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

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INCREASED ASSISTANCE TO THE LEAST DEVELOPED COUNTRIES (LDCs)

*Document prepared by the International Bureau*

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## **I. Introduction**

1. Governments, private sectors and international organizations play an important role in creating a coherent policy framework and setting up effective support measures and structures for the development of the intellectual property system in the Least Developed Countries (LDCs). The Director General of WIPO, cognizant of this fact, taking into account the needs of LDCs and the important role that intellectual property plays and contributes to development, established the LDCs Unit in October 1998, under the Cooperation for Development Sector.

2. This preliminary report seeks to provide brief information on the establishment of the Unit and related measures taken by the Director General since then. In this context, the report describes the background to and the establishment of the LDCs Unit in WIPO and the activities undertaken thereafter.

3. There is a need for in depth national studies and analysis of the intellectual property sectors of LDCs. This could be met by conducting extensive research on individual sectors of intellectual property in LDCs, by identifying problem areas and suggesting possible solutions. In this connection, preliminary general analysis of the intellectual property sectors of LDCs and their contributions for development will serve as inputs for future detailed studies. The Committee may wish to take action on this and other related matters during its current session.

## **II. Background and establishment of the Least Developed Countries (LDCs) Unit**

4. The Least Developed Countries (LDCs) are the poorest and economically weakest countries of the world, with formidable structural problems. They face supply-side weaknesses, which impede their ability to compete effectively in world markets. Their share of the world Gross Domestic Product (GDP) decreased in the 1990s as compared to the 1980s. Their share in worldwide investment is also very small, and the LDCs as a group received less than 1 per cent of foreign direct investment (FDI). For many years the profound implications of their situation has been the subject of public debate.

5. The recognition of the developmental problem of the poorest countries and the establishment of the LDCs group dates back to 1971, when 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. The three principal criteria used to establish the group were (i) per capita GDP of US \$ 100 per person in 1968 or less; (ii) a share of manufacturing in total GDP of 10 per cent or less; and (iii) an adult literacy rate of 20 per cent or less. The list of countries as "least developed" is established by the General Assembly on the recommendation of the Economic and Social Council (ECOSOC) and at the advice of the Committee for Development Planning (CDP). The list is reviewed every three years. The most recent review was conducted in 1994. The current set of criteria for identifying LDCs are: (i) Per capita GDP of \$ 699 (at US annual average 1992-1994); (ii) Augmented

physical quality of life index (APQLI) of 47 or less;<sup>1</sup> (iii) Economic diversification index (EDI) of 26 or less;<sup>2</sup> and (iv) Inhabitants of not larger than 75 million. Accordingly a country will qualify for inclusion if it meets the four criteria namely, population size, per capita income, the APQLI and EDI, subject to the judgement of the Committee.

6. The number of countries now classed as LDCs has risen to 48 and 23 of the 24 original members are still in the same category (the exception being Botswana) and their number has more than doubled in the last 25 years. The increase in the number of LDCs has been even more significant in the 1990s; the number has risen from 41 in 1990 to 48 in 1995, which is a substantial increase. Thirty-three of the 48 LDCs are in Africa, 14 are in Asia and the Pacific, and one in the Latin America and Caribbean region. Sixteen of the 48 LDCs are landlocked. The high transport costs which result from their particular geographical handicaps continue to have a significant adverse impact on their overall economic development. Island LDCs face particular problems resulting from their smallness, insularity and remoteness from the major economic centers.

7. The supply side weaknesses faced by the LDCs impede their ability to compete effectively in the world markets. These weaknesses span both public and private sectors. They include, *inter alia*, poorly developed managerial and technical capacities in the private sector, weaknesses in public administration and deficiencies in physical infrastructure. Technological advances have aided the globalization process in transport and communications, and there has been a rapid liberalization and deregulation of trade and capital flows at both the national and the international levels. Countries with initial conditions that make them less suited to take advantage of the opportunities presented by globalization are at risk of becoming further marginalized.

