

<ABS Forum in China>

# Discussing Legislation of ABS Law in China and Korea & Implications for the Future



July 14, 2014 (Monday) 16:00 – 18:30

Doubletree by Hilton in Beijing

Host



Sponsor





<ABS Forum in China>

**Discussing Legislation of ABS Law**  
**in China and Korea**  
**&**  
**Implications for the Future**

## I. Purpose

- With the expectation of entry into force of the Nagoya Protocol on Access and Benefit Sharing of Genetic Resources, many countries are making efforts to legislate Access and Benefit Sharing (ABS) laws. China is actively pursuing this legislation effort and Korea is also in the process of interagency consultations among relevant government ministries. It is obvious that these progresses will impact the Sino-Korean public and business relationship in the near future.
- In this light, ABS experts from both countries need to exchange ABS information and discuss the present and future relationship between the two neighboring countries through open dialogue and discussions.

## II. Logistics

- **Time and Place:** July 14, 2014 (Monday) 16:00 – 18:30 (followed by Dinner),  
Doubletree by Hilton in Beijing
- **Host:** National Institute of Biological Resources (Ministry of Environment of Korea)
- **Sponsor:** Korea Biotechnology Industry Organization
- **Agenda:**
  - ☞ The Status of Chinese ABS Administrative Systems
  - ☞ ABS Legislative Trends in Korea and China
  - ☞ The Status of Korean ABS Administrative Systems
  - ☞ The Effect on Related Industries in Korea and China



## ○ Participants

### <China>

- Dr. Xu Jing (Chinese Research Academy of Environmental Sciences)
- Prof. Xue Dayuan (Minzu University of China, Chief Expert on Biodiversity Nanjing Institute of Environmental Science Ministry of Environment Protection of China)
- Prof. Liu Changhua (Dean of The China Institute for the History of Medicine and Medical Literature, China Academy of Chinese Medical Sciences)

### <Korea>

- Dr. Lee Sang-Jun (National Institute of Biological Resources)
- Specialist Park Junghoon (National Institute of Biological Resources)
- Researcher Song Songyi (National Institute of Biological Resources)
- Prof. Choi Won-Mog (Ewha Womans University, President of the Korea ABS Forum)
- Prof. Park Won-seog (Chung-Ang University, Co-Chair of Expert Meeting Group on Article 10)
- Dr. Huh In (Korea Institute of Intellectual Property)
- Dr. Lee Min-Ho (Korea Institute of Oriental Medicine)
- Prof. Ryu Yeri (Gyeongsang National University)
- Prof. Oh SunYoung (Soongsil University)
- Researcher Jung Yeonhee (Ewha WTO Law Center)
- Researcher Choi Sung-yul (Chung-Ang University)

### **III. Schedule**

**Moderator: Prof. Choi Won-Mog (President of the Korea ABS Forum)**

**16:00 – 17:00 Session 1: Legislating ABS Laws in China and Korea**

- 16:00 – 16:20 Briefing of ABS Law and System in China  
Presentation by a Chinese Speaker (Dr. Xu Jing)  
Comments by Chinese participant (Prof. Xue Dayuan)
- 16:20 – 16:40 Briefing of ABS Law and System in Korea  
Presentation by Korean Speaker (Prof. Oh Sun Young)  
Comments by Korean participant (Dr. Huh In)
- 16:40 – 17:00 Discussions and Q&A

**17:00 – 17:15 Coffee Break**

**17:15 – 18:20 Session 2: ABS System and Its Implications to Korea-China Public and Business Relationship**

- 17:15 – 17:30 Presentation by Korean Side (Dr. Lee Min-Ho)
- 17:30 – 17:45 Presentation by Chinese Side 1 (Prof. Liu Changhua)
- 17:45 – 18:00 Presentation by Chinese Side 2 (Prof. Xue Dayuan)
- 18:00 – 18:20 Discussions and Q&A

**18:20 – 18:30 Closing Remarks (Prof. Choi Won-Mog, Prof. Park Won-seog)**

**18:30 – 20:30 Dinner**

**(Hosted by Prof. Choi Won-Mog, President of the Korea ABS Forum)**

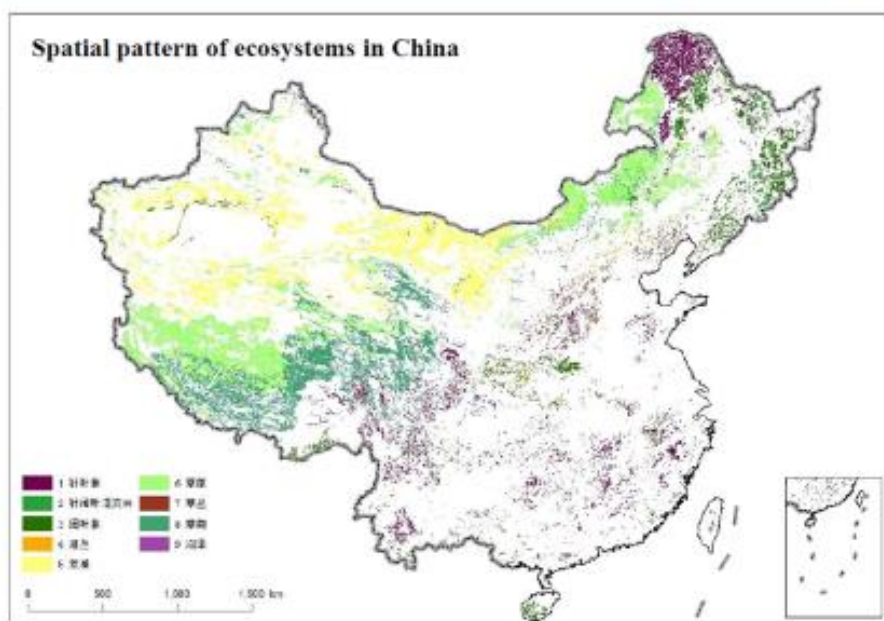
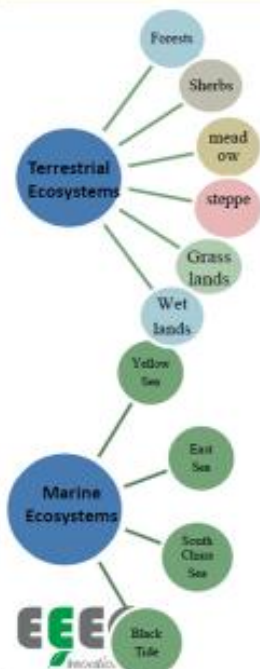
# CBD and Nagoya Protocol Follow-up in China

