

WIPO



WIPO/GRTKF/IC/4/7

ORIGINAL: English

DATE: November 5, 2002

E

WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

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

Fourth Session
Geneva, December 9 to 17, 2002

REPORT ON THE REVIEW OF EXISTING INTELLECTUAL PROPERTY PROTECTION
OF TRADITIONAL KNOWLEDGE

Document prepared by the Secretariat

I INTRODUCTION

1. At the third session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the “Committee”) held in Geneva from June 13 to 21, 2002, the Committee considered¹ document WIPO/GRTKF/IC/3/7, entitled “Review of Existing Intellectual Property Protection of Traditional Knowledge”.² The Committee concluded that it would leave document WIPO/GRTKF/IC/3/7 “open” for further input from Committee Members.³ Such input would be provided to the Secretariat of the World Intellectual Property Organization (“WIPO”) on the basis of a revised and simplified questionnaire on national experiences of intellectual property mechanisms for the protection of traditional knowledge (“TK”): see revised questionnaire WIPO/GRTKF/IC/Q.1.

2. The review of existing intellectual property protection of TK was left “open” so that those Committee Members which had not yet provided a response could still do so. This would help provide a better picture of how existing intellectual property systems are currently being used to protect TK. In addition, those Members which had already provided answers could update their responses, for instance by providing copies of any new laws and regulations, and any relevant final judicial decisions and administrative rulings. In this way, a mechanism would be established whereby the Committee could be kept informed of any new, additional measures or practices to protect TK.

II REPORT

3. By October 28, 2002, twenty (20) Committee Members had provided responses to revised questionnaire WIPO/GRTKF/IC/Q.1. No Member reported any significant new experience of using existing mechanisms of intellectual property protection to protect TK, or on the recent adoption of a *sui generis* regime to protect TK, over and above those answers already incorporated in document WIPO/GRTKF/IC/3/7.

4. The two annexes to this brief report reflect the responses to the revised questionnaire received so far:

- Annex 1 presents, in a synoptic manner, the replies provided to questions (a), (b), (d), (e) and (g);
- Annex 2 contains the replies provided to question (c); that is, actual examples of the use of existing intellectual property regimes by Committee Members. Annex II currently contains replies from the following countries: Canada, Italy, Mexico, Portugal, the Russian Federation and Vietnam. Annex II also contains the replies provided to question (f), explaining features of any *sui generis* regime. Currently, only Portugal has provided relevant information.

¹ See Report of the third session of the Committee, document WIPO/GRTKF/IC/3/17, paragraphs 164 to 210.

² The information contained in WIPO/GRTKF/IC/3/7 had been compiled by the Secretariat of the WIPO from responses received to questionnaire WIPO/GRTKF/IC/2/5.

³ *Id.*, paragraph 211.

5. It is proposed that any legislative texts of adopted, or planned, *sui generis* regimes that are notified to the Secretariat of WIPO should be included in an Annex 3. No such texts have been received to date.

6. As decided by the Committee at its third session, the review of existing intellectual property protection of TK should stay “open”, so that Committee Members can provide complete, update and accurate information about current forms of intellectual property protection for TK, either through existing intellectual property regimes, or through new, specially adapted, *sui generis* regimes. In particular, it is clear from the responses received to the revised questionnaire that several Committee Members are in the process of considering the creation of *sui generis* regimes to protect TK. In this way, other Committee Members will be able to benefit from such experiences.

7. The Committee is invited to take note of this document and the respective Annexes, and to continue to provide new or updated information to the Secretariat of WIPO, including in particular any relevant examples of the use of existing intellectual property regimes by Members to protect TK, and copies of any relevant draft or enacted legislative text to protect TK.