8. Traditional distinctions between the economic, social and political spheres between efficiency and equity, and between the national and international are increasingly inadequate to grasp the nature and scale of contemporary development. Knowledge, skills, information, values, communication and exchange lie at the heart of these developments and the challenges they represent. As the pace of technological change accelerates and international competition intensifies, uncertainty increases for policy-makers and producers alike. The changes, in turn, are fundamentally altering development requirements, adding the need for continuous adjustment to the traditional elements of sustained growth and structural change. To cope with this new reality, pressures are mounting to orient development processes everywhere towards the creation of more flexible production systems built upon a strong technological base.<sup>3</sup>

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<sup>1</sup> APQLI is a composite index comprising of 4 indicators: (i) child mortality, under the age of 5; (ii) calorie supply as a percentage of minimum daily requirements, or percentage of population undernourished; (iii) adult literacy rate; and (iv) combined primary and secondary school enrolment ratio.

<sup>2</sup> EDI is a composite comprising of the following indicators: (i) combined indicator of manufacturing and modern services as a share of GDP; (ii) indicator of the concentration of goods and services exports; (iii) per capita electricity consumption per year; and (iv) vulnerability of natural disasters (developing and including an indicator in this area is in the process of being done).

<sup>3</sup> As stated by Don Tapscott in his book 'The Digital Economy, Promise and Parole in the age of networked intelligence', pp 7-8, McGraw-Hill, 1996: "The factory of today is as different from the industrial factory of the old economy as the old factory from the craft production that preceded it. Farms are operated with agricultural equipment brimming with chips. Cargo is shipped in containers loaded by giant computer-controlled cranes or in jumbo jets loaded with software. Products themselves have knowledge content. There are smart clothes with chips in the collar; smart vehicles brimming with microprocessors that do a hundred new things every year; smart maps that tell a trucker's location and automatically change tire pressure according to the weather and road conditions; smart

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9. Over the past several years, many LDCs have undertaken wide-ranging reform policies and measures to improve their economic situation. As they moved along the reform path, the reform objectives became more complex and ambitious, shifting from the limited concerns of correcting macroeconomic imbalances and stabilization to promoting development by a plethora of market-oriented reforms, including improving economic efficiency, curbing public-sector intervention, encouraging the private sector and liberalizing the external trade sector. The reform process also requires adjusting to the process of the new economy which is a knowledge economy based on the application of human know-how to everything we produce and how we produce it. In the new economy, more and more of the economy's added value will be created by brain. Many agricultural and industrial jobs are becoming knowledge work. For LDCs to break away from their marginalization and participate more actively in global economic processes, it is imperative that they should be supported in widening and deepening the national infrastructure of their intellectual property and the external orientation of their economies as knowledge, skills, information values, communication and exchange lie at the heart of contemporary development. Without support, LDCs will become further marginalized as the process of globalization gains further momentum.

10. The Director General took a personal initiative to address the developmental problems of LDCs and the constraints facing them in integrating into the culture of intellectual property and the world economy at large. He issued policy directives initiating new activities and taking measures aimed at introducing new and improved methods of work. One year after he took office and following the decision taken by the WIPO General Assembly of September 1998, the Director General established a Unit for the Least Developed Countries in October of the same year to deal with the special concerns of LDCs and aimed at improving their overall capacity to respond to the opportunities offered by the global world economy. In this context the Unit:

- (i) Coordinates WIPO's technical cooperation activities in LDCs, to ensure that they focus on the specific requirements of the countries concerned and that they complement rather than duplicate technical cooperation activities undertaken by other agencies. In doing so, the Unit works closely with the various Bureaux and Divisions of the Organization.
- (ii) Designs additional programs and highlights a set of activities that should be coordinated in close cooperation with the Regional Bureaux and Divisions.
- (iii) Proposes goals, objectives and strategies for the development of the culture of intellectual property in the short, medium and long term. In doing so, it will take into account the changing social and economic conditions in the LDCs, and the evolving global environment.
- (iv) Participates in the preparation of analyses and comment on the evolving global environment as this is influenced by political, economic and technological changes and will assess the implications of this evolution in the development of

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radios that store the traffic report for when you want it; smart houses that manage energy, protect you from intrusion, and run a bath for you before you arrive. These are only a few examples. Adding ideas to products and turning new ideas into new products is what the future is all about. Whether people act as consumers or producers, adding ideas will be central to wealth creation." Hence the increasing importance of Intellectual Property.

intellectual property culture in the LDCs.

