



Permanent Mission of Brazil in Geneva

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No. 909

The Permanent Mission of Brazil in Geneva presents its compliments to the World Intellectual Property Organization, and wishes to refer to the Questionnaire on the Draft Program and Budget for the 2008/2009 Biennium, of October 4, 2006, circulated to Members by the International Bureau.

2. The Mission of Brazil acknowledges with appreciation that by issuing the Questionnaire the International Bureau has taken a very important first step towards implementing decisions of the WIPO Assemblies of 2005 and 2006 on a new mechanism to further involve Members States in the discussion and follow up of the Organization's program and budgets, beginning with the one for the 2008-2009 biennium.

3. Account taken of the deadline of November 3, 2006, the Mission of Brazil hereby presents, in the document attached, its preliminary responses to the Questionnaire, to be further developed as the budgetary process for 2008-2009 proceeds in accordance with the newly established mechanism.

Geneva, November 3, 2006

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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

QUESTIONNAIRE

ON THE

DRAFT PROGRAM AND BUDGET FOR THE 2008/09 BIENNIUM

I. BACKGROUND

This questionnaire is the first step of the new mechanism for the preparation and follow up of the Program and Budget of the Organization following the adoption of that mechanism by the 2006 session of the Assemblies of the Member States, as illustrated in Annex I.

Member States' replies to the questionnaire shall be published on the website (see below) in the original language, and analyzed by the Secretariat. These replies will guide the Secretariat in the preparation of the Director General's outline document on the next program and budget proposal which will be reviewed at the informal session of the Program and Budget Committee scheduled to take place in December 2006.

II. QUESTIONS

QUESTION 1: STRATEGIC GOALS

The Program and Budget for the 2006/07 Biennium is elaborated on the basis of five strategic goals. These are:

- Strategic Goal One: To Promote an IP Culture
- Strategic Goal Two: To Integrate IP in National Development Policies and Programs
- Strategic Goal Three: Progressive Development of International IP Law
- Strategic Goal Four: Delivery of Quality Services in Global IP Protection Systems
- Strategic Goal Five: Greater Efficiency of Management and Administrative Support Processes within WIPO

Does your Government consider that the program and budget for the 2008/09 biennium should continue to be based on the same strategic goals? If not, please elaborate.

The main objective of The Organization's program and budget for the 2008/2009 biennium should be implementation and monitoring of WIPO's mandate, as stated in the Agreement of 1974 Between WIPO and the United Nations, in particular its responsibility as a UN Specialized Agency for "[...]promoting creative intellectual activity and for facilitating the transfer of technology related to industrial property to the developing countries in order to accelerate economic, social and cultural development, subject to the competence and responsibilities of the United Nations and its organs, particularly the United Nations Conference on Trade and Development, the United Nations Development Program and the United Nations Industrial Development Organization, as well as of the United Nations Educational, Scientific and Cultural Organization and of other agencies within the United Nations system" (Article 1 of the 1974 Agreement).

The goals of WIPO, as set out in its Convention of 1967, adopted before it became a UN Specialized Agency, should be revised in practice and updated in light of the 1974 Agreement with the UN, in order to reflect fully WIPO's current role and mission as a member of the UN family of specialized agencies, which by definition are formally committed to all UN development related recommendations, policy guidelines, and objectives.

New models for promoting scientific research, technological innovation or creative intellectual activity based, *inter alia*, on collective ownership, collaborative research, open access and standards, or creative commons type licenses are being considered, developed and applied with positive and more balanced results in many different countries and under diverse conditions and circumstances. These initiatives open vast new fields for debate and action within the WIPO mandate of 1974, and are promising alternatives to addressing the challenges of innovation and creativity in the 21st century.

The strategic goals of WIPO must be cognizant of and reflect the new trends and concerns developing countries and other stakeholders – including non-rights holders – have been articulating with regard to improving – in legal and practical terms – the public interest flexibilities, limitations and exceptions, disclosure and transfer of technology provisions and competition policy clauses inherent to the international intellectual property legal framework. The objective is to improve public access to knowledge, information, science, research, education, culture, health, food, among other goods and services, material or immaterial, which are relevant to promoting creative intellectual activity in a context of development.

The WIPO Development Agenda, proposed by a group of developing Member States, must be adequately reflected in substance in the strategy for the 2008/2009 biennium, through sufficient provision of funds for financing debate, formulation and implementation of a program of work as agreed by Members. In particular, development issues should not be equated to technical assistance or cooperation, but understood and elaborated on as a horizontal concern, relevant to all programs and activities within the Organization, in particular the norm-setting ones.

