

PRESENTATION ON COUNTRY EXPERIENCES IN IMPLEMENTATION OF INTELLECTUAL PROPERTY RIGHTS- MALAWI

1. First and foremost, I would like to thank the WTO Secretariat for inviting Malawi to participate in this important meeting. As most of us are aware, Malawi does not have a permanent mission in Geneva therefore most of the issues are observed from the capital of course with the assistance of our mission in Brussels which rarely participates in these important meetings therefore we appreciate WTO's extension of the invitation to Malawi to participate in this symposium.
2. Let me also thank presenters from the WTO, WIPO, UNDTAD, ICTSD who provided a lot of background information on some of the work being done to assist Least developed countries in the TRIPS area.
3. Let me also take this opportunity to thank the presence of our developed partners within this meeting and also the presence of my fellow LDC countries and to say that we need to take this symposium seriously considering the fact that it presents to us the opportunity to express our concerns in the TRIPS area.
4. I listened carefully to the different presentations on the flow yesterday and it was noted that only six LDC countries have so far submitted their needs assessments and requirements to the WTO Trips council and close to 28 have not yet done so up to now. These figures clearly indicate the challenges that LDCs are facing a lot of challenges in this area hence these countries indeed need some technical and financial assistance in some way or another to undertake such assessments and Malawi is in such a group.
5. Malawi like other LDCs available in this room implements the TRIPS agreement however the institutions implementing the Intellectual property issues are diverse. The Intellectual property issues are the responsibility of the following institutions namely the Registrar General under the Ministry of Justice which is responsible for patents, trademarks and designs, the Copyright society of Malawi under the Ministry of Culture and they deal with copyright issues and

my Ministry is responsible for trade related aspects of the IPR and others .

6. This has therefore prompted the drafting of the new IP policy which is currently awaiting approval by Cabinet. The IP Policy proposes to consolidate IPR matters through the creation of the Malawi Intellectual Property Office (MIPO). It is envisaged that this will be a self-financing parastatal organisation, with income to be generated from registration fees for patents, copyrights and trademarks.
7. The aim of this policy will be to stimulate the generation, protection, and commercialisation of intellectual property rights as an economic stimulant for wealth creation, encourage institutions to adopt their own IP policies, and integrate the IP System in government development strategies.
8. Enforcement institutions include Ministry of Justice, Ministry of Culture, MOIT, Malawi Police, Malawi Revenue Authority, Malawi bureau of standards just to mention a few. Under the new IP Policy, these institutions would be required to set standards on IP service delivery, inspect and ensure the delivery of original and genuine materials, advise institutions and stakeholders on IP issues, mediate and arbitrate IP related disputes; and prevent smuggling of counterfeit products.
9. Malawi has major intellectual property laws most of which are outdate and there is an urgent need to review the outdated laws to take account of technological changes and aligning them with international treaties.

I. POLICY AND LEGISLATIVE REFORMS

Malawi realises that IP is a cross-cutting issue where complementary policies on, for instance, health, agriculture, environment and competition are equally important in the context of implementing the TRIPS Agreement. The implementation needs to be undertaken comprehensively and coherently with other international arrangements such as the Convention on Biological Diversity, the FAO treaty on Plant

Genetic Resources, relevant WIPO conventions and WHO treaties and resolutions as well as regional trade and IP arrangements (e.g. AU, COMESA, ARIPO, etc) that will be key components in a comprehensive policy reform process.

It will also be important to also adapt domestic policies to align with rapidly changing technological trends in the global economy.

II. BUILDING A SCIENTIFIC, TECHNOLOGICAL AND CREATIVE BASE

In Malawi, efforts are underway to begin to establish a modern national scientific and technological infrastructure which meets the needs and aspirations of our people, our enterprises and our industries. Malawi has recently developed a draft national science, technology and innovation policy, drafted a national IP policy and has a small network of research institutions operating mainly in the public sector. However, much more can be done to strengthen our embryonic scientific and research institutions and implement appropriate interventions to reinforce existing national policies, incentives and programmes aimed at both the public and the private sector. Much more can also be done to encourage better-targeted incentives for transfer of technology by developed countries. In this last respect, Malawi plans to cooperate with other LDCs to make further contributions to the TRIPS Council regarding its specific needs for technology transfer in order to guide developed countries in the implementation of Article 66.2 of the TRIPS Agreement.

10. The implementation of the IP policy therefore faces number of challenges including :

- Lack of human resources and finance;
- Inadequate infrastructure for managing and administering IPRs;
- Absence of IPR related training and educational institutions and services; and

- Lack of awareness among major stakeholders.

