

1. INTRODUCTION

This document provides a factual overview to promote coordination of technical and financial cooperation under the TRIPS Agreement for the benefit of Least Developed Country Members of the WTO. It has been prepared as a factual overview for the LDC Group as part of a consultancy assignment carried out by Tom Pengelly of Saana Consulting with the sponsorship of the Swedish International Development Cooperation Agency (SIDA).

The document considers broadly the state of play in the 33 LDC WTO members¹ in developing their intellectual property (IP) systems; outlines the identified needs of LDC members for technical and financial assistance related to TRIPS implementation; and surveys the provision of assistance in this field by international organisations, bilateral co-operation partners and non-governmental organisations.

Table 1. The LDC members of the WTO

Year of joining WTO	LDC
1995	Bangladesh, Burkina Faso, Burundi, Central African Republic, Djibouti, Guinea, Guinea-Bissau, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mozambique, Myanmar, Senegal, Sierra Leone, Tanzania, Togo, Uganda & Zambia
1996	Angola, Benin, Chad, Gambia, Haiti, Niger, Rwanda & Solomon Islands
1997	Democratic Republic of Congo
2004	Cambodia & Nepal
2012	Samoa & Vanuatu
2013	Lao People's Democratic Republic

Importantly, the focus of this document is on collating and analysing information on the *articulated needs* of LDCs for technical and financial assistance as mandated by the TRIPS Council in November 2005, as well as on the *effective supply* from co-operation partners as foreseen under Article 67 of the TRIPS Agreement to meet those needs.

This document does as such not attempt a discussion or assessment of TRIPS compliance by LDC members; nor does it address the specific issue of a possible extension of the transitional period for LDCs for implementation of the TRIPS Agreement beyond the present date of 1st July 2013.

1.1 Background

The TRIPS Agreement forms part of the package of trade law that entered into force in 1995 with the creation of the World Trade Organisation. Large disparities in IP protection around the world and a steady increase in trade in counterfeit and pirated goods led the major developed economies to include IP protection in the Uruguay Round negotiations that resulted in the creation of the WTO. As articulated in its Preamble, the TRIPS Agreement therefore sets out to reduce distortions and impediments to trade. IP as defined by the TRIPS Agreement encompasses: i) copyright and related rights; ii) trademarks; iii) geographical indications; iv) industrial designs; v) patents; vi) layout-designs (topographies) of integrated circuits; vii) plant variety rights and viii) protection of undisclosed information (trade secrets).

¹ Lao People's Democratic Republic acceded to the WTO on 2 February 2013 and as such has not been considered separately at length in this report.

The TRIPS Agreement provides minimum standards for protection for each of these eight types of IP, as well as enforcement, whilst leaving it to individual countries to determine their implementation strategy and trajectory. The TRIPS Agreement drew on several existing treaties (including the Berne and Paris Conventions) and further extended or reinforced these existing IP standards. It is furthermore founded upon the same general principles of non-discrimination as other agreements in the WTO, namely national treatment and most-favoured nation treatment (except that the TRIPS Agreement does not incorporate a regional integration clause which would reserve the option of providing better treatment of partners to regional agreements than to other WTO members). The Council for TRIPS was established to administer the operation of the TRIPS Agreement; this includes monitoring implementation by members.

Under the TRIPS Agreement, the original transition period for its implementation by LDCs under Article 66.1 was to end on 1st January 2006. This longer transition period recognised the special needs and requirements of LDC Members, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base. The TRIPS Agreement also foresaw the possibility of extensions of this period, and the TRIPS Council decided on 29th November 2005 that the transition period was to be extended to 1st July 2013.² At the time of writing, consultations are under way concerning a further extension of this period, pursuant to a request by LDC Members³. The transition period applies to all TRIPS obligations with the exception of Articles 3, 4 and 5, which incorporate the principles of national treatment and most-favoured nation treatment, and regulates the relationship between the TRIPS Agreement and other multilateral agreements on acquisition or maintenance of IP rights.

Pursuant to the Doha Declaration on the TRIPS Agreement and Public Health⁴, the Council had earlier adopted on 27th June 2002, a decision extending the transition period under Article 66.1 for certain obligations concerning pharmaceutical products.⁵ Thus, LDCs are not obliged with respect to pharmaceutical products, to implement or apply Sections 5 (concerning patents) and 7 (concerning undisclosed information) of Part II of the TRIPS Agreement or to enforce rights provided for under these Sections until 1st January 2016.

