

MOVING TOWARDS A SUSTAINABLE FUTURE: REPLACING TRIPS WITH A NEW INTERNATIONAL REGIME FOR INTELLECTUAL PROPERTY AND SUSTAINABLE ENERGY TECHNOLOGY TRANSFER

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INTRODUCTION

One of the foremost issues of the twenty-first century is finding a solution to anthropogenic climate change—that which is caused primarily by human activities. International organizations and agreements such as the United Nations Framework Convention on Climate Change (“UNFCCC”), the Intergovernmental Panel on Climate Change (“IPCC”), the World Trade Organization (“WTO”), and the Kyoto Protocol have all created plans and guidelines for addressing climate change. Many of these organizations and their agreements recognize the role that innovation and technology transfer will play to solve climate change. International intellectual property law will be essential in determining how states and corporations finance, implement, and distribute the innovative technologies necessary to create solutions.

Part I of this paper outlines the key problems and potential solutions surrounding transfer of sustainable energy technologies. Part II provides background on TRIPS and the Doha Declaration, particularly how they interact with patent rights, technology transfer, and member states’ public health interests. Part III evaluates how these agreements have affected medical technology transfer, then compares medical technologies with sustainable technologies to show that the latter are significantly distinct in their investment requirements. These investment requirements, along with the non-localized nature of climate change issues, suggest that TRIPS alone will not be sufficient to encourage innovation and implementation of sustainable technologies. This paper concludes by outlining a new intellectual property regime for encouraging the development of sustainable technologies that emphasizes long-term investment in developing states.

(pp. 148-149)

...B. ORGANIZATIONAL DIFFERENCES BETWEEN MEDICAL TECHNOLOGIES AND SUSTAINABLE TECHNOLOGIES

Climate change mitigation requires a concerted effort on a global level in order to be effective, because greenhouse gas emissions are not localized to the state that causes them.¹¹⁰ Carbon leakage may occur if emissions-causing industries are shifted to regions with lenient emissions standards.¹¹¹ Leakage typically is characterized negatively because it may undo the benefits that states with effective emissions standards do create.¹¹² However, “one should recall that leakage can be efficient if GHG-intensive production moves to another country where the same goods can be produced in a more carbon friendly way, for example, with hydropower.”¹¹³

In addition, incremental efforts, whereby each state determines its own climate change mitigation policy, may actually frustrate the global effort.¹¹⁴

¹¹⁰ Jayashree Watal Webcast Address, *supra* note 105.

111 Id.

112 Charnovitz, *supra* note 33, at 399.

113 Id.

114 Jayashree Watal Webcast Address, *supra* note 105. ***See also* Lawrence A. Kogan, *Brazil's IP Opportunism Threatens U.S. Private Property Rights*, 38 U. MIAMI INTER-AM. L. REV. 1, 136–37 (2006) (highlighting Brazil's growth as an emerging economy and aspiring regional and global power, but one that may seek sustainable development that eschews strong intellectual property rights).**

(p. 167)