Technology Transfer, Intellectual Property and “Access”

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WHO/WIPO/WTO

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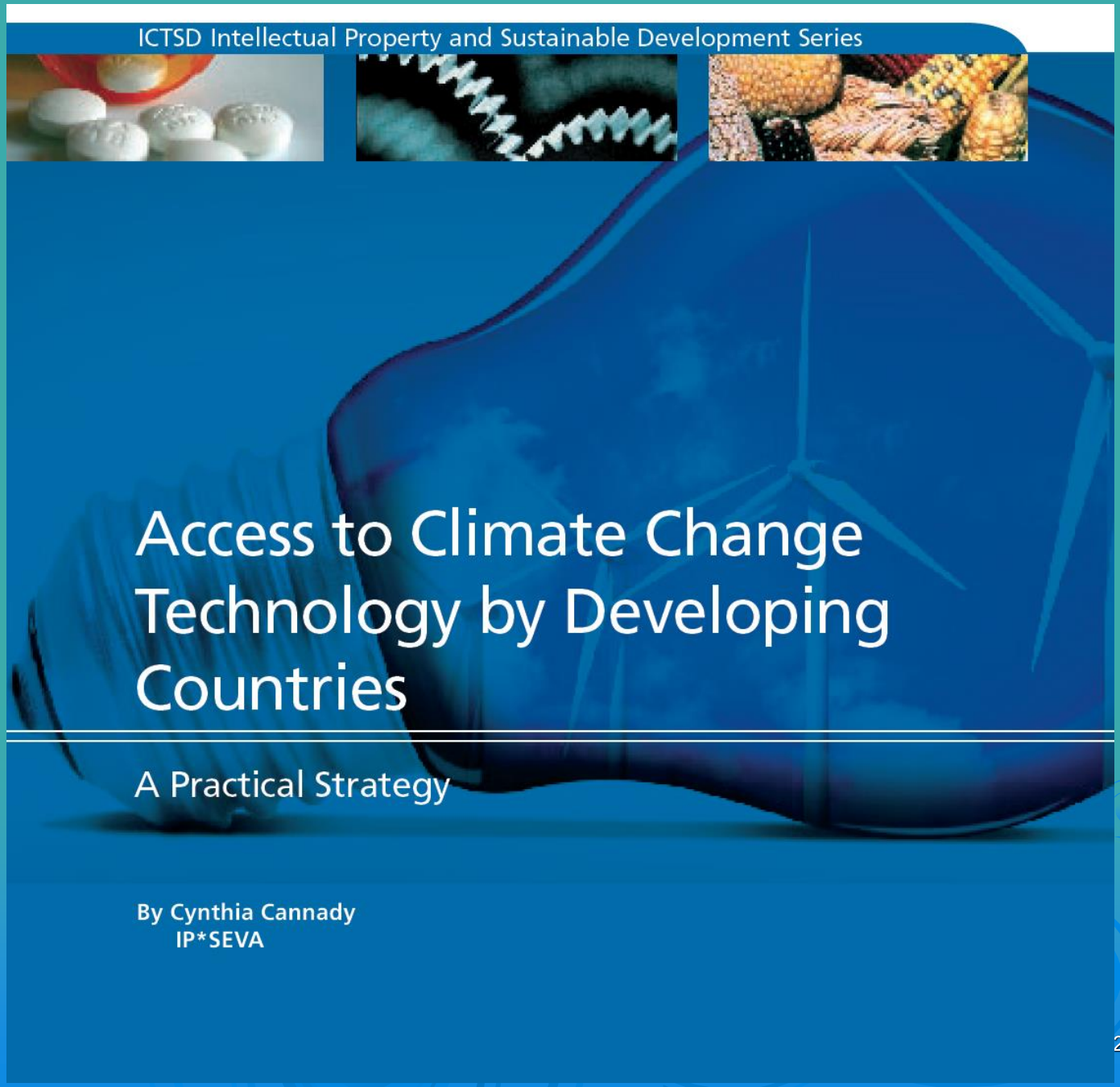
How long have we been talking about this? TRIPs was 1994. Art. 66.2 has not been implemented. Lots of articles (this one for the International Centre for Trade and Sustainable Development was 2009)



Overview

1. What outcomes are we trying to accomplish?
2. Different types of technology contracts have different outcomes.
3. What can international organizations do to support technology transfer in medicine?

