TECHNOLOGY TRANSFER AS AN ISSUE IN NORTH-SOUTH NEGOTIATIONS

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OCTOBER 25, 1980

I. DEFINITIONS

- A. NORTH-SOUTH
- B. GROUP OF 77
  - 1. DEVELOPING COUNTRIES
- C. GROUP B
  - 1. DEVELOPED COUNTRIES
- D. GROUP D
- E. UNCTAD
- F. WIPO

II. NEGOTIATIONS IN WHICH TECHNOLOGY TRANSFER IS MAJOR SUBJECT

- A. UNCTAD CODE OF CONDUCT FOR INTERNATIONAL TRANSFER OF TECHNOLOGY
  - 1. BACKGROUND
    - a. PUGWASH CODE (1974)
    - b. SERIES OF MEETINGS
  - 2. WHY?
    - a. DESIRED TECHNOLOGY POSSESSED BY LARGE MULTINATIONAL ENTERPRISES LOCATED IN DEVELOPED COUNTRIES.

B. THESE BUSINESSES MUST BE FORCED TO MAKE TECHNOLOGY AVAILABLE TO LDC ON ADVANTAGEOUS TERMS.

C. ASSUMED THAT MNE ARE EAGER TO TRANSFER THEIR TECHNOLOGY TO LDC.

D. GOVERNMENTS MUST PLAY A MAJOR PART IN NEGOTIATIONS AND THE TRANSFER PROCESS.

3. GOVERNMENT NEGOTIATING DELEGATIONS

A. "GOVERNMENTAL" EXPERTS

I. GOVERNMENT PEOPLE

II. USUALLY NO PRIVATE INDUSTRY PEOPLE

III. GIVE MORE WEIGHT TO UNIVERSITY PROFESSORS

B. THUS, THOSE NEGOTIATING HAVE NO PRACTICAL EXPERIENCE IN TECHNOLOGY TRANSFER.

C. REAL EXPERTS COULD COME UP WITH A REASONABLE CODE FAIRLY QUICKLY.

4. WHAT DOES CODE COVER?

A. NOT LIMITED TO TECHNOLOGY TRANSFER FROM LARGE MNE TO SMALLER LDC ORGANIZATION.

B. CANADIAN PATENT OWNER LICENSES U.S. COMPANY. NO KNOWHOW INCLUDED.

C. EMPLOYMENT AGREEMENT BETWEEN ONE EMPLOYER AND EMPLOYEE LOCATED IN ANOTHER COUNTRY.

D. TRANSACTION BETWEEN TWO DEVELOPED COUNTRY ORGANIZATIONS.

5. IS IT NEEDED BY LICENSEES?

A. ITEK HAS MORE LICENSES WHERE IT IS LICENSEE THAN IT HAS WHERE IT IS LICENSOR.

B. ITEK DOESN'T NEED IT.

6. IT IS ASSUMED THAT ALL LICENSE AGREEMENTS ARE LONG, COMPLEX AGREEMENTS WITH PROVISIONS FOR:

A. GUARANTEES OF:

i. PRODUCT QUALITY

ii. SUITABILITY OF THE TECHNOLOGY FOR THE PURPOSE CONTEMPLATED.

b. TRAINING OF PERSONNEL.

c. TRANSFERRED INFORMATION IS COMPLETE.

d. SPARE PARTS WILL BE AVAILABLE.

e. EXCLUSIVE GRANT-BACKS TO LICENSOR, ETC.

f. ITEK HAS NO AGREEMENTS WITH SUCH CLAUSES.

7. MANY COMPANIES WILL NOT BOTHER TO TRY TO TRANSFER TECHNOLOGY TO OTHERS IF CODE IS ENACTED.

8. RESTRICTIVE BUSINESS PRACTICES (PP. 10-11).

9. CURRENT STATUS.

a. LAST MEETING TOOK PLACE IN GENEVA IN APRIL 1980.

b. NEXT MEETING IS IN GENEVA FROM JANUARY 26 TO FEBRUARY 13, 1981.

