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## **LDCs seek exemption from WTO TRIPS agreement**

**By Kanaga Raja**

The Least Developed Countries (LDCs) have submitted a "duly motivated" request to the WTO TRIPS Council for an extension of the transition period for them to comply with the TRIPS Agreement "for as long as the WTO Member remains a least developed country".

A proposed draft decision annexed to their request states that: "Least developed country Members shall not be required to apply the provisions of the Agreement, other than Articles 3, 4 and 5, until they cease to be a least developed country Member."

The request was submitted by Haiti, on behalf of the LDCs, at a meeting of the TRIPS Council on 6-7 November. In introducing its request, Haiti asked for this issue to be put on the agenda of the next TRIPS Council meeting (scheduled to take place next March).

The request for the extension of the transitional period is under Article 66.1 of the TRIPS Agreement.

Article 66.1 states that: "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 Articles 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."

The exemption had been due to expire end-December 2005, but the transition period was extended by the TRIPS Council (through a decision contained in IP/C/40) until 1 July 2013.

At the eighth WTO Ministerial Conference (MC8) held in Geneva last December, Ministers decided to invite the TRIPS Council "to give full consideration to a duly motivated request from Least-Developed Country Members for an extension of their transition period under Article 66.1 of the TRIPS Agreement, and report thereon to the WTO Ninth Ministerial Conference."

The ninth Ministerial Conference is scheduled to take place in Bali, Indonesia, in December 2013.

According to the request submitted by the LDCs to the TRIPS Council, the least developed country Members of the WTO represent the poorest and weakest segment of the international community.

"The economies of least developed country Members are extremely vulnerable, with large segments of their population living in poverty. They also face numerous challenges such as high burdens of infectious and non-infectious disease, low literacy, inadequate access to clean water and sanitation, low agricultural

productivity, environmental and climate-related challenges."

Noting that the situation of LDCs has not changed significantly since the last extension decision in 2005, the LDC request said that the LDCs continue to play a very marginal role in the world economy, and their growing integration in the global market has been accompanied by very limited advances (if any) in their relative position compared with the rest of the world.

"From a long-term perspective, the marginalisation of LDCs is in many ways worse than in the early 1970s. More generally LDCs have not been able to develop their productive capacities and have not beneficially integrated with the world economy," stressed Haiti.

"Least developed countries' productive capacity is limited, they have serious infrastructure deficits and are lagging behind in critical areas, which are key drivers for transformation and have great potential to change the development landscape of least developed countries if developed and harnessed properly," the submission further noted.

Haiti underlined that least developed countries "have not been able to move beyond out-dated technologies that characterise their production processes and outputs although acquiring new technologies and building domestic capacity and knowledge base to be able to fully utilise acquired technologies and promoting indigenous capacity on a sustainable basis for research and development are needed to enhance the productive capacities in least developed countries."

Noting that the TRIPS Council, through its decision IP/C/40 on 29 November 2005, extended the transition period for least developed country Members under Article 66.1 of the TRIPS Agreement until 1 July 2013, Haiti said that the LDC Members of the WTO "continue to face serious economic, financial and administrative constraints and need maximum flexibility to create a sound and viable technological base."

"Developing a viable technological base is a long-term process. Given the increasing complexity of modern industrial practices, least developed country Members need a continuing waiver from TRIPS 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."

Moreover, Haiti underscored that because of their extreme poverty, least developed country Members need the policy space to access various technologies, educational resources, and other tools necessary for development. Most IP-protected commodities are simply priced beyond the purchasing power of least developed country Members and their nationals, it added.

"In view of the impossibility of determining when individual LDCs will be able to overcome the constraints that prevent them from creating a viable technological base, the transition period should remain in force while the Member is considered a least developed country in the WTO," Haiti concluded.

The proposed draft TRIPS Council decision on the extension of the transition period for LDCs, which has been annexed to Haiti's request, is as follows:

"The Council for Trade-Related Aspects of Intellectual Property Rights (the "Council for TRIPS"),

"Having regard to paragraph 1 of Article 66 of the TRIPS Agreement (the "Agreement");

"Recalling that, unless extended, the transition period granted to least developed country Members under Article 66.1 of the Agreement will expire on 1 July 2013;

"Having regard to the request from least developed country Members of the World Trade Organization (the "WTO"), dated 5 November 2012, for an extension of their transition period under Article 66.1 of the Agreement contained in document IP/C/W/583;

"Recognizing the special needs and requirements of least developed country Members, the economic, financial and administrative constraints that they continue to face, and their need for flexibility to create a viable technological base;

"Recognizing that Article 66.1 of the TRIPS Agreement provides that the Council for TRIPS "shall, upon duly motivated request by a least developed country Member, accord extensions of this period";

Decides as follows:

"Least developed country Members shall not be required to apply the provisions of the Agreement, other than Articles 3, 4 and 5, until they cease to be a least developed country Member."

**Kanaga Raja is editor of the South-North Development Monitor (SUNS).**

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