

FTA에서의 ABS 조항

발간등록번호

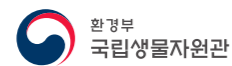
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# FTA에서의 ABS 조항



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2019

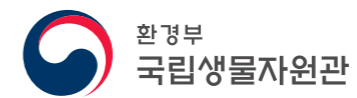


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# FTA에서의 ABS 조항



환경부  
국립생물자원관

Free Trade Agreement

## FTA에서의 ABS 조항



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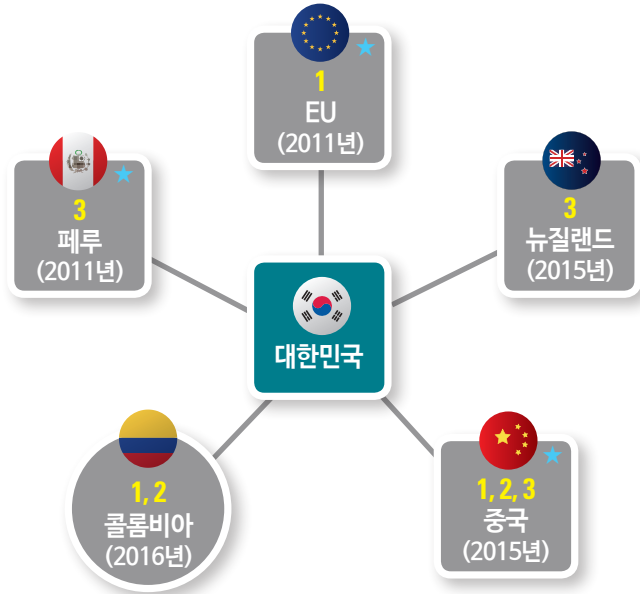


대한민국  
Republic of Korea

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FTA에서의 ABS 조항

## I 유전자원 이용국



- 도형모양으로 챕터별 구분: 네모(지식재산권 챕터), 동그라미(환경 챕터), 마름모(경제협력 챕터, 기타)
- 숫자로 ABS 조항의 내용을 구분: 1(협약/협력), 2(정보교환 등), 3(국제적 의무에 따른 조치), 4(국내적 이행장치), 5(특허), 6(기타)
- ★표는 나고야의정서 당사국임

한국은 2010년부터 2019년 6월 까지 총 12건의 FTA를 체결하였으며, 조사기간 ('10~'19년)동안 한국은 전 세계에서 가장 활발하게 FTA를 체결한 국가임

- 2018년 기준 한국의 FTA 시장 네트워크는 칠레, 페루에 이어 세계 3위 규모이며, 주요 교역국 중 미국, 중국, EU, ASEAN 등 거대 경제권과 동시에 FTA를 맺고 있는 유일한 나라임(산업통상자원부, 2018)
- 2010년부터 2019년 상반기까지 한국이 체결한 총 12건의 FTA 중 5건에서 ABS 이슈가 다루어지고 있으며, 챕터별로 살펴보면 4건이 지식재산권 챕터, 가장 최근에 체결된 1건에서 경제협력 챕터에서 ABS를 다루고 있음
- 그 내용을 살펴보면 정보교환에 대한 언급이 가장 많이 이루어지고 있으며, 이어 국제적 의무에 따른 조치를 취하겠다는 내용이 포함되어 있음

나고야의정서 당사국인 한국은 총 12건의 FTA 중 유전자원 제공국과는 9건, 유전자원 이용국과는 3건의 FTA를 체결하고 있음

- 유전자원 제공국으로 분류되는 콜롬비아, 베트남, 뉴질랜드, 호주, 터키, 인도, 중국, 아세안, 페루와 FTA를 체결하였으며, 이중 ABS 이슈를 언급하고 있는 FTA는 4건으로 콜롬비아, 뉴질랜드, 중국, 페루와의 FTA임
- 유전자원 이용국으로 분류되는 캐나다, 미국, EU와도 FTA를 체결하고 있으며, 이 중 EU와 체결한 FTA에서만 ABS 이슈를 언급하고 있음
- 한-EU FTA에서는 유전자원 등에 관한 별도의 조항을 두고 있으며(제10.40조 유전자원, 전통지식 및 민간전승물), ABS 이슈를 다루는 국제기구에서 논의되는 사항들에 대해 정기적으로 견해와 의견을 교환하도록 하는 내용을 담고 있음

## SECTION B Standards concerning intellectual property rights

### Sub-section F Other provisions

#### Article 10.40 Genetic resources, traditional knowledge and folklore

1. Subject to their legislation, the Parties shall respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the involvement and approval of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices.
2. The Parties agree to regularly exchange views and information on relevant multilateral discussions:
  - (a) in WIPO, on the issues dealt with in the framework of the Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore;
  - (b) in the WTO, on the issues related to the relationship between the TRIPS Agreement and the Convention on Biological Diversity (hereinafter referred to as the 'CBD'), and the protection of traditional knowledge and folklore;
 

and
  - (c) in the CBD, on the issues related to an international regime on access to genetic resources and benefit sharing.

3. Following the conclusion of the relevant multilateral discussions referred to in paragraph 2, the Parties agree, at the request of either Party, to review this Article in the Trade Committee in the light of the results and conclusion of such multilateral discussions. The Trade Committee may adopt any decision necessary to give effect to the results of the review.

## CHAPTER SEVENTEEN INTELLECTUAL PROPERTY RIGHTS

### ARTICLE 17.5: GENETIC RESOURCES AND TRADITIONAL KNOWLEDGE

1. The Parties acknowledge paragraph 19 of the Ministerial Declaration(WT/MIN/(01) DEC/1), adopted on November 14, 2001 by the WTO Ministerial Conference, on the relationship between the TRIPS Agreement and the CBD and the protection of genetic resources, traditional knowledge, and folklore.
2. The Parties recognize the value and importance of biological diversity, traditional knowledge as well as the contribution of knowledge, innovations, and practices of indigenous and local communities to the conservation and sustainable use of biological diversity. Each Party shall have the authority to determine access to genetic resources in accordance with its domestic legislation and endeavor to create conditions to facilitate transparent access to genetic resources for environmentally sound uses.
3. Subject to their domestic legislations and the CBD, the Parties respect knowledge, innovations, and practices of indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity and promote their wider application with the involvement and approval of the holders of such knowledge, innovations, and practices.
4. Each Party shall endeavor to seek ways to share information on patent applications based on genetic resources or traditional knowledge by providing:
  - (a) publicly accessible database that contains relevant information; and
  - (b) opportunities to file prior art to the appropriate examining authority in writing.
5. The Parties agree to share views and information on discussions in the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore, the WTO TRIPS Council, and any other relevant fora in addressing matters related to genetic resources and traditional knowledge.
6. Subject to future developments of multilateral agreements or their respective domestic legislations, the Parties agree to further discuss relevant issues on genetic resources.

## CHAPTER 11 INTELLECTUAL PROPERTY RIGHTS

## Article 11.10 : Genetic Resources, Traditional Knowledge and Folklore

Subject to each Party's international obligations, each Party may establish appropriate measures to protect genetic resources, traditional knowledge and traditional cultural expressions or folklore.

## CHAPTER 15 INTELLECTUAL PROPERTY RIGHTS

## Section E: Genetic Resources, Traditional Knowledge and Folklore

## Article 15.17: Genetic Resources, Traditional Knowledge and Folklore

1. The Parties recognize the contribution made by genetic resources, traditional knowledge and folklore to scientific, cultural and economic development.
2. The Parties acknowledge and reaffirm the principles established in the Convention on Biological Diversity adopted on 5 June 1992 (hereinafter referred to in this Article as the "Convention") and respect the requirements in Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, especially those on prior informed consent and fair and equitable sharing of benefits. The Parties encourage the effort to enhance a mutually supportive relationship between the TRIPS Agreement and the Convention, regarding genetic resources and traditional knowledge.
3. Subject to each Party's international rights and obligations and domestic laws, the Parties may adopt or maintain measures to promote the conservation of biological diversity and the equitable sharing of benefits arising from the use of genetic resources and traditional knowledge.



4. Subject to future developments of multilateral agreements or their respective domestic legislations, the Parties agree to further discuss relevant issues on genetic resources.

5. The Parties, recognizing that patents and other intellectual property rights may have an influence on the implementation of the Convention, shall cooperate in this regard subject to national legislation and international law in order to ensure that such rights are supportive of and do not run counter to the objectives of the Convention.

## CHAPTER SIXTEEN TRADE AND SUSTAINABLE DEVELOPMENT

### ARTICLE 16.5: BIOLOGICAL DIVERSITY

1. The Parties acknowledge paragraph 19 of the Ministerial Declaration (WT/MIN/(01)DEC/1), adopted on November 14, 2001 by the WTO Ministerial Conference, on the relationship between the TRIPS Agreement and the Convention on Biological Diversity (hereinafter referred to as “CBD”) and the protection of genetic resources, traditional knowledge<sup>2</sup>, and folklore.
2. The Parties recognize the value and importance of biological diversity, traditional knowledge as well as the contribution of knowledge, innovations, and practices of indigenous and local communities to the conservation and sustainable use of biological diversity. Recognizing the sovereign rights of States over their natural resources, each Party shall have the authority to determine access to genetic resources in accordance with its legislation and endeavor to create conditions to facilitate transparent access to genetic resources for environmentally sound uses.
3. Subject to their legislations and the CBD, the Parties respect knowledge, innovations, and practices of indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity and promote their wider application with the involvement and approval of the holders of such knowledge, innovations, and practices.

4. Each Party shall endeavor to seek ways to share information on patent applications based on genetic resources or traditional knowledge by providing:
  - (a) publicly accessible database that contains relevant information; and
  - (b) opportunities to file prior art to the appropriate examining authority in writing.
  
5. The Parties agree to share views and information on discussions in the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore, the WTO TRIPS Council, and any other relevant fora in addressing matters related to genetic resources and traditional knowledge.
  
6. The Parties acknowledge the adoption of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity and agree to further discuss relevant issues on genetic resources subject to future developments of multilateral agreements or their respective legislations.

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2).For greater certainty, “traditional knowledge” in this Chapter refers to traditional knowledge associated with genetic resources.

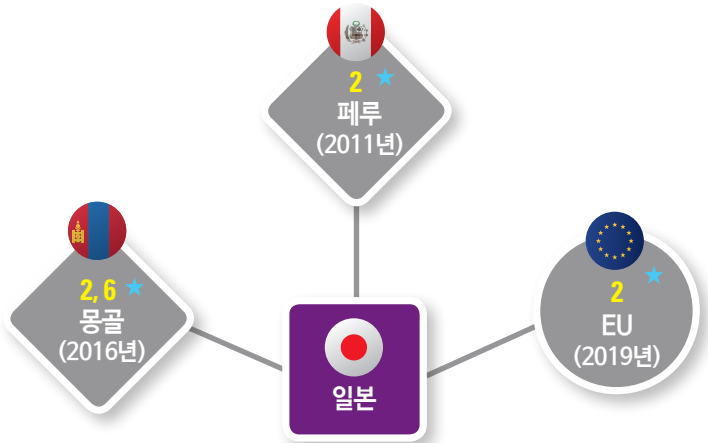
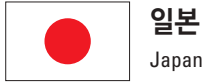


일본  
Japan

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FTA에서의 ABS 조항

## 유전자원 이용국



- 도형모양으로 챕터별 구분: 네모(지식재산권 챕터), 동그라미(환경 챕터), 마름모(경제협력 챕터, 기타)
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- ★표는 나고야의정서 당사국임

일본은 우리나라와 비교하여 상대적으로 FTA 체결에 소극적으로 나타남. 그러나 2012년 일본의 FTA 시장 네트워크는 19%에 불과했으나, 2018년까지 70%로 끌어올리기 위한 계획을 제시하였음

- 일본은 다자간 FTA의 하나인 CPTPP에 참여하면서 태평양지역에 포함되지 않은 국가들을 중심으로 양자간 FTA를 체결하고 있음

조사기간('10~'19년)동안 총 5건의 양자간 FTA를 체결하였으나, 이 중 유전자원 제공국가로 분류되는 호주, 인도와는 ABS 이슈를 FTA상에서 언급하고 있지 않음

- 반면 유전자원 제공국가로 분류되는 페루, 몽골과는 ABS 이슈를 FTA상에서 다루고 있으나, 지식재산권 챕터가 아닌 곳에서 해당 이슈를 다루고 있음.
- 특히 페루는 ABS 이슈를 꾸준히 지식재산권 챕터에서 다루고 있는 국가이나, 일본과 체결한 FTA에서만 유일하게 공동 성명서(Joint Statement)를 통해 이를 다루고 있음.
- 유전자원 이용국가로 분류되는 EU와의 FTA에서는 무역과 지속가능한 개발 챕터에서 생물다양성과 더불어 포괄적으로 ABS 이슈를 규정하고 있음(제16조 생물다양성). 이는 한국이 EU와 체결한 FTA에서 ABS 이슈를 지식재산권 챕터에서 별도의 조항으로 다룬 것과는 대조적임(제10.40조 유전자원, 전통지식 및 민간전승물)

Joint Statement on Biodiversity, Access to Genetic Resources and Traditional Knowledge, on the occasion of the Signing of the Agreement between Japan and the Republic of Peru for an Economic Partnership

We, the Governments of Japan and the Republic of Peru, recalling the longstanding friendship between both countries, which has developed into an enduring cooperative relationship;

Today, welcoming the expeditious conclusion of the negotiations;

Signed the Agreement between Japan and the Republic of Peru for an Economic Partnership.

Both sides,

Recognizing the importance of the three objectives of the Convention on Biological Diversity (hereinafter referred to as the “CBD”), which are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources;

Recognizing the importance of the value of biodiversity and its components as stated in the preamble of the CBD, as well as their potential contribution to cultural, economic and social development;

Recognizing the sovereign rights of States over their natural resources, and that the authority to determine access to genetic resources rests with the national governments and is subject to their national legislation as provided for in paragraph 1 of Article 15 of the CBD; and

Acknowledging what is set forth in paragraph 5 of Article 16 of the CBD;

Have reached the recognition as follows:

Both sides, as Contracting Parties of the CBD, reaffirm the importance of the following:

- (1) endeavoring to create conditions to facilitate access to genetic resources for environmentally sound uses in view of paragraph 2 of Article 15 of the CBD;
- (2) obtaining informed consent from the appropriate authority prior to accessing genetic resources under the control of such authority in view of paragraph 5 of Article 15 of the CBD;
- (3) sharing in a fair and equitable way the benefits, upon mutually agreed terms, arising from the commercial and other utilization of genetic resources with the country providing such resources in view of paragraph 7 of Article 15 of the CBD; and
- (4) subject to their respective national legislation, respecting, preserving and maintaining knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promoting their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encouraging the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices in view of subparagraph (j) of Article 8 of the CBD.

With a view to promoting quality patent examination to ensure the conditions of patentability are satisfied, each side will endeavor to seek ways to share information that may have a bearing on the patentability of inventions based on genetic resources or traditional knowledge associated with genetic resources by:

- (a) providing or utilizing publicly accessible databases that contain relevant information; and
- (b) providing an opportunity to submit in writing, to the appropriate examining authority in accordance with its laws and regulations, information on prior art that may have a bearing on patentability.

Any part of this Joint Statement does not prejudice ongoing negotiations and their outcomes in other fora in which both sides are participating.

Tokyo, May 31, 2011

Minister for Foreign Affairs of Japan  
Takeaki Matsumoto

Minister of Foreign Trade and Tourism  
of the Republic of Peru  
Eduardo Ferreyros

## 02 일본-몽골 FTA (2015년 2월 10일 서명, 2016년 6월 7일 발효)

### Agreement between Japan and Mongolia for an Economic Partnership

#### Chapter 15 Cooperation

##### Article 15.1 Basic Principles

The Parties shall, in accordance with their respective laws and regulations, promote cooperation under this Agreement for their mutual benefit, in order to further liberalize and facilitate trade in goods and services as well as investment between the Parties and to promote the well-being of the people and sustainable development of the Parties. For this purpose, the Parties shall enhance further cooperation between their Governments, and encourage and facilitate mutual cooperation between relevant entities of the Parties, one of both of whom are entities other than the Governments of the Parties, in the following fields:

- (a) agriculture, forestry and fisheries, including matters related to SPS measures referred to in Chapter 5;
- (b) manufacturing industry, including matters related to technical regulations, standards and conformity assessment procedures referred to in Chapter 6;
- (c) small and medium enterprises;
- (d) trade and investment;
- (e) infrastructure, construction and urban development;
- (f) science and technology and intellectual property;
- (g) financial services;

- (h) education and human resource development;
- (i) tourism;
- (j) environment;
- (k) mining and energy;
- (l) healthcare;
- (m) competition;
- (n) information and communications technology; and
- (o) other fields to be mutually agreed upon by the Governments of the Parties.

### Article 15.2 Areas and Forms of Cooperation

The areas and forms of cooperation under this Chapter shall be set forth in the Implementing Agreement.

Implementing Agreement between the Government of Japan and the Government of Mongolia pursuant to Article 1.12 of the Agreement between Japan and Mongolia for an Economic Partnership

### Chapter 5 Cooperation

Article 5.1 Agriculture, Forestry and Fisheries, including matters related to SPS measures referred to in Chapter 5

Pursuant to Article 15.2 of the Basic Agreement, in the field referred to in subparagraph

- (a) of Article 15.1 of the Basic Agreement:
- (a) the areas of cooperation may include:
  - ( i ) genetic resources for foods and agriculture;

- ( ii ) irrigation and seed production;
- (iii) establishing demonstration and model farms and facilities;
- (iv) production of diary products, beef, organic foods, grains and vegetables;
- ( v ) horticulture;
- (vi) beekeeping;
- (vii) fodder production and pet food processing;
- (viii) animal breeding biotechnology;
- (ix) animal health and veterinary services;
- ( x ) any matters on sanitary and phytosanitary(hereinafter referred to as “SPS”)

measures, including the following matters:

- (A) establishment of pest or disease free zones; and
- (B) control, inspection and approval procedures on SPS measures;
  - ( x i ) food processing, including heat processing meat production;
  - (xii) food marketing;
  - (xiv) wood processing;
  - (xv) aquaculture;
  - (xvi) human resource development; and
  - (xvii) other areas an may be agreed by the Partie; and

**CHAPTER 16 TRADE AND SUSTAINABLE DEVELOPMENT****ARTICLE 16.6 Biological diversity**

1. Each Party recognises the importance and the role of trade and investment in ensuring the conservation and sustainable use of biological diversity in accordance with relevant international agreements to which it is party, notably the Convention on Biological Diversity, done at Rio de Janeiro on 5 June 1992, and its protocols and the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington D.C. on 3 March 1973 (hereinafter referred to as “CITES”).
2. In that context, each Party shall:
  - (a) encourage the use of products which were obtained through sustainable use of natural resources and which contribute to the conservation and sustainable use of biodiversity, including through labelling schemes, taking into account the importance of trade in such products;
  - (b) implement effective measures, such as monitoring and enforcement measures, and awareness-raising actions, to combat illegal trade in endangered species of wild fauna and flora as listed in CITES, and as appropriate in other endangered species;
  - (c) implement, as appropriate, the decisions which were adopted under the international agreements referred to in paragraph 1, including through laws, regulations, strategies, plans and programmes; and

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- 
- 
- (d) exchange information and consult with the other Party at bilateral and multilateral levels on matters of relevance to this Article, including trade in wildlife and natural resource-based products, the valuation, mapping and assessment of ecosystems and related services, and the access to genetic resources and the fair and equitable sharing of benefits arising from their utilisation.

