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INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE

Eleventh Session
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**THE PROTECTION OF TRADITIONAL KNOWLEDGE:
TABLE OF WRITTEN COMMENTS ON REVISED OBJECTIVES AND PRINCIPLES:
ADDENDUM**

Document prepared by the Secretariat

1. The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (“the Committee”) is currently considering the protection of traditional knowledge (“TK”) through two processes:
 - (i) consideration of an agreed list of Issues concerning the protection of TK; and
 - (ii) consideration of a draft set of “Revised Objectives and Principles for the Protection of Traditional Knowledge” (“Objectives and Principles”).

2. Document WIPO/GRTKF/IC/11/5(b) is a compilation of comments on the draft Objectives and Principles, written comments provided between the ninth and tenth sessions, in line with a commentary process agreed by the Committee at its ninth session and a format agreed at the tenth session. It omitted comments received from Canada, Ecuador and Mexico which were earlier circulated with documents WIPO/GRTKF/IC/10/INF/2 Add and WIPO/GRTKF/IC/10/INF/3. The Annex to the present document contains those comments which should be read in conjunction with the contents of the Annex to document WIPO/GRTKF/IC/11/5(b).

2. The Committee is invited to review and discuss the comments on the draft Objectives and Principles collated in the Annex in addition to those contained in the Annex to WIPO/GRTKF/IC/11/5(b).

[Annex follows]

ANNEX

<i>ISSUES</i>	<i>COMMENTS</i>
I. GENERAL COMMENTS	
<p>General Comments from Canada on Document WIPO/GRTKF/IC/9/5</p>	<p>At the ninth session of the WIPO IGC, member States of the WIPO IGC have been invited to submit written comments on the above-referenced document in advance of the next scheduled IGC meeting, to be held from 30 November – 8 December 2006.</p> <p>In response to the above invitation from WIPO, Canada is making the following submission on document WIPO/GRTKF/IC/9/5, without prejudice to comments that may be provided at a later date. The intent is that it be shared among Member States, the WIPO IGC Secretariat, and governmental and non-governmental organizations.</p> <p>Canada extends its thanks to the Secretariat for the opportunity to comment on Document 9/5. We are pleased to continue working with other Member States, and governmental and non-governmental organizations towards a consensus on these policy objectives and guiding principles as a way of guiding the future work of the IGC.</p> <p>We note a number of general observations on Document 9/5 as a whole, as follows.</p> <p>First, it is worth reiterating that Canada is of the view that any possible policy approaches that may be developed in the IGC for the protection of intellectual property (IP) rights of traditional knowledge holders must be consistent with both the mandate of the IGC and with Member States' existing obligations with respect to international treaties relating to IP.</p> <p>Second, it is equally important, in Canada's view, to keep in mind the need for maximum flexibility for Member States at the national level during the further development and refinement of policy objectives.</p> <p>Third, Canada stresses the need for the policy objectives to strike the appropriate balance between the interests of the traditional knowledge holders and users on the one hand, and the interests of broader society on the other.</p> <p>Fourth, Canada recommends, for clarity and consistency, that references to "rights" in the document be changed to specify "IP rights". In addition, we also recommend that further consideration be given to the meaning of some terms inserted in Document 9/5</p>

	<p>and on their implication for TK. For example, we are of the view that more work and discussion with regards to the meaning of “prior informed consent” and “misappropriation” is needed.</p> <p>Fifth, recognizing the relationship between the work of the IGC and the on-going TK-related discussions under the CBD and other international <i>fora</i>, we wish to reiterate our view that the WIPO-IGC is the appropriate body to discuss the IP-related aspects of the protection of traditional knowledge. Other TK-related issues that go beyond the scope of IP should be discussed in the appropriate international <i>fora</i> such as the CBD, UNESCO, etc.</p> <p>Finally, with respect to the structure of the document itself, Canada notes that a number of objectives are quite similar in spirit and meaning, and we recommend that consideration be given, in these instances, to combining similar objectives.</p> <p>The following comments elaborate on Canada’s interventions on Document 9/5 at the ninth session of the IGC. These comments are divided into two sections, which correspond to the following headings in Document 9/5:</p> <p>I - Policy Objectives; and II - General Guiding Principles.</p>
<p>General Comments from Mexico on Document WIPO/GRTKF/IC/9/5</p>	<p>Mexico understands “knowledge” as including traditional practices.</p> <p>Mexico wishes the United Nations Declaration on the Rights of Indigenous People, approved by the Human Rights Council on June 29, 2006, to be taken into account, together with the Plan of Action for the Second International Decade of the World’s Indigenous People.</p> <p>The translation from English to Spanish needs to be revised, since in many cases the meaning of the text changes.</p> <p>In that sense;</p> <p>(1) the term “holder” should be replaced throughout the text by “owner”.</p> <p>(2) “Global” (global) is not the same as “holístico” (holistic) and this appears throughout the document. The term “holístico” is the appropriate one in the Spanish translation and should replace “global”.</p>

