

WIPO BUDGETARY ISSUES AND TECHNICAL COOPERATION

*Informal background note compiled by ICTSD
based on informal discussions with delegates, experts, and NGOs*

I. WIPO's Funding

The World Intellectual Property Organization (WIPO) has a unique funding scheme that sets it apart from most international organizations. Indeed, while UN specialized agencies and other international organizations are generally funded by financial contributions from their Member States, WIPO's funding comes predominantly from the registrations systems it administers, mainly the Patent Cooperation Treaty (PCT) for filing international patent applications and the Madrid system for filing international trademark applications. Together the PCT and the Madrid system provide for nearly 90% of WIPO's revenues. Contributions by Member States represent less than 7% of the organization's total income.¹ Importantly, WIPO's finances are thus contingent on the level of PCT applications, PCT fees and the global economic environment in which patent filing takes place.

This unique funding scheme has important implications. The growth of registration systems, particularly the PCT since the early 1990s, has led to a considerable increase in the organization's revenues. As a result, the size of its personnel and the scope of its activities have considerably expanded in recent years. WIPO's budget increased from 378 million Swiss francs in 1998/99 to 528 million Swiss francs in 2004/05--a contrast to the zero-nominal growth budgetary policy currently followed by most international organizations.²

WIPO's unique funding pattern has lead some observe that WIPO effectively has two constituents: its Member States and market forces—or what are also referred to as the “users” of the registration systems administered by the organization (mainly firms and some individuals).³ Many Member States argue that they are the only constituency of the organization and note that they represent the interests of all other relevant stakeholders, including users who receive a valuable service in exchange of a determined fee. Indeed, the 1967 Convention does not make any reference to “users”. In order to preserve the inter-governmental nature of the organization, Member States have in the past declined

¹ The remaining of WIPO's revenues comes from different sources such as The Hague system for Industrial Designs, proceedings from publications and other services provided by the organization such as arbitration and mediation services (Proposed Program and Budget for 2006/07).

² The comparison with the WTO is interesting. WIPO's revised budget for 2004/05 was 523 million Swiss francs, while the WTO's 2005 budget was 169 millions Swiss francs. WIPO's personnel is generally around 1000 staff, while the WTO's personnel consists of 630 staff.

³ It is to be noted that the overwhelming majority of the “users” comes from developed countries (95% in the case of the PCT system).

proposals to discontinue their financial contributions despite their small overall contribution to WIPO's revenues.

II. WIPO's Budgetary Process

a) The Program and Budget Committee

The main body of WIPO in which budgetary related deliberations take place is the Program and Budget Committee (PBC). This Committee has held eight sessions since its creation. Its last session was held from 27 to 29 of April 2005, and recommended to the General Assembly of WIPO the approval of the proposed Program and Budget for 2006-07.⁴

The PBC is a limited membership body. It is currently composed of 41 countries: Algeria, Argentina, Brazil, Bulgaria, Canada, Chile, China, Colombia, Czech Republic, Ecuador, Egypt, France, Germany, Hungary, India, Italy, Japan, Kenya, Kyrgyzstan, Mexico, Morocco, Netherlands, Nigeria, Oman, Pakistan, Philippines, Republic of Korea, Russian Federation, Senegal, Serbia and Montenegro, Slovenia, South Africa, Spain, Sri Lanka, Switzerland (*ex officio*), Thailand, Ukraine, United Kingdom, United States of America, Venezuela and Zambia. Importantly, this list highlights an over-representation (relative to WIPO's full membership) of Group B countries in the current membership of the PBC.⁵ States members of WIPO but not members of the Committee can participate in its sessions as observers.

In past years, developing countries have argued in favor of the transformation of the PBC into an open-ended body as a means of enhancing participation in its deliberations and ensuring the ownership of the budgetary decision making process by all Member States. However, Group B countries have not reacted positively to such proposals.

