

AUSTRALIA

The following comments were received through a communication from IP Australia

1. Australia strongly supports the work of the WIPO IGC as the pre-eminent international forum for the discussion of issues relating to intellectual property and genetic resources, traditional knowledge and folklore, and values this opportunity to comment on the draft objectives and core principles as set out in Annex I of document WIPO/GRTKF/IC/7/5. Australia acknowledges the work of the WIPO Secretariat in preparing document WIPO/GRTKF/IC/7/5 which we regard as a significant and substantial contribution to the debate surrounding the development of a common international approach to the protection of traditional knowledge.

2. Australia is a country of many different indigenous groups that possess a wide variety of scientific, technical and ecological knowledge. Our understanding is that the suggested policy objectives and principles aim to provide a common approach to the protection of traditional knowledge and hence are guidelines for encouraging such protection at a national level. We are encouraged by the statements made at paragraph 9 of document WIPO/GRTKF/IC/7/5 which state that the draft policy objectives and principles 'do not seek to place limits on the parameters of the debate concerning TK protection, to prescribe any particular outcomes or solutions, nor to define the form that they may take'. It is on this basis that Australia is supportive of the draft policy objectives which address the key goals of valuing and supporting traditional knowledge, traditional knowledge systems and traditional knowledge holders, and providing a framework for the protection and exploitation of traditional knowledge.

3. Australia understands the need for the Specific Substantive Principles to guide the manner in which protection for traditional knowledge can be afforded. However we believe that such principles can only be finalised once the draft policy objectives and the general guiding principles are carefully considered and agreed to.

4. Australia favours a flexible approach to the protection of traditional knowledge to ensure that appropriate mechanisms are available to suit the range of needs of indigenous people, and to ensure that an appropriate balance is achieved between those needs and the maintenance of a stable framework for investment, for example in biotechnology, both nationally and at a global level. Australia also believes that this flexibility should extend to respect for the diversity of legal systems amongst Member States.

5. In particular, Australia supports the comments at paragraph 12 in relation to Draft Principle A.4, that there exists a "need to respect that effective and appropriate protection may be achieved by a wide variety of legal mechanisms, and that too narrow or rigid an approach at the level of principle may constrain effective protection, conflict with existing laws to protect TK, and pre-empt necessary consultation with TK holders". The wording of Principle A.4 appears to address both the diversity of traditional knowledge in different countries and the diversity in national legal systems and potential approaches to the protection of that knowledge.

6. Australia supports consultation and cooperation with other international fora where traditional knowledge is discussed, such as the Convention on Biological Diversity, and the principle of consistency with relevant provisions of existing international instruments. This appears to be reflected in draft policy objective (viii) *Concord with relevant international agreements and processes* and draft general guiding principle A.7: *Principle of respect for and cooperation with other international and regional instruments and processes*. However Australia is of the view that WIPO and the World Trade Organization (WTO), should remain the principal fora for addressing intellectual property issues relating to the protection of traditional knowledge, and as such should play a lead role in debate on any future measures to protect traditional knowledge, including advising other fora where necessary.

7. The Australian government has concluded an intergovernmental agreement on genetic resource management with the governments of the Australian States and Territories, known as the *Nationally Consistent Approach for Access to and the Utilisation of Australia's Native Genetic and Biochemical Resources*. Some of these States and Territories have introduced or are in the process of considering legislation relating to access to biological resources for biodiversity and other purposes. This legislation does not address traditional knowledge and it is Australia's view that the two issues, although they are closely interconnected, should be treated separately, as there are genetic resources to which no traditional knowledge is applicable and vice versa. Accordingly, Australia supports the first paragraph in Draft Principle B.12 distinguishing between access to genetic resources and access to traditional knowledge. However Australia suggests a clarification of the wording in the second sentence of the first paragraph to "Permission to access *and/or use* traditional knowledge does not imply permission to *access and/or use* associated genetic resources and vice versa" to cover both access to and use of, traditional knowledge and genetic resources.

8. Australia has expressed its view in other fora¹ that existing legal and administrative mechanisms may provide effective protection for traditional knowledge, and maintains that the evolution of domestic policy and legislative responses should not be unduly constrained by any premature and binding *suigeneris* measures internationally. Thus we are encouraged by the presence of those principles which respect the effectiveness of existing systems.

9. We also note that there appears to be a word missing in the first sentence after "community-based" in draft policy objective (xii) and believe that it should be reviewed to prevent any misunderstanding about what the policy objective seeks to achieve.

10. Australia is committed to ongoing and constructive discussion of these draft policy objectives and core principles in order to assist its further analysis of the issues surrounding the protection of traditional knowledge.

¹WTO document IP/C/W/310 of 2 October 2001.