

Position Paper on the Implementation of the South African Bioprospecting, Access and Benefit-Sharing Regulatory Framework in the Aloe industry



5 June 2013

VERSION 1.0

Introduction

South Africa, with its unique heritage of ancient human history and rich biodiversity acknowledges that it has a moral and ethical responsibility for the preservation of this heritage for future generations. In acknowledgement of this responsibility, the South African Government is signatory to many international conventions and agreements that aim to protect the world's biodiversity through sustainable utilization. Similarly, the Government acknowledges and aims to protect the cultural diversity and rich heritage in traditions and cultural practices in South Africa.

Since its inception in 2003, the Aloe Council of South Africa (ACSA) and its members have held the view that a growing aloe industry can only reach long-term prosperity if it does so in an economically sustainable and socially responsible fashion. ACSA specifically recognises the importance of *Aloe* in many cultures and traditional practices, not only in South Africa, but throughout the world. The tapping and use of *Aloe*, *per se*, is not endemic to South Africa and is well documented in the cultural practices and traditional uses of many nations. What is endemic to the South African aloe industry, especially in the Western Cape, is the way in which the traditional communities extended and evolved their traditional practices into commercial activities. The tapping practices and commercial relationships between the independent traditional tappers, land owners and traders/convertors is a uniquely South African answer to sustainable use of natural resources. These practices developed over a period of some 200 years and are central to the distinctive and exceptional character of the aloe industry.

According to Minister Molewa, the objectives of *South Africa's Bioprospecting, Access and Benefit-Sharing Regulatory Framework (BABS)* is to ensure “*sustainable use of biological resources and fair and equitable benefit sharing among stakeholders*”. ACSA is of the opinion that the current application of BABS in the aloe industry fundamentally fails to achieve these objectives because it neither recognises, nor caters for, the distinctive traditional structures and practices in the industry, which, for 200 years, ensured the sustainable use of natural resources while ensuring inclusivity of all its stakeholders. Interviews with stakeholders in the industry who have received, or are in the process of applying for a bioprospecting permit, indicated that they are extremely concerned about a number of aspects regarding the application of the Regulation for the industry. The stakeholders

who were interviewed have indicated that they are complying (or will comply) with the Regulation, but that they do so under duress. Whilst the concept of fair and equitable benefit sharing is fully supported, the main concerns lie with the fact that the real stakeholders in the industry will not benefit in the long run and, in fact, the industry as a whole might be negatively affected. For the most part, application for the permit and establishing a benefit sharing agreement is seen as an additional means of taxation in an already overburdened industry. The effect of this is that applicants and holders of permits only do the minimum to maintain compliance with the Regulation. It also substantially raises the barriers to entry into the industry whilst reducing the barriers to exit, which would lead to a total decline in revenue in the industry – and benefit sharing for the stakeholders.

In addition to the discussions between members of the DEA (Department of Environmental Affairs) and ACSA members in April 2012, as documented by Professor Ben-Erik van Wyk, the Aloe Council is of the opinion that ACSA could play an important role in facilitating the implementation of the BABS regulation in the aloe industry. Furthermore, if the stakeholders approach the implementation of the Regulation in a constructive manner, it could be the catalyst to create unique differentiators for the South African aloe industry, which would assist with growth of the industry. With the co-operation of Government, the existing traditions and practices in the industry could be uniquely applied within the BABS regulatory framework to achieve the objectives, as envisioned by the Minister, in a way that would unite and build the aloe industry for the benefit of all its stakeholders.

This position paper is the result of a number of very constructive and fruitful discussions with representatives of Cape Nature, the Department of Environmental Affairs and members of the Aloe Council of South Africa. This document attempts to describe the key constraints and opportunities in the aloe industry, and develops a concept for the custom application of BABS that would address these constraints and unlock these opportunities – thereby unlocking value for all its stakeholders while achieving the objectives envisioned by the Minister.