**Article 18.16: Cooperation in the Area of Traditional Knowledge**

1. The Parties recognise the relevance of intellectual property systems and traditional knowledge associated with genetic resources to each other, when that traditional knowledge is related to those intellectual property systems.
2. The Parties shall endeavour to cooperate through their respective agencies responsible for intellectual property, or other relevant institutions, to enhance the understanding of issues connected with traditional knowledge associated with genetic resources, and genetic resources.
3. The Parties shall endeavour to pursue quality patent examination, which may include:
  - (a) that in determining prior art, relevant publicly available documented information related to traditional knowledge associated with genetic resources may be taken into account;
  - (b) an opportunity for third parties to cite, in writing, to the competent examining authority prior art disclosures that may have a bearing on patentability, including prior art disclosures related to traditional knowledge associated with genetic resources;
  - (c) if applicable and appropriate, the use of databases or digital libraries containing traditional knowledge associated with genetic resources; and (d) cooperation in the training of patent examiners in the examination of patent applications related to traditional knowledge associated with genetic resources.

**Article 20.12: Cooperation Frameworks**

1. The Parties recognise the importance of cooperation as a mechanism to implement this Chapter, to enhance its benefits and to strengthen the Parties' joint and individual capacities to protect the environment and to promote sustainable development as they strengthen their trade and investment relations.
2. Taking account of their national priorities and circumstances, and available resources, the Parties shall cooperate to address matters of joint or common interest among the participating Parties related to the implementation of this Chapter, when there is mutual benefit from that cooperation. This cooperation may be carried out on a bilateral or plurilateral basis between Parties and, subject to consensus by the participating Parties, may include non-governmental bodies or organisations and non-Parties to this Agreement.
3. Each Party shall designate the authority or authorities responsible for cooperation related to the implementation of this Chapter to serve as its national contact point on matters that relate to coordination of cooperation activities and shall notify the other Parties in writing within 90 days of the date of entry into force of this Agreement for that Party of its contact point. On notifying the other Parties of its contact point, or at any time thereafter through the contact points, a Party may:
  - (a) share its priorities for cooperation with the other Parties, including the objectives of that cooperation; and
  - (b) propose cooperation activities related to the implementation of this Chapter to another Party or Parties.



4. When possible and appropriate, the Parties shall seek to complement and use their existing cooperation mechanisms and take into account relevant work of regional and international organisations.
5. Cooperation may be undertaken through various means including: dialogues, workshops, seminars, conferences, collaborative programmes and projects; technical assistance to promote and facilitate cooperation and training; the sharing of best practices on policies and procedures; and the exchange of experts.
6. In developing cooperative activities and programmes, a Party shall, if relevant, identify performance measures and indicators to assist in examining and evaluating the efficiency, effectiveness and progress of specific cooperative activities and programmes and share those measures and indicators, as well as the outcome of any evaluation during or following the completion of a cooperative activity or programme, with the other Parties.
7. The Parties, through their contact points for cooperation, shall periodically review the implementation and operation of this Article and report their findings, which may include recommendations, to the Committee to inform its review under Article 20.19(3)(c) (Environment Committee and Contact Points). The Parties, through the Committee, may periodically evaluate the necessity of designating an entity to provide administrative and operational support for cooperative activities. If the Parties decide to establish such an entity, the Parties shall agree on the funding of the entity on a voluntary basis to support the entity's operation.

8. Each Party shall promote public participation in the development and implementation of cooperative activities, as appropriate. This may include activities such as encouraging and facilitating direct contacts and cooperation among relevant entities and the conclusion of arrangements among them for the conduct of cooperative activities under this Chapter.
9. Where a Party has defined the environmental laws under Article 20.1 (Definitions) to include only laws at the central level of government (first Party), and where another Party (second Party) considers that an environmental law at the sub-central level of government of the first Party is not being effectively enforced by the relevant sub-central government through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties, the second Party may request a dialogue with the first Party. The request shall contain information that is specific and sufficient to enable the first Party to evaluate the matter at issue and an indication of how the matter is negatively affecting trade or investment of the second Party.
10. All cooperative activities under this Chapter are subject to the availability of funds and of human and other resources, and to the applicable laws and regulations of the participating Parties. The participating Parties shall decide, on a case-by-case basis, the funding of cooperative activities.

#### **Article 20.13: Trade and Biodiversity**

1. The Parties recognise the importance of conservation and sustainable use of biological diversity and their key role in achieving sustainable development.

2. Accordingly, each Party shall promote and encourage the conservation and sustainable use of biological diversity, in accordance with its law or policy.
3. The Parties recognise the importance of respecting, preserving and maintaining knowledge and practices of indigenous and local communities embodying traditional lifestyles that contribute to the conservation and sustainable use of biological diversity.
4. The Parties recognise the importance of facilitating access to genetic resources within their respective national jurisdictions, consistent with each Party's international obligations. The Parties further recognise that some Parties require, through national measures, prior informed consent to access such genetic resources in accordance with national measures and, where such access is granted, the establishment of mutually agreed terms, including with respect to sharing of benefits from the use of such genetic resources, between users and providers.
5. The Parties also recognise the importance of public participation and consultation, in accordance with their respective law or policy, in the development and implementation of measures concerning the conservation and sustainable use of biological diversity. Each Party shall make publicly available information about its programmes and activities, including cooperative programmes, related to the conservation and sustainable use of biological diversity.
6. Consistent with Article 20.12 (Cooperation Frameworks), the Parties shall cooperate to address matters of mutual interest. Cooperation may include, but is

- not limited to, exchanging information and experiences in areas related to:
- (a) the conservation and sustainable use of biological diversity;
  - (b) the protection and maintenance of ecosystems and ecosystem services; and
  - (c) access to genetic resources and the sharing of benefits arising from their utilisation.

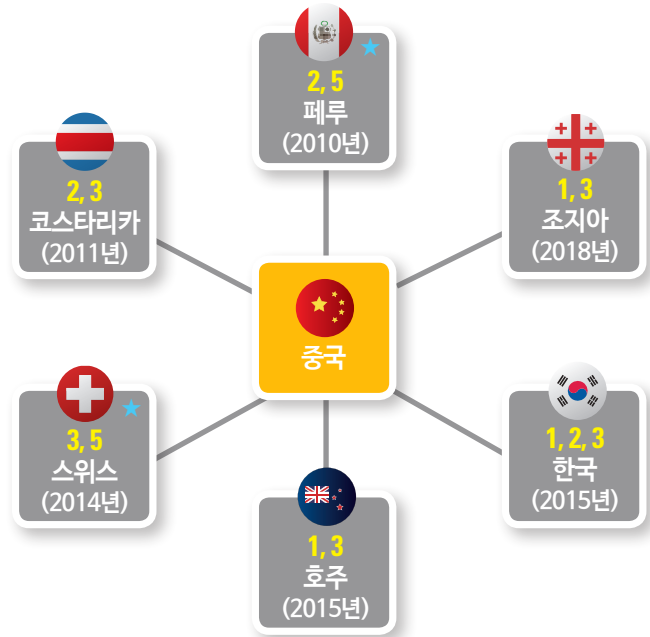


중국  
China

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FTA에서의 ABS 조항

## | 유전자원 제공국 |



- 도형모양으로 챕터별 구분: 네모(지식재산권 챕터), 동그라미(환경 챕터), 마름모(경제협력 챕터, 기타)
- 숫자로 ABS 조항의 내용을 구분: 1(협약/협력), 2(정보교환 등), 3(국제적 의무에 따른 조치), 4(국내적 이행장치), 5(특허), 6(기타)
- ★표는 나고야의정서 당사국임

## 중국은 대표적인 유전자원 부국으로 통상협정인 FTA에서도 ABS 이슈를 적극적으로 다루고 있는 모습을 보임

- 조사기간('10~'19년)동안 중국이 체결한 총 7건의 FTA 중에서 6건의 FTA에서 ABS 이슈를 명시하고 있으며, 모두 지식재산권 챕터에서 해당 이슈를 다루고 있음
- 특히 2014년 스위스와 체결한 FTA에서는 국내적 조치를 넘어 특허까지 언급하는 상당히 구체적인 내용을 담고 있음
- 나고야의정서 비당사국인 호주, 조지아 등과도 FTA 체결시 ABS 이슈를 명시하고 있음(유일한 예외가 아이슬란드와 체결한 FTA로 아이슬란드는 나고야의정서 비당사국임)

## CHAPTER 11 INTELLECTUAL PROPERTY RIGHTS

## Article 145: Genetic Resources, Traditional Knowledge and Folklore

The Parties recognize the contribution made by the genetic resources, traditional knowledge and folklore to the scientific, cultural and economic development.

The Parties acknowledge and reaffirm the principles and provisions established in the Convention on Biological Diversity adopted on June 5th, 1992, and encourage the effort to establish a mutually supportive relationship between the TRIPS Agreement and the Convention on Biological Diversity, regarding genetic resources and the protection of traditional knowledge and folklore.

Subject to each Party's international obligations and national legislation, the Parties may establish appropriate measures to protect genetic resources, traditional knowledge and folklore.

Subject to future developments of national legislation, the Parties agree to further discuss the disclosure of origin or source of genetic resources and/or prior informed consent obligations in patent applications.

## Chapter 10 Intellectual Property

## Article 111: Genetic Resources, Traditional Knowledge and Folklore

1. The Parties recognize the contribution made by genetic resources, traditional knowledge and folklore to scientific, cultural and economic development.
2. The Parties acknowledge and reaffirm the principles and provisions established in the Convention on Biological Diversity adopted on 5th June 1992 and encourage the effort to establish a mutually supportive relationship between the TRIPS Agreement and the Convention on Biological Diversity, regarding genetic resources and the protection of traditional knowledge and folklore.
3. Subject to each Party's international obligations and domestic laws, the Parties may adopt or maintain measures to promote the conservation of biological diversity, share equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components in conformity with what is established in the Convention on Biological Diversity.
4. Subject to future developments of domestic laws and the outcome of negotiations in multilateral fora, the Parties agree to further discuss the disclosure of origin or source of genetic resources; and/or prior informed consent obligations in patent applications; and the grant of a patent for an invention that involves or relies on genetic resources, when such resources were acquired or exploited without complying the relevant domestic laws or regulations.

## SECTION II

STANDARDS CONCERNING THE AVAILABILITY, SCOPE  
AND USE OF INTELLECTUAL PROPERTY RIGHTS

## ARTICLE 11.9 Genetic Resources and Traditional Knowledge

1. The Parties recognise the contribution made by genetic resources and traditional knowledge to scientific, cultural and economic development.
2. The Parties acknowledge and reaffirm the principles established in the Convention on Biological Diversity adopted on 5 June 1992 and encourage the effort to enhance a mutually supportive relationship between the TRIPS Agreement and the Convention on Biological Diversity, regarding genetic resources and traditional knowledge.
3. Subject to each Party's international rights and obligations and domestic laws, the Parties may adopt or maintain measures to promote the conservation of biological diversity and the equitable sharing of benefits arising from the use of genetic resources and traditional knowledge.
4. The Parties may require that patent applicants should indicate the source of a genetic resource and, if so provided by the national law, traditional knowledge, to which the inventor or the patent applicant has had access, insofar as the

invention is directly based on this resource or this knowledge in accordance with domestic laws and regulations;

5. If a patent application does not meet the requirements of paragraph 4, the Parties may set a time limit by which the applicant must correct the defect. The Parties may refuse the application or consider it withdrawn if the defect according to this paragraph has not been corrected within the set time limit.
6. If it is discovered after the granting of a patent that the application failed to disclose the source or that intentionally false information was submitted, or other relevant laws and regulations were violated, the Parties may provide for appropriate legal consequences.

## CHAPTER 11 INTELLECTUAL PROPERTY

ARTICLE 11.17: GENETIC RESOURCES, TRADITIONAL KNOWLEDGE  
AND FOLKLORE

1. Subject to each Party's international obligations and its laws, the Parties may establish appropriate measures to protect genetic resources, traditional knowledge and folklore.
2. The Parties agree to further discuss relevant issues concerning genetic resources, traditional knowledge and folklore, taking into account future developments in their respective laws and in multilateral agreements.

## CHAPTER 15 INTELLECTUAL PROPERTY RIGHTS

## Section E: Genetic Resources, Traditional Knowledge and Folklore

## Article 15.17: Genetic Resources, Traditional Knowledge and Folklore

1. The Parties recognize the contribution made by genetic resources, traditional knowledge and folklore to scientific, cultural and economic development.
2. The Parties acknowledge and reaffirm the principles established in the Convention on Biological Diversity adopted on 5 June 1992 (hereinafter referred to in this Article as the "Convention") and respect the requirements in Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, especially those on prior informed consent and fair and equitable sharing of benefits. The Parties encourage the effort to enhance a mutually supportive relationship between the TRIPS Agreement and the Convention, regarding genetic resources and traditional knowledge.
3. Subject to each Party's international rights and obligations and domestic laws, the Parties may adopt or maintain measures to promote the conservation of biological diversity and the equitable sharing of benefits arising from the use of genetic resources and traditional knowledge.

4. Subject to future developments of multilateral agreements or their respective domestic legislations, the Parties agree to further discuss relevant issues on genetic resources.

5. The Parties, recognizing that patents and other intellectual property rights may have an influence on the implementation of the Convention, shall cooperate in this regard subject to national legislation and international law in order to ensure that such rights are supportive of and do not run counter to the objectives of the Convention.



## 중국-조지아 FTA

(2016년 10월 서명, 2018년 1월 1일 발효)

### CHAPTER 11 INTELLECTUAL PROPERTY

#### ARTICLE 11.16: GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE

1. Subject to each Party's international obligations and its laws, the Parties may establish appropriate measures to protect genetic resources, traditional knowledge and folklore.
2. The Parties agree to explore the possibility to further discuss relevant issues concerning genetic resources, traditional knowledge and folklore, taking into account future developments in their respective laws and in multilateral agreements.





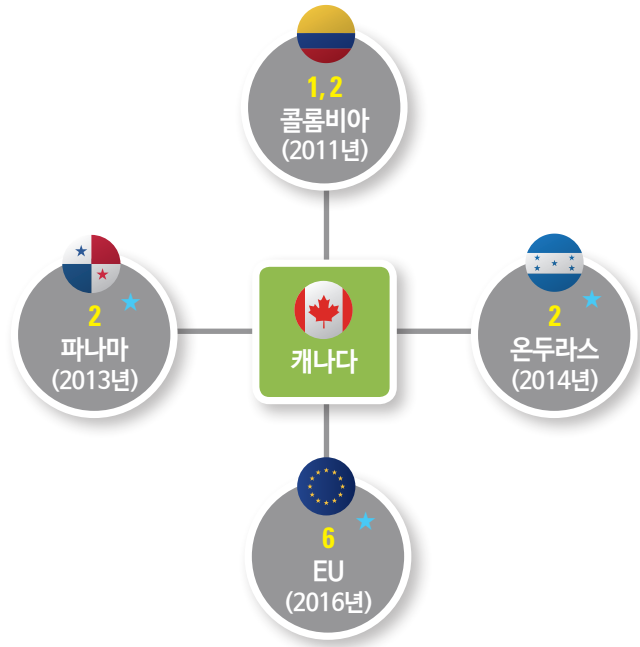
캐나다

Canada

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FTA에서의 ABS 조항

## 유전자원 이용국



- 도형모양으로 챕터별 구분: 네모(지식재산권 챕터), 동그라미(환경 챕터), 마름모(경제협력 챕터, 기타)
- 숫자로 ABS 조항의 내용을 구분: 1(협약/협력), 2(정보교환 등), 3(국제적 의무에 따른 조치), 4(국내적 이행장치), 5(특허), 6(기타)
- ★표는 나고야의정서 당사국임

### 캐나다는 총 7건의 FTA 중 4건의 FTA에서 ABS 이슈를 언급하고 있음

- 유전자원 제공국가인 파나마, 콜롬비아, 온두라스와는 FTA에서 ABS 이슈를 언급하고는 있으나 모두 환경협정에서 이를 명시하고 있음.
- 다만 파나마, 콜롬비아와 체결한 FTA에서는 생물다양성(Biological Diversity)이라는 제목의 독립된 조항이 포함된 반면, 온두라스와의 FTA에서는 협력(Cooperation) 조항에서 다양한 환경 협력 프로그램 중 하나로 언급되고 있음
- 유전자원 이용국가와 체결한 FTA에서는 ABS 이슈를 거의 언급하지 않으며, 예외적으로 EU와는 ABS와 간접적으로 연결되는 바이오테크 시장접근과 관련한 양자간 채널을 구축하는 것을 언급하고 있음(제25.2조 Dialogue on Biotech Market Access Issues)

### 캐나다는 다자간 FTA인 CPTPP의 가입국가임

### Canada-Columbia Free Trade Agreement

#### Article 1703: Agreement on Environment

In furtherance of these principles, the Parties have set out their mutual obligations in the Agreement on the Environment between Canada and the Republic of Colombia (“Agreement on the Environment”) that addresses, inter alia:

- (a) conservation, protection and improvement of the environment in the territory of each Party for the well being of present and future generations;
- (b) a commitment not to derogate from domestic environmental laws in order to encourage trade or investment;
- (c) conservation and sustainable use of biological diversity and protection and preservation of traditional knowledge;
- (d) development of, compliance with and enforcement of environmental laws;
- (e) transparency and public participation on environmental matters; and
- (f) cooperation between the Parties on the advancement of environmental issues of common interest.

#### Article 1704: Relationship between this Agreement and the Agreement on the Environment

1. The Parties recognize the importance of balancing trade obligations and environmental obligations, and affirm that the Agreement on the Environment complements this Agreement, and that the two are mutually supportive.

2. The Commission shall consider, as appropriate, reports and recommendations from the Committee on Environment established under the Agreement on Environment, in respect of any trade and environment-related issues.

### Canada-Colombia environment agreement

#### Article 5: Biological Diversity

1. The Parties recognize the importance of the conservation and sustainable use of biological diversity in achieving sustainable development and reiterate their commitment to promote the conservation and sustainable use of biological diversity.
2. The Parties also reiterate their commitment, as established by the Convention on Biological Diversity, to respect, preserve and maintain traditional knowledge, innovations and practices of indigenous and local communities that contribute to the conservation and sustainable use of biological diversity, subject to national legislation.
3. The Parties reiterate their sovereign rights over their natural resources and recognize their authority and obligations as established by the Convention on Biological Diversity with respect to access to genetic resources, and to the fair and equitable sharing of benefits arising out of the utilization of those genetic resources.
4. The Parties also recognize the importance of public participation and consultation, as provided by domestic law, on matters concerning the conservation and sustainable use of biological diversity.

