



**General Council
Committee on Trade and Development
Council for Trade in Goods
Council for Trade in Services
Council for Trade-Related Aspects of Intellectual
Property Rights**

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**THE ROLE OF TRANSFER OF TECHNOLOGY IN RESILIENCE BUILDING:
WORK PROGRAMME ON ELECTRONIC COMMERCE**

COMMUNICATION FROM THE AFRICAN GROUP (ANGOLA; BENIN; BOTSWANA; BURKINA FASO; BURUNDI; CABO VERDE; CAMEROON; CENTRAL AFRICAN REPUBLIC; CHAD; CONGO; CÔTE D'IVOIRE; DEMOCRATIC REPUBLIC OF CONGO; DJIBOUTI; EGYPT; ESWATINI; GABON; THE GAMBIA; GHANA; GUINEA; GUINEA-BISSAU; KENYA; LESOTHO; LIBERIA; MADAGASCAR; MALAWI; MALI; MAURITANIA; MAURITIUS; MOROCCO; MOZAMBIQUE; NAMIBIA; NIGER; NIGERIA; RWANDA; SENEGAL; SEYCHELLES; SIERRA LEONE; SOUTH AFRICA; TANZANIA; TOGO; TUNISIA; UGANDA; ZAMBIA AND ZIMBABWE)

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

1 CONTEXT

1.1. This communication should be read in conjunction with the paper WT/GC/W/883 - WT/WGTTT/W/34/Rev.1 - WT/COMTD/W/277 - IP/C/W/700 "The Role of Transfer of Technology in resilience Building: Reinvigorating the discussions in the WTO on trade and transfer of technology", as submitted to the General Council, the Working Group on Trade and Transfer of Technology, the Committee on Trade and Development and the Council for Trade-Related Aspects of Intellectual Property Rights and document WT/GC/W/868 "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". These latter two submissions set out the design and parameters for discussions on Agreement-specific issues as pertains to industrial development in general, including the role, towards that end, of transfer of technology and trade.

1.2. The Declaration on Global Electronic Commerce adopted on 20 May 1998, established a comprehensive work programme to "...examine all trade-related issues relating to global electronic commerce, including those issues identified by Members...". It further states that "The work programme will involve the relevant World Trade Organization (WTO) bodies, take into account the economic, financial, and development needs of developing countries, and recognize that work is also being undertaken in other international fora". The Doha Ministerial Declaration introduced, for the first time in the WTO, a binding mandate for WTO Members to examine the relationship between trade and technology transfer (TT). There is great complementarity between the mandates of the Work Programme on E-Commerce (WPEC) and the Doha mandate on the relationship between trade and transfer of technology. Development lies at the heart of both mandates.

1.3. Technology and innovation are central to the implementation of the 2030 Agenda and the Sustainable Development Goals (SDGs). When utilized effectively, technology can be mobilized to identify barriers to and provide solutions for sustainable development challenges from the local to global level. Advancing the development dimension of the WPEC requires that development and the various Sustainable Development Goals (SDGs) are mainstreamed into the discussion at the GC and

the relevant committees. In order to meet the SDGs, new technology needs to be harnessed and accessed by developing countries and LDCs, supported by an effective framework for technology transfer.

1.4. E-Commerce can be used as a powerful tool to integrate marginalised communities and enterprises into the global economy. To do so, steps must be taken to address the digital divide which is pronounced in terms of existing digital infrastructure, data processing skills and digital technologies. According to the UNCTAD Digital Economy Report, out of a total of 4,422 so-called colocation data centres, 80 per cent are in developed countries, with the United States accounting for about 40 per cent. Africa and Latin America together account for less than 5 per cent of the world's colocation data centres. The Cloud market is also highly concentrated, with 4 out of the five providers based in US.

1.5. Lack of digital skills and digital infrastructure pose grave threats to the existing export competitiveness of African SMEs. There is potential danger that many SMEs in Africa will be outcompeted by digital players in the developed countries with access to high-tech digital technologies.

1.6. These challenges highlight that the gains from the growing global E-Commerce will not be automatic for developing countries, particularly Africa. Bridging this gap will require strategic interventions at all levels, including at the national and international levels.

1.7. Ensuring the safety and cybersecurity of hardware and software systems are forming an integral part of new-age trade agreements around the disclosure or sharing of the source code prior to the transfer of technologies embodying such codes. There are topical policy considerations on the confidentiality of the proprietary know-how *vis-à-vis* regulatory and judicial requirements. As more and more attacks against software and hardware increase, there will be severe disruptions to trade flows. There is a need for a discussion on the importance of source codes to technology diffusion.

1.8. Given important public policy motivations, for disclosing source code and algorithms, trade agreements have often included a number of exclusions and clarifications. Ensuring that open source is not inadvertently impacted by these trade rules is one essential clarification. Exceptions around public policy and security might also be mentioned which can reduce risks of such rules impacting on regulation. There are however serious questions about whether such exceptions are sufficient. For example, in countries with large public sectors, algorithms need to be understood by managers as part of procurement. But when public sectors are increasingly outsourced to consultants and private contractors, questions of coverage and exceptions may not be enough.

1.9. Members must explore mechanisms to address deepening digital inequities, mechanisms to encourage the diffusion of software technology, assess ways to foster regulatory compliance in the digital space and address anti-competitive practices by some of the prominent digital giants which are enforced through terms and conditions imposed on customers to use their digital platforms. Overall, the unfair trade practices have arisen, in part, from market dominance which in turn arises from access to data. This underscores the importance of data for creating competitive businesses. Many retailers have closed on account of unfair trade practices of the global digital giants. Strategies for enhancing their stranglehold and deepening their market share include buying out competitors.

2 ISSUES TO BE DISCUSSED WITH A VIEW TO MAKING RECOMMENDATIONS FOR ADOPTION AT MC13

2.1. These discussions which are of burgeoning interest to WTO Members could be centered around the following critical questions. It is expected that these issues will be thoroughly analysed and discussed among Members, with a view to making recommendations to Trade Ministers for adoption at MC13.

- a. How can technology transfer assist in bridging the digital divide and how can the WTO contribute to this process?
- b. How should WTO Members balance the accessibility to source code/s and create a secure, transparent, and trusted technology environment?

3 WAY FORWARD

3.1. It is proposed that discussions on the role and relevance of the WTO rules in relation to source code be examined and for engagement to commence as soon as possible under the 1998 Work Programme on Electronic Commerce.
