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Access and Benefit Sharing and the Nagoya Protocol

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Objectives of presentation

- Provide background on:
 - Access and Benefit Sharing
 - The Convention on Biological Diversity
 - The Nagoya Protocol
- Hear your views

Note: *The following slides have been included to facilitate understanding of the Nagoya Protocol. This is not a legal analysis or interpretation of the Nagoya Protocol.*



Background: The Convention on Biological Diversity

- United Nations Convention on Biological Diversity entered into force in 1993
- The Convention has three formal objectives
 1. Conservation of biological diversity
 2. Sustainable use of its components
 3. Fair and equitable sharing of benefits arising out of utilization of genetic resources.
- Articles 8 (j) and 15 of the Convention create general obligations for countries to take measures related to access and benefit sharing
- Canada has been a Party to the Convention since 1993



Background: The Nagoya Protocol

- The *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization* was adopted by the Conference of the Parties to the Convention on Biological Diversity in 2010
 - Addresses the third objective of the Convention on Biological Diversity
 - Entered into force in October, 2014
 - Canada was actively involved in the negotiation of the Protocol but has not yet made a decision on whether to become a Party



Genetic Resources

- Plants, animals and microbes all contain genetic material - Under the Convention and the *Protocol*, when this material has or may have value, it is called a **genetic resource**.
- The **utilization of genetic resources** includes research and development on the genetic and/or biochemical composition of genetic resources, including through the application of biotechnology
- This includes scientific research and commercial use
- Genetic resources are important to many sectors in Canada such as agriculture, fisheries, forestry, and pharmaceuticals.



Access and Benefit Sharing

- **Access and benefit sharing (ABS)** creates a system where those who access and use genetic resources - **the users** - enter into an agreement or arrangement with those who provide the resources - **the providers** - that allows providers to control access (if desired) and to receive a share of the benefits derived from the use of the genetic resources (if desired)
 - **Providers** grant permission to access the genetic resources or associated traditional knowledge they control, and can impose conditions on the sharing of benefits arising from their utilization
 - **Users** can be diverse, from research institutions to cosmetic industries, who seek genetic resources or associated traditional knowledge to further their work



Benefit Sharing

- Benefits can take the form of monetary or non-monetary benefits
 - **Non-monetary benefits** may include technology transfer or sharing of research and development results
 - **Monetary benefits** may include licensing fees or payment of royalties, and are often the result of research focused on commercialization



Traditional Knowledge

- Use of traditional knowledge associated with genetic resources may help users expedite their research and development efforts or offer insight into conservation activities
- Access and benefit sharing allows for the benefits arising from the use of traditional knowledge associated with genetic resources to be shared with the holders of that knowledge



Nagoya Protocol – Countries' Responsibilities

- The Protocol affirms the rights of nations to require prior informed consent for access to their genetic resources and to enter into mutually agreed terms for benefit sharing
- In addition, under the Protocol, countries will,
 - as appropriate, aim to ensure that indigenous and local communities provide prior informed consent or approve of and are involved in, decisions regarding access to genetic resources on land to which they have an established right to grant access
 - aim to ensure that indigenous communities provide prior informed consent or approve of and are involved in, decisions regarding access to traditional knowledge associated with genetic resources which they hold



Nagoya Protocol – Roles and Responsibilities

- Different entities may be made responsible for providing prior informed consent depending on the type and location of the genetic resources being accessed
 - These are referred to as Competent National Authorities
- Countries need to establish a National Focal Point to:
 - Inform potential users of genetic resources and associated Traditional Knowledge on ABS requirements, as well as provide information on Competent National Authorities
 - Liaise with the International Clearing House
- Countries also need to take measures to:
 - Provide that genetic resources that are acquired in other countries and being utilized in their country are accessed according to the other country's laws and
 - Establish checkpoints to monitor the utilization of genetic resources



Nagoya Protocol – Implications for Users

- In a jurisdiction that has measures regarding access to genetic resources in place, a user (researcher, company, etc.) wanting to access genetic resources for the purposes of performing research and development on the genetic or biochemical composition of the genetic resource would need to:
 1. Gain permission to access the genetic resources
 2. Enter into a contract for the use of the genetic resource, where the provider requires such an arrangement (i.e., negotiate Mutually Agreed Terms)
 3. Abide by the conditions in the mutually agreed terms when using the genetic resource, including any benefit sharing arrangements



Federal Engagement on ABS

- Environment and Climate Change Canada (ECCC) has been engaging actively on the further development of domestic ABS policy and to better understand the implications of the Protocol for Canada
- This year ECCC is engaging with provinces, territories, Aboriginal communities and governments, industry and researchers to hear their views on:
 - Best practices that Canadian companies and researchers should employ when accessing and utilizing genetic resources and associated traditional knowledge (e.g., guidelines, rules, research protocols, policies)
 - Mechanisms that Aboriginal governments and communities are using when providing access to genetic resources and associated traditional knowledge (e.g., contractual clauses, research agreements, licences or permits)

