

**The UK Government Response to  
The Report of the Commission on Intellectual Property Rights  
"Integrating Intellectual Property Rights and Development Policy"**

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## Ministerial Introduction

1. Last September, the UK Government welcomed the report of the Commission on Intellectual Property Rights “*Integrating Intellectual Property Rights and Development Policy*” which had been set up by the Government as a result of a commitment in the Government’s second White Paper on International Development entitled: “*Eliminating World Poverty: Making Globalisation Work for the Poor.*” (December 2000). The report is a valuable contribution to the debate on the complex issues surrounding the interaction of intellectual property rights (IPRs) and development policy.

2. The Government believes that IPRs can play a vital role in the course of the development process for developing countries today, just as they did, and continue to do, in the UK, other developed countries and the most successful developing economies. The Commission’s report emphasises that a prerequisite for sustainable development in any country is the development of an indigenous scientific and technological capacity. As the Commission recognises, an IPR system is capable of being an important element in developing that capacity, notably in those countries which have already developed a scientific and technological infrastructure. But, as the Commission’s report makes clear, an intellectual property system cannot of itself ensure a country attains its developmental goals. The degree to which this occurs depends on many different factors, particularly the economic, social and environmental policies it chooses to pursue, for example, openness to trade and effective governance.

3. We agree with the Commission that IPR regimes can and should be tailored to take into account individual country’s circumstances within the framework of international agreements such as the Agreement on Trade-Related aspects of Intellectual Property Rights (TRIPS). The Commission also raises the important issue of how technical assistance from developed countries and international organisations such as the World Intellectual Property Organisation (WIPO) can be provided so as to ensure that developing countries fully understand how to create an effective intellectual property system appropriate to their needs. The Government is committed to this goal, both in its own technical assistance programmes and in influencing those of international organisations

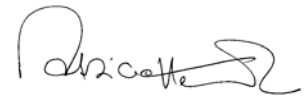
4. In setting up the Commission, the Government’s intention was to explore how IPRs could work better for developing countries within the overall framework of development policy. The Commission has found that intellectual property does indeed have a role to play in promoting development but it has made a number of detailed recommendations designed to improve the way these rules are developed and applied, both nationally and internationally. We are pleased to introduce the Government’s detailed response to these recommendations, which will be used to inform the UK’s position in a range of negotiations over the coming months and years.

5. We should stress that the Government remains firmly committed to the effective protection of IPRs in order to stimulate continued innovation and creativity. But this is also consistent with the use of various flexibilities in the TRIPS agreement by developing countries as the Ministerial Agreement on the WTO Doha Declaration on TRIPS and Public Health in November 2001 demonstrated in one important area for developing countries.

6. Finally, we would like to thank the Commissioners personally for a comprehensive and well-written report. While there are those who disagree strongly with aspects of the report, just as others are in wholehearted agreement, nobody should ignore the importance of the issues it raises and the quality of its analysis. We hope it will continue to serve as a stimulus to ongoing debate on these important issues.



CLARE SHORT  
Secretary of State for International Development



PATRICIA HEWITT  
Secretary of State for Trade and Industry

# The UK Government Response to the Report of the Commission on Intellectual Property Rights “Integrating Intellectual Property Rights and Development Policy”<sup>1</sup>

The Government response consists of an introductory general comment on each chapter, and a more detailed response to each of the Commission’s recommendations (which are shown in bold).

## CHAPTER 1

### INTELLECTUAL PROPERTY AND DEVELOPMENT

1. The Government welcomes the approach of the Commission in exploring the rationale for IP protection, and the historical and contemporary evidence on the impact of IP. In doing so, the Commission notes that much of the evidence on the impact of IP is inconclusive. The Government believes that the Commission may have interpreted the available evidence in a way that understates the impact of IP in developing countries. For example, too little emphasis seems to be placed on the benefits that may accrue in countries such as India, China and Brazil from implementing TRIPS-standard IP protection. Similarly, while the section on the historical experience of developed countries with IP is of interest, it does not logically follow that, because now-developed countries used IP selectively in the past, this would be most appropriate for developing countries today. There remains room for differing interpretations of the evidence marshalled by the Commission.

**Appropriate incentive policies in developed countries to promote technology transfer, for instance tax breaks for companies that license technology to developing countries.**

2. The Government agrees that developed countries should provide incentives to promote technology transfer to developing countries. The provision of incentives for technology transfer to Least Developed Countries is already mandatory under Article 66.2 of the TRIPS Agreement. The Government welcomes the fact that the TRIPS Council has just agreed clearer procedures for reporting annually on these incentives. However, the Government agrees with the Commission that the issue of technology transfer to least developed (and developing) countries needs to be addressed in a much wider context than the specific provisions of Article 66.2, and that context should include the issue of how local capacity to absorb, use and adapt technologies from abroad can be increased.

**Establishment of effective competition policies in developing countries.**

3. The Government believes that effective competition policies will help to make developing countries’ markets more efficient. For this reason, the Government has strongly supported the inclusion in the Doha Development Agenda of negotiations on trade and competition.

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<sup>1</sup><http://www.iprcommission.org>

**Making more public funds available to promote indigenous scientific and technological capability in developing countries through scientific and technological cooperation. For instance, supporting the proposed Global Research Alliance between developing and developed country research institutions.**

4. The Government agrees both that there is a need to build the capacity of developing countries in science and technology and that international cooperation between developed and developing countries is a means to this end. The Department for International Development (DFID) is amongst the largest spenders on research and development of bilateral aid donors. In addition it contributes its share to European Union programmes for research cooperation with developing countries. Much of DFID's research expenditure involves scientific and technological cooperation between developed and developing country research institutions. Following a review of its research policy, DFID plans to strengthen the role it plays in building appropriate capacity in developing countries to acquire, use and generate knowledge.

**Commitments to ensure that the benefits of publicly funded research are available to all.**

**Commitments to ensure open access to scientific databases.**

5. The Government agrees that the results of publicly-funded research should as a general rule be made publicly available, while recognising that there will need to be exceptions, for example on grounds of national security.

## CHAPTER 2

### HEALTH

6. The Government agrees with the Commission that, without the incentives of patents, it is unlikely that the private sector would have invested so much in the discovery and development of medicines, many of which are currently in use in both developed and developing countries. It is also clearly true that for diseases that affect mainly developing countries, the incentives for research and development provided by the market are inadequate in relation to the scale of human suffering and the economic and social costs they cause in developing countries. In those circumstances, the IP system cannot overcome the insufficiency of market demand. The Government agrees that tackling these diseases therefore requires public intervention either directly e.g. through public funding or tax incentives to encourage private sector research, or through stimulating private-public partnerships.

