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**PERMANENT COMMITTEE ON COOPERATION FOR
DEVELOPMENT RELATED TO INTELLECTUAL PROPERTY**

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ASSISTANCE TO THE LEAST DEVELOPED COUNTRIES (LDCs)

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I. INTRODUCTION

1. At its first session from May 31 to June 4, 1999, the Permanent Committee on Cooperation for Development Related to Intellectual Property recommended a number of areas of action that are of importance in institution building in the field of intellectual property in the least developed countries (LDCs). This report has been prepared for the second session of the Committee to review and assess progress in implementing those recommendations.

2. The report also provides information on the latest criteria for identifying a developing country as an LDC and for defining the threshold for graduation from an LDC to a developing country.

3. Part of the report is devoted to the cooperation between WIPO and other United Nations organizations in the preparations for the Third United Nations Conference on the LDCs to be held in Brussels, Belgium, from May 14 to 20, 2001. The report also provides a summary of WIPO technical assistance to the LDCs.

4. The last part of the report provides information on some of the main constraints to institutional development in the field of intellectual property in the LDCs and highlights the kind of action needed to overcome those constraints and to improve the prospects for long-term sustainable institutional development in the field of intellectual property in the LDCs.

Accession of LDCs to the WIPO Convention and Conventions Administered by WIPO

1. Of the 48 LDCs, 39 have acceded to the WIPO Convention. Around 15 LDCs have notified WIPO that they have copyright legislation and some also have intellectual property legislation. A number of LDCs have established collective management societies in copyright and related rights. WIPO currently has about 24 Nationally Focused Action Plans (NFAPs) and other related projects in the LDCs.
2. Among the weaknesses of the intellectual property system in the LDCs are the lack of developed managerial and technical capacities in both the public and private sectors, shortcomings in their public administration, legal systems and institutions, and deficiencies in their physical infrastructure. WIPO thus attaches special importance to institutional development in the field of intellectual property in the LDCs by providing country-specific multidisciplinary assistance through the NFAPs.
3. The Program for the LDCs broadens WIPO's approach to assisting the LDCs by interacting with new partners, such as policy makers and government officials from various ministries, non-governmental organizations and civil society to establish and modernize intellectual property systems, consistent with national objectives and requirements. It coordinates efforts, in close cooperation with United Nations organizations and organs and regional intellectual property organizations, to overcome the developmental problems faced by the LDCs.
4. Promoting and strengthening the intellectual property system cannot be achieved by focusing only on the development of norms and rules and establishing enforcement mechanisms. Certain non-legal factors impeding the acceptance of intellectual property systems in the socio-economic development of the LDCs need to be addressed systematically by WIPO if the LDCs are to benefit. The Program takes into account this concern of the LDCs by focusing on information and communication technologies for the LDCs as they provide the basis for the functioning of a knowledge-based economy.
5. The lack of adequate information about intellectual property systems in the LDCs has led many people to the conclusion that intellectual property is a vehicle for protecting foreign interests. The systematic spread of information on the qualitative and quantitative aspects of the theory and practice of the various disciplines of intellectual property through traditional and modern means of communication will help to correct this erroneous conclusion.
6. Since the establishment of the Program, WIPO's work has started to demonstrate the usefulness of intellectual property systems to ministers, parliamentarians and journalists in the LDCs. The Program aims to show the link between the intellectual property system, investment, research for development and the transfer of technology in encouraging institution building and modernization of the intellectual property systems of the LDCs and in bringing discussions on intellectual property to the center stage of national development planning.

II. PROGRESS IN THE IMPLEMENTATION OF THE RECOMMENDATIONS OF THE FIRST SESSION OF THE PERMANENT COMMITTEE

A. Regional Seminars on Intellectual Property in 1999

5. Activities at the Regional level in 1999 focused on the preparatory processes for the implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) by the LDCs. The first seminar on the process was held in Banjul, the Gambia, for English-speaking African LDCs, from April 12 to 14, while regional seminars for French-speaking African LDCs and Portuguese-speaking LDCs were held in Ouagadougou, Burkina Faso, from August 17 to 19 and in Maputo, Mozambique, from October 7 to 9, respectively. The regional seminar for Asia and the Pacific LDCs was held from June 29 to July 1, in Vientiane, Lao People's Democratic Republic. The principal objective of the seminars was to contribute to institution building by providing clarification concerning obligations under the TRIPS Agreement on measures to be taken at the national level and concerning the assistance available to the LDCs from WIPO to help them comply with those obligations. Officials from Ministries of Trade and Industry, Science and Technology Commissions, Industrial Property and Copyright Offices, Attorney Generals' Offices, Customs and Excise and legislative drafting departments attended the seminars.

