

WIPO



WIPO/GRTKF/IC/16/INF/27

ORIGINAL: English

DATE: February 19, 2010

E

WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

**INTERGOVERNMENTAL COMMITTEE ON
INTELLECTUAL PROPERTY AND GENETIC RESOURCES,
TRADITIONAL KNOWLEDGE AND FOLKLORE**

**Sixteenth Session
Geneva, May 3 to 7, 2010**

**POLICIES, MEASURES AND EXPERIENCES REGARDING INTELLECTUAL
PROPERTY AND GENETIC RESOURCES: SUBMISSION BY CHINA**

Document prepared by the Secretariat

1. At its fifteenth session, held from December 7 to 11, 2009, the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore ('the Committee'):

“invited Member States and observers to make available to the Secretariat papers describing regional, national and community policies, measures and experiences regarding intellectual property and genetic resources before February 12, 2010, and requested the Secretariat to make these available as information documents for the next session of the Committee.” [...]

2. Further to the decision above, the WIPO Secretariat issued a circular to all Committee participants, dated January 15, 2010, recalling the decision and inviting participants to make their submissions before February 12, 2010.

3. Pursuant to the above decision, the Delegation of China submitted a document entitled “Relevant Policies, Measures and Experiences of China Regarding Intellectual Property and Genetic Resources”, and requested it to be made available as an information document for the Sixteenth Session of the Committee.

4. The document is reproduced in the form received and contained in the Annex to this document.

[Annex follows]

ANNEX

RELEVANT POLICIES, MEASURES AND EXPERIENCES OF CHINA REGARDING
INTELLECTUAL PROPERTY AND GENETIC RESOURCES

Over the years, China has shown continuous interest in, and concern over, the protection of intellectual property (IP) and genetic resources, by actively participating in related international discussions, as well as vigorously conducting domestic research and practices in the area of IP and genetic resources protection, the result of which has been incorporated into its relevant legislation. The following is a brief description of such efforts.

I. Active Participation in International Discussions

China has been an active participant in the relevant discussions held in various international forums, such as the Intergovernmental Commission on Traditional Knowledge, Genetic Resources and Folklore (IGC) of the World Intellectual Property Organization (WIPO), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organization (WTO), and Access to Genetic Resources and Benefit Sharing under the Convention on Biological Diversity (CBD).

II. Institutional Development and Information Dissemination

At the end of 2004, the State Intellectual Property Office (SIPO) of China set up a separate division specialized in research on the issue of IP protection of genetic resources and traditional knowledge. The beginning of 2005 saw a special web page at the official web site of SIPO, focusing on IP protection of genetic resources and traditional knowledge, whereby information on related international discussions as well as relevant documents and materials are made available to the general public to help them better understand, study and discuss such issues.

III. Organization of Seminars and Workshops

Both before and after the third amendment of the Patent Law of China, SIPO has organized, in cooperation with WIPO, the European Patent Office (EPO), some other countries and other ministries and national institutions, a series of seminars and workshops on issues related to genetic resources and traditional knowledge, for example, in Beijing, Henan and Guizhou in 2006, in Sichuan in 2007, in Sichuan and Yunnan in 2008, and in Xinjiang in June 2009, focusing on IP protection of genetic resources and traditional knowledge. These focused seminars and workshops have played a very active role in advancing relevant research in these areas in China.

IV. Legislation

1. *Patent Law of the People's Republic of China*

The new Patent Law, after being amended for the third time, became effective on October 1, 2009, and includes two new paragraphs directly related to the protection of genetic resources, namely:

Article 5 (2), which states that “no patent right shall be granted for any invention/creation that relies on genetic resources accessed or used in violation of the provisions of relevant laws or administrative regulations”; and

Article 26 (5), which states that “for inventions/creations that rely on genetic resources, the patent applicant shall disclose, in the application, the direct source and the original source of the genetic resources, and shall, in the case where the applicant fails to disclose the original source, provide a reason for such a failure”.

Accordingly, specific provisions on these two paragraphs have been further set out in the revised Implementing Regulations under the Patent Law and the Guide on Patent Examination, respectively, to make the amendments operational.

It is expected that in the process of implementing the amended Patent Law, experiences would be gradually accumulated for further exploration and improvement of the use of the patent system for protecting genetic resources in a more effective manner.

2. *Measures for the Examination and Approval of Entry & Exit and the Foreign Cooperative Research on the Application of Genetic Resources of Livestock and Poultry*

Recently, with an aim to protect genetic resources and to ensure equitable sharing of the benefits arising from the use of genetic resources, national laws and regulations governing the management of biological genetic resources provisions have been updated, in applying the framework provisions of the Convention on Biological Diversity (CBD), to provide for IP ownership in the cooperative use of genetic resources by Chinese and foreign partners. Notably, in 2008, the State Council promulgated the Measures for the Examination and Approval of Entry & Exit and the Foreign Cooperative Research on the Application of Genetic Resources of Livestock and Poultry (hereinafter referred to as “the Measures”) in accordance with Article 17 of the Animal Husbandry Law of the People's Republic of China. Article 8 of the Measures states that “any research cooperatively conducted in China with overseas entities or individuals that uses genetic resources of livestock and poultry, which are included in the List of Protected Genetic Resources of Livestock and Poultry, must: (i) have clearly defined objectives and scopes, and definite time limits for cooperation; (ii) be carried out in consistence with the protection and utilization plan of genetic resources of livestock and poultry; (iii) have clear clauses on IP ownership, and a reasonable program on benefit sharing of the research achievements; (iv) constitute no threat to domestic genetic resources of livestock and poultry or ecological environment security; and (v) have a reasonable benefit-sharing plan for countries concerned. ...”

V. Development of National Pilot Projects for IP Protection of Traditional Knowledge

In 2008, SIPO launched a series of National Pilot Projects for IP Protection of Traditional Knowledge. Up to now, such pilot projects have been developed in 15 counties/municipalities/regions. For example, the Project on the Protection of Genetic Diversity of the Sichuan Snub-nosed Monkeys (*Rhinopithecus roxellana*) in the Shennongjia Forest Area has been developed in Hubei Province to protect, help carry on and develop this precious biological species of the so-called Sichuan Snub-nosed Monkeys, and a special Research Team has been set up under the Project. Another example concerns a project on the protection of Tibetan medicine (southern school) – a project that has been developed in Kang Ding County of Sichuan Province to protect and develop technologies on related medicinal planting, animal breeding, and pharmaceutical producing and processing. Such pilot projects on IP protection of traditional knowledge have contributed to further advancing and improving the work in the protection of traditional knowledge and genetic resources across the country.

[End of Annex and of document]