7. The Government also agrees that much more needs to be done to increase access to essential medicines. As the Commission notes this is about much more than intellectual property regimes. In addition to inadequate research, weak health systems and infrastructure, a lack of funds and limitations in existing national health and drug policies all play important roles in impeding access to medicines by those who need them. The recent report from the UK Working Group on Increasing Access To Essential Medicines in The Developing World<sup>2</sup> (hereafter the Working Group) examined the range of policy approaches that can help achieve more affordable prices and better access to essential medicines in the developing world. In particular it sets out the Government's support for a voluntary framework which would make widespread, sustainable, and predictable differential pricing the operational norm. The IP system also has a contribution to make. That is why the Government supports the Doha Declaration on TRIPS and Public Health (henceforth the "Doha Declaration") that requires WTO members to find a long-term workable system that will permit compulsory licensing to be used by those developing countries with inadequate manufacturing capacity of their own.

**Public funding for research on health problems in developing countries should be increased. This additional funding should seek to exploit and develop existing capacities in developing countries for this kind of research, and promote new capacity, both in the public and private sectors.**

8. The Government agrees. Public funding for health problems in developing countries of relevance to poor people needs to be increased at the global level. In addition, the Government recognises that a range of public policies for research and development will be required to stimulate an increase in research and development in the private sector. Direct public investment must be complemented by other approaches. This is why the Government is increasingly providing public funding to help create public-private partnerships (PPPs).

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<sup>2</sup>[http://www.dfid.gov.uk/Pubs/files/access\\_to\\_medicines\\_report\\_28.11.pdf](http://www.dfid.gov.uk/Pubs/files/access_to_medicines_report_28.11.pdf)

9. The type of policy and investment will vary depending on the nature of the disease condition as well the nature of the research problem. Last year DFID committed £16 million to a consortium of public sector groups led by the UK Medical Research Council (MRC) to develop and test microbiocides to prevent HIV infection in women. DFID commitments to PPPs include £14 million to the International AIDS Vaccine Initiative (IAVI), £5 million to the Medicines for Malaria venture in 2001 as well as £2.5 million to the development of the Malaria drug LAPDAP together with GlaxoSmithKline. It also supports work on lymphatic filariasis and onchocerciasis. Apart from annual investments by DFID of approximately £24 million per annum in health research, the MRC spends about £23 million on research of particular relevance to developing countries.

**Countries need to adopt a range of policies to improve access to medicines. Additional resources to improve services, delivery mechanisms and infrastructure are critical. Other macroeconomic policies need to be in harmony with health policy objectives. But so also does the IP regime. Countries need to ensure that their IP protection regimes do not run counter to their public health policies and that they are consistent with and supportive of such policies.**

10. The Government agrees. Access to medicines is a complex issue which requires a multi-faceted response. The Government actively supports developing countries efforts to improve healthcare and DFID has invested over £1.5 billion since 1997 to support the development of health systems in poorer countries and has worked closely with the World Health Organisation (WHO) on the recent major revisions to the Essential Drugs List.

11. The UK is represented on the boards of GAVI and the Global Fund for HIV/AIDS, TB and Malaria (GFATM). DFID made a five-year commitment of \$200 million to the Global Fund in 2001 and provided £38 million to the Global Alliance for Vaccines and Immunisation (GAVI). DFID is also funding a new organisation to promote access to health technologies for the poor through improved management of intellectual property in research and development – the Centre for the Management of Intellectual Property in Health R&D (MIHR).<sup>3</sup>

**Developed countries should maintain and strengthen their legislative regimes to prevent imports of low priced pharmaceutical products originating from developing countries.**

12. Existing EU rules mean that imports of cheaper patented drugs from outside the EU (“parallel imports”) are prohibited. The Government, along with the European Commission and other EU member states, is working to strengthen further border measures to prevent differentially priced pharmaceuticals (i.e. parallel imports of medicines specifically priced at a lower rate for developing countries) from entering the EU. This is important as it will help keep pharmaceutical products priced for poor people in the developing world in the intended market and thus support the wider differential pricing framework (see para 7 above).

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<sup>3</sup><http://www.mih.org>

**Developing countries should not eliminate potential sources of low cost imports, from other developing or developed countries. In order to be an effective pro-competitive measure in a scenario of full compliance with TRIPS, parallel imports should be allowed whenever the patentee's rights have been exhausted in the foreign country. Since TRIPS allows countries to design their own exhaustion of rights regimes (a point restated at Doha), developing countries should aim to facilitate parallel imports in their legislation.**

13. The Government agrees in principle. The Doha Declaration confirmed that each Member is free to establish its own regime in this area. Parallel imports are therefore entirely compatible with TRIPS.

14. However, it is important that efforts to price drugs differentially for poor people are not undermined. This will require commitments from developing and developed countries alike to prevent diversion of differentially priced drugs from their intended users. This means that one potential source of low cost imports - the diversion of differentially priced drugs to higher-priced markets - must be ruled out.

**Developing countries should establish workable laws and procedures to give effect to compulsory licensing, and provide appropriate provisions for Government use.**

15. The Government agrees that legislation and procedures should be established by developing countries to allow the effective use of compulsory licensing and government use, as provided for in TRIPS and in line with the Doha Declaration. TRIPS also provides for the adequate remuneration for the right holder, taking into account the economic value of the authorisation of the compulsory licence. The Government considers that the principal purpose of this recommendation is to bolster the ability of developing countries to negotiate effectively with potential providers of patented medicines. But the actual use of compulsory licensing should be sparing and should follow the rules set out in Article 31 of TRIPS (including any agreements or amendments which may be endorsed by the WTO General Council pursuant to the Doha Declaration).

**The choice between these options will be worked out politically, but we strongly emphasise our concern that whatever legal solution is adopted by the WTO is, it should proceed upon the following principles. First, it should be quickly and easily implementable with a view to a long-term solution. Second, the solution should ensure that the needs of poor people in developing countries without manufacturing capacity are given priority. Third it should seek to ensure that conditions are established to provide potential suppliers the necessary incentive to export medicines that are needed.**

16. The Government agrees. The Government is committed to finding a sustainable long-term solution for WTO members with insufficient or no pharmaceutical manufacturing capacity so that they can make effective use of compulsory licensing. The Government is disappointed that no agreement was reached by the end of December 2002 but remains committed to working with all WTO members to find a long-term multilateral solution as quickly as possible.



17. The Government believes that the solution should be easy to use by both exporting and importing countries and that the process should be clear and transparent. The Government also believes that effective safeguards against abuse should be put in place. It recognises that creating a positive incentive through the TRIPS Agreement alone may be very difficult.

**A way needs to be found to reconcile the nature of the solution adopted with the objective of providing medicines of the appropriate quality at the lowest possible cost. If that cannot be achieved, the legal solution will have little practical reality. Nor will the option of compulsory licensing be effective as a negotiating tool.**

18. The Government agrees. For the solution to be effective it must provide developing countries with a real negotiating tool.

