

**NGO LETTER TO LEAST-DEVELOPED COUNTRY MEMBERS OF WTO
CONCERNING A FURTHER EXTENSION OF THE 1 JULY 2013 LDC TRANSITION
PERIOD UNDER ARTICLE 66.1 OF THE TRIPS AGREEMENT**

15TH OCTOBER 2012

Dear WTO LDC Members,

As civil society organizations concerned with access to medicines, to educational resources, to environmentally sound technologies (ESTs), and to other public goods and cultural creations and further concerned with farmers' rights, food security, human flourishing, sustainable and equitable technological and industrial development in LDC countries, we write to least-developed country Members of the World Trade Organization (WTO) with respect to the pending request for a further extension of the 1 July 2013 LDC transition period under Article 66.1 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). It is urgent that LDC Members of the WTO act collectively to immediately submit a duly motivated request to the WTO TRIPS Council for an indefinite extension (i.e. for as long as a WTO member remains a LDC) of the soon-to-lapse LDC transition period.

Article 66.1 of the TRIPS Agreement accorded LDC Members a renewable ten-year exemption from most obligations under the TRIPS Agreement in view of the special needs and requirements of the LDC Members, their economic, financial and administrative constraints and their need for flexibility to create a viable technological base.¹

This exemption was originally due to expire on 31 December 2005. However, a TRIPS Council decision of 27 June 2002 (IP/C/25), extended the 2005 transition period until 1 January 2016 in relation to pharmaceutical patents and test data protection. A separate 8 July 2002 General Council's decision (WT/L/478) suspended the obligations of LDC Members under Article 70.9 of the TRIPS Agreement with respect to pharmaceutical products until 1 January 2016. **Without prejudice to this extension, the TRIPS Council, through its decision IP/C/40, extended the general TRIPS compliance transition period for LDC Members for all obligations under the TRIPS Agreement, other than Articles 3, 4 and 5, until 1 July 2013 or until such date on which a Member ceases to be an LDC, whichever date is earlier.**

As the expiry of the exemption, 1 July 2013 is fast approaching, we believe it is urgent for all least-developed countries (LDC) to act collectively to submit a duly motivated request to the WTO TRIPS Council for an extension of the LDC transition period, until a Member ceases to be a LDC.

According to the United Nations Conference on Trade and Development Least Developed Country Report (2007), "The domestic knowledge systems in the LDCs are very weak and the level of technological capabilities of domestic enterprises is very low." In general, LDCs are at an enormous technological disadvantage compared to other countries and have yet to reap the benefits of the knowledge/ technology economy. At the same time LDCs face enormous

¹ Article 66.1 of the TRIPS Agreement states: "In view of the special needs and requirements of least-developed country Members, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base, such Members shall not be required to apply the provisions of this Agreement, other than Article 3, 4, and 5, for a period of 10 years from the date of application as defined under paragraph 1 of Article 65. The Council for TRIPS shall, upon duly motivated request by a least-developed country Member, accord extensions of this period."

economic, financial, and administrative constraints as well as human and technological capacity shortfalls.

Failure to seek and obtain a further extension of the 2013 LDC transition period could be disastrous for LDC Members and their citizens. LDCs would immediately need to amend their intellectual property laws to become TRIPS-compliant and would be under extreme time pressures to do so. Much worse, they would be adopting high standards of intellectual property protection and enforcement before they had any real domestic technological capacity and before a significant body of local inventors, authors, and creators could leverage a domestic intellectual property system to their advantage. It is a fact that in LDC countries foreign individuals and companies are the main beneficiaries of expanded IP protection and these foreign right holders tend to set high monopoly prices, which are unaffordable to most of the population.

Moreover, historically most technological development in developing and even in developed countries has come through a period of copying and adapting advanced technologies initially invented elsewhere. This trend is aptly captured by Ha-Joon Chang: "...when they were backward themselves in terms of knowledge, all of today's rich countries blithely violated other people's patents, trademarks and copyrights. The Swiss "borrowed" German chemical inventions, while the Germans "borrowed" English trademarks" and the Americans "borrowed" British copyrighted materials – all without paying what would today be considered "just" compensation"².