PRIORITY NEEDS FOR TECHNICAL AND FINANCIAL CO-OPERATION FOR TAKING STEPS NECESSARY TO IMPLEMENT THE TRIPS AGREEMENT

IP policy framework

- **Support for coordination of IP policy development.** The National Trade Policy requires that laws to protect IP be enacted. Whilst many of the aspects of the basic elements of the IPR legal framework are in place in Malawi, and new legal drafts and regulations are being prepared by the Malawi Law Commission supported by external assistance, what is missing is an over-arching national IP policy framework developed and supported by all interested stakeholders, and covering the policy linkages between IP and public health (including implementation of the WTO Doha Declaration on the TRIPS Agreement and Public Health in Malawi); agriculture and the environment including plant variety protection; education, science and technology; enterprise development and regulation; and protecting Malawi's rich cultural heritage and traditional knowledge. Financial and technical assistance is required for implementation of the current draft IP Policy.
- **Training for policymakers on IPR concepts, international IPR conventions and best practices from other countries.** Technical assistance is required to undertake an initial "intensive phase" of human resource development for government officials, the private sector and all stakeholders involved in IP matters. Theoretical and practical training on basic IPR concepts, the international framework for IPR protection (TRIPS Agreement and other principal international IP conventions including obligations, flexibilities, safeguards and exceptions applicable to Malawi), key challenges (benefits, costs and risks) for developing countries implementing stronger IP protection and best practices from other countries is required, tailored to the needs of policymakers (rather than IP office administrators for example). Educating government

officials and other relevant stakeholders in basic concepts of intellectual property rights is essential to raise awareness and understanding of IPRs in general, its value and how it can be used in the interest of furthering Malawi's local and regional development. The training should also cover emerging IP issues on the international, regional and national agendas (for instance the EPA negotiations between the EU and the SADC/COMESA Block), and include financial assistance for logistics, background research and overseas study tours.

- **Development of a multi-disciplinary IP policy teaching, research and analysis capacity in the academic community.** Subject matter to be covered would include the full range of intellectual property issues, including new and evolving areas such as ensuring improved access to medicines, technology transfer concepts, protection of traditional knowledge, exploitation of geographical indications, protection of integrated circuit topographies, utility model protection, access to genetic resources and benefit sharing under the CBD, and the evolution of copyright and potentially new forms of rights in the digital environment. The focus would be on supporting graduate, undergraduate and doctoral teaching and supervision capacity and on investigating the socio-economic impacts, international experiences in other countries, and identification of the optimum legal and regulatory frameworks for their administration in Malawi as well as in a regional context (e.g. AU, COMESA, ARIPO, etc).

Innovation, technology transfer and using IP for development

- **Improving business education and awareness about IP for small and medium enterprises (SMEs).** There is a long-term need for technical and financial assistance for education and awareness raising campaigns in basic IP concepts, using IP for development, and the management of IP, for SMEs across Malawi but targeting the creative industries (copyright and related rights), agricultural (plant varieties, trademarks, geographical indications) and commercial and manufacturing sector in particular (trademarks and patents). Activities should be professionally

designed and target different segments of the SME and its support community appropriately (e.g. creators of IP, business service providers, government research facilities, university researchers, and legal and financial service professionals). There is also a need for assistance to develop curricula to cover IP, from a broad perspective, in the tertiary educational sector and in the faculties of law, engineering, science, economics and agriculture at Bunda College and other universities and vocational institutions. Finally, there is a specific need for technical and financial assistance to improve the quality and availability of local business consultancy and support organizations to offer improved services on IP management by SMEs in Malawi, again targeting the sectors described above. In the context of establishing and strengthening a domestic creative and innovative base it is important to attract technology and to absorb and adjust it for local needs. It is important to build upon knowledge available within the public domain.

- **Development of a Patent Information Service to support innovation and technology transfer.** Technical co-operation and financial assistance are needed to design and implement a computerized and on-line Patent Information Service (PIS) in Malawi. The PIS should include the facility for advanced searching of up-to-date global patent databases to identify technologies and technological information of importance for innovation and technology transfer to support industrial development in key sectors (e.g. manufacturing, mining, fishing, forestry, agriculture). The PIS should be operated by the DRG (as the Malawian node in the global patent information network) in cooperation with the Commission for Science and Technology, the Malawi Industrial Research and Technology Development Institute, the Malawi Investment and Trade Authority and select academic institutions in Malawi. Support for training of PIS operators and users would be required. Support is also needed to assess the feasibility of staffing the DRG with a limited number of technical specialists (patent examiners) in key fields to serve as an 'intelligent interface' between the global patent system and Malawian researchers and SMEs.