**The underlying principle should be to aim for strict standards of patentability and narrow scope of allowed claims, with the objective of:**

- **Limiting the scope of subject matter that can be patented**
- **Applying standards such that only patents which meet strict requirements for patentability are granted and that the breadth of each patent is commensurate with the inventive contribution and the disclosure made**
- **Facilitating competition by restricting the ability of patentees to prohibit others from building on or designing around patented inventions**
- **Providing extensive safeguards to ensure that patent rights are not exploited inappropriately.**

19. The Government believes that these are all aspects which developing countries should take into account when designing an overall legislative framework to increase competitiveness through innovation whilst safeguarding against abusive behaviour. As noted in our response to chapter 6 of the report, the Government is fully supportive of having fixed and measurable quality standards for granting of patents.

20. As we also note in our response to chapter 6, developing countries will have differing requirements in respect of IPRs. Thus while some countries may benefit from a more restrictive scope of patentable subject matter in this area, others may benefit from a less restrictive approach. As the Commission notes, in particular industries, such as chemicals, and for particular activities such as R&D, a strong IPR regime can be a significant factor in the decision to invest. For instance, one of the responses to the Commission report considers that investment in pharmaceuticals in Brazil and Mexico increased significantly when those countries strengthened their IPR regimes in the 1990s.

**Most developing countries, particularly those without research capabilities, should strictly exclude diagnostic, therapeutic and surgical methods from patentability, including new uses of known products.**

21. The UK and the EU have specific exceptions for diagnostic therapy and surgical methods. Developing countries should give consideration to a similar approach.

**Developing countries should include an appropriate exception for “early working” to patent rights in their legislation, which will accelerate the introduction of generic substitutes on patent expiry.**

22. Use of “early working” provisions (such as the Canadian version of a “Bolar exemption” which has been judged compatible with TRIPS) should be considered by developing countries. This is particularly the case for those countries who have, or wish to encourage, a generic medicines industry. Even in countries with no manufacturing capacity, there may be circumstances where early regulatory approval of generic substitutes will be facilitated by a “Bolar exemption.”

**Countries may allow health authorities to approve equivalent generic substitutes by “relying on” the original data. Developing countries should implement data protection legislation that facilitates the entry of generic competitors, whilst providing appropriate protection for confidential data, which may be done in a variety of TRIPS-compatible ways. Developing countries need not enact legislation the effect of which is to create exclusive rights where no patent protection exists or to extend the effective period of the patent monopoly beyond its proper term.**

23. The Government agrees that developing countries should consider all means compatible with TRIPS and the protection of confidential data to ensure that the entry of generic competitors is not hindered either when patent protection has expired or when there is no patent protection.

**Those LDCs which already provide pharmaceutical protection should consider carefully how to amend their legislation to take advantage of the Doha Declaration. Consistent with our analysis elsewhere, the TRIPS Council should review the transitional arrangements for LDCs, including those applying to join the WTO, in all fields of technology.**

24. The Government agrees that LDCs should consider carefully whether and how to amend their legislation, following the WTO General Council endorsement of the extension of the transition period for pharmaceutical patents in line with the Doha Declaration. Acceding LDCs should be allowed to use all the flexibilities in the TRIPS agreement and there should be no “TRIPS plus” for latecomers. The issue of extending transition arrangements for LDCs in all other fields of technology is addressed in the response to Chapter 8.

25. Intellectual property rights play an important role in the area of genetic resources and agriculture as a stimulus to research and innovation. However, the Government recognises that countries have different needs. For example, those developing countries which have, or which would like to develop, a biotechnology industry have different needs to those without. There are also different traditional systems for the exchange of seed between farmers which are important for maintaining biodiversity and food security. For these reasons the Government believes that developing countries should make full use, as appropriate, of the flexibilities available under the TRIPS agreement to ensure that their intellectual property systems are tailored to their individual needs.

**Developing countries should generally not provide patent protection for animals and plants, as is allowed under Article 27.3(b) of TRIPS, because of the restrictions patents may place on use of seed by farmers and researchers. Rather they should consider different forms of *sui generis* systems for plant varieties**

26. We believe that this approach to the patenting of plants and animals should be carefully considered by developing countries. Indeed, in the EU plant and animal varieties and essentially biological processes for the production of plants or animals are excluded from patentability under the Directive on the Legal Protection of Biotechnological Inventions. Some developing countries, as noted in the report, have gone further in defining the exclusion of living matter from patentability. Under TRIPS WTO member countries are obliged to provide patents for inventions involving microbiological and non-biological processes, which would include genetic modification technology. Essentially biological processes for the production of plants and animals, such as plant breeding, may be excluded. In addition, countries may exclude inventions from patentability on moral grounds, including to protect human, animal or plant life or health or avoid serious prejudice to the environment. In deciding where the balance of benefit lies for them, developing countries will need to consider, amongst other things, the role patent protection could have in stimulating investment in research. Exceptions can be made to patent rights, which could address the restrictions patents may place on the use of seed by farmers and researchers, but *sui generis* systems for protecting plant varieties may well be a more suitable option for many developing countries.

**Those developing countries with limited technological capacity should restrict the application of patenting in agricultural biotechnology consistent with TRIPS, and they should adopt a restrictive definition of the term “microorganism”**

27. We support the conclusion that it may be in the interests of many developing countries to restrict the application of patenting in biotechnology consistent with TRIPS. The absence of a definition of the term “microorganism” in TRIPS means that it is legitimate for WTO member states to make a reasonable definition themselves. They should do so based on the potential research benefits to the extent that they have, or wish to develop, biotechnology research capacity.

**Countries that have, or wish to develop, biotechnology-related industries may wish to provide certain types of patent protection in this area. If they do so, specific exceptions to the exclusive rights, for plant breeding and research, should be provided. The extent to which patent rights extend to the progeny or multiplied product of the patented invention should also be examined and a clear exception provided for farmers to reuse seeds**

28. The Government agrees that it may be in the interests of some developing countries to provide additional patent protection for biotechnology even beyond what is required under TRIPS, for the reasons given by the Commission. We agree that in these circumstances it would be appropriate for developing countries to consider the use of exemptions for research (and plant breeding) and to enable farmers to reuse seed.

