DECISIONS

COUNCIL DECISION (EU) 2015/1855

of 13 October 2015

establishing the position to be taken on behalf of the European Union within the Council for Trade-Related Aspects of Intellectual Property Rights and the General Council of the World Trade Organisation as regards the request from least-developed country Members for an extension of the transitional period under paragraph 1 of Article 66 of the Agreement on Trade-Related Aspects of Intellectual Property Rights concerning certain obligations related to pharmaceutical products, and for a waiver of the obligations under paragraphs 8 and 9 of Article 70 of that Agreement

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) Pursuant to paragraph 1 of Article 66 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the 'TRIPS Agreement'), the Council for Trade-Related Aspects of Intellectual Property Rights ('Council for TRIPS') is, upon the duly motivated request by a least-developed country ('LDC') Member, to accord extensions of the transitional period.

(2) On 14 November 2001, the Doha Ministerial Conference of the World Trade Organisation ('WTO') adopted the Declaration on the TRIPS Agreement and Public Health ('Doha Declaration'). It stated that extension of the transitional period as provided for in paragraph 1 of Article 66 of the TRIPS Agreement was without prejudice to the right of LDC Members to seek other extensions.

(3) In accordance with paragraph 7 of the Doha Declaration and with paragraph 1 of Article 66 of the TRIPS Agreement, the Council for TRIPS, by decision of 27 June 2002, extended the transitional period during which LDC Members are not obliged to provide patent protection for pharmaceutical products until 1 January 2016.

(4) On 8 July 2002, the General Council of the WTO adopted a closely related decision, waiving the obligations of LDC Members to grant exclusive marketing rights under paragraph 9 of Article 70 of the TRIPS Agreement. The waiver applies until 1 January 2016.

(5) On 23 February 2015, Bangladesh, on behalf of the LDC Members group, requested an indefinite extension of the transitional period under paragraph 1 of Article 66 of the TRIPS Agreement and an indefinite waiver of the obligations under paragraphs 8 and 9 of Article 70 of that Agreement for as long as each LDC Member remains an LDC.

(6) As there has been a separate waiver for pharmaceutical-related intellectual property rights since 2002, it is appropriate for the Union to agree to the extension of the transitional period, so as not to hinder LDC Members' access to pharmaceutical products.

(7) Several WTO Members appear ready to grant the indefinite extension and indefinite waiver, and therefore the Union should join the consensus, in line with its continued support for the Doha Declaration. However, if the WTO Members agree rather to a further temporary extension and temporary waiver, the Union should also agree to such a solution.

(8) It is appropriate to establish the position to be taken on the Union's behalf within the Council for TRIPS and the General Council of the WTO as regards the request from LDC Members for an extension of the transitional period under paragraph 1 of Article 66 of the TRIPS Agreement concerning certain obligations related to pharmaceutical products, and for a waiver of the obligations under paragraphs 8 and 9 of Article 70 of that Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the European Union within the Council for Trade-Related Aspects of Intellectual Property Rights and the General Council of the World Trade Organisation ('WTO'), shall be the following:

(a) to agree to:

(i) the request from least-developed country ('LDC') Members for an extension of the transitional period under paragraph 1 of Article 66 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the 'TRIPS Agreement') concerning certain obligations related to pharmaceutical products; and

(ii) the request to waive the obligations of LDC Members under paragraphs 8 and 9 of Article 70 of the TRIPS Agreement; and

(b) to agree either to:

(i) the request for the extension referred to in point (a)(i) of this Article, or the waiver referred to in point (a)(ii) of this Article, or both, to apply for as long as each LDC Member remains an LDC; or

(ii) the request for a temporary extension or a temporary waiver, or both, if that request is also acceptable to the other WTO Members.

Article 2

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

Done at Luxembourg, 13 October 2015.

For the Council
The President
J. ASSELBORN