



# Earth Negotiations Bulletin

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## IFF-4 HIGHLIGHTS THURSDAY, 3 FEBRUARY 2000

On the fourth day of IFF-4, Working Group 1 continued to negotiate bracketed text on TFRK and briefly addressed underlying causes of deforestation, protected areas and forest research. Delegates met in contact groups on transfer of ESTs, finance, and trade and environment to continue deliberations.

### WORKING GROUP 1

**TRADITIONAL FOREST-RELATED KNOWLEDGE:** On an action proposal calling on countries to implement stronger measures to recognize, respect and protect TFRK in SFM within IPR and *sui generis* systems as appropriate, and taking into account the work of the CBD and IPR-related treaties, JAPAN preferred, and BRAZIL and the PHILIPPINES opposed, "sufficient" measures. The US proposed "strong." AUSTRALIA suggested and delegates agreed to "effective" measures. The EU, NORWAY and CANADA called to delete "within IPR and *sui generis* systems as appropriate." BRAZIL, supported by COLOMBIA, the US and PERU, opposed, underscoring the need for legal coherency. The EU, supported by JAPAN, the US, AUSTRALIA and ECUADOR, called to replace "IPR related treaties" with "and other relevant international agreements." BRAZIL agreed, contingent on retaining "within IPR and *sui generis* systems." The EU agreed with the addition of "or other systems." The proposal was adopted with these modifications.

Regarding encouraging consistency between trade-related IPR agreements and TFRK, AUSTRALIA preferred a broader statement regarding the origin of traditional knowledge and suggested reference to exploring how TFRK can be protected under an IP regime. JAPAN, supported by the EU, said the paragraph was redundant as identification of origin of TRFK was addressed by private contract and urged its deletion. BRAZIL, with GHANA, PERU and NORWAY, emphasized the role of the CBD in determining the origin of TFRK and requested its retention. JAPAN indicated that aspects of origin were also being addressed by WIPO. The EU proposed revised text encouraging consistency between TFRK of indigenous and local communities and relevant international agreements. Several delegates, including the US and AUSTRALIA, questioned the meaning of "consistency" between TFRK and international agreements. BRAZIL suggested its intent to ensure arrangements for protecting TFRK and international agreements do not conflict and underscored that protecting TFRK should not be bypassed by international agreements regarding IPR. CANADA, supported by the US and NORWAY, suggested the language stemmed from the acknowledged need for further knowledge on the relationship and linkages between IPR and TFRK. She proposed new text encouraging, *inter alia*, work with relevant international organizations to help develop a common appreciation and under-

standing of the relationship between the current IPR, patent and *sui generis* systems, TRIPs, and the CBD, including identifying the origin of traditional knowledge and genetic resources with the intent of protecting such knowledge from inappropriate use. CANADA reiterated that patent and *sui generis* are in brackets. COLOMBIA expressed concern over reference to *sui generis*. ECUADOR questioned the meaning of inappropriate use and BRAZIL explained the intent is to avoid use of TFRK without consent. The US asked whether this would be applicable to national law. The EU requested time to consult. The text remains under consideration.

On text inviting the CBD Secretariat to prepare an overview of approaches to identifying and recording TFRK, the PHILIPPINES stressed the importance of identifying and applying TFRK. JAPAN called for reference to taking into account IPR-related treaties. PERU and ECUADOR said references to CIFOR, IUFRO and FAO in the text signalled a decreased emphasis on traditional knowledge holders, and requested deletion of the paragraph. This text remain unresolved.

On the action proposal inviting the CBD to address certain TFRK-related issues, the US said requesting the CBD to establish prior informed consent for access to TFRK is beyond the IFF's mandate. BRAZIL, COLOMBIA and AUSTRALIA supported reference to prior informed consent. CANADA suggested the IFF invite the CBD to consider prior informed consent procedures and ECUADOR suggested the CBD consider applications for prior informed consent procedures.

On the action proposal for promoting fair and equitable benefit sharing, BRAZIL, supported by AUSTRALIA and the PHILIPPINES, supported text on payments where appropriate and specific CBD articles. AUSTRALIA and PERU suggested reference to developing benefit sharing mechanisms. ECUADOR, supported by the US and MEXICO, preferred referring to related articles of the CBD rather than listing specific articles. BRAZIL opposed and preferred the insertion of "*inter alia*" in reference to these articles. JAPAN called for reference to IPR-related treaties. The EU preferred reference to relevant international agreements and to national law. Delegates agreed to refer to payments, international agreements, national law and specific CBD articles.

Regarding developing national level legislation and policies to achieve objectives under various CBD articles, JAPAN, CANADA, GHANA and the EU proposed, and BRAZIL and ECUADOR opposed, deleting a reference to developing a legal framework for the CBD articles at the international level. BRAZIL suggested reference to an international regime on biodiversity. ECUADOR called for reference to Article 10(c) (traditional use of biological resources) of the CBD. The US proposed reference to related provisions of the CBD rather than to specific articles. She also suggested replacing reference to a legal framework with reference to enhanced international coopera-

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tion. BRAZIL and ECUADOR opposed, and CANADA suggested reference to a set of guidelines. BRAZIL advocated reference to all traditional knowledge. The US welcomed the reference to guidelines but said TFRK should remain the emphasis. JAPAN asked that the text remain bracketed.

**UNDERLYING CAUSES:** To an underlying causes action proposal on transparency in structural adjustment policies (SAPs), AUSTRALIA proposed amending text to state that the IFF invited international financial institutions to provide transparency in SAPs and to work toward ensuring the policies support national sustainable development objectives. Delegates will revisit this proposal.