**The continuing review of Article 27.3(b) of TRIPS should also preserve the right of countries not to grant patents for plants and animals, including genes and genetically modified plants and animals, as well as to develop *sui generis* regimes for the protection of plant varieties that suit their agricultural systems. Such regimes should permit access to the protected varieties for further research and breeding, and provide at least for the right of farmers to save and plant-back seeds including the possibility of informal sale and exchange**

29. The Government strongly agrees that the flexibilities currently contained in Article 27.3(b) of the TRIPS Agreement, including the option of *sui generis* regimes for the protection of plant varieties, are important for developing countries and should be maintained. It would also be right for developing countries to consider the inclusion of appropriate provisions in *sui generis* regimes on the right of farmers to save and plant back seed, including the possibility of informal sale and exchange. TRIPS does not explicitly address whether genes (in their natural state or modified) should be patentable but we agree that genes in their natural environment should not be patentable. Countries are also free to define their own patentability criteria for gene-based inventions in line with the provisions of TRIPS. However, while TRIPS would allow the exclusion of genetically modified plants and animals from patenting, as noted above, countries are obliged to grant patents on technical processes involving genetic modifications, subject to any exclusions they may wish to make consistent with Article 27(2) of TRIPS.

**Because of the growing concentration in the seed industry, public sector research on agriculture and its international component should be strengthened and better funded. The objective should be to ensure that research is oriented to the needs of poor farmers; that public sector varieties are available to provide competition for private sector varieties; and that the world's plant genetic resource heritage is maintained. In addition, this is an area in which nations should consider the use of competition law to respond to the high level of concentration in the private sector**

30. The Government agrees that publicly funded research has an important role to play, particularly in addressing the needs of poor farmers which may not be catered for by private sector research. The Government is fully aware of the crucial role of the public sector generally, and the international community in particular, in supporting research directed at the problems of the poorest countries and the poorest people. DFID is amongst the leading bilateral funders of agricultural research for the benefit of developing countries but we recognise a continuing level of under-investment at the global level. Details of our contribution to agricultural research are in the DFID Annual Report.<sup>4</sup> The UK will continue to work for greater focus and strengthened global research efforts on the needs of the poor along the lines recommended by the Commission. The Government also agrees that it is important to maintain a competitive environment if the potential benefits of new technology for poor farmers and consumers are to be maximised.

**Developed and developing countries should accelerate the process of ratification of the FAO International Treaty on Plant Genetic Resources for Food and Agriculture and should, in particular, implement the treaty's provisions relating to:**

- **Not granting IPR protection of any material transferred in the framework of the multilateral system, in the form received**
- **Implementation of Farmers' Rights at the national level, including (a) protection of traditional knowledge relevant to plant genetic resources for food and agriculture; (b) the right to equitably participate in sharing benefits arising from the utilisation of plant genetic resources for food and agriculture; (c) the right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture**

31. The Government fully supports the rapid, effective and transparent implementation of the International Treaty on Plant Genetic Resources for Food and Agriculture. The UK signed the Treaty on 6 June 2002 and hopes to ratify it soon. We would urge all other countries that have not yet done so to sign and ratify the Treaty as soon as possible.

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<sup>4</sup>[http://www.dfid.gov.uk/Pubs/files/dr2002\\_report.pdf](http://www.dfid.gov.uk/Pubs/files/dr2002_report.pdf)

32. The Government broadly endorses the Commission's analysis in this chapter. It recognises that traditional knowledge plays an important part in the livelihoods of many poor communities in developing countries. It agrees with the Commission that the issue of "protecting" traditional knowledge goes well beyond the question of how IP protection might be applied to it. Nevertheless, it recognises the importance of obtaining an equitable and fair solution in the interaction between traditional knowledge and IP protection. As a signatory to the Convention on Biological Diversity (CBD) the UK believes that there should be an equitable sharing of benefits arising out of the utilisation of genetic resources and that TRIPS and CBD need to be implemented in a mutually supportive manner. The CBD adopted Guidelines on Access and Benefit Sharing at the Conference of the Parties in The Hague in April 2002. These will provide a valuable reference point for Governments and stakeholders in their implementation of the access and benefit sharing arrangements of the CBD.

**There is much to gain by considering the issue in a number of fora, while ensuring coherent approaches are developed and that effort is not duplicated.**

33. The Government agrees. WIPO has an important role to play, but the issues go well beyond intellectual property in the conventional sense, and a multi-pronged effort is desirable, involving both national and international processes. The debate should continue internationally in official fora (such as WIPO or the CBD) and also in unofficial dialogues between stakeholders. For instance, the World Business Council for Sustainable Development has just published the results of a stakeholder dialogue on this topic.<sup>5</sup> At national level, similar diverse processes may be required.

**With such a wide range of material to protect and such diverse reasons for "protecting it", it may be that a single all-encompassing *sui generis* system of protection for traditional knowledge may be too specific and not flexible enough to accommodate local needs**

34. The Government agrees that an internationally agreed *sui generis* system is not necessarily a desirable or realistic goal.

**Digital libraries of traditional knowledge should, as soon as practical, be incorporated into the minimum search documentation lists of patent offices therefore ensuring that the data contained within them will be considered during the processing of patent applications. Holders of the traditional knowledge should play a crucial role in deciding whether such knowledge is included in any databases and should also benefit from any commercial exploitation of the information.**

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<sup>5</sup>[http://www.wbcd.org/newscenter/reports/2002/20020819\\_biotech.pdf](http://www.wbcd.org/newscenter/reports/2002/20020819_biotech.pdf)

35. The Government agrees that these libraries will play a valuable role in helping to ensure that patents are granted on the basis of a full knowledge of extant “prior art”. But the information in such libraries should only be included with the consent of those who lay claim to that knowledge. The UK is working with other members of WIPO in the Intergovernmental Committee on Genetic Resources, Traditional Knowledge, and Folklore on the setting up of appropriate databases. Preliminary work has been based on databases provided by India and China, amongst others, and the UK Patent Office is reviewing these to identify those that provide useful search tools.

**Those countries that only include domestic use in their definition of prior art, should give equal treatment to users of knowledge in other countries. In addition, account should be taken of the unwritten nature of much traditional knowledge in any attempts to develop further the patent system internationally.**

36. The UK gives equal treatment to users of knowledge in other countries. The Government agrees that if the same policy were adopted in all countries this would be an important safeguard against the granting of patents on knowledge which is already in the public domain. The Government will therefore work with others to get this principle extended. The development of digital libraries should aim to include traditional knowledge of an unwritten nature, but only provided this is with the consent of the holders of that knowledge. We recognise the need to address the legitimate concerns amongst traditional knowledge holders over the use of such data banks, particularly where their knowledge is of important cultural or religious significance, and where disclosure might be damaging to their interests.

**The principle of equity dictates that a person should not be able to benefit from an IP right based on genetic resources or associated knowledge acquired in contravention of any legislation governing access to that material. In such cases the burden should generally lie with the complainant to prove that the IP holder has acted improperly. However, a precursor for any action is knowledge of the wrong. It is to assist in this respect that we believe that a disclosure requirement of the type discussed above is necessary.**

37. The Government agrees in principle that a disclosure requirement in patent applications is desirable. The EU is now actively supporting this in the TRIPS Council, on the basis that any sanctions should not affect the validity of the patent.