To date, while NGOs accredited to WIPO are entitled to attend meetings of all WIPO bodies as observers, there has not been any significant participation of NGOs in the meetings of the PBC. This fact appears to be attributable to a prevailing perception that the PBC only discusses the financial situation of the organization.⁶ However, this perception is not entirely accurate. The Committee discusses not only "budgeting" (in terms of the allocation of resources for activities) but also "programming" (providing an overview of the activities to be implemented during the biennium). Both aspects of the

⁴ Para. 174 of document WO/PBC/8/5 Prov. states that the delegations of Argentina, Brazil and India were not able to support the decision of Committee.

⁵ While ten countries of Group B are members of the PBC, only eight African countries are members, and this even though the number of countries members of the African Group is superior to the membership of Group B.

⁶ The increasingly active participation of NGOs in WIPO meetings, in the past years, has mainly focused on bodies where substantive deliberations on intellectual property protection take place such as the Standing Committee on the Law of Patents (SCP), the Standing Committee on the law of Copyright and Related Rights (SCCR) or the Inter-governmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC).

work of the Committee are equally important and provide a valuable opportunity for member States to discuss the activities envisaged by the International Bureau (IB) and the expected results to be reached.

The PBC is a subsidiary body within the governance structure of WIPO. It therefore makes recommendations to the General Assembly of WIPO, which ultimately adopts the Program and Budget document. The PBC can decide to establish subsidiary bodies to examine specific issues. At its last session, the PBC decided, for instance, to establish an open-ended Working Group to meet informally to consider and report on proposals on the establishment of a WIPO Audit Committee.⁷

b) The preparation of the Program and Budget of WIPO

As is the case in most international organizations, the Program and Budget of WIPO is elaborated on a biennial basis.

The elaboration of the Program and Budget document goes through several stages. First, the International Bureau (IB) prepares a brief note, which contains its main proposed budgetary indicators for the biennium. This note, or a draft program and budget based on it, is discussed within regional groups and during informal open-ended consultations. It can also be discussed in an informal session of the PBC. An Initial Proposal for Program and Budget is then submitted to the formal session of the PBC for discussion. Based on these deliberations, a Revised Proposal for Program and Budget is submitted for consideration to another session of the Committee. In this connection, the PBC can request Member States to make available to the Secretariat specific proposals in written form on the revision of proposed program activities.⁸ Subsequently, the PBC recommends the Revised Proposal for Program and Budget for approval by the WIPO Assemblies of Member States.⁹ At the end of the biennium, the IB provides Member States with the final accounts reflecting actual income and expenditure in comparison to the approved level.

The participation of developing countries and LDCs in the substantive discussions of the budgetary process at WIPO has been relatively limited in past years, although this varies from one country to the other. A part of the explanation for more active participation by developed countries in the substantive discussions of the PBC is that the analysis and discussion of the Program and Budget document is a complex technical and policy exercise—the analytical capacities and resources required exceed those available to developing countries. As such, developing country participation has mostly been confined to seeking an increase in the resources allocated to technical cooperation activities and arguing in favor of strengthening activities which reflect their other priorities in the organization's work program such as those relating to training and

⁷ See document WO/PBC/8/5 Prov, para. 174, (4).

⁸ Document WO/PBC/6/4, para. 116, (vii)

⁹ This was the procedure followed during the elaboration of the Program and Budget for 2004/05.

capacity building (the WIPO World Wide Academy, WWA), genetic resources traditional knowledge and folklore, Small and Medium Enterprises (SMEs), Information Technology projects and LDCs. Emphasis is also made on the need for increased financial assistance to enable the participation of capital-based representatives to WIPO meetings. However, starting from the sixth session of the PBC,¹⁰ the participation of some developing countries in the budgetary process began to go beyond these traditional concerns and to apprehend the programming and budgeting process in a more comprehensive manner and from a more in-depth analytical perspective. Their comments during that session contributed to the reformulation in a significant manner of the Program and Budget Document, which was submitted in its revised form to the Seventh session of the PCB.

