

Why Unilateral Options?

- To determine the necessary scope of action required at the international level to address intellectual property issues
- To determine how much freedom there is to act due to the failure of industrialized countries to meet their obligations under the UNFCCC
- Which technologies?
 - Mitigation
 - Adaptation

What Kind of Unilateral Actions?

The IP problem

- Access to goods
 - Ensuring the normal flow of goods by ensuring distribution at a price that makes it economical to adopt 'climate-friendly' technologies.
- Access to knowledge/technology
 - Ensuring ability of domestic actors to produce, adapt, innovate on and around climate technologies. Issue is access to licensing at a reasonable price that make it economically sound to produce and disseminate climate technologies

What Kind of Unilateral Actions?

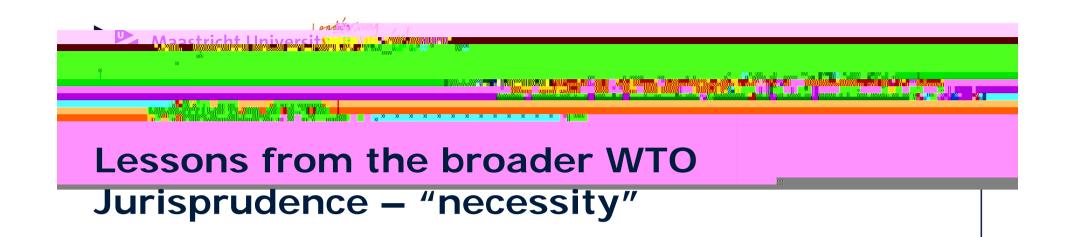
- Purchase, Imitate and adapt
 - Address failure to produce, distribute goods into the domestic market at a price necessary to meet the demand for climate technology
 - Domestic production Direct copying or exceptions, or patent exclusions
 compulsory licensing supported by

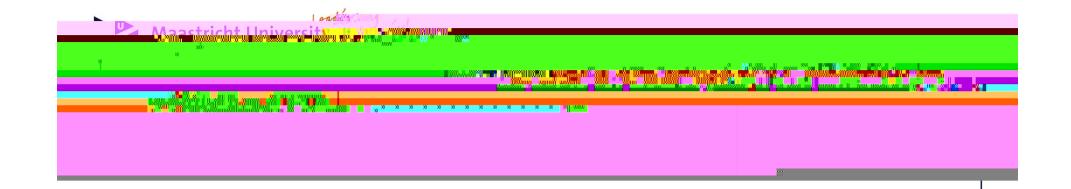
Two key Considerations in Assessing Actions

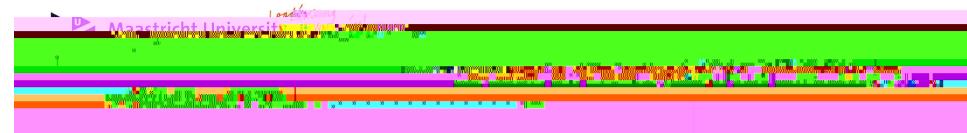
- The Role of Emerging economies as intermediary distribution and sales points between large developed and the majority of developing countries
- The UNFCCC framework on CBDR and Historical responsibility
 - UNFCCC Article 4.1.c, Article 4.3, Article 4.5 and Article 4.7
 - Unilateral actions that are of use are aimed at ensuring the cost is not borne by consumers or actors in non-Annex 1 countries, or they are beside the point and likely to fail.

The TRIPS Problem?

- Article 27.1 and 27.2
- Article 30 US Copyright; Canada Pharmaceuticals
- Article 31 no jurisprudence but significant discussion in the Doha Declaration on TRIPS and Public Health
 - Solution to Article 30 and 31 issues may be Articles 7 and 8 of TRIPS?







Conclusions on Unilateral Actions

- Unilateral IP Actions by developing countries are either unavailable due to TRIPS or the available avenues are too small to make a difference.
- We require multilateral action to address the IP and non-IP failures.

The Way Forward

- Unilateral Action at the Competition Law level
 - Aligning refusals to deal, competition law with the public interest goal of economy and sector wide transformations in en ergy production and consumption; and adaptation
 - Multilateral cooperation on this as required by TRIPS Article 40
- Multilateral platforms at the UNFCCC to provide
 - Commercial certainty for licensing into em may play a key role as a platform and for SMTA does at the ITPGRFA.
- emerging economy actors to export to sing, possibly through a Paragraph 6 like

providing standard licensing such as the

erging economies – the proposed CTC&Ns

- Segmented licensing markets for enabling developing countries. For compulsory licen process.
- r support to pay for licenses to access IP a project or program to be funded.
- Multilateral funds that explicitly provide fo where needed and proposed as part of
- Systemic Integration of Legal analysis and interpretation at the Multilateral Level, especially the WTO
 - Avoidance of conflicts
 - Shared Objectives
 - Competencies