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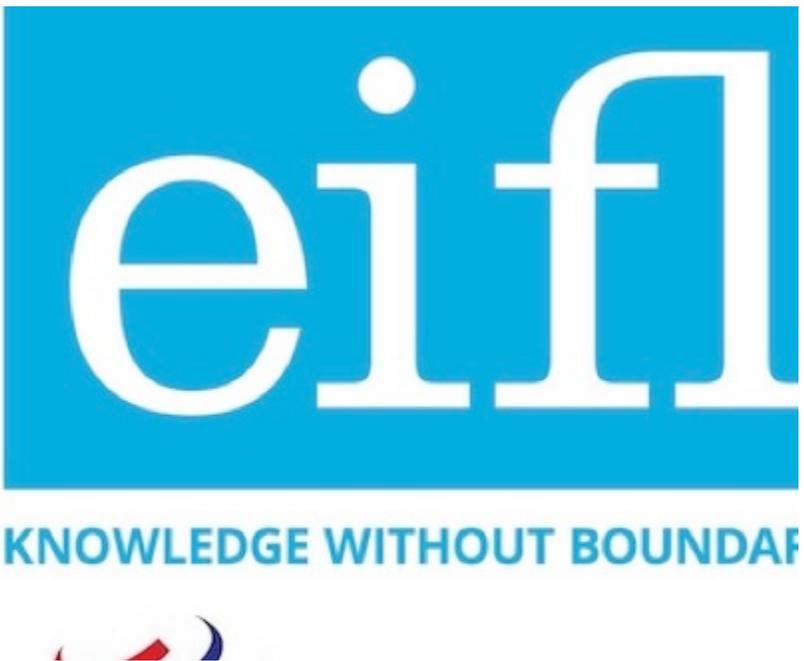
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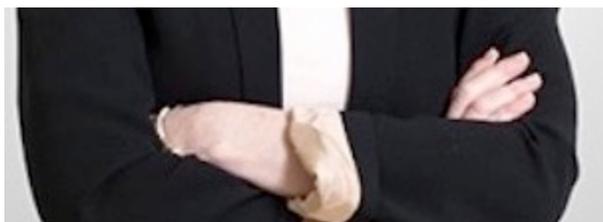


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OPINION





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Collage of pictures of Teresa Hackett, EIFL-logo and WTO-logo, Source: EIFL

WTO Extends Measures for LDCs to Access Knowledge, But Why not Go the Whole Way?

Viewpoint by Teresa Hackett

The writer is Copyright and Libraries Programme Manager at Electronic Information for Libraries (EIFL (<https://www.eifl.net/>)). She oversees the development and delivery of a unique, copyright service for libraries in developing and transition countries, providing specialist resources in multiple languages, and individual assistance on legislative issues.

VILNIUS, Lithuania (IDN) — When members of the World Trade Organization (WTO) recently agreed to extend the transition period by which Least Developed Countries (LDCs) must apply WTO rules on intellectual property, it was a welcome decision.

However, it fell short of what LDCs had requested, and left open the wider issue of the need for special and differential treatment after a country graduates from LDC status, especially relevant given the fallout from the COVID-19 pandemic.

The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), adopted in 1995, is the most comprehensive multilateral agreement on intellectual property (IP). It brought together seven different aspects of IP including copyright and related rights, trademarks, geographical indications and patents.

And it broke new ground by establishing a mechanism for the multilateral enforcement of IP rights (where a country can bring a case to the WTO if they believe another country is in violation of trade rules).

Like other WTO agreements, TRIPS applies to all WTO Members who are obliged to comply with certain mandatory standards of IP protection and enforcement.

However, in recognition of “the special needs and requirements of least-developed country Members, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base”, Article 66.1 permits LDCs to

delay implementation of the substantive rules on IP, including copyright.

The current general transition period had been due to expire on 1 July 2021. (A separate, special transition period for pharmaceutical products runs until 2033).

In October 2020, Chad, on behalf of the WTO LDC Group, duly made a request for a further extension of the general transition (there were two previous extensions in 2005 and 2013).

