Informal expert workshop on practical guidelines for equitable sharing of benefits of biological resources in BioTrade activities

Institut du développement durable et des relations internationales (Iddri)
6, rue Général Clergerie, 75116 Paris, France

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Meeting Report

This informal UNCTAD BTFP workshop aimed to promote discussion and concrete inputs towards a practical and effective approach to facilitating equitable benefit-sharing in the context of BioTrade activities. The workshop brought together a small group of experts on different aspects of benefit-sharing and BioTrade activities and companies working with products derived from biodiversity, both in importing and exporting countries. Plenary discussions took place on the basis of presentations on the challenges and potential solutions for a more equitable sharing of benefits derived from the sustainable use of biodiversity in the BioTrade context. Working groups then conducted an in-depth discussion of a concept note outlining the scope, specific objectives and potential elements of the BioTrade guidelines on benefit-sharing. In addition, during follow-up conversations on September 15th, a smaller group of participants, building on work conducted the previous day, discussed a revised framework for the BioTrade guidelines, as well as concrete suggestions regarding content and language.

BioTrade and equitable benefit-sharing

The introductory session of the workshop focused on the importance of equitable sharing of benefits of biological resources for BioTrade activities. Benefit-sharing is a critical element of the sustainable use of biodiversity under the Convention on Biological Diversity (CBD).1 As a result, it is also a fundamental tenet of the BioTrade Principles and Criteria. In the BioTrade verification framework, aimed at providing companies a critical path that leads towards compliance with BioTrade Principles and Criteria, benefit-sharing will thus have a central role.

In addition, it was noted that addressing benefit-sharing is increasingly important for companies working with biodiversity. Reasons include relevant requirements stemming from regional or national legislation, as well as growing public awareness of the issue. In this regard, addressing benefit-sharing is both a necessity and an opportunity for the private sector. Companies are in a position to make a significant contribution to the conservation and sustainable use of biodiversity. Moreover, there are a number of

1 References were also made to the traditional knowledge provisions in the CBD, which address the sharing of benefits derived from the use of the knowledge, innovations, and practices of indigenous and local communities relevant for the conservation and sustainable use of biological diversity.
specific advantages of taking on this challenge, including attaining reliability within supply chains; supporting product differentiation strategies; and building stronger links with other contributors within the value chain.

The role of the BioTrade guidelines on benefit-sharing would be to facilitate the implementation of benefit-sharing in BioTrade activities and thus support more economic, social, and environmentally sustainable value chains for products of biodiversity. Discussion among participants highlighted the importance of such contributions to BioTrade activities, noting the need for further guidance and methodologies in regards to the equitable sharing of benefits.

A clarification sought by participants referred to the link of the BioTrade guidelines with CBD provisions on benefit-sharing. One of the objectives of the CBD is the fair and equitable sharing of benefits arising from the use of genetic resources. Article 15 thus requires access and distribution of benefits in relation to genetic resources to take place on the basis of prior informed consent and mutually agreed terms. The issues addressed by the CBD working group on access and benefit-sharing have resulted from these provisions and its discussions thus focus exclusively on genetic resources.

Nevertheless, equitable benefit-sharing also arises in the context of the second objective of the CBD: the sustainable use of biodiversity. In this context, the need and importance of benefit-sharing extends not only to genetic resources but to all components of biodiversity. The Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity, for example, adopted by the Seventh Conference of the Parties of the CBD, include several references to this effect.

As a result, it is within its work towards the sustainable use of biodiversity that the BioTrade Initiative is addressing benefit-sharing – which is thus focused on biological resources more generally. In this regard, the BioTrade guidelines on benefit-sharing will be inherently different than other tools that address genetic resources more narrowly in the context of the third objective of the CBD.

Several issues to consider within this approach were raised in discussion, including the difficulties in distinguishing, in practice, genetic and biological resources and the related traditional knowledge. Similarly, the possible need to further clarify distinctions within biological resources – to more clearly exclude traditional commodities, for example – and between cultivated and wild species was noted. Nevertheless, participants agreed that the guidelines should not focus on definitions, but rather find practical and relatively simple mechanisms to promote benefit-sharing in the BioTrade context.

