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The Access and Benefit Sharing issue under the CBD: how far does Business' influence Matter?

Introduction

A few words about the ABS issue

The sharing of the benefits arising from the utilization of biological and genetic resources - Access and Benefit Sharing (ABS), has been analysed in the perspective of private/ public agreements called bioprospecting accords. This form of private governance[1], which took place internationally without any regulation until the beginning of the 1990s generated problems of equity and transparency between the different stakeholders, the private sector being often accused of biopiracy[2]. The Convention on Biodiversity (CBD) developed to address this issue, working in parallel for the conservation of biodiversity and its sustainable use. Without access and equitable benefit sharing, it suggested that there will be fewer resources to conserve and sustain for future use.

Access and benefit sharing is consequently becoming an important issue in the global environmental regulation realm as the CBD is the only agreement trying to put in place a new governance scheme for the use of all genetic resources. However, and even if an agreement on ABS has been negotiated for several years already, the ABS issue still seem to lead to a dead-end one. On one side developed countries are reluctant to put in place any national or international framework whereas, on the other side, the developing world is forcefully hoping to be soon able to share the benefits from the use of genetic resources.

[1] Private governance refers to the involvement of private actors in the development of governance schemes. This involvement can take place through the establishment of new regulations by private actors that, this way, create a new formal authority in the shape of private regimes. It can also evolve, like in our case, in new actor configurations to deal with governance issues. These rearrangements lead to the establishment of rules but do not refer to any formal authority. For a very good synthesis on this point see (Pattberg, 2004).

[2] "Biopiracy" refers to the illegal exploitation of genetic resources whereas "bioprospecting" designates the activity of searching, legally, for potentially valuable genetic resources and biochemical compounds in nature.

A brief review of the literature

In parallel to this apparently dead-end of the negotiations, it seems that current studies of the ABS issue fail to describe the whole dynamics of the questions at stake in the debate. Initially, the first kind of studies in international relations concerning the access and benefit sharing issue tried to picture the "ideal" bioprospecting agreements (Kery and Lair, 2002) trying to use the first biopropecting contracts known at that time like the INBio one in Costa Rica as "good examples" to follow (Sittenfeld and Lovejoy, 1999). As the interest in the ABS issue grow with time, specialists also started to envisage the issue in a legal way, describing the implementation and development of ABS legislation at the national level (Cullet and Jawahar, 2004; Wynberg and Swiderska, 2001; Miller, 2006).

If these studies were useful to have a first understanding of the issues at stake they however failed to consider the politics of the ABS question. This is to remedy to this drawback that current studies of the access and benefit sharing issue are going back to the debates that initially launched the idea of an ABS regime under the CBD: the question of privatization of the use of natural resources with in particular the intellectual property rights issue as well as the domination of Northern countries in that field. More recently, access and benefit sharing issues have consequently been studied in broad terms by structuralist approaches of IPR and International law. Some authors, focusing on the international arena level, are questioning if the actual development of the CBD corresponds more to a normative or a neo-realist framework (Rosendal, 2006a); some specialists are studying the "regime complex" associated with the use of genetic resources and the "interaction between multilateral agreements" in broad terms (Rosendal, 2006a and 2006b; Raustiala and Victor, 2004). Inherent to these approaches is the recognition of ABS issues as linked to neo-gramscian arguments of privatisation of nature and domination through the power of multinational corporations (Gorg and Brand, 2006). Complementary to these last issues is a growing international literature on the questions of justice and equity in the access and benefit-sharing governance (Udo and Kleinsmidt, 2006).

If all these studies give some interesting aspects of the issue and are important elements in the understanding of the ABS politics, this paper argues that they also have their limits. If the first ones were gathering information on the issue without studying the politics of access and benefit sharing, the last ones usually simplify the different stakeholders and

arguments of the debate, starting with strong initial hypothesis concerning the actors and keeping a very broad scope for their studies. The usual interrogation raised by these studies is to see to which extend the CBD will be able to challenge the patent system installed by the World Trade Organisation (WTO). However, they generally fail to conclude, recognising an increasing legitimacy to the CBD arena but still considering it constrained by the broader scope of economic regimes.

Finally, and in parallel to these debates, studies of the negotiation process of the CBD, which is at the core of the future ABS regime, have only been developed punctually with few studies covering different periods of time and numerous gaps. For the initial negotiations of the treaty we can site (Arts, 1998), for the negotiations until the adoption in 2002 of the Bonn guidelines (Tully, 2003) and until 2004 (Frein and Meyer, 2005).

Studying business in the ABS issue as a new starting point

In attempting to surpass and avoid these shortcomings and complement the actual literature on ABS issues, this study aims at developing one aspect of the ABS debate that has been strongly neglected in international relations and political studies: the question of the involvement of the private sector in the negotiations' process of the ABS issue. Business actors are indeed often pointed out to be of great influence in international negotiations but have never been studied in detail concerning the ABS issue. Their consideration is incomplete and has mainly been done through the lenses of the exploitation of natural resources by industries. The only references to business actors in the ABS literature are references made to the International Chamber of Commerce (ICC)[3] (Tully, 2003: 84, 88; Frein and Meyer, 2005:123) or to the refusal of American biotech companies to sign the CBD (Raustiala, 1997). They are coupled with studies considering the private sector as synonymous to a so-called "biotechnology sector" (Rosendal, 2006a and 2006b) without specifying who this sector might represent or explaining the links between biotechnology and pharmaceutical companies met on the field.

On the contrary, this study aims at considering industries' involvement in the negotiation process which will lead to the establishment of an ABS regime. It will try to bring some new lights on the numerous issues at stake in the ABS debate. Our study aims at

[3] The ICC is an international business coalition grouping firms from different sectors with the aim to represent the voice of "World business". It is one of the world broader business coalitions.

demonstrating two points concerning the involvement of the private sector in the ABS issue. On the one hand, that business involvement in the CBD has been wrongly described, understood and often summarised in the activities of the ICC. We will try to show in which extend it is possible to asses that the ICC is not representative of the business community for the ABS issue. On the other hand, that the former literature on the private sector and the ABS issue has led to confusion on the links between bioprospecting, biotechnology, pharmaceutical companies and American firms. This confusion has led to misunderstandings of some aspects of the ABS debate. The study will also demonstrate how the organisation of business in relation to the CBD issue leaves some space to consider the question of the limits of business influence in the CBS debate on ABS, even in the case of American companies often pointed out by scholars in their attempt to undermine the negotiations of a CBD regime (Raustiala, 1997). Studying precisely business involvement in the ABS negotiations will also help reshaping the debate and distinguishing different patterns in the negotiation process to deconstruct former claims[4] concerning business actions in ABS governance. In a broader perspective, this will help shedding some lights on misunderstandings and finding new ways through the access and benefit-sharing dilemma.

The theoretical approach used will be based on a global governance study framework focused on the dynamics of the negotiations and the interaction between actors of the ABS governance. Theoretical concepts developed by previous scholars in other similar studies and key to analyse the question of business involvement in the ABS issue will also be used and clarified along the study. This essay is organised in two parts. The first one will consider the multiplicity of business representatives involved in the ABS process; a second one will question the influence of such firms in the ABS negotiations. The paper uses the literature on the subject, CBD documents related to the topic as well as field work conducted during the last ABS negotiations' meetings[5].

I Business actors and the ABS issue

1 From the adoption of the convention to the Bonn guidelines

[4] These claims, as well as their discussion and assessment, will be developed after the conduction of the study, in the conclusion, so as to demonstrate the rectifications and complements brought to them by our analysis.

[5] These comprise the last meeting of the CBD working group on ABS in Granada, Spain, January 2006 as well as the last meeting of the CBD Conference Of the Parties (COP) in Curitiba, Brazil, Marsh 2006. Participating to these meetings enabled the author to observe the debates, gather relevant documents as well as conduct interviews with non governmental organisations (NGOs), the private sector as well as national delegates.

A) A brief overview of the emergence of the ABS issue and its negotiations in the CBD

Before considering the question of the private sector involvement in ABS, some elements of the emergence of the ABS issue in the CBD will be useful to understand the context of business actions during the negotiations. In contrary to all other previous international agreements, the CBD recognizes at its adoption in 1992 the sovereignty of States over their genetic resources. This new principle was going to change the usual terms in which these genetic resources could be accessed and benefited from other States. According to the CBD regime, genetic resources are indeed no more responding to a "common heritage principle" of free access for countries, research institutes and companies, which had always been the case in former arenas (Raustiala and Victor, 2004: 284). This new international legislation was, by recognising the sovereignty of States on their genetic resources, hoping for the establishment of an international regime which would put an end to biopiracy issues.

This claim had mainly been put on the agenda by developing countries, wanting to stop the unfair utilisation of their resources by developed countries possessing all the technological capacities to transform these products into patents (Arts, 1998: 194). One added issue was also the fact that traditional knowledge, often biopirated in patents, was more difficult to protect than technological innovations (Rosendal, 2006b: 267). Famous biopiracy cases became indeed publicised just as the convention was negotiated like the famous example of the exploitation of the Rosy Periwinkle (*C. roseus*), a native plant of Madagascar, which story had appeared in *New Scientist* in 1992. The drug, developed by the pharmaceutical company Eli Lilly reportedly generated an annual U.S.$200 billion, none of which was returned to the country of origin (Rosendal, 2006a: 431). Facing this reality and the fact that challenging patent applications for each case of biopiracy was requiring too much time and resources, especially for developing countries or local communities (IFOAM, 2005: 65), international regulations appeared to be needed. The negotiations of the ABS issue took however some time to appear on the agenda of the CBD, which initially focused on conservation issues as well as on biosafety ones. Table 1 summarises the main CBD meetings related to the ABS question.

