

《名古屋议定书》的主要内容及其潜在影响

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Analysis for the main elements and potential impacts of Nagoya Protocol

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摘要

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摘要 《生物多样性公约》第10次缔约方大会(2010年10月,日本名古屋)通过了《名古屋议定书》,这为全面实现《生物多样性公约》的三大目标,特别是第三项目标(公平公正地分享因利用遗传资源所产生的惠益)迈出了关键一步。建立遗传资源及相关传统知识获取与惠益分享(ABS)国际制度是《生物多样性公约》过去10年来的一项主要任务,《公约》缔约方大会于2000年专门建立了“ABS工作组”,致力于该ABS国际制度的谈判。自2001年在德国波恩召开ABS工作组第1次会议到《名古屋议定书》达成,一共召开了9次工作组会议,其中第9次工作组会议召开了3次续会。《名古屋议定书》的主要内容包括:议定书目标;适用范围;获取遗传资源及相关传统知识的要求(事先知情同意程序);“共同商定条件”下公平分享因利用遗传资源和相关传统知识所产生的惠益;确保履约的措施,包括披露遗传资源来源与原产地,遗传资源合法来源证书和监测履约的检查点;能力建设等。谈判中最为核心的问题是遗传资源的定义是否包括衍生物,以及采取何种措施监测遗传资源的利用。因分歧太大,议定书文本未能规定在申请专利时强制性披露遗传资源来源及原产地,对建立履约的监测检查点也未严格要求,在处理收集保存库中遗传资源的获取与惠益分享方面也不太明确。中国是全球生物多样性最为丰富的国家之一,是遗传资源重要提供国。《名古屋议定书》的通过和实施将对加强中国生物遗传资源的保护及促进其公平惠益分享具有重要意义。中国需要加强国家层次的立法,以配合议定书的实施。

关键词: 生物多样性公约 获取与惠益分享 遗传资源 传统知识 潜在影响 ABS CBD

Abstract: The adoption of Nagoya Protocol (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) in the 10th Conference of Parties (COP10) (Nagoya, Japan, October 2010), is a key step to fully realize the three objectives of the Convention on Biological Diversity (CBD), especially the third objective of fair and equitable sharing of benefits arising from the utilization of genetic resources. To negotiate the international regime for access and benefit-sharing (ABS) of genetic resources and associated traditional knowledge (TK) is a main mandate of CBD in the past 10 years, and for implementation of the mandate, the Ad Hoc Open-ended Working Group on ABS was established in 2000. This working group convened altogether nine meetings during 2001 to 2010, of which the ninth meeting extended three resumed meetings till the COP10 because the negotiation is very difficult. The main elements of Nagoya Protocol are objective; scope; access to genetic resources and associated TK (subject to prior informed consent, PIC); fair and equitable sharing of benefits arising from the utilization of genetic resources and associated TK based on mutually agreed terms (MAT); measures to ensure compliance including disclosure of source and origin of genetic resources, certification of genetic resources with compliance, and check points for monitoring utilization of genetic resources; capacity buildings; etc. The core issue during the negotiation is whether derivative can be included in definition of genetic resources and another is how to monitor utilization of genetic resources. Duo to the strong argument, in the Protocol, the requirement of disclosure was not adopted, the check points were also not strongly required for monitoring, and in addition, the version is not very clear for the benefit-sharing of the genetic resources collected in the western gene banks accessed in the past time. As China is one of the mega-biodiversity countries and an important provider of genetic resources in the world, the adoption and implementation of Nagoya Protocol will be significant for China to enhance biodiversity conservation and to promote benefit-sharing with users. In particular China need to enhance legislation on ABS in national level.

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