

WTO Rules on Patents' Compulsory Licensing

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Your March 14 editorial "[The Thai Flu](#)" misses an important legal nuance regarding the rules of the World Trade Organization. You state that the WTO has "vague language" on intellectual property rights permitting compulsory license of a patent in a time of "national emergency" or for "public non-commercial use." You go on to conclude that in recent episodes when the Thai government granted such a compulsory license, there was "no such emergency in this case."

Actually, the rules of the WTO are not vague. Article 31 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) does not contain any limitation on the purposes for which compulsory licenses can be granted by a government. Thus, compulsory licenses are not limited to purposes of national emergency. If there was any doubt about this, the WTO member governments acted by consensus in 2001 in the Doha TRIPS Declaration to state that "Each member has the right to grant compulsory licenses and the freedom to determine the grounds upon which such licenses are granted."

Of course, TRIPS Article 31 also contains a number of requirements that a government must fulfill to grant a compulsory license (e.g., paying "adequate remuneration"). I am not taking a position on whether Thailand has met the Article 31 requirements or on whether Thailand's action was wise for its economy or for its public health.

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