

EMERGING MARKETS PROGRAM PROPOSAL
**Agricultural Intellectual Property Rights in China: Creating a Solution for the
Protection of Patents, Trademarks, Copyrights, and Agriculture Technology**

Date of Proposal

August 14, 2008

Names of the Person/ Organization Submitting Proposal:

Organization

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Full Title of Proposal:

Agricultural Intellectual Property Rights in China: Creating
a Solution for the Protection of Patents, Trademarks,
Copyrights, and Agriculture Technology

Target Market:

China

Proposed Dates of Implementation:

FY09; October 2008 to September 2009

Summary:

In China's dynamic regulatory environment, U.S. agricultural industry, especially small and medium sized businesses, contend with financial losses from intellectual property right (IPR) violations. This project is a continuation of a 2006 EMP funded program that will support U.S. agricultural industry with labeling issues and IPR violations in China. Because of widespread piracy, it is critical that the Foreign Agriculture Service (FAS) in China expand its support to companies facing these challenges. Under this program, FAS will advise cooperators and agricultural interests working or planning to work in China's market. In the short-term, individual companies are assisted and in the long-term the project will create a better overall environment in China for U.S. agricultural exporters.

Many of the projects initial information dissemination, awareness, and outreach goals have been met or are underway. However, to fully accomplish the objectives established

for this project, FAS Beijing will continue to utilize intellectual property rights and labeling specialists to complete the remainder of the initial goals.

In the past year, the China IPR Office assisted over 50 companies with a range of IPR issues and as the news of the importance of this issue grows, the number of U.S. organizations requesting assistance grows. With additional funding, the IPR Office will continue to conduct general training and support for the U.S. agricultural industry and provide specific advice on IPR issues. General support will be provided by supplementing the agriculture IPR toolkit, continuing an IPR issue tracking system, providing updates and news related to the rapidly changing IPR landscape in China, and holding IPR educational programs. Specific advice will be provided through appropriate legal specialists. A second series of goals relates to creating an environment that protects the intellectual property used in creating agricultural goods, such as seed genetic material and animal genetics.

Benefit to U.S. Agricultural Exports:

The project will benefit individual cooperators and agricultural companies and further U.S. government policy objectives. Industries, including the Wisconsin Ginseng industry and the California pistachio industry have lost their markets to counterfeit products. In addition to ongoing market revenues, continued access problems will potentially close U.S. industry out of the market. This proposal supports a service to cooperators and companies in the agricultural industry and provides expanded market intelligence that will assist FAS in formulating trade policy objectives.

Background:

As American suppliers continue to enter the market and operate in China, many are faced with violations of their IPR. The piracy rate is estimated to be above 90 percent in China, which is easily among the highest rates in the world. It is estimated by some copyright industry associations that U.S. companies lose over one billion dollars every year due to IPR violations. The agricultural industry is among the many industries affected by this crime. To date, the United States is China's largest supplier of agricultural commodities. In facing these problems, small and medium enterprises (SME) are particularly vulnerable to these costs of doing business in China.

FAS China proposes to continue to provide services to all U.S. agricultural exporters, especially SMEs. As China's largest supplier of agricultural products, it is critical that FAS take a more active role in aiding U.S. companies in addressing labeling problems and IPR violations. The U.S. Embassy in Beijing has initiated a campaign to address IPR problems and this project will dovetail with this campaign to support agricultural interests. Theft of a trademark and mislabeling can damage a brand's name and reputation, decrease consumer confidence, result in lost sales, and create liability problems from consumer illness.

With current services limited to reporting on labeling requirements, utilizing the current Agriculture IPR Toolkit, and the general situation with IPR, U.S. agricultural interests face significant market access barriers. This project envisions continued services to: 1)

work with an IPR and labeling specialist and legal advisor; 2) conduct educational outreach; 3) create supplements to the agriculture IPR toolkit; 4) continue the internal database to monitor cooperators and companies' registration and cases of complaints; and 5) prepare market reports.

Description of Proposed Activities:

1 Agricultural Intellectual Property Rights Legal Advisor

The advisor will provide general legal training about the IPR environment in China as well as consult with companies seeking patent, trademark and copyright advice. This relationship will help provide a better understanding about the IPR issues in China, how to create a better environment for U.S. agricultural exporters, as well as ensure that U.S. agricultural suppliers are appropriately registered and understand the legal environment in which they will be exporting. The opportunity to consult with a legal expert will be a critical component for cooperators and SME's. The Advisor will conduct IPR training, in-depth research on legal issues of importance to agriculture, and produce information for the IPR news update.