In terms of budget, a key tension that often crystallizes during the budgetary process concerns the determination of the level of PCT fees (given their importance as a source of WIPO revenue). Between 1997 and 2003, PCT fees were reduced by 38%. PCT fee reduction is often a priority of Group B countries given that most of the users of the PCT are their nationals. The reduction of fees is also seen as a way to address the surplus generated by WIPO. Although developing countries have approved these reductions in past years, it has been on the basis that they would not impact negatively on the availability of resources for other programs of importance to them, such as those relating to technical assistance.

Debates also emerge with respect to the “programming” aspects of the PBC’s work—particularly when these are linked to substantive deliberations in other WIPO bodies. Two cases can be mentioned in this regard. The first one concerns geographical indications. The Revised Draft Program and Budget for 2002-2003 envisaged the continuation during the biennium of discussions on geographical indications in the context of the Standing Committee on Trademarks, Industrial Designs and Geographical Indications (SCT). However, some Member States believed that this recommendation prejudged the future work on this issue in the SCT. No consensus was reached on this matter at the fourth session of the PBC¹¹ and the issue was left to be settled by the WIPO Assemblies. The second example concerns negotiations on the Draft Substantive Patent Law Treaty (SPLT). In the Proposed Program and Budget for 2004/05, a diplomatic conference on the SPLT was envisaged. However, many countries felt that this was preempting the decision of the SCP on this matter and reflected an assessment of the maturity of the discussions in that body which was not shared by all Member States.¹² Ultimately, the Revised Program and Budget document for 2004/05 (WO/PBC/7/2) made no mention of holding such a conference.

¹⁰ PBC, Sixth Session, April 29 to May 1, 2003. The report of this session is contained in document WO/PBC/6/4.

¹¹ See document WO/PBC/4/4, par.123 (ii) which stated that "it was not possible for the Committee to reach a consensus on what recommendation should be made on the program of activities on geographical indications contained in sub-program 05.2", and it was agreed to keep the issue open for further consideration at the next session of the SCT."

¹² *Supra*, note 7, para. 39

From an institutional perspective, some commentators have raised concerns about the significant gap between the expertise and capabilities of the IB in the budgetary process and those of the delegations of the majority of member States, who are supposed to exercise their oversight over the finances of the organization. Although Member States can significantly influence the general financial and budgetary orientation of the organization in a number of clear and specific cases (the level of PCT fees or construction projects), many specific budgetary and programming aspects are elaborated by the Secretariat and the final approved program and budget document carries, to a large extent, its mark and reflects its orientations. A particular challenge in this respect is that the “program” aspect of the Program and Budget document often reflects substantive views on IP and envisages activities, including in the area of technical cooperation, which are not necessarily agreed to by all Member States. In presenting its proposed program, the Secretariat emphasizes that it works to align the “program” with the “Medium-term Vision and Strategy” documents “approved” by Member States in 1999 and 2003. It has, however, been pointed out that such documents were elaborated by the Secretariat and are only “taken note” of by Member States - and not approved - as they are not open to changes by them.¹³ Consequently, suggestions have been made that the Program and Budget document should confine itself to financial considerations and not extend to programmatic ones.¹⁴ In light of the concerns, it is now generally accepted that the activities envisaged under the “program” aspect of the budget document are of a purely indicative nature and are subject to the agreement by Member States in the relevant bodies of the organization.

