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**Committee on Trade and Development Special Session
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G-90 DOCUMENT FOR THE SPECIAL SESSION OF THE COMMITTEE ON TRADE AND DEVELOPMENT (CTD-SS) ON SPECIAL AND DIFFERENTIAL TREATMENT PROPOSALS ON ARTICLE 66.2 OF THE AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRANSFER OF TECHNOLOGY)

SUBMISSION BY SOUTH AFRICA ON BEHALF OF THE ORGANISATION OF AFRICAN, CARIBBEAN AND PACIFIC STATES (OACPS), THE AFRICAN GROUP AND THE LDC GROUP

The following communication, dated 22 November 2023, is being circulated at the request of the Delegation of South Africa on behalf of the Organisation of African, Caribbean and Pacific States (OACPS), the African Group and the LDC Group.

1 INTRODUCTION

1. The G-90 submits the proposals herein in pursuance of the work directed under Paragraph 2 of the 12th Ministerial Conference (MC12) of the world Trade Organization (WTO) Outcome Document (WT/MIN(22)/24 – WT/L/1135). This contribution seeks to advance work on the review of special and differential treatment (SDT) with a view to strengthening them and making them more precise, effective, and operational in line with paragraph 44 of the Doha Ministerial Declaration.

2. The submission of the textual proposals in relation to Article 66.2 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) builds on the G-90 submission presented to the Special Session of the Committee on Trade and Development (CTD-SS) contained in document JOB/TN/CTD/2 - JOB/TNC/106 as part of the ten Agreement-Specific Proposals (ASPs) that the G-90 is tabling for negotiations towards outcomes by latest MC13, in line with and consistent with the roadmap that was proposed and presented by G-90 to the CTD-SS and subsequently agreed by the committee at its meeting on 20 March 2023.

2 THE RATIONALE BEHIND THE G-90 AGREEMENT SPECIFIC PROPOSALS

3. The G90 recalls the following key principles towards realisation of SDT provisions that are precise, effective and operational, in line with the negotiating mandate:

- SDT for developing and least developed countries is an integral part of the multilateral trading system architecture and a treaty embedded right.
- The mandate under paragraph 44 of the Doha Declaration and reaffirmed at MC12 is to review SDT provisions under the covered Agreements with a view to strengthening them and making them more precise, effective and operational.

4. The G-90 is not seeking blanket exemptions from commitments, but instead seeks to ensure effective implementation of existing S&D provisions. The proposals aim to operationalize the collective commitments of the WTO Membership in several WTO agreements to facilitate the effective integration of developing and least developed countries (LDCs) into the multilateral trading system.

5. SDT is not confined to transitional periods and capacity building and technical assistance, but should be intrinsically embedded in the trade rules to allow policy flexibility to developing countries and LDCs to achieve their development objectives, and under conditions of certainty.

6. The G-90 proposals have been crafted with a view to ensuring stability, predictability and transparency in the implementation of existing S&D provisions, and thus strengthening a key area of the multilateral trading system in favour and benefit of the interests of developing countries, including LDCs. These proposals are the result of careful and detailed deliberations among G-90 members, taking into account the needs of members at different levels of development.

3 THE CASE FOR STRENGTHENING SPECIAL AND DIFFERENTIAL TREATMENT FOR TRANSFER OF TECHNOLOGY UNDER ARTICLE 66.2 OF TRIPS AGREEMENT

7. Technology and innovation play an increasingly important role in the global economy, and is critical to meeting urgent human needs for improved health, food security, water, energy, among others and combating global crises such as health emergencies and climate change. The role of technology in development has attracted increased attention in recent years, particularly around the question of how to bridge the technological gap between countries with different levels of industrial capacity. The proposal by G-90 affords a real opportunity to developed countries to discharge their commitment under Article 66.2; to meaningfully contribute to the achievement of SDGs and bridging the technological divide; and to send a positive signal about the role the multilateral trading system can play for the growth and development of least-developed countries.

8. Article 7 on the Objectives of the TRIPS Agreement states that the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations. Therefore, technology transfer is an integral part of the TRIPS Agreement.

9. LDCs have attracted special consideration in recognition that TRIPS implementation would put an additional burden on them, and their need for maximum policy space to develop their technological capacity to meet their development needs. Special consideration is given to LDCs in the Preamble and Article 66 of the TRIPS Agreement. In this context, Article 66.2 of the TRIPS Agreement requires developed countries to provide incentives to enterprises and institutions in their territories to induce technology transfer to LDC Members, in order to enable them "to create a sound and viable technological base".

10. A core concern of LDCs has been that while some Members have made efforts, the implementation of Article 66.2 continues to fall short of the letter and spirit of the TRIPS Agreement mandate. In particular some of the policies and programmes reported by developed countries either barely target or do not at all target LDCs. LDCs request that these programmes be made more effective in meeting their intended purpose. Therefore, while there is regular reporting by developed country Members on their contributions under Article 66.2 of the TRIPS Agreement, the reality is a lack of clarity in notifications on the nature of incentives and whether such incentives sufficiently result in technology transfer to LDCs, including whether such incentives truly contribute to the creation of a sound and viable technological base in LDCs. Many notifications continue to show that recipients of incentives are not LDCs, and where LDCs are identified in the notifications as recipients, the incentives do not result in any transfer of technology. Further in the absence of a common understanding of what comprises technology transfer, technical capacity programmes are at times passed off as technology transfer.

