



Technical Assistance
for the Formulation and Implementation of
Intellectual Property Policy in Developing Countries
and Transition Economies

Draft Report

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List of Acronyms and Abbreviations

APEC	Asia Pacific Economic Co-operation
ARIPO	African Regional Industrial Property Organisation
AusAID	Australian Agency for International Development
CAFTA	Central America Free Trade Agreement
CIPR	Commission on Intellectual Property Rights
DAC	Development Assistance Committee
DFID	Department for International Development
EC	European Commission
EPC	European Patent Convention
EPO	European Patent Office
EU	European Union
FTAA	Free Trade Area of the Americas
ICTSD	International Centre for Trade & Sustainable Development
IDRC	International Development Research Centre
IP	Intellectual Property
IPR	Intellectual Property Rights
LDC	Least Developed Country
NFAP	Nationally Focused Action Plan
OAPI	Organisation Africaine de la Propriété Intellectuelle
OECD	Organisation for Economic Co-operation & Development
QUNO	Quakers United Nations Office
TA	Technical Assistance
TRIPS	Trade Related Aspects of Intellectual Property Rights
UNCTAD	United Nations Conference on Trade & Development
UNDP	United Nations Development Programme
UPOV	International Union for the Protection of New Varieties of Plants
USAID	United States Agency for International Development
USPTO	United States Patent and Trademark Office
USTR	United States Trade Representative
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation

1. INTRODUCTION

As developing countries continue implementing IP-related treaties, such as the TRIPS Agreement, and participate in new negotiations at the multilateral, regional and bilateral level, appropriate and effective technical assistance and capacity building will be crucial if these countries are to use IP tools effectively in the pursuit of their sustainable human and economic development goals.

Ensuring that the limited resources allocated to IP technical assistance effectively respond to the expectations of all members of society in developing countries requires a multi-stakeholder and constructive debate highlighting the strengths and weaknesses of current programmes and exploring ways to improve them from a sustainable development perspective. Surprisingly enough, however very limited independent analytical work has been undertaken in this area and the literature is scarce.

The overall objective of this paper is to contribute to a constructive, informed and evidence-based debate on the policies and procedures used by some of the main donor institutions and providers in the design, financing, delivery and evaluation of IP-related technical assistance to developing countries and transition economies.

Data for the study was collected by a variety of methods. A literature review and website survey was first conducted. Then questionnaires were sent to each of the donor organisations which are the subject of the five case studies in this paper. The extent of information which was received through the questionnaire process (eg on financing of IP technical assistance programmes) varied considerably. Finally, a limited number of interviews were held with developing country representatives at the WIPO Assemblies meeting in Geneva in September 2003.

The rest of this paper comprises four chapters:

- In **Chapter 2**, the common needs of developing countries and transition economies for IP technical assistance and capacity building are identified.
- The main sources of IP-related technical assistance programmes and the types of services and activities provided are presented and analysed in **Chapter 3**;
- **Chapter 4** considers how IP-technical assistance is guided by donor policy objectives and is designed, implemented, financed and monitored by five different donor organisations via case studies on the World Intellectual Property Organisation (WIPO); the European Patent Office (EPO), the European Commission (EC); the United States; and IP Australia.
- Finally, in **Chapter 5**, some strategic issues for the future of IP technical co-operation programmes with developing countries and transition economies are presented.

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however, the responsibility of the author. Any comments please send to Tom Pengelly
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2. NEED FOR IP-TA IN DEVELOPING COUNTRIES

The requirements for IP technical assistance and capacity building which developing countries have are many and various, relating *inter alia* to IP policymaking and legal reforms; participation in negotiation of international IP agreements and multilateral standard setting; re-organisation and automation of IPR administration; strengthening of capacity for regulation and enforcement of IPRs; and promotion of national innovation and creativity (Leesti & Pengelly, 2002).

A brief discussion of each of these areas of need for technical assistance and capacity building in developing countries is provided in the sections below.

2.1 POLICYMAKING, LEGISLATION DEVELOPMENT & DIALOGUE

Policymakers in most developing countries have a formidable forward agenda in the area of intellectual property reform, often driven by developments in IP and trade negotiations at the bilateral, regional and multilateral level. However, the agenda is also affected in important ways by changes in the business model for major industries and technological progress (for example, the new challenges for copyright protection of creative works in the digital environment).

Developing country policymakers also face choices about adopting other IP reforms such as protection of traditional knowledge and regulation of access to national biological resources. Complimentary reforms to related areas of the domestic regulatory environment may also be required, such as science and technology policy and anti-trust legislation. All this presents considerable challenges concerning IP policy co-ordination across government, as well as outside of government through involving stakeholders from the private sector and civil society.

In many developing countries, inter-ministerial committees have been established to improve the co-ordination of IP policy advice, with key participants being the ministries of industry, commerce, science, environment and education or culture. But as such committees have often been formed only relatively recently, they may not include broad representation from the private sector and civil society and are often not fully effective – particularly in respect of integration of intellectual property issues with other areas of economic, industry and technology policy.

To address these challenges effectively, developing countries require sophisticated technical and analytical capabilities; a co-ordinated approach to policymaking across government; and a process that facilitates participation by different stakeholder groups in the private sector, academia and civil society. In many cases, technical assistance from different donor organisations is a central part of building these capabilities over time.

2.2 PARTICIPATION IN INTERNATIONAL STANDARD SETTING

International rule making and standard setting on a very broad range of intellectual property subjects takes place predominantly in WIPO and WTO. Because of lack of financial resources and technical capacity constraints in

understanding the issues and analysing national interests, some developing countries, including many of the poorest countries, are currently little more than spectators in such negotiations.

Even in some larger developing countries, the national IP institutions may lack personnel with the broad range of technical, analytical and diplomacy skills needed to effectively represent the nation's interests in international fora. For example, delegations may comprise experts with knowledge of IPR administration as compared to a broader understanding of using IP as a tool of regulatory and economic policy. In the case of the Least Developed Countries (LDCs), they generally have poor or no representation at all by IP specialists from capital in WIPO and at WTO (Drahos, 2001).

Improving the capacity of developing countries to participate more effectively in international IP standard setting and negotiations – particularly at WIPO and WTO – through provision of training, upgraded IT infrastructure, manuals and handbooks for negotiators, and resources for policy analysis and stakeholder dialogue “in capital” has become an important aspect of IP technical assistance programmes for a number of donor organisations.

2.3 IPR ADMINISTRATION, ENFORCEMENT & REGULATION

2.3.1 Administration of IPRs

Administration of IPRs actually covers a number of different dimensions of institutional capacity, such as organisational and management arrangements; staffing and human resource issues; and operating procedures and automation models. Administration of patents, trademarks, copyright and other forms of IPRs may also require quite different types of institutional capacity and present quite different challenges for developing countries, depending upon the type of national regime in place for the different kinds of IPRs.

By far the most challenging aspect is substantive examination of patent applications. Some patent applications can run to thousands of pages of technical data, in a wide array of technology fields, and substantive examination involves both professional/technical competence and access to sophisticated international patent information computer databases to provide the state of the art. Such institutional capacity requirements are way beyond the reach of most IPR administration agencies in the world – even in the more industrialised countries - and many developing countries instead opt for a patent registration regime and rely on international co-operation.

In LDCs and smaller, low-income developing countries the availability of managerial, technical, (scientific and engineering) and legal expertise tends to be in very short supply, due to the structural weaknesses and funding constraints within national educational systems. In the more advanced or larger developing countries there is generally a greater availability of legal expertise in intellectual property, particularly in the trademark field.

Automated information systems are a key requirement for efficient administration of IPRs but a surprisingly high number of developing countries still have manual, paper-based systems. Lack of automation not only hinders efficient processing of IPR applications; it also greatly complicates collection of important statistical, financial and management information and limits the use of the IP system as a means of promoting innovation (through access to patent information databases for example).

2.3.2 Enforcement

Many developing countries are facing calls from their trading partners to upgrade IP enforcement and compliance with the enforcement provisions of the TRIPS Agreement. Particularly for LDCs, this presents considerable institutional challenges for the policing and judicial institutions, civil and criminal justice systems and the customs authorities. For example, judicial systems in many LDCs currently do not function well for any area of the law, much less for IP.

The lack of suitably qualified local legal professionals in many developing countries, noted above, also acts as an important constraint on the ability of IP rights holders to bring cases of IPR infringement through the civil courts and even to obtain remedies through the administrative system.

2.3.3 Regulation of IPRs in the public interest & to promote competition

In many developing countries and LDCs, mechanisms aiming at controlling restrictive business practices resulting from the misuse of IPRs are weak or non-existent. Similarly, developing countries are generally unprepared or unable to neutralize the impact that price increases resulting from the establishment or reinforcement of IPRs may have on access to protected products, particularly by the low income population (Correa, 1999).

Finally, the skills and judgements required in administration of compulsory licenses, such as deciding questions of “reasonable commercial terms” and “reasonable time period” are quite sophisticated and are likely to go beyond the existing capacity of the relevant national institutions in many developing countries, particularly the poorest. Here again, appropriated technical assistance and training is required.

2.4 PROMOTING NATIONAL INNOVATION & CREATIVITY

Most developing countries are able to devote few resources to innovation and generate very low levels of (industrial) intellectual property that could be protected by the formal system of patents and trademarks. For example, almost 90% of patents granted in 2000 in the US originated from the USA, Europe and Japan (Leesti & Pengelly, 2002).

To address this situation, developing countries require a wider institutional framework in order to support building of their national innovation and creativity capabilities for development. This can be achieved through strengthening research and education institutions and by maximising access to technologies and knowledge assets protected by IPRs through subsidised patent information services and support to upgrade technology transfer capabilities in universities.

The evidence suggests that these imperatives are not always well reflected at present in the institutional infrastructure in developing countries or, indeed, in most technical co-operation programmes supported by donor organisations.

3. MAIN TYPES OF IPR-TA ACTIVITIES & SERVICES

3.1 INTRODUCTION

The types of IP technical assistance that are currently provided to developing countries and transition economies by donor organisations fall into the following broad categories (Lehman, 2000b):

- general and specialised training for human resource development;
- advice on IP policy/legal reforms and assistance with preparing draft laws;
- support for modernising IPR administration offices (including automation) and collective management systems;
- international patent co-operation and information services (including search and examination) to facilitate IPR administration and promote local innovation and creativity.

As most of the implementing agencies of IP technical assistance (ie WIPO, EPO and developed country patent offices) do not have offices and specialist IP professional staff in the field, short-term advisory missions and consultants are normally deployed in developing countries and transition economies to assess needs and plan, deliver and monitor programme activities.

3.2 TRAINING & HUMAN RESOURCE DEVELOPMENT

Training and human resource development, of various kinds, has been a major focus in IP technical assistance programmes undertaken by most donor organisations and providers around the world – although there is a difference in the content and approach, particularly in the case of some non-traditional IP technical assistance donors and providers (see Section 4.1.3 below). Most training programmes have typically emphasised development of professional capacities in IPR administration (eg training of national IP office staff and local IP attorneys in patent and trademark examination) and enforcement (eg training of judges and officials from customs and police agencies).

The training programmes that are provided are usually through short term training courses, seminars and workshops (eg usually not more than a maximum of 1-2 weeks, and sometimes only one or two days), either generalised or on specific subjects (eg copyright in the digital era or patent examination in new fields of technology, such as bio-technology). These courses are run in individual developing countries, at regional locations, and in the home country of the respective IP technical assistance donor – for example, if the training event is in the form of a study tour hosted by the national IP offices of Japan, United States, Australia or the United Kingdom. WIPO in particular has also funded a limited number of longer term scholarships for developing country IP officials to attend post-graduate taught courses in IP subjects, typically at universities in Europe and North America.

It is also very important to note that both WIPO and EPO have established dedicated “Academies”, as separate units within the respective organisations, which deliver services related to training and human resource development to developing countries and transition economies. WIPO’s Worldwide Academy has its own premises outside Geneva and recently has also become more active in offering distance learning programmes and strengthening institutional linkages with universities in developing countries (eg through training of trainers and transfer of materials for curricula development) which are seeking to establish or improve training programmes offered in the area of IP.

3.3 ADVICE ON LEGAL & POLICY REFORM

As developing countries continue implementing IP-related treaties, such as the TRIPS Agreement, and prepare for new negotiations at the multilateral, regional and bilateral level, appropriate and effective technical assistance in the area of legal and policy reform has become a major focus for many donor organisations. This has commonly taken the form of:

- publication and funding of issue-based research and guidance (eg on protection of geographical indications);
- workshops and seminars on technical topics and negotiating skills (either at the national, regional or inter-regional level);
- production of handbooks for IP policymakers and negotiators (eg on TRIPS) such as that produced by UNCTAD/ICSTD and available at www.iprsonline.org;
- and, in some cases, country specific policy analysis and legal advice (eg on how to incorporate provisions of the TRIPS Agreement into national laws).