Industry Perspective

The *Aloe* as Commodity

In contrast to most other indigenous resources, *Aloe ferox* is viewed as a commodity in the broader international aloe industry and aloe trade. In economics, a commodity is defined as “*a class of goods for which there is a demand, but which is supplied without qualitative differentiation across the market.*” As with other commodities like grain or wheat, the trading price of *Aloe ferox* is purely a function of supply and demand – irrespective of its origin. Therefore, traders in *Aloe ferox* from South Africa must compete in the international trade with *Aloe ferox* produced in other countries such as Kenya. Additionally, because of the prevalence of *Aloe vera*, *Aloe ferox* is generally viewed as a regular commodity in the worldwide trade in *Aloe* raw materials. Although we would like to believe otherwise, the reality is that, from a marketing perspective, neither the *Aloe* nor its uses are indigenous to South Africa.

The challenge for the South African aloe industry is to identify unique characteristics that could be developed to differentiate itself in the marketplace.

Fair Trade

Fair Trade is a concept with its roots in the coffee industry whereby certain suppliers include their workforce in profit sharing schemes. The active marketing and development of the concept of Fair Trade has created a differentiator in the coffee market and allowed these suppliers to fetch a premium for their product in the market. The additional value unlocked by this differentiation is passed through to the workforce. Fair Trade and BABS have very similar objectives, i.e. the unlocking of value for indigenous communities through sustainable use of natural resources. In the case of BABS, the natural resources are indigenous. If, however, one subscribes to the arguments that *Aloe* is a commodity, like coffee or bananas, then the application of BABS in the aloe industry is akin to Fair Trade. However, there is a fundamental, but crucial, difference between Fair Trade and BABS. Fair Trade is inexorably founded on the principle that the consumer buys into the ideals of Fair Trade and that this unlocks value for all the players in the value chain – and therefore also for the indigenous communities. In contrast, the manner in which BABS is presently implemented in the aloe industry places a financial burden on the traders/convertors without unlocking potential additional value. In contrast to Fair Trade, which creates a commercial incentive that willingly draws in indigenous communities; traders/convertors and consumers alike, BABS attempts to redistribute limited financial resources from unwilling participants without any value in return.



Organic

The concept of *Organic* is an initiative driven by the health and environmentally conscious consumers who are prepared to pay a premium for products that promote the health and wellbeing of people as well as the environment. There are various registered marks that differentiate raw materials or products on the basis of its “*organic*” status. Some of these marks have been developed; are marketed; and managed by governments in order to help differentiate its industries and increase its competitiveness in the marketplace. The USDA ORGANIC mark is a prime example of such a mark. Through marketing and consumer awareness programs, the United States Department of Agriculture (USDA) helped create such a demand for organic products that the market is willing to pay a premium for them. This, in turn, creates an incentive for producers to willingly convert to organic production methods. The USDA further incentivises producers through its Environmental Quality Incentive Program, which gives financial and technical assistance to producers that wish to convert to organic conversion. They also offer a rebate to producers to help cover the cost of organic certification.



Why is the US Government going to all this trouble to develop market and build this mark? It is because they understand that one cannot “*tax*” or “*regulate*” the agriculture industry into going “*green*”. But, they do realise that by creating a consumer demand for these types of products, the

agriculture industry will willingly gravitate towards organic production methods. By creating consumer demand, agriculture gets access to capital in the form of premium product pricing that fuels the process.

Although there are exceptions, most organic certification marks and programs are focused on cultivated crops on predefined fields. The certification process usually involves a formally documented management plan for each plot of land selected for organic cultivation, which includes detailed and meticulous record keeping of all the agricultural activities related to each plot. There is a strong emphasis on the traceability of organic produce and documented evidence of organic cultivation methods. This is quite achievable in the formal agriculture where crops are cultivated, harvested and sold by land owners. Although we implicitly know that the *Aloe ferox* produce in South Africa is “organic”, it is very difficult to achieve or maintain the level of traceability required for organic certification. As is explained in more detail below, this is due to the informal and unstructured nature of the traditional tapping process and the, (often fluid), tri-party arrangement between the land owner, tapper and trader/convertor. The result of this is that South African traders/convertors cannot compete against *aloe* producers from other parts of the world on an equal footing or fetch the premium for what we know to be superior produce.

