

BioTrade and ABS in a Nagoya Protocol Era

Manuel Ruiz
in collaboration with
Véronique Rossow

Objective of this presentation

Undertake an overview of key and salient issues raised by the Scoping Paper entitled

“ *Facilitating BioTrade in a Challenging Benefit Sharing Policy and legal Environment: Options for Improved Action*”

BioTrade vs. Access to genetic resources and benefit sharing

BioTrade

- Benefit sharing from utilization of biodiversity (at all levels), often through and along a value chain
- Non monetary and monetary benefits (MAT)
- Prior informed consent (to sustainably use biodiversity and TK)

ABS

- Benefits arising, specifically, from (access to) and the utilisation of genetic resources (and derivatives)
- Monetary and non monetary benefits
- MAT (to define access and use conditions)
- PIC (to sustainably use genetic resources and derivatives, and TK)

Legal frameworks

BioTrade

- No specific BioTrade law
- BioTrade is affected by various sectorial laws and regulations
- Institutionally under environmental or trade sectors

ABS

- Many ABS measures and regulations
- No *specific* references to BioTrade under their scope, although some exceptions (South Africa) and exclusions (Peru)...
- Institutionally under the environmental sector, but often linked to other sectors

The realm of “classic” ABS

Typical Access reasons:

- Collecting biological samples *in situ* for bioprospecting purposes
- Complementing *in situ* collecting with ethnobotanical studies
- Accessing materials from facilities for bioprospecting purposes *ex situ*

The realm of “classic” ABS

Typical use examples:

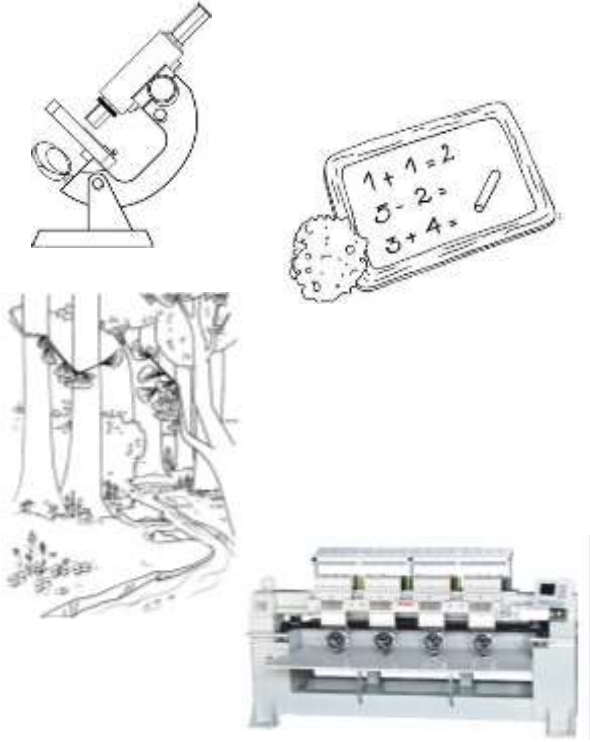
- Applying a technology to add value for commercial intensification:
Ex.: biotechnology to identify an active compound or useful molecule collected from a marine organism and transform it into a commercial/industrial product

The realm of BioTrade

The value chain ... as a means for:

- Sourcing, extracting, processing and commercializing ingredients for the cosmetics industry (eg. Essential oil)
- Cultivating and commercializing native crops (eg. sacha inchi, cocoa)
- Extracting and processing natural dyes and colorants from plant and animal sources without further valorization research

“Additional” benefit sharing situation from use of genetic resources and derivatives



Resource



Commercialization of product

Benefits sharing



BioTrade and / or ABS depending on who sought for access and purpose of utilization

What's new under the Nagoya Protocol

- Emphasis on “utilisation” of genetic resources and derivatives (i.e. Value that can be added)

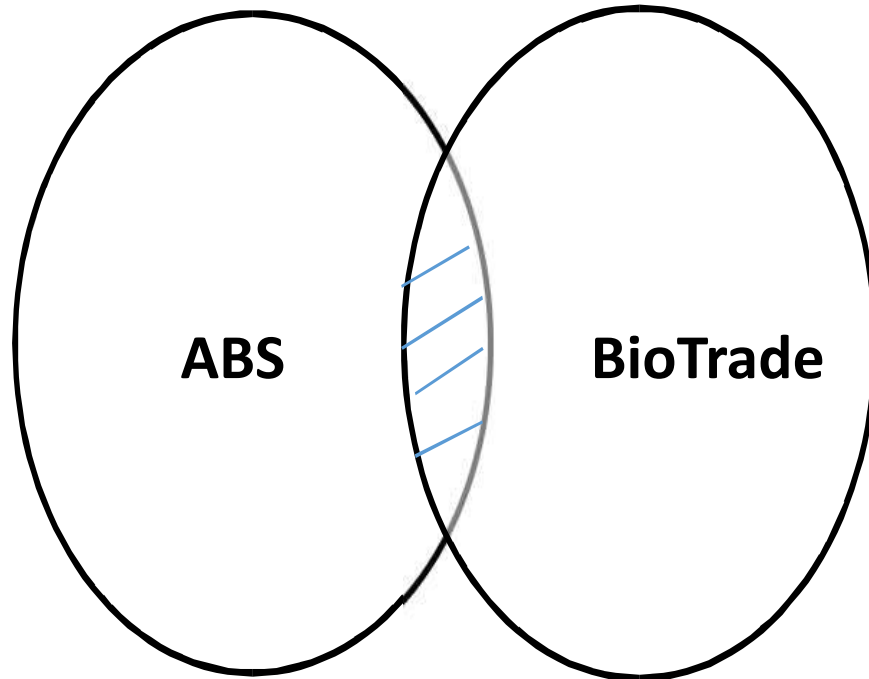


- User measures (i.e. Compliancy requirements)

