

## 2. METHODOLOGY

Figure 1. Section 2 outline



### 2.1 Designing the information resource

This document has been prepared mostly through desk-based research in a review of publicly available documents and internet resources (see Section 2.3), but it is also informed by a November 2012 Symposium organised in Geneva by the Intellectual Property Division of the WTO Secretariat. The purpose of the Symposium was to discuss the successes and challenges associated with the programme of enhanced coordination of technical and financial assistance initiated by the TRIPS Council Decision of 29<sup>th</sup> November 2005.

During the Symposium a number of LDCs reported on their current processes in relation to the definition of or progress in addressing their priority needs for technical and financial assistance. Further, developed country members and co-operation partners reported on the work they have been doing, the range of relevant technical cooperation programmes, and the focus they intend to take in this area in the near future.

### 2.2 Taxonomy of technical and financial co-operation related to TRIPS

LDCs have a variety of needs in modernising their national IP systems and adapting them to serve their individual economic, social and developmental objectives, including their obligations under international agreements such as TRIPS. Technical and financial cooperation programmes respond to these different kinds of needs and they can be classified as follows:

- IP policy framework
- IP legal framework
- IP administration
- Enforcement and regulation regime
- Promoting innovation, creativity and technology transfer

## 2.3 Data sources and availability

### Needs communicated by LDCs

The WTO TRIPS Council Decision of 29<sup>th</sup> November 2005 invited LDC members to submit as much information as possible on their individual priority needs in order to make the provision of targeted technical assistance and financial cooperation an easier and more efficient process.

The specific objective of communicating national needs is to review the current status of the IP regime and innovation infrastructure in LDCs in order to provide assistance for the next stage of required reforms, together with a tailored program of capacity building and awareness raising for key stakeholders from government, the private sector and civil society.

Between November 2005 and January 2013, seven LDCs - Sierra Leone, Uganda, Bangladesh, Rwanda, Tanzania, Senegal & Mali - communicated their needs for technical and financial assistance to the WTO TRIPS Council. Madagascar has also recently communicated its needs to the TRIPS Council.<sup>8</sup> These reports are an invaluable resource in understanding LDCs' priority needs in the field of IP, and importantly, are based on those needs that each country itself identifies. Submissions are also expected from other LDCs including Cambodia, Lesotho, Malawi, and Nepal.

### WTO Trade Policy Reviews

The Trade Policy Review Mechanism (TPRM) was an early result of the Uruguay Round, being provisionally established at the Montreal Mid-Term Review of the Round in December 1988. Article III of the Marrakesh Agreement, agreed by Ministers in April 1994, placed the TPRM on a permanent footing as one of the WTO's basic functions and, with the entry into force of the WTO in 1995, the mandate of the TPRM was broadened to cover services trade and intellectual property.

Reviews are conducted by the Trade Policy Review Body (TPRB) on the basis of a policy statement by the member under review and a report prepared by the WTO Secretariat's Trade Policy Review Division and input from substantive divisions.

The reports consist of detailed chapters examining the trade policies and practices of the members and describing trade policymaking institutions and the macroeconomic situation; these chapters are preceded by the Secretariat's Summary Observations, which summarise the report and presents the Secretariat's perspective on a Member's trade policies. The Secretariat report and the Member's policy statement are published after the review meeting, along with the minutes of the meeting and the text of the TPRB Chairperson's Concluding Remarks delivered at the conclusion of the meeting. It must be noted however that there are limitations to the availability of this information since LDC members are only reviewed once every six years.

In the preparation of this document, the Consultant has been able to make use of around 15 TPRs from 2008 onwards. These have provided useful insights into the state of play in individual LDC members in relation to policy measures, legislation, administration and enforcement of IP.

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<sup>8</sup> WTO TRIPS Council submissions from LDC members: Sierra Leone (IP/C/W/499); Uganda (IP/C/W/500); Bangladesh (IP/C/W/546); Rwanda (IP/C/W/548); Tanzania (IP/C/W/552); Senegal (IP/C/W/555); Mali (IP/C/W/575); Madagascar (IP/C/W/584).

## WTO accession protocols for LDCs

After the WTO came into being, further LDCs have joined the organisation as a result of accession negotiations. WTO membership means a balance of rights and obligations. Members enjoy the privileges that other member states give to them and the security that the trading rules provide. In return, they must make commitments to open their markets and to abide by the rules, and those commitments are the result of the membership (or 'accession') negotiations.

Once the working party has completed its examination of an applicant's trade regime, and the parallel bilateral market access negotiations are complete, the working party finalises the terms of accession. These appear in a report, a draft membership treaty ('protocol of accession') and lists ('schedules') of the member-to-be's commitments. The final package, consisting of the report, protocol and lists of commitments, is presented to the WTO General Council or the Ministerial Conference for adoption. Once it has been adopted, an applicant is free to sign the protocol and to accede to the organisation.

