COMPARATIVE ANALYSIS OF ACCESS TO PATENTED HIV/AIDS PHARMACEUTICAL MEDICINES THROUGH THE CANADIAN AND EU TRIPS FLEXIBILITIES MEASURES: ARE THEY EFFICACIOUS OR OVERLY BURDENSOME AND INEFFECTIVE MEASURES?

OS Sibanda*

SUMMARY

This paper evaluates the Canadian and the European Union's (EU) implementation of the World Trade Organisation (WTO) General Council Decision of 2003, which resolved that developed nations could export patented pharmaceutical drugs to member states in order to address public health challenges such as Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome (HIV/AIDS), tuberculosis, malaria and other epidemics, such states including Sub-Saharan Africa (SSA). *The author makes a primarily textual appraisal of* how and to what extent the *Canada Access to Medicine Regime (*CAMR) and European Union (EU) Regulations benefit, for instance, SSA countries in the WTO in their quest to make essential medicine more accessible. The author argues that although there are identifiable complexities inherent in the Canadian and the EU's access to pharmaceutical product regimes, there are far more important incentives and benefits that can be reaped in taking advantage of the respective systems. The author recommends that countries facing public health crises/emergencies, such as SSA countries, and non-governmental organisations (NGOs) take advantage of the regulatory flexibilities of Canada and the EU in their efforts to provide their communities with essential HIV/AIDS treatment, and treatment for other diseases such as malaria. The author dismisses the arguments against TRIPS (Trade-Related Aspects of Intellectual Property) flexibilities-inspired legislation and similar measures as mostly mere rhetoric and hair-splitting, because they sometimes unwarrantedly dismiss a workable solution to public-health problems.

KEYWORDS: HIV/AIDS, pharaceuticals, patents TRIPS, Canada, EU

* Omphemetse S Sibanda B Juris LLB (Vista) LLM (Georgetown) LLD (NWU). Professor and Chair of Department of Criminal and Procedural Law, College of Law, UNISA,SIBANOS@unisa.ac.za.