XU Jing and XUE Dayuan

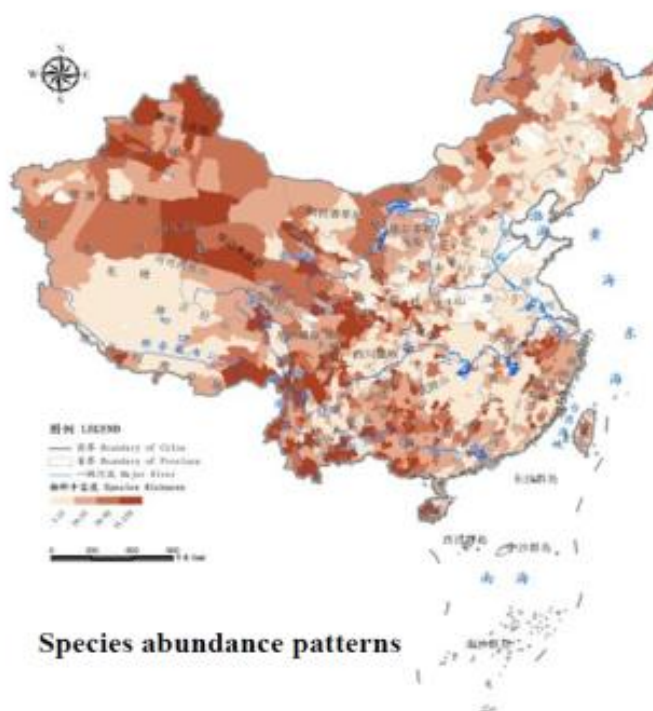
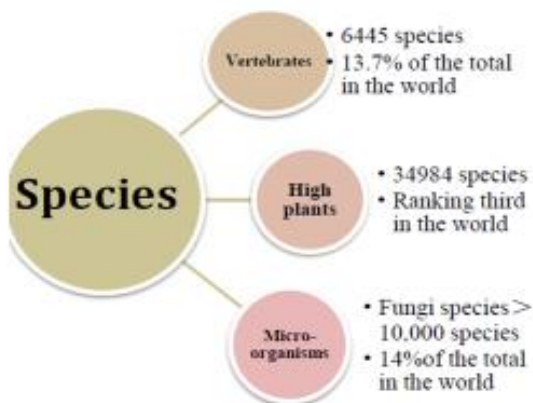


## Backgrounds

China is one of the 12 mega-biodiversity countries in the world.



## Backgrounds



## The Adoption of ABS Protocol

- ▲ 18-29 October 2010, Aichi-Nagoya, Japan, the tenth Meeting of the Conference of the Parties (COP10) decided to adopt the “Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (the Nagoya Protocol)”



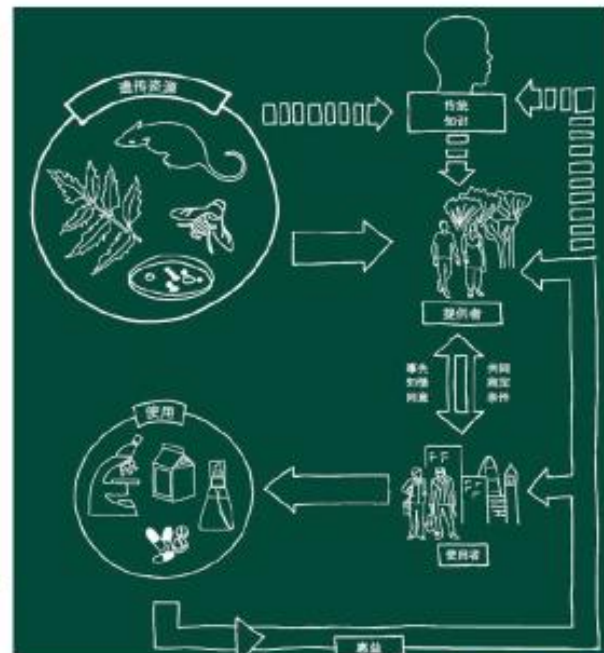
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## The Adoption of ABS Protocol

● NP is an international framework, providing considerable flexibility for establishing domestic ABS regime, detailed administrative procedure has to be designated by domestic laws, legislations and regulations of parties



## The efforts have been made in China

-  Outline of the National Intellectual Property Strategy
-  China National Biodiversity Conservation Strategy and Action Plan
-  Updating of ABS related legislation
-  ABS specific legislation elaboration





## Outline of the National Intellectual Property Strategy



The Outline of the National Intellectual Property Strategy



▲ This Outline is formulated for the purpose of improving China's capacity to create, utilize, protect and administer intellectual property, making China an innovative country and attaining the goal of building a moderately prosperous society in all respects.

