

Practical guidelines for equitable sharing of benefits of biological resources in BioTrade activities

Concept note

The UNCTAD BioTrade Initiative promotes trade and investment in biological resources in support of sustainable development, in line with the Convention of Biological Diversity (CBD). The BioTrade Principles and Criteria, which provide critical guidance for BioTrade activities, thus reflect and seek to advance the equitable sharing of benefits arising out of the utilisation of biodiversity. Few concrete mechanisms and procedures for the equitable sharing of benefits, however, are available to direct implementation. The need for practical tools for benefit-sharing is particularly noteworthy in relation to biological resources, which have not been the focus of international discussions but are increasingly addressed in national legislation. Moreover, biological resources are a significant element in a number of BioTrade sectors. As the BioTrade Initiative proceeds with the development of a verification framework derived from the BioTrade Principles and Criteria for its products, including those that include biological resources, practical tools for compliance with benefit-sharing principles and requirements are becoming indispensable. As a result, and following consultations with actors from the public and private sectors, the BioTrade Facilitation Programme (BTFP) is elaborating practical guidelines to facilitate the equitable sharing of benefits arising from the use of biological resources in BioTrade activities. These guidelines, which will consider and support existing legal and policy instruments related to equitable benefit-sharing, are expected to be applied by private enterprises along their value chain, with the support of National BioTrade Programmes and relevant regulating institutions at country level.

Background

The fair and equitable sharing of benefits arising from the utilisation of biodiversity is one of the central objectives of the Convention on Biological Diversity (CBD), and the basis of the primary obligations established for Contracting Parties. As a result, in the context of the CBD, benefit-sharing is an exceedingly broad concept. Article 15 addresses this objective of the CBD with regard to access to genetic resources. In addition, Article 8(j) seeks to encourage the equitable sharing of the benefits arising from the utilization of traditional knowledge and innovations.

Benefit-sharing is also an element in the provisions on access to, and transfer of technology (Article 16), exchange of information (Article 17), technical and scientific cooperation (Article 18), the handling of biotechnology and distribution of its benefits (Article 19, paragraphs 1 and 2), and financial resources and financial mechanism (Article 20 and Article 21).

Frameworks to facilitate fair and equitable benefit-sharing in particular contexts, though useful, have not yet developed practical guidelines for implementation. The Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of Benefits Arising out of their Utilization (Bonn Guidelines), perhaps the most significant, offers guidance on the potential scope of the mutually agreed terms and suggestions regarding the types of monetary and non-monetary benefits that could be covered and the timing of and mechanisms for the sharing of benefits. For example, it notes benefits should be shared fairly and equitably with all those identified as having contributed to the resources management, scientific and/or commercial process. Nevertheless, the structure of the Bonn Guidelines remains quite general and it focuses solely - as will be noted below - on genetic resources.

Equitable benefit-sharing is also a fundamental tenet of the BioTrade Principles and Criteria, which are based on the objectives of the CBD and other international sustainable development instruments. In particular, Principle 3 calls for BioTrade activities to equitably share the benefits derived from the use of biodiversity, which in turn entails informed, transparent, and inclusive interaction among all actors involved in the production and commercialisation of biodiversity products, among other factors. In addition, equitable benefit-sharing is also a key element in other principles. In Principle 4, socio-economic sustainability, for example, the importance of benefits reaching local communities through the generation of employment and the improvement of the standard of living is emphasised. Principle 7, which addresses the need for clarity about land tenure, use and access to natural resources and knowledge, also highlights the need to recognise the rights of actors providing traditional knowledge used in product development, valuing and rewarding them in the appropriate manner.

Box 1 - BioTrade Principles

The BioTrade Initiative and the BioTrade Facilitation Programme have adopted a set of BioTrade principles regarding products and services:

- Principle 1: Conservation of biodiversity
- Principle 2: Sustainable use of biodiversity
- Principle 3: Equitable sharing of benefits derived from the use of biodiversity
- Principle 4: Socio-economic sustainability (management, production and markets)
- Principle 5: Compliance with national and international legislation and agreements
- Principle 6: Respect for the rights of actors involved in BioTrade activities
- Principle 7: Clarity about land tenure, use and access to natural resources and knowledge.

Both criteria and indicators support these principles.

