

# WIPO



**WIPO/GRTKF/IC/2/10**  
**ORIGINAL:** English  
**DATE:** December 3, 2001

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**WORLD INTELLECTUAL PROPERTY ORGANIZATION**  
GENEVA

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

**Second Session**  
**Geneva, December 10 to 14, 2001**

POSITION PAPER OF THE ASIAN GROUP AND CHINA

*Document submitted by the Asian Group and China*

1. In a letter dated November 22, 2001, the Permanent Mission of India to the United Nations Offices and other International Organizations in Geneva submitted a document on behalf of the Asian Group and China entitled "Position Paper of the Asian Group and China."
2. The document is reproduced in the Annex.
3. *The Intergovernmental Committee is invited to take note of this document and the Annex to it.*

[Annex follows]

POSITION PAPER OF THE ASIAN GROUP AND CHINA  
IN WIPO FOR THE SECOND MEETING OF THE  
INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND  
GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE  
10-14 DECEMBER 2001

The countries of the Asian Group and China note that they are mostly rich in genetic resources, traditional knowledge and folklore, and consider the specific needs and interests in relation to genetic resources, traditional knowledge and folklore crucial to the discussions in this Committee. The countries further :

Welcome the work undertaken thus far by the WIPO in relation to the intellectual property aspects of access to genetic resources, traditional knowledge and folklore ;

Recognize the inter-relationships between the issues of access to genetic resources, traditional knowledge and folklore;

Recall the recommendations spelled out by the WIPO-UNESCO Regional Consultation on the Protection of Expressions of Folklore for Countries of Asia and the Pacific, convened in Hanoi, Vietnam, from 21 to 23, 1999 and the Inter-regional Meeting on Intellectual Property and Traditional Knowledge, convened in Chiang Rai, Thailand, from November 9 to 11, 2000; and

Further note the recommendations of the WIPO Asia Pacific Regional Symposium on Intellectual Property Rights, Traditional Knowledge and Related Issues held in Yogyakarta, Indonesia, from October 17 to 19, 2001.

The Asian Group and China submit the following for the consideration of the Intergovernmental Committee:

1. That WIPO is the most appropriate forum to develop internationally acceptable and equitable solutions to the intellectual property issues related to genetic resources, traditional knowledge and folklore and that the terms of reference of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore should be as broad as possible to enable policies, plans and mechanisms on the issues concerned to be fully developed;
2. The Secretariat of the WIPO should ensure the full and well-informed participation of the developing countries in the various meetings and consultation process in this regard;
3. The Intergovernmental Committee should exchange views with a view to negotiating a comprehensive international instrument on the protection of genetic resources, traditional knowledge and folklore;
4. In order to enhance the ability of developing countries to strengthen their intellectual property systems particularly in dealing with the intellectual property issues related to genetic resources, traditional knowledge and folklore, WIPO should offer increased capacity building

to developing and least-developed countries in the form of legal and technical assistance, training and the provision of necessary equipment and other resources;

5. WIPO should undertake studies to find all possible options, by which the success of the tasks relating to genetic resources, traditional knowledge and folklore could be ensured;

6. Recognizing that the WIPO Arbitration and Mediation Center offers arbitration and mediation services for the resolution of international commercial disputes between private parties, WIPO should study possibilities of offering alternative dispute resolution services, including but not limited to arbitration and mediation, which are particularly appropriate for the problems involving intellectual property issues related to traditional knowledge and folklore;

7. Further, the Asian Group and China would like to make the following specific proposals:

(a) Intellectual Property and Genetic Resources

(i) Governments may conduct consultations at the national level regarding access to genetic resources and benefit-sharing which involve all relevant stakeholders, and may provide the results from these processes and other relevant national experiences to the Committee in the form of country reports, case studies and other information.

(ii) Governments should emphasize in the context of the intellectual property-related provisions of the Convention on Biological Diversity (CBD), the importance of access to and transfer of technology which makes use of those resources, including technology protected by patents and other intellectual property rights.

(iii) WIPO should undertake studies and projects to clarify options for governments of using intellectual property rights as a policy tool to obtain specific policy objectives in various sectors of genetic resources, such as agriculture or pharmaceuticals. Where appropriate such studies should be undertaken in cooperation with other specialized agencies which hold specialized expertise in the field of genetic resources.

(iv) WIPO should address issues related to genetic resources, traditional knowledge and folklore in conjunction with the Secretariat of the CBD and the Commission on Genetic Resources for Food and Agriculture of the FAO, in order to ensure that the work of WIPO will continue to be consistent with, and complementary to, the work that is being done by the CBD and the FAO.

