

S U S T A I N A B L E T E C H N O L O G Y T R A N S F E R

A GUIDE TO GLOBAL AID & TRADE DEVELOPMENT

EDITED BY

Hans Henrik Lidgard

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Tu Thanh Nguyen



Wolters Kluwer
Law & Business

Sustainable Technology Transfer

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Published by:

Kluwer Law International
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by:

Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@aspenpublishers.com

Sold and distributed in all other countries by:

Turpin Distribution Services Ltd.
Stratton Business Park
Pegasus Drive, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom
Email: kluwerlaw@turpin-distribution.com

Printed on acid-free paper.

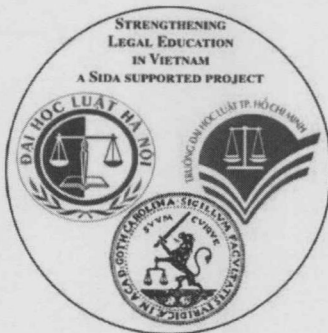
ISBN 978-90-411-3448-6

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Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.



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List of Abbreviations

ACTA	Anti-Counterfeiting Trade Agreement
AFEC	Applicants for Africa Enterprise Challenge Fund
AHTEG	Ad Hoc Technical Experts Group on Technology Transfer and Scientific and Technological Cooperation
ANSI	American National Standards Institute's
ARV	Anti-retroviral Medicine
ASEAN	1967 Association of Southeast Asian Nations
BTA	Bilateral Trade Agreement with the United States
BI	Boehringer Ingelheim
BIT	Bilateral Investment Treaty
BRIC	Brazil, Russia, India, and China
CAFOs	Concentrated Animal Feeding Operations
CBD	1992 Convention on Biological Diversity, Adopted Rio de Janeiro 5 June 1992, entered into force 29 December 1993, 1760 U.N.T.S. 79
CDIP	WIPO Committee on Development and Intellectual Property
CDM	Clean Development Mechanism
CDR	Carbon Dioxide Removal
CDM	Clean Development Management
CDM EB	CDM Executive Board
CER	Certified Emission Reductions
CFC	Chlorofluorocarbon
CGIAR	Consultative Group on International Agricultural Research
CJEU	Court of Justice of the European Union
CL	Compulsory License
COP	Council of Parties

List of Abbreviations

DRM	Digital Rights Management
DRAM	Dynamic Random Access Memory
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
ECJ	European Court of Justice
EGAT	Electricity Generation Authority of Thailand
EIF	Enhanced Integrated Framework
ERAV	Energy Regulatory Authority of Vietnam
EU	European Union
EVN	Electricite de Vietnam
FAO	Food and Agriculture Organisation
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
FTC	US Federal Trade Commission
GATT	1947 General Agreement on Tariffs and Trade 55 U.N.T.S 194
GDA	Global Development Alliance
GDC	German Development Corporation, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH
GEF	Global Environmental Facility
GHG	Greenhouse Gas
GSK	GlaxoSmithKline
HTTP	Hypertext Transfer Protocol
ICL	International Common Law
ICTs	Information and Communications Technologies
IEC	International Electrotechnical Committee
IFAD	International Fund for Agricultural Development
ILA	International Law Association
ILO	International Labour Organization
IPCC	Intergovernmental Panel on Climate Change
IP	Intellectual Property
IPR	Intellectual Property Rights
ITC	International Trade Commission
ITU	International Telecommunication Union
JPS	Japanese Patent System
LDC	Least Developed Country
MDG	8th UN Millennium Development Goal, UN, General Assembly, Draft Res. A/65/L.1, 17 September 2010
MEA	Multilateral Environmental Agreement
MNE	Multi-National Enterprise
MOIT	Ministry of Industry and Trade
MONRE	Ministry of Natural Resources and Environment of Vietnam
NGO	Non-Governmental Agency
NIC	Newly Industrialised Country
NIEO	United Nations Declaration on the Establishment of a New International Economic Order, Resolution 3201(S-VI) of 1 May 1974, A/RES/S-6/3201

