

## **PATENT COOPERATION TREATY (PCT) WORKING GROUP**

### **Third Session**

**Geneva, June 14 to 18, 2010**

#### **ELIGIBILITY CRITERIA FOR REDUCTIONS IN CERTAIN FEES: REVISED PROPOSALS**

*Document prepared by the International Bureau*

1. The present document contains further revised proposals for establishing eligibility criteria for determining the group of countries whose applicants should benefit from a reduction of certain PCT fees. The content of the present document is identical to that of document PCT/WG/3/4, except for certain changes which are indicated by grey highlighting of the paragraph concerned and by underlining (additions) and striking through (deletions) the text concerned, consequential on the following further revised proposals:
  - (a) it is proposed to set the threshold above which a country should no longer benefit from PCT fee reductions at a higher level, namely, at 25.000 US dollars (instead of 20.000 US dollars) per capita gross domestic product (GDP);
  - (b) to avoid extreme effects in very small countries where only a handful of applications are needed to exceed the limit of "less than 10 international applications filed per year (per million population)" for the innovation-based criterion, it is proposed to introduce a second indicator for the innovation-based criterion of "less than 50 international applications filed per year (in absolute numbers)" (each in terms of number of international applications filed by natural persons), and to require that a country need only meet one of those two indicators to comply with the innovation-based criterion.
2. Annexes I and II have been updated accordingly.

## SUMMARY

3. There appears to be agreement among Member States that the eligibility criteria for PCT fee reductions should give a broad range of applicants from certain countries, notably, least developed and developing countries, the benefit of fee reductions, noting that such a reduction would contribute to increased access to the PCT system by applicants from those countries. However, there continue to be a divergence of views among Member States as to which criteria to apply to determine which group of countries should benefit from reductions in certain PCT fees. Moreover, it would appear that perhaps insurmountable difficulties exist in identifying indicators underpinning alternative or additional criteria for which reliable and officially recognized figures are available in respect of *all* countries whose applicants could potentially benefit from PCT fee reductions. Against this background, this document sets out a revised proposal for establishing eligibility criteria for determining the group of countries whose applicants should benefit from a reduction of certain PCT fees.

## BACKGROUND

4. During its thirty-sixth session, held in Geneva in September-October 2007, the Assembly discussed proposals for amendments to the Schedule of Fees under the PCT submitted by the United States of America and Japan (document PCT/A/36/11) and by Brazil (document PCT/A/36/12). Summarizing the results of informal consultations, the Chair stated, *inter alia*, that during those consultations “there had been agreement among delegations to request the International Bureau to carry out a study on the eligibility criteria for determining the group of developing and least developed countries whose applicants should benefit from a reduction of PCT fees and to present that study to the next session of the PCT Assembly in September-October 2008” (document PCT/A/36/13, paragraph 62).
5. During its thirty-seventh session, held in Geneva in March 2008, the Assembly approved a 5% reduction in the international filing fee, as well as certain amendments of the Schedule of Fees which resulted in an increase from 75% to 90% in the reduction available to applicants from certain States and an extension of the reduction to make it available, pending a decision by the PCT Assembly on the eligibility criteria specified in sub-paragraph 4(a) of the Schedule of Fees under the PCT, to applicants from Antigua and Barbuda, Bahrain, Barbados, Libyan Arab Jamahiriya, Oman, Seychelles, Singapore, Trinidad and Tobago and the United Arab Emirates (document PCT/A/37/2).
6. During its thirty-eighth session, held in Geneva in September 2008, the Assembly considered proposals for amendment of the Schedule of Fees annexed to the PCT Regulations relating to the eligibility criteria for reductions in certain PCT fees, based on a document prepared by the International Bureau (document PCT/A/38/5).
7. Document PCT/A/38/5 outlined a number of criteria for determining the group countries whose applicants should benefit from a reduction in certain PCT fees, notably, *criteria based on income* as an economic indicator of development used by multilateral organizations for the purposes of assessing development assistance needs, and *criteria based on the size* of a country, reasoned by size of economy, taking into account that smaller countries have fewer opportunities to benefit from economies of scale and therefore may have greater needs for assistance.
8. Noting the pros and cons of purely income-based and purely size-based criteria, the document considered that a mix of the two would present the fairest set of criteria and proposed that an international application should benefit from the 90% fee reduction if it is filed by an applicant who meets any one of the following criteria:

- (a) a natural person who is a national of and resides in a State that is listed as being a State whose per capita national income is below the threshold used by the World Bank for establishing the “high income” category (according to the most recent four year average per capita national income figures published by the United Nations); or
  - (b) a natural person who is a national of and resides in a State that is listed as being a State whose per capita national income is not more than 50% above the threshold used by the World Bank for establishing the “high income” category (according to the most recent four year average per capita national income figures published by the United Nations) and whose gross domestic product is less than 0.1% of the world total gross domestic product (according to the most recent four year average gross domestic product figures published by the United Nations); or
  - (c) a natural person or legal entity, who is a national of and resides in a State that is listed as being classified by the United Nations as a least developed country.
9. The Assembly’s discussions at its thirty-eighth session on the proposals set out in document PCT/A/38/5 are outlined in the report of that session (document PCT/A/38/6, paragraphs 16 to 30). The Assembly agreed that the issue should be placed on the agenda of the PCT Working Group in 2009.
10. As agreed by the Assembly, the Working Group, during its third session, held in Geneva in May 2009, discussed the issue of eligibility criteria for reductions in certain PCT fees, based on a document prepared by the International Bureau (document PCT/WG/2/4). The Working Group’s discussions are outlined in the report of that session (document PCT/WG/2/14, paragraphs 111 to 129), reproduced in the following paragraphs:

“ELIGIBILITY CRITERIA FOR REDUCTIONS IN CERTAIN FEES

“111. Discussions were based on document PCT/WG/2/4.

“112. The Delegation of Barbados stated that the current criterion for a 90% reduction in the international filing fee and the handling fee was based on average *per capita* income. Barbados was one of nine developing countries whose *per capita* income was above the eligibility threshold for a reduction in the PCT fees. It was, however, entitled to a reduction pending a decision of the PCT Assembly on the eligibility criteria for determining the beneficiaries. In the view of the delegation, any criteria to be established should be equitable and balanced, taking into account the special needs of developing countries, including the small, high income, vulnerable economies such as Barbados.

“113. Average *per capita* income had been used as a determinant of eligibility for a PCT fee reduction and had resulted in inequity with respect to economies such as that of Barbados. It had been the basis on which patent holders in Barbados, who faced challenges over and above those in large emerging economies in the manufacture and sale of their inventions, had been denied special and differential treatment at the international level in the form of a reduction in certain PCT fees. These challenges nullified the effect of having a higher *per capita* income.

“114. Challenges that patent applicants in Barbados faced included the following: (1) the lack of economies of scale; (2) the high cost of labor; and (3) an insufficiently large local market for the manufacture and sale of their inventions. As a result of these challenges, it was difficult for patent holders to recoup the large costs associated with bringing their inventions to the stage of patentability.

“115. In addition to these challenges, there were a number of factors which, when taken together, pointed to the fact that, notwithstanding Barbados’ average *per capita* income, Barbados should, like other developing countries, who in other respects stood in a better position than Barbados, be entitled to the 90% fee reduction on a long-term basis, since the challenges which Barbados faces were of a long-term nature. These factors included:

(1) Barbados' small percentage of world GDP; (2) its small percentage of world NAMA trade; (3) its vulnerability to external economic and financial shocks; (4) its vulnerability to natural disasters as a small island developing state; (5) the fact that, as a result of the level of Barbados' *per capita* income, Barbados' economies no longer qualified for concessionary financing and consequently had to resort to commercial borrowing to meet critical infrastructure and other developmental needs while at the same time respond to the increasing incidence of natural disasters and other climate change impacts in the regions, as well as pay higher prices for much needed medicines for our people; (6) its very limited natural resources; (7) its small fledgling industries; and (8) the fact that Barbados' relatively high *per capita* GDP was based on vulnerable sectors.

