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**Council for Trade-Related Aspects of  
Intellectual Property Rights**

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## **EXTENSION OF THE TRANSITION PERIOD UNDER TRIPS ARTICLE 66.1 FOR LEAST DEVELOPED COUNTRY MEMBERS**

### **COMMUNICATION FROM CHAD ON BEHALF OF THE LDC GROUP**

1. Least developed countries (LDCs) represent the poorest and weakest segment of the international community, characterized by constraints such as low per capita income, low level of human development, and economic and structural handicaps to growth that limit resilience to vulnerabilities.<sup>1</sup>
2. LDCs continue to face many difficulties in reaching their development goals, even as the period for implementing 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, comes to an end.
3. The United Nations Secretary General has observed that "...the least developed country group as a whole, which comprise 13% of the world's population, has not succeeded in combating poverty through high rates of economic growth, achieving structural transformation and building productive capacity, nor through increasing its global share of exports. The high degree of vulnerability from which the least developed countries suffer, both to economic and climate shocks, has caused significant setbacks to progress towards sustainable development and the achievement of the Sustainable Development Goals. Declining commodity prices have diminished the value of exports and foreign currency earnings, exacerbating debt burdens, while natural hazards, especially climate-related phenomena such as hurricanes, cyclones, flooding, drought and landslides, have caused devastating loss and damage to lives, livelihoods and infrastructure."<sup>2</sup>
4. The COVID-19 pandemic has further exacerbated the challenges that the LDCs continue to face. The United Nations Department of Economic and Social Affairs in its analysis concludes that "COVID-19 threatens to have devastating consequences in LDCs. Health systems may be unable to cope with a precipitous increase in infections and these countries lack the resources to cope with the socio-economic consequences of lockdowns around the world. Unless bold policy actions are taken by the international community, achieving the Sustainable Development Goals (SDGs) by the 2030 deadline will likely slip out of reach".<sup>3</sup> The lockdown and slump in global demand has particularly impacted LDCs that are dependent on exports of finished products.
5. It is evident that the COVID-19 pandemic will have far-reaching implications for the global economy and especially for LDCs including those on the path to graduation. Exports of LDCs are anticipated to be severely affected, primary commodities prices are in decline, supply chains

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<sup>1</sup> 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.

<sup>2</sup> Implementation of the Programme of Action for the Least Developed Countries for the Decade 2011-2020

Report of the Secretary-General (A/75/72-E/2020/14)

<sup>3</sup> UN/DESA Policy Brief#66: COVID-19 and the least developed countries

disrupted, and the tourism industry largely at a standstill.<sup>4</sup> There is also strong likelihood of a balance of payments crisis in LDCs.<sup>5</sup>

6. A viable technology base is a crucial driver of productivity growth especially in the present era of digital economy. If developed and harnessed properly, it has great potential to change the development landscape of LDCs. However, LDCs have often not been able to move beyond outdated technologies that characterize their production processes and outputs. Acquiring new technologies and building domestic capacity and a 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 productive capacities in least developed countries.<sup>6</sup>

7. Importantly, LDCs lag significantly far behind in science, technology and innovation. Between 2011 and 2017, LDCs' research and development expenditure as a share of GDP was 0.6% or less, compared with more advanced economies, which have a value of approximately 2% of their much larger GDP.<sup>7</sup> If the current trend continues, LDCs risk being left further behind, given the increasing role of innovation and technology in the economic activity in the present day.<sup>8</sup>

8. The lack of domestic financial resources, high debt levels, and fragile health system presents a crucial challenge for the LDCs. What has emerged as a health crisis in the short term may well have far-reaching impacts on education, human rights, employment, food security, and economic development in the long term. Notwithstanding the health impacts, with commodity market turmoil, the pandemic presents a major and unprecedented economic crisis for LDCs. Oil, minerals, food and other commodities account for more than 70% of merchandise exports from LDCs<sup>9</sup>. The pandemic has undeniably pushed the LDCs out of the progress track and these countries will need much longer duration only to regain their current state of development. They will need to redesign many of their priorities to restart their journey. In the near future, implementation of TRIPS provisions will be much beyond the capacity of the LDCs.

9. Developing a viable technological base is a long-term process. LDCs need a continuing exemption from the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement") 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. To overcome the difficulties confronting LDCs, magnified manifold by the COVID-19 crisis, LDCs need maximum policy space *inter alia* to access various technologies, educational resources, and other tools necessary for development and to curb the spread of COVID-19 pandemic. Most intellectual property (IP)-protected commodities are simply priced beyond the purchasing power of least developed countries.

10. Article 66.1 of 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 developed country Members, their economic, financial and administrative constraints and their need for flexibility to create a viable technological base. Since then this exemption has been renewed on two occasions. On 29 November 2005, a TRIPS Council decision (IP/C/40) extended this general transition period until 1 July 2013. Subsequently on 11 June 2013, TRIPS Council decision (IP/C/64) renewed the transition period until 1 July 2021.

11. Least developed countries continue to face serious economic, financial and administrative constraints and are still struggling with various challenges to uplift the socio-economic conditions with very limited capacities. Such a situation is restricting them to divert resources from other areas,

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<sup>4</sup> UN/DESA Policy Brief#66: COVID-19 and the least developed countries

<sup>5</sup> UN/DESA Policy Brief#71: COVID-19 pandemic deals a huge blow to the manufacturing exports from LDCs.

