

1 ARTICLE 31	1
1.1 Text of Article 31	1
1.2 General	2

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Article 31

Other Use Without Authorization of the Right Holder

Where the law of a Member allows for other use⁷ of the subject matter of a patent without the authorization of the right holder, including use by the government or third parties authorized by the government, the following provisions shall be respected:

(footnote original) ⁷ "Other use" refers to use other than that allowed under Article 30.

- (a) authorization of such use shall be considered on its individual merits;
- (b) such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. This requirement may be waived by a Member in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;
- (c) the scope and duration of such use shall be limited to the purpose for which it was authorized, and in the case of semi-conductor technology shall only be for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive;
- (d) such use shall be non-exclusive;
- (e) such use shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use;
- (f) any such use shall be authorized predominantly for the supply of the domestic market of the Member authorizing such use;
- (g) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, upon motivated request, the continued existence of these circumstances;
- (h) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;
- (i) the legal validity of any decision relating to the authorization of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;

- (j) any decision relating to the remuneration provided in respect of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;
- (k) Members are not obliged to apply the conditions set forth in subparagraphs (b) and (f) where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive. The need to correct anti-competitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions which led to such authorization are likely to recur;
- (l) where such use is authorized to permit the exploitation of a patent ("the second patent") which cannot be exploited without infringing another patent ("the first patent"), the following additional conditions shall apply:
 - (i) the invention claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent;
 - (ii) the owner of the first patent shall be entitled to a cross-licence on reasonable terms to use the invention claimed in the second patent; and
 - (iii) the use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent.

1.2 General

1. With respect to the grant of compulsory licences and what constitutes a national emergency or other circumstances of extreme urgency, paragraphs 5(b) and (c) of the Declaration on the TRIPS Agreement and Public Health, adopted on 14 November 2001, read as follows:

"(b) Each Member has the right to grant compulsory licences and the freedom to determine the grounds upon which such licences are granted.

(c) Each Member has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/AIDS, tuberculosis, malaria and other epidemics, can represent a national emergency or other circumstances of extreme urgency."¹

2. Following the entry into force of the Protocol Amending the TRIPS Agreement², Members to which the amended TRIPS Agreement applies may derogate from the obligations set out in paragraphs (f) and (h) of Article 31 of the TRIPS Agreement with respect to pharmaceutical products pursuant to Article 31*bis*, the Annex and the Appendix to the TRIPS Agreement.³ For other Members that have yet to accept the Protocol, the waiver provisions established under the General Council decision of 30 August 2003 on the "Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health" continue to apply.⁴

¹ [WT/MIN\(01\)/DEC/2](#).

² [WT/L/641](#). The decision on an "Amendment of the TRIPS Agreement" to which the Protocol Amending the TRIPS Agreement was attached was adopted by the General Council on 6 December 2005 in the light of a statement read out by the Chairman as reflected in paragraphs 29-32 of the minutes of the General Council meeting in [WT/GC/M/100](#). The Amendment Protocol entered into force on 23 January 2017 following acceptance by two thirds of WTO Members, as required pursuant to paragraph 3 of Article X of the WTO Agreement ([WT/Let/1236](#)).

³ See the document on Article 31*bis* of the TRIPS Agreement (Practice).

⁴ [WT/L/540](#) and [Corr.1](#). This waiver decision implements paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health ([WT/MIN\(01\)/DEC/2](#)). It was adopted by the General Council in the light of

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a statement read out by the Chairman as reflected in paragraphs 29-31 of the minutes of the General Council meeting in [WT/GC/M/82](#).