



Facts on Global Reform

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Contract-Based Systems Provide Better Protection for Biological Diversity

CBD Negotiations in the WTO

Some countries believe that the patent provisions of the Agreement on Trade Related Aspects of Intellectual Property Agreement (TRIPS Agreement) need to be amended to implement the Convention on Biological Diversity (CBD). The CBD is an international treaty that addresses many aspects of biological diversity, including rules on how a country's genetic resources should be used. An example of a genetic resource is a plant.

US Position

The United States is a biodiverse country with many genetic resources requiring protection. These resources are protected outside of the patent system through contracts between the provider of the resource and the user of the resource.

There is no conflict between the TRIPS Agreement and the CBD and therefore no need to amend the TRIPS Agreement to protect genetic resources. TRIPS and the CBD can be implemented in a mutually supportive manner.

Benefits

Contract-based systems provide many advantages for protecting access to and use of genetic resources or traditional knowledge of indigenous populations, many of which would not be available in a patent system. For example, contracts provide a mechanism to properly obtain genetic resources or traditional knowledge from the provider for research and permit benefit sharing arrangements between the provider of the resource and the user of that resource.

Contracts can also include research reporting requirements, rules on how to transfer, store or use the genetic resources or traditional knowledge, and set out clear ways to resolve any future disputes that may arise between the provider and user.

By contrast, the patent system is an ill-fit. The patent system cannot ensure authorized access to genetic resources and equitable sharing of their benefits. Contracts can be precisely tailored to accomplish these goals. In addition, amending the patent system would introduce uncertainty that could discourage innovation and undermine any eventual benefit-sharing.