6. The presentations and discussions can be divided into three parts: the first focused on the various provisions of the TRIPS Agreement; the second was a roundtable on the status of the compatibility of the intellectual property legislation of invited countries with obligations under the TRIPS Agreement; the third was a roundtable on the activities of WIPO for the benefit of the LDCs.

7. Several of the participants, particularly customs officials and those involved in legislative drafting, said that the meetings had clarified for them the changes to be made to existing laws and the new legislation that would have to be enacted. Development experts who participated in the Seminars drew attention to Article 8 of the TRIPS Agreement and stressed the importance of its implementation with respect to the transfer of technology. The obligations and options under the TRIPS Agreement became clearer to participants, and the LDCs that participated could be expected to find it easier to take the necessary steps at the national level to comply with the Agreement, and to make better use of WIPO technical assistance.

B. Regional Seminars on Intellectual Property in 2000

8. WIPO regional seminars or roundtables in 2000 focused on the preparations for the Third United Nations Conference on the LDCs and institution building in the field of intellectual property in the LDCs. The regional seminar on the modernization of the intellectual property system for Asia and the Pacific LDCs was held in Katmandu, Nepal, from May 16 to 18. For Arab LDCs the seminar was held in Khartoum, Sudan, from October 23 to 25. For African LDCs the seminar took place in Kampala, Uganda, from December 18 to 20. As Haiti is the only LDC in Latin America and the Caribbean region, a multifaceted national seminar was organized there, from September 25 to 27. The objective of the seminars was twofold: firstly,

to contribute to the modernization of the intellectual property systems of the LDCs; secondly, to provide inputs for the Third United Nations Conference on the LDCs.

9. The above-mentioned meetings considered the following items, namely: (i) the TRIPS Agreement and Transfer of Technology; (ii) Protection of Trademarks and Well-known Marks; (iii) Copyright and Related Rights and Collective Management; (iv) Global Intellectual Property Issues; (v) Accession of African LDCs to International Conventions and Treaties; (vi) WIPO Dispute Resolution Mechanism and Enforcement of Intellectual Property Rights; (vii) Information and Communication Technologies; (viii) Human Resources Development and Institution Building in Intellectual Property; (ix) Issues in the Field of Intellectual Property in the Context of the Substantive Agenda Items for the Third United Nations Conference on the LDCs.

10. Participants in each of the regional meetings agreed on a set of conclusions of common concern to them all. The conclusions, *inter alia*, recognized that, despite their commitment to fulfill obligations in the field of intellectual property, the LDCs faced certain severe constraints, such as a shortage of resources, a weak intellectual property infrastructure, a lack of skilled personnel, and inadequate awareness of and information on the various treaties and conventions in the field of intellectual property. It was recommended that WIPO should provide the necessary legal and technical assistance to the LDCs to facilitate their accession to international treaties and to fulfill their obligations under the TRIPS Agreement. In particular, it was recommended that WIPO should strengthen its activities in assisting the LDCs to establish effective national intellectual property institutions. Participants called for the wealth created through the intellectual property system to be equitably distributed among the parties concerned in accordance with the relevant international treaties.

C. Interregional Roundtable in 1999

11. The First High-level Interregional Roundtable for the LDCs was held on September 30, to deliberate on the forward-looking theme of "Intellectual property, the new millennium and the least developed countries", with a view to articulating policy and technical issues and contributing to institution building in the area of intellectual property in the LDCs in the era of the knowledge-based economy.

12. During discussions at the Roundtable, it was highlighted that a new paradigm for the new millennium could not be limited to a narrow construct or a narrow vision. It must incorporate a wide range of objectives: to provide food in a world of hunger; to ensure access to health care; to respect traditional knowledge and cultural values; to seek the preservation of biodiversity; to reconsider the ethics of patenting life. It must be conducive to development which improves the living conditions of people.

13. Following presentations and discussions on the Internet and WIPONET, it was recognized that the Internet was the fastest-growing communication tool the world had ever seen and that to ensure that the global communications revolution was truly global, the needs and concerns of the LDCs must be taken into account.

