

# 23.08.2018

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## gLAWcal Comment #315

### DEFINING GENETIC RESOURCES

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*Based on*

**Jianqiang Nie “The Relationship between the TRIPs Agreement and the Convention on Biological Diversity (CBD): Intellectual Property and Genetic Resources, Traditional Knowledge and Folk Protection from a Chinese Perspective”**



**gLAWcal**  
Global Law Initiatives for Sustainable Development



**Routledge**  
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## A gLAWcal comment on Jianqiang Nie “The Relationship between the TRIPs Agreement and the Convention on Biological Diversity (CBD): Intellectual Property and Genetic Resources, Traditional Knowledge and Folk Protection from a Chinese Perspective” in Paolo Davide Farah and Elena Cima (Eds.) **China’s Influence on Non-Trade Concerns in International Economic Law**

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As the text states: Genetic Resources indicates any material of plant, animal, microbial, or other origin containing functional units of heredity that have actual or potential value. From traditional legal structures, there are elements of the regulation and protection that are dispersed amongst a variety of areas of the law from property law to intellectual property law. While this may not be a new feature of regulation, it certainly complicate the novel regulation of genetic resources. An area of this regulation that provides a very different outcome for the intellectual property holder is whether it is further defined as a discovery or as an invention. In the Chinese example, there are efforts to fully define the scope of reg-

ulation of the intellectual property of genetic resources are commendable. As the text sets out to make recognition, this area of the law is necessarily complicated because every different sphere of regulation is complex, bringing different definitions and levels of consideration into play. Simply, the words in common language of “discovery” and “invention” would otherwise be used interchangeably, but the real consequences of whether something is a discovery or an invention as it is related to genetic resources creates a quite different cascading effect depending upon which first categorization the knowledge falls into. Regulators should be especially careful when writing rules to reflect this bifurcating outcome of protection for something that is deemed to be invented, and something that is invented.

Cite as: gLAWcal Comment #315 “Defining genetic resources” (2018) based on Jianqiang Nie “The Relationship between the TRIPs Agreement and the Convention on Biological Diversity (CBD): Intellectual Property and Genetic Resources, Traditional Knowledge and Folk Protection from a Chinese Perspective” in Paolo Davide Farah & Elena Cima (Editors), *China’s Influence on Non-Trade Concerns in International Economic Law*, gLAWcal Book Series, Routledge Publishing (New-York/London), 2016

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The gLAWcal comments are insight and short analytical pieces written by the gLAWcal team. The gLAWcal comments are based on, and inspired by, the books and chapters published within one of the [gLAWcal book series](#) published by Routledge Publishing (New York/London).

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To influence policymakers, to raise awareness over Non Trade Concerns, to encourage stakeholder participation, and to disseminate gLAWcal’s publication results.



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