

TRANSITION PERIOD FOR LDCS

Sangeeta Shashikant

Third World Network

Legal Basis for LDC Transition Periods

➤ Article 66 of TRIPS:

“**In view of the special needs and requirements of LDCs...** their economic, financial and administrative constraints and **their need for flexibility to create a viable technological base...** Members **shall not** be required to apply the provisions **for a period of 10 years**”

Note: For LDCs, TRIPS Agreement was to come into force in 2006. But recognizing the vulnerability of LDCs, the TRIPS Agreement built in a renewable transition period.

➤ Article 66.1

“The Council for TRIPS **SHALL, upon duly motivated** request by a least developed country Member, **accord extensions** of this period”

Transition Periods

2 types of transition periods currently available:

A) General Transition Period: For All TRIPS Provisions

B) Specific Transition Period For Pharmaceutical products

A. General Transition Period (For all TRIPS Provisions)

- **Oct. 2005**, LDC group requested an extension of transition period as per Article 66.1 of TRIPS.
- **Nov 2005**, LDCs as a group were granted an extension of the transitional period for 7.5 years i.e. “**until 1 July 2013** or until such a date on which they cease to be a least developed country Member whichever date is earlier” (WTO doc. IP/C/40).
- **Nov. 2012**, LDC Group requested a further extension under Article 66.1 of TRIPS.
- **11 June 2013**, WTO TRIPS Council granted a further extension
“**Least developed country Members shall not be required to apply the provisions of the Agreement**, other than Articles 3, 4 and 5, **until 1 July 2021**, or until such a date on which they cease to be a least developed country Member, whichever date is earlier.” (WTO Doc. IP/C/64)
 - **LDCs may rollback their IP laws.**
 - **Without prejudice to further extension**

B. Pharmaceutical Transition Period

- **Paragraph 7 Doha Declaration:** LDCs do not have to implement or apply Sections 5 (patents) and 7 (protection of undisclosed information) of Part II of the TRIPS Agreement or to enforce rights provided for under these Sections until 1 January 2016.
- **February 2015:** LDCs submitted a duly motivated request pursuant to Article 66.1 of the TRIPS Agreement seeking a transition period for pharmaceutical products for as long as the WTO Member remains a least developed country.
- **6 November 2015:** pharmaceutical transition period extended until 1 January 2033. Waivers from mailbox and exclusive marketing rights granted.

***TRIPS Council Decision 6 November 2015* (WTO Doc. IP/C/73)**

Decides as follows:

Least developed country Members **will not be obliged**, with respect to pharmaceutical products, **to implement or apply Sections 5 [patents] and 7 [protection of undisclosed information]** of Part II of the TRIPS Agreement **or to enforce rights** provided for under these Sections **until 1 January 2033**, or until such a date on which they cease to be a least developed country Member, whichever date is earlier.

This decision is made **without prejudice** to the right of least developed country Members **to seek other extensions** of the period provided for in paragraph 1 of Article 66 of the TRIPS Agreement.

***General Council Decision 6 November 2015* (WTO Doc. WT/L/971)**
LDCs granted waivers from Article 70.8 and 70.9 of the TRIPS Agreement until 1 January 2033. Means LDCs **do not have to implement mailbox** (mechanism for receiving patent applications) **and exclusive marketing right.**

Importance of Using Pharmaceutical Transition Period

- For LDCs – **most important TRIPS flexibility**
- A major barrier to access to affordable medicines removed.
- Key to development of local manufacturing capacity.

e.g. India....no patent protection for pharmaceutical product between 1970 - 2005....one of the critical government policy that supported developed of a scientific and technological base. They have a multibillion dollar generic industry, which provides for local and foreign markets and contributes to the economy.