Table 1 Negotiation meetings for the ABS issue

Session	Date and place
First expert meeting on ABS	1-5 October 1999, San José, Costa Rica
Second expert meeting on ABS	19-22 Mars 2001, Montréal, Canada
ABSWG1*	22-26 October 2001, Bonn, Germany
COP6**	7-19 April 2002, La Hague, Netherlands
Workshop on capacity building	2-4 December 2002, Montréal, Canada
ABSWG2	1-3 December 2003, Montréal, Canada
COP 7	9-20 February 2004, Kuala Lumpur, Malaysia
ABSWG3	14-18 February 2005, Bangkok, Thailand
ABSWG 4	20 January -3 February 2006, Granada, Spain
Working group on certification	22-25 January 2007, Lima, Peru

* Access and Benefit Sharing Working Group 1
** Conference of the Parties 6

B) Description of industry presence in that context

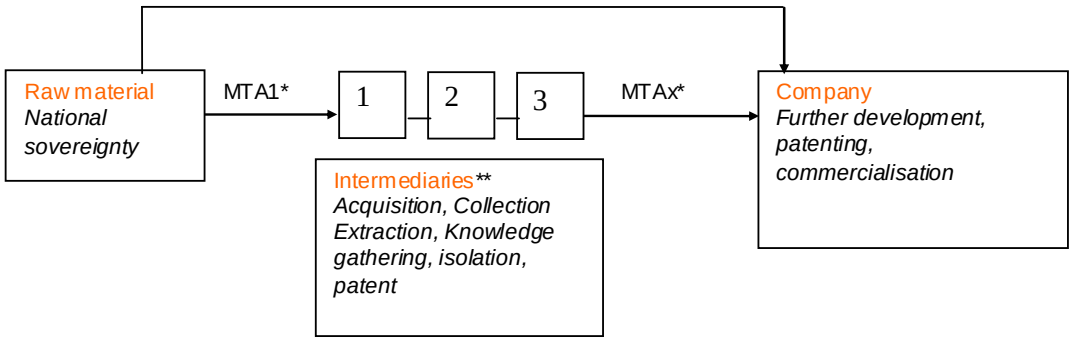
In the context of the emergence of the ABS issue, from 1992 until COP6, two types of industry representatives appeared during the negotiation process: on the one hand bioprospecting companies; on the other hand world leading pharmaceutical industries. We are now going to clarify the characteristics of these two categories to understand their participation in the framing of the ABS debate

At the beginning of the supply chain: the bioprospecting companies

Bioprospection, as already said, was the main activity aimed at being regulated by the CBD through its access and benefit-sharing objective. The idea was to prevent bioprospecting activities to become biopiracy cases. Bioprospection consists in the collection of natural resources so as to develop knowledge of and eventually commercialise products derived from their potential properties. It implies the screening of biodiversity and related -traditional- knowledge in search for commercially valuable genetic and bio-chemical resources. Figure 1 represents the functioning of a basic bioprospecting supply chain. It shows that bioprospection may imply several actors depending on the bioprospecting agreement and the product developed. The raw material is indeed initially collected by intermediaries that can later search for its characteristics before selling it to a bigger company or decide to sell it directly to consumers. What is important to realise is that intermediaries can either be small firms specialised in sample collections as well as public research institutions or botanical gardens.

However, further elaboration on the samples as well as patenting is often done by bigger private companies.

Figure 1 The usual supply chain for the commercialisation of genetic resources



* MTAx is often a license
MTA1 should be with prior informed consent

** Intermediaries can be botanic gardens, universities, research institutions, culture collections, gene banks, and for-profit brokers

Source: (Kerry and Laird, 2002:23;51) and interviews.

To illustrate better the bioprospecting mechanism, we can briefly develop some famous cases of biopiracy, like the Hoodia case. Hoodia, a cactus-like plant, has been used for centuries by the hunter-gatherer San who used Hoodia to suppress hunger and thirst on long hunting trips. In 1986, scientists from the South African Centre for Scientific and Industrial Research (CSIR) identified the hunger suppressing active substance contained in Hoodia, naming it P57, and received a patent for it in 1997. CSIR than began to look for a corporate partner to commercialize P57. In 1998, CSIR gave a license to a rather small British company, Phytopharm, for the exploitation of the Hoodia related patents. Later, Phytopharm entered into a $21 million dollar agreement with a US-based transnational, Pfizer, to further develop the drug. The first appropriation of the plant by CSIR as well as all the following transactions were conducted without any consent and benefit-sharing agreement with the San community. Phytopharm even claimed they were convinced that the San had already disappeared. (Frein and Meyer, 2005: 140-141). This case demonstrates how many actors got involved in the deal between local communities and the final pharmaceutical company Pfizer, world fifth biggest pharmaceutical company at that time (Kate and Laird, 2002: 35).

Discussion on the ABS issue inside the CBD arena consequently started with the analysis of such biopiracy cases as well as discussion around successful bioprospecting agreements like the Merck/InBio one in Costa Rica -between The National Institute of

Biodiversity of Costa Rica (INBio) and the US-based transnational Merck in 1991[6]. Few companies were at that point involved in the negotiations of the convention but were present in a constructive way in the debates (interview with Mexican delegate). They often showed up to present bioprospecting agreements they were involved in, like it was the case for a US-based bioprospecting company Diversa. These companies, fully aware of the ABS issue, appeared as "good players" in the CBD negotiations, getting to know the process. At that time, most of these industries statements were like "this looks good, companies don't want uncertainty, just involve industry a beet and you will be fine" (interview with Mexican delegate). This can be explained by the fact that these companies had concrete case studies to present. They were also not the only one involved in such cases but were representing one actor in a broader governance scheme often involving public actors as well. For these companies, taking part to the discussions was also a way to try to secure the access they previously had to genetic resources.

It is quite difficult to find any data concerning biopropecting firms, which we consider are the firms that can be found at the beginning of the bioprospection supply chain- involved in MTA1[7]. But considering the type of activities they are involved in, these companies are mainly national and work on a contract basis with national authorities and research institutes or bigger companies. These firms are dispersed all over the world, especially in countries rich in biodiversity, and no precise industry grouping was represented them during the negotiations. Their actions were consequently much more similar to individual testimonies. The bioprospecting companies did not in any case represent a unified community as the CBD had already traced a line between those involved in biopiracy cases –which were hiding from the debates- and those involved in bioprospecting contracts considered as equitable –which on the contrary were showing their skills in the ABS issue.

Bigger pharmaceutical companies at the end of the supply chain?

Another kind of industries expressed its positions concerning access and benefit-sharing at the beginning of the negotiations: the pharmaceutical companies sector regrouped under the banner of the Biotechnology Industry Organisation (BIO). BIO is an international coalition of pharmaceutical and agribusiness companies using biotechnology modification to

[6] Merck was the world first pharmaceutical company in 1998 (Kate and Laird, 2002: 35).
[7] For-profit brokers on the figure. The lack of data is due to several reasons but mainly because bioprospecting activities are conducted by a broad range of actors, nationally based, with frameworks depending on the countries and activities sometimes conducted illegally.

develop part of their products. It is quite an heterogeneous group which comprises the world top 10 pharmaceutical companies as well as hundreds of smaller firms. At the time of the ABS negotiations, intense international negotiations concerning a protocol –named the Cartagena Protocol- to regulate biosafety issues were under consideration in the CBD framework. BIO was one of the groups concerned in the negotiations of such a protocol and started being aware of the parallel developments of the ABS issue. As pharmaceutical companies were pointed by developing countries as often being involved in bioprospecting agreements, making most of the profits with the patent system[8], BIO decided to answer to the ABS developments, explaining that most of their members were not involved in bioprospecting activities (interview with German NGO representative). These groups consequently explained they could not see the point for them to ask for any regulation in that domain. Their point was to signal that they were poorly involved in bioprospecting as they were mainly using chemical synthesis and biotechnology as new modes of drug discovery[9]. Moreover, the few members of BIO that were partially involved in bioprospecting, like the firms Merck and Pfizer, were, as we already seen, quite keen on presenting their ABS experiences.

The literature however fails to signal this point and, for the period concerning the beginning of the ABS issue, mostly concentrate on the ICC as representing the big firms' voice in the ABS negotiations. This is due to a crystallisation by this literature of the US and ICC positions, altogether, concerning the adoption of the CBD. The reference to the refusal of the United States to ratify the biodiversity convention after 1992 is often interpreted by an opposition of the US to any kind of convention that was not corresponding to their expectations, with a particular emphasis on the issue of patenting (Raustiala, 1997: 51). Recognising the sovereignty of States over their genetic resources was indeed seen as a potential threat to the US patent system and biotechnology companies. The fact that the ICC was the most visible industry group at that time and that, in 1992, it reacted to the CBD call for compensation by explaining that it was maybe asking too much, just as the US

[8] The lobby of the pharmaceutical companies for the establishment of an international patent system has been very strong in forums like the World Trade Organisation concerning the TRIPS regime- Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). This is for this kind of political role that pharmaceutical companies are usually well-known for. For a study of the pharmaceutical lobby see (Sell, 2003).

[9] The link between bioprospecting companies and big pharmaceutical ones is hard to establish for different reasons: the presence of intermediaries along the supply chain; the presence of other potential sectors interested in bioprospection like the cosmetic, medicinal plant or natural food product companies; and the secrecy which often characterises bioprospecting agreements. We will question the claim of the pharmaceutical sector to have few links with bioprospecting companies in the second section of the paper.

government said (Tully, 2003: 84) reinforced the analogy between the ICC and the biotechnology issue. However, after 1992, the ICC stopped to represent the voice of business in the CBD negotiations and the debate over patenting left the CBD arena for a while as nothing new initially developed in link with this issue[10].

C) Working together for the Bonn guidelines

The beginning of the debate on ABS saw consequently the involvement of two kinds of industry groups: small, dispersed, bioprospecting firms on one hand and the pharmaceutical companies sector on the other. The first ones, joined by a handful of pharmaceutical companies involved in bioprospection- were keen on helping in the development of regulations whereas the second did not feel directly concerned, and, if they did not see the point for regulation, did not oppose its first developments. Regulation started developing internationally with examples of bioprospecting contracts as starting points and the creation of ABS laws and guidelines at the national level. Notably, the Swiss government started developing guidelines nationally as soon as 1999, which were then reviewed by the CBD parties and became the international Bonn guidelines on access and benefit-sharing, adopted at COP6 in 2002. The Swiss guidelines were elaborated in consultation with all the stakeholders and precisely elaborated to be applied by state and non-state actors. This kind of initiative permitted to all kind of companies to participate in the process, mainly at the national level. Switzerland is one of the countries most representative of the pharmaceutical sector with three world leaders in the domain and made sure they were consulted and agreeing with the guidelines (interview with Swiss delegate). These industries probably accepted the guidelines as they were not really involved in the issue. All the stakeholders were therefore keen on developing international regulations to prevent the exploitation of traditional knowledge by research institutes and private sector actors. Botanic gardens also launched their own guidelines with the initiative of the International Plant Exchange Network (IPEN).

The adoption of the Bonn guidelines[11] could consequently have been a nice end for the ABS issue, making private companies it up with sustainable use of biodiversity. But the guidelines had at least to help prevent the development of the biopiracy activities taking place mostly in developing countries, which, as we are going to develop, did not seem to be the

[10] As was the case for the pharmaceutical companies, the ICC was more concerned about the developments of the patent issue in other forums like for the TRIPS negotiations. (Tully, 2003: 88).
[11] For an analysis of the content of the Bonn guidelines, see (Rosendal, 2006a: 433).

case. A quick look at the submissions industry groups did in CBD documentation during the ABS negotiation process –table 2- and more precisely after the adoption of the Bonn guidelines reveals furthermore that the "business cartography" changed dramatically from the adoption of the Bonn guidelines and more precisely after COP7. From that date and on, much more industry groups got involved in the process. Table 2 also shows that new groups, of which BIO and the ICC are not the more active, have been involved in the negotiations. It also demonstrates that other industries groups appeared quite late in the process. The context of the adoption of the Bonn guidelines and their acceptation by parties seem consequently to be an indicator of a "turning point" in the ABS issue. We are now going to analyse this reframing of the ABS debate as it is going to be crucial in understanding the new business actors' mobilisation in the CBD arena.

