

INTELLECTUAL PROPERTY RIGHTS AND GREEN TECHNOLOGY TRANSFER: GERMAN AND U.S. PERSPECTIVES

By:

Robert V. Percival and Miranda A. Schreurs

AICGS POLICY REPORT 45

AMERICAN INSTITUTE FOR CONTEMPORARY GERMAN STUDIES THE JOHNS HOPKINS UNIVERSITY

©2010 by the American Institute for Contemporary German Studies

FOREWORD

While environmental concerns have recently taken a backseat to the economic and financial crisis, scientific projections on climate change continue to call for action. Yet, international cooperation has been hampered and a rift between developed and developing nations is increasingly evident. Developed nations charge that a reduction in emissions is not possible without a similar commitment from developing countries, whereas developing countries fear that their economic growth will be hampered by severe restrictions. Intellectual property rights also play a role in the disagreements. Companies in the developed world that spend considerable amounts of money on the research and development of energy efficient and clean energy technology are interested in recouping those investments through property rights. Developing nations as well as environmental and climate advocates contend, however, that such technology must be made available to all nations for the betterment of the developing countries and the world as a whole.

This Policy Report examines American and German views on this contentious issue. In his essay, Robert Percival from the University of Maryland School of Law first outlines various strategies for promoting the development and deployment of green energy technology. The author then turns to intellectual property laws and their influence on green energy innovation. Miranda Schreurs from the Freie Universität Berlin examines why technology transfer and intellectual property rights are key issues in climate policy and what role technology transfer has played so far, focusing especially on the German and European view on these issues. Both essays provide important insights into the climate policy debate as well as the aspect of intellectual property rights and add important policy recommendations for policymakers on both sides of the Atlantic.

... U.S. POLICY

Steven Chu, the US Secretary of Energy, spoke in 2009 of sharing all green technology IP with developing nations, stating the necessity for collaboration to mitigate global climate change.³¹⁵ However, following Chu's suggestion that IPRs be weakened, the Chamber of Commerce created the Innovation, Development, and Employment Alliance (IDEA).³¹⁶ IDEA was formed as a coalition of companies united to lobby for more restrictive patent laws.³¹⁷

Numerous actions of Congress were put forward prior to the UNFCCC Copenhagen Conference that reiterated the adherence of the United States to the provisions in the TRIPS agreement. Three separate bills passed by the United States House of Representatives³¹⁸ and one Senate bill³¹⁹ included provisions or amendments ensuring the United States' compliance with international IP legal requirements. In the Senate, forty-two senators signed a letter advocating for intellectual property protections. Additionally, Congress passed, and the President signed, the Consolidated Appropriations Act of 2010 restating the United States' commitment to not stray from its adherence to international IP legal requirements.³²⁰

The passage of legislation in the U.S. reiterating the country's commitment to international IP legal standards means that technology transfer must occur within the TRIPS framework. **Some parties to TRIPS have expressed doubt on whether flexibilities are sufficient to allow quick and widespread transfer of climate change technology.**³²¹ Additionally, while application of the exceptions may be possible, there may be a danger in over-applying the TRIPS flexibilities beyond the limited, exceptional purpose for which they were originally tailored.
(p. 25)

...NOTES
(p. 49)

... 315 Andrew C. Revkin and Kate Galbraith, Energy Chief Seeks Global Flow of Ideas, N.Y. Times: Dot Earth, March 26, 2009, available at <http://dotearth.blogs.nytimes.com/2009/03/26/energy-chief-seeks-global-flow-of-ideas/>.

316 Andrew C. Revkin, Will Energy Ideas Be Private or Public?, N.Y. Times: Dot Earth, May 21, 2009, available at <http://dotearth.blogs.nytimes.com/2009/05/21/will-energy-ideas-be-private-or-public/#more-3983>.

317 U.S. Chamber of Commerce, U.S. Chamber Urges Protection of Intellectual Property-Based Jobs in Climate Change Policy, May 20, 2009.

318 See H.R. 2410, 111th cong. § 1120a (2009); h.r.2454. 111th Cong. § 441 (2009); H.R. 3081. 111th Cong. § 7089 (2009). The bills were all similarly passed to “prevent any weakening of, and ensure robust compliance with and enforcement of, existing international legal requirements for the protection of intellectual property rights, related to energy or environmental technologies.” H.R. 2410, 111th Cong. § 1120a (2009).

319 See S. 2835, 111th Cong. § 202-204 (2009).

320 Consolidated Appropriations Act, 2010, Pub. L. No. 111-117, §7091, 123 stat. 3033, 3407 (2009).

321 Lawrence A. Kogan, Esq., Climate Change: Technology Transfer or Compulsory License? (2010), available at <http://itssd.org/IKogan%20-%20climate%20change%20-%20technology%20transfer%20or%20compulsory%20license%20-%20ansi%20luncheon%201-15-10.doc>

<http://nebula.wsimg.com/89148f148afc3bad9267db8ee6172881?AccessKeyId=39A2DC689E4CA87C906D&disposition=0&alloworigin=1>

(p. 55-56)