▲ Goals for the next five years

- genetic resources and traditional knowledge will be effectively protected and reasonably utilized.

## Outline of the National Intellectual Property Strategy

Strategic focus: Improving the Intellectual Property Regime

- Special intellectual property laws, such as the Patent Law, Trademark Law and Copyright Law, and related regulations need to be promptly revised.

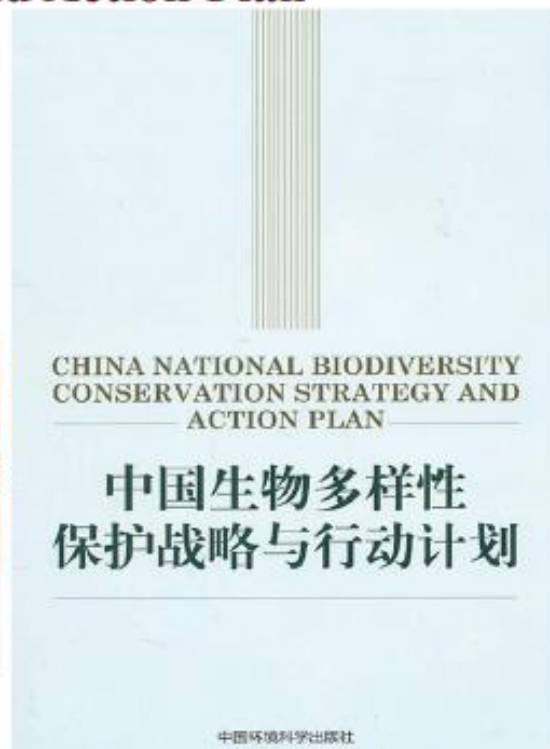
Specific tasks 6: Intellectual Property in Specific Areas

- Strengthen the protection, development and utilization systems for genetic resources to prevent loss and inappropriate use of them. Balance interests between the need to protect genetic resources and the need to develop and utilize them, and to develop a reasonable mechanism for genetic resource access and benefit sharing. The right of prior-informed consent enjoyed by suppliers of genetic resources shall be guaranteed.



# China National Biodiversity Conservation Strategy and Action Plan

- Approved by the 126<sup>th</sup> executive meeting of the State Council in 2010



# China National Biodiversity Conservation Strategy and Action Plan





## Priority Fields and Actions of Biodiversity Conservation



10  
priority  
fields

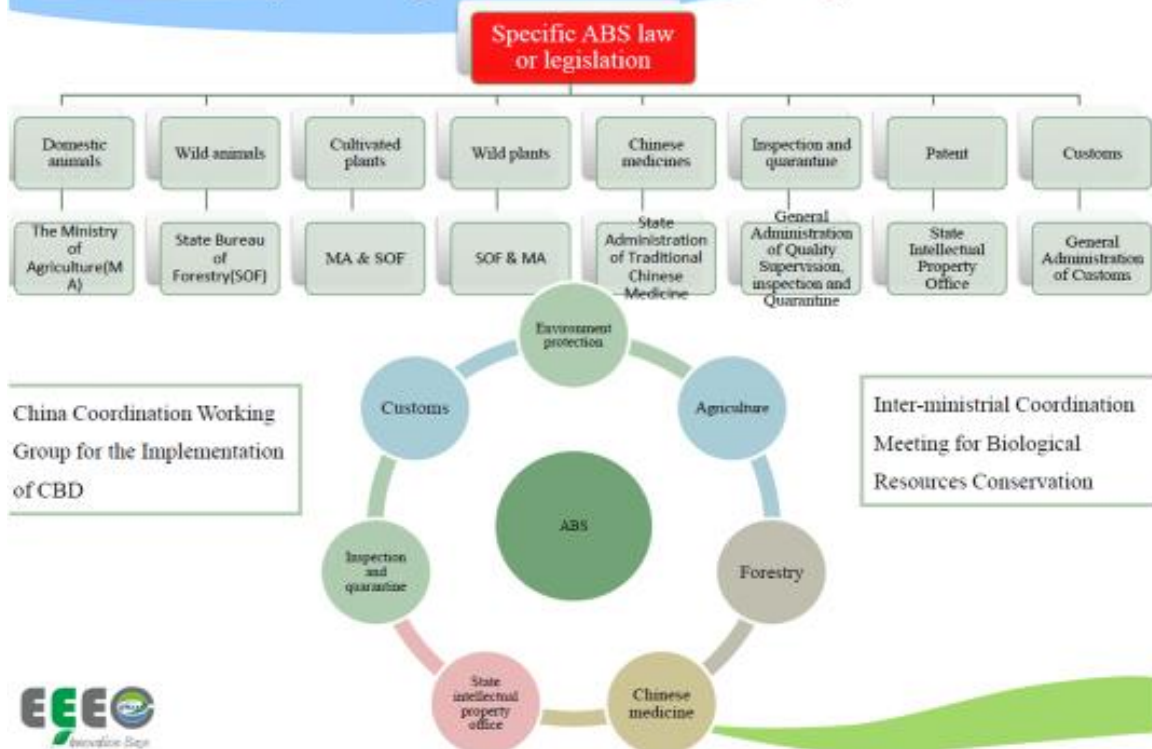
1. Complete policy and legal system in sustainable use of biodiversity.
2. Involve biodiversity in developing department and regional planning to promote sustainable use.
3. Carry out investigation, evaluation and monitor.
4. Reinforce in-situ conservation.
5. Carry out ex-situ conservation appropriately.
6. Promote access and benefit-sharing of genetic resources and associated traditional knowledge.
7. Intensify management of AIS, LMOs and GMOs.
8. Enhance capacity to dealing with climate change.
9. Strengthen scientific studies and education.
10. Set up public participation mechanism and partnership.