**All countries should provide in their legislation for the obligatory disclosure of information in the patent application of the geographical source of genetic resources from which the invention is derived. This requirement should be subject to reasonable exceptions as, for example, where it is genuinely impossible to identify the geographical source of material. Sanctions, possibly of the type discussed above, should be applied only where it can be shown that the patentee has failed to disclose the known source or where he has sought to deliberately mislead about the source. This issue should be considered by the Council for TRIPS, in the context of paragraph 19 of the Doha Ministerial Declaration.**

38. The Government agrees that it would be beneficial if all countries adopted a disclosure requirement in their legislation. When the TRIPS Council decides on this issue, we will consider with our European partners how best to implement this in EU and UK legislation. This will include definition of the kind of sanctions that would be appropriate where it can be demonstrated that the applicant has deliberately failed to disclose or has provided misleading information about the source.

**Consideration should also be given to establishing a system whereby patent offices examining patent applications which identify the geographical source of genetic resources or traditional knowledge pass on that information, either to the country concerned, or to WIPO which may act as a depository for patent-related information on alleged “biopiracy”. Through these measures it will be possible to monitor more closely the use and misuse of genetic resources.**

39. The Government will pursue this recommendation with its EU partners and in WIPO. There would be considerable value in establishing such a depository.

**Further research should be undertaken, as a matter of urgency, by a competent body possibly UNCTAD, to assess in respect of developing countries:**

- **The actual or likely costs of implementing existing geographical indications provisions under TRIPS**
- **What role geographical indications could play in the development of these countries**
- **The likely costs and benefits of extending the current additional protection for wines and spirits to other products**
- **The costs and benefits of the various proposals put forward for establishing a multilateral register of geographical indications**

40. The Government agrees with this recommendation. DFID intends to include this research agenda in its follow-up activities in response to the report.



## CHAPTER 5

### COPYRIGHT, SOFTWARE AND THE INTERNET

41. The Commission rightly notes that “stronger copyright protection may help to stimulate local cultural industries in developing countries”, but that it may be a necessary but not a sufficient condition for the development of such industries. The Commission’s concern is whether copyright rules strike the right balance for developing countries between providing incentives for creation and ensuring adequate access to knowledge and knowledge-based products. This led the Commission to focus on the cost of accessing such products and the adequacy of “fair use” or “fair dealing exemptions” from the point of view of developing countries.

42. Most developing countries are long standing members of the Berne Convention for the Protection of Literary and Artistic Works (for example, Brazil since 1922) and have already taken steps to bring their copyright laws and enforcement procedures into compliance with TRIPS. The Government welcomes this development and notes that their representatives in the TRIPS Council have not expressed any concerns regarding the international rules for the protection and enforcement of copyright and related rights. Moreover, as noted in the report, developing countries are seeking to find ways in which, for instance, folklore can be better protected through such rights.

43. The Government believes that developing countries stand to benefit from the encouragement and protection of creative endeavour, and that it is in the interests of developing countries to continue to provide levels of copyright protection and enforcement that do not fall below TRIPS standards. In the internet age it will become increasingly important for developing countries to protect their creative industries as they integrate more fully into the global economy; and it is gratifying that 37 developing and transitional countries have so far ratified the 1996 WIPO Copyright Treaty and the 1996 WIPO Performances and Phonograms Treaty.

44. The Government notes the Commission’s concerns about “fair use” provisions but believes that existing provisions in TRIPS, and other international copyright conventions are adequate for the needs of developing countries. However, the Government remains concerned about poor enforcement and high levels of copyright infringement in some countries and will continue to work for effective action against piracy, wherever it occurs. It will continue to contribute to the development of international systems for the protection and enforcement of rights in this important field. Our commitment to capacity building and to providing copyright training for peoples from developing countries will be maintained and, wherever possible, strengthened.

**Publishers, both of hard copy and on-line books and journals, and software producers should review their pricing policies to help reduce unauthorised copying and to facilitate access to their products in developing countries. Initiatives being undertaken by publishers to expand access to their products for developing countries are valuable and we encourage an expansion of such schemes. The extension of free on-line access initiatives for developing countries to cover all academic journals is a good example of what could be done.**

45. The Government welcomes the existing initiatives by publishers and software producers to facilitate access to their products, and will encourage them to make access more widely available wherever appropriate. Copyright laws provide the foundation on which access initiatives can be built.

**In order to improve access to copyright works and achieve their goals for education and knowledge transfer, developing countries should adopt pro-competitive measures under copyright laws. Developing countries should be allowed to maintain or adopt broad exemptions for educational, research and library uses in their national copyright laws. The implementation of international copyright standards in the developing world must be undertaken with a proper appreciation of the continuing high level of need for improving the availability of these products, and their crucial importance for social and economic development.**

46. The Government agrees that competition and copyright laws and policies in developing countries should act to deter and prevent anti-competitive practices, as they do in the United Kingdom. However, we recognise that comparable levels of supervision and regulation of market behaviour frequently do not exist in developing countries. The Government accepts that, in some defined circumstances, exceptions and limitations to copyright can be justified, in particular, for educational, research and library purposes; and we acknowledge that (subject to recognised safeguards) developing countries are entitled to use Berne and TRIPS flexibilities to further public policy and educational objectives.

**Developing countries and their donor partners should review policies for procurement of computer software, with a view to ensuring that options for using low-cost and/or open-source software products are properly considered and their costs and benefits carefully evaluated. Developing countries should ensure that their national copyright laws permit the reverse engineering of computer software programmes beyond the requirements for inter-operability, consistent with the relevant IP treaties they have joined.**

47. The Government agrees that a review of procurement policies may be needed. We have already concluded that in looking at cost-effective software for our own use we will consider open source software solutions alongside proprietary ones in IT procurements. The Government will only use products for interoperability that support open standards and specifications in all future IT developments. We would recommend developing countries similarly to consider the use of open source software. DFID is reviewing on the same lines its software procurement policies in developing countries.

48. TRIPS requires computer programmes to be protected as literary works under the Berne Convention. Likewise, the WIPO Copyright Treaty states that computer programmes are protected as literary works within the meaning of Berne. The Government agrees with the Commission that developing countries' national copyright laws should be consistent with the treaties they have joined. In the European Union computer programmes are protected by copyright as literary works, though it is permissible to make a back-up copy; decompile a programme to achieve interoperability; and (subject to safeguards) study or test a programme in order to determine the underlying ideas and principles.