- "116. For example, the tourism sector, Barbados' main foreign exchange earner, was highly susceptible to airline decisions, international security issues, the changing tastes of tourists and possible pandemics. The existence and operation of the international business sector was largely dependent on decisions taken by major developed countries.
- "117. Cognizant of the challenges which patent holders and would-be patent holders in Barbados face, the Delegation welcomed the study which the International Bureau presented to the PCT Assembly in September-October 2008 on the eligibility criteria for determining the group of developing and least developed countries whose applicants should benefit from a reduction of PCT fees. Of the nine countries who, but for the 2008 *ad hoc* decision, would not be eligible for a PCT fee reduction, three were small island developing states from the Caribbean with small vulnerable economies.
- "118. The Delegation stated that it was glad to see that, in its proposals, the International Bureau had not suggested a one-size-fits-all approach but instead, and consistent with the spirit of the development agenda, suggested criteria aimed at, amongst other things, taking into account the needs of small countries.
- "119. While the Delegation acknowledged that the criteria suggested by the International Bureau would have allowed patent applicants in Barbados to benefit from a fee reduction, it was concerned that, as regards the period of eligibility, such benefits would be short-term when compared with certain large emerging economies where patent applicants are not confronted with the same challenges as applicants from Barbados. The Delegation emphasized that it did not have a difficulty with patent applicants in those large middle income countries benefiting from a fee reduction, but it needed to ensure equity and balance, which could only be done if the period of eligibility for a fee reduction would be the same for nationals of large emerging economies and those of small, high income, vulnerable economies.
- "120. At present, given the wide gap which existed between the *per capita* income of some large economies and the threshold for high income countries, these large economies were given a permanent carve-out with respect to the reduction of PCT fees while patent applicants in Barbados were given less favorable treatment. They would be constantly under threat of losing their eligibility.
- "121. The Delegation further stated that during the PCT Assembly in September 2008, Barbados had suggested a criterion based on the percentage of world trade which could be understood as reflective of how few patented technologies Barbados was able to export. The African Group, however, had proposed a criterion which was much simpler and would remove the discrimination which existed for a long time with the use of *per capita* income as a determinant for eligibility for a PCT fee reduction. As seen in paragraph 20 on page 4 of PCT/WG/2/4, that criterion was that the reduction applied to all developing countries, including the nine States to which the reductions had been extended pending review. The Delegation saw merit in this proposal, as *per capita* income was not an accurate indicator of which countries required a stimulus at the international level to encourage innovation. In addition, it had to be borne in mind that, apart from one or two countries in the list of nine

which currently benefit under the *ad hoc* decision and which had a comparatively high *per capita* income, filings by individuals had been negligible. To extend the fee reduction to these countries would not result in a loss of significant revenue to WIPO.

- “122. The Delegation further stated that, according to document PCT/WG/2/4, the Working Group was invited to consider how it wished to proceed with regard to establishing eligibility criteria for determining the group of developing and least developed countries whose applicants should benefit from a reduction of PCT fees.
- “123. In line with the Delegation’s view that patent applicants in small high income economies should be given treatment no less favorable than that which is being given to certain large emerging economies, Barbados wished to suggest that the International Bureau update its study to take on board, amongst other criteria, the criteria suggested by Barbados and the African Group at the September 2008 PCT Assembly and to present the study to the next session of the PCT Working Group for discussion.
- “124. The Delegation of Singapore stated that, as Singapore had stated during the 45th series of Meetings of the Assemblies of the Member States of WIPO, it had some conceptual concerns with regard to the parameters used in the Secretariats proposal set out in document PCT/A/38/5. The Delegation restated some of those concerns and suggested some ideas to proceed on this issue.
- “125. First, the proposed income-based and size-based criteria were fairly new concepts. Related to this was that the basis of the size-based criteria benchmarks, “not more than 50% above the threshold/or establishing the high-income category” and “not more than 0.1% of world GDP” was unclear and appeared arbitrary. These benchmarks were based on borrowing concepts and measurements developed in other international organizations for other purposes. Hence, more clarity on the rationale for and formulation of this criteria was fundamental for an informed discussion.
- “126. Second, earlier discussions highlighted that the overarching objective of the reduction in PCT fees for individuals was to spur innovation. In this regard, Singapore was of the view that the proposal’s focus on economic indicators such as GNI *per capita* and GDP were not definitive in measuring or encouraging innovation. For a more complete picture, Singapore considered that an innovation criterion would be required to complement the Secretariat’s proposed criteria. The Delegation acknowledged that there was no single internationally accepted innovation criterion. Hence, effort should be made to design an innovation criterion founded on sound reasoning and statistical analysis. A rigorous innovation criterion would have to take into account a variety of elements, such as patent counts, PCT resident filings, cross-country variations in patent examination criteria, patent value in the form of licensing revenue flows, and so forth. Singapore believed that fine-tuning the existing proposal to include an innovation criterion would ensure that the reduction in PCT fees served to benefit Members by encouraging innovation, and the increased usage of the PCT system.
- “127. Third, while some had argued that international fees formed a negligible part of international patenting costs, the reality was that these fees still formed a significant component of the initial cost for individual applicants. To quote the summary record of the Meeting of Heads of Offices contained in Annex II of document PCT/WG/2/3: “Fees were seen as a sensitive but important issue which needed to be addressed carefully and used as a positive policy instrument to make the system more attractive. Several participants noted that the problem of costs was by no means limited to developing countries but to individuals and small and medium sized enterprises (SMEs) everywhere.”
- “128. With reference to the Director General’s Memorandum on the “Future of the PCT”, Singapore shared the view that the key issue was to “ensure that the international patent system is as accessible as possible to innovators from all States.” In this regard, Singapore supported the idea proposed in the Memorandum on the need for a further

review of international fees and consideration of new ways to offer assistance particularly to individuals and small businesses from developing countries. It was with these considerations in mind that Singapore supported an SME policy and proposed that the Secretariat undertake a study exploring a fee reduction criterion for SMEs. The Delegation stated that it considered that the inclusion of a fee reduction criteria targeted at SMEs would help to complete the whole package of eligibility criteria for the reduction of PCT fees. In this regard, Singapore was of the view that a decision on eligibility criteria for fee reductions should be deferred to the next PCT Working Group meeting, pending the outcome of this Secretariat study on an SME criterion. This additional time for consideration would also allow Members to deliberate and explore new and conceptually robust criteria as well as to contemplate other innovative approaches to provide assistance to SMEs.

“129. The Working Group agreed to request the Secretariat to carry out the requested studies and to present those studies to the next session of the Working Group.”

### **SUGGESTIONS MADE DURING THE SECOND SESSION OF THE WORKING GROUP**

11. As requested by the Working Group, the International Bureau has further studied the suggestions made during the second session of the Working Group, namely:
  - (a) to ensure that the period of eligibility for fee reductions should be the same for applicants (natural persons) from small but “high income” vulnerable economies such as Barbados as it is for applicants (natural persons) from large but “middle income” emerging economies (see the suggestion by the Delegation of Barbados, document PCT/WG/2/14, paragraph 119, reproduced in paragraph 10, above);
  - (b) to include a criterion based on percentage of world trade (see the suggestion by the Delegation of Barbados, document PCT/WG/2/14, paragraph 121 and 123, reproduced in paragraph 10, above);
  - (c) to apply the fee reduction to applicants (natural persons) of “all developing countries”, including the nine States to which the reductions had been extended by a decision of the Assembly, pending a decision by the Assembly on the eligibility criteria (see the suggestion by the Delegation of Barbados, document PCT/WG/2/14, paragraphs 121 and 123, reproduced in paragraph 10, above);
  - (d) to include an innovation based criterion to complement the income-based and size-based criteria proposed by the International Bureau (see the suggestion by the Delegation of Singapore, document PCT/WG/2/14, paragraph 126, reproduced in paragraph 10, above); and
  - (e) to explore a fee reduction criterion for small and medium sized enterprises (SMEs) (see the suggestion by the Delegation of Singapore, document PCT/WG/2/14, paragraph 128, reproduced in paragraph 10, above).
12. All of those suggestions would appear to give rise to certain concerns, as set out in the following paragraphs.

#### **Small but “high income” vulnerable economies**

13. During the second session of the Working Group, the Delegation of Barbados in effect suggested that the eligibility for fee reductions should be the same for applicants (natural persons) from small but “high income” vulnerable economies such as Barbados as it is for applicants (natural persons) from large but “middle income” emerging economies (see the suggestion by the Delegation of Barbados, document PCT/WG/2/14, paragraph 119, reproduced in paragraph 10, above).

14. This suggestion meets with some concerns since it in effect would mean that one would “de-link” the eligibility criteria applied to a country which is considered to be a “small and vulnerable” but “high income” economy from the actual economic status and development of that country and grant a fee reduction solely on the basis that the country is considered to be a “small and vulnerable” economy. As stated in document PCT/A/38/5 (paragraph 25), relying solely on a size-based criterion for determining the eligibility for fee reductions without a clear indicator of what constitutes “vulnerability” appears problematic, noting that this would result in some small countries with very high incomes and strong economies to benefit from the reduction in PCT fees, although the economic strength of such countries would seem to suggest that it was not the lack of financial resources but other factors which prevented applicants from such countries from making good use of the PCT system.

#### **Criterion based on percentage of world trade**

15. During the second session of the Working Group, the Delegation of Barbados also suggested that the eligibility criteria should include a criterion based on percentage of world trade of countries (see the suggestion by the Delegation of Barbados, document PCT/WG/2/14, paragraph 121 and 123, reproduced in paragraph 10, above).
16. The main concern with regard to this suggestion remains that official reliable figures of shares in world trade are not available for *all* countries whose applicants could potentially benefit from PCT fee reductions. This is why the International Bureau had suggested, in document PCT/A/38/5 (paragraph 24), to choose the shares of States in the world’s total GDP according to the most recent four year average GDP figures published by the United Nations as a “size-based” criterion for PCT fee reductions, noting that figures relating to those shares are available, from an officially recognized source, for all countries whose applicants could potentially benefit from PCT fee reductions. Furthermore, this criterion in isolation shares the same concern as that for the “small but high income, vulnerable economies” in that it could extend reductions to States whose size means that they share a very small percentage of world trade, but whose economies generally might be stronger and more secure than those of their larger neighbors.