[Annexes follow]

ANNEX I

Revised questionnaire (WIPO/GRTKF/IC/Q.1)	Argentina	Canada	Cuba	Czech Republic	Germany	Hungary ⁴	Italy
(a) Is protection for traditional knowledge available under the current standards of your intellectual property law?	No	Yes	No	No	No	Yes	Yes
(b) If your answer to question (a) is yes, has your country already provided for protection of elements of traditional knowledge by means of the currently available standards of intellectual property?	No						Yes
(d) Which of the following elements or standards of currently existing intellectual property law do you perceive as limitations in the application of intellectual property laws and procedures to the protection of traditional knowledge:							
(i) novelty or originality;	X	X	X	X	X		X
(ii) inventive step or non-obviousness;	X		X	X	X		X
(iii) fixation;							
(iv) informal nature of TK;	X	X	X				
(v) individual v. collective creation;	X		X	X	X		X
(vi) term of protection;	X	X	X	X	X		
(vii) other;	X						
(viii) no limitations.							
(e) Have you enacted any law or regulation or administrative ruling of general application establishing a system of traditional knowledge intellectual property protection especially adapted to its characteristics (that is, a <i>sui generis</i> system)?	No	No	No	No	No	No	No
(g) If your answer to question (e) is no, is your country planning to establish a system of traditional knowledge protection especially adapted to its characteristics (a <i>sui generis</i> system)	No	No	No	No	No		No

⁴ The delegation of Hungary notified the Secretariat that it had no additional information over and above that contained in its reply to the previous questionnaire (WIPO/GRTKF/IC/2/5). Therefore, the present table takes into account information previously provided by Hungary in response to WIPO/GRTKF/IC/2/5.

Revised questionnaire (WIPO/GRTKF/IC/Q.1)	Malawi	Mexico	Moldova, Rep. of	Niger	Korea, Rep. of	Portugal	Romania
(a) Is protection for traditional knowledge available under the current standards of your intellectual property law?	No	Yes	Yes	No	Yes	Yes	Yes
(b) If your answer to question (a) is yes, has your country already provided for protection of elements of traditional knowledge by means of the currently available standards of intellectual property?		Yes	Yes		Yes	Yes	
(d) Which of the following elements or standards of currently existing intellectual property law do you perceive as limitations in the application of intellectual property laws and procedures to the protection of traditional knowledge:							
(i) novelty or originality;	X	X	X			X	
(ii) inventive step or non-obviousness;	X	X	X				
(iii) fixation;	X	X					X
(iv) informal nature of TK;	X	X	X	X			X
(v) individual v. collective creation;	X	X	X	X			
(vi) term of protection;		X	X				
(vii) other;			X ⁵	X ⁶			
(viii) no limitations.							
(e) Have you enacted any law or regulation or administrative ruling of general application establishing a system of traditional knowledge intellectual property protection especially adapted to its characteristics (that is, a <i>sui generis</i> system)?	No	No	No	No	No	Yes	No
(g) If your answer to question (e) is no, is your country planning to establish a system of traditional knowledge protection especially adapted to its characteristics (a <i>sui generis</i> system)		No	No		No		⁷

⁵ The delegation of the Republic of Moldova gave the requirement for “disclosure” of an example of “other” limitations.

⁶ The delegation of Niger has indicated as another limitation the fact that traditional knowledge may be held by communities across several countries’ borders.

⁷ The delegation of Romania noted that it is currently analyzing the creation of databases in the field of TK.

Revised questionnaire (WIPO/GRTKF/IC/Q.1)	Russian Fed.	Spain	Switzerland	Togo	Ukraine	Uruguay	Viet Nam
(a) Is protection for traditional knowledge available under the current standards of your intellectual property law?	Yes	No	Yes	No	No	Yes	Yes
(b) If your answer to question (a) is yes, has your country already provided for protection of elements of traditional knowledge by means of the currently available standards of intellectual property?	Yes						Yes
(d) Which of the following elements or standards of currently existing intellectual property law do you perceive as limitations in the application of intellectual property laws and procedures to the protection of traditional knowledge:							
(i) novelty or originality;	X	X	X			X	X
(ii) inventive step or non-obviousness;	X	X	X			X	X
(iii) fixation;	X					X	
(iv) informal nature of TK;	X	X	X	X		X	X
(v) individual v. collective creation;						X	X
(vi) term of protection;	X				X	X	
(vii) other;			X		X		
(viii) no limitations.					X		
(e) Have you enacted any law or regulation or administrative ruling of general application establishing a system of traditional knowledge intellectual property protection especially adapted to its characteristics (that is, a <i>sui generis</i> system)?		No	No	No	No	No	No
(g) If your answer to question (e) is no, is your country planning to establish a system of traditional knowledge protection especially adapted to its characteristics (a <i>sui generis</i> system)	⁸		No	Yes ⁹	¹⁰	No	No