II. COMMENTS ON OBJECTIVES	
General Comments on Objectives	<p>While Canada recognizes that the protection of TK may be broader than just the IP protection of such knowledge, we feel that it is nonetheless important to focus on the IP aspects of TK, particularly in the context of keeping the discussion in IGC, given its technical expertise in IP and its relationship to TK.</p> <p>In this regard, Canada notes that focusing on the specific IP aspects of protecting TK would strengthen and reinforce the policy objectives and guiding principles. The opening line of the document could set this up, by being amended to read, “The protection of traditional knowledge <u>in relation to intellectual property</u> should aim to:”</p> <p>(CANADA)</p> <hr/> <p>As stated by the drafters of the provisions, the objectives must be clear, measurable, achievable and permanent, and must in themselves be sustainable.</p> <p>The objectives stated in (i) to (xiii) could aim to:</p> <p>(ECUADOR)</p>
i. Recognize value	<p>Canada is pleased to note that our previous comments, relating to the intrinsic value of TK within indigenous and local communities, are reflected in this text. Therefore, we support this objective in principle. We would appreciate, however, receiving additional clarity with respect to the meaning of the phrase “equal scientific value as other knowledge systems”.</p> <p>(CANADA)</p>
	<p>Recognize the contribution of communities for the benefit of humanity.</p> <p>(ECUADOR)</p>
	<p>Recognize the holistic nature (Spanish: el carácter la naturaleza global holística) and its intrinsic value, including its social, spiritual, economic, intellectual, scientific, ecological, technological, commercial, educational and cultural value, and acknowledge that traditional knowledge systems are frameworks of ongoing innovation and distinctive intellectual and creative life that are fundamentally important for indigenous and local communities and have equal scientific value as other knowledge systems.</p> <p>(MEXICO)</p>
ii. Promote respect	<p>Generally, Canada supports this objective because it recognizes the value of TK for existing TK holders, including indigenous and local</p>

	<p>communities (as well as other TK communities). However, we feel that the text could more clearly and firmly state the need for a <u>balanced approach</u>. Successfully promoting respect for TK will only be possible if the views of all TK creators and users, as well as those of the general public, are taken into account in a balanced fashion.</p> <p>(CANADA)</p>
	<p>Promote the respect of humanity for communities.</p> <p>(ECUADOR)</p>
	<p>Promote respect for traditional knowledge systems; for the dignity, cultural integrity and intellectual and spiritual values of the traditional knowledge holders owners who conserve and maintain those systems; (Spanish: de a) for the contribution which traditional knowledge has made in sustaining the livelihoods and identities of traditional knowledge holders; and <u>recognize</u> the contribution which traditional knowledge holders have made to the conservation and sustainable use of the environment and biodiversity, to food security and sustainable (Spanish: sostenible <u>sustentable</u>) agriculture, and to the progress of science and technology;</p> <p>(MEXICO)</p>
<p>iii. Meet the actual needs of traditional knowledge holders</p>	<p>Canada notes that the objective statement is overly broad; IP is only one way in which the “actual” needs of TK holders can be met. Canada, therefore, recommends re-stating the objective statement as follows, “Contributing to meeting the intellectual property needs of holders of traditional knowledge”.</p> <p>In addition, the explanatory text itself is somewhat vague. For example, the reference to “rights” ought to be changed to “IP rights”. The text should also clearly indicate that any potential policy approaches need to take into account and balance the needs and interests of all TK holders and user communities, as well as those of the general public. The phrase “to the progress of science and socially beneficial technology” should be defined.</p> <p>Finally, in keeping with our comments regarding the need for greater consistency, clarity, and focus in the text generally, Canada recommends combining this objective with objective (xiii) - or at least placing them sequentially, as they are notionally related and would benefit from being read together.</p> <p>(CANADA)</p>
	<p>Meet and contribute to the actual needs of communities.</p> <p>(ECUADOR)</p>