Many LDC Members, pursuant to misguided advice, have been focusing on assessing their TRIPS compliance and their technical needs for TRIPS-compliant law reform. We are of the view that this is the wrong focus as generally LDCs are not in a position to benefit from full TRIPS compliance at this time.

Even if a LDC Member believes it can benefit from a certain form of intellectual property protection (e.g. trademarks for local traders), an extended transition period provides ample flexibility to allow LDCs to implement the level of intellectual property protection suitable for individual interests and needs. Thus LDCs should not prematurely tie their hands to full implementation of the TRIPS Agreement by focusing on needs assessment, when an extension is a right that LDCs have under Article 66.1.

In addition, to the extent that LDC Members do want to incentivize and protect their local innovators and creators, even with an extension of the transition period, this remains possible as local innovators and creators will still be able to benefit economically from the protection of IPRs in non-LDC Members, a market much more robust than the domestic market alone.

An extension of the 2013 LDC transition period is further desirable because it will set the stage for a future extension of the 2016 LDC pharmaceutical extension period. This extension is vitally important to the continued ability of LDC to access affordable generic medicines of assured quality for HIV/AIDS, TB, malaria and other infectious, neglected, and non-communicable diseases and to allow LDCs to develop local pharmaceutical capacity. Indeed, LDC Members, could fill an important pharmaceutical niche by manufacturing newer medicines now patented in key producer countries like India, all of which were required to become TRIPS-compliant in 2000 or 2005.

²Ha-Joon Chang (2007), "Bad Samaritans The Guilty Secrets of Rich Nations & the Threat to Global Prosperity"

In conclusion, we request urgently that:

- LDC Members collaborate and offer a joint request for an indefinite extension of the TRIPS transition period under Article 66.1. Attached is a proposed draft of such an extension. Civil society and supporters of this letter will be eager to offer advocacy support to LDC Members for the passage of the needed extension at the WTO.

The extension sought should be one that is indefinite – in other words, it should not end until a Member ceases to be an LDC. The arc of technological development is long, especially since LDC members have both to catch up and keep pace with the rapid development and expansion of technological capacity in other developing and developed countries.

- The transition period extension must also NOT have conditions such as those contained in paragraph 5 of IP/C/40. Article 66.1 of the TRIPS Agreement contains no requirement that there be any conditions on the grant of a properly motivated extension request. Article 66.1 states that the Council “shall upon duly motivated request ... accord” extensions of the transition period. To the same effect, the 2013 extension decision (IP/C/40) was “without prejudice” with respect “to the right of least-developed Country Members to seek further extensions of the period provided for in paragraph 1 of Article 66 of the Agreement.”

This issue is critical, as many LDC Members have prematurely provided for patents and other intellectual property rights and protections prior to the extension granted in 2005 of the Article 66.1 transition period, often as a legacy of colonial rule. Conditions such as paragraph 5 of IP/C/40 narrows the policy space available to LDCs by cementing colonial era IP rules and even more recent ill-advised IP reforms championed by WIPO, European and US Patent Offices and other technical advisors. Such conditions are aimed at preventing LDCs from fully enjoying the flexibility and policy space available during the transition period and which are crucial to enable LDCs to engage in technology catch-up and at the same time ensure access to more affordable commodities and public goods both for their citizens.

ATTACHMENT: PROPOSED CIVIL SOCIETY DRAFT REQUEST FOR AN EXTENSION OF THE TRANSITIONAL PERIOD UNDER ARTICLE 66.1 OF THE TRIPS AGREEMENT

Article 66.1 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) granted least-developed country (LDC) Members a ten-year transition period from most obligations under the TRIPS Agreement in view of their special needs and requirements, including their economic, financial and administrative constraints and their need for flexibility to create a viable technological base.

