



Statement by the South Centre on the extension of the transition period for LDCs under the TRIPS Agreement

30 June 2021

The Council for the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) adopted on 29th June a decision extending the transition period for Least Developed Country (LDC) Members to comply with the TRIPS Agreement obligations until 2034 or the prior graduation of a member from the LDC category, whichever date is earlier.

The South Centre regrets that the decision does not meet the scope and duration of the transition period that the LDCs had requested.

The LDC duly-motivated request for extension of the general transition period contained two elements. LDCs requested an extension of the transition period until the graduation of each LDC from this category, rather than a fixed term that would apply to all LDCs as agreed in past extensions. This was a very sound request because LDCs will continue to face obstacles to build a viable technological base while the conditions that place them in this category remain, and their vulnerabilities have increased in the recent years. Secondly, LDCs requested that the transition period be extended for a limited time after graduating from LDC status. The status of newly graduated LDCs brings new challenges such as loss of potential trade and other benefits that can impact on the efforts towards increasing their technological base. Moreover, vulnerabilities faced by LDCs, aggravated by the COVID-19 pandemic impacts, may remain despite achievement of the statistical criteria of graduation. Two United Nations General Assembly (UNGA) resolutions had called upon the World Trade Organization (WTO) to ensure the availability of LDC specific supporting measures such as the TRIPS transition period even after LDC graduation.¹ This call, however, has been ignored.

It is unfortunate that these two critical elements of the duly-motivated request by LDCs did not receive support from the developed countries that engaged in consultations with the LDCs. The negotiation process was not optimal. Discussions on the decision text began belatedly despite the fact that the duly-motivated request by the LDC group had been submitted in October 2020. This meant that there was limited time to find consensus as the term of the current transition period ends on 1 July 2021.

The decision, as adopted by the Council, will go now to the General Council for adoption. Notwithstanding some positive elements (the period is longer than in past extensions; LDCs shall not be prevented from making full use of the TRIPS flexibilities), the WTO has lost a significant opportunity to

¹ See UN, G.A. Res. 59/209, 20 December 2004. Available from <https://undocs.org/A/RES/59/209>; G.A. Res. 67/221, 21 December 2012. Available from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/491/86/PDF/N1249186.pdf?OpenElement>.

make a realistic decision in the light of the current level of technological development of LDCs and of the need -recognized in the referred to UNGA resolutions- for a transition beyond the graduation date. A longer extension would have conferred legal certainty to the LDCs of the availability of maximum flexibilities for the implementation of the TRIPS Agreement until such time as they are able to overcome their multiple vulnerabilities and challenges so as to develop a sound and viable technological base. This was necessary, in particular, in a context of reversal of the development gains that LDCs have encountered in the wake of the global COVID-19 pandemic, the increased need for global support for LDCs on multiple fronts including in easing the disproportionate burden of compliance with international disciplines, and the commitment under the 2030 Agenda for Sustainable Development to not leave anyone behind.²

² For an analysis of the need for extension of the TRIPS transition period for LDCs beyond graduation see Nirmalya Syam, "Need for Extension of the LDC Transition Period under Article 66.1 of the TRIPS Agreement until Graduation and Beyond", Policy Brief, No.88 (Geneva, South Centre, March 2021). Available from <https://www.southcentre.int/wp-content/uploads/2021/03/PB-88.pdf>.