As in the CBD, however, there is still uncertainty about how equitable benefit-sharing in BioTrade activities should be complied with in practice. Companies struggle to determine how to engage actors, promote transparent and informed negotiations, balance monetary and non-monetary benefits, and generally best fulfil equitable benefit-sharing principles. There is little legal structure in place regarding equitable benefit-sharing, and even where laws and regulations exist, they are often not implemented. Moreover, even when compliance is sought, it is difficult for companies to show their work towards more equitable distribution of benefits. These issues become particularly significant as companies seek to achieve certification of compliance with BioTrade Principles and Criteria.

The BioTrade Facilitation Programme (BTFP) is currently developing a verification system for BioTrade activities, aimed at providing companies a roadmap that leads towards compliance with BioTrade Principles and Criteria. This verification scheme will establish international standards that will need to be fulfilled by participating companies in order to achieve BioTrade certification. The fair and equitable sharing of benefits will be a critical element of the verification framework. For example, the company will have to demonstrate that prices are based on negotiations between actors along the value chain, and – where it uses knowledge and practices that come from traditional knowledge – that it has developed consultation procedures according to the existing national or international regulations to access such knowledge.

Concrete and practical tools for the equitable sharing of benefits will be essential to allow and promote companies to realise the requirements of the BioTrade verification system, and therefore those of the BioTrade Principles and Criteria, and the CBD. Moreover, in 2006, the Conference of the Parties to the CBD noted the usefulness of guidelines in facilitating contributions from the

private sector.¹ The BTFP thus aims to support good practice with regards to benefit-sharing through guidelines that provide business and industry the practical tools to realise their significant contribution towards the conservation and sustainable use of biodiversity.

UNCTAD BioTrade Initiative approach to equitable sharing of benefits

The development of guidelines for benefit-sharing will complement and build on the BioTrade Initiative's range of activities. The UNCTAD BioTrade Initiative promotes trade and investment in biological resources in support of sustainable development, in line with the three objectives of the CBD. It provides support for activities of collection, production, transformation, and commercialisation of goods and services derived from native biodiversity, under criteria of environmental, social and economic sustainability. As a result, in addition to a set of trade promotion services, the BioTrade Initiative supports the elaboration and implementation of management plans, best practices, and other such guidelines in the field of sustainable use.

Box 2 - Supporting the equitable sharing of benefits: Advantages for the private sector

The private sector can make a significant contribution to the fulfilment of the 2010 biodiversity target and the objectives of the CBD. In addition, there is also a business case in adopting and promoting good practices, particularly in relation to equitable benefit-sharing, which includes:

- Increasing transparency;
- Improving accountability to other actors and stakeholders;
- Implementing social and environmental responsibility;
- Achieving recognition of progress towards BioTrade and CBD objectives;
- Supporting product differentiation strategies;
- Building stronger links with other contributors within the value chain;
- Further validating potential price differentials;
- Forming more constructive relationships with local communities; and
- Complying more easily with national, regional, and international requirements.

In the work of the BioTrade Initiative, a range of actors in biodiversity-related productive activities has expressed the need for guidelines to advance and facilitate compliance with the fair and equitable sharing of benefits. On the basis of its experience, the approach of the BioTrade Initiative to these guidelines will have several characteristics. First, it will be inherently practical, focusing on methodologies that are functional and dynamic. Second, it will initially focus on a particular industry sector, with later work extending the resulting methodologies to other areas. Third, it will address the use of biological resources, which are fundamental to several sectors of

¹ Decision VIII/17 on Private-sector engagement adopted by the Conference of the Parties to the Convention on Biological Diversity at its Eighth Meeting, Curitiba, 20-31 March 2006.

BioTrade, but where little debate or work has to date taken place. Finally, it will involve a range of stakeholders, including experts, participants in productive activities related to biodiversity, and the private sector, to ensure the outcome is practicable and efficient.