**PROTECTED AREAS:** The WORLD BANK provided a definition for protected areas provided by the IUCN's World Commission on Protected Areas (WCPA). He noted the definition and an IUCN/WCPA-developed classification system are being used by many countries, UN institutions and major groups, and encouraged the IFF to take note of this. He called on the IFF to invite further development of a global approach for assessing effectiveness of protected forest areas management. The US expressed concern that the conclusion and action proposals on protected areas do not reflect the IFF-3 outcome, and hoped the issues could be solved informally.

**FOREST RESEARCH:** Delegates approved the conclusions and action proposals.

### CONTACT GROUPS

**TRANSFER OF EST:** Regarding an action proposal urging developed countries to take further measures on transferring ESTs to developing countries, delegates debated the placement of reference to putting into practice the recommendations of Agenda 21, the CSD and IPF. One delegate proposed adding text on promoting and facilitating EST transfer. Delegates generally agreed on urging countries to take further active measures. One delegate proposed text on catalyzing support for development and application of technology development. However, no consensus was reached pending consultations of a group of countries.

Deliberations on the establishment of new mechanisms to enhance transfer of ESTs continued regarding: proposed text referring to the broadening and development of initiatives and/or mechanisms; and the reluctance of some delegations to support language on initiating actions. On this issue, some delegations felt suggested wording implied a lack of existing actions. The text remains unresolved, pending consultations.

Regarding inclusion of an action proposal on sharing benefits from the use of biological resources in accordance with CBD provisions, some countries questioned the appropriateness of discussing the issue at the IFF as it is being discussed in other fora such as the CBD and WIPO and preferred its deletion. One delegate proposed that, if the action proposal is included, text on benefit sharing in accordance with international and domestic laws relevant to IPR be included. Another added that benefit sharing should be as mutually agreed. Some questioned including reference to IPF proposals for action. Many supported reference to forest biodiversity instead of forest biological resources. The text remains bracketed pending further consultations.

On a proposal encouraging countries to develop mechanisms and/or measures to enable TFRK benefits to be realized, one delegate proposed deleting the text. Others supported its retention. Some felt it should be dealt with under the TFRK programme element. The group postponed discussion pending conclusion of the TFRK debate.

**TRADE AND ENVIRONMENT:** The contact group on trade and environment met in the evening and discussed the Chair's draft text containing three proposals for action. While progress was made on cleaning up bracketed text, no consensus was reached on these proposals.

Regarding a proposal urging countries, international organizations and other interested parties to undertake cooperative work on voluntary certification and/or labelling (C&L) schemes, developing countries, supported by some developed countries, sought reference to the WTO. A regional group and one other opposed this and, after considerable deliberation, this reference remains bracketed.

A regional group suggested combining the entire proposal with another on voluntary C&L schemes and replacing text on unjustifiable obstacles to market access with reference to ensuring adequate transparency and non-discrimination. Developing countries and some others opposed this. The two formulations on obstacles to market access and transparency and non-discrimination were combined into one large proposal.

Within the reworked proposal on C&L, one developed country suggested replacing language urging countries to "encourage" rather than "undertake" further work on C&L. This was not accepted and the original reference to "undertake" was modified by another developed country, adding "as appropriate." The whole text remains in what one regional group called "mental brackets," contingent on an acceptable outcome to the reference to the WTO. The group continued discussions into the evening.

**FINANCE:** The contact group on financial resources made progress on many paragraphs but left important sections in brackets. Regarding revenues from sustainably produced forest goods and services, delegates decided not to refer to "biological resources" because the term is under discussion in other groups and has not been defined, and instead used resources "related to biological diversity." Both developing and developed countries acknowledged that reinvestment of revenues from sustainably produced forest products into SFM cannot be "ensured" but only "promoted" since it is up to the private sector. Everyone agreed that private sector mobilization for SFM should include establishing legal frameworks, but one regional group opposed "provision of incentives."

On considering SFM as a priority for domestic resource allocation and in ODA programming, one developed country proposed reference to ODA in general, while a regional group preferred specifying ODA related to forests. Regarding the importance of stakeholder participation and involvement for the effective use of financial resources, a regional group proposed, and others accepted, replacing "stakeholders" with "interested parties" due to a concern that multinational companies may be given inappropriate participation rights.

Delegates debated establishment of an international forest fund, with one regional group putting forward text on proposals for establishing such a fund toward SFM for a transitional period. Developed countries called for text signaling that such proposals were made but that no consensus was reached. They emphasized the need to strengthen the effective use of existing resources.

Regarding text on an entity to promote international investment in SFM, a developed country proposed text that avoids reference to any particular entity. With regard to national forest programmes as a basis for channeling finances back into forests, one developed country proposed exploring both the potential and the results of such finances. Several delegates pointed out that it is inappropriate to speak of an international regulatory framework for investment in SFM.

### IN THE CORRIDORS

One delegate indicated that the Co-Chairs' text on Category III may have succeeded in reaching a reasonable compromise. One delegate described the text as having a little bit of something for everyone. Others have suggested the "reasonable compromise" is simply due to a universal level of dissatisfaction with it.

### THINGS TO LOOK FOR TODAY

**PLENARY:** Plenary will convene at 3:00 pm in Conference Room 2 to hear progress reports from the working and contact groups and to consider a Co-Chairs' draft proposal on Category III.

**WORKING GROUPS:** Working Group 1 will convene at 10:00 am to finalize pending text on TFRK and underlying causes of deforestation in the Trusteeship Council. Working Group 2 will meet in Conference Room 2.

**CONTACT GROUPS:** The contact group on transfer of ESTs will meet after Working Group 2 adjourns. The contact group on finance is likely to meet on Saturday, 5 February 2000, at a time to be announced.