



International Chamber of Commerce

The world business organization

Access and Benefit Sharing: General Observations and Positions

*Submitted for the 9th Conference of the Parties of the UN Convention
on Biological Diversity*

General observations

1. **Business can and is willing to offer important insights to the ABS-discussions:**
 - Business is committed to contributing constructively to substantive discussions in the access and benefit sharing (ABS) negotiations, including on the objectives, scope and main components of an International Regime. The business community has been an active participant in negotiations concerning access to and the sharing of benefits from genetic resources since even before the entry into force of the Convention on Biological Diversity (CBD) in 1993. The business delegation, coordinated by the International Chamber of Commerce, today represents the interests of various business sectors, including agricultural biotechnology, cosmetics, enzymes and fermentation, specialty chemicals and industrial biotechnology, farming, flavors and fragrances, forestry, herbal medicines, pharmaceuticals, and plant breeding¹. The outcome of the negotiations on ABS will have significant consequences for business. As a result and as a key stakeholder in this debate, business urges CBD member states to include ICC in all relevant meetings and negotiations.
 - Business plays an essential role in creating social and economic benefits from genetic resources, as well as in their sustainable preservation and use. It can assist in clarifying exactly how genetic resources are accessed, developed and commercialised and how to best ensure the sharing of benefits. Business can add considerable expertise in areas such as cost benefit and gap analysis, administrative management, and planning and resourcing. ICC would therefore urge CBD Member States to give full consideration to industry views.
2. **Benefits which can be shared accrue only if fair access is granted.** Unfair access practices occur in many forms. They can range from wieldy, opaque, and inefficient access procedures to blatant discrimination when access is denied to non-nationals by a national ABS regime. Clearly, access and benefits are inextricably linked. However, to date, the ABS discussions have tended to focus disproportionately on benefit sharing without an adequate review of the challenges associated with ensuring fair access to genetic resources.

¹ In alphabetical order

3. **Countries are interdependent in terms of genetic resources.** Most countries depend heavily on genetic resources accessed from other countries. This interdependence equally exists even for countries with extensive biodiversity.
4. **Different sectors use various methods to access, use and create value (and thus benefits) from genetic resources.**
 - **Genetic resources are utilized in many different ways:**
 - They are not always present in a final product. Rather, the genetic resource may be a step in a process, a research tool or catalyst, a part of a raw material, or an inactive component of a vaccine or herbal medicine;
 - They may be used in their original form, a modified form, or simply as a source of information (e.g. as a digital gene sequence) or be completely substituted by synthetic models;
 - They may be used as a fully functional organism or only as a sub-unit of an individual gene;
 - They may be consumed in an end-market sale or may be reusable;
 - The relationship between the accessed genetic resource and final products may be one-to-one, one-to-many, many to one or many to many.
 - **The complexity in movements of genetic resources and the variety of their sources also vary:**
 - The number of intermediate sales and purchases of genetic resources between access and end-market sale may vary from one to dozens;
 - Genetic resources might be available in in-situ conditions in one or in a number of countries;
 - Many genetic resources have long since been extracted from their original natural environment (examples include vectors, plasmids, and cell lines). Many have become commodities or staple commercial products in the trading system. They are also extracted for research by academic and public research institutes around the globe. Ex-situ collections are wide-spread and range from gene banks, zoos and aquariums to herbaria, botanical gardens as well as other public and private collections;
 - Every day, there are millions of common transactions (sales and uses) of genetic resources and of items in some way derived from or using genetic resources.
5. **Product development out of genetic resources involves long-term risk and investment, because:**
 - The duration of a product development cycle may take decades;
 - The success rate of new product development may vary, but often is very low;
 - Even when the success rate is high, margins may be low;
 - The usage of genetic resources may or may not be associated with the creation of intellectual property.

Positions

1. The business delegation fully supports the principles of the CBD.
2. A "one-size-fits-all" ABS regime would be impractical and ineffective for all stakeholders and counter-productive to the CBD's goals. Rather, a more nuanced, practical, and informed approach, respectful of the differences between the various sectors, is necessary.
3. Any international ABS regime should provide guidance to national ABS regimes, work to harmonize efforts among those national ABS regimes, and integrate international systems related to genetic resource management in other international conventions and organizations concerned. Most significant among them are: the United Nations Food and Agricultural Organization International Treaty on Plant and Genetic Resources for Food and Agriculture ((FAO ITPGRFA), the International Union for the Protection of New Varieties of Plants (UPOV), the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO). The mandates of these organizations should be respected, in particular with regard to
 - Requirements for IP-protection; and
 - The definition and protection of "traditional knowledge".
4. The Bonn Guidelines remain the best roadmap to develop and maintain an ABS regime, which should combine binding and non-binding elements.

Binding elements should include :

- basic principles concerning access, such as
 - One national focal point;
 - Non-discrimination;
 - Legal certainty;
 - Transparency;
- limits on applicability of ABS rules such as:
 - No retroactivity (no application to genetic material acquired prior to national ratification of the CBD and prior to national ABS legislation);
 - No application to genetic material made publicly available by any country legally possessing it;
 - Clear definition of essential terms like "genetic resource" (excluding pathogens and genetic material from human beings or of human origin) and "derivatives";

- Given the particularities of the plant breeding business, and its continuous use of a mix of genetic resources from different backgrounds, “Prior Informed Consent” (PIC) on the basis of “Mutually Agreed Terms” (MAT) with countries of origin are not suited for plant genetic resources accessed for plant breeding purposes;
- and basic rules on procedure
 - No introduction of a certificate of any kind, the absence of which may be taken as an indication of wrongdoing;
 -
 - No mandatory disclosure requirements in patent and/or PVR applications.

Document n° 450/1035

16 May 2008

* * * * *