



ABS WG-2 HIGHLIGHTS TUESDAY, 2 DECEMBER 2003

Delegates to the second meeting of the *Ad Hoc* Open-ended Working Group on Access and Benefit-sharing of the Convention on Biological Diversity (CBD) met in sub-working groups throughout the day. Sub-Working Group I (SWG-I) heard reports on experience with the Bonn Guidelines on Access and Benefit-sharing (ABS) and considered the use of terms and other approaches to the implementation of ABS arrangements. Sub-Working Group II (SWG-II) addressed measures to ensure compliance with prior informed consent (PIC) and mutually agreed terms (MAT), including the role of intellectual property rights (IPRs), and capacity building for ABS. A brief Plenary met in late afternoon to review progress.

SUB-WORKING GROUP I

REPORTS: The Secretariat drew attention to the compilation of submissions on ABS (UNEP/CBD/WG-ABS/2/INF/1). SWG-I Chair Ines Verleye (Belgium) invited views on experience with the Bonn Guidelines.

The EUROPEAN COMMUNITY (EC), GERMANY and CANADA noted awareness-raising activities regarding users' obligations. The EC highlighted ongoing discussions on a stand-alone disclosure requirement and certification schemes. FRANCE drew attention to relevant international instruments to address compliance. IRELAND noted its review of the state and use of genetic resources, and supported strong user measures.

GERMANY and NORWAY stressed amendments to their patent legislation to include disclosure of origin, with GERMANY noting that the requirement would not affect the granting of patents. IRAN said a group of specialists is identifying needs regarding ABS, prioritized benefit-sharing over access, and called for enhancing regional and international cooperation on ABS. NORWAY and the GAMBIA said they are developing ABS legislation, and DENMARK described the Greenlandic Home Rule Authority's proposed ABS regime. SOUTH AFRICA said its upcoming biodiversity legislation will provide for export permits for genetic resources. CHILE noted its efforts to regulate bioprospecting. TURKEY said its ABS legislation includes provisions on PIC, MAT and a material transfer agreement.

USE OF TERMS: The Secretariat presented documents on the use of terms (UNEP/CBD/WG-ABS/2/2 Section II, INF/1 and UNEP/CBD/COP-6/INF/40).

JAMAICA and Uganda, on behalf of the AFRICAN GROUP, said definitions would assist in drafting ABS legislation. AUSTRALIA, the EC and others said discussions on the use of terms should not prejudice negotiations on an international regime.

ALGERIA suggested revisiting the issue once the international regime is in place. CHINA suggested incorporating work on terms within the negotiating process for an international ABS regime.

Italy, on behalf of the EC Member States and acceding countries (EU), suggested that the Secretariat compile a glossary of terms by COP-8. BRAZIL and others called for an expert group on the use of terms to be established after COP-7. BRAZIL and the TULALIP TRIBES supported a definitions' glossary as a basis for developing a common understanding.

Following concerns expressed over representation and financial issues associated with convening an expert group, several delegates supported the UK and US proposals to conduct electronic consultations and use the Clearing-House Mechanism. CANADA and the ASSOCIATION IXA CA VAA FOR INDIGENOUS DEVELOPMENT AND INFORMATION called for indigenous peoples' involvement in the consultations. UGANDA, ETHIOPIA and ANTIGUA AND BARBUDA noted difficulties for some countries and indigenous communities to contribute electronically to the debate. SAINT LUCIA suggested that ABS focal points coordinate input from stakeholders. BRAZIL suggested that COP-7 mandate the ABS Working Group to decide on the way forward, and CANADA said the decision on convening an expert group would depend on the output of COP-7 regarding an ABS regime. SWITZERLAND recommended using existing CBD structures.

Chair Verleye said she would prepare a Chair's text on modalities for the compilation of definitions and an expert group on the use of terms.

OTHER APPROACHES: The Secretariat introduced its overview of other approaches to complement the Bonn Guidelines and assist countries in ABS implementation (UNEP/CBD/WG-ABS/2/2 Section III). Several delegates noted positive experience with bilateral and regional approaches, and ABS-related codes of conduct. JAMAICA expressed interest in adopting a code of ethics.

BRAZIL, EL SALVADOR, JAMAICA and others supported Mexico's proposal for an international certificate of origin, and JAPAN called for a study of its cost-effectiveness. Acknowledging the merits of certificates, the US warned against increased costs and delays.

ARGENTINA underlined the difficulty of assessing these approaches' efficacy, and CANADA stressed the need for further study to identify gaps warranting adaptation of current approaches. CHINA requested the CBD Secretariat to provide a further compilation of existing arrangements and approaches.

Chair Verleye said a Chair's text will be prepared.

**SUB-WORKING GROUP II**

COMPLIANCE MEASURES FOR PIC AND MAT: The Secretariat introduced documents on compliance measures (UNEP/CBD/WG-ABS/2/2 Section IV), and IPRs (UNEP/CBD/WG-ABS/2/3 and INF/2). The WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO) presented its technical study on disclosure requirements related to genetic resources and traditional knowledge (UNEP/CBD/WG-ABS/2/INF/4), stressing the need for collaboration between the CBD and the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC).