## China National Biodiversity Conservation Strategy and Action Plan

**Action 21 establish rules and mechanisms of conservation, access to and benefit sharing of genetic resources and related traditional knowledge**

- Develop policies of and regulations on access to and benefit sharing of genetic resources and related traditional knowledge.
- Improve regulations on disclosure of origin of genetic resources in patent applications and establish procedures of mutually agreed terms and prior informed consent for access to and benefit sharing of genetic resources and related traditional knowledge, and ensure that inspection of the import & export of biological resources will be operating effectively.
- Establish administration mechanisms, administrative agencies and technical supporting systems for access to and benefit sharing of genetic resources and improve related information exchange mechanisms.

## Updating of ABS related legislations



## Higher level coordination mechanism

- ▲ **China National Committee for Biodiversity Conservation**
  - **Premier Li Keqiang Formally Chaired**
  - **Membership of 25 National Authorities**





## Updating of ABS related legislations

- The animal husbandry law (2006)
- Administrative regulations of species of livestock and poultry (1994)
- Administrative rules on the livestock and poultry genetic resources conservation field protected areas and gene library (2006)
- Rules for examination and approval of Livestock and poultry genetic resources import & export and overseas cooperative research & utilization (2008)

### Domestic Animals



- Administrative Regulations of Fishery resources breeding and conservation (1979)
- Law of protection of wildlife (1988)
- Regulations for the implementation on terrestrial wildlife protection (1992)
- Regulations on the implementation of wild aquatic animal protection (1993)
- Administrative regulations of nature reserves (1993)
- Forest law (1998)
- Fishery law (2000)
- Grasslands law (2002)

### Wild Animals



## Updating of ABS related legislations

- Seed law (2000)
- Interim Measures for the agriculture seed import & export (1997)

### Agriculture plants



- Administrative regulations of wild medicinal materials resources (1987)
- Regulations on the conservation of wild plant (1996)
- Forest law (1998)
- Grasslands law (2002)

### Wild plants



- Regulations on the protection of types of traditional Chinese medicine varieties (1993)
- Regulations on the protection of new varieties of plants (1997)

### Plants varieties



## Updating of ABS related legislations

- Law on the entry and exit animal and plant quarantine (1991)
- Patent law (amended in 2008)
- Interim administrative rules of cultural relics (1985)
- Administrative regulations of nature reserves (1994)
- Regulations on city afforestation (1992)
- Customs Law(1987)

Others



## Updating of ABS related legislations (Intellectual Property Strategy)



CHECKPOINT

- ▲ A new paragraph regard to **disclosure requirement** was added into the Article 26 of the revised Patent Law (2008) :
  - ➔ Where an invention-creation is developed relying on the genetic resources, the applicant shall indicate, in the application documents, the direct and original source of such genetic resources; where the applicant fails to indicate the original source, he or it shall state the reasons thereof.





## Updating of ABS related legislations (Traditional Knowledge, 2011)

### ▲ The Law of Cultural Heritage for Intangible Goods (2011)



◆ **Intangible cultural heritage** refers to any traditional cultural expressions and physical objects and places associated with traditional cultural expressions which transfer among generations within all ethnic groups in China, including:

- ✓ **Traditional oral literature and language as its carrier**
- ✓ **Traditional fine arts, calligraphy, music, dance, drama, acrobatics and circus**
- ✓ **Traditional arts, medicine and calendar**
- ✓ **Traditional etiquette, festivals and other customs**
- ✓ **Traditional sports and recreation**
- ✓ **Other intangible cultural heritage**

## ABS specific legislation elaboration

### ▲ Legal framework should be improved

- A country who want to establish such system may wish to have a specific national law/legislation, or other laws /legislations relevant to the access of genetic resources.

Para 1, Article 6, Access to Genetic Resources

Para 1, Article 15, Compliance with Domestic Legislation or Regulatory Requirements on Access and Benefit-sharing

Para 1 Article 16, Compliance with Domestic Legislation or Regulatory Requirements on Access and Benefit-sharing for TK

## Look into the future



Thank you for your attention!  
谢谢!

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# IMPLEMENTATION OF THE NAGOYA PROTOCOL



**ABS LAWS & SYSTEM IN KOREA**

SUN YOUNG OH

(SOONGSIL UNIVERSITY)

## **Status of the ABS Draft Regulation in Korea**



Korea Ministry of Environment



KOREA DRAFT Regulation on Access to Genetic Resources and the Fair and Equitable Sharing of the Benefits Arising from their Utilization the implementation of the Nagoya Protocol



Pre-announcement of Legislation (Dec. 2013)



No Further Progress yet to the Korea Assembly for Ratification

## National Authorities

### AGRO-FISHERY BIO RESOURCES

- ACT ON THE PRESERVATION, MANAGEMENT AND USE OF AGRO-FISHERY BIO RESOURCES



Ministry of Agriculture,  
Food & Rural Affairs

### MARINE BIO RESOURCES

- ACT ON SECURING, MANAGEMENT, USE, ETC. OF MARINE BIO-RESOURCES



Ministry of Oceans  
and Fisheries

### BIOLOGICAL RESOURCES

- ACT ON THE PRESERVATION, MANAGEMENT AND USE OF BIOLOGICAL DIVERSITY



Ministry of  
Environment

## SCOPE

- Apply to GR and traditional knowledge associated with GR accessed (acquired) **after** the entry into force of the Nagoya Protocol
- **NOT** apply to GR which is regulated under other international agreements and instruments

## Access



- Need to **Report** to the Minister of the National Authorities in accordance with this Act
- **No Report required if** having the (1) Access Permit, or (2) Approval for removal from the Korea under the other existing laws

## Benefit-Sharing



All users of genetic resources and traditional knowledge associated with genetic resources need to make an endeavor to ascertain that benefits are fairly and equitable shared upon **mutually agreed terms**



## Monitoring User Compliance

- All users of overseas genetic resources and traditional knowledge associated with genetic resources need to follow the rules of the provider countries.
- All users of overseas genetic resources and traditional knowledge associated with genetic resources need to report the appropriate Minister in order to prove those are properly accessed and shared.