5. The Parties agree to cooperate on the conservation and sustainable use of biological diversity within the framework provided by Section II of this Agreement.
6. The Parties shall endeavour to cooperate in order to exchange relevant information regarding:
  - (a) the conservation and sustainable use of biodiversity;
  - (b) the avoidance of illegal access to genetic resources, traditional knowledge, innovations and practices; and,
  - (c) the equitable sharing of the benefits arising from the utilization of genetic resources and associated knowledge, innovations and practices.

## Section II -- Environmental Cooperation

### Article 7: Cooperation

1. The Parties recognize that cooperation is an effective way to achieve the objectives of this Agreement and reaffirm their commitment to developing cooperation programs and activities to promote the achievement of these objectives.
2. The Parties agree to strive to strengthen their cooperation on environmental issues in other bilateral, regional and multilateral fora in which they participate.
3. In developing cooperation programs, the Parties may involve the public and interested stakeholders or any other entity as the Parties deem appropriate.

4. The Parties agree to identify priority areas for cooperative activities and to establish a work program which shall be prepared forthwith after the entry into force of this Agreement. The priority areas listed in Annex 1 to this Agreement shall be considered for the initial Work Program.
5. The Parties agree to make best efforts to find appropriate resources to effectively implement a Work Program. The Work Program could be implemented:
  - (a) through technical cooperation programmes under any modality decided by the Parties, including information sharing, exchange of experts and training; and/or
  - (b) through financial cooperation for priority projects presented by the Parties.
 The resources could come from, inter alia, public entities or agencies from the Parties, or when appropriate, from private institutions, foundations or international public organizations.
6. The Parties may cooperate with any State not party to this Agreement, where appropriate, to maximize available resources. Where appropriate, the Parties agree to cooperate to identify and to secure resources from external sources.
7. The Parties agree that the public should be informed of cooperative activities undertaken under this Agreement and engaged, as appropriate.
8. The Parties shall meet no later than one year after the entry into force of this Agreement and subsequently as agreed to review progress on cooperative activities. Such meetings shall be organized by the National Coordinating Officers.

### Canada-Panama free trade agreement

#### Article 17.02: Agreement on the Environment

In keeping with the spirit of Article 17.01, the Parties have set out their mutual obligations in the Agreement on the Environment to promote the following objectives:

- a. conservation, protection and improvement of the environment in the territory of each Party for the well-being of present and future generations;
- b. a commitment not to derogate from domestic environmental laws in order to encourage trade or investment;
- c. conservation and sustainable use of biological diversity, and protection and preservation of traditional knowledge;
- d. development of, compliance with and enforcement of environmental laws;
- e. transparency and public participation in environmental matters; and
- f. cooperation between the Parties to advance environmental issues of common interest.

#### Article 17.03: Relationship between this Agreement and the Agreement on the Environment

1. The Parties recognize the importance of balancing trade obligations and environmental obligations, and affirm that the Agreement on the Environment complements this Agreement and that they are mutually supportive.

2. The Commission may consider, as appropriate, reports and recommendations from the Committee on the Environment established under the Agreement on the Environment, in respect of any issues related to trade and the environment.

### Canada-Panama environment agreement

#### Article 10: Biological Diversity

1. The Parties recognize the importance of the conservation and sustainable use of biological diversity in achieving sustainable development and reiterate their commitment to promote the conservation and sustainable use of biological diversity.
2. The parties also reiterate their commitment, as established by the Convention on Biological Diversity, to respect, preserve and maintain traditional knowledge, innovations and practices of indigenous and local communities that contribute to the conservation and sustainable use of biodiversity, subject to national legislation.
3. The Parties reiterate their sovereign rights over their natural resources and recognize their authority and obligations as established by the Convention on Biological Diversity with respect to access to genetic resources, and to the fair and equitable sharing of benefits arising out of the use of those genetic resources.
4. The Parties also recognize the importance of public participation and consultation, as provided by domestic law, on matters concerning the conservation and sustainable use of biological diversity.

5. The Parties shall endeavour to cooperate on the conservation and sustainable use of biological diversity as identified in Annex II.

6. The Parties shall also endeavour to cooperate in exchanging relevant information regarding:

- (a) the conservation and sustainable use of biodiversity;
- (b) the avoidance of illegal access to genetic resources, traditional knowledge, innovations and practices; and
- (c) the equitable sharing of benefits arising from the use of genetic resources and associated knowledge, innovations and practices.

## ANNEX II -- ENVIRONMENTAL COOPERATION

### Modalities and Forms of Cooperation

Cooperation developed under this Agreement may occur through bilateral and regional capacity building activities and related instruments, on the basis of technical and financial assistance programs, including:

- (a) the exchange of delegations, professionals, technicians and specialists from the academic sector, non-governmental organizations, and public and private sectors; and the facilitation of partnerships for the development and transfer of knowledge and technologies to promote the development of environmental best practices;
- (b) the joint development of programs, conferences, seminars, workshops and actions to strengthen environmental policies;
- (c) the exchange of information on environmental policies, laws, standards, regulations, indicators, national environmental programs, environmental reviews of trade agreements, compliance and enforcement mechanisms; and

(d) any other form of environmental cooperation that may be decided by the Parties.

### Work Program and Priority Cooperation Areas

The work program developed by the Committee on the Environment shall reflect national priorities of the Parties, and may include:

- (a) strengthening each Party's capacity building and environmental management systems, including reinforcing institutional and legal frameworks;
- (b) developing and promoting incentives and other flexible and voluntary mechanisms in order to encourage environmental protection, including the development of market-based initiatives and economic incentives for environmental management;
- (c) fostering partnerships to address current or emerging conservation and management issues, including personnel training and capacity building;
- (d) conserving and managing species that are shared, migratory, endangered, or subject to international commercial trade;
- (e) managing marine and terrestrial parks and other protected areas;
- (f) conserving in situ and ex situ biodiversity at the national level;
- (g) promoting best practices leading to sustainable development;
- (h) facilitating technology development, transfer and training to promote the use, proper operation and maintenance of cleaner production technologies;
- (i) promoting environmentally beneficial goods and services;
- (j) strengthening each Party's capacity to implement and enforce obligations under the agreements listed in Annex 1.06 - Multilateral Environmental Agreement of the Canada -Panama FTA; and
- (k) any other areas for environmental cooperation on which the Parties may concur.

## Canada-Honduras Free Trade Agreement

### Chapter Eighteen: Environment

#### Article 18.2: Agreement on Environmental Cooperation

Further to Article 18.1, the Parties have set out their mutual obligations in the Agreement on Environmental Cooperation between Canada and the Republic of Honduras (the “Agreement on Environmental Cooperation”) that addresses, among other things:

- (a) conservation, protection and improvement of the environment in the territory of each Party for the well-being of present and future generations;
- (b) non-derogation from domestic environmental law in order to encourage trade or investment;
- (c) development of, compliance with and enforcement of domestic environmental law;
- (d) transparency and public participation in environmental matters; and
- (e) cooperation between the Parties to advance environmental issues of common interest.

#### Article 18.3: Relationship between this Agreement and the Agreement on Environmental Cooperation

1. The Parties recognize the importance of balancing trade obligations with environmental obligations, and affirm that the Agreement on Environmental Cooperation complements this Agreement and that the 2 are mutually supportive.

2. The Commission may consider reports and recommendations from the Committee on the Environment established under the Agreement on Environmental Cooperation, in respect of an issue related to trade and the environment.

## Agreement on Environmental Cooperation Between Canada and the Republic of Honduras

### Part Five: Cooperation

#### Article 17: Cooperative Activities

1. The Parties may develop programs of cooperative activities to promote the achievement of the objectives and fulfillment of the obligations under this Agreement based on their national priorities. The Parties shall strive to strengthen their cooperation on environmental issues in other bilateral, regional and multilateral forums in which they participate.
2. The funding of cooperative activities shall be arranged on a case-by-case basis subject to the availability of appropriate financial resources as mutually decided by the Parties.
3. Programs of cooperative activities may be developed with due consideration of:
  - a. the economic, environmental, geographic, social, cultural and legal differences between the Parties;
  - b. existing environmental cooperative activities;
  - c. the involvement of the public, experts, and international organizations, as appropriate.

4. The Parties shall identify priority areas for cooperative activities and establish a work program which shall be prepared without delay after the entry into force of this Agreement. The priority areas of cooperation identified by Honduras, listed in Annex II (Environmental Cooperation), may be considered for the initial work program of cooperative activities.

5. The Parties shall make best efforts to effectively implement a work program through activities such as: exchange of experts; facilitation of partnerships for the transfer of knowledge and technologies; training, conferences, and workshops; joint research projects on topics of mutual interest for the purposes of promoting the development or exchange of environmental best practices, information and indicators of interest to the Parties; and, any other form of environmental cooperation that may be decided by the Parties.

6. The Parties shall meet within 1 year after the entry into force of this Agreement and subsequently as mutually decided in order to review progress on environmental cooperation activities.

## Annex II: Environmental Cooperation

The following is an indicative list of areas of possible cooperation identified by Honduras for consideration in cooperative work programs:

- a. strengthening environmental management systems, including:
  - i . environmental risk management,
  - ii . integrated waste management,
  - iii. comprehensive management of chemical substances, toxic and hazardous wastes;

b. strengthening institutional capacity for the enforcement of domestic environmental laws, including:

- i . information system on the environment, including environmental monitoring,
- ii . surveillance programs to monitor and track the genetic resources,
- iii. monitoring and alert system of genetically modified organisms;

c. promoting compliance with domestic environmental law, including providing support to small and medium-sized enterprises to comply with this legislation, including exporting sectors;

d. promoting best practices leading to sustainable development, including through:

- i . use and development of cleaner production technologies,
- ii . promotion of production and trade of environmentally-friendly goods and services;

e. promoting best practices of Corporate Social Responsibility by enterprises within the territories of the Parties;

f. strengthening mechanisms for public participation in accordance with domestic law of each Party, including environmental citizenship and participation;

g. capacity building for the mitigation of climate change, the reduction of risk and vulnerability, and adaptation to the consequences of climate change;

h. promotion of innovation and efficiency in the protection and conservation of biodiversity and the sustainable use of natural resources;

- i . the Parties may cooperate on any other areas for environmental cooperation on which they may concur.



## Canada-European Union Comprehensive Economic and Trade Agreement (CETA)

### Chapter twenty-two: Trade and sustainable development

#### Article 22.3 – Cooperation and promotion of trade supporting sustainable development

1. The Parties recognise the value of international cooperation to achieve the goal of sustainable development and the integration at the international level of economic, social and environmental development and protection initiatives, actions and measures. Therefore, the Parties agree to dialogue and consult with each other with regard to trade-related sustainable development issues of common interest.
2. The Parties affirm that trade should promote sustainable development. Accordingly, each Party shall strive to promote trade and economic flows and practices that contribute to enhancing decent work and environmental protection, including by:
  - a. encouraging the development and use of voluntary schemes relating to the sustainable production of goods and services, such as eco-labelling and fair trade schemes;
  - b. encouraging the development and use of voluntary best practices of corporate social responsibility by enterprises, such as those in the OECD Guidelines for Multinational Enterprises, to strengthen coherence between economic, social and environmental objectives;

- c. encouraging the integration of sustainability considerations in private and public consumption decisions; and
- d. promoting the development, the establishment, the maintenance or the improvement of environmental performance goals and standards.

3. The Parties recognise the importance of addressing specific sustainable development issues by assessing the potential economic, social and environmental impacts of possible actions, taking account of the views of stakeholders. Therefore, each Party commits to review, monitor and assess the impact of the implementation of this Agreement on sustainable development in its territory in order to identify any need for action that may arise in connection with this Agreement. The Parties may carry out joint assessments. These assessments will be conducted in a manner that is adapted to the practices and conditions of each Party, through the respective participative processes of the Parties, as well as those processes set up under this Agreement.

#### Article 22.4 – Institutional mechanisms

1. The Committee on Trade and Sustainable Development, established under Article 26.2.1(g) (Specialised committees), shall be comprised of high level representatives of the Parties responsible for matters covered by this Chapter and Chapters Twenty-Three (Trade and Labour) and Twenty-Four (Trade and Environment). The Committee on Trade and Sustainable Development shall oversee the implementation of those Chapters, including cooperative activities and the review of the impact of this Agreement on sustainable development, and address in an integrated manner any matter of common interest to the Parties in relation to the interface between economic development, social development

and environmental protection. With regard to Chapters Twenty-Three (Trade and Labour) and Twenty-Four (Trade and Environment), the Committee on Trade and Sustainable Development can also carry out its duties through dedicated sessions comprising participants responsible for any matter covered, respectively, under these Chapters.

2. The Committee on Trade and Sustainable Development shall meet within the first year of the entry into force of this Agreement, and thereafter as often as the Parties consider necessary. The contact points referred to in Articles 23.8 (Institutional mechanisms) and 24.13 (Institutional mechanisms) are responsible for the communication between the Parties regarding the scheduling and the organisation of those meetings or dedicated sessions.
3. Each regular meeting or dedicated session of the Committee on Trade and Sustainable Development includes a session with the public to discuss matters relating to the implementation of the relevant Chapters, unless the Parties decide otherwise.
4. The Committee on Trade and Sustainable Development shall promote transparency and public participation. To this end:
  - a. any decision or report of the Committee on Trade and Sustainable Development shall be made public, unless it decides otherwise;
  - b. the Committee on Trade and Sustainable Development shall present updates on any matter related to this Chapter, including its implementation, to the Civil Society Forum referred to in Article 22.5. Any view or opinion of the Civil Society Forum shall be presented to the Parties directly, or through the consultative mechanisms referred to in Articles 23.8.3 (Institutional

mechanisms) and 24.13 (Institutional mechanisms). The Committee on Trade and Sustainable Development shall report annually on the follow-up to those communications;

- c. the Committee on Trade and Sustainable Development shall report annually on any matter that it addresses pursuant to Article 24.7.3 (Public information and awareness) or Article 23.8.4 (Institutional mechanisms).

## Chapter Twenty-five Bilateral dialogues and cooperation

### Article 25.1 – Objectives and principles

1. Building upon their well-established partnership and shared values, the Parties agree to facilitate cooperation on issues of common interest, including through:
  - a. strengthening bilateral cooperation on biotechnology through the Dialogue on Biotech Market Access Issues;
  - b. fostering and facilitating bilateral dialogue and exchange of information on issues related to trade in forest products through the Bilateral Dialogue on Forest Products;
  - c. endeavour to establish and maintain effective cooperation on raw materials issues through the Bilateral Dialogue on Raw Materials; and
  - d. encouraging enhanced cooperation on science, technology, research and innovation issues.
2. Unless otherwise provided in this Agreement, bilateral dialogues shall take place without undue delay at the request of either Party or of the CETA Joint Committee. The dialogues shall be co-chaired by representatives of Canada and the European Union. The meeting schedules and agendas shall be determined by agreement between the co-chairs.

3. The co-chairs of a bilateral dialogue shall inform the CETA Joint Committee of the schedules and agendas of any bilateral dialogue sufficiently in advance of meetings. The co-chairs of a bilateral dialogue shall report to the CETA Joint Committee on the results and conclusions of a dialogue as appropriate or on request by the CETA Joint Committee. The creation or existence of a dialogue shall not prevent either Party from bringing any matter directly to the CETA Joint Committee.

4. The CETA Joint Committee may decide to change or undertake the task assigned to a dialogue or dissolve a dialogue.

5. The Parties may engage in bilateral cooperation in other areas under this Agreement on consent of the CETA Joint Committee.

#### **ARTICLE 25.2 Dialogue on Biotech Market Access Issues**

1. The Parties agree that cooperation and information exchange on issues in connection with biotechnology products are of mutual interest. Such cooperation and exchange of information shall take place in the bilateral dialogue on agricultural biotech market access issues of mutual interest which was established by the Mutually Agreed Solution reached on 15 July 2009 between Canada and the European Union following the WTO dispute European Communities – Measures Affecting the Approval and Marketing of Biotech Products WT/DS292. The bilateral dialogue covers any relevant issue of mutual interest to the Parties, including:

(a) biotechnology product approvals in the territory of the Parties as well as, where appropriate, forthcoming applications for product approvals of

commercial interest to either side;

(b) the commercial and economic outlook for future approvals of biotechnology products;

(c) any trade impact related to asynchronous approvals of biotechnology products or the accidental release of unauthorised products, and any appropriate measures in this respect;

(d) any biotech-related measures that may affect trade between the Parties, including measures of Member States of the European Union;

(e) any new legislation in the field of biotechnology; and

(f) best practices in the implementation of legislation on biotechnology.

2. The Parties also note the importance of the following shared objectives with respect to cooperation in the field of biotechnology:

(a) to exchange information on policy, regulatory and technical issues of common interest related to biotechnology products, and, in particular, information on their respective systems and processes for risk assessments for decision-making on the use of genetically modified organisms;

(b) to promote efficient science-based approval processes for biotechnology products;

(c) to cooperate internationally on issues related to biotechnology, such as low level presence of genetically modified organisms; and

(d) to engage in regulatory cooperation to minimise adverse trade impacts of regulatory practices related to biotechnology products.

**Article 18.16: Cooperation in the Area of Traditional Knowledge**

1. The Parties recognise the relevance of intellectual property systems and traditional knowledge associated with genetic resources to each other, when that traditional knowledge is related to those intellectual property systems.
2. The Parties shall endeavour to cooperate through their respective agencies responsible for intellectual property, or other relevant institutions, to enhance the understanding of issues connected with traditional knowledge associated with genetic resources, and genetic resources.
3. The Parties shall endeavour to pursue quality patent examination, which may include:
  - (a) that in determining prior art, relevant publicly available documented information related to traditional knowledge associated with genetic resources may be taken into account;
  - (b) an opportunity for third parties to cite, in writing, to the competent examining authority prior art disclosures that may have a bearing on patentability, including prior art disclosures related to traditional knowledge associated with genetic resources;
  - (c) if applicable and appropriate, the use of databases or digital libraries containing traditional knowledge associated with genetic resources; and
  - (d) cooperation in the training of patent examiners in the examination of patent applications related to traditional knowledge associated with genetic resources.

**Article 20.12: Cooperation Frameworks**

1. The Parties recognise the importance of cooperation as a mechanism to implement this Chapter, to enhance its benefits and to strengthen the Parties' joint and individual capacities to protect the environment and to promote sustainable development as they strengthen their trade and investment relations.
2. Taking account of their national priorities and circumstances, and available resources, the Parties shall cooperate to address matters of joint or common interest among the participating Parties related to the implementation of this Chapter, when there is mutual benefit from that cooperation. This cooperation may be carried out on a bilateral or plurilateral basis between Parties and, subject to consensus by the participating Parties, may include non-governmental bodies or organisations and non-Parties to this Agreement.
3. Each Party shall designate the authority or authorities responsible for cooperation related to the implementation of this Chapter to serve as its national contact point on matters that relate to coordination of cooperation activities and shall notify the other Parties in writing within 90 days of the date of entry into force of this Agreement for that Party of its contact point. On notifying the other Parties of its contact point, or at any time thereafter through the contact points, a Party may:
  - (a) share its priorities for cooperation with the other Parties, including the objectives of that cooperation; and
  - (b) propose cooperation activities related to the implementation of this Chapter to another Party or Parties.

