



**Convention on
Biological Diversity**

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AD HOC OPEN-ENDED WORKING GROUP ON
ACCESS AND BENEFIT-SHARING
Sixth meeting
Geneva, 21-25 January 2008
Item 3 of the provisional agenda*

**COMPILATION OF SUBMISSIONS PROVIDED BY PARTIES, GOVERNMENTS,
INDIGENOUS AND LOCAL COMMUNITIES AND STAKEHOLDERS ON CONCRETE
OPTIONS ON SUBSTANTIVE ITEMS ON THE AGENDA OF THE FIFTH AND SIXTH
MEETINGS OF THE AD HOC OPEN-ENDED WORKING GROUP ON ACCESS AND
BENEFIT-SHARING**

Note by the Executive Secretary

Addendum

SUBMISSION FROM THE UNITED STATES OF AMERICA

1. The Secretariat is circulating herewith, as an addendum to the original compilation of submissions on concrete options on substantive items on the agenda of the fifth and sixth meetings of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing (UNEP/CBD/WG-ABS/6/INF/3), a submission from the Government of the United States of America.
2. The contribution has been reproduced in the form and language in which it was received.

* UNEP/CBD/WG-ABS/6/1.



United States Department of State

*Bureau of Oceans and International
Environmental and Scientific Affairs*

Office of Ecology and Terrestrial Conservation

The United States appreciates the ongoing efforts by both the Executive Secretariat and ABS Working Group Co-Chairs to further discussions on the potential nature and scope of an international regime on access and benefit sharing under the CBD. We note that, concurrently, countries are actively considering the question of the use and status of marine genetic resources beyond national jurisdiction under the auspices of the United Nations General Assembly.

The United States submits the following views for consideration at the Sixth Meeting of the Ad Hoc Open-Ended Working Group on Access and Benefit Sharing.

Certificates:

The United States supports the goal of establishing efficient and effective measures to aid in the use of genetic resources. We note that certificates have been proposed as a potentially useful tool to promote transparency, but we are concerned about their feasibility, practicality and costs.

We have closely followed the discussions and analyses of the many different proposed certificates models. Each model proposed has its merits and purposes, but none address every concern and each could lead to high transaction and administrative costs for both providers and users of genetic resources.

The United States underscores the need for a comprehensive, fact-based assessment of the advantages and disadvantages associated with any proposed certificates system. This assessment should include analyses of: the volume of material that will fall under the system; a life-cycle analysis of specimens and certificates; ways to simplify attaching a certificate, such as e-certificates; any legal impediments to implementation; and personnel, budgetary and infrastructure needed for both users and providers to implement and maintain the system.

We do not believe that the existing certification system in CITES provides a useful model for ABS in the CBD. We note key differences in the vast number of biodiversity transfers for material obtained under the terms of the CBD versus a limited list of known organisms listed on the CITES appendices. The taxonomic impediment alone may make many of the proposed certificate models scientifically and technically infeasible.

International Minimum Standards for Benefit Sharing:

Some governments have proposed adopting minimum benefit-sharing standards to prevent the dilution of benefits, particularly in cases where a provider country may lack the capacity to adequately represent its interests. We recognize this concern but believe that, based on practical and technical grounds, it is currently premature to address this topic. For example, until there is both a clear understanding of which uses and products are covered under CBD implementation regulations and a substantive analysis of the uses in different sectors, the baselines necessary for any analysis of standards cannot be established.

For instance, a standard for benefit sharing that is reasonable in the context of cosmetic or pharmaceutical uses for genetic resources may be unreasonable in the context of crop or livestock breeding and other agricultural or research uses.

Compliance with PIC and MAT:

The United States acknowledges each country's right to require PIC and MAT prior to granting access to genetic resources as well as the establishment of appropriate measures for compliance with PIC and MAT. We continue to work with our users to educate them about their potential responsibilities under PIC and MAT regulations, permits, and contracts, as may be required by different national laws.

Our main national research funding agencies—the National Science Foundation and the National Institutes of Health—strive to have all grantees comply with applicable access and use laws as a fundamental condition of funding. This condition has led to some grants being withdrawn because the investigators were not able to come to mutually agreed terms with countries of origin.

Patent Disclosure Requirements:

Discussions among intellectual property experts in WIPO and WTO show that there are many divergent views on the linkage between disclosure of the origin/source/legal provenance for genetic resources and the patent process.

We believe that these discussions, which have included consideration of specific case examples, support the view that requiring the disclosure of origin and related information in patent applications will not achieve the desired objectives of ensuring prior informed consent or compliance with equitable benefit-sharing. In

fact, these requirements may have negative impacts on the innovation incentives provided by patent systems and, consequently, on the benefits to be shared.

Instead, evidence has shown that contract-based compliance systems provide an effective means for achieving the objectives of access and benefit sharing.

The United States appreciates the inclusion of our comments in the synthesis paper presented to participants of the 6th Ad Hoc Open-Ended Working Group on Access and Benefit Sharing.