Table 2 Number of Industry submissions included in CBD documentation/ Side events

	First expert meeting on ABS	Second expert meeting on ABS	ABS WG1	COP6	Workshop on capacity building	ABS WG2	COP 7	ABS WG3	ABS WG4	COP8	Expert meeting on certification
ICC	…	…	…	…	(1)	…	…	1	…/1	…/1	2
PhRma	…	…	…	…	…	…	…	2	1	…	1
EFPIA	…	…	…	…	…	…	…	1	…	…	1
ISF/ seed industry	…	…	…	…	…	…	…	2	…	…	1
Pioneer	…	…	…	…	…	…	…	3	…	…	…
Dupont	…	…	…	…	…	…	…	1	…	…	…
Novozymes	…	…	…	…	…	…	…	1	…	…	…
ABIA	…	…	…	…	…	…	…	…	1/1	…/1	…
APEC	…	…	…	…	…	…	…	…	2/2	…	…
BPG	…	…	…	…	…	…	…	…	…	…	1
BIO	…	…	…	…	…	…	…	…	…/1	…	…

2. Pushing the (A)-BS issue forward: the action of developing countries

A) Dissatisfactions around the Bonn guidelines

Guidelines are designated as “soft law” regimes in international relations as they establish global principles and international norms that are however not binding to their members. This explains why guidelines are usually perceived as weak initiatives emerging when international tensions do not permit any better agreement. They might impact on actors that adopted them in a positive way but adopting the guidelines is a pre-requisite depending on the actors’ good will.

Their non binding nature is definitely one factor that can explain the limited influence the Bonn guidelines had on limiting biopiracy. As seen before, illegal companies did obviously not show up during the CBD meetings and could just continue exerting their previous activities. The guidelines might have increased the international awareness about biopiracy but did not stop the phenomena. They helped several countries to put in place their first national legislation but did not prevent some biopiracy cases to occur in these countries. We also have to mention the fact that the guidelines were poorly helpful to less favoured countries, which did not have enough resources and expertise to put any legislation in place.

In parallel, several developing countries felt that the guidelines were much more centred on the access issue than on the benefit-sharing one. This was due to the emphasis made by developed countries on the idea that benefits were not going to be made without any access. More and more, the claim among developing countries evolved in the opposite direction: access was not going to be possible any more without guarantying equitable benefit-sharing. One of the issues raised by some of these countries was also the one of indigenous people, whose culture and belief might be completely opposed to any idea of commercialisation of nature. More and more, a tense issue was the one of having the right to simply say no to bioprospecting (Vandana, 2005). Generally, the whole idea of bioprospecting was starting to be put in question again. How could the link between national authorities and indigenous solve the problem of equities? How could these actors deal with communities? If biopiracy was definitely condemnable, what about bioprospecting? The attempt to extract the “Green gold” and the “Green oil” (Vandana, 2005) of developing countries was probably unfair in essence. “Contractual benefit sharing is like waking up in the middle of the night to find your house being robbed. On the way out the door, the thieves tell you not to worry because they promise to give you a share of whatever profit they make selling what used to belong to you” Alejandro Argumedo, Quechua activist (Ribeiro, 2005 : 37).

Another unsatisfactory issue about the guidelines was the fact that their adoption did not occur in a very consensual way. During their adoption by the working group ABSWG1

Indigenous people declared they opposed completely the guidelines. After this meeting, a lot of issues were still to be considered at COP6 like the use of term, scope, stakeholder involvement, intellectual property rights and capacity building. However, the chair of the COP6 working group decided to restrict negotiations at COP6 on a limited number of sections of the draft guidelines. This had for consequence that countries added lots of special clauses and extra provisions when adopting the guidelines (Tully, 2003: 86). Even if countries like the United Stated tried to stop the adoption of the guidelines (Vivas, 2003: 3), most NGOs and developing countries stated, on the contrary, that they saw the Bonn guidelines as a starting point for a further negotiation of the issue.

Another crucial factor in reframing the ABS debate was the fact that the patent issue was progressing in a number of international forums. The privatisation of plants and animals already had taking place in the US long ago after the adoption of several national legislations in favour of patenting of life. On the contrary, Europe had developed the UPOV system, which permits protection for intellectual property on plants but recognises the rights of the breeders' community. In an attempt to harmonise the international system, the TRIPS accords were negotiated and adopted in the WTO arena. they are recognised to mostly follow the American patenting system but still are ambiguous about the intellectual property scheme to adopt for plants, as article 27[3] [b] permits countries to choose if they want to allow the patent of plants or not. There also contain an exemption –extended period of time- clause for developing countries to adopt the treaty. Unsatisfied with these exemptions, the US launched some bilateral initiatives known as "TRIPS+" accords requiring further acceptance of the patent system as well as a quicker period of time to adopt it. In parallel, the WIPO forum started negotiating further rules on patenting of plant such as the draft Substantive Patent Law Treaty (SPLT), which aims to achieve international harmonization on patent applications, core terms and patent criteria. This progressing development towards the global privatization of life was again seen as a threat from the developing countries side as it could increase inequities regarding the use of genetic resources, creating a gap between countries able to access the patent system and those left behind. Ethically, the privatisation of life forms was also unacceptable for some stakeholders.

B) Reframing the ABS debate: the emergence of a new country coalition

Eager to express their frustration towards the ABS development, developing countries started to organise a broader "justice and equity" claim, starting by questioning several points of the TRIPS agreements. The Conference of the Parties to TRIPS has been consequently instructed in the Doha Ministerial Declaration to examine the relationship of its provisions with those of the CBD. In general the WTO Doha Round is moreover fraught with contentious and unresolved North-South issues, of which TRIPS is only one among many (Rosendal, 2006a: 436). The claims of these countries have also been heard by forums such as UNESCO or WIPO, which started to discuss the question of traditional knowledge. This progress towards better recognition of the ABS issue catalyzed several developing countries claim, which decided to gather in one new coalition. This lead to the creation of the group of the Like- Minded Megadiverse countries (LMM countries)-comprising Bolivia, Brazil, China, Colombia, Costa Rica, Ecuador, the Philippines, India, Indonesia, Kenya, Malaysia, Mexico, Peru, South Africa and Venezuela- stated in the Cusco Declaration in November 2002 on "Access to Genetic Resources, Traditional Knowledge and Intellectual Property Rights of Like-Minded Megadiverse Countries". This initiative represents a consultation and cooperation mechanism of these countries in order to promote their common interests and priorities related to the conservation and sustainable use of biological diversity. One of the starting points for the actions of the LMM countries was the victory developing countries had just won during the Johannesburg summit. Indeed, the outcome of the World Summit on Sustainable Development and in particular the Johannesburg Declaration on Sustainable Development and the Plan of Implementation paragraph 42 (o) approved in September 4th, 2002 asks for an international regime on ABS to be negotiated under the CBD (Cusco Declaration, 2002). The main focus of the LMM countries has been on the establishment of such a regime as well as on one issue which permitted them to cross ABS and IPR arenas: the question of the disclosure of the origin of genetic resources used as a basis for inventions and patents. In that perspective, the CBD seemed for the LMM countries to be the ideal forum to try to counter the international developments on intellectual property rights. From its creation an on, these countries never stopped to ask for a legally binding protocol[12] or regime to be negotiated under the CBD and accompanied by a special tool focusing on the possibility of a certificate of legal source/provenance/origin. This certificate would allow countries to identify the genetic resources used for the patent application and to consequently ask for compensation to be given from the firm to the country were originated these resources.

[12] The reference to a protocol was strategic as it reminded the former developments of the Cartagena protocol.

All these new developments concerning the ABS issue under the CBD had strong normative reframing effects in the consideration of ABS: broader notions of justice and equity were introduced in the negotiation process and got linked to new stakes like the controversial development of intellectual property rights. These developments are crucial to understand business "new" involvement in ABS as the convention is more and more concerned about creating binding regulations linked to industry actors' main activities. In that sense, the new concept of certificate of legal source/provenance/origin strengthens the possible interference between the CBD and the WTO. The next section will therefore describe the new industry groups involved in the ABS negotiations –as identified in table 2- as well as their main positions towards an international regime to replace the Bonn guidelines. A special focus will be given on their positions towards the certificate proposal in order to understand to which extend and in which directions they are able to support/ or oppose[13] the initiative.

C) New groups getting involved in the negotiation process

Seed companies and the question of genetic resources used in agriculture

The seed industry is represented in the CBD arena by the International Seed Federation (ISF), an international forum for the world seed companies. These firms got mostly involved in the CBD discussions because they had been following the developments of the Cartagena protocol on biosafety as some of ISF members companies are engaged in biotechnology (interview with European seed company representative).

Looking at the paper position submitted by ISF, its general argument is that the usual story heard in the CBD negotiation forum concerning huge profits made by pharmaceutical companies discovering new species is not representative of the question of business access to genetic resources, and mostly fail to consider the case of the seed industries. The materials used by these firms consist of plant varieties issued from continuous and numerous intermingling of genetic resources in the past and the present (ISF, 2005:2). Moreover, most of these resources are stored in international gene banks such as the ones of the Consultative Group on International Agricultural Research (CGIAR). Therefore, seed industries are very rarely using exotic species to improve their reproductive lines. If we look again at the

[13] Intuitively, we would expect business representatives to lobby against any kind of proposal that could threaten the patent system, which is the main source of business profit. This interpretation is confirmed by studies of former business lobby on the IPR issue (Sell, 2003). However our approach prefers not to consider this initial hypothesis and work on the description of business groupings and positions to conclude about the business actors' involvement in ABS.

bioprospecting supply chain these companies are mostly in contact with intermediaries as gene banks and nearly never directly use in situ material.

