



**General Council
Working Group on Trade and Transfer of Technology
Committee on Trade and Development
Council for Trade-Related Aspects of
Intellectual Property Rights**

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**THE ROLE OF TRANSFER OF TECHNOLOGY IN RESILIENCE BUILDING:
REINVIGORATING THE DISCUSSIONS IN THE WTO ON TRADE AND
TRANSFER OF TECHNOLOGY***

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The following communication, dated 3 July 2023, is being circulated at the request of the African Group.

1 INTRODUCTION

1.1. This contribution is submitted as a follow-up to the African Group submission tabled in the General Council held on 8-9 March 2023 titled "Policy space for industrial development - a case for rebalancing trade rules to promote industrialisation and to address emerging challenges such as climate change, concentration of production and digital industrialisation" (WT/GC/W/868, G/C/W/825, WT/COMTD/W/270, IP/C/W/695, WT/WGTTT/W/33). It is a contribution to the discussions and negotiations towards the reform of the WTO agreed by Ministers at MC12.

1.2. At the Fourth WTO Ministerial Conference in Doha in November 2001, Ministers agreed 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."¹

1.3. The discussions on the relationship between trade and transfer of technology highlighted that "technology and technical know-how were essential for improving productivity, promoting growth, and attaining the development aspirations of less developed Members; and, that technology transfer can be an important tool to narrow the technological gap between developed and developing countries, and for integrating developing countries into the multilateral trading system."²

1.4. Over the years, a broad set of themes have emerged, some of which are cross-cutting in the WTO. Currently, the global economy is grappling with the polycrisis of inter alia, the COVID-19 pandemic, food insecurity, climate change, slow and unequal economic growth, and a widening of the digital divide. As pointed out in the African Group submission in WT/GC/W/868, various factors

* This document was previously issued as WT/WGTTT/W/34 on 3 July 2023.

¹ Paragraph 37 of document WT/MIN(01)/DEC/1.

² Report (2021) of the Working Group on Trade and Transfer of Technology to the General Council.

have hampered global recovery including geopolitical volatility exacerbated by unilateral protectionist measures by major industrialised economies.

1.5. As part of the broader discussion on the need to channel the potential of WTO rules to foster industrial development, and build resilience Members can benefit from a reinvigoration of the discussions on trade and transfer of technology across multiple WTO bodies including the Working Group on Trade and Transfer of Technology (Working Group) with a view to developing possible recommendations.

2 OBJECTIVE

2.1. The reinvigoration of the discussions would be centered around the below-mentioned themes that are related to the issue of trade and transfer of technology. Every theme will be thoroughly analysed and discussed among Members in the relevant WTO bodies, with the objective of developing clear recommendations for Trade Ministers to consider for adoption at the WTO MC13. Issue or Agreement-specific written submissions will be tabled in the relevant WTO bodies to complement this paper.

3 THEMATIC DISCUSSIONS ON THE ROLE OF TRANSFER OF TECHNOLOGY

3.1. WTO rules on the transfer of technology are relevant in the context of the **TRIPS Agreement**. The COVID-19 pandemic is the latest illustration of how WTO rules and the so-called flexibilities in the TRIPS Agreement have hampered Members' ability to respond reasonably to the multiple crises that ensued. It has also prompted a deeper reflection on the utility of the TRIPS Agreement *vis-à-vis* the manufacturing capacity of developing and least developed countries notably in the pharmaceutical and industrial sectors. The reinvigoration of discussions in the TRIPS Council would delve deeper into the relationship between the promotion and dissemination of technology in way that benefits both its producers and users.

3.2. The role that digital technologies play in **trade facilitation** reform is an area of growing interest to WTO Members. This paves the way for deeper reflections on the effects of digital technologies on the composition of trade especially in developing and least developed countries. Discussions will also examine how intellectual property protections together with other institutional and regulatory determinants could affect the smooth transfer and diffusion of technology to developing countries, including least developed countries.

3.3. In the midst of the polycrisis, the transfer of technology is fundamental when considering how to build **agricultural resilience** to withstand, amongst others, the food security emergencies. In some parts of the world, technological developments including hybrid seed, fertilizers, pesticides, mechanical improvements, etc. have revolutionized agricultural trade. This has been done with important State interventions including strong institutional frameworks and research programmes to facilitate technology adaptation and adoption. Developing and least developed countries will greatly benefit from an in-depth discussion on the role that international and regional Agriculture research centers play in promoting and disseminating technology, how products and technologies are developed (inputs, production, harvest, etc.), as well as considering a range of issues relating to water management, nitrogen and food waste reductions, etc.

3.4. WTO Members will greatly benefit from resetting the **climate change** narrative in the WTO to an assessment of the application of existing WTO rules on technology transfer for diffusion of climate change technologies, including compulsory licensing. In light of existing international fora and environmental law principles, discussions in the WTO could focus on how to build deeper coherence and coordination to support existing mechanisms and frameworks.

3.5. The 1998 Work Programme on Electronic Commerce provides a broad framework for discussion on an area of extreme importance i.e., the safety and cybersecurity of hardware and software systems through **Source Code**. These discussions will assess the policy and legal considerations of balancing accessibility to source codes in the context of a secure, transparent and trusted technology environment.

