

ENDNOTES

¹ A list of the LDCs and their membership of WTO, WIPO and other IP treaties is provided at Annex F.

² For a thorough listing of IPRTA providers, see Pengelly, T. (2005) *Technical Assistance for the Formulation and Implementation of IP Policy in Developing Countries and Transition Economies*, Issue paper 11, ICTSD Programme on IPRs and Sustainable Development, International Centre for Trade and Sustainable Development: Geneva.

³ See the report of the IPRTA Forum workshop held in Bangkok in December 2006 available at www.iprtaforum.org

⁴ See the Report of the DFID Workshop: "Reflecting on IPR Technical Assistance for Developing Countries & Transition Economies", 15-17 September 2004, Burnham Beeches, UK.

⁵ Available for download from www.iprtaforum.org

⁶ See, for example, Gowers, A. 2006 (Recommendation 6) and Musungu, S.F. 2007.

⁷ For further information and analysis of the WTO TRIPS Agreement and the implications for LDCs, reference should be made to the UNCTAD/ICTSD publication *Resource Book on TRIPS and Development: An authoritative and practical guide to the TRIPS Agreement* (2005) available from ICSTD or UNCTAD and at www.iprsonline.org

⁸ See Annex B for a summary listing and the WIPO web site at <http://www.wipo.int/treaties/en/> for details.

⁹ Detailed information on ARIPO may be found on their web site at: <http://www.aripo.org/>

¹⁰ Detailed information on OAPI may be found on their web site at: <http://www.oapi.wipo.net/en/OAPI/index.htm>

¹¹ Available on the WIPO website at: www.wipo.int

¹² An illustrative list of web sites that carry information about intellectual property from a developmental perspective is included in Annex A.

¹³ See Vivas-Eugui, David (2003) "Regional and bilateral agreements and a TRIPS-plus world: the Free Trade Area of the Americas (FTAA)", ICTSD, Geneva and Roffe, P., Vivas, D., Veá, G. (2007) "Maintaining Policy Space for Development: A Case Study on IP Technical Assistance in FTAs", Issue paper 19, ICTSD Programme on IPRs and Sustainable Development, International Centre for Trade and Sustainable Development: Geneva.

¹⁴ See Leesti, M. & Pengelly, T. (2002) *Institutional Issues for Developing Countries in Intellectual Property Policymaking, Administration and Enforcement*, Background Paper 9, page 27 (Report of the Commission on Intellectual Property Rights (CIPR).

¹⁵ See *Integrating Intellectual Property Rights and Development Policy*, Final Report of the Commission on Intellectual Property Rights (CIPR), London, September 2002, page 140.

¹⁶ Article 7 reads: "The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations."

¹⁷ Article 8 reads: "1. Members may, in formulating or amending their national laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement. 2. Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology."

¹⁸ See Institute for Economic Research (1996) *Study on the Financial and Other Implications of the Implementation of the TRIPS Agreement for Developing Countries*, WIPO, Geneva.

¹⁹ *“Counterfeiting in the new millennium”*. (ICC Commercial Crimes Services, London, 13 January 2000)

²⁰ Commission on Intellectual Property Rights (2002), Chapter 7, *“Final Report”*.

²¹ See Leesti, M. & Pengelly, T. (2002)

²² The preamble to the TRIPS Agreement states that it is the desire of Members: “to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade”.

²³ Article 1.1 of the TRIPS Agreement provides that: “Members may, but shall not be obliged to, implement in their domestic law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice”.

²⁴ Article 1.3 of the TRIPS Agreement

²⁵ Article 2.1 of the Agreement reads: “In respect of Parts II, III and IV of this Agreement, Members shall comply with Articles 1-12 and 19 of the Paris Convention (1967)”.

²⁶ Article 9.1 of the TRIPS Agreement reads: “Members shall comply with Articles 1-21 and the Appendix of the Berne Convention (1971). However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6bis of that Convention or of the rights derived therefrom”.

²⁷ Article 35 of the TRIPS Agreement reads: “Members agree to provide protection to the layout-designs (topographies) of integrated circuits (hereinafter referred to as “layout-designs”) in accordance with Articles 2-7 (other than paragraph 3 of Article 6), Article 12 and paragraph 3 of Article 16 of the Treaty on Intellectual Property in Respect of Integrated Circuits...”.

²⁸ Article 11 of the TRIPS Agreement

²⁹ Article 27.3(b) of the TRIPS Agreement

³⁰ Article 7 of the TRIPS Agreement

³¹ Article 8 of the TRIPS Agreement

³² Article 41.1

³³ *Ibid.*

³⁴ Article 41.2

³⁵ Article 41.3

³⁶ Article 41.4

³⁷ Article 41.5

³⁸ The TRIPS Agreement contains the following footnote: “It is understood that there shall be no obligation to apply such procedures to imports of goods put on the market in another country by or with the consent of the right holder, or to goods in transit.”

³⁹ The TRIPS Agreement contains the following footnote: “For the purposes of this Agreement:

- counterfeit trademark goods shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation;
- pirated copyright goods shall mean any goods which are copies made without the consent of the right holder or person duly authorized by him in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.”

⁴⁰ Article 61 of the TRIPS Agreement

⁴¹ Article 65 of the TRIPS Agreement

⁴² Articles 70.8 and 70.9 of the TRIPS Agreement

⁴³ Some analysts have questioned the legal validity of this “no roll-back” provision and regard it as being beyond the mandate of the WTO Council for TRIPS, for example see Musungu (2007).

⁴⁴ See the full text on the WTO website:

http://www.wto.org/english/tratop_e/trips_e/implem_para6_e.htm

⁴⁵ This decision means that LDC members will not be obliged, with respect to pharmaceutical products, to implement or apply Sections 5 and 7 of Part II of the TRIPS Agreement. See the full text on the WTO website:

http://www.wto.org/english/tratop_e/trips_e/art66_1_e.htm

⁴⁶ This decision means that the obligations on LDC members under paragraph 9 of Article 70 of the TRIPS Agreement shall be waived with respect to pharmaceutical products until 1 January 2016. The waiver is subject to annual review. See the full text on the WTO website:

http://www.wto.org/english/tratop_e/trips_e/art70_9_e.htm