



IP, International R&D and Knowledge Transfer – the UNCTAD perspective

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Overview of Presentation

- UNCTAD's mandates and work on IP
- UNCTAD's experience in IP and knowledge/technology transfer
- New trends in knowledge creation and implications for national IP and innovation systems





UNCTAD's mandates on IP

- Accra Accord (UNCTAD Ministerial Conference 2008): development implications of IP
- UNCTAD Investment Commission: local production of pharmaceutical products
- Recommendation 40 of WIPO Development Agenda
- WHA Resolution 61.21 Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property



UNCTAD's work on IP

- Development Dimensions of Intellectual Property (DDIP): advisory services
 - Policy recommendations on the use of IP as a development tool
 - Focus on interface between IP and FDI, technology transfer, dissemination and innovation
 - For interested DCs and LDCs





IP and FDI/trade/innovation

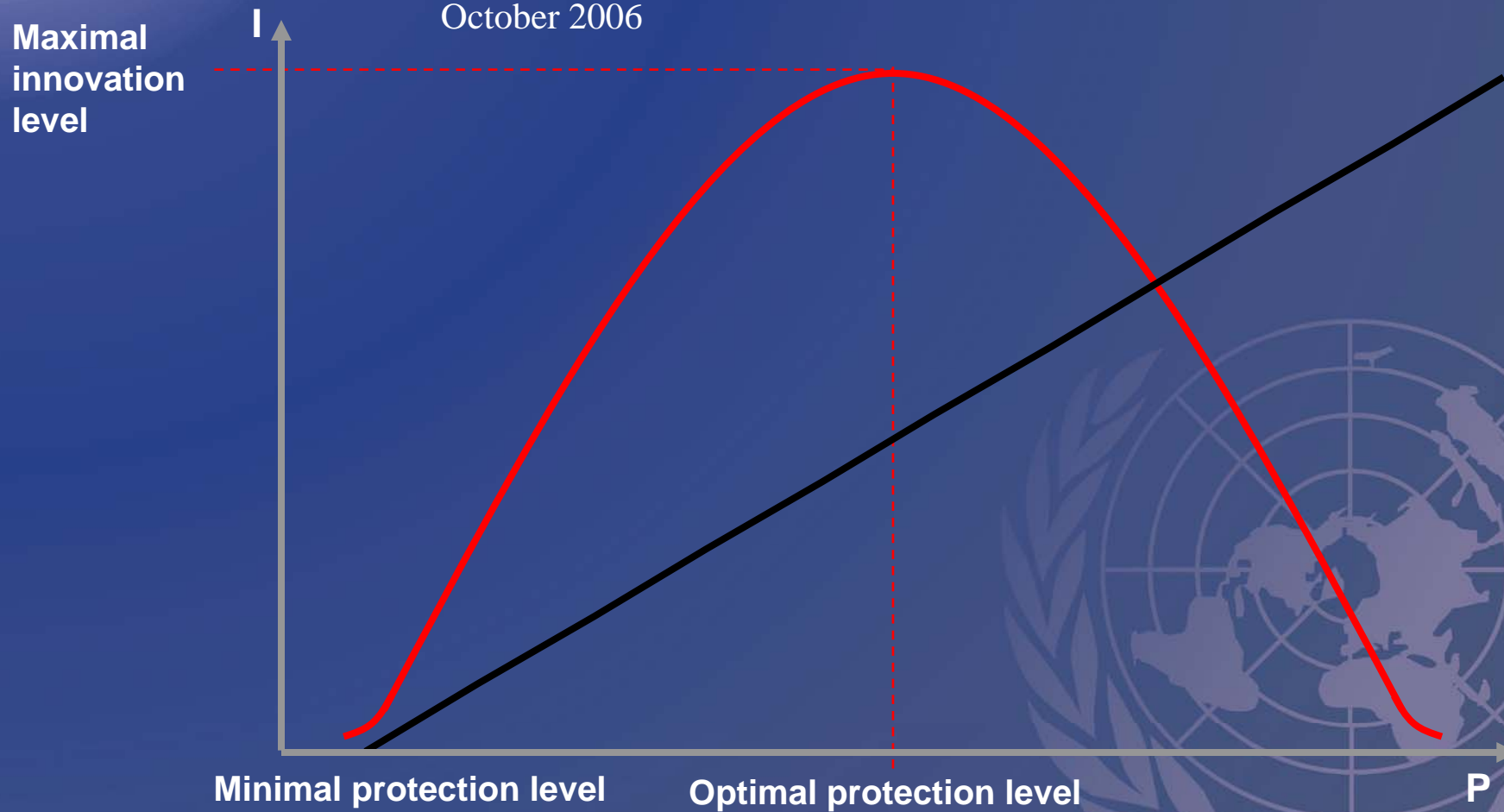
- IP protection is one among many factors (market size, local expertise, economic and political stability)
- Importance for attracting FDI varies with sector of industry: R&D-based industries need IP (pharma); as opposed to generic producers
 - Example Cipla investment in Uganda
- OECD study (2003): both too little and too much IP is detrimental to FDI and trade
- The same applies to innovation





Striking a balance: Patents as a Policy Measure Protection (P) vs. Innovation (I)

Source: Swiss Federal Institute of Intellectual Property,
October 2006





IP and knowledge transfer

- Effective enforcement of IP provides incentives to license knowledge
- But investors need capable local partners → importance of building technological capacities
- Knowledge transfer through
 - Formal means (e.g. licensing, FDI): advanced domestic capacities
 - Informal means (e.g. imitation, adaptation, reverse engineering): low/modest domestic capacities
- Informal means of transfer require a broad public domain



New trends in knowledge creation

- Innovation processes become more cumulative (ICTs, software): open innovation
- R&D in CH private sector: fast, incremental improvements of existing technologies (NZZ of 18 June 2010)
- Interoperability is decisive for competitiveness, but requires access to third party knowledge
- Complex technologies often subject to « patent thickets »



Patent thickets (1)

- US Federal Trade Commission (2003):
 - 90,000 different patents on microprocessors
 - Patents held by more than 10,000 parties
 - Patent mosaic on end product
 - Result: use of end product may be blocked by owner of one patent
 - Companies seeking to commercialize technology have to pay considerable licensing fees or challenge blocking patents in costly & lengthy litigation



Patent thickets (2)

- BlackBerry ® case (2006): multiple patent infringements through use of key technology
- Last-minute settlement prevented shutdown of all BlackBerry services
- Strategic patenting of software
 - To block competitors and/or collect royalties (patent « trolls »)
 - Defeats original purpose of the patent system: diffusion of knowledge for benefit of society
 - Serious concerns for US FTC and EU Commission



Policy responses

- IP/patent systems needs to reflect reality of knowledge creation & innovation: collaborative approaches
- Find solutions that provide incentives to R&D, but prevent blocking of knowledge needed for follow-on product development
 - Licenses of right/remuneration: Swiss Patents Act on research tools
 - Broad research exemptions: generation of new knowledge
 - Stricter patenting standards (US Supreme Court, 2008 *KSR vs Teleflex*)
 - Patent pools (e.g. UNITAID Patent Pool for tropical diseases)
 - EPO: « Scenarios for the Future », 2007: treat patents differently according to technology sector?



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