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**DRAFT REPORT OF THE COMMISSION ON INVESTMENT, TECHNOLOGY
AND RELATED FINANCIAL ISSUES ON ITS SIXTH SESSION**

21-25 January 2002

Rapporteur: Ms. Vanessa Head (United Kingdom)

Agenda item 4

Speakers:

Chief of the Investment Policies and
Capacity-Building Branch, DITE
Vice-Chairperson-cum-Rapporteur
of the Expert Meeting
Sri Lanka (for the Asian Group and China)
Egypt (for the African Group)

Spain (for the European Union)
Bangladesh (for the LDCs)
United States of America
India
Zambia

Note for delegations

This draft report is a provisional text circulated for clearance by delegations.
Requests for amendments to statements by individual delegations should be communicated
by **Friday, 1 February 2002** at the latest, to:
UNCTAD Editorial Section, Room E.8102, fax no. 907 0056, tel. no. 907 5654/1066.

**INTERNATIONAL POLICY ISSUES: INTERNATIONAL ARRANGEMENTS FOR
TRANSFER OF TECHNOLOGY: BEST PRACTICES FOR ACCESS TO AND
MEASURES TO ENCOURAGE TRANSFER OF TECHNOLOGY WITH A VIEW TO
CAPACITY-BUILDING IN DEVELOPING COUNTRIES, ESPECIALLY IN
LEAST DEVELOPED COUNTRIES**

(Agenda item 4)

1. For its consideration of this item, the Commission had before it the following documentation:

“International arrangements for transfer of technology: Note by the UNCTAD secretariat” (TD/B/COM.2/37)

“International arrangements for transfer of technology: Issues note by the UNCTAD secretariat” (TD/B/COM.2/EM.9/2)

“Report of the Expert Meeting on International Arrangements for Transfer of Technology: Best Practices for Access to and Measures to Encourage Transfer of Technology with a view to Capacity-Building in Developing Countries, Especially in Least Developed Countries” (TD/B/COM.2/33 - TD/B/COM.2/EM.9/3)

2. The **Chief of the Investment Policies and Capacity-building Branch of the Division on Investment, Technology and Enterprise Development**, introducing agenda item 4, said that the Expert Meeting on International Arrangements for Transfer of Technology held from 27 to 29 June 2001, in a response to the Bangkok Plan of Action was not about transfer of technology per se, since the need for such transfer, especially to developing countries, had been recognized in various international forums. Instead, the main issue was how to enhance the effectiveness of existing international arrangements, or in other words, how to translate good intentions into good practices. The UNCTAD secretariat had compiled for the Expert Meeting a *Compendium of International Arrangements on Transfer of Technology*, which had now been published. This compilation of the various commitments was a reminder of the considerable scope for further policy action.

3. He pointed out that while transfer of technology was a fundamental goal of many international instruments, especially agreements involving developing countries, one of the main challenges was to ensure that transfer and diffusion provisions were translated into practice. National host country policies played a key role in this regard, including through promoting enterprise development and attracting FDI, as well as streamlining approval procedures and putting in place appropriate provisions on technology transfer or other operating requirements. There were best practices to be derived from the successful experiences of countries in all regions. The provisions on transfer of technology and capacity-building were underpinned by a variety of shared concerns: effective integration of the developing countries into world trade and investment, protection of intellectual property rights and sustainable development. These provisions had different objectives and scope, and different modes of implementation, including the provision of financing, and were subject to

different terms and conditions. In most cases, however, they took the form of "best efforts" commitments rather than mandatory rules.

4. He said that four other generalizations were possible. First, these provisions generally distinguished between developed and developing countries, assigning differing obligations to different categories of addressees, so that technology could be transferred from countries with strong capabilities to countries with low capacities. This distinction was a common feature of multilateral agreements, such as the TRIPS Agreement. In some instruments, such as Agenda 21, the addressees included enterprises. In other instruments, such as regional agreements among developing countries, there was no explicit distinction. Second, technology-related provisions could also be distinguished with respect to the type of technology they covered. Thus, the provisions of the Vienna Convention for the Protection of the Ozone Layer related primarily to technologies for environmental protection. In contrast, the TRIPS Agreement referred to technology in a broader sense. Third, technology-related provisions could be distinguished with respect to the methods of implementation. Here a broad trend was evident: instruments with a specific objective (such as environmental protection) generally had an in-built implementation mechanism, including financial provisions (such as the Montreal Protocol), while instruments dealing with transfer of technology as a broad objective often relied on national measures in developed country addressees for their successful implementation (such as Article 66.2 of the TRIPS Agreement). Finally, instruments differed with regard to the terms and conditions under which transfer of technology was expected to occur. In some agreements provisions called for "fair and reasonable terms", whereas other agreements emphasized the commercial nature of transfer of technology. Interestingly, there was no clear correlation between the implementation of particular provisions and their respective terms and conditions. The Montreal Protocol scored high on implementation. An analysis of the different aspects of existing international agreements posed the following question: could mechanisms in instruments with a promising implementation record, such as built-in financial provisions and monitoring arrangements, serve as a model in other areas? The Expert Meeting had addressed this issue and others. It had reviewed best practices and made various suggestions for possible future areas of work for UNCTAD. A number of countries that had provided comments (contained in document TD/B/COM.2/37) felt that the Expert Meeting's outcome and summary covered all significant points related to the topic discussed.