List of Abbreviations

NOIP	National Office of Intellectual Property
NSSPP	Non-Negotiable Standardized Small Power Program
NSPPA	Non-Negotiable Standardized Power Producer Agreements
OECD	Organisation for Economic Co-operation and Development
ODA	Official Development Assistance
PCT	Patent Cooperation Treaty
PDD	Project Designed Document
PPA	Power Purchase Agreement
PPP	Public Private Partnership
R&D	Research and Development
RESPP	Renewable Energy Small Power Program
SAAP	State Aids Action Program
SACC	South African Competition Commission
SBSTTA	Subsidiary Body on Scientific, Technical and Technological Advice
SIDA	The Swedish International Development Cooperation Agency (Styrelsen för Internationellt Utvecklingssamarbete)
SME	Small and Medium Sized Enterprises
SPP	Small Power Producer
SRM	Solar Radiation Management
SSO	Standard-Setting Organization
SSP	Sub-Saharan Publishers
TAC	Treatment Action Campaign
TBT	Agreement on Technical Barriers to Trade
Agreement	
TFEU	Treaty on the Functioning of the European Union
TFP	Total Factor Productivity
TFTC	Fair Trade Commission of Taiwan
TIPO	Intellectual Property Office of Taiwan
ToT Code	International Code of Conduct on the Transfer of Technology
TPP	Trans Pacific Strategic Economic Partnership Agreement among Brunei Darussalam, the Republic of Chile, New Zealand and the Republic of Singapore, entered into force May 2006
TRIPS	Trade-related Aspects of Intellectual Property Rights
Agreement	
TT	Technology Transfer
UNCCD	1996 United Nations Convention to Combat Desertification
UNCED	United Nations Conference on the Environment and Development
UNCLOS	United Nations Convention on the Law of the Sea, 16 November 1994, 21 ILM 1245 (1982)
UNCTAD	1964 United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNEP	United Nation Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNIDO	United Nations Industrial Development Organization
USAID	US Agency for International Development
USTR	United States Trade Representative

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WCT	WIPO Copyright Treaty, 20 December 1996, 36 I.L.M. 65 (1997)
WGABS	Working Group on Access and Benefit-sharing
WHO	World Health Organisation
WIPO	1967 World Intellectual Property Organization
WTO	1994 World Trade Organization
WPPT	WIPO Performances and Phonograms Treaty 20 December 1996, 36 I.L.M. 76 (1997)

Institutional Definitions and Abbreviations

ACTA	Anti-Counterfeiting Trade Agreement dated 15 November 2010 among Australia, Austria, Belgium, Bulgaria, Canada, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, the Republic of Korea, Latvia, Lithuania, Luxembourg, Malta, Morocco, the Netherlands, New Zealand, Poland, Portugal, Romania, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, the United Kingdom, the United Mexican States, the United States, and the European Union
Bayh-Dole Act	Pub. L. No. 96-517 (1980) codified at 35 USC. § 200-12
Berne Convention	Berne Convention for the Protection of Literary and Artistic Works September 9, 1886, as last revised at Paris on July 24, 1971, 1161 U.N.T.S. 30
Copenhagen Accord	Copenhagen Accord of 18 December 2009
Cotonou Agreement	Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States on the One Part and the European Community and its Member States on the Other Part, Signed in Cotonou Benin on 23 June 2000, entered into force 1 April 2003
Doha Declaration	WTO, Ministerial Conference Fourth Session Doha, 9 – 14 November 2001, Decision of 14 November 2001, Implementation-Related Issues and Concerns, WT/MIN (01)/17, DEC/1, 41 I.L.M. (2002)