B. UNCTAD MEETINGS ON "ROLE OF INTELLECTUAL PROPERTY (PATENTS) IN INTERNATIONAL TRANSFER OF TECHNOLOGY

1. BACKGROUND

a. 2 MAJOR MEETINGS IN GENEVA

i. SEPTEMBER 1975 - MOSTLY ON PATENTS

ii. OCTOBER 1977 - MOSTLY ON TRADEMARKS

2. SEPTEMBER 1975 MEETING

a. 2 NON-GOVERNMENTAL EMPLOYEES

i. HOB & CANADIAN

b. SAME SUBJECTS AS EARLIER WIPO MEETINGS ON REVISIONS OF PARIS CONVENTION.

c. WHAT LDC'S WANT: (PP. 13-19)

i. NATIONAL TREATMENT - DISCRIMINATING TO LDC'S.

II. ACTUAL WORKING OF PATENTS IN COUNTRY WHERE PATENT IS ISSUED.

III. DURATION OF PATENTS SHOULD BE SHORTER. CUBA "UNLIKELY THAT A NEW TECHNOLOGY COULD LAST MORE THAN 7 YEARS."

IV. PATENTS SHOULD NOT INCLUDE THE EXCLUSIVE RIGHT OF IMPORTATION.

V. PATENTS SHOULD NOT BE USED TO LIMIT EXPORTATION OF PRODUCTS FROM ONE COUNTRY TO ANOTHER.

VI. DISCLOSURE IN PATENTS ARE INADEQUATE.

VII. PRINCIPLE OF INDEPENDENCE OF PATENTS (IN EACH COUNTRY) MUST BE CHANGED.

VIII. IMPORTATION OF PATENTED ITEM SHOULD NOT CONSTITUTE WORKING OF PATENTS.

3. OCTOBER 1977 MEETING.

A. 3 NON-GOVERNMENTAL EMPLOYEES

I. HOB, JERRY MCAULIFFE & CANADIAN

B. SOVIET SPEECH

4. NO SPECIFIC RESULTS FROM EITHER MEETING.

A. TM REPORT MAY BE ONE ITEM USED IN PREPARATION OF A REPORT BY KURT WALDHEIN, SECRETARY GENERAL OF U.N. ON CONSUMERS.

C. PARIS CONVENTION

1. ORIGINALLY SIGNED IN 1883.

2. LAST REVISION WAS IN STOCKHOLM IN 1967.

3. NUMBER OF MEETINGS DISCUSSING SAME POINTS RAISED IN OTHER MEETINGS.

4. 14 POINTS

5. UNANIMITY (PP. 29-30)

A. DIPLOMATIC CONVENTION FEB.-MARCH 1980 IN GENEVA.

B. IN PAST PARIS CONVENTION AMENDED ONLY BE UNANIMITY VOTE.

C. CUSTOM, NOT SPECIFIED IN CONVENTION ITSELF.

D. MOST U.N. AGENCIES OPERATE ON 2/3 VOTE.

E. PRESIDENT OF CONFERENCE RULED, WITHOUT VOTE, THAT PARIS CONVENTION SHOULD BE REVISED

I. BY COMPANIES, IF POSSIBLE. IF NOT,

II. BY TWO-THIRDS OF THOSE VOTING

1. IF NO MORE THAN 12 OPPOSE.

F. U.S. IS ONLY COUNTRY OPPOSING.

6. PREPARATORY CONFERENCE TO BE HELD IN GENEVA MARCH 9-30, 1981.

7. RESUME DIPLOMATIC CONFERENCE IN NAIROBI SEPT. 28-OCT. 24, 1981.

8. EEC SITUATION.

A. EXCLUSIVE COMPULSORY LICENSING.

B. APPELLATIONS OF ORIGIN.

II. NEGOTIATIONS IN WHICH TECHNOLOGY TRANSFER IS AN ISSUE

A. UNCTAD - RESTRICTIVE BUSINESS PRACTICES CODE.

B. UNCTAD - MODEL LAW ON RESTRICTIVE BUSINESS PRACTICES.

C. LAW OF THE SEA.