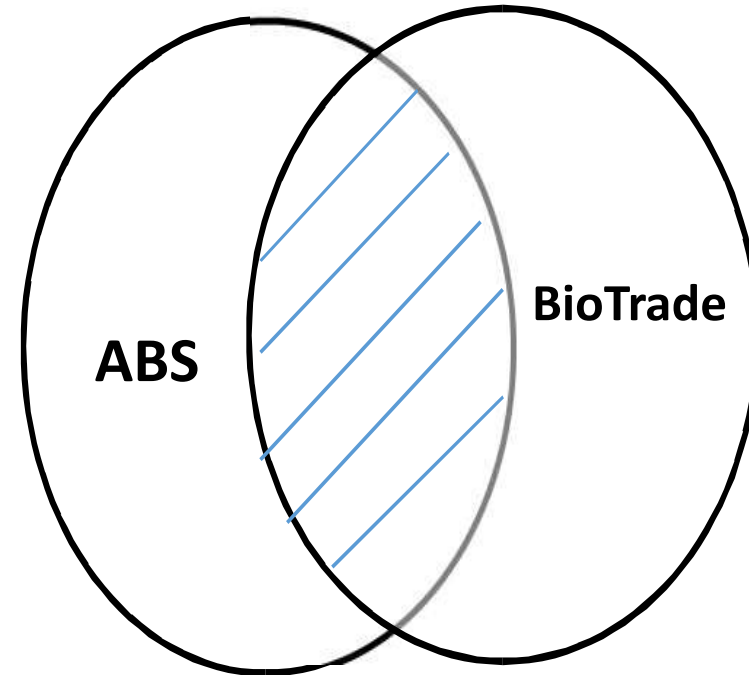
- Broadening of scope to include genetic resources PLUS derivatives (biochemicals) (i.e more actors involved – diversification and increase of skills and opportunities)



Post CBD



Post Nagoya



Why the need for rapid adjustment?

=> Implementation of the Protocol in the EU means:

- Due diligence requirements.
- Implementation of check points (including patent procedures, pre-commercialization stage).
- Conditions for research grants (from public sources).
- Ensuring that products based on biodiversity and genetic resources have been accessed and used in accordance with national ABS and other frameworks.

Why the need for rapid adjustment?

- Need for provider countries in particular to ensure that their original call for a protocol is reflected in concrete benefits (both generated *and* shared).
- Need for legal certainty (for all actors) as a means to enable sustainable and “Nagoya Protocol sensitive” biodiversity-based businesses and projects.

=> Define a workable and meaningful implementation of the Nagoya Protocol

What does this mean in practice?

Providing countries need to develop and *implement* national ABS frameworks which are supportive of and complementary to the Nagoya Protocol and which are effective and efficient at the same time

=> Valorization strategy through a “ownership” approach

Key recommendations

- CDB principles should be interpreted systematically where there is a balance between facilitating access and regulating.
- ABS should be transparent, clear and operational – this includes unequivocally defining scope and coverage. Legal uncertainty can be the main inhibitor of projects, businesses and investments.
- UNCTAD should develop a checklist, provide examples of real cases of linkages between ABS and BioTrade and extract useful lessons in benefit sharing.

Key recommendations

- Coordination among ABS and BioTrade authorities and practitioners is critical to dynamically adapt legal and regulatory frameworks.
- ABS frameworks should include BioTrade principles i.e. biodiversity based businesses which follow sustainability criteria (conservation, fair prices, etc.).
- Capacity building activities should be expanded and enhanced among all involved ABS and BioTrade actors. BioTrade has demonstrated certain difficulties in adapting and responding to ABS frameworks and requirements.

Key recommendations

- Users measures should also be strengthened in Provider's regulatory framework
- Existing ABS activities under BioTrade projects and businesses should be rapidly validated in light of the Nagoya Protocol implementation.

Key recommendations

- UNCTAD should undertake an analysis of the changing nature and landscape of R&D in genetic resources and assess their implications on BioTrade activities.
- Flexibility may be important to allow value chains to develop and grow and ensure potentially non anticipated R&D can be undertaken.
- Attention should be carefully given to non-monetary benefits and their contribution to conservation, sustainable and resilient economical development and local well-being.

Key recommendations

- User measures will only be effective if there are functional and operational ABS regimes in place in provider countries.
- Particular attention should be given to PIC, TK and benefit sharing in the case of indigenous people.