Benefit-sharing and the private sector: Challenges and opportunities

Following the introductory session, a roundtable discussion focused on the experiences of several companies and trade associations in implementing benefit-sharing along their value chains. On the basis of specific cases, such as the "breu branco" in Brazil, the "huito" or "jagua" in Colombia, and several cases in Southern Africa, participants discussed some of the difficulties and issues to be addressed for a
more equitable sharing of benefits in the context of natural ingredients. Various approaches to benefit-sharing were presented, reflecting not only the growing interest of the private sector on this issue, but also the emerging wealth of work that the BioTrade Initiative will be able to consider and build upon.

A range of challenges for the equitable sharing of benefits also emerged from these discussions. For example, the scope and complexity of many national access and benefit-sharing laws make the process exceedingly long and difficult, as well as increased transaction costs. In this regard, it was noted that policies and strategies developed by companies and other organisations, while always adequately accommodating relevant legal requirements, can help clarify and facilitate the process. In particular, one of the areas where these policies and strategies have focused – and where more work is needed – is making negotiations more balanced and efficient. Participants noted negotiations were often extensive, which had a negative impact on the pace of product development and commercialisation. The lack of awareness among actors of rights and responsibilities, for example, can significantly complicate and lengthen negotiations.

Participants shared experiences on addressing some of these challenges. Work to build trust among actors in the value chain was seen as particularly important for more equitable negotiations. Defining information on prices, volumes, and market requirements on the basis of knowledge of the species, management plans for the resource, and discussion with communities and producers, and clearly including this information in the contracts, was one strategy shared in discussions. Another effective strategy pointed out was working in partnerships, both with actors within and outside the value chain. Potential partnerships with companies or universities working on research and development, with governments, and with local communities and producers, were mentioned during the discussions. To form effective partnerships, it is necessary for actors along the value chain to understand their responsibility for the sustainable use of the biological resources and to consider the commercialisation of biodiversity as an opportunity to fulfill this responsibility as well as to improve their incomes and livelihoods. Outside the value chain, it is also critical, for example, for governments to recognise and facilitate the sustainable use of biological resources.

Another issue addressed in discussions was the generation and distribution of benefits, both monetary and non-monetary. Participants noted that generating benefits is a pre-requisite to benefit-sharing, with relationships within the value chain needing to be established in a way to add value at each stage and work jointly in the achievement of goals. As a result of this common vision, actors within the value chain should share both the costs and benefits. Costs, including transaction costs, should thus be adequately considered in negotiations. Various models to discuss and take into account the costs along the value chain have been developed, though none has proved definitive so far. These models look not only at the costs of raw material, labor, and equipment, but also at the characteristics of the resource, such as availability, sustainable management and yield.

Even with consideration of costs, it was noted that it is oftentimes difficult to define an adequate price – a fundamental element for equitable benefit-sharing within the value chain. There is often no point of

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2 “Breu branco” is a soft resin with an aromatic odor obtained from the trunk of certain Protium species, particularly Protium pallidum. “Huito” is the common name for the Genipa Americana, a small to medium-sized tree that is used as a source of natural colorants.
reference due to lack of similar products, although factors to be considered include the costs needed to produce or collect the resources plus an adequate profit margin, which some companies have already determined. In addition, some companies provide a premium over the price, accredited through a third party. Another approach favours investment in the supply chain or providing other support towards adding more value to the product at the local level, for instance creating infrastructure for initial processing. Several participants also mentioned the use of funds to support the community needs. However, it was noted it was difficult to ensure that benefits were really being used for social development and the conservation and sustainable use of the resource. That is why reinvestment in activities such as capacity building, promoting alternative productive activities, and transferring technology was preferred. Participants also referred to benefit-sharing beyond the value chain, for example, collaborating with local authorities to promote natural resources in the area, or involving more groups and communities in the management of the resource.