#### **Criterion “all developing countries”**

17. During the second session of the Working Group, the Delegation of Barbados also suggested to apply the fee reduction to applicants (natural persons) of “all developing countries”, including the nine States to which the reductions had been extended by a decision of the Assembly, pending a decision by the Assembly on the eligibility criteria (see the suggestion by the Delegation of Barbados, document PCT/WG/2/14, paragraphs 121 and 123, reproduced in paragraph 10, above). A similar suggestion had already been made by the Delegation of Algeria, speaking on behalf of the African Group, during the 38<sup>th</sup> session of the PCT Assembly (document PCT/A/38/6, paragraph 20).
18. The main concern with regard to this suggestion would appear to be that, while there are definitions of distinct groups of developing countries recognized by the United Nations, such as the group of “Least Developed Countries (LDCs)”, the group of “Landlocked Developing Countries (LLDCs)” and the group of “Small Island Developing States (SIDS)” (see the homepage of the “UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States” at [www.unohrrls.org/en/home/](http://www.unohrrls.org/en/home/)), there is no distinct group of developing countries recognized by the United Nations as a whole which would include “*all* developing countries”, noting the absence of an agreed upon definition of what constitutes a “developing country”. To determine who should benefit from PCT fee reductions by reference to any of the existing groups or organizations of “developing countries” appears problematic, noting that membership in such groups or organizations would appear to depend entirely on the criteria chosen for membership by the group or organization concerned, which may not necessarily reflect solely the economic

conditions and needs of the qualifying countries but rather also be based on political, historical or geographical considerations, resulting in some high-income countries qualifying and low-income countries being excluded from fee reductions.

#### **Innovation-based criterion**

19. During the second session of the Working Group, the Delegation of Singapore suggested to include an innovation based criterion to complement the income-based and size-based criteria proposed by the International Bureau, (see the suggestion by the Delegation of Singapore, document PCT/WG/2/14, paragraph 126, reproduced in paragraph 10, above).
20. The main concern with regard to this suggestion would appear to be that, while WIPO (as well as many other international organizations and entities) is continuously striving to improve the collection of data on different measures of innovation, official reliable figures underpinning possible indicators for innovative activity in countries are simply not available for *all* countries whose applicants could potentially benefit from PCT fee reductions.
21. For example, the 2010 edition of the World Development Indicators (published by the World Bank: <http://data.worldbank.org/data-catalog/world-development-indicators>), recognizing that technological innovation drives industrial growth and helps raise living standards, lists the following twelve different “Science and Technology” related development indicators, drawn from a variety of sources (including the UNESCO Institute for Statistics, the U.S. National Science Board, the UN Statistics Division, the International Monetary Fund and WIPO): high-technology exports (% of manufactured exports); high-technology exports (USD); patent applications, non-residents; patent applications, residents; research and development expenditure (% of GDP); researchers in R&D (per million people); royalty and license fees, payments (USD); royalty and license fees, receipts (USD); scientific and technical journal articles; technicians in R&D (per million people); trademark applications, direct non-resident; and trademark applications, direct resident. All of these indicators could no doubt contribute to and assist in the development of an “innovation criterion” or a set of innovation criteria which could be used in the context of determining eligibility for PCT fee reductions. However, at present, for none of these indicators are official, reliable underpinning figures available in respect of *all* countries whose applicants could potentially benefit from PCT fee reductions, thus making it impossible, for the time being, to use such indicators in the present context.
22. One possible (and perhaps the only) indicator for which figures are available in respect of *all* countries whose applicants could potentially benefit from PCT fee reductions would be the number of PCT applications filed by applicants from a given country, say, per million population over a 5-year period. While doubts remain as to the extent to which PCT filing figures alone are a sufficiently reliable and objective indicator of the level of general innovative activity in a particular country, an “innovation criterion” based on the indicator “PCT filing figures” is further discussed in paragraphs 33 and 33 to 36, below, and included in the proposal set out in paragraphs 37 to 41.

#### **Fee reductions for small and medium-sized enterprises (SMEs)**

23. During the second session of the Working Group, the Delegation of Singapore also suggested to explore a fee reduction criterion for small and medium sized enterprises (SMEs) (see the suggestion by the Delegation of Singapore, document PCT/WG/2/14, paragraph 128, reproduced in paragraph 10, above). A related statement was adopted by the Working Group also at its second session, as stated in the report of that session (document PCT/WG/2/14, paragraph 97):

- “97. The Meeting agreed on the importance of fee reductions and capacity building measures, including in patent drafting and filing, and agreed that the relevant PCT bodies should prepare proposals, including fee reductions and capacity building measures, to increase access to the PCT for independent inventors and/or natural persons, small and medium sized enterprises and Universities and research institutions, in particular from developing and least developed countries.”
24. It is to be noted that the issue of assistance (*inter alia*, in the form of fee reductions) for independent inventors and/or natural persons, small and medium sized enterprises and Universities and research institutions, in particular from developing and least developed countries, is addressed in document PCT/WG/3/2 (“The need for improving the functioning of the PCT system”) as follows:
- “187. In addition to the cost savings which could potentially be made as a result of a higher quality international search and more effective international preliminary examination, initial fees remain a significant barrier to entry to the system for some applicants. As pointed out in paragraphs 109 and 110 [of document PCT/WG/3/2], large reductions to the international filing fee have been offered to certain applicants from developing countries, but these do not extend to all groups for which Contracting States have suggested that assistance would be appropriate, including small and medium-sized enterprises and academic institutions.
- “188. Given that the international fees are only a very small part of the total cost of seeking international patent protection, considering these fees alone will not solve the problems of access to the patent system more generally. However, it is clear that an applicant who cannot afford to use the international filing system will also not be able to bring most products to market internationally on a scale which would make patent protection worthwhile without partners of some type. An international application gives time before the greater costs need to be paid and may give assistance in finding such partners. Consequently, while a relatively small part of the total cost, accessibility to this stage of the patent procedure may be particularly important for some innovators.
- “189. There is no simple solution to this question of the international fees. According to the funding model set up by the Contracting States, the PCT fees fund not only the operation of the PCT itself, but also a large part of the other operations of WIPO. These reduced-fee applications are processed at a considerable loss even taking into account only the direct cost of running the PCT and this can only be afforded because they still form a relatively small proportion of the total number of applications, though this is changing quickly. To offer reductions to potentially large categories of further applicants on the basis of the type of applicant rather than on methods of application which cost less to process (as with the reductions for filing applications in electronic form) would require careful study of the effects on the finances of the Organization and at least one of the following would need to take place:
- “(a) a large increase in use of the PCT by applicants paying the full fees;
  - “(b) a reduction in either the amounts by which fees are currently reduced for developing country applicants or in the extent to which they are available;
  - “(c) a reduction in the other activities of WIPO which are funded by PCT fees; or
  - “(d) a major increase in the contributions made by WIPO Member States.

- “190. Given the differences in definitions of small and medium-sized enterprises between Contracting States, the lack of clear information on how many applications such entities file and other difficulties in defining and identifying the relevant applicants, it is not clear how many applications would be involved. A practical and acceptable solution may require a more innovative approach to be found than simply extending the availability of fee reductions, especially in view of the difficulty which has been found in identifying an appropriate way to define the reductions which should be available for applicants from developing countries.
- “191. It is *recommended* that the IB and Contracting States further review the level of fees for different types of applicant and seek innovative solutions to the problem of ensuring that applicants are not excluded from use of the system by the level of the fees.”
25. Subject to the discussions by the Working Group on the recommendations contained in document PCT/WG/3/2, it is the International Bureau's intention to further investigate existing national criteria for defining what constitutes a small and medium-sized enterprise on the national (or regional) level; the levels of use of national and regional patent system and of the PCT by small and medium sized enterprises to get a better understanding of the possible effects on fee income; and national schemes (fee-based or otherwise) for assisting inventors to access the patent system; and to report back to the Working Group at its next session. This, however, should need not further delay a decision on the eligibility criteria for PCT fee reductions currently under discussion.

