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Open Letter to the Chair of the Council on Trade Related Intellectual Property Rights (TRIPS): Alfredo Suescum, Ambassador of Panama to the World Trade Organization (WTO)

Dear Ambassador Suescum,

Electronic Information for Libraries (EIFL) is an international not-for-profit organization dedicated to enabling access to knowledge through libraries in more than 60 developing and transition countries, including ten Least Developed Countries (LDCs).

We wish to express our concern at the conduct of the informal consultations taking place in Geneva regarding the request by LDCs for an unconditional extension of the transition period of the WTO TRIPS Agreement.

We fail to understand why the legitimate request by LDCs is subjected to consultations that appear to be aimed at forcing LDCs to accept conditions that will result in a dilution of their unconditional request. Article 66.1 clearly affirms the mandate of the TRIPS Council to accord extensions of the transition period upon receipt of a duly motivated request, thus recognizing the special requirements of LDCs and their need for policy flexibility.

We deplore any exclusion of developing countries (that gave widespread support to the LDC request at the TRIPS Council meeting on 5-6 March 2013)ⁱ from the consultations, a tactic that we believe serves to undermine the negotiating capacity of LDC members who represent the poorest and weakest segment of the international community, and who face serious financial and administrative constraintsⁱⁱ.

LDCs are requesting the freedom to tailor their IP systems until they graduate from LDC status in order to be able to grow economically viable industrial and technological sectors. While the goal is to halve the number of LDCs in the next 10 yearsⁱⁱⁱ, a study measuring Multidimensional Poverty - an index created in collaboration with UNDP's Human Development Report - illustrates the diversity of deprivations in health, education and living standards that face people in poor countries. For example if Nepal, Rwanda and Bangladesh continue progress at the current rate, multidimensional poverty will be halved in less than 10 years and eradicated in 20. In Ethiopia, an estimated 45 years is needed to halve multidimensional poverty; in other words, to achieve poverty levels equivalent to those Nigeria has now, and it will take Malawi 74 years to eradicate acute poverty as measured by the index^{iv}.

Such findings provide incontrovertible evidence of the need for the request, as expressed in the statement of the government of Malawi that it is not ready to implement the TRIPS Agreement. Ministry of Industry and Trade spokesperson, Wiskes Nkombezi, however “hoped the plea by LDCs for the extension of the waiver will be heeded and that rich countries, who are proponents of stringent adherence to the WTO Trips agreement will understand the economic and social environment compelling LDCs to seek these waivers”.^v

The findings are also a stark reminder, if one were needed, that the granting of a waiver for a limited time period, such as five years, is wholly unrealistic and amounts to a ratcheting up of pressure on LDCs to adopt TRIPS under the guise of being a development-friendly measure.

We strongly believe that LDCs must not be forced to adopt higher TRIPS standards of protection, such as for databases and the three-step test. LDCs should not have to take on costly obligations with regard to enforcement measures, such as the establishment of new criminal procedures and border controls. Instead scarce resources should be used to develop essential services, including investment in education and well-resourced libraries providing access to knowledge, acknowledged by the World Bank as a major factor in development^{vi}.

As you may know, the LDC request has received wide-ranging support including from Members of Congress of the United States^v, UN agencies^{vi}, legal academics^{vii}, industry^{viii} and civil society^{ix}, many of whom are dismayed at developments. We expect that the rules of the WTO and the rights of its members are fully upheld. As Chair of the Council on TRIPS, we look to your leadership to ensure that consultations are conducted in a spirit of fairness and equity. We believe that LDCs deserve no less from the rest of the international community.

Yours sincerely



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Electronic Information for Libraries (EIFL) is an international not-for-profit organization dedicated to enabling access to knowledge for education, learning, research and sustainable community development through libraries in more than 60 developing and transition countries in Africa, Asia, Europe and Latin America. EIFL works with national library consortia in the following Least Developed Countries: Ethiopia, Laos, Lesotho, Malawi, Mali, Mozambique, Nepal, Senegal, Uganda, Zambia.

ⁱ www.ip-watch.org/2013/03/06/wto-wide-support-for-ldc-trips-transition-extension-with-a-hitch/

ⁱⁱ Communication from Haiti on behalf of the LDC Group of 5 November 2012 (IP/C/W/583)

ⁱⁱⁱ The Guardian, 6 May 2011 <http://bit.ly/1UH0m0>

^{iv} Oxford Poverty and Human Development Initiative (OPHI) <http://bit.ly/12PzVn5>

^v Nation Online, 20 May 2013 <http://mwnation.com/business-news-the-nation/16847-malawi-not-ready-for-trips-enforcement>

^{vi} <http://bit.ly/gMzoHl>