

Trends in transfer of technology to developing countries

- **Keeping or sharing technologies with developing countries?**

Transfer of technology laws 1970-1980

Royalty payments

Restrictive practices in licensing
agreements

Guarantees

International Code of Conduct on Transfer of Technology

- Objective: to set forth an appropriate set of responsibilities and obligations of parties to transfer of technology transactions, taking into consideration their legitimate interests as well as differences in their bargaining positions.

International Code of Conduct on Transfer of Technology

- **Restrictive practices**
(‘development/competition test’)
- **Guarantees**
- **Applicable law and forum**

- **United Nations Convention on the Law of the Sea (1982)**
- **UN Framework Convention on Climate Change(1992)**
- **Convention on Biological Diversity(1992) (CBD)**
- **Agenda 21**
- **Energy Charter (1994)**
- **FAO International Treaty on Plant**

United Nations Framework Convention on Climate Change (UNFCCC)-Commitments (art. 4.3)

- The developed country Parties and other developed Parties included in Annex II shall provide new and additional financial resources to meet the agreed full costs incurred by
- developing country Parties... including for the transfer of technology...

New scenario

- **Trade liberalization**
- **'South Korean syndrome'**
- **Loss of competitiveness**
- **End of a flexible IPRs regime: GATT negotiations**

The TRIPS Agreement

- The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology (article 7)

Article 8.2-TRIPS

- Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent...the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

Control of anti-competitive practices in contractual licences (article 40)

- **2. Nothing in this Agreement shall prevent Members from specifying in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market...**

TRIPS-article 66.2

- 2. Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base.

- **Reluctance to transfer updated/tested technology (increased imitation capacity in developing countries)**
- **Absence of regulations on restrictive practices in developing countries**
- **Increased cost of technology (e.g. China U\$S 13 billion; SKorea, U\$S 8,9 billion)**
- **Increased levels of IPRs (e.g. FTAs)**

- **Technology transfer in international debates: are IPRs a barrier or an incentive?**

ToT and sustainable development

- Agenda 21: compulsory licenses
- technology transfer “particularly to developing countries, on favourable terms, including on concessional and preferential terms, as mutually agreed.” **Rio+20 Declaration, para. 269**

Technology Executive Committee (TEC) to the COP

- IPRs were identified as an area for which clarity would be needed on its role in the development and transfer of climate technologies based upon evidence on a case by case basis.

Conclusions

- **Technology transfer, necessary for economic development, climate change, etc.**
- **Increased technological protectionism**
- **Transfer of technology will remain a key issue in North-South negotiations**