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THE INTERFACE BETWEEN ACCESS AND BENEFIT-SHARING RULES AND BIOTRADE

IN VIET NAM



UNITED NATIONS

Note

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Contents

Note	ii
Acknowledgements	ii
Acronyms and Abbreviations	iv
Executive summary.....	v
I. INTRODUCTION.....	1
II. OVERVIEW	3
A. Viet Nam's biological resources.....	3
B. Genetic resources.....	3
C. Traditional Knowledge associated with GRs.....	3
III. NAGOYA PROTOCOL ON ACCESS AND BENEFIT-SHARING: STATUS IN VIET NAM	5
A. Implementation strategies.....	5
B. Snapshot: Viet Nam's National ABS Regulatory Framework.....	7
i. Genetic resources and their legal status	7
ii. Access to genetic resources in Viet Nam.....	8
iii. Benefit-sharing.....	10
iv. Treatment of traditional knowledge under the Regulations	12
v. Compliance and enforcement.....	13
IV. BIOTRADE AND ITS DEVELOPMENTS IN VIET NAM.....	17
A. The BioTrade concepts and principles	17
B. BioTrade in Viet Nam	18
C. Steps ahead.....	22
D. The Perception of BioTrade in Viet Nam.....	22
E. BioTrade in numbers.....	23
F. BioTrade Viet Nam: Challenges and additional actions in Viet Nam	23
V. ACCESS AND BENEFIT-SHARING RULES AND THE BIOTRADE APPROACH: AN OVERVIEW	25
A. BioTrade and Viet Nam's laws on biodiversity.....	25
B. Synergies, implementation and lessons learned.....	25
C. Differentiating between ABS and BioTrade	27
D. Implementing the BioTrade Principles and the Vietnamese ABS law.....	28
VI. POLICY AND REGULATORY OPTIONS AND RECOMMENDATIONS	30
GLOSSARY	34
ANNEX	35
Notes.....	39
References.....	39
Key Figures The Decree No. 65/2010/ND-CP Access to GRs procedures.....	9
Viet Nam ABS offences and sanctions.....	15
Results Chain for Scaling up of Ethical BioTrade activities within phyto-pharmaceutical sector in Viet Nam.....	20
The BioTrade Principles and Criteria and the ABS Standards.....	27
Key Tables The BioTrade Principles and Criteria	17
BioTrade sectors prioritized by countries and partners in Africa, Asia and Latin America.....	18
Partnerships and actors involved in BioTrade activities.....	20
ABS provisions vis-à-vis BioTrade Principles and Criteria	26

Acronyms and Abbreviations

ABS	Access and benefit sharing
ASEAN	Association of Southeast Asian Nations
BCA	Biodiversity Conservation Agency
BIG Viet Nam	BioTrade Implementation Group Viet Nam
BL 2008	Biodiversity Law of Viet Nam of 2008
BTFP	BioTrade Facilitation Programme
CBD	Convention on Biological Diversity
CITES	Convention on International Trade of Endangered Species of Wild Fauna and Flora
CRED	Centre for Rural Economic Development
FAO	United Nations Food and Agriculture Organization
GIZ	(Deutsche Gesellschaft für Internationale Zusammenarbeit) German Agency for International Cooperation
GR/GRs	Genetic Resource/s
IP	Intellectual property
IPRs	Intellectual property rights
ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture
IUCN	International Union for Conservation of Nature
MAT	Mutually agreed terms
MARD	Ministry of Agriculture and Rural Development of Viet Nam
MOH	Ministry of Health of Viet Nam
MOIT	Ministry of Industry and Trade of Viet Nam
MONRE	Ministry of Natural Resources and Environment of Viet Nam
MOST	Ministry of Science and Technology of Viet Nam
NIMM	National Institute of Medicinal Materials
PIC	Prior informed consent
PPC	Provincial People Committee
SECO	State Secretariat for Economic Affairs (Switzerland)
SIPPO	Swiss Import Promotion Programme
TK	Traditional knowledge
UEBT	Union for Ethical BioTrade
UNCTAD	United Nations Conference on Trade and Development
VACNE	Viet Nam Association for Conservation of Nature and Environment
VEA	Viet Nam Environment Administration
VIETRADE	Viet Nam Trade Promotion Agency
VIMAMES	Viet Nam Material Medical Society
VND	Vietnamese Dong
WHO	World Health Organization
WIPO	World Intellectual Property Organization
UNCTAD	United Nations Conference on Trade and Development
US\$	United States Dollar

EXECUTIVE SUMMARY

Viet Nam has enjoyed strong economic growth in the last 25 years. In fact, its GDP per capita growth has been among the fastest in the world averaging between 6.4 and 6.7 per cent annually since the 2000s. By the same token, the World Bank reports that about 30 million Vietnamese live close to the poverty line – that is about a third of the population being classified under the “poor” or “near poor” groups. A majority of the members of these groups are farmers, indigenous communities and those whose livelihoods depend on biodiversity. Obvious impediments of poverty aside, the same groups of people are also the most vulnerable to shocks from climate change, natural disasters as well as economic and health shocks.

In 1994, Viet Nam became a member of the Convention on Biodiversity (CBD). By being a Party to the CBD, Viet Nam had pledged to mainstream biodiversity considerations and sustainable use of biological resources (including equitable sharing of benefits from their use) in its policy-making agendas. Recognizing that biodiversity conservation and sustainable development cannot be successful without the participation of the poor, the Biodiversity Law of 2008 (BL 2008) was envisaged as a legal instrument which could integrate pro-poor principles and involve biodiversity holders at the grass roots level. Coupled with the Decree No. 65/2010/ND-CP (jointly, “the Regulations”), which details implementation procedures for the BL 2008, the Government attempted to put in place legislative and administrative measures which, from the findings of this report (see III.B Snapshot: Viet Nam’s national ABS regulatory framework from p. 7), are still unclear with respect to certain definitions and legal aspects-related access and benefit-sharing (ABS) and the demarcation of ministerial assignments relating to the State management of genetic resources’ (GRs) giving rise to impractical implementation of the Regulations. In addition, the Regulations put in place so far do not provide tools for compliance and enforcement (e.g. a national database for GRs and TK) which creates an arbitrary mechanism for sharing benefits and ambiguous roles of stakeholders in the ABS process. Overall and in consideration of the Regulations being legal instruments pre-Nagoya Protocol (Protocol), the provisions intended to satisfy the CBD requirements are too general to be functional and provide inadequate interpretation of the ABS rules while being compounded by the lack of supporting mechanisms to be applicable in practice. The subsequent entry into force of the Nagoya Protocol in 2014, Viet Nam’s consequent ratification of it and the growing impact of the Protocol domestically and internationally entail that the country is faced with a greater challenge to comply with the ABS rules and make them workable if it were to achieve its own sustainable development objectives.

On the back of these policy and administrative integration challenges, UNCTAD BioTrade, in collaboration with the Biodiversity Conservation Agency of Vietnam, Helvetas - Viet Nam and the recently created BioTrade Implementation Group (BIG Vietnam) and with the support of SECO Switzerland, has demonstrated a slow but steady rise as a bolster for sustainable development through trade and investment in biological resources in keeping with the objectives of the CBD and the Protocol. Although in legal terms, ABS and BioTrade are subtly different (see V Access and Benefit-Sharing rules and the BioTrade approach from p.25), these two concepts converge in a manner that BioTrade fortifies implementation of the ABS Regulations, and the Regulations become the enabler and promoter of BioTrade as a viable livelihood option for various actors in the value chain, especially the local and indigenous communities. The BioTrade Principles and Criteria particularly: Principle 3 (on fair and equitable sharing of benefits, Principle 5 (on compliance with national and international regulations and Principle 7 (on clarity of access rights and prior informed consent) give the means to its practitioners, albeit indirectly, to comply with the ABS Regulations.

Through the promotion of sustainable sourcing and use of biological resources e.g. medicinal and aromatic plants for trade, and distributing benefits fairly (monetary and non-monetary) and equitably sharing the benefits with the communities and the actors involved in the value chain, BioTrade practitioners are also able to comply with the benefit sharing principle of the Protocol (See V.C Synergies, Implementation and Lessons Learned on p. 25). Also, through its capacity development programmes coupled with the sensitization of ABS rights, local communities (stakeholders) are able to take part in the value addition, commercial and trade activities. Through this process, the communities play an active role in the negotiation of the mutually agreed terms (MATs) and are able to give Protocol compliant Prior Informed Consent (PIC). Essentially, since its inception in Viet Nam and despite the existing challenges noted in this report, BioTrade has proven itself as a working model on ABS compliance. Its preliminary projects results have created the basis for its long term development in the country.

The current revision and improvement of ABS Regulations in Viet Nam so that they are not only aligned with the definitions and obligations under the Nagoya Protocol but are also bespoke, clear and detailed legal instruments to incentivise both biological and genetic resource users and providers could close the gaps on the interaction of ABS and BioTrade. In the spirit of the principle of sovereignty of the State, such adaptation could prove to be an opportunity for Viet Nam to resolve how best it could regulate BioTrade activities vis-à-vis overseeing ABS through its legislative and administrative approaches. Subject to the extent of modification of the Regulations' clarity, scope and flexibility, BioTrade may fall under the Protocol and ABS rules which are of mandatory nature. However, it must be noted that the BioTrade achievements, in terms of the coverage of its Principles and Criteria, only provide, on voluntary basis, the minimum standard required by the ABS rules under the CBD and the Protocol. BioTrade projects and activities in the country will therefore still be largely dependent on the national programmes as guided by the revised ABS Regulatory framework, supportive administrative practice and technical assistance.