Both decisions were made without prejudice to the right of LDC Members to seek other extensions of the period provided for in Article 66.1 which provides that the Council for TRIPS “shall, upon duly motivated request by a least developed country Member, accord extensions” of the implementation period for LDCs. In 2002, the WTO General Council also approved a waiver that exempted LDCs from having to provide exclusive marketing rights for any new drugs in the period when they do not provide patent protection.⁶

The TRIPS Agreement recognises the particular concerns and needs of LDCs when it comes to the IP system. Indeed, its preamble acknowledges LDCs’ particular needs for maximum flexibility in implementing laws and regulations domestically. The Agreement also recognises the continuing needs of LDC Members for technical and financial cooperation so as to enable them to realise the economic, cultural, social, technological and other developmental objectives of IP protection. Article 67 requires developed countries to provide technical and financial cooperation in favour of developing country Members, including LDCs, on request and on mutually agreed terms and conditions.

² WTO, 2005 Press Release: Extension of the transition period under article 66.1 for LDC members, Decision of the Council for TRIPS of 29th November 2005 http://www.wto.org/english/news_e/pres05_e/pr424_e.htm

³ Request for an extension of the transitional period under Article 66.1 of the TRIPS Agreement, Communication from Haiti: IP/C/W/583

⁴ WTO Declaration on the TRIPS Agreement and Public Health, http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm

⁵ WTO, 2002 Press Release: Council approves LDC decision with additional waiver, https://www.wto.org/english/news_e/pres02_e/pr301_e.htm

⁶ Ibid.

In extending the transition period for LDCs and setting up the process of communicated needs and coordinating the delivery of assistance to respond to the needs identified, the TRIPS Council's Decision of 29th November 2005 contains the following three operational elements:

- **LDCs** are asked to provide the TRIPS Council with as much information as possible on what they need as a priority for technical and financial assistance. The purpose is to help them take the necessary steps to implement the TRIPS Agreement, and it would not only be for the purely technical and legal exercise of translating TRIPS provisions into their laws. The emphasis is on identifying priority needs and interests so that the assistance given is comprehensive and coordinated and meets individual LDCs' developmental and other objectives.
- **Developed countries** are asked to provide technical and financial assistance to LDCs to address the identified needs effectively. This means that co-operation partner countries or organisations providing technical assistance are also responsible for making the process work. Effective coordination will ensure that the identified needs are followed up and duplication is minimised. The whole process remains demand-driven, centred on actual requirements each LDC has identified.
- **The WTO** is asked to enhance its cooperation with WIPO and other relevant international organisations. The two organisations are now cooperating more closely in this area, in response to the request and based on a Cooperation Agreement adopted in 1995, as well as a Joint Initiative on Technical Cooperation for Least Developed Countries, launched in June 2001.

Past WTO activities aimed at coordinating needs-based LDC technical assistance, as well as continuing policy debate, notably in the Council for TRIPS, have identified the need for an accessible, comprehensive and up-to-date overview of identified individual priority needs of LDCs, information on the state of play of IP systems in LDCs, and programmes that can provide the technical and financial resources required to meet individual priority needs identified by LDCs. Large amounts of data are available on each of these points, including in the form of numerous notifications and reviews provided to the WTO, but this raw data is difficult to review in a systematic, comprehensive manner suitable for delegations and decision-makers to consult.⁷

1.2 Objectives

This assignment was prepared with the aims of updating factual information on the identification of priority needs by LDCs and the responses given to them; strengthening the flow of practical information between bilateral co-operation partners, IGOs and other providers of technical and financial assistance; and promoting practical coordination so as to match more systematically the priority needs with available programmes.

A great deal of relevant information is already available in a range of public sources, including many WTO notification documents, but it is diverse in character and it is effectively impossible for delegates, officials and policymakers to gain a practical overview.

This document therefore presents in a distilled and accessible form reported, factual information provided by WTO Members and by its intergovernmental partners, in order to provide a richer and more usable base of information for the process of coordination between identification of priority needs and the availability of technical and financial assistance relevant to those needs.

⁷ WTO, 'A Handbook on the WTO TRIPS Agreement', Appendix II contains a 'Guide to TRIPS Documentation'

1.3 Scope of work

The scope of work of this assignment draws on reported publicly available materials to provide a distilled and accessible overview of:

- Currently reported IP-related policies and measures in LDC members, and identified priority needs for technical and financial cooperation for those LDCs who have completed submissions to the TRIPS Council and for those LDCs that have submissions under way.
- Currently reported programmes and resources relevant to identifying individual priority needs of LDC members who are in the process of identifying their needs, including projects under way that support the identification of such needs.
- Current reported status of responses to needs identified by LDCs, including projects under way that respond to individual priority needs.
- Further reported information on programmes of developed country members and IGOs that may be relevant to the effective provision of technical and financial assistance required to fulfil needs identified by LDC members.

This document is intended to serve as a practical tool to facilitate the coordination of technical and financial cooperation under the TRIPS Agreement. It is not intended to assess the extent of implementation of TRIPS standards by individual LDCs, nor to advocate any approach to TRIPS implementation, nor address any question regarding the rights and obligations of LDC members of the WTO. It is intended as a factual overview only.