

The United Nations logo, featuring a world map surrounded by olive branches, is positioned in the upper left corner of the slide.

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

WIPO International Seminar on Intellectual Property & Development

Geneva, 2-3 May 2005

Intellectual Property and Public Policy: Competition Policy for Development

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INTRODUCTION

IP and Competition Policy: conflict
or coherence?

IP → grant of monopoly

CP → challenges monopoly

Dynamic Coherence:

IP is essential for R&D by enterprises:
avoid free-rider phenomenon

CP is essential for dynamic efficiency:
incentive to innovate

both essential for INNOVATION

UN Set of Principles & Rules for the Control of RBPs (The Competition Set)

- Article A.2(c) Competition encourages innovation
- Article B.5 The Set covers all goods and services (including IPRs)
- Article D.4(e) provides that blocking parallel imports through application of trademark rights may result in abuse of dominance by trademark holder

CP & IPR: Conflict situations do arise

1) Attempts to monopolise essential facilities

e.g. Patent pool, aimed at blocking any R&D by competitors

e.g. Obtaining a patent and non utilisation

→ [compulsory licensing provision]

e.g. Excessive duration of IP; attempt to prolong control after expiry of IP right

2) Abusive provisions in LICENSING contracts

- TRIPs Art. 40 Sect. 8: Nothing in the Agreement shall prevent members from taking appropriate action...
- Attempts to control or divide markets:
 - » e.g. control inputs: tying supplies
 - » e.g. prohibit exports: market allocation
 - » e.g. price fixing of sales: collusive pricing
 - » e.g. grantback of innovation: tying conditions

3) The use of IPRs to artificially divide markets: prohibition of parallel imports

a) The argument of TNCs

- Differential pricing allows TNCs to fix lower prices in poorer countries
- Parallel imports or re-imports may impede lower prices in poor countries

b) Critique in favour of parallel imports:

- Differential pricing does not always defend poorest markets: it depends on bargaining power
- It may be necessary to fight excessive pricing and abuses of dominance

c) Cases of emergency: the case of HIV treatment, medicines

- TRIPs Agreement revised (30/8/03)
- Cases of emergency: compulsory licence
- Generic drugs

Conclusion:

- Both IPR and CLP are necessary to ensure sustainable development
- There is an optimal point of IP protection:
 - too little protection discourages R&D
 - too much protection creates rents which slow R&D
- CP is needed to ensure that abuses and distortions of the ultimate aim of IP, which is accelerated innovation and progress, is not distorted