<p>iv. Promote conservation and preservation of traditional knowledge</p>	<p>Canada views this text as very similar to that of Objective (vi) – support traditional knowledge systems. In our view, both objectives are not necessary. We recommend that a new, combined objective be drafted, building on the objective above, and focusing specifically on the IP aspects of promoting, respecting and supporting the conservation and preservation of TK.</p> <p>(CANADA)</p>
	<p>Guarantee the existence of traditional cultural expressions/expressions of folklore</p> <p>(ECUADOR)</p>
<p>v. Empower holders of traditional knowledge and acknowledge the distinctive nature of traditional knowledge systems</p>	<p>Empowering holders of TK to protect their knowledge is important. Canada notes that Member States require maximum flexibility at the national level. We also note that more work and discussion is needed, at national and international levels, to determine what this policy objective will entail in practice. It would be useful to clarify the intent of “due rights and authority over their own knowledge”. In addition, we are of the view that more work and discussion with regards to the meaning of “misappropriation” is needed.</p> <p>This objective could be combined with, or placed next to, objectives (x) and (xv), as they are all notionally related and should be read together.</p> <p>(CANADA)</p>
	<p>Disseminate intellectual property (IP) rights within communities.</p> <p>(ECUADOR)</p>
	<p>be undertaken in a manner that empowers strengthens traditional knowledge holders to protect their knowledge by fully acknowledging the distinctive nature (Spanish: del carácter la naturaleza) of traditional knowledge systems and the need to tailor solutions that meet the distinctive nature (Spanish: carácter naturaleza) of such systems, bearing in mind that such solutions should be balanced and equitable, should ensure that conventional intellectual property regimes operate in a manner supportive of the protection of traditional knowledge against misappropriation, and should effectively empower strengthen traditional knowledge holders to decide and exercise due rights and authority over their own knowledge.</p> <p>(MEXICO)</p>
<p>vi. Support traditional knowledge systems</p>	<p>Please see our previous comment under Objective (iv) – promote conservation and preservation of traditional knowledge.</p> <p>In addition, Canada is unclear as to the meaning of the following</p>

	<p>language: “augment customary custodianship of knowledge and associated genetic resources.” and would have to have clarification before being in a position to agree with this objective.</p> <p>(CANADA)</p>
	<p>Support customary practices and community cooperation.</p> <p>(ECUADOR)</p>
	<p>respect and facilitate the continuing (Spanish: continuo) customary use, development, exchange and transmission (Spanish: transmisión) of traditional knowledge by and between traditional knowledge holders; and support and augment customary custodianship of knowledge and associated genetic resources, and promote the continued development of traditional knowledge systems;</p> <p>(MEXICO)</p>
vii. Contribute to safeguarding traditional knowledge	<p>For consistency with the qualifications in the opening sentence (the <u>appropriate balance</u>; customary <u>and other means</u>), Canada recommends adding “as appropriate” just prior to “in accordance with relevant customary laws”.</p> <p>(CANADA)</p>
	<p>Contribute to safeguarding traditional cultures.</p> <p>(ECUADOR)</p>
viii. Repress unfair and inequitable uses	<p>Canada is pleased to note that our previous concerns about the need of Member States for maximum flexibility at the national level are reflected in this text. However, we are of the view that more work and discussion with regards to the meaning of “misappropriation” is needed.</p> <p>(CANADA)</p>
	<p>Promote intellectual and artistic freedom, research and cultural exchange on equitable terms</p> <p>(ECUADOR)</p>
	<p>Repress the misappropriation of traditional knowledge and other unfair commercial and non-commercial activities, recognizing the need to adapt approaches for the repression of (Spanish: enfocar la lucha contra adaptar los enfoques para impedir) misappropriation of traditional knowledge to national and local needs;</p> <p>(MEXICO)</p>
ix. Concord with	<p>Canada is pleased to note the revised language of this objective,</p>

<p>relevant international agreements and processes</p>	<p>particularly with respect to the opening part of the explanatory text, “take account of and operate consistently with other international and regional instruments and processes”.</p> <p>We feel, however, that the text should go even further, and should note specifically that the work done in the IGC on the IP protection of TK should not be prejudged nor should it be predetermined by possible outcomes in other international <i>fora</i>. It is also important that this work be mindful of the non-IP TK-related work undertaken in other international <i>fora</i>.</p> <p>(CANADA)</p>
<p>x. Promote innovation and creativity</p>	<p>Canada recommends deleting the phrase “, including, subject to the consent of the traditional knowledge holders, by integrating such knowledge into educational initiatives among the communities, for the benefit of the holders and custodians of traditional knowledge”, since it is beyond the scope of IP law and policy.</p> <p>Also, in keeping with our comments regarding the need for greater consistency, clarity, and focus in the text generally, Canada recommends combining this objective with objectives (v) and (xv), or that the document be re-ordered to place all three objectives together, as they are notionally related and would benefit from being read sequentially.</p> <p>Ensure prior informed consent and exchanges based on mutually agreed terms</p> <p>(CANADA)</p>
	<p>Encourage community innovation and creativity.</p> <p>(ECUADOR)</p>
<p>xi. Ensure prior informed consent and exchanges based on mutually agreed terms</p>	<p>Canada is pleased to note the reference to existing national and international regimes in the explanatory text.</p> <p>However, we feel that the introductory word “ensure” is too strong, particularly given that we have no agreed-upon definition of “prior informed consent”. Canada is of the view that “ensure” reflects an obligation that Member States can not meet given that states would not necessarily be the agents in exchanges of this nature. We recommend reverting to the original introductory word “promote”.</p> <p>The lack of clarity and definition around “prior informed consent” is also a concern for Canada. This is an area that warrants further discussion.</p> <p>(CANADA)</p>
<p>xii. Promote equitable</p>	<p>Canada considers the IGC as the most appropriate international</p>