In the vast majority of developing countries, there is considerable dependence on externally-funded technical assistance, in the form of draft laws, legal advice and expert commentary on new draft legislation, provided by donors, principally WIPO (which has around 14 full-time professional staff working on legal assistance in its Development Cooperation division). Implementation of the TRIPS Agreement into domestic laws and regulations has been a major driver for IPR technical assistance for most donors, including WIPO, the United States Agency for International Development (USAID) and the EC since 1996.

Technical assistance in this area can also include translation of IP treaties, laws and regulations. For example, between 1999 and 2001, WIPO provided assistance to translate such documents in over 150 countries from or into Arabic, English, French, German, Portuguese and Spanish as required (WIPO, 2001a).

3.4 INSTITUTIONAL DEVELOPMENT & AUTOMATION

Within larger IP technical assistance programmes (ie those which can leverage greater financial resources), such as those undertaken by WIPO, EPO, EC and USAID, a key

area of activity has been development of the national IP institutional infrastructure. Activities in this area have included technical assistance for institutional development, organisational reform, introduction of modern management systems and financial assistance for automation of IP administration.

Recipients have included national and regional IP institutions involved in patent and copyright administration, as well as agencies involved in enforcement of IPRs. In particular, the African Regional Industrial Property Organisation (ARIPO) and the Organisation Africaine de la Propriété Intellectuelle (OAPI) have been major recipients of technical and financial assistance for institutional development and automation from WIPO and EPO over a number of years.

Within the focus of IP technical assistance programmes, a key driver in the last five years has been the fact that for many national IP institutions in developing countries, self-financing has become a key and urgent issue as government subsidies have been phased out. More technical assistance has therefore been provided to national IP institutions in many countries in the areas of investment and operating cost planning; identification of possible revenue streams from IP administration services; and establishment of modern financial management planning systems appropriate to financially autonomous agencies.

Technical and financial assistance for automation of IPR administration in developing countries and regional intellectual property organisations has also become a highly significant area for those donor organisations which can leverage greater resources (eg WIPO, EPO, USAID, EC). A prime example is the WIPO Net programme, which provides on-line services such as secure electronic mail, secure exchange of intellectual property data, hosting of national IPR agency websites, and Internet connectivity to 154 intellectual property offices around the world all for an estimated cost of over 97 million Swiss francs between 2000 and 2005 (WIPO, 2001b).

3.5 PATENT INFORMATION CO-OPERATION

Given the exponential growth in both the volume and complexity of industrial property rights applications worldwide, regional and/or international co-operation in IPR administration is often seen by developing countries as essential to ensure high validity of rights, reduce costs and increase efficiency in national IPR administration. For patents in particular, most developing countries rely to a greater or lesser extent on the work of the EPO and the patent offices of the United States and Japan, who together probably undertake the substantive examination for around 95% of all applications worldwide (the EPO has over 4000 professional patent examiners specialising in different fields of technologies).

Under the WIPO-administered Patent Co-operation Treaty (PCT) system, technical search and examination of patent applications from developing country IP offices are performed by a small number of designated international search and examination authorities (the EPO and the national patent offices of the United States, Japan, Australia, Austria, Spain, Sweden, Republic of Korea, China and the Russian Federation). A second option is to delegate or contract-out patent examination to another national or international patent office. For example, the EPO offers an extension system for patents for a number of smaller countries in Eastern Europe.

As well as these formalised co-operation systems, developing countries are also able to seek assistance from WIPO's Patent Information Services (WPIS) for search and examination of individual patent applications. WPIS provides a conduit for channeling search requests from a wide range of users in developing countries to the IP offices of those countries who have agreed to assist in providing these searches.

4. DONORS, PROGRAMMING POLICIES & FINANCING

4.1 OVERVIEW

In this chapter, the policies, financing and programming modalities of IP technical assistance donor organisations and providers are reviewed. A brief overview of the principal categories of IP technical assistance donor organisations and providers is presented. This is then followed by case studies on five different donor organisations, namely (1) WIPO; (2) the EPO; (3) the EC; (4) the United States; and (5) IP Australia.

As Table 1 below, IP technical assistance donors can be divided into three principal categories:

- **International institutions** (eg multilateral agencies, inter-governmental organisations, regional organisations, who may have either specific or non-specific mandates in the area of IP technical assistance);
- **Bilateral donor agencies** (eg national governments and the respective agencies dealing with development co-operation and IP administration and co-operation);
- **“Non-traditional donors and providers”** (eg civil society institutions and non-governmental organisations, the majority of whom have become active in the field of IP technical assistance comparatively recently and whom in many cases are dependent on funding from bilateral donor agencies and international institutions for their IP technical assistance programmes).

Table 1: Principal categories of IP technical assistance donors & providers

International institutions	Bilateral donor agencies	Non-traditional donors & providers
<ul style="list-style-type: none"> • WIPO/UPOV • UNCTAD • UNDP/UNIDO • World Bank • FAO • Commonwealth Secretariat • Asian Development Bank • Organisation of American States • European Patent Office 	<ul style="list-style-type: none"> • United States • Japan • Australia • Canada • EU member states • Switzerland • Norway • New Zealand • European Commission 	<ul style="list-style-type: none"> • ICTSD • South Centre • Quaker United Nations Office • IDRC • OXFAM • Medicines Sans Frontiers

Table 2 presents an analysis of the three principal categories of donor organisations by the types of IP technical assistance services and activities which they provide and support. Each category is discussed in detail in Sections 4.1.1 to 4.1.3 below.

Table 2: Main types of IPR-TA services provided, by donor organisation

Donors	Main types of IPR-TA services provided					
	Training & human resource development	Advice on IP legislation & policy reform	Organisation development & automation	Promoting domestic innovation and creativity	Patent information co-operation	Research & dialogue on IP issues relevant to developing countries
International institutions & regional organisations						
WIPO/UPOV	✓	✓	✓	✓	✓	✓
WTO	✓	✓				
UNCTAD	✓	✓				✓
World Bank	✓	✓	✓	✓		✓
European Patent Office	✓	✓	✓	✓	✓	
Bilateral governmental donor agencies						
United States	✓	✓	✓	✓	✓	
European Commission	✓	✓	✓	✓	✓	
Japan	✓	✓	✓	✓	✓	
Australia	✓	✓	✓	✓	✓	
Non-traditional donors and providers						
ICTSD		✓				✓
South Centre		✓				✓
UN Quaker office						✓
IRDC		✓				✓
Medicines Sans Frontiers		✓				✓
OXFAM		✓				✓

Providing an accurate overview of the scope and financing for IP technical assistance globally is very difficult as information is hard to obtain (particularly for bilateral donor agencies) and so many donor organisations are involved. Moreover, a further difficulty for analysis is that much IP technical assistance tends to be through a large number of small scale discrete activities (eg training courses and workshops).

The best proxy for summary data *available* for a partial overview of support for IP technical assistance programmes is that provided by the *WTO/OECD Trade Capacity Building Database*.¹ The database is clearly incomplete as mostly bilateral donor agencies have provided information on their programmes and commitments – and may have only provided incomplete information – so major IP technical assistance donors like WIPO and EPO are not included. But some data are available for 2001 and 2002 showing the type of IP technical assistance activity, funding amount and geographical location.

According to information in the *WTO/OECD Trade Capacity Building Database*, in 2001 donor commitments on IP technical assistance amounted to a total of US \$13.10m, with 64 activities reported. The total expenditure level by donors on IP technical assistance fell to US \$9.30 m in 2002, although the number of activities reported increased to 196. For more information, and a breakdown of expenditures by region, see Annex 2. These figures certainly underestimate the total expenditures by all donor organisations on IP technical assistance to developing countries and transition economies in the respective years, but they do perhaps give a useful rough figure for commitments by bilateral donor agencies.

4.1.1 International institutions & regional organisations

The principal international institutions, inter-governmental organisations and regional organisations involved in the provision of IP technical assistance to developing countries and transition economies are WIPO, EPO, the World Trade Organisation (WTO) and the United Nations Conference on Trade and Development (UNCTAD). The **International Union for the Protection of New Varieties of Plants (UPOV)** operates within the WIPO system and also provides targeted technical assistance that includes assistance in legislative drafting as well as training seminars and short courses in the area of plant variety protection systems.

The **United Nations Development Programme (UNDP)** and the World Bank, in contrast, have devoted mainly financial resources, either directly to developing countries or via contributions to WIPO trust funds. WIPO and EPO are not discussed in detail in this overview section as they are the subject of detailed case studies later in this chapter.

The Secretariat of the **WTO** provides a limited amount of technical assistance, mainly to explain the rights and obligations under the TRIPS Agreement to developing country member states or observers and to provide information of the progress of ongoing negotiations in the WTO TRIPS Council on IP-related issues. Under the

¹ The database is available on line at <http://tcdb.wto.org/index.asp>

WTO-WIPO co-operation agreement, however, much of the WTO's role in the explanation of the TRIPS Agreement is delegated to WIPO. Members of the WTO Secretariat, of course, participate in many WIPO-led training events and continue to provide *ad hoc* advice to WTO Member States and observers regarding specific technical questions about the TRIPS Agreement.

UNCTAD advises developing countries on implementation of the TRIPS Agreement and undertakes broader research and training programmes on intellectual property and development issues. UNCTAD, in collaboration with the International Centre for Trade and Sustainable Development (ICSTD), is also currently implementing a project to provide developing countries with policy guidance on implementation of the TRIPS Agreement and on the upcoming reviews of the TRIPS Agreement (particularly through the production of a detailed handbook on the TRIPS Agreement aimed at policymakers and negotiators from developing countries). The project is financed by the UK Department for International Development (DFID).

The **World Bank** has financed some substantial IP-related capacity building programmes in the 1990s. In Brazil, US \$4.00 million was earmarked for IP-related capacity building components within a World Bank loan of US \$160.00 million for the ministry of science and technology. In Indonesia, the cost of the IPR component of the World Bank-financed Infrastructure Development Project was US \$14.70 million. Finally, in Mexico, the World Bank provided US \$32.10 million for a programme to improve IPR administration, automation and enforcement.²

Interestingly, in the countries that have received World Bank-funded assistance in this area (eg Brazil, Indonesia, Mexico), upgrading of the national IP systems has been approached as one component of much broader programmes of policy reform and capacity building aimed at stimulating research & development spending and improving industrial productivity and competitiveness. Unfortunately, only a small number of such programmes have been undertaken and detailed evaluations do not appear to be available. Potentially, however, such programmes provide a very different approach from those supported by most other IP technical assistance donors and may enable better integration of IP reforms and related-capacity building within broader national development strategies of developing countries.

4.1.2 Bilateral governmental donor agencies

Developed countries provide technical and financial assistance to developing countries either bilaterally (sometimes through the national development co-operation agencies but mainly by IP institutions such as Patent offices or Copyright Collective Management organisations³) or multilaterally (through their contributions to the United Nations agencies and other international organisations, including the EC in the case of the 25 member states of the European Union).

² Financial data for the IP-related components of these World Bank-funded programmes undertaken in the 1990s is provided in the Bank's submission to the WTO TRIPS Council in 1999.

³ In the area of collective copyright management, Kopinor, the Norwegian Reproduction Rights Organisation, provides assistance to collection societies in Africa with funding from the Norwegian government.

As members of the WTO, developed countries have an obligation to provide technical assistance to developing countries under Article 67 of the TRIPS Agreement. As the annual submissions to the WTO TRIPS Council since 1995 reveal, most developed countries can be said to be providers of IP technical assistance to developing countries (eg the **European Union** and its member states, the **United States, Japan, Australia, Canada, New Zealand, Norway, and Switzerland**).

Bilateral donor agencies vary considerably in the scale and geographical coverage of their IP technical assistance programmes (eg Australia IP technical assistance programmes are concentrated on South East Asia and the Pacific Islands). Amongst the largest bilateral donor organisations are USAID and the EC. These donor organisations are able to leverage substantial financial resources to support multi-year capacity building programmes in selected developing countries and transition economies, as discussed in the case studies on the United States and the European Commission later in this chapter.

More generally, however, despite variations in scale and geographical, the main types of technical assistance services and activities which bilateral donor agencies support are generic and cover essentially all of those described in Chapter 3 above – although not all of these activities are necessarily provided for each partner country. A key policy objective across bilateral governmental donors of IP technical assistance is to support greater compliance by developing countries and transition economies with multilateral, regional and bilateral IP treaties and trade agreements including provisions related to protection of IPRs.

4.1.3 Non-traditional donors and providers

In recent years, an increasing number of civil society institutions and non-governmental organisations have become active in undertaking policy research and dialogue as well as providing technical assistance related to policy/legal reform to developing countries in the area of intellectual property. The majority of such organisations have become active in the field of IP technical assistance comparatively recently and, in many cases, are dependent on funding from bilateral donor agencies, charitable endowments (such as the Rockefeller Foundation) and international institutions for their IP technical assistance programmes.