Other issues raised in the discussion included the need to avoid making producers and communities dependent on a single ingredient, the role of traditional knowledge in the value chain, the importance of intellectual property policies in benefit-sharing, and the relevance of assessing the impact of the benefit-sharing activities.

Objectives and elements of BioTrade guidelines on benefit-sharing

In the afternoon, after a brief overview of some of the potential objectives and elements of the BioTrade guidelines on benefit-sharing, participants broke into working groups to propose concrete suggestions and comments on the most useful approach and content for these guidelines. Following a discussion of each of the different elements presented in the concept note on the BioTrade guidelines, each group presented its findings to the plenary. These findings are described below according to each of the four potential specific objectives for the guidelines, as identified in the concept note. In addition, a fifth objective, suggested by one of the groups, is also defined.

Transparency

One of the proposed objectives for the BioTrade guidelines was greater transparency in the relationship between actors and other interested parties. Such an objective could require the guidelines to address, for example, the information needed from each actor during the different stages of negotiation and implementation of BioTrade agreements and mechanisms necessary to ensure inclusive and balanced participation of the different actors and interested third parties. Participants considered, however, that transparency may already be an existing business practice for many companies involved in BioTrade. In this regard, a better way to frame this objective would be to refer to "ensuring participation and dialogue to build trust between actors." One group thus defined transparency as "building relationships based on confidence and long-term mutual benefit along the value chain, by means of exchange of reliable, useful, and pertinent information with permanent feedback."

The importance of transparency was also emphasized, given its link with traceability and quality, both critical elements for equitable benefit-sharing. Other issues addressed included the relevance of the
structure of the value chain, as fewer intermediaries facilitate the information flow, and the role that legislation requiring products to identify their country of origin can play in ensuring transparency.

Adequate compensation

Achieving adequate compensation through considering elements such as the work, perceptions and needs of the producers, and the different costs in managing the resources and developing and commercialising the product was another of the proposed objectives for the guidelines. Participants considered it would be more accurate to talk about an "adequate price," and, even more comprehensively, about a "fair and equitable commercial relationship."

Suggestions for determining an adequate price included establishing a participatory and consensus-based process to adequately valuate the risk, investment and work along the value chain, including the costs necessary to guarantee economic, social, and environmental sustainability. This process would be particularly important if there is no price for the ingredient in the market. Other points to consider when establishing an adequate price include ensuring price-reversibility and its sustainability in the market. Finally, the risk of having a fixed price established for a certain period of time, with the possibility that better market prices could be possible at some point, was also discussed.

Other benefits

The third objective proposed by the concept note for the BioTrade guidelines referred to an increased participation in other monetary and non-monetary benefits, including through elements such as converting the diverse contributions into sustainable business margins, establishing the commercial relationship so as to increase economic benefits, and identifying diverse types of non-monetary benefits. Discussion thus included issues related to monetary benefits, such as the creation of funds to provide infrastructure to producers and local communities, as well as to enhance value addition at the local level. In addition, the importance of long-term contracts with certain price stability was noted.

Nevertheless, given that the previous objective had been re-defined as including all aspects within a commercial relationship, discussion on "other benefits" focused on "compensation through broader cooperation and benefit-sharing." This new framework would be linked to non-monetary benefits provided beyond a commercial or contractual relationship, meant to create skills and tools for sustainable development in the broader community.

Traditional knowledge

One of the key objectives proposed by the concept note on the BioTrade guidelines was the improved recognition of the value of traditional knowledge. Although there was broad agreement on the importance of traditional knowledge in the benefit-sharing context, limited time restricted discussions on the issue. During follow-up conversations on September 15th, however, participants focused on traditional knowledge, which they considered should also be addressed both as a separate objective but also in a cross-cutting manner.
In regards to transparency, for example, participants suggested companies conduct a proactive and participatory study to determine whether an ingredient is in any way linked to traditional knowledge and make efforts to ensure that commercial relationships are established with the rightful owners of the traditional knowledge. In the context of a commercial relationship, moreover, it was recommended that the guidelines call for intellectual property rights to reflect the contribution of traditional knowledge.