## Checkpoints

- No enumerated Agencies yet
- Checkpoint will be Central Administrative Agency designated by the Presidential Decree



# CONCLUSION



THANK YOU

## Comments by Korean participant (Dr. Huh In)

발표 잘 들었습니다. 저는 이미 관련 내용을 같이 작업을 하여 내용을 잘 알고 있어, 중국 측에 다음의 질의를 하고자 합니다. 중국의 조치는 한국의 법제 구축에 큰 도움이 될 것이라고 생각하기 때문에 다음과 같이 질의를 드립니다.

질문은 다음과 같습니다.

- 중국은 1993 년 CBD 비준 이후에 제공국의 입장을 견지하고 있습니다. 그럼 지금도 계속 동일한 입장인지, 향후 중국의 입장은 어떻게 될 것이라고 전망을 하시는지?
- 유전자원의 범위와 관련하여 중국은 파생물을 법규에 내용에 담아 규제를 할 것인지?
- 사전통보동의권의 주체는 누구인지? 중앙정부, 지방정부, ILC, 개인 중 누구인지와 향후 입법에서 어떠한 내용을 담아 이를 정리해 나갈 것인지?
- 중국도 유전자원 별로 주무부처가 다른데, 향후 어떠한 방향으로 입법을 추진 할 것인지? 더불어 책임기관의 운영에 대하여 어떠한 복안을 가지고 계신지?
- 각 부처의 나고야 의정서 비준에 대하여 상호간에 이견은 없는지?

- ILC 와 이익공유를 위하여 중국은 어떤 조치를 생각하고 있는지와 계획이 있다면 어떤 것이 있는지?
  
- 「생물유전자원획득과 이익공유 관리 조례」의 입법을 추진하는 것으로 아는데, 현재 중국 측의 관련 입법 상황이 어떤지?
  
- 특허와 관련하여 전리법에 출처공개 제도를 두었는데 후속입법의 상황은 어떤지? 또한 출처공개를 하지 않는 경우 어떠한 조치를 예정하고 계신지? 끝

感谢您的发言。由于一直参与相关内容的研究工作，所以对此比较了解，现在想要向中方提出如下几个问题。我认为中国在很多方面的措施都对韩国法制建设很有借鉴和启示。

我的提问如下：

- 中国在1993年批准加入CBD以后，一直坚持提供国的立场。那么现在还是相同的立场，应该如何展望中国未来的立场？
- 关于遗传资源的范围，中国会不会增加衍生物的相关法规规定？
- 事前知情同意权的主体是谁？中央政府，地方政府，ILC还是个人？为了立法中是否会整理添加相关内容？
- 中国也是另设主管部门，以后会向什么样的方向促进立法？对于责任机关的运营想要采取什么样的方案？
- 各部门对于名古屋议定书的批准相互间是否存在异议？
- 为了ILC和利益共享，中国想要采取哪些措施？是否有什么计划？具体是什么样的计划？
- 据我所了解，中方在促进《生物遗传资源获得与惠益共享管理条例》的立法，现在中方相关立法情况如何？
- 电力法中规定了关于专利的来源公开制度，后续立法状况如何？如果没有进行来源公开，预想采取哪些措施？

# **Nagoya Protocol and Traditional Knowledge of Korean Medicine**

(名古屋议定书与韩医药传统知识)

Lee Min-Ho(李敏镐)  
KIOM(韩国韩医学研究院)

2014. 07. 14



- 
- 1. Nagoya Protocol**
  - 2. Issues**
  - 3. Traditional Knowledge of Korean  
Medicine**
  - 4. Conclusion**

# 1. Nagoya Protocol

## ▲ Genetic resources and traditional knowledge associated with genetic resources

- The problem of protection on GR and TK having emerged as a popular issue in the late 1970s and early 1980s
- Developed countries have gained interests from GR and TK that located in developing countries
- At that time natural GR and TK regard as ‘common heritage of mankind’
- But the recognition of national sovereignty over GR and TK is generally understood as the main provisions of the Convention on Biological Diversity(CBD) relating to access to resources, as well as a sharing of the benefits that result from such access

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# 1. Nagoya Protocol

## ▲ If the Nagoya protocol takes effect

Genetic resources and traditional knowledge associated with genetic resources (遗传资源及遗传资源相关的传统知识)

- ‘the common heritage of mankind’ (人类共同遗产)
- ‘the object of Benefit-sharing’ (惠益分享的对象)