[Annex II follows]

⁸ The delegation of the Russian Federation replied that it was in the process of considering the creation of a *sui generis* system which would address the protection of TK, taking into account its specific features (aim, criteria, holders etc.).

⁹ The delegation of Togo replied that its proposed law on the protection of TK will take all the elements contained in question (f) into account.

¹⁰ The delegation of Ukraine stated that this issue is to be carefully examined taking into consideration both the internal needs of the country and international experience. Ukraine is currently examining whether it is appropriate to establish such a system.

ANNEX II

RESPONSES RECEIVED TO QUESTION (c), WIPO/GRTKF/IC/Q.1

Question (c): If your answer to question (b) is yes, could you please explain by means of concrete examples how currently available standards of intellectual property have been used to protect traditional knowledge.

CANADA

The *Copyright Act* is used by range of Aboriginal artists, composers and writers to protect their tradition-based creations. Examples include wood carvings of Pacific coast artists, silver jewelry of Haida artists, songs and sound recordings of Aboriginal artists, and sculptures of Inuit artists.

Trademarks, including certification marks, are often used by Aboriginal people to identify a wide range of traditional goods and services. These range from traditional art and artwork to food products, clothing, tourist services and enterprises run by First Nations. Many Aboriginal businesses and organizations have registered trademarks relating to traditional symbols and names. The number of unregistered trademarks used by Aboriginal businesses and organizations is considerably greater than those that are registered. Some trademarks are registered in order to prevent improper utilization of symbols or names.

For example, Snuneymuxw First Nation of Canada in 1999 used the *Trademarks Act* to protect ten petroglyph (ancient rock painting images). Because the petroglyphs have special religious significance to the members of the First Nation, the unauthorized reproduction and commodification of the images was considered to be contrary to the cultural interests of the community, and the petroglyph images were registered in order to stop the sale of commercial items, such as T-shirts, jewelry and postcards, which bore those images. Members of the Snuneymuxw First Nation subsequently indicated that local merchants and commercial artisans had indeed stopped using the petroglyph images, and that the use of trade-mark protection, accompanied by an education campaign to make others aware of the significance of the petroglyphs to the Snuneymuxw First Nation, had been very successful.

Aboriginal communities also rely upon trade secret protection, and, on occasion, use confidentiality agreements with governments and non-Aboriginal businesses when sharing their traditional knowledge.

A study produced for the Canadian government in 1999 provides an overview of areas of Canadian intellectual property law of most relevance to Aboriginal people. It sets out brief examples of Aboriginal peoples' use of, and their perspectives on, copyright, industrial design, trade-marks, patent and trade secrecy protection. This paper is available at: http://www.ainc-inac.gc.ca/pr/ra/intpro/intpro_e.html.

ITALY

Specific laws protect exclusive rights regarding the commercial use of trade names related to specific goods (not services) which in certain cases could have been made using “Traditional Knowledge”. That can be assumed referring to the protection of certificate of origin and geographical indications (i.e. “Prosciutto di Parma”). At the moment, this kind of protection for agricultural goods and foodstuff is admitted only after the Community Registration of the certificate of origin issued by the European Commission: See Reg. 2081/92/CEE, dated July 14th 1992, in GUCE n. 208L dated July 24th 1992.