For example, the **South Centre**, the **International Centre for Trade and Sustainable Development (ICTSD)**, and the **United Nations Quaker Office to the United Nations (QUNO)**, all based in Geneva, the **International Development Research Centre (IDRC)** in Ottawa, Canada, **Oxfam** and **Medicines San Frontiers** all have active policy research and dialogue programmes related to IP and the linkages to sustainable development issues.

Although less well recognised than bilateral governmental agencies and international institutions, non-traditional providers do play a significant role in the delivery of IP technical assistance to developing countries – often filling important “gaps” in the spectrum of technical assistance available. As Table 2 shows, the main types of technical assistance activities supported by this category of donor organisations and providers are usually limited to (a) advice on policy and legal reform (though limited in terms of the intensity of support provided to individual countries, the preferred

approach typically being manuals and handbooks) and (b) policy research and dialogue (eg through workshops and seminars, either in Geneva or, to a lesser extent, at regional level in the developing world). But as Table 2 also shows, these are just the kinds of activities which are often under-funded by international institutions and bilateral donor agencies.

Whilst outside the scope of this paper, examining the policies, programming modalities, monitoring and evaluation systems, and financing of non-traditional providers of IP technical assistance is an area which deserves further study in the future. One interesting research question would be to examine the informal or semi-formal nature of technical assistance programmes supported by non-traditional providers (in terms of the relationships with recipients in developing countries) and how this may enable a different kind of policy dialogue and technical assistance “experience”.

Another research question to explore would be the present observed practice of many non-traditional donors and providers to focus or “cluster” their technical assistance programmes around very specific issues (eg access to medicines by developing countries and the provision of the TRIPS Agreement regarding compulsory licensing of patents for pharmaceuticals in times of public health emergencies).

4.2 CASE STUDY 1: WIPO

4.2.1 Policy objectives for IP technical assistance programmes

As the specialised agency of the United Nations responsible for IP, WIPO’s overall objective is the promotion of effective protection and use of IPRs throughout the world through co-operation with, and among, its member states and other stakeholders within the framework of the UN Millennium Development Goals. According to WIPO documentation and its website, this objective is to be achieved by creating an enabling environment and infrastructure conducive to an enhanced understanding of the contribution of IP to economic, social and cultural development, and, in particular, by assisting developing countries in building their capacity for greater access to, and use of, the IP system.

WIPO’s policy objectives for its IP technical assistance programmes are set out in a document entitled “*Medium Term Plan for WIPO Program Activities – Vision and Strategic Direction of WIPO*” produced in July 2003 (WIPO, 2003a). The policy framework guiding its technical assistance programmes is that every country should be encouraged to develop an IP culture appropriate to its needs, including a focused national IP strategy, the most suitable national IP infrastructure, and the fostering of a nation-wide perception of IP as a powerful tool for economic, social and cultural development. The IP system, including its legal, institutional and human resources capacity, should meet national policy objectives and should be effective, affordable and easily accessible to all stakeholders.

According to WIPO’s policy framework for its technical assistance, national IP systems in developing countries and transition economies should maintain a balance between the interests of the holders of IPRs and those of the public at large. While being mindful of national policy objectives, national IP systems should also be

consistent with international IP treaties and international agreements including IP-related provisions.

4.2.2 Activities supported under IP technical assistance programmes

WIPO technical and financial support is offered in the first instance to member states' national IP authorities such as patent and trademark offices, as well as regional organisations involved in IP administration (eg OAPI and ARIPO). Assistance is also given to national and regional organisations and associations representing IP lawyers, trade and industry groups, universities and other cultural bodies (eg writers and performers' associations) active in the IP field.

More specifically, WIPO's IP technical assistance and capacity building programmes with developing countries and transition economies involve the following kinds of activities:

- Providing consistent and customized legislative guidance, technical expertise and limited financial assistance (eg provision of IT hardware and software) for building up and organising national and regional IP institutions.
- Training general and specialist personnel working with these authorities and institutions in technical and managerial aspects of IPR administration.
- Providing technical support primarily in the form of advice on information and documentation, and the provision of hardware, software and library stock.
- Promoting public awareness of IP and promotion of an IP culture to encourage creators, innovators, and public to obtain, use and license IPRs and assets.
- International patent co-operation and operation and development of global IP protection systems (such as the PCT and the Madrid system).

Based on documentation provided by WIPO (WIPO, 2001a), Table 3 below provides more detail about the scope of WIPO's activities over the period 1996 to 2001 within the four main areas of its technical assistance and capacity building programmes related to implementation of the TRIPS Agreement in developing countries (Legislative advice; Human resource development & training; Institutional development & automation; and Enforcement).

Table 3: WIPO's technical assistance activities 1996-2001, by main programme area

Area of IP technical assistance	Activities during period 1996-2001
Legislative advice	119 developing countries and regional organisations were assisted in preparation of 214 draft IP laws between 1996 and 2000. In the same period, WIPO also prepared draft provisions to amend and modernise existing laws and

	made comments and suggestions on 235 draft laws received from 134 developing countries and regional organisations in developing countries. Additional assistance in the form of further comments or clarifications was provided in 170 cases to some 130 countries and regional organisations.
Human resource development & training	Between 1996 and 2001, WIPO's human resource development and training programme included 122 regional meetings, 251 sub-regional and national meetings and 124 inter-regional meetings and seminars, involving more than 32, 000 participants. In addition some 217 study tours and attachments were arranged and on-the-job training was carried out in 67 developing countries.
Institutional development & automation	To take forward its technical co-operation programmes with developing countries to build up the infrastructure of national and regional IP institutions, between 1996 and 2001, WIPO sent advisory missions to 102 developing countries and sponsored visits of over 360 officials from developing countries to IP offices in industrialised countries to study ongoing modernisation programmes. Regarding automation, 95 countries received IT equipment from WIPO and 40 developing countries were assisted by WIPO to develop software for automation of IP administration.
Enforcement	Activities related to improving enforcement of IPRs in developing countries were incorporated as an integral part of WIPO technical co-operation programmes from 1996. Between 1996 and 2001, WIPO organised 3 inter-regional, 10 regional and 60 national meetings/workshops concentrating on enforcement provisions of the TRIPS Agreement.

4.2.3 Financing, programme management and delivery modalities

Programming modalities

WIPO's technical assistance programmes are led by the Co-operation for Development Division within WIPO's International Bureau. Within the Co-operation for Development Division, there are Regional Bureaux managing programmes with Africa, Asia, Latin America & Caribbean and the Arab region.⁴ The Division also

⁴ Within the International Bureau but outside of the Co-operation for Development Division in WIPO, a separate Division for Co-operation with Certain Countries in Europe and Asia manages WIPO's IP technical assistance programmes to the Central European & Baltic States (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia, former Yugoslav Republic of Macedonia, Serbia and Montenegro); Caucasian, Central Asian and Eastern European Countries (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Republic of Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine and Uzbekistan); as well as selected other countries (Cyprus, Israel, Malta and Turkey).

encompasses the WIPO Worldwide Academy, the LDC unit and departments dealing with IP Law and international co-operation systems (eg PCT, Madrid).⁵

Plans and resource requirements for IP technical assistance programmes are prepared by the International Bureau and set out in detail in the WIPO Program and Budget documentation for each biennium period. These are subject to discussion and approval by member states at the WIPO annual assemblies in Geneva. In addition, a Permanent Committee on Co-operation for Development related to Intellectual Property, comprised of member states, meets annually and serves as the main forum for identifying and reviewing on-going priorities.

In each of the main areas of WIPO's technical assistance programmes (Legislative advice; Human resource development & training; Institutional development & automation; and Enforcement), specific priority-setting guidelines for use in programming assistance to individual countries or regions are developed by WIPO based on a number of operational principles, such as sustainability and cost-effectiveness. Programme priorities are established according to WIPO's policy objectives and the needs identified by member states, as well as taking account of WIPO's capacity in delivering such program activities.

According to WIPO, (see WIPO, 2003a) each country or regional technical assistance programme is designed to ensure sufficient flexibility to respond to the evolving needs of member states. Programs are individually tailored, wherever possible, in consultation with member states, so as to promote sustainability of the results. Cooperation with other institutions (such as the EPO or the Patent Offices of industrialised countries for example) is encouraged by WIPO, as much as possible, to achieve the greatest cost effectiveness.

Two recent important trends stand out in terms of the programming of WIPO's technical assistance. First, according to WIPO's, its activities under its development co-operation programme have become more comprehensive and needs-oriented by extensive application of the mechanism of Nationally Focused Action Plans (NFAPs), which cover an agreed set of technical assistance activities to be supported by WIPO over a two year period.⁶

Second, enforcement is likely to take increasing importance as a focus area within WIPO technical co-operation programmes. This will be driven by the fact that more developing countries are completing the necessary legal reforms required to implement the TRIPS Agreement and other international IP treaties and regional/bilateral agreements. A greater focus on enforcement is also strongly supported by major IPR holders and interest groups (such as the Business Software Alliance and the International Intellectual Property Alliance).

Financing for IP technical assistance programmes

⁵ This is an interesting and unique feature, as in this way WIPO's International Bureau is responsible for WIPO's work on international IP standard setting as well as its technical assistance programmes – a point which has raised concerns from some commentators as to the compatibility of these two functions (eg Dutfield & Musungu, 2003).

⁶ As NFAPs are not made publicly available by WIPO, it was not possible to verify this claimed change in programming of WIPO's IP technical assistance during the course of this study.

Amongst IP technical assistance donors reviewed in the study, WIPO appears to have the greatest financial resources available to support programmes with developing countries and transition economies. These resources come from member states' subscriptions and trust funds to a small extent, but around 85% of WIPO's financial resources are generated by income from the user fees which WIPO charges for its international IP system services, such as the PCT.

From the information in WIPO's bi-annual budget documents, between 1996 and 2003, WIPO's budgeted expenditure on development co-operation was 274 million Swiss francs⁷. However, it is not clear from these budget documents whether these figures indicate only WIPO's regular budget expenditure, or also include contributions to trust funds. For the 2002-2003 biennium, however, WIPO's expenditure on development co-operation was clearly budgeted at approximately 100 million Swiss francs; with around 20% of this in trust fund contributions from bilateral and multilateral donor agencies (Japan alone will contribute about 5 million Swiss francs).

Table 4 below provides a breakdown of WIPO's financing for IP technical assistance programmes for each biennium between 1996 and 2003. As Table 4 shows, WIPO's overall resource envelope for supporting IP technical assistance programmes has more than doubled in size from 45 million Swiss francs in the 1996-7 biennium to 100 million Swiss francs in the 2002-3 biennium.

Table 4: WIPO's financing for IP technical assistance programmes, 1996-2003

1996-7	1998-9	2000-1	2002-3	Total
SFr 45,000,000	SFr 58,000,000	SFr 71,000,000	SFr 100,000,000	SFr 274,000,000

Source: WIPO programme and budget documents & Leesti & Pengelly, 2002

A significant proportion of these expenditures (around 40% for 2002-2003) are staff-related expenses rather than programme costs, though of course WIPO staff are directly engaged in delivering and managing some technical co-operation activities. WIPO has around 70 full-time professional staff working in its Co-operation for Development and Co-operation with Certain Countries in Europe & Asia Divisions (including the WIPO Worldwide Academy). These budget figures for development co-operation do not include expenditure on WIPO Net, however, which is expected to cost a total of 97 million Swiss francs between 2000 and 2005.

Analysing the geographical distribution of WIPO's IP technical assistance expenditures amongst developing countries is not possible with the data WIPO provides publicly. However, research by a recent study finds that WIPO's trust fund resources (usually country or region specific) are currently mainly concentrated on Latin America and Asia-Pacific regions (Leesti & Pengelly, 2002). The same study

⁷ These figures represent the revised budget amounts taken from the WIPO documents and cover the following programmes only: Co-operation with Developing Countries; Co-operation with Certain Countries in Europe and Asia; and WIPO Worldwide Academy.

also found that in the 2000-2001 biennium, WIPO's development co-operation budget allocation for African countries was around 7 million Swiss francs, with budget allocations for NFAPs with African nations typically in the range of 80,000-120,000 Swiss francs over 2 years.⁸

Monitoring and evaluation

WIPO has evolved a well-developed system of results-based budgeting for its IP technical assistance programmes as well as a set of detailed performance indicators. These are set out in detail in Program and Budget documentation WIPO prepares for each biennium period for discussion and approval by member states at the WIPO annual assemblies in Geneva. The results-based system for development co-operation includes objectives, expected results and performance indicators for the main sub-programmes covering different thematic areas (eg automation and modernisation of IP institutions). Reporting on the results actually achieved in a given year is published by WIPO in a Programme Performance Report to the WIPO annual assemblies in the following year.

