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PATENTS (AMENDMENT) BILL 2007

COMMITTEE STAGE

Amendments to be moved by the Secretary for Commerce and Economic Development

Clause

Amendment Proposed

- 2 By deleting "Secretary for Commerce, Industry and Technology" and substituting "Secretary for Commerce and Economic Development".
- 3 (a) In the proposed definition of "eligible importing member", in paragraph (b), by deleting "Article 31 bis in" and substituting "the General Council Decision or".
- (b) In the proposed definition of "exporting member", by deleting "Article 31 bis in" and substituting "the General Council Decision or".
- (c) In the proposed definition of "Protocol", by adding ", the Annex to the Protocol Amending the TRIPS Agreement, the Annex to the TRIPS Agreement and the Appendix to the Annex to the TRIPS Agreement" after "2005".
- (d) By adding -
- "Doha Declaration" (《多哈宣言》) means the Declaration on the TRIPS Agreement and Public Health adopted on 14 November 2001

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by the Fourth WTO Ministerial Conference
at Doha, Qatar;

"General Council Decision" (《總理事會決定》)

means the Decision adopted by the General
Council of the WTO on 30 August 2003 on
the Implementation of Paragraph 6 of the
Doha Declaration;

"relevant instrument or legislation" (有關文書或
法例) means -

- (a) the General Council Decision;
- (b) the Protocol; or
- (c) legislation made by the
exporting member or the
eligible importing member, as
the case may be, pursuant to or
for the purpose of implementing
-
 - (i) the General Council
Decision; or
 - (ii) the Protocol;"

- 5 (a) By deleting the proposed section 72B(2) and
substituting -

"(2) Where a period of extreme urgency
has been declared under subsection (1), the
Chief Executive in Council shall review from
time to time, or cause to be reviewed from
time to time, the public health problem or the
threatened public health problem leading to

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the declaration.

(3) The period of extreme urgency declared under subsection (1) continues to run until such a date as may be specified by the Chief Executive in Council by notice published in the Gazette terminating the period of extreme urgency.

(4) A notice published under subsection (1) or (3) is subsidiary legislation."

- (b) In the proposed section 72E(1), by deleting "Article 31 bis in the Protocol and Article 31(h) of the TRIPS Agreement" and substituting "the relevant instrument or legislation".
- (c) In the proposed section 72E(2) -
- (i) by deleting "to the satisfaction of the Government" and substituting "to the satisfaction of the Director";
 - (ii) by deleting "Article 31 bis in the Protocol and Article 31(h) of the TRIPS Agreement" and substituting "the relevant instrument or legislation".
- (d) In the proposed section 72E(6), by deleting "Secretary for Commerce, Industry and Technology" and substituting "Secretary for Commerce and Economic Development".
- (e) By deleting the proposed section 72F(2) and substituting -
- "(2) The Director shall -
 - (a) as soon as practicable after

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any amount of remuneration has been agreed under section 72E(2)(a) between him and the proprietor of the patent concerned, advertise in the official journal a notice stating -

(i) the amount of remuneration so agreed with the proprietor of the patent concerned named in the notice and, where applicable, the apportionment of the amount of remuneration under section 72E(5); and

(ii) that any other person who is entitled to claim remuneration payable under section 72E(2) may make an application to the court under section 72I(2); or

(b) as soon as practicable after he is satisfied that he and the proprietor of the patent concerned have failed to agree on the amount of remuneration payable under section 72E(2),

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advertise in the official journal a notice stating -

(i) the fact of the failure to agree on the amount of remuneration with the proprietor of the patent concerned named in the notice; and

(ii) that any other person who is entitled to claim remuneration payable under that section may make an application to the court under section 72I(2).".

(f) By adding -

"72GA. Disposal of patented pharmaceutical products after period of extreme urgency etc.

(1) On the termination of the period of extreme urgency by a notice under section 72B(3), the import compulsory licensee shall take reasonable steps to recall or cause to recall any patented pharmaceutical product which is imported under the import compulsory licence from any person (other than a person who is in possession of the product privately for non-commercial purposes) who is in possession of the product disposed of in accordance with the licence.

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(2) An import compulsory licensee shall -

- (a) surrender to the Director any patented pharmaceutical product which is in his possession or recalled under subsection (1); or
- (b) dispose of the product in such a way as may be agreed with the proprietor of the patent concerned granted in Hong Kong.

(3) Where a patented pharmaceutical product is surrendered to the Director under subsection (2)(a) -

- (a) the Government shall pay to the import compulsory licensee a sum equivalent to the purchase price for the product paid by the licensee to the seller of the product in the exporting member; and
- (b) the Director shall -
 - (i) dispose of the product in such a way as may be agreed with the proprietor of the patent concerned granted in Hong Kong; or
 - (ii) in default of agreement,

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destroy the product as soon as practicable.

(4) For the avoidance of doubt, stocking of any patented pharmaceutical product which is imported under an import compulsory licence does not amount to an infringement of the patent concerned on the part of the import compulsory licensee or the Director from the termination of the period of extreme urgency by a notice under section 72B(3) until -

- (a) the import compulsory licensee surrenders the product to the Director under subsection (2)(a) or disposes of the product under subsection (2)(b); or
- (b) the Director disposes of the product under subsection (3)(b)(i) or destroys the product under subsection (3)(b)(ii),

as the case may be."

- (g) In the proposed section 72K(2)(b) -
 - (i) in subparagraph (ii)(C), by deleting "Article 31 bis in the Protocol and Article 31 of the TRIPS Agreement" and substituting "the relevant instrument or legislation";
 - (ii) in subparagraph (iii), by adding "where

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applicable," before "a copy".

- (h) In the proposed section 72M(1)(b)(iii), by deleting "dedicated to and maintained for the purpose of Article 31 bis in the Protocol".
- (i) In the proposed section 72O(4), by deleting "Secretary for Commerce, Industry and Technology" and substituting "Secretary for Commerce and Economic Development".

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