



22 February 2013

(13-0958)

Page: 1/12

**Council for Trade-Related Aspects of
Intellectual Property Rights**

Original: French

PRIORITY NEEDS FOR TECHNICAL AND FINANCIAL COOPERATION

COMMUNICATION FROM MADAGASCAR

INTRODUCTION

In its decision of 29 November 2005 extending the transition period for least developed countries (LDCs) to implement the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), the WTO TRIPS Council also invited LDC Members to provide as much information as possible on their individual priority needs for technical and financial cooperation in order to assist them in taking steps necessary for implementing the TRIPS Agreement.

Madagascar is fully aware of its international obligations, of the need to implement the TRIPS Agreement, and of the fact that intellectual property rights (IPRs) should be used for development and should form an integral part of domestic policies and programmes and of efforts to protect culture and encourage innovation.

Madagascar's intellectual property system is administered by the Malagasy Industrial Property Office (OMAPI) in the case of industrial property, and the Malagasy Copyright Office (OMDA) in the case of literary and artistic works.

The purpose of this communication and its annexes is to set out the priority needs for technical and financial assistance with a view to taking the necessary steps to implement the TRIPS Agreement in Madagascar.

These steps are being taken in response to national technical and financial considerations. The needs assessment covers, *inter alia*, the country's intellectual property (IP) policy and legal framework, the management of efforts to combat climate change and protect the environment, the enforcement and regulation of IPRs, compliance with regulations governing pharmaceutical and phytosanitary products, as well as the promotion of innovation and research, technology transfer, the protection of foreign direct investment (FDI), and the use of IP for development purposes.

ANNEX A

PRIORITY NEEDS FOR TECHNICAL AND FINANCIAL COOPERATION WITH A VIEW TO ENSURING THE EFFECTIVE IMPLEMENTATION OF THE TRIPS AGREEMENT

1 STRATEGIC OBJECTIVE: UPDATING INTELLECTUAL PROPERTY (IP) POLICY AND LEGAL FRAMEWORK

1.1 Strengthening IP policy and legal development and coordination capacity

1.1. Madagascar has one major advantage in the intellectual property area: it has two bodies responsible for the administration of intellectual property, OMAPI and OMDA.

1.2. However, it would appear that the legislation in force excludes many "cultural properties". This gap in the country's legislative texts undermines creativity and is detrimental to the competitiveness and performance of the country's economic operators, notably craftsmen and artists.

1.3. Another advantage for Madagascar is its National Cultural Policy Law for socio-economic development.

1.4. In view of the above considerations, we have decided to begin by organizing a national forum whose ultimate aim is to come up with recommendations and action plans for updating the Malagasy National Cultural Policy Law.

1.5. We are asking for technical and financial assistance in this respect.

1.2 Support for the reform of IP legislation and the harmonization of sectoral policies with the different laws

1.6. The development of a national IP policy and a legislative framework for IPRs needs to be consistent with related policies in areas such as culture – which is considered in Madagascar to be a springboard for development – science and technology, health, competition, agriculture, livestock, fisheries and the environment.

1.7. There is a need to understand linkages and best options for implementation in the light of the different levels of development and national priorities. Hence the pressing need for technical assistance, in areas where there is a priority need to update industrial property and copyright legislation, in drafting laws in which traditional knowledge and folklore need to be highlighted given the abundance in Madagascar of cultural products and handicrafts that could be protected and exported.

1.3 Introduction of a system for labelling and controlling products

1.8. To safeguard and encourage the performances of economic operators and the creativity of craftsmen, researchers, farmers, cattle breeders, and fishermen, technical and financial assistance is needed to introduce a system for controlling products and strengthening the efforts to combat counterfeiting.

2 STRATEGIC OBJECTIVE: MODERNIZATION OF THE INFRASTRUCTURE FOR IP ADMINISTRATION

2.1. The administration of intellectual property must keep pace with the different changes taking place internationally, including the development of technology to meet IP-user needs. This also applies to the LDCs like Madagascar when it comes to implementing the TRIPS Agreement.

2.2. The OMDA and the OMAPI, which are responsible for IP administration in Madagascar, are called upon to provide quality services to the productive and creative population and to the business world.

2.3. The fact is, however, that their task is complicated by their outdated infrastructure.

2.4. In the case of the OMAPI, a number of steps have already been taken: their human resources have been strengthened, domestic legislation has been overhauled in the light of the TRIPS Agreement, the archives have been reorganized, and procedures for issuing IP titles have been computerized.

