

May 20, 2013

An Open Letter to the Chair of the Council on Trade Related Intellectual Property Rights (TRIPS): Alfredo Suescum, Ambassador of Panama to the World Trade Organization (WTO)

Dear Ambassador Suescum,

We are outraged with the manner in which informal consultations are being conducted on the issue of extension of the LDC's transition period. We find the current process to be unfair and prejudicial to the interests of the LDCs, the poorest and most vulnerable segment of the international community.

The LDC's request has obtained extensive support from the developing world but the supporters of the LDC's request have not been invited to participate in the current on-going consultations. Instead, the consultations have been limited to developed countries (that are opposed to the LDCs request) and to the LDC Group. It is outrageous that developing countries that have supported the LDC request (which together with the LDCs form the vast majority of actual members of the WTO), are being prevented from participating in the consultations. As a result you are depriving LDCs of their allies, while attempting to overwhelm the negotiating capacity of the poorest members of the WTO by placing them in an unfair position where they have to face the united might of the developed countries. Clearly the consultations have been designed so that the outcome will fail the LDCs.

In addition, the LDC request for an extension of the transition period to defer implementation of the TRIPS agreement has been made as per Article 66.1 which states WTO members SHALL grant an extension once LDCs submit a "duly motivated request". Thus, developed countries are in violation of WTO rules even to demand *negotiations* to the terms of the extension decision. We refer you to a [letter](#) sent by 130-plus legal and other academics from high-, middle-, and low-income countries who specialize in international intellectual property and trade law, development studies, human rights, and other related disciplines which reiterates this legal mandate. It is a violation of your supposedly "neutral" role as the Chair to allow for negotiations to occur, when adherence to the rules-based system would necessitate that you facilitate the granting of the extension as requested by the LDCs in their duly motivated request IP/C/W/583, as mandated by Article 66.1 of the TRIPS agreement.

Further, we find it is unconscionable that you are enabling negotiations of conditionalities in the extension decision, which will greatly minimize or nullify the benefit of the transition period. Developed countries are demanding that LDCs agree not to dismantle any existing TRIPS-complaint legislation, through a variety of convoluted language options. Such demands are illegitimate as they alter the nature of rights LDCs are entitled to during the transition period and conflict with Article 66.1. We are also concerned that the consultations are facilitating developed countries' blatant disregard of the rationale of the transition period that is explicitly stated in Article 66.1 of TRIPS (i.e. to provide flexibility to LDCs to overcome their constraints and to develop a viable technological base) and accommodating language that will commit LDCs to become TRIPS compliant irrespective of their capacities and technological development.

We would like to stress that as the Chairman of the TRIPS Council, you have a solemn duty to ensure that the terms of the extension decision do not violate WTO rules or conflict with the rationale and the full rights LDCs are entitled to under Article 66.1 of the TRIPS Agreement.

We also reiterate that the LDC request has received massive support from all segments of society.

Apart from strong support developing countries advocated at the last TRIPS Council meeting,¹ many civil society groups (representing millions)², industry³, academics⁴, UN agencies⁵ have also firmly supported the approval of an unconditional extension of the transition period for as long as a country remains a LDC. They have rejected the notion that implementation of the TRIP Agreement benefits LDCs and supported LDCs' right to roll back existing intellectual property rules should they be adverse to their needs and interests.

They have also supported that the duration of the extension be for as long as LDCs remain LDCs as their conditions are terribly poor. For example more than half of the LDC population lives on less than \$1.25 (PPP) per day; adult literacy rate in LDCs is on average at 60.7%, with gross enrolment in tertiary education at about 6.6% while primary school dropout rate at 40.9 % of the population; only 1.7 per 100 people have personal computers, while about 5 out of 100 have access to the worldwide network; more than half of the LDC population do not have access to electricity, water or sanitation facilities. The productive capacities in LDCs are also extremely limited and they tend to be at the bottom of all innovation/technology indices. These conditions suggest that the proposed time-frame is not only practical but also necessary. Short time-frames such as that currently proposed by developed countries (e.g. 5 years) cannot be the basis of the consultations. We stress that it is your duty to ensure that the LDCs are extended the time-frame they have requested.

Finally we specifically refer to you the letter sent on 21st February, 2013 by 376 civil society organizations from nearly every member of the WTO, demanding that WTO members immediately grant the extension as requested by the LDCs, without conditionalities. On behalf of those 376 organizations and their hundreds of millions of members across the globe, we demand that you immediately cease facilitating the bullying of the LDCs in the TRIPS negotiations, and instead facilitate the immediate and unconditional granting of the extension, as requested by the LDCs.

Sincerely,

Our World Is Not for Sale (OWINFS) network

LDC Watch



¹ See http://www.twinside.org.sg/title2/intellectual_property/info.service/2013/ipr.info.130301.htm and <http://www.ip-watch.org/2013/03/06/wto-wide-support-for-ldc-trips-transition-extension-with-a-hitch/>

² See Civil Society Letter at <http://www.ip-watch.org/weblog/wp-content/uploads/2013/02/CSO-Letter-Supporting-Extension-of-LDCs-Transition-Period.pdf> and See Statement of Electronic Information for Libraries (EIFL) at <http://www.eifl.net/eifl-statement-support-lcd-trips-waiver>.

³ See statement by Computer & Communications Industry Association (CCIA) at <http://www.cciainet.org/?sid=5&artid=363&evtflg=False>

⁴ See Global Academics Letter to WTO Members on TRIPS Extension at <http://infojustice.org/archives/29370>

⁵ See <http://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2013/february/20130226prtrips/> and http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2013/JC2474_TRIPS-transition-period-extensions_en.pdf