4. When possible and appropriate, the Parties shall seek to complement and use their existing cooperation mechanisms and take into account relevant work of regional and international organisations.
5. Cooperation may be undertaken through various means including: dialogues, workshops, seminars, conferences, collaborative programmes and projects; technical assistance to promote and facilitate cooperation and training; the sharing of best practices on policies and procedures; and the exchange of experts.
6. In developing cooperative activities and programmes, a Party shall, if relevant, identify performance measures and indicators to assist in examining and evaluating the efficiency, effectiveness and progress of specific cooperative activities and programmes and share those measures and indicators, as well as the outcome of any evaluation during or following the completion of a cooperative activity or programme, with the other Parties.
7. The Parties, through their contact points for cooperation, shall periodically review the implementation and operation of this Article and report their findings, which may include recommendations, to the Committee to inform its review under Article 20.19(3)(c) (Environment Committee and Contact Points). The Parties, through the Committee, may periodically evaluate the necessity of designating an entity to provide administrative and operational support for cooperative activities. If the Parties decide to establish such an entity, the Parties shall agree on the funding of the entity on a voluntary basis to support the entity's operation.
8. Each Party shall promote public participation in the development and implementation of cooperative activities, as appropriate. This may include

activities such as encouraging and facilitating direct contacts and cooperation among relevant entities and the conclusion of arrangements among them for the conduct of cooperative activities under this Chapter.

9. Where a Party has defined the environmental laws under Article 20.1 (Definitions) to include only laws at the central level of government (first Party), and where another Party (second Party) considers that an environmental law at the sub-central level of government of the first Party is not being effectively enforced by the relevant sub-central government through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties, the second Party may request a dialogue with the first Party. The request shall contain information that is specific and sufficient to enable the first Party to evaluate the matter at issue and an indication of how the matter is negatively affecting trade or investment of the second Party.
10. All cooperative activities under this Chapter are subject to the availability of funds and of human and other resources, and to the applicable laws and regulations of the participating Parties. The participating Parties shall decide, on a case-by-case basis, the funding of cooperative activities.

#### **Article 20.13: Trade and Biodiversity**

1. The Parties recognise the importance of conservation and sustainable use of biological diversity and their key role in achieving sustainable development.
2. Accordingly, each Party shall promote and encourage the conservation and sustainable use of biological diversity, in accordance with its law or policy.

3. The Parties recognise the importance of respecting, preserving and maintaining knowledge and practices of indigenous and local communities embodying traditional lifestyles that contribute to the conservation and sustainable use of biological diversity.
4. The Parties recognise the importance of facilitating access to genetic resources within their respective national jurisdictions, consistent with each Party's international obligations. The Parties further recognise that some Parties require, through national measures, prior informed consent to access such genetic resources in accordance with national measures and, where such access is granted, the establishment of mutually agreed terms, including with respect to sharing of benefits from the use of such genetic resources, between users and providers.
5. The Parties also recognise the importance of public participation and consultation, in accordance with their respective law or policy, in the development and implementation of measures concerning the conservation and sustainable use of biological diversity. Each Party shall make publicly available information about its programmes and activities, including cooperative programmes, related to the conservation and sustainable use of biological diversity.
6. Consistent with Article 20.12 (Cooperation Frameworks), the Parties shall cooperate to address matters of mutual interest. Cooperation may include, but is not limited to, exchanging information and experiences in areas related to:
  - (a) the conservation and sustainable use of biological diversity;
  - (b) the protection and maintenance of ecosystems and ecosystem services; and
  - (c) access to genetic resources and the sharing of benefits arising from their utilisation.

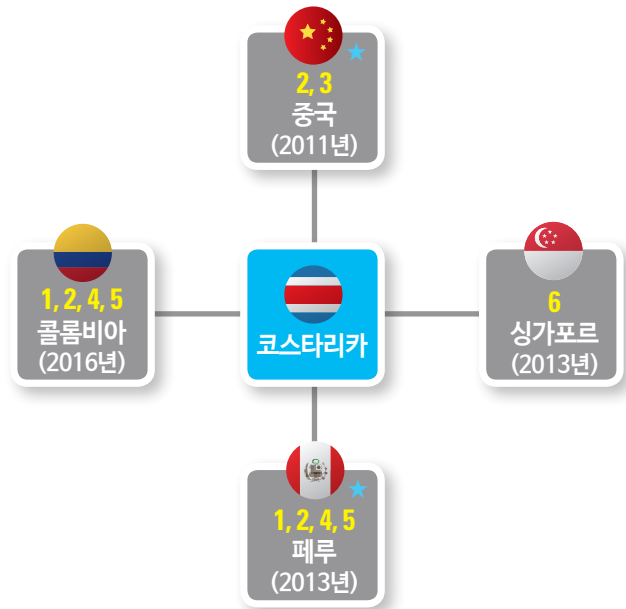


코스타리카  
Costa Rica

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FTA에서의 ABS 조항

## | 유전자원 제공국 |



- 도형모양으로 챕터별 구분: 네모(지식재산권 챕터), 동그라미(환경 챕터), 마름모(경제협력 챕터, 기타)
- 숫자로 ABS 조항의 내용을 구분: 1(협약/협력), 2(정보교환 등), 3(국제적 의무에 따른 조치), 4(국내적 이행장치), 5(특허), 6(기타)
- ★표는 나고야의정서 당사국임

코스타리카는 나고야의정서 비당사국이지만 조사기간 체결한 모든 FTA에서 ABS 이슈를 포함시키고 있음.

- ABS 조항은 모두 지식재산권 챕터에서 다루어 지고 있음
- 특히 콜롬비아, 페루와 체결한 FTA에서는 특허 허여시 유전자원 출처를 공개하도록 규정하는 등 강력하게 그 내용을 규정하고 있음
- 반면 초기에 중국과 체결한 FTA에서는 특허와 관련한 내용은 포함되지 않았으나, 향후 유전자원 원산지나 출처의 공개, 특허의 허여 등에 대해 향후 협의할 것을 언급하고 있음

## Chapter 10 Intellectual Property

### Article 111: Genetic Resources, Traditional Knowledge and Folklore

1. The Parties recognize the contribution made by genetic resources, traditional knowledge and folklore to scientific, cultural and economic development.
2. The Parties acknowledge and reaffirm the principles and provisions established in the Convention on Biological Diversity adopted on 5th June 1992 and encourage the effort to establish a mutually supportive relationship between the TRIPS Agreement and the Convention on Biological Diversity, regarding genetic resources and the protection of traditional knowledge and folklore.
3. Subject to each Party's international obligations and domestic laws, the Parties may adopt or maintain measures to promote the conservation of biological diversity, share equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components in conformity with what is established in the Convention on Biological Diversity.
4. Subject to future developments of domestic laws and the outcome of negotiations in multilateral fora, the Parties agree to further discuss the disclosure of origin or source of genetic resources; and/or prior informed consent obligations in patent applications; and the grant of a patent for an invention that involves or relies on genetic resources, when such resources were acquired or exploited without complying the relevant domestic laws or regulations.

## Capítulo 9 Propiedad Intelectual

### Artículo 9.5: Medidas Relacionadas con la Protección a la Biodiversidad y los Conocimientos Tradicionales

1. Las Partes reconocen la importancia y valor de su diversidad biológica y sus componentes. Cada Parte ejerce soberanía sobre sus recursos biológicos y genéticos y sus productos derivados, y en consecuencia determinan las condiciones de su acceso, de acuerdo con los principios y disposiciones contenidos en normas nacionales e internacionales pertinentes.
2. Las Partes reconocen la importancia y valor de los conocimientos, innovaciones y prácticas de las comunidades indígenas y locales<sup>2</sup>, así como la contribución pasada, presente y futura de las mismas a la conservación y uso sostenible de los recursos biológicos y genéticos y sus productos derivados, y en general, la contribución de los conocimientos tradicionales de tales comunidades a la cultura y al desarrollo económico y social de las naciones.  
Cada Parte, de conformidad con su legislación nacional, reitera su compromiso de respetar, preservar y mantener los conocimientos tradicionales, innovaciones y prácticas de las colectividades indígenas y locales de los territorios de las Partes.
3. El acceso a los recursos biológicos y genéticos y sus productos derivados estará condicionado al consentimiento fundamentado previo de la Parte que es país de origen, en términos mutuamente acordados. Igualmente, el acceso a los



conocimientos tradicionales de las comunidades indígenas y locales asociado a dichos recursos estará condicionado al consentimiento fundamentado previo de los titulares o poseedores, según corresponda, de dichos conocimientos, en términos mutuamente acordados. Ambos supuestos estarán sujetos a lo dispuesto por la legislación nacional de cada Parte.

4. Las Partes fomentarán medidas para asegurar una distribución justa y equitativa de los beneficios derivados de la utilización de los recursos biológicos y genéticos y productos derivados y de los conocimientos tradicionales de las comunidades indígenas y locales.
5. Cada Parte fomentará las medidas de política, legales y administrativas, con el fin de asegurar el cabal cumplimiento de las condiciones de acceso a los recursos biológicos y genéticos de la biodiversidad.
6. Cualquier derecho de propiedad intelectual que se genere a partir del uso de recursos biológicos y genéticos y sus productos derivados, y/o conocimientos tradicionales de las comunidades indígenas y locales, de las cuales una Parte es país de origen, deberá observar el cumplimiento de las normas nacionales e internacionales específicas en la materia.
7. Las Partes requerirán que en las solicitudes de patentes desarrolladas a partir de recursos biológicos, genéticos y/o conocimientos tradicionales asociados, de los que sean país de origen, se demuestre el acceso legal a dichos recursos o conocimientos, así como la divulgación del origen del recurso y/o conocimiento tradicional accedido, en caso que la legislación nacional de la Parte así lo requiera.

8. Las Partes podrán, a través de sus autoridades nacionales competentes, intercambiar información relacionada a la biodiversidad y/o conocimientos tradicionales e información documentada relativa a recursos biológicos y genéticos y sus derivados, o de ser el caso, de los conocimientos tradicionales de sus comunidades indígenas y locales, a fin de que sirvan de apoyo en la evaluación de las patentes.

9. Las Partes acuerdan, a solicitud de cualquiera de ellas, colaborar en el suministro de información pública que tengan a su disposición para la investigación y seguimiento del acceso ilegal a recursos genéticos y/o conocimientos, innovaciones y prácticas tradicionales en sus territorios.

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\* 2) Si la legislación nacional de cada Parte así lo prevé, “comunidades indígenas y locales” incluirá las comunidades afroamericanas o afro descendientes.

### Chapter 13 Intellectual Property and Innovation

#### Article 13.3: Genetic Resources, Traditional Knowledge and Folklore

1. The Parties recognize the contribution made by the genetic resources, traditional knowledge and folklore to scientific, cultural and economic development.
2. The Parties acknowledge and reaffirm the principles and provisions established in the Convention on Biological Diversity adopted on 5 June 1992 and encourage a mutually supportive relationship between the TRIPS Agreement and the Convention on Biological Diversity.
3. Subject to each Party's international obligations and domestic laws, each Party may adopt or maintain measures to promote the conservation of biological diversity, the sustainable utilization of its components and the fair and equitable participation in the benefits arising from the utilization of genetic resources, traditional knowledge and folklore in conformity with what is established in the aforementioned Convention.

#### ARTÍCULO 9.5: MEDIDAS RELACIONADAS CON LA PROTECCIÓN A LA BIODIVERSIDAD Y LOS CONOCIMIENTOS TRADICIONALES

1. Las Partes reconocen y reafirman sus derechos y obligaciones establecidos en el CDB relacionados con la soberanía de las Partes sobre sus recursos naturales y la autoridad para determinar el acceso a los recursos biológicos y genéticos y sus productos derivados, mediante términos mutuamente acordados, de acuerdo con los principios y disposiciones contenidos en normas nacionales e internacionales pertinentes. Las Partes reconocen el párrafo 19 de la Declaración Ministerial de Doha, adoptada el 14 de noviembre de 2001, sobre la relación entre el Acuerdo sobre los ADPIC y el CDB
2. Las Partes reconocen la importancia y valor de los conocimientos, innovaciones y prácticas de las comunidades indígenas y locales<sup>3</sup>, así como la contribución pasada, presente y futura de las mismas a la conservación y uso sostenible de los recursos biológicos y genéticos y sus productos derivados, y en general, la contribución de los conocimientos tradicionales de tales comunidades a la cultura y al desarrollo económico y social de las naciones. Cada Parte, de conformidad con su legislación, reitera su compromiso de respetar, preservar y mantener los conocimientos tradicionales, innovaciones y prácticas de las comunidades indígenas y locales de los territorios de las Partes.
3. El acceso a los recursos biológicos y genéticos y sus productos derivados estará condicionado al consentimiento fundamentado previo de la Parte que es país de origen, en términos mutuamente acordados. Igualmente, el acceso a los conocimientos tradicionales de las comunidades indígenas y locales asociado

a dichos recursos estará condicionado al consentimiento fundamentado previo de los titulares o poseedores, según corresponda, de dichos conocimientos, en términos mutuamente acordados. Ambos supuestos estarán sujetos a lo dispuesto por la legislación de cada Parte.

4. Las Partes tomarán medidas para asegurar una distribución justa y equitativa de los beneficios que surjan de la utilización de los recursos biológicos y genéticos y productos derivados y de los conocimientos tradicionales de las comunidades indígenas y locales.
5. Cada Parte tomará las medidas de política, legales y administrativas, con el fin de asegurar el cabal cumplimiento de las condiciones de acceso a los recursos biológicos y genéticos de la biodiversidad y a los conocimientos tradicionales asociados.
6. Cualquier derecho de propiedad intelectual que se genere a partir del uso de recursos biológicos y genéticos y sus productos derivados, y/o conocimientos tradicionales de las comunidades indígenas y locales, de las cuales una Parte es país de origen, deberá observar el cumplimiento de las normas nacionales e internacionales específicas en la materia.
7. De conformidad con su legislación, las Partes requerirán que en las solicitudes de patentes desarrolladas a partir de recursos biológicos, genéticos y/o conocimientos tradicionales asociados, de los que sean país de origen, se demuestre el acceso legal a dichos recursos o conocimientos, así como la divulgación del origen del recurso y/o conocimiento tradicional accedido.
8. Las Partes podrán, a través de sus autoridades nacionales competentes, intercambiar información relacionada a la biodiversidad y/o conocimientos

tradicionales e información documentada relativa a recursos biológicos y genéticos y sus derivados, o de ser el caso, de los conocimientos tradicionales de sus comunidades indígenas y locales, a fin de que sirvan de apoyo en la evaluación de las patentes.

9. Las Partes acuerdan, a solicitud de cualquiera de ellas, colaborar en el suministro de información pública que tengan a su disposición para la investigación y seguimiento del acceso ilegal a recursos genéticos y/o conocimientos, innovaciones y prácticas tradicionales en sus territorios.
10. Las Partes cooperarán, sobre la base de términos mutuamente acordados, con el intercambio de información y experiencias en relación con el acceso a los recursos biológicos, genéticos y sus derivados, y/o conocimientos tradicionales asociados.

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\* Si la legislación de cada Parte así lo prevé, “comunidades indígenas y locales” incluirá las comunidades afroamericanas o afrodescendientes.



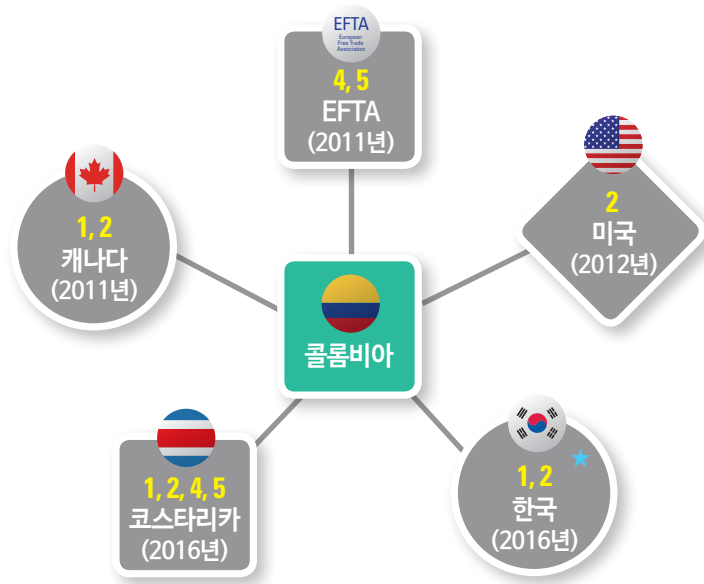
콜롬비아

Colombia

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FTA에서의 ABS 조항

## 유전자원 제공국



- 도형모양으로 챕터별 구분: 네모(지식재산권 챕터), 동그라미(환경 챕터), 마름모(경제협력 챕터, 기타)
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- ★표는 나고야의정서 당사국임

콜롬비아도 나고야의정서 당사국은 아니지만 모든 FTA에 ABS 조항을 포함시키고 있음.

- 하지만 코스타리카와 달리 다양한 챕터에서 ABS 조항을 명시하고 있음.
- 하지만 FTA 상대국별로 그 내용적인 차이가 크게 존재함. EFTA와 체결한 FTA에서는 ABS 도입을 위한 구체적인 국내적 이행장치를 제공할 것을 의무화하고 있음. 한발 더 나아가 코스타리카와 체결한 FTA에서는 특허 신청시, 국내법이 요구할 경우, 원산국과 활용된 자원이나 정보가 법적 접근을 하였는지를 증명하도록 요구하고 있음.
- 반면, 캐나다, 미국, 한국과 체결한 FTA에서는 ABS 관련하여 협의하거나 정보를 교환하겠다는 보다 유연한 접근을 취하고 있음..

## CHAPTER 6 PROTECTION OF INTELLECTUAL PROPERTY

### ARTICLE 6.5 Measures Related to Biodiversity

1. The Parties reaffirm their sovereign rights over their natural resources and recognise their rights and obligations as established by the Convention on Biological Diversity with respect to access to genetic resources, and to the fair and equitable sharing of benefits arising out of the utilisation of these genetic resources.
2. The Parties recognise the importance and the value of their biological diversity and of the associated traditional knowledge, innovations and practices of indigenous and local communities. Each Party shall determine the access conditions to its genetic resources in accordance with the principles and provisions contained in applicable national and international law.
3. The Parties recognise past, present and future contributions of indigenous and local communities and their knowledge, innovations and practices to the conservation and sustainable use of biological and genetic resources and in general the contribution of the traditional knowledge of their indigenous and local communities to the culture and economic and social development of nations.
4. The Parties shall consider collaborating in cases regarding non compliance with applicable legal provisions on access to genetic resources and traditional knowledge, innovations and practices.
5. According to their national law, the Parties shall require that patent applications contain a declaration of the origin or source of a genetic resource, to which the inventor or the patent applicant has had access. As far as provided for in their national legislation, the Parties will also require the fulfilment of prior informed consent (PIC) and they will apply the provisions set out in this Article to traditional knowledge as applicable.
6. The Parties, in accordance with their national laws, shall provide for administrative, civil or criminal sanctions if the inventor or the patent applicant wilfully make a wrongful or misleading declaration of the origin or source. The judge may order the publication of the ruling.
7. If the law of a Party so provides:
  - (a) access to genetic resources shall be subject to the prior informed consent of the Party that is the Party providing the genetic resources; and
  - (b) access to traditional knowledge of indigenous and local communities associated to these resources shall be subject to the approval and involvement of these communities.
8. Each Party shall take policy, legal and administrative measures, with the aim of facilitating the fulfilment of terms and conditions for access established by the Parties for such genetic resources.
9. The Parties shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring the fair and equitable sharing of the benefits arising from the use of genetic resources or associated traditional knowledge. Such sharing shall be based on mutually agreed terms.



