DOHA ROUND BRIEFING SERIES

Developments Since the Fourth WTO Ministerial Conference

The International Centre for Trade and Sustainable Development (ICTSD) and the International Institute for Sustainable Development (IISD)

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Trade and Transfer of Technology

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)

Background

The Doha Ministerial Declaration has, for the first time in the history of the multilateral trading system, introduced a binding mandate for WTO Members to examine the relationship between trade and technology transfer. To this end, ministers established a Working Group on Trade and Transfer of Technology (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 technology transfer clauses in all WTO Agreements. Some developed countries tend to perceive the mandate as an academic exercise and are reluctant to deepen the work towards the implementation of technology transfer clauses in WTO Agreements or to initiate negotiations for increasing technology transfer flows.

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

Reaching agreement on a substantive agenda for the WGTTT and the process to follow was not an easy task in the first meetings of the Working Group. Fifteen developing countries proposed a set of objectives and terms of reference for the work to be pursued along five clusters (WT/WGTTT/W/2):

- provision of the WTO Agreements related to the transfer of technology (ToT);
- specific analytical work;
- technical co-operation;
- possible areas of consensus-building; and
- the role of international and non-governmental organisations.

In contrast, the EU (WT/WGTTT/1) suggested that the Group should focus on:

- a common understanding of the definition of technology transfer;
- identification of technology transfer channels; and
- assessment of technology transfer channels with a view to recommendations.

To reconcile these differences, the Working Group Chair proposed an exploratory agenda covering a broad range of issues including:

- analysis of the relationship between trade and transfer of technology;
- work by other intergovernmental organisations and academia;
- sharing of country experiences;
- identification of provisions related to transfer of technology 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.

The Main 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 the 15-country proposal described above, as well as a submission listing the provisions relating to technology transfer in all WTO Agreements from Cuba, Egypt, Honduras, Indonesia, Kenya and Zimbabwe (WT/WGTTT/3).

These two submissions have stressed the need to engage in a creative effort on practical means to increase flows of technology transfer and an adequate implementation of relevant trade disciplines. The approach of these proponents can be summarised in the following five aspirations:

- effective implementation of ToT clauses in WTO Agreements;
- enhanced flexibility to implement active country measures (developed and developing) designed to encourage technology flows;
- examination of restrictive practices on technology transfer in light of competition policy;
- increased technical co-operation; and
- capacity-building to facilitate technology transfer.

The EU has laid emphasis on definitional issues, technology transfer channels and assessment of the effectiveness of those channels. On definitional issues, it considers that a broad working definition should be used. It notes that the overall objective of technology transfer is to integrate developing countries in the global economy. According to the EU, there are several main channels for technology transfer including investment, trade in services, trade in goods, licensing of intellectual property rights (IPRs), government procurement, development cooperation, and multilateral environmental agreements. Overall, the EU has shown a rather co-operative stand on moving the WGTTT's mandate forward.

Other OECD countries have expressed strong doubts over the value of the exercise. For instance, 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. Japan has kept a low profile role in the talks.

Sharing Experience

In the absence of deep substantive discussion, Canada, Brazil and China have presented their country experiences. Canada's submission describes the type of domestic policies that the country has implemented in various fields including its general regulatory system, intellectual property regulations, competition policies, government procurement tools and specific initiatives and programmes on technology transfer (WT/WGTTT/2). Many of the policies used by Canada tend to be active and oriented towards strengthening domestic innovation capacity. The submission in particular underlines the ability to attract, absorb, use and export technology.

While stressing the Working Group's importance, Brazil has been critical about the value of the TRIPs Agreement as a tool for technology transfer. In particular, it has highlighted the trade-distorting effects of developed country public funding schemes in support of research and development and the serious consequences for the competitiveness of developing countries.

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

Links to Intellectual Property Rights and the TRIPs Debate

Various delegations have recognised that intellectual property rights (IPRs) can stimulate innovation and that the TRIPs Agreement can have an impact on technology transfer. The EU and Canada believe that licensing technology subject to IPRs allows the transfer of certain know-how, skills and application technologies. Canada specifically mentions using the flexibility of the TRIPs Agreement with regard to the 'early working' clause, which allows the manufacture of patented inventions (both products and procedures) for the purpose of obtaining regulatory approval for generic production of pharmaceutical products even before the patent expires. However, 'early working' consisting of stockpiling production prior to the patent's expiration — with the purpose of having a certain quantity of ready-to-sell products for when the patent protection ends — was found incompatible with the TRIPs Agreement in the EU-Canada dispute on pharmaceutical products.

Developing countries have noted the need to encourage co-operation for establishing appropriate norms and practices that lower 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 technology transfer.

Implementation Issues

Currently, the TRIPs Council is working specifically on incentives for the transfer of technology to least-developed countries 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 least-developed country Members to help them create a "sound and viable technological base." According to paragraph 11.2 of the Doha Decision on Implementation-related Issues and Concerns, the provisions of Article 66.2 are mandatory, and 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."

As outlined in the Council's year-end report (IP/C/27), as of 6 December, information on technology transfer incentives had been received and circulated (under IP/C/W/388 and addenda) by Australia, Canada, the EU and its member states, Japan, New Zealand, Norway and Switzerland.

Least-developed countries have 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). According to this proposal, a mechanism under article 66.2 should take into account the following considerations:

- it must require specific reporting on incentives, enterprises involved, transaction cost, type of technology, appropriateness and local adaptability of the technology transferred and the beneficiary enterprise or institution;
- it must indicate the terms under which technology is transferred and if it meets certain standards of competitiveness;
- it must not fall within the general rubric of overseas development assistance; and
- it must require annual updates and opportunities for review and monitoring.

The proposal also notes that once Members have worked out a monitoring mechanism, its incorporation into the TRIPs Agreement will be critical.

See also the section on technology transfer in the Doha Round Briefing No. 1 on Implementation-related Issues and Concerns.

Outstanding Implementation Issues

"Articles 7 and 8 of the TRIPs Agreement to be operationalised by providing for transfer of technology on fair and mutually advantageous terms" (tiret 94 of the Compilation of Outstanding Implementation Issues, document JOB(01)/152/Rev.1).

This tiret has not yet been explicitly addressed and/or resolved.

Open Expectations

The Working Group has made some progress in the identification of possible areas of work. However, its future is uncertain and unclear. In the view of many observers, in the current policy environment where development has been placed at the centre, the WGTTT offers a unique opportunity for developing countries to redress the current imbalances of the multilateral trading system. Upgrading technology could assist them in reaching wider development goals and thus lead to a more balanced integration into the global economy. Notwithstanding this imperative, the discussions have also highlighted the difficulties of developing countries in addressing the different negotiating tracks simultaneously, particularly with regard to a subject like this where there is an urgent need for new ideas and a clear negotiating strategy.

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

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