MEXICO¹¹Case 1: ARTE SERI (registered trademark)

The Seri people is made up of a number of communities, and the clan structure plays an important part in its social organization. The intensity and depth of its relationship with the nature of the Gulf of California and the Sonora Desert has been abundantly documented (Felger & Moser, 1991). It is an effect of this ancient culture that the Seri have managed to survive in one of the driest regions of North America. In doing so they have taught themselves to eke out the available resources, and their creations include numerous articles of adornment for craft markets, which actually constitute an important source of income for families and communities. In the middle of 1993, a meeting was held in Bahía Kino, Sonora, to discuss the difficult circumstances of the Seri craftsmen who produced ironwood pieces, faced as they were with mass production by mestizo workers. So there was some discussion at the time on whether the appellation of origin might not be an appropriate medium of protection. The report on the meeting was signed by the Governor of the Seri tribe, Pedro Romero, and the Director of the Field Office of the National Institute of Indigenous Affairs in the region.

As a result of this process closer relations evolved with the Secretariat for Commerce and Industrial Promotion. In view of the fact that not just one process and one product were involved, the appellation of origin concept was eventually not adopted, and the trademark route was taken instead. In order to secure protection for the wide range of Seri products (baskets, necklaces, carvings in wood and stone, dolls, etc.), the Cooperative Consumer Society “Artesanos Los Seris” S.C.L. registered the trademark Arte Seri with the Mexican National Institute of Industrial Property in five different classes between 1994 and 1995. Although the trademark is still in force in the various categories, the Seri are not making use constant use of it.

Some thoughts inspired by this case are recorded below.

¹¹ These examples were recently submitted by the Delegation of Mexico in response to the questionnaire contained in document WIPO/GRTKF/IC/2/5, as opposed to revised questionnaire WIPO/GRTKF/IC/Q.1.

Classification of marks

The Arte Seri trademark was registered in five different classes

<i>TABLE. TRADEMARK CLASSES AND ARTE SERI</i>	
<i>Classes and product covered</i>	<i>Art. 59. Regulations under the Industrial Property Law</i>
14. Necklaces	Jewellery, precious stones
19. Sculpted rock	Building materials (non-metal)
20. Ironwood and elephant wood carvings	Furniture, mirrors, picture frames; goods (not included in other classes) of various natural materials
21. Clay carvings	Earthenware not included in other classes
28. Rag dolls	Games and playthings

Given the range of craft products, their uses and the materials of which they were made, it was necessary to register them in five different classes, and that in turn generated an administrative cost from a procedural standing as well as to their right owners. This example shows that a careful study should be made of the wisdom of creating a special class for goods produced by groups organized according to ethnic identity where the goods in question fall into very different classes of the present classification.

Ownership of the registration

The legislation in force did not and still does not recognize indigenous peoples as subjects of law, so a legal notion recognizable by law had to be created, which in this case was a cooperative, but it was alien to Seri forms of organizational structure. In the present situation, those Seri who do not form part of the cooperative are not entitled to make use of the trademark, owing to the fact that, in practice, a form of organization has been imposed that is alien to their practices and customs.

At present the rights of indigenous peoples and communities are the subject of intense debate in Mexico. This example shows clearly that there are areas of law in which recognition of these communities as subjects of law would enable them to join together as peoples and, for instance, exercise their right to have trademarks registered or apply to have appellations of origin legally protected. In that connection it could be mentioned that Mexico is party to Convention 169 of the International Labour Organization, and that the Convention has been ratified almost exclusively by Latin American countries. This has implications for the development of a *sui generis* system in our countries.

Limitations of the Arte Seri trade mark

Registration of the trademark in five classes in any event was insufficient, given the diversity of the traditional knowledge and practices of the Seri, if their goods were to be exploited in the market. For instance, the elephant wood basketwork of the Seri, while covered by the trademark, is a product that has all the features of an appellation of origin (namely the indissoluble link with their environment and culture), with about five local plants being used and an abundance of culturally specific skills applied (picking, *tatemado*, spinning, dyeing and weaving).