This also explains why ISF presented a quite open position towards the proposal of disclosure under the CBD. If it thinks that finding the origin of the materials would be quite impossible as it would probably mean going back to the Neolithic[14], it proposed a certificate of source, with few exemptions, to specify were their resources came from (gene banks, countries, research institutes) (ISF, 2005:2). They also proposed to establish a joint system of characterization of varieties so that their content would be known. However, ISF opposed the Prior Informed Consent requirement of the CBD –which requires that any genetic resources use has to be made with the consent of its owner- as no national authorities are currently able to deal with that issue (ISF, 2005:3). All these positions have been confirmed by interviews with representatives from the seed industry, one of their recurrent arguments being that the FAO treaty was already dealing with the question of food and agriculture resources before the CBD developments. The UN Food and Agricultural Organization (FAO) has indeed recently revised its International Undertaking so as to adopt a binding international system to secure free international access to a list of plant genetic resources. Access to the great variety of seeds that have been collected in international gene banks is vital for development, breeding and food security. The FAO consequently recognises the common heritage principle which gives free access to a list of 35 crops for companies. To access these crops, firms will have to pay a contribution, which will be used to conserve international agricultural genetic resources. The FAO still has to decide about the percentage of benefit sharing the companies will have to guarantee but seed companies were quite keen in participating to the initiative (Tully, 2003: 98). This explains why industry was also eager to follow the CBD/ABS process.

Initially, having already the FAO treaty, seed industries do not wanted any additional text under the CBD. But as they already had conceded some of their property rights to the FAO system, they did not mind declaring the source of their materials (interview with European seed company representative). Again, the FAO system does not require prior informed consent, as it deals with gene banks and firms did not see the point to follow this new regulation. This is confirmed in a communication written by Walter Smolders, Former head of patents in seeds at Novartis/Syngenta and former Chairman of the Intellectual

[14] The difficulty to determinate the country of origin is not inherent to industry positions (see Rosendal).

Property Committee of the International Seed Federation on the question of disclosure of origin:

> "The seed industry (the International Seed Federation) has no problems with disclosure of origin of plant genetic resources used in the development of new plant varieties. This was stated in a Position Paper of ISF on "Disclosure of Origin in Intellectual Property Protection Applications", 2003, which was unanimously endorsed at the ISF World Congress in Bangalore, 2003. Seed companies can not run the risk of using material they have not legally accessed – it may cost them a fortune – and breeders have to write down in their notebooks what material they used. Disclosure of origin (in the sense of source) is not an extra burden for seed companies. It does also not reveal trade secrets". (Smolders, 2005: 2).

Patents issues are also less important for these companies as they also mainly use the UPOV system.

Pharmaceutical representatives and the patent issue

Two "new" groups of pharmaceutical representatives also took part to the submissions to the CBD: the Pharmaceutical Research and Manufacturers of America (PhRma) and the European Federation of Pharmaceutical Industry Associations (EFPIA). These companies, representing two regional pharmaceutical sectors[15] - have been aware of the CBD through its new developments on disclosure and thought it was becoming an important topic to follow (interview with PhRma representative).

PhRma general arguments are twofold concerning ABS: on the one hand, PhRma states –again- that the usual scenario of the blockbuster drug is a wrong one and that interest in biopropecting is diminishing for its members; on the other hand, and this is more evident in recent papers, PhRma recognises the importance of the American patent system (PhRma, 2006). These two general statements lead PhRma to recognise the CBD as the sole international arena for a binding international ABS regime but which should not affect patentability. Such a regime would be based on contracts between industry and CBD parties with full disclosure. One non-compliance mechanism could also be put in place to ensure the implementation of the regime (PhRma, 2004: 117). Concerning the certificate, even if PhRma

[15] The companies involved in these two groups are also usually members of BIO. BIO is consequently a broader coalition in the sense that it comprises regional pharmaceutical industry associations but other industry sectors as well such as seed companies and other biotechnology sectors' ones.

is still considering the eventuality of such a system, it reminds parties that commercialised products issued from genetic resources are not necessarily patented. Therefore, the disclosure for patents will cover very few cases of biopiracy (PhRma, 2005:70). It moreover does not guarantee any equitable sharing of the benefits or prior informed consent. The positions of the EFPIA are quite similar to the PhRma's one. However, EFPIA produced more general statements only referring to the importance of responsible use of genetic resources and without mentioning the patent system issue.

The more radical aspect of the position of "pharmacists" towards the certificate has been confirmed by several interviews. According to one of them, these companies have access to gene banks but might still need an access to the countries anyway (interview with Syngenta representative). Another seed representative confirmed that seed companies did not mind declaring the sources, but that pharmaceutical groups did (interview with European seed company representative). In general, the pharmaceutical companies have been quite silent in the ABS debate. Only one company among the three transnational Swiss pharmaceutical companies came to the negotiations meetings. Swiss industries are not participating to the negotiations because they do not use natural material. Syngenta, the only firm present during the debate, is taking part because it is also concerned about seeds (interview with Swiss delegate).

The will for pharmaceutical companies not to be too much involved in ABS is reflected in the discrete participation of BIO to the recent ABS developments. BIO did not submit any position paper to the CBD concerning ABS. It however organised a side event, in association with PhRma, during ABSWG4, presenting BIO positions concerning the regime as well as the "BIO guidelines", guidelines that BIO members decided to develop concerning the Access and Benefit Sharing issue. These guidelines have been elaborated from BIO members, using the Bonn guidelines as well as other international guidelines and BIO member's personal experiences. During their side-event, BIO members explained how in association with PhRma, the two groups decided to have a look at the list of biopiracy cases, 144 in total, realised by the government of Peru in an attempt to put some light on the issue. Both groups stated that there are very few cases of biopiracy that are implying theirs companies. Moreover, not all cases were linked to patents (BIO, 2006). BIO advocated the importance of public pressure by guidelines and national regimes. It emphasized the need to develop national legislations so that industry members can identify the key persons to contact

in case of a bioprospecting agreement. Disclosure of origin would be very difficult to obtain which would mean lots of difficulties for BIO members, especially for small companies. Overall, the position BIO is well summarised in this quotation from Smolders: "The Biotechnology Industry Organization (BIO; US), which is primarily dominated by pharma industry, is against mandatory Disclosure of Origin at present. Most if not all known cases of "biopiracy" have little commercial value. Why, then, should BIO come up with an item that is not important for them and could impair their negotiation position for more important issues? (Smolders, 2005: 2). Prior Informed Consent and benefit-sharing seem consequently important issues for the pharmaceutical sectors, even if they do not directly concern its activities. Linking these requirements to the patent system, which is broadly used by pharmacists, is consequently not seen as a possible tool for the new ABS regime.

The ABIA lobby group: lobbying to promote the American patent system

Table 2 also shows the emergence of the American Bioindustry Alliance as a new industry group being involved. ABIA is a grouping of American companies which aim at implementing the ABS policies and programs outside the patent system. It has been created in September 2005 with a precise goal: defend industry in diverse forums (WTO, WIPO, CBD) concerning the patent issues (interview with ABIA representative). All other industry members outlined this very precise and particular goal of ABIA, which makes it a particular lobby group among industry.

ABIA advocates an international regime based on a contractual approach, where each ABS agreement would include a legally enforceable memorandum of understanding between the CBD members and interested stakeholders. This regime should help to transfer technology, favours the inclusion of indigenous people and provide effective redress for all parties in case of illegal or inappropriate activities related to the international regime.

ABIA members – six pharmaceutical companies (among which the world first and second firms), one biotechnology one, one enzyme development company and General Electrics[16]- are strongly linked to the US patent system[17]. For these firms, bioprospecting is not an issue but modifying the patent system would be (Finston, 2005). Any further requirement will lower the efficiency of the patent system, requiring more time and

[16] It is worth noting that General Electrics is the first American company to have obtained in 1980 from the US Supreme Court a patent for a living entity –a modified bacterium- in the very famous Chakrabarty case (Boisvert and Vivien, 2005: 193).

[17] Another point worth noting is that one of ABIA representative, Jacques Gorlin, is a very well known American lobbyist, who notably participated to the negotiations and adoptions of the TRIPS accords. See (Sell, 2003: 49).

bureaucracy. ABIA recognises both the importance of the ABS issue as well as of the US patent system. It therefore advocates a contract basis for every bioprospecting agreement, rejecting the possibility of any certificate approach.

The APEC

The last new comer appearing on Table 2 is The Australian APEC Study Centre based at Monash University and University of New South Wales in Australia. Its role is to research, inform and promote discussion on issues regarding Asia Pacific Economic Cooperation. APEC is consequently a public institution. However, all interviewee, delegates, NGOs or industry representatives cited APEC as one of the most radical group against any international regime. APEC is also pointed to be part of the industry community as part of its study on ABS has been financed by PhRma. As such, it seems useful to briefly detail about the positions of this group.

APEC is opposed to any international regime and promotes market based approaches using property rights (APEC, 2005a and 2005b). During its ABSWG4 side event the key conclusion of APEC was that there is no evidence that biopiracy constitutes a significant problem (APEC, 2006: 6). In that case disclosure is definitely not needed. During the ABSWG4 meeting, APEC clearly stated during a plenary intervention that it is fighting to preserve the Intellectual property Right issue. Alan Oxley, one of its founding members used to be the former ambassador to the General Agreement on Trades and Tariffs. He is a well known lobbyist for free trade and takes part to several business groupings such as the Australia-United States Free Trade Agreement Business Group of which he is the director.

After the adoption of the Bonn guidelines the business landscape seems to change completely and diversify. New groups as the seed industries, PhRma, ABIA and APEC arrive to take part in the negotiations. These groups all have particular positions concerning the issues raised by the CBD\ABS forum. Table 3 and Table 4 summarise the different industry groups and their positions. After describing this “business” landscape, the next part of the study will try to outline its mechanisms and the potential for business alliances to emerge and lobby during the negotiations. If the increase in the number of industry representatives following the ABS issue proves the growing interest of companies regarding this question, we have to assess to which extend this growing interest is coupled with a strong lobby impact and in which directions.