14. On the subject of global intellectual property issues and the LDCs, it was pointed out that the lack of clear legal obligations meant that traditional knowledge was often accessed and used for the development of new commercial products without any requirement that the benefits of their marketing should flow back to the original knowledge holders and to the societies in

which they lived. WIPO had recently begun to explore ways in which the protection of creativity and innovation could encompass the holders of traditional knowledge by means of intellectual property rights' mechanisms.

15. On the relationship between the TRIPS Agreement, technology transfer and foreign direct investment it was considered that the strengthening of intellectual property regimes was an important condition, though not sufficient on its own to enable technology transfer to take place. Intellectual property rights laws, as well as being consistent with international standards, should be balanced so that they did not disadvantage local inventors and creators. Intellectual property rights should thus be implemented in such a way as to promote dynamic competition through the acquisition and local development of technology in an environment that was conducive to the growth and development of the LDCs.

Criteria for Classification of the LDCs

1. The recognition of the developmental problems of the poorest countries and the establishment of the LDCs as a group dates back to 1971, when the General Assembly of the United Nations, in its resolution 2768 (XXVI) of 18 November 1971, established the first group of LDCs with 24 countries as its original members.
2. The three principal criteria used to establish the group were: (i) a per capita gross domestic product (GDP) of US\$100 per person in 1968 or less; (ii) a share of manufacturing in total GDP of 10 per cent or less; (iii) an adult literacy rate of 20 per cent or less. The list of countries classified as “least developed” is established by the General Assembly on the recommendation of the Economic and Social Council (ECOSOC) and on the advice of the Committee for Development Planning (CDP). The list is reviewed every three years.
3. The United Nations criteria underlying the current list of LDCs are: (i) a low income, as measured by GDP per capita; (ii) weak human resources, as measured by the Augmented Physical Quality of Life Index (APQLI)¹; (iii) a low level of economic diversification, as measured by the Economic Diversification Index (EDI).²
4. A country qualifies to be added to the list of LDCs if it meets the inclusion thresholds on all three criteria mentioned above. A country qualifies for graduation from the list if it meets graduation thresholds on two of the three criteria. For the low-income criterion, the threshold on which inclusion on the current list is based has been a GDP per capita of \$800, and the threshold for graduation has been GDP per capita of \$900. The most recent review was conducted in 2000. As of the end of September 2000, 48 countries were designated by the United Nations as LDCs.
5. At its meeting in 2000, the Committee for Development Policy recommended that the EDI be replaced by an Economic Vulnerability Index reflecting the main external shocks to which many low-income countries are subject, and incorporating the main structural elements of the countries’ exposure to shocks, including their smallness and lack of diversification.

¹ APQLI is a composite index comprising four indicators: (i) child mortality, children under the age of 5; (ii) calorie supply as a percentage of minimum daily requirements, or percentage of population undernourished; (iii) the adult literacy rate; (iv) combined primary and secondary school enrolment ratio.

² EDI is a composite index comprising the following indicators: (i) a combined indicator of manufacturing and modern services as a share of GDP; (ii) an indicator of the concentration of goods and services exports; (iii) per capita electricity consumption per year; (iv) vulnerability to natural disasters (an indicator in this area is now being developed).

D. Cooperation with the United Nations

(i) *Participation in the tenth session of the United Nations Conference on Trade and Development (UNCTAD X)*

16. The tenth session of the United Nations Conference on Trade and Development was held in Bangkok, Thailand, from February 12 to 19, 2000. WIPO participated in the following events: (i) the Association of South East Asian Nations (ASEAN)-United Nations Summit; (ii) the high-level roundtable, with heads of United Nations agencies, programs and related institutions; (iii) the meeting of ministers of trade of the LDCs.

(ii) *ASEAN-United Nations Summit*

17. At the invitation of the Foreign Minister of Thailand, on February 12, 2000, the Director General of WIPO participated in the ASEAN-United Nations Summit with the heads of State and Government of the ASEAN,³ the Secretary-General of the United Nations and other specially invited heads of UN specialized agencies. The Director General of WIPO participated in the exchange of views on global economic development.

