

Tax breaks for the promotion of technology transfer under Article 66:2 of the TRIPS Agreement

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Concept of Technology Transfer in International Public Law

- United Nations definition: transfer of systematic knowledge for manufacturing of a product or provision of service (not specific)
- TRIPS Agreement – no definition of technology transfer

Article 66:2 of TRIPS Agreement

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.

Obligation to technology transfer in Article 66:2 TRIPS

- Article 66:2: a positive legal obligation
- Very little technology transfer to least developed countries conducted so far.

Types of incentives and programmes for technology transfer to least developed countries

- foreign investment incentives
- programmes facilitating trade capacities of least developed countries
- incentives that are related to health technologies and medical research programmes
- incentives related to training, research and IPRs education
- climate change sound technology transfer incentives

Why tax breaks are so important ?

Main obstacles to technology transfer:

- lack of fiscal incentives
- lack of financial resources & high investment costs
- subsidies, tariffs and incompatible prices

Tax breaks for technology transfer in Switzerland

- Article 56(g) of Bundesgesetz über die direkte Bundessteuer (SR. 642.11) (federal level).
- Article 56(g) DBG – no precise stipulation of tax exemptions for technology transfer.

Charitable institution in Switzerland engaged in technology transfer

The Novartis Foundation for Sustainable
Development

Main activities:

- supply of cost-free medicines
- local training to promote Integrated Management of Childhood Illness
- training and supervision of health personnel
- supply of training infrastructure

Foreign Investment Incentives

United States Bilateral Investment Treaties
goals:

- Promotion of USA investment in least developed countries
- Advancement of important reforms encouragement to the adoption of policies that facilitate and support foreign investment.

Programmes for building trade capacities in LDCs

USA Programme “Aid for Trade“ goals:

- promotion of economic growth through trade
- facilitation of developing countries to negotiate and implement market-opening and reform-oriented trade agreements.

Incentives related to health technologies and medical research

National Institutes of Health in the USA:

- establishment of malaria research facilities in Mali and Ghana
- training of local scientific staff to conduct malaria research.
- facilitation of return of NIH trained foreign researchers into their home countries.

Incentives related to training, research and IPRs education

The Japanese Patent Office:

- group training courses on IP rights for government officials.
- displacement of experts to private companies in developing countries.
- assistance provided indirectly to research institutions in developing countries

Climate change sound technology transfer incentives

The Norwegian Cleaner Development Mechanism:

- promotion of technology transfer to the least developed countries under the Kyoto Protocol.
- contribution to sustainable development and transfer of environmentally sound technologies.
- only a small proportion of the projects registered are in the least developed countries.

Current issues in technology transfer domain

- notion of incentives in Article 66:2 TRIPS limits States programmes encouraging enterprises to transfer technology to LDCs.
- modern technology and know-how are in the hands of the private sector.
- implementing purely governmental projects is not enough to comply with article 66.2 TRIPS
- private and public sector cooperation is essential.

Conclusion

Activities as diverse as:

- trade and investment promotion
- training of IP and custom officials
- granting general incentives to their own enterprises
- assistance in developing legislation
- scientific cooperation

can not be perceived as technology transfer incentives in light of Article 66.2 TRIPS

- lack of definitional clarity in regards to technology transfer and least developed country
- programmes do not precisely target LDCs but mainly developing countries
- some of developed countries have never submitted a report (e.g. Israel, South Korea, Iceland)
- other submissions have been irregular

Future developments and prospects

- Tax breaks might be the effective tool to induce transfer of technology from the private sector
- private sector might have appropriate business incentives and get part of its costs refunded.

A way Forward

- Amendment of the body of TRIPS Agreement by WTO member states consensus
- enumerative list of incentives that encourage technology transfer in article 66:2 of TRIPS
- more specific definition of technology transfer in Article 66:2 TRIPS.

A way Forward

- review of the Agreement on Subsidies and Countervailing Measures
- revival of a green light approach for R&D and technology transfer tax incentives under new WTO subsidies regime.

Thank you for your attention