

WORLD TRADE ORGANIZATION

WT/GC/W/435
G/C/W/264
S/C/W/193
IP/C/W/264
WT/COMTD/W/87
16 May 2001
(01-2522)

Original: Spanish

NEED FOR UNRESTRICTED GLOBAL ELECTRONIC COMMERCE

Communication from Cuba

The following communication, dated 8 May 2001, has been received from the Permanent Mission of Cuba, addressed to the General Council, the Council for Trade in Goods, the Council for Trade in Services, the Council for Trade-Related Aspects of Intellectual Property Rights and the Committee on Trade and Development, with the request that it be circulated to Members.

In the "Declaration on Global Electronic Commerce" adopted at the Second Session of the Ministerial Conference in May 1998¹, the WTO Members agreed to establish a work programme to examine all trade-related issues relating to global electronic commerce, specifically taking into account the needs of developing countries. As a result, the four subsidiary bodies responsible for the work programme identified a large number of obstacles hindering participation by developing countries in global electronic commerce.

Specific mention may be made, *inter alia*, of the problems of access, on a commercial basis, to modern technologies used in digital certification, electronic transactions, data protection and the authentication of documents.

In this regard, the Council for Trade in Services², within the framework of the work programme, examined the need to increase the participation of developing countries, *inter alia*, by the implementation of Article IV of the GATS concerning the liberalization of market access in areas of export interest to them and regarding better access to technology, including technology relating to **encryption and security of transactions**.

Besides, the Council for TRIPS³ was clear as to the role to be played by Article 7 of the TRIPS Agreement in encouraging technological development and facilitating access to technology.

In spite of these provisions and the recognition that international trade, viewed as a vehicle for economic and social progress, must be governed by rules and procedures compatible with the aims of Article XXXVI, Part IV of the GATT 1994, several developing countries Members of the WTO including Cuba, and others that do not belong to this organization, have been prevented from participating in the Global Project of the International Telecommunication Union (ITU) being conducted in cooperation with the Swiss company Wisekey as part of the ITU project "Electronic

¹ See document WT/MIN(98)DEC/2 of 25 May 1998.

² See document S/L/74 of 27 July 1999.

³ See document IP/C/18 of 30 July 1999.

Commerce for Developing Countries" (EC-DC), owing to the United States policy of imposing unilateral and coercive measures in violation of the rules and principles of international trade.

The above-mentioned Global Project was conceived to afford developing countries access to information technologies so as to guarantee secure electronic commerce. These include servers, communication and data storage hardware, as well as software packages including those pertaining to digital signature and encryption techniques. Wisekey integrates technologies from 12 companies, including some originating in the United States or using technologies generated in that country, for which reason they are forbidden to transfer commercially available information technology programmes or techniques to the group of developing countries condemned by the United States.

This prohibition was made public since the launch of the Global Project in late November 2000 during the Wiseworld 2000 Conference, denying the developing countries concerned the possibility of receiving a software package necessary for issuing digital certificates, with the explanation that this was due to trade restrictions imposed by the United States.

Yet the software programme being withheld uses encryption techniques that are already in commercial use and do not have the potential to be used for other purposes, in relation to national security for instance.

These restrictions have many negative consequences both for the developing countries concerned and for international trade in general. More specifically, they represent a barrier to the extremely rapid progress of electronic commerce, they prevent the execution of secure transactions by internationally recognized means, including the collection and making of payments both in domestic and foreign trade. This situation is accentuating and further widening the digital gap between countries and is hampering international trade. Technological restrictions of this kind work against the expansion of global electronic commerce and the creation of new trade opportunities, an objective recognized in the aforementioned Ministerial Declaration.

In the light of the above, we underline the necessity and importance of eliminating across the board all types of politically motivated restrictions, whether commercial or technological, including those affecting the purchase and free use of encryption technologies and hardware available on the market, as they constrain the development of global electronic commerce and the full incorporation of all developing countries as an indispensable condition for reaching a multilateral agreement or decision within the WTO framework in favour of unrestricted electronic commerce.