The need to strike and maintain an adequate balance in the IP system between the public interest, in particular of developing countries, and those of private rights holders, must constitute a priority element of WIPO's strategic goals.

The strategic goals or objectives of the next biennium programs should be the following:

Strategic goal No. 1:

To promote balanced systems of intellectual property in regards to the relationship between the public interest and the private rights conferred, and to explore other models for innovation and promotion of creative intellectual activity and facilitating of transfer of technology, not necessary based on the protection of private rights of a monopolistic nature.

Strategic goal No. 2:

To evolve the international IP legal framework so that it becomes more supportive of national development policies and programs by means of development-friendly approaches to fostering creative intellectual activities and facilitating transfer of technology.

Strategic goal No. 3:

To adapt the international IP legal framework and WIPO activities in general to the different national policy objectives of WIPO members, taking into account, in particular, their different levels of economic, social and technological development.

Strategic goal No. 4:

Efficient, transparent and cost-effective administration of international registration systems administered by WIPO.

Strategic goal No. 5:

Improve transparency, cost-effectiveness and accountability to Members of WIPO's internal management and administration.

QUESTION 2: PROGRAMS

./. The 2006/07 Program and Budget consists of 31 programs organized under the five strategic goals referred to above. This is illustrated in Annex II (Strategic Framework). Does your Government consider that the 2008/09 Program and Budget should continue to be based on the same programs? Should any program(s) be added? If so, please explain which ones and why. In your opinion, what would be the objective of any suggested new program and what would be the expected results (measurable outcomes)? Should certain programs or groups of programs be consolidated? If so, how?

Transparency should be the main guiding principle for the scheduling of activities and allocation of resources. Therefore, the program and budget should be as clear as possible with regards to what is being sought under each specific program and

individual activity, what it will cost, how much human and financial resources will be allocated to it, what are the concrete actions foreseen, by whom they will be taken and where.

Regarding technical cooperation, the practice of breaking up resources and corresponding activities for assistance to developing countries and LDCs under several different programs across the whole of the program-and budget should be revised. Because of such practice it has become very difficult for Members to assess the exact overall amount and impact on the program and budget of resources, both human and financial, destined to such activities. For instance, the item travel and procurement can be seen in various programs notwithstanding the existence of a specific program for that purpose.

Programs and resource allocation should be explicitly and unequivocally linked to formal decisions by the WIPO membership adopted in the competent bodies of the Organization. The Program and budget committee should only take decisions regarding issues within its competence.

Clearly, there is need to reformulate thoroughly for the 2008-2009 program and budget the overall number, content, and titles of the 31 programs contained in the 2006-2007 program and budget in light of the parameters set out in answers given above. There is room for streamlining and merging of repetitious, overlapping or similar programs in order to gain clarity and a better sense of purpose.

Unfortunately, several problems regarding the substance of programs included in the ongoing 2006-2007 program and budget have not been adequately addressed due to a lack of opportunity, time wise and procedurally, for many members to give their full informed opinion and specific inputs on these matters in the period that led to the adoption of that document in the 2005 General Assembly. It is important to recall, in this respect, the intervention made on behalf of developing countries during the consideration of the 2006-2007 program and budget by the 41st Series of WIPO Assemblies:

The Delegation of Brazil, speaking on behalf of the Delegations of Argentina, Bolivia, Brazil, Cuba, Ecuador, the Islamic Republic of Iran, Peru, Sierra Leone, South Africa, Tanzania and Venezuela, noted that the body established in WIPO to address and recommend to the General Assembly the Program and Budget of the Organization was the Program and Budget Committee (PBC), and that notwithstanding its responsibility in the budgetary process, this Committee had held a three-day meeting only in April to analyze and formulate recommendations to this General Assembly on the Program and Budget 2006-2007 (a proposal by the Secretariat). The countries on behalf of which the Delegation spoke had clearly identified the shortcomings of the Program and Budget Committee and noted that in practice superficial debate of the financial aspect of the budget had been held, insufficient time to analyze the document had been provided for, the distribution of the document itself had been done only a few days before the meeting and, in their view, information provided in support of the proposal had been insufficient. Additionally, although financial and programmatic aspects of the proposal were equally important, the programmatic aspects proposed by the Secretariat