- *Practicability*: Facilitating policies that promote the conservation and sustainable use of biodiversity in the private sector requires a practical approach that provides concrete tools to effectuate often broad objectives and principles. In its work, the BioTrade Initiative focuses on developing approaches and methodologies to promote the application and integration of CBD objectives and principles into relevant programmes, policies, and strategies. As in its continuing activities on sustainable management plans and other guidelines to advance the environmental, social and economic sustainability of BioTrade activities, the BTFP is directing its work on benefit-sharing towards tangible and efficient instruments for companies to achieve a fair and equitable distribution of benefits at all the levels of the value chain.
- *Initial focus on natural ingredients sector*: Natural ingredients provide key opportunities for developing and least-developed countries rich in biodiversity. These natural ingredients are used for health, food, and cosmetic products, including extracts, herbs, and essential and vegetable oils. Industries for natural ingredients products are experiencing rapid growth worldwide, with increasing awareness among both companies and consumers of the importance of the conservation and sustainable use of biodiversity. The BTFP is already working with this sector in the development of the verification framework in which benefit-sharing guidelines will eventually integrate. Initial work on benefit-sharing guidelines will thus be designed to advance equitable sharing of benefits specifically in the value chain of natural ingredients.
- *Scope - Biological resources*: The main objectives of the CBD are the conservation of the components of biodiversity, their sustainable use, and the fair and equitable sharing of benefits arising from their utilisation. As a result, CBD provisions are relevant to all biological resources - living components of ecosystems with actual or potential use or value for humanity, such as microorganisms, plants or animals. Discussions on benefit-sharing, however, often focus only on the use of genetic resources - that is, the use of biological resources for their genetic material or information - within the framework of Article 15 of the CBD. The Bonn Guidelines, for example, adopted in 2002,

specifically address genetic resources. The scope of the proposed international regime on access and benefit-sharing is still unclear, with Parties and experts differing on whether access to and use of biological resources, when there is no utilisation of their genetic content, should be addressed.

The collection, production, transformation, and commercialisation of goods and services derived from biodiversity, however, clearly goes beyond genetic resources. BioTrade activities include trade in spices, herbs, fruits, nuts and other food; in wildlife and wildlife products; and cultivated and non-cultivated natural products used as ingredients in the cosmetic, pharmaceutical and food industries. All of these activities involve the use of components of biodiversity and clearly fall within the scope and spirit of the CBD. They are also specifically addressed in a number of national and regional legislations and agreements. The model legislation developed by the African Union, for example, addresses acquisition of all biological resources and their derivatives. Similarly, the draft Association of Southeast Asian Nations (ASEAN) framework agreement on the issue refers to access and use of biological and genetic resources as well as the derivatives thereof.

As a result, the work of BTFP will address benefit-sharing in the context of biological resources accessed and utilised not for their genetic content but for their several other values and uses.² The BTFP will thus provide guidance to BioTrade companies in the specific range of their activities and in an area in which practical tools for implementation are particularly lacking. In addition, BTFP work will also adequately consider the intangible elements of biological resources - i.e. the traditional knowledge, innovations, and practices associated with biodiversity - to advance compliance with relevant CBD principles and provisions

- *Participatory Process:* As in other guidelines and standards, the process towards development of benefit-sharing guidelines for the natural ingredients products sector is essential in itself. It will involve BTFP partners in Asia, Africa, and Latin America, BioTrade regional and national programmes, and private sector organizations from both

² Although issues related to the potential or actual use of genetic resources are also raised by some BioTrade activities mentioned above, including trade in wildlife.

importing and exporting countries.³ In addition, the BTFP will establish a working group of partners, private sector, and other interested organisations and support the development of practical and efficient mechanisms and procedures. Moreover, the guidelines will be developed with close consideration of existing work on access and benefit-sharing, particularly CBD COP Decisions, including the Bonn guidelines and other important outputs, and regional and national legislations or other measures whenever relevant (see Box 3).

Box 3 - Examples of legal and policy instruments on equitable benefit-sharing

Guidelines formulated under intergovernmental agreements and by international agencies

- CBD Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization
- Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to take place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities
- FAO International Code of Conduct for Plant Germplasm Collecting and Transfer
- Standard Material Transfer Agreement (SMTA) under the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)

Guidelines established by regional and economic integration organizations

- Andean Pact Decision 391 - A Common System on Access to Genetic Resources
- Draft Association of South East Asian Nations-ASEAN Framework Agreement on Access to Genetic and Biological Resources
- African Union - African Model Legislation for the Protection of the Right of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources.