Institutional Definitions and Abbreviations

Kyoto Protocol	Kyoto Protocol to the United Nations Framework Convention on Climate Change, 10 December 1997, 37 I.L.M. 22 (1998)
NAFTA	1994 North American Free Trade Agreement 32 I.L.M.289 (Parts 1-3) and 32 I.L.M. 612 (Parts 4-8)
Paris Convention	Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised, 828 U.N.T.S. 305
The 1948 Universal Declaration of Human Rights	UN, General Assembly Res. 217 (III), Universal Declaration of Human Rights of 10 December 1948
TRIPS	The Agreement on Trade-Related Aspects of Property Rights Annex 1C to the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh 15 April 1994, 33 I.L.M. 1125
UNFCCC	United Nations Framework Convention on Climate Change United Nations Framework Convention on Climate Change, May 1992, S. TREATY DOC. NO. 102-38, 1771 U.N.T.S. 164, 166, 170

Preface

Interdependence is a term that captures the essence of modern times. We all share in the world's scarce natural resources and we are affected by cross border measures. The world cannot remain indifferent to poverty and natural disasters in other countries. Collaboration and sharing of knowledge is both demanded by reality and required by international law.

Based on overriding humanitarian considerations, richer states support the least developed countries (LDCs) with aid programs to address acute emergencies and with longer-term measures to assist in building viable infrastructures. Several international conventions require that such measures be undertaken in a specific and concrete way. For example, the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) requires developed countries to provide incentives to their national industries in order to foster concrete transfer of useful technologies.

Problems inevitably arise when good intentions are put to the test. Rights to the ownership of intellectual property assets create problems for developing countries. When actors in developing countries copy trademark protected products or items covered by copyright, the reaction from the developed countries is often swift, and one which sometimes disregards the overall goal of developed country support. On the other hand some claim that it is only when IPRs are respected that sustainable support can be expected.

In October 2010 five universities from three different continents held a legally-oriented conference in Vietnam on the subject of Sustainable Technology Transfer. The event was one of the final elements of a twelve yearlong project financed by the Swedish Development Agency (SIDA) under the title 'Strengthening Legal Education in Vietnam' and carried out by the Faculty of Law of Lund University. Over the course of its existence, the project has supported Vietnamese teachers studying educational and research methodology with a view to promoting

Preface

international understanding. More than 200 teachers have undergone such training in Vietnam and abroad. In addition some 80 younger teachers earned a master's degree in International Law and a small group out of these is in the process of completing their PhD dissertations – all now learning from international experience and applying their findings to the Vietnamese context.

The project is an example of what might be characterized as a technical assistance project. The Conference, which assembled distinguished scholars, international and national agency representatives and Vietnamese teachers, was focused on Sustainable Technology Transfer – from developed countries to developing countries – primarily LDCs. A review of past developments indicated their shortcomings and provided a lesson for the future. The more difficult task was to find ways to improve the outcome.

The purpose of this book is to summarize the most important findings in a coherent manner. What is required to satisfy the existing international obligations and to what extent may developing countries use flexibilities in international conventions to advance their own development? Our focus is on the legal problems which Sustainable Technology Transfer may give rise to and how they may be addressed. Along with technical legal discussion, the book focuses on health, environment, energy and climate change as examples of the more problematic areas. The intention is less to find a one-size-fits-all solution or to give a full presentation of these problems, but rather to look for clues on how to approach them in the future.

Firstly, the book draws a global map of the territory we are entering providing an overall context. To that end it sketches out the major issues, purposes, institutions, and players. The book then reviews legislative enactments and seeks to establish their real value. A factual account of actual technology transfer follows. Subsequent chapter discuss to what extent competition rules offer developing countries a way to escape the more severe consequences of the undertakings they have accepted. With this background, the presentations turn to the health care sector, discussing the impact of compulsory licensing and the recently agreed ACTA agreement. It also deals with the transfer of technology in the energy sector, the climate change area and the specific conditions pertaining to conservation of biodiversity in separate studies. Finally the situation in Vietnam is examined by way of example.

Having penetrated all these areas as a way to expand on real life situations, the book concludes with forward looking statements in which the experience that has been studied is used to provide recommendations for concrete actions.

Many have contributed to the result, but the editors wish to gratefully acknowledge the valuable support provided by Robert Schwartz, who served as research assistant throughout the project.