These accession protocols therefore contain important information about acceding countries' IP systems and commitments. With the accessions of Nepal and Cambodia, and more recently Samoa and Vanuatu, to the WTO, the accession protocols have been a useful resource for this study in showing the state of play in these 4 LDC member countries regarding their national IP systems.<sup>9</sup>

## WTO TRIPS Article 67 notifications

Article 67 of TRIPS requires that "developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members". To ensure that information on available assistance is readily accessible and to facilitate the monitoring of compliance under the obligation of Article 67, developed country members have agreed to present descriptions of their relevant technical and financial cooperation programmes to the TRIPS Council and to update them annually. The Council normally holds its annual review of technical cooperation at its meetings in the autumn and requires the submission of these documents sometime in September/October each year.

The information from developed country members, IGOs and the WTO Secretariat on their technical cooperation activities in the area of TRIPS is circulated in a series of documents that are made available on the WTO documents online database. This information can be accessed through the TRIPS transparency toolkit webpage.<sup>10</sup> Developed country members have reported extensively on their technical assistance programmes under Article 67 since 1995. In addition, the EU, Japan and Canada made supplementary submissions in 2012 focusing specifically on responses to identified LDC needs.<sup>11</sup> These documents have been considered as an additional source of information regarding bilateral and regional support to LDC members in the preparation of this document.

The Consultant has reviewed all such submissions filed between 1995 and 2012, and developed separate matrices for 33 WTO-member LDCs along the variables of years and co-operation partners.<sup>12</sup> A summary of each type of co-operation partner activity has been noted (in italics where the LDC member has been specifically named and in regular font

<sup>9</sup> Lao People's Democratic Republic acceded to the WTO on 2 February 2013 but data from the accession protocol has not been included in this version of the report.

<sup>10</sup> TRIPS Transparency Toolkit: [http://www.wto.org/english/tratop\\_e/trips\\_e/trips\\_toolkit\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/trips_toolkit_e.htm)

<sup>11</sup> LDC Priority Needs in Intellectual Property: Submissions received from Developed Country Members (EU - IP/C/W/568, Japan - IP/C/W/572, Canada - IP/C/W/579)

<sup>12</sup> 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.

where it is likely that the LDC was a beneficiary given its membership of the relevant group). While these reports are unlikely to be a complete and exhaustive record, this analysis does give the best available indication of the kind of assistance that each LDC member has received from which co-operation partner and over what timeframe.

### WTO seminars and symposium

In recent years, at the request of the LDC Group, the WTO Secretariat has convened a series of workshops, both regionally and in Geneva, on the process of identifying priority needs and coordinating technical and financial cooperation. The most recent of these was the Symposium on LDC Priority Needs for Technical and Financial Cooperation from 31<sup>st</sup> October to 2<sup>nd</sup> November 2012<sup>13</sup>.

The Consultant was able to attend the November 2012 symposium and this has proved very helpful in gaining an improved and updated overview of the issues facing LDC members in mobilising technical and financial assistance in the field of IP. In particular, there were useful presentations and interventions at the November 2012 symposium in terms of understanding the priority needs of LDCs, the ongoing processes for identifying needs, the assistance developed countries are able and willing to provide, as well as challenges in coordinating demand and supply.

### Enhanced Integrated Framework - Diagnostic Trade Integration Study

The Enhanced Integration Framework (EIF) is a multi-donor programme, which supports LDCs to be more active players in the global trading system by helping them tackle supply-side constraints to trade. The Diagnostic Trade Integration Study (DTIS) is the cornerstone of the programme providing the basis for all subsequent EIF projects<sup>14</sup>. A DTIS evaluates internal and external constraints on a country's integration into the world economy, and recommends areas where technical assistance and policy actions can help the country overcome these barriers. The analysis covers specific sectors of the economy as well as cross-cutting institutional issues, such as market access, transportation and trade facilitation, standards, poverty, and core trade policy. An action matrix facilitates discussions with the government, co-operation partners, and the private sectors after the diagnostic study is completed. The World Bank is now in the process of updating existing studies, funded largely with resources from the EIF.

A number of LDC members have requested IP-related technical and financial assistance within their DTIS/DTIS Updates and Action Matrices. In the research for this report, the relevant reports and matrices have been briefly reviewed and it has been found that at least 15 countries<sup>15</sup> have provided information about their technical and financial assistance needs and requirements related to IP in their DTIS and action matrices.

#### Text box 1. Key findings from Cambodia, Lesotho and Nepal's DTIS

Cambodia indicated in the DTIS (2007) the need for IP education in order to strengthen human resource capacity in IP knowledge. Additional needs identified included the establishment of a commercial court system.

Lesotho's action matrix identified the need for training, legal expertise and support to enhance integration with South Africa's IPR regime.

<sup>13</sup> Details of this consultative process including presentations made are available at [http://www.wto.org/english/tratop\\_e/trips\\_e/lcdc\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/lcdc_e.htm)

<sup>14</sup> EIF, Compendium of EIF Documents: A user's guide to the EIF, 2011

<sup>15</sup> Cambodia, Guinea, Lesotho, Lao PDR, Mali, Mozambique, Nepal, Niger, Rwanda, Samoa, Senegal, Sierra Leone, Solomon Islands, Tanzania & Vanuatu.