2.5. However, not enough has been done: OMAPI still does not have its own building. Moreover, most of the materials and equipment used by the office are obsolete.

2.6. As regards the OMDA, the infrastructure for managing literary and artistic property could also do with some reorganization.

2.7. At the same time, to facilitate efforts to protect IP, a strategy for ensuring the evaluation and labelling of cultural products is needed.

- Accordingly, to improve its IP administration Madagascar has identified the following priority needs:
- a separate building for the OMAPI and upgrading of the OMDA building;
- computer materials and equipment for the two Offices;
- digitization of the archives of both Offices;
- computerization of OMDA procedures for the allocation of rights;
- open-air infrastructure for the promotion of folk dancing near cultural sites;
- creation and equipment of a museum devoted to the traditional wood-crafting knowledge of the Zafimaniry community (UNESCO Cultural Heritage of Humanity), which is typically Malagasy and could contribute to the promotion of handicrafts and tourism;
- institutional capacity building (materials, training, etc.).

3 STRATEGIC OBJECTIVE: USING IP FOR DEVELOPMENT, PROMOTING INNOVATION, RESEARCH, CREATIVITY AND TECHNOLOGY TRANSFER

3.1. Although information and awareness raising together with the promotion of the results of research in the IP area are basic tools for the implementation of the TRIPS Agreement, the efforts made thus far have not yielded any convincing results.

3.2. Information and awareness raising via radio, television and the press only reaches a small portion of the target population. It might be useful to contact the relevant groups or associations of operators directly, to draw up an appropriate timetable and to specify the topic of a given workshop or training session. Thought also needs to be given to possible actions at the decentralized community level.

3.3. Progress has been made with respect to research, technology and innovation, with the introduction of research centres. However, significant efforts are needed, and the existing research centres need to work in synergy with each other to develop training for operators. The objective would be to truly guarantee creativity and technology transfer.

3.4. Moreover, in most cases there is a technology deficit at the regional level. A considerable effort needs to be made to develop appropriate technologies adapted to local specificities, capacities and conditions. That effort must first and foremost target the critical sectors of the local

economy, in particular agricultural and food production, local production processes, and the conservation and improvement of resources such as water, forests and energy.

3.5. For the handicrafts sector, a better understanding of the surrounding environment (institution to contact, financial partner, donor supplying raw materials, media, etc.) is needed to ensure that marketing and distribution takes place through formal channels.

3.6. To address all of these problems, Madagascar is putting forward the following actions for which it requests technical and financial assistance from developed countries through their enterprises and/or institutions:

- organization and systematization of technological information, in particular intermediate technology (village technology, labour-intensive technology in public works and construction, agricultural machinery adapted to local conditions, intermediate industrial technology);
- strengthening and optimization of technological development assistance structures and mechanisms;
- identification of the key technologies requiring priority (energy, climate change, etc.) and organization of groups tasked with acquiring command of these technologies;
- human and material capacity building;
- support for the Chambers of Commerce and Industry in the IP area in order to encourage them to promote innovation and creativity and speed up the registration of patents with the OMAPI;
- information and awareness raising for micro, small and medium enterprises (MSMEs) in the IP area;
- capacity building for craftsmen;
- operational capacity building for administrative officials.

4 STRATEGIC OBJECTIVE: STRENGTHENING THE IP ENFORCEMENT AND REGULATION REGIME

4.1 Lack of awareness among the population, particularly consumers and operators such as PMEs, PMIs and cooperatives, of their IP rights.

4.1. In Madagascar, consumers and operators such as SMEs, SMIs and cooperatives tend to be misinformed or unaware of the existence of IP rights, and do not know that they have such rights.

4.2. The population therefore needs to be informed, educated and made aware of the importance of IPs so that they can protect their inventions and so that they all know what to do when problems arise.

4.3. This requires the periodic organization of IP forums and economic events (workshops, seminars, exchanges of experience, round tables) down to the grassroots level in order to reach out directly to the population and inform as many people as possible.

4.2 Lack of synergy among the different intellectual property agencies responsible for enforcement of IPRs and within the administration (police, justice, customs)

4.4. Since joining the WTO, Madagascar has become aware of a lack of synergy between the different IP bodies (public and private) responsible for IPR enforcement owing to the fact that there is no coordinating structure to bring all the stakeholders together.

