
General Council

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PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

Transfer of Technology Provisions in the WTO Agreements

Communication from Cuba, Egypt, Honduras, India, Pakistan and Malaysia

The following communication, dated 20 September 1999, has been received from the Permanent Mission of Cuba.

Background

1. As recognized in the Marrakesh Agreement there is a need for positive efforts designed to ensure that developing countries, and specially the least developed among them, secure a share in the growth in international trade commensurate with the needs of the economic development. The technology gap between advanced and less advanced economies is a factor hindering economic development and thus effecting their capacity to reap benefits from the international trading system. This situation is most critical for countries that lack a viable and sound technological base.
2. A number of multilateral trade agreements acknowledge the fact that access to technology is a determinant for their appropriate implementation.
3. The Agreement on Technical Barriers to Trade (TBT) recognizes “the contribution which international standardization can make to the transfer of technology from developed to developing countries”. Further, the need to provide developing countries with necessary technical assistance is recognized in the Agreement on the Application of Sanitary and Phytosanitary (SPS) measures in the areas such as “processing technologies, research and infrastructure”.
4. The GATS provides that the increasing participation of developing countries in world trade shall be facilitated through negotiated specific commitments relating to “the strengthening of their domestic services capacity and its efficiency and competitiveness, *inter alia* through access to technology on a commercial basis” and in the establishment of contact points concerning “the availability of services technologies”.
5. The TRIPS Agreement deals at large with transfer of technology issues. It is by all accounts a far-reaching undertaking in terms of providing a set of high-level intellectual property standards coupled with effective and appropriate means of enforcement within a system of multilateral protection and settlement of disputes between governments, which have no parallel in the pre-TRIPS era.

6. The TRIPS Agreement provides in its objectives that the “protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in manner conducive to social and economic welfare, and to a balance of rights and obligations”. There is a need to elevate this fundamental objective to a central place among the new rules and disciplines governing international intellectual property relations, and to make it fully operational within the larger TRIPS framework, in order to ensure a full and faithful implementation in the interest of all Members, technology-exporting as well as technology-importing countries, and to ensure that the benefits of such implementation would accrue to producers as well as consumers. The realization of these objectives requires the full involvement of all Members and the cooperation particularly of the technology exporting countries.

7. The TRIPS Agreement considers a partial response to the above concerns by stating that “developed-country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base” (Article 66).

8. With a view towards ensuring that developing countries secure a share in the growth in international trade commensurate with the needs of their economic development and to ensure a frictionless and cooperative implementation of the multilateral trade commitments, particularly the TRIPS Agreement, there is a need to institute a system of support that would enable weak economies to build up a sound and viable technological base and to participate harmoniously in the exchange of new ideas, information and knowledge. It follows that Members lacking a sound and viable technological base will require the support and assistance of the other Members.

9. In brief, transfer of and access to technology is a cross-cutting issue related to a number of multilateral trade agreements. Transfer of technology as such has a particular specificity in the case of the TRIPS Agreement. With a view to addressing these concerns, particularly of countries lacking a viable and sound technological base, the following proposal is put forward.

Proposal

10. A working group should be established to study the implications of existing trade agreements for the transfer of technology on a commercial basis, and the ways of enhancing such transfer, particularly to developing countries.
