

Does TRIPS Art.66.2 Encourage Technology Transfer to the LDCs?: An Analysis of Country Submissions to the TRIPS Council (1999-2007)

Encouraging Technology Transfer to LDCs: Towards a more
effective implementation of TRIPS Article 66.2

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Overview

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2. Methodology: Definitions & Data
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6. Summary & Conclusions

1. Introduction: Background

Background:

- ◆ T.Transfer as part of the IP bargain
- ◆ 1994 TRIPS Article 66.2
- ◆ 1998 TRIPS Council: Haiti
- ◆ 2001 Doha Declaration
- ◆ 2003 TRIPS Council Decision on reporting
 - WTO Working Group on Trade & TT

1. Introduction: Research Question

Question: Based on **country self-reports** to the TRIPS Council, has Art.66.2 led to **increased incentives** offered by developed countries for technology transfer to the **LDCs**?

Art. 66.2: Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base.

2. Methodology

If 66.2 **were** functioning, what data would we **expect** to see?

- ◆ Regular developed country reports
- ◆ Participation of *all* developed countries
- ◆ Incentives *specifically* targeting LDC WTO Members
- ◆ Explicit mention of Art.66.2 as rationale
- ◆ Incentives regarding *technologies*
- ◆ Incentives for *transfer* of technology

2. Methodology: Definitions

1. LDCs: 50 UN-defined LDCs
 - ◆ 32 WTO Members
 - ◆ 10 in accession process
 - ◆ 1 observer
 - ◆ 7 non Members
2. “Developed” countries: No WTO definition
 - ◆ OECD: 30 members
 - ◆ World Bank High-Income: 60 countries
3. “Technology Transfer”: No WTO definition
 - ◆ Of 22 countries submitting, only 5 (23%) include definition.

2. Methodology: Definitions

“Technology Transfer”:

UN/New Zealand definition offers four key modes of TT:

- i) physical objects or equipment,
- ii) skills and human aspects of technology management and learning,
- iii) designs and blueprints which constitute the document-embodied knowledge on information and technology, and
- iv) production arrangement linkages within which technology is operated.

2. Methodology: Data

- All country submissions 1995-2007 (starts 1999)
- Feb 2003 TRIPS Council Decision (IP/C/28):
 - ◆ requires full reports every 3 years, annual updates in between
 - ◆ Requires more detailed data re: incentives, agency providing, entities eligible, “functioning in practice”
- 56 reports from 21 Members (+EC), 830 pp total
- Assume: developed Members do not underreport
- Weaknesses:
 - ◆ No uniform reporting format between Members, between years
 - ◆ Different concepts of technology transfer
 - ◆ Wide variance in level of detail

3. Findings

- a. How broad is reporting of compliance among developed Members?
- b. How specifically targeted are the policies towards LDC Members?
- c. Do the programs encourage TT to LDC Members?

3. Findings: Member Reporting

Members that **ever** submitted reports:

- OECD: 70% (21 of 30)
(or 26 of 30 [83%] if EC covers all member obligations)
- WB High-income: 35%

