

Doha Mandates

"We agree to an examination, in a Working Group under the auspices of the General Council, of the relationship between trade and transfer of technology, and of any possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries. The General Council shall report to the Fifth Session of the Ministerial Conference on progress in the examination."

(Para. 37 of the Doha Ministerial Declaration)

"Reaffirming that the provisions of Article 66.2 of the TRIPS Agreement are mandatory, it is agreed that the TRIPS Council shall put in place a mechanism for ensuring the monitoring and full implementation of the obligations in question. To this end, developed-country Members shall submit prior to the end of 2002 detailed reports on the functioning in practice of the incentives provided to their enterprises for the transfer of technology in pursuance of their commitments under Article 66.2. These submissions shall be subject to a review in the TRIPS Council and information shall be updated by Members annually."

(Para. 11.2 of the Decision on Implementation-related Issues and Concerns)

Trade and Transfer of Technology

Prospects for Cancun

While some developing countries in the Working Group on the Relationship between Trade and Transfer of Technology (WGTTT) have pushed for the adoption of practical recommendations by the Fifth WTO Ministerial on how to increase technology flows, no consensus on the content and type of possible recommendations could be reached. The 2nd draft Cancun Ministerial text (Job(03)/150 of 24 August 2003) simply takes note of the progress made in the WGTTT and agrees that the Group's work "shall continue based on the mandate contained in paragraph 37 of the Doha Declaration." The WGTTT's mandate is likely to be renewed at the Ministerial meeting without much controversy. Post-Cancun, developing countries will need to focus their efforts on how to move the discussion forward in the WGTTT if Members are to agree on specific recommendations by the end of the Doha Round.

Background

The Doha Ministerial Declaration introduced, for the first time in the WTO, a binding mandate for WTO Members to examine the relationship between trade and technology transfer (TT). To this end, ministers established the WGTTT, open to all Members, to operate within the permanent structure of the WTO.

The main *demandeurs* for examining this issue are developing countries seeking the full implementation of existing TT clauses in all WTO agreements and possibly the development of a new agreement to facilitate TT. Some developed countries, however, seem to perceive the mandate as an academic exercise and appear reluctant to deepen the work towards the implementation of TT clauses in WTO agreements or to move into discussions that might trigger substantive negotiations for increasing TT.

Reaching agreement on a substantive agenda and the process to follow was not an easy task in the WGTTT. Developing countries preferred to focus discussions on specific TT clauses in WTO agreements and their effectiveness while the EC sought

to clarify some definitional issues before engaging in substantive discussions. To reconcile these differences, the WGTTT Chair proposed an exploratory agenda covering the following issues:

- analysis of the relationship between trade and TT;
- work by other intergovernmental organizations (IGOs) and academia;
- sharing of country experiences;
- identification of provisions related to TT in WTO agreements; and
- any possible recommendations on steps that might be taken within the WTO's mandate to increase flows of technology to developing countries.

Mandated Deadline

The General Council shall report to the fifth WTO Ministerial Conference (10-14 September 2003 in Cancun, Mexico) "any possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries."

Current State of Play

The WGTTT's report presented to the General Council in mid-2003 outlines Members' submissions and presentations by countries and IGOs over the past two years (WT/WGTTT/5). According to the report, Members failed to agree on recommendations on steps that might be taken within the WTO mandate to increase TT, but some Members have identified particular themes for further discussion and have put forward possible recommendations (see below). The General Council adopted the report, which notes the desire of some Members to extend the Group's mandate for two more years.

Approaches Taken by WTO Members

Several developing countries have taken an active role by clearly stating their objectives for the WGTTT. This is reflected in a submission by a group of 15 developing countries proposing a set of objectives and terms of reference for the Group (WT/WGTTT/W/2), and a submission by Cuba,

Egypt, Honduras, Indonesia, Kenya and Zimbabwe listing the TT-related provisions in WTO agreements (WT/WGTTT/3). These two submissions have stressed the need for an adequate implementation of relevant trade disciplines and creative efforts on practical ways of increasing TT. The proponents' approach can be summarised in the following aspirations:

- Effective implementation of TT clauses in WTO agreements;
- Enhanced flexibility to implement measures in both developed and developing countries designed to encourage technology flows;
- Examination of restrictive practices on TT in light of competition policy;
- Increased technical co-operation; and
- Capacity building to facilitate TT.