1. What are we trying to accomplish?

1. more people, especially poor people, can get medicines that they need. *SDGs 1,2,3*
2. robust R&D leads to scientific progress including vaccines and treatments. *SDGs 2, 9*
3. supply chains work well so that medicines can be manufactured and distributed. *SDGs 8,9,17*
4. technology is transferred to developing countries in such a way that economic spill over effects occur (and stimulate jobs, income and poverty alleviation) *SDGs 1,2,8,9,10, 17*

2. Different types of technology contracts--what outcomes?

- Purchase and sale of goods/services (not a license)
- Distribution license
- Manufacturing license (aka “bundle” or “product” license)
- Collaborative development agreement
- IP license (patent or copyright—with broad grant clauses)
- Standards licensing (pooling agreements)

The Grant Clause

LICENSE GRANT.

Upon the terms and subject to the conditions set out in this Agreement, Pfizer hereby grants to the MPP, and the MPP hereby accepts, a non-exclusive, sublicensable, royalty-free, fully-paid license under the Licensed IP to develop, make, have made, use, file for regulatory approval, sell, have sold, offer to sell, import and export Products in the Field in the Territory.

SUBLICENSES.

Sublicensees. It is understood and agreed that MPP will not itself further develop and commercialize Compound or Products or exploit the Licensed IP, but it will do so through its Sublicensees without receiving compensation in exchange for such rights. MPP may grant Sublicenses, under the terms and conditions of this Agreement, to any

What contract goes with what outcome?

1. If your desired outcome is differential pricing to governments=*purchase and sales of goods*
2. local distribution channels=*distribution licenses and tech support*
3. supply chain diversification=*manufacturing license +tech support*
4. Increasing robust innovation and collaboration, localization market expansion=*collaborative development agreement promote indigenous R&D, product localization*
5. U.N. Development Goals related to poverty alleviation? *All of the above.*

What is Technology Transfer?

- “Technology transfer” vs. technology licensing
- Case: Is licensing to a controlled entity for manufacturing in an industrialized country and delivery of product to a developing country technology transfer?
- Case: Is sale of pharmaceutical products into developing country markets at reduced prices technology transfer?
- With a patent pool, are licenses granted to licensees for free? What is FRAND?
- What is the difference between a bundle licensing agreement and a patent pool?

Terminology and basic concepts

- Licensing means consent to use IP under specified terms and conditions.
- Terms like “open”, “commons” “access” “free” don’t address critical issues of price and scope of rights.
- Pooling agreements that suggest open and free but do not mean that patentees will confer IP rights for free (FRAND ≠ free). Patent pools strengthen the power of patentees and effectively implement patents in jurisdictions where they are not in force. Usually justified for interoperability of technologies. Patents are national—only valid and enforceable in countries where they are filed and granted.
- “Structured mechanisms” that purport to help with licensing negotiation. Plus, they may take away the power of local professionals to negotiate.

3. What to do?

The Third Way

Imagine a world where…

- Distribution, manufacturing and R&D centers thrive in the developing world.
- We no longer argue about compulsory licensing but are able to negotiate true voluntary licenses with research institutions and businesses in varied countries.
- Supply chain constraints are lessened because of manufacturing.
- R&D Networks enable research, development and commercialization.

The Third Way challenges

Technology transfer=technology enablement.
Developing countries as partners not passengers.
Contributors, not only customers.

1. How to fund innovation infrastructure and pilot projects?
2. How to free up public funding in developing countries for R&D, strengthen universities from the heritage of structural adjustment era?
3. What real incentives can motivate private sector to commit to voluntary licensing?
4. How to bring in development banks?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What WIPO Offers

- *Successful Technology Licensing* (STL) booklet and coordinated training programs were started in 2004 and have been translated in 10 languages and offered in <30 countries worldwide. New edition coming in Winter 2021-22
- Programs on innovation infrastructure and IP programs to build capacity to use the IP system (e.g. patent drafting).
- Focus on ownership of intellectual capital, a resource possessed by all nations.