(iii) *High-level roundtable with heads of United Nations agencies, programs and related institutions*

18. The roundtable was designed as a contribution to the Millennium General Assembly and as a step towards greater coherence among United Nations bodies dealing with economic and development issues. The Director General of WIPO said that, in today's global economy, wealth creation is based on the magnitude of technological knowledge, in particularly digital and genetic information and on the availability of well-structured intellectual property systems. Creativity, knowledge and information are the keys to success. In order to trade and grow, it is not simply a question of increasing market access but also of capacity-building in institutions and human resources, empowering developing countries and LDCs with information technology, distance learning and access to global information networks. Nationally Focused Action Plans (NFAPs) to address the information gap are essential and a well designed intellectual property system allows more foreign direct investment (FDI) and technology to flow, thus enabling more export growth and subsequently the creation of better technology, particularly indigenous technologies. The Director General called for the developing countries to be empowered with the legal means to compete.

(iv) *Meeting of Ministers of Trade of the LDCs*

19. At the meeting of the Ministers of Trade of the LDCs it was pointed out that the developed, and some of the developing countries have benefited from liberalization and globalization, but the LDCs have not shared in these benefits. There was serious concern that the income gap between the developed countries and the LDCs, both among and within countries, has significantly widened over the past 15 years, and that the number of people living in absolute poverty in the LDCs has been increasing despite unprecedented prosperity in

³ The Association of Southeast Asian Nations (ASEAN) was established on August 8, 1967, in Bangkok, by the five original member countries, namely, Indonesia, Malaysia, Philippines, Singapore and Thailand. Brunei Darussalam joined on January 8, 1984, Vietnam on July 28, 1995, Laos and Myanmar on July 23, 1997, and Cambodia on April 30, 1999. The ASEAN Region has a population of about 500 million, a total area of 4.5 million square kilometers, a combined GDP of US\$ 737 billion, and a total trade of US\$ 720 billion.

other parts of the world. Explanations were given in detail about the various initiatives taken by the Director General to establish a nationally tailored Least Developed Countries technical assistance program and provide them with their short, medium and long term needs and promote durable development.

(v) *Participation of WIPO in the meeting of the Intergovernmental Preparatory Committee for the Third United Nations Conference on the LDCs*

(a) The inter-agency meetings and the Consultative Forum

20. The inter-agency meeting mechanism was established to ensure the full mobilization and cooperation of all the relevant organizations and bodies of the United Nations system in the preparations for and follow-up to the Third United Nations Conference on the LDCs. So far, WIPO has participated in all the three inter-agency meetings and worked closely with other specialized agencies, organizations and organs of the United Nations system. The Consultative Forum which includes United Nations specialized agencies, organs and organizations, representatives of regional group coordinators and other delegations, advises the Secretary General of the Conference on the format and substantive issues of the Conference. WIPO participated in the Consultative Forum and has contributed to the discussions on organizational and substantive issues.

(b) First session of the Intergovernmental Preparatory Committee for the Third United Nations Conference on the LDCs

21. WIPO participated, in July 2000, in the first session of the Intergovernmental Preparatory Committee for the Third United Nations Conference on the LDCs. The purpose of the Conference is to discuss improved market access, promoting investment in the LDCs, debt relief, official development assistance and capacity building. Around 300 representatives from 84 countries, United Nations specialized agencies, organizations and organs of the United Nations system, and non-governmental organizations attended the session.

22. The LDCs want to reduce their structural handicaps and limit their vulnerability with a view to seizing new economic opportunities, and to facilitate the involvement of all relevant actors, such as Governments, the private sectors and civil societies. They also want to establish a post-Conference follow-up mechanism to ensure that, for each LDC, the national program of action will be able to translate the new package expected to be agreed in Brussels into actual benefits. In economic jargon, the Conference should result in enhanced local productive capacities and an improved human development indicator.

23. The new Program of Action for the LDCs should be tangible, quantifiable, measurable and implementable. WIPO is contributing to the preparations for the Conference in two phases: (i) the holding of a high-level interregional roundtable on the LDCs and intellectual property (the outcome of the meeting should be published and made available to the preparatory process); (ii) the convening of a regional meeting for the Asia and the Pacific region in Katmandu in May 2000, with subsequent meetings for African LDCs held in Kampala, Uganda, in December 2000, and for the Arab region LDCs held in Khartoum, Sudan, in October 2000. The outcome should also be made available to the preparatory process. A separate multi-disciplinary meeting on intellectual property for the LDCs was organized for Haiti in Port au Prince in September 2000.