<sup>6</sup> 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.

<sup>7</sup> Implementation of the Programme of Action for the least developed countries for the Decade 2011-2020

Report of the Secretary-General (A/75/72-E/2020/14)

<sup>8</sup> Implementation of the Programme of Action for the least developed countries for the Decade 2011-2020

Report of the Secretary-General (A/75/72-E/2020/14)

<sup>9</sup> UN-OHRLLS: World's most vulnerable countries lack the capacity to respond to global pandemic; <http://unohrlls.org/covid-19/>

where there is utmost necessity to improve the socio-economic condition of their people. The COVID-19 pandemic has further exacerbated the situation in those countries. 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." Since the rationale behind the transition period under Article 66 is to provide LDCs maximum flexibility (by exempting them from most TRIPS obligations) in view of their constraints, special needs and requirements including a viable technological base, the need to extend the transition period will continue to exist so long as these elements have not been addressed.

12. Essentially the provision laid down in Article 66.1 acknowledges that the TRIPS Agreement may not be conducive to the social and economic circumstances of LDCs and that LDCs need to have policy space and flexibility to address their development challenges and to create a viable technological base. Moreover, implementation of TRIPS involves substantial economic, financial and administrative costs, which may be untenable for LDCs.

13. It has not been determined when individual LDCs will be able to overcome their economic, financial, and administrative constraints that prevent them from applying the provisions of the TRIPS Agreement and from creating a viable technological base. Therefore, the transition period should remain in force for as long as a country remains a least developed country.

14. Sustainable and smooth graduation is a challenge for the LDCs. The 2016 UNCTAD LDC report summarises some of the challenges faced by LDCs: "*The process of development beyond graduation merits much greater attention, even during the pre-graduation period — that graduation itself should not be the primary focus of LDCs and their development partners, but should rather be viewed as one milestone in LDCs' longer-term sustainable development. Graduation does not represent a solution to all the graduating country's development challenges; neither does a new set of challenges emerge out of nothing at this point. Rather, the challenges of the post-graduation period are a continuation of those that characterized the pre-graduation period*"<sup>10</sup>. Addressing this concern in the WTO requires that LDC-specific flexibilities continue to apply after graduation, to be phased out progressively. Such approach would also be consistent with UN resolutions 59/209 of 2004 and 67/221 of 2012 as well as the LDCs Buenos Aires Ministerial Declaration of 2017. In this spirit, the LDCs after graduation must be exempted for additional years from applying the provisions of the TRIPS Agreement.

15. Thus, if the need for developing productive capacities is a permanent need for all LDCs, including graduating LDCs, the availability of a sound and viable technological base is indispensable. Hence, in order to build a sound and viable technological base, all LDCs, including graduating LDCs, would need a further extension of the transition period with maximum flexibility.

16. Least developed countries hereby submit a duly motivated request for an extension of the transitional period (that ends on 1 July 2021) and request the TRIPS Council to adopt the annexed decision text.

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<sup>10</sup> The UNCTAD Least Developed Countries Report 2016, p. 126

**ANNEX****EXTENSION OF THE TRANSITION PERIOD UNDER TRIPS ARTICLE 66.1 FOR  
LEAST DEVELOPED COUNTRY<sup>1</sup> MEMBERS****DECISION OF THE COUNCIL FOR TRIPS**

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

*Having regard* to the transition period for least developed country Members provided for in paragraph 1 of Article 66 of the TRIPS Agreement (the "Agreement");

*Recalling* that this transition period was extended for a second time by the Decision of the Council for TRIPS of 11 June 2013 (IP/C/64) until 1 July 2021;

*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 2021;

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

*Having regard* to the duly motivated request from least developed country Members, dated 1 October 2020, for a further extension of this transition period, contained in document IP/C/W/668;

*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;

*Recalling* the United Nations General Assembly resolutions 59/209 of 20 December 2004 and 67/221 of 21 December 2012, inviting all Members of the World Trade Organization to consider extending to graduated least developed country Members the existing special and differential treatment measures and exemptions available to least developed country Members for a period appropriate to the development situation of the country;

*Recognizing further* that sustainable graduation of least developed country Members requires the continued development of productive capacities by allowing maximum flexibility to least developed country Members;

*Noting with concern* the threat to human health, safety and well-being caused by the coronavirus disease 2019 (COVID-19) pandemic, which has spread all around the globe, as well as the unprecedented and multifaceted effects of the pandemic, including the severe disruption to societies, economies, global trade and travel and the devastating impact on the livelihoods of people;

*Noting with concern* the reversal of progress towards sustainable development due to the long-lasting economic impacts of the COVID-19 pandemic on least developed country Members;

*Recognizing* that individual LDCs are yet to overcome their economic, financial and administrative constraints that prevent them from applying the provisions of the Agreement;

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<sup>1</sup> As designated by the United Nations

*Decides* as follows:

1. A least developed country Member shall not be required to apply the provisions of the Agreement, other than Articles 3, 4 and 5, as long as the Member remains in the category of least developed country and for a period of twelve years from the date of entry into force of a decision by the UN General Assembly to exclude the Member from the least developed country category.
  2. This Decision is without prejudice to the right of least developed countries to seek further extensions of the period provided for in paragraph 1 of Article 66 of the Agreement.
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