Finally, in order to promote a BioTrade-friendly implementation of the Nagoya Protocol and potentially introducing some BioTrade-related provisions in future and revised ABS regulations, this study provides a series of recommendations and proposals for the consideration by policy makers and regulators in Viet Nam. These recommendations do not only apply to Vietnam alone but they could also serve as a blueprint for other biodiversity-rich countries in the Mekong region as they share common challenges and opportunities, biological and genetic resources, traditional practices and communities.



I. INTRODUCTION

Located in the Indo-Burma Biodiversity Hotspot (IBBH), Viet Nam is ranked as the 16th most biodiversity-rich country in the world. It is home to more than 42,900 identified species, nearly 14,000 of which are recognized species of flora, 11,000 marine species and a remarkable number of rare endemic species. The Mekong River which boasts the world's largest inland fishery - accounting for up to 25 per cent of the global freshwater catch and providing livelihoods for at least 60 million people flows south through Viet Nam to the Mekong Delta, nicknamed the "rice bowl" of Viet Nam. With its abundant indigenous plant varieties, livestock breed, medicinal plants, herbs and associated traditional knowledge, it is unsurprising that Viet Nam's biodiversity has a crucial role in contributing to sustainable livelihoods over many generations through the provision of food security and health care, especially for local people living in remote areas who are directly dependent on resources exploitation.

With the growing concern about threats to its biodiversity, the Government of Viet Nam has introduced measures for its protection, conservation and development through the creation of national policies and implementation of international conventions and protocols it has signed up for post-Convention on Biological Diversity ("CBD"), one of which is the Nagoya Protocol ("Protocol"). Two years after it became a Party to the Protocol in April 2014, the Prime Minister issued Decision No. 1141/QĐ-TTg on 27 June 2016 approving a national scheme spanning from 2016 to 2025 to strengthen the government's management capacity of access to genetic resources and fair and equitable sharing of benefits arising from their utilization. To this effect, the Ministry of Natural Resources and Environment ("MONRE") was designated to coordinate with other related ministries and agencies in the drafting of a new decree to implement the Protocol, particularly on access and benefit sharing ("ABS") that will enhance the existing national legal framework. Such legal instrument aims to establish ABS systems that will define the way in which genetic resources can be accessed and how the benefits resulting from their utilization can be shared among users, providers and other related stake-holders as well as yield (maximum) benefits to users and providers, contribute to ecosystem conservation and support the livelihoods

of communities located where the genetic resources are found or accessed.

Historically, Viet Nam's commitment to sustainable use and conservation of its biodiversity dates back to 1995 when it ratified the CBD and launched its first National Biodiversity Action Plan (NBAP 1995) in the same year. Among its Prioritized Activities (within the framework of NBAP 1995) was to "promote international cooperation for biodiversity conservation by way of appealing to international organizations, foreign governments and individuals to provide technical and financial support and staff training to realise biodiversity action plans."¹ By 2003, the BioTrade concept was introduced in Viet Nam via UNCTAD's BioTrade Initiative ("BioTrade"). The intervention aimed to provide technical assistance to support partners to develop specific sectors of biodiversity products and services through a broad range of trade promotion tools. Such tools operate on BioTrade's concept of fostering activities of collection, production, transformation, and commercialization of goods and services derived from native biodiversity (genetic resources, species and ecosystems) under the criteria of environmental, social and economic sustainability. Between 2012 and 2014, BioTrade worked in close partnership with Helvetas Viet Nam to implement the project "The development of value chains for natural ingredient products." This project's key objective was for Viet Nam to be acknowledged internationally as a recognized supplier of natural ingredient products that were CBD compliant and as guided by the BioTrade Principles.

Nevertheless, in the face of the manifest linkages between Biotrade and ABS principles, there is a practical challenge for stakeholders to determine how BioTrade can adopt the mandatory ABS principles under the Protocol and how the implementation of certain aspects of the Protocol will impact BioTrade businesses and activities. On this account, UNCTAD through the BioTrade Facilitation Programme III (BTFP III) is working to develop policy options for the implementation of the Protocol on Biotrade, pitching towards ABS systems that are supportive of BioTrade activities. In line with this undertaking, UNCTAD offered technical support to countries, of which Viet Nam was a beneficiary. During the course of technical support, Viet Nam was provided a review of their national regulation on BioTrade-related issues, an in-depth analysis of the status of BioTrade and ABS in the country, and face-to-face training for interested stakeholders.

This report (i) identifies and explores main regulatory challenges in Viet Nam, (ii) addresses issues of concern and policy options to develop in response to (i), (iii) assesses the country's national competent

authorities' ABS frameworks supportive of BioTrade, and finally (iv) considers the outlook for businesses and other relevant stakeholders in line with the new obligations under the Nagoya Protocol in Viet Nam.



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