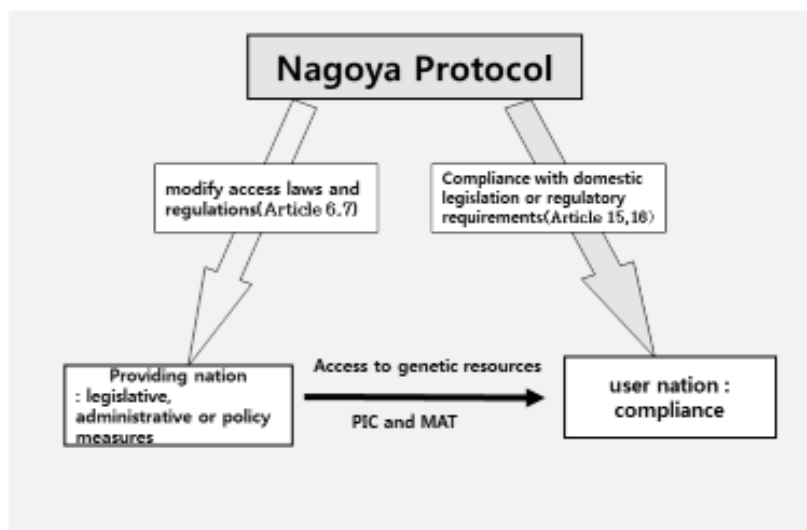
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# 1. Nagoya Protocol

Access (获取)	Benefit-sharing (惠益分享)	Compliance (遵守)
<ul style="list-style-type: none"> <li>• (PIC : Prior Informed Consent, 事先知情同意)</li> </ul>	<ul style="list-style-type: none"> <li>• (MAT : Mutually Agreed Terms, 共同商定条件)</li> </ul>	<ul style="list-style-type: none"> <li>• National focal points and competent national authorities(国家联络点和国家主管当局)</li> </ul>
<ul style="list-style-type: none"> <li>• Provide for fair and non-arbitrary rules and procedures on accessing genetic resources</li> </ul>	<ul style="list-style-type: none"> <li>• Monetary and non-monetary benefits                             <ul style="list-style-type: none"> <li>- Up-front payments</li> <li>- Milestone payments</li> <li>- Payment of royalties;</li> <li>- Sharing of research and development results</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Compliance with domestic legislation or regulatory requirements on access and benefit-sharing</li> <li>• The designation of one or more checkpoints</li> </ul>

# 1. Nagoya Protocol



## 2. Issues

▲ The problem of protection on GR and TK is negotiating in some international organization

- the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (GRTKF) of the World Intellectual Property Organization (WIPO)
- the TRIPs Council of the World Trade Organization (WTO)
- the United Nations Environmental Programme (UNEP)
- the United Nations Food and Agriculture Organization (FAO)

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## 2. Issues

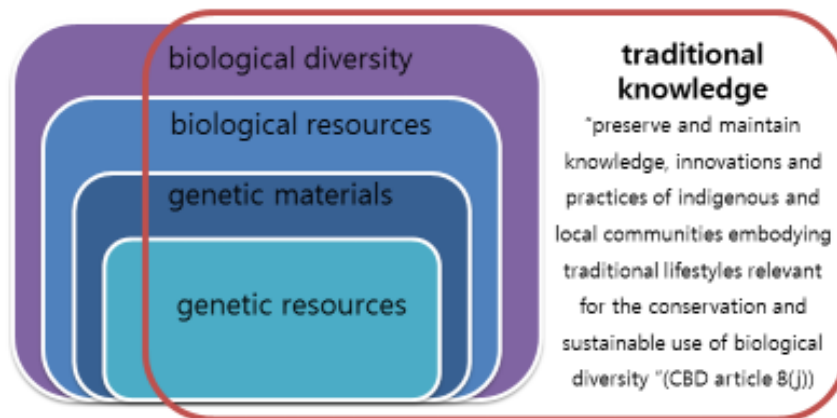
▲ Some countries have enacted the law for protect there GR and TK that located in there territory

- India, Thailand, Philippines, Andean Pact Countries and so forth
- They provide for intellectual property or sui–generis system on protection of GR and TK

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## 2. Issues

- Genetic Resources and Traditional Knowledge associated with genetic resources of the Indigenous and Local Communities (土著和地方社区)
- Opened to the public traditional knowledge and intellectual property right



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## 2. Issues

### Nagoya Protocol

#### – Article 3 : Scope

“ This Protocol shall also apply to traditional knowledge associated with genetic resources within the scope of the Convention and to the benefits arising from the utilization of such knowledge.”

#### – Article 7 : Access to traditional knowledge associated with genetic resources

“ In accordance with domestic law, each party shall take measures, as appropriate, with the aim of ensuring that traditional knowledge associated with the prior and informed consent or approval and involvement of these indigenous and local communities, and that mutually agreed terms have been established.”

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## 2. Issues

▲ The Nagoya Protocol sets the protection of traditional knowledge, the obtainment of prior informed consent from the indigenous peoples or local communities, and fair and equitable benefit-sharing between supplier and user

- 1) How to protect the traditional knowledge of Korean Medicine?
- 2) Traditional knowledge of Korean Medicine is the object of benefit-sharing or not?

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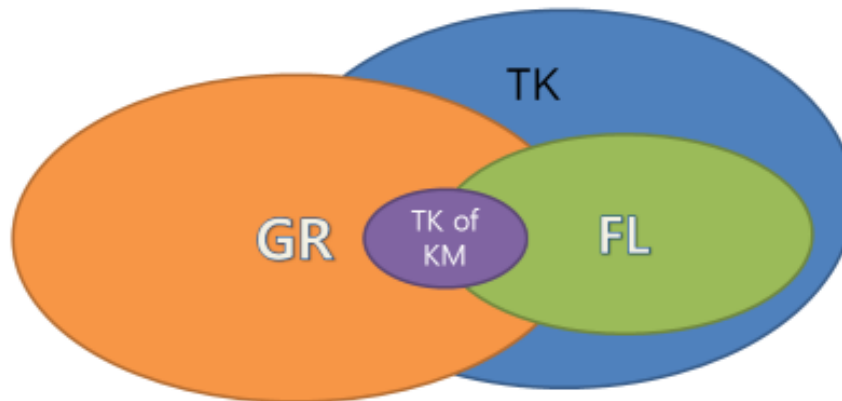
## 3. Traditional Knowledge of Korean Medicine

▲ What is the Traditional Knowledge of Korean Medicine?



