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Intergovernmental Committee on Intellectual Property and Genetic resources, Traditional Knowledge and folklore: Norway's comments on the contents of documents WIPO/GRTKF/IC/9/4 and WIPO/GRTKF/IC/9/5 and proposal regarding disclosure of origin of genetic resources and traditional knowledge in patent applications

We refer to the International Bureau's letter 23 June 2006 and the decision on agenda item 11 at the ninth session of the Committee where the Committee participants were invited to submit written comments on the contents of documents WIPO/GRTKF/IC/9/4 and WIPO/GRTKF/IC/9/5.

1. DOCUMENTS WIPO/GRTKF/IC/9/4 AND WIPO/GRTKF/IC/9/5

Document WIPO/GRTKF/IC/9/12 was submitted by Norway before the ninth session regarding documents 9/4 and 9/5. The objective of document 9/12 is to contribute to the discussions in the IGC regarding the policy objectives and principles for the protection of Traditional Knowledge (TK) and Traditional Cultural Expressions (TCE) in order to proceed within the renewed mandate period. The first parts of the document is proposed to focus on trying to find areas where there seems to be consensus or emerging consensus, instead on focusing on issues where the discussions have been polarised so far. Following this track the paper presents suggestions on how to divide the objectives and guiding principles in the annexes of documents 9/4 and 9/5 into two categories; (1) objectives with a preambular or contextual character and (2) objectives/principles that may be more suitable for being dealt with in international substantive provisions. Finally, the document presents a proposal on the possible use of article 10bis in the Paris Convention as a model for a future instrument for the protection of TK.

Document 9/12 reflects Norway's point of view on how the Committee should be dealing with documents 9/4 and 9/5. We would like to emphasize that document 9/12 simply presents one idea on how the Committee could move ahead to reach an outcome within the present mandate period, and that Norway at this stage does not exclude any final outcome of the deliberations of the IGC.


2. A MANDATORY OBLIGATION TO DISCLOSE THE ORIGIN OF GENETIC RESOURCES AND TRADITIONAL KNOWLEDGE IN PATENT APPLICATIONS


The proposal in document 9/12 should be seen in connection with Norway's proposal in the WTO to amend the TRIPS-agreement to introduce a mandatory obligation to disclose the origin of genetic resources and traditional knowledge in ./patent applications (Norway's communication to the TRIPS-council in June is attached).

In the communication to the TRIPS-council Norway supports an amendment of the TRIPS Agreement in introducing a mandatory obligation to disclose the origin of *genetic resources and traditional knowledge* in patent applications. The disclosure requirement should provide that patent applications should not be processed unless the required information has been submitted. However, non-compliance with the disclosure obligation that is discovered post-grant should not affect the validity of the patent.

In Norway's opinion such an obligation should apply to all patent applications (international, regional and national). Therefore Norway considers that also the relevant treaties under the auspices of WIPO, namely the Patent Corporation Treaty and the Patent Law Treaty should be amended in a similar manner. It is important that the treaties should be mutually supportive. Norway intends to present a more detailed proposal on this matter at a later stage.

Yours sincerely,


Magnus Hauge Greaker
legal adviser


Berit Johansen
secretary

Annex:

- Communication from Norway to the TRIPS-council 14 June 2006