A more impact-oriented set of performance indicators has been included by WIPO in its draft Program and Budget for the 2004-2005 biennium. These performance indicators are to be used in respect of all program activities to evaluate the success of WIPO's IP technical assistance programs, and concern the impact of the activity on:

- IP policy of Member States;
- integration of IP policy into the cultural-socio-economic policies of Member States;
- enhancement and development, in quantity and quality, of IPRs and assets obtained by nationals in Member States;
- number of accessions or ratifications, the geographical coverage and the effective use of treaties administered by WIPO;
- number and range of users of WIPO's global protection systems;
- status and functions of IP-related institutions (effective IP offices and copyright collective management societies, competent courts and customs offices for IP enforcement, etc);
- number of people who benefited under WIPO programs, including government officials, innovators, researchers & IP practitioners.

⁸ This is a significant point and, as the case studies on EC and the United States show, presents a paradox for WIPO in that whilst it may enjoy amongst the largest global resource envelope for IP technical assistance to developing countries, it does not have the capacity to leverage multi-million US dollar resources for individual national programmes in the way that USAID and the EC can for example (eg USAID committed US \$6.32 million to a single IP technical assistance project in Egypt.)

As far as the research undertaken for this study was able to determine, WIPO is the only IP technical assistance donor organisation to have developed such an elaborate set of performance indicators and evaluation criteria specifically for its IP technical assistance programmes. That is not to say, however, that WIPO's results-based management and reporting system could not be improved or enhanced, through improved target setting and more impact-oriented performance measures.

Regarding more in-depth evaluation activities, WIPO has recently established an Office of Internal Oversight, which has undertaken some small pilot evaluations exercises of its IP technical assistance activities. For example, in 2002, WIPO undertook a *Participants Evaluation Survey* (see WIPO, 2003b) of some of its technical assistance programmes. The results reported in the survey, perhaps unsurprisingly, were that some of the meetings and seminars organised by the Co-operation for Development Division were rated as highly effective by participants.

A different, but more extensive, internal performance monitoring report on its IP technical assistance programmes related to implementation of the TRIPS Agreement in developing countries between 1996 and 2001 was published by WIPO in 2001 (WIPO, 2001a). The scope of this report is really only to provide aggregated, quantitative data relating to the type and number of technical assistance activities (training seminars, overseas missions etc) delivered by WIPO (see summary in Table 3 above).

The report does not attempt to measure nor assess the *impact* of these activities in terms of increasing the human and institutional capacity of the participating organisations in developing countries and does not provide information on activities delivered in particular countries.

4.3 CASE STUDY 2: UNITED STATES

4.3.1 Policy objectives for IP technical assistance programmes

According to a recent publication by USAID (USAID, 2003), the main policy objective for the IP technical assistance programmes of US governmental agencies such as USAID, the US Patent and Trademark Office (USPTO) and the Department of Commerce and drawing on the resources and expertise of private industry and international organizations, is to help developing countries implement the TRIPS Agreement.

The United States also provides training and technical assistance to strengthen compliance by developing countries with regional and bilateral trade agreements signed with the US and encourages the adoption of laws and practices that strengthen the protection of intellectual property. In US policy terms, such protection encourages innovation, promotes FDI and private sector growth, and creates a framework in which developing countries can participate in the economic activities of the developed world.

4.3.2 Activities supported under IP technical assistance programmes

Depending on the partner countries' needs, IP technical assistance programmes supported by US government agencies can focus on one or more of the following activities:

- Legislative advice in the form of draft legislation and commentaries on bills concerning the general provisions and fundamental principles of the TRIPS Agreement and other bilateral and international IP agreements and treaties.
- Advice on how to organise the administrative apparatus, e.g. patent offices, collective management societies', etc.
- Training for staff in the administration of IPR protection and management methods.
- Specialised training for the judges, customs officials and police officers who have to enforce rights.
- Activities to promote awareness in the private sector and civil society about IPRs.

A significant feature of US IP technical assistance programmes is the inter-action of a number of different US agencies and business associations in the design and delivery of activities. For example, several US agencies have collaborated to fund a series of seminars on IP enforcement in the Philippines. Table 5 below provides further information on examples of US-funded IP technical assistance programmes in developing countries and transition economies.

Table 5: Examples of US IP-technical assistance projects, 2002

Project	Country or Region	Funding and source	Description
More Open Trade and Investment Policies	Central Americas	\$ 1,307,972 USAID	Works to increase public support for open trade and investment policies; increase Central American compliance with the second FTAA business facilitation measures and with WTO recommendations on customs valuation; strengthen national IPR institutions and raise public awareness of IPR issues through effective dissemination of information.
Trade Capacity Building Project	Algeria	\$ 129,450 USAID	Judges in the civil administrative and criminal courts, as well as rights holders, were trained in IP cases. Training was also provided to Ministry of Justice officials and the Algerian Judicial Training Centre. An “IP Judges Bench Reference Manual” was drafted. Consultations were held with officials, rights holders and universities on technology transfer and licensing issues. Consultations were also held with Algerian judges on TRIPS Agreement. A workshop on “Protecting & Enforcing IPRs for Authors, Artists and Composers” was also held.
Intellectual Property Crimes Training	Philippines	\$ 60,000 US Department of State	A training programme in the Philippines to build effective IPR crime enforcement.
Technical Assistance for Intellectual Property Rights Enforcement	Costa Rica	\$ 40,952 US Department of State	Customs training program for Costa Rican law enforcement and trade communities to encourage compliance and policy formulation for IPR enforcement.
Intellectual Property Rights	South Africa	\$ 187,500 USAID	Works with the South African Department of Trade & Industry to review policy and

Project	Country or Region	Funding and source	Description
			implementation of IPRs in South Africa. Also works with Southern African Research and Innovation Managers Association to improve research and innovation at South Africa universities, technikons and think-tanks, as well as facilitating greater commercialisation of research through the IPR system.
Ukraine WTO	Ukraine	\$ 50,000 USAID	Assistance provided which enabled Ukraine to adopt an IPR Omnibus Law to bring IP laws and regulations into compliance with the TRIPS Agreement.
Technical Assistance on Communication, Arbitration & IPRs	Dominican Republic	\$15,000 USAID	Provides support for commercial arbitration and IPR management to make local laws compliant with the TRIPS Agreement.

Source: Goans, 2003 and USAID Trade Capacity Building Database

4.3.3 Financing, programme management and delivery modalities

Programming modalities

IP technical assistance programmes are implemented by US government agencies, private contractors and US-based business associations (eg the Business Software Alliance). The bulk of assistance is channelled primarily through in-country USAID offices and central departments, although there are also a number of regional and global programmes.

However, other US government agencies, such as the Office of the US Trade Representative (USTR), USPTO, the Commerce Department and the State Department, also have input into programme design through well developed inter-agency consultation mechanisms in Washington.

Separate US-funded technical assistance programmes on IPRs exist only in few countries. Other IP assistance projects are integrated into larger programmes and are managed as part of the USAID's general development assistance and trade capacity building programmes.

Financing for IP technical assistance programmes

No consolidated data on the financing of IP technical assistance programmes was provided by the relevant United States government agencies in response to the survey undertaken in the preparation for this study. However, it is possible to give a partial picture of the scale and geographical distribution of US financing for IP technical assistance programmes by looking at data from the USAID on-line Trade Capacity Building Database.⁹

Indeed, this database provides amongst the most comprehensive data on IP technical assistance programmes of any of the IP donor organisations studied in the research for this paper. USAID deserves due recognition for its investment in this information resource and it is a powerful tool for promoting knowledge sharing and donor co-ordination in the area of IP technical assistance programmes.

As Table 6 below shows, for the period 1999 to 2003, USAID expenditures on IP technical assistance programmes being implemented in developing countries and transition economies totalled US\$ 20.59 million. Of particular interest is the fact that USAID's annual expenditures increased nearly tenfold from US \$ 770,632 in 1999 to US \$7,027,824 in 2003.

Table 6: USAID Expenditure on TA Related to the TRIPS Agreement, 1999-2003

1999	2000	2001	2002	2003	Total
\$ 770,632	\$ 3,020,831	\$ 3,558,952	\$ 6,215,359	\$ 7,027,824	\$ 20,593,598

⁹ Available on-line at <http://gesdb.cdie.org/tcb/index.html>

Source: USAID Trade Capacity Building Database

At Annex 3, a full read-out of the available data on the USAID Trade Capacity Building Database concerning USAID IP technical assistance programmes is provided. The data are presented by country and/or by region, and annual expenditure numbers are given for each project for the period 1999-2003. Looking at this data reveals significant information about the geographical distribution of USAID IP technical assistance programmes.

For example, over US\$3.27 million (almost 16%) was committed by USAID to programmes in Eastern and Central Europe, including transition economies like Bulgaria, Bosnia, Croatia and Moldova over the 5 year period between 1999 and 2003. On the other hand, only US\$1.51 million (approximately 7%) was committed by USAID to programmes in Sub-Saharan Africa in the same period. Of this amount, US\$1.32 million (almost 90%) went to national IP technical assistance programmes in Nigeria and South Africa alone.

Annex 3 also reveals significant findings concerning the variation in the scale of USAID IP technical assistance programmes with developing countries and transition economies. For example, a total of US\$6.32 million was spent by USAID on one 3 year “mega-programme” in Egypt (this project represents over 30% of USAID’s total expenditure on IP technical assistance between 1999 and 2003). Multi-year programmes were also supported by USAID in Sri Lanka, Kyrgyzstan and the Philippines. At the other end of the spectrum, one-off projects of less than US\$20,000 were funded in countries such as Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Hungary, Nicaragua and Zambia.

Monitoring and evaluation

As far as it was possible to determine during research for this study, none of the US agencies involved has undertaken or published any major external impact evaluations of any of its IP technical assistance programmes with developing countries and transition economies. Consultations with USAID during the research for this study revealed that there were no specific arrangements in place for the monitoring or evaluation of IP technical assistance programmes – other than the general systems used for US development co-operation programmes generally.

Research for this study also revealed that USAID also had no plans to undertake any horizontal or project-specific external impact evaluations of its IP technical assistance programmes with developing countries and transition economies in the future. Nor did USAID have any plans to re-organise its structures for programming and managing IP technical assistance programmes, based on lessons learned from experience so far.

However, in 2003 USAID did commission a US consultancy company to produce a project planning guide entitled “*Intellectual Property and Developing Countries*” (see Goans, 2003). This has been distributed to USAID staff and is available online at the website of the USAID-financed Trade Capacity Building project.¹⁰

¹⁰ See <http://www.tcb-project.com/tcb/level1.php>

The paper explores how technical assistance programmes can be successful in increasing developing countries' protection of IPRs through linking IP with local needs and interests, building effective communication with government officials and local industry, strengthening local institutions and planning for sustainability. The paper also provides an overview of resources for USAID missions and developing country governments seeking to improve IP systems and participate in international systems of protection.

4.4 CASE STUDY 3: EUROPEAN COMMISSION

4.4.1 Policy objectives for IP technical assistance programmes

One of the core objectives of European Union (EU) relations with developing countries is to strengthen the mutual trade and investment flows. With this in mind, the EC, the executive arm of the EU, has launched a series of economic co-operation programmes with developing countries and transition economies, which cover, inter alia, intellectual property protection and related IP technical assistance.

Within these economic co-operation initiatives, the development of a modern IPR protection system is seen by the EU as of central importance for the establishment of favourable conditions for trade and investment between the EU and its partners in the long term.

In a document entitled "*Guidelines for European Commission Trade Related Assistance*" (EC, 2003), the EC outlines the following specific policy objectives for its IP technical assistance programmes with developing countries:

- To help with adoption of laws and regulations that are compliant with the TRIPS Agreement (unless specific bilateral provisions provide that this country should reach a level IPR protection similar to that of the EU) and supportive to national objectives (economic development, social and health objectives, etc).
- To provide expertise on how administrative offices and collecting societies can be organised or modernised.
- To provide training for administrative and judicial staff; and
- To increase awareness amongst potential right-holders.

A key cross-cutting policy goal for EC development programmes in all sectors – not just IP technical assistance – is to offer developing countries and transition economies access to European expertise. In most development co-operation projects, therefore, the EC usually includes a requirement that at least some of the professional experts participating in the activities must be nationals of the European Union, and have expertise in European institutions for example.

