



# The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



E

**Items 11.2, 11.3 and 11.4 of the Provisional Agenda**

**FOURTH SESSION OF THE GOVERNING BODY**

**Bali, Indonesia, 14 – 18 March 2011**

**REVIEWS AND ASSESSMENTS UNDER THE MULTILATERAL SYSTEM,  
AND OF THE IMPLEMENTATION AND OPERATION OF THE STANDARD  
MATERIAL TRANSFER AGREEMENT**

*Note by the Secretary*

- i) *At its Third Session, the Governing Body decided to postpone the reviews and assessments that are due under Articles 11.4 and 13.2d(ii) of the Treaty to the current Session. It stressed the importance of adequate information being provided to the Secretary (part III of Resolution 4/2009).*
- ii) *This document outlines the relevant provisions of the Treaty; reviews the relevant prior deliberations of the Governing Body and provides the information available. The document concludes that although more information is now available, the information on which to base the reviews and assessments is still partial and unsystematic.*
- iii) *The Governing Body is being invited to consider whether to undertake or commence the process for the reviews and assessments at this Fourth Session or again postpone them until its next Session; and that further research and analysis would be required in either case. In this regard, possible elements to be included in a Resolution on the Multilateral System of Access and Benefit-sharing are provided for consideration by the Governing Body.*

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## I. INTRODUCTION

1. The Treaty, which entered into force on 29 June 2004, provides for the following reviews and assessments to be carried out by the Governing Body, regarding the implementation of the Multilateral System and the operation of the Standard Material Transfer Agreement:

### **Article 11.4**

*(1) Assessment, within two years of the entry into force of the Treaty, of the progress in inclusion of plant genetic resources for food and agriculture in the Multilateral System by natural and legal persons and a decision whether access shall continue to be facilitated to those natural and legal persons that have not included these plant genetic resources for food and agriculture in the Multilateral System;*

### **Article 13.2d(ii)**

*(2) Review, from time to time, [of] the levels of payment with a view to achieving fair and equitable sharing of benefit, and*

*(3) Assessment, within a period of five years from the entry into force of the Treaty, of whether the mandatory payment requirement in the SMTA shall apply also in cases where such commercialized products are available without restriction to others for further research and breeding.*

2. The Treaty specified time limits within which the first and third of these reviews and assessments were to be undertaken. However, due to a lack of adequate information on which to base these reviews, the Governing Body postponed them as they fell due.

3. In the case of the assessment under Article 11.4, the Governing Body has repeatedly invited Contracting Parties, and natural and legal persons themselves, to provide information concerning plant genetic resources for food and agriculture that natural and legal persons have included in the Multilateral System. In the case of the review and assessment under Article 13.2d(ii)—of the level of payment, and of whether mandatory payment shall apply in cases where commercialized products are available without restriction—the Governing Body has not indicated what information it might need, or how this might be assembled.

4. By Resolution 4/2009 of its last Session, the Governing Body expressed its concern at the continuing lack of information and accordingly decided to postpone these reviews and assessments to the current Session. It stressed the importance of adequate information being provided to the Secretary, so that a full report might be prepared for its consideration at the current Session.

5. The present document constitutes that report. In the case of each of the reviews or assessments, the document outlines the relevant provisions of the Treaty; reviews the relevant prior deliberations of the Governing Body, in particular its requests to Contracting Parties and relevant stakeholders for information on which to base its reviews, as well as follow-up by the Secretary; and provides the information currently available.

6. The report concludes that although more information is now available, in particular, on the plant genetic resources held in certain Contracting Parties by natural and legal persons, as part of their national plant genetic resources systems, the information on which to base these reviews and assessments is still partial and unsystematic. Even in relation to natural and legal persons holding plant genetic resources as part of national programmes, the situation in most Contracting Parties is still undocumented, and there is almost no information on companies and private sector entities. In terms of methodology, however, an important advance has been made by the *Ad Hoc* Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System, whose advice has now provided a clearer picture as to ways in which private sector natural and legal persons may include material in the Multilateral System.

