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Abstract

**Making Rules in the WTO:
Lessons from Article 6 of the TRIPS Agreement**

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This article analyzes rule making in the WTO with special reference to Article 6 of the TRIPS Agreement. Two competing approaches to parallel imports characterized the Uruguay Round negotiations: to prohibit parallel imports or to permit them. The contracting parties were adamant in holding to their competing positions; therefore, the negotiators designed Article 6 of the TRIPS Agreement with an open texture so that both of these competing approaches could be legitimized. Consequently, the nature of Article 6 of the TRIPS Agreement is extremely complex, leading to disharmonious legal regimes and practices at the domestic level. Moreover, the wording of Article 6 has resulted in a disguised form of protection of embedded producer interests at the cost of consumer interests. Against this background, this article argues for the need to establish the true nature of Article 6 of the TRIPS Agreement, that is, as embodying international exhaustion rules in light of the Paris and Berne conventions.

Keywords: exhaustion, open texture, parallel imports, rule making, trade negotiations