IPR administration

- **Developing an optimal business model for intellectual property administration in Malawi by benchmarking against international best practice.** Whilst the Malawi Intellectual Property Office (MIPO) has been mooted and proposed in the draft national IP Policy, it is yet to be established once the Draft Policy is approved. There is an urgent need for technical co-operation to identify the most appropriate and feasible legal and operational structure as envisioned by the Policy and based on lessons learned from the international best practice, including other African countries. Currently Malawi has no patent examiners and patent applications are examined by ARIPO. Moreover it is important to establish a link between training institutions and the IP office. Users of IP demand increased service levels in terms of patent filing and trademark registration. The use of databases would facilitate this process as it allows for transparency and access to available information. This investigation would also examine the issue of whether or not patent administration in Malawi should include substantive technical examination and, if so, how such examination could best be carried out. Should the investigation conclude that a financially autonomous IP office is a viable model, medium-term financial assistance would be required from 2012 for an initial period of at least 5 years or until the office is in a position to achieve financial self-sustainability.
- **Enhanced human resources at DRG.** If and when a financially autonomous IP Office is operationalized (see above), a modest number of additional permanent staff positions will be required to support the delivery of improved levels of services to IP rights holders and other users through an alternative, self-sustaining business model. Formal and on-the-job training will be required for staff in IPR administration, patent information services, strategic and business planning, financial management and accrual accounting, human resources management, information technology skills, and communications, on an on-going basis.

- **Computerization of registries for trademarks, industrial designs, and patents.** Since the country is a member of the Patent Co-operation Treaty (PCT) system and ARIPO, where documentation and operations are computerized, there is an urgent need to also fully computerize workflows and registries in Malawi. Users of IP demand increased service levels in terms of patent filing and trademark registration and use computerized databases would facilitate greater efficiency, transparency and access to available information. In the short term, technical (including training of staff) and financial support to design and implement necessary electronic processes, workflows and registries, including the conversion of existing paper registries for patents, trademarks and industrial designs to electronic form, is required. These needs will continue over the medium term, as new and amended legislation, regulations and administrative procedures are implemented.

Enforcement and regulation of IPRs

- **Improving consumer education and public awareness about IPRs.** There is a medium-term need for technical and financial assistance to support public education and awareness raising campaigns throughout Malawi on IPRs, including obligations, flexibilities, safeguards and exceptions. Campaigns should be professionally designed and use well-defined messages to target different audiences appropriately, e.g. consumers, businesses and traders, artists and musicians, radio and television broadcasters, the academic community, manufacturers, researchers and legal and business service professionals. Such campaigns should include participation from private sector and rights holder organizations, such as the Malawi Manufacturers Association, Copyright Society of Malawi, and the Malawi Music Publishers Association as well as Consumer Associations.
- **Training and qualification of private and public sector attorneys and agents.** There is an urgent need to train and qualify private and public sector practitioners to effectively represent the interests of applicants and owners of IPRs and other

interested parties before the IP Office and the courts. Specifically, there is an immediate need for technical and financial support to develop and deliver training programs for attorneys as well as engineers and scientists in matters relating to patent drafting, application, prosecution and litigation. Such training could be delivered through a professional development or continuing education program at the Malawi Legal Practitioners Institute and MIM, for example. In the longer term, the government may choose to establish standards that must be met by private sector IP practitioners in order to qualify to represent applicants before the IP Office and the courts.

- **Training of enforcement agencies and rights holder organizations in IPR concepts, national legislation and enforcement strategies.** There is a need for technical cooperation and financial support for the "training of trainers" in IP concepts, national legislation and regulations and enforcement matters for the full range of enforcement authorities and such other organizations that play important roles in contributing to effective enforcement of IPRs, including: the police, the Malawi Revenue Authority's Customs and Excise Department (CED), the Malawi Bureau of Standards. Specialized training is needed for the office of the public prosecutor and members of the commercial division of the High Court. In addition, support is needed for "training of trainers" on IPR enforcement strategies of other interested organizations (governmental and private sector) including, for example, Ministry of Health's Central Medical Stores and the Pharmacy, Medicines and Poisons Board (authority for regulatory compliance of pharmaceuticals), the Copyrights Society of Malawi, the Malawi Inventors Association and the Malawi Music Publishers Association.
- **Provision of access to networked, computerised national intellectual property registries for the Malawi Customs and Excise Department and the Malawi Bureau of Standards.** Medium term financial assistance and technical co-operation is required to provide access to networked, computerised databases on IPRs that are in force in Malawi, for use by enforcement authorities in co-operation with the IP Office as the National Focal

Point for TRIPS matters. Additionally, on-line communications with and access to World Customs Organization (WCO) databases to improve 'risk profiling' and to identify counterfeit trademarks and fake goods should also be provided to the Customs authority and, if feasible, to the Ministry of Health in the case of fraudulent pharmaceutical products.

- **Enhancing co-operation with foreign enforcement agencies on combating counterfeiting and piracy.** Financial and technical assistance is required to enable coordination of customs border measures between Malawi and its neighbouring countries. A study should be undertaken to determine the feasibility of establishing a network mechanism between neighbouring countries for greater coordination and cooperation between the IP offices, customs and police authorities. For example, it may be advantageous to facilitate access by neighbouring countries enforcement authorities to each other's electronic intellectual property registries, initially among SADC/COMESA member countries.

Based on this information i would like to request the meeting to provide some highlight on what has so far happened with the needs assessments submitted by the 6 countries.