

**TECHNICAL COOPERATION AND CAPACITY BUILDING:  
"CLUSTER" A OF THE DEVELOPMENT AGENDA**

Communication from Brazil

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Since the TRIPS Council's 2005 decision "Extension of the Transition Period under Article 66.1 for Least Developed Country Members", discussions on the implementation of technical cooperation and capacity building obligations under Article 67 have been concentrating on the need to develop targeted technical cooperation programme for LDCs, so as to help those countries to integrate meaningfully into the IP system, as active players of the world knowledge-based economy.

Throughout this now three-year old debate, Members often expressed the view that technical cooperation and capacity building programme should be more responsive to developing countries' specific needs, in particular those of the LDCs, and should encompass a broader spectrum of activities. Concrete efforts are being made to help LDCs in the assessment of their assistance needs and requests. Moreover, it was suggested that a monitoring mechanism be established in the WTO under the TRIPS Council to make sure that their requests were responded to.

Brazil, along with other developing countries, has been actively participating in this debate. Time and again, we have been emphasizing the need to systematically assess the extent to which technical assistance activities carried out by developed countries under Article 67 are truly "development oriented" and contribute to a balanced implementation of the TRIPS agreement, in light of its objectives and principles laid down in Articles 7 and 8. Indeed, technical assistance provided by developed country members should not only concentrate on implementation of obligations. To be effective, technical assistance should be broader in nature and also teach how to make legitimate use of the flexibilities of the TRIPS agreement, as well as of its provisions related to transfer of technology and the prevention and mitigation of abuse of IP rights.

In other words: the IP regime is based on a balance between rights and obligations. Technical assistance should therefore fully respect this balance, enabling developing countries not only to fulfil their obligations, but also to benefit from their rights.

The ongoing debate in the TRIPS Council on how to achieve effective compliance with the obligations under Article 67 would greatly benefit from the contribution of the intense and broad discussions going on in the World Intellectual Property Organization (WIPO) on the implementation of the Development Agenda. WIPO has been the main multilateral provider of technical assistance in the field of intellectual property and by virtue of the 1995 agreement with the WTO, it plays an

important role in providing developing countries with technical assistance to implement the TRIPS Agreement.

The WIPO Development Agenda process entered its implementation phase with the first meeting of the Committee on Development and Intellectual Property (CDIP) last March. A draft work programme for the implementation of the 45 agreed proposals – organized into six clusters - is currently under discussion. Cluster A, with 14 proposals, addresses technical assistance and capacity building issues.

Proposals under Cluster A provide a guiding framework for development-oriented technical assistance. In a nutshell, assistance activities should be demand-driven, transparent, neutral, and accountable, and take into account the special needs of developing countries, in particular LDCs. Ensuring demand-driven assistance requires a careful needs assessment process with the participation of civil society and an effective evaluation mechanism capable of monitoring each stage of implementation.

Brazil proposes that the TRIPS Council takes note of the 14 proposals of cluster A of the Development Agenda, acknowledging, where applicable, their relevance for the implementation of Article 67 of the TRIPS Agreement, and submits that the consideration of issues related to technical assistance and capacity building under article 67 be carried out from now on also on the basis of those recommendations.

The 14 elements of Cluster A of the Development Agenda, as adopted by the WIPO General Assembly of 2007, are as follows (those marked by an asterisk were adopted for immediate implementation):

A. CLUSTER A: TECHNICAL ASSISTANCE AND CAPACITY BUILDING

1. \*WIPO technical assistance shall be, *inter alia*, development-oriented, demand-driven and transparent, taking into account the priorities and the special needs of developing countries, especially LDCs, as well as the different levels of development of member States and activities should include time frames for completion. In this regard, design, delivery mechanisms and evaluation processes of technical assistance programme should be country specific.
2. Provide additional assistance to WIPO through donor funding, and establish Trust-in-Funds or other voluntary funds within WIPO specifically for LDCs, while continuing to accord high priority to finance activities in Africa through budgetary and extra-budgetary resources, to promote, *inter alia*, the legal, commercial, cultural, and economic exploitation of intellectual property in these countries.
3. \*Increase human and financial allocation for technical assistance programs in WIPO for promoting a, *inter alia*, development-oriented intellectual property culture, with an emphasis on introducing intellectual property at different academic levels and on generating greater public awareness on intellectual property.
4. \*Place particular emphasis on the needs of small and medium-sized enterprises (SMEs) and institutions dealing with scientific research and cultural industries and assist member States, at their request, in setting-up appropriate national strategies in the field of intellectual property.
5. WIPO shall display general information on all technical assistance activities on its website, and shall provide, on request from member States, details of specific activities, with the consent of the member State(s) and other recipients concerned, for which the activity was implemented.

6. \*WIPO's technical assistance staff and consultants shall continue to be neutral and accountable, by paying particular attention to the existing Code of Ethics, and by avoiding potential conflicts of interest. WIPO shall draw up and make widely known to the member States a roster of consultants for technical assistance available with WIPO.
  7. \*Promote measures that will help countries deal with intellectual property-related anti-competitive practices, by providing technical cooperation to developing countries, especially LDCs, at their request, in order to better understand the interface between IPRs and competition policies.
  8. Request WIPO to develop agreements with research institutions and with private enterprises with a view to facilitating the national offices of developing countries, especially LDCs, as well as their regional and sub-regional intellectual property organizations to access specialized databases for the purposes of patent searches.
  9. Request WIPO to create, in coordination with Member States, a database to match specific intellectual property-related development needs with available resources, thereby expanding the scope of its technical assistance programme, aimed at bridging the digital divide.
  10. To assist member States to develop and improve national intellectual property institutional capacity through further development of infrastructure and other facilities with a view to making national intellectual property institutions more efficient and promote fair balance between intellectual property protection and the public interest. This technical assistance should also be extended to sub-regional and regional organizations dealing with intellectual property.
  11. \*To assist member States to strengthen national capacity for protection of domestic creations, innovations and inventions and to support development of national scientific and technological infrastructure, where appropriate, in accordance with WIPO's mandate.
  12. \*To further mainstream development considerations into WIPO's substantive and technical assistance activities and debates, in accordance with its mandate.
  13. \*WIPO's legislative assistance shall be, *inter alia*, development-oriented and demand-driven, taking into account the priorities and the special needs of developing countries, especially LDCs, as well as the different levels of development of member States and activities should include time frames for completion.
  14. \*Within the framework of the agreement between WIPO and the WTO, WIPO shall make available advice to developing countries and LDCs, on the implementation and operation of the rights and obligations and the understanding and use of flexibilities contained in the TRIPS Agreement.
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