- (v) Addresses and articulates the various needs of LDCs at the sub-regional, regional and interregional levels and ensures the implementation of the various follow up actions involved. It also initiates and proposes measures to provide improved training for intellectual property cadres in LDCs, and the establishment and improvement of the intellectual property infrastructure, including the improvement of human resources training and institution building.

11. In order to achieve the above aims, the Unit will maintain a network of contacts with officials in LDCs, including the focal points that assume the overall responsibility for coordination at the national level. To this end the Unit deals closely with the national focal points to ensure the efficient implementation of program activities and their follow up. The Unit also coordinates closely with subregional, regional and international organizations such as ARIPO, OAPI, WTO, UNIDO, UNCTAD, ITC, ECA, OAU, ECLAC and ESCWA and others as necessary.

### **III. Accession to WIPO Conventions and other WIPO-administered Conventions**

12. Accession of LDCs to the WIPO Conventions must be seen not as an end in itself but as a key element in the pursuit of national development objectives. The LDCs find it difficult to exploit fully the opportunities available for accession to WIPO owing to lack of proper and well-disseminated information. Out of the 48 LDCs only 39 have acceded to the WIPO Convention. Further disaggregation of the regional membership shows that 31 of the 39 are from Africa accounting for seventy nine per cent of the LDCs acceded to the WIPO Convention. Only seven LDCs from the Asian region, accounting for eighteen per cent of the LDCs have acceded to the WIPO Convention. Nine LDCs accounting for nineteen per cent of them are not yet members of WIPO (seven from Asia and two from Africa).

13. Only 22 of the 48 LDCs have acceded to the Berne Convention, and 31 of them to the Paris Convention. While three Asian LDCs have acceded to the Paris Convention, only Bangladesh has acceded to the Berne Convention. On the other hand 27 African LDCs have acceded to the Paris Convention and 21 of them to the Berne Convention. While there are 19 LDCs that are parties to the Patent Cooperation Treaty, all of them are from Africa. None of the Asian LDCs or Latin American and Caribbean LDC are members of the PCT. Haiti being the only LDC in Latin America and the Caribbean, has acceded to the Paris and Berne Conventions. Four of the LDCs, all of them from Africa, have acceded to the Madrid System on Trademarks.<sup>4</sup> Fifteen LDCs have notified WIPO that they have Copyright legislation.

14. Promoting and strengthening the intellectual property system could not be achieved by focusing only on the development of norms and rules and establishing enforcement mechanisms. Certain non-legal factors impeding broader acceptance of intellectual property systems need to be addressed systematically by WIPO if LDCs are to benefit from it. The lack of adequate information about intellectual property systems in LDCs has led many government officials to the conclusion that intellectual property is a vehicle for protecting foreign interests. Measures are required to demonstrate the usefulness of intellectual property systems for LDCs. In this connection:

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<sup>4</sup> Refer to WIPO document number 423, dated January, 1999.

- (i) A clear link between intellectual property systems, foreign investment, research and development, and transfer of technology must be demonstrated to the LDCs in order to encourage their accession to the Organization and the Conventions administered by it.
- (ii) Attention should be given to encouraging them to become members of regional and subregional organizations dealing with intellectual property questions.
- (iii) There currently exists an information kit containing information on the various Conventions administered by WIPO such as the Paris Convention on the Protection of Industrial Property, the Berne Convention on the Protection of Literary and Artistic Works, the PCT, the Treaty on Intellectual Property in respect of Integrated Circuits and other Conventions. It would be advantageous if a special Kit could be prepared containing additional information for LDCs taking into account their particular needs.

#### **IV. WIPO's technical assistance for LDCs**

15. The program of technical assistance for LDCs, through the provision of technical assistance and cooperation with governments establishes or modernizes intellectual property (industrial property and copyright) systems, consistent with national objectives and requirements. The program is being implemented by the various WIPO Bureaux and Divisions which, under the policy directives of the Director General, make provision for developing human and institutional capacities in LDCs. The priority areas of technical assistance of WIPO for LDCs were articulated by the Director General on several occasions.

