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**Council for Trade-Related Aspects
of Intellectual Property Rights**

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COMMUNICATION FROM THE DELEGATION OF ZAMBIA

The statement made by the delegation of Zambia at the meeting of the Council on 26 to 29 June 2000 is reproduced below.

We thank the Secretariat for including on the agenda Article 66.2 regarding technology transfer to least-developed countries. My delegation has two points to make in relation to the topic under discussion. The first point is related to the implementation of the provisions under Article 66.2 and the second will situate the issue in a broader context of transfer of technology in developing countries.

The TRIPS Agreement recognizes not only "the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives" but "also the special needs of the least-developed country Members in respect of maximum flexibility in the domestic implementation of laws and regulations in order to enable them to create a sound and viable technological base". The recognition of the public policy objectives and the special needs of least-developed countries need to be underlined even more today in view of: (a) the technological gap between developed and least-developed countries which is wide and increasing; (b) the fact that only countries with a broad range of technological capabilities are able to attract the various goods and services with highly technological content; and (c) technological development is the most important, if not the only, way for the integration and participation of LDCs in the international trading system.

Therefore, the implementation of Article 66.2 is becoming very important and urgent. Just to recapitulate, this Article requires that developed countries give incentives to their enterprises and institutions for purposes of transferring technology to least-developed countries in order to enhance their technological base. Since the request by Haiti, developed countries have provided answers to this request.¹ My delegation is asking the Council to help us understand how consistent these answers are with the multilateral style of notification. It is with this background we wish to comment on the answers provided by our developed country partners regarding the implementation of Article 66.2.

We have a few queries related to the answers and would appreciate if Members and the Secretariat could shed light. While we thank the Secretariat for grouping the incentives mentioned in the answers,² we are not sure how these relate to the obligation fulfilment requirements. How do these answers fit into the multilateral format? Most of the answers are based on bilateral initiatives before the TRIPS Agreement came into existence. Bilateral initiatives need to be used as examples in addition to multilateral steps. The commitment in the TRIPS Agreement is about incentives to be

¹ Documents IP/C/W/132 and addenda.

² Document IP/C/W/169.

provided to potential technology providers. Do we not need to be provided with a list of incentives to enterprises and institutions? Which least-developed countries, if any, have enjoyed these benefits so far? Does MFN apply? If so, how exactly does it apply here? And, if it does, what implication does this have on answers that talk about initiatives focusing on one region ignoring others? The answers do not target least-developed countries because they include all countries and this has been highlighted by the Secretariat. What is the nature and money involved in the incentives listed? Let's be hypothetical and assume that this obligation were for least-developed countries to implement, would our developed trading partners have accepted these answers? When the provision was being signed, was this the envisaged form that implementation would take?

We call for a more critical assessment of the answers by the Council for TRIPS. This assessment would clarify many questions and hopefully satisfy us.

Our second point is to put the issue of implementation into a broader context of transfer of technology in view of strengthening the capacity of developing countries.

Technological knowledge includes not only knowledge on which a product, process or service is based but also the organization knowledge necessary for production and distribution of goods and services. Transfer of technology is embodied in machinery, equipment, and managerial skills, but also occurs through other means such as training and the provision of information. The transfer process should focus on a transfer of capacity, which is of greater developmental value than the mere transfer of a piece of hardware. These issues, among others, have been highlighted in UNCTAD X which has concluded its work in Bangkok.

The TRIPS Agreement has covered an enormous breadth of the intellectual property rights ranging all along the value-adding chain of industry and trade from manufacturing processes and products to their design; from marketing and distribution to data processing and information services. The other Agreements recognizing the importance of technological capacity contain specific clauses on transfer of technology such as Article 9 of the Agreement on Sanitary and Phytosanitary Measures "Members agree to facilitate the provision of technical assistance to other Members, especially developing country Members, either bilaterally or through the appropriate international organizations. Such assistance may be, *inter alia*, in the areas of processing technologies, research and infrastructure, including in the establishment of national regulatory bodies, and may take the form of advice, credits, donations and grants, including for the purpose of seeking technical expertise, training and equipment to allow such countries to adjust to, and comply with, sanitary or phytosanitary measures necessary to achieve the appropriate level of sanitary or phytosanitary protection in their export markets". The GATS, TRIMs, TBT and Services Agreements, for example, all contain similar provisions that offer opportunities for supply capacity.

Perhaps at a later stage, we could specify to the Council the potential opportunities of these other Agreements. While appreciating the lack of legal enforceability of these provisions, we still are hopeful that political will and moral obligation among our developed country trading partners will prevail. This is why we'd like to put technology transfer at the centre of WTO activities.

To meet the above-mentioned challenges there is a need for an array of domestic and international actions, including human resource development, strengthening of policy and legal frameworks and the competitive environment, establishment of science and technology institutes and infrastructure, encouragement of business support service, and home country measures that encourage the transfer of technology. This is why other organizations such as UNCTAD, in particular following UNCTAD X, should be involved in the achievement of the objectives set out in the TRIPS Agreement.

We reiterate that the ultimate objective of the implementation exercise in the WTO is to strengthen the supply capacity of the developing countries, especially least-developed countries, by creating a sound technology base. That is the message we wish to put across.

Because technology development is the basis for the development, transfer arrangements tend to be economically and technically complex. It may be important to develop capabilities within these countries to facilitate acquisition of technology.

It was in this context that we presented a proposal in the Committee on Trade and Development which, we are proud to mention, received popular support from Members and we hope will soon be an integral part of the Committee on Trade and Development's work programme. And we wish to thank most sincerely all developing and developed countries that supported or showed a positive attitude to our proposal. We wish to inform them that such attitude is a real motivation for us as a small mission to participate in the WTO. Our proposal assumes that efforts by the WTO in the implementation of provisions on technology transfer need to be complemented by other organizations. The gist of our proposal contained in document WT/COMTD/W/67³ is to kick-start the process of implementation of the provisions relating to technology transfer to developing countries particularly least-developed countries, which all Members realize is at the heart of improved integration of our economies in the global trading system. **It is not about technical assistance.** It is about an exploration of a mechanism to implement these provisions. While technical assistance will remain important in improving supply capacity, it is not a substitute for technology content products that are essential for us to compete.

To compete effectively, our products foremost need a technology content and its blending with the current forms of capacity building. On its own, the current form of capacity building will not do much to salvage our trade position. Technology content is the dynamo and only hope for integrating least-developed countries into the world trading system. This is about starting that process.

In this context, we support strongly the suggestion by Norway in the last Committee on Trade and Development meeting that the international organizations listed in our proposal namely, UNCTAD, WIPO, UNIDO, and the World Bank and, indeed, any other organization competent in this area of work, be invited to provide information on their work in this area of technology. As we said in the seminar the other day, approaches do exist through which technology transfer can be achieved. These organizations and individual experts like Jeffrey Sachs, the Harvard Professor of International Trade whose article on this subject we had referred to in the seminar, would go a long way to assisting the WTO to implement these important provisions. We look forward to the work programme.

³ This proposal was also distributed to Members of the TRIPS Council as document IP/C/W/199.