

Going Global: The Challenge for Knowledge Based Economies

Helsinki, 21-22 September 2006

Session 2 – Local, Regional and Supranational Perspectives

The Role of International Trade Rules in Promoting Development and Technology Transfer

Manuel A.J. Teehankee

Chairman, *Working Group on Trade and Transfer of Technology*
World Trade Organization, Geneva
Philippine Permanent Representative to the WTO

Presentation Outline

- A. Development and International Rule-making
on Technology Transfer
- B. The WTO Working Group on Trade and
Technology Transfer
 - *History*
 - *North and South Perspectives*
- C. Recommendations and Concluding Remarks

A. Development, Rule-making and Technology Transfer

- The Normative Role of Law and International Rule-making
- Establishment of International Norms and Policies
- Increased Harmonization of Domestic Norms and Civil Society



Going Global IX.2006, Helsinki

3

A. Development, Rule-making and Technology Transfer

- The Linkage of Setting Development Goals for Capital and Technology
- Expanding the Cycle to Include Developing Countries and Promoting Global Poverty Eradication



Going Global IX.2006, Helsinki

4

A. Development, Rule-making and Technology Transfer

History of Rulemaking:



1970s to 1985

Failed United Nations Negotiations on a Draft International Code of Conduct on Transfer of Technology (see work of Patel, Roffe, Yusuf, Kluwer Law International 2000)



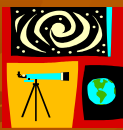
1992 Rio Earth Summit, UN Climate Change Convention Article 4,

- *Par. 1(c) Promote and cooperate in the development, application and diffusion, **including transfer, of technologies**, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol . . .*

Going Global IX.2006, Helsinki

5

A. Development, Rule-making and Technology Transfer



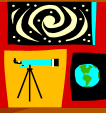
1992 Rio Earth Summit, UN Climate Change Convention

- *Par. 5. The developed country Parties and other developed Parties included in Annex II shall take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to other Parties, particularly developing country Parties, to enable them to implement the provisions of the Convention. In this process, the developed country Parties shall support the development and enhancement of endogenous capacities and technologies of developing country Parties. Other Parties and organizations in a position to do so may also assist in facilitating the transfer of such technologies.*

Going Global IX.2006, Helsinki

6

A. Development, Rule-making and Technology Transfer



1992 Rio Earth Summit, UN Climate Change Convention

- > 2001 Conference Session, the Parties established an Expert Group on Technology Transfer (EGTT) (20 experts -- 3 Africa, 3 Asia-Pacific, 3 Latin America-Caribbean, 1 small island states, 7 developed and 3 international organizations)



2000 OECD Guidelines for Multinational Enterprises

- > Guideline VIII on Science and Technology
 1. ensure compatibility with host state S&T policies
 2. permit transfer and rapid diffusion of technologies
 3. perform S&T development work in host state
 4. reasonable licensing terms for intellectual property
 5. cooperative research projects with local universities and industry

Going Global IX.2006, Helsinki

7

B. The WTO Working Group on Trade and Technology Transfer

Doha, Qatar 2001



Proposal by 12 Developing Countries to study the inter-relationship of trade and technology transfer (WT/GC/W/443)



Par. 37 of Ministerial Declaration:

"We agree to an examination, in a Working Group under the auspices of the General Council, of the relationship between trade and transfer of technology, and of any possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries."

Going Global IX.2006, Helsinki

8

B. The WTO Working Group on Trade and Technology Transfer

Technology Transfer Provisions in WTO Agreements



1. GATS (Trade in Services) – strengthening of services sector through access to technology
2. TBT Agreement – international standards technology
3. SPS Agreement – technical assistance to developing countries

Going Global IX.2006, Helsinki

9

B. The WTO Working Group on Trade and Technology Transfer



4. TRIPS Agreement
 - Article 7. The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.
 - Article 8 (Principles) Appropriate measures, ... may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.
5. TRIPS Amendment, December 2005 (WT/L/641)
 - Public Health Crisis relating to HIV/Aids, tuberculosis, malaria was addressed by the Ministers in Doha (WT/MIN(01)/DEC/2)
 - Led to the 2003 Waiver, and the 2005 Amendment
 - In effect, allows compulsory licensing and export of drugs consistent with domestic regulations and to address manufacturing capacity constraints

Going Global IX.2006, Helsinki

10

B. The WTO Working Group on Trade and Technology Transfer

Perspectives and Status of Work of the WGTTT

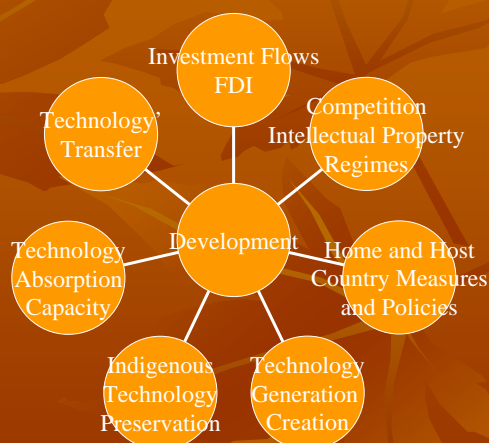


- North Focus on non-prescriptive aspect, mainly the examination of the relationship, and avoid any weakening of protection of intellectual property rights
- South Focus on providing and adopting recommendations that will make the mandate for technology transfer more effective and meaningful
- UNCTAD Studies presented
 - ✓ Case Studies (Aircraft industry in Brazil, Pharmaceuticals in India and Autos in South Africa)
 - ✓ Survey of Home Country Measures
 - ✓ Taxation Policies and their Impact
- Other studies, World Bank, Unido, Country Experts
- Developing Country Proposals (W/6, W/10)

C. Recommendations and Concluding Remarks

The discussions and studies point to the fact that TT is not an end in itself and increasingly involves more complex issues and sets of factors.

The dynamic interplay of these factors are needed for technology to result in promoting more rapid development and poverty alleviation as well as successful results.



C. Recommendations and Concluding Remarks



Potential Multilateral Rules for Technology Transfer

Recognize Primary Role of Home Country Measures and Policies to Absorb and Adapt Technology

Encourage Domestic and Multilateral Fiscal Incentives and Funding for R&D and S&T

Moving the focus from Intellectual Property Protection towards Win Win Technology Partnerships and Dynamism

Handouts available:

1. WGTTT Report (2005), with annex of excerpts of technology transfer related provisions in WTO Agreements
2. Proposal to Establish the WTO Working Group on Trade and Transfer of Technology (2001)
3. WTO Amendment of the TRIPS Agreement, Decision of 6 December 2005
4. Article VIII, OECD Guidelines, Revision 2000
5. Excerpts, UNFCCC Documents on Establishment of Experts Group on Technology Transfer

Thank you ...

... ??

any questions please

Going Global IX.2006, Helsinki

15