

Access and benefit sharing: Understanding implications for industry



What is ABS?

In the CBD, ABS refers to the system for access to genetic resources and associated traditional knowledge and the fair and equitable sharing of benefits arising out of their utilization, on the basis of prior informed consent and mutually agreed terms. In many of the laws and regulations implementing the CBD, as well as in the Ethical BioTrade standard, access and benefit sharing requirements extend more broadly to biodiversity-based research and development, as well as subsequent applications and commercialization activities.

Implementation of the ABS principles set out by the CBD takes place through domestic legislation. For example, how and when companies must obtain prior informed consent depends on the country in which they are seeking access. Similarly, the content of the mutually agreed terms will depend on local requirements and specific circumstances.

What does the Ethical BioTrade standard say about ABS?

Fair and equitable sharing of benefits is at the core of UEBT, as are other CBD principles such as conservation and sustainable use. ABS principles are expressly included in the Ethical BioTrade standard. For example, even if there are no relevant legislative or regulatory requirements, access to biodiversity and associated traditional knowledge for research and development must be subject to prior informed consent and based on mutually agreed terms, including on sharing of benefits. ABS principles are also reflected in the context of other requirements linked to equity and benefit sharing. The information used in sourcing negotiations, for instance, must be complete and accessible to the parties involved. Companies must also contribute to sustainable development goals in sourcing areas, as defined by producers and their local communities.

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 the Ethical BioTrade standard, including on ABS. In addition, UEBT provides technical advice and support on CBD-related issues, including through training and practical tools.

ABS, the Nagoya Protocol and ethical sourcing practices

In 2010, countries adopted new international rules governing access to biodiversity and associated traditional knowledge for research and development, and the sharing of resulting benefits. The Nagoya Protocol on Access and Benefit Sharing (ABS), an international agreement under the United Nation's Convention on Biological Diversity (CBD), aims to facilitate the implementation of CBD principles on ABS.

These principles require research and development of biodiversity-based products to take place only with the approval of relevant countries and communities, which must also share in the benefits.

ABS rules and principles have a range of implications for companies working with biodiversity. Yet ABS remains relatively unknown in the private sector. The Union for Ethical BioTrade (UEBT) has published a number of documents that explain ABS and provide guidance on tools and approaches. This note gives a brief introduction to ABS, with references to more detailed UEBT documents found on the website www.ethicalbiotrade.org.



Are patents bad for biodiversity?

In the context of ABS, patents are controversial for their potential to undermine the implementation of ABS principles. 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.

Patents can be important tools to promote innovation and investment in biodiversity-based research and development. If utilized appropriately, they can also be useful in recognizing contributions to new biodiversity-based products and processes, and expand the benefits that can be shared. In this respect, it is imperative for companies committed to ethical sourcing practices to adopt patenting practices that respect ABS principles.

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 specifically focusing on patents and the cosmetics sector.



The Nagoya Protocol



In October 2010, the Nagoya Protocol on ABS was adopted as a set of rules to advance the implementation of the CBD ABS principles.

The Nagoya Protocol is a binding international instrument under the CBD. 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 ABS requirements will increase. The Nagoya Protocol also establishes mechanisms such as a clearinghouse for ABS information exchange.

What does the Nagoya Protocol mean for companies?

The Nagoya Protocol clarifies the scope of ABS - under what circumstances ABS requirements are applicable. According to the Nagoya 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 point for companies in the food and personal care sectors, which often analyze and 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.

UEBT resources on ABS

These resources, available on the UEBT website: www.ethicalbiotrade.org, provide additional information on ABS:

- The Ethical BioTrade standard
- The Introductory Video on ABS
- The ABS Basic Information Sheet
- The Technical Brief on the Nagoya Protocol on ABS
- The Introductory video on patents and biodiversity
- The Principles on Patents and Biodiversity
- The Notes on trends in patents, cosmetics and biodiversity.

Contact UEBT

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