This LDC transition period was originally set to expire on 31 December 2005. However, a TRIPS Council decision of 27 June 2002 (IP/C/25) extended the 2005 transition period until 1 January 2016 in relation to pharmaceutical patents and test data protection. A separate 8 July 2002 General Council’s decision (WT/L/478) suspended the obligation of LDC Members under Article 70.9 of the TRIPS Agreement with respect to pharmaceutical products until 1 January 2016.

Without prejudice to this pharmaceutical related extension, the TRIPS Council, through its decision IP/C/40, extended the general TRIPS compliance transition period for LDC Members for all obligations under the TRIPS Agreement, other than Articles 3, 4 and 5, until 1 July 2013 or until such date on which a Member ceases to be an LDC, whichever date is earlier.

LDC Members of the WTO continue to face serious economic, financial and administrative constraints and for the most part have failed to create a viable technological base. Moreover, they lag in all indicators concerning concentrated poverty, illiteracy, poor health and a failure to realize sustainable and equitable human and economic development. LDC Members also have very low levels of innovative activity currently or commercial creative activity and are net importers of expensive IP-related commodities including medicines, information technology, educational resources, and environmentally sound technologies, most of which are not affordable to most of the LDC population.

LDC Members therefore need to keep maximum flexibility to delay implementation of intellectual property right protections in accordance with Article 66.1 as long as they remain severely and comparatively disadvantaged in knowledge-based economic activity. A further extension of the TRIPS transition period would give LDCs an opportunity to imitate and translate existing technologies and informational resources for local use at the same time that they build their technological resources and human capacities.

Developing a viable technological base does not happen overnight, especially as LDC Members will not only have to catch up but then keep pace with the global rate of technological development. Thus LDCs need a long-lasting transition period from TRIPS compliance in order to be able to grow economically viable industrial and technological sectors, to consolidate capacity, and to work their way up the technological value chain.

Article 66.1 provides that the Council for TRIPS “shall, upon duly motivated request by a least developed country Member, accord extensions of this period [emphasis added].” At the Eighth WTO Ministerial Conference of December 2011, the Ministers invited the TRIPS Council to give full consideration to a duly motivated request from LDCs for a further extension.

Since it is impossible to determine when individual LDCs will be able to overcome their economic, financial and administrative constraints and create a viable technological base, a further extension of the Article 66.1 transition period should not be limited to an artificial, pre-defined time period but instead should remain in force so long a particular LDC Member is considered a LDC as defined by the WTO. Moreover, an extension should be granted to LDCs as a group, given their common delays in development and should be granted with respect to all TRIPS intellectual property rights.

LDC Members of the WTO hereby submit this duly motivated request for an extension of the transitional period (that ends on 1 July 2013) for as long as any particular WTO Member remains an LDC. This extension should not have conditions such as those contained in paragraph 5 of IP/C/40.

This request shall not derogate from the rights of LDC Members available under Article 66.1 to request further extensions of transition period with respect to pharmaceutical products which is due to expire on 1 January 2016.

Signatories

Global, Inter-regional and Regional Networks

1. Act-Up Basel
2. Africa Biodiversity Network (ABN)
3. Africa Europe Faith and Justice Network (AEFJN)

4. Africa Network for Animal Welfare (ANAW)
5. Asia Pacific Network of People living with HIV/AIDS (APN+)
6. Consumers International
7. Eastern & Southern Africa Small Scale Farmers' Forum (ESAFF)
8. European AIDS Treatment Group (EATG)
9. Health Action International Africa (HAIA)
10. International Association of Peace Messenger Cities (IAPMC)
11. International Treatment Preparedness Coalition (ITPC)
12. International Treatment Preparedness Coalition Middle Eastern & North Africa
13. Latin American Coordination Network for Fair Trade (Mesa de Coordinación Latinoamericana de Comercio Justo), Latin America
14. LDC Watch
15. Nord-Sud XXI
16. Pan African Animal Welfare Alliance (PAAWA)
17. Pacific Network on Globalisation (PANG)
18. Pacific Islands Association of Non-Governmental Organisations (PIANGO)
19. Participatory Ecological Land Use Management (PELUM)
20. Office Africain pour le Developpement et la Cooperation (OFADEC)
21. Oxfam International
22. Southern and Eastern African Trade Information and Negotiations Institute (SEATINI)
23. Social Watch
24. South Asia Alliance for Poverty Eradication (SAAPE)
25. The Global Forum on MSM & HIV (MSMGF)
26. Third World Network
27. Treatment Access Watch, Africa
28. Women for a New era (DAWN)

