

Malawi's Priority Needs for Technical & Financial Cooperation relating to implementing the TRIPS Agreement

1. FINANCIAL AND TECHNICAL ASSISTANCE REQUIRED

I. POLICY AND LEGISLATIVE REFORM

It is crucial for Malawi to establish mechanisms to elaborate a cross-cutting national IP policy framework. The reform of existing legal frameworks will have to consider carefully a balanced implementation of obligations, flexibilities, safeguards and exceptions, especially in the fields of health and education.

Malawi realizes 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 is important to also adapt domestic policies to align with rapidly changing technological trends in the global economy. At this stage of Malawi's path to development, it is necessary for the country to seek and receive support from the international community on the use and management IPRs in combination with well designed government support measures that address domestic development needs such as the promotion and establishment of a domestic creative and innovative industry and the development of its technological base.

II. BUILDING A SCIENTIFIC, TECHNOLOGICAL AND CREATIVE BASE

In Malawi, efforts are underway, supported by our development partners, 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.

III. SETTING PRIORITIES AND A PLAN OF ACTION AT THE NATIONAL LEVEL

This introductory statement is supplemented with two annexes. Annex A highlights the prime priorities in terms of financial and technical elements for taking the steps necessary to implement the TRIPS Agreement based on feedback and inputs provided in multi-stakeholder consultations and in interviews carried out at the national level. The needs assessment includes the IP policy and legal framework, IPRs administration, enforcement and regulation of IPRs, and promoting innovation, stimulating technology transfer and using IP for advancing development. Annex B provides an outline planning matrix for a long-term, national IPR capacity building programme meeting Malawi's needs.

Within the framework of this future outlook of necessary administrative and legal reform, and mindful of the commitment made by developed countries under Article 67 of the TRIPS Agreement and the principles set out in the 2005 Paris Declaration on aid effectiveness, Malawi requests early consultations with appropriate agencies from developed country members, in co-ordination with international institutions and interested NGOs working on IPRs and development, to take forward the detailed design and implementation of such a programme

Malawi is committed to ensuring that the new national IP capacity building programme be well-linked with other related initiatives supported by its development partners, especially those involved with updating the legal framework, agricultural and creative industries and the development and the strengthening of the national scientific and technology base.

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.