

SEED WORKING PAPER No. 50  
**Promoting the Culture Sector through Job Creation and Small Enterprise  
Development in SADC Countries: The Ethno-tourism Industry**

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**Box 6. Industrial design: A mechanism to protect traditional handicrafts**

Industrial design makes an article attractive and appealing; it adds to the commercial value of a product and increases its marketability. An industrial design is the ornamental or aesthetic aspect of an article produced by the industry or handicraft. These ornamental aspects may be constituted by elements which are three dimensional (the shape of the article) or two-dimensional (lines, designs, colours) but must not be dictated solely or essentially by technical or functional considerations. Industrial designs are applied to a wide variety of products of industry and handicraft: from technical and medical instruments to watches, jewellery, and other luxury items; from house wares and electrical appliances to vehicles and architectural structures; from textile designs to leisure goods. To be eligible for industrial property protection in a country, industrial designs must be original or novel and must be registered in a government office (this is usually the same office that grants patents and trademarks). Different countries have varying definitions of what is “novel”, as well as variations in the registration process itself. Generally, “new” means that no identical or very similar design is known to have existed before. Once a design is registered, a registration certificate is issued. Following that, the term of protection is generally five years, with the possibility of further periods of renewal up to, in most cases, 15 years. However, certain countries provide also for the protection of unregistered industrial designs. Thus, traditional crafts in principle receive industrial design protection.

When an industrial design is protected, the owner – the person or entity that has registered the design – is assured an exclusive right against unauthorized copying or imitation of the design by third parties. This helps to ensure a fair return on investment. An effective system of protection also benefits consumers and the public at large, by promoting fair competition and honest trade practices, encouraging creativity, and fostering more aesthetically attractive products. Industrial designs can be relatively simple and inexpensive to develop and protect. They are reasonably accessible to small and medium-sized enterprises as well as to individual artists and crafters, in both industrialized and developing countries.

In some countries, some types of industrial design are also protected as works of art (works of art being objects of copyright protection). In certain countries, there may be an overlap between industrial design and copyright protection. Under certain circumstances, a design can also be protected by an unfair competition law.

The main International Agreements on Industrial Designs are the Paris Convention for the Protection of Industrial Property, 1883 and the Hague Agreement Concerning the International Deposit of Industrial Designs, 1925.\* These are both WIPO-administered treaties. In addition, the TRIPS Agreement also contains provisions on industrial designs. \*\*

\* See Geneva Act (1999) of the Hague Agreement Concerning the International Registrations of Industrial Designs, Adopted by the Diplomatic Conference on 2 July, 1999.

\*\*Part II, Section 4, Article 25 of the Trade-Related Aspects of Intellectual Property Rights Agreement.