BARBADOS drew attention to CITES-type import/export regulations. MEXICO, ARGENTINA, BRAZIL, COSTA RICA and COLOMBIA supported an internationally recognized certificate of legal origin. NIGER stressed the need to assess the costs of implementing the Bonn Guidelines. CHINA cautioned against generalizing country situations. The FAO noted discussions on compliance in the framework of the International Treaty on Plant Genetic Resources for Food and Agriculture. The EU described measures on: a network of ABS focal points; corporate social responsibility; consideration of disclosure of origin in patent legislation; and discussions on a stand-alone disclosure requirement. NORWAY described the Nordic ABS approach, including measures to ensure compliance with international agreements. JORDAN highlighted the importance of cooperation agreements between users and providers. CANADA called for more information on compliance measures, and the UK on implementation of CBD Article 15 (Access to Genetic Resources).

CARE EARTH INDIA stressed the need for PIC of local communities, and FRIENDS OF THE EARTH INTERNATIONAL stated that communities must hold control of their resources. The INTERNATIONAL INDIGENOUS FORUM ON BIODIVERSITY (IIFB) suggested establishing an indigenous experts' committee on ABS.

Intellectual Property Rights: CANADA suggested deferring specific issues to WIPO's IGC. DENMARK supported addressing disclosure requirements in international patent law. SWITZERLAND suggested amending WIPO's Patent Cooperation Treaty.

FRANCE called for considering IPRs' positive impacts on industry's capacity to contribute to conservation, with the NETHERLANDS suggesting to consider sustainable use aspects. IRELAND welcomed further discussion on an international certificate of origin and noted that each country should decide on introducing mandatory disclosure requirements. AUSTRALIA supported voluntary disclosure of origin, while the US cautioned against its administrative and budgetary implications.

TANZANIA stressed the need for appropriate monitoring mechanisms. JAPAN endorsed defensive protection of genetic resources and traditional knowledge through IGC activities on a database and toolkit for use by patent examiners. ARGENTINA called for considering traditional knowledge as prior art, with BRAZIL underscoring that community registers are not required for such consideration. CHINA called for users' obligations according to relevant CBD principles.

CAPACITY BUILDING: The Secretariat introduced the document on capacity building (UNEP/CBD/WG-ABS/2/2 Section V) and the report of the Expert Workshop, including a draft action plan (UNEP/CBD/ABS/EW-CB/1/3).

The EU stressed the need for synergies and coordination with initiatives of indigenous and local communities. The GLOBAL ENVIRONMENT FACILITY (GEF) emphasized that funding will be made available. MALAYSIA and TANZANIA emphasized the need for a country- and demand-driven approach. Noting that no responsibilities or measures are identified in the draft, COLOMBIA, BRAZIL and SENEGAL asked that it be referred to as "guidelines" rather than "action plan."

While BRAZIL proposed extending discussions on capacity building to include the international ABS regime, SENEGAL and NIGER stressed that this would postpone action on capacity building. CHINA suggested including experience-sharing, and long-term planning, training and education. PAKISTAN emphasized capacity building for local and regional institutions and, with YEMEN, stressed links to the implementation of the Biosafety Protocol. JORDAN and YEMEN stressed many countries' need for technological and financial assistance.

CANADA emphasized the need for assessment, inventory and monitoring of genetic resources and traditional knowledge and, supported by the IIFB, highlighted that this should be upon invitation by indigenous people. ARGENTINA and MEXICO said the action plan lacks focus on implementation in developing countries. JAPAN outlined its bioindustry's training programmes and a regional biodiversity research cooperation project. NORWAY reported on the Trondheim Conference on technology transfer and capacity building.

The UN UNIVERSITY highlighted the importance of coordinated international capacity-building programmes to develop national access laws and facilitate contract negotiations. The UN DEVELOPMENT PROGRAMME reported on relevant activities and the need to prioritize awareness and valuation programmes, stakeholder participation, regulatory coordination and enforcement capacity.

SWG-II Chair Desh Deepak Verma (India) said he would prepare a Chair's text, following consultations with interested delegations.

PLENARY

SWG-I Chair Verleye and SWG-II Chair Verma reported on progress achieved. Working Group Chair Hans Hoogeveen (the Netherlands) presented a Chair's text on an international ABS regime, which includes a recommendation that COP-7 request the Working Group on ABS to elaborate and negotiate an international regime as soon as possible, and terms of reference regarding the nature, scope, elements and modalities of the regime.

IN THE CORRIDORS

While SWG-I continued sharing experience on the Bonn Guidelines, several Like-Minded Megadiverse Countries were chomping at the bit, lamenting that precious time was being wasted when an international ABS regime was hot on the plate. In the end, all items on the group's agenda were dealt with in an expeditious manner.

Meanwhile, delegates in SWG-II expressed satisfaction with the group's positive dynamics and were confident that discussions will lead to concise recommendations to COP-7. Some commented on the EC's statement on IPRs, which clearly indicates a will to consider a mandatory disclosure requirement in patent applications, noting that this may well represent a major policy shift in a predominantly user region.

Both sub-working groups completed discussions on their respective items in plenty of time for the afternoon Plenary. With most agenda items well on their way, the coast is now clear to tackle the issue which is likely to lead them into late-night deliberations as the week draws to a close, namely the international ABS regime.

THINGS TO LOOK FOR TODAY

SUB-WORKING GROUP I: SWG-I will convene at 11:30 am in Room I to consider Chair's texts on: the international ABS regime; use of terms; and other approaches.

SUB-WORKING GROUP II: SWG-II will meet at 11:30 am in Room II to consider Chair's texts on compliance measures and capacity building.

PLENARY: Plenary will convene at 5:30 pm in Room I to review progress.