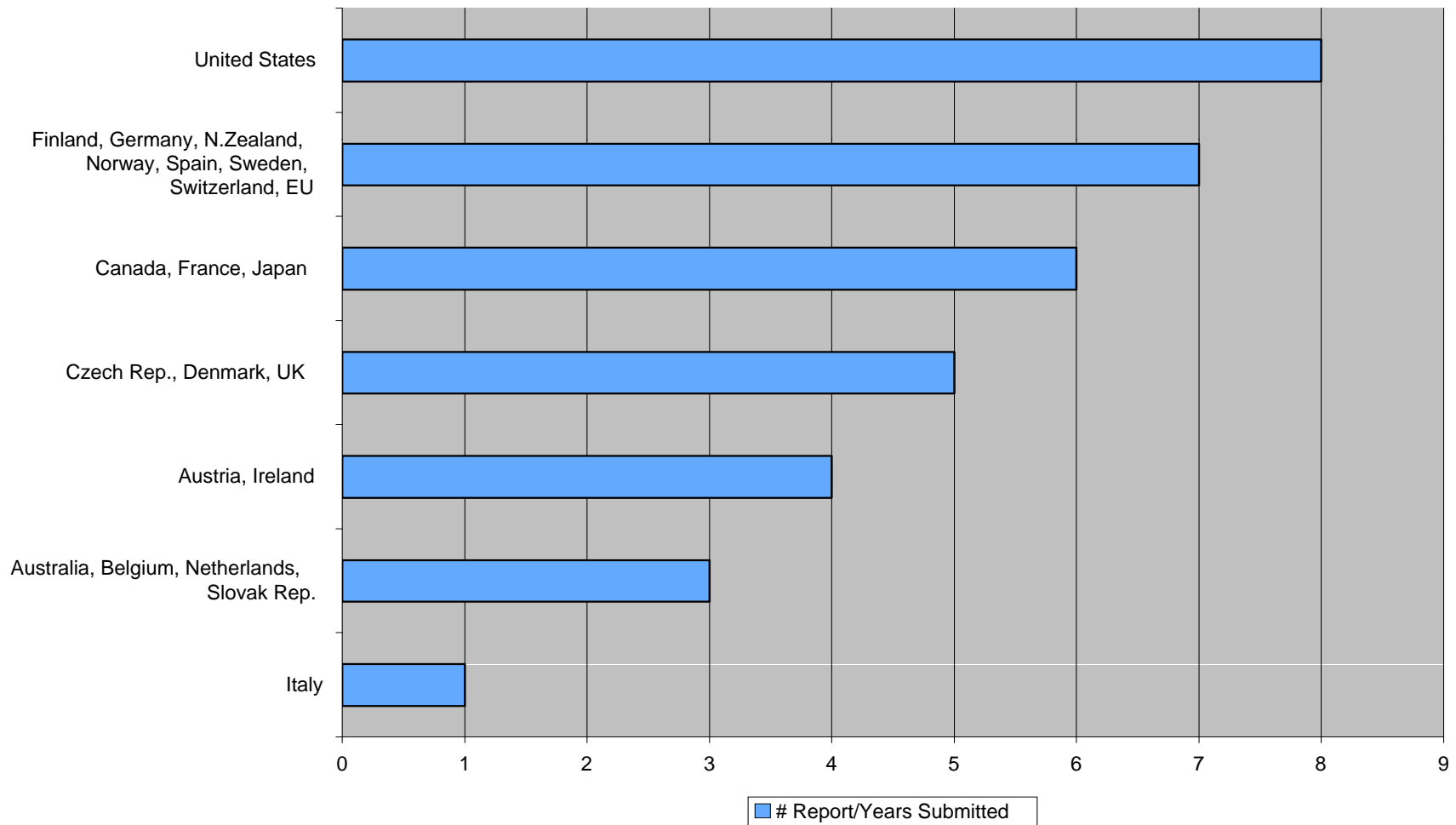
Of Members that ever reported (n=21):

- 0% submitted every year
- 1999-2007: 1/3 submit < 50% time

Assume: if Members did not submit report, not likely to have taken action to comply with Art.66.2

3. Findings: Reporting

Developed Country Report Submissions 1999-2007



3. Findings: Target LDC Members?

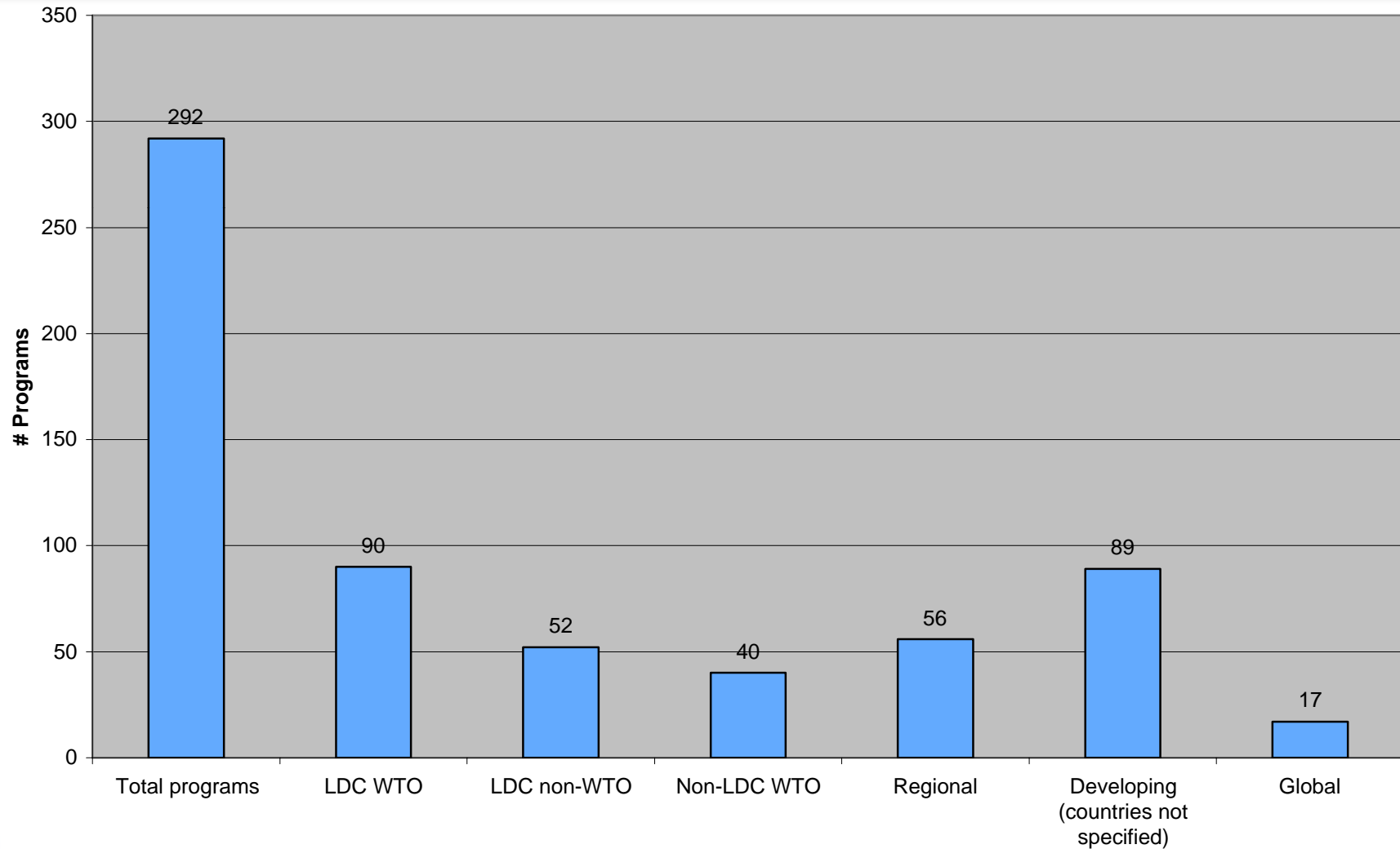
292 unique programs*:

