Fact Sheet: Extending the TRIPS Waiver for Least Developed Countries

Promoting health, development, education, and environmental consideration

Haiti recently submitted, on behalf of the Least Developed Country (LDC) members of the World Trade Organization (WTO), a request to extend the transition period for LDCs to implement the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement. The TRIPS Agreement sets out minimum standards for intellectual property (IP) protection and enforcement that all WTO Members must implement in their national laws. When it was signed TRIPS granted transition periods for both developing and Least Developed Countries. LDCs initial transition period was to have expired in 2005, but an extension was granted in 2005 until June 30, 2013. The Haiti proposal would simply extend this transition period until countries "graduate" from LDC status—a proposal the TRIPS Council is obliged to pass according to WTO rules.

The "Least Developed Country" Category

LDCs are the most impoverished and economically vulnerable countries—officially classified by the United Nations based on three factors: lowest income (GNI $ 1,190 per capita); poor human development indicators of nutrition, health, and literacy; and economic vulnerability. LDCs include countries such as Haiti, Bangladesh, and Zambia. While they comprise 880 million people, one eighth of the world's population, they subsist on 0.9% of the world total GDP. The transition period in the TRIPS Agreement was to protect LDCs in need of increased assistance, investment, and technology transfer from the burdens of granting and enforcing IP monopolies in order to enable them to "graduate" (as Botswana and Cape Verde have); the global goal is for at least half of LDCs to graduate in the next 10 years.

TRIPS & LDCs

The adoption of Intellectual Property Rules (IPRs) by developing countries means that they are no longer free to make use of technologies developed in wealthy countries without the permission of right holders. Nevertheless, developing countries were convinced to join the WTO because they were promised "special and differential treatment" that included increased investment and technology transfer from rich countries to LDCs under TRIPS. Article 66.1 of TRIPS provided for an initial ten-year extendable timeframe for them to implement TRIPS. It further provided that LDCs would be accorded extensions to this original transition period upon a "duly motivated request." Article 66.2 requires rich countries to support LDCs in obtaining technologies they need for development and economic growth—an obligation that most observers say has not been met.

In 2002, the LDCs were granted an extended waiver based on the "Doha Declaration on TRIPS and Public Health" saying they were not obliged to implement or to enforce patents and test data for pharmaceutical products until January 2016. Recognizing that LDCs were still likely to be negatively impacted by the full scope of TRIPS, a waiver for the full TRIPS agreement was granted in 2005 that extends through ***June 2013***. If it is not extended, LDCs will be under an immediate obligation to implement TRIPS (pharmaceuticals in a few years). The short term and long-term impacts of such an obligation would be harmful to development.

The New LDC Request

LDCs submitted a proposal at the November 2012 TRIPS Council meeting, requesting that all LDCs be provided with a full waiver on TRIPS implementation until they graduate from the LDC status. This would include giving LDCs the right to eliminate any IP provisions that had already been implemented, which is important for countries that find that old IP rules—some dating from the colonial era—are inhibiting development. If agreed, the proposal would also extend the waiver issued to LDCs with regard to pharmaceutical-related provisions.

Wealthy countries have not taken a public position on the LDC request, though there are signs that certain developed countries will refuse to agree with the LDC request or may require onerous conditions, limited timeframe, etc.. In March 2013, the TRIPS Council will meet to take up the LDC group proposal. Civil society groups from across the world including Oxfam, Health GAP, Doctors Without Borders, Knowledge Ecology Intl., Public Citizen, and Third World Network have called on WTO Members to approve the LDC request in its current form.

KEY ISSUES AT STAKE

Access to affordable medicines. LDCs, by definition, face substantial health problems—often high rates of HIV and malaria, weak health systems, and massively insufficient health budgets. Implementation of TRIPS IP rules, as well as of rules that exceed TRIPS ("TRIPS-plus") drives up the price of medicines by allowing key medicines to be patented—putting life-saving technology out of the reach of patients and national health programs. IP rules could also undermine nascent industries in LDCs. Some LDCs are working with foreign partners to upgrade their domestic pharmaceutical capacities; in Bangladesh and Uganda, for example, the Indian generics firm Cipla has set up manufacturing facilities for quality, low-cost medicines that could be used domestically, or exported to other developing countries. Such activities could be interrupted if patents can be filed in those countries.

Access to educational resources. Although the need for affordable medicines is well known globally, LDCs also need access to other important public goods and technologies that are frequently blocked by IP. For example, students in LDCs need access to affordable educational resources and such access is routinely blocked by copyrights owned by textbook publishers. Similarly, LDC researchers need access to the latest scientific information to adapt new technologies and to pioneer innovations meeting unmet local needs. Software, textbooks, and academic journals are key items where copyright is a determining factor in pricing and access. For instance, a reasonable selection of academic journals is far beyond the purchasing budgets of university libraries in most LDCs.

Access to agricultural goods. The rights of small-scale farmers that dominate LDCs agriculture system can also be hampered as IP can hinder their traditional farming practices by preventing free exchange and use of protected seeds and varieties. IP systems for plant variety protection can also hinder access to affordable agricultural inputs, increase erosion of agro-biodiversity, which in turn affects food security.

Access to Green Technology. Many of the break-through green technologies that are energy-saving and that control or mitigate climate change are unavailable in LDCs. Further, many of them are not adapted for use in low-resource and tropical settings and patents will stand in the way of local companies and non-profits adapting them where they're needed most. For LDCs to be able to deal with the climate challenges effectively, they will need prompt access to affordable technologies, which requires policy space to overcome IP barriers.

TRIPS hinders development in the case of LDCs. Many economists have documented how pushing LDCs to adopt TRIPS is unlikely to support development—indeed today's wealthy countries largely built their technological capacity by copying and experimenting with proprietary technologies developed elsewhere without the barrier of overly broad IPRs. In order for IP regimes to have any role in stimulating investment and R&D, a technological and knowledge base must first be built and there must be a functioning market. Such conditions do not yet exist in most LDCs. LDCs should have policy space to access to the same path to development that was previously used by rich countries including the U.S.

Don't LDCs already have IP systems? Many LDCs have implemented parts of the TRIPS agreement voluntarily—some as a simple legacy of colonial-era laws and others through conscious choice. Under the exception LDCs remain free to adopt whatever IP provisions they find them appropriate. But LDCs should *not* be forced to adopt the whole TRIPS system immediately—they need the space to prioritize development. LDCs should also *not* be forced to keep in place any existing laws that prove to be a barrier to development—which wealthy countries have demanded in the past in exchange for the 2006-2013 extension.

Instituting TRIPS-compliant IP systems would be very expensive for LDCs. TRIPS implementation costs countries an initial outlay of anywhere between USD 250K and USD 1m, plus annual expenditures of as much as USD 1m.[1] LDCs should be directing their scarce economic resources towards more pressing regulatory and other essential needs. For example, LDCs could achieve a greater return on their spending by directing resources towards improvement of the regulatory systems that ensure medicine quality and safety, or the education system.

[1] http://www.iprcommission.org/papers/text/final_report/chapter7htmfinal.htm