1. U.N. REPORT ON THIRD CONFERENCE OF THE LAW OF THE SEA INCLUDES DRAFT TREATY.

A. ANY ORGANIZATION WANTING TO WORK IN THE SEA MUST SUBMIT PLAN.

B. COVERS ACTIVITIES SUCH AS DRILLING FOR OIL & GAS, MINING, ETC.

C. MUST AGREE TO MAKE TECHNOLOGY TO BE USED AVAILABLE TO THE U.N. "ENTERPRISE" OR LDC IN CERTAIN CIRCUMSTANCES,

"ON FAIR AND REASONABLE COMMERCIAL TERMS AND CONDITIONS".

c. THIS IS A COMPULSORY LICENSE.

d. IF TECHNOLOGY IS NOT MADE AVAILABLE, IT CANNOT BE USED ON PROJECT.

D. U.N. CONFERENCE ON SCIENCE AND TECHNOLOGY FOR DEVELOPMENT.

1. "THIS YEAR'S EXPENSIVE JAMBOREE OF UNITED NATIONS CONFERENCE OF SCIENCE AND TECHNOLOGY FOR DEVELOPMENT YIELDED HOLLOW PHRASES AND LITTLE ELSE."

III. RELATED NATIONAL OR REGIONAL LEGISLATION AND REGULATION

A. EEC

B. ANDEAN PACT

C. LATIN AMERICAN COUNTRIES

D. JAPAN

E. NIGERIA

IV. WHAT IS THE PROBLEM?

A. DEVELOPING COUNTRIES DO NOT HAVE ABILITY

1. TO

a. DESIGN,

b. BUILD, OR

c. OPERATE

MANUFACTURING FACILITIES FOR MANY MODERN PRODUCTS, OR

2. TO

a. MARKET,

b. DISTRIBUTE OR

c. SERVICE

THESE PRODUCTS.

B. WHY?

1. LACK OF EDUCATED OR TRAINED POPULACE.
2. LACK OF COMPONENT VENDORS.
3. LACK OF DISTRIBUTION CHANNELS.
4. LACK OF CAPITAL.
5. LACK OF ABILITY OF LOCAL SOCIETY TO USE THE PRODUCTS.
   - A. NEED ROADS FOR CARS.
   - B. NEED ELECTRICITY GENERATION AND DISTRIBUTION FOR ELCTRICALLY DRIVEN MACHINES, APPLIANCES.
   - C. NEED COMMUNICATIONS NETWORK FOR NATIONAL UTILIZATION OF INFORMATION.

V. WHAT DEVELOPING COUNTRIES SEE AS A SOLUTION.

A. FORCE TECHNOLOGY OWNING NATIONS TO TRANSFER TECHNOLOGY TO DEVELOPING COUNTRIES ON REGULATED CONDITIONS, FAVORABLE TO THE DEVELOPING COUNTRIES.

B. DO (A) BY MEANS OF INTERNATIONAL MULTI-GOVERNMENTAL NEGOTIATION OF TREATIES AND CODES OF CONDUCT, USUALLY IN A U.N. FORUM.

C. (A) & (B) INITIATED AND ENCOURAGED BY U.N. EMPLOYEES, NATIONAL GOVERNMENT EMPLOYEES AND VARIOUS CONSULTANTS, MANY WITH ACADEMIC ECONOMICS BACKGROUND, BUT RARELY WITH ANY INDUSTRIAL DEVELOPMENTAL OR TECHNOLOGY TRANSFER EXPERIENCE.

VI. IF DEVELOPING COUNTRIES GOT ALL TREATIES, CODES AND REGULATIONS THEY WANT, WOULD HAVE LITTLE, IF ANY, POSITIVE IMPACT ON THEIR ECONOMY, SOCIETY OR PEOPLE

A. INDUSTRIAL TECHNOLOGY IN MARKET-ORIENTED DEVELOPED COUNTRIES IS NOT OWNED BY GOVERNMENTS, BUT BY NON-GOVERNMENT ENTITITES.