4.5. It is therefore essential that a first forum be organized to set up this coordinating structure in the form of a committee with the power to implement the TRIPS Agreement.

4.3 Limited understanding on the part of the stakeholders (administration and IPR enforcement bodies) of matters relating to IPRs (regulations, scope)

4.6. To obtain better results in IP enforcement and regulation, all of the economic and social actors need capacity building in their respective areas so that they can fulfil their role properly.

4.7. The planned training would be tailored to each of the stakeholder groups, i.e. the population, IPR enforcement bodies and IP registration bodies, and finally, the administration.

4.8. The ministries in charge of industry, culture and trade would be responsible for organizing the awareness campaign, the forum and the capacity building, while the OMDA, the OMAPI and IP representatives, the private sector, consumers, researchers and research centres, students, politicians, etc., would all be invited to participate.

5 STRATEGIC OBJECTIVE: STRENGTHENING OF THE HEALTH DEPARTMENTS RESPONSIBLE FOR ENFORCING THE REGULATIONS GOVERNING PHARMACEUTICAL AND PHYTOSANITARY PRODUCTS

5.1. Madagascar is a Member of the WTO and has acceded to the different WTO agreements, including the TRIPS Agreement. Certain provisions of that Agreement concern public health. The health departments responsible for enforcing and regulating pharmaceutical and phytosanitary products are having problems implementing the Agreement.

5.2. Madagascar has a significant production capacity for pharmaceutical and phytosanitary products. However, there are a number of obstacles, such as taxation of the ingredients and the equipment needed for production, the shortage of laboratory equipment and lack of competence among the officials concerned. As a result, local products are no longer able to compete with imported products.

5.3. When it comes to marketing pharmaceutical and phytosanitary products, Madagascar is aware of the danger of selling counterfeit medicines. The procedure for obtaining a Marketing Approval Certificate (AMM) from the authorities is cumbersome. The officials responsible for controlling medicines are not sufficiently trained in combating counterfeiting.

5.4. Consequently, in order to improve access to medicines and to better control counterfeit products, Madagascar has identified the following priority needs:

- technical and financial assistance for the health departments;
- materials and equipment needed for the production of medicines;
- capacity building on the standardization of control procedures for pharmaceutical, phytosanitary and veterinary products;
- technical and financial assistance for the body responsible for protecting inventions deriving from pharmaceutical and phytosanitary products;
- training with a view to raising awareness of the harmful effects of counterfeit pharmaceutical products and medicines.

6 OBJECTIVE: IMPROVEMENT OF IP DISPUTE MANAGEMENT

6.1. The system of arbitration and mediation has existed in Madagascar for some time now, but the economic actors are not very familiar with them.

6.2. The law on arbitration was enacted in 1998, and in 2012, a law on mediation was adopted. The two laws form part of the Code of Civil Procedure. That same year, the Arbitration and

Mediation Centre of Madagascar was restructured by the Chamber of Commerce and Industry of Antananarivo.

6.3. Support and assistance are requested in the following areas:

6.1 Capacity building on arbitration and mediation

6.4. The staff working in this Centre needs better training on IP procedures, both national and international, and the agents and officials working in both Offices need to be trained in managing IP conflicts between applicants and authors.

6.2 Capacity building on international procedures relating to cultural goods

6.5. As a former colony, Madagascar had much of its national wealth in cultural property looted. Its goods on display in foreign museums have encountered considerable success.

6.6. The country's economy, trade and tourism stand to benefit from the repatriation of its property, but the officials concerned lack experience in the procedures that would enable this to happen. Hence the need for technical assistance on negotiations relating to the identification and repatriation of these cultural goods.

7 STRATEGIC OBJECTIVE: ENHANCED REGIONAL AND INTERNATIONAL COOPERATION

7.1 Facilitating participation in international and regional meetings organized by WIPO

7.1. The presence of IP negotiators at international and regional meetings would ensure a better understanding of the provisions of the TRIPS Agreement and more efficient and effective implementation of the Agreement. Exchanges of experience with other countries and international experts from the WTO and WIPO would help to enhance the capacity of the Malagasy actors (officials, agents in the Offices and other bodies, private sector) with respect to the protection and use of IP. It would be particularly useful if donors could meet the costs of Malagasy representatives to enable them to participate in meetings and events abroad. The national delegation will be reinforced by representatives from the Permanent Mission in Geneva, who will follow up the periodic meetings on the IP issues.