Innovation, tradition and environment

On the subject of the ironwood artefacts, Felger and Moser (1991) say that it was a craft industry that developed at the beginning of the 1960s and was neither traditional nor imported; it came in the wake of a drastic acclimatization exercise. In other words, this particular craft is a Seri innovation, a fact recognized even by Jose Astorga who pioneered it. As already mentioned, the trademark owes its origin to the concern generated by the mass production of machine-made imitations competing with those made by hand, which involved carving one of the hardest woods of the planet (*Olneya tesota*). The semi-industrial production has had a serious effect on the populations of this species of tree, of which there are progressively fewer centenarian examples. Indeed it has already been written among the Seri that they will discontinue this craft because it destroys “such a hard and ancient tree, some live to be 700 years old, are felled in an instant, and we don’t make sculptures for that reason,” as Humberto Romero of the Kunkaak people puts it.

It is also important to mention that production based on natural raw materials (biological resources) is not necessarily sustainable just because it is the work of the Seri. That means that, without there being any intellectual property aspects, it is necessary to forge links between intellectual property and the rights and obligations associated with the conservation and development of biodiversity. Such matters have a direct connection with the Convention on Biological Diversity, especially its Article 8j.

Case 2: OLINALÁ (appellation of origin)

The appellation of origin OLINALÁ relates to wooden articles made in the municipality of Olinalá in the state of Guerrero. This tradition has to do with Mexican lacquers which use natural raw materials, and the product is clearly an example of the connection between the environment and culture, which makes it eligible for the appellation.

The applicant for recognition of the denomination was the Unión de Artesanos Olinca, A.C., although in fact the declaration was made by, and the appellation belongs to, the State as a whole, which rules out the possibility of the arbitrary exclusion of other interested parties, as might happen in the case of the Arte Seri trademark. That fact indicates the importance of appellations of origin as elements of the national heritage which should be protected by the State. The articles in question are chests and crates made of wood from the Aloe tree (*Bursera aeloxylon*), a tree endemic to the Upper Balsas region. The lacquering process involves additional raw materials such as fats of insect origin and mineral powders. The

manufacture of Olinalá craft products is a local tradition that makes use of wood from a shrub that is a biological resource specific to the region.

Case 3: TEQUILA (appellation of origin)

Tequila is a spirit produced in various regions of Mexico by distillation of the fermented must derived from the heart of a plant known as the “blue agave,” the “Azul” variety of the *Agave tequilana* Weber. The name Tequila comes from the eponymous region in Jalisco, but the traditional production takes place in a number of municipalities in the states of Jalisco, Nayarit, Tamaulipas, Guanajuato and Michoacán.

The making of tequila involves knowledge that is traditional in the region and dates back to the middle of the sixteenth century, and it evolved into a full-scale industry at the end of the nineteenth. Tequila is considered the Mexican alcoholic beverage *par excellence*.

PORTUGAL

The Industrial Property Code (CPI), approved by Decree-Law no. 16/95 of January 24, 1995 plays an important role in the absence of any specific legislation about traditional knowledge, for it protects various forms of intellectual property in general, such as trade, collective, and certification marks, appellations of origin and geographical indications.

It should therefore be pointed out, in the case of trademarks, that is forbidden to register signs that consist exclusively of the shape resulting from the nature of the product itself, the shape of the product necessary for obtaining a technical result or the shape that gives the product its own substantial value, as well as of signs or indications that may be used commercially to designate the kind, quality, quantity, purpose, value, geographical origin, the time of production of the product or of rendering of the service (CPI article 166). Consequently there is a form of indirect protection of the subject matter which for the most part seeks to avoid or prevent the registration of marks, or other distinctive signs, that relate to the designation of the traditional knowledge concerned.

A more visible form of protection of the traditional knowledge may be found in collective marks — signs or indications used commercially to designate the geographical origin of products or services (CPI article 172(2)) —, association marks — specific signs belonging to an association of natural or legal entities whose members use or have the intention of using the sign for products or services (CPI article 173) —, and certification marks — specific signs belonging to a corporate body that controls the products or services or establishes the regulations that they must comply with; such sign is to be used in respect of products or services which are subject to the aforementioned control for which the regulations were established (CPI article 174).

