Sustainable Technology Transfer

A Guide to Global Aid & Trade Development

Edited by

Hans Henrik Lidgard
Jeffery Atik
Tu Thanh Nguyen
Summary of Contents

The Editors vii
List of Contributors ix
List of Abbreviations xxiii
Institutional Definitions and Abbreviations xxvii
Preface xxix

Chapter 1
Framing the Issues 1
Hans Henrik Lidgard, Jeffery Atik & Tu Thanh Nguyen

Chapter 2
TRIPS Article 66.2: Between Hard Law and Soft Law? 13
Thu-Lang Tran-Wasescha & Xavier Groussot

Chapter 3
Assessing Reporting Obligations under TRIPS Article 66.2 43
Hans Henrik Lidgard

Chapter 4
Technology Transfer and Competition Law: Options for Developing Countries 65
Tu Thanh Nguyen
<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Intellectual Property Rights, Technology Transfer and Development: The Case of Compulsory Licensing</td>
<td>89</td>
</tr>
<tr>
<td></td>
<td><em>Keith E. Maskus</em></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>ACTA and the Destabilization of TRIPS</td>
<td>121</td>
</tr>
<tr>
<td></td>
<td><em>Jeffery Atik</em></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Breaking Down Barriers to Technology Transfer: Reforming WTO Standard-Setting Rules and Establishing an Advisory Facility in Standard-Setting for Developing and Least Developed Countries</td>
<td>149</td>
</tr>
<tr>
<td></td>
<td><em>Christopher Gibson</em></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Technology Transfer and Climate Change</td>
<td>177</td>
</tr>
<tr>
<td></td>
<td><em>Hari M. Osofsky</em></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Technology Transfer and Benefit Sharing under the Biodiversity Convention</td>
<td>195</td>
</tr>
<tr>
<td></td>
<td><em>Peter Gottschalk</em></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Sustainable Technology Transfer, Climate Control, and Renewable Power in Vietnam</td>
<td>221</td>
</tr>
<tr>
<td></td>
<td><em>Steven Ferrey</em></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Vietnam: A Case Study for Sustainable Technology Transfer</td>
<td>251</td>
</tr>
<tr>
<td></td>
<td><em>Tran Viet Dung, Le Thi Nam Giang &amp; Nguyen Nhu Quynh</em></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>From Reality to Law: Sustainable Technology Transfer – An Outlook</td>
<td>287</td>
</tr>
<tr>
<td></td>
<td><em>Christoffer Wong, Hans Henrik Lidgard, Jeffery Atik &amp; Tu Thanh Nguyen</em></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Bibliography</td>
<td>301</td>
</tr>
<tr>
<td></td>
<td>Index</td>
<td>323</td>
</tr>
</tbody>
</table>
Table of Contents

The Editors vii
List of Contributors ix
List of Abbreviations xxiii
Institutional Definitions and Abbreviations xxvii
Preface xxix

Chapter 1
Framing the Issues 1
Hans Henrik Lidgard, Jejfery Atik & Tu Thanh Nguyen

1 Defining Sustainable Technology Transfer 1
1.1 Technology Transfer and Technical Assistance 2
1.2 Sustainable 4

2 Balancing Fundamental Interests 5
2.1 Sustainable Technology Transfer: An Element in a Larger Context 5
2.1.1 UN Millennium Development Goals Require the Eradication of Poverty 5
2.1.2 Human Rights Justifications for Technology Transfer 7
2.1.3 Addressing the Environment: A Question of Survival 9

3 Treaty Obligations Giving Effect To Fundamental Concepts 10
4 Fragmentation 11
# Table of Contents

## Chapter 2
**TRIPS Article 66.2: Between Hard Law and Soft Law?**
*Thu-Lang Tran-Wasescha & Xavier Groussot*

1. The WTO’s ‘Legislative’ and ‘Judicial’ Roles  
1.1 Multilateral versus Plurilateral Participation in Treaties  
1.2 Application and interpretation  
2. TRIPS Provisions and TRIPS Flexibilities  
  2.1 The ‘Hierarchy’ of Members’ Obligations  
  2.2 Flexibilities and Constructive Ambiguity  
  2.3 Balancing Interests  
    2.3.1 The case of TRIPS-public health  
3. Overview of Provisions Related to Patents and DSU  
4. ‘Soft Law’ and Trade Law  
  4.1 Defining Soft Law in the Context of Trade Law  
  4.2 Soft Law and Theory in the WTO Context  
    4.2.1 Shrimp/Turtle Case  
    4.2.2 The Canada – Pharmaceutical Patents Case  
5. Technology Transfer and Article 66.2  
6. Conclusions