4.4.2 Activities supported under IP technical assistance programmes

According to the EC's Guidelines, depending on the partner countries' needs, IP technical assistance programmes can focus on one or more of the following activities:

- Legislative advice in the form of commentaries on bills concerning the general provisions and fundamental principles of the TRIPS Agreement, all other areas of IPRs, control of anti-competitive practices in contractual licenses or ways of enforcing such rights.
- Advice and clarification concerning the scope allowed by the TRIPS Agreement, notably with regard to access to medicines, traditional knowledge and genetic resources and geographical indications. According to the Guidelines, the EU is ready to help partner countries to implement the Doha Declaration on TRIPS and public health and can provide advice on how to reconcile the need to encourage innovation with the need to protect consumers and competition.
- Advice on how to organise the administrative apparatus, e.g. patent offices, collective management societies', etc.
- Training for staff in the administration of intellectual property protection and management methods.
- Specialised training for the judges, customs officials and police officers who have to enforce rights.
- Activities to promote awareness in the private sector and civil society about IPRs.

To illustrate the type of activities supported by the EC under its IP technical assistance programmes, Box 1 below provides information on the EC-ASEAN Intellectual Property Rights Co-operation project (ECAP). Further information can be obtained by looking at the EU's substantial annual submissions to the WTO TRIPS Council on its IP technical assistance programmes – the submission in February 2004 ran to 43 pages. These submissions include information on programmes supported by the EC as well as by the EU member states

Box 1: The EC-ASEAN Intellectual Property Rights Co-operation Project (ECAP)

From September 1993 to June 1997, ECAP Phase I assisted ASEAN countries in promoting their systems for the protection of IPRs. ECAP I was implemented with the six original ASEAN member states namely Brunei, Indonesia, Malaysia, Thailand, the Philippines, and Singapore. After joining ASEAN in June 1995, Vietnam participated in all regional ECAP I activities and a specific national EC-financed IP co-operation project was implemented by December 2000.

With regard to **regional co-operation** in the field of industrial property between the ASEAN member states, ECAP I organised regional seminars and high-level meetings, which gave the ASEAN officials an opportunity to exchange information and to adopt new approaches and to take advantage of the experience of Europe in

identifying suitable models. Various common study visits and training courses were organised in order to promote harmonisation of procedures, to learn from “best practice” work methods and to initiate common standards regarding IP administration as well as search and examination.

At **national level**, ECAP I provided assistance in the field of ‘streamlined’ or ‘modified’ patent examination procedures in four of the national ASEAN offices with full examination of patents. Positive results were also achieved in the fields of automation (installation of Common Software at the Malaysian IP Office), awareness raising and enforcement of IPRs.

Further to the successful implementation of ECAP I, the EC launched a second phase in July 2000. ECAP II runs for five years, has a budget of €5 million and is implemented by the EPO.

While ECAP I focused on industrial property rights, ECAP II expands the scope of activities to all fields of IPRs: patents and industrial designs, trade marks, copyrights, geographical indications, layout-designs of integrated circuits and trade secrets. It also covers activities in the area of enforcement. It comprises a regional component covering Brunei, Indonesia, Philippines, Singapore, Thailand and Vietnam, and national components covering the same countries except Vietnam.

Source: www.ecap-project.org

4.4.3 Financing, programme management and delivery modalities

Programming modalities

Development assistance programmes of the EC are implemented by DG Europe Aid Cooperation Office (Europe Aid) primarily through in-country EC Delegations. However, the Directorates-General in charge of trade (so-called ‘DG Trade’), development issues (DG Development), and external relations (DG Relex) also have input into country strategy development and programme design through inter-service consultation.

Separate EC technical assistance programmes on IPRs exist only in a few countries. The EPO is in fact a major implementing agency for EC-financed IP technical assistance programmes. For example, a major EC-funded IP technical assistance programme being implemented by the EPO is the EC-ASEAN Intellectual Property Rights Co-operation Project (see Box 1). Other IP assistance projects are integrated into larger trade capacity building programmes and are managed as part of the EC’s general development assistance programmes. This makes maintaining and recording separate data on the EC’s support for IP technical assistance programmes, and its impact, much more difficult – though there may indeed be many programmatic advantages from the integration of IP-related activities within wider efforts aimed at building capacity for trade, investment and economic development.

The EC does not have a cadre of staff dedicated to working on IP technical assistance programmes, as do WIPO and EPO for instance. In fact, as far as one instance can be representative, the EC seemed to face considerable challenges in co-ordinating across

the different Commission services (DG Trade, Europe Aid, DG Development, DG Relex) a response to the survey questionnaire which was prepared for this study.

Indeed, the fairly brief response to the survey which was received from the EC took several months to be compiled and transmitted – and this did not include any financial management information on expenditure or commitments to the EC IP technical assistance programmes. This situation contrasts particularly with the substantive amounts of information publicly available on IP technical assistance supported by WIPO and the EPO, for example, and is surely a reflection of the greater human resources employed in those two organisations solely to manage such programmes.

Financing for IP technical assistance programmes

As noted above, no consolidated data on the financing of IP technical assistance programmes was provided by the European Commission in response to the survey undertaken in the preparation for this study. Although there may be good reasons to explain this situation, it is a source of concern that one of the major donors for IP technical assistance to developing countries should not be able to provide this kind of information – particularly so if the reason is that this data is not readily available even to EC officials.

However, it is possible to give a partial picture of the scale and geographical distribution of EC financing for IP technical assistance programmes by looking at data from the EPO to EC-funded programmes which the EPO is implementing, provided by the EPO to the UK Commission on Intellectual Property Rights in 2002 (see Karachalios, 2002).

As Table 7 below shows, for the period 1990 to 2005, the EC has committed approximately €30.44 million in programmes being implemented by the EPO in developing countries and transition economies. Of this total financing sum from the EC for IP technical assistance programmes implemented by the EPO, however, there was a heavy concentration of expenditure within specific countries and regions.

For example, €12.80 million (42%) was allocated to Phases I and II of the ECAP programme with ASEAN countries (see Box 1 above). A further €9.50 million (31%) was allocated to countries in Eastern Europe under the RIPP programme; whilst €4.57 million (15%) of this was for programmes in China alone. Rather surprisingly, as Table 7 shows, during the 15 year period from 1990 to 2005, there were no EC-financed IP technical assistance programmes being implemented by the EPO in the Africa, Latin America, Pacific, Caribbean or the Middle Eastern regions.

Table 7: EC financing for IP technical assistance implemented by EPO, 1990-2005

Country/region	Period	Total budget
China	1998-2001	€ 3,280,000
	2002-2003	€ 1,295,000
Vietnam	1996-2000	€ 900,000
ASEAN	1993-1997	€ 6,400,000
	2001-2005	€ 6,400,000

India	2001-2003	€ 1,000,000
Eastern Europe (RIPP)	1990-2001	€ 9,500,000
CIS countries		
Regional	1996-1998	€ 1,000,000
Ukraine	1994-1996	€ 270,000
Uzbekistan	1995-1997	€ 400,000
Total	1990-2005	€ 30,445,000

Source: Karachalios (2002)

Monitoring and evaluation

As far as it was possible to determine during research for this study, the EC has not undertaken or published any major external impact evaluations of any its IP technical assistance programmes with developing countries and transition economies. Consultations with EC officials during the research for this study revealed that there were no specific arrangements in place for the monitoring or evaluation of IP technical assistance programmes – other than the general systems used for EC development co-operation programmes generally.

Research for this study also revealed that the EC also had no plans to undertake any horizontal or project-specific external impact evaluations of its IP technical assistance programmes in the future. Nor did the EC have any plans to re-organise its structures for programming and managing IP technical assistance programmes, based on lessons learned from experience so far.

4.5 CASE STUDY 4: EUROPEAN PATENT OFFICE

The EPO, with headquarters in Munich, is the executive arm of the European Patent Organisation, an intergovernmental body which was established by the European Patent Convention in 1973. The activities of the EPO, centred on patent administration but including technical co-operation with members and non-members of the EPO (ie developing countries and other transition economies) are supervised by the Administrative Council, composed of delegates from the EPC's 27 contracting states.

Like WIPO, the EPO is essentially in the “first division” of IP technical assistance donors and providers, in terms of the scale and scope of its programmes, their worldwide coverage, the dedicated organisational structures employed for managing these programmes and the internal technical expertise in IP subjects which the EPO can provide in-house, through its staff of more than four thousand professionals. Like WIPO, therefore, the EPO should be considered as a key player in the provision of IP technical assistance to developing countries.

4.5.1 Policy objectives for IP technical assistance programmes

The overall aim of the EPO's technical assistance programme is to make the EPO's expertise and technology available to IP agencies around the world. As a regional patent office, clearly the EPO's technical expertise is centred on patent examination,

administration and information systems. However, the EPO does undertake the implementation of full-scale IP technical assistance programmes in all areas of IP, often with the assistance of co-operating partner organisations.

More specifically, the EPO's technical assistance programmes have the following main policy objectives:

- Establishing appropriate national infrastructure for the administration of IP protection and harmonising and simplifying administrative procedures.
- Building up national IP rights enforcement systems.
- Using patent information to promote innovation and technology transfer.
- Developing and implementing standards for information and data exchange.
- Harmonising the legal systems of different countries within given regions.
- Promoting public awareness of IP as a powerful motor for the economy, society and culture.

In a document entitled "*Worldwide co-operation: The European Patent Office and its programme for international co-operation*" (EPO, 2003), the EPO emphasises that it favours a collaborative approach to its technical assistance programmes, working in partnerships with EPO member states (who often have special interests in particular regions such as Latin America for Spain, Portuguese-speaking countries for Portugal and African countries for France and the United Kingdom); WIPO; the EC and other organisations.

As noted in case study 3 above, the EC regularly sub-contracts with the EPO to implement EU-financed IP technical co-operation programmes. Indeed, the ability of the EPO to run major projects and bring together many national IP offices and technical specialists in different fields is one of its most significant characteristics.

4.5.2 Activities supported under IP technical assistance programmes

EPO support is offered in the first instance to national IP authorities such as patent and trademark offices in countries and regions involved in co-operation programmes. Assistance is given to national and regional organisations and associations, governmental departments dealing with IP, lawyers, representatives of industry, trade and culture, universities and other bodies active in the IP field.

These programmes involve the following kinds of activities:

- Providing guidance on building up and organising IP authorities and institutions.
- Training general and specialist personnel working with these authorities and institutions.

- Providing technical support primarily in the form of advice on information and documentation, and the provision of hardware, software and library stock.
- Promoting public awareness of IP.

Table 8: Examples of EPO IP technical assistance programmes activities

Region	Description
Central and Eastern Europe	Most central and eastern European states are now members of the EPO. Assistance programmes to these countries involve building up national IP office infrastructure, developing IT systems and training. Training on IP issues is aimed not just at staff in national IP offices but also the research community, SMEs, patent attorneys and the judiciary. In Turkey, the EPO is implementing an EU-financed project to support the Turkish ministry of justice in setting up special IP courts in Turkey.
CIS countries and Mongolia	The main aspects of the EPO's technical assistance programmes with national IP offices in this region and the Eurasian Patent Office are building national IP systems, staff training in patent administration and data processing, including training of trainers; patent information systems development and promoting awareness about IPRs within the research and legal communities.
Asia	The EPO has trained large numbers of staff from the State IP office in China, both in the region and in Europe. In addition to training activities, the EPO has provided the State IP office in China with patent databases and administration software, permitting on-line searches for state of the art in different fields of technology. In addition to the programme with China, the EPO is also engaged in providing technical assistance to Thailand, Philippines, Malaysia, Indonesia, Vietnam, Singapore, Brunei, Cambodia, Laos, India and South Korea. EPO financed technical assistance with these countries is focused on training for patent examiners, providing technical support for patent examination and encouraging regional co-operation in IP administration.
Latin America	The primary recipients of EPO IP technical assistance are Argentina, Brazil, Chile and Mexico. Activities with countries in Central America and the Andean Community commenced only recently in collaboration with WIPO.

Region	Description
	EPO technical assistance in this region is focused on training, automation and public relations related to the patent systems. Training activities include seminars at the EPO International Academy and in the region by EPO experts, sometimes held in conjunction with national patent offices. Support for automation involves assistance in the area of electronic publishing, database development and software for patent administration.
Africa and Middle Eastern countries	<p>The EPO's most active IP technical assistance programmes in Sub-Saharan Africa are with South Africa, OAPI and ARIPO. In the Middle Eastern region, framework agreements with the EPO are in place with Morocco, Egypt, Tunisia, Algeria and the patent office of the Gulf Cooperation Council. Links have also been established with Jordan, Syria and Lebanon.</p> <p>IP technical assistance programmes in this region centre on developing and implementing integrated plans for building up small and medium-sized IP authorities; promoting knowledge transfer from the EPO to partners and within the sub-regions; developing patent information systems to promote access to technologies of importance to Africa and Middle Eastern countries; and adapting EPO training programmes as required through setting up local training centres.</p>

Source: EPO (2003)

4.5.3 Financing, programme management and delivery modalities

The EPO provides technical assistance in essentially three ways: bilaterally (funded by its own budget), as an implementing agency for EU-financed programmes, and contributing to the activities of other organizations (mainly WIPO). Almost since its beginning, the EPO has been providing technical assistance to developing countries. With time, a matrix structure has emerged in the EPO's International Cooperation Directorate, consisting of "vertical" and "horizontal" units with complementary tasks and responsibilities.