Specifically, Chad called on Members to extend the transition period for LDCs as long as a country remains an LDC, and for an additional period of 12 years after a country graduates to developing country status.

Policy space – for 13 years

The global library community welcomed the decision by the TRIPS Council on 29 June 2021 to extend the transition period for LDCs for a further 13 years to 1 July 2034.

However, there was no consensus on the request to allow the transition to run for as long as a country remains an LDC. But why not? LDCs represent one of the most vulnerable segments of the international community, and the need for special measures to address the socio-economic circumstances of LDCs will always be important. Article 66.1 essentially acknowledges this fact.

LDCs are characterized by constraints such as low per capita income, a low research and industrial base and weak education systems, and they lag far behind in expenditure on science, technology and innovation. They are highly vulnerable to social, economic and environmental shocks resulting from climate change.

The COVID-19 pandemic has exacerbated the challenges, threatening to undo progress made by LDCs over recent decades towards sustainable development. In fact, the United Nations Development Programme (UNDP) estimates that global human development, as the combined measure of the world's education, health and living standards, is on course to decline for the first time in 30 years.

It is also estimated that the number of people living in extreme poverty could increase by nearly 130 million by 2030.

Now and for years to come, LDCs need maximum policy space to access technologies and educational resources needed to support research and development - the request by Chad notes that most IP-protected commodities are priced well beyond the purchasing power of least developed countries.

Supporting national priorities requires long-term planning

These issues matter to libraries and the people who rely on them. Libraries are a core part of the education, research, and cultural infrastructure in any country. A viable technological and industrial base requires a strong R&D sector, which in turn is created and fostered by a quality education system.

All rely on access to up-to-date, global information resources and learning support services that are typically provided by academic, research and public libraries.

Maximum 'policy space' in the copyright context enables governments to freely craft exceptions to use copyright-protected content in support of key national priorities on education, literacy, research and innovation without fear of sanction or breaking trade rules. For example, to fully facilitate classroom use and online education, support cutting-edge research, and enable the use of digital tools, such as text and data mining (TDM) for medical and scientific discovery.

Short extensions of the transition period, that require LDCs to make repeated requests every decade or so, do not facilitate long-term planning nor take into account the huge strides that must be made to build effective capacity in science, technology and innovation.

The international trade community should agree, for once and for all, to a permanent extension for as long as a country remains an LDC.

Enabling a smooth transition—a contested matter

The other issue upon which Members of the TRIPS Council could not agree was the request to extend the transition for an additional 12 years after a country graduates from LDC to developing country status. (Currently, 12 countries are scheduled for graduation).

The problem is that after leaving the LDC category, countries lose access to special support measures and flexibilities, such as enhanced technical assistance, preferential market access, and special and differential treatment provisions in WTO rules, such as TRIPS Article 66.1.

The abrupt cessation of such supports can be highly disruptive. Measures to cushion the process would act as an incentive for a country to graduate, enable a smooth adjustment to their new developing country status, and avoid the risk of falling back into the LDC category, especially high as a result of the COVID-19 pandemic.

The UN Inter-agency Task Force on Financing for Development

(<https://developmentfinance.un.org/>) has warned of “a lost decade for development – one most pronounced in the Least Developed Countries”.

Since Members of the TRIPS Council failed to agree on this issue, it will be taken forward at the General Council, the WTO’s highest-level decision-making body.

Next steps at WTO’s General Council

A major conference, setting out an ambitious new 10-year programme of action for LDCs, will take place in Doha in January 2022. Now is a critical time for the WTO to align with efforts to support the LDCs as the final decade of action for the 2030 agenda gathers pace.

In December 2020, the LDC Group had presented a parallel proposal to the General Council on post-graduation measures that would apply to all WTO agreements (not only TRIPS). They also presented the text of a draft decision for the Ministerial Conference (MC12) that will take place in Geneva from 30 November to 3 December 2021.

The General Council did not make any decision at its December 2020 meeting. The EU and US requested clarifications on the proposal, and consultations are ongoing.

Let’s hope that the issue of post-graduation measures can be agreed upon in the interests of common sense, mutual benefit and global solidarity. [IDN-InDepthNews – 19 October 2021]

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