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South Centre's Fourth South Innovation Perspectives Series Seminar:

Making Patent Policy Work for Development:

Lessons from the SWISS Experience

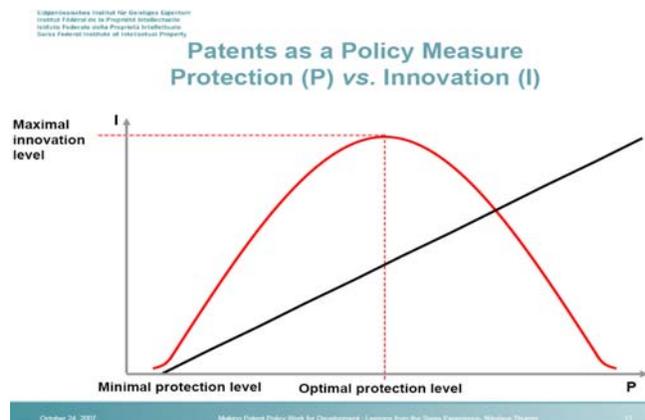
Organized by the Innovation and Access to Knowledge Programme, South Centre
24 October 2007, Palais des Nations, Geneva

This seminar addressed two important questions: first, "What would be a *reasonable* level of patent protection?"; and second, "How does Switzerland define the *appropriate* level of patent protection (scope of rights) for *domestic* biotechnology industry innovation?" Through both theoretical and empirical analysis, this seminar provides insightful lessons on how developing countries to make tailor-made patent policy work for innovation and development.

Keynote Speaker: Dr. Nikolaus THUMM, Senior Economic Counsellor, Swiss Federal Institute of Intellectual Property:

(i). Conceptual Issues:

- To ensure a reasonable level of intellectual property protection is crucial.
- Only at a certain threshold of development does a patent system begin to spur innovation.
- The optimal level of IP protection varies- there is a different optimum for different countries and industries.
- The importance is to determine where we are *actually*.



Note:

1. **Traditional understanding (a lawyer's perspective):** the higher level of protection, the higher level of innovation. (black line)
2. **Swiss understanding (an economist's perspective):** maximal innovation occurs only at the point of optimal level of IP protection. (red curve)

(ii). Problematic Phenomenon (in both developed countries and developing countries):

- Unfortunately, many patent offices and lawyers believe that more IP protection means more innovation.
- Patent policy making and patent law making are now dominated by lawyers; there is lot to gain by bringing in economists and economic reasoning.

Discussant: Professor Dominique FORAY, Chair of Economics of Innovation, Swiss Federal Institute of Technology, Lausanne



(i). Conceptual Framework:

- Before discussing ‘*what is the appropriate level of IP protection*’, the first question to ask is ‘*what is the problem that we face, regarding innovation (in a country/industry)?*’

(ii). Policy Instruments:

- Bear in mind that IP protection is only one policy instruments to spur innovation, among others.
- *Alternative mechanisms* are proven effective to promote innovation, e.g. subsidy/prize funds etc...

(ii). Technology Transfer:

- While IPRs may have a net positive effect on transfer of technology via licensing, we do not know if the strengthening of IP has a net positive effect on technology transfer.
- Patents may promote technology transfer via licensing but may equally impede it.
- There are many other channels for technology transfer other than licensing.

Discussant: Mr. HUANG Rengang, Minister Counsellor, Chinese Permanent Mission to WTO:

(i). The Puzzle of Patents and Innovation in Swiss History:

- Fact 1: Switzerland maintained strong innovation record in 1851 (ranks No. 2 during international innovation exposition in UK in 1851).
- Fact 2: Switzerland was without a real patent regime until exactly 100 years ago, 1907.
- Puzzle: What is the relevant nexus between patent and innovation?

(ii). Important Angles for Patent Policy Makers:

- Whose patent policy for whose country?
- We live in an imperfect world. Full access to knowledge and perfect competition are impossible. If we cannot seek full access to knowledge or full competition, we should certainly encourage more access to knowledge and more competition, the second-best option.
- Easier access to knowledge is important in the sake of public good, public interest, and to stimulate economic development in more countries. From the point of view of developing countries, it is the responsibility of the government to have the interests of all stakeholders in mind.



Concluding Remarks by the Chair: Dr. Xuan LI, Lead Economist and Acting Coordinator, IAKP, South Centre:



To sum up, at least three important lessons can be drawn from Swiss experiences for developing countries:

- First, a proper conceptual framework to root the development concept into the IP policy making process must be established. The graph presented by Switzerland is an excellent guiding concept for policy making.
- Second, an economic approach should be introduced into national IP policy-making processes. The Swiss survey on biotechnology is an excellent example of how such an interdisciplinary approach can be envisaged.
- Third, antitrust (competition) concerns should be embedded into the IP regime. Swiss experience of introducing research exemption into patent law is a good example. The Swiss experience, together with US approach discussed during the South Centre IP enforcement symposium (9 Oct 2007, http://www.southcentre.org/southface/South_Face_IAKP_9Oct.pdf), demonstrates how developed countries have secured a proper balance between IP and anti-trust.