Notably, in 2005, a Report of the United Nations’ Joint Inspection Unit (JIU), entitled *Review of Management and Administration in WIPO*, made reference to the role of Member States in Oversight. It asserted “Member States should exercise their “Board of Directors” function by taking an active and robust role not only in the programming process but in the budget process as well.”¹⁵ This assertion was supported by many delegations of both developed and developing countries at the last session of the PBC.¹⁶ At that session, several delegations suggested having more frequent meetings of the PBC and a proposal was made by Group B to establish an Audit Committee, consistent with best practices in other international organizations.¹⁷

c) The organization of the Program and Budget of WIPO

WIPO’s Program and Budget document is organized into a number of programs and sub-programs. The budget structure has changed over the years and that the number of programs varies. For instance, there were 18 programs in 2000/01, 13 in 2004/05 and 31

¹³ Document WO/PBC/8/5 Prov, para. 69

¹⁴ *Ibid*, para. 94

¹⁵ Document JIU/REP/2005/1, para 28

¹⁶ Document WO/PBC/8/5 Prov, para. 49, 50, 51, 53, 62 and 67

¹⁷ *Ibid*, para.32

in 2006/07. This makes comparisons from one Program and Budget document to the other very difficult.

The proposed Program and Budget for 2006/07 discussed at the eighth session of the PBC, is organized in 31 programs covering all the areas of work of the organization. The programs were regrouped under a number of Strategic Goals—the most important being Strategic Goal One (To promote an IP culture), Strategic Goal Two (To integrate IP in National Development Policies and Programs), Strategic Goal Three (Progressive Development of International IP Law) and Strategic Goal Four (Delivery of Quality Service in Global IP Protection Systems).

Although WIPO has a consolidated budget incorporating all activities, income and expenditure of the organization, contribution-financed "unions"¹⁸ maintain their own budget, as reflected in the Program and Budget Document.

III. Technical cooperation in WIPO's budgetary process

WIPO plays a central role in the provision of technical assistance in the field of intellectual property. By virtue of the 1995 Agreement with the WTO, WIPO also plays an important role in the implementation of TRIPS agreement in developing countries. Consequently, technical assistance is one of the paramount concerns of developing countries in the organization's budgetary process. Several salient issues relating to WIPO's technical cooperation programs warrant further discussion:

a) Identification of resources allocated to technical cooperation in the Program and Budget

Deliberations in WIPO's budgetary process mostly focus on the amount of resources allocated to technical assistance activities in the program and budget. Several WIPO Programs are involved in the delivery of these technical assistance activities.

The most relevant program is Program 6 in the Proposed Program and Budget for 2006/07—relating to the activities carried out by the regional bureaus for Africa, Asia and the Pacific, Latin America and the Caribbean countries, which are the focal point in the delivery of technical assistance to countries of these regions. While there have been repeated requests for a breakdown of the resources allocated to the different geographical regions, at present the budget does not make such disaggregated information available.

As noted by several delegations at the eighth session of the PBC, the budget allocation for Program 6 declined by 12.9% from 41.3 million Swiss francs in 2004/05 to 37.6 million Swiss francs in 2006/07. The Secretariat, however, notes that resource allocations for cooperation for development activities are to be found not only in Program 6, but also in a number of other programs such as Program 3 (Strategic Use of IP for development)

¹⁸ PCT Union, Madrid Union and Hague Union.

which deals with issues such as SMEs. As such, the Secretariat has argued that resources devoted to cooperation with developing countries have in fact increased from 71.7 million Swiss francs in the revised budget of 2004/05 to 73.7 million Swiss francs in the proposed budget of 2006/07.¹⁹

Importantly, the amount of technical assistance resources actually allocated to operational activities benefiting developing countries may be significantly lower than these figures suggestion. For instance, almost half of the resources allocate to Program 6 were dedicated to expenditure on personnel.

b) A quantitative approach to technical cooperation?

Deliberations during the budgetary process are generally centered on the amount of resources allocated to technical cooperation. The performance indicators and expected results to be achieved by technical cooperation activities similarly reflect and accentuate a quantitative approach.

