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Thursday, 16 September 2015

Dear Minister Davies:

I am writing on behalf of Doctors Without Borders/Médecins Sans Frontières (MSF) to urge South Africa's support for the request made by the 48 least developed countries (LDCs) within the World Trade Organisation, for an unconditional extension for LDCs of the transition period under Article 66.1 of the TRIPS Agreement, regarding certain obligations with respect to pharmaceutical products. These governments have also requested a waiver from Articles 70.8 and 70.9 of TRIPS for as long as such countries remain a LDC.

MSF is an international medical humanitarian organisation which provides impartial medical assistance to those affected by armed conflict, epidemics, natural disasters or exclusion from healthcare. MSF carries out this work in South Africa and 62 other countries worldwide, of which 28 are LDCs. In order to perform our medical operations, MSF needs sustainable access to medicines, vaccines and other medical supplies that are affordable and suitable for resource-poor settings. One critical barrier MSF witnesses every day is high prices of medical tools, which are increasingly being protected by patents and other intellectual property obligations.

In 2002, MSF strongly supported the original extended transition period for LDCs regarding patents on pharmaceutical products and the specific waiver for Article 70.9 of TRIPS with respect to granting market exclusivity. The extension and the waiver have played a critical role in ensuring that patents filed and granted in these countries, due in part to historical adoption of unnecessary IP rules, did not and could not prevent importation and even production of low-cost generic medicines for these countries. As a humanitarian medical treatment provider, the extension and the waiver enabled MSF to provide affordable new drugs, such as anti-retroviral medicines to treat HIV and AIDS, without having to contend with legal barriers to access. The LDCs where MSF works are characterised by high levels of poverty and poor health and suffer disproportionately when beset by warfare, natural disaster or

disease outbreak. A lack of funding, whether due to insufficient donor funds, government funds or household budget, also means that health care costs, especially for medicines, must be as low as possible or otherwise cannot be provided to patients in need. The dramatic scale up of treatment for HIV and AIDS, which now exceeds 15 million people worldwide, would not have been possible without affordable first-line anti-retroviral medicines around the world and especially in LDCs.

The upcoming October TRIPS Council meeting is an opportunity to ensure that governments, so long as they remain LDCs, will not have to contend with intellectual property barriers as one cause of high prices for life-saving medical tools. Some countries opposing the LDC request proffer arguments that the existing LDC extension, which exempts the introduction of full intellectual property laws under TRIPS until 2021, is sufficient. This is wrong.

Failing to grant the current LDC request will create uncertainty for producers, exporters and importers of generic medicines that patent rules for pharmaceuticals, barring a last-ditch intervention, will be introduced in just a few years from now. Generics companies may forego these markets, as well as investments in medical tools that are predominantly needed in LDCs. More broadly, a collective failure to fulfil this extension as currently requested will send a broader message that the medical needs of the poorest countries, at a time when these countries are recovering from natural disasters, warfare and disease outbreaks, are no longer a priority.

We hope the South African government will not only support the request that has been issued by LDCs, but advocate on their behalf with those governments which are reluctant to honour this duly motivated request. Recognising the harmful impact that IP monopolies often have on access to life-saving medical technologies, South Africa released a Draft National Policy on Intellectual Property in 2013, committing to the adoption of TRIPS flexibilities to protect health into its national legislation. We hope that the South African government will similarly take a strong stance to support the request of LDCs to ensure these countries remain able to access critical medical technologies.

MSF would appreciate the opportunity to meet with you to discuss the LDC request before the October TRIPS Council meeting in Geneva. Further, we would welcome such a meeting as an opportunity for an update from the Dept. of Trade and Industry on the planned release of finalised National Policy on Intellectual Property for South Africa. Please confirm your availability for a meeting with Catherine Tomlinson at [Catherine.Tomlinson@joburg.msf.org](mailto:Catherine.Tomlinson@joburg.msf.org).

We look forward to hearing from you at your earliest convenience.

Yours sincerely



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