## Chapter 3
**Assessing Reporting Obligations under TRIPS Article 66.2**
*Hans Henrik Lidgard*

1. The UNCTAD Discussion  
  1.1 2002 Policy Document  
  1.2 UNCTAD Conferences  
2. The TRIPS Development  
  2.1 No Reporting Obligations in the Agreement  
  2.2 The 2001 Doha Declaration  
  2.3 LDC, Developing and Developed  
  2.4 Unspecific Initial Reporting  
3. Recent Article 66.2 Reporting  
  3.1 United States Provides Tax Incentives and Forges Public-Private Sector Alliances  
  3.2 European Union Emphasizes R&D Collaboration  
  3.3 Individual Country Reports  
    3.3.1 Spain – A Bottom-Up Approach  
    3.3.2 United Kingdom – Africa Enterprise Challenge Fund  
    3.3.3 Germany – Public-Private Partnership  
    3.3.4 Denmark: The Business-to-Business Programme  
    3.3.5 Norway: Clean Technology Support  
    3.3.6 Switzerland: A Broad and Committed Engagement
Table of Contents

3.3.7 Canada: Confirms a New Reporting Trend 59
3.3.8 Australia Broadly Supports Education 60
3.3.9 New Zealand Promotes Water and Waste Projects 60
3.3.10 Japan Supports Training 61
4 Developing Countries Require Adherence to the Obligations Established in the Conventions 61
5 Conclusion: Enigmatic Provisions and Uncreative Reporting 62

Chapter 4
Technology Transfer and Competition Law: Options for Developing Countries 65
Tu Thanh Nguyen

1 Interface between IPRs and Competition Law 67
2 International Reactions 70
3 Technology Transfer-Related Competition Law Enforcement in Developing Countries 73
  3.1 Refusal to License Pharmaceutical Patents in South Africa 74
  3.1.1 Hazel Tau v. GSK & BI 74
  3.1.2 TAC v. Merck/Msd 75
  3.1.3 Remarks 77
  3.2 Abbott’s Withdrawal of Medicine Registration Applications in Thailand 80
  3.3 Philips Package Licensing in Taiwan 81
    3.3.1 Background 81
    3.3.2 Other Cases Involved 83
    3.3.3 Remarks 86
4 Options for Developing Countries 88

Chapter 5
Intellectual Property Rights, Technology Transfer and Development: The Case of Compulsory Licensing 89
Keith E. Maskus

1 IPR and Technology Transfer 92
2 History of Global Regulation and TRIPS 95
   2.1 General History and Industrial Property 95
   2.2 The TRIPS Agreement and CLs 97
   2.3 Copyrights 100
3 Historical Use of Compulsory Licensing 104
   3.1 The United States 104
   3.2 Canada 107
   3.3 Other Countries 108
Table of Contents

3.4 Summary: The Scope for Compulsory Licenses 110
4 Statistical Evidence 113
5 Economic Tradeoffs 115
6 Policy Lessons 118

Chapter 6
ACTA and the Destabilization of TRIPS 121
Jeffery Atik

1 From TRIPS to TRIPS Plus 121
  1.1 The Unravelling of the Grand Bargain 121
  1.2 Regime Shift Redux 124
  1.3 The Road to ACTA 125
2 ACTA and Health Anxieties 129
  2.1 Revisiting the Essential Medicines Controversy 129
  2.2 The EU Transhipment Case 131
  2.3 ACTA and Health 133
3 The Uneasy Coexistence of ACTA and TRIPS 133
  3.1 The Force of ACTA’s Norms 133
  3.2 Conflict of Norms 136
  3.3 ACTA Norms in WTO Dispute Settlement 138
4 The Extension of TRIPS Plus Norms to Developing Countries: The Case of Vietnam 140
5 Destabilizing TRIPS 144

Chapter 7
Breaking Down Barriers to Technology Transfer: Reforming WTO Standard-Setting Rules and Establishing an Advisory Facility in Standard-Setting for Developing and Least Developed Countries 149
Christopher Gibson

