

targets. CDM projects may also include transfer of green technology from developed countries to developing countries.

## **B. Compatibility with TRIPS Flexibilities**

### **1. Technology Transfer Obligation under TRIPS Articles 7, 8(1) and 66(2)**

The TRIPS Agreement includes provisions for creating favourable conditions in developing countries to attract technology through trade and investment (pull factors).<sup>77</sup> However, TRIPS also recognizes LDCs' special need for flexibilities with respect to their national laws in order to allow them to establish "a sound and viable technological base."<sup>78</sup> To list a few TRIPS provisions that emphasize such equilibrium between rights and obligations, Article 7 provides that the protection and enforcement of IP should "contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users."<sup>79</sup> Article 8(1) allows Members to "adopt measures necessary to protect public health .... and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that those measures are consistent with TRIPS."<sup>80</sup> Article 66(2) also provides, as a basis for the active transfer of technology to developing countries, that developed country members shall provide incentives (monetary or otherwise) to institutions to encourage transfer to LDCs for their technology base.<sup>81</sup>

### **2. Exceptions to Rights under TRIPS Article 30**

To cure potential market inefficiencies occurring as a result of exclusive rights, the scope of patents may be balanced out mainly through two mechanisms:<sup>82</sup> (i) ex-

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77 *Supra* note 56 (by setting strong minimum standards of protection on patent terms, exclusive rights and national treatment).

78 TRIPS Agreement, *supra* note 8 at the Preamble.

79 *Id.* at art. 7.

80 *Id.* at art. 8(1).

81 *Id.* at art. 66(2). *Cf.* TRIPS Article 66(1) provides an extendable transition period of ten years for LDCs.

82 WIPO Standing Committee on the Law of Patents 13th Session, Exclusions from Patentable Subject Matter and Exceptions and Limitations to the Rights, Mar. 23-27, 2009, Paras. 10-11, WIPO Doc. SCP/13/3 (Feb. 4, 2009).