4 MODALITIES FOR DISCUSSIONS

4.1. The themes could be designed on the basis of the following parameters:

- a. Analyzing the relationship between transfer of technology and economic development. This may include but not limited to:
 - i. Assessing the role of technology transfer in increasing production and in enhancing agriculture productivity and in developing and least developed countries.
 - ii. Assessing the role of Transfer of Technology as a means to enhancing industrial development and in diversifying their economies to better integrate into the regional and global value chains, including in the green economy.
- b. Assessing the use of Information and Communications Technology (ICT) to promote technology transfer.
- c. Assessing the role of the "flexibilities" contained in the TRIPS agreement to promote technology transfer in areas relevant to pharmaceuticals and medical applications, treatments, medicines, diagnostics, therapeutics, biodiversity.
- d. Assessing the role of the "flexibilities" contained in the TRIPS agreement to promote technology transfer in areas relevant to climate change mitigation, decarbonization or green industrialization technologies, digitalization.
- e. Assessing the role of technical assistance and capacity building programs offered or granted by donors to developing and least developed countries, including an examination of technology transfer flows.
- f. Identification and assessment of incentives provided by developed countries, by virtue of their national regulations, to their enterprises and institutions to promote and encourage technology transfer to developing countries and in particular to LDCs (Article 66.2).
- g. How to best enable MSMES especially in developing and least developed countries to benefit from various technology transfer tools, instruments, agreements, and platforms?
- h. Assessing the effects of the introduction of patents on prices and welfare in developing and least developed countries (the case of pharmaceuticals and therapeutics).

5 EXPERIENCE-SHARING

5.1. Members should be encouraged to share their domestic experiences on trade and transfer of technology in the Working Group and in other relevant WTO bodies on initiatives and programs Members have undertaken to promote the generation, management and transfer of technology.

5.2. Members may consider the possibility of exchanging information and best practices within their national laws and regulations relevant to IP protection, trade facilitation and their relevance to the issue of technology transfer. This may include exchanging information on procedures related to the acquisition and maintenance of IPRs, particularly concerning how applications for IP protection are administered. Members may also share information on their methods of implementing the provisions of the TRIPS agreement within their own legal systems and practices, insofar as transfer of technology is concerned.

6 COLLABORATION WITH INTERNATIONAL ORGANISATIONS

6.1. For the purposes of the reinvigoration of the work, the analysis of the relationship between trade and transfer of technology may proceed on the basis of work carried out by, among others, the World Intellectual Property Organization (WIPO)³, the Food and Agriculture Organization (FAO) through the Platform for the Co-Development and Transfer of Technologies⁴, and the World Bank. The Working Group should benefit from and, to the extent practical, take the academic perspective on the relationship between trade and transfer of technology on board as we proceed with our discussions.

6.2. Upon invitation, relevant international organizations may be called upon to contribute to the discussions leading up to the possible recommendations for the future, more specifically, the possible outcome of MC13 on trade and transfer of technology to face global challenges in particular those related to building resilience to face pandemics, food insecurity, climate change and more generally, bridging the technological and digital divides between members and regions.

7 ROLE OF AND COLLABORATION AMONG STAKEHOLDERS

7.1. Most of the primary research is carried out by academic institutions or through public-private initiatives that are later owned or commercialized by corporations. These stakeholders among others could be called upon to share their reflections on the issue at hand and explain how they would take the issue of technology transfer on board while conducting their businesses.

7.2. These inputs and presentations could then inform the Working Group and other relevant WTO bodies on the practices that the private sector employ to transfer and/or to diffuse technology especially to companies in developing countries. The practices that could be investigated in this regard may include issues and practices pertaining to granting and usage of patent rights, Technology License Agreements, Voluntary Licensing/Agreements, and other relevant issues.

7.3. A deeper assessment is required to understand the role of the various tools and instruments used, both at the official "Gov. to Gov." as well as among non-state actors (including research institutes, Universities), in the domain of technology transfer. This assessment should cover the pattern and trend of the relevant tools, including, Licensed Technology, Licensor Technology, Research License, and Product Technology. Upon invitation, relevant external stakeholders may be invited to engage to clarify and explain their practices on issues of relevance to technology transfer. The purpose is to assess and determine the role and contribution of those tools in technology transfer among and within public research institutes.

8 WAY FORWARD

8.1. It is proposed that the reinvigoration of work on trade and transfer of technology commence as soon as possible in the Working Group and other relevant WTO bodies. This communication compliments WT/GC/W/868 on policy Space for industrial development and will be supported by a number of issue-specific submissions tabled in the relevant competent bodies to ensure that a holistic examination is carried out.

³<https://www.wipo.int/patents/en/technology/#:~:text=WIPO%20supports%20mutually-beneficial%20technology%20transfer%20through%20patent%20information,WIPO%20Committees%2C%20public-private%20partnerships%20and%20dispute%20resolution%20services>, WIPO supports mutually-beneficial technology transfer through patent information services, innovation support programs and tools, projects and activities by WIPO Committees, public-private partnerships and dispute resolution services. We also organize knowledge transfer-related activities, including capacity building and training on transfer of technology".

⁴ <https://www.fao.org/plant-treaty/tools/transfer-of-technologies/en/>, the Platform was established as a direct follow-up of the [Rio Six-point Action Plan for the International Treaty](#) adopted in 2012 at the [Second High-Level Round Table of the Treaty](#), on the occasion of the United Nations Conference on Sustainable Development.