**Empowerment**

To more clearly address the weakest link in the value chain, participants suggested an additional objective for the BioTrade guidelines: Empowering the local communities that collect or cultivate the natural ingredients used in the value chain. Given one of the main challenges in equitable benefit-sharing discussions is the uneven playing field, expressly supporting the communities' capacity to effectively negotiate and implement benefit-sharing agreements was deemed fundamental. In this regard, potential elements to achieve this objective may be providing skills to enable communities to improve their commercial practices and to add as much value as possible to the supply chain. Another idea was to complement strictly commercial relationships with "partnerships" or other types of broader cooperation agreements.

**Revised framework for BioTrade guidelines**

As a result of this active engagement of both experts and private-sector representatives in discussions, as well as their various suggestions and comments, a revised framework for the BioTrade guidelines on equitable sharing of benefits had already emerged by the end of the two-day workshop. The revised framework, described below, reflects participants' submissions on the specific objectives that should be facilitated by the BioTrade guidelines, as well as on the elements that need to be addressed by the guidelines in order to achieve such facilitation. In this regard, though significant work is still needed to fully develop the BioTrade guidelines, participants considered that the revised framework constituted an adequate basis for subsequent work.

1. **Building trust between actors in the value chain.** Since relationships based on confidence and long-term mutual benefit are fundamental for equitable benefit-sharing, it was noted the guidelines should – first and foremost – aim to facilitate such relationships. Elements addressed could include the production and exchange of reliable and relevant information in the course of negotiations and implementation, as well as the way in which this information must be presented so that it can be understood and used competently. Similarly, guidelines should not merely require the broad participation of actors, but also take measures to promote actual dialogue along the value chain.

2. **Enhancing business and legal skills for producers and communities.** Supporting the collectors’ or producers’ capacity to effectively negotiate and implement benefit-sharing agreements was considered particularly important in building trust between actors, and should thus be addressed separately. In this regard, participants noted that tools of transparency and dialogue are only
valuable if parties can appropriately understand and use them – if they are empowered to use them. Moreover, supporting the business and legal awareness of producers is also important to increase their reliability as business partners and to avoid situations of commercial dependency. As mentioned above, potential elements to achieve this objective are to foresee providing skills that enable communities to improve their commercial practices and to develop broader cooperation agreements to complement strictly commercial relationships.

3. **Promoting fair and equitable commercial relationships.** Such relationships were seen to require two elements: First, an adequate price for the natural ingredients – most importantly at the primary producer level; and second, other benefits negotiated in the context of the commercial relationship to complement or enhance the specific payment for goods and services, such as long-term contracts or the setting up of funds. Discussions on potential elements to consider in determining an adequate price and other benefits in the context of commercial discussions have been mentioned above.

4. **Encouraging broader cooperation and benefit-sharing.** Beyond the commercial relationship established with a specific group of producers, it is also important to acknowledge that often the community as a whole is responsible for or involved in the conservation and sustainable management of the resources. As a result, benefits arising out of BioTrade activities need to be shared in such a way to reward the community, as well as to protect and conserve the resource. Moreover, the significance of engaging in and supporting the communities in which commercial activities take place is increasingly recognised in the context of corporate social responsibility. Nevertheless, participants noted the sharing of benefits need to be commensurate with the scale of the use of biodiversity and the nature of the provider group.

5. **Increasing recognition of the value of traditional knowledge.** Participants agreed that acknowledging traditional knowledge as proposed by the concept note on the BioTrade guidelines on benefit-sharing is vital, so that increasing the recognition of the value of traditional knowledge will remain one of the key objectives of these guidelines. Nevertheless, as mentioned above, there were also calls to include traditional knowledge considerations in other elements of the guidelines – particularly those referring to an adequate price and to broader cooperation and benefit-sharing – that will also be considered as the guidelines are developed.

**Next steps**

In the closing remarks, the organisers thanked the participants for the constructive engagement and contributions on the BioTrade guidelines on benefit-sharing. On the basis of these contributions, as well as of the experiences of working groups looking at these issues at the national level, a first draft of the BioTrade guidelines will be prepared, which will then be subject to further consultations.