**Users of information available on the Internet in the developing nations should be entitled to “fair use” rights such as making and distributing printed copies from electronic sources in reasonable numbers for educational and research purposes, and using reasonable excerpts in commentary and criticism. Where suppliers of digital information or software attempt to restrict “fair use” rights by contract provisions associated with the distribution of digital material, the relevant contract provision may be treated as void. Where the same restriction is attempted through technological means, measures to defeat the technological means of protection in such circumstances should not be regarded as illegal. Developing countries should think very carefully before joining the WIPO Copyright Treaty and other countries should not follow the lead of the US and the EU by implementing legislation on the lines of the DMCA or the Database Directive.**

49. The Government supports “fair use” exceptions provided in international treaties and other measures, including the WIPO Copyright Treaty. It agrees that exceptions may be guaranteed under national law despite contractual terms to the contrary; and recognises that developing countries are free to determine their own approach to technological protection measures, consistent with any international obligations they may have undertaken. For example, the EC’s Information Society Directive (2001/29/EC) permits Member States to ensure that users benefit from “fair use” exceptions even where technological protection measures are applied.

50. The Government believes that IPRs, including patents, can play a vital role in the course of the development process for developing countries today, just as they did, and continue to do, in the UK, other developed countries and the most successful developing economies. The Government agrees with the Commission that, in order to achieve this, patent regimes can and should be tailored to take into account individual country's specific circumstances. And that in order to be effective in promoting development, patent and other intellectual property rights need to be effectively managed. The Government also welcomes the Commission's discussion of the issues raised by patenting in universities and public sector research, and the need to strike the right balance between the incentives offered by the patent system, and the possible disincentive to further research drawing on protected technologies.

### **THE DESIGN OF PATENT SYSTEMS IN DEVELOPING COUNTRIES**

**This should be achieved, within the constraints of international and bilateral obligations, by:**

- **limiting the scope of subject matter that can be patented**
- **applying standards such that only patents which meet strict requirements for patentability are granted and that the breadth of each patent is commensurate with the inventive contribution and the disclosure made**
- **facilitating competition by restricting the ability of the patentees to prohibit others from building on or designing around patented inventions**
- **providing extensive safeguards to ensure that patent rights are not exploited inappropriately**
- **considering the suitability of other forms of protection to encourage local innovation.**

51. The Government agrees with the Commission that different developing countries will have different requirements in respect of IPR, and that a country's IP system should reflect these. Thus the Government believes that these recommendations are all aspects which developing countries should take into account when designing an overall legislative framework to increase competitiveness through innovation whilst safeguarding against abusive behaviour.

52. In particular, while some countries may benefit from a more restrictive scope of patentable subject matter, others may benefit from a less restrictive approach. For example, in chapter 3 the Commission highlights that countries that have, or wish to develop, biotechnology-related industries may wish to provide patent protection in that area, beyond that required by TRIPS. A stronger IPR regime is one factor that may be important in attracting investment in particular sectors and activities, as noted in para 20.

53. Therefore, as we indicate in our response to chapter 8, the Government agrees with the Commission that developing countries should decide for themselves if accelerated compliance with TRIPS, or adoption of stronger IP rights than TRIPS requires, would be beneficial for their own development.

54. In addition, the Government is fully supportive of having fixed and measurable quality standards for granting of patents. For example, the UK has recently initiated the setting up of a common quality framework in discussions at WIPO and has been actively involved in discussions on protection of traditional knowledge, as noted in the response to chapter 4 of the report.

**Developing countries providing patent protection for biotechnological inventions should assess whether they are effectively susceptible to industrial application, taking account of the USPTO guidelines as appropriate.**

55. The Government agrees. Developing countries may well be able to learn from the experience of developed countries in searching for appropriate criteria for patentability in this rapidly developing area of technology.

**Developing countries should adopt the best mode provision to ensure that the patent applicant does not withhold information that would be useful to third parties.**

56. The Government considers the full disclosure of information to be an important benefit of the IP system, especially in the context of technology transfer, and we agree that developing countries should consider adopting best mode provisions. Developing countries will need to consider both the potential benefits, and costs such as increased legal uncertainty, of such an additional requirement.

**If developing countries allow patents over genes as such, regulations or guidelines should provide that claims be limited to the uses effectively disclosed in the patent specification, so as to encourage further research and commercial application of any new uses of the gene.**

57. The Government agrees that developing countries should consider carefully the case for limiting patent protection to the uses effectively disclosed in the application.

**Rather than diluting the patentability standards to capture the incremental type of innovations that predominate in many developing countries, lawmakers and policy makers in these countries should consider the establishment of utility model protection for stimulating and rewarding such innovations. Further research would seem desirable to assess the precise role that utility model protection, or other systems with similar objectives, might play in developing countries.**

58. The Government agrees that other models of protection may be useful tools for developing countries. We support this recommendation as an option for developing countries to consider, but agree that there needs to be more research as to the precise role of utility models, or other supplements to patent protection, in developing countries.

## THE USE OF THE PATENT SYSTEM IN PUBLIC SECTOR RESEARCH

Based on the above, we believe that there is a role for IP in public research institutions to promote the transfer and application of technologies. But it is important that:

- generating alternative sources of funding is not seen as the principal goal, which is rather to promote technology transfer.
- care be taken to ensure that research priorities, particularly as regards the technology requirements of the poor, be it in agriculture or health, are not distorted by the search for a larger licensing income.
- patenting and licensing should only be undertaken where it is judged necessary to encourage private sector development and the application of technologies.
- careful consideration be given to the need to take out “defensive” patents on important inventions, particularly for use as a bargaining tool where complementary technologies are owned by private sector entities and cross-licensing may be required to access those technologies.
- expertise in IP is developed in public sector institutions which traditionally have had none, but without losing sight of the objectives of public policy for research.

59. The Government believes that a proper understanding of how to use IP most effectively to promote the principal goal of public funding for research, which differs from private funding, is very important for public research institutions in developing countries, just as it is for institutions in developed countries. We agree with the Commission that there is a role for IP in public research institutions, and support this recommendation as raising important points for developing countries to consider in developing policies for these institutions. The UK Patent Office has recently published a guide for UK universities which addresses some of the issues raised by the Commission, but developing countries will need to take into account their own circumstances in determining the appropriate role of IP in the public sector.<sup>6</sup>

## HOW THE PATENT SYSTEM MIGHT INHIBIT RESEARCH AND INNOVATION

There is a need for the further development of institutions and strategies such as these which will seek to facilitate the development and acquisition of technologies required for research relevant to developing countries, seek to use the opportunities offered by IP to best advantage, and also help resolve the difficulties associated with the proliferation of patents on research tools. We also consider it important that, in developing such initiatives, attention continues to be paid to opportunities to improve patent systems, in both developed and developing countries, to obviate some of the problems these initiatives are seeking to address. The rules of the game, as well as the way it is played, are both important considerations for developing countries.

