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The Protection of Genetic Resources and Indigenous Knowledge – Disclosure of Origin on the International and Latin-American Agenda**

In 2006, a group of biodiversity-rich countries including Brazil, Peru, and India proposed a new Art. 29^{bis} to the WTO's TRIPS Agreement, which aims at protecting biodiversity by making it mandatory for patent applicants to reveal the origin of the biological resources or traditional knowledge from which the subject matter of the patent application is derived. Further, they shall provide evidence of compliance with the legal requirements in the providing country for prior informed consent for access and fair and equitable benefit-sharing of commercial uses. Dozens of other developing countries have voiced their support for this proposal. However, Brazil itself only managed to fully implement this so-called "certificate of legal provenance" in its national legislation by the beginning of 2007. This latest development is analysed, taking into account the respective legal situation in the Andean Community and in Costa Rica.

A. The Subject Matter of Protection – Genetic Resources and Indigenous Knowledge

The topic of genetic resources and indigenous knowledge has been a highly controversial issue in international fora ever since the so-called "megadiverse"¹ countries have observed the immense economic value of their genetic resources. According to studies on the commercial use of biodiversity, the annual market for products derived from genetic resources is between US\$500 billion and \$800 billion.² Industrial sectors which depend to a greater or lesser degree on biogenetic resources include pharmaceuticals,

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1 This term denotes a group of twelve countries which accommodate approximately 70% of biodiversity worldwide. It was created in order to provide a link between biological diversity and a certain degree of political responsibility. It is noteworthy that, apart from Australia, all other "megadiverse" countries are developing countries. All in all, a high diversity of species can mostly be found in warm and humid regions. Therefore, the tropical rainforests, which only represent 7% of the worldwide landmass, possess more than 90% of all terrestrial species according to estimates; see Telde, 23 May 2006, "22 de Mayo, Día Mundial de la Diversidad Biológica".

2 See DUTFIELD, "Intellectual Property, Biogenetic Resources and Traditional Knowledge" 18 (London/Sterling 2004: Earthscan).