7.2. It goes without saying that upon returning to their country, the negotiators undertake to produce a detailed mission report and to report in plenary. As far as possible, they will also disseminate what was learned on each mission both at the national level and at the regional level through the local representatives of the entities concerned. The websites of the participating institutions should also help to support these outreach efforts.

7.2 Support for the organization of regional and international cultural events

7.3. The strengthening of regional and international cooperation creates a capital of leadership and knowledge. Leadership and managerial capacity help, in their turn, to create and maintain other forms of capital, and know-how contributes to creative and competitive practices and boosts business productivity. Technical assistance is needed in this area, together with material and financial support.

7.4. At the same time, the insularity and remoteness of Madagascar have a considerable influence on the promotion of trade. Hence the need to develop relations and to exchange experiences with partner countries. Madagascar has the potential for a booming music sector, but few international producers and tour organizers are aware of that potential. It would be useful to be able to organize regional and international cultural events with the support of the leading international tour organizers as a means of promoting the culture and art of the ocean rim states and improving the copyright industry.

7.3 Introduction of common procedures to fight piracy and counterfeiting in the Region (Indian Ocean, Southern and Eastern Africa)

7.5. The Government has set up an Anti-Piracy Brigade (BAP) within the Ministry of Culture and Heritage to combat piracy, theft and looting of the cultural heritage. We would therefore propose that this structure, made up of the judicial police from different parts of the National Gendarmerie and the National Police, be expanded in order to be able to fight against counterfeiting in general. In addition, we need to set up, in cooperation with Customs and the public entities responsible for border control, some kind of regional cooperation in implementing a common procedure that complies with the TRIPS Agreement.

ANNEX B

OUTLINE PLANNING MATRIX FOR THE PROGRAMMES

Strategic objectives	Needs for technical and financial assistance	Main activities	Leading national bodies
<p>1. Updating intellectual property (IP) policy and legal framework</p>	<p>Strengthening IP policy and legal development and coordination capacity</p> <p>Support for the reform of IP legislation and for the harmonization of sectoral policies with the different laws</p> <p>Introduction of a system for labelling products</p>	<p>Organization of a "Forum on IP Policy"</p> <p>Assistance in drafting new laws and regulatory texts (geographical indications, plant varieties, traditional knowledge and folklore)</p> <p>Updating of legislative and regulatory texts governing the sector</p> <p>Fight against counterfeiting at both the national and international level</p>	<p>OMAPI</p> <p>OMDA</p> <p>Other public and private bodies, groupings and civil society</p> <p>Ministers concerned: Justice, Culture and Heritage, Handicrafts, Trade, Industry, Agriculture, Livestock, Fisheries, Environment</p> <p>BAP, OMDA, OMAPI, Customs, National Gendarmerie, National Police, Justice, Health</p>
<p>2. Modernization of the infrastructure for IP administration</p>	<p>Modernization of the organizational structure of IPR administration</p> <p>Revitalization of the two Offices (OMDA and OMAPI)</p> <p>Institutional capacity building</p>	<p>Computerization of procedures for issuing IP titles</p> <p>Separate building for the IP bodies</p> <p>Staff capacity building, design and implementation of training programmes</p>	<p>OMAPI</p> <p>OMDA</p> <p>IP representatives</p> <p>Technical and financial line ministries</p>

<p>3. Using IP for development, promoting innovation, research, creativity and technology transfer</p>	<p>Organization and systematization of technological information, in particular intermediate technology (village technology, labour intensive technology in public works and construction, agricultural machinery adapted to local conditions, intermediate industrial technology)</p> <p>Strengthening and optimization of technological development assistance structures and mechanisms</p> <p>Organization of groups tasked with acquiring a command of key technologies (energy, climate change)</p> <p>Support for the Chambers of Commerce and Industry in the IP area</p> <p>Information and awareness-raising for micro, small and medium-sized enterprises (MSMEs) in the IP area</p> <p>Managerial capacity building for craftsmen</p> <p>Operational capacity building for administrative officials</p>	<p>Study of the possibility of introducing a National Innovation Index in Madagascar</p> <p>Organization of a contest/exhibition for amateur Malagasy inventors</p> <p>Support to the research centres and universities for the publication and dissemination of the results of technological research</p> <p>Improvement of access to national and international databases</p> <p>Capacity building for researchers in the technology transfer area</p> <p>Upgrading of the laboratories and research centres</p> <p>Operational capacity building for the government service in charge of handicrafts</p> <p>Production and managerial capacity building for craftsmen</p> <p>Study on appropriate technologies for Madagascar</p> <p>Support for students, craftsmen and enterprises seeking to master these technologies</p> <p>IP training, documentation and equipment</p> <p>Training to improve the competitiveness of handicrafts production units</p> <p>Proper protection and exploitation</p> <p>Introduction of a network between craftsmen and environmental operators</p> <p>Introduction of a marketing and distribution network</p>	<p>OMAPI</p> <p>OMDA</p> <p>IP representatives, universities and research centres</p> <p>Groupings of economic operators and professionals</p> <p>Consumer associations</p> <p>Chambers of Commerce and Industry</p> <p>Ministries concerned</p> <p>Association of creative craftsmen and distributors</p> <p>Decentralized territorial communities</p>
---	---	--	---