2 Technology Transfer in Agriculture

The program is designed to encourage an environment that is more protective of physical intellectual property and the agriculture technology used to create it. Specific agriculture industries cannot take advantage of China's market because they have or expect that production techniques or processes used to create unique products will not be protected during the government registration or marketing in China. In the seed industry, examples have shown that marketing advanced seeds in China has subsequently resulted in unlicensed use of the technology by Chinese companies, resulting in lost sales and technology valued in the hundreds of millions of dollars. As a result, U.S. conventional and biotech seed sales are dramatically smaller than they would be in an environment that protected agricultural technology transfer. Seminars and educational outreach will be conducted to educate Chinese policymakers about the advantages of a strong IPR protection environment for agriculture technology.

3 Further Development of the Toolkit on Agricultural Intellectual Property Rights in China

This is a resource to supplement the current U.S. Embassy IPR toolkit. The Agriculture IPR Toolkit currently includes the following:

- Background on IPR and agriculture
- Risk of doing business in China
- Introductory "How to" address IPR concerns
- How can FAS help
- Additional Resources and Information

Additional information will include

- Guide to IPR Enforcement
- IPR and the Internet
- IPR and the Use of Well Known Generic Symbols in China

- 4 Agricultural issues, including patent, trademark, copyright and compliance with labeling standards, tracking.

The China IPR currently tracks all issues where assistance or advice is provided. This system for tracking would be continued and expanded. The system helps to establish the extent of this problem and insure appropriate follow-up. It contains basic information about the companies, what their complaint or problem is, when they registered, what classes they registered, what violations have they encountered, what action did they pursue to stop the violation, and what was the final outcome. This information will help FAS better manage and service the U.S. agriculture industry in China

- 5 Continue Agricultural Intellectual Property Rights Market Reports

The IPR China Office program would include additional reports on the IPR environment and violations in China that measure the extent of the problem of intellectual property rights violations for the U.S. agricultural industry, and over time, provide a critical evaluation tool for the success of the program. The first survey will be the most in depth, as it will take time to gather the initial information and develop reliable resources. The market survey should include the following:

- Estimate of agricultural IPR violations
- Estimate of agriculture industry financial loss due to IPR violations
- Most common violation
- Most viable solution to date
- Outcomes of all solutions
- Current trade policies in effect towards IPR

- 6 Outreach on Agriculture Intellectual Property Rights

The program includes informational programs to assist U.S. cooperators and companies operating and or entering the Chinese market and to help the Chinese government create better preventative measures for IPR violations and enhance enforcement policies. The programs for the U.S. agriculture industry will cover protection of brand name, registration, enforcement options, new industry violations, and best solutions. The educational program and material will also market the services of the IPR and labeling specialist and provide a forum to get feedback on how FAS can improve these services.

Implementing Agency or Organization:

FAS offices in China will implement this activity.

Roles and Responsibilities

FAS Agricultural Post in China

- Supervise and monitor the implementation of the project.
- Provide office support for the Agricultural Intellectual Property Rights and Labeling Advisor
- Assist with the initial market report
- Coordinate with the Advisor on trade policy research dealing with IPR and labeling
- Liaison with other U.S. Embassy Offices on the wider Embassy IPR campaigns

Agricultural Intellectual Property Rights and Labeling Advisor

- Generally manage the labeling and IPR portfolios
- Advise cooperators and companies with IPR issues, including registration and enforcement
- Develop and Maintain the Agricultural Intellectual Property Rights in China Toolkit
- Oversee the development the issue tracking database
- Maintain current information about agriculture IPR violations, including:
 - Complaints
 - Advise given
 - Action(s) taken
 - Status of action(s)
 - Final outcome
- Market reports
- Oversee educational outreach programs

Monitoring and Evaluating:

FAS Beijing will monitor and report on the performance of the project. This will include monitoring the new database for new cases and successes, approving reports written by the specialist, regular meetings, and other direct oversight. Quantitative benchmarks include 4 GAIN reports with IPR and labeling updates, 30 new cases, resolve 15 cases, and 90% satisfaction rate with clients.

Budget Amount Requested for Support of Project: \$157,500

The budget for the program is \$157,500 from the Emerging Markets Program. This funding will support the attorney advisor, supplemental agriculture intellectual property rights toolkit information, continuation of an issue tracking database, education, and technology transfer policy outreach. A detailed description expenses follows.

