

Trade and Transfer of Technology

Doha Mandate:

"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)

In 2005, Members continued discussions on measures to promote the transfer of technology (ToT) in the Working Group on the Relationship between Trade and Transfer of Technology. Although no consensus has been reached on recommendations that could be put forward at the Hong Kong Ministerial Conference in December, three developing country proposals provide some potential for advancing discussions towards practical outcomes. Nevertheless, in Hong Kong ministers are unlikely to do more than extend the working group's mandate.

Background

Paragraph 37 of the Doha Ministerial Declaration introduced, for the first time in the WTO, a mandate to examine the relationship between trade and the transfer of technology (ToT). A Working Group on the Relationship between Trade and the Transfer of Technology (WGTTT), open to all Members, was established to carry out the task.

The main *demandeurs* for WTO action on this issue are developing countries seeking the full implementation of existing ToT clauses in all WTO agreements and possibly the development of a new agreement to facilitate ToT. Some developed countries, however, seem to regard the WGTTT as an academic exercise and appear reluctant to move into discussions that might trigger substantive negotiations.

Reaching agreement on an agenda and the process to follow was thus not an easy task. Developing countries preferred to focus on provisions relating to ToT in the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS), the Agreement on Trade-related Investment Measures (TRIMS), the General Agreement on Trade in Services (GATS), Article 10.1 of the Agreement on Sanitary and Phytosanitary Measures (SPS) and Article 12.3 of the Agreement on Technical Barriers to Trade (TBT). On the other hand, the EU and other developed countries sought to clarify some definitional issues before engaging in substantive discussions.

To reconcile these differences, Members agreed to the following agenda:

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

Mandated Deadlines

- The General Council was supposed to report to the 2003 Cancun Ministerial Conference "any possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries." As talks in Cancun collapsed without either a Ministerial Declaration or a specific decision on the matter, the WGTTT should present its recommendations to the Hong Kong Ministerial Conference in December 2005.

- Paragraph 11.2 of the Doha Decision on Implementation-related Issues and Concerns requested the TRIPS Council to put in place a mechanism to monitor developed country compliance with their ToT obligations to LDCs under Article 66.2 of the TRIPS Agreement. On 19 February 2003, the TRIPS Council took a Decision (IP/C/28), which required developed country Members to submit annual reports on actions taken or planned in pursuance of their commitments under Article 66.2. The TRIPS Council reviews the reports annually; see section on Implementation Issues below.

Current State of Play

In 2005, Members continued their analysis of the relationship between trade and ToT, as well as discussed possible recommendations on steps that could increase flows of technology to developing countries. Cuba submitted a communication in June in an attempt to hasten discussions in the lead up to Hong Kong. It focused on the examination of different ToT provisions contained in the WTO agreements, with a view to making these operational and meaningful from the perspective of developing countries, and LDCs in particular. In October, a more comprehensive proposal on the same topic was put forward by India, Pakistan and the Philippines, co-sponsored by Brazil, Egypt, Barbados and Nigeria.

Relationship between Trade and Technology Transfer

Members and observer organisations have identified a number of barriers to ToT, as well as strategies that could facilitate host and home country measures to overcome them. Home country measures could include policies that provide financing for ToT, incentives to stimulate foreign direct investment with a ToT component, incentives for small- and medium-size enterprises seeking partners in developing countries, simplification of rules of origin and the establishment of a database to ensure the flow of all relevant information on technology.

In this context, UNCTAD has introduced a number of documents to the working group. The first of these on *Transfer of Technology for Successful Integration into the Global Economy* (UNCTAD/ITE/IPC/2003/6) provides a general overview of the main findings and conclusions of successful cases of ToT and an analysis of those cases in light of multilateral rules in order to identify policies related to ToT and capacity-building. The second document, entitled *A Survey of Home Country Measures* (UNCTAD/ITE/IPC/2004/5) highlights measures such as incentives, the role of home country governments and the private sector, and other efforts that could be made to facilitate ToT. The *Case Study of the Electronics Industry in Thailand* (UNCTAD/ITE/IPC/2005/6, submitted in April 2005) focuses on the contribution of Thailand's manufacturing sector to the country's rapid economic growth in recent years, particularly the export growth in manufactured and electronic goods, and the role of foreign direct investment in the development of the electronics industry. It also emphasises the role of host country measures, discussing some of the pro-active policies pursued by the government of Thailand. Members welcomed all three documents and highlighted the importance of partnerships in ToT in order to make it a win-win situation for both home and host countries.

