

Tough fight over means of implementation

Rio de Janeiro, 22 June (TWN) – While governments at the closing of the pre-conference informal consultations were reasonably satisfied with the delicate balance achieved in the outcome document for the Rio+20 Conference, many were deeply disappointed with the lack of ambition in the section on the means of implementation, with some calling it a step backwards.

This was due to very difficult and diverging positions between developed and developing countries over the provision of financial resources and technology transfer. Since the negotiations on the outcome document began in New York and on the road to Rio, the finance and technology transfer issues were one of the most heavily contested areas.

From the perspective of the **G77 and China**, without the requisite finance and transfer of technology it is difficult to see how the many commitments contained within the document are going to be implemented.

The final draft of the outcome document for the Rio+20 Conference entitled the “Future We Want” was agreed to by all member states and adopted at referendum at a closing plenary session of the pre-Conference informal consultations convened on Tuesday, June 19. The text will now be put forward for adoption by Heads of State at the conclusion of the Conference on Friday.

In the closing plenary of the informal consultations, **Bolivia** expressed regret with the lack of clear commitment by developed countries to provide finance and technology transfer, characterizing it as “a step backwards”. The sentiments were shared by, among others, **Kenya, Cuba, Venezuela and Egypt**, speaking on behalf of the **Arab Group**.

The saving grace is that at the very least, the elements for future delivery on the means of implementation have been preserved, as the

document establishes both financial and technology mechanisms. An intergovernmental process under the UN General Assembly is to propose options on an effective “Sustainable Development Financing Strategy” to facilitate the mobilization of resources in achieving sustainable development objectives. Similarly, a facilitation mechanism for technology transfer of environmentally sound technologies is to be developed. Moreover, the outcome document agreed to explore modalities in the relevant fora for enhanced access to these technologies by developing countries.

Finance: No numbers, no new and additional resources

The issue of finance was among the most contentious in the negotiations. Initial proposals by the **G77 and China** (G77) on finance had called on the developed countries to provide new and additional resources exceeding US 30 billion per year from 2013-17, and to enhance the mobilization to US 100 billion per year from 2018 onwards and work towards setting up a financial mechanism, including a possible sustainable development fund.

As it became clear during the negotiations that this was unacceptable to the developed countries, with the **United States, Canada, Japan, Australia, New Zealand and Switzerland** either insisting that Rio+20 was not a ‘pledging’ conference or that they were not in the position to commit new funds, the G77 eventually dropped this proposal.

In its place, the **G77** on June 15 proposed the establishment of an intergovernmental process under the UN General Assembly to define a financing framework/mechanism for the provision of new, additional and predictable resources, including for technology transfer (see TWN Rio+20 News Update No. 10).

Even this watered down proposal drew heavy criticism from the developed countries, and the G77 fought hard to retain the text on this.

On 18 June, the Brazilian Presidency introduced new text for the consideration of parties in the informal group dealing with the “means of implementation”, after listening to the various positions of the delegations. The text attempted to broaden the consultative process and define further its objectives, characterizing the proposed framework/mechanism as a Sustainable Development Financing Strategy.

The new text read: “We agree to establish an intergovernmental process under the United Nations General Assembly, with technical support from the UN System, and in open and broad consultation with relevant international and regional financial institutions and other relevant stakeholders. The process will assess financing needs, consider the effectiveness, consistency and synergies of existing instruments and frameworks, and evaluate additional initiatives, with a view to prepare a report proposing options on an effective Sustainable Development Financing Strategy to facilitate the mobilization of resources and their effective use in achieving sustainable development objectives.”

In addition, the implementation of the process is to be carried out by an intergovernmental committee, comprising thirty experts nominated by regional groups, with equitable geographical representation. It is to conclude its work by 2014. The resulting report would be considered by the General Assembly, which is requested to take appropriate actions. The proposed time frame and report requiring action from the General Assembly would ensure that there is implementation and follow up to realize the resources for financing sustainable development.

Objections however persisted, and a small group “huddle” was convened to try and iron out the differences. The “huddle” was not able to come to any agreed language.

The **US** later questioned the basis of the section on finance, saying that the presumption that it is about what countries in the North can give to the South was the wrong thesis to start with. **Australia** questioned the need for the process. **Canada** raised concerns about potential duplication with other financing processes and **Japan** found the proposal difficult to accommodate as it was worried that it

would lead to a new mechanism that would require extensive funding.

Switzerland on the other hand welcomed the additional text proposed by the Brazilian Presidency, which clarified what the process should deliver. It preferred to think of an expert process, rather than one which may be political or that would duplicate existing processes. The **European Union**, while not fully convinced of the necessity and value of an intergovernmental process, was willing to discuss the issue, but stressed that the proposed committee would need to be an expert one and should provide well-reasoned recommendations for which action could be taken.

When the Brazilian Presidency presented the final draft text for adoption on June 19, the paragraphs in question (255-257) remained unchanged, which was no small victory for the developing countries, given the continued resistance from the developed countries. Therefore, the door remains open to a future resource mobilization framework for sustainable development.

The **G77** had been consistently asking for new and additional resources to be committed by the developed countries, as the last 20 years have shown that existing resources are not enough. While recognizing it is the responsibility of each country for resource mobilization, which the developing countries “do not shy away from”, on its own, domestic mobilization would not be sufficient to implement sustainable development objectives or the Millennium Development Goals, let alone the Sustainable Development Goals and green economy policies. In addition, South-South cooperation is only a complement to North-South cooperation.