#### **REVISED PROPOSAL**

26. Originally, the International Bureau had considered it appropriate to move away from the present “income-only” based criterion set out in the PCT Schedule of Fees and had proposed to replace that sole criterion with what appeared to be the fairest set of criteria, namely, a mix of income-based and size-based criteria.
27. Following the discussions in both the Working Group and the Assembly, there appears to be agreement among Member States that the eligibility criteria should give a broad range of applicants from certain countries, notably, from least developed and developing countries, the benefit of fee reductions, noting that such a reduction would contribute to increased access to the PCT system by applicants from those countries. However, there appears to continue to be a divergence of views among Member States as to which criteria to apply to determine which group of countries should benefit from fee reductions. In that regard, there only is agreement that the distinct group of least developed countries (LDCs) should continue to benefit from the fee reductions as at present.
28. With regard to the various alternative or additional criteria suggested by Member States during the discussions on this matter in both the Assembly and the Working Group, it has to be recognized that great (perhaps insurmountable) difficulties exist in identifying indicators underpinning those suggested alternative or additional criteria for which reliable and officially recognized figures are available in respect of *all* countries whose applicants could potentially benefit from PCT fee reductions. As noted above, it would appear that the only reliable indicator of innovative activity for which figures are available in respect of *all* countries whose applicants could potentially benefit from PCT fee reductions is the number of PCT applications filed by applicants from a given country over a given period of time.
29. It is against this background that the International Bureau has further considered its original proposal for eligibility criteria for fee reductions and would like to propose to use an updated criterion based on a combination of income and innovation-based factors. The innovation-based factor would be dependent on the number of PCT applications filed by natural persons in a State over a given period of time, as set out below.

### Income-based criterion

30. As regards the proposed continued use of an income-based criterion, it has to be recognized that the present “income-only” based criterion has served the PCT system well for almost 15 years. If there were problems associated with the present income-only based criterion which led to the “ad-hoc” decision by the Assembly to add a further nine countries to the list of beneficiaries of PCT fee reductions, those problems would appear to have been related mainly to the fact that the figures underpinning that criterion had not been updated for a very long time (in effect, they have never been updated since the first entry into force of fee reductions for certain applicants in January 1996). It would appear that those problems were not related to the use of that criterion “per se”.
31. During the discussions in both the Working Group and the Assembly, concerns were raised as to the period of eligibility for those countries “in transition” which, under the previous proposals, might have—in the medium term—lost their eligibility due to strong economic growth. In addition, it was noted that, despite having reached a relatively high average income, the economies of certain countries might be more fragile than others where incomes were comparable, and that consequently it might still be appropriate to offer assistance for individuals filing international applications. To address those concerns, two changes are proposed:
- (a) it is no longer proposed to use the World Bank’s classification system (“low income”, “lower middle income”, “upper middle income” and “high income”) for determining the threshold above which a country should no longer benefit from PCT fee reductions; rather, it is proposed to set the threshold above which a country should no longer benefit from PCT fee reductions at a higher level, namely, at 25,000 ~~20,000~~ US dollars per capita gross domestic product (GDP) (that is, the new threshold would be more than ~~almost~~ double the previously proposed World Bank’s “high income” threshold of 11,116 US dollars);
  - (b) it is no longer proposed to determine country income according to the most recent *four-year* average gross national income but rather a *ten-year* average per capita gross domestic product (GDP) figures published by the United Nations.
32. Furthermore, it is no longer proposed to use “current US\$” values to determine the per capita gross domestic product (GDP) of countries. Rather, noting that improved or worsened affordability of the PCT system is explained by changes in real per capita income and not by changes due to inflation (or deflation), the use of “constant US\$” values appears more appropriate. Using per capita GDP in constant US\$ values eliminates the impact of either inflation or deflation, thus providing a measure of real per capita income. It is thus proposed that the income figures should be based on “constant US\$” values according to United Nations data, selecting the most recent year for which GDP data are available as the baseline year, that is, 2008.

### Innovation-based criterion

33. In addition to the income-based criterion, it is proposed to also use an innovation-based criterion, based on what appears to be the only indicator for which figures are available in respect of *all* countries whose applicants could potentially benefit from PCT fee reductions, namely, the number of PCT applications filed by applicants from a given country, ~~per million population,~~ over a given period of time.
34. Noting that, as at present, the fee reduction would only apply to applicants who are natural persons, it would appear most reasonable to use as the indicator the number of PCT applications filed by applicants who are natural persons, and not the overall number of applications filed by all applicants (natural persons or not).

35. While, admittedly, it could be argued that an innovation criterion based on only one indicator (PCT filings by applicants who are natural persons) is a rather weak basis for determining which country should benefit from PCT fee reductions, it would appear that such an additional criterion is needed so as to balance the relatively high threshold of 25,000 ~~20,000~~ US dollar set as the income-based criterion. Without such an additional balancing criterion, there would be the risk that countries with a relatively high (but still below the threshold) per capita gross domestic product *and* a relatively high number of PCT filings by applicants who are natural persons would benefit from a fee reduction which, in view of the high number of PCT filings, does not appear to be needed as a means for stimulating increased use of the PCT system.
36. More specifically, it is proposed that an international application should only benefit from the 90% fee reduction if it is filed by an applicant who is a natural person and who is a national of and resides in a State that, in addition to meeting the income-based criterion, is a State whose national and residents who are natural persons have filed less than 10 international applications per year (per million population) ~~per-year~~ or less than 50 international applications per year (in absolute numbers) according to the most recent 5-year average yearly filing figures published by the International Bureau (see the figures set out in the table in Annex I). It is proposed to use both indicators “international applications filed per year (in absolute numbers)” and “international applications filed per year (per million population)” (each in terms of number of international applications filed by natural persons) so as to avoid extreme effects in very small countries where only a handful of applications are needed to exceed the limit of “less than 10 international applications filed per year (per million population)”, and to require that a country need only meet one of those two indicators to comply with the innovation-based criterion.

### Proposal

37. Accordingly, it is proposed that an international application should benefit from the 90% fee reduction if it is filed by:
- (a) an applicant who is a natural person and who is a national of and resides in a State that is listed as being a State whose per capita gross domestic product (GDP) is below US\$ 25,000 ~~20,000~~, according to the most recent ten-year average per capita gross domestic product (GDP) figures at constant 2008 US\$ values published by the United Nations, *and* whose nationals and residents who are natural persons have filed less than 10 international applications per year (per million population) ~~per-year~~ or less than 50 international applications per year (in absolute numbers) according to the most recent 5-year average yearly filing figures published by the International Bureau; or
  - (b) an applicant, whether a natural person or not, who is a national of and resides in a State that is listed as being classified by the United Nations as a least developed country.
38. The full list of States which would qualify under either criterion (a) or (b) (or on the basis of both criteria) can be seen by the corresponding indication “(a)”and/or “(b)” in the third column of the table appearing in Annex I. Under the proposed new criteria, compared to the current criteria, 2 ~~4~~ countries (~~Bahrain, Oman,~~ Singapore and United Arab Emirates) which are eligible under the current criteria would no longer be eligible, whereas 7 ~~5~~ countries (Malta, Nauru, Palau, Portugal, Saudi Arabia, Slovenia and Suriname) which are not currently eligible would become eligible. The eligibility of all other countries would not change.
39. To reflect the changing economic conditions in States and possible changes in the usage of the PCT system, it is proposed that the lists of qualifying countries in each group (see paragraph 37(a) and (b)) should be updated *every five years* by the International Bureau in accordance with directives to be given by the Assembly (similar to directives given by the Assembly for the establishment of new amounts of certain PCT fees established in currencies other than Swiss francs in case of changes in the exchange rates between the currencies concerned (PCT Rules 15.2(d) and 16.1(d)). Revised lists would be made available to States

based on the relevant figures as they apply at the opening day of the session of the PCT Assembly taking place during the “revision year” and, subject to correction of errors in fact, the new list would come into effect from January 1 the following year.

40. A specific proposal for implementing this option, in the form of a draft amended Schedule of Fees, is set out in Annex II, together with associated draft directives set out in Annex III. The draft directives also include a mechanism whereby, if a State does not qualify for the reduction but new figures become available in-between ordinary sessions of the Assembly which show that it has become eligible, for example because its per capita gross domestic product (GDP) has fallen, that State may apply to be included in the list without waiting until the next “review session” of the Assembly (whereas States whose per capita gross domestic product (GDP) rise will retain the benefit of the reduction until the next normal updating of the list).
41. As to the entry into force of the amended Schedule of Fees, it is proposed that the amendments of the Schedule of Fees set out in Annex II shall enter into force on January 1, 2011, and be subject to the usual provisions concerning the amount payable where the amount of a fee has changed (Rule 15.4 with regard to the international filing fee: payable is the amount applicable on the date of receipt of the international application by the receiving Office; Rule 45*bis*.2(c) with regard to the supplementary search handling fee: payable is the amount applicable on the date on which the supplementary search handling fee is paid; and Rule 57.3(d) with regard to the handling fee under Chapter II: payable is the amount applicable on the date on which the handling fee is paid). Consequently, the reductions would apply as follows:
- (a) In the case of reductions to the international filing fee, the new reductions would apply to any international application received by the receiving Office on or after January 1, 2011. The old reductions would continue to apply to any international application received before that date, irrespective of what international filing date might later be given to such application (Rule 15.4).
  - (b) In the case of reductions to the handling fee and the supplementary search handling fee, the new reductions would apply to any international application in respect of which the fee was paid on or after January 1, 2011, irrespective of when the request for supplementary international search or the demand for international preliminary examination, respectively, was submitted (Rules 45*bis*.2(c) and 57.3(d)).