At present, in depth substantive discussions on the orientations of this cooperation and its overall assessment rarely take place in the PBC. As noted by the JIU in relation to WIPO programs: "few program evaluations have been undertaken; only one of these involved technical cooperation."²⁰ Some delegations have made substantive comments on technical cooperation at different sessions of the PBC and have pointed to the "narrow" focus of technical cooperation in the Proposed Program and Budget for 2006/07 on enforcement issues rather than on the use of flexibilities that exist in the system²¹ and emphasized the need to reorient and customize the thrust of WIPO's technical cooperation programs.²²

In the meantime, the delivery of WIPO's technical cooperation activities is closely associated with the general orientations of the organization. The initiative to establish a Development Agenda for WIPO draws attention to this trend—arguing that technical assistance is one of the core areas of WIPO's work where the integration of a development dimension should be an organizational imperative. The Proposal submitted by the Group of Friends of Development at the First Session of the Inter-sessional Intergovernmental Meeting (IIM) suggests a number of principles and guidelines for the provision and evaluation of technical assistance to address perceived shortcomings in the provision by WIPO of technical cooperation.²³

c) Support to participation of capital-based delegates from developing countries in WIPO meetings

¹⁹ *Ibid*, para and 81

²⁰ *Ibid*, para26

²¹ *Ibid*, para 63, Statement by the Delegation of Brazil

²² *Ibid*, para 68, tatement by the Delegation of India

²³ Document IIM/1/4

WIPO currently provides financial assistance for a number of capital-based officials from developing countries to participate in WIPO inter-governmental meetings, particularly the Standing committees and the IGC. This assistance is valuable as it contributes to strengthening the expertise of developing country officials in dealing with substantive intellectual property issues and enhancing their participation in the organization's standard-setting activities.

The criteria on which such as assistance is allocated to countries from different regions and from within each region are not, however, currently clearly defined. They appear to involve geographical rotation within regional groups and the interest manifested by each country towards certain intellectual property issues. Critics have raised concerns about the potential for such technical assistance to be used to "reward" capital-based officials from developing countries in exchange for their support to the agenda of certain interests or parties with a vested interest in the upwards harmonization of international intellectual property standards. In this connection, clear criteria should be established in relation to funding the participation of developing countries to WIPO meetings so as to avoid any possible inclination to use such funding in order to influence negotiations in WIPO or perception that this is the case.²⁴ A second criteria could be that countries selected for financial assistance represent a diversity of views on the matters under discussion.

d) Involvement of private sector and civil society organizations in WIPOs technical cooperation activities

WIPO has been organizing technical cooperation activities in collaboration with the private sector for many years on an *ad hoc basis*. Cooperation with the private sector in the delivery of technical cooperation activities is justifiable on the grounds that the private sector and user organizations are an important stakeholder in intellectual property protection. However, WIPO's cooperation with the private sector has been, in past years, mostly with business interests representing large multinational corporations, with very specific and offensive interests in developing countries (for instance in the field of pharmaceuticals and software), rather than with the domestic private sector of developing countries which is not necessarily linked to such corporations. This can lead to a conflict of interest particularly in sensitive areas such as intellectual property and public health. Indeed, critics have argued that this can jeopardize the impartiality and neutrality supposed to characterize multilateral technical cooperation such as that provided by WIPO. By contrast, public interest NGOs and consumer organizations have not been equally harnessed by WIPO for the delivery of technical cooperation activities although they are also important stakeholders in relation to intellectual property protection and its impact on important public policy objectives.

To obtain additional funding for its activities, the Secretariat included in the Proposed Program and Budget for 2004/05 a program on Private Sector Partnership, which was