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<sup>6</sup><http://www.patent.gov.uk/about/notices/manip>

60. The Government strongly supports the development of Public-Private Partnerships. The UK is actively involved in the development of the African Agricultural Technology Foundation which is being designed to facilitate the royalty-free transfer of proprietary technologies that meet the needs of resource-poor African farmers in ways that address and resolve the concerns of the technology providers. As noted in the response to Chapter 2, DFID also supports a number of PPPs in the health sector.

61. The Government agrees with the Commission that the patent system, while providing incentives for research may also create disincentives for those seeking to use protected products in research. As noted above, striking the right balance between protecting current innovation and not hindering subsequent innovation is key to the IPR system for all countries. The Government will continue to pay attention to concerns about the operation of the patent system generally and consider how improvements in the rules nationally and internationally might address them, particularly as they might affect developing countries. But there is considerable scope, within the boundaries of TRIPS, for countries to determine exceptions and safeguards e.g. research exemptions, or compulsory licensing, which mitigate the possible inhibitions to follow-on innovation.

## **INTERNATIONAL PATENT HARMONISATION**

**Developing countries should identify a strategy for dealing with the risk that WIPO harmonisation will lead to standards that do not take account of their interests. This could be done by seeking a global standard reflecting the recommendations of this report; it could be done by seeking continued flexibility in the WIPO standards; it could be done by rejection of the WIPO process if it appears that the outcome will not be in the interests of developing countries.**

62. The Government agrees that developing countries should consider their interests and develop a negotiating strategy accordingly for international negotiations on harmonisation of patent law, particularly the Substantive Patent Law Treaty being considered by WIPO. As the Commission has noted in chapter 4 of its report, there are areas, such as a requirement for disclosure of the origin of genetic resources used in patented inventions, where harmonisation of patent law could bring benefits to developing countries.

63. The Government agrees with the Commission that IPR regimes can and should be tailored to take into account individual country's specific circumstances. In this chapter, the Commission raises the important issue of technical assistance from developed countries and international organisations such as WIPO, to ensure that developing countries are able to create an intellectual property system appropriate to their needs. The Government is committed to this goal, both in its own technical assistance programmes and in influencing those of international organisations.

### **IP POLICY MAKING AND LEGISLATION**

**Developing countries and donors should work together to ensure that national IP reform processes are properly “joined-up” with related areas of development policy. Likewise, greater efforts are needed to encourage more participation by national stakeholders in IP reforms. In providing technical assistance, donors must be mindful of the need to help build the capacity of local institutions to undertake IP policy research and dialogue with stakeholders, in addition to providing international experts and legal advice.**

64. The Government fully supports this recommendation. In the UK, the Patent Office, as the lead government body, works with DFID and other interested departments, on the development of Government intellectual property policy. New developments in IP policy routinely involve open public consultation. The Government, in providing technical assistance to developing countries, will seek to ensure that a wider range of stakeholders is involved in the development of their national IP policy, and that the capacity of local institutions is enhanced.

### **COSTS AND REVENUES**

**Developing countries should aim to recover the full costs of upgrading and maintaining their national IP infrastructure through the fees charged to users of the system. They should also consider adopting a tiered-system of fees for IPR registration. The level of charges to users should be regularly reviewed to ensure that they enable full recovery of the costs of administering the system**

65. The Government fully supports this recommendation. The UK Patent Office fully covers its administrative costs together with the appropriate margin to achieve a financial target of a 6% return on capital through fees.



## ENFORCEMENT

**Developing countries should ensure that their IP legislation and procedures emphasise, to the maximum possible extent, enforcement of IPRs through administrative action and through the civil rather than criminal justice system. Enforcement procedures should be fair and equitable to both parties and ensure that injunctions and other measures are not used unduly by IP rights holders to block legitimate competition. Public funds and donor programmes should mainly be used to improve IP enforcement as part of broader strengthening of the legal and judicial systems.**

66. The Government fully agrees that enforcement procedures should be fair and equitable. We agree that legitimate competition should not be unduly impeded. We support the use of administrative and civil measures as permitted under the TRIPS Agreement. We also support the strengthening of legal and judicial systems, of which IP enforcement arrangements are a part.

**Developed countries should implement procedures to facilitate effective access to their intellectual property systems by inventors from developing nations. These might include, for example, fee differentials that favour poor or non-profit inventors, pro bono systems, arrangements for recovery of legal fees by prevailing parties in litigation, or inclusion of appropriate IP implementation costs in technical assistance programmes.**

67. The Government believes that the best way to enable effective access for poorer or non-profit inventors is to ensure that fees are as low as possible. In the UK, it costs only £200 in fees to obtain a patent. In addition DFID will consider ways in which it might assist developing countries in accessing developed world IP systems e.g. through supporting the development of pro bono systems.

## REGULATING INTELLECTUAL PROPERTY RIGHTS

**Developed countries and international institutions that provide assistance for the development of IPR regimes in developing countries should provide such assistance in concert with the development of appropriate competition policies and institutions.**

68. The Government strongly agrees that effective competition law and policy should be an essential complement to IP protection in the promotion of innovation. The UK will seek to ensure that its technical assistance and training programmes in IP consider appropriately how the role of competition policy can be strengthened. And it will seek to influence the major providers of technical assistance in this area to do the same.

## TECHNICAL ASSISTANCE AND CAPACITY BUILDING

**WIPO, the EPO and developed countries should significantly expand their programmes of IP-related technical assistance. The additional financing required could be raised through modest increases in IPR user fees, such as PCT charges, rather than from already over-stretched aid budgets. Donors could also seek to direct more technical assistance at LDCs in view of their special needs in developing an IP regime, as well as the wider institutional infrastructure they require for effective enforcement and regulation.**

69. The Government agrees that there may be a case for expanding IP-related assistance, particularly for least developed countries, provided it is appropriately focussed on the needs of developing countries. However, it considers that much could be achieved by increasing the effectiveness with which the current funds allocated to technical assistance are spent, on the lines suggested by the Commission. Moreover any increases in fees will need to be considered carefully, particularly to avoid additional costs for applicants from developing countries and to ensure that the increased revenue was in reality devoted to technical assistance.

**IP-related technical assistance should be organised in relation to an individual country's specific development needs and priorities. One way to do this is to incorporate such assistance within the Integrated Framework to facilitate better integration with national development plans and donor assistance strategies.**

70. The Government agrees that technical assistance should reflect the partner country's specific development needs and priorities. More effective incorporation of IP in the Integrated Framework (which is a multi-donor initiative to provide trade-related technical assistance to LDCs) is a good idea. More generally, appropriate IPR policies need to be considered in the formulation and implementation of Poverty Reduction Strategy Papers (PRSPs), which are compiled by a wider range of developing countries more generally as the basis for focussing development assistance on country priorities.