for a whole biennium had never been a matter of discussion, neither in the PBC nor in other bodies. In the view of the said countries, it was obvious that the current practice of calling for only a meeting of very short duration to discuss the budget did not allow Member States time for the elaboration of recommendations on a responsible and informed basis. Therefore, the said countries believed that the PBC should meet on a regular basis, and should hold as many meetings as necessary, to address all the issues of its competence in an appropriate way, and that dedicated budget analysis would facilitate the inherent control functions and responsibilities of Member States and substantially improve allocation of resources in the most transparent and efficient way. The Program and Budget Committee had recognized in its April session the need for a new mechanism to involve Member States in the drafting of the programmatic and budgetary aspects and in the discussions and follow-up of the Program and Budget. In this sense, the said countries proposed that the General Assembly should decide that the Program and Budget Committee should start, as it had already been agreed in the Committee, discussions for the implementation of such a mechanism, to be operative for the consideration of the Program and Budget for 2008-2009, and that the PBC should submit a proposal for its adoption by the next General Assembly in 2006. Finally, a decision had been taken, as contained in paragraph 174, subparagraph 3 of the report of the April session of the PBC, but this recommendation had not been reflected in any of the proposed decisions submitted to the Assembly. The following text to implement the Program and Budget Committee's recommendation, as referred to above, should therefore be considered and adopted by the present session of the General Assembly: "The General Assembly decides that adjustments to the Program and Budget for 2006-2007 shall be carried out in order to take into account any programmatic and budgetary implications resulting from on-going discussions on the WIPO Development Agenda and other issues." [Paragraph 161 of the General Report adopted by the 41st series of meetings of the Assemblies of WIPO, document A/41/17, October 5, 2005.]

This procedural shortcoming is precisely what the current process of consultation, by means of this questionnaire, is attempting to redress, as per decision adopted at the 41st Series of WIPO Assemblies, which:

[...(vi)] endorsed the recommendation contained in paragraph 174, subparagraph 5 of the report of the eighth session of the Program and Budget Committee (document WO/PBC/8/5 annexed to document A/41/5) whereby the Program and Budget Committee will include in the agenda of its next regular session an item on a new mechanism that would involve Member States in the discussion and follow up of the Program and Budget, beginning with the Program and Budget for 2008-2009, and decided that such a mechanism should be presented to the General Assemblies 2006 session for approval.

In light of the above reservations, and notwithstanding disagreement with parts of the content itself of the ongoing 2006-2007 program and budget, and the way in which they are drafted and the views on IP that they reflect, the following preliminary comments can be made:

Program 1: Public outreach and communication: The high level of expenditures envisaged for this program should be reconsidered. Its objectives and the way to achieve them should be further debated among Members with a view to better defining the scope, the nature and purpose of this program in the 2008-2009 program and budget. Furthermore, this program could be merged with program 2.

Program 2: External coordination: The inclusion of this program in the 2008-2009 program and budget should be discussed in light of additional information by the Secretariat regarding activities developed by WIPO'S coordinating offices outside Geneva, and on the premise that a mechanism will be proposed and adopted for Member States to adequately monitor and assess such activities, their objectives and cost-effectiveness.

Program 3: Strategic use of IP for development: The "challenges", "expected results", "performance indicators" and "actions" presented under this program are premised on the controversial idea that the more IP awareness and protection the better for development. On the other hand, this program should address how the flexibilities existing in the IP system can be strategically used to steer countries' public policies towards development, in accordance with each Members' needs, priorities, institutional capacities and level of development. In this context, the program should focus on and disseminate experiences of countries – both developed and developing - that have implemented public policies based on the flexibilities provided by the IP system, with a view to strengthening the abilities of all Members, in particular developing ones, to making the most effective use possible of such flexibilities.

Program 5: IP and public policy: As has been noted above, many Members consider that IP can have a negative impact on public policies. This program, however, appears to establish an unqualified positive link between more IP protection on the one hand and better public policies, on the other -- some kind of automatic positive feed-back mechanism promoted through the IP system between the private and the public spheres, not necessarily to be verified empirically in the real world, especially not in developing countries. This program needs to be thoroughly revised, taking into account the complexities and sensitivities that many Members have been pointing out in their proposals on a WIPO Development Agenda with regard to the relationship between IP and public policy.

Program 6: Africa, Arab, Asia and the Pacific, Latin America and the Caribbean Countries, LDCs: This program refers, in substance and in practice, to technical assistance and cooperation for developing countries and LDCs. Therefore, it should fall under the heading of "Technical cooperation and capacity building".