National & Other Organizations & Networks

29. S.O.S - Crianca E Desenvolvimento Integral De Angola, Angola
30. Citizen Participation Forum for Justice and Human Rights (FOCO) Argentina
31. Encuentro de Entidades No Gubernamentales para el Desarrollo, Argentina
32. Fundación SES, Argentina
33. Mujeres Activas, Argentina
34. Center for Encounters and Active Non-Violence, Austria
35. Bahrain Transparency Society, Bahrain
36. Bangladesh Krishok Federation, Bangladesh
37. Center for Participatory Research and Development (CPRD), Bangladesh
38. Equity BD, Bangladesh
39. Coastal Association for Social Transformation Trust (COAST), Bangladesh
40. Plate forme des Organisations de la Société Civile du Bénin (PASCiB), Benin
41. Dynamique des Organisations de la Société Civile d' Afrique Fancophone (OSCAF), Benin
42. Groupe de Recherche et d'Action pour la Promotion de l'Agriculture et du Développement (GRAPAD) Bénin
43. Brazilian Insitute of Consumer Protection (IDEC), Brazil,
44. Association pour le Droit à la Santé et au Développement (ODSAD Faso), Burkina Faso
45. French Forum Against TB, Burkina Faso
46. Coalition 15%, Cameroon
47. Cameroon TB group, Cameroon
48. Positive-Generation, Cameroon
49. Mouvement camerounais pour le plaidoyer à l'accès aux traitements (MOCPAT) Cameroon

50. Groupe d'Action, de Paix et de Formation pour la Transformation (GAPAFOT), Central African Republic
51. Planetary Association for Clean Energy, Canada
52. Polaris Institute, Canada
53. Tchad Agir Pour L'Environnement, (TCHAPE), Chad
54. ONG Derechos Digitales, Chile
55. Fundación Karisma, Colombia
56. Comité d'Appui au Travail Social de Rue (CATSR), Democratic Republic of Congo
57. Jeunesse Avenir, Democratic Republic of Congo
58. Citizens' Action Network on Free Trade and Investment - Sinti Techan (Red de Acción Ciudadana frente al Libre Comercio e Inversión Sinti Techan), El Salvador
59. Fiji Women's Rights Movement, Fiji
60. Act Up-Paris, France
61. Sidaction, France
62. Worldview, Gambia
63. Action Against AIDS, Germany
64. Centre du Commerce international pour le développement (CECIDE), Guinée
65. Plateforme Haitienne de Plaidoyer pour un Developpement Alternatif (PAPDA), Haiti
66. All India Drug Action Network, India
67. Bharatiya Krishak Samaj, India
68. Center for Internet and Society, India
69. Diverse Women for Diversity, India
70. Initiative for Health & Equity in Society, India
71. Research Foundation for Science Technology & Ecology, India
72. Presentation Justice Network, Ireland
73. AIDS Law Project - Kenya
74. Inades Formation Kenya
75. Kenya Biodiversity Coalition, (KbioC), Kenya
76. Kenya Debt Relief Network (KENDREN), Kenya
77. Catholic Commission for Justice and Peace, Lesotho
78. Consumers Protection Association, Lesotho
79. Junior Chamber International, Lesotho
80. Policy Analysis and Research Institute of Lesotho, Lesotho
81. Plate Forme Société Civile pour l'Enfance, Madagascar
82. Forum Pour L'Autre (FORAM), Mali
83. Association de lutte contre le sida (ALCS), Morocco
84. All National Women's Association (ANWA), Nepal
85. Jagaran Nepal, Nepal
86. Nepal NGO Federation of Nepal (NFN), Nepal
87. Rural Reconstruction Nepal (RRN), Nepal
88. Both ENDS, the Netherlands
89. Platform Aarde Boer consument, the Netherlands,
90. Alternative Espaces Citoyens, Niger
91. Labour, Health and Human Rights Development Centre, Nigeria
92. Vision Spring Initiatives, Nigeria
93. The Norwegian Trade Campaign (Handelskampanjen), Norway
94. ACTNOWpng!, Papua New Guinea
95. Peruvian Network for Fair Trade and Ethical Consumption (Red Peruana de Comercio Justo y Consumo Ético), Peru
96. Réseau Dynamiques Africaines, Rwanda
97. Africaine de Recherche et de Cooperation pour l'Appui au Developpement Endogene