On 7 May 2003, Cuba, Indonesia, Jamaica, Kenya, Nigeria, Pakistan, Tanzania, Venezuela and Zimbabwe submitted a communication outlining possible recommendations on steps that might be taken to increase flows of technology (WT/WGTTT/W/6), including the need to examine:

- TT-related provisions with a view of making them operational and meaningful;
- Provisions that might hinder TT and how to mitigate such effects;
- Restrictive practices adopted by multinational enterprises in the area of TT and how to prevent such practices;
- Impact of tariff peaks and tariff escalation on TT;
- Difficulties of developing countries in meeting WTO standards in cases where the relevant technologies are unavailable;
- Need and desirability of internationally agreed disciplines on TT with a view to promoting development;
- Ways of helping developing countries to strengthen their technology base.

The EC has focused on definitional issues, TT channels and assessing the effectiveness of those channels (WT/WGTTT/1 and WT/WGTTT/W/5). Overall, the EC has shown a rather co-operative stance on moving the WGTTT's mandate forward.

Other OECD countries have expressed doubts over the value of the exercise. The US has shown no enthusiasm on the reach

of the WGTTT's prescriptive mandate, arguing that there is no obligation for the Group to explore recommendations for Cancun regarding provisions in WTO Agreements. It has hinted at a preference for maintaining the Group in an 'analytical mode', favouring the exchange of national experiences and a debate on mechanisms to promote technology development and transfer without interfering with the status quo of WTO obligations.

In response to the recommendations proposed by the group of nine developing countries, developed countries noted that the WGTTT was not in a position to make this type of recommendations. They considered some of the recommendations as inappropriate for the discussion, as they fell outside the WTO's mandate.

Sharing Experience

In order to enhance understanding on how to promote TT, several Members, including Brazil, Canada, China and Switzerland, presented their country experiences. Canada described the type of domestic policies that it has implemented (WT/WGTTT/2), while Switzerland outlined its experience in creating incentives for the transfer of environmentally sound technologies (WT/WGTTT/W/7).

While stressing the Working Group's importance, Brazil has been critical of the value of the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs) as a tool for TT. In particular, it has highlighted the trade-distorting effects of developed countries' public funding schemes in support of research and development and the serious consequences for developing countries' competitiveness.

UNCTAD, the United Nations University (UNU/INTECH), the UN Industrial Development Organisation (UNIDO) and the World Bank have also contributed presentations on their relevant experiences.

Links to IPRs and the TRIPs Debate

Various delegations have recognised that IPRs can stimulate innovation and that the TRIPs Agreement can have an impact on TT. The EC, Canada and Switzerland believe that licensing technology subject to

IPRs promote the transfer of certain know-how, skills and application technologies. Developing countries have noted the need to encourage co-operation for establishing appropriate norms and practices that lower the transaction costs of intellectual property and dissemination of technology. They have also identified the lack of will by many countries to engage in effective transfer programmes among the major problems that limit TT.

Implementation Issues

The TRIPs Council worked specifically on TT to least-developed countries (LDCs) in light of Article 66.2 of the TRIPs Agreement, which commits developed countries to "provide incentives to enterprises and institutions in their territories for the purpose of promoting technology transfer" to LDC Members.

Pursuant to para. 11.2 of the Doha Decision on Implementation-Related Issues and Concerns, LDCs submitted one proposal on the type of mechanism that should be put in place for monitoring and implementing Article 66.2 of the TRIPs Agreement (IP/C/W/357).

On 19 February 2003, the TRIPs Council took a Decision regarding the Implementation of Article 66.2 of the TRIPs Agreement (IP/C/28), thereby complying with the para. 11.2 mandate. The Decision requires developed country Members to submit annual reports on actions taken or planned in pursuance of their commitments under Article 66.2. The reports will provide an overview of the incentive regime put in place; the type of incentives and government agency or entity making it available; eligible enterprises and other institutions, and any information available on the functioning of these incentives in practice. The TRIPs Council will review the reports at its final meeting each year, providing an opportunity for Members to ask questions and discuss the effectiveness of the incentives.

Proposals and other documents can be found at <http://docsonline.wto.org/> under WT/WGTTT*.

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