In Portugal, for example, Arraiolos carpets, North Alentejo handicraft, striped cheese and Minho fiancées’ handkerchief are registered as association marks as well as shoes from Portugal, Caldas da Rainha embroidery, Açores pineapple, cheese of Évora, Açores handicraft.

However, traditional knowledge has an even more direct form of protection under appellations of origin — the name of a region, a specific locality or in exceptional cases a

country used to designate or identify the following types of products: a) products originating from the region, specific locality or country in question; b) products the quality or characteristics of which are essentially or exclusively due to the geographical environment, including natural and human factors, and the production, transformation and creation of which are carried out in the demarcated geographical area. Appellations of origin may also include certain traditional designations, whether geographical or not, indicating a product which comes from a region or specific locality (CPI article 249). A geographical indication is the name of a region, a specific locality or in exceptional cases a country used to designate or identify the following types of products: a) products originating from the region, specific locality or country in question; b) products the reputation, specific quality or other characteristics of which may be attributed to such geographical region and/or the production, transformation and creation of which are carried out in the demarcated geographical area (CPI article 249).

Portugal has a variety of rights of this kind protected such as wines of Porto, Madeira, Redondo, Dão; the cheeses of Serpa, Azeitão, S. Jorge, Serra da Estrela, Nisa; Madeira embroidery; honey of Alentejo, Açores.

Those rights, when registered, shall constitute the common property of the residents and may be used indiscriminately by any person who, in the respective area, work in any field of characteristic production.

RUSSIAN FEDERATION

In addition to the examples cited in document WIPO/GRTKF/IC/2/5,¹² we propose the following examples of the protection of traditional knowledge under the existing system of intellectual property protection.

Patents granted to national industrial enterprises:

- “Majolica paste”: Patent no. 2153479. Applicant: “Gzhel” Association.
- “Porcelain glaze”: Patent no. 2148570. Applicant: “Gzhel” Association.
- “Method for artistic-decorative articles made of wood (variants)”: Patent no. 2156783. Applicant: “Khokhloma Painting” Association.

Patents granted for medicines:

- “Medicinal, cosmetic cream” (based on medicinal plants): Patent no. 2049459. Applicant: M.M. Gafarov et al.

¹² The examples previously provided by the Russian Federation can be found in document WIPO/GRTKF/IC/3/7.

- “Immunomodulation means” (using grapevines, whey, etc.): Patent no. 2034542.
- “Diabetic mix” (based on medicinal plants):
Patent no. 2137491. Applicant: A.I. Sukhanov.

Examples of protection of works of national creation by means of patents for industrial designs:

Many art products are made and considered to be industrial designs protected by the patent law of the Russian Federation.

Applications are filed by the closed stock company “Gzhel” from the Moscow region. Gzhel is an ancient mining region known as a major mining area from the 18th century onwards. Patents for industrial designs are granted for mining items such as the “Plate”: Patent No. 48143; “Kvasnik” (a container for kvass), Patent No. 48142; and a “Tea Service”, Patent No. 48144.

Decorative articles made of wood with Khokhloma painting are protected, including golden painted wooden plates and dishes, toys, matrioshka dolls and domestic utensils. In the 1970’s, industrial design certificates were issued for the following painted articles: an “assemblable matrioshka” toy, Certificate No. 11052; a “matrioshka” musical toy, Certificate No. 11170; a “Khorovod” toy, Certificate No. 11358; and a “needlecase”, Certificate No. 11528.

Protection of items of national creation using geographical appellations.

According to Article 35(1) of Law No. 3520-1 of the Russian Federation on “Trade Marks and Service Marks for Appellations of Origin” (September 23, 1992), a State Register of the Russian Federation on appellations of origin must be kept. The entry of an appellation of origin in the Register serves as a basis for granting to the applicant a certificate for the right to use this item, which is issued for ten years and may be extended for additional ten-year periods.

