



BioTrade and Access and Benefit Sharing: From concept to practice

A handbook for policymakers and regulators



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For further information on UNCTAD's BioTrade Initiative please consult the following website:

<http://www.unctad.org/biotrade> or contact: biotrade@unctad.org

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Purpose of the handbook

This handbook seeks to orient policymakers and regulators in the development and implementation of BioTrade and measures related to access and benefit sharing at the national level, consistent with the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, which entered into force in 2014.

Target audience

This handbook is mainly targeted towards policymakers and regulators in Parties to the Convention on Biodiversity and the Nagoya Protocol and where BioTrade and ABS-related activities and projects are taking place or may develop in the future. It may be especially relevant for countries that are in the process of defining or drafting their national ABS frameworks and at the same time working on BioTrade projects.

How to use this handbook

The handbook is intended to facilitate the process of development of sound legal, regulatory and administrative measures and assist daily practices of ABS regulators. It is a “how to do” tool, which is complemented with practical examples, case studies and checklists, which will facilitate its use and application mainly, albeit not only, by ABS and BioTrade policymakers and regulators. A distinction is made between policymakers and regulators. The former are responsible for designing, developing and approving policy, law and regulations whilst the latter are responsible for interpreting and applying these laws and regulations in practice, on a day-to-day basis. In some cases, policymakers and regulators may coincide. This depends considerably on how countries are organized administratively and institutionally.

Acronyms and abbreviations

ABS	access and benefit sharing	MADS	Ministry of Environmental and Sustainable Development (Colombia)
ABSCH	Access and Benefit Sharing Clearing-house (Secretariat of the CBD)	MAT	mutually agreed terms
AoO	appellation of origin	MEAs	multilateral environmental agreements
ATK	associated traditional knowledge	MINEPDED	Ministry of Environment, Natural Protection and Sustainable Development (Cameroon)
BIG	BioTrade Interest Group (Viet Nam)	MOSAICC	Micro-Organisms Sustainable use and Access regulation International Code of Conduct
BTFP	BioTrade Facilitation Programme	MoU	memorandum of understanding
CAF	Development Bank of Latin America	MTA	material transfer agreement
CBD	Convention on Biological Diversity	NBSAP	national biodiversity strategies and action plan
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora	NCHA	Federal Act on the Protection of Natural and Cultural Heritage (Switzerland)
CRISPR	clustered regularly interspaced short palindromic repeats	NGO	non-governmental organization
DDR	due diligence requirements	NTFP	non-timber forest product
ERuDef	Environment and Rural Development Foundation (Cameroon)	OECD	Organisation for Economic Co-operation and Development
FOEN	Federal Office for the Environment (Switzerland)	PGS	participatory guarantee system
GACP	good agricultural and collection practices	PIC	prior informed consent
GBIF	Global Biodiversity Information Facility	PoA	protected appellation of origin
GEF	Global Environment Facility	PTA	PhytoTrade Africa
GI	geographical indications	R&D	research and development
GMBSM	global multilateral benefit sharing mechanism	REDD+	Reducing Emissions from Deforestation and Forest Degradation
IEPI	Ecuadorian Institute of Intellectual Property	SCBD	Secretariat of the Convention on Biological Diversity
IFOAM	International Federation of Organic Agriculture Movements	SECO	Swiss State Secretariat for Economic Affairs
INIA	National Institute of Agrarian Innovation (Peru)	SDG	Sustainable Development Goals
IP	intellectual property	SME	small and medium-sized enterprise
IPEN	International Plant Exchange Network	SMTA	standard material transfer agreement
IPI	Swiss Federal Institute of Intellectual Property	TRIPS	Trade-Related Aspects of Intellectual Property Rights (World Trade Organization)
IPLCs	indigenous peoples and local communities	UEBT	Union for Ethical BioTrade
IRCC	internationally recognized certificate of compliance	UNCTAD	United Nations Conference on Trade and Development
ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture (FAO)	USDA	United States Department of Agriculture
		WIPO	World Intellectual Property Organization



EXECUTIVE SUMMARY



Since the Convention on Biological Diversity (CBD) was adopted in 1992, a new paradigm relating to the planet's natural capital has emerged. Contrary to the widely accepted legal precept that biodiversity is a "common heritage of humanity", individual States can now fully assert their exclusive entitlement to regulate and set up conditions for the access and use of their biodiversity, particularly their genetic resources through "access and benefit sharing" (ABS) regulations. The adoption of the CBD's Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (Nagoya Protocol), detailing the ABS and compliance obligations relating to genetic resources, and associated traditional knowledge (ATK), has only fortified this new ethos. The challenge now is how the Parties develop and implement the provisions of the Nagoya Protocol so that legal, regulatory and administrative measures contribute to and fulfil the objectives of the CBD while facilitating the emergence and scale up of BioTrade.

This handbook addresses some of the practical opportunities and challenges regarding ABS in two ways. Firstly, by presenting the story of BioTrade and UNCTAD's role, and how, since the creation of the concept 20 years ago, it has emerged as a concrete practical model for identifying and bridging the gap between stakeholders (from the grassroots to the regulatory level) and the public and private sector, as well as enabling the implementation of the CBD's objectives, namely conservation of biodiversity, sustainable use and benefit sharing. Secondly, it offers a practical and easy way to understand some of the key issues policymakers and regulators may need to consider when developing and implementing ABS and BioTrade measures, and projects, in compliance with related international frameworks.

The handbook has been structured to highlight key issues and challenges with suggestions at the end of each section for both regulators and policymakers. A distinction is made between a regulator (i.e. a person who mainly applies a law or regulation) and a policymaker who basically develops the rules and frameworks – often these two roles coincide.

Section 1 introduces key ABS and BioTrade Principles and outlines how they positively contribute to the advancement and implementation of recently adopted United Nations Sustainable Development Goals (SDGs) and other international and multilateral environmental agreements (MEAs). This section presents the basic content of and obligations under the Nagoya Protocol. Subject to national ABS frameworks, some BioTrade activities may be included in the Nagoya Protocol's scope, i.e. the benefit sharing rules being applicable to genetic resources, their genetic and/or biochemical compositions, and ATK. This will also depend on how national laws and regulations define the scope of their ABS frameworks.

In this respect, historically, BioTrade has encouraged the conservation of biodiversity, promoted sustainable use and secured the equitable sharing of benefits among the actors of its value chains owing to its fluid, non-mandatory and minimum standards compliance system. However, there are rarely laws or regulations relating to it, and, as such, policymakers are encouraged to design flexible, straightforward, transparent, practical and complementary ABS norms

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