Table 3 Variations of industry groups' positions (with made at least 2 submissions to the CBD) on an international regime

	ICC	PhRma	EFPIA	ISF	ABIA	Australian APEC Study Center
Sector/ origin	International Chamber of Commerce/International	Pharmaceutical and biotechnology companies/ American	European Federation of Pharmaceutical Industry Associations	International Seed Federation/ international	American Bioindustry Alliance/ American	Monash University University of New South Wales University/ Australia
Aim	World business organization that speaks on behalf of enterprises from all sectors	To conduct effective advocacy for public policies	The voice on the European scene of about 2,100 companies	Serves as an international forum where issues of interest to the world seed industry are discussed	The ABIA seeks the implementation of ABS policies and programs outside the patent system	Its role is to research, inform and promote discussion on issues regarding Asia Pacific Economic Cooperation
Proposal for a Regime	-Support the Bonn guidelines - Regret the lack of implementation at the national level	- CBD as the sole international arena for a binding international ABS regime - Should not affect patentability - Based on contracts between industry and CBD parties with full disclosure - Non-compliance mechanisms for firms/ dispute settlement - CBD parties create a database for TK - Developed countries helping developing countries to negotiate with firms - TK negotiations between countries and local communities	…	- The certificate issue will weaken the development of the regime	- Technology transfer and capacity building - Inclusion of indigenous peoples - Appropriate incentives for in situ bioprospecting to enhance knowledge - Enforcement of an ABS IR across borders that provides effective redress for all parties in case of illegal or inappropriate activities related to the IR	- No international regime needed - Regulation by the market
General arguments	- The blockbuster product story is an exemption and is false as it presents the process as linear and because pharmaceutical industries are not the main users. - Patent is not the general case	-The blockbuster product story is wrong and interest in biopropecting is diminishing. -The US patent system as ideal	-Any system should promote the responsible use of genetic resources	-The blockbuster product story is wrong -Industry expertise is important -Numerous and diverse uses and continuous intermingling of genetic resources in the past and at present		- Market based approaches using property rights - Biopiracy does not exist

Table 4 Variations of industry groups' positions on disclosure

	ICC	PhRma	EFPIA	ISF	ABIA	Australian APEC Study Centre
Proposal for disclosure	- Favourable for a certificate of the source - Origin is hard to determine, what if no patent, patents are for innovation - There are a lot of different utilisations for genetic resources. Ask for clarifications.	- Does not help reaching the objectives of the convention - Brings uncertainty - Apply to post CBD products coming from countries of origin - National level implementation does not guaranty PIC or equitable sharing patents not the only form of protection - Time frame too long - Still considers the establishment of such a certificate, asking for clarifications.	- Develop different scenario for the disclosure to interrogate delegates -The country of origin is hard to determine - Not only patents are developed from natural resources -Expertise from industry is crucial - Gap analysis	-No certificate of origin but certificate of source with few exemptions - No PIC as national authorities are unable to deal with it -Proposes joint early characterization but difficult - System like FAO for several origins and bilateral agreements for the rest	ABS IR based on a contractual approach, where each ABS agreement would include a legally enforceable memorandum of understanding (MOU) between CBD members and interested stakeholders	No disclosure needed

II The influence of business groups on the ABS issue

1. Influence at the national level

A) The national level as the level of predilection for business actors

Business actors usually influence positions at the national level where they have the support of their national authorities (Newell and Glover, 2003: 3). Links with these authorities are even more developed that business often interact with governments in nearly all important issues of national politics like economics, employment or innovation.

As we stated already, the beginning of the negotiations on ABS were characterised by actions of firms at the national level. "Good" bioprospecting firms were indeed presenting their bioprospecting contracts and experience with the support of the government and academic structures involved in the agreements. In parallel, big pharmaceutical companies, poorly concerned but still cautious with the ABS issue, followed the development of guidelines, such as in the case of the Swiss initiative which was then turned into the Bonn guidelines. However, what characterises this first period of industry involvement was mainly the absence of strong business lobby. Bioprospecting firms had more a participative attitude or were hiding from the negotiations and in that case had no influence; pharmaceutical ones were mainly keeping an eye on the development of the negotiations.

Considering the new groups arising after the evolvement of the CBD from bioprospecting issues to IPR ones, it is likely that the situation changes. ABIA, for example, is a group created precisely to lobby inside the CBD arena. All industry group members from these "new comers" confirmed that they had contacts with their governments as well as discussions with "friendly" delegates with whom they could share their positions. These groups could ask for meetings with national delegations during the negotiations. But this is sometimes even unnecessary as governments are usually keen on consulting their industries to determine their policies and national positions before the negotiations. This is confirmed by the fact that several developed countries –like Germany or France- are currently realising some national studies to consult their industries and determine the potential consequences of any disclosure type, if adopted.

When following the negotiations, it appears quite clearly that countries like Australia and Japan had very regressive positions during the negotiations of ABSWG4. It becomes quite easy then to build a parallel between the APEC study centre which is based in Australia and the Australian position. Following the same line, ABIA group confirmed it had good

contacts with Japanese firms (interview with ABIA representative). In that sense, looking at the side-event organised by industry representatives can be very informative. For example, the Australian delegate Geoff Burton from the agricultural ministry of Australia intervened in both the ABIA side event at ABSWG4 and the ICC side event at COP8.

One typical example of industry influence at the national level is the American delegation. Lobby group like ABIA and American companies in general confirmed they had links with the US government, mainly to advocate the importance of the patent system for their activities. However, even in the case of the US, two elements are undermining the hypothesis of the influence of industry representatives at the national level. First of all, studies of the American position on the CBD reveals that not all American groups have been successful in influencing the American positions. Indeed, just after the elaboration of the CBD text, in a private initiative, a working group of NGOs and pharmaceutical and biotechnology firms- including Merck, Genentech, and World Resource Institute- was formed. This group carefully evaluated the treaty and eventually drew up an interpretative statement supportive of US accession. This made the Clinton administration accede to the treaty but did not convince the senate to ratify the convention (Raustiala, 1997: 52). Different parts of the government are linked to different authorities. In that case, the US position was reflecting the position of the more radical industry groups. Moreover, the United States are not parties to the CBD. ABIA representatives as well as one representative of one big agribusiness American company confirmed it did not help them in their lobby actions.

Several interviewees also questioned the usual claim that being included in national delegations must be the better way for business representatives to be able to lobby for their own profits. One condition for business to act through national level channels is obviously that it has to be accepted by the delegations. A German representative pointed that to be heard by the delegation, the delegates have to want to agree in including industry in their team or to express the will to speak with them. Following the same line one Swiss delegate recognised that being included in a delegation could also lower the room of business people to manoeuvre (interview with German NGO representative and Swiss delegate). Indeed, when they are included in the delegations, these actors share some kind of responsibility in representing the broader national interest of their country. Constraints can be added to their freedom to express particular profit-based views.

These two developments, concerning the US delegation and the constraints business actors might face when being member of national delegations demonstrate how common intuitions about industry actors can be nuanced. The main point about influence at the national

level and its limits does not however reside in these nuances but in the fact that gaining the approval of one or several countries does not mean to be able to have its positions adopted at the level of the international arena. Particularly, forums like the CBD involve a high number of participants and evolve according to particular rules of the game. The next part will question the limits of the possible influence of industry representatives at the international level, being direct or through national delegations. These limits are the complexity of the negotiation process on the one hand; and the crucial role of personal links in ABS policy making on the other.

B) The limits of influencing international negotiations from a national perspective

A complex negotiation process

All industry representatives taking part to the ABSWG4 meeting expressed difficulties in following the international negotiations of ABS. Two main arguments are given by business representatives to explain these difficulties: the complex process of the negotiations on one side; the topics raised inside the CBD arena on the other.

The CBD negotiation process is based on the notion of consensus, with discussions being held in plenary sessions or parallel working groups by parties until they can get to a point of agreement. Decisions to be made concern the rules of procedure -like the establishment of expert groups- or the adoption of negotiation texts. During the negotiations, Parties express their will to express their positions to the chair of the meetings and are then given the floor alternatively. Time is often a big constraint for this type of negotiations as more than 150 parties can take part to the discussions. Chairs of the meetings often ask countries to be quick and try to move on the process as often as possible –see the example for the Bonn guidelines quoted above. This leads to frustration as “nothing seem to happen but at the same time if you miss ten minutes of the discussions, you do not know where we are any more” (interview with Canadian delegate). The behaviour of the chair of the ABSWG4, always pushing issues forwards, was seen as particularly striking from the point of view of industry representatives. They felt member states were depreciated by the secretariat (interview with ICC and ABIA representatives). One fact that confirms the pushing pressure on states during the negotiations is that discussions often raise concerns that are outside initial countries’ mandates to negotiate. This was the case for Japan and the European Union during ABSWG4. This is also precisely why industry people can feel threatened as it confirms the limits of influence at the national level before the negotiations’ venue. In that perspective, one

representative of an American company said the CBD is notorious to be very disorganised (interview with PhRma representative). One other representative suggested that an improved organisation could have resolved some of the issues. He indeed noted that the CBD should have organised meetings between the working groups ABSWG3 and ABSWG4 so as to push the issues further for ABSWG4. What emphasised industry representatives' "surprise" concerning the CBD process is also the fact that they all had already participated to other kind of negotiations, notably at the WTO for the codex alimentarius or WIPO. They felt that forums like the codex are more scientific and give importance to the "right" actors. This means that countries with higher GDP (*Growth Domestic Product*) are listened by the chairs (interview with ABIA representative).

Another interesting characteristic of the process of negotiations inside the CBD forum is that controversial topics are usually negotiated in smaller negotiations groups. These can be working groups, which are still open to observers, as well as contact groups or Friends of the chair groups which are most of the time closed to observers. This means that industry can not directly participate in these groups and, as these groups are open to few delegates, it is often also the case for industry people integrated in national delegations. Issues are intensifying in importance during the negotiation process and negotiations are usually ended up in small groups. One American representative recognised that things usually happen the last day of the CBD meetings. These quite "informal" negotiation sessions are perceived as key elements of the negotiations by all participants and seem out of reach from business lobbyists.

Secondly, all representatives agreed that the topics of the CBD are just too broad and far away from business preoccupation and skills. The themes are indeed very broad and often very emotional. This is especially the case for the ABS issue dealing with questions of justice and equity which are far from being easy issues, as stated by Beth Burrows: "Now the good old days are over. Now we've arrived at the ugly stuff: Property, Injustice, Domination. Now we're going to talk about the really painful issues - so painful, indeed, that some of us may yearn for the good old days of the biosafety negotiations." (Burrow, 2005: i). These topics are perceived as problems of "reverse colonialism" and "calls of helplessness" from the industry representatives' point of view. If they consider these issues, industry representatives are quite sceptical about them. One American representative even felt concerned that developing countries would never get what they claim. A European one announced they must be some false wishes. Again, these questions are framing the ABS issue in a normative way quite far

from the usual “technical frames” business actors are used to deal with and limit the potential for business arguments to be heard at the international level.

The importance of personal networks

At first sight it could seem quite impossible then to influence the process of such huge and broad negotiations. Actually, the fact that small closed negotiation groups usually make the biggest decisions hold the key to understand the CBD negotiations: a lot of people –negotiators, observers- are present during the negotiation sessions, but very few are really negotiating the issue. All participants that were following the CBD process for quite some time confirmed that few delegates are present for the negotiations from the beginning, until the end of the issues. These persons are considered key contacts for whoever wishes to have a hand on the decisions made. Adding to that characteristic, it is worth noting that there is an interesting aspect of the CBD negotiations, which concerns representation. In the national delegations to CBD and ABS talks, there are a variety of actors, including Ministries of Environment and Foreign Affairs, as well as NGOs. On the contrary, the delegations to WIPO largely consist of technical experts and patent lawyers from national patent offices (Rosendal, 2006b: 272). Industry representatives are not favourably linked to the first kind of actors. From an industry point of view, the problem is that people participating to the CBD are not specialists. One industry representative thought that the ABS negotiations were a non-objective dialogue because it is with environmental ministries…arguing about patents (interview with DuPont representative). One European representative felt much more importance was given to the NGO community (interview with ISF representative). European industry members were also worried about the EU position, as the Chair was from Spain and seemed to favour developing countries –like by accepting a text proposal from the African group as a starting point for the negotiations, see section 2- but also because some EU members’ delegations included development ministries. Overall, industry was surprised to see the importance given to usually “weak” states like Ethiopia, which proposed a text for the regime at ABSWG4.