Possible Recommendations

In 2003, Cuba, India, Indonesia, Jamaica, Kenya, Nigeria, Pakistan, Tanzania, Venezuela and Zimbabwe presented a proposal on Possible Recommendations on Steps that Might Be Taken within the Mandate of the WTO to Increase Flows of Technology to Developing Countries (WT/WGTTT/W/6 and add1). They suggested that the WGTTT examine, *inter alia*, restrictive practices adopted by multinational enterprises in the area of ToT and how to prevent such practices; the impact of tariff peaks and tariff escalation on ToT; developing countries' difficulties in meeting WTO standards when the relevant technologies are unavailable; the need for and desirability of internationally agreed disciplines on ToT with a view to

promoting development; and ways of helping developing countries to strengthen their technology base. In subsequent meetings Members agreed to undertake an examination of the provisions in WTO agreements that relate to ToT and to consider which provisions might have the effect of hindering ToT to developing countries.

On 23 June 2005, Cuba submitted a communication in June 2005 reiterating the urgent need for the WGTTT to agree on concrete recommendations for adoption at the Hong Kong Ministerial on the basis of those already proposed by various developing countries in the 2003 proposal. These recommendations would request ministers to instruct the WGTTT to:

- *carry out a detailed examination of the different provisions on technology transfer contained in the various WTO agreements, with a view to making these provisions operational and meaningful from the point of view of developing countries; and*
- *look at those provisions of various WTO agreements which may have an effect of hindering technology transfer to developing countries and come up with recommendations as to how to mitigate the negative effects of these provisions.*

At the working group's July 2005 session, several developing countries supported the Cuban submission. In contrast, many developed countries, including the US, argued that as the links between trade and ToT had yet to be adequately defined a push towards such recommendations might jeopardise the process of consensus-building.

In October 2005, Members considered a proposal tabled by India, Pakistan and the Philippines, co-sponsored by Brazil, Egypt, Barbados and Nigeria (WT/WGTTT/W/10). The submission made several possible recommendations to be taken up in discussions at the Hong Kong Ministerial, including:

- an expansion of technical assistance under TRIPS by linking Article 67 (on technical and financial co-operation) to patent applications and patent databases to facilitate use and exchange of technical information.
- the formal adoption of voluntary guidelines such as those of the OECD on technology transfer incentives for multinational firms;
- assistance for developing countries to implement or improve competition policies capable of monitoring and discouraging the use of restrictive business practices by technology owners;
- the establishment of mechanisms to help developing countries' standards-monitoring authorities acquire the necessary technology to improve health and environmental quality standards;
- encouraging mobility of technical experts through the General Agreement on Trade in Services;
- further information exchange on investment and technology related incentives provided to firms; and
- the encouragement of regulatory standards-sharing between patent offices, in terms of the operation of patent applications and patent databases to facilitate use and exchange of technical information.

The submission was well-received as useful and pragmatic, although there was some discussion about

whether the WGTTC was the appropriate forum in which to address competition policy. Most notably, Brazil maintained that the working group's mandate was broad enough to address such cross-cutting issues.

An UNCTAD study outlining potential tax measures aimed at facilitating technology transfer was also briefly discussed in October (*Taxation and Technology Transfer*, UNCTAD/ITE/IPC/2005/9). The report highlights the need for an incentives policy within the taxation framework that encourages foreign direct investment, such as the adoption of tax-sparing credits, the granting of a deemed credit in the amount of tax that would have been paid to the foreign country had it not provided a tax subsidy, or an exemption from tax for business income earned in developing countries - in particular sub-Saharan Africa. Among other possible measures is the extension of R&D incentives to include activities undertaken in non-home countries.

An additional informal session was scheduled for November 2005, with some brief discussions on ToT expected at the Hong Kong Ministerial itself.

Implementation Issues

The TRIPS Council has been working on ToT in relation to 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. The Doha Decision on Implementation-Related Issues and Concerns requested the Council to put in place a mechanism to monitor developed country compliance with their ToT obligations. On 19 February 2003, the Council adopted a Decision (IP/C/28), which requires developed country Members to submit annual reports on actions taken or planned in pursuance of their commitments under Article 66.2. The purpose of the reports is to provide an overview of the incentive regime put in place; the type of incentives offered to firms; the government agency or entity making them available; eligible enterprises and other institutions; and any information available on actual the functioning of the incentives. The TRIPS Council reviews these reports at its final meeting each year, where Members have an opportunity to ask questions and discuss the effectiveness of the incentives.

By the end of October 2005, Australia, Canada, Japan, New Zealand, Norway and Switzerland had provided updated information on their recent ToT incentives. The EU and certain of its member states, as well as the US, have also reported on their ToT-related activities in the past. Developing countries, including LDCs, continue to review these reports, but so far there has been little actual discussion at the TRIPS Council meetings.

Some commentators have argued that this provision is flawed because it commits developed *countries* to provide incentives rather than targeting the *firms* based within those countries to ensure the effective operation of ToT. To date, large firms in many developed countries have been reluctant to take up many of these incentives, fueling developing country - and particularly LDC - impatience with the process.