## Canada-Columbia Free Trade Agreement

### Article 1703: Agreement on Environment

In furtherance of these principles, the Parties have set out their mutual obligations in the Agreement on the Environment between Canada and the Republic of Colombia (“Agreement on the Environment”) that addresses, inter alia:

- (a) conservation, protection and improvement of the environment in the territory of each Party for the well being of present and future generations;
- (b) a commitment not to derogate from domestic environmental laws in order to encourage trade or investment;
- (c) conservation and sustainable use of biological diversity and protection and preservation of traditional knowledge;
- (d) development of, compliance with and enforcement of environmental laws;
- (e) transparency and public participation on environmental matters; and
- (f) cooperation between the Parties on the advancement of environmental issues of common interest.

### Article 1704: Relationship between this Agreement and the Agreement on the Environment

1. The Parties recognize the importance of balancing trade obligations and environmental obligations, and affirm that the Agreement on the Environment complements this Agreement, and that the two are mutually supportive.

2. The Commission shall consider, as appropriate, reports and recommendations from the Committee on Environment established under the Agreement on Environment, in respect of any trade and environment-related issues.

## Canada-Colombia environment agreement

### Article 5: Biological Diversity

1. The Parties recognize the importance of the conservation and sustainable use of biological diversity in achieving sustainable development and reiterate their commitment to promote the conservation and sustainable use of biological diversity.
2. The Parties also reiterate their commitment, as established by the Convention on Biological Diversity, to respect, preserve and maintain traditional knowledge, innovations and practices of indigenous and local communities that contribute to the conservation and sustainable use of biological diversity, subject to national legislation.
3. The Parties reiterate their sovereign rights over their natural resources and recognize their authority and obligations as established by the Convention on Biological Diversity with respect to access to genetic resources, and to the fair and equitable sharing of benefits arising out of the utilization of those genetic resources.
4. The Parties also recognize the importance of public participation and consultation, as provided by domestic law, on matters concerning the conservation and sustainable use of biological diversity.

5. The Parties agree to cooperate on the conservation and sustainable use of biological diversity within the framework provided by Section II of this Agreement.

6. The Parties shall endeavour to cooperate in order to exchange relevant information regarding:

- (a) the conservation and sustainable use of biodiversity;
- (b) the avoidance of illegal access to genetic resources, traditional knowledge, innovations and practices; and,
- (c) the equitable sharing of the benefits arising from the utilization of genetic resources and associated knowledge, innovations and practices.

## Section II -- Environmental Cooperation

### Article 7: Cooperation

1. The Parties recognize that cooperation is an effective way to achieve the objectives of this Agreement and reaffirm their commitment to developing cooperation programs and activities to promote the achievement of these objectives.

2. The Parties agree to strive to strengthen their cooperation on environmental issues in other bilateral, regional and multilateral fora in which they participate.

3. In developing cooperation programs, the Parties may involve the public and interested stakeholders or any other entity as the Parties deem appropriate.

4. The Parties agree to identify priority areas for cooperative activities and to establish a work program which shall be prepared forthwith after the entry into force of this Agreement. The priority areas listed in Annex 1 to this Agreement shall be considered for the initial Work Program.

5. The Parties agree to make best efforts to find appropriate resources to effectively implement a Work Program. The Work Program could be implemented:

- (a) through technical cooperation programmes under any modality decided by the Parties, including information sharing, exchange of experts and training; and/or
- (b) through financial cooperation for priority projects presented by the Parties.

The resources could come from, inter alia, public entities or agencies from the Parties, or when appropriate, from private institutions, foundations or international public organizations.

6. The Parties may cooperate with any State not party to this Agreement, where appropriate, to maximize available resources. Where appropriate, the Parties agree to cooperate to identify and to secure resources from external sources.

7. The Parties agree that the public should be informed of cooperative activities undertaken under this Agreement and engaged, as appropriate.

8. The Parties shall meet no later than one year after the entry into force of this Agreement and subsequently as agreed to review progress on cooperative activities. Such meetings shall be organized by the National Coordinating Officers.



## UNDERSTANDINGS REGARDING BIODIVERSITY AND TRADITIONAL KNOWLEDGE

November 22, 2006

The Governments of the United States of America and the Republic of Colombia have reached the following understandings concerning biodiversity and traditional knowledge in connection with the United States – Colombia Trade Promotion Agreement signed this day:

The Parties recognize the importance of traditional knowledge and biodiversity, as well as the potential contribution of traditional knowledge and biodiversity to cultural, economic, and social development.

The Parties recognize the importance of the following: (1) obtaining informed consent from the appropriate authority prior to accessing genetic resources under the control of such authority; (2) equitably sharing the benefits arising from the use of traditional knowledge and genetic resources; and (3) promoting quality patent examination to ensure the conditions of patentability are satisfied.

The Parties recognize that access to genetic resources or traditional knowledge, as well as the equitable sharing of benefits that may result from use of those resources or that knowledge, can be adequately addressed through contracts that reflect mutually agreed terms between users and providers.

Each Party shall endeavor to seek ways to share information that may have a bearing on the patentability of inventions based on traditional knowledge or genetic resources by providing:

- (a) publicly accessible databases that contain relevant information; and
- (b) an opportunity to cite, in writing, to the appropriate examining authority prior art that may have a bearing on patentability.

## CHAPTER SIXTEEN TRADE AND SUSTAINABLE DEVELOPMENT

### ARTICLE 16.5: BIOLOGICAL DIVERSITY

1. The Parties acknowledge paragraph 19 of the Ministerial Declaration (WT/MIN/(01)DEC/1), adopted on November 14, 2001 by the WTO Ministerial Conference, on the relationship between the TRIPS Agreement and the Convention on Biological Diversity (hereinafter referred to as “CBD”) and the protection of genetic resources, traditional knowledge<sup>2</sup>, and folklore.
2. The Parties recognize the value and importance of biological diversity, traditional knowledge as well as the contribution of knowledge, innovations, and practices of indigenous and local communities to the conservation and sustainable use of biological diversity. Recognizing the sovereign rights of States over their natural resources, each Party shall have the authority to determine access to genetic resources in accordance with its legislation and endeavor to create conditions to facilitate transparent access to genetic resources for environmentally sound uses.
3. Subject to their legislations and the CBD, the Parties respect knowledge, innovations, and practices of indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity and promote their wider application with the involvement and approval of the holders of such knowledge, innovations, and practices.

4. Each Party shall endeavor to seek ways to share information on patent applications based on genetic resources or traditional knowledge by providing:
  - (a) publicly accessible database that contains relevant information; and
  - (b) opportunities to file prior art to the appropriate examining authority in writing.
5. The Parties agree to share views and information on discussions in the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore, the WTO TRIPS Council, and any other relevant fora in addressing matters related to genetic resources and traditional knowledge.
6. The Parties acknowledge the adoption of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity and agree to further discuss relevant issues on genetic resources subject to future developments of multilateral agreements or their respective legislations.

<sup>2</sup>) For greater certainty, “traditional knowledge” in this Chapter refers to traditional knowledge associated with genetic resources.

### ARTÍCULO 9.5: MEDIDAS RELACIONADAS CON LA PROTECCIÓN A LA BIODIVERSIDAD Y LOS CONOCIMIENTOS TRADICIONALES

1. Las Partes reconocen y reafirman sus derechos y obligaciones establecidos en el CDB relacionados con la soberanía de las Partes sobre sus recursos naturales y la autoridad para determinar el acceso a los recursos biológicos y genéticos y sus productos derivados, mediante términos mutuamente acordados, de acuerdo con los principios y disposiciones contenidos en normas nacionales e internacionales pertinentes. Las Partes reconocen el párrafo 19 de la Declaración Ministerial de Doha, adoptada el 14 de noviembre de 2001, sobre la relación entre el Acuerdo sobre los ADPIC y el CDB
2. Las Partes reconocen la importancia y valor de los conocimientos, innovaciones y prácticas de las comunidades indígenas y locales<sup>3</sup>, así como la contribución pasada, presente y futura de las mismas a la conservación y uso sostenible de los recursos biológicos y genéticos y sus productos derivados, y en general, la contribución de los conocimientos tradicionales de tales comunidades a la cultura y al desarrollo económico y social de las naciones. Cada Parte, de conformidad con su legislación, reitera su compromiso de respetar, preservar y mantener los conocimientos tradicionales, innovaciones y prácticas de las comunidades indígenas y locales de los territorios de las Partes.
3. El acceso a los recursos biológicos y genéticos y sus productos derivados estará condicionado al consentimiento fundamentado previo de la Parte que es país de origen, en términos mutuamente acordados. Igualmente, el acceso a los conocimientos tradicionales de las comunidades indígenas y locales asociado a dichos recursos estará condicionado al consentimiento fundamentado previo de los titulares o poseedores, según corresponda, de dichos conocimientos, en términos mutuamente acordados. Ambos supuestos estarán sujetos a lo dispuesto por la legislación de cada Parte.
4. Las Partes tomarán medidas para asegurar una distribución justa y equitativa de los beneficios que surjan de la utilización de los recursos biológicos y genéticos y productos derivados y de los conocimientos tradicionales de las comunidades indígenas y locales.
5. Cada Parte tomará las medidas de política, legales y administrativas, con el fin de asegurar el cabal cumplimiento de las condiciones de acceso a los recursos biológicos y genéticos de la biodiversidad y a los conocimientos tradicionales asociados.
6. Cualquier derecho de propiedad intelectual que se genere a partir del uso de recursos biológicos y genéticos y sus productos derivados, y/o conocimientos tradicionales de las comunidades indígenas y locales, de las cuales una Parte es país de origen, deberá observar el cumplimiento de las normas nacionales e internacionales específicas en la materia.
7. De conformidad con su legislación, las Partes requerirán que en las solicitudes de patentes desarrolladas a partir de recursos biológicos, genéticos y/o

conocimientos tradicionales asociados, de los que sean país de origen, se demuestre el acceso legal a dichos recursos o conocimientos, así como la divulgación del origen del recurso y/o conocimiento tradicional accedido.

8. Las Partes podrán, a través de sus autoridades nacionales competentes, intercambiar información relacionada a la biodiversidad y/o conocimientos tradicionales e información documentada relativa a recursos biológicos y genéticos y sus derivados, o de ser el caso, de los conocimientos tradicionales de sus comunidades indígenas y locales, a fin de que sirvan de apoyo en la evaluación de las patentes.

9. Las Partes acuerdan, a solicitud de cualquiera de ellas, colaborar en el suministro de información pública que tengan a su disposición para la investigación y seguimiento del acceso ilegal a recursos genéticos y/o conocimientos, innovaciones y prácticas tradicionales en sus territorios.

10. Las Partes cooperarán, sobre la base de términos mutuamente acordados, con el intercambio de información y experiencias en relación con el acceso a los recursos biológicos, genéticos y sus derivados, y/o conocimientos tradicionales asociados.

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3) .Si la legislación de cada Parte así lo prevé, “comunidades indígenas y locales” incluirá las comunidades afroamericanas o afrodescendientes.

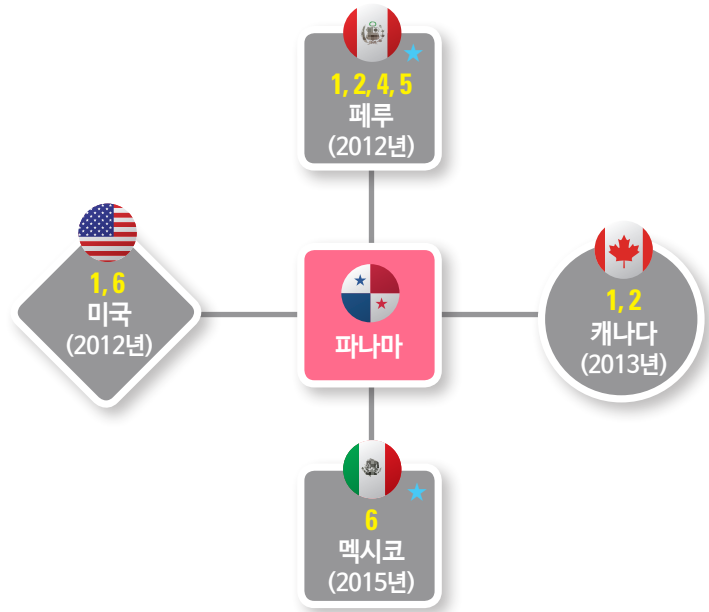


파나마  
Panama

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FTA에서의 ABS 조항

## 유전자원 제공국



- 도형모양으로 챕터별 구분: 네모(지식재산권 챕터), 동그라미(환경 챕터), 마름모(경제협력 챕터, 기타)
- 숫자로 ABS 조항의 내용을 구분: 1(협약/협력), 2(정보교환 등), 3(국제적 의무에 따른 조치), 4(국내적 이행장치), 5(특허), 6(기타)
- ★표는 나고야의정서 당사국임

파나마도 나고야의정서 당사국이 아님에도 불구하고 조사기간('10~'19년)동안 체결한 모든 FTA에서 ABS 조항을 명시하고 있음.

- 콜롬비아처럼 ABS 조항이 포함된 챕터는 지재권, 환경, 경제협력 챕터 등으로 다양함.
- 내용도 FTA 상대국별로 그 내용이 다양함. 페루와 체결한 FTA에서는 특허까지 언급하며 구체적이고 강력하게 그 내용을 규정하고 있는 반면, 캐나다와는 ABS 이슈에 대해 협의, 의견교환하겠다는 내용이, 멕시코와는 지식재산권과 생물다양성의 지속 가능한 이용을 위한 보호자 조화되어야 한다는 일반적인 방향만을 언급하는 수준에 그침. 미국과는 향후 전통지식이나 민속에 대한 조항을 포함하는 FTA를 체결/발효시킬 경우, 파나마와도 그와 유사한 조항을 삽입할지를 논의하는 자리를 마련하기로 명시함.

미국과는 향후 전통지식이나 민속에 대한 조항을 포함하는 FTA를 체결/발효시킬 경우, 파나마와도 그와 유사한 조항을 삽입할지를 논의하는 자리를 마련하기로 명시함.

## Capítulo 9 Propiedad Intelectual

### Artículo 9.5: Conocimientos Tradicionales

1. Cada Parte, de conformidad con su legislación nacional, reconoce el derecho de las comunidades indígenas y locales<sup>2</sup> sobre sus conocimientos tradicionales, y reitera su compromiso de respetar, preservar y mantener los conocimientos tradicionales, innovaciones y prácticas de las comunidades indígenas y locales de los territorios de las Partes.
2. Las Partes podrán proteger los derechos referidos en este Artículo contra los actos que constituyan supuestos de competencia desleal, de conformidad con lo previsto en su legislación nacional.
3. La República de Panamá declara, dentro de los conocimientos tradicionales protegidos en su legislación nacional, los siguientes productos:
  - (a) MOLA KUNA PANAMA;
  - (b) NAHUA;
  - (c) CHACARA;
  - (d) CHAQUIRA;
  - (e) SOMBRERO NGOBE Y BUGLÉ;
  - (f) TALLA DE MADERA;
  - (g) TAGUA;

- (h) HOSIG DÍ o JIW'A (CESTA);
- (i) HAMACA KUNAS PANAMA; y
- (j) INSTRUMENTOS MUSICALES KUNAS PANAMA.

4. Las Partes manifiestan su interés de impulsar y promover las discusiones relativas a la protección de los recursos genéticos, conocimientos tradicionales y expresiones culturales tradicionales que se desarrollen en el Comité Intergubernamental sobre Propiedad Intelectual y Recursos Genéticos, Conocimientos Tradicionales y Folklore de la OMPI, en el Consejo de los ADPIC de la OMC, así como en cualquier otro foro relevante que trate dichas materias.

2) Si la legislación nacional de cada Parte así lo prevé, “comunidades indígenas y locales” incluirá las comunidades afroamericanas o afro descendientes.

### Artículo 9.6: Medidas Relacionadas con la Protección a la Biodiversidad y los Conocimientos Tradicionales

1. Las Partes reconocen la importancia y valor de su diversidad biológica y sus componentes. Cada Parte ejerce soberanía sobre sus recursos biológicos y genéticos y sus productos derivados, y en consecuencia determinan las condiciones de su acceso, de acuerdo con los principios y disposiciones contenidos en normas nacionales e internacionales pertinentes.
2. Las Partes reconocen la importancia y valor de los conocimientos, innovaciones y prácticas de las comunidades indígenas y locales, así como la contribución pasada, presente y futura de las mismas a la conservación y uso sostenible de

los recursos biológicos y genéticos y sus productos derivados, y en general, la contribución de los conocimientos tradicionales de tales comunidades a la cultura y al desarrollo económico y social de las naciones.

3. Cada Parte, de conformidad con su legislación nacional, reitera su compromiso de respetar, preservar y mantener los conocimientos tradicionales, innovaciones y prácticas de las colectividades indígenas y locales del territorio de cada Parte.
4. El acceso a los recursos biológicos y genéticos y sus productos derivados estará condicionado al consentimiento fundamentado previo de la Parte que es país de origen, en términos mutuamente acordados. Igualmente, el acceso a los conocimientos tradicionales de las comunidades indígenas y locales asociado a dichos recursos estará condicionado al consentimiento fundamentado previo de los titulares o poseedores, según corresponda, de dichos conocimientos, en términos mutuamente acordados. Ambos supuestos estarán sujetos a lo dispuesto por la legislación nacional de cada Parte.
5. Las Partes fomentarán medidas para asegurar una distribución justa y equitativa de los beneficios derivados de la utilización de los recursos biológicos y genéticos y productos derivados y de los conocimientos tradicionales de las comunidades indígenas y locales.
6. Cada Parte fomentará las medidas políticas, legales y administrativas, con el fin de asegurar el cabal cumplimiento de las condiciones de acceso a los recursos biológicos y genéticos de la biodiversidad.

7. Cualquier derecho de propiedad intelectual que se genere a partir del uso de recursos biológicos y genéticos y sus productos derivados, y/o conocimientos tradicionales de las comunidades indígenas y locales, de las cuales una Parte es país de origen, deberá observar el cumplimiento de las normas nacionales e internacionales específicas en la materia.
8. Las Partes requerirán que en las solicitudes de patentes desarrolladas a partir de recursos biológicos, genéticos y/o conocimientos tradicionales asociados, de los que sean país de origen, se demuestre el acceso legal a dichos recursos o conocimientos, así como la divulgación del origen del recurso y/o conocimiento tradicional accedido, en caso que la legislación nacional de la Parte así lo requiera.
9. Las Partes podrán, a través de sus autoridades nacionales competentes, intercambiar información relacionada a la biodiversidad y/o conocimientos tradicionales e información documentada relativa a recursos biológicos y genéticos y sus derivados, o de ser el caso, de los conocimientos tradicionales de sus comunidades indígenas y locales, a fin de que sirvan de apoyo en la evaluación de las patentes.
10. Las Partes acuerdan colaborar, a solicitud de cualquiera de ellas, en el suministro de información pública que tengan a su disposición para la investigación y seguimiento del acceso ilegal a recursos genéticos y/o conocimientos, innovaciones y prácticas tradicionales en sus territorios.