<p>benefit-sharing</p>	<p>body to deal with technical issues relating to the IP protection of TK. Nevertheless, we note that the development of any possible approaches in the IGC relating to access and benefit-sharing would need to take into consideration ongoing discussions and initiatives on this same subject in other <i>fora</i>, such as the CBD, to ensure consistency.</p> <p>Canada views the wording in the explanatory text as very limiting which, if adopted, could impact our future flexibility with respect to policy development.</p> <p>Canada is concerned that the word, “disclosed”, might lead to confusion and be taken to mean solely in reference to the issues involving patent disclosure. “Released” or “available” may be more accurate terms.</p> <p>Finally, we also note some concerns with respect to the terminology used. For example, we would like to see some precision with respect to the addition of the word “sharing” to the phrase “sharing and distribution of monetary and non-monetary benefits”(does it relate only to agreements reached between communities on how to share the benefits? Does “distribution” means that an authority would be in charge of administrating the benefits and then distributing them to the rights holders concerned?). Furthermore, the phrase “compensation in special cases where the individual holder is not identifiable” needs clarification. Finally, the lack of clarity and definition around “prior informed consent” is also a concern for Canada. This is an area that warrants further discussion.</p> <p>(CANADA)</p>
<p>xiii. Promote community development and legitimate trading activities</p>	<p>Canada supports this objective in principle.</p> <p>Again, as we have stated elsewhere in our commentary, Canada recommends specifying “IP rights” in the phrase concerning recognition of “rights”. As well, in keeping with our general comments regarding the need for greater consistency, clarity, and focus in the text overall, this objective should be combined with, or should follow, objective (iii), as they are notionally related and would benefit from being read together.</p> <p>(CANADA)</p>
	<p>Promote community development and legitimate trading activities.</p> <p>(ECUADOR)</p>
<p>xiv. Preclude the grant of improper intellectual property rights to</p>	<p>Since the patent disclosure discussion among WIPO Members is still on-going, Canada feels it is premature to make such an addition to a policy objective that is to be in essence reflective of a common general direction for protection of all Members. In</p>

<p>unauthorized parties</p>	<p>addition, the lack of clarity and definition around “prior informed consent” is also a concern for Canada. This is an area that warrants further discussion.</p> <p>(CANADA)</p>
	<p>Preclude the grant of unauthorized IP rights.</p> <p>(ECUADOR)</p>
<p>xv. Enhance transparency and mutual confidence</p>	<p>It is not clear why document 9/5 refers to “mutual confidence” in the heading of this objective but “mutual respect” in the body of the objective.</p> <p>Canada supports the inclusion of government users in the dialogue with traditional knowledge holders.</p> <p>The federal government holds IP workshops in indigenous communities, at the request of those communities, expressly for the purpose of exchanging information on IP law and policy, and on traditional knowledge and traditional cultural expressions.</p> <p>We observe, however, that the last part of the text implies that there already exists a clear and established set of principles and guidelines regarding ethical codes of conduct and prior informed consent. Canada is of the view that this overstates the reality of the situation, and recommends softening the language accordingly. The lack of clarity and definition around “prior informed consent” is also a concern for Canada. This is an area that warrants further discussion.</p> <p>As noted previously, this objective could be combined with objectives (v) and (x).</p> <p>Complement protection of traditional cultural expressions</p> <p>(CANADA)</p>
	<p>Enhance certainty, transparency and mutual confidence between communities and the users of TK.</p> <p>(ECUADOR)</p>
	<p>Enhance certainty, transparency, mutual respect and understanding in relations between traditional knowledge holders on the one hand, and academic, commercial, educational, governmental and other users of traditional knowledge on the other, including by promoting adherence to ethical codes of conduct and the principles of free and prior informed consent.</p> <p>Delete the terms <i>on the one hand</i> and <i>on the other</i>, in order to clarify the wording and avoid the relations between the traditional</p>