American firms might even have more difficulties as they are usually not well perceived by participants (interview with CBD secretariat representative, Monsanto representative and Mexican delegate). For example, one representative of a big American company said that when he was lobbying he was telling people he was coming from “industry” but not from his precise industry group as representing an American company was not well perceived. Again, American people confessed it was quite hard to lobby when your

government is not part of the process as its presence tend to be illegitimate. Former strong lobby actions by industry groups during the biosafety negotiations proved also to be limits in building personal trust with delegates. During the ABS negotiations, one delegate told an American representative that if industry was too negative, people won't listen to it. Overall, all business representatives confessed they were more "skilled" and used to other forums. Industry is often seen as the "bad guys" in the CBD arena and feels discussions concerning business are just aiming at asking for financial compensations (interview with ICC representative).

Influence of business representatives at the national level is part of all industry members' strategy to pass their positions on to the main decision makers. However, this action proves to have limits, precisely when considering a complex arena as the CBD one. Several business characteristics do moreover not fit to the kind of issues dealt with in the ABS case. Generally, business network capacities are poorer in the CBD forum. In that case, trying to act collectively might be a solution to minimise the risks to be involved in the negotiations and reinforce ones position. Business actors are also usually well known to organise their lobbying activities through coalitions that increase the power of their arguments. This is precisely the high ability of business representatives to network with each other that is usually pointed by the literature (Newel, 2003; Steffenhagen, 2001). The next session will consider the potential for business alliances to emerge in the context of the ABS negotiations and how these alliances are able to help business overcome the particularities of the ABS forum.

2 The influence at the international level: the ICC as a potential for business alliances

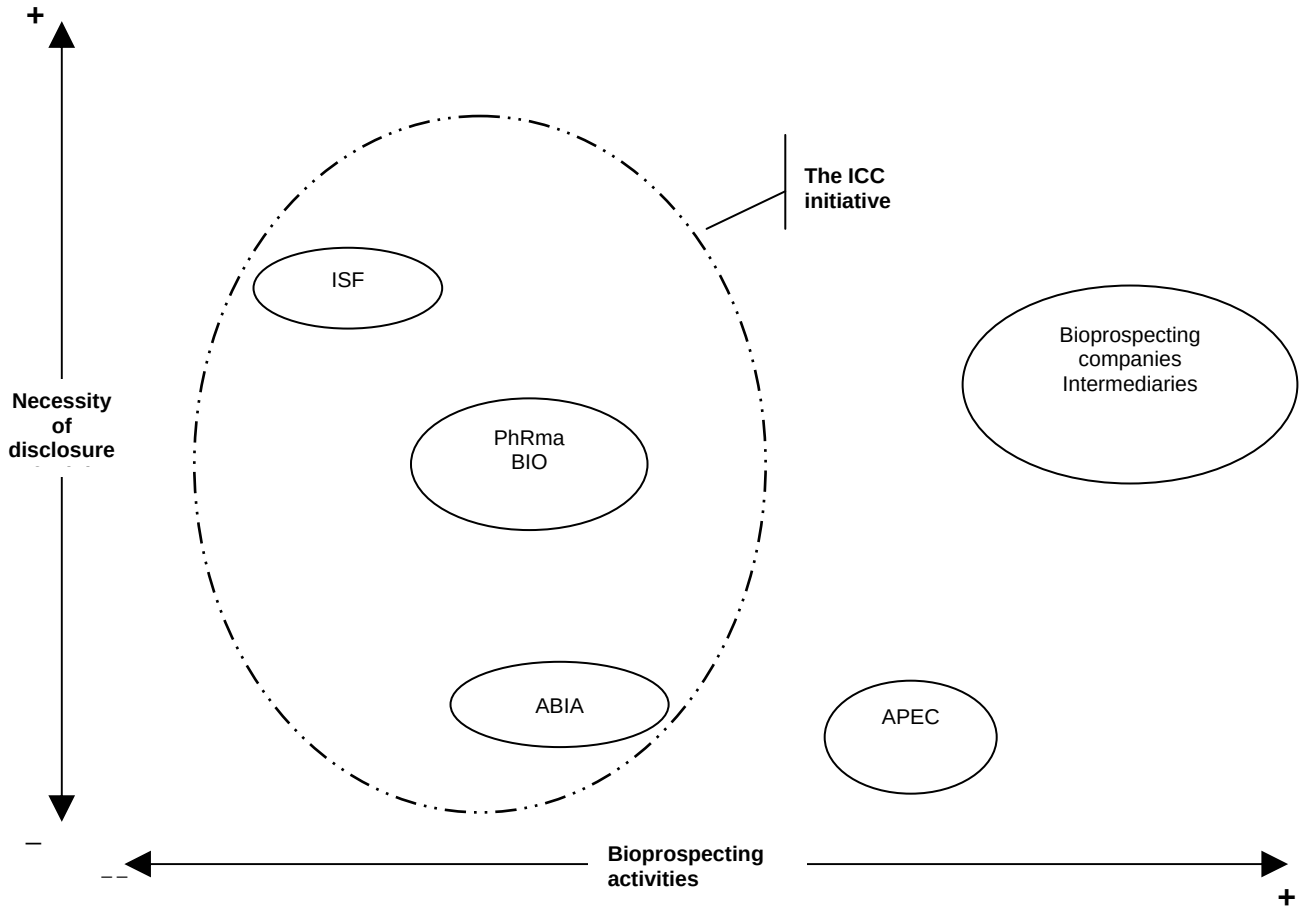
To assess the potential of business coalitions to emerge, Figure 2 below presents the configuration of business groups regarding their interests in bioprospecting activities on one hand and their position regarding disclosure of origin on the other hand.

A) Studying the ICC initiative

Description of the initiative

The only official attempt to gather all industry interests under one banner has been made by the ICC, notably during the ABSWG4 meeting. In general, the ICC aims at representing the voice of the business community and in that sense is often and legitimately pointed as a reference in term of industry representation (see references in introduction).

Figure 2 Configuration of business coalitions regarding the ABS issue



Willing to pursue its aim to represent the business community as a whole, the ICC launched a new initiative during ABSWG4 and decided to organise and chair some "industry group" meetings every morning and any time the group felt the need to meet during the whole negotiations of ABSWG4. It also expressed industry positions during the plenary session of the meeting. As showed on figure 2, ICC industry group gathered representatives of ISF, PhRma, BIO and ABIA. However, no individual bioprospecting company took part to the "industry group" meetings and the APEC was also not joining the initiative. While trying to understand the influence of business on the ABS issue it seems crucial to look at the relevance of the ICC attempt to gather industry representatives under its banner.

Lobbying styles, size and the unity of the ICC coalition

One obvious limit of the ICC coalition attempt is -as we have already seen and as appears on figure 2- the fact that the industry lobby groups it attempted to gather have quite different interests and positions on the issue. When asked about the unity of the ICC group, all

industry representatives taking part to it recognised that their businesses had sometimes different interests and positions. As we already noted, seed companies underlined their different position with pharmaceutical companies on the disclosure of source. However, differences between business representatives are not only emerging between sectors but also according to two other demarcation lines: the question of the origin of the firms, and the importance of the size of the industries.

Differences of lobbying styles are usually mentioned in studies of lobby at the European level (Coen, 2005). However, they are nearly never evoked concerning lobbying activities at the international level which strangely removes all business potential conflicts. In the case of a potential transatlantic divide, the literature often insists on the ways these conflicts might be overcome whereas on the way they affect international politics (Steffehagen, 2001). These kinds of differences, and especially transatlantic different lobbying styles, were however very clear during the industry group meetings and have been confirmed by several interviewees. When facing difficulties, American groups usually express strongly their opposition to any proposal that do not meet their expectations. On the contrary, European representatives will try to analyse the proposal and elaborate a new text or a position paper in reaction to it. Following that aspect of lobbying styles, Americans are also more open to speak freely about their lobby intentions and activities, whereas European representatives prefer acting informally through their personal links.

This might seem an anecdotic element only interfering at the margins of a possible unified action by the private sector. However, it has some important consequences on the way industries try to answer to the main developments of the negotiations. One example is the behaviour of the industry group during the main event that occurred at ABSWG4: the African group proposal of a text for an international binding ABS regime. This proposal has been elaborated by the Ethiopian government –in collaboration with the NGO *Third World Network* as confirmed by several participants- and presented to the plenary in the name of the whole African group and on the first day of the negotiations in order to serve as a basis for the elaboration of the international regime[18]. In that case, during ABSWG4, elaborating a common position concerning the proposal for a text of an international regime on ABS elaborated by Ethiopia was crucial for all the participants, industry representatives included.

[18] Proposing a text is critical as it pushes the negotiations forward and permits to the authors of the proposal to control the discussions.

But because of the different sensitivity of business representatives, it has not been an easy task. The American representatives thought the text was a pretty dead proposal, nearly a joke, whereas the Europeans feared it might be a threat. The first ones were consequently not even considering answering to the text while the European representatives wanted to elaborate an industry proposal to counter the African group one. Europeans representatives notified to the Americans that the first biosafety draft had precisely also been put forward by the Third World Network, and that this proposal was consequently a challenge for industry to find an alternative to such a paper. Moreover, they expressed doubts concerning the positions of the European Union towards the text, while American representatives were quite sure it was not going to be endorsed by any developed country. In the end, a consensus proposal was for industry to produce a position paper about the text, but industry did not present its own proposal for an international regime[19].

These differences American/European companies are also reinforced by the differences between the sizes of companies. Notably, these differences concern the seed industry and the use of the patent system for big companies whereas smaller ones might prefer the UPOV system. This is summarised by Smolders:

> "The two biggest companies, Pioneer (seed sales US$ 2,600m in 2004) and Monsanto (seed sales US$ 2,803m in 2004) are not happy with the level of intellectual property protection given for plant varieties under the UPOV Convention. They strive for a delayed access to commercially available for breeding purposes, thereby consolidating their position. Their ultimate goal is one intellectual property system for plant varieties, the patent system. The US Administration seems to pave the way for that by having this in their negotiation package for bilateral agreements […] A weak point of the UPOV Convention is that it does not provide rules for preservation of plant varieties at the end of the period of protection. Most seed companies are presumably happy with that situation." (Smolders, 2005: 4).