The vertical units are called "regional projects". The managers of these IP technical assistance projects are responsible for the co-ordination of all activities relating to a given region and also for the allocation of the budget. Currently, EPO IP technical assistance projects exist for the following regions:

- Africa and the Middle East (Arab countries)
- China

- South-East Asia (ASEAN countries and India)
- Eastern Europe
- CIS countries
- Latin America.

As well as these vertical units, three horizontal units exist for accomplishing tasks and services, common to several projects:

- The IT unit which is responsible for developing and implementing IT tools, such as patent administration; documentation and publication tools (data capturing, scanning and indexing of documents, producing CD-ROMs and local databases); making patent information available in practice (CD-ROMs, off-line databases, Internet); and on-line links to EPO databases.
- The EPO International Academy is responsible for human resources development in the IP field, including organisation of training seminars (involving about 500 persons per year as trainees), topical conferences and fora inside and outside Europe, and development of tutorial material.
- The Financial and Management Control Unit which assists all other units in administering the financial and administrative aspects of the activities and programmes.

The EPO has about 40 staff in its Directorate for International Co-operation¹¹. This puts the EPO in a league with WIPO as one of the most significant donor organisations in terms of human resources deployed in management of intellectual property-related technical co-operation activities. Through its cadre of professional staff, the EPO is also a major provider of expertise to developing countries through its IP technical assistance programmes: in 2004 alone, for example, the EPO expects to send approximately 130 experts to 45 countries for a total of 642 person days (EPO, 2003).

Financing for IP technical assistance programmes

Since it began its IP technical assistance programmes in 1982, the EPO has implemented projects in approximately 80 countries and spent almost €54 million. Half of this funding has come from the EPO, the rest from other sources, chiefly the EC. As noted in Section 4.4.3 above, the EPO is in fact a major implementing agency for EC-financed IP technical assistance programmes.

As shown by Table 9 below, between 1996 and 2001, from its own resources, the EPO committed almost €19.00 million to its own IP technical assistance programmes. Annual commitments by the EPO increased from €2.60 million in 1996 to €3.65 million in 2001 – a relatively large increase of approximately 40% over the period. As

¹¹ Communication from EPO, January 2004.

in the case of WIPO, the bulk of these resources are generated by income from the user fees which the EPO charges for its patent administration services.

Table 9: EPO's budgetary resources for IP technical assistance 1996-2001 by year

1996	1997	1998	1999	2000	2001	Total
€ 2,600,00 0	€ 2,875,00 0	€ 3,050,00 0	€ 3,050,00 0	€3,575,0 00	€3,650,0 00	€18,800,00 0

Source: Karachalios (2002)

However, unlike the financial data presented in the case study above on WIPO, this figure excludes the cost of EPO staff participation in IP technical assistance activities, other than travel expenses. With around 40 staff dedicated to management of IP technical assistance programmes – and further EPO experts participating in training seminars and other activities – such staff costs are clearly a significant additional element of the EPO's financing commitment.

In this sense, the EPO's stated budgetary resources available for IP technical assistance programmes are a considerable under-statement of the comparable figure in the data provided by WIPO. It is important to bear this point in mind when considering the relative scale and contribution of both WIPO and the EPO to IP technical assistance with developing countries.

In a submission to the UK Commission on Intellectual Property Rights by the EPO (see Karachalios, 2002), the EPO provided a breakdown of these budgetary resources committed to IP technical assistance programmes between 1996 and 2001, by geographical region. The Eastern Europe region received the largest single budgetary allocation, but it is noticeable from Table 10 that there is a relatively even distribution of EPO resources for IP technical assistance across the 6 regions and the specialist IT unit.

Table 10: EPO's budgetary resources for IP technical assistance 1996-2001 by region

Region	Total budget for 1996-2001
Africa and Middle East	€ 3,100 000
China	€ 2,650,000
CIS countries	€ 2,600,000
Eastern Europe	€ 3,700,000
Latin America	€ 2,200,000
South Eastern Asia	€ 2,050,000
IT unit (automation projects)	€ 2,500,000
Total	€ 18,800,000

Source: Karachalios (2002)

Monitoring and evaluation

As far as it was possible to determine during research for this study, the EPO has not undertaken or published any major external impact evaluations of any its IP technical assistance programmes with developing countries and transition economies. Consultations with EPO during the research for this study revealed that there were no specific arrangements in place for systematic evaluation of its IP technical assistance programmes, although regular monitoring of project activities is undertaken by the regional project managers.

As with WIPO, EC and USAID, research for this study also revealed that the EPO had no plans to undertake any horizontal or project-specific external impact evaluations of its IP technical assistance programmes with developing countries and transition economies in the future. Nor did EPO have any plans to re-organise its structures for programming and managing IP technical assistance programmes, based on lessons learned from experience so far.

As mentioned earlier, however, in 2002 the EPO did produce an analytical paper as a submission to the UK Commission on Intellectual Property Rights, entitled "*Current situation of regional organisations in the IPR field and future challenges*" (see Karachalios, 2002), on the institutional capacities of regional IP organisations in developing countries with whom the EPO has been working for a number of years. The paper includes some initial analysis of the scope, coverage and future challenges for the EPO's IP technical assistance programmes, covering a period of more than 10 years. This document is a welcome and useful contribution to the literature and reflected a new interest by the EPO's International Directorate in some of the strategic issues future issues for IP technical assistance with developing countries and transition economies in the future.

4.6 CASE STUDY 5: IP AUSTRALIA

IP Australia's corporate mission is "To create an effective, efficient and accessible global IP system that promotes innovation, investment and international competitiveness for the benefit of all Australians." While the principal focus of technical assistance activities is in relation to patents, trade marks and designs examination systems, assistance is also provided on IP public awareness and education issues, IT systems and allied topics like geographical indications. Where IP Australia does not contain the necessary expertise to provide the assistance it may consider funding external people or organisations to deliver the relevant technical assistance.

IP Australia is an agency of the Department of Industry, Tourism and Resources, a department of the Australian Government. While IP Australia is an agency of a larger Department it is autonomous in most of its activities. However, large scale projects may require consultation with other government agencies and gain clearances from Ministers. IP Australia operates on a full cost recovery basis. This means that IP Australia must derive all of its expenditure needs from revenue it earns from service fees (mainly from applications for IP rights and their registration and renewal).

4.6.1 Policy objectives for IP technical assistance programmes

The technical assistance that IP Australia provides is governed by a wide range of factors such as:

- The availability of resources within IP Australia (both financial and administrative) and its competence to deliver the assistance.
- Funding available from external organisations like WIPO, the Asia Pacific Economic Co-operation organisation (APEC) and the Australian Agency for International Development (AusAID).
- Broader Australian government objectives.
- International agreements, both bilateral and multilateral, which include clauses on IP co-operation or the provision of technical assistance (for example, TRIPS agreement, WIPO-Australia Joint Statement¹², APEC IPEG¹³, Free Trade Agreements etc).

The main policy objective for IP Australia in relation to IP technical assistance is to co-operate with countries in the Asia-Pacific region to implement effective intellectual property services and develop new business opportunities. Under this broad objective, IP Australia's priorities within the 2003-2004 financial year are:

- To successfully develop and deliver a regionally focused action plan (RFAP) for the Pacific Island Countries in conjunction with WIPO and the Pacific Islands Forum Secretariat. The RFAP is a three year plan concluding in October 2004.
- To deliver a program of IP public education and awareness particularly communicating the benefits for individuals and business advantages for companies of an effective IP system. These activities are being developed for Indonesia, the Philippines and Vietnam. This program is being funded by APEC under its Trade and Investment Liberalisation and Facilitation program.
- To work with WIPO in considering requests for technical assistance from countries in the Asia-Pacific region.

IP Australia's objectives in relation to IP technical assistance are determined based on domestic and international obligations and the aim of seeking harmonisation of IP systems to reduce duplication and increase their effectiveness. The views of our stakeholders and available resources are taken into account when developing annual priorities.

IP Australia's broad objectives in relation to IP technical assistance have not varied greatly over time, however, the focus of activities has varied from year to year. More emphasis is given to ensuring that assistance given is effective and efficiently given. The majority of assistance given relates to those areas IP Australia has strengths in for

¹² WIPO-Australia Joint Statement on Co-operation for IP Technical Assistance in the Asia and Pacific Region.

¹³ APEC Intellectual Property Rights Experts Group. See www.apecipecg.org

example, IP examination systems and associated administration functions, legislation development and IP public education and awareness raising activities.

4.6.2 Activities supported under IP technical assistance programmes

The principal focus of IP Australia's technical assistance funding is related to IP administration & management as this relates to IP Australia's core business. Activities supported by IP Australia in its IP technical assistance programmes with developing countries include:

- Training in patent & trademark examination work and oppositions and training in the administrative and electronic systems to support the operations of IP offices. This training may be in the form of in-country training, training in Australia or through regional seminars and workshops.
- The provision of commentaries on legislation developments.
- Funding of speakers to symposium and conferences.
- Development of IP public education and awareness has also been a focus of IP Australia's assistance programmes with developing countries.

4.6.3 Financing, programme management and delivery modalities

Programming modalities

The majority of IP technical assistance activities for IP Australia originate from requests for assistance received by WIPO from countries in the Asia- Pacific region. The decision of which requests WIPO seeks IP Australia's assistance is at WIPO's discretion but factors like previous assistance, areas of competence and knowledge about resources would be taken into account.

The initial assessment of needs under these arrangements is then undertaken by WIPO. Where IP Australia agrees to provide assistance then contact with the recipient country by IP Australia would likely occur to review the issues and resources required. Many of these requests for assistance are on an ad hoc basis.

For large projects there is an initial and ongoing assessment of the needs of a country. For example, an APEC project on IP public education and awareness which is being delivered to Indonesia, Philippines and Vietnam over a 2 year period involved project identification at a conceptual level; bringing on board recipient countries; assessment of country needs and developing country specific programs. During these phases reports to the APEC Secretariat were prepared and discussed to ensure the timely delivery of country specific programs was occurring. The assessments of country needs were undertaken between IP Australia's experts and the recipient country experts through visits to the relevant countries.

In many of IP Australia's technical assistance programs, the major donor is usually WIPO. This co-operative arrangement is managed via direct contact between the relevant officials of both organisations. In cases where IP Australia is aware of other

donors providing assistance to the recipient country on similar or related projects, it seeks information from the recipient country on that previous assistance. It is, however, not always possible to identify what earlier or concurrent assistance is being provided to developing countries.

Financing for IP technical assistance programmes

IP technical assistance provided by IP Australia is financed either via internal budget allocations or through external sources. External sources of funding include WIPO, APEC and AusAID¹⁴.

Financing for IP Australia's IP technical assistance programs is determined on an annual basis according to the priority of the assistance as measured against other operational needs of the organisation. Some technical assistance projects receive multi-year approval subject to annual financial constraints of the organisation.

IP Australia's technical assistance funding covers administrative expenses of the following nature: travel, accommodation, travel allowance, equipment and workshop/seminar expenses. Expenditure by IP Australia on administrative and staff related expenses between 2000 and 2003 is shown in the table below.

Table 11: IP Australia budgetary resources for IP technical assistance 2000-2003

2000/1	2001/2	2002/3	Total
AUS \$ 836,000	AUS \$ 705,000	AUS \$ 671,000	AUS \$ 2,212,000

Source: Communication from IP Australia, December 2003

Monitoring and evaluation

Follow-up monitoring of WIPO sponsored projects is usually done by WIPO. However, IP Australia will informally monitor projects through personal contact with recipient country officials to learn how the assistance is being used (though this is not the case where the assistance was principally through the delivery of seminars). This informal contact enables IP Australia to identify whether further follow-up or next step assistance is needed.

Technical assistance programs sponsored by external agencies for example, WIPO, APEC or AusAID are subject to the monitoring and assessment protocols of those organisations. In programs sponsored by IP Australia, feedback from the recipient countries is used to review the effectiveness of programs.

This is used to evaluate whether the program was effective to meet the recipient country needs and what alterations are required for future assistance or whether we should continue with providing similar assistance. Evaluation materials produced by IP Australia are not published.

¹⁴ See www.ausaid.gov.au

5. STRATEGIC ISSUES FOR THE FUTURE

5.1 TAKING STOCK

There have been some considerable achievements in the last 5-10 years in terms of modernising the IP infrastructure and developing the associated human resources in the developing world. Large numbers of people, from a variety of professional backgrounds, have received general and specialised training in IP subjects. Many developing countries have over-hauled their IP legislation – although there have been criticisms from some quarters about the content and process of these reforms - and have taken advantage of international co-operation and assistance for automation to make important efficiency gains and provide improved service levels.