	<p>knowledge holders and the other players involved being separated.</p> <p>(MEXICO)</p>
<p>xvi. Complement protection of traditional cultural expressions</p>	<p>Canada is supportive of this text. However, we note that the corresponding objective has been deleted from document 9/4. Canada understands from its discussions with Canadian Aboriginal groups that some traditional knowledge holders consider TK, TCEs and folklore to emanate from the same source and, that taken together, they form part of a larger holistic view. In light of this, Canada respectfully submits that the corresponding objective be re-inserted into document 9/4.</p> <p>(CANADA)</p>

III. COMMENTS ON GENERAL GUIDING PRINCIPLES	
General comments on the General Guiding Principles	As regards the general guiding principles and the observations thereon, compliance must be maintained with the following: (ECUADOR)
a. Responsiveness to the needs and expectations of traditional knowledge holders	Canada is pleased to note that many of our previous comments are reflected in this text. However, some concerns remain with respect to the concept of recognizing and applying “indigenous customary practices, protocols and laws”, even with the qualifier “as far as possible and appropriate”. In Canada’s view, more analysis is needed on the issue of recognizing customary laws and protocols. (CANADA)
	Responsiveness to aspirations and expectations of communities. (ECUADOR)
b. Recognition of rights	As stated elsewhere in our submission, Canada is of the view that more clarity and precision around the term “rights” is warranted. In our view, the text should explicitly refer to intellectual property rights. It is clear to Canada that IP rights are available to TK holders and can be used, where appropriate, for the protection of their knowledge, but in certain instances there are limits to the usefulness of those rights. Part of the IGC’s work is to determine how to more adequately deal with these circumstances. Therefore, we believe that it is important to reinforce the specific reference to IP rights throughout the entire text. In addition, as previously stated, we are of the view that more work and discussion with regards to the meaning of “misappropriation” is needed. (CANADA)
	Balance. (ECUADOR)
c. Effectiveness and accessibility of protection	Canada recommends the following modification to the last sentence, in keeping with our principle of allowing maximum flexibility for Member States “Where measures for the protection of traditional knowledge are adopted, appropriate enforcement mechanisms should be developed <u>at the national and local levels</u> permitting effective action against misappropriation of traditional knowledge and supporting the broader principle of prior informed consent”. Again, we are of the view that more work and discussion with regards to the meaning of “misappropriation” is needed. The lack of clarity and definition around “prior informed consent” is also a

	<p>concern for Canada. This is an area that warrants further discussion.</p> <p>(CANADA)</p>
	<p>Effectiveness and accessibility of protection.</p> <p>(ECUADOR)</p>
<p>d. Flexibility and comprehensiveness</p>	<p>Canada is supportive of this principle and considers it to be of primary importance to the interpretation of all other guiding principles. As such, we suggest that it become the first, rather than the fourth, guiding principle in Document 9/5.</p> <p>We recommend deleting the last sentence of explanatory paragraph 2 (Protection should include defensive measures to curtail illegitimate acquisition of industrial property rights over traditional knowledge or associated genetic resources, and positive measures establishing legal entitlements for traditional knowledge holders), as many of these issues are still under discussion in a variety of international <i>fora</i>, and it thus seems premature to reflect them here.</p> <p>(CANADA)</p>
	<p>Flexibility and comprehensiveness.</p> <p>(ECUADOR)</p>
<p>e. Equity and benefit-sharing</p>	<p>Canada has a number of concerns with respect to this principle. First, we observe that the term “protection” has several different meanings, such as preserving, promoting wider use, controlling use, preventing misuse, or channelling a proper share of benefits to holders. In addition, these various forms of protection may be realized through a variety of legal and policy measures quite apart from IP law.</p> <p>Second, Canada notes that the primary purpose of most branches of the IP system is to promote human intellectual creativity and innovation. IP law and policy do so by striking a careful balance between the rights and interests of innovators and creators, on the one hand, and of the public at large, on the other. Thus, public dissemination of information is an important IP objective. All IP rights are also subject to various exceptions and limitations to help ensure a balance between the rights of creators and users. In addition, IP rights may be circumscribed by other legal and policy considerations such as freedom of expression, access to information and privacy legislation, and competition policy.</p> <p>We believe that that the concept of prior informed consent requires clarification and definition. While the language used in the second explanatory paragraph draws from Article 8(j) of the CBD, it does not reflect any of the necessary contextual qualifiers, and, therefore, is misleading. The text also fails to address those TK or associated</p>