Technical cooperation activities should promote more debate and exchange of views and experience on IP issues and development among all developing countries Members of WIPO. Therefore, not all resources should be allocated on a regional or on a country-by country basis. Proportional amounts of resources should be clearly distributed and organized on the basis of activities involving: (a) all developing countries, (b) regional groups and (c) countries individually.

All expenditures allocated in the 2008-2009 program and budget for technical cooperation and capacity building activities should be regrouped under this single heading.

Expenditures not directly related to these issues should be eliminated from this program and included in another appropriate program elsewhere in the program and budget for 2008-2009.

Program 7: Certain countries in Europe and Asia: This program should be named “Technical cooperation and capacity building for countries with economies in transition”. Same comments as for program 6 regarding program lines.

Program 8: Business Modernization of IP institutions: This program refers to technical assistance (as it seems to be targeted for developing countries and economies in transition only) and should therefore be relocated under the heading of “Technical cooperation and capacity building”, possibly as a sub-item of that program.

Program 10: IPR enforcement: This program should be named: “Technical assistance for implementation of WIPO Agreements” and its content should be focused likewise on implementation of WIPO Agreements, including both the rights and obligations of signatory Members under them, avoiding reference to enforcement issues for which WIPO has no specific mandate to act upon as an Organization, other than promoting information exchange exercises within the deliberately narrow mandate of the Advisory Committee on Enforcement.

Program 11: The WIPO Worldwide Academy: In order to evaluate the resources assigned to this program, it would be important that more information be given to Member States regarding the activities of the Academy, beneficiary countries, etc.

Program 12: Law of Patents: This program should focus on activities scheduled by the Standing Committee on Law of Patents, according to its agenda, approved by members. We suggest to change the name of the program for “Standing Committee on Law of Patents”.

Same comments apply to:

- **program 13: Law of trademarks, Industrial Designs and Geographical Indications:** name suggested: Standing Committee on...
- **program 14: Law of copyright and related rights:** name suggested: Standing Committee on..., and
- **program 15: Traditional knowledge, Traditional Cultural Expressions and Genetic Resources. Name suggested:** Standing Committee on...

Program 22: Direction and Executive Management: The scope and objective of this program should be clarified in order to evaluate the need for its inclusion in the 2008-2009 program and budget, as well as possible financial requirements.

Program 29: Premises management and program 30: travel and procurement:
all expenditures related to these issues should be included in these programs.

No comments for the moment to the following Programs: 4, 9, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28 y 31

Does your Government have any views on the respective level(s) of resources of the program(s) of the Organization? In your Government's view, should any upward or downward adjustment(s) be made?

While reserving the right of coming back to this and other questions later, some preliminary comments can be found above on the levels of assigned resources for certain programs.

QUESTION 3: PROGRAMMATIC PRIORITIES

Kindly indicate which are the programmatic areas of the Organization's work to which your Government attaches the greatest importance (priorities).

All issues related with the proposal for a WIPO Development Agenda, as outlined in comments above.

QUESTION 4: EFFICIENCY-GAIN TARGETS

The 2006/07 Program and Budget contains a number of efficiency-gain targets and related benchmarks. These are reproduced in Annex III. Does your Government have suggestions for ways in which these targets and benchmarks can be further improved or extended to apply to other areas of the Organization's work?

The proposal for a WIPO Development Agenda contains many proposals for impact assessment studies and for an impact assessment unit to be developed and nurtured within WIPO as a means of assessing and benchmarking the efficiency of WIPO programs and activities.

QUESTION 5: RESULTS-BASED BUDGET

The 2006/07 Program and Budget contains a number of objectives, expected results (measurable outcomes) and performance indicators, on a program by program basis. These results frameworks were elaborated to facilitate the assessment of the performance and impact of a given program. Please indicate for which programs you consider a further refinement of the results framework to be necessary. Could you provide examples of objectives, expected results (measurable outcomes) and performance indicators for such programs? Do you consider the quantification of the performance indicators (i.e. targets) to be useful?

Yes, performance indicators are important and useful. They should be refined for all measurable WIPO activity, in particular technical assistance, Treaty based registration activities (PCT, TLT, etc), seminars and missions to Member countries, measurable output by unit of the Secretariat, etc. A debate could be established between the International Bureau and Member States for the purpose of promoting more exchange of information on this subject.

Strengthening WIPO's institutional capacity to perform independent impact assessment studies is also relevant in this respect.