## Capítulo 9 Propiedad Intelectual

### Letter

June 28, 2007

The Honorable Alejandro Ferrer  
Minister of Commerce and Industry  
Republic of Panama

Dear Minister Ferrer:

I have the honor to confirm the following understandings reached between the delegations of the United States and Panama in the course of negotiations regarding Chapter Fifteen (Intellectual Property Rights) of the United States – Panama Trade Promotion Agreement between our two Governments signed this day (the “Agreement”):

Each Party recognizes the importance of traditional knowledge and folklore to its people.

Accordingly, the Parties will seek to work together in consulting on issues and positions in the World Intellectual Property Organization Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional

Knowledge, and Folklore in addressing matters related to traditional knowledge and folklore.

If the United States and another government sign a free trade agreement that contains provisions addressing traditional knowledge or folklore, the United States and Panama shall promptly consult after that agreement enters into force on whether to apply similar provisions, as appropriate, between the United States and Panama.<sup>1</sup>

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments, to enter into force on the date the Agreement enters into force.

Sincerely,

Susan C. Schwab

<sup>1</sup>) The Parties shall initiate any such consultations through the Free Trade Commission established under Article 19.1 (The Free Trade Commission) of the Agreement.



### Canada-Panama free trade agreement

#### Article 17.02: Agreement on the Environment

In keeping with the spirit of Article 17.01, the Parties have set out their mutual obligations in the Agreement on the Environment to promote the following objectives:

- a. conservation, protection and improvement of the environment in the territory of each Party for the well-being of present and future generations;
- b. a commitment not to derogate from domestic environmental laws in order to encourage trade or investment;
- c. conservation and sustainable use of biological diversity, and protection and preservation of traditional knowledge;
- d. development of, compliance with and enforcement of environmental laws;
- e. transparency and public participation in environmental matters; and
- f. cooperation between the Parties to advance environmental issues of common interest.

#### Article 17.03: Relationship between this Agreement and the Agreement on the Environment

1. The Parties recognize the importance of balancing trade obligations and environmental obligations, and affirm that the Agreement on the Environment complements this Agreement and that they are mutually supportive.

2. The Commission may consider, as appropriate, reports and recommendations from the Committee on the Environment established under the Agreement on the Environment, in respect of any issues related to trade and the environment.

### Canada-Panama environment agreement

#### Article 10: Biological Diversity

1. The Parties recognize the importance of the conservation and sustainable use of biological diversity in achieving sustainable development and reiterate their commitment to promote the conservation and sustainable use of biological diversity.
2. The parties also reiterate their commitment, as established by the Convention on Biological Diversity, to respect, preserve and maintain traditional knowledge, innovations and practices of indigenous and local communities that contribute to the conservation and sustainable use of biodiversity, subject to national legislation.
3. The Parties reiterate their sovereign rights over their natural resources and recognize their authority and obligations as established by the Convention on Biological Diversity with respect to access to genetic resources, and to the fair and equitable sharing of benefits arising out of the use of those genetic resources.
4. The Parties also recognize the importance of public participation and consultation, as provided by domestic law, on matters concerning the conservation and sustainable use of biological diversity.

5. The Parties shall endeavour to cooperate on the conservation and sustainable use of biological diversity as identified in Annex II.

6. The Parties shall also endeavour to cooperate in exchanging relevant information regarding:

- (a) the conservation and sustainable use of biodiversity;
- (b) the avoidance of illegal access to genetic resources, traditional knowledge, innovations and practices; and
- (c) the equitable sharing of benefits arising from the use of genetic resources and associated knowledge, innovations and practices.

## ANNEX II -- ENVIRONMENTAL COOPERATION

### Modalities and Forms of Cooperation

Cooperation developed under this Agreement may occur through bilateral and regional capacity building activities and related instruments, on the basis of technical and financial assistance programs, including:

- (a) the exchange of delegations, professionals, technicians and specialists from the academic sector, non-governmental organizations, and public and private sectors; and the facilitation of partnerships for the development and transfer of knowledge and technologies to promote the development of environmental best practices;
- (b) the joint development of programs, conferences, seminars, workshops and actions to strengthen environmental policies;
- (c) the exchange of information on environmental policies, laws, standards, regulations, indicators, national environmental programs, environmental reviews of trade agreements, compliance and enforcement mechanisms; and

(d) any other form of environmental cooperation that may be decided by the Parties.

### Work Program and Priority Cooperation Areas

The work program developed by the Committee on the Environment shall reflect national priorities of the Parties, and may include:

- (a) strengthening each Party's capacity building and environmental management systems, including reinforcing institutional and legal frameworks;
- (b) developing and promoting incentives and other flexible and voluntary mechanisms in order to encourage environmental protection, including the development of market-based initiatives and economic incentives for environmental management;
- (c) fostering partnerships to address current or emerging conservation and management issues, including personnel training and capacity building;
- (d) conserving and managing species that are shared, migratory, endangered, or subject to international commercial trade;
- (e) managing marine and terrestrial parks and other protected areas;
- (f) conserving in situ and ex situ biodiversity at the national level;
- (g) promoting best practices leading to sustainable development;
- (h) facilitating technology development, transfer and training to promote the use, proper operation and maintenance of cleaner production technologies;
- (i) promoting environmentally beneficial goods and services;
- (j) strengthening each Party's capacity to implement and enforce obligations under the agreements listed in Annex 1.06 - Multilateral Environmental Agreement of the Canada -Panama FTA; and
- (k) any other areas for environmental cooperation on which the Parties may concur.

## CAPÍTULO 15 PROPIEDAD INTELECTUAL

### Artículo 15.3: Disposiciones Generales

6. Ninguna disposición de este Capítulo impedirá a una Parte adoptar las medidas necesarias para prevenir el abuso de los derechos de propiedad intelectual por sus titulares, o el recurso a prácticas que limiten de manera injustificable el comercio, o redunden en detrimento de la transferencia internacional de tecnología. Asimismo, ninguna disposición de este Capítulo se interpretará como una disminución de las protecciones que las Partes acuerden o hayan acordado en beneficio de la conservación y uso sostenible de la biodiversidad, ni impedirá que las Partes adopten o mantengan medidas para este fin.

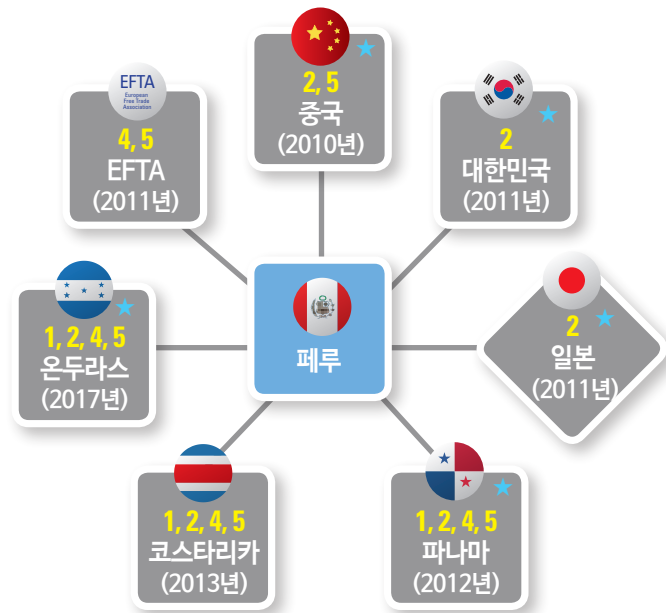


페루  
Peru

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FTA에서의 ABS 조항

## | 유전자원 제공국 |



- 도형모양으로 챕터별 구분: 네모(지식재산권 챕터), 동그라미(환경 챕터), 마름모(경제협력 챕터, 기타)
- 숫자로 ABS 조항의 내용을 구분: 1(협약/협력), 2(정보교환 등), 3(국제적 의무에 따른 조치), 4(국내적 이행장치), 5(특허), 6(기타)
- ★표는 나고야의정서 당사국임

페루는 나고야의정서 당사국으로 초기부터 적극적이고 일관되게 양자간 FTA에서 ABS 조항을 포함시키고 있음

- ABS 조항이 포함된 챕터는 지재권이 대부분이며, 유일한 예외가 일본과 체결한 FTA임.
- 코스타리카, 파나마 및 온두라스처럼 남미국가들과 체결한 FTA에서는 특허까지 언급하여 구체적이고 강력하게 ABS 체제 도입 및 운영을 언급하고 있음.
- EFTA하고 체결한 FTA에서도 국내법에 따라 특허 등록시 유전자원의 원산지나 출처를 신고하도록 규정하고 있음.
- 반면 아시아 지역 국가들-한중일-과 체결한 FTA에서는 ABS 관련 의견교환 정도로 언급하고 있음.

페루는 다자간 FTA인 CPTPP의 가입국가임

## CHAPTER 11 INTELLECTUAL PROPERTY RIGHTS

**Article 145: Genetic Resources, Traditional Knowledge and Folklore**

The Parties recognize the contribution made by the genetic resources, traditional knowledge and folklore to the scientific, cultural and economic development.

The Parties acknowledge and reaffirm the principles and provisions established in the Convention on Biological Diversity adopted on June 5th, 1992, and encourage the effort to establish a mutually supportive relationship between the TRIPS Agreement and the Convention on Biological Diversity, regarding genetic resources and the protection of traditional knowledge and folklore.

Subject to each Party's international obligations and national legislation, the Parties may establish appropriate measures to protect genetic resources, traditional knowledge and folklore.

Subject to future developments of national legislation, the Parties agree to further discuss the disclosure of origin or source of genetic resources and/or prior informed consent obligations in patent applications.

## CHAPTER 11 INTELLECTUAL PROPERTY RIGHTS

Joint Statement on Biodiversity, Access to Genetic Resources and Traditional Knowledge, on the occasion of the Signing of the Agreement between Japan and the Republic of Peru for an Economic Partnership

We, the Governments of Japan and the Republic of Peru, recalling the longstanding friendship between both countries, which has developed into an enduring cooperative relationship;

Today, welcoming the expeditious conclusion of the negotiations;

Signed the Agreement between Japan and the Republic of Peru for an Economic Partnership.

Both sides,

Recognizing the importance of the three objectives of the Convention on Biological Diversity (hereinafter referred to as the “CBD”), which are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources;

Recognizing the importance of the value of biodiversity and its components as stated in the preamble of the CBD, as well as their potential contribution to cultural, economic and social development;

Recognizing the sovereign rights of States over their natural resources, and that the authority to determine access to genetic resources rests with the national governments and is subject to their national legislation as provided for in paragraph 1 of Article 15 of the CBD; and

**Acknowledging what is set forth in paragraph 5 of Article 16 of the CBD;**

**Have reached the recognition as follows:**

Both sides, as Contracting Parties of the CBD, reaffirm the importance of the following:

- (1) endeavoring to create conditions to facilitate access to genetic resources for environmentally sound uses in view of paragraph 2 of Article 15 of the CBD;
- (2) obtaining informed consent from the appropriate authority prior to accessing genetic resources under the control of such authority in view of paragraph 5 of Article 15 of the CBD;
- (3) sharing in a fair and equitable way the benefits, upon mutually agreed terms, arising from the commercial and other utilization of genetic resources with the country providing such resources in view of paragraph 7 of Article 15 of the CBD; and
- (4) subject to their respective national legislation, respecting, preserving and maintaining knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promoting their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encouraging the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices in view of subparagraph (j) of Article 8 of the CBD.

With a view to promoting quality patent examination to ensure the conditions of patentability are satisfied, each side will endeavor to seek ways to share information that may have a bearing on the patentability of inventions based on genetic resources or traditional knowledge associated with genetic resources by:

- (a) providing or utilizing publicly accessible databases that contain relevant information; and
- (b) providing an opportunity to submit in writing, to the appropriate examining authority in accordance with its laws and regulations, information on prior art that may have a bearing on patentability.

Any part of this Joint Statement does not prejudice ongoing negotiations and their outcomes in other fora in which both sides are participating.

Tokyo, May 31, 2011

Minister for Foreign Affairs of Japan  
Takeaki Matsumoto

Minister of Foreign Trade and Tourism  
of the Republic of Peru  
Eduardo Ferreyros

**페루-EFTA FTA**

(2010년 6월 24일 서명, 2011년 7월 1일 일부국가(페루, 리히텐슈타인 및 스위스) 발효, 2011년 10월 1일 아이슬란드 발효, 2012년 7월 1일 노르웨이 발효)

**CHAPTER 6 PROTECTION OF INTELLECTUAL PROPERTY****ARTICLE 6.5 Measures Related to Biodiversity**

1. The Parties reaffirm their sovereign rights over their natural resources and recognise their rights and obligations under the Convention on Biological Diversity with respect to access to genetic resources and to the fair and equitable sharing of benefits arising out of the utilisation of these genetic resources.
2. The Parties recognise the importance and the value of their biological diversity and of the associated traditional knowledge, innovations and practices of indigenous and local communities. Each Party shall determine the access conditions to its genetic resources in accordance with the principles and provisions contained in applicable national and international law.
3. The Parties recognise past, present and future contributions of indigenous and local communities and their knowledge, innovations and practices to the conservation and sustainable use of biological and genetic resources and in general the contribution of the traditional knowledge of their indigenous and local communities to the culture and economic and social development of nations.
4. The Parties shall consider collaborating in cases regarding non compliance with the applicable legal provisions on access to genetic resources and traditional knowledge, innovations and practices.
5. According to their national law, the Parties shall require that patent applications contain a declaration of the origin or source of a genetic resource, to which the inventor or the patent applicant has had access. As far as provided in their national legislation, the Parties will also require the fulfilment of prior informed consent and they will apply the provisions set out in this Article to traditional knowledge as applicable.
6. The Parties, in accordance with their national laws, shall provide for administrative, civil or criminal sanctions if the inventor or the patent applicant wilfully make a wrongful or misleading declaration of the origin or source. The judge may order the publication of the ruling.
7. If the law of the Party so provides:
  - (a) access to genetic resources shall be subject to the prior informed consent of the Party providing the genetic resources; and
  - (b) access to traditional knowledge of indigenous and local communities associated to these resources shall be subject to the approval and involvement of these communities.
8. Each Party shall take policy, legal and administrative measures, with the aim of facilitating the fulfilment of terms and conditions for access established by the Parties for such genetic resources.

9. The Parties affirm and recognise their existing rights and obligations with respect to each other under the International Treaty of Plant Genetic Resources for Food and Agriculture of the Food and Agriculture Organization.

10. The Parties shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring the fair and equitable sharing of the benefits arising from the use of genetic resources or associated traditional knowledge. Such sharing shall be based on mutually agreed terms.



## 페루-한국 FTA

(2011년 3월 21일 서명, 2011년 8월 1일 발효)

### CHAPTER SEVENTEEN INTELLECTUAL PROPERTY RIGHTS

#### ARTICLE 17.5: GENETIC RESOURCES AND TRADITIONAL KNOWLEDGE

1. The Parties acknowledge paragraph 19 of the Ministerial Declaration(WT/MIN/(01) DEC/1), adopted on November 14, 2001 by the WTO Ministerial Conference, on the relationship between the TRIPS Agreement and the CBD and the protection of genetic resources, traditional knowledge, and folklore.
2. The Parties recognize the value and importance of biological diversity, traditional knowledge as well as the contribution of knowledge, innovations, and practices of indigenous and local communities to the conservation and sustainable use of biological diversity. Each Party shall have the authority to determine access to genetic resources in accordance with its domestic legislation and endeavor to create conditions to facilitate transparent access to genetic resources for environmentally sound uses.
3. Subject to their domestic legislations and the CBD, the Parties respect knowledge, innovations, and practices of indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity and promote their wider application with the involvement and approval of the holders of such knowledge, innovations, and practices.



4. Each Party shall endeavor to seek ways to share information on patent applications based on genetic resources or traditional knowledge by providing:
  - (a) publicly accessible database that contains relevant information; and
  - (b) opportunities to file prior art to the appropriate examining authority in writing.
  
5. The Parties agree to share views and information on discussions in the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore, the WTO TRIPS Council, and any other relevant fora in addressing matters related to genetic resources and traditional knowledge.
  
6. Subject to future developments of multilateral agreements or their respective domestic legislations, the Parties agree to further discuss relevant issues on genetic resources.



## 페루-파나마 FTA

(2011년 5월 25일 서명, 2012년 5월 1일 발효)

### Capítulo 9 Propiedad Intelectual

#### Artículo 9.5: Conocimientos Tradicionales

1. Cada Parte, de conformidad con su legislación nacional, reconoce el derecho de las comunidades indígenas y locales<sup>2</sup> sobre sus conocimientos tradicionales, y reitera su compromiso de respetar, preservar y mantener los conocimientos tradicionales, innovaciones y prácticas de las comunidades indígenas y locales de los territorios de las Partes.
  
2. Las Partes podrán proteger los derechos referidos en este Artículo contra los actos que constituyan supuestos de competencia desleal, de conformidad con lo previsto en su legislación nacional.
  
3. La República de Panamá declara, dentro de los conocimientos tradicionales protegidos en su legislación nacional, los siguientes productos:
  - (a) MOLA KUNA PANAMA;
  - (b) NAHUA;
  - (c) CHACARA;
  - (d) CHAQUIRA;
  - (e) SOMBRERO NGOBE Y BUGLÉ;
  - (f) TALLA DE MADERA;
  - (g) TAGUA;
  - (h) HOSIG DÍ o JIW'A (CESTA);

- (i) HAMACA KUNAS PANAMA; y
- (j) INSTRUMENTOS MUSICALES KUNAS PANAMA.

4. Las Partes manifiestan su interés de impulsar y promover las discusiones relativas a la protección de los recursos genéticos, conocimientos tradicionales y expresiones culturales tradicionales que se desarrollen en el Comité Intergubernamental sobre Propiedad Intelectual y Recursos Genéticos, Conocimientos Tradicionales y Folklore de la OMPI, en el Consejo de los ADPIC de la OMC, así como en cualquier otro foro relevante que trate dichas materias.

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2) Si la legislación nacional de cada Parte así lo prevé, “comunidades indígenas y locales” incluirá las comunidades afroamericanas o afro descendientes.

#### **Artículo 9.6: Medidas Relacionadas con la Protección a la Biodiversidad y los Conocimientos Tradicionales**

1. Las Partes reconocen la importancia y valor de su diversidad biológica y sus componentes. Cada Parte ejerce soberanía sobre sus recursos biológicos y genéticos y sus productos derivados, y en consecuencia determinan las condiciones de su acceso, de acuerdo con los principios y disposiciones contenidos en normas nacionales e internacionales pertinentes.
2. Las Partes reconocen la importancia y valor de los conocimientos, innovaciones y prácticas de las comunidades indígenas y locales, así como la contribución pasada, presente y futura de las mismas a la conservación y uso sostenible de los recursos biológicos y genéticos y sus productos derivados, y en general,

la contribución de los conocimientos tradicionales de tales comunidades a la cultura y al desarrollo económico y social de las naciones.

