

## MEXICO

*The following comments were received through a communication from IMPI*

It may be observed that the protection of Traditional Knowledge (TK), which is suggested in the document, is based on the prevention of the misappropriation of such knowledge, i.e.:

- (1) any acquisition or appropriation of TK by unfair or unlawful means;
- (2) obtaining commercial benefits from the acquisition or appropriation of TK which has been the subject of acquisition or appropriation by unfair means;
- (3) other commercial activities contrary to honest use and through which unfair benefits are obtained from TK.

From the above, the policy objectives, core principles and substantive principles of protection should aim to avoid the misappropriation and misuse of TK.

Taking into account the fact that a clearer definition exists between the sphere of intellectual property protection and the protection of TK from misappropriation, Mexico agrees with this type of protection, for which reason we can state that intellectual property parameters cannot cover the protection of TK in terms of its characteristics and nature, as widely discussed in the Committee.

In this connection, the list of policy objectives should, in our opinion, be clearly determined, since there are various policy objectives which are confused or are similar to each other; we therefore suggest that the objectives are limited to the following:

- (i) Recognizing the value of TK;
- (ii) Promoting respect for TK;
- (iii) Meeting the actual needs of holders of TK;
- (iv) Empowering holders of TK;
- (v) Contributing to the safeguarding of TK;
- (vi) Repressing unfair and inequitable use;
- (vii) Complying with the relevant international agreements and processes;
- (viii) Promoting equitable benefit sharing;
- (ix) Precluding the grant of invalid IP rights;
- (x) Complementing protection of traditional cultural expressions.

As regards the objectives:

- Supporting TK systems;
- Promoting innovation and creativity;
- Promoting the exchange of technology and knowledge;
- Promoting community development and lawful commercial activities;
- Guaranteeing transparency and mutual trust.

These can be said to be envisaged in objectives (i), (ii), (iii) and (v) listed above.

As regards the core principles, special attention should be given to principle A6 (principle of consistency with existing legal systems), and A7 (principle of respect for and cooperation with other regional and international instruments and processes), in order to avoid possible conflicts with binding agreements and systems already in force in the intellectual property sphere.

Furthermore, the specific substantive principles contained in Section B are consistent with the objectives and core principles. The definition of the acts of misappropriation listed in B1.3 are sufficient to prevent such appropriation, taking into account acts of fraud, bribery, theft and commercial or industrial use without fair remuneration for the holders of TK.

Similarly, we believe that said document must be consolidated in a series of recommendations by WIPO for the establishment of a legal protection framework for TK, as suggested in the legal form of protection in paragraph B.2, wherein the establishment of legal provisions is recommended in the form of a *sui generis* law or *inter alia* in various civil, criminal or unfair competition laws. Likewise, paragraph B13 will be of great assistance in determining the administrative authority which will be responsible for protection and for enforcing the provisions on misappropriation of TK.