	<p>genetic resources that are already in the public domain, and the impact this may have on any possible policy approaches to equitable benefit-sharing.</p> <p>Finally, Canada recommends that the third explanatory paragraph be deleted.</p> <p>(CANADA)</p>
<p>f. Consistency with existing legal systems governing access to associated genetic resources</p>	<p>Canada strongly recommends that the second explanatory paragraph contained in Document 7/5 be re-inserted in to Document 9/5. In our view, the stand-alone explanatory paragraph now in Document 9/5 is too narrow in that it does not adequately maintain the integrity of existing IP systems and international agreements. Accordingly, we recommend adding a second paragraph, as follow:</p> <p>“Traditional knowledge protection should be consistent with, and supportive of, existing IP systems and should enhance the applicability of relevant IP systems to traditional knowledge subject matter in the interests of holders of traditional knowledge and consistently with the broader public interest. Nothing in these Principles shall be interpreted to derogate from existing obligations that national authorities have to each under the Paris Convention and other international intellectual property agreements.”</p> <p>We also recommend inserting “if any” in the first paragraph (The protection of traditional knowledge associated with genetic resources shall be consistent with the applicable law, <u>if any</u>, governing access to those resources...).</p> <p>(CANADA)</p>
<p>g. Respect for and cooperation with other international and regional instruments and processes</p>	<p>Canada is supportive of this principle and explanatory text. Canada has consistently stated in its interventions and submissions to the IGC that any policy mechanisms that may be developed for the IP protection of TK must be consistent with Member States’ international obligations and commitments in IP treaties.</p> <p>(CANADA)</p>
	<p>Respect for and consistency with international and regional agreements and instruments</p> <p>(ECUADOR)</p>
<p>h. Respect for customary use and transmission of traditional knowledge</p>	<p>Canada is supportive of this principle, but recommends a re-inserting the qualifiers “as far a possible and as appropriate” into the opening sentence (Customary use, practices and norms shall be respected and given due account in the protection of traditional knowledge, <u>as far as possible and as appropriate</u>, subject to national law and policy).</p> <p>(CANADA)</p>

	<p>Respect for customary use and transmission of TK.</p> <p>(ECUADOR)</p>
<p>i. Recognition of the specific characteristics of traditional knowledge</p>	<p>Canada is supportive of this principle, as it seems to adequately reflect comments and concerns frequently expressed by Aboriginal peoples in Canada.</p> <p>(CANADA)</p>
	<p>Respect for rights of and obligations towards indigenous peoples and other traditional communities/Complementarity with protection of traditional knowledge.</p> <p>(ECUADOR)</p>
<p>j. Providing assistance to address the needs of traditional knowledge holders</p>	<p>Canada would like to express its appreciation to China for developing this new guiding principle, and we support the desirability of capacity building as expressed here.</p> <p>Capacity issues are prominent in the Canadian context and given the number and diversity of communities, in some cases their relative isolation, and linguistic and cultural diversity, the resource implications are large. In our view, therefore, this principle needs to realistically reflect resource limitations on the part of governments to carry out capacity building activities.</p> <p>(CANADA)</p>

IV. COMMENTS ON SUBSTANTIVE PRINCIPLES	
General Comments on the Substantive Principles	
Article 1. Protection Against Misappropriation	<p>Any acquisition, appropriation or utilization of traditional knowledge by means unfair or illicit acts of competition constitutes an act of misappropriation. Misappropriation may also include deriving commercial benefit from the acquisition, appropriation or utilization of traditional knowledge when the person using that knowledge knows, or is negligent in failing to know, that it was acquired or appropriated by unfair means; and other commercial activities contrary to honest practices that gain inequitable benefit from traditional knowledge.</p> <p>3.- In particular, legal means should be provided to prevent:</p> <p>(iv) If Access to traditional knowledge has been accessed, commercial or industrial use of traditional knowledge without just and appropriate compensation to the recognized holders owners of the knowledge, when such activities are carried out for gainful intent and or confer a technological or commercial advantage on its user, and when compensation would be consistent with fairness and equity in relation to the holders owners of the knowledge, in view of given the circumstances in which the user acquired the knowledge; and</p> <p>5.- The application, interpretation and enforcement of protection against misappropriation of traditional knowledge, including determination of equitable sharing and distribution of benefits, should be guided, as far as possible and appropriate, by respect for the customary practices, norms, laws and understandings of the holder owner of the knowledge, including the spiritual, sacred or ceremonial characteristics of the traditional origin of the knowledge.</p> <p>(MEXICO)</p>
Article 2. Legal Form of Protection	<p>Registers and other TK archives should be included together with their respective databases. The second paragraph should refer only to the collective holders of TK, where protection is directed to the community, and it would serve no purpose to maintain the duality of the individual and collective holders of TK.</p> <p>(ECUADOR)</p> <p>The protection of traditional knowledge against misappropriation may be implemented through a range of legal measures, including: a special law on traditional knowledge; laws on intellectual property, including laws governing unfair competition and unjust enrichment; the law of contracts; the law of civil liability, including torts and liability for compensation; criminal law; laws</p>

