

Global Public Health - High-Quality, Low-Cost Pharmaceutical Production in Developing Countries

UNCTAD – WHO – UNIDO - ICTSD Ministerial Breakfast Roundtable at the ECOSOC High Level Segment

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Intellectual Property and Technology Transfer for the Local Production of Pharmaceuticals in the Developing World: What We Know and Don't Know

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Excellencies, distinguished colleagues, ladies and gentlemen,

It is an honor to speak on behalf of ICTSD at this Ministerial Roundtable. Contrary to what the ambitious title of my intervention suggests, I will not be in a position to tell you all *that we know and Don't Know* about the interface between Intellectual Property and Technology Transfer in relation to the production of pharmaceuticals in developing countries. This would well go beyond the time I have been assigned.

However, I do hope to share with you some of what we, at ICTSD, have learned on this issue, which stands at the intersection of work we have done in recent years in the areas of intellectual property (IP), technology transfer, public health and access to medicine. Much of this work has been carried out in the context of a fruitful cooperation with UNCTAD.

Let me begin with some general observations.

Life today is shaped as much by the dynamism of globalizing markets as by its unintended consequences. This much is evident in the absurd inconsistency between momentous advancement in the application of knowledge to human needs on one hand, and the continued prevalence of life-threatening ailments, destitution and inadequate development conditions on the other. Economics has been operating – with due consideration to the current crisis – to create a cosmopolitan order in which global output grows strongly and trade twice as fast. At the same time, entire populations in a few countries live on average incomes 60 times higher than those in most countries, while the likelihood of a newborn surviving to age 65 varies from between 30 and 90%, depending on whether the happy occurrence took place in southern Africa or in Europe. There is clear evidence of the link between good health and economic prosperity. Yet, an overwhelming 2 million people die every year from preventable and curable diseases. Thus, health is a cause, as well as an effect, of poverty.

From a policy perspective, a critical component of today's reality is the novel, globalized intellectual property architecture that regulates the expansion, diffusion and use of knowledge for commercial purposes, including access to essential medicines.

Let me turn to the specifics.

The role of intellectual property in technology transfer in relation to the local production of pharmaceuticals in developing countries cannot be dissociated from the broader set of questions raised by this relationship in many areas. So let me start by some elements of *What we know*:

1. The issue of transfer of technology to developing countries has been with us for many years. But, the concept is still ambiguous. What is certain is that it is a multifarious process involving one organizational entity transferring knowledge as well as the capacity of the other entity to absorb and master that knowledge. It is not an automatic or costless process. One key aspect of the process is the development of domestic capacities to absorb and master external knowledge, to innovate on the basis of that knowledge or on further technical change, and to be able to commercialize the results of those endeavours.

2. It is important to recall that technology transfer is an important objective of the global IP trade related rules: *the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology...*[Article 7 of the TRIPS Agreement]

3- However, empirical evidence on the role of IP in technology transfer remains inconclusive. It tends to indicate that the volume and sophistication of technologies transferred tends to rise with improvements in the level of IP protection, but this seems to hold only for larger and middle-income emerging economies. It appears also to vary in these countries according to individual sectors and technologies. Within the least developed countries such flows do not tend to respond much to variations in the degree of protection for intellectual property rights.

4- In some cases, it appears that the *absence* of patent protection for pharmaceutical products played a role in the development of the local production of pharmaceuticals. This was the case in the early days of the Swiss pharmaceutical industry. It was also the case for the Indian industry until recently. The current absence of patent protection for pharmaceutical products in some LDCs – as allowed by the TRIPS agreement - appears to be one of the factors that could possibly attract investment and technology transfer for local and regional production, such as in the case of the Indian venture recently established in Uganda.

5- It also cannot be overlooked that the greater attention given to the local production of pharmaceuticals in developing countries in recent years coincides with the increased recognition of the importance of taking full advantage of health related flexibilities in trade and IP instruments, and efforts to promote access to medicines at an affordable price. This is particularly the case for developing countries which have introduced patent

protection for pharmaceuticals. So in a nutshell, policies to encourage the local production of pharmaceuticals in developing countries need to be embedded in countries' health, industrial and IP policies.

6- One of the things we know for certain is that IP is just one among a number of factors that influence technology transfer and its dissemination. Among these factors are the general macro- and micro- economic conditions, the quality and density of the respective national innovation systems, investment regulatory frameworks, competition policies, and so forth.

7- In this respect, public-private partnerships can play a key role in promoting access to knowledge and technological absorptive capacity, particularly in LDCs where the market channels for technology transfer are rather weak. There are interesting experiences ongoing in the health sector. Conditions in host countries need to facilitate such undertakings.

Now let me turn to *what we don't know*:

1- We don't know yet how to make developed country incentives to their enterprises and institutions more effective for technology transfer, particularly to LDCs. This is reflected in the long, ongoing, rather futile, debate about the implementation (or lack thereof) of TRIPS Article 66.2. There is a clear need for a set of assessment indicators that would allow a more accurate and effective examination of policies in these areas as well as development and documentation of best practices. Much of the stalemate in this debate relates to disagreements around what technology transfer actually means.

2- In this context, we need to explore further ways in which technology transfer may be enhanced by broader international and institutional collaboration, based on the combination of capital, public and private knowledge, and appropriate incentives in home countries.

3- Yet, much needs to be learned on how we can create a suitable environment that facilitates diffusion, access and technological absorption. Measures to enhance technology inflows in host countries have been identified. But in the particular case of manufacturing capacities for medicines and vaccines, selecting the right type of measures is a complex challenge. These complexities are compounded by concentration on the supply side, increasing demand in developing countries, complex and changing dynamics between foreign innovation-based industry and local generic manufacturers, and a more restrictive IP landscape resulting from new trade agreements and the recent enforcement agenda.

We trust that through the joint undertakings of ICTSD with WHO and UNCTAD on the encouragement of local pharmaceutical production in developing countries, we shall be able to offer answers to some of these questions.

Thank you for your attention.
