

Position paper of
Japanese bio-business sector for submission to the COP16



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Japan Cosmetic Industry Association (JCiA)

Japan Pharmaceutical Manufacturers Association (JPMA)

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General comments on the multilateral mechanism for benefit-sharing from the use of DSI;

Japanese bio-business believes that the conservation and sustainable use of biodiversity is a challenge that should be addressed by all global citizens, since all societies, including our own, depend on biodiversity. Therefore, we believe that the benefit-sharing mechanism of DSI (MLM) should be designed to encourage the participation of as many countries and a broad base of users as possible, and not to impose benefit sharing obligations on specific users. We are concerned that some proposals in the recommendation could create a divide in the industry's engagement to environmental issues, as it could create differences in business competitiveness between users and non-users of DSI. This may discourage research and development (R&D) and innovation using DSI, poses negative impacts on the continuity of businesses harnessing biotechnology and may delay the bio-economic transformation of society. To avoid these and achieve the broad engagement of users, incentive-based system is essential. Contributions to the fund should be recognized by all countries as fulfilling relevant benefit-sharing obligations under the CBD, and compliance certificates should be provided to ensure legal certainty with respect to the use of DSI. This is extremely important for businesses and could be a strong incentive for voluntary contributions to the fund.

Given the diversity of the ways in which DSI is used in the value/supply chain and the complex interrelationships with many scientific and social infrastructures and services, it is very difficult to develop a practical 'one-size-fits-all' mechanism that covers most commercial activities that use DSI. Therefore, we would like to reiterate that the benefit-sharing mechanism of DSI should be flexible enough to encourage the participation of as many countries and a wide range of users as possible.

Specific comments on the "Recommendation adopted by the Ad Hoc Open-ended Working Group on Benefit-sharing from the Use of Digital Sequence Information on Genetic Resources on 16 August 2024. 2/1. Further development of the multilateral mechanism for benefit-sharing from the use of digital sequence information on genetic resources, including a global fund" (CBD/WGDSI/REC/2/1) ;

1. Payment mechanism and options

- In order to ensure that the significance of benefit sharing is globally acknowledged and to generate meaningful levels of financial flow, it is essential to broaden the payer base as much as possible and reduce the financial burden on each. The payer base should not be narrowed down by limiting to developed countries, large and transnational companies, and specific sectors in business from the outset.
- In particular, small and medium-sized enterprises and start-ups lack the ability/resources to pay the fund. In order to enable them to focus on innovation, contributions should be based on their ability to pay, rather than on a flat rate. It should be left to the discretion of each country or sector whether to set a baseline threshold to exclude them from contributing or to what extent to apply the ability-to-pay basis.

- Option A and C (product/service-based approach):
For the following reasons, we do not support the approach of putting levy on products and/or services on the market that have benefited from the use of DSI:
 - Unless these options define “DSI” and its “use/utilization”, it is not possible to identify the products/services that are subject to benefit sharing. In addition, as it is likely that track and trace will be required across the entire R&D, value/supply chain, these options will obviously not work in practice.
 - With regard to Option C, it is unclear who will collect the 1% of the retail price and pay it into the fund. The retailers who are in a position to set the retail price and who are likely to pay a portion of their sales into the fund are not participating in this discussion. This may raise procedural concerns.
- Option B (sector/company-based approach):
 - For the following reasons, we cannot support the approach of designating specific sectors and obliging companies belonging to those sectors to contribute:
 - Since the way DSI is used varies considerably from user to user, even within the same sector, a flat-rate mandatory contribution could make it difficult for some companies to continue their business, and could lead them to avoid using DSI, thereby slowing down R&D and innovation. We reiterate that it is very difficult to develop a practical ‘one-size-fits-all’ payment system that covers most commercial activities that use DSI.
 - As we pointed out in the peer review of the CBD-commissioned study report¹, the rationale and process for identifying sectors that benefit from the use of DSI is still unclear. This option is not convincing and does not clearly tell who should pay for what reason. The terms “highly reliant on the use of DSI” and “directly or indirectly benefit from the use of DSI” need to be defined together with its clear criteria. However, it may be useful to explore whether it is possible to broaden the payer base and minimize individual financial burdens in a fair and reasonable way for potential contributors by providing a sound definition of “directly or indirectly benefit from DSI”.
- Option D (leave discretion to each country):
 - We understood Option D as a system based on voluntary contributions that would provide flexibility to encourage active engagement of companies in MLM without threatening and hindering business continuity and R&D and innovation, respectively. Therefore, this option could be the only practical and favorable system to implement that can flexibly respond to the diversity of sectors, sector-specific challenges, and future technological development.
 - However, there is a concern about a fragmented global landscape of benefit-sharing rules