Traditional Tappers

The tappers, especially those in the Western Cape, still follow practices handed down over many generations. Traditionally, the tappers are independent operators – sometimes working as husband and wife pairs or as small, self-organized, groups who, in agreement with the land owners, would tap areas of wild *aloes*. A cursory inspection of this arrangement would lead one to believe that the tappers are contract or migration workers, but closer investigation highlights elements that would define them as rural entrepreneurs:

Firstly, the tappers decide if, where and when they want to tap. *Aloe* tapping is not a seasonal process driven by the requirements of cultivated crops planted by land owners. Traditionally, areas of wild *aloes* are not tapped at the request of the land owner. Land owners do not manage areas of wild *aloes* in the same way as they would an apple orchard or a wheat field. Generally, land owners do not maintain tapping schedules and do not pro-actively source tappers to tap an area of *aloe*. Tappers that operate in a geographic area informally keep track of the areas of *aloe* that have been or are ready to be tapped and would initiate discussions with the land owner to tap a given area.

Secondly, and more importantly, the tappers do not sell their labour! The tappers are the primary processors and owners of the bitter sap, or crystal lump, recovered from the *aloe*. Because they own the produce (sap or lump) they are also the initial traders/convertors of the produce. The tappers are free to sell their produce to the highest bidder, which may or may not be the land owner on whose land the *aloes* were tapped. This does, of course, also expose them the open market forces of supply and demand.

Thirdly, the tappers have full freedom of association. Some tappers choose to operate fully autonomously and usually have informal arrangements with a few land owners to tap

sections of *aloe* on a rotational basis. Some of these land owners might buy the bitter produce while others will require a commission. For logistical and infrastructural support, some tappers co-operate with traders/convertors that would set up agreements with land owners; provide transport and other logistical support; and buy the produce.

The traditional tappers proudly value their knowledge of nature and their skill in tapping and processing *aloe*. They also cherish and protect their independence through self-employment. Historically it has proven difficult to formally organize and structure these people and their tapping activities. This difficulty in organizing and lack of structure among the tappers are two of the primary reasons why the successful implementation of BABS in the aloe industry is proving so elusive. Tappers tend to move in and out of the industry depending on factors such as the current demand and price for bitter produce; the availability of *aloe* at any given time; and the prevailing climatic conditions. This makes it quite difficult to maintain an indirect benefit sharing scheme where benefit flows back to the initial (and direct) producers. Presently there is no incentive for the tappers to formalize their trade; register as someone plying the tapping trade; or keeping any form of record of their contribution to the total production in a region. This is also the reason why the tappers themselves favour direct reward in the form of cash payment when they sell the bitter produce.

Concept for the application for BABS in Aloe industry

The Aloe Council of South Africa believes that it is possible to apply BABS in the aloe industry in such a way that it not only embraces the peculiarities of the industry, but forms the catalyst for renewal and unlocking potential value for all its stakeholders.

Concept

The Council believes that, as in the case of Fair Trade and USDA Organic, a mark should be established that differentiates traditionally harvested *Aloe ferox* in the international marketplace. The additional value created by this mark should be applied for the benefit of the traditional tappers and their direct communities. As the perceived consumer value and, therefore, consumer demand for produce carrying the new mark increase, it will naturally incentivise traditional tappers, land owners and traders/convertors to formally (and willingly) participate in the process. This will ensure that the *real* beneficiaries will receive *real and sustained* benefit as envisioned by the Minister.

The marketing and consumer value of the mark could be based on the following two arguments:

Better than Fair Trade

The traditional tappers and the communities they come from exhibit all the usual requirements that make them excellent candidates to benefit from a typical Fair Trade implementation. The mark should therefore strongly build on the concepts defined by Fair Trade and, if required, even register with the international Fair Trade origination and license the use of certain concepts.

However, the fact that the traditional tappers are independent rural entrepreneurs makes it possible to even further differentiate them from the typical Fair Trade beneficiary. Fair Trade indirectly rewards traditional communities for the labour they provide in the cultivation and harvesting of produce. Although this is a noble and valuable initiative, it stops short of drawing these communities

in as primary participants in the value chain. They remain contributors *to* the value chain, but not participants *in* the value chain. Traditional tappers, however, are real participants in the *Aloe* value chain. The mark could therefore promote a concept that is better than Fair Trade in the sense that it not only preserves and builds real rural entrepreneurship but that it does so while preserving two centuries old indigenous traditions. These words and concepts are very powerful motivators in the consumer market place and, if correctly promoted, could ensure a fair premium for produce carrying this mark.

