International Seed Federation
Seed is Life

ISF adopts International Chamber of Commerce Position on Global Multilateral Benefit Sharing Mechanism (GMBSM)

JUNE 2018

A POSITION PAPER PREPARED BY THE
International Seed Federation

CONTEXT

ISF, as member of the International Chamber of Commerce, adopts the position published on 10 January 2018 "Global Benefit Sharing Mechanism: Views on the way forward" relating to the implementation of Article 10 of the Nagoya Protocol.

ISF agrees that no situations have been identified where it is not possible to exercise national discretion to grant prior informed consent.

Attached: ICC Submission "Global Benefit Sharing Mechanism: Views on the way forward" 10 January 2018

International Chamber of Commerce
Policy and Business Practices

GLOBAL BENEFIT SHARING MECHANISM: VIEWS ON THE WAY FORWARD

SUBMISSION

Prepared by the ICC Task Force on Access and Benefit Sharing

Summary and highlights

- Situations where it is not possible to grant or obtain prior informed consent
- Views on the way forward

INTERNATIONAL CHAMBER OF COMMERCE
The world business organization

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In response to Notification 2017-094, in particular to paragraphs (b) and (c) of this document, ICC is happy to share its views as a relevant stakeholder whose members have extensive global experience as users and developers of genetic resources. It also refers to its two earlier positions on a possible Global Multilateral Benefit Sharing Mechanism (The need for and modalities of a global multilateral benefit-sharing mechanism, *15 October 2015 (doc. no. 450/1096);* Business views on a global multilateral benefit-sharing mechanism (Article 10, Nagoya Protocol)*, 18 November 2011 (doc.no. 450/1069).*

Situations where it is not possible to grant or obtain prior informed consent

As indicated in our earlier position papers, granting prior informed consent is a matter of national discretion as enshrined in the CBD. We have not identified any situations where it would not be possible to exercise this national discretion and grant PIC if national law prescribes such a requirement. In practice, we recognize that implementation of the Nagoya Protocol by some Contracting Parties has not progressed sufficiently. However, the practical problems that currently exist with regard to implementing national administrative, legal, and policy measures should not be complicated by a discussion about the need for a GMBSM.

Since ICC made its last submission on Article 10, we have not become aware of any cases where it is fundamentally not possible to grant or obtain prior informed consent.

We accept that obtaining PIC from many Contracting Parties is currently very complicated in practice because they lack administrative processes, legislation and/or implementing acts to provide users and providers with the necessary legal certainty. Nevertheless, these national examples of incomplete or inadequate implementation of the Nagoya Protocol do not serve as relevant examples of cases where it is not possible to grant or obtain PIC.

Views on the way forward

With regard to pursuing work in the future on a GMBSM, ICC recommends - as stated in our submission in 2015 - that Contracting Parties should focus on implementation of the Nagoya Protocol at a national/regional level, paying particular attention to operational aspects in Articles 11 through 20.

ICC emphasizes that it would be premature at this time to negotiate an additional ABS tool such as a GMBSM because of two inter-related reasons: 1) the present bilateral ABS system is not running well, and 2) the full attention of policy makers is required to address the implementation challenges. As long as the current mechanism does not function correctly, attention and resources should not be diverted to additional, and even more complex, mechanisms. ABS must be grounded in practices that attain the objectives of the Nagoya Protocol (Article 1). It is important that ABS expectations are managed while also respecting national sovereignty and other principles of international law. Until those expectations are managed and the bilateral system as envisaged by the Nagoya Protocol is functioning correctly, the need for a GMBSM mechanism in addition to the current bilateral system cannot and should not be addressed.