

*Innovation and Technology Transfer
to Address Climate Change: lessons
from global policy development on
intellectual property and public
health*

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ICTSD Dialogue

Climate Change, Transfer of Technology and IPRs:

The Challenge of Evidence based Policy

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Eight fundamental lessons from public health negotiations

- *Economic and political power matters*
 - *Strategic alliances strengthen bargaining position*
 - *Do not discount “external factors” shaping environment*
- *Stakeholder involvement is essential*
 - *NGOs critical to building public pressure*
- *Zero-sum bargaining is unlikely to be successful*
 - *Appeals to equity have limited impact on business community*
- *Technology transfer requires concrete mechanisms*
 - *Promises of future consideration show little real return*

Eight fundamental lessons from public health negotiations

- *Communication to public shapes political environment*
 - *Governments can influence media perceptions*
- *Forum shifting can undermine gains*
 - *“It’s not over ‘till its over”*
- *Competition law is underemployed*
 - *Developing country capacity-building required*
- *Human rights values influence the dialogue*
 - *Doha Declaration shaped by right to protect public health*



Lessons of IPRs and Public Health

- Patents do not have uniform effect across fields of technology
 - Fundamental flaw in “non-discrimination” premise of TRIPS Agreement
 - Cannot divorce the industrial policy instrument from its social welfare effects
- Recommendations
 - Tighten standards of patentability
 - Scalable rewards based on level of contribution (“quasi-patents”)
 - Decoupling innovation rewards and end-user pricing

Transposing patent lessons to climate change

- Preliminary assessment of potential public welfare impact of technology restrictions necessary
 - Multiple perspectives and qualifications important – “patents are too important to leave to patent lawyers”
 - Avoid “government seconding” expert selection processes
- Identify key potential bottlenecks and mechanisms to address
 - Public health dialogue provides arsenal of options

Technology transfer

- Concrete and specific rights and obligations critical
 - Promises of future consideration rarely fulfilled
- Governments do not predominantly control technology; private industry sector does
 - Private sector is motivated by return on investment, not appeal to equity
- Meaningful ToT will require financial incentives for private sector
 - Concrete joint venture mechanisms with mutual economic benefits
 - Multilateral institutions can play significant role with expertise, facilitation and mediation

Assessing the Doha Declaration

- A positive step in modifying the political environment
- Development of public international law a medium to long term process
- Heightened attention to problems stimulated concrete action
 - WHO prequalification and wider acceptance of generic substitutes
 - US PEPFAR program/Global Fund
 - Public-Private Partnerships (e.g., DNDi)
 - Deeper involvement of WHO
 - Special treatment for LDCs

Assessing the Doha Declaration

- Not a panacea
 - Political environment continues to discourage use of flexibilities
 - Thailand, Brazil compulsory licensing
 - EU/Dutch seizures of generic product in transit introduces new element of backsliding
 - Structure of pharmaceutical sector largely unchanged
 - Consolidation includes OECD acquisition of Indian generics leaders
 - Limiting alternative policy perspectives

A “Doha” Declaration on IPRs and Climate Change?

- Is expert understanding of TRIPS flexibilities sufficient?
- Are constructive discussions feasible?
 - Years of acrimonious debate would create an unwelcome diversion from practical problem-solving
- Understanding or modification of terms
 - Is there are new Article 31(f) problem?

A “Doha” Declaration on IPRs and Climate Change?

- What is the optimal forum? Objective is “coherence”
 - UN General Assembly
 - UNFCCC
 - Joint multilateral declaration (e.g., UNFCCC, WTO, WIPO, World Bank, WHO, UNCTAD, UNDP, IEA, FAO, etc.)
- Is a unified dispute settlement forum useful or practicable?
 - Are remedial measures anticipated?