7. Should the Governing Body so decide, it may undertake or commence the process for the reviews and assessments at its current sessions, or it may decide to again postpone them until its next session. Further research and analysis would in either case appear to be required.

## II. ARTICLE 11.4

### ASSESSMENT OF PROGRESS IN INCLUSION OF PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE HELD BY NATURAL AND LEGAL PERSONS IN THE MULTILATERAL SYSTEM OF ACCESS AND BENEFIT-SHARING AND DECISION AS TO WHETHER ACCESS SHALL CONTINUE TO BE FACILITATED FOR NATURAL AND LEGAL PERSONS WHO HAVE NOT INCLUDED RESOURCES IN THE MULTILATERAL SYSTEM

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#### II.1 Mandate, and process to date

8. By Article 11.3 of the Treaty, Contracting Parties  
*“agree to take appropriate measures to encourage natural and legal persons within their jurisdictions who hold plant genetic resources for food and agriculture listed in Annex I to include such plant genetic resources for food and agriculture in the Multilateral System”.*
9. Article 11.4 further provides that:  
*“Within two years of the entry into force of the Treaty, the Governing Body shall assess the progress in including the plant genetic resources for food and agriculture referred to in paragraph 11.3 in the Multilateral System. Following this assessment, the Governing Body shall decide whether access shall continue to be facilitated to those natural and legal persons referred to in paragraph 11.3 that have not included these plant genetic resources for food and agriculture in the Multilateral System, or take such other measures as it deems appropriate.”*
10. The Treaty entered into force on 29 June 2004, and the First Session of the Governing Body was held from 1 to 6 June 2006. At that session, the Governing Body decided to defer the assessment of progress in the inclusion of plant genetic resources for food and agriculture held by natural and legal persons in the Multilateral System until its Third Session. It  
*“Urge[d] all other holders of the plant genetic resources for food and agriculture listed in Annex I to the Treaty to include these plant genetic resources in the Multilateral System, and urge[d] Contracting Parties to take appropriate measures, in accordance with Article 11.3 of the Treaty”,*  
and  
*“re-emphasised the importance of Contracting Parties taking appropriate measures to encourage natural and legal persons within their jurisdiction, who hold plant genetic resources for food and agriculture listed in Annex I of the Treaty, to include such plant genetic resources for food and agriculture in the Multilateral System”.*
11. By a Circular State Letter of 3 November 2006, the Interim Secretary accordingly requested Contracting Parties to provide:  
*“Information on all plant genetic resources for food and agriculture made available [...] includ[ing] by natural and legal persons within their jurisdictions”.*
12. At its Second Session, the Governing Body further:  
*“requested the Secretary to continue gathering information on the assessment of progress in the inclusion of plant genetic resources in the Multilateral System”.*
13. By a Circular State Letter of 11 November 2007, the Secretary accordingly drew the attention of Contracting Parties to the outstanding request for such information, and distributed a sample letter of notification of inclusion of material in the Multilateral System, which could be used both by Contracting Parties and natural and legal persons.

14. At its Third Session, the Governing Body

*Expresse[d] its concern that information on the inclusion of plant genetic resource for food and agriculture in the Multilateral System by natural and legal persons within the jurisdiction of Contracting Parties on which to base its assessment of the progress in including these plant genetic resources for food and agriculture in the Multilateral System, is not yet available;*

*Reiterate[d] the urgency of obtaining the appropriate information it needs to assess progress in the inclusion in the Multilateral System of plant genetic resources for food and agriculture held by natural and legal persons within the jurisdictions of Contracting Parties;*

*Decide[d] to postpone the assessment provided for in Article 11.4 of the Treaty until its Fourth Session, because of the current lack of information;*

*Stresse[d] the importance of adequate information being provided to the Secretary by January 2011, so that a full report may be prepared for its Fourth Session.*

15. By a further Circular State Letter of 30 November 2009, the Secretary accordingly drew the attention of Contracting Parties to the outstanding request for such information. This was followed by a further notification to National Focal Points on 31 May 2010, highlighting the actions to be taken by Contracting Parties in the context of the Multilateral System of Access and Benefit-sharing.

