

Our ref: CEHURD/ADM/17/06

5th June 2013

To H.E. Mr. Michael PUNKE
Ambassador Permanent Representative to the WTO

RE: LDCs' Request for an Extension of the TRIPS Transition period

We are writing in support of the request by the Least Developed Country Members of the WTO (LDCs) to the TRIPS Council for an unconditional extension until a country graduates from the LDC status (IP/C/W/583). **We also strongly condemn United States on-going efforts in opposing LDCs' legitimate request to defer implementation of the TRIPS Agreement.**

LDCs (most of which are from sub-Saharan Africa) are the most vulnerable segment of the international community. Generally the conditions prevailing in LDCs are terribly poor. More than half of the LDC population lives on less than \$1.25 (PPP) per day; adult literacy rate in LDCs is on average at 60.7%, with gross enrolment in tertiary education at about 6.6% while primary school dropout rate at 40.9 % of the population; only 1.7 per 100 people have personal computers, while about 5 out of 100 have access to the worldwide network; more than half of the LDC population do not have access to electricity, water or sanitation facilities. The productive capacities in LDCs are also extremely limited and they tend to be at the bottom of all innovation/technology indices. LDCs also face challenges such as natural disasters (e.g. severe droughts, floods, earthquakes, tsunamis) and political instability.

In recognition of the special needs and requirements of LDCs, in particular their need for flexibility to develop a viable technological base and to overcome constraints, the TRIPS Agreement (Article 66.1) allows LDCs to seek an extension of the transition period. The provision also states that WTO members "SHALL" accord an extension, once LDCs submit a duly motivated request, which they did last November.

Thus far the LDCs' request has received unprecedented support from: developing countries, civil society groups (representing millions)¹, industry², academics³, UN agencies⁴, Members of the US Congress⁵ and EU parliamentarians.

In view of the above, it is shocking and shameful that the US is currently relentlessly attempting to block adoption of the LDCs' request. We understand that the US is trying to force LDCs to agree to a short and impractical duration of between 5 and 7.5 years and to TRIPS-plus conditions such as no-rollback, which would require LDCs to maintain existing levels of TRIPS compliance, even if adverse to its development needs.

¹ See Civil Society Letter at <http://www.ip-watch.org/weblog/wp-content/uploads/2013/02/CSO-Letter-Supporting-Extension-of-LDCs-Transition-Period.pdf> and See Statement of Electronic Information for Libraries (EIFL) at <http://www.eifl.net/eifl-statement-support-lcd-trips-waiver>.

² See statement by Computer & Communications Industry Association (CCIA) at <http://www.cciainet.org/?sid=5&artid=363&evtflg=False>

³ See Global Academics Letter to WTO Members on TRIPS Extension at <http://infojustice.org/archives/29370>

⁴ See <http://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2013/february/20130226prtrips/> and http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2013/JC2474_TRIPS-transition-period-extensions_en.pdf

⁵ See <https://healthgap.squarespace.com/s/LDC-IPR-Waiver-Letter-to-USTR-FINAL-5-14-13-1.pdf>

Unlike the LDCs' demands, which are based on sound arguments and the text of Article 66.1, the US position is baseless and unjustifiable. The short duration (between 5 to 7.5 years) being suggested by the US is absurd considering the grim realities in many of the LDCs. Within such a timeframe, it is impossible for LDCs to develop the basic prerequisites of development (e.g. skilled and qualified personnel, a scientific and technological base, a market, and regulatory systems) and to overcome their existing constraints, in order to be able to benefit from the TRIPS Agreement. In fact, during such a short extension, it is unlikely that conditions in LDCs will have improved to any measurable degree. So why are LDCs being subjected to such a senseless time demand?

Equally unacceptable is the imposition of conditionalities (e.g. no rollback) aimed at reducing rights LDCs are legally entitled to during the transition period and to prematurely tie LDCs to TRIPS compliance. LDCs, by definition require maximum policy space to pursue their development agendas. Thus by requiring LDCs to agree to illegitimate conditionalities, the US is undermining the credibility of the WTO, which allegedly is a rules based system.

The position taken by United States in the current on-going informal consultations in Geneva is simply unconscionable. We call on the United States to immediately stop the relentless and baseless bullying of LDCs and to respect the intent and spirit of Article 66.1 of the TRIPS Agreement. In their request to the TRIPS Council, the LDCs are seeking nothing more than what they are legally entitled to.

As a member of the WTO, it is the responsibility of the United States to ensure that the poorest Members of WTO are not denied their rights. Accordingly it is imperative that the United States endorses approval of the LDCs' request to the TRIPS Council for an unconditional extension of the transition period for as long as a country remains a LDC, as requested in IP/C/W/583.

Failure by the United States to support LDCs' demands will send a clear and loud message that President Obama is willing to disregard and trample over the legitimate rights and interests of some of the world most impoverished nations, including LDCs from Sub-Saharan Africa such as Senegal and Tanzania that he will be visiting soon.

Sincerely,



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Cc: Mr Thomas E. "Tom" Donilon

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Cc: Mr. Tony Blinken, Deputy National Security Advisor

Cc: Mr William J. Burns, Deputy Secretary of State

Cc: Robert D. Hormats, Under Secretary for Economic Growth, Energy, and the Environment