#### **Impact on PCT fee income of the proposed new criteria**

42. It is expected that the new set of criteria would not have a major impact on PCT fee income. Taking the 2008 PCT filing figures as a basis and applying the new criteria, ~~73~~ 76 international applications (~~3 from Bahrain, 0 from Oman,~~ 64 international applications from Singapore and 9 from the United Arab Emirates) which, under the old criteria, were at least potentially<sup>1</sup> eligible for the fee reduction would no longer have been eligible, whereas ~~53~~ 8 international applications would have at least potentially<sup>1</sup> become eligible (2 from Malta, 0 from Nauru, 0 from Palau, 20 from Portugal, 6 from Saudi Arabia, 25 from Slovenia and 0 from Suriname).

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<sup>1</sup> The fact that those international applications were filed by natural persons only does not automatically mean that they were eligible for the fee reduction. In order to be eligible for the fee reduction, all applicants must satisfy the criteria set out in sub-items 5(a) or (b) of the Schedule of Fees.

43. In this context, it is to be noted, however, that the overall number of eligible applications and the impact on PCT fee income is by no means negligible: in 2008, a total number of 3120 international applications were filed which were eligible for fee reductions under item 5 of the Schedule of Fees, resulting in more than 3.7 million Swiss francs in fee reductions granted to applicants from eligible developing and least developed countries.

*44. The Working Group is invited to consider the proposals contained in this document.*

[Annexes follow]

ANNEX I  
COUNTRY PROFILES

Country	Current PCT fee reduction	Proposed new PCT fee reduction	World Bank group	GDP per capita (US\$), 2008	GDP per capita (constant US\$), 5-year average 2004 - 2008	GDP per capita (constant US\$), 10-year average 1999 - 2008	Population (million inhabitants), 5-year average 2004 - 2008	PCT filings by all applicants (per million population), 5-year average 2004 - 2008	PCT filings by natural persons (per million population), 5-year average 2004 - 2008	PCT filings in 2008	PCT filings by natural persons, 5-year average 2004 - 2008	PCT filings by natural persons in 2008
Afghanistan	Yes	Yes (a) (b)	L	466	417	328	25.40	0.00	0.00	0	0.00	0
Albania	Yes	Yes (a)	LM	4174	3736	3298	3.12	0.13	0.06	0	0.20	0
Algeria	Yes	Yes (a)	LM	4959	4821	4507	33.36	0.21	0.18	10	6.00	10
Andorra	No	No	H	43975	42440	39843	0.08	44.29	29.53	7	2.40	5
Angola	Yes	Yes (a) (b)	LM	1942	1509	1233	17.08	0.00	0.00	0	0.00	0
Antigua and Barbuda	Yes*	Yes (a)(b)	H	14048	12653	11414	0.08	9.46	7.09	0	0.60	0
Argentina	Yes	Yes (a)	UM	8358	7331	6708	39.12	0.57	0.30	25	11.80	9
Armenia	Yes	Yes (a)	LM	3877	3202	2502	3.07	1.50	1.37	7	4.20	7
Australia	No	No	H	48253	47007	44861	20.62	95.46	20.52	1946	423.20	420
Austria	No	No	H	49596	47556	45674	8.27	107.37	21.27	954	175.80	174
Azerbaijan	Yes	Yes (a)	LM	5298	3865	2828	8.55	0.80	0.56	4	4.80	3
Bahamas	No	Yes (a)	H	22102	21964	22006	0.33	78.89	1.82	21	0.60	0
Bahrain	Yes*	Yes (a) <del>No</del>	H	28240	25732	23386	0.74	0.81	0.54	3	0.40	2
Bangladesh	Yes	Yes (a) (b)	L	494	451	410	155.41	0.00	0.00	0	0.00	0
Barbados	Yes*	Yes (a)	H	14422	13862	13148	0.25	1078.39	5.51	246	1.40	1
Belarus	Yes	Yes (a)	LM	6230	5193	4282	9.77	1.72	1.31	9	12.80	8
Belgium	No	No	H	47609	46253	44500	10.47	99.27	10.88	1133	114.00	56
Belize	Yes	Yes (a)	UM	4569	4492	4197	0.29	14.56	0.69	4	0.20	0
Benin	Yes	Yes (a) (b)	L	767	750	739	8.13	0.05	0.05	1	0.40	1
Bhutan	Yes	Yes (a) (b)	LM	1933	1649	1451	0.66	0.00	0.00	0	0.00	0
Bolivia	Yes	Yes (a)	LM	1723	1615	1549	9.35	0.09	0.06	0	0.60	0
Bosnia and Herzegovina	Yes	Yes (a)	LM	4874	4364	4359	3.78	2.12	2.06	9	7.80	9
Botswana	Yes	Yes (a)	UM	6108	5827	5307	1.87	0.11	0.00	1	0.00	0

## Key:

Yes/No Eligible (yes) or not eligible (no) for current fee reduction

Yes\* Eligible for fee reduction since July 1, 2008

Yes (a) Eligible for fee reductions due to proposed new criteria "GDP/PCT filings" (a)

Yes (a) (b) Eligible for proposed fee reductions due to new criteria "GDP/PCT filings" (a) and due to unchanged criterion "classification as a Least Developed Country (LDC)" (b)

H High income

UM Upper middle income

LM Lower middle income

L Low income

Country	Current PCT fee reduction	Proposed new PCT fee reduction	World Bank group	GDP per capita (US\$), 2008	GDP per capita (constant US\$), 5-year average 2004 - 2008	GDP per capita (constant US\$), 10-year average 1999 - 2008	Population (million inhabitants), 5-year average 2004 - 2008	PCT filings by all applicants (per million population), 5-year average 2004 - 2008	PCT filings by natural persons (per million population), 5-year average 2004 - 2008	PCT filings in 2008	PCT filings by natural persons, 5-year average 2004 - 2008	PCT filings by natural persons in 2008
Brazil	Yes	Yes (a)	UM	8311	7721	7308	188.04	1.86	0.74	472	139.00	193
Brunei Darussalam	No	No	H	37048	38156	38285	0.38	4.24	0.00	0	0.00	0
Bulgaria	Yes	Yes (a)	UM	6573	5790	5004	7.69	3.35	2.34	27	18.00	18
Burkina Faso	Yes	Yes (a) (b)	L	522	510	483	14.24	0.01	0.01	1	0.20	1
Burundi	Yes	Yes (a) (b)	L	138	135	136	7.61	0.13	0.13	0	1.00	0
Cambodia	Yes	Yes (a) (b)	L	769	674	567	14.10	0.00	0.00	0	0.00	0
Cameroon	Yes	Yes (a)	LM	1218	1194	1160	18.25	0.08	0.08	1	1.40	1
Canada	No	No	H	45166	44374	42631	32.62	78.22	11.54	2913	376.60	401
Cape Verde	Yes	Yes (a) (b)	LM	3439	3076	2770	0.48	0.00	0.00	0	0.00	0
Central African Republic	Yes	Yes (a) (b)	L	464	454	473	4.18	0.00	0.00	0	0.00	0
Chad	Yes	Yes (a) (b)	L	765	795	669	10.32	0.00	0.00	0	0.00	0
Chile	Yes	Yes (a)	UM	10091	9504	8779	16.47	0.86	0.23	27	3.80	12
China	Yes	Yes (a)	LM	3292	2740	2240	1297.76	3.04	0.84	6126	1087.20	1359
Colombia	Yes	Yes (a)	LM	5415	5049	4690	43.70	0.71	0.50	37	22.00	24
Comoros	Yes	Yes (a) (b)	L	802	828	834	0.63	0.00	0.00	0	0.00	0
Congo	Yes	Yes (a)	LM	2934	2835	2707	3.48	0.06	0.06	1	0.20	1
Costa Rica	Yes	Yes (a)	UM	6599	6039	5586	4.39	1.23	0.77	8	3.40	3
Côte d'Ivoire	Yes	Yes (a)	L	1137	1147	1202	19.69	0.01	0.00	0	0.00	0
Croatia	Yes	Yes (a)	UM	15677	14494	12996	4.44	16.14	9.78	56	43.40	22
Cuba	Yes	Yes (a)	LM	5596	4891	4245	11.20	1.48	0.04	11	0.40	0
Cyprus	No	No	H	31551	29964	28715	0.77	59.50	6.26	39	4.80	4
Czech Republic	Yes	Yes (a)	H	21036	19268	17386	10.24	11.86	3.56	156	36.40	35
Democratic People's Republic of Korea	Yes	Yes (a)	L	555	550	536	23.82	0.14	0.12	7	2.80	6
Democratic Republic of the Congo	Yes	Yes (a) (b)	L	181	169	162	60.80	0.01	0.00	2	0.00	0
Denmark	No	No	H	62520	61694	59687	5.43	215.25	13.04	1357	70.80	66
Djibouti	Yes	Yes (a) (b)	LM	1155	1086	1051	0.82	0.00	0.00	0	0.00	0
Dominica	Yes	Yes (a)	UM	5447	5126	4840	0.07	0.00	0.00	0	0.00	0
Dominican Republic	Yes	Yes (a)	LM	4574	4078	3766	9.67	0.14	0.04	5	0.40	1