### 3. Traditional Knowledge of Korean Medicine

#### ▲ Territory



### 3. Traditional Knowledge of Korean Medicine

#### ▲ Where is the Traditional Knowledge of Korean Medicine

- Korean history books
  - *The Chronicles of the Three States* (三国史记) : *ginseng* (人參), *ox bezoar* (牛黃)
- the classics of the Korean Medicine
  - *Hyangyakjibseongbang* (乡药集成方), *Dongbogam* (东医宝鉴) : medicinal herbs of Korea, Geo-Herb

### 3. Traditional Knowledge of Korean Medicine

#### ▲ Where is the Traditional Knowledge of Korean Medicine

- individual collection of literary works
  - *Kosachoalyo* (攷事撮要): encyclopedia, variety therapy that handed down among people (treat dysentery etc.)
  - *Jeungbosalimkyungje* (增补山林经济): emergency measures, 210 prescribe medicines
  
- Korean traditional folk remedies

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### 3. Traditional Knowledge of Korean Medicine

#### ▲ Classification

- 1) basic theory (基础理论)
- 2) diagnostic technique (诊断技术)
- 3) herbal prescription technical knowledge (本草处方技术知识)
- 4) acupuncture and moxibustion (针灸)
- 5) Korea traditional therapy technique (韩国传统治疗技术)
- 6) food cure (食治)
- 7) care of one's health (养生)
- 8) history and culture of traditional medicine (传统医药历史文化)
- 9) materia medica (药物剂制)
- 10) folkloric knowledge (民间传承知识)

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### 3. Traditional Knowledge of Korean Medicine

#### ▲ research study on the Traditional Knowledge of Korean Medicine

field	task to be performed
Law and system research	1) Intellectual property law research ① Intellectual property law ② sui generis system 2) system research - laws about the genetic resources and meteria medica
Survey and excavation research	1) literature investigation research 2) Field survey 3) conduct surveys and research on herbal resources
Information Database	1) analyze argument of WIPO 2) TK and GR Database 3) Patent Pool research and development
value evaluation method system research	1) value evaluation method Protocol development 2) valuation of TK and GR 3) value evaluation system development of TK and GR
industrialization system development	1) industrial condition <i>inquiry and support system</i> 2) R&D framework and related system with industrialization

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### 3. Traditional Knowledge of Korean Medicine

#### ▲ the status of Database

- Korean Traditional Knowledge Portal (KTKP) : the Korean Intellectual Property Office (KIPO) decided in 2004 to formulate information strategy planning for the building of a database of traditional knowledge. The database, which was compiled between 2005 and 2007, is based on traditional Korean medicine. A search service of the database commenced in December 2007

- OASIS(Oriental Medicine Advanced Searching Integrated System) : KIOM(韩国韩医学研究院)

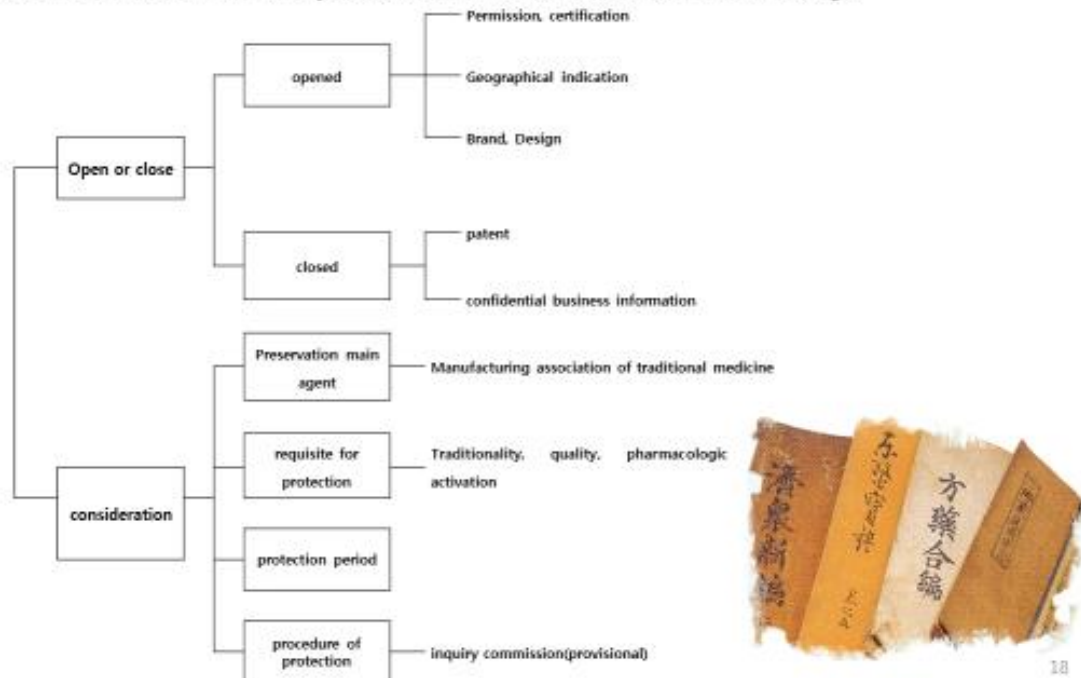


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### 3. Traditional Knowledge of Korean Medicine

