

**REQUEST FOR AN EXTENSION OF THE TRANSITIONAL PERIOD
UNDER ARTICLE 66.1 OF THE TRIPS AGREEMENT**

Communication from Haiti on behalf of the LDC Group

The following communication, dated 5 November 2012, is being circulated at the request of the delegation of Haiti on behalf of the least developed country Members.

1. 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.

2. The situation of LDCs has not changed significantly since the last extension decision in 2005. 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.¹ From a long-term perspective, the marginalization 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.²

3. 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.³ Least developed countries have not been able to move beyond out-dated technologies that characterize their production processes and outputs although acquiring new technologies and building domestic capacity and knowledge base to be able to fully utilize 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.⁴

4. Article 66.1 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the "TRIPS Agreement") accorded least developed country Members a ten-year exemption from most obligations under the TRIPS Agreement in view of the special needs and requirements of the least

¹ UNCTAD 2011 Least Developed Countries Report.

² UNCTAD 2011 Least Developed Countries Report.

³ The Istanbul Programme of Action for the Least Developed Countries for the Decade 2011-2020 adopted by the Fourth UN Conference on the Least Developed Countries.

⁴ The Istanbul Programme of Action for the Least Developed Countries for the Decade 2011-2020 adopted by the Fourth UN Conference on the Least Developed Countries.

developed country Members, their economic, financial and administrative constraints and their need for flexibility to create a viable technological base.

5. This exemption was due to expire on 31 December 2005. On 27 June 2002, a TRIPS Council decision (IP/C/25) extended it until 2016 in relation to patents and test data protection related to pharmaceuticals. Without prejudice to this extension, 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, or until such a date on which they cease to be a least developed country Member, whichever date is earlier.

6. The least developed country 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.

7. 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, 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.

8. 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."

9. 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 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".

10. 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.

11. Least developed country Members of the WTO hereby submit a duly motivated request for an extension of the transitional period (that ends on 1 July 2013) for as long as the WTO Member remains a least developed country.

ANNEX

**PROPOSED DRAFT TRIPS COUNCIL DECISION ON THE EXTENSION OF
THE TRANSITION PERIOD UNDER ARTICLE 66.1 FOR
LEAST DEVELOPED COUNTRY MEMBERS**

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.