Key:

Yes/No Eligible (yes) or not eligible (no) for current fee reduction

Yes\* Eligible for fee reduction since July 1, 2008

Yes (a) Eligible for fee reductions due to proposed new criteria "GDP/PCT filings" (a)

Yes (a) (b) Eligible for proposed fee reductions due to new criteria "GDP/PCT filings" (a) and due to unchanged criterion "classification as a Least Developed Country (LDC)" (b)

H High income

UM Upper middle income

LM Lower middle income

L Low income

Country	Current PCT fee reduction	Proposed new PCT fee reduction	World Bank group	GDP per capita (US\$), 2008	GDP per capita (constant US\$), 5-year average 2004 - 2008	GDP per capita (constant US\$), 10-year average 1999 - 2008	Population (million inhabitants), 5-year average 2004 - 2008	PCT filings by all applicants (per million population), 5-year average 2004 - 2008	PCT filings by natural persons (per million population), 5-year average 2004 - 2008	PCT filings in 2008	PCT filings by natural persons, 5-year average 2004 - 2008	PCT filings by natural persons in 2008
Ecuador	Yes	Yes (a)	LM	3900	3669	3353	13.20	0.36	0.30	4	4.00	2
Egypt	Yes	Yes (a)	LM	2031	1891	1754	78.61	0.58	0.52	43	41.20	40
El Salvador	Yes	Yes (a)	LM	3605	3394	3209	6.08	0.10	0.10	3	0.60	3
Equatorial Guinea	Yes	Yes (a) (b)	UM	27130	21931	16097	0.63	0.64	0.64	0	0.40	0
Eritrea	Yes	Yes (a) (b)	L	300	314	340	4.62	0.00	0.00	0	0.00	0
Estonia	Yes	Yes (a)	H	17298	16246	13699	1.35	15.76	2.38	35	3.20	4
Ethiopia	Yes	Yes (a) (b)	L	319	273	243	76.68	0.00	0.00	0	0.00	0
Fiji	Yes	Yes (a)	LM	4264	4394	4283	0.83	0.24	0.24	0	0.20	0
Finland	No	No	H	51409	48992	45899	5.26	365.69	14.97	2223	78.80	81
France	No	No	H	44675	43872	42584	63.21	97.60	7.88	7073	498.20	453
Gabon	Yes	Yes (a)	UM	9888	9671	9721	1.40	0.14	0.14	1	0.20	1
Gambia	Yes	Yes (a) (b)	L	636	607	611	1.57	0.00	0.00	0	0.00	0
Georgia	Yes	Yes (a)	LM	2970	2544	2093	4.41	1.45	1.22	9	5.40	6
Germany	No	No	H	44363	42683	41535	82.36	205.49	13.35	18855	1099.40	1123
Ghana	Yes	Yes (a)	L	709	655	608	22.39	0.04	0.04	3	0.80	3
Greece	No	No	H	31954	29955	27283	11.09	7.52	4.11	109	45.60	54
Grenada	Yes	Yes (a)	UM	6221	5947	5661	0.10	1.94	1.94	1	0.20	1
Guatemala	Yes	Yes (a)	LM	2848	2721	2647	13.04	0.25	0.21	14	2.80	13
Guinea	Yes	Yes (a) (b)	L	505	498	490	9.42	0.00	0.00	0	0.00	0
Guinea-Bissau	Yes	Yes (a) (b)	L	257	253	263	1.51	0.00	0.00	0	0.00	0
Guyana	Yes	Yes (a)	LM	1543	1448	1421	0.76	0.00	0.00	0	0.00	0
Haiti	Yes	Yes (a) (b)	L	717	710	738	9.57	0.00	0.00	0	0.00	0
Honduras	Yes	Yes (a)	LM	1957	1835	1701	7.03	0.11	0.03	3	0.20	0
Hungary	Yes	Yes (a)	UM	15448	14859	13498	10.06	15.55	6.72	175	67.60	67
Iceland	No	No	H	52490	51277	47500	0.30	173.93	17.19	66	5.20	4
India	Yes	Yes (a)	L	1061	933	814	1147.55	0.73	0.14	1070	164.80	250
Indonesia	Yes	Yes (a)	LM	2247	2054	1880	221.92	0.04	0.02	10	4.60	7
Iran (Islamic Republic of)	Yes	Yes (a)	LM	4728	4370	3951	71.62	0.03	0.02	2	1.40	1
Iraq	Yes	Yes (a)	LM	788	727	711	28.85	0.01	0.01	0	0.20	0
Ireland	No	No	H	61314	60582	56041	4.27	92.68	11.38	469	48.60	51

Key:

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Yes\* Eligible for fee reduction since July 1, 2008

Yes (a) Eligible for fee reductions due to proposed new criteria "GDP/PCT filings" (a)

Yes (a) (b) Eligible for proposed fee reductions due to new criteria "GDP/PCT filings" (a) and due to unchanged criterion "classification as a Least Developed Country (LDC)" (b)

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Country	Current PCT fee reduction	Proposed new PCT fee reduction	World Bank group	GDP per capita (US\$), 2008	GDP per capita (constant US\$), 5-year average 2004 - 2008	GDP per capita (constant US\$), 10-year average 1999 - 2008	Population (million inhabitants), 5-year average 2004 - 2008	PCT filings by all applicants (per million population), 5-year average 2004 - 2008	PCT filings by natural persons (per million population), 5-year average 2004 - 2008	PCT filings in 2008	PCT filings by natural persons, 5-year average 2004 - 2008	PCT filings by natural persons in 2008
Israel	No	No	H	28292	26709	25660	6.81	233.13	39.02	1905	265.80	322
Italy	No	No	H	38640	38660	38153	58.97	44.34	7.94	2885	468.40	517
Jamaica	Yes	Yes (a)	LM	5571	5561	5434	2.68	0.15	0.07	0	0.20	0
Japan	No	No	H	38578	37436	35992	127.39	202.04	4.59	28785	585.20	585
Jordan	Yes	Yes (a)	LM	3466	3163	2885	5.76	1.35	0.00	7	0.00	0
Kazakhstan	Yes	Yes (a)	UM	8535	7607	6264	15.30	0.68	0.51	4	7.80	2
Kenya	Yes	Yes (a)	L	788	758	730	36.80	0.13	0.05	2	2.00	1
Kiribati	Yes	Yes (a) (b)	LM	804	809	810	0.09	0.00	0.00	0	0.00	0
Kuwait	No	No	H	54152	50911	45868	2.77	1.01	0.72	3	2.00	1
Kyrgyzstan	Yes	Yes (a)	L	934	851	786	5.29	0.15	0.11	0	0.60	0
Lao People's Democratic Republic	Yes	Yes (a) (b)	L	858	769	685	5.99	0.00	0.00	0	0.00	0
Latvia	Yes	Yes (a)	UM	14956	13689	11285	2.28	7.54	3.86	20	8.80	6
Lebanon	Yes	Yes (a)	UM	6797	6205	6016	4.12	0.44	0.19	1	0.80	0
Lesotho	Yes	Yes (a) (b)	LM	788	735	689	2.01	0.00	0.00	0	0.00	0
Liberia	Yes	Yes (a) (b)	L	219	205	235	3.49	0.06	0.00	0	0.00	0
Libyan Arab Jamahiriya	Yes *	Yes (a)	UM	14430	13259	12057	6.05	0.03	0.03	1	0.20	1
Liechtenstein	No	No	H	141114	133225	129026	0.04	3638.00	39.98	374	1.40	1
Lithuania	Yes	Yes (a)	UM	14244	12471	10419	3.38	3.43	2.01	18	6.80	12
Luxembourg	No	No	H	111743	108057	100813	0.47	325.41	9.37	227	4.40	3
Madagascar	Yes	Yes (a) (b)	L	488	465	456	18.11	0.03	0.03	1	0.60	1
Malawi	Yes	Yes (a) (b)	L	278	256	242	14.05	0.00	0.00	0	0.00	0
Malaysia	Yes	Yes (a)	UM	8197	7651	7032	26.09	3.52	1.10	205	28.80	57
Maldives	Yes	Yes (a) (b)	LM	4131	3673	3220	0.30	0.00	0.00	0	0.00	0
Mali	Yes	Yes (a) (b)	L	677	646	607	12.12	0.02	0.02	0	0.20	0
Malta	No	Yes (a)	H	20254	19370	18801	0.40	32.16	1.48	24	0.60	2
Marshall Islands	Yes	Yes (a)	LM	2737	2749	2656	0.06	13.78	0.00	0	0.00	0
Mauritania	Yes	Yes (a) (b)	L	1017	938	849	3.06	0.00	0.00	0	0.00	0
Mauritius	Yes	Yes (a)	UM	7450	6889	6410	1.26	5.55	0.32	3	0.40	1
Mexico	Yes	Yes (a)	UM	9964	9630	9252	106.41	1.55	1.00	213	106.60	117