Perhaps the regions where there has been the biggest impact from IP technical assistance are Latin America and Eastern Europe. But there has also been significant development of institutional capacities in other developing countries like China, Morocco, Vietnam, Trinidad, and India, as well as in the regional IP organisations such as OAPI and ARIPO (Leesti & Pengelly, 2002).

At the same time, many low-income countries, and particularly LDCs, still face considerable challenges in participating in international IP rule-making and developing their IP infrastructure and national IP legal & policy frameworks in ways compatible with their development needs. This is made all the more important given the on-going developments in international IP standard setting at the multilateral, regional and bilateral level involving these countries. These challenges present a number of strategic issues for the financing, design and delivery of technical co-operation to low-income countries and LDCS that need be addressed by all donor organisations and providers.

In this final Chapter of the paper, and within this context, some of these strategic issues for the future of technical assistance for the formulation and implementation of IP policy in developing countries and transition economies are presented such as:

- Tailoring IP-technical assistance to development needs;
- Scaling up IP assistance to low-income countries and LDCs;
- Promoting pro-competitive enforcement and regulation of IPRs;
- Ensuring balanced advice for legislative reform;
- Improving co-ordination of IP technical assistance;
- Supporting knowledge sharing and better ways of working; and
- Improving impact monitoring and evaluation.

This is not intended as a comprehensive listing, but rather as a contribution to the debate. Some of the issues are raised here because IP technical assistance donors,

providers and their developing country partners need to reflect further on them and be mindful of them going forward. For other issues, some specific recommendations are set out where these seem sensible and justified by the existing situation and the findings of this study.

5.2 TAILORING IP TECHNICAL ASSISTANCE TO DEVELOPMENT NEEDS

Donors of IP technical assistance must be constantly aware that the development of IP systems in developing countries cannot be considered in isolation to the general development context and needs of the country concerned. For example, the sustainable provision of equipment for an IP Office may require consideration of local skills to service the equipment, reliable power supply and telecommunications infrastructure or associated equipment like air conditioners. Other factors like the level of IP activity (eg low numbers of patenting and trademark applications) in a small or very low-income country may mean that it is not technically feasible nor economically viable for such a country to establish and sustain an IP system comparable to developed countries in terms of capacity for administration, enforcement and regulation of IPRs.

It follows from this that the assessment of IP technical assistance requirements of a developing country should be based on what a developing country needs rather than on what a donor country wants, or is able, to provide. Developing countries should take the lead in preparing such assessments, based on a broad and medium term perspective, and a wider range of stakeholders should be involved – not just national IP offices but stakeholders from other government agencies, the business sector and civil society as well.

Donors do have an important role to play in this process by assisting developing countries to understand the international IP systems and their future developments, as well as sharing the lessons of their own experience. In this way, donors can provide developing countries with sufficient information to make informed decisions about how their national systems should develop and what can be realistically achieved and delivered in the short and long term.

These medium term strategic plans for building up an appropriate legal/policy framework and national IP infrastructure should then be shared with all interested parties and IP donors to facilitate better co-ordination of efforts, reduce duplication and facilitate strategic, and promote well-sequenced investments in human resource development and modernisation of national institutions. Delivery of IP technical assistance to developing countries should be explicitly tailored around these strategic plans and should usually be through multi-year, broad-based programmes and not just one-off events. Financial sustainability of national IP institutions should be a key objective from the outset.

5.3 SCALING-UP IP ASSISTANCE TO LOW-INCOME COUNTRIES & LDCS

In order to meet the special needs of low income developing countries and LDCs in developing the IP regime and wider innovation and technology infrastructure they

require, a priority issue for all donors should be to examine the case for a significant expansion in commitments for IP technical assistance and capacity building programmes to such countries over the next 5-10 years.

While some assistance is on offer now, the case studies in this paper show that the bulk of donor resources often go to middle income developing countries (eg China, Egypt, the Philippines or South Africa). Even for a donor with the financial strength of WIPO and its level of commitment to IP technical assistance globally, the resources that are allocated to national programmes in LDCs and low income countries seem insufficient even for the narrower task of supporting better participation in IP rule making and modernising IP administration – let alone the much bigger job of broadening the scope of IP assistance programmes to encompass a package of policy reforms and capacity building aimed at stimulating more local innovation through R&D to improve productivity and competitiveness, as well as greater use of the IP system by small and medium sized enterprises.

In 2001, the World Bank estimated that a comprehensive upgrade of the IPR regime in poor countries, including training, could require capital expenditure of US\$1.5 to 2 million (World Bank, 2002). Based on the indications from the case studies in this paper, more financial resources for capacity building and technical assistance to achieve such upgrading of IPR regimes in low income countries and LDCs would clearly seem to be required over the next 5-10 years, particularly as the LDC members of the WTO struggle to implement their obligations under the TRIPS Agreement by January 2006 through legal and institutional reforms compatible with their development needs.

Low income developing countries and LDCs could also perhaps do more to help make the case to donors for scaling up IP-related technical assistance and capacity building programmes. First, they could ask donors to provide more transparent financial information on their commitments to IP technical assistance programmes in LDCs and low income countries.

A second option would be to give these issues higher profile within the diagnostic studies and needs assessments carried out by the World Bank under the multi-donor Integrated Framework for Trade Related Technical Assistance to LDCs.¹⁵ A brief review during the research for this paper of existing diagnostic studies completed under the Integrated Framework so far revealed very little reference or importance given to IP-related policy reform and capacity building issues – despite the fact that consideration of the IP regime is clearly within the scope of the diagnostic studies. This was confirmed by interviews with officials working on the Integrated Framework at the World Bank, WTO and UNCTAD in September 2003.

Finally, LDCs and low-income developing countries could insist on binding undertakings by developed countries to provide greater assistance for needed capacity building as part of new international trade negotiations and agreements covering IP issues at the multilateral, regional and bilateral levels. Article 67 of the TRIPS Agreement is one example of such an undertaking by developed countries. Another, more recent– though by no means perfect - example of this kind of approach is

¹⁵ See www.integratedframework.org.

provided by Chapter 15 (Intellectual Property Rights) in the US-Central America Free Trade Agreement (CAFTA) signed in May 2004.

In the FTA agreement, Article 15.1.16 (General Provisions) of the Chapter contains the following provisions explicitly related to IP technical assistance and capacity building:

“Recognizing the Parties’ commitment to trade capacity building as reflected in the establishment of the Committee on Trade Capacity Building under Article 19.4 (Committee on Trade Capacity Building) and the importance of trade capacity building activities, the Parties shall cooperate through that Committee in the following initial capacity-building priority activities, on mutually agreed terms and conditions, and subject to the availability of appropriated funds:

- a) educational and dissemination projects on the use of intellectual property as a research and innovation tool, as well as on the enforcement of intellectual property rights;
- b) appropriate coordination, training, specialization courses, and exchange of information between the intellectual property offices and other institutions of the Parties; and
- c) enhancing the knowledge, development, and implementation of the electronic systems used for the management of intellectual property.”

5.4 PROMOTING PRO-COMPETITIVE ENFORCEMENT AND REGULATION

For all of the IP technical assistance donors reviewed in the case studies for this paper, a key policy objective going forward is to ensure that enforcement systems in developing countries address serious IPR infringements more effectively. This is seen as critically important to protect the incentives that the system offers to IP rights holders. But, as the UK Commission on Intellectual Property Rights noted (CIPR, 2002 Chapter 7), it is also important that developing countries are assisted to develop institutions capable of doing this in a balanced, pro-competitive way.

As the CIPR report correctly observed, developed countries have introduced stronger IP protection in the context of competition regimes and other regulatory regimes designed to ensure that IPRs do not harm the public interest. Seen from the institutional perspective, however, such effective regulation of IPRs is likely to present significant challenges for policymakers, administrators and enforcement agencies in developing countries.

This suggests that, as well as enforcement, building capacity for regulation of IPRs, particularly in relation to matters of special public interest (as with compulsory licensing) or in relation to controlling anti-competitive practice by rights holders, should be given higher priority in IP technical assistance programmes for developing countries and transition economies in the future.

As well as the development of appropriate regulatory frameworks per se, an important part of effective regulation is the undertaking of regular, periodic reviews of all aspects of the national IP regime, to ensure that these are relevant and appropriate. Donors could also do more to assist developing countries in this task, through providing appropriate technical assistance as well as formal and on-the-job training.

5.5 ENSURING BALANCED ADVICE FOR LEGISLATIVE REFORM

In recent years, concerns have been expressed from a number of different sources regarding the role of donors in providing advice and technical assistance to developing countries for reform of IP legislation. While developing country IP offices typically value the technical assistance provided by institutions such as WIPO or bilateral donors, a number of experts and organisations have raised substantial concerns about whether this assistance has always been appropriately tailored to the circumstances of the developing country concerned.

In particular, it has been argued that sometimes the advice provided by certain IP technical assistance donors doesn't always fully take into account all the possible options and flexibilities to accommodate public policy objectives under the TRIPS Agreement regarding. These criticisms relate, among others, to the fact that for many IP technical assistance donors – as the case studies in this paper explain – a key policy objective is the promotion of stronger protection of IPRs in developing countries, through higher standards and improved enforcement.

For instance, at the conference on *Implementation of the Doha Declaration on the TRIPS Agreement and Public Health: Technical Assistance – How to Get it Right?*, organised by Medicines Sans Frontières and Oxfam International in Geneva in March 2002, some participants voiced concerns that such policy objectives of IP technical assistance donors may not be consistent with the need for more flexible systems of IP protection that take into account varying stages of economic development and local conditions in developing countries, especially in light of the crisis in access to essential medicines. In a subsequent paper, Medicines Sans Frontières documented these concerns regarding specific examples of IP technical assistance provided by WIPO in Cambodia and by USAID in Uganda and Nigeria (Medicines Sans Frontières, 2003).

It is beyond the scope of this paper to investigate such concerns about IP technical assistance related to legal reform in developing countries. But even if such concerns turn out to be not as justified as some commentators fear, they demonstrate the potential sensitivity and importance of this area of domestic regulatory policymaking in developing countries. As many low-income developing countries and LDCs will continue to depend on technical assistance in this area for some time to come, particularly as they proceed with implementation of the TRIPS Agreement, IP technical assistance should be mindful of the need to respond positively to these concerns.

5.6 IMPROVING CO-ORDINATION OF IP TECHNICAL ASSISTANCE

At times, technical assistance activities have not been well co-ordinated by the multiple donors involved or by the national authorities in the recipient countries

concerned. In Vietnam, for example, 8 different donor agencies provided IP technical assistance in the country between 1996 and 2001 (Leesti & Pengelly, 2002).

The result of poor co-ordination of IP technical assistance is duplication of efforts or, at worst, waste of resources and conflicting advice on important policy and investment decisions related to, for example, the most appropriate kind of software for patent administration or the right form of protection for intellectual property related to plant variety technologies. Moreover, given finite resources, the needs of other developing countries for technical assistance and capacity building are more likely to be left unattended as a consequence of “crowding” by several donors in one particular country which is perceived as being of particular importance at that time.

More positively, as the case studies in this paper have shown, there is much *ad hoc* co-operation between donors and some good instances of more formalised collaboration (eg the WIPO-WTO co-operation agreement and the WIPO-IP Australia co-operation agreement). Donors should build on these successes.

One option for improving donor co-ordination and delivering more comprehensive assistance programmes, integrated within the national development strategies, could be to incorporate IP technical assistance more fully under the Integrated Framework for Trade-Related Technical Assistance for LDCs than is presently the case (see Section 5.3 above).

5.7 SUPPORTING KNOWLEDGE-SHARING & BETTER WAYS OF WORKING

Donors/providers and developing countries also need to find new ways of working together better in programming and delivering IP technical assistance programmes. As the research for this paper demonstrated, there are problems in obtaining good data from donor organisations about IP technical assistance programmes. What information is available tends to lack important details (such as country or programme specific financial information) that make a meaningful analysis very difficult.

Crucially, there seems to be a complete lack of literature concerning external evaluation of IP technical assistance programmes, drawing out key lessons learned and elaborating best practice guidance for donors and developing countries to follow. It should be emphasised that this situation is in marked contrast to many other sectors of development co-operation such as education, health, transport, private sector development, energy or building capacity for trade.

In particular, much better use could be made by IP technical assistance donors of the existing institutional mechanisms, at the national, regional and international levels for sharing information and improving delivery of development co-operation assistance generally – such as national development planning documents, UN Development Assistance Frameworks etc, World Bank Consultative Group meetings and project or programme specific websites for individual developing countries or sub-regions.

For example, the project website developed for the EC-financed ECAP programme (see Box 1 in Section 4.4) could be replicated by other donors for similar programmes; WIPO in particular could perhaps develop country specific web-pages

providing information on activities and achievements for each of its NFAPs. Alternatively, WIPO and other IP technical assistance donors could assist developing countries to establish and maintain such web-based information platforms.