- 31% LDC WTO Members
- 16% LDC Non-Members
- 15% non-LDC Developing countries
- 17% Regions
- 31% Developing Countries
- 6% Global (“Foreign”)

All LDCs targeted by at least some programs.

3. Findings: Target LDC Members?

Countries Targeted by Incentives



3. Findings: Target LDC Members for TT?

TT Includes, for example:

- Financing purchase of technology,
- Incentives for FDI,
- Matching businesses for skills-building & training,
- Support to education systems,
- Providing venture capital,
- Providing insurance,
- Technical training in aid projects,
- Skilled volunteers

Excludes, for example:

- General good governance programs
- Basic needs support
- Technology but without transfer (e.g. drug development outside LDCs)

3. Findings: Target LDC Members for TT?

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All Programs/Policies	292 (100%)
Targeting LDC WTO Members	90 (31%)
--Of which qualify as technology transfer	64 (22%)
Targeting LDCs (WTO and non-WTO)	116 (40%)
--Of which qualify as technology transfer	84 (29%)

4. Discussion

- Evidence suggests rather limited impact of Art. 66.2
- Key question is *additionality over BAU*
 - ◆ 1 of 292 clearly identified 66.2 as motivation
- Data limitations:
 - ◆ Too general
 - ◆ No quantitative measure for incentives
 - ◆ Financial data only included 50% of programs, inconsistent meaning
 - ◆ Often insufficient data on TT: what and how? (TRIPS Council 2003 Decision)
- Stricter TT definition would lead to < 22%

5. Suggestions

Keeping in mind:

- Country reports did improve over time, especially after 2003.
- However, many country reports do not provide full info.
- Council Decision 2003 requests review of reporting mechanism in 3 years.
- Negotiated definitions vs shared understandings

Suggestions for:

- All Members.
- Developed
- LDC

5. Suggestions: All Members

- a. Agree on which countries are “developed” for purposes of 66.2
- b. Agree on definition of “technology transfer” and list of programs & policies that do/do not qualify.
- c. Provide common, comparable metrics for measuring *effect* of incentives.

5. Suggestions: Developed Members

- d. Provide clear, detailed data on incentives and **outcomes**, using uniform reporting format across Members and time periods.
- e. Indicate whether and how incentives are additional to business-as-usual.

5. Suggestions: LDC Members

- f. Report on effectiveness of TT for building sound, viable technological base, and identify gaps where access to technology remains difficult.
- g. Report (un)successful developed country incentives, to build gradually a set of recommended practices from LDC perspective.

6. Summary & Conclusions

1. Country reports suggest very limited impact of Article 66.2 on creation of incentives for TT for LDC Members.
2. Definitional lack of clarity means unclear: **which** countries are obligated to do **what?**
3. Reporting by countries is often absent or irregular.

6. Summary & Conclusions

4. Majority of reported programs/policies do not target LDCs or LDC Members.
5. Many reported programs/policies do not encourage technology transfer.
6. Unclear whether programs are additional to BAU (e.g. traditional ODA).

Key Conclusion: Need to change reporting system for greater detail, comparability, and to measure trends over time.



Thank you

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