16. In February 1999, the Director General addressed a letter to officials of LDCs with a set of questionnaires to assess and evaluate the critical needs of these countries. The focus is to strengthen managerial and technical capacities in the private sector, to enhance the ability of public administration to formulate and implement appropriate intellectual property policies and to provide the service infrastructure to support intellectual property as requested by WIPO Member States. Furthermore the Director General is determined to ensure that the level of technical assistance to LDCs increases and that its effectiveness is maximized. In this context, initiatives have been taken to provide improved training for intellectual property cadres in LDCs, and the establishment and improvement of intellectual property infrastructure, including the improvement of human resources training and institution building.

17. It is assumed that there is scope for further improvement and better utilization of the benefits conferred by WIPO on LDCs. WIPO's Technical Cooperation program for LDCs is needs-based, clearly focused and manageable. There is an emphasis on program ownership and commitment by the public and private sectors. There is focus on national, subregional, regional and interregional activities, and priority will be given to intellectual property awareness, capacity building in human resources development, preparations for the implementation of the TRIPS Agreement, technology transfer, information and communication technologies (the use of internet and electronic commerce). Attention will also be given to the enactment of laws, rules and regulations in LDCs with regard to industrial designs, geographical indications, unfair competitions and plant varieties; the protection of

traditional knowledge and biotechnology and the importance in the development of LDCs; as well as the protection of indigenous technology and folklore.

18. The full potential of intellectual property can be realized by simultaneously building capacity in key areas and sectors in the LDCs to which it is linked. LDCs have the requisite natural and human resources to play an active role in the global economy. What is needed is a way to tap that potential effectively. This can be done, *inter alia*, by providing systematic and consistent support in building the LDCs' human resources capacity and utilizing that capacity efficiently within an enabling environment. In this connection, building "knowledge capital" is a requirement to realize this potential. Knowledge capital, which is composed of excellence in policy leadership, management, administration, skills, professionalism and entrepreneurship, can be built by harnessing information inputs, data and technology, education, training, and institution-building. This investment in people will serve to build "knowledge capital" in the public and private sectors. WIPO programs can effectively contribute to fulfilling these needs of LDCs through training and institution building.

19. To realize the above objectives the LDCs Unit in close cooperation and coordination with the Regional Bureaux, Divisions and programs will design and contribute in the implementation of programs consisting of two phases, in addition to the on-going activities. Phase one will entail preparatory work (needs assessment, and planning). This will be followed in phase two by the delivery of technical assistance (in the form of studies, training, seminars, and meetings). The program would also provide opportunities and involve efforts to cooperate more closely with subregional, regional and interregional organizations dealing with intellectual property issues to further develop the program in LDCs and ensure its sustainability.

20. As a first step in the implementations of the program objective the Director General in his letter of February 1999, addressed to officials of LDCs, has set in motion a process of an intellectual reassessment of policy and action and of the institutional initiatives that would be undertaken by LDCs for the implementation and development of their intellectual property systems in order to face the challenges of the next millennium. In this context, a questionnaire prepared in English, French, Arabic and Spanish languages and devoted to addressing the development needs of LDCs in relation to intellectual property issues has been sent to 47 Least Developed Countries in order to reassess their overall needs in the various fields of intellectual property, especially addressing their requirements in human resources and institutional development, national legislation including national laws and regulations related to intellectual property, such as investment and technology transfer codes. Additional efforts are also being made to assess interest, needs and requirements through the organization of national, subregional, regional and inter regional seminars and round tables, by undertaking consultations with government officials (in the Ministries of Science and Technology, Culture, Education and Information and Investment Promotion Agencies), as well as representatives of private sector organizations (Chambers of Commerce and Industry, Trade Associations).

21. The above exercise will be useful to determine, first, which of the sectoral areas of technical assistance program under WIPO's aegis meet the specific requirements of individual LDCs, and, given domestic institutional capacities, can feasibly be implemented with realistic expectations of success, and secondly to determine the composition of full-scale participation of the Organization in the subregional, regional and interregional activities. The results of the assessment will form part of a comprehensive report containing analysis and recommendations.



22. This will be followed by improved and needs based program implementation of technical assistance in each of the regions concerned. This phase will provide the substantive outputs such as the delivery of services in the form of studies in selected subject areas, and participation in seminars to discuss and highlight common problem areas, to identify differences, suggest and seek solutions to problems identified and to design a strategy for more activities.