E. Publications

Profile of Intellectual Property for the LDCs

24. This publication, prepared on the basis of replies to a questionnaire sent to LDCs, is available for all countries. The “LDCs Profile on Intellectual Property” provides a handy guide to the state of LDCs national legislation on intellectual property and other related legislation such as legislation on the transfer of technology and foreign direct investment. The profile will serve as a convenient reference tool for government officials, universities and research institutions, journalists and non-governmental organizations. The profile also shows LDCs what they need to do to comply with existing intellectual property instruments.

25. The electronic version of the profile will be available on the WIPO Website.

BOX 3

Summary of WIPO Technical Assistance for LDCs from 1998 to 2000

From January 1998 till June 2000, the following activities were accomplished by WIPO in the LDCs:

- Intellectual property officials from the LDCs received training in awareness raising and human resources development.
- LDCs have received assistance in building-up or upgrading their intellectual property offices with adequate institutional infrastructure and resources, qualified staff, modern management techniques and access to information technology support systems.
- WIPO sent, on request, advisory missions to the intellectual property offices of most LDCs, including those which are not members of WIPO, to give advice on modernizing management systems and streamlining administrative procedures.
- WIPO, through the WIPO Worldwide Academy, sponsored study visits for officials from the LDCs.
- WIPO organized study tours for officials from many LDCs to offices in industrialized countries to study various aspects of modernization.
- LDCs were beneficiaries of WIPO assistance on legislation in the areas of industrial property and copyright and neighboring rights.
- Advice and assistance were given in connection with the setting-up or strengthening of collective management societies in LDCs.
- In order to create awareness of the importance and implications of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), WIPO, in close cooperation with other international organizations, organized national, regional and interregional meetings for the LDCs on the implementation of the TRIPS Agreement. A clear and balanced view of the Agreement enables the LDCs to assess how their existing national legislation complies with the provisions of the TRIPS Agreement.
- WIPO organized regional meetings for African, Asian-Pacific and Arab LDCs for the preparation of the Third United Nations Conference on the LDCs, scheduled to take place in Brussels in May 2001.

III. Concluding remarks

26. Key socio-economic and development indicators, including education, health, nutrition and sanitation and population issues impact in a fundamental way on institution building in the area of intellectual property. According to available data, out of the 35 countries that fall in the low human development category, 31 are LDCs. It is necessary to focus not only on the quality of education but also on its content. Today's economy is driven by rapid technological change and the LDCs must be able to manipulate technology to ensure that their development is sustainable.

27. The latest studies indicate that the LDCs have only 20,000 scientists and engineers, or 0.36 per cent of the world total, and contribute only 0.8 per cent of world scientific publications and that their share of patents is almost close to zero. They have also made limited use of computers in the education sector, mainly because of a lack of resources for their purchase and because of poor telecommunications.

28. Some of the key reasons for the lack of sustainable institution-building in the field of intellectual property in the LDCs and the difficulties in institution building in that field stem among other things from their weak productive capacity and competitiveness.

(i) Intellectual property institutions are very weak in almost all LDCs and their proper functioning is not yet well entrenched;

(ii) The internal capacity necessary to generate an internally driven development is weak largely because human resources have not been adequately developed, science and technology development and adaptation is poor and the physical infrastructure, including power, telecommunications and transportation, remains expensive and unreliable.

29. In the light of the above, therefore:

(i) LDCs Governments should put in place special measures to encourage the modernization and development of national intellectual property institutions, facilitate access to new technologies and provide training to improve management skills in intellectual property institutions;

(ii) Governments should encourage small and medium sized enterprises in the LDCs to take advantage of WIPO training programs on intellectual property;

(iii) Governments should encourage cooperative business networks, through the use of WIPONET, so that small and medium sized enterprises, in particular, can share information and cooperate in production, design and marketing;

(iv) Governments should also provide a package of incentives to scientists, inventors and entrepreneurs to encourage them to invest in technology-based enterprises, while at the same time facilitating the involvement of the private sector in the development of science and technology;

(v) WIPO will continue to ensure that the New Initiative of the Director General for LDCs is implemented by formulating programs designed in such a way as to complement the domestic initiatives, programs and policies of individual LDCs through tangible, measurable and implementable outputs;

(vi) The Third United Nations Conference on the LDCs will give the LDCs and their development partners an opportunity to evolve a new strategy of cooperation for development. This new strategy should be driven by a desire to find innovative approaches to formulate programs that will enhance the productive capacities of the LDCs and their competitiveness in a rapidly evolving global context. WIPO is one of the major Organizations in the United Nations system which is an active partner in the preparations of the Conference and is committed to the implementation of tangible and measurable outcomes.

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