

Committee on Trade and Environment
Council for Trade-Related Aspects
of Intellectual Property Rights

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SEMINAR ON SYSTEMS FOR THE PROTECTION AND COMMERCIALIZATION OF TRADITIONAL KNOWLEDGE

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Paragraph 32(ii)

1. An International Seminar was convened with the participation of representatives from Brazil, Cambodia, Chile, China, Colombia, Cuba, Egypt, Kenya, Peru, Philippines, Sri Lanka, Thailand, Venezuela and India at New Delhi from 3 – 5 April 2002. The Seminar was sponsored by India and UNCTAD, where, apart from national delegations, a number of international experts and intergovernmental organizations expressed their views. The range of issues covered included the commercialization of traditional knowledge (TK), exchange of national experiences of systems for protection of TK, including *sui generis* systems, and the international dimension of protection of TK.
2. Recognizing the serious and irreversible loss to bio-diversity at the global level, participants expressed a need for creating and strengthening systems for protecting biodiversity and its associated traditional knowledge, innovations and practices. In this context, participants expressed the need for understanding the viability of various instruments including national *sui generis* systems of protection and their recognition at the international level. This issue has been the subject of debate in various inter-governmental forums including WTO, WIPO, CBD, UNCTAD and FAO. A number of countries expressed strong views on the need for identifying new means for protecting TK in the light of increasing globalization and its impact on local and indigenous communities. Participants expressed a strong view that apart from existing IPRs, suitable systems based on national experiences through customary laws and other means need to be fully explored.
3. Participants noted that traditional and local communities historically developed customary and other forms of protection over TK, which enabled its preservation and growth. Loss of biodiversity and its associated TK is in part due to increasing globalization. It is in part also due to misappropriation of TK *inter alia* through improper granting of patents and lack of rewards to TK holders in the patent system. These were discussed as some of the issues, which need urgent redressal. To offset such impacts of globalization, *sui generis* systems have been developed at the national level to protect TK and reward TK holders. While these do provide the means for protection and growth of TK within national jurisdictions, the participants felt that national systems by themselves would not be adequate to fully protect and preserve TK. For example, the ability of patent offices in a national jurisdiction to prevent bio-piracy as well as to install informed consent mechanisms to ensure reward to TK holders, does not *ipso facto* lead to similar action on the patent application in other countries. A need was therefore expressed for an international framework for protecting TK. In this connection it was felt that the existing forms of IPR protection regimes may not sufficiently recognize the rights of TK holders. Similarly, benefit-sharing mechanisms installed through national legislation would need to be recognized in user countries.

4. Commercialization of TK based products and services, where appropriate, should be promoted with an emphasis on equitable benefit-sharing with local and indigenous communities and with their prior informed consent. Particular attention should be paid to the sustainable use and management of biological resources in the process. The participants expressed a view that the transfer, utilization and commercialization of TK should take place through fair and equitable terms and conditions, for which a set of guidelines should be developed with the help of relevant international intergovernmental organizations. Where commercialization of TK derived products takes place outside the country of origin, there is a need to establish mechanisms for ensuring equitable benefit sharing.

5. Discussions then focused on the process of identifying essential components of a framework for international recognition of various *sui generis* systems, customary law and others for protection of TK. Some of the possible components identified include: (i) local protection to the rights of TK holders through national level *sui generis* regimes including customary laws as well as others and its effective enforcement *inter alia* through systems such as positive comity of protection systems for TK (ii) protection of traditional knowledge through registers of TK databases in order to avoid misappropriation (iii) a procedure whereby the use of TK from one country is allowed, particularly for seeking IPR protection or commercialization, only after the competent national authority of the country of origin gives a certificate that source of origin is disclosed and prior informed consent, including acceptance of benefit sharing conditions, obtained (iv) an internationally agreed instrument that recognizes such national level protection. This would not only prevent misappropriation but also ensure that national level benefit sharing mechanisms and laws are respected worldwide.

6. The participants recommended that their countries would work together in various intergovernmental forums particularly CBD, FAO, WIPO, WTO, and UNCTAD to develop an international framework for the recognition of national systems of protection of traditional knowledge, including diverse *sui generis* systems. This was found to be particularly relevant and urgent in the context of the ongoing work programme pursuant to the Doha Ministerial Declaration. Further work should also be undertaken by inter-governmental organizations including UNCTAD on protection and commercialization of TK with a view to promoting its sustainable use.