A number of ancient industries are registered, the articles for which are connected with designations claiming to protect as appellations of origin: Velikiy-Ustyug niello, Gorodets painting, Rostov enamel, Kargopol clay toy, and a Filimonov toy.

To date, Rospatent has received more than 150 applications.

VIET NAM

Patent No. VN1017: Traditional preparation of medicinal plants used for assistance in stopping drug-addiction was patented as it met all requirements for a patent to be protected of novelty, involving an inventive step and industrial applicability.

Trademark No. 30848: Traditional balm of medicinal plants registered as Truong Son Balsam was granted with trademark certificate as it was distinctive from others.

Appellation of Origin No.1: Phu Quoc fish soya sauce has been protected as it is geographical name of an island where the fish sauce is produced and has peculiar characteristics or qualities attributed to geographical factors of the island.

(f) If your answer to question (e) is yes, could you please describe how your law or regulation or administrative ruling of general application establishing a system of traditional knowledge protection especially adapted to its characteristics (a sui generis system)

- (i) defines and/or identifies the policy objective of the protection;*
- (ii) identifies its subject matter (scope of protection);*
- (iii) identifies the criteria the subject matter must meet as a condition for its protection;*
- (iv) identifies the owner of the rights;*
- (v) defines the rights conferred, including exceptions;*
- (vi) establishes the procedures and formalities, if any, for the acquisition and maintenance of the rights conferred;*
- (vii) sets forth enforcement procedures so as to permit effective action against infringement of rights in traditional knowledge;*
- (viii) defines how the rights are lost and how they expire (including invalidation or revocation of any registration);*
- (ix) sets forth the interaction between the sui generis system and the existing standards of intellectual property, especially the extent to which they overlap or complement each other.*

PORTUGAL

Decree-law no. 118/2002 of April. 20, establishes the legal regime of registration, conservation, safeguarding and transfer of autochthonous vegetable material with actual or potential interest for the agrarian, agriculture-forest activities and landscape, including local varieties and spontaneous material, as well as the knowledge to him associated.

Traditional knowledge is all the intangible elements associated to the commercial or industrial use of local varieties and other endogenous material developed by the local populations, collectivity or individually, in a non-systematic manner and that are inserted in the cultural and spiritual traditions of those populations, including, but not limiting to, knowledge relating to methods, processes, products and denominations that are applicable in agriculture, food and industrial activities in general, including handicrafts, trade and services, informality associated to the use and preservation of local

varieties and other endogenous and spontaneous material that is covered by the present statute.

Such knowledge shall be protected against its reproduction and/or commercial or industrial use, provided the following conditions of protection are met:

(a) traditional knowledge shall be identified, described and registered in the Registry of Plant Genetic Resources (RPGR);

(b) the description referred to in the previous subparagraph shall be made in a manner that allows for other persons to reproduce or use the traditional knowledge and to obtain results that are identical to those obtained by the knowledge holder.

Traditional knowledge holders may opt for keeping it in confidentiality, in which event the regulation will set forth the modality of its publication in the gazette of registration, which shall be limited to give notice of the existence of the knowledge and to identify the varieties to which it is associated, the protection conferred by the certificate being limited to the event it has been acquired by third parties in an unfair manner.

The registration of traditional knowledge which, by the date of the filing of the application, has not been the subject of utilization in industrial activities or are has not become publicly known beyond the population or the local community in which it has been developed, shall confer on the respective holders the right:

(a) To prevent unauthorized third parties from reproducing, imitating and or using, directly or indirectly, for commercial purposes;

(b) To assign, transfer or license the rights in traditional knowledge, including transfer by succession;

(c) Traditional knowledge that is the subject matter of specific industrial property registrations is excluded from protection.

The entities that are entitled to register traditional knowledge are any public or private, individual or collective entity that represents the interests of the geographical zone where the local variety is more dispersed or where the spontaneous autochthonous material presents the highest genetic variability.

The registration of traditional knowledge shall provide effects for a period of 50 years from the date of the application, renewable for an identical period.

[End of Annex and of document]