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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION on the position to be taken on behalf of the European Union in the Council for Trade-Related Aspects of Intellectual Property Rights of the World Trade Organization

COUNCIL DECISION (EU) 2021/...

of ...

**on the position to be taken on behalf of the European Union
in the Council for Trade-Related Aspects of Intellectual Property Rights
of the World Trade Organization**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 207(4), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement establishing the World Trade Organization, including the Agreements in Annexes 1, 2 and 3 to that Agreement, ('the Marrakesh Agreement') was concluded by the Union by Council Decision 94/800/EC¹ and entered into force on 1 January 1995.
- (2) Pursuant to Article 66(1) of the Agreement on the Trade-Related Aspects of Intellectual Property Rights ('the TRIPS Agreement'), included in Annex 1C to the Marrakesh Agreement, the Council for Trade-Related Aspects of Intellectual Property Rights of the World Trade Organization ('the TRIPS Council') is to, upon duly motivated request by a least-developed country (LDC) Member, accord extensions of the transitional period during which LDC Members are not required to apply the provisions of the TRIPS Agreement, other than Articles 3, 4 and 5.
- (3) The existing transitional period, as agreed in the Decision of the TRIPS Council of 11 June 2013, is due to expire on 1 July 2021.
- (4) On 1 October 2020, Chad, on behalf of the LDC group, formally submitted a request for an extension of the transitional period.

¹ Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ L 336, 23.12.1994, p. 1).

- (5) The TRIPS Council, during its formal session on 8 and 9 June 2021, is to adopt a decision regarding the request for an extension of the transitional period under Article 66(1) of the TRIPS Agreement for LDC Members ('the TRIPS Council's Decision').
- (6) It is appropriate to establish the position to be taken on the Union's behalf in the TRIPS Council, as the TRIPS Council's Decision will be binding on the Union.
- (7) LDC Members represent the most vulnerable segment of the international trade community, facing economic, financial and administrative constraints. LDC Members need to have policy space and flexibility to address their development challenges and further time to implement the TRIPS Agreement.
- (8) A certain level of intellectual property rights (IPR) protection and enforcement is beneficial to LDC Members because IPRs are a catalyst for innovation and an important tool for sustainable development. Some LDC Members have already taken steps towards implementation of the TRIPS Agreement and need to be encouraged not to decrease the existing level of IPR protection and enforcement.
- (9) An extension of the transitional period without a time limit, as proposed by the LDC group, would slow down the process of gradually integrating LDC Members, as members of the multilateral trading system, in the international IP system on the basis of the minimum requirements provided in the TRIPS Agreement.

- (10) Accordingly, it is appropriate to extend the transitional period for the implementation of the TRIPS Agreement, other than Articles 3, 4 and 5, for LDC Members for a limited period of time not exceeding 10 years.
- (11) Should Members of the World Trade Organization support the extension of the transitional period under Article 66(1) of the TRIPS Agreement for a longer period or without a time limit, the Union should not stand in the way of reaching a consensus.
- (12) The LDCs' request for an additional period of 12 years exemption calculated from the date on which an LDC Member graduates from the LDC category appears to go beyond the scope of Article 66(1) of the TRIPS Agreement as that Article only applies to the extension of the transitional period for the implementation of certain provisions of the TRIPS Agreement by LDC Members. Therefore, the request to grant an exemption for non-LDC Members as part of a TRIPS Council's Decision under Article 66(1) of the TRIPS Agreement should not be supported,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the Council for Trade-Related Aspects of Intellectual Property Rights of the World Trade Organization ('the TRIPS Council'), during its formal session on 8 and 9 June 2021, shall be as follows:

- (a) LDC Members are not to be required to apply the provisions of the Agreement on the Trade-Related Aspects of Intellectual Property Rights ('the TRIPS Agreement') other than Articles 3, 4 and 5, for a limited period of time not exceeding 10 years, or until such date on which they cease to be an LDC Member, whichever date is earlier;
- (b) should Members of the World Trade Organization support the extension of the transitional period under Article 66(1) of the TRIPS Agreement for a longer period or without a time limit, the Union is not to stand in the way of reaching a consensus;
- (c) LDC Members are to ensure that any changes in their laws, regulations and practice made during the additional transitional period do not result in a lesser degree of consistency with the provisions of the TRIPS Agreement. However, should Members of the World Trade Organization not support such an obligation of the LDC Members, the Union is not to stand in the way of reaching a consensus;

- (d) the LDC Members' request for an additional period of 12 years exemption calculated from the date an LDC Member graduates from the LDC category is not to be supported as it falls outside the scope of Article 66(1) of the TRIPS Agreement.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at ...,

For the Council

The President
