Traditional Knowledge and EPAs

Issues to consider

Dr Philippe Cullet

School of Law, School of Oriental and African Studies (SOAS)
&
International Environmental Law Research Centre (IELRC)

pcullet@soas.ac.uk, pcullet@ielrc.org
www.ielrc.org

What is traditional knowledge (TK)?

- Knowledge that is not ‘modern’
- Knowledge held either individually or collectively
- Knowledge that cannot easily be protected under existing IPR laws and treaties
- Knowledge that is in the ‘public domain’ and/or considered ‘prior art’
What protection for TK?

1. Defensive protection
2. Protection through existing IPR frameworks
3. *Sui generis* protection
Defensive protection

- Registration of TK in written form to confirm public domain status of knowledge
- Disclosure requirement ensuring acknowledgment of use of TK and triggering benefit sharing
Protection through existing IPR frameworks

• Use of patent system to foster TK protection through, for instance:
  – Concept of joint inventorship
  – Redefinition of notion of inventiveness

• Geographical indications
  – Best suited form of existing IPRs for TK protection
Sui generis protection

- Aims of a sui generis system:
  - Ensuring conservation and protection
  - Ensuring protection of TK is linked to protection of underlying biodiversity (Article 8(j) CBD)
  - Ensuring protection of TK undertaken to protect commercial and non-commercial uses of TK
TK, ACP countries and EPAs

• Premise: TK is neither ‘old’ nor ‘valueless’
• Need to ensure:
  – Effective control over plant genetic resources for TK holders in domestic law (property rights) and for countries of origin at international level (sovereign rights)
  – Mechanisms to ensure no unjust appropriation of TK domestically or internationally
TK and ACP countries (ctd)

- Need to ensure (ctd)
  - Procedural guarantees such as prior informed consent, access and benefit sharing regimes, disclosure requirements

- Establishment of *sui generis* law recognising multiplicity of uses and functions of TK and taking into account all international commitments