¹ Studies commissioned further to decision 15/9 (CBD/WGDSI/2/INF/1)

if the formulation of rules is left entirely to the discretion of each country or sector/company to determine who, whether, and how much to pay. To avoid too much fragmentation, it is desirable that guidelines that minimize the fragmentation of the benefit-sharing landscape both domestically and globally will be developed.

2. Non-monetary benefit-sharing

- There are many sectors and companies that already have/had engaged in non-monetary benefit sharing in a variety of ways. These sectors and companies do so in a sustainable way based on their own management policies, capabilities and social missions, and should be encouraged, not mandated. If non-monetary benefit sharing is made mandatory, some companies may not be able to continue due to the stacked burdens of monetary and non-monetary benefit sharing.
- Non-monetary benefit sharing depends largely on the alignment of individual company policies with the needs of developing countries. In addition, there may be needs that cannot be met without mobilizing trade secrets and/or know-how, so it should not be made mandatory.
- On the other hand, the visibility of contributions to non-monetary benefit sharing can be recognized as an incentive for business. The design of a clearing house mechanism to showcase contributions and the methodology for evaluating its effectiveness in this regard should be developed by a multi-stakeholder group, including business.

3. Governance of databases

- Since public database services are one of the greatest and most important non-monetary benefit sharing, we should avoid imposing excessive obligations that make it difficult for them to continue providing their services or that force them to reduce the quality of their services. Any request for databases to require their users to comply with international ABS obligations with respect to DSI could lead to significant burdens such as monitoring compliance and dealing with violators, which may require changes in the policies and practices of public database management.
- Requiring proof of permission from the national authority of the country of origin of the genetic resource for new DSI registrations would add unnecessary procedures between public databases and data submitters, such as verifying the existence of certificates and their authenticity. This delays the DSI registration process and discourages users from submitting DSI. This is clearly inconsistent with paragraph 9 (e; Not hinder research and innovation) of Decision 15/9, and could be a major obstacle to preventing the spread of infectious diseases that could potentially lead to a new pandemic.

4. Incentives to participate in the MLM

- Contributions to the global fund should be recognized by all countries as fulfilling not only benefit-sharing obligations from DSI under the MLM, but also the requirements of countries with relevant national legislation and other international ABS fora. This could be supported by

certificates of compliance issued upon payment. We would like to reiterate that such internationally valid certificates of compliance with benefit-sharing obligation are a strong incentive for industry to participate in the MLM.

- This internationally valid certificates of compliance would also help to prevent stacking of benefit-sharing obligations.
- The proposal to issue certificates of compliance or receipts only for DSIs that have been uploaded to a public database with the approval of the country of origin of the genetic resources could lead to a requirement to trace DSI. This could be contrary to Decision 15/9, which denied the practicality of tracking and tracing DSI.

5. Fund allocation

- Funds should be used solely for conservation and restoration of biodiversity. We will continue to call for transparency and accountability in the distribution of the funds.

6. Avoidance of multiple payment

- In order to avoid double payments, countries that implement benefit-sharing from the use of DSI through national legislation should automatically lose their eligibility to receive funds from the MLM.