Nepal's DTIS and action matrix identified the need for formal, legal regimes to establish IPRs over ethno-botanical knowledge, traditional cultural expressions and genetic resources. Further needs identified include capacity building in the judicial system to handle IP disputes as well as a public education campaign.

### Other publicly available databases, publications and sources

A number of other sources have been useful in the preparation of the information resource. These resources as well as the nature of the information found in them are outlined in the table below.

**Table 2. Further information resources**

Name	Type of Information	Relevant Link
<b>WIPO Lex</b>	National legislation since 1995.	<a href="http://www.wipo.int/wipolex/en/">http://www.wipo.int/wipolex/en/</a>
<b>WIPO Statistics</b>	Statistics primarily on IP administration (e.g. applications and grants of patents and trademarks).	<a href="http://www.wipo.int/ipstats/en/">http://www.wipo.int/ipstats/en/</a>
<b>WIPO IP Strategies</b>	LDCs' national IP strategies.	<a href="http://www.wipo.int/ip-development/en/strategies/national_ip_strategies.html">http://www.wipo.int/ip-development/en/strategies/national_ip_strategies.html</a>
<b>National Development Plan (NDP) &amp; Poverty Reduction Strategy Paper (PRSP)</b>	NDPs and PRSPs are likely to contain broader objectives for the IP system (if this subject is discussed at all). Moreover, the context in which IP is discussed (innovation, growth, agriculture, public health, etc.) will be indicative of key development priorities.	<a href="http://www.imf.org/external/np/prsp/prsp.aspx">http://www.imf.org/external/np/prsp/prsp.aspx</a>
<b>Science, Technology and Innovation (STI) Policy</b>	Where these exist, STI policies are likely to have some discussion of IP policy objectives.	<a href="http://unctad.org/en/Pages/Publications/Science,-Technology-and-Innovation-Policy-Reviews-(STIP-Reviews).aspx">http://unctad.org/en/Pages/Publications/Science,-Technology-and-Innovation-Policy-Reviews-(STIP-Reviews).aspx</a>
<b>WIPO Country Profiles</b>	General information about LDCs' national IP systems and participation in major international treaties (Berne, Paris, Madrid, Hague, UPOV, PCT etc).	<a href="http://www.wipo.int/directory/en/">http://www.wipo.int/directory/en/</a>
<b>WTO Notifications</b>	Notifications of changes to LDCs' IP laws.	<a href="http://www.wto.org/english/tratop_e/trips_e/trips_nofif2_art63-2_e.htm">http://www.wto.org/english/tratop_e/trips_e/trips_nofif2_art63-2_e.htm</a>
<b>UNCTAD</b>	Development Dimension of Intellectual Property Reports	<a href="http://unctad.org/en/Pages/DIAE/Intellectual%20Property/UNCTAD-ICTSD-Reports-Development-Dimension-of-Intellectual-Property.aspx">http://unctad.org/en/Pages/DIAE/Intellectual%20Property/UNCTAD-ICTSD-Reports-Development-Dimension-of-Intellectual-Property.aspx</a>
<b>The World Bank's Development Indicators</b>	General background information on LDCs' levels of economic and industrial development.	<a href="http://data.worldbank.org/data-catalog/world-development-indicators">http://data.worldbank.org/data-catalog/world-development-indicators</a>
<b>National and Regional IP Office Homepages</b>	General information about national IP systems.	Various
<b>WIPO IP Development Matchmaking</b>	Online tool for matching specific IP related development needs with resources offered by	<a href="http://www.wipo.int/dmd/en/">http://www.wipo.int/dmd/en/</a>

Database	potential co-operation partners.	
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## 2.4 Limitations

As the previous section outlines, this document relies on publicly available data sources. This means that the factual overview will not be as comprehensive as if in-depth stakeholder interviews and primary data collection had been undertaken with national authorities in LDC member capitals.

Further, although the subsequent section (Chapter 3) considers the state of play with IP-related policies and measures in LDC members broadly, the focus of this assignment means that only LDC members that have communicated their needs to date<sup>16</sup>; or are reported to be in process of doing so<sup>17</sup> have been considered in depth, in addition to those LDC members with recent WTO TPRs and/or accession protocols<sup>18</sup>. In total, 17 of the 34 LDC WTO members fall into one of these three categories.

Furthermore, most, if not all, LDC members are likely to have individual priority needs for technical and financial assistance related to TRIPS, but because their needs have not been explicitly articulated in publicly available sources they are not profiled in Chapter 4. More updated information is available for member states that were present at the November 2012 symposium, both in terms of LDCs and their needs, and co-operation partners.

Importantly, the focus of the resource is on the needs of LDCs and on meeting those needs with effective supply from co-operation partners. The resource expressly does not address policy questions, such as the transitional period for LDC members. Rather it focuses on needs as identified by LDCs themselves.

<sup>16</sup> Bangladesh, Mali, Madagascar, Rwanda, Senegal, Sierra Leone, Tanzania and Uganda.

<sup>17</sup> Cambodia, Lesotho, Malawi and Nepal.

<sup>18</sup> Burundi, Mozambique, Samoa and Vanuatu.