16. A number of Contracting Parties have reported on the plant genetic resources for food and agriculture that they incorporated in the Multilateral System. As such information is not of relevance to the reviews and assessments, since they concern only the inclusion of plant genetic resources for food and agriculture held by natural and legal persons. It is therefore not reported here: for such information, see Document IT/GB-4/11/12, *Report on the implementation of the Multilateral System*.<sup>1</sup>

## **II.2 Relevant considerations by the *Ad Hoc* Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System**

17. At its Third Session, the Governing Body established an *Ad Hoc* Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System.

18. At its first meeting, the Committee considered, among other matters, *Legal and administrative measures to encourage natural and legal persons to voluntarily place material in the Multilateral System*. It was of the opinion that:

*“the decision on what measures to establish under Article 11.3 of the International Treaty is left to the discretion of Contracting Parties. Those measures may include, but are not limited to, financial or fiscal incentives to holders of material (e.g., eligibility for public funding schemes). They might also consist of policy and legal measures, administrative actions setting up domestic procedures for inclusions, or awareness raising efforts (especially at the level of farmers).”<sup>2</sup>*

19. The Committee also considered the *Practical and legal implications for natural and legal persons putting material into the Multilateral System*, as a number of questions had been raised by industry that needed to be responded to, in order to promote the incorporation of such materials in the Multilateral System. It requested that a paper be prepared, in collaboration with relevant stakeholders, in particular the industry, which would raise and examine relevant legal issues and practical questions, for consideration at its second meeting.

<sup>1</sup> Notifications received from Contracting Parties are available at [http://www.planttreaty.org/inclus\\_en.htm](http://www.planttreaty.org/inclus_en.htm). See also, IT/GB-3/09/14.

<sup>2</sup> See document IT/AC-SMTA-MLS 1/10/Report.

20. At its second meeting, the Committee considered in particular how material might be included in the Multilateral System by natural and legal persons. It was of the opinion that there are various effective means by which this might be done. It concluded that:

*“The Multilateral System functions as a distributed genebanking system, from which plant breeders and others can request materials. In practical terms, it is only as good as the information on what the materials and their characteristics are, where they are held and by whom, and how they may be obtained. The Governing Body, in Resolution 3/2009, had stressed the importance of documenting the plant genetic resources for food and agriculture within the Multilateral System.*

*“In sum, it could be considered that a material held by a natural or legal person is ‘in’ the Multilateral System when that person:*

*“(i) has undertaken by notification to the Secretary, or equivalent public statement, to make the material available in accordance with the Multilateral System through an SMTA;*

*“(ii) has adequately and publicly documented the material, so that it may be requested for research, breeding and training for food and agriculture; and*

*“(iii) abides by that undertaking, or*

*“(iv) has donated a sample to an institution that has already undertaken to hold material within the Multilateral System.*

*“Any material transferred by a legal or natural person under an SMTA is in the Multilateral System.”<sup>3</sup>*

21. The deliberations and opinions of the Committee now form a clear basis to provide legal certainty to natural and legal persons considering including their materials in the Multilateral System, and encourage them to do so. They also show some of the complexities of documenting the material that may already have been brought into the Multilateral System, for example, by donation to national or international genebanks.

### **II. 3 Inclusion of plant genetic resources for food and agriculture by natural and legal persons forming part of national plant genetic resources systems**

22. The policy, legal and administrative structures of Contracting Parties regarding plant genetic resources for food and agriculture differ widely. Whereas, in some countries, plant genetic resources in the Multilateral System may be held directly by government entities, in others part or all of these resources may be held by institutions that are formally separate legal persons, but operate within a national policy framework. Plant genetic resources are also held, in some countries, through various forms of public/private partnerships. In recognition of this fact, and taking into consideration the fact that certain Contracting Parties had already reported on such entities, when notifying the Secretary of materials that they had included in the Multilateral System, the Governing Body, at its last Session, invited Contracting Parties

*“to provide information on the collections of legal persons not part of the government, whom they regard as forming part of their national plant genetic resources systems and who are willing to make such information available”.*

23. The Governing Body further invited

*“all Contracting Parties to include in their reports on the plant genetic resources for food and agriculture in the Multilateral System information on the appropriate measures that they are taking, in accordance with Article 11.3 of the Treaty, to encourage natural and*

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<sup>3</sup> See document IT/AC-SMTA-MLS 2/10/Report.