#### ▲ Consideration on the protection of the traditional knowledge



### 4. Conclusion

#### ▲ Maneuver

: Discovery and preservation of the traditional knowledge of Korean Medicine associated with genetic resources

– Korea Institute of Oriental Medicine(KIOM) research project :

“Knowledge Resource Development by Excavation and preservation and DB Establishment of Traditional Home Remedy”

## 4. Conclusion

### ▲ “Knowledge Resource Development by Excavation and preservation and DB Establishment of Traditional Home Remedy”

#### 1) Purpose and necessity of research development

- Establishment of local situation map of folk remedy through total folk remedy excavation and collection
- Excavation and preservation of traditional folk remedy by in–depth on investigation
- DB establishment of traditional knowledge about folk remedy and knowledge resource development through registration of Patent Cooperation Treaty(PCT) minimum documentation

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## 4. Conclusion

### ▲ “Knowledge Resource Development by Excavation and preservation and DB Establishment of Traditional Home Remedy”

#### 2) Research contents and scale

- A. Establishment of local situation map of folk remedies
  - Document construction for local situation according to Government Compilation Sources
  - Establishment of regional current status data through the survey
- B. Excavation and preservation of traditional folk remedies
  - A single medicine therapy that is at the center of preservation of traditional folk remedy
  - Excavation and preservation of medical folk technique and non drug treatment
- C. Knowledge resource development through systematic classification
  - Indexing and systematic classification of folk remedy
  - Establishment of database of folk remedies

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## 4. Conclusion

### ▲ Traditional Knowledge of the classics of the Korean Medicine

- 1) That is the Public knowledge : It is not patentable subject matter
- 2) And have no concern with Indigenous and Local Communities(ILC, 土著和地方社区)
  - There is not exist ILC in korea

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*Thank you*

谢谢



# Session 2: ABS System and Its Implications to Korea-China Public and Business Relationship

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## ABS System

### Article 3. Scope

- This Protocol shall apply to genetic resources within the scope of Article 15 of the Convention and to the benefits arising from the utilization of such resources. This Protocol shall also apply to traditional knowledge associated with genetic resources within the scope of the Convention and to the benefits arising from the utilization of such knowledge.

### Article 2. Use of Terms

- (c) "Utilization of genetic resources" means to conduct research and development on the genetic and/or biochemical composition of genetic resources, including through the application of biotechnology as defined in Article 2 of the Convention;

### Implication

- (1) Genetic resources (GR) (origin or legally accessed)
- (2) Derivatives (Utilization of GR)
- (3) Traditional Knowledge associated with GR

# ABS System

## **Article 5. Fair and Equitable Benefit-sharing**

5. Each Party shall take legislative, administrative or policy measures, as appropriate, in order that the benefits arising from the utilization of traditional knowledge associated with genetic resources are shared in a fair and equitable way with indigenous and local communities holding such knowledge. Such sharing shall be upon mutually agreed terms

### **Preamble**

- *Further recognizing* the unique circumstances where traditional knowledge associated with genetic resources is held in countries, which may be oral, documented or in other forms, reflecting a rich cultural heritage relevant for conservation and sustainable use of biological diversity

# ABS System

## **Article 16. Compliance with Domestic Legislation or Regulatory Requirements on Access and Benefit-sharing for Traditional Knowledge Associated with Genetic Resources**

1. Each Party shall take appropriate, effective and proportionate legislative, administrative or policy measures, as appropriate, to provide that traditional knowledge associated with genetic resources utilized within their jurisdiction has been accessed in accordance with prior informed consent or approval and involvement of indigenous and local communities and that mutually agreed terms have been established, as required by domestic access and benefit-sharing legislation or regulatory requirements of the other Party where such indigenous and local communities are located.
- 2. Each Party shall take appropriate, effective and proportionate measures to address situations of non-compliance with measures adopted in accordance with paragraph 1 above.
- 3. Parties shall, as far as possible and as appropriate, cooperate in cases of alleged violation of domestic access and benefit-sharing legislation or regulatory requirements referred to in paragraph 1 above.



# ABS System

## **Article 11. Transboundary Cooperation**

- 1. In instances where the same genetic resources are found in situ within the territory of more than one Party, those Parties shall endeavour to cooperate, as appropriate, with the involvement of indigenous and local communities concerned, where applicable, with a view to implementing this Protocol.
- 2. Where the same traditional knowledge associated with genetic resources is shared by one or more indigenous and local communities in several Parties, those Parties shall endeavour to cooperate, as appropriate, with the involvement of the indigenous and local communities concerned, with a view to implementing the objective of this Protocol.

## Implications to China-Korea

### 1. Trade on medicines

Some 85% medicinal materials in Korea are imported from China

#### **Implications:**

- (1) raw materials (GR, environmental damage and benefit-sharing consideration)
- (2) Extractives (new form, derivatives)

## Implications to China-Korea

### 2. Documented TKs

The documented Chinese TCM has been widely used in Korea and Japan

#### Implications:

- (1) 汉方医药；东医药
- (2) Benefit sharing

## Implications to China-Korea

### 3. Korean invested bio-industries

Korean has invested a lot bio-industries in China, including joint venture, they will be subject to domestic legislation.

#### Implications:

- (1) PIC in access GR & TKs
- (2) MAT and benefit sharing



## Implications to China-Korea

- 4 Common species in the border areas of Korea and China, such as ginseng.

### implications

- 1 benefit-sharing mechanism
- 2 access to GRs

谢谢！

Thank you !