3. Cada Parte, de conformidad con su legislación nacional, reitera su compromiso de respetar, preservar y mantener los conocimientos tradicionales, innovaciones y prácticas de las colectividades indígenas y locales del territorio de cada Parte.
4. El acceso a los recursos biológicos y genéticos y sus productos derivados estará condicionado al consentimiento fundamentado previo de la Parte que es país de origen, en términos mutuamente acordados. Igualmente, el acceso a los conocimientos tradicionales de las comunidades indígenas y locales asociado a dichos recursos estará condicionado al consentimiento fundamentado previo de los titulares o poseedores, según corresponda, de dichos conocimientos, en términos mutuamente acordados. Ambos supuestos estarán sujetos a lo dispuesto por la legislación nacional de cada Parte.
5. Las Partes fomentarán medidas para asegurar una distribución justa y equitativa de los beneficios derivados de la utilización de los recursos biológicos y genéticos y productos derivados y de los conocimientos tradicionales de las comunidades indígenas y locales.
6. Cada Parte fomentará las medidas políticas, legales y administrativas, con el fin de asegurar el cabal cumplimiento de las condiciones de acceso a los recursos biológicos y genéticos de la biodiversidad.
7. Cualquier derecho de propiedad intelectual que se genere a partir del uso de recursos biológicos y genéticos y sus productos derivados, y/o conocimientos

tradicionales de las comunidades indígenas y locales, de las cuales una Parte es país de origen, deberá observar el cumplimiento de las normas nacionales e internacionales específicas en la materia.

8. Las Partes requerirán que en las solicitudes de patentes desarrolladas a partir de recursos biológicos, genéticos y/o conocimientos tradicionales asociados, de los que sean país de origen, se demuestre el acceso legal a dichos recursos o conocimientos, así como la divulgación del origen del recurso y/o conocimiento tradicional accedido, en caso que la legislación nacional de la Parte así lo requiera.
9. Las Partes podrán, a través de sus autoridades nacionales competentes, intercambiar información relacionada a la biodiversidad y/o conocimientos tradicionales e información documentada relativa a recursos biológicos y genéticos y sus derivados, o de ser el caso, de los conocimientos tradicionales de sus comunidades indígenas y locales, a fin de que sirvan de apoyo en la evaluación de las patentes.
10. Las Partes acuerdan colaborar, a solicitud de cualquiera de ellas, en el suministro de información pública que tengan a su disposición para la investigación y seguimiento del acceso ilegal a recursos genéticos y/o conocimientos, innovaciones y prácticas tradicionales en sus territorios.



## Capítulo 9 Propiedad Intelectual

### Artículo 9.5: Medidas Relacionadas con la Protección a la Biodiversidad y los Conocimientos Tradicionales

1. Las Partes reconocen la importancia y valor de su diversidad biológica y sus componentes. Cada Parte ejerce soberanía sobre sus recursos biológicos y genéticos y sus productos derivados, y en consecuencia determinan las condiciones de su acceso, de acuerdo con los principios y disposiciones contenidos en normas nacionales e internacionales pertinentes.
2. Las Partes reconocen la importancia y valor de los conocimientos, innovaciones y prácticas de las comunidades indígenas y locales<sup>2</sup>, así como la contribución pasada, presente y futura de las mismas a la conservación y uso sostenible de los recursos biológicos y genéticos y sus productos derivados, y en general, la contribución de los conocimientos tradicionales de tales comunidades a la cultura y al desarrollo económico y social de las naciones.  
Cada Parte, de conformidad con su legislación nacional, reitera su compromiso de respetar, preservar y mantener los conocimientos tradicionales, innovaciones y prácticas de las colectividades indígenas y locales de los territorios de las Partes.
3. El acceso a los recursos biológicos y genéticos y sus productos derivados estará condicionado al consentimiento fundamentado previo de la Parte que es país de origen, en términos mutuamente acordados. Igualmente, el acceso a los

conocimientos tradicionales de las comunidades indígenas y locales asociado a dichos recursos estará condicionado al consentimiento fundamentado previo de los titulares o poseedores, según corresponda, de dichos conocimientos, en términos mutuamente acordados. Ambos supuestos estarán sujetos a lo dispuesto por la legislación nacional de cada Parte.

4. Las Partes fomentarán medidas para asegurar una distribución justa y equitativa de los beneficios derivados de la utilización de los recursos biológicos y genéticos y productos derivados y de los conocimientos tradicionales de las comunidades indígenas y locales.

5. Cada Parte fomentará las medidas de política, legales y administrativas, con el fin de asegurar el cabal cumplimiento de las condiciones de acceso a los recursos biológicos y genéticos de la biodiversidad.

6. Cualquier derecho de propiedad intelectual que se genere a partir del uso de recursos biológicos y genéticos y sus productos derivados, y/o conocimientos tradicionales de las comunidades indígenas y locales, de las cuales una Parte es país de origen, deberá observar el cumplimiento de las normas nacionales e internacionales específicas en la materia.

7. Las Partes requerirán que en las solicitudes de patentes desarrolladas a partir de recursos biológicos, genéticos y/o conocimientos tradicionales asociados, de los que sean país de origen, se demuestre el acceso legal a dichos recursos o conocimientos, así como la divulgación del origen del recurso y/o conocimiento tradicional accedido, en caso que la legislación nacional de la Parte así lo requiera.

8. Las Partes podrán, a través de sus autoridades nacionales competentes, intercambiar información relacionada a la biodiversidad y/o conocimientos tradicionales e información documentada relativa a recursos biológicos y genéticos y sus derivados, o de ser el caso, de los conocimientos tradicionales de sus comunidades indígenas y locales, a fin de que sirvan de apoyo en la evaluación de las patentes.

9. Las Partes acuerdan, a solicitud de cualquiera de ellas, colaborar en el suministro de información pública que tengan a su disposición para la investigación y seguimiento del acceso ilegal a recursos genéticos y/o conocimientos, innovaciones y prácticas tradicionales en sus territorios.

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\* 2) Si la legislación nacional de cada Parte así lo prevé, “comunidades indígenas y locales” incluirá las comunidades afroamericanas o afro descendientes.(h) HOSIG DÍ o JIW'A (CESTA);

### Artículo 9.5: Medidas Relacionadas con la Protección a la Biodiversidad y los Conocimientos Tradicionales

1. Las Partes reconocen la importancia y valor de su diversidad biológica y sus componentes. Cada Parte ejerce soberanía sobre sus recursos biológicos y genéticos y sus productos derivados, y en consecuencia determinan las condiciones de su acceso, de acuerdo con los principios y disposiciones contenidos en normas nacionales e internacionales pertinentes.
2. Las Partes reconocen la importancia y valor de los conocimientos, innovaciones y prácticas de las comunidades indígenas y locales<sup>2</sup>, así como la contribución pasada, presente y futura de las mismas a la conservación y uso sostenible de los recursos biológicos y genéticos y sus productos derivados, y en general, la contribución de los conocimientos tradicionales de tales comunidades a la cultura y al desarrollo económico y social de las naciones.  
Cada Parte, de conformidad con su legislación nacional, reitera su compromiso de respetar, preservar y mantener los conocimientos tradicionales, innovaciones y prácticas de las colectividades indígenas y locales de los territorios de las Partes.
3. El acceso a los recursos biológicos y genéticos y sus productos derivados estará condicionado al consentimiento fundamentado previo de la Parte que es país de origen, en términos mutuamente acordados. Igualmente, el acceso a los conocimientos tradicionales de las comunidades indígenas y locales asociado

a dichos recursos estará condicionado al consentimiento fundamentado previo de los titulares o poseedores, según corresponda, de dichos conocimientos, en términos mutuamente acordados. Ambos supuestos estarán sujetos a lo dispuesto por la legislación nacional de cada Parte.

4. Las Partes fomentarán medidas para asegurar una distribución justa y equitativa de los beneficios derivados de la utilización de los recursos biológicos y genéticos y productos derivados y de los conocimientos tradicionales de las comunidades indígenas y locales.
5. Cada Parte fomentará las medidas de política, legales y administrativas, con el fin de asegurar el cabal cumplimiento de las condiciones de acceso a los recursos biológicos y genéticos de la biodiversidad.
6. Cualquier derecho de propiedad intelectual que se genere a partir del uso de recursos biológicos y genéticos y sus productos derivados, y/o conocimientos tradicionales de las comunidades indígenas y locales, de las cuales una Parte es país de origen, deberá observar el cumplimiento de las normas nacionales e internacionales específicas en la materia.
7. Las Partes requerirán que en las solicitudes de patentes desarrolladas a partir de recursos biológicos, genéticos y/o conocimientos tradicionales asociados, de los que sean país de origen, se demuestre el acceso legal a dichos recursos o conocimientos, así como la divulgación del origen del recurso y/o conocimiento tradicional accedido, en caso que la legislación nacional de la Parte así lo requiera.

8. Las Partes podrán, a través de sus autoridades nacionales competentes, intercambiar información relacionada a la biodiversidad y/o conocimientos tradicionales e información documentada relativa a recursos biológicos y genéticos y sus derivados, o de ser el caso, de los conocimientos tradicionales de sus comunidades indígenas y locales, a fin de que sirvan de apoyo en la evaluación de las patentes.

9. Las Partes acuerdan, a solicitud de cualquiera de ellas, colaborar en el suministro de información pública que tengan a su disposición para la investigación y seguimiento del acceso ilegal a recursos genéticos y/o conocimientos, innovaciones y prácticas tradicionales en sus territorios.

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2) Si la legislación nacional de cada Parte así lo prevé, “comunidades indígenas y locales” incluirá las comunidades afroamericanas o afro descendientes.



## CPTPP

(2018년 12월 30일 캐나다, 호주, 일본, 멕시코, 뉴질랜드 및 싱가포르 발효, 2019년 1월 14일 베트남 발효)

### Article 18.16: Cooperation in the Area of Traditional Knowledge

1. The Parties recognise the relevance of intellectual property systems and traditional knowledge associated with genetic resources to each other, when that traditional knowledge is related to those intellectual property systems.
2. The Parties shall endeavour to cooperate through their respective agencies responsible for intellectual property, or other relevant institutions, to enhance the understanding of issues connected with traditional knowledge associated with genetic resources, and genetic resources.
3. The Parties shall endeavour to pursue quality patent examination, which may include:
  - (a) that in determining prior art, relevant publicly available documented information related to traditional knowledge associated with genetic resources may be taken into account;
  - (b) an opportunity for third parties to cite, in writing, to the competent examining authority prior art disclosures that may have a bearing on patentability, including prior art disclosures related to traditional knowledge associated with genetic resources;
  - (c) if applicable and appropriate, the use of databases or digital libraries containing traditional knowledge associated with genetic resources; and
  - (d) cooperation in the training of patent examiners in the examination of patent applications related to traditional knowledge associated with genetic resources.

## Article 20.12: Cooperation Frameworks

1. The Parties recognise the importance of cooperation as a mechanism to implement this Chapter, to enhance its benefits and to strengthen the Parties' joint and individual capacities to protect the environment and to promote sustainable development as they strengthen their trade and investment relations.
2. Taking account of their national priorities and circumstances, and available resources, the Parties shall cooperate to address matters of joint or common interest among the participating Parties related to the implementation of this Chapter, when there is mutual benefit from that cooperation. This cooperation may be carried out on a bilateral or plurilateral basis between Parties and, subject to consensus by the participating Parties, may include non-governmental bodies or organisations and non-Parties to this Agreement.
3. Each Party shall designate the authority or authorities responsible for cooperation related to the implementation of this Chapter to serve as its national contact point the other Parties in writing within 90 days of the date of entry into force of this Agreement for that Party of its contact point. On notifying the other Parties of its contact point, or at any time thereafter through the contact points, a Party may:
  - (a) share its priorities for cooperation with the other Parties, including the objectives of that cooperation; and
  - (b) propose cooperation activities related to the implementation of this Chapter to another Party or Parties.
4. When possible and appropriate, the Parties shall seek to complement and use their existing cooperation mechanisms and take into account relevant work of regional and international organisations.
5. Cooperation may be undertaken through various means including: dialogues, workshops, seminars, conferences, collaborative programmes and projects; technical assistance to promote and facilitate cooperation and training; the sharing of best practices on policies and procedures; and the exchange of experts.
6. In developing cooperative activities and programmes, a Party shall, if relevant, identify performance measures and indicators to assist in examining and evaluating the efficiency, effectiveness and progress of specific cooperative activities and programmes and share those measures and indicators, as well as the outcome of any evaluation during or following the completion of a cooperative activity or programme, with the other Parties.
7. The Parties, through their contact points for cooperation, shall periodically review the implementation and operation of this Article and report their findings, which may include recommendations, to the Committee to inform its review under Article 20.19(3)(c) (Environment Committee and Contact Points). The Parties, through the Committee, may periodically evaluate the necessity of designating an entity to provide administrative and operational support for cooperative activities. If the Parties decide to establish such an entity, the Parties shall agree on the funding of the entity on a voluntary basis to support the entity's operation.
8. Each Party shall promote public participation in the development and implementation of cooperative activities, as appropriate. This may include

activities such as encouraging and facilitating direct contacts and cooperation among relevant entities and the conclusion of arrangements among them for the conduct of cooperative activities under this Chapter.

9. Where a Party has defined the environmental laws under Article 20.1 (Definitions) to include only laws at the central level of government (first Party), and where another Party (second Party) considers that an environmental law at the sub-central level of government of the first Party is not being effectively enforced by the relevant sub-central government through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties, the second Party may request a dialogue with the first Party. The request shall contain information that is specific and sufficient to enable the first Party to evaluate the matter at issue and an indication of how the matter is negatively affecting trade or investment of the second Party.
10. All cooperative activities under this Chapter are subject to the availability of funds and of human and other resources, and to the applicable laws and regulations of the participating Parties. The participating Parties shall decide, on a case-by-case basis, the funding of cooperative activities.

#### **Article 20.13: Trade and Biodiversity**

1. The Parties recognise the importance of conservation and sustainable use of biological diversity and their key role in achieving sustainable development.
2. Accordingly, each Party shall promote and encourage the conservation and sustainable use of biological diversity, in accordance with its law or policy.

3. The Parties recognise the importance of respecting, preserving and maintaining knowledge and practices of indigenous and local communities embodying traditional lifestyles that contribute to the conservation and sustainable use of biological diversity.
4. The Parties recognise the importance of facilitating access to genetic resources within their respective national jurisdictions, consistent with each Party's international obligations. The Parties further recognise that some Parties require, through national measures, prior informed consent to access such genetic resources in accordance with national measures and, where such access is granted, the establishment of mutually agreed terms, including with respect to sharing of benefits from the use of such genetic resources, between users and providers.
5. The Parties also recognise the importance of public participation and consultation, in accordance with their respective law or policy, in the development and implementation of measures concerning the conservation and sustainable use of biological diversity. Each Party shall make publicly available information about its programmes and activities, including cooperative programmes, related to the conservation and sustainable use of biological diversity.
6. Consistent with Article 20.12 (Cooperation Frameworks), the Parties shall cooperate to address matters of mutual interest. Cooperation may include, but is not limited to, exchanging information and experiences in areas related to:
  - (a) the conservation and sustainable use of biological diversity;
  - (b) the protection and maintenance of ecosystems and ecosystem services; and
  - (c) access to genetic resources and the sharing of benefits arising from their utilisation.



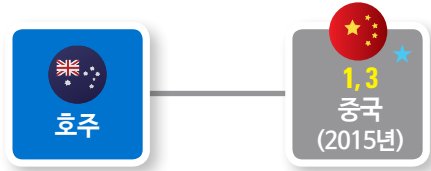


호주-뉴질랜드  
Australia-New Zealand

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FTA에서의 ABS 조항

## | 유전자원 제공국 |



- 도형모양으로 챕터별 구분: 네모(지식재산권 챕터), 동그라미(환경 챕터), 마름모(경제협력 챕터, 기타)
- 숫자로 ABS 조항의 내용을 구분: 1(협약/협력), 2(정보교환 등), 3(국제적 의무에 따른 조치), 4(국내적 이행장치), 5(특허), 6(기타)
- ★표는 나고야의정서 당사국임

**호주는 유전자원 제공국으로 분류되지만 나고야의정서의 당사국은 아닌 특징이 있음. 그 결과 FTA 상에서 적극적으로 ABS 이슈를 다루고 있지 않음**

- 조사기간 동안 총 4건의 FTA를 체결하였고, 일본, 한국, 말레이시아 등 나고야의정서 당사국과도 FTA를 체결하였지만, ABS조항을 해당 협정들에서는 포함시키지 않음
- 유일하게 ABS 조항을 포함하고 있는 FTA는 해당이슈에 가장 적극적인 국가 중의 하나인 중국과 체결한 FTA로, 단순 협력 및 국제적 의무에 따른 조치를 취하겠다는 내용을 담고 있음

**호주는 다자간 FTA인 CPTPP의 가입국가임**

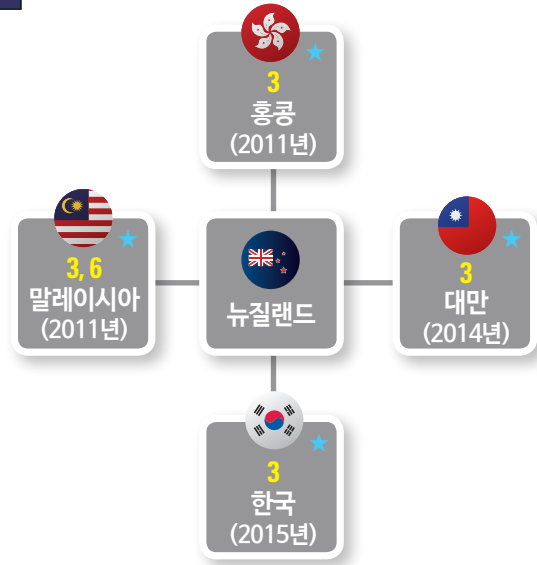
## 01 호주-중국 FTA (2015년 12월 20일 발효)

### CHAPTER 11 INTELLECTUAL PROPERTY

#### ARTICLE 11.17: GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE

1. Subject to each Party's international obligations and its laws, the Parties may establish appropriate measures to protect genetic resources, traditional knowledge and folklore.
2. The Parties agree to further discuss relevant issues concerning genetic resources, traditional knowledge and folklore, taking into account future developments in their respective laws and in multilateral agreements.

## 유전자원 제공국



- 도형모양으로 챕터별 구분: 네모(지식재산권 챕터), 동그라미(환경 챕터), 마름모(경제협력 챕터, 기타)
- 숫자로 ABS 조항의 내용을 구분: 1(협약/협력), 2(정보교환 등), 3(국제적 의무에 따른 조치), 4(국내적 이행장치), 5(특허), 6(기타)
- ★표는 나고야의정서 당사국이라는 표시

### 뉴질랜드는 나고야의정서 비당사국이지만 유전자원 제공국으로 FTA 체결시 ABS 이슈를 반드시 포함시키고 있음

- 조사기간 동안 총 4건의 FTA를 체결하였고, 모든 FTA에서 ABS 이슈를 언급하고 있음
- ABS 조항은 일관되게 지식재산권 챕터에서 다루어지고 있으나, 그 내용은 국제적 의무에 따른 조치를 취한다는 수준에 그치고 있음

### 뉴질랜드는 다자간 FTA인 CPTPP의 가입국가임

## 01 뉴질랜드-홍콩 FTA (2010년 3월 29일 서명, 2011년 1월 1일 발효)

### CHAPTER 11 INTELLECTUAL PROPERTY RIGHTS

#### Article 8 Genetic Resources, Traditional Knowledge and Folklore

Subject to the international obligations that are applicable to each Party, each Party may establish appropriate measures to protect genetic resources, traditional knowledge and traditional cultural expressions or folklore.