*legal persons within their jurisdictions to include plant genetic resources for food and agriculture in the Multilateral System, according to national capacities”.*

24. In the 2010/2011 biennium to date, the European Region has reported systematically in this way, which has made it possible to obtain a picture of the role of both their government and non-governments institutions in incorporating materials in the Multilateral System.<sup>4</sup> The breakdown of which type of institution holds these resources is as follows:

<b>Legal status of institution</b>	<b>Accessions</b>
Government	89,577
National and legal persons regarded as forming part of national plant genetic resources	172, 433
National and legal persons regarded as forming part of national plant genetic resources, by direct notification to the Secretary	2,317 <sup>5</sup>
Institutions of various statuses, reporting through EURISCO	57,764
Total	318,001

25. Although this information relates to only one region, it suggests that large numbers of accessions of *Annex I* have been incorporated in the Multilateral System by a variety of institutions regarded as forming part of national plant genetic resources systems, which are not formally part of government. In this region, the holdings of such institutions largely outnumber government holdings.

26. The European Region also reported on measures that its Contracting Parties have taken to encourage natural and legal persons to incorporate materials in the Multilateral System, largely addressed to this category of institutions. Switzerland, for example, has taken steps to require that not only all accessions of the national seed genebank, but also all accessions of Swiss private organizations financed by the National Plan of Action on Plant Genetic Resources for Food and Agriculture (NAP-PGRFA) are included in the Multilateral System.<sup>6</sup>

27. In terms of the information on which the Governing Body may base its reviews and assessment, it should be noted that such natural and legal persons forming part of national plant genetic resources systems are usually not commercial entities involved in the business of creating commercial products from plant genetic resources in the Multilateral System, from which Products may be developed, such that payments become due to the Treaty, under the provision of Article 13.2 of the Treaty and of the Standard Material Transfer Agreement. Information on materials that may have been incorporated in the Multilateral System by private commercial entities in any Contracting Party is scarce and unsystematic, though there is reason to believe that a number of them have contributed materials to genebanks that then make them available within the Multilateral System.

<sup>4</sup> IT/GB-4/11/Inf.9

<sup>5</sup> The notification of the inclusion of these materials, by the *Association pour l'Etude et l'Amélioration du Maïs*, (PRO-MAÏS), a private maize-breeders' association for maize study and improvement in France, and by the *Association Française des Semences de céréales à paille et autres espèces Autogames* (AFSA), both with the National Institute for Agricultural Research of France (INRA), was reported to the Governing Body during its Third Session. These are the only direct reports from natural or legal persons within the jurisdiction of a Contracting Party yet received.

<sup>6</sup> See document IT/AC-SMTA-MLS-2/10/2, for the second meeting of the *Ad Hoc* Advisory Committee on the Standard Material Transfer Agreement and the Multilateral System.



### III. ARTICLE 13.2d(ii)

#### 1. REVIEW OF THE LEVEL OF PAYMENT

#### 2. ASSESSMENT OF WHETHER THE MANDATORY PAYMENT REQUIREMENT UNDER THE STANDARD MATERIAL TRANSFER AGREEMENT SHALL ALSO APPLY IN CASES WHERE COMMERCIALIZED PRODUCTS ARE AVAILABLE WITHOUT RESTRICTION TO OTHERS FOR FURTHER RESEARCH AND BREEDING

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#### III.1 Review of the level of payment

##### III.1.1 Mandate, and process to date

28. Article 13.2d(ii) