



Union for  
Ethical  
BioTrade

**SOURCING  
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## New rules on benefit sharing: Understanding implications for industry

### ABS, the Nagoya Protocol and ethical sourcing practices

In 2010, countries adopted new international rules governing access to biodiversity for research and development, and the sharing of resulting benefits called the Nagoya Protocol on access and benefit sharing (ABS). This Protocol is a new international agreement under the United Nation's Convention on Biological Diversity (CBD). Its aim is to facilitate the implementation of CBD ABS principles. These principles include the fact that research and development of biodiversity-based products can only take place with the approval of relevant countries and communities, which must also share in the benefits. These new rules, which will need to be implemented by national legislation, have a range of possible implications for companies working with biodiversity.

Yet ABS, though a central concept within the CBD, remains relatively unknown in the private sector. The Union for Ethical BioTrade (UEBT) has published a number of documents that help to explain ABS and other related concepts. This note gives a brief introduction to ABS, with references to more detailed UEBT documents found on the website [www.ethicalbiotrade.org](http://www.ethicalbiotrade.org).



### How are the benefits of biodiversity shared?

Prior to the CBD, which came into force in 1993, genetic resources found in biodiversity were seen as the heritage of humankind; that is, accessible without limitations. Research and development on genetic material contained in biological resources could be conducted without restrictions, and this had at times led to the creation of significant wealth for companies involved. Developing countries, which hold much of the world's biodiversity, became increasingly concerned that this exploitation of genetic resources did not result in benefits. In response to this concern, the CBD confers national governments the authority to determine and regulate access to their genetic resources.

According to the CBD, access to genetic resources can only occur with the prior informed consent of the provider country. In addition, if access is granted it is subject to mutually agreed terms, which would include the fair and equitable sharing of the benefits. Although prior informed consent is a principle set out by the CBD, how it is applied for and granted depends on the country in which the company is trying to work, as national legal systems can implement ABS principles in different ways. Similarly, the negotiation of mutually agreed terms will vary from country to country, and case by case.

In addition to genetic resources, ABS also covers traditional knowledge. Traditional knowledge can inform research and development and is often used as the initial basis for selecting, sampling and screening biodiversity. According to the CBD, ABS principles of prior informed consent and mutually agreed terms also apply to traditional knowledge.

More information on these concepts can be found in UEBT's ABS - Basic Information Sheet and Introductory Video found in the Resources section of the website, in the Benefit Sharing box.

### What does the UEBT standard say about benefit sharing?

The fair and equitable sharing of benefits derived from the use of biodiversity is at the core of UEBT; ABS principles are included in the Ethical BioTrade standard, both expressly and in the context of broader benefit sharing requirements. The UEBT third-party verification system assesses company policies and their implementation, and determines any changes that need to be gradually implemented to comply with Ethical BioTrade practices, including on ABS. In addition, UEBT provides technical advice and support on CBD-related issues, including through practical tools and workshops.



## Are patents bad for biodiversity?

In the context of ABS, patents are a controversial issue as some critics argue they are not in agreement with the CBD's principles on sharing benefits. In the past, use of patents for biodiversity-related products has been central to accusations of biopiracy, which refers to the appropriation of genetic resources or traditional knowledge without adequate authorization and compensation. For example, the patent on the Indian neem tree was revoked when it was pointed out that the claimed uses had been known in India for over 2000 years. However, as patents are used to help promote innovation and investment in research and development they can be useful in expanding the benefits that can be shared. In this respect, it is important that companies adopt patenting practices that are in agreement with the CBD's principles on benefit sharing.

In order to help companies develop CBD-friendly patent practices, UEBT has developed a set of principles for the use of patents in relation to biodiversity. In addition, UEBT has published a number of documents analyzing the use of patents in the cosmetics sector.

UEBT's introductory video on Biopiracy, UEBT Principles on Patents and Biodiversity, and the UEBT Series on Trends in Patents, notes 1-4, can be found in the Resources section of the website, in the Benefit Sharing box.



## The Nagoya Protocol

In October 2011, the Conference of the Parties of the CBD adopted the Nagoya Protocol on Access and Benefit Sharing. The protocol establishes a new set of rules and procedures that aims to advance the implementation of the CBD ABS principles. The Nagoya Protocol is a binding international instrument and all countries that sign and ratify it will have to integrate it into their national legal systems. In practice, this means that the number of countries with national ABS regulations is likely to increase.

## What does the Nagoya Protocol mean for companies?

In addition to providing rules for the implementation of ABS, the Nagoya Protocol also helped clarify under what circumstances ABS is applicable. Under the protocol, 'the utilization of genetic resources' includes research and development of bioactive compounds as ingredients, and not just research on genes and DNA. This is a particularly important clarification for companies in the food and personal care sectors as they often use bioactive compounds found in biodiversity as the starting point for new ingredients. This definition underlines the need for all companies working with biodiversity-based ingredients to consider the relevance of ABS to their activities and review their relevant policies and practices.

More information on the Nagoya Protocol and how this will affect companies researching natural ingredients can be found in UEBT's Technical Brief on the Nagoya Protocol, in the Resources section of the website, in the Benefit Sharing box.



## Contact UEBT

UEBT is a membership-based, non profit organisation based in Switzerland.

For more information on UEBT, its members, the UEBT standard, technical briefs, and news up-dates visit

[www.ethicalbiotrade.org](http://www.ethicalbiotrade.org)

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