

**WORKING GROUP ON TRADE AND TRANSFER OF TECHNOLOGY**

Communication from Cuba

The following communication, dated 6 March 2006, is being circulated at the request of the delegation of Cuba.

**General remarks**

1. Access to technology would appear to be subject to rules that aim – though fail – to contribute to increasing flows of technology to developing countries through trade that is free of barriers or arbitrary distortions and unfair practices. Among these rules, the Working Group has identified a number of provisions with different objectives, scope and modes of implementation, that address technology transfer expressly.

2. Eleven years after the creation of the WTO, it is time to leave aside rhetoric and return with some fresh thinking to a number of facts that have been overlooked:

- "Best endeavours" commitments on technology transfer and dissemination in the WTO Agreements are not real commitments for the developed countries. Very often, the governments of these countries are prevented from taking measures to encourage their private sectors to transfer clean technologies to the developing countries;
- the rules laid down in the TRIPS Agreement, which purportedly are meant to contribute to and promote decisions to transfer technology, have, when applied, actually become barriers preventing the developing countries from implementing measures which in the past proved strategic for what are now the industrialized countries at the time when they were on the path to development.

3. Consequently, there can be no further delay in responding to the developing countries' request that the new rules should encourage rather than obstruct the transfer to their territories of, and real access to, new knowledge, innovations and technologies. The paragraphs below analyse and assess application of the WTO Agreement on Technical Barriers to Trade (TBT Agreement) and the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement).

**Technical barriers to trade, sanitary and phytosanitary measures and the transfer of technology: difficulties faced by the developing countries**

4. Technical barriers to trade and sanitary and phytosanitary measures have now overtaken tariff barriers. Developed countries as a rule apply them to their imports by means of technical regulations, mandatory standards, conformity assessment procedures, or sanitary and phytosanitary prescriptions,

through which they set technical requirements citing as grounds for the quality assurance of the products they are importing, protection of the life and health of persons and animals or the environment, prevention of misleading practices or protection of essential security and trade interests.

5. Although technology transfer is of the utmost importance for developing countries, neither the TBT Agreement nor the SPS Agreement afford treatment that is suited to or commensurate with the difficulties faced by these countries, considering the role that technology transfer could play in avoiding or containing technical barriers to trade and in helping the developing countries to comply with sanitary and phytosanitary prescriptions with which they have difficulties.

6. Article 11 of the TBT Agreement refers to technical assistance to Members, especially the developing country Members. In practice, the provision of such assistance by developed country Members is on occasion so cumbersome, complex and slow a process that it, in fact, turns into a major trade barrier for products from the developing countries or the least developed countries. In the SPS Agreement, Article 9 regulates technical assistance matters, and here too there are similar difficulties in practice.

7. Article 12 of the TBT Agreement establishes special and differential treatment for developing country Members. However, it has become clear that expressions such as "*shall give particular attention*", "*shall take into account*" or "*shall bear in mind*", which imply some unspecified duty and not an obligation, arouse little interest among developed Members in seeking concrete solutions to the problems of the developing world. As to the SPS Agreement, special and differential treatment is governed by Article 10, which deals with this important principle in much the same way.

8. Current practice shows that the developed countries issue technical regulations in which they set mandatory technical requirements and testing methods for specific products, compliance with which requires technology that the developing countries exporting the products do not have.

9. The most relevant examples of difficulties met in applying the technical regulations, standards or conformity assessment procedures of developed countries are:

- lack of equipment or technology for the requisite testing and/or the absence of any accredited national body to carry out the testing;
- high cost of the equipment or technology needed for the requisite testing and no possibility of purchasing it within a reasonable period of time;
- high cost of equipment or technology that involves adapting industrial processes in order to meet the requirement in question;
- the existence of plans that are cumbersome and very detailed for infrastructures that are not well developed, which imply additional production costs;
- proliferation of private standards that set higher requirements than the internal provisions of the consumer market.

10. For the developing and least developed countries, situations such as these mean a loss in export earnings, a limitation on the expansion and diversification of their exports and/or the partial or total loss of destination markets, mostly in the developed countries.

### **Some recommendations to increase technology transfer to developing countries**

11. There is a need for the WTO to contribute actively to promoting the flow of technology to developing countries as a means of responding effectively to their problems, which are a reflection of the lack of clear commitments by the developed countries in the various Agreements.

12. The TBT Agreement and the SPS Agreement need stronger provisions on technology transfer from the developed to the developing countries so that such transfer really contributes to enhancing the developing countries' participation in international trade, in keeping with the needs of their economic development, rather than being a barrier that limits or bars such development, as is increasingly the case.

13. In view of the foregoing, we propose that the Working Group should hold a discussion in the near future with a view to adopting the following recommendation:

- Developed Members will transfer on preferential terms<sup>1</sup> to the developing and least developed countries the equipment and technology needed to apply the technical regulations, standards or conformity assessment procedures and the sanitary and phytosanitary prescriptions to be met for access to their markets, if these countries lack such equipment and technology and are unable to acquire them for financial reasons and if such lack would limit significantly or preclude their participation in the market in question. Where infrastructure problems are an obstacle to compliance with the requirements, financial assistance should also be considered. Such requests could be addressed bilaterally or by means of joint projects or in any other manner that Members may suggest.
- To facilitate implementation of the foregoing proposal, it is important to ensure that the developing countries exporting the product that will have to comply with the technical regulation, standard or conformity assessment procedure or the sanitary and phytosanitary prescriptions, are consulted directly at an early stage<sup>2</sup> so that full account can be taken of the status of their technology and infrastructure in the preparation of the requirements to be met, with a view to exploring alternatives which neither rule out application of the measure nor restrict or preclude the developing countries' participation in the market in question. If this is not possible, it is important from this stage on to ensure effective ways to supply technology to these countries, as outlined in the previous paragraph.

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<sup>1</sup> Cost-free for LDCs that so request.

<sup>2</sup> In other words, when the developed Member embarks on its internal consultations to prepare any TBT or SPS requirements, and not after the consultations have concluded. This will always be before official notification of the relevant Committee.