

Provisional Measure No. 482, OF 10 FEBRUARY 2010.

Provides for measures to suspend concessions or other obligations of the country on intellectual property rights and others, in cases of noncompliance with the obligations of the Agreement Establishing the World Trade Organization - WTO.

THE PRESIDENT OF THE REPUBLIC, in exercise of the powers conferred upon it by art. 62 of the Constitution, adopts the following Provisional Measure, the force of law:

Article 1. This Provisional Measure provides for measures to suspend concessions or other obligations of the country on intellectual property rights and others, in cases of breach of multilateral obligations for Member of the World Trade Organization - WTO, when the Federative Republic of Brazil has been authorized by the Dispute Settlement WTO to suspend the application to that State, concessions or other obligations under the WTO Agreements.

Article 2. For the purposes of this Provisional Measure, it is:

I - Agreement Establishing the World Trade Organization 1994: The treaty establishing the World Trade Organization, done at Maraqueche on April 12, 1994, contained in the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations of the GATT April 12, 1994, incorporated into the Brazilian regulations by Decree 1355 of 30 December 1994;

II - Agreement on Aspects of Intellectual Property Rights Trade-related: the accord integrated to Annex 1C of the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations of the GATT 1994, incorporated into the Brazilian legal system by Decree 1355, 1994;

III - Dispute Settlement Understanding: Understanding on Rules and Procedures Regarding Settlement Solutions of WTO, attached to the Annex II of the Final Act of the Uruguay Round of Multilateral Trade Negotiations of the GATT 1994, incorporated into the Brazilian regulations by Decree 1355 of 30 December 1994;, and

IV - intellectual property rights: rights to intellectual property of:

- a) literary, artistic and scientific works;
- b) artists, phonogram producers and broadcasting organizations;
- c) computer programs;
- d) trademarks;
- e) geographical indications;
- f) industrial designs;
- g) patents and utility models;

- h) cultivares or vegetables varieties;
- i) topographies of integrated circuits;
- j) confidential or undisclosed information, and
- k) other intellectual property rights established by the Brazilian legislation.

Article 3. This Provisional Measure will be made effective through the following measures:

- I - suspension of intellectual property rights;
- II - limitation of intellectual property rights;
- III – changing requirements for the implementation of intellectual property rights protection;
- IV – changing requirements for obtaining and maintaining intellectual property rights;
- V - temporarily blocking of royalties remittance or compensation based on the license of intellectual property rights, and
- VI – applying commercial rights on the remuneration due to the holder of intellectual property rights.

Paragraph. For the purposes of the measures mentioned in this article shall be considered the registration requirements set forth in the correspondent legislation, in accordance to the competence of the Institute of Industrial Property - INPI and the Ministry of Agriculture.

Article 4 The following Parties will be subject to the terms of this Provisional Measure:

I - Part II – standards concerning the availability, scope and use of intellectual property rights with respect to:

- a) copyright and related rights;
- b) trademarks;
- c) geographical indications;
- d) industrial designs;
- e) patents;
- f) topographies of integrated circuits, and
- g) protection of confidential information or protection of undisclosed information;

II - Part III - enforcement of intellectual property rights, and

III - Part IV – acquisition and maintaining of intellectual property rights and related *inter-parties* procedures.

§ 1 The intellectual property protection of computer programs, as international obligations, is considered as part of the letter "a" of item I of the main body of this article.

§ 2 The intellectual property protection of plant varieties or cultivars, as international obligations, is considered as part of obligations under the letter "e" in Item I of the head of this article under the "b" of paragraph 3 of Article 27 of the Agreement on Trade-Related Aspects of Intellectual Property Rights.

Article 5. The terms of this Provisional Measure may only be applied against applicants, holders or licensees of intellectual property rights which are:

I – citizens of Member of the WTO, as described in Art. 1, or people based on its territory, or

II – companies based or established in the WTO member country, as described in Art. 1.

Article 6 The terms of this Provisional Measure may be applied individually or cumulatively, as approved by Resolution of the Council of Ministers of the Board of Foreign Trade - CAMEX in the following ways:

I – postponing the beginning of the enforcement of intellectual property rights to a future date to be defined by the Executive Branch, consequently reducing the term of protection for pending intellectual property applications;

II – reducing the term of intellectual property rights, while it is in force;

III - licensing or non-commercial public use, without authorization of the holder;

IV - suspension of the exclusive right to prevent imports and marketing in the domestic market for goods protected by patent rights, even if the imported goods has not been placed in the external market directly by the holder of intellectual property rights or with his consent;

V - increase taxes due to governmental bodies or public entities responsible for granting intellectual property rights, including its acquisition and maintenance;

VI - temporarily blocking of royalties remittance or compensation based on the license of intellectual property rights;

VII - applying commercial rights on the remuneration due to the holder of intellectual property rights, or

VIII - creation of mandatory registration in order to obtain and maintain intellectual property rights.

§ 1 In case the penalties mentioned in items I and II of the caput of this article has been withdrawn, the recovery of the intellectual property rights will not give the holder the possibility to obtain:

I – restitution of the subtracted term, even if the demanded rights depend on a bureaucratic act effective after the intellectual property rights recovery, or

II - the extension of protection.