A coalition difficult to organise but supported by industry members

The consequences of all these differences –positions, origin, and size- are that industry groups were not lobbying in the name of the ICC. When asked about their lobby activities during ABSWG4, they all answered that they were first of all lobbying for their own

[19] Observation data during the "industry group" meeting following the African group proposal.

companies. We also noted that all these groups had their own position papers. During the ABSWG4 meetings, the ICC exposed industry positions during the plenary but some interventions were also made by BIO. To summarise, as one representative of a European seed company declared: 'The ICC is trying to play a coordination role but it is totally unofficial' (interview with European seed company representative). On its side, the ICC recognises that it requires a lot of investment to mobilize such peoples, "industry is as difficult to organise as NGOs, even worst" (interview with ICC representative).

However all industry members attended the industry group meetings which they consider are always a good occasion to exchange information. In that sense, the goals of the meetings are to get to know each other, to organise and decide who will do what, to see what industry does agree on –for example to ask to participate in contact and friends of the chair groups is a consensus position among all industry members- and the messages it wants to express (interview with PhRma representative and European seed industry representative). One strong feeling is also common to all industry members taking part to the industry group meetings: the ABS issue is going to have an impact on industry activities. Having analysed the functioning of the ICC industry group initiative, it seems interesting to look at the ICC position papers. It will indeed help assess to which extend the ICC might manage to overcome business different interests and represent a common voice for business representatives.

The ICC position

All along the ABS negotiations, table 2 permits to realise that the ICC produced several position papers and organised two side events. The ICC was actually the first group to submit its positions concerning the ABS issue. However, it might have taken some time for the group to really understand what ABS was all about. Indeed, when reading the ICC position paper of 2002 it appears that the paper is mostly centred on biotechnology, just as the industry papers for biosafety (compare this ICC paper with a submission by BIOTECanada, a North American coalition of biotechnology companies, to the biosafety negotiations (GIC, 1999)). This first position paper also contains this precision: "The comments therein represent positions of the task force and do not constitute an official policy position of the ICC" (ICC, 2002: 109). However, all the other ICC statements are clearly related to the ABS issue. It is worth noting that they have been elaborated by a new task force –than the one of 2002- the ICC tack force on intellectual property. This reflects the evolution of the debate towards intellectual property issues.

The ICC general arguments are that the blockbuster product story is an exemption and gives a wrong idea of ABS issues as it presents the process as linear and as if pharmaceutical industries were the main users of genetic resources. Moreover, patent is no the general intellectual property system used by bioprospecting companies (ICC, 2005: 4). Therefore, the ICC supports the Bonn guidelines as a good complementation of any national action (ICC, 2005: 8). However, it regrets the lack of implementation of ABS laws precisely at the national level. Concerning the proposal of disclosure, the ICC is quite favourable of a certificate of source (ICC, 2005: 10) but asks for many clarifications concerning the issue (ICC, 2006). Generally, the wordings of the ICC papers are quite general and deal with lots of different issues.

Outside the submissions to the CBD, the ICC expressed as a group in plenary sessions. In its first statement it reminded that several private sectors are concerned about the access and benefit sharing issue and that one approach won't fit all interests. The ICC therefore asked for international guidelines but national tools. National rules are usually encouraged by private actors because they permit a case by case analysis and avoid strong international standards. However, one reason for the ICC not to call for any international system is also that this group does not have a unified position on the issues. The uncertainty reflected in the ICC position is confirmed by the analysis of Smolders: "Due to the different positions of ISF and BIO the International Chamber of Commerce (ICC) was unable to publish a common position on disclosure of origin and prior informed consent" (Smolders, 2005: 3). On one of its papers on the question of disclosure appearing on its website, the ICC states that it does not have consensus regarding any of the specific proposals for disclosure currently under consideration, but does have a general view that such disclosure will not significantly advance the aims of access and benefit sharing; and has consensus on a number of considerations relevant to the proposals (ICC, 2005a: 1).

However, the ICC position is generally quite open concerning the negotiation process and does not oppose the certificate requirements, contrary to more radical groups. This seems to be explained by several aspects. First of all, the actors most experienced about the CBD process are mainly the seed companies which had already been integrated in the negotiations on biosafety. We have already seen that the initial position of these firms is initially less radical than the one of other groups. Moreover, the aim of the ICC is usually to take a "middle path" so as to represent industry as a whole, it can not be too radical. Secondly, the chair of the ICC initiative was a representative from a European industry. The European members

recognise that industry had to change its reputation after the attitude they took towards the biosafety negotiations were they got involved quite late and tried aggressively to stop the process through the lobby efforts of an American led group: the Global Industry Coalition (interview with ICC representative). One NGO representative confirmed that industry has discovered in the CBD that their reputation is quite bad and their impact not so good (interview with German NGO representative). In that perspective, industry has to gain the trust again; it has to have concrete arguments and should not repeat its former mistakes.

The ICC initiative as a complement to national level lobbying

The ICC consequently developed its own position which, by now, does not seem to represent a consensus among the other industry lobby groups. The ICC initiative to convene some industry group meetings is followed by industry members but does not represent a unification of their positions. In that sense, the main channel of influence for industry lobby groups is still at the level of their national delegations. However, their participation to the meetings of the ICC makes sense only if it has a positive impact on their lobby activities. Several elements confirm that these groups are using the ICC initiative mainly as a source of information concerning the negotiation process. It also gives more importance to statements on which all industry members agree. In the difficult context of the international negotiations of the ABS issue, this complement is more than welcome. The initial aim of the ICC to unify business position and "correct" the differences among industry representatives (interview with ICC representative) is consequently only partly achieved.

We are now going to briefly question the possibility of other business alliances to emerge in the CBD/ABS forum.

B) A possible alliance between lobby groups and APEC?

As we have already seen, APEC is sometimes pointed to be part of the "industry community", notably because part of the study it conducted on the ABS regime has been financed by the group PhRma. Representing strong free trade interests, and having at least one link with PhRma, the APEC was however not taking part to the "industry group" meetings during the negotiations of the ABS issue.

APEC does not seem to have strong links with the business lobby groups' representatives. When asked about the APEC, one representative of PhRma insisted that its organisation provided a small amount of money to APEC and did not found the whole project. PhRma moreover insisted that anything APEC wrote on the study was APEC's ideas and that

their document is obviously not a PhRma's paper. When they founded the project, PhRma members did not know exactly which results APEC was going to publish (interview with PhRma representative).

When asked about possible "enemy" to industry influence in the ABS issue one business representative named the APEC as the worst organisation for business reputation. APEC positions and actions are really outdated as industry positions and attitude were like the APEC ones some years ago but not any more (interview with business representative). One delegate confirmed that APEC actions were clumsy and not considering people seriously. He was referring to a paper produced by the organisation on the costs of a possible international regime and sent to several countries participating to the ABS debate (interview with delegate).

C) Assessing business influence at the national level and through alliances

To conclude, it is quite difficult to assess the influence of industry concerning the ABS issue. National delegations seem however to be the most satisfying channel industry representatives used to try to influence the process on the international regime. This is confirmed by links between industry and government representatives on one hand; and by the use of the ICC initiative as a tool to optimise these actions by sharing information on the negotiation process on the other hand. The difficulties to put in place a unified position for the industry voice in the ABS negotiations are due to differences in industry positions according to the sectors, origin and size of the firms concerned. The ICC is however the only attempt of alliance between industry groups.

In that perspective it seems difficult to assess the overall influence of "Industry" on the ABS issue. Generally, during ABSWG4, all industry representatives were disappointed by the African group proposal and the proceedings of the week. They were also not able to understand if the text proposed was going to be adopted as the basis of negotiation for the regime. For groups like the ABIA, the fact that the text has been finally adopted as an annex to future negotiations, that the working group on the elaboration of a regime has been reconvened and mostly that disclosure is going to be discussed in an expert group might represent a failure. On the contrary, the ICC seemed worried about the complexity of the text adopted in Granada but will still follow the issue of certification with interest.

D) What about the bioprospecting firms?

Where are bioprospecting firms in the CBD arena?

The bioprospecting debate seems to be the first one to suffer from the growing involvement of private actors in the CBD since discussions have now shifted from the issue of bioprospection to the one of patent protection. In the negotiations arena, less and less bioprospecting firms are present during the meetings. The initial bioprospecting companies got indeed less involved in the process as they started to think they had done their duty and were however still accused of biopiracy (interview with Mexican delegate). Few Brazilian bioprospecting companies (natural-products developers) were present at COP8 in Curitiba. One representative of these companies explained he lost trust in the negotiation process as the Brazilian government just adopted very strong national legislation concerning bioprospecting. One of his concerns during the COP8 meeting has also been to certify to people that his company was legal as participants were sceptical about a bioprospecting company coming from the South (interview with Brazilian bioprospecting firm representative). Influence then depends on the contacts these industries have with their governments.

Does the absence of bioprospecting firms mean the end of biopiracy?

Concerning the biopirary issue, on the one hand some authors are quite positive about the eradication of biopiracy and state that the principle of equitable sharing of benefits is becoming increasingly accepted among private sector users of genetic resources (Rosendal, 2006b : 274). Several industry sectors seem indeed to have been involved. The horticulture sector for example started developing “fair trade plants” and companies of “fair trade natural products” emerged on the market. One example of these is the Phytotrade Africa initiative. During ABSWG4, a case of equitable sharing involving a Dutch company with the Ethiopian government was presented during a side event (DGIS and GTZ, 2006: 23).

On the other hand, unfair bioprospecting agreements are still negotiated. One current issue might not be the absence of any kind of contract but the contract terms. Several recent contracts emerged between public institutions and private companies recognising a shared part of the benefits on the commercialisation of the products, while the companies involved were just intermediaries and would never commercialised directly the products (interview with European NGO representative). Shisheido, a Japanese company, is often cited for its biopiracy actions in Malaysia and even NGOs are pointed by developing countries for their involvement in product commercialisation (DGIS and GTZ, 2006: 24).

In general, the importance of personal links between the persons involved in bioprospecting has been pointed as one of the only guarantee of “good bioprospecting”. For

example “the Novartis- UZACHI deal (in Mexico) would not have happened but for the close links between Dr. Ignacio Chapela, the adviser of the four communities comprising UZACHI, and Dr. Dreyfuss of Novartis, who worked on the details of the benefit-sharing arrangements and had it revised in accordance with the wishes of the community” (Peria, 2005: 177). The positive actions of the firm Novartis (Syngenta) have been confirmed by one Mexican and one French delegate. However, the fact that the fair and equitable sharing of the benefits depends on the people involved in the contracts proves that the CBD is far from having an international efficient mechanism. Looking at countries’ legislations, the implementation efforts are very poor, notably for developed countries with the example of Switzerland which is still working on the implementation of the Bonn guidelines. Obviously, the dispersed and punctual nature of fair ABS agreements does not help the poorest countries to develop their own legislation. Finally some enterprises are absolutely not appearing on the international scene like the nutritional ones. It is obvious that these companies are not showing up because their activities are mostly illegal.

