

**NATIONS UNIES**  
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**PROCEDURES SPECIALES DU**  
**CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS**  
**OFFICE OF THE UNITED NATIONS**  
**HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE**  
**HUMAN RIGHTS COUNCIL**

**Mandate of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.**

REFERENCE: OL Health (2002-7)  
OTH 2/2013

8 March 2013

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health pursuant to Human Rights Council resolution 15/22.

In this connection, I would like to bring to your Excellency's Government's attention information I have received concerning the request made by the delegation from Haiti on 5 November 2012 (IP/C/W/583), on behalf of the least developed country (LDC) Group of the WTO Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS Council). Pursuant to article 66.1 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). The request reportedly seeks an extension of the transitional period (that ends on 1 July 2013) for as long as the WTO Member remains a least developed country. According to the request, LDC Members would not be required to apply the provisions of the Agreement, other than Articles 3, 4 and 5, until they cease to be a LDC Member.

I note that the TRIPS Council is scheduled to meet from 5 to 6 March 2013 to discuss the request. I note that the current transition period for LDCs, granted under article 66, will expire on 1 July 2013 and the waiver from implementing or enforcing patents and test data obligations with regard to pharmaceutical products will expire on 1 January 2016. I am writing to express my strong support for unconditional extension of the TRIPS transition period under Article 66.1 for LDC Members, until they cease to be an LDC Member.

According to article 66.1, in view of the special needs and requirements of LDC Members, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base, such Members are not required to apply the provisions of the TRIPS Agreement other than Articles 3, 4 and 5, for a period of 10 years from the date of application. It adds that the TRIPS Council for TRIPS "shall, upon

duly motivated request by a least-developed country Member, accord extensions of this period”.

LDC Members are characterized by high rates of poverty and high burden of communicable and non-communicable diseases. According to World Health Organization, an estimated 4.6 million people needed anti-retroviral therapy in LDCs in 2010, but only 2.5 million could access it. Low and middle-income countries account for over 80 per cent of cardiovascular and diabetes deaths. Without the extension of the transition period, LDC members would be required to adopt and enforce strict intellectual property laws without the support of a sufficiently strong economy or the presence of adequate infrastructure and capacity. The consequent increase in medicine prices would become a serious barrier to access to medicines, including essential medicines, by those who require them most.

The extension of the transition period would help LDC Member in overcoming significant challenges, which require long-term and locally appropriate strategies, flexible policy and increased financial investment in domestic industries over decades. This is a more meaningful approach than the setting of arbitrary time periods. Furthermore, the public health exception under article 27.2 of the TRIPS Agreement, coupled with its affirmation in the Doha Declaration on the TRIPS Agreement and Public Health, confers a legitimate right on LDC Members to secure public health objectives in as much time as required, while imposing an obligation on developed countries to support and initiate efforts to increase the technological capacity of LDC Members.

Most Members of the TRIPS Council are States parties to the International Covenant on Economic, Social and Cultural Rights. They are therefore bound by the obligation to take joint and separate action to respect, protect and fulfill the right to health (article 12) and to ensure that international agreements do not adversely affect the implementation of the right to health. Availability and accessibility of quality health facilities, goods and services, including access to medicines, is an essential principle of the right to health. Access to essential medicines is a core obligation of the State and requires them to be available and affordable for all sectors of the population. Furthermore, as LDC Members are marked by a high disease burden and are therefore home to some of the most vulnerable population, special provisions should be made for the realization of their right to health.

I also note that the Global Commission on HIV and the Law in its final report observed the central role of excessive intellectual property laws in “exacerbating the lack of access to HIV treatment and other essential medicines”. The Commission recommended that WTO Members “indefinitely extend the exemption for LDCs from the application of TRIPS provisions in the case of pharmaceutical products”.

I urge the TRIPS Council to grant this, which is reportedly also supported by UNAIDS, UNDP, WHO, and civil society organizations around the world. Waiving the obligation of LDC Members to comply with the TRIPS obligations would enable them to continue working towards making medicines more available and economically accessible

to all, especially vulnerable populations, which is consistent with the public health exception under the TRIPS Agreement and in accordance with the right to health.

Please accept, Excellency, the assurances of my highest consideration.

Anand Grover  
Special Rapporteur on the right of everyone to the enjoyment of the  
highest attainable standard of physical and mental health