11. The LDC group has tabled several specific submissions to the Council for TRIPS (through document IP/C/W/561 dated 6 October 2011, document IP/C/W/640 dated 16 February 2018, document RD/IP/24 dated 14 June 2018 and IP/C/W/664 dated 17 July 2020) to further assist developed countries in reporting implementation of their obligation under Article 66.2 with greater clarity and precision.

12. Operationalizing technology transfer is ever more urgent and relevant today. In addition to long-standing structural vulnerabilities, compounded by deficiencies in international support, LDCs are having to grapple with new and escalating challenges exacerbated by the COVID-19 crisis, climate change, shifts in trade dynamics within an ever more digital global economy and swiftly

evolving technological landscape. Meanwhile the technological disparity between LDCs and both developed and other developing nations continues to widen.

13. The UN Sustainable Development Goals Report of 2023 highlights the stark disparities in industrial productivity between rich and poor nations. LDCs are likely to miss their 2030 target of doubling manufacturing share of GDP. Manufacturing Value Added (MVA) per capita reached \$150 in LDCs compared to \$5,093 in Europe and Northern America. The share of medium-high and high-technology production within total manufacturing remains low in LDCs at 10.6 per cent in 2020, compared with 47.7 per cent in Europe and Northern America.

14. Technology is at the heart of structural transformation for sustainable development. It is the backbone of the knowledge and digital economy of the 21st century. It is equally crucial to tackling today's polycrises impacting LDCs. For instance, the UNCTAD LDC Report 2022, highlights that although LDCs have barely contributed to climate change, they are on the front lines of the climate crisis. Over the last 50 years, 69 per cent of worldwide deaths caused by climate-related disasters occurred in LDCs.

15. Shifting productive capacities of LDCs presently dominated by natural resources-based sectors towards value added manufacturing, medium-and high-tech industries offers the potential for sustainable economic expansion, bolstering green growth, and enhancing its resilience to exogenous shocks and emerging challenges. Further unless technological capacities are significantly and rapidly improved, LDCs are also most at risk of missing out on trade opportunities emerging from the green technology revolution, presently dominated by developed countries.

16. Sustainable Development Goal 17.6-8 encourages international cooperation on and access to technology and innovation, including the promotion, development, transfer, dissemination and diffusion of technologies to developing and least-developed countries. A key element of the WTO role in this respect is the full and effective operationalisation of Article 66.2 of the TRIPS Agreement

17. Some developed Members have argued that it is difficult for governments to ensure technology transfer because technology is the subject of private contracts and rights. However, Article 66.2 is clear that the responsibility to provide adequate incentives to motivate technology transfer clearly falls on the developed country Members. Importantly, it is a firm legally binding commitment made more than a quarter of a century ago by developed countries and not a promise of best-endeavour efforts.

18. Effective measures to transfer technology to LDCs can play a vital role in supporting LDCs to upgrade and expand their productive capacities, and fostering sustainable development in these countries.

19. The LDC Group have developed an illustrative list (document no. RD/IP/24) containing the types of programmes that in their view could qualify as incentives or actual transfer of technology. Developed country Members are encouraged to use this as a guide to implement their obligation under Article 66.2.

20. An immediate action that can be taken by developed countries to implement their Article 66.2 obligation is to subject provision of public funds to enterprises and institutions in their territories to terms and conditions that will facilitate transfer of technologies and related know-how to LDCs with the aim to create a sound and viable technological base. Further developed country Members should establish a publicly owned technology inventory and provide incentives to enterprises and institutions in their territories to transfer those technologies and know-how to LDCs, upon their request.

21. WTO Agreements should also be reviewed with the aim to provide more policy space to LDCs to develop a sound and viable technological base. The G90 proposes in *Annex 1* as decision towards addressing these above objectives.

ANNEX 1

TEXTUAL SUGGESTIONS ON THE AGREEMENT ON SPECIAL AND DIFFERENTIAL TREATMENT FOR TRANSFER OF TECHNOLOGY UNDER ARTICLE 66.2 OF TRIPS AGREEMENT

Having regard to paragraph 2 of Article 66 of the TRIPS Agreement which requires that developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base.

Decides as follows:

- (1) Developed countries shall ensure the provision of public funds to enterprises and institutions in their territories is subject to terms and conditions that will rapidly facilitate transfer of technologies and related know-how to least developed country Members with the aim to create a sound and viable technological base in such Members.
- (2) Developed countries shall establish and publish an inventory of all publicly (wholly or partially) owned technologies and shall on request of any least developed country Member, transfer those technologies and related know-how, by providing incentives to enterprises and institutions in their territories, with the aim to create a sound and viable technological base in the requesting least developed country Member.
