

CLIENT ALERT

New Global Rules for Use of Marine Genetic Materials?

Feb.19.2015

Does your company use marine biological materials in its products, however small the amount? Or does your company or organization conduct research on marine biological materials for potential commercial application? Or is your company involved in global supply chains that involve marine materials? If so, keep reading.

After decades of discussions, in January 2015 countries from around the world agreed to develop a new legally binding instrument on what is known as "marine biological diversity beyond areas of national jurisdiction" under the United Nations Convention on the Law of the Sea (UNCLOS). This would cover the use of materials that are in ocean areas 200 miles or farther off a country's coastline (materials sourced within 200 miles are regulated by a country's domestic laws under UNCLOS and are potentially covered by the 2010 'Nagoya Protocol' which regulates genetic resources within a country's jurisdiction.)

The developing countries calling for these new rules argue that the world needs to conserve and sustainably use its oceans. There are hundreds of thousands of known marine life forms and potentially millions more we are beginning to discover. These resources offer enormous potential to humanity, from life-saving therapies to sustainable food sources. The proponents of this new treaty argue that these benefits are the world's common heritage. Benefits from use and exploitation of these resources should therefore be regulated, and distributed, beyond the initial user.

After years of debate, the United Nations has now agreed to open negotiations on the creation of a new international body to monitor—and perhaps regulate—the use of marine genetic resources. Negotiators will consider whether access to marine genetic resources should be subject to notification or authorization. Inevitably, issues of profits and costs will also come into play. Should companies that benefit commercially from products be required to pay into a global fund or be forced to transfer technology? If so, to whom would benefits go and on what basis would they be distributed? What products would be covered? Is a fish a marine genetic resource? Which actors in the very long chain from basic research to product sales would be required to share benefits?

Governments are only beginning to think about these issues. Their first step will be to organize a preparatory committee meeting (PrepCom), which will begin work on a treaty in 2016, with a mandate to propose elements of a treaty to the United Nations General Assembly in 2017. The General Assembly will then decide in 2018 whether or not to convene an intergovernmental conference to elaborate or adopt the text, depending on how far the PrepCom progresses.

Recent Happenings in APRM February 2015

- [The D.C. Circuit's POM Wonderful Decision: New Precedent for Advertisers Making Disease and Health Claims](#)
- [New Global Rules for Use of Marine Genetic Materials?](#)
- [Sunscreen Ingredients' New Path to U.S. Market Approval](#)
- [The European Chemicals Agency \(ECHA\) issues practical guidance on the Biocidal Products Regulation](#)
- [Advertisers in the Ring – a Roundup of This Month's Competitor Advertising Challenges: NAD Tasks Internet Service Providers and Vacuum Makers with Tailoring Their Claims to Their Support](#)

The U.S. has not ratified UNCLOS, but U.S. companies will be affected and the U.S. will participate in the negotiations. Moreover, in the era of global supply chains, if a country anywhere along the supply chain is involved – from source, to supplier, to researcher, to customer – the company will be affected.

As a result, companies that utilize marine genetic resources should consider weighing in on this negotiation – or risk seeing unworkable rules proposed by environmental officials with little appreciation for how the private sector or the research and development process works.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Patricia L. Wu

C&M International Vice President and Managing Director – Washington, D.C.

Phone: +1 202.624.2963

Email: pwu@crowell.com

David (Dj) Wolff

Partner; Attorney at Law – Washington, D.C., London

Phone: +1 202.624.2548, +44.20.7413.1368

Email: djwolff@crowell.com