The reasons of bioprospecting firms’ absence

This last fact that several industry sectors involved in bioprospecting are not aware of the CBD developments has been confirmed by the representatives taking part to the industry group meetings. This is even more problematic as more and more participants recognise that genetic resources might not be needed by pharmaceutical industries which develop few products from natural resources. On the contrary, this false issue developed from the beginning is hiding one of the real debates about biopiracy which is the total absence of the food, cosmetics, small and medium industry, phyto-pharmaceuticals and plant drugs industries (interview with German NGO representative). The demand for medicinal plants is currently increasing in both developed and developing countries, because of their accessibility and affordable costs and the growing recognition that natural products have fewer side effects (IUCN, 2006: 33). This absence has been noted by all people interviewed.

Apart from the illegality issue –the Brazilian bioprospecting companies confirmed that most of their competitors were not coming at the negotiations because they were illegal under the new Brazilian law- one explanation might be that, as developed before, participating in the CBD process is not an easy task. Industry, and especially small industries, do not all have the money to participate in the process (interview with ISF representative and Brazilian bioprospecting company representative). One representative of the biggest American group

said that it is actually hard for companies to follow the process, especially because it requires a lot of different competences in Law, technical issues, Politics and Public relations (interview with Monsanto representative). This is confirmed by one ICC representative who noted that not all companies have the possibility to pay for a consultant (interview with ICC representative).

The business supply chain as a possible readjustment?

One issue also which seems to be missing when looking at the issue of private sector involvement in the CBD is the one of a possible link between the lobby groups appearing after the adoption of the Bonn guidelines and the individual bioprospecting companies. PhRma, for example, recognises that its member companies have links with small companies doing bioprospection. Novartis, as we have seen, has developed positive approaches to bioprospection. As big firms are upstream in the supply chain, it could be envisaged that they put pressure on local companies to comply with the ABS requirements of the CBD. However, one representative explained that industry is already quite busy with its own business. Furthermore, the answer from these groups was the establishment of the guidelines they adopted and they did not feel they could engage more than that. “We don’t’ need to blame people” as one representative of the ICC said. The issue of industry size might appear in this case as a will from the big companies being able to adopt regulations to gain a competitive advantage. From their side, bioprospecting companies feel like ‘the small fishes in the ocean’ (interview with Brazilian bioprospecting company), trying to breathe at the surface of the water. They confirmed that Brazilian companies do not work with big international ones.

The current developments on patents also seem to blur the fact that the idea of bioprospecting linked to biotechnology in the North exploiting the biodiversity of the South is more and more becoming a false one. One British delegate cited a Brazilian company doing bioprospecting in Ethiopia (interview with British delegate). One representative confirmed that there is a lot of technology here around (*in Brazil*) (interview with Brazilian bioprospecting company representative). As one Mexican delegate signalled, the biggest threat to fair bioprospecting might be “the dormant industry”, the one located in the third world countries like Brazil, India or South Africa (interview with Mexican delegate).

Conclusion:

Findings concerning business action in the ABS issue

Our study aimed at describing and analysing industry representation and influence during the ABS process. At the beginning of the ABS issue, industry representatives consisted in isolated companies involved in bioprospecting activities on one side as well as bigger pharmaceutical interests on the other side. The first ones were quite keen on sharing their knowledge while the seconds were mostly aiming at making clear their poor responsibility in biopiracy activities. Both groups participated in the elaboration of the international Bonn guidelines on access and benefit-sharing. However, several groups of countries, and mostly developing ones from South American and Africa started to express their dissatisfaction about the Bonn guidelines. The elements contained in the guidelines were a good start towards the sharing of the benefits issued from genetic resources but had to be developed further; notably the question of disclosure of the origin/source of genetic resources as a new requirement for the patent system was raised. From COP6 and on, new industry groups appeared, mostly feeling threaten by these new developments concerning intellectual property. This was the case for the seed industry representatives, the pharmaceutical ones as well as one American lobby group. One important element about these groups is that they did not have the same position concerning the ABS issue. Their origin and sizes were also factors of divides within business actors. This presupposes some difficulties for these groups to gather and express in one voice the interests of “Industry”. However, facing some limits to influence the process because of their late involvement in the negotiation process and their focus at the national level, one industry group, the ICC is currently trying to gather industry under its banner. By analysing this new initiative, it appears that it represents more an opportunity for business representatives to share information than a real reunification of business positions. The future developments of this initiative will reveal the evolution of power among the business community. One interesting result of this involvement of new groups is the disappearance of bioprospecting companies from the international scene. After been still accused of biopiracy the initial ones preferred to leave the CBD arena whereas most of the groups using natural resources are hiding from their governments.

Qualifying former claims on business actions in ABS governance

This new mapping and understanding of the private sector involvement in the ABS issue permits to clarify some contradictions and false claimes that have been formally raised by scholars.

For example, in her study about the ABS issue, Kristin Rosendal declares in her conclusion: “part of the ABS-IPR debate is paradoxical. Countries and corporations from the North tend to argue that there is no money in bioprospecting (argument five), and ABS legislation in the South is criticized for undermining access and innovation efforts (argument four).” (Rosendal, 2006a : 442). This assertion is incorrect on several points. First of all, it does not seem that industry groups do not recognise that bioprospecting is a lucrative activity. On the contrary, they are aware of the issue and the profits made by the natural industry sectors (medicinal, herbal tea). They also, contrary to APEC, recognise the issue of biopiracy and the ABS one as important. Secondly, it is exact that countries of the South might be criticized for undermining innovation, but it does not necessarily have a link with the first argument. Industry groups like ABIA are precisely fighting for the patent system because they think it is the best system to favour innovation and consequently profits, but these companies can develop patents without using genetic resources. Their claim is a broader claim concerning intellectual property.

Our study also demonstrates the complexity of the ABS issue which might not be as easy and straightforward as scholars pretend it to be. This quotation by Rosendal can again be challenged on several points: “Putting a price tag on biodiversity might disclose how profits in the agricultural and pharmaceutical sectors in the North are extracted from genetic resources from the South” (Rosendal, 2006a: 432). First of all, seed companies are not necessarily against disclosure. Secondly, the ABS issue is more and more becoming a global one, not just about North/South issues, specially as industries are developing in countries as Brazil or India and also because bioprospecting activities might soon be developed in marine resources in countries of the North. Some multinational companies are indeed re-developing bioprospecting and looking at resources from countries of the North and deep sea resources (Rosendal 2006a: 440).

Speaking in terms of “biotechnology companies” when considering the ABS issue is also incorrect as several groups are not engaged in biotechnology. This can be the case of bioprospecting companies as well as seed breeders. It is true that biotechnology is more and more used by business actors to create new products but the ABS issue is not only about biotechnology (the protocol is). It is urgent to consider natural products companies as well.

Finally, it clearly demonstrated that the ICC is not the only industry group interested in the ABS issue.

Further developments on the business side

This study can also bring some light on several developments that are of particular interest concerning business involvement in the ABS issue. First of all the fact that there is a big difference between political representation of the firms, like lobby groups, and the individual ones represented by the bioprospecting companies. To be efficient, the CBD will have to cope with both groups and find solutions adapted to all sectors.

Among the lobby groups, if industry does not seem to be necessarily against regulation, the further developments of the ICC will probably depend on the ability of its members to find a consensus and adopt a common position. During that process, power relations among business representatives will be of great importance and one probable threat is the one of the captation of business voice by bigger groups. As stated by Smolders, "The leading seed companies have much weight in international organizations and can influence the long term future of the seed industry. Their aim is stronger intellectual property protection, to render access to their genetic resources more difficult and to increase the price of the proprietary seed by focusing on elite material and discarding less profitable plant varieties". (Smolders, 2005: 4).

Finally, new technologies -the use of microbes, enzymes and the development of medicinal remedies- might also restructure the map of business representation in the ABS process.

Studying business to understand better other actors in environmental governance

Analysing the question of the influence of industry representatives in one of the topic of the CBD also permits to bring some new elements concerning other actors of the ABS forum. Concerning State actors, the study seems to demonstrate that the CBD is an arena –and probably the only one- where developing countries are quite powerful. It is useful particularly to note the increased acceptance of the concerns of developing countries in environmental governance (Rosendal, 2006a: 443; Williams, 2005: 54). Developing countries preoccupations are advocated through the CBD arena where the nature of the process –consensus- and the general context –environment and development ministries- give them more negotiating power. The positive sign illustrated by industry growing involvement in the negotiations is that it is a credible threat (interview with Mexican delegate). It is particularly important to note that Like-Minded Megadiverse Countries (LMMC), the Latin American and Caribbean Group (GRULAC), and the African Group were able to operate as a coalition during ABSWG4 (Rosendal, 2006a: 441). On the contrary, developed countries are less

coherent. Switzerland for example has proposed an amendment to WIPO's Patent Cooperation Treaty and the EU supports a requirement to disclose the origin or source of genetic resources under both TRIPS and WIPO. The coherence and gathering of developing countries is also growing outside the CBD framework. The LMM countries group is asking for revision of the TRIPS agreement and several developing countries like India have adopted the disclosure requirement for patents at the level of their national legislation.

Unfortunately, one actor seems to be neglected when focusing on industry actors in the CBD process: the question of indigenous people. If industry representatives might be favourable to share some of their benefits and recognise the problems associated with indigenous people, it is also clear that they mostly leave the question of indigenous people to their national governments. Dealing with local communities does not seem to be on the agenda of business representatives. This might sound like good news but can become a problem when we know that governments are not always eager to look after their local communities.

Finally, the study highlights some striking elements concerning the involvement of the scientific community in the ABS issue. This is particularly well illustrated by the APEC study centre, the most radical group against the ABS regime. One NGO interviewee confirmed that it is usually not a problem to talk to industry people; the problem is to talk to governments as the institutes of collections have a very specific interest. They are aware it will pose some difficulties for their research activities and fear they will have problems to obtain new materials. During the ICC side event at COP8, Kew gardens, a botanical garden, said that a certificate was not a possible solution. Following the same argument, the Swiss government recently launched an initiative which tries to explain scientists the impact their activities might have on ABS. But these kinds of actors are really difficult to mobilise (Swiss, 2006: 29). Science definitely has a part of responsibility in the ABS issue.

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