1 Technology Standard-Setting, Intellectual Property and Issues for Developing Countries 150
  1.1 Complexity in Technology Standard-Setting 150
  1.2 The Trouble with Intellectual Property and Standards 154
  1.3 Standard-Setting, Intellectual Property and a Test-Case to Explore Unfair Competition 156
2 TBT Agreement and Proposal for Reform 160
  2.1 Proposal for Amendment of CTBT Principles 169
  2.4 Dispute Settlement 170
3 Advisory Facility on Standard-Setting for Developing and Least Developed Countries 172
4 Conclusion 174
Chapter 8  
Technology Transfer and Climate Change  
Hari M. Osofsky  

1. All Climate Change Technology Was Not Created Equal 180  
2. Dilemmas of Scale in Climate Change Technology Transfer 188  
3. Towards a Multidimensional Approach to Climate Change Technology Transfer 189  
4. Conclusion 193  

Chapter 9  
Technology Transfer and Benefit Sharing under the Biodiversity Convention  
Peter Gottschalk  

1. What Is Technology Transfer? 198  
2. Technology Transfer in the Context of the Convention 201  
   2.1 Provisions on Technology Transfer in the CBD 202  
      2.1.1 Technology 203  
      2.1.2 Transfer and Cooperation 204  
   2.2 Technology Transfer as a Cross-Cutting Issue 205  
   2.3 Negotiating Technology Transfer 206  
   2.4 Sustainable Technology Transfer? 208  
      2.4.1 The Institutional Context for Norm Making 209  
      2.4.2 The Principle of Common but Differentiated Responsibilities 210  
3. Assessing Article 23 212  
4. Conclusions: Towards Technology Governance? 218  

Chapter 10  
Sustainable Technology Transfer, Climate Control, and Renewable Power in Vietnam  
Steven Ferrey  

1. The Global Climate Challenge and Energy Technology 223  
   1.1 The Role of Power Technology 223  
   1.2 The Sustainable Technology Future 225  
2. What Works in Developing Nations? 227  
   2.1 Leading Asian Countries 227  
      2.1.1 Sri Lanka 229  
      2.1.2 Thailand 231  
      2.1.3 India 231  
   2.2 International Lessons in Renewable Development Technology Transfer 232  
3. Vietnam Initiatives on Carbon and Renewables 234
Table of Contents

3.1 The Vietnam Sustainable Energy Potential
3.2 The Legal Framework for Sustainable Energy Technology in Vietnam
3.3 Compared to other Asian Nations
4 Embellishing the Sustainable Energy Opportunities in Vietnam through International Climate Change Programs
4.1 The CDN of the Kyoto Protocol
4.2 The Application of CDM in Vietnam
5 Conclusion: Solving the International Climate Change Equation

Chapter 11
Vietnam: A Case Study for Sustainable Technology Transfer
Tran Viet Dung, Le Thi Nam Giang & Nguyen Nhu Quynh
1 Law and Practice on Compulsory Licensing
  1.1 The Tamiflu Case
  1.2 Recent Legislative Developments
  1.3 Preliminary Evaluation
2 Law and Practice on Parallel Imports
  2.1 From the Tribeco Case to the Circular No. 825/2000/TT-BKHCNMT
  2.2 Honda Case
  2.3 Recent Developments
    2.3.1 The Decision No. 1906/2004/QD-BYT
    2.3.2 The Intellectual Property Law
    2.3.3 Kingmax Case
  2.4 Preliminary Evaluation
3 Competition Law and Policy on Technology Transfer
4 Zuellig Pharma Vietnam Case
  4.1 Preliminary Evaluation
5 Conclusion

Chapter 12
From Reality to Law: Sustainable Technology Transfer – An Outlook
Christoffer Wong, Hans Henrik Lidgard, Jeffery Atik & Tu Thanh Nguyen
1 Trends
2 Law of Technology Transfer
  2.1 Definitional Dilemmas
    2.1.1 The Developing Country/Developed Country Dyad
    2.1.2 The Scope of the Obligations to Transfer Technology to Developing Countries

xx
<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.2</td>
<td>Nature of Legal Obligations</td>
</tr>
<tr>
<td>2.3</td>
<td>Fragmentation</td>
</tr>
<tr>
<td>3</td>
<td>A Way Forward</td>
</tr>
<tr>
<td>3.1</td>
<td>Article 66.2 Reporting</td>
</tr>
<tr>
<td>3.2</td>
<td>Article 67 Reporting</td>
</tr>
<tr>
<td>3.3</td>
<td>General Development Aid</td>
</tr>
<tr>
<td>Bibliography</td>
<td>301</td>
</tr>
<tr>
<td>Index</td>
<td>323</td>
</tr>
</tbody>
</table>