

TRIPS:

A multidisciplinary analysis of certain possibilities and consequences of compulsory license in TRIPS

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Abstract:

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The world is facing large challenges in the forthcoming years. The global warming and the following consequences are calling for rapid action to minimize the cost and destruction. At the same time some of the, so far, less polluting economies like India and Brazil are evolving and their development needs energy to be maintained. If this is to be solved without worsening the global warming, a drastic increase in the diffusion of sustainable energy is needed. **This thesis is analyzing the suggestion made by developing countries at the COP negotiations in Bonn, compulsory license on sustainable energy. It is analyzed whether compulsory license on sustainable energy is possible according to TRIPS and what it will mean to the incentive to invest in R&D.**

The legal analysis shows that TRIPS does not put any restrictions on the Member States as to what they can, or cannot issue compulsory license upon. However there are different criteria's that needs to be satisfied in order to issue a license.

The economic analysis does not give a clear answer. **Most of the evidence shows that compulsory licensing in most of the cases won't have a negative effect on the R&D. However three points play an important role on whether or not compulsory licensing have a negative effect.**

- The royalty determined.
- The importance of the affected market.
- The predictability of the license.

...References

...Sheet 1, Side 3

Itssd comments concerning document (scp/13/3) ITSSD 2009

Climate Change: Technology Transfer or Compulsory License?, Kogan, Lawrence A. 2010