	<p>concerning the interests of indigenous peoples; agricultural and cattle-breeding laws, environmental laws; regimes governing access to genetic resources and benefit-sharing associated with the use of genetic resources"; or any other law or any combination of those laws or regulations. This paragraph is subject to Article 11(1).</p> <p>(MEXICO)</p>
<p>Article 3. General Scope of Subject Matter</p>	<p>It is important to highlight the evolving nature of TK, but not only in terms of nature; what is important is to prevent and preclude the interruption of the evolving process, and the phrase "evolving nature" should be replaced by "evolving process".</p> <p>(ECUADOR)</p> <p>For the purpose of these principles only, the term "traditional knowledge" refers to the content or substance of knowledge resulting from intellectual activity in a traditional context, and includes the know-how, skills, innovations, practices and learning that form part of traditional knowledge systems, and knowledge embodying traditional lifestyles of indigenous and local communities, or contained in codified knowledge systems passed between generations. It is not limited to any specific technical field, and may include agricultural, cattle-breeding, fishing, environmental and medicinal knowledge, and knowledge associated (Spanish: asociado) with genetic resources.</p> <p>In the same way as in the previous case, it will be necessary to include agricultural and cattle-breeding laws so as to take account of those communities dedicated to these tasks and to insert the word "associated", so as not to generate confusion with the term "derived" from genetic resources.</p> <p>(MEXICO)</p>
<p>Article 4. Eligibility for Protection</p>	<p>In (ii), if protection is necessarily going to be granted to the indigenous or traditional community, the word "people" (synonym of population) should be used. The same applies to (iii).</p> <p>(ECUADOR)</p>
<p>Article 5. Beneficiaries of Protection</p>	<p>Emphasis should be placed on identifying the beneficiaries; indigenous or traditional communities should be the lawful beneficiaries.</p> <p>(ECUADOR)</p> <p>Protection of traditional knowledge should benefit the communities who generate, preserve and transmit the knowledge in a traditional and intergenerational context, who are associated with it and who identify with it in accordance with Article 4. Protection should accordingly benefit the indigenous and traditional communities themselves that hold (Spanish: detienen detentan) traditional</p>

	<p>knowledge in this manner, as well as recognized individuals within these communities and peoples.</p> <p>Entitlement to the benefits of protection should, as far as possible and appropriate and subject to national legal provisions, at the time it is granted, take account of the customary protocols, understandings, laws and practices of these communities and peoples.</p> <p>The changes made are designed to improve the wording and avoid a subjective criterion being applied in order to ascertain when it is appropriate to grant entitlement to the benefits of protection.</p> <p>(MEXICO)</p>
<p>Article 6. Fair and Equitable Benefit-sharing and Recognition of Knowledge Holders</p>	<p>Legal measures should necessarily be translated into economic sanctions, in order to maintain confidence in the TK registration system. Indigenous communities do not as a rule possess economic resources to support the defense of their interests and, for the same reason, it is necessary to establish a transparent legal system both for indigenous communities and the users of TK. Indigenous communities are not interested in non-monetary benefits.</p> <p>(ECUADOR)</p> <hr/> <p>Use of traditional knowledge for non-commercial purposes need only give rise to non-monetary benefits, such as (Spanish: tales como) access to research outcomes and involvement of the source community in research (Spanish: de investigación) and educational activities.</p> <p>2.- The benefits of protection of traditional knowledge to which its holders owners are entitled include the fair and equitable sharing of benefits arising out (Spanish: deriva deriven) of the commercial or industrial use of that traditional knowledge.</p> <p>Amend the order of the paragraphs, since the research process generates commercial aims and the reverse is not true.</p> <p>(MEXICO)</p>
<p>Article 7. Principle of Prior Informed Consent</p>	<p>It would be necessary to include this article in the general guiding principles.</p> <p>(ECUADOR)</p> <hr/> <p>The right of the holder owner of traditional knowledge shall be entitled to grant prior informed consent for access to traditional knowledge, or to approve the grant of such consent by an appropriate competent national authority, shall be recognized, as provided by Article 13 of these provisions and applicable national legislation.</p> <hr/> <p>It is suggested that the wording be amended, since the right in traditional knowledge already belongs to the owners of the rights and/or the communities, and the aim of the law will be to recognize</p>