Better than Organic

As discussed above, organic certification aims to promote the production of cultivated crops in a naturally sustainable fashion. Although these crops are not genetically modified, they are most often genetically selected for specific attributes, and, in the case of *Aloe vera*, cloned to produce fields of genetically identical crops. In addition to adhering to all the fundamentals of organic cultivation, *Aloe ferox* is a naturally organic product where natural genetic variation is fostered and natural selection, as described by Darwin, ensures the continuous adaption of the species for the benefit the species. Because *Aloe ferox* exists in its natural habitat, it reproduces and thrives without any human intervention. Surely, this is far better than organic! Again, these are powerful ideas that could create tremendous differentiation and demand in the consumer market and therefore unlock value for the industry.

Mark Ownership and Use

It is envisioned that the mark will be registered and the rights will be owned by the traditional tappers. Any value that accrues as a result of the mark will belong to the traditional tappers.

Traditional tappers that produce bitter sap or lump from wild-growing *Aloe* and who are registered as such would and should be entitled to ask a premium for the supply of such produce. The size and nature of such a premium are to be determined through a collective bargaining process.

Traders/convertors or other consumers of produce supplied by registered traditional tappers shall register and be licensed to use the mark. Annual registration and licensing fees should be determined through collective bargaining and may be based on the:

1. market value and demand for *Aloe ferox* produce carrying the mark, and
2. annual consumption of *Aloe* sap or lump by the applicant, which may be correlated with the annual, *Aloe* related, turnover of the applicant.

Producers and consumers duly registered in terms of the mark will automatically be deemed to be licensed in terms of BABS.

Implementation

It is clear from the explanation above that there exists a potential to bring together and further expand on the basic concept of Fair Trade and Organic to create a mark that is much more powerful than any of these two concepts on its own. Add to that the third concept of preserving centuries old indigenous traditions, South Africa could create differentiators that would be very difficult to duplicate anywhere in the world.

Successful implementation would be based on a public-private partnership that would involve government departments like the DEA and DTI, relevant nature conservation organisations as well as the traditional *Aloe* tappers, land owners and traders/convertors. It is envisioned that the mark will be registered in the name of a Trust and that all duly registered traditional tappers will be the beneficiaries of this trust. The trustees could be comprised of representatives from the various traditional tapper communities; representatives from the Aloe Council of South Africa – representing the traders/convertors; representatives from the DEA and DTI; and representatives from relevant nature conservation organisations.

Standard operating procedures could be developed that would require the traditional tappers as well as the traders/convertors, to maintain an auditable log and report sales and consumption on an annual basis. Royalties and other beneficiary payments to traditional tappers would then be based on their logged production figures. The reconciliation of reported production and reported consumption would facilitate self-regulation and participation in the process.

Development of the mark

As with the Fair Trade and the various “organic” initiatives, the success of this initiative is inexorably linked to the successful marketing and subsequent endorsement of the mark by the local and international consumer market. Without the additional value and demand created by the acceptance of the mark by the consuming public and the aloe industry, the traders/convertors will not perceive any value in registering and licensing the mark – and will only do so in order to comply with BABS regulations.

Neither the tapper communities nor the trader/convertor communities have the capital or human resources to fund or drive the initial development and establishment of the mark and the accompanying scheme as envisioned in this document. Active government participation and funding would be required until the revenues generated by the perceived value of the mark makes the process self-sustainable.

Closing

This position paper shows that, without a substantially different approach than the current BABS Regulations and the way it is implemented in the aloe industry, there would be limited benefit to the traditional communities and that valuable traditional practices could be lost for future generations. However, it shows that with the inclusive and constructive participation of government, the tapper communities and the traders/convertors, it is possible to uniquely restructure and build the aloe industry to be globally competitive to the benefit of all its stakeholders.