To take these efforts forward in a more effective manner, a work programme on better donor co-ordination and best-practice for IP technical assistance could be established. The work programme could be undertaken by a group of experts from donors and developing countries and could be based on a series of detailed case studies on different developing countries/regions. The main outputs of the work programme would be improved mechanisms for information sharing and a set of detailed guidelines for improving the delivery of IP technical assistance, but the process in itself would also be useful in improving dialogue and information sharing amongst donors and developing countries.

5.8 IMPROVING IMPACT MONITORING & EVALUATION

As indicated in Section 5.5 above, an important constraint in discussing IP technical assistance for developing countries is the lack of formal evaluation literature and meaningful information on key aspects of specific technical co-operation programmes (such as financial information) in the public domain. Likewise, there appear to be no sector-wide reviews of this area of technical co-operation, even for specific regions of the developing world. Given the lack of evaluation literature in particular, it is very difficult to comment authoritatively on the impact and effectiveness of IP technical co-operation programmes undertaken by the various donor organisations in specific countries or regions.

It is important for ensuring effectiveness and value for money that donors undertake evaluation exercises – individually and collectively – as a routine activity within the programme management cycle. IP technical assistance donors could strengthen their present systems for monitoring and evaluation of IP technical assistance programmes.

A rolling programme of external impact evaluations could be undertaken and published by IP technical assistance donors, including international institutions, bilateral agencies and non-traditional providers. In fact, such a proposal was already suggested as a key recommendation by the Commission on Intellectual Property Rights in its Final Report of 2002. A more concerted effort on the part of the IP technical assistance donors and their developing county partners is now required to take this forward.

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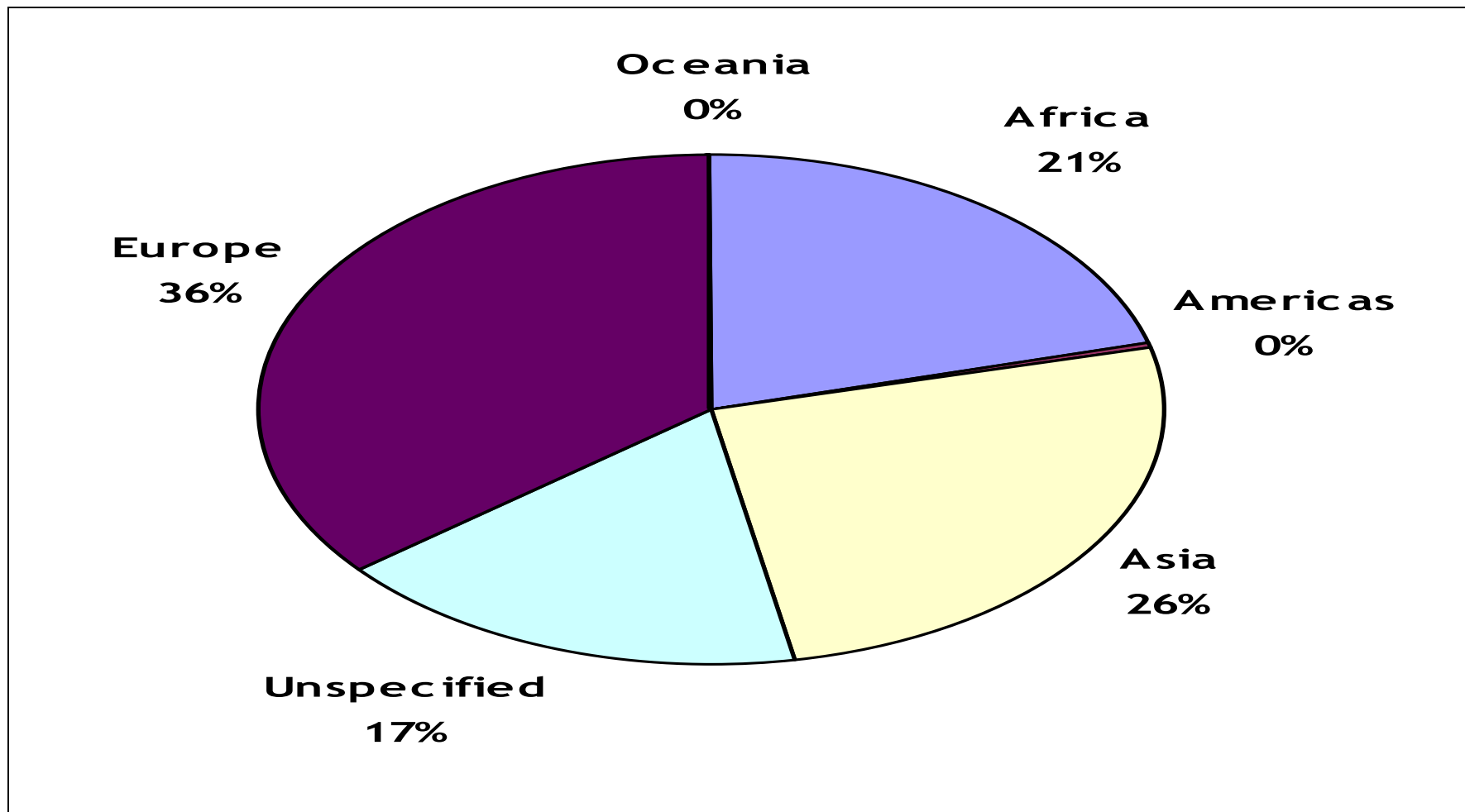
ANNEX 2 OECD-DAC DATA ON IP-TECHNICAL ASSISTANCE FINANCING

WTO-OECD Trade Capacity Building Database data on IPR-TA expenditure commitments & activities by region, 2001 & 2002

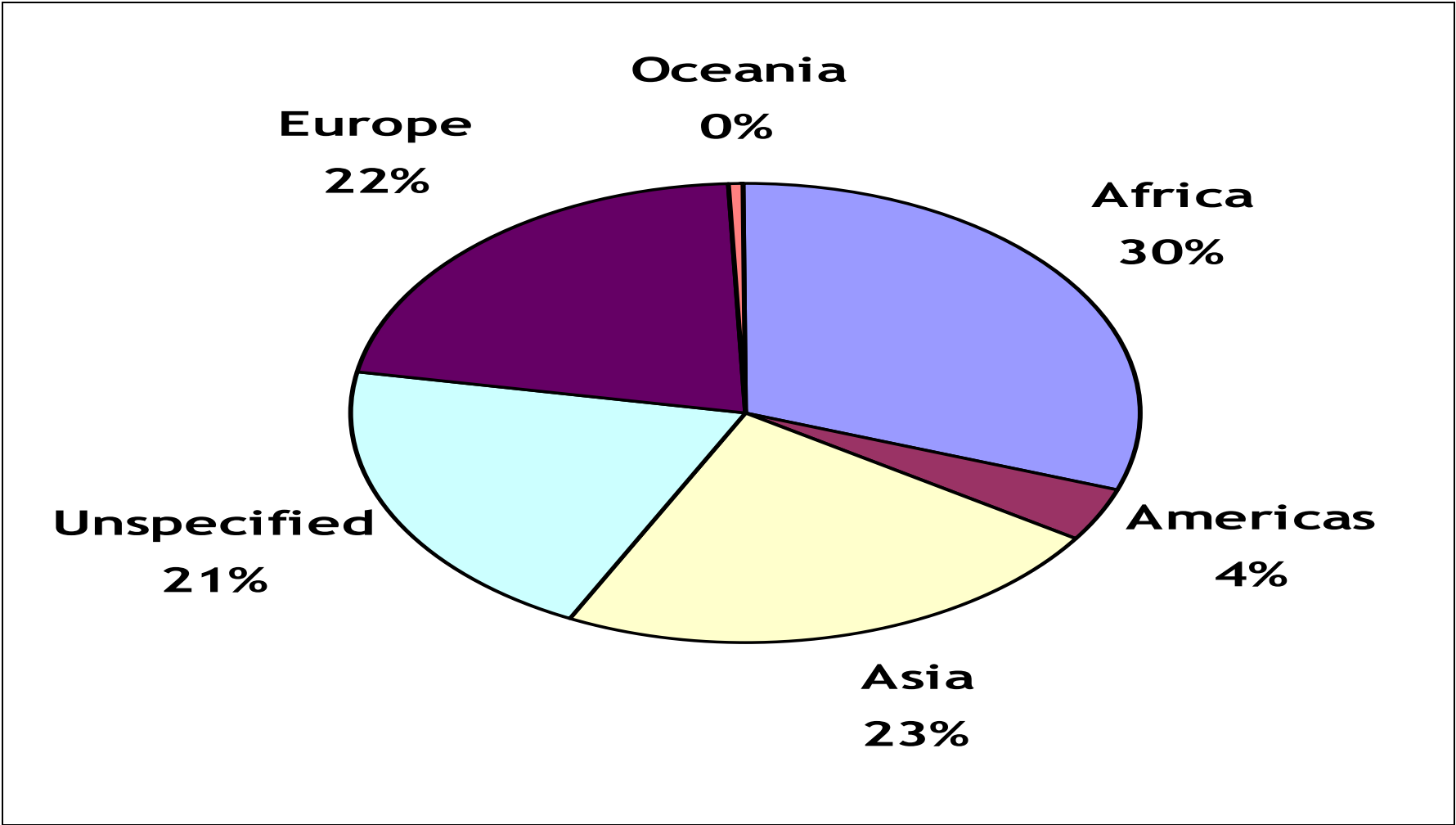
Region	2001		2002	
	Commitment (\$)	Activities	Commitment (\$)	Activities
Africa	2,718,000	10	2,846,000	59
Americas	41,000	8	343,000	19
Asia	3,396,000	28	2,138,000	77
Europe	4,679,000	7	2,012,000	16
Oceania	7,000	2	45,000	6
Unspecified	2,264,000	9	1,921,000	19
Total	13,105,000	64	9,305,000	196

Source: WTO-OEDC Trade Capacity Building Database. The database only contains the information provided by certain donors, mainly bilateral donors but also WTO.

WTO-OECD Trade Capacity Building Database data on IPR-TA expenditure commitments by region, 2001



WTO-OECD Trade Capacity Building Database data on IPR-TA expenditure commitments by region, 2002



ANNEX 3 USAID EXPENDITURE ON IP TECHNICAL ASSISTANCE 1999-2003

Countries	1999	2000	2001	2002	2003
Albania			\$14,200		\$450,000
Algeria					\$129,450
Bolivia				56,000	\$150,000
Bosnia & Herzegovina					\$450,000
Brazil				120,000	
Bulgaria					\$562,500
China (P.R.C.)				62,723	
Costa Rica				6,560	\$40,952
Croatia					\$562,500
Dominican Republic				\$7,850	\$15,000
Egypt		\$2,373,000	\$2,496,000	\$1,450,000	
El Salvador				\$6,560	
Guatemala				\$9,515	
Honduras				\$6,560	
Hungary				\$3,083	
Indonesia	\$9,982	\$9,991		\$37,750	
Jamaica				75,000	
Jordan			\$95,946	354,602	\$115,000
Korea, Rep.				\$350	
Kyrgyzstan	\$614,100	\$30,000	\$74,300		
Lebanon				\$486,000	
Macedonia				\$37,500	\$617,750
Malaysia				\$43,000	
Moldova				\$105,000	

Nicaragua				\$6,560	
Nigeria				\$312,500	\$190,000
Peru					\$190,000
Philippines	\$74,000	\$80,000	\$415,720	\$438,668	\$70,400
Poland				\$3,509	
Romania				\$3,683	\$450,000
Russia				\$135,000	\$60,000
Senegal					\$77,000
Serbia and Montenegro (FRY)			276,000	\$242,000	\$157,750
South Africa			\$61,400	\$565,891	\$195,500
Sri Lanka	\$32,800	\$339,840	\$49,200	\$40,000	
Tunisia					\$12,000
Turkmenistan	\$39,750				
Ukraine				123,959	50,000
Vietnam				\$25,000	
Zambia			\$3,840	\$4,000	\$5,130
Other Groups**					
Asia ns		\$28,000		\$49,000	
Central & Eastern Europe ns				\$729,502	
Central America ns				\$4,580	\$1,307,972
Global ns		\$35,000	\$36,000	\$585,454	\$500,000
Latin America & Caribbean ns		\$111,000			
SADC Secretariat					\$137,920
Sub-Saharan Africa ns		\$14,000		\$78,000	
Western Africa ns			\$36,346		\$531,000
Total	\$770,632	\$3,020,831	\$3,558,952	\$6,215,359	\$7,027,824
** These are activities not targeted to a specific country. ns = not specified					

Source: USAID Trade Capacity Building Database