

April 22, 2008

Mr. Keith H. Christie, D. Phil
Assistant Deputy Minister, Global Issues
125 Sussex Drive
Ottawa, Ontario
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Mr. Douglas George
Director, Intellectual Property, Information and Technology Trade Policy Division (TMI)
Department of Foreign Affairs and International Trade
111 Sussex Drive
Ottawa, Ontario
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Dear Mr. Christie and Mr. George:

On behalf of BIOTECanada, the Canadian Chamber of Commerce, Canada's Research Based Pharmaceutical Companies (Rx&D) and CropLife Canada, (collectively the "Canadian Industry Stakeholders"), thank you for taking the time on April 3rd, 2008, to consult with us on the topic of Access and Benefit Sharing (ABS) in preparation for the Ninth Conference of the Parties (COP9) of the Convention on Biological Diversity. Further information on the members of Canadian Industry Stakeholders is attached to this letter.

While the positions of the Canadian Industry Stakeholders have not changed significantly from our previous communication to you, we are pleased to reiterate our position and provide additional comments on the ongoing efforts of the CBD to create a legal framework for ABS. We believe that it is important to involve industry stakeholders early in the formulation of Government of Canada policy and continue to look forward to a more detailed, collaborative relationship with the Government of Canada and other stakeholders on this issue.

From the standpoint of the Canadian Industry Stakeholders represented in this letter, we believe there are two critical components pertaining to ABS that need to be considered: the international perspective and the domestic perspective. Our comments on both perspectives of ABS are guided by the principle that robust intellectual property protection regimes are absolutely critical to the development of innovative industries in Canada. As Canada strives to position itself in an increasingly competitive global economy, innovation has become critical to Canada's continued success. As participants in a knowledge-based economy, Canadians have a vested interest in their Government striving for a best-in-class intellectual property protection regime domestically, and that we vigorously promote and defend intellectual property rights internationally.

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1. International Perspective:

Support for CBD Objectives. Canadian Industry Stakeholders support the objectives of the Convention on Biological Diversity (CBD) – to provide a legal framework for the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising out of the utilization of Genetic Resources (GR).

Foreign ABS Regimes. We note that the CBD contemplates introduction of laws which facilitate access to GR for environmentally sound purposes and prohibits restrictions that run counter to the CBD's objectives. Canadian Industry Stakeholders therefore encourage the Government of Canada to advocate that those CBD members concerned with ABS introduce such laws, clearly identifying the national bodies with authority to grant access to GR and the procedures necessary to obtain prior informed consent to access.

Scope. We believe that the scope of any ABS framework should not include genetic resources and materials found *ex situ*. *In situ* resources and materials should be subject to formal contractual benefit-sharing agreements reflecting the mutually agreed terms. Patents and/or technologies that include genetic resources or derivatives thereof that are not derived directly from their natural state should not be covered by an ABS framework.

Contractual Basis. Canadian Industry Stakeholders also note that the CBD contemplates that the fair and equitable sharing of benefits should be on mutually agreed terms. We believe that this is the best way to ensure fair and equitable benefit sharing and is best achieved by agreement of contracts between, on the one hand, authorized providers of GR and associated traditional knowledge and, on the other, users. Wherever possible, bilateral contractual agreements between providers and potential users should be promoted with government participation limited to the legislative framework level.

No Patent Related Disclosure Requirements. ABS issues should not be linked to the international patent system. The patent disclosure requirement would have a serious and negative impact on the ability of Canadian Industry Stakeholders to continue to invest in the development of innovative technologies including vital medicines, crops with valuable traits, and other technologies which provide solutions to the most pressing environmental issues. The patent disclosure requirement will discourage the uptake of genetic resources for commercial use by harming the interests of GR holders, which will in turn reduce the possible benefits to be shared.

2. Domestic Perspective:

While Canadian Industry Stakeholders understand the motivation behind the Government of Canada's interest in the establishment of a domestic regime for ABS, and appreciate the fact that you have asked for our comments early in the process, it remains unclear to us whether a domestic ABS regime is truly needed at this point in time. However, assuming that the Government moves forward, we have identified several key concepts that must be taken into consideration.

