

**Comments for the Office for Global Affairs, Office of the Secretary, HHS
on The Implications of Access and Benefit Sharing (ABS)
Commitments/Regimes and Other Proposed Commitments
Being Considered Under a WHO Convention, Agreement, or Other International Instrument on
Pandemic Prevention, Preparedness & Response**

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As described in detail in the attached, prepared comments that we submitted to the U.S. International Trade Commission, and as further elaborated in the attached article that we published, there is a critical need for a new Pandemic Agreement to require governments to compel the sharing to third parties of trade secrets and non-trade-secret know-how and show-how (“trade secrets”) that are needed for development, regulatory approval, manufacturing, and distribution of all sorts of medical countermeasures. Without such mandatory technology sharing (transfer), the world will not be able to respond as expeditiously and effectively, and the inevitable shortages of such countermeasures will lead to inequitable distribution rather than to distribution according to prioritized world-wide health needs.

Such an obligation for government-compelled sharing of needed trade secrets will affect Article 9 research and development approaches; Article 10 sustainable production; Article 11 transfer of technology and know-how; Article 12 access and benefit sharing; and Article 13 global supply chains and logistics. Without assuring the sharing of such needed trade secrets, countries where pandemic diseases originate or otherwise arise may have little reason to share at the earliest times knowledge of pandemic disease-causing agents, as they may not be the recipients of any countermeasures that are developed from such agents. Alternatively, to the extent that such originating countries or countries where the agents arise are able to negotiate prioritized access to countermeasures that may be developed, those access contracts, agreements, or other obligations may then work to the detriment of other countries where health needs for the countermeasures are a higher priority.

The only feasible system to meaningfully address the need for countermeasures in advance of a pandemic that could arise anywhere in the world is a truly multilateral system that assures that countermeasures developed anywhere in the world are distributed on a worldwide basis according to prioritized worldwide health needs. Continuing to base development, approval, production, and distribution decisions on national technological proficiency, contractual power, or some other metric inevitably will both be less effective and highly inequitable. Further, the “quid pro quo” of providing early access to pandemic agents (that are sovereign genetic resources) must be a worldwide agreement to distribute developed countermeasures equitably based on worldwide health priorities. And the only way to do that effectively is to require by treaty that governments compel sharing of the needed technology for global R&D, regulatory approval, production, and distribution.

Additional details on compelling trade secret sharing are provided in the attachments.