- (ARCADE), Senegal
98. African Forum for Alternatives, Senegal
 99. Network Movement for Justice and Development (NMJD), Sierra Leone
 100. Artisanal Fishers Association, South Africa
 101. Surplus People Project, South Africa
 102. African Biosafety Centre (ACB), South Africa
 103. Social Watch coalition, Spain
 104. World Democratic Governance project association, Spain
 105. National Civic Forum, Sudan
 106. Alliance Sud, Swiss Alliance of Development Organizations, Switzerland
 107. Berne Declaration, Switzerland
 108. Institute for Planetary Synthesis, Switzerland
 109. International-Lawyers.Org, Switzerland
 110. Organisation for the Communication in Africa and the Promotion of the International Economique Cooperation. (OCAPROCE International), Switzerland
 111. Envirocare, Tanzania
 112. Tanzania Alliance for Biodiversity, Tanzania
 113. Tanzania Organic Agriculture Movement, Tanzania
 114. AIDS ACCESS Foundation, Thailand
 115. Alternative Agricultural Network, Thailand
 116. Drug Study Group, Thailand
 117. Drug System Monitoring and Development Program, Thailand
 118. Ecological Alert and Recovery – Thailand (EARTH), Thailand
 119. Foundation for AIDS Rights, Thailand
 120. Foundation for Consumers, Thailand
 121. FTA Watch, Thailand
 122. Health and Development Foundation, Thailand
 123. Health Consumers Protection Program, Thailand
 124. Social Pharmacy Research Unit, Chulalongkorn University, Thailand
 125. Rural Doctors Foundation, Thailand
 126. Rural Doctor Society, Thailand
 127. Rural Pharmacists Foundation, Thailand
 128. Thai NGO Coalition on AIDS, Thailand
 129. Thai Holistic Health Foundation, Thailand
 130. The Thai Network of People living with HIV/AIDS (TNP+), Thailand
 131. La' o Hamutuk, Timor-Leste
 132. Peace and Conflict Studies Centre, Timor-Leste
 133. Actionaid Uganda, Uganda
 134. Advocates Coalition for Development and Environment (Acode), Uganda
 135. Center for Health, Human Rights and Development (CEHURD), Uganda
 136. Coalition for Health Promotion and Social Development (HEPS), Uganda
 137. Participatory Ecological Land Use Management (PELUM), Uganda
 138. Mariam Foundation Centre, Uganda
 139. National Organic Agricultural Movement of Uganda (NOGAMU), Uganda
 140. Foundation for GAIA, UK
 141. War on Want, UK
 142. African Services Committee, USA.
 143. Global Exchange, USA
 144. Health GAP (Global Access Project), USA
 145. Initiative for Medicines, Access & Knowledge (I-MAK), USA
 146. International Forum on Globalization, USA

147. Knowledge Ecology International, USA
148. Moana Nui (Action Alliance), USA
149. Association for the Prevention of HIV and TB (ZAPHIT) Support Program, Zambia
150. Community Based TB Action Group (COBTAG), Zambia
151. Community Based TB/HIV Organization (CBTO), Zambia
152. Treatment Advocacy and Literacy Campaign (TALC), Zambia
153. Youth Hope Network, Zambia
154. Community Technology Development Trust (CTDT), Zimbabwe
155. Health Poverty Action, International