23. At present, through its Nationally Focused Action Plans, WIPO has about 44 projects in 38 LDCs in the field of copyright, industrial property and folklore. It has maintained close network of contacts with officials in LDCs, including the focal points who assume overall responsibility for coordination at the national level. During the current year national, subregional, regional and interregional seminars, training programs, and meetings are planned. In addition, preparatory work for studies and issues notes, including collection and evaluation of information for LDCs on intellectual property has already started.

24. A major effort is required with respect to institution building and upgrading, training in specialized skills and improvement of information collection, coordination and commercialization, and exploitation of inventions and creations protected by intellectual property rights. Inventive and creative activities and mechanisms for the commercialization and exploitation of inventions and creations protected by intellectual property rights should be promoted. WIPO, with its wide-ranging and multidisciplinary technical expertise, has a special contribution to offer LDCs in many of these areas. Consideration would also be given to the launching of intergovernmental consultations, including bodies to address and articulate the special needs of LDCs in the use of intellectual property for development and for the joint management of Nationally Focused Action Plans in LDCs.

#### **V. First African Sub-Regional Symposium for Least Developed Countries (LDCs) on the Implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Banjul, the Gambia (12 to 14 April, 1999)**

25. The first African Subregional Symposium on the implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) by the Least Developed Countries was held in Banjul, the Gambia, 12 to 14 April, 1999. The objective of the Symposium was to contribute to institution-building by providing clarifications on obligations under the TRIPS Agreement on measures to be taken at the national level and on the assistance available to them from WIPO for the purpose of compliance with those obligations. Around 50 participants from nine African LDCs (Western, Eastern and Southern African LDCs) comprising officials from Ministries of Trade and Industry, Science and Technology Commissions, Industrial Property and Copyright Offices, Attorney General's Offices and Customs and Excise; Legislative Drafting Departments were present at the Symposium.<sup>5</sup> The discussions and presentations made at the Symposium were divided into three interrelated main agenda items as described below.

#### **A. Implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS, January 2006)**

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<sup>5</sup> Representatives of Eritrea, Ethiopia, the Gambia, Lesotho, Malawi, Sierra Leone, Tanzania, Uganda and Zambia attended the Symposium.

26. Under this item presentations were made on the main provisions covered under the TRIPS Agreement, namely: (i) General Provisions and Basic Principles; (ii) Copyright and Related Rights; (iii) Trademarks and Geographical Indications; (iv) Patents and Industrial Designs; (v) Layout-Designs (Topographies) of Integrated Circuits; (vi) Protection of Undisclosed Information; (vii) Control of Anti-Competitive Practices in Contractual Licenses; (viii) General Obligations; Civil and Administrative Procedures and Remedies; Provisional Measures, (ix) Special Requirements Related to Border Measures; (x) Acquisition and Maintenance of Intellectual Property Rights and Related Inter Parties Procedures; Dispute prevention and Settlement; and (xi) Institutional Arrangements and Final Provisions.

27. Each of the presentations made highlighted the importance and the main points of the provisions, identified problem areas as concerns LDCs and suggested possible solutions. The presentations were followed by a lively exchange of views, mainly in the form of comments, questions and answers. Thorough discussions took place that focused on policy implications and contributed to a deeper understanding of the issues involved.

B. Round table on the Status of the Compatibility of the Intellectual Property Legislation of Invited Countries with Obligations under the TRIPS Agreement

28. The Round Table on the Status of the Compatibility of the Intellectual Property Legislation of Invited Countries with Obligations under the TRIPS Agreement focused on clarifications of draft legislation available from WIPO mainly on some of the topics mentioned in paragraph 26 which were the subject of presentations and discussions. The main issues that were discussed included how compatibility of legislation with TRIPS obligations was to be ascertained (review by the TRIPS Council) the Banjul Protocol on Marks, within the framework of ARIPO, and the need of national legislation in its Contracting States to comply with TRIPS obligations, uniform legislation within the framework of OAPI and the Community Trade Mark; the protection of plant varieties and WIPO's availability to provide clarifications on its draft laws and to organize seminars or workshops at the national level in connection with newly-enacted legislation.