QUESTION 6: LEVEL OF EXPENDITURE

The 2006/07 Program and Budget represents a 1.5 per cent increase over the revised budget for the 2004/05 biennium. What are the views of your Government on what the evolution of the level of expenditure of the Organization in the 2008/09 biennium should be?

WIPO's income (PCT fees collection, for example), reserves, expenditures, and level of implementation of activities for the current biennium, as well as an estimate for the next biennium, should be made known to Members before this question can be properly addressed. WIPO's expenditure levels are relatively high, compared with other Agencies. As a general rule, the Organization should focus on more efficient management of resources, and avoid increasing the overall budget from one biennium to the next.

QUESTION 7: BUDGETARY POLICY

In the 2006/07 Program and Budget the level of expenditure matches the expected level of income, with no deficit and no surplus. This budgetary balance was welcomed by Member States. Numerous delegations also expressed the wish that budgetary balance should become a policy in the medium term. In the view of your Government, should the 2008/09 Program and Budget continue to be based on full budgetary balance?

Yes, the 2008-2009 budget should be a balanced one.

QUESTION 8: LEVEL OF RESERVE AND WORKING CAPITAL FUNDS

In the year 2000, Assemblies of the Member States determined that the target level of reserve and working capital funds of the Organization should correspond, on average, to 18 per cent of biennial expenditure (document A/35/15, paragraph 151). In its 2006 report, the External Auditor recommended that this target be reviewed and increased to 25 per cent of biennial expenditure (Report of the Auditor to the Assembly of the Member States of WIPO on the 2004-2005 Biennium, paragraph 57, Recommendation 5). Does your Government consider that the target level of reserve funds should be reassessed by Member States? Should the 2008/09 Program and Budget be based on the

target level established by Member States in the year 2000 or should the Secretariat base its proposals for the 2008/09 biennium on the approach recommended by the External Auditor? And, should the Organization generate any surplus in the 2008/09 biennium, would your Government consider that this surplus should remain in the reserves? Or should it be utilized for a specific purpose? If so, which?

The level of reserve and working capital fund for the 2008/09 biennium should be based on the approach recommended by the External Auditor (25%).

If there is a surplus in the biennium 2008-2009, the Committee on Program and Budget, based on concrete data, should determine whether to use the surplus, and for what purpose, or maintain it as reserve.

QUESTION 9: FUTURE ACTUARIAL LIABILITY FOR SEPARATION FROM SERVICE (RETIREMENTS) AND POSTSERVICE MEDICAL BENEFITS

The Organization has contractual obligations to provide staff members with certain benefits at the time of their retirement. The Organization also has a contractual obligation to provide retired staff members with post-service medical benefits. These contractual obligations have long-term financial implications and therefore represent a financial liability for the Organization. With the adoption, by the United Nations system of organizations, by 2010 at the latest, of the International Public Sector Accounting Standards (IPSAS), UN organizations, including WIPO, shall be required to record them in the accounts. As shown in the Financial Management Report for 2004/05, a provision corresponding to six per cent of biennial staff (post) expenditure was made to start covering such liability. Would your Government consider it appropriate that a similar amount be earmarked under the 2008/09 Program and Budget to cover such liability?

The preliminary answer to this is affirmative, but more information is needed to assess whether an amount similar to the 2008/09 program and budget is adequate to cover such liability

QUESTION 10: INFORMATION

Is there any other information that your Government would like to see in the draft Program and Budget for 2008/09 document?

This question was answered in general terms in response to question 2.

QUESTION 11: OTHER ISSUES

Is there any other issue your Government would like to address in the context of the preparation of the next draft Program and Budget of the Organization?

Detailed information on the financing of representatives attending WIPO meetings, with names of beneficiaries, travel and per diem costs covered, including Geneva based, regional and national meetings, seminars, missions and workshops.

Information on vacancies that will become available during the course of the 2008-2009 biennium, the time-frame for notices to be circulated among Member States through Missions in Geneva, and information to Members under a systematic and formal approach of outcomes of the selection process.

III. PROCEDURES FOR REPLY

It would be appreciated if the completed questionnaire could be returned to the International Bureau before Friday, November 3, 2006. It will not be possible to reflect replies received after that date in the Director General's outline. The questionnaire is also available in electronic form on the Organization's Website <<http://www.wipo.int/about-wipo/en/pb/>> and may be transmitted by e-mail to <controller.mail@wipo.int>. A confirmation copy may be sent by post.

[Annexes follow]