

Nature: Key to Compliance and Fair/ Equitable Benefit Sharing

- CBD Members divided; ABS IR may be Legally binding, Non-binding instrument or Combination of measures
 - LMCCs/Africa Group/GRULAC insist legally binding, mandatory ABS/IR
 - Australia, Canada, EU, Japan, Korea, New Zealand do not accept legally binding regime as only possible outcome
 - U.S. Observer in CBD/ABS negotiations
- Compliance: Disclosure of Origin (DOO), Certificates of Compliance, Check-Points (*Chokepoints?*)
 - Legal uncertainty, different rules in 190 markets
 - No “best practices” for companies, no safe harbors
 - No Quiet Title = No Benefits
- Fair/Equitable Benefit Sharing: Regional Tech Transfer for *Ex Situ* GR, “Benefit Sharing for Every Use”
- Continuing Industry Concern: Equity (Predictability, Transparency, Non-discrimination, Durability of Measures)

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DOO in BRIC + SA

Provisions	Brazil	India	China	South Africa
CBD Treaty Limits				
Plant/Animal GR (non-human)	✓	NO	NO	NO
Post-1994 GR	NO	NO	NO	NO
In-Situ GR	NO	NO	NO	NO
Prior Informed Consent	Mandatory #	#	Unclear #	#
Proof of Benefit Sharing	Mandatory #	#	Unclear #	#
Other GR/TK Patent Dilution				
Source or Origin	Origin	Origin	Origin	Unclear
Condition of Patentability	✓	✓	✓	✓
Grounds for Patent Revocation	✓	✓	unclear #	✓
Open-ended Challenge Grounds	✓	✓	unclear	✓
Inclusion of TK	✓	✓	GR Only	✓
Inclusion of derivatives	✓	✓	GR Only	✓

India seeks proof of benefit sharing and prior informed consent in ongoing WTO negotiations; Brazil, China, and South Africa support this position.

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Next Steps

- *ABS WG-8 (Montreal, Nov 2009)*: Operational text on Nature, TK, Capacity-Building, Compliance, Fair and Equitable Benefit Sharing, Access; to continue to advance on the topics initiated at ABS WG-7
- *ABS WG-9*: Consolidation of Operational Text
- *COP 10 (Nagoya, Oct 2010)*: Adoption by Ministers
 - Canada, Germany, Japan committed to success
 - Will ABS IR Adopt what Works to enable benefit sharing, support/respect other International Agreements?

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Access and Benefit Sharing Alliance

Thank you

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