## 02 뉴질랜드-말레이시아 FTA (2010년 서명, 2011년 8월 1일 발효)

### CHAPTER 11: INTELLECTUAL PROPERTY

#### Article 11.6 Traditional Knowledge

Subject to each Party's international obligations, the Parties may establish appropriate measures to protect traditional knowledge.

03

**뉴질랜드-대만 FTA**

(2013년 7월 10일 서명, 2014년 1월 1일 발효)

**CHAPTER 10 INTELLECTUAL PROPERTY****Article 6 Genetic Resources, Traditional Knowledge and Folklore**

Subject to the international obligations that are applicable to each Party, each Party may establish appropriate measures to protect genetic resources, traditional knowledge and traditional cultural expressions or folklore.

04

**뉴질랜드-한국 FTA**

(2015년 3월 23일 서명, 2015년 12월 20일 발효)

**CHAPTER 11 INTELLECTUAL PROPERTY RIGHTS****Article 11.10 : Genetic Resources, Traditional Knowledge and Folklore**

Subject to each Party's international obligations, each Party may establish appropriate measures to protect genetic resources, traditional knowledge and traditional cultural expressions or folklore.

05

**CPTPP**

(2018년 12월 30일 캐나다, 호주, 일본, 멕시코, 뉴질랜드 및 싱가포르 발효, 2019년 1월 14일 베트남 발효)

**Article 18.16: Cooperation in the Area of Traditional Knowledge**

1. The Parties recognise the relevance of intellectual property systems and traditional knowledge associated with genetic resources to each other, when that traditional knowledge is related to those intellectual property systems.
2. The Parties shall endeavour to cooperate through their respective agencies responsible for intellectual property, or other relevant institutions, to enhance the understanding of issues connected with traditional knowledge associated with genetic resources, and genetic resources.
3. The Parties shall endeavour to pursue quality patent examination, which may include:
  - (a) that in determining prior art, relevant publicly available documented information related to traditional knowledge associated with genetic resources may be taken into account;
  - (b) an opportunity for third parties to cite, in writing, to the competent examining authority prior art disclosures that may have a bearing on patentability, including prior art disclosures related to traditional knowledge associated with genetic resources;
  - (c) if applicable and appropriate, the use of databases or digital libraries containing traditional knowledge associated with genetic resources; and
  - (d) cooperation in the training of patent examiners in the examination of

patent applications related to traditional knowledge associated with genetic resources.

#### **Article 20.12: Cooperation Frameworks**

1. The Parties recognise the importance of cooperation as a mechanism to implement this Chapter, to enhance its benefits and to strengthen the Parties' joint and individual capacities to protect the environment and to promote sustainable development as they strengthen their trade and investment relations.
2. Taking account of their national priorities and circumstances, and available resources, the Parties shall cooperate to address matters of joint or common interest among the participating Parties related to the implementation of this Chapter, when there is mutual benefit from that cooperation. This cooperation may be carried out on a bilateral or plurilateral basis between Parties and, subject to consensus by the participating Parties, may include non-governmental bodies or organisations and non-Parties to this Agreement.
3. Each Party shall designate the authority or authorities responsible for cooperation related to the implementation of this Chapter to serve as its national contact point on matters that relate to coordination of cooperation activities and shall notify the other Parties in writing within 90 days of the date of entry into force of this Agreement for that Party of its contact point. On notifying the other Parties of its contact point, or at any time thereafter through the contact points, a Party may:
  - (a) share its priorities for cooperation with the other Parties, including the objectives of that cooperation; and

- (b) propose cooperation activities related to the implementation of this Chapter to another Party or Parties.

4. When possible and appropriate, the Parties shall seek to complement and use their existing cooperation mechanisms and take into account relevant work of regional and international organisations.
5. Cooperation may be undertaken through various means including: dialogues, workshops, seminars, conferences, collaborative programmes and projects; technical assistance to promote and facilitate cooperation and training; the sharing of best practices on policies and procedures; and the exchange of experts.
6. In developing cooperative activities and programmes, a Party shall, if relevant, identify performance measures and indicators to assist in examining and evaluating the efficiency, effectiveness and progress of specific cooperative activities and programmes and share those measures and indicators, as well as the outcome of any evaluation during or following the completion of a cooperative activity or programme, with the other Parties.
7. The Parties, through their contact points for cooperation, shall periodically review the implementation and operation of this Article and report their findings, which may include recommendations, to the Committee to inform its review under Article 20.19(3)(c) (Environment Committee and Contact Points). The Parties, through the Committee, may periodically evaluate the necessity of designating an entity to provide administrative and operational support for cooperative activities. If the Parties decide to establish such an entity, the Parties

shall agree on the funding of the entity on a voluntary basis to support the entity's operation.

8. Each Party shall promote public participation in the development and implementation of cooperative activities, as appropriate. This may include activities such as encouraging and facilitating direct contacts and cooperation among relevant entities and the conclusion of arrangements among them for the conduct of cooperative activities under this Chapter.

9. Where a Party has defined the environmental laws under Article 20.1 (Definitions) to include only laws at the central level of government (first Party), and where another Party (second Party) considers that an environmental law at the sub-central level of government of the first Party is not being effectively enforced by the relevant sub-central government through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties, the second Party may request a dialogue with the first Party. The request shall contain information that is specific and sufficient to enable the first Party to evaluate the matter at issue and an indication of how the matter is negatively affecting trade or investment of the second Party.

10. All cooperative activities under this Chapter are subject to the availability of funds and of human and other resources, and to the applicable laws and regulations of the participating Parties. The participating Parties shall decide, on a case-by-case basis, the funding of cooperative activities.

#### **Article 20.13: Trade and Biodiversity**

1. The Parties recognise the importance of conservation and sustainable use of biological diversity and their key role in achieving sustainable development.

2. Accordingly, each Party shall promote and encourage the conservation and sustainable use of biological diversity, in accordance with its law or policy.

3. The Parties recognise the importance of respecting, preserving and maintaining knowledge and practices of indigenous and local communities embodying traditional lifestyles that contribute to the conservation and sustainable use of biological diversity.

4. The Parties recognise the importance of facilitating access to genetic resources within their respective national jurisdictions, consistent with each Party's international obligations. The Parties further recognise that some Parties require, through national measures, prior informed consent to access such genetic resources in accordance with national measures and, where such access is granted, the establishment of mutually agreed terms, including with respect to sharing of benefits from the use of such genetic resources, between users and providers.

5. The Parties also recognise the importance of public participation and consultation, in accordance with their respective law or policy, in the development and implementation of measures concerning the conservation and sustainable use of biological diversity. Each Party shall make publicly available information about its programmes and activities, including cooperative programmes, related to the conservation and sustainable use of biological diversity.

6. Consistent with Article 20.12 (Cooperation Frameworks), the Parties shall cooperate to address matters of mutual interest. Cooperation may include, but is not limited to, exchanging information and experiences in areas related to:

- (a) the conservation and sustainable use of biological diversity;
- (b) the protection and maintenance of ecosystems and ecosystem services; and
- (c) access to genetic resources and the sharing of benefits arising from their utilisation.



유럽 연합  
European Union

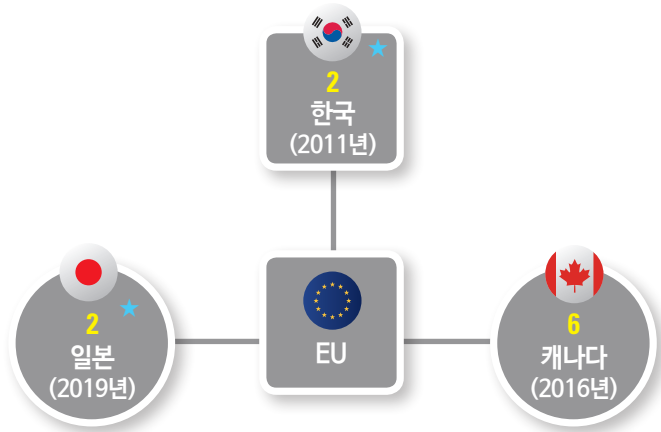
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FTA에서의 ABS 조항

## 유전자원 이용국



유럽 연합  
European Union



- 도형모양으로 챕터별 구분: 네모(지식재산권 챕터), 동그라미(환경 챕터), 마름모(경제협력 챕터, 기타)
- 숫자로 ABS 조항의 내용을 구분: 1(협약/협력), 2(정보교환 등), 3(국제적 의무에 따른 조치), 4(국내적 이행장치), 5(특허), 6(기타)
- ★표는 나고야의정서 당사국임

### EU는 유전자원 이용국으로 통상협정인 FTA에서 ABS 이슈를 언급하는데 소극적임

- 조사기간 동안 총 5건의 FTA를 체결하였으며, 가나와 세르비아와 체결한 FTA를 제외한 3건의 FTA에서 직간접적으로 ABS 이슈를 언급하고 있음.
- 현재까지 ABS 이슈는 한국과 체결한 FTA에서 가장 구체적으로 명시되고 있음.
- 그 외 일본과는 생물다양성을 포함한 포괄적 접근을 하고 있으며, 캐나다와 체결한 FTA에서는 ABS와 관련한 특정 이슈-바이오테크 시장접근-만을 언급하고 있음

01

## EU-한국 FTA

(2010년 10월 6일 서명, 2011년 7월 1일 잠정발효,  
2015년 12월 13일 전체발효)

### SECTION B Standards concerning intellectual property rights

#### Sub-section F Other provisions

#### Article 10.40 Genetic resources, traditional knowledge and folklore

1. Subject to their legislation, the Parties shall respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the involvement and approval of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices.
2. The Parties agree to regularly exchange views and information on relevant multilateral discussions:
  - (a) in WIPO, on the issues dealt with in the framework of the Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore;
  - (b) in the WTO, on the issues related to the relationship between the TRIPS Agreement and the Convention on Biological Diversity (hereinafter referred to as the 'CBD'), and the protection of traditional knowledge and folklore; and
  - (c) in the CBD, on the issues related to an international regime on access to genetic resources and benefit sharing.



3. Following the conclusion of the relevant multilateral discussions referred to in paragraph 2, the Parties agree, at the request of either Party, to review this Article in the Trade Committee in the light of the results and conclusion of such multilateral discussions. The Trade Committee may adopt any decision necessary to give effect to the results of the review.



**EU-캐나다 CETA**  
(2017년 9월 21일 잠정발효)

**Canada-European Union Comprehensive Economic  
and Trade Agreement (CETA)**

**Chapter twenty-two: Trade and sustainable development**

**Article 22.3 – Cooperation and promotion of trade supporting sustainable development**

1. The Parties recognise the value of international cooperation to achieve the goal of sustainable development and the integration at the international level of economic, social and environmental development and protection initiatives, actions and measures. Therefore, the Parties agree to dialogue and consult with each other with regard to trade-related sustainable development issues of common interest.
2. The Parties affirm that trade should promote sustainable development. Accordingly, each Party shall strive to promote trade and economic flows and practices that contribute to enhancing decent work and environmental protection, including by:
  - a. encouraging the development and use of voluntary schemes relating to the sustainable production of goods and services, such as eco-labelling and fair trade schemes;
  - b. encouraging the development and use of voluntary best practices of corporate social responsibility by enterprises, such as those in the OECD Guidelines for

Multinational Enterprises, to strengthen coherence between economic, social and environmental objectives;

- c. encouraging the integration of sustainability considerations in private and public consumption decisions; and
- d. promoting the development, the establishment, the maintenance or the improvement of environmental performance goals and standards.

3. The Parties recognise the importance of addressing specific sustainable development issues by assessing the potential economic, social and environmental impacts of possible actions, taking account of the views of stakeholders. Therefore, each Party commits to review, monitor and assess the impact of the implementation of this Agreement on sustainable development in its territory in order to identify any need for action that may arise in connection with this Agreement. The Parties may carry out joint assessments. These assessments will be conducted in a manner that is adapted to the practices and conditions of each Party, through the respective participative processes of the Parties, as well as those processes set up under this Agreement.

#### **Article 22.4 – Institutional mechanisms**

1. The Committee on Trade and Sustainable Development, established under Article 26.2.1(g) (Specialised committees), shall be comprised of high level representatives of the Parties responsible for matters covered by this Chapter and Chapters Twenty-Three (Trade and Labour) and Twenty-Four (Trade and Environment). The Committee on Trade and Sustainable Development shall oversee the implementation of those Chapters, including cooperative activities and the review of the impact of this Agreement on sustainable development, and

address in an integrated manner any matter of common interest to the Parties in relation to the interface between economic development, social development and environmental protection. With regard to Chapters Twenty-Three (Trade and Labour) and Twenty-Four (Trade and Environment), the Committee on Trade and Sustainable Development can also carry out its duties through dedicated sessions comprising participants responsible for any matter covered, respectively, under these Chapters.

2. The Committee on Trade and Sustainable Development shall meet within the first year of the entry into force of this Agreement, and thereafter as often as the Parties consider necessary. The contact points referred to in Articles 23.8 (Institutional mechanisms) and 24.13 (Institutional mechanisms) are responsible for the communication between the Parties regarding the scheduling and the organisation of those meetings or dedicated sessions.

3. Each regular meeting or dedicated session of the Committee on Trade and Sustainable Development includes a session with the public to discuss matters relating to the implementation of the relevant Chapters, unless the Parties decide otherwise.

4. The Committee on Trade and Sustainable Development shall promote transparency and public participation. To this end:

- a. any decision or report of the Committee on Trade and Sustainable Development shall be made public, unless it decides otherwise;
- b. the Committee on Trade and Sustainable Development shall present updates on any matter related to this Chapter, including its implementation, to the Civil Society Forum referred to in Article 22.5. Any view or opinion of the

Civil Society Forum shall be presented to the Parties directly, or through the consultative mechanisms referred to in Articles 23.8.3 (Institutional mechanisms) and 24.13 (Institutional mechanisms). The Committee on Trade and Sustainable Development shall report annually on the follow-up to those communications;

c. the Committee on Trade and Sustainable Development shall report annually on any matter that it addresses pursuant to Article 24.7.3 (Public information and awareness) or Article 23.8.4 (Institutional mechanisms).

## Chapter Twenty-five Bilateral dialogues and cooperation

### Article 25.1 – Objectives and principles

1. Building upon their well-established partnership and shared values, the Parties agree to facilitate cooperation on issues of common interest, including through:
  - a. strengthening bilateral cooperation on biotechnology through the Dialogue on Biotech Market Access Issues;
  - b. fostering and facilitating bilateral dialogue and exchange of information on issues related to trade in forest products through the Bilateral Dialogue on Forest Products;
  - c. endeavour to establish and maintain effective cooperation on raw materials issues through the Bilateral Dialogue on Raw Materials; and
  - d. encouraging enhanced cooperation on science, technology, research and innovation issues.
2. Unless otherwise provided in this Agreement, bilateral dialogues shall take place without undue delay at the request of either Party or of the CETA Joint

Committee. The dialogues shall be co-chaired by representatives of Canada and the European Union. The meeting schedules and agendas shall be determined by agreement between the co-chairs.

3. The co-chairs of a bilateral dialogue shall inform the CETA Joint Committee of the schedules and agendas of any bilateral dialogue sufficiently in advance of meetings. The co-chairs of a bilateral dialogue shall report to the CETA Joint Committee on the results and conclusions of a dialogue as appropriate or on request by the CETA Joint Committee. The creation or existence of a dialogue shall not prevent either Party from bringing any matter directly to the CETA Joint Committee.
4. The CETA Joint Committee may decide to change or undertake the task assigned to a dialogue or dissolve a dialogue.
5. The Parties may engage in bilateral cooperation in other areas under this Agreement on consent of the CETA Joint Committee.

### ARTICLE 25.2 Dialogue on Biotech Market Access Issues

1. The Parties agree that cooperation and information exchange on issues in connection with biotechnology products are of mutual interest. Such cooperation and exchange of information shall take place in the bilateral dialogue on agricultural biotech market access issues of mutual interest which was established by the Mutually Agreed Solution reached on 15 July 2009 between Canada and the European Union following the WTO dispute European Communities – Measures Affecting the Approval and Marketing of Biotech



Products WT/DS292. The bilateral dialogue covers any relevant issue of mutual interest to the Parties, including:

- (a) biotechnology product approvals in the territory of the Parties as well as, where appropriate, forthcoming applications for product approvals of commercial interest to either side;
- (b) the commercial and economic outlook for future approvals of biotechnology products;
- (c) any trade impact related to asynchronous approvals of biotechnology products or the accidental release of unauthorised products, and any appropriate measures in this respect;
- (d) any biotech-related measures that may affect trade between the Parties, including measures of Member States of the European Union;
- (e) any new legislation in the field of biotechnology; and
- (f) best practices in the implementation of legislation on biotechnology.

2. The Parties also note the importance of the following shared objectives with respect to cooperation in the field of biotechnology:

- (a) to exchange information on policy, regulatory and technical issues of common interest related to biotechnology products, and, in particular, information on their respective systems and processes for risk assessments for decision-making on the use of genetically modified organisms;
- (b) to promote efficient science-based approval processes for biotechnology products;
- (c) to cooperate internationally on issues related to biotechnology, such as low level presence of genetically modified organisms; and
- (d) to engage in regulatory cooperation to minimise adverse trade impacts of regulatory practices related to biotechnology products.

## CHAPTER 16 TRADE AND SUSTAINABLE DEVELOPMENT

### ARTICLE 16.6 Biological diversity

1. Each Party recognises the importance and the role of trade and investment in ensuring the conservation and sustainable use of biological diversity in accordance with relevant international agreements to which it is party, notably the Convention on Biological Diversity, done at Rio de Janeiro on 5 June 1992, and its protocols and the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington D.C. on 3 March 1973 (hereinafter referred to as “CITES”).
2. In that context, each Party shall:
  - (a) encourage the use of products which were obtained through sustainable use of natural resources and which contribute to the conservation and sustainable use of biodiversity, including through labelling schemes, taking into account the importance of trade in such products;
  - (b) implement effective measures, such as monitoring and enforcement measures, and awareness-raising actions, to combat illegal trade in endangered species of wild fauna and flora as listed in CITES, and as appropriate in other endangered species;
  - (c) implement, as appropriate, the decisions which were adopted under the international agreements referred to in paragraph 1, including through laws, regulations, strategies, plans and programmes; and

(d) exchange information and consult with the other Party at bilateral and multilateral levels on matters of relevance to this Article, including trade in wildlife and natural resource-based products, the valuation, mapping and assessment of ecosystems and related services, and the access to genetic resources and the fair and equitable sharing of benefits arising from their utilisation.

## FTA에서의 ABS 조항

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2019년 12월 31일 발행

**발행** 환경부 국립생물자원관

**편집** 환경부 국립생물자원관

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