<p>4. Strengthening the IP enforcement and regulation regime</p>	<p>Informing, educating, and raising the awareness of the population with regard to the importance of IP</p> <p>Introduction of a coordinating structure to bringing all the stakeholders together</p> <p>Capacity building of all of the economic and social actors</p>	<p>Periodic organization of IP forums</p> <p>Organization of economic events (workshops, seminars, exchanges of experience, round tables) down to the grass-roots level</p> <p>Organization of a first forum to set up a structure (committee capable of implementing the TRIPS Agreement)</p> <p>Proper training for each of the stakeholders: population, IPR protection bodies and/or IP registration bodies, administration</p>	<p>Organization: Ministries in charge of:</p> <ul style="list-style-type: none"> - Industry - Culture - Trade <p>Participation:</p> <ul style="list-style-type: none"> - Administration - OMDA, OMAPI and IP representatives - Private sector - Consumers - Researchers and research centre - Students - Politicians - Etc.
---	--	---	--

<p>5. Strengthening of the health departments responsible for enforcing the regulations governing pharmaceutical and phytosanitary products</p>	<p>Capacity building for officials in the ministries in charge of IP health matters and public health</p> <p>Technical and financial assistance for employees of the office responsible for the protection of inventions deriving from pharmaceutical and phytosanitary products</p> <p>Capacity building for employees of the National Laboratory for Veterinary Diagnosis (LNDV) and the Madagascar Medicinal Product Agency as well as for border control agents</p>	<p>Training on IPRs and public, phytosanitary and veterinary health</p> <p>Improved standardization of administrative procedures for local production of veterinary products</p> <p>Traditional medicine practitioners</p> <p>Technical and financial assistance for the protection of inventions deriving from pharmaceutical and phytosanitary products</p> <p>Technical and financial assistance for the protection of the results of pharmaceutical research</p> <p>Improvement of the standardization of administrative procedures for the marketing of pharmaceutical products</p> <p>Awareness raising on the dangers of pharmaceutical products and counterfeit medicines</p> <p>Capacity building for laboratory employees and border control agents</p> <p>Improvement of laboratory equipment for the LNDV and the Madagascar Medicinal Product Agency</p> <p>Information/training/exchange of experience</p> <p>Protection of patents by requiring and controlling marketing authorizations for pharmaceutical products sold in Madagascar</p> <p>Purchase of a high-capacity incinerator</p>	<p>Professionals from the Ministries concerned</p> <p>Human, veterinary and phytosanitary health professionals</p> <p>Private bodies and veterinary and pharmaceutical product researchers</p> <p>Traditional medicine practitioners' group</p> <p>OMAPI</p>
<p>6. Improvement of IP dispute management</p>	<p>Capacity building on arbitration and mediation</p> <p>Capacity building on international procedures</p> <p>Exchanges of experience on the functioning of mediation and arbitration bodies</p>	<p>Training on national and international procedures</p> <p>Establishment of an arbitration structure specializing in IP or strengthening of existing structures</p>	<p>Ministries of Justice, Culture and Heritage, Trade, Industry; OMDA, OMAPI, CAMM; Bar Association</p> <p>Ministries of Justice, Foreign Affairs, Culture and Heritage; Customs</p>

7. Enhanced regional and international cooperation	Exchanges of experience Institutional capacity building	Facilitation of participation in international and regional meetings organized by the WTO and WIPO Support for the organization of regional and international cultural events Introduction of common procedures to fight piracy and counterfeiting in the region (Indian Ocean, Southern and Eastern Africa)	OMAPI OMDA IP representatives Technical and financial line Ministries Customs
---	--	--	---