**Donors should strengthen systems for the monitoring and evaluation of their IP-related development co-operation programmes. As an important first step, a working group of donors and developing countries should be established to commission and oversee a sector-wide impact review of IP-related technical assistance to developing countries since 1995. A team of external evaluators should carry out this review.**

71. The Government agrees that it would be appropriate to review the effectiveness of technical assistance in the IP area. In particular, this would need to consider the concerns expressed relating to effectiveness, appropriateness and the absence of coordination. The Government is considering how a review on the lines proposed could be most appropriately organised and financed.

## CHAPTER 8

### THE INTERNATIONAL ARCHITECTURE

72. The Government agrees with the Commission on the need for international negotiations and international organisations which deal with intellectual property to assist developing countries achieve their developmental goals. We also agree on the need for the engagement of the full range of stakeholders. We will work to achieve this.

#### INTERNATIONAL STANDARD SETTING: WIPO AND WTO

**WIPO should act to integrate development objectives into its approach to the promotion of IP protection in developing countries. It should give explicit recognition to both the benefits and costs of IP protection and the corresponding need to adjust domestic regimes in developing countries to ensure that the costs do not outweigh the benefits. It is for WIPO to determine what substantive steps are necessary to achieve this aim but it should as a minimum ensure that its advisory committees include representatives from a wide range of constituencies and, in addition, seek closer cooperation with other relevant international organisations.**

73. The Government fully support this recommendation. We agree that WIPO should make efforts to promote intellectual property protection in a balanced manner, recognising that it carries costs as well as benefits for all countries. We agree that WIPO should engage better with the full range of stakeholders involved in IP, including both the producers and users of technologies and products, to ensure that each country is assisted to find the right balance for itself. Similarly it should seek to coordinate its activities effectively with other international development agencies. As a member of WIPO, the UK will work to see WIPO's work reflects this orientation.

**Unless they are clearly able to integrate the required balance into their operations by means of appropriate reinterpretation of their articles, WIPO member states should revise the WIPO articles to allow them to do so.**

74. The Government believes that WIPO should exercise its mandate to promote intellectual property protection in a responsible and balanced manner. The Commission's report is an opportunity for WIPO, and its member states, to review how this can best be done, bearing the interests of developing countries in particular in mind.

#### THE TRIPS AGREEMENT

**WIPO should take action to make effective its stated policy of being more responsive to the need to adapt its IP advice to the specific circumstances of the particular developing country it is assisting. We also recommend that it, and the government concerned, involve a wider range of stakeholders in the preparation of IP laws both within government and outside, and both potential producers and users of IP. Other providers of technical assistance to developing countries should take equivalent steps.**

75. The Government fully agrees with the Commission that IP advice needs to be tailored to the specific circumstances of each country in order to enable that country to implement an effective IP system. As noted above, we agree that engagement with the full range of stakeholders, both producers and consumers, is necessary. We will work within WIPO and in our own technical assistance programmes to achieve this.

**LDCs should be granted an extended transition period for implementation of TRIPS until at least 2016. The TRIPS Council should consider introducing criteria based on indicators of economic and technological development for deciding the basis of further extensions after this deadline. LDCs that have already adopted TRIPS standards of IP protection should be free to amend their legislation if they so desire within this extended transition period.**

76. TRIPS provides for extensions of transition periods for LDCs to be granted on presentation of a duly motivated request. The transition period for patents on pharmaceutical products has already been extended to 2016 for all LDCs. It is for individual LDCs to decide if it is in their interest to make a request for extension in other areas, but the UK Government will support duly motivated requests. The Government also supports the development of more rigorous criteria - economic, financial, administrative and technological - to determine if an extension of a transition period would be appropriate.

## **IP IN BILATERAL AND REGIONAL AGREEMENTS**

**Though developing countries have the right to opt for accelerated compliance with or the adoption of standards beyond TRIPS, if they think it is in their interests to do so, developed countries should review their policies in regional/bilateral commercial diplomacy with developing countries so as to ensure that they do not impose on developing countries standards or timetables beyond TRIPS.**

77. The Government fully supports the right of developing countries to make use of the transition periods provided by the TRIPS Agreement. We agree with the Commission that developing countries should decide for themselves if accelerated compliance would be beneficial for their economies. The Government also supports the right of developing countries to adopt standards beyond TRIPS if they consider it is in their interests to do so. We also concur that bilateral and other agreements should not, as a matter of course, oblige countries to adopt intellectual property standards or timetables that go beyond TRIPS. For our part, we will seek to ensure that EU agreements with developing countries avoid imposing obligations beyond TRIPS.

## **PARTICIPATION BY DEVELOPING COUNTRIES**

**WIPO should expand its existing schemes for financing representatives from developing countries so that developing countries can be effectively represented at all important WIPO and WTO meetings which affect their interests. It would be for WIPO and its member states to consider how this might most effectively be done and financed from WIPO's own budgetary resources.**

78. The Government supports the financing of developing country representatives to enable their effective representation. We also support the funding of representatives of indigenous and local communities attending the WIPO Inter Governmental Committee on Genetic Resources, Traditional Knowledge, and Folklore, which deals with issues which particularly concern them.

**UNCTAD should establish two new posts for Intellectual Property Advisers to provide advice to developing countries in international IP negotiations. DFID should consider the initial funding of these posts as a follow-up to its current TRIPS-related project funding to UNCTAD.**

79. The Government will discuss with UNCTAD and others whether this proposal is the best way of increasing the quantity and quality of advice available to developing countries and their negotiators in Geneva.

## **THE ROLE OF CIVIL SOCIETY**

**WTO and WIPO should increase the opportunities for civil society organisations to play their legitimate roles as constructively as possible. For instance, this could be done by inviting NGOs and other concerned civil society groups to sit on, or observe, appropriate advisory committees and by organising regular public dialogues on current topics in which NGOs could participate.**

80. The Government supports the full involvement of civil society organisations as observers in all relevant fora such as WTO and WIPO.

## **DEEPENING UNDERSTANDING ABOUT IP AND DEVELOPMENT**

**Research sponsors, including WIPO, should provide funds to support additional research on the relationships between IP and development in the subject areas we have identified in our report. The establishment of an international network and an initiative for partnership amongst research sponsors, developing country governments, development agencies and academic organisations in the IP field could help by identifying and co-ordinating research priorities, sharing knowledge and facilitating wider dissemination of finds. In the first instance we recommend that DFID, in collaboration with others, take forward the definition of such and initiative.**

81. The Government agrees that there is a case for more and better-coordinated research on the impact of intellectual property rights in developing countries. DFID will investigate with potential partners the possibility of defining and taking forward such an initiative.

This response can be downloaded from

<http://www.dfid.gov.uk>

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