National guidelines and guidelines established by national institutions

- Swiss draft guidelines on access and benefit sharing regarding the utilization of genetic resources
- Common Policy Guidelines for Participating Botanic Gardens on Access to Genetic Resources and Benefit-Sharing (Royal Botanic Gardens, Kew, and UK Department for International Development)
- NCI Policy on Benefit-Sharing - Letter of Intent (1990); Letter of Collection (1992); and the Memorandum of Understanding (1995) (National Cancer Institute of the US National Institutes of Health)

Guidelines established by NGOs

- Indigenous Peoples and Conservation - WWF Statement of Principles (World Wide Fund for Nature, Gland, Switzerland, 1996)
- ABS Management Tool (IISD, 2005)

Guidelines established by indigenous and local community organizations

- Draft Statement of Principles Regarding Biophysical Research in the Aboriginal Lands, Islands and Waters of Cape York Peninsula (Balkanu Cape York Development Corporation Pty Ltd, Cairns, Australia)

³ BTFP partners in Africa, for example, include PhytoTrade Africa, a centre of excellence for access and benefit sharing under the Southern African Development Community (SADC).

- Guidelines for the Conduct of Participatory Community Research to Document Traditional Ecological Knowledge for the Purpose of Environmental Assessment and Environmental Management (Dene Cultural Institute, Hay River, Northwest Territories, Canada, 1991)

Guidelines elaborated by relevant professional societies

- Code of Ethics and Standards of Practice (International Society of Ethnobiology 1998).
- Code of Ethics for Foreign Collectors of Biological Samples (Botany 2000 Herbarium Curation Workshop, Perth, Western Australia, October 1990. Modified April 1992)
- MOSAICC (Micro-organisms Sustainable Use and Access Regulation - International Code of Conduct)

Guidelines elaborated by the private sector

- Acquisition of Natural Resources for the Development of New Pharmaceuticals (Novo Nordisk Health Care Discovery, 1995)
- Agreement of Principles (Shaman Pharmaceuticals)
- Code of Practice (International Federation for Alternative Trade - IFAT Conference, New Windsor, Maryland, USA, May 1995)
- Discovering New Medicines from Nature (Glaxo Wellcome, UK, 1992)
- Policy for the Acquisition of Natural Product Source Materials (Xenova Discovery Ltd, 1998)
- Statement of principles on Indigenous Rights and Bioprospecting (Bristol-Myers Squibb, 1995)

Source: Website of the Convention on Biological Diversity (CBD)

Guidelines for fair and equitable sharing of benefits: Initial framework

The objectives and principles of the CBD, as well as the BioTrade Principles and Criteria, will provide the conceptual framework for the BTFP guidelines on fair and equitable sharing of benefits arising from the use of biological resources. In addition, the standards and characteristics of the verification system currently being developed for BioTrade activities will also be considered to ensure coherence and complementarity. As a result, the guidelines will have the following characteristics:

- **Objective:** To advance compliance with the BioTrade Principles and Criteria and therefore the objectives of the CBD in relation to the fair and equitable sharing of benefits arising from the use of biological resources. In particular, the guidelines will aim to provide practical means to ensure a fair and equitable negotiation of the distribution of income generated at all levels of the value chain of products derived from natural ingredients.
- **Scope:** Guidelines will cover the sharing of economic, social, and environmental benefits arising from products biological resources among actors along the value chain on the basis of the contributions of these actors in creating value.

- Stakeholders: The range of actors involved in relevant productive activities, as well as experts, representatives from the public sector, and other stakeholders will be encouraged to participate and contribute to the development of the guidelines.
- Link with other legal and policy instruments: The guidelines will be developed as to adequately consider, support, and enhance compliance with existing legal and policy instruments on the fair and equitable sharing of benefits of biodiversity, particularly those developed in the context of the CBD.

Next steps

Specific activities projected for 2006-early 2007 include:

- Conducting a scoping exercise of relevant standards, guidelines, and best practices (July 2006);
- Conducting several studies focusing on specific natural ingredients products to define needs and challenges related to benefit-sharing (July-August 2006);
- Identifying key experts, partners, and stakeholders for a core group on benefit-sharing, as well as a broader group of potential users of the guidelines (July-August 2006);
- Preparing a 10-15 page background note directed at potential users of the guidelines (August 2006);
- Holding a meeting of the core group to discuss background note and studies (September 2006);
- Developing an initial draft of the benefit-sharing guidelines;
- Disseminating guidelines for comments;
- Testing the guidelines in selected companies;
- Revising and finalising the guidelines;
- Holding a workshop to present final guidelines; and
- Elaborating a work plan to expand guidelines to other sectors.