Budget:

FAS Funding:

Overhead and Technical Support

EMP Requested Funding:

Proposed Activities	Cost Break Down	Total Cost
Agricultural Intellectual Property Rights and Labeling Advisor	Legal Advisor \$50,000	
Professional Legal Training And Consultations	Professional Counsel \$20,000	
		\$70,000
Education, Outreach, and Market Reports	Professional Counsel \$15,000	
	Travel \$20,000	
		\$35,000
Supplementary Agricultural Intellectual Property Rights Toolkit	Development \$7,000	
	Miscellaneous \$ 500	
		\$7,500
Technology Transfer Seminar	Venue, Materials, Interpretation \$25,000	
	Travel, Speakers \$20,000	
	Per diem, Accommodation	
		\$45,000
PROPOSAL GRAND TOTAL		\$157,500

Appendix I

FAS China Emerging Markets Program Summary Proposal

- a) **Date:**
August 14, 2008
- b) **Organization Name:**
Office of Agricultural Affairs, U.S. Embassy Beijing
- c) **Organization Address:**
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- d) **Primary Contact:**
William Westman, Agricultural Minister Counselor
Mark Petry, Attaché
- e) **Full Title of Proposal:**
Agricultural Intellectual Property Rights in China: Creating a Solution for the Protection of Patents, Trademarks, Copyrights, and Agriculture Technology
- f) **Target Market:**
China
- g) **Description of Problem:**
 1. Inadequate knowledge of market impact of intellectual property rights (IPR) violations on U.S. agricultural exporters
 2. Inadequate enforcement policies for violations of patent and trademark infringements means lost revenue and unfair competition
 3. Lack protection of patent, trademark and copyrights creates a market access-barriers, especially for small and medium sized enterprises.
 4. Labeling standards and regulatory compliance is a significant market-access barrier for small and medium size enterprises
- h) **Project Objectives:**
 1. Create a better environment in China for U.S. agricultural suppliers to export
 2. Provide advice, feedback, and support on labeling and IPR needs to cooperators and companies working or planning to work in China
 3. Reduce the lead time for individual companies interested in exporting their products to China
 4. Better monitor the IPR situation for agriculture in China
 5. Understand the process and laws that support foreign companies with labeling, patent, trademarks and copyright issues

6. Train companies on protecting their IPR and developing labeling consistent with Chinese regulations
7. Improve enforcement of IPR laws through training of PRC Government officials

i) Performance Measures:

1. Draft at least 4 GAIN reports with IPR updates
2. Open 30 new cases
3. Resolve 15 cases
4. 90% satisfaction for seminars and clients
5. Chinese government policy changes

j) Rationale:

This proposal will provide U.S. companies with practical guidance on protecting IPR and insuring cost-effective compliance with Chinese labeling requirements. Long-term components of the program are intended to increase the government of China's enforcement of agricultural IPR.

k) Clear Demonstration of Successful Implementation Benefits an Industry:

Labeling and IPR infringements are widespread in China. The number of Wisconsin Ginseng producers has dropped by 75% since trademark violations undermined their marketing efforts in China, but rebounded after aggressive IPR enforcement actions. The pistachio industry halted marketing in China because of their inability to effectively address their trademark infringements, but have put IPR protection efforts at the beginning of their re-entry strategy. Addressing these issues on a case-by-case basis as well as concrete policy changes by the Chinese government will mark success to a wide variety of U.S. agricultural sectors.

l) Explanation of What Could Not Be Done Without Federal Funding:

Critical market access barriers will not be addressed without government funding. First, there is no resource for small and medium sized enterprises for practical assistance addressing labeling problems. Once the service is established, this portion of the service could be handed over to the private sector. The service will not be started without government funding. Developing solutions requires close coordination with the U.S. Embassy and FAS offices in Beijing and U.S. agricultural industry. This project will create the nexus where this coordination can take place.

m) Specific Activity Description(s):

FAS China will begin to advise, provide feedback, and help cooperators and companies with trademark and patent issues. The various ways that this will be achieved include full-time employment of an intellectual property rights specialist, creation of supplementary agriculture IPR toolkit and computer-based organizational database, development of market reports, and IPR educational materials.

- n) **Time Line:**
October 1, 2008 to September 30, 2009

- o) **Detailed Line Item Budget:**
Please refer to the detailed line item budget referred to in the main proposal.