With the removal of the G77 proposal on the “numbers”, concrete new and additional resources have thus not been agreed to. Ironically, the only reference to additionality that is linked to responsibility in the finance section is in the paragraph addressing South-South cooperation (paragraph 260): “We reiterate our support for South-South cooperation, as well as triangular cooperation, which provides much needed additional resources to the implementation of development programme”.

Despite objections from the **G77, India and Nigeria**, and their calls for a strong reference to new and additional resources from developed countries, this was not to be. The text therefore reflects the **US** position, as it insisted numerous

times over the course of the negotiations that “the world has changed in the last 20 years”.

Technology transfer: IPRs not addressed

Negotiators came to Rio fighting an uphill battle on technology transfer, as developed countries were apparently backtracking from their previous commitments since the Rio Summit in 1992. The **US, EU, Canada** and **Australia** had not even wanted any reference to “technology transfer” in the title of the relevant section. (The title now simply reads “Technology”).

The **US**, supported by **Canada**, had wanted the words “voluntary transfer on mutually agreed terms and conditions” to apply to all references to technology transfer. The **G77**, however, had been adamant that technology transfer should be carried out on favourable terms, including on concessional and preferential terms. It is only where the technology transfer is on “concessional and preferential terms” that these should be “mutually agreed”. They pointed to the Johannesburg Plan of Implementation (JPOI), which has references to the promotion of technology transfer and diffusion of environmentally sound technologies and corresponding know-how “on favourable terms, including on concessional and preferential terms, as mutually agreed...”

While the term “voluntary” was removed during the course of the negotiations, the new text introduced by the Brazilian Presidency on June 18 retained “mutually agreed terms”. In an attempt to balance the text, the Presidency also incorporated language from Article 7 of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). Hence the relevant sentence read: “We emphasize the importance of implementing technology transfer on mutually agreed terms and reaffirm that the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.” (The TRIPS language is contained in the second half of the sentence).

The **G77** had also wanted to address the issue of intellectual property rights (IPRs) in particular the need to consider their impact on the access to environmentally sound technologies. The **US** and some other developed countries including the **EU**,

Japan, Australia, and Switzerland wanted to remove any references to the issue.

The compilation text of June 16 put together by the Brazilian Presidency retained reference to IPRs and included language referring to the “making use of existing flexibilities and addressing the issue of access to technologies with particular attention to the needs of developing countries”. After strenuous objections from the developed countries, this text evolved and in the June 18 proposal of the Brazilian Presidency, the reference to flexibilities was removed and replaced by language reaffirming adherence to the objectives and principles of the TRIPS agreement.

According to sources, during the small group “huddle” on June 18 to discuss the issue, the **US** had adamantly opposed the idea of technology transfer to developing countries on preferential and concessional terms. It claimed that it too wanted to access technologies and failed to see the reason why developing countries should get preferential and concessional terms, and not developed countries. In addition, the **US** argued that any technology transfer should be on voluntary and mutually agreed terms because to agree on anything less would be to imply “coercive and involuntary” technology transfer, and that their companies would then suffer intellectual property violations.

The “huddle” also saw heated discussions on the issue of IPRs and the TRIPS agreement, according to sources. The **G77**’s attempt to link the issue of IPRs to access to environmentally sound technologies, and therefore the need to explore modalities for enhanced access to such technologies by developing countries, drew sharp responses from the **US**. The **US** claimed that this would be rewriting the TRIPS agreement and that any reference to flexibilities would imply that something is wrong with the TRIPS agreement. It further said that instead of exploring modalities for enhancing access, it would suggest language calling for the strengthening of modalities for IPR protection.

The “huddle” could not come to any agreement and when the participants reported back to the larger “splinter group”, **Canada** and **Japan** joined the **US** in asking for the retention of the reference to mutually agreed terms. The **US** raised its concerns with referring selectively to the TRIPS agreement, while **Japan, Switzerland** and the **EU** suggested the deletion of the paragraph dealing with IPRs.

In the end, the final draft outcome document that was adopted recalls the provisions on technology transfer, finance, access to information, and intellectual property rights as agreed in the Johannesburg Plan of Implementation, in particular its call to “promote, facilitate and finance, as appropriate, access to and the development, transfer and diffusion of environmentally sound technologies and corresponding know-how, in particular to developing countries, on favourable terms, including on concessional and preferential terms, as mutually agreed.”.

However, at the insistence of the **US**, the following sentence was inserted after, and follows the formulation agreed to in the “splinter group” on green economy: “We also take note of the further evolution of discussions and agreements on these issues since the JPOI.” This is understood to refer to the TRIPS agreement and developments in other fora such as the World Intellectual Property Organization (WIPO), with the implicit goal of detracting from the JPOI language and qualifying it further.

The paragraph that addressed IPRs was removed from the final draft outcome document, and with that, the intention of the G77 to draw attention to

the potential negative implications of IPRs for access to environmentally sound technologies and the need to address this. Nonetheless, language referring to the need to explore modalities in the relevant fora for enhanced access to such technologies by developing countries was retained, opening the door to future action on the issue.

Furthermore, while questions and concerns also raised about the G77 proposal of June 15 for an international technology facilitation mechanism, the final draft of the outcome document retains the proposal, but in slightly modified language (paragraph 275): “We request relevant UN agencies to identify options for a facilitation mechanism that promotes the development, transfer and dissemination of clean and environmentally sound technologies by, *inter alia*, assessing technology needs of developing countries, options to address them and capacity building. We request the UN Secretary General, on the basis of the options identified and taking into account existing models, to make recommendations regarding the facilitation mechanism to the 67th Session of the UN General Assembly.” This provides a vehicle for future delivery of technology transfer to developing countries.