C. Round table on the Activities of the World Intellectual Property Organization (WIPO) in respect of Least Developed Countries (LDCs)

29. A comprehensive overview of events on the establishment of the LDCs Unit at WIPO and the initiative taken by the Director General was presented under this heading. Issues like technology transfer, and competition were highlighted. The changes that fundamentally altered development requirements, adding the need for continuous adjustment to the traditional elements of sustained growth and structural change were highlighted. The needs for LDCs to participate more actively in global economic processes, and the support that they required, was also mentioned. Several questions were raised during the exchange of views under this item. The major questions were, *inter alia*: WIPO's activities regarding global intellectual property issues; whether LDCs were making progress with regard to development; exchange of information and trade among LDCs; the need for awareness promotion, collection of data, organization of seminars on the basis of data collected with the view to seeing a possible way forward; the Symposium scheduled to be held in WIPO in September 1999 for LDCs (to include topics such as electronic commerce, the Internet and

global intellectual property issues); the questionnaire sent by WIPO to all LDCs on needs identification and assistance provided for their participation in meetings; relations between medical doctors and traditional healers (herbalists); the patenting in foreign countries of traditional medicines from LDCs; negotiation of license contracts (WIPO Licensing Guide for Developing Countries); ownership of patents (by the inventor); studies conducted within the United Nations system on the brain-drain from developing countries; WIPO and development issues (the role of industrial property in development).

30. At the conclusion of the Symposium, participants welcomed the establishment of the LDCs Unit at WIPO and commended the Director General for his untiring effort and for the initiative he had taken to alleviate the development problems of LDCs. The Symposium was very helpful for participants and met its objectives which were to provide clarification on obligations under the TRIPS Agreement and measures required to be taken at the national level for compliance with them and on the assistance available from WIPO. The active participation of the audience was particularly stimulating and demonstrated the interest aroused by the Symposium. Several of the officials, particularly those involved in legislative drafting and customs officials, stated that the Symposium had made matters much clearer to them regarding the changes to be made to existing laws and the new laws that would have to be enacted. The Symposium had made the obligations and the options allowed under the TRIPS Agreement clearer to participants and it was expected to make it easier for the LDCs that participated to take the necessary steps required at the national level for compliance with the TRIPS Agreement, and to make better use of the technical assistance made available to LDCs by WIPO.

## **VI. Concluding remarks**

31. The level of their overall developmental situations such as communications facilities, the size of the domestic market, the degree of integration of the domestic economy, the technological capacity, availability of adequate human capital in terms of skills are some of the elements in which LDCs exhibit major weaknesses. Such weaknesses have a significant bearing on the manner in which an intellectual property infrastructure can be developed and pursued in LDCs.

32. The main issue is how to create and build capacity for the development of intellectual property system and capacity (physical, human and institutional), a necessary first step towards building up national intellectual property capabilities. The establishment of the necessary institutions together with adequate manpower training requires effective planning and mobilization of resources commensurate to their needs. LDCs should define common priorities and strategies in the development of their intellectual property systems. This implies reflection and planning based on exhaustive national, regional and interregional studies in order to propose measures at all levels.

33. LDCs should intensify their technical and financial cooperation with developing countries within the framework of South-South cooperation. In some of the developing countries there exist technologies suitable to many LDCs and technological skills (know-how) accessible at low cost. Cooperation between LDCs and some developing countries should help the former palliate their technological gap. Donor countries and organizations may consider assisting development of intellectual property system in LDCs by providing assistance for national institution building and by providing markets while they themselves should benefit from low risk investments.

34. A wealth of information on technology transfer and the terms and conditions of this transfer packages is available in developed and some developing countries and organizations. WIPO should establish a data bank, including regional and subregional ones, for use by LDCs, containing information on potential cooperation areas in intellectual property sectors between LDCs and other countries and organizations. WIPO should further assist LDCs by identifying the main areas of cooperation such as national laws of these countries that regulate the intellectual property sector and administrative measures concerning cooperation. These measures could expedite the process of establishing and development of intellectual property system and institutions in LDCs.

*35. The Permanent Committee is invited to take note of the information contained in this document and to make comments on the contents thereof.*

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