	<p>such a right not to grant it.</p> <p>Similarly, it is suggested to amend the word appropriate to competent, as this is how it is referred to in Article 13 of the wording, and in said section the capacities which said authorities shall have are also specified.</p> <p>(MEXICO)</p>
<p>Article 8. Exceptions and Limitations</p>	<p>Sub-paragraph (ii) should also include users of TK in the use of traditional medicine.</p> <p>(ECUADOR)</p> <p>In particular national authorities may exclude from the principle of prior informed consent the fair lawful use of traditional knowledge which is already readily available to the general public, provided that users of that traditional knowledge provide equitable compensation for industrial and commercial uses of that traditional knowledge.</p> <p>Legally speaking, it is more precise to speak of lawful or due use, since the word fair can give rise to subjective interpretations.</p> <p>It is suggested that the term “derived” be added in order to improve the wording.</p> <p>Similarly, in the commentary on Article 8, contained in the document, it is considered relevant to delete the word “unreasonable”, so that the wording is as follows:</p> <p>Like the rights and entitlements granted in other fields of legal protection, rights in traditional knowledge may be limited or qualified so as to avoid unreasonable prejudice to the interests of society as a whole.</p> <p>(MEXICO)</p>
<p>Article 9. Duration of Protection</p>	<p>Once the term of protection for TK has expired, the TK shall enter the public domain.</p> <p>(ECUADOR)</p>
<p>Article 10. Transitional Measures</p>	<p>Retroactive protection should, as a matter of course, be clearly delineated and specified in the transitional measures.</p> <p>(ECUADOR)</p> <p>Protection of traditional knowledge newly introduced in accordance with these principles should be applied to new acts of acquisition, appropriation and use of traditional knowledge. Acquisition, appropriation or use prior to the entry into force of the protection should be regularized within a reasonable period, subject to the</p>

	<p>provisions of national laws, of that protection coming into force. There should however be equitable treatment of rights acquired by third parties in good faith.</p> <p>(MEXICO)</p>
<p>Article 11. Formalities</p>	<p>The title of the article should be changed, since (1) envisages that no formalities should be required. It could be entitled “forms of protection”.</p> <p>(ECUADOR)</p> <p>1. Eligibility for Protection of traditional knowledge against acts of misappropriation should not require any formalities.</p> <p>2. - In the interests of transparency, certainty and the conservation of traditional knowledge, relevant national authorities may maintain registers or other records of traditional knowledge, where appropriate and subject to relevant policies, laws and procedures, and the needs and aspirations of traditional knowledge holders owners.</p> <p>Such registers may be associated with specific forms of protection, and should not compromise the status affect the protection of hitherto undisclosed traditional knowledge or the interests of traditional knowledge holders owners in relation to undisclosed elements of their knowledge.</p> <p>(MEXICO)</p>
<p>Article 12. Consistency with the General Legal Framework</p>	<p>What happens to traditional knowledge that is not protected? It would be appropriate in the commentary to delete this phrase “...regulating access to genetic resources which are associated with the protected TK...”</p> <p>(ECUADOR)</p> <p>1. In case of traditional knowledge which relates to components of biological diversity, access to, and use of, that traditional knowledge shall be consistent with international obligations and national laws regulating access to those components of biological diversity. Permission to access and/or use traditional knowledge does not imply permission to access and/or use associated genetic resources and vice versa.</p> <p>(MEXICO)</p>
<p>Article 13. Administration and Enforcement of Protection</p>	<p>“Distributing information...” in sub-paragraph (i) should be replaced.</p> <p>(ECUADOR)</p> <p>(a) An appropriate national or regional authority, or authorities, should be competent for:</p> <p>(ii) (Spanish: Distribuir Difundir) information about traditional knowledge protection and conducting public awareness and advertising campaigns to inform traditional knowledge holders owners and other stakeholders about the availability, scope, use</p>

	<p>and enforcement of traditional knowledge protection;</p> <p>(vi) assisting where possible and supporting as appropriate holders owners of traditional knowledge to use, exercise and enforce their rights over their traditional knowledge.</p> <p>(b) The identity of the competent national or regional authority or authorities should be communicated to an international body the competent international bodies and published widely so as to facilitate cooperation and exchange of information in relation to protection of traditional knowledge and the equitable sharing of benefits.</p> <p>(MEXICO)</p>
<p>Article 14. International and Regional Protection</p>	

[End of Annex and of document]