§ 2 The penalty mentioned in item III of the caput of this article may be applied with or without payment.

Article 7 The application of commercial rights mentioned in paragraph VII of Art. 6th will be approved by resolution of the Council of Ministers of CAMEX, for a specified period, by applying the percentage of compensation on the amount of compensation they are entitled to the persons mentioned in art. 5.

§ 1 It will be responsible for paying the commercial rights referred in the caput of this article:

I - the financial agent responsible for closing the exchange agreement, in the case of bank wire, and

II - the person or organization who make the claim or the payment without the intervention of agents of the financial system or resources held abroad.

§ 2 The commercial rights referred in the caput of this article will be applied independently of any administrative or tributary action and will be due on the date of payment, shipment or arrival.

§ 3 The lack of payment of the commercial rights referred in this article will result:

I - in the case of voluntary payment, after delivery, payment or credit, the incidence of late-payment penalty and interest, and

II - in case of official demand, a fine of seventy-five percent and interest referred to in item I.

§ 4 The penalty for late payment under subsection I of § 3 will be calculated at the rate of thirty-three hundredths of a percent per day of delay from the first day subsequent to the date of shipment to the outside until the day of actual payment limited to twenty percent.

§ 5 The penalty for late payment under subsection I of § 3 shall be the reference rate of the Special Settlement and Custody - Selic, for federal bonds, accumulated on a monthly basis from the first day of the month following the delivery, payment or credit to the last day of the month preceding the payment and one percent in the month of payment.

§ 6 The fine mentioned in item II of § 3 will be required in isolation when the rights of a commercial nature referred to in this Article, have been paid after the referral, payment or credit to the persons mentioned in art. 5, but without arrears surcharges.

§ 7 The demand letter of the commercial rights of the caput of this article, as well as arrears surcharges and penalties will be formalized on tax assessment compiled by Auditor-Fiscal da Receita Federal of Brazil, subject to the provisions of Decree at 70,235, 6 March 1972, and within five years from the date of shipment, payment or credit.

§ 8 Checking the breach of duty, the Internal Revenue Service of Brazil refer the debt to the Attorney General of the National Treasury - PGFN for inclusion in Tax Debt Union and its recovery, subject to the limitation period of five years.

§ 9 will only be liable for compensation values taken as charges for the caput of this Article in cases of overpayment or greater than the amount due, subject to the procedures established by the Internal Revenue Service of Brazil.

§ 10. The amounts collected under the commercial law of the caput of this Article shall be reported as income of origin and classified as "income arising from measures of Suspension of Concessions of Intellectual Property Rights" and will be allocated to the Ministry of Development, Industry and Trade, for investment in the stock of foreign trade, according to guidelines established and approved by Resolution of the Council of Ministers of CAMEX;

§ 11. The figures collected a penalty for late payment and trade, as well as interest, that in § § 3 and 7 of this article will be allocated to the Special Fund for Development and Improvement of Surveillance Activities - FUNDAP established by art. 6 of Decree-Law 1437 of 17 December 1975.

8th Art During the term and limits for the application of any of the measures provided for in this Provisional Measure, be suspended for people to art. 5th:

I - the principle of national treatment and the principle of most favored nation, being the application of discriminatory treatment under the Understanding on Rules and Procedures Governing the Settlement Solutions WTO;

II - the rights to the holder or applicant of intellectual property rights under the legislation of intellectual property, mentioned in art. 4;

III - the rights to the beneficiaries or applicants for protection against unfair commercial use of information concerning the results of tests or other undisclosed data submitted to the competent authorities as a condition to adopt or maintain the record for the marketing of products, and

IV - the achievement and maintenance of intellectual property rights and procedures related Interpart.

Paragraph. The measures provided for in this Provisional Measure does not matter any fee or compensation for the exercise of rights by third parties, except in the case of licensing or public non-paid commercial without permission of the owner.

Article 9 The application of measures provided for in this Provisional Measure will be preceded by preliminary report of CAMEX, the draft measures and the reasons therefor.

§ 1 The parties have twenty days to submit expressions, from the date of publication of the preliminary report in the Official Gazette

§ 2 Once the period referred to in § 1, the Council of Ministers of CAMEX will decide on an end unless the deliberate application of measurement not contained in the report, when it should be repeated the procedure described in this article.

§ 3 In applying the measures provided for in this Provisional Measure, could be evaluated proposals submitted by the Brazilian sectors that have requested use of the mechanism for resolving the WTO dispute, which originated.

Article 10. The measures provided for in this Provisional Measure period will only be taken for as long as the authorization of the Dispute Settlement WTO.

Paragraph. The restoration, the WTO, at any time, concessions or other obligations suspended Brazilian:

I - no matter the restoration of rights that have been affected by the measures, and

II - not prejudice the legitimate interests of third parties under contracts or uses authorized by the Executive during the implementation of measures adopted on the basis of this Provisional Measure.

Article 11. The Executive will establish mechanisms to monitor the implementation of the measures adopted on the basis of this Provisional Measure.

Article 12. This Provisional Measure shall enter into force on the date of its publication.

Brasília, February 10, 2010, 189th and 122nd Independence of the Republic.

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