1. EVEN WHERE GOVERNMENTS "OWN" RIGHTS, DO NOT HAVE

KNOWHOW TO MAKE TECHNOLOGY COVERED BY PATENT RIGHTS WORK AND MAKE REAL PRODUCTS.

EXAMPLE: ITEK AERIAL CAMERAS
MILITARY VEHICLES

HOW MANY PRODUCTS CAN DEVELOPED COUNTRY GOVERNMENTS MANUFACTURE AND DISTRIBUTE?

B. WHILE SOME TECHNOLOGY WILL BE TRANSFERRED IN ANY EVENT, MUCH MORE WOULD BE TRANSFERRED IF WERE MORE INCENTIVE TO DO SO.

1. PARTICULARLY FOR THE MEDIUM AND SMALLER COMPANIES WHO DO NOT HAVE LARGE INTERNAL STAFFS OF LICENSING PEOPLE, LAWYERS OR ECONOMISTS.

   A. ITEK EXAMPLE (P. 41)

   B. $15 MILLION SALES EXAMPLE (P. 42)

C. COMPANIES HAVE CERTAIN PRIORITIES.

1. TECHNOLOGY TRANSFER IS NOT USUALLY AMONG THEM.

2. EVEN THE BIGGEST COMPANIES CANNOT DO EVERYTHING THAT THEY SERIOUSLY CONSIDER.

3. ITEMS MEETING MOST OF COMPANY'S GOALS ARE SELECTED.

4. TOO MUCH MANPOWER REQUIRED TO TRANSFER TECHNOLOGY TO DEVELOPING NATIONS TO WARRANT ATTEMPTING TO DO SO IN FACE OF DRAWN OUT NEGOTIATIONS, RESTRICTIONS, REGULATIONS, ETC.

5. WHY SHOULD ITEK ATTEMPT TO TRANSFER TECHNOLOGY TO DEVELOPING COUNTRIES?

   A. NO PATENTS IN ANY DEVELOPING COUNTRIES.

   B. FEW TRADEMARKS - MERELY TO PROTECT EXPORT MARKETS IN MOST CASES.

   C. DON'T HAVE THE MANPOWER TO WASTE ON LONG, EXPENSIVE NEGOTIATIONS.

D. WOULD NEED LARGE INCENTIVES TO TRANSFER TECHNOLOGY TO DEVELOPING COUNTRIES - WHICH ARE NOT THERE AT PRESENT.

E. NOT UNSYMPATHETIC TO DEVELOPING COUNTRIES.

D. PATENTS IN DEVELOPING COUNTRIES (PP. 44-47)

1. BANGLADESH (8TH MOST POPULOUS COUNTRY IN WORLD)

A. 154 PATENT APPLICATIONS FILED PER YEAR.

B. 3 PATENT APPLICATIONS FILED PER WEEK.

2. INDIA

A. 3,093 PATENT APPLICATIONS FILED PER YEAR.

B. 59 PATENT APPLICATIONS FILED PER WEEK.

3. JAPAN

A. 161,016 PATENT APPLICATIONS FILED PER YEAR.

B. 3,100 PATENT APPLICATIONS FILED PER WEEK.

4. LUXEMBOURG

A. 2,384 PATENT APPLICATIONS FILED PER YEAR.

B. 46 PATENT APPLICATIONS FILED PER WEEK.

5. IF ALL 1,000 LARGEST U.S. COMPANIES DID ALL THE PATENT APPLICATION FILING IN INDIA, WOULD BE THREE PER YEAR.

6. WHY?

A. OFFICE COPIER EXAMPLE.

I. 10 PATENTABLE INVENTIONS (P. 46)

II. $1,000 PER INVENTION PER COUNTRY.

III. 10 COUNTRIES = $100,000.

VII. WHAT CAN BE DONE?

A. LES PROPOSALS.