Simple and Facilitative: If the Government concludes that there is a need for a Canadian ABS policy, it should be consistent with the Bonn Guidelines in that it must be simple, predictable and national in scope. Parties seeking to utilize Canadian GR cannot reasonably be expected to negotiate with the Government of Canada, in addition to several provinces and territories, First Nations, and other GR

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holders. There must be a “single-window” approach to accessing these resources, or else Canadian GR will not be utilized, to the ultimate detriment of potential users and holders. Canada’s federal, provincial and territorial jurisdictions must agree on ownership issues prior to implementation of any domestic GR policy. Moreover, any Canadian ABS policy should create a framework which encourages access to GR to the mutual benefit of users and holders, rather than creating bureaucratic or cost obstacles to usage. Consistent with our comments regarding international perspectives on ABS, any policy should emphasize bilateral contractual agreements between users and holders.

Forward-Looking: Any new Canadian policy on ABS must have a clear starting date. The Government should not seek to enforce the new policy on GR that was accessed prior to its coming into force, since this would create business uncertainty and be highly inequitable. Any new policy should therefore “grandfather” rather than impose new burdens on holders and users that already have agreements in place to access GR.

Do No Harm: Consistent with our international position above, Canadian Industry Stakeholders do not support any form of patent disclosure mechanism (even of a voluntary nature) in relation to a domestic ABS policy. We also note that several Canadian companies are currently accessing Canadian GR in a variety of industries under agreements from various levels of government. We would encourage the Government of Canada to consult with these companies to learn what best practices might be employed in the creation of a national ABS policy, and to ensure that any new policy does not result in additional regulatory burden on these companies.

Consistent with S&T Policy: *Mobilizing Science and Technology to Canada’s Advantage* [Canada’s Science and Technology Policy published in 2007] is focused on encouraging a more competitive and sustainable Canadian economy with the help of science and technology. The Strategy recognizes that the most important role of the Government of Canada is to ensure a competitive marketplace and create an investment climate that encourages the private sector to compete against the world on the basis of their innovative products, services, and technologies. Any future ABS policy should be built on and fully support this policy foundation and its economic goals.

Conclusions:

The Canadian Industry Stakeholders greatly appreciate the position that the Government of Canada has taken to date in these international negotiations in opposition to the inclusion of new disclosure requirements within the patent system. We ask that the Government of Canada maintain this reasonable and defensible position in opposition to any proposals that would seek to undermine the current balance of rights and obligations that exist within the Trade-Related Aspects of Intellectual Property Rights Agreement and related international agreements. With respect to domestic ABS discussions, we believe that the general concepts set out above should guide the Government with respect to both its internal deliberations, and in its discussions with other Canadian governments and stakeholders.

The Canadian Industry Stakeholders appreciate the Government of Canada’s continued collaboration and consultation with our respective industries on this important topic. We look forward to working with the Department of Foreign Affairs and International Trade, other federal departments, P/T governments, and other stakeholders to help provide practical solutions and an industry perspective on both international and domestic ABS related issues.

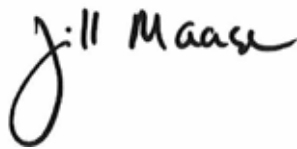
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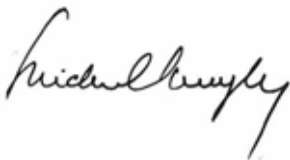
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About BIOTECanada

BIOTECanada is the national association representing the broad spectrum of biotech constituents including emerging and established companies in the health, agricultural, and industrial sectors, as well as academic and research institutions and other related organizations. BIOTECanada is a not-for-profit, non-government, industry-funded association. BIOTECanada is dedicated to the sustainable commercial development of biotechnology in Canada. BIOTECanada's goal is to inspire our domestic and international community to recognize the value of biotechnology in Canada and provide solutions to the challenges our constituents face.

About Rx & D

Canada's Research-Based Pharmaceutical Companies (Rx&D) is the national association representing over 20,000 men and women who work for more than 50 research-based pharmaceutical companies in Canada. Approximately 10,000 medical researchers are employed as a result of our member companies' investment in Rx&D. Of this total, about 4,000 work within Rx&D member companies and an estimated 6,000 work at universities, hospitals and research institutions. Member companies share a single primary objective: to discover new medicines that improve the quality of health care available for every Canadian.

About CropLife Canada

CropLife Canada is the trade association representing the developers, manufacturers and distributors of plant science innovations – pest control products, plant biotechnology and seeds with novel traits – for use in agriculture, urban and public health settings. CropLife Canada stands for safety and innovation supported by a foundation of continuous research and a strong commitment to stewardship.

About the Canadian Chamber of Commerce

The Canadian Chamber of Commerce, the Voice of Canadian Business™, is Canada's leading business organization speaking on behalf of a strong, diverse network of 170,000 members. Our membership of local chambers of commerce, associations and corporations represents businesses of all sizes and sectors, in every federal riding across Canada.