5. The **Vice-Chairperson-cum-Rapporteur of the Expert Meeting on International Arrangements for Transfer of Technology** introduced the report of the Expert Meeting on International Arrangements for Transfer of Technology: Best Practices for Access to and Measures to Encourage Transfer of Technology with a view to Capacity-Building in Developing Countries, Especially in Least Developed Countries (TD/BCIM.2/3), held in Geneva from 27 to 29 June 2001. He referred to the two parts of the report: the outcome and the Chairperson's summary of discussions. In presenting the outcome, he said that investment agreements had theoretical provisions, with the exception of the Montreal Protocol, which had specific provisions for its implementation. UNCTAD should provide assistance to developing countries, and particularly to LDCs, for strengthening their negotiating capacity

in respect of international investment agreements and work on a compilation of home country measures on technology transfer in relation to Article 66.2 of the TRIPS Agreement.

6. The representative of **Sri Lanka**, speaking on behalf of the **Asian Group and China**, emphasized that created technological assets, more than traditional factor endowments, determined comparative advantage in today's knowledge-based world economy. Technological development was essential for the integration and participation of developing countries in the international trading system. She said that the existing technological gap might be bridged through the transfer of technology from producers to users by means of the market and other mechanisms. Building supply capacity in developing countries needed all types of technologies. There was a risk that access to the critical technologies might be limited in an overly protectionist intellectual property environment that did not properly balance incentive to innovate against the need for dissemination of knowledge.

7. The concerns of the international community with respect to enhancing the transfer of technology to developing countries, as well as their technological capabilities, were enshrined in several dozen international instruments, including WTO Agreements. The main question was how to ensure the effectiveness of international arrangements for transfer of technology and capacity-building, and what were the best mechanisms for their successful implementation. In this connection, the Expert Meeting on International Arrangements for Transfer of Technology had found that the several dozen international instruments included provisions on enhancing the transfer of technology to developing countries, particularly LDCs, as well as their technological capabilities, but that more needed to be done for their effective implementation. She said that it was the first time that an Expert Meeting had examined a number of best practices that could contribute to generating favourable conditions and opportunities for transfer of technology and capacity-building.

8. There was an increasing need to promote understanding of emerging issues, including the role of international arrangements, with a view to strengthening developing countries' ability to participate in discussions and negotiations on international agreements. In supporting the outcome of the Expert Meeting, UNCTAD should provide assistance to developing countries, particularly LDCs, to strengthen their capacity for discussing and negotiating technology transfer provisions in international instruments. In view of the importance of the questions raised, UNCTAD should further explore ways and means for effective implementation of international commitments in the area of transfer of technology and capacity-building. With regard to information on the existing instruments, the recently published *Compendium of International Arrangements on Transfer of Technology* was a welcome contribution and should be continuously updated as necessary.

9. The representative of **Egypt**, speaking on behalf of the **African Group**, said that greater attention should be paid to international instruments with built-in implementation mechanisms, including financial provisions and monitoring arrangements, and to the promising implementation record in the area of environmental protection. They could serve as a model in other areas such as infrastructure, health, nutrition and telecommunications. He emphasized that the design of measures and specific incentives for home-country enterprises, including fiscal and other incentives, to promote transfer of technology, especially through

FDI in developing countries, was needed in particular for those transfers of technology that depended on the measures to be taken at the country level. In this connection, the monitoring of implementation of Article 66.2 of the TRIPS Agreement could contribute to building a sound and viable technological base in LDCs.

10. His Group fully endorsed the establishment of a special body to promote research and development and other activities in the area of technology in developing countries. He urged the full implementation of the Brussels Programme of Action for the Least Developed Countries, especially the commitment concerning capacity- and institution-building and the commitment concerning financing, and stressed that UNCTAD should assist developing countries in areas identified by the Expert Meeting.

11. The representative of **Spain**, speaking on behalf of the **European Union**, emphasized that FDI could be an effective way to help LDCs in receiving technology. In this connection, he underlined the importance of a legal system to support intellectual property rights. He also stressed that any incentives provided by a country must be in conformity with WTO rules. UNCTAD should compile a list of national measures taken in accordance with Article 66.2 of the TRIPS Agreement and should provide technical assistance to developing countries, particularly LDCs, in cooperation with other international organizations in areas identified by the Expert Meeting. In conclusion, he referred to the *Compendium on International Arrangements on Transfer of Technology*, which could be a useful input to the forthcoming meeting of the WTO Working Group on Trade and Technology.

12. The representative of **Bangladesh**, speaking on behalf of the **LDCs**, reaffirmed the importance of technology for LDCs. It was necessary to find new ways of transferring technology to LDCs since the market was not sufficient. There was also a need for incentives to be given to technology owners, which were in the private sector. Therefore, developed countries must provide incentives in order to promote the creation of a viable technological base in LDCs. In this respect, the compilation of a list of incentives would be an important step.

13. The representative of the **United States of America** said that the full protection of intellectual property rights was necessary for the transfer of technology. He supported efforts for public-private research and development, for example in information technology. Furthermore, he agreed that monitoring and implementation of Article 66.2 of the TRIPS Agreement constituted an important matter to be pursued within the WTO. Also, the organization of workshops and seminars on legal issues could be very beneficial for participating countries with regard to matters discussed in the Expert Meeting.

14. The representative of **India** supported the recommendations of the Expert Meeting and highlighted some best practices for transfer of technology identified in its outcome. He made particular reference paragraph 4(d), which dealt with local working requirements, paragraph 4(e), which dealt with making the TRIPS Agreement more conducive to transfer of technology, and paragraph 4(h), which dealt with design of measures. Many aspects of FDI and transfer of technology needed more studies. He added that there was a distinction in the

literature between know-how and know-why, and that there seemed to be less focus on the latter.

15. The representative of **Zambia** drew attention to Article 66.2 of the TRIPS Agreement and focused on measures to be designed for its implementation. In this context, he referred to various incentive schemes used by developed countries.