DOHA ROUND BRIEFING SERIES

Developments Since the Cancun Ministerial Conference

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

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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

Since Cancun, Members have exchanged experiences and information in the Working Group on the Relationship between Trade and Transfer of Technology (WGTTT) on host and home country measures that could promote technology transfer. Although no consensus has so far been reached on recommendations that could be forwarded to the Hong Kong Ministerial Conference in December 2005, work based on a proposal from ten developing countries provides some potential for practical outcomes. The more concrete the recommendations, the better the chances of 'operationalising' WTO provisions on technology transfer. In Hong Kong, ministers are likely to extend the working group's mandate without much discussion.

Background

The Doha Ministerial Declaration introduced, for the first time in the WTO, a mandate to examine the relationship between trade and transfer of technology (ToT) and established a working group open to all Members 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 the transfer of technology. Some developed countries, however, seem to regard the working group 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 discussions on specific technology transfer clauses in the WTO agreements as well as their effectiveness. 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, WTO 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 WTO's mandate to increase flows of technology to developing countries.

Mandated Deadline

The General Council was supposed to report to the 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 that event collapsed without either a Ministerial Declaration or a specific decision on the matter, the WGTTT will have to present its recommendations to the Hong Kong Ministerial Conference in 2005.

Current State of Play

The WGTTT's draft report to the General Council in late 2004 indicated that Members would continue the analysis of the relationship between trade and transfer of technology, as well as discuss any possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries.

Relationship between Trade and Technology Transfer

Members and observer organisations have identified a number of barriers to the transfer of technology, as well as strategies that could facilitate host and

home country measures to overcome them. Reacting to a WTO Secretariat note entitled *A Taxonomy on Country Experiences on International Technology Transfers* (WT/WGTTT/W/3), some Members felt that it focused more on the host country perspective than on identifying policy space, options and instruments that would facilitate technology transfer. They suggested that Members share their experiences and ideas on the types of policy measures and incentives that would facilitate technology transfer.[1]

In response to these concerns, UNCTAD introduced two 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) provided a general overview of the main findings and conclusions of successful cases of technology transfer compiled by UNCTAD and an analysis of those cases in light of multilateral rules in order to identify policy efforts related to technology transfer and capacity-building. The second document, entitled *A Survey of Home Country Measures* (UNCTAD/ITE/IPC/2004/5), highlighted measures such as incentives, the role of home country governments and the private sector, and other efforts that could be made to facilitate transfer of technology.

During the discussions, the WGTTT's attention was also called to a study on *Encouraging International Technology Transfer* prepared by Professor Keith Maskus of the University of Colorado for a joint project between the International Centre for Trade and Sustainable Development (ICTSD) and UNCTAD.[2]

According to a number of WTO Members, home country measures could include policies that provide financing for transfer of technology, incentives to stimulate foreign direct investment with a technology transfer 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. Members welcomed all three documents and highlighted the importance of partnerships in technology transfer in order to make it a win-win situation for both home and host countries.[3]

The United Nations University, the UN Industrial Development Organisation and the World Bank have also contrib-uted presentations on their experiences in promoting technology transfer and the design of national innovation systems.

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). The proposal identified some issues and possible recommendations that the WGTTT should examine, including:

- ToT-related provisions with a view to making them operational and meaningful;

- provisions that might hinder ToT and how to mitigate such effects;

- restrictive practices adopted by multinational enterprises in the area of ToT and how to prevent such practices;

- impact of tariff peaks and tariff escalation on ToT;

- developing countries' difficulties in meeting WTO standards in cases where 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.

Members agreed to undertake an examination of the provisions in WTO Agreements that relate to technology transfer and to consider which provisions might have the effect of hindering technology transfer to developing countries.

With regard to existing WTO rules related to ToT, various developing countries have pointed to a number of relevant provisions in the TRIPS Agreement that should be made more effective and operational. These include Articles 7 and 8 on the objectives and principles of the Agreement. According to Article 7, the protection and enforcement of intellectual property rights must "contribute to the transfer and dissemination of technology", while Article 8 allows Members to "promote the public interest in sectors of vital importance to their socio-economic and technological development". In addition, Members have raised Articles 40, which deals with the control of anti-competitive licensing practises, and 66.2, which requires developed countries to provide incentives for technology transfer to least-developed countries.

Members have also mentioned technology transfer-related provisions in some other WTO Agreements. These include 'best-endeavour' technical assistance clauses in the Agreements on Sanitary and Phytosanitary Measures, and on Technical Barriers to Trade, as well as S&D provisions under the General Agreement on Trade in Services, including credit for autonomous liberalisation. With regard to the Agreement on Subsidies and Countervailing Measures, Members have seen potential technology transfer benefits in reinstating and strengthening the now-lapsed Article 8 on non-actionable subsidies.

Some developed countries have argued that since the WGTTT is not a negotiating body, it is not the appropriate forum in which to amend existing provisions relating to transfer of technology. They have advocated taking up that debate in the relevant WTO bodies. The proponents have, however, indicated that Members should not limit the scope of the discussions in the working group, especially because their proposals are oriented toward the implementation and operation-alisation of existing WTO obligations rather than the creation of new ones.

The identification of rules that might hinder the transfer of technology is proceeding on the basis of the WTO and UNCTAD documents mentioned in the section on the relationship between trade and technology transfer.

Certain developing countries have stressed the need for any proposed recommendations to flow organically from the working group's discussions and analytical work.

Implementation Issues

The TRIPS Council worked specifically on ToT 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.

On 19 February 2003, the TRIPS Council took 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. That requirement responds to para. 11.2 of the Doha Decision on Implementation-Related Issues and Concerns, which requested the Council to put in place a mechanism to monitor developed country compliance with their technology transfer obligations. The annual reports will provide an overview of the incentive regime put in place; the type of incentives; the government agency or entity making it available; eligible enterprises and other institutions, and any information available on actual the functioning of these incentives. 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 incentives.

Endnotes

1   See draft report (2004) of the Working Group on Trade and Transfer of Technology to the General Council WT/WGTTT/W/8/Rev.1 of 22 November 2004.

2   See WT/WGTTT/W/M/9 of 16 September 2004.

3   See note 1.

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