(v) In view of the consensus decision of the Committee to develop model intellectual property clauses and guide contractual practices for contractual agreements on access to genetic resources and benefit-sharing, it is recommended that the model intellectual property clauses and guide contractual practices

- take due account of relevant provisions of existing international instruments in the field of genetic resources, such as the CBD, the International Undertaking on Plant Genetic Resources, and the Convention on the International Trade in Endangered Species (CITES);

- be made available to the relevant subsidiary bodies of the United Nations agencies administering those instruments, such as the Ad Hoc Open-ended Working Group on Access and Benefit-sharing of the CBD and the Commission on Genetic Resources of Food and Agriculture (CGRFA) of the Food and Agriculture Organization of the United Nations (FAO), as well as all other stakeholders and international organizations working in the field of genetic resources.

(b) Intellectual Property and Traditional Knowledge

(i) Governments may conduct consultations at the national level with holders of traditional knowledge and other stakeholders on the types of knowledge which should be protected by intellectual property and other rights and the scope of rights which should be available for those types of knowledge. Governments may provide the results from these processes and other national experiences with the protection of traditional knowledge to the Committee in the form of country reports, case studies and other information.

(ii) Member States may document their traditional knowledge to avoid its loss with the passing away of the older generations. When documenting the traditional knowledge, governments may take into account existing intellectual property standards and distinguish between traditional knowledge which is in the public domain and traditional knowledge which is not in the public domain. Based on this distinction, Member States may:

- as appropriate, compile databases of traditional knowledge which is in the public domain and make these databases available to patent-granting authorities for the purposes of prior art searches, in order to prevent the grant of any intellectual property rights over such public domain knowledge;
- establish registers of traditional knowledge elements which are not in the public domain and keep the contents of the registers undisclosed, pending the possible establishment of new protection standards for the traditional knowledge elements contained in the registers.

(iii) WIPO should continue studying and facilitate discussions among all WIPO Member States to clarify:

- which traditional knowledge is currently adequately covered by existing intellectual property rights;
- which additional subject matter requires to be legally protected, but is currently not adequately covered by existing intellectual property rights;
- which rights would need to be made available in order to provide adequate legal protection for this additional subject matter.

(iv) WIPO should explore the specifications that may facilitate the exchange of traditional knowledge information for prior art searches, including through traditional knowledge databases, by:

- consulting with patent and other relevant offices about their needs for traditional knowledge information;
- testing existing techniques and criteria for the recording and exchange of patent information in the traditional knowledge area and, if needed, developing appropriate new criteria and classification systems for the recording and exchange of traditional knowledge information;
- working with other intergovernmental organizations in accomplishing these objectives in different fields of traditional knowledge, as appropriate.

(v) WIPO should take a more active role and, on an increased scale and pace, have Traditional Knowledge Digital Library (TKDL) as a priority project in parallel with other activities in the field of access to genetic resources, traditional knowledge and folklore, including in continuing to explore at regional, sub-regional and national levels the various legal and operational problems of the issues concerned.

(vi) WIPO should encourage WIPO Member States to establish specific standards for the legal protection of traditional knowledge subject to their respective legal system or improve the application of existing standards for the effective legal protection of traditional knowledge.

(c) Intellectual Property and Expressions of Folklore

(i) Governments may conduct wide-ranging consultations at the national level among producers of handicrafts and other expressions of folklore about the appropriate legal systems and institutional infrastructure for the protection of craft items and other expressions of folklore. Governments may provide the results from these processes and other national experiences with the protection of expressions of folklore to the Committee in the form of country reports, case studies and other information.

(ii) Member States may establish national focal points for the protection of crafts and other expressions of folklore in order to facilitate:

- at the national level, the promotion and legal protection of crafts items and the coordination of existing crafts guilds and organizations;
- at the regional level, the promotion of crafts items and other expressions of folklore and the establishment and coordination of a regional protection system for crafts items and other expression of folklore.

(iii) WIPO should explore practical options for the protection of tangible expressions of folklore through existing intellectual property rights, such as copyright, industrial designs, certification and collective marks, and geographical indications, and, if necessary, should study the possibility of establishing additional intellectual property rights for handicrafts and other tangible expressions of folklore which are not protected by such existing rights.

(iv) WIPO should conduct practical studies on the exploitation of intangible expressions of folklore, in particular in light of new technologies for the reproduction and dissemination of such folkloric works. The study should survey the measures which WIPO Member States have taken in order to provide for effective legal protection of intangible expressions of folklore and it should offer options which governments may take for the effective legal protection to intangible expressions of folklore.

The specific proposals submitted above reflect the broad position of the Asian Group and China. The Group is conscious of the opportunity provided by the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore to address these issues and looks forward to working with the other regional groups in the Committee.

[End of Annex and of document]