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Committee on Technical Barriers to Trade

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**PROPOSAL TO INTRODUCE STANDARDIZED PLAIN PACKAGING OF
TOBACCO PRODUCTS IN IRELAND**

**STATEMENT BY MALAWI TO THE COMMITTEE ON TECHNICAL BARRIERS TO TRADE AT ITS
MEETING OF 17, 19-20 JUNE 2013**

The following communication, dated 25 June 2013, is being circulated at the request of the delegation of Malawi.

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1. Malawi expresses serious concern about the impact of the announced plain packaging measures by Ireland with respect to the consistency both with the TRIPS and TBT Agreements.
 2. Malawi shares Ireland's public health objective of reducing the use of tobacco products and smoking, particularly for young people as well as discouraging them from smoking or using tobacco products. Malawi however, is nevertheless concerned with the proposed regulation as it is unclear how Ireland would reconcile its obligations under the WTO Agreement with its public health objectives, in particular the TBT and TRIPS Agreements. Article 2.2 of the TBT Agreement requires all Members to ensure that technical regulations are neither drafted, adopted nor applied to create unnecessary trade barriers. Article 12.3 of the TBT Agreement requires Members to ensure that their technical regulations do not create unnecessary obstacles to exports from developing country Members. Given the disputes concerning the Australian plain packaging measures currently before the DSB, Malawi hopes that the drafting of similar legislation by any other WTO Members would wait until the conclusions and guidance from those disputes.
 3. It is unclear to Malawi how the adoption of the said measure would attain health objectives. Malawi therefore asks Ireland to provide reliable scientific and technical information demonstrating that plain packaging will reduce the number of smokers as well as to explain how the measure is compliant with the Articles 2.2 and 2.4 of the TBT Agreement.
 4. This measure would not only be trade restrictive but also negatively impact the competitiveness of countries such as Malawi in international trade. In particular, Ireland's announced measure would undermine the economic rise of Least Developed Countries like Malawi, which depend on the manufacture of tobacco products as a key tool for poverty reduction by creating direct and indirect employment and livelihood. You may wish to note that, tobacco farming is a major source of livelihood for many farmers in developing countries. In Malawi, about 1.5 million people rely on tobacco farming. Tobacco contributes significantly to the country's GDP and is a major export good. The export of tobacco and manufactured tobacco substitutes accounted for around 52 percent of total Malawi exports in 2012, and is therefore hugely significant to Malawi's economy.
 5. Malawi asks Ireland to provide reliable evidence that it will rely upon to support this measure. . Did Ireland consider any alternative less trade-restrictive measures in support its public health goals without the removal of all trademarks and standardization of the products and their packaging? If such alternatives were examined, could Ireland indicate why such alternative measures were not preferred? Were there any studies conducted on addressing the likely unintended consequences of the plain packaging measure particularly on prices and on illicit trade?

Malawi is concerned that plain packaging measures, like the ones adopted by Australia and proposed by Ireland, are more trade restrictive than necessary to fulfill their legitimate objectives and are thus inconsistent, among others, with the obligation under Article 2.2 of the TBT Agreement. Furthermore, the measure would affect trademarks and geographical indications, the value of which had been built up over many years, and in some cases even centuries.

6. The four disputes against the Australian plain packaging measures will determine their WTO compliance. Malawi therefore questions whether it would not be a preferred approach to await the outcome of these ongoing disputes before proceeding with a similar measure in Ireland. Malawi therefore urges Ireland to re-consider their intention to introduce plain packaging until final decisions have been made in the Australia plain packaging disputes.