Key:

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Yes\* Eligible for fee reduction since July 1, 2008

Yes (a) Eligible for fee reductions due to proposed new criteria "GDP/PCT filings" (a)

Yes (a) (b) Eligible for proposed fee reductions due to new criteria "GDP/PCT filings" (a) and due to unchanged criterion "classification as a Least Developed Country (LDC)" (b)

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L Low income

Country	Current PCT fee reduction	Proposed new PCT fee reduction	World Bank group	GDP per capita (US\$), 2008	GDP per capita (constant US\$), 5-year average 2004 - 2008	GDP per capita (constant US\$), 10-year average 1999 - 2008	Population (million inhabitants), 5-year average 2004 - 2008	PCT filings by all applicants (per million population), 5-year average 2004 - 2008	PCT filings by natural persons (per million population), 5-year average 2004 - 2008	PCT filings in 2008	PCT filings by natural persons, 5-year average 2004 - 2008	PCT filings by natural persons in 2008
Micronesia (Federated States of)	Yes	Yes (a)	LM	2154	2356	2369	0.11	0.00	0.00	0	0.00	0
Moldova	Yes	Yes (a)	LM	1664	1468	1234	3.72	1.29	1.18	5	4.40	3
Monaco	No	No	H	211501	178491	164820	0.03	411.78	147.50	17	4.80	11
Mongolia	Yes	Yes (a)	L	1991	1724	1501	2.58	0.70	0.23	3	0.60	3
Montenegro	Yes	Yes (a)	UM	7744	6116	4408	0.62	0.64	0.64	0	0.40	0
Morocco	Yes	Yes (a)	LM	2740	2557	2346	30.87	0.39	0.25	16	7.80	10
Mozambique	Yes	Yes (a) (b)	L	440	399	354	21.35	0.00	0.00	0	0.00	0
Myanmar	Yes	Yes (a) (b)	L	578	536	487	48.75	0.00	0.00	1	0.20	1
Namibia	Yes	Yes (a)	LM	4143	3950	3624	2.05	0.59	0.29	0	0.60	0
Nauru	No	Yes (a)	[UM]	2396	3261	3932	0.01	0.00	0.00	0	0.00	0
Nepal	Yes	Yes (a) (b)	L	465	441	425	27.75	0.00	0.00	0	0.00	0
Netherlands	No	No	H	52699	50363	48638	16.39	269.74	7.37	4341	120.80	106
New Zealand	No	No	H	29879	29578	28092	4.15	86.84	19.52	359	81.00	78
Nicaragua	Yes	Yes (a)	LM	1228	1182	1122	5.53	0.00	0.00	0	0.00	0
Niger	Yes	Yes (a) (b)	L	354	345	336	13.64	0.00	0.00	0	0.00	0
Nigeria	Yes	Yes (a)	L	1450	1269	1050	144.33	0.01	0.01	0	1.00	0
Norway	No	No	H	94791	91895	88172	4.68	124.88	15.64	646	73.20	50
Oman	Yes *	Yes (a) <del>No</del>	UM	18879	20685	20061	2.67	0.22	0.15	0	0.40	0
Pakistan	Yes	Yes (a)	L	1010	940	862	169.53	0.01	0.00	0	0.20	0
Palau	No	Yes (a)	UM	8812	8284	7994	0.02	0.00	0.00	0	0.00	0
Panama	Yes	Yes (a)	UM	6793	5884	5331	3.29	4.32	0.12	9	0.40	0
Papua New Guinea	Yes	Yes (a)	L	1218	1144	1141	6.27	0.03	0.03	0	0.20	0
Paraguay	Yes	Yes (a)	LM	2581	2408	2337	6.02	0.03	0.03	0	0.20	0
Peru	Yes	Yes (a)	LM	4471	3886	3526	28.17	0.04	0.02	2	0.60	1
Philippines	Yes	Yes (a)	LM	1866	1739	1612	87.11	0.21	0.16	13	14.00	8
Poland	Yes	Yes (a)	UM	13855	12445	11255	38.17	2.83	1.04	128	39.60	30
Portugal	No	Yes (a) <del>No</del>	H	22805	22584	22329	10.59	6.89	1.61	100	17.00	20
Qatar	No	No	H	88990	86114	83032	1.02	0.39	0.39	0	0.40	0
Republic of Korea	No	No	H	19296	18066	16413	47.76	122.09	27.02	7900	1290.40	1519

Key:

Yes/No Eligible (yes) or not eligible (no) for current fee reduction

Yes\* Eligible for fee reduction since July 1, 2008

Yes (a) Eligible for fee reductions due to proposed new criteria "GDP/PCT filings" (a)

Yes (a) (b) Eligible for proposed fee reductions due to new criteria "GDP/PCT filings" (a) and due to unchanged criterion "classification as a Least Developed Country (LDC)" (b)

H High income

UM Upper middle income

LM Lower middle income

L Low income

Country	Current PCT fee reduction	Proposed new PCT fee reduction	World Bank group	GDP per capita (US\$), 2008	GDP per capita (constant US\$), 5-year average 2004 - 2008	GDP per capita (constant US\$), 10-year average 1999 - 2008	Population (million inhabitants), 5-year average 2004 - 2008	PCT filings by all applicants (per million population), 5-year average 2004 - 2008	PCT filings by natural persons (per million population), 5-year average 2004 - 2008	PCT filings in 2008	PCT filings by natural persons, 5-year average 2004 - 2008	PCT filings by natural persons in 2008
Romania	Yes	Yes (a)	UM	9518	8245	7109	21.54	0.99	0.72	15	15.60	12
Russian Federation	Yes	Yes (a)	UM	11858	10358	8821	142.58	4.79	3.12	803	444.80	495
Rwanda	Yes	Yes (a) (b)	L	458	407	374	9.24	0.00	0.00	0	0.00	0
Saint Kitts and Nevis	Yes	Yes (a)	UM	10874	10375	9755	0.05	20.09	0.00	1	0.00	0
Saint Lucia	Yes	Yes (a)	UM	6016	5839	5554	0.17	1.20	1.20	1	0.20	1
Saint Vincent and the Grenadines	Yes	Yes (a)	UM	5515	4927	4448	0.11	3.67	0.00	1	0.00	0
Samoa	Yes	Yes (a) (b)	LM	2988	2919	2651	0.18	5.59	0.00	3	0.00	0
San Marino	No	No	H	60925	58873	57114	0.03	248.79	6.55	10	0.20	0
Sao Tome and Principe	Yes	Yes (a) (b)	L	1108	1020	920	0.16	0.00	0.00	0	0.00	0
Saudi Arabia	No	Yes	H	18555	17970	17245	24.14	1.91	0.13	61	3.20	6
Senegal	Yes	Yes (a) (b)	L	1088	1072	1027	11.59	0.14	0.10	0	1.20	0
Serbia	Yes	Yes (a)	UM	6871	6143	5399	7.43	1.83	1.67	37	12.40	35
Seychelles	Yes*	Yes (a)	UM	11044	10163	9918	0.08	108.38	0.00	16	0.00	0
Sierra Leone	Yes	Yes (a) (b)	L	418	392	341	5.26	0.11	0.00	1	0.00	0
Singapore	Yes*	No	H	39423	37614	33996	4.39	111.95	11.08	563	48.60	64
Slovakia	Yes	Yes (a)	UM	17585	15190	13302	5.39	6.27	3.08	41	16.60	17
Slovenia	No	Yes (a) No	H	26987	24630	22379	2.01	41.88	9.67	107	19.40	25
Solomon Islands	Yes	Yes (a) (b)	L	1284	1175	1167	0.49	0.00	0.00	0	0.00	0
Somalia	Yes	Yes (a) (b)	L	298	296	294	8.54	0.00	0.00	0	0.00	0
South Africa	Yes	Yes (a)	UM	5566	5234	4883	48.61	8.23	4.61	399	224.00	199
Spain	No	No	H	36061	34963	33300	43.53	26.81	7.25	1389	315.60	357
Sri Lanka	Yes	Yes (a)	LM	2030	1825	1644	19.71	0.22	0.20	10	4.00	9
Sudan	Yes	Yes (a) (b)	L	1700	1504	1274	39.58	0.10	0.08	3	3.20	1
Suriname	No	Yes (a)	LM	5569	5076	4630	0.50	0.00	0.00	0	0.00	0
Swaziland	Yes	Yes (a)	LM	2369	2286	2184	1.14	0.18	0.00	0	0.00	0
Sweden	No	No	H	52035	50677	47819	9.11	370.18	21.51	4136	196.00	207
Switzerland	No	No	H	65200	62491	60605	7.47	464.82	29.78	3749	222.60	238
Syrian Arab Republic	Yes	Yes (a)	LM	2572	2473	2369	19.83	0.23	0.23	5	4.60	5
Tajikistan	Yes	Yes (a)	L	4407	4006	3747	2.04	1.57	1.47	2	3.00	2

Key:

Yes/No	Eligible (yes) or not eligible (no) for current fee reduction	H	High income
Yes*	Eligible for fee reduction since July 1, 2008	UM	Upper middle income
Yes (a)	Eligible for fee reductions due to proposed new criteria "GDP/PCT filings" (a)	LM	Lower middle income
Yes (a) (b)	Eligible for proposed fee reductions due to new criteria "GDP/PCT filings" (a) and due to unchanged criterion "classification as a Least Developed Country (LDC)" (b)	L	Low income

Country	Current PCT fee reduction	Proposed new PCT fee reduction	World Bank group	GDP per capita (US\$), 2008	GDP per capita (constant US\$), 5-year average 2004 - 2008	GDP per capita (constant US\$), 10-year average 1999 - 2008	Population (million inhabitants), 5-year average 2004 - 2008	PCT filings by all applicants (per million population), 5-year average 2004 - 2008	PCT filings by natural persons (per million population), 5-year average 2004 - 2008	PCT filings in 2008	PCT filings by natural persons, 5-year average 2004 - 2008	PCT filings by natural persons in 2008
TFYR of Macedonia	Yes	Yes (a)	LM	363	357	318	6.64	0.00	0.00	0	0.00	0
Thailand	Yes	Yes (a)	LM	4187	3867	3502	66.42	0.17	0.07	17	4.80	3
Timor-Leste	Yes	Yes (a) (b)	L	518	486	519	1.03	0.00	0.00	0	0.00	0
Togo	Yes	Yes (a) (b)	L	446	450	459	6.15	0.00	0.00	0	0.00	0
Tonga	Yes	Yes (a)	LM	2891	2928	2897	0.10	0.00	0.00	0	0.00	0
Trinidad and Tobago	Yes*	Yes (a)	H	18153	16297	13687	1.32	1.21	0.91	0	1.20	0
Tunisia	Yes	Yes (a)	LM	3876	3534	3218	9.98	0.62	0.28	5	2.80	3
Turkey	Yes	Yes (a)	UM	10031	9537	8617	72.09	3.64	0.74	393	53.40	95
Turkmenistan	Yes	Yes (a)	LM	1754	1476	1304	4.91	0.04	0.04	1	0.20	1
Tuvalu	Yes	Yes (a) (b)	[LM]	3213	3128	2932	0.01	0.00	0.00	0	0.00	0
Uganda	Yes	Yes (a) (b)	L	500	452	416	29.68	0.00	0.00	0	0.00	0
Ukraine	Yes	Yes (a)	LM	3921	3528	2946	46.62	1.80	1.53	99	71.20	87
United Arab Emirates	Yes*	No	H	63966	58925	54110	4.22	4.69	2.65	23	11.20	9
United Kingdom	No	No	H	43544	42350	40302	60.58	86.75	10.90	5513	660.60	645
United Republic of Tanzania	Yes	Yes (a) (b)	L	502	463	420	39.05	0.00	0.00	0	0.00	0
United States	No	No	H	45230	44417	42796	305.72	161.75	12.74	51673	3895.40	3769
Uruguay	Yes	Yes (a)	UM	9610	8391	7926	3.33	1.50	0.24	6	0.80	1
Uzbekistan	Yes	Yes (a)	L	946	829	737	26.61	0.04	0.03	2	0.80	1
Vanuatu	Yes	Yes (a) (b)	LM	2388	2222	2194	0.22	1.80	0.90	0	0.20	0
Venezuela	Yes	Yes (a)	UM	11376	10210	9460	27.19	0.13	0.06	4	1.60	2
Vietnam	Yes	Yes (a)	L	1041	926	804	85.08	0.06	0.04	6	3.60	4
Yemen	Yes	Yes (a) (b)	L	1356	1317	1280	21.65	0.00	0.00	0	0.00	0
Zambia	Yes	Yes (a) (b)	L	1144	1069	1001	12.03	0.00	0.00	0	0.00	0
Zimbabwe	Yes	Yes (a)	L	314	376	429	12.47	0.06	0.06	0	0.80	0

[Annex II follows]

Key:

Yes/No	Eligible (yes) or not eligible (no) for current fee reduction	H	High income
Yes*	Eligible for fee reduction since July 1, 2008	UM	Upper middle income
Yes (a)	Eligible for fee reductions due to proposed new criteria "GDP/PCT filings" (a)	LM	Lower middle income
Yes (a) (b)	Eligible for proposed fee reductions due to new criteria "GDP/PCT filings" (a) and due to unchanged criterion "classification as a Least Developed Country (LDC)" (b)	L	Low income

## ANNEX II

## PROPOSED AMENDMENT OF THE REGULATIONS UNDER THE PCT:

## SCHEDULE OF FEES

*(as proposed to be amended with effect from January 1, 2011)*

Fees	Amounts
1. International filing fee: (Rule 15.2)	1,330 Swiss francs plus 15 Swiss francs for each sheet of the international application in excess of 30 sheets
2. Supplementary search handling fee: (Rule 45bis.2)	200 Swiss francs
3. Handling fee: (Rule 57.2)	200 Swiss francs

## Reductions

4. The international filing fee is reduced by the following amount if the international application is, as provided for in the Administrative Instructions, filed:
- |   |                  |
|---|------------------|
| (a) on paper together with a copy in electronic form, in character coded format, of the request and the abstract: | 100 Swiss francs |
| (b) in electronic form, the request not being in character coded format:  | 100 Swiss francs |
| (c) in electronic form, the request being in character coded format:  | 200 Swiss francs |
| (d) in electronic form, the request, description, claims and abstract being in character coded format:            | 300 Swiss francs |
5. The international filing fee under item 1 (where applicable, as reduced under item 4), the supplementary search handling fee under item 2 and the handling fee under item 3 are reduced by 90% if the international application is filed by:
- (a) an applicant who is a natural person and who is a national of and resides in a State that is listed as being a State whose per capita gross domestic product national income is below US\$ 25,000 ~~US\$3,000~~ (according to the most recent ten-year average per capita gross domestic product national income figures at constant 2008 US\$ values published used by the United Nations), and whose nationals and residents who are natural persons have filed less than 10 international applications per year (per million population) or 50 international applications per year (in absolute numbers) according to the most recent 5-year average yearly filing figures published by the International Bureau for determining its scale of assessments for the contributions payable for the years 1995, 1996 and 1997) or, pending a decision by the PCT Assembly on the eligibility criteria specified in this sub-paragraph, one of the following States: Antigua and Barbuda, Bahrain, Barbados, Libyan Arab Jamahiriya, Oman, Seychelles, Singapore, Trinidad & Tobago and United Arab Emirates; or
- (b) an applicant, whether a natural person or not, who is a national of and resides in a State that is listed as being classified by the United Nations ~~classed~~ as a least developed country by the United Nations;

provided that, if there are several applicants, each must satisfy the criteria set out in either sub-item (a) or (b). The lists of States referred to in sub-items (a) and (b) shall be updated by the Director General at least every five years according to directives given by the Assembly.

[Annex III follows]

## ANNEX III

PROPOSED DIRECTIVES FOR UPDATING THE LISTS OF STATES  
MEETING THE CRITERIA FOR REDUCTION OF CERTAIN PCT FEES

The Assembly establishes in the following terms the directives referred to in the Schedule of Fees, it being understood that, in the light of experience, the Assembly may at any time modify these directives:

- (1) Five years after the establishment of the first list of States which meet the criteria referred to in items 5(a) and (b) of the Schedule of Fees, and every five years thereafter, the Director General shall prepare draft lists of States which appear to meet the criteria referred to in:
  - (i) item 5(a) of the Schedule of Fees according to the most recent ten year average per capita gross domestic product figures from the United Nations published at least two weeks prior to the first day of that session of the Assembly;
  - (ii) item 5(b) of the Schedule of Fees according to the most recent list of countries classified as least developed countries by the United Nations published at least two weeks prior to the first day of that session of the Assembly;

and shall make those lists available to the PCT Contracting States and States entitled to observer status in the Assembly for comment before the end of that session of the Assembly.

- (2) Following the end of that session of the Assembly, the Director General shall establish new lists, taking into account any comments received. The revised lists shall become applicable on the first day of the calendar year subsequent to that session and shall be used to determine, in accordance with Rules 15.4, 45*bis*.2(c) and 57.3(d), the eligibility for the fee reduction under items 5(a) and 5(b), respectively, of the Schedule of Fees of any relevant fee payable. Any revised list shall be published in the Gazette.
- (3) Where any State is not included in a particular list but subsequently becomes eligible for inclusion in that list due to the publication, after the expiration of the period of two weeks prior to the first day of the ordinary session of the Assembly referred to in paragraph 1, above, of revised per capita national income figures by the United Nations or of a revised list of States that are being classified as least developed countries by the United Nations, that State may request the Director General to revise the relevant list of States. Any such revised list shall become applicable on a date to be specified by the Director General, that date being no more than 3 months from the date of receipt of the request. Any revised list shall be published in the Gazette.

[End of Annex III and of document]