²⁴ This is a matter which figures among the principles and guidelines for the provision and evaluation of technical assistance suggested in document IIM/1/4, para. 65

thoroughly discussed at the Sixth Session of the PBC. Many delegations emphasized the need to regulate cooperation with the private sector, in accordance with UN practices, in order to avoid the potential conflict previously mentioned. In this regard, Group B “encouraged the development of effective codes of conduct for the proposed relations between the organization and the private sector.”²⁵ The Group of Latin American and Caribbean countries (GRULAC) expressed concern that “extra-budgetary funds may be earmarked for only specific activities and conditions may be imposed on their use, thus contrary to the very important idea that cooperation for development should be demand-driven.”²⁶ The delegation of India mentioned that “embarking on projects with extra-budgetary funding from the private sector might lead the Secretariat to orient its activities in ways not all countries could support.”²⁷ As a result of these discussions and of the concerns expressed, the Secretariat indicated at the Seventh Session of the PBC “Draft Guidelines for the new cooperation with the private sector would be prepared in consultation with Member States after the approval of the Program and Budget.” To date such Guidelines have not been prepared. Mention of their elaboration is made in the Proposed Program and Budget for 2006/07.²⁸

e) Managing technical cooperation

Once the Program and Budget is approved, how is technical cooperation managed between the Secretariat and the developing country? In most cases, the country in question presents a technical cooperation request to the International Bureau concerning the organization of a seminar, obtaining legislative advice or modernizing its IP national administration. These requests are examined by the Secretariat and approved on condition of availability of resources. To deal more comprehensively with the technical cooperation needs, WIPO established Nationally-Focused Action Plans (NFAPs), which are in place for one to three years and provide detailed implementation of bilateral cooperation programs. According to WIPO’s website 51 NFAPs were in place in 2002. The elaboration of the NFAPs generally relies primarily on the national intellectual property administrations of developing countries—without the involvement of a wider number of stakeholders either from other government agencies or from outside government. In order to move beyond the current narrow focus of WIPO’s technical cooperation, developing countries should thus ensure that a diverse number of stakeholders are involved in the design and delivery of technical cooperation activities to ensure that they have a broad focus which conforms with the country’s overall needs and priorities, not simply those of national intellectual property administrations.

IV. Conclusions and Preliminary Recommendations

²⁵ WO/PBC/6/4, para.33

²⁶ *Ibid*, para.41

²⁷ *Ibid*, para.47

²⁸ See document WO/PBC/8/3 para.52

The elaboration of WIPO's Program and Budget represents a valuable opportunity for Member states and other stakeholders to express their views on the general direction of WIPO's activities, including technical cooperation.

Improvements in technical cooperation provided by WIPO will require greater engagement by developing countries in WIPO's Program and Budget process—particularly in the preparation of the Program and Budget for each biennium. In this respect, there have been recommendations that developing countries should:

- Broaden their focus beyond simply that of the quantity of resources allocated to technical cooperation
- Approach technical cooperation in a more in depth and analytical manner and relate it to their overall needs, priorities and public policy and development objectives.
- Emphasize the importance of evaluating current technical assistance activities before new ones are undertaken and included in the budgetary process.

On the domestic front, developing countries should ensure that a diverse number of stakeholders are involved in the delivery of technical cooperation activities and these they have a broad focus which conforms with the country's overall needs and priorities and are not restricted to those of their national intellectual property administrations.

With respect to WIPO itself, several suggestions and recommendations have been made regarding actions that the Secretariat and WIPO Member States could advance, including:

- Establish clear guidelines and principles for the provision of technical assistance would benefit all Member States of WIPO and stakeholders, as this would contribute towards ensuring the transparency of the activities undertaken and their integration of the specific circumstances and levels of development of each country and the optimum use of the resources allocated to such activities.
- Ensure that WIPO's cooperation with the private sector in the delivery of technical cooperation activities is properly regulated, in accordance with UN practices, in order to avoid potential conflict of interests.
- Establish clear criteria in relation to funding the participation of developing countries to WIPO meetings so as to avoid any possible inclination to use such funding in order to influence the positions of developing countries in current negotiations.
- Consider options for expanding the membership of the PBC and undertake efforts to maximize the opportunities and ease with which developing countries with limited resources can follow, analyze and engage in the process.
- Adopt a more consistent format with respect to the structure of the presentation of WIPO's budget and include more disaggregated information with respect to the allocation of technical cooperation by region.