

NGOs Condemn the EU Press Release on TRIPS Extension for LDCs 21st June 2013

On 11th June 2013, the WTO TRIPS Council took a decision (IP/C/64) to extend for a further 8 years, the flexibility of least developed country (LDC) Members under Article 66.1 to not apply the provisions of the TRIPS¹ Agreement except for Articles 3, 4 and 5 (which concern national treatment and most-favored nation treatment). This decision was taken in response to the “duly motivated request” submitted by Haiti on behalf of the LDC Group last November, seeking an unconditional extension for as long as a WTO Member remains a LDC.

This decision was a compromise deal as the EU and US exerted intense pressure on the LDCs to accept conditionalities that are not in favour of the people in the LDCs.

The European Union in its press release on 11 June 2013 (“the release”), welcomes the TRIPS Council Decision, but it also makes several inaccurate and misleading statements.

1. The release claims that the EU: *“From the outset of discussions has recognized the importance of flexibility for least developed countries (LDCs) and supported an extension to the transition period”*.

Contrary to its claim of support, throughout months of behind-the-scenes negotiations, the EU consistently sought to undermine both the requested length of the transition period and LDCs’ freedom to determine the level of IP protection, if any, that was optimal in light of their special circumstances.

Article 66.1 of TRIPS explicitly permits LDCs not to apply TRIPS provisions in recognition of their special needs and requirements, their economic, financial and administrative constraints and their need for flexibility to develop a viable technological base. However, throughout the negotiations, the EU prioritized accelerated TRIPS compliance over the development needs of LDCs. The EU persistently viewed the transition period as merely giving LDCs a little more time to become TRIPS compliant, irrespective of whether the basic conditions exists in LDCs to benefit from high levels of intellectual property protection and enforcement. Consequently the EU opposed duration requested by LDCs (i.e. of as long as they remain LDCs) and attempted to limit the policy space/freedom LDCs are legally entitled to under Article 66.1 of TRIPS.

2. The EU release also states that where LDCs voluntarily provide some kinds of IP protection, *“they have committed themselves not to reduce or withdraw the current protection that they give”* (no-rollback). This is a disingenuous reading of the recently adopted TRIPS Council Decision and of the negotiating history, where the EU clearly lost its efforts to secure a no-rollback clause.

The no-rollback clause, included in the previous extension decision adopted in 2005, is not included in the current extension. The LDC Group rightly objected to its inclusion in the new decision, though the developed countries particularly the US and the EU continued to demand it. As a compromise, the new decision replaces the obligatory no-rollback clause with a sentence whereby LDCs only “express their determination to preserve and continue the progress towards implementation of the TRIPS Agreement”. To remove any doubt, the decision further clarifies, that “Nothing in this decision shall prevent least developed country Members from making full use of the flexibilities provided by the Agreement to address their needs”

¹ Trade Related Aspects on Intellectual Property Rights which is part of the World Trade organisation (WTO) membership

Clearly, the new extension decision does not prevent LDCs from rolling back (i.e. reducing or withdrawing) existing IP protections (even if less consistent than the TRIPS Agreement), if appropriate, in their own judgment, to meet their particular needs. This is supported by the exclusion of the previous obligatory no-rollback clause from the new extension decision and the reaffirmation of the right of LDCs to use the flexibilities provided by the TRIPS Agreement, which includes the flexibility under Article 66.1 (to not apply TRIPS provisions), which now has been extended. **Therefore, the EU's interpretation of the new extension decision is fundamentally flawed and purposefully misleading, and is just another attempt to undermine rights of the poorest nations granted under Article 66.1 of TRIPS.**

3. The release states that: “*LDCs will not have to protect these patents [pharmaceutical product] until 2016*”, giving the impression that the transition period for pharmaceutical products unequivocally ends by 2016.

In 2002, the TRIPS Council Decision of 27 June 2002 (IP/C/25) specifically exempted LDCs from applying TRIPS provisions on patents and on undisclosed information, to pharmaceutical products, until 2016, without prejudice to the right of LDCs to seek further extensions thereof. The 11 June 2013 decision text is applicable to all provisions of the TRIPS Agreement (except for Articles 3, 4 and 5). The decision does not prevent LDCs from seeking a further extension of the 2002 TRIPS Council Decision concerning pharmaceutical products (IP/C/25). **In this regard we urge the LDCs Group to submit a “duly motivated request” pursuant to Article 66.1 of the TRIPS Agreement to seek an unconditional extension of the 2002 TRIPS Council Decision concerning pharmaceutical products (IP/C/25) until a WTO member graduates from the LDC status.**

In conclusion, we call on the EU to abandon its efforts to force LDCs to prematurely adopt stringent standards of intellectual property protection and to unreservedly support any future requests by LDCs pursuant to Article 66.1 of the TRIPS Agreement.

Act Up Paris

Asociacion Ambiente y Sociedad, Colombia

Berne Declaration, Switzerland

Both ENDS, The Netherlands

Centre For Climate Change and Environmental Studies

Center for Encounter and Active Non-Violence, Austria

Center for Information Policy in Africa

Coalition for Health Promotion and Social Development (HEPS), Uganda

East African Health Platform

Ecologistas en Acción, Spain

Electronic Information for Libraries (EIFL)

Food Rights Alliance

Health Action International

Health GAP, USA

Labour, Health and Human Rights Development Centre, Nigeria

Mariam Foundation, Uganda

Stop AIDS Campaign, United Kingdom

The Center for Health, Human Rights and Development (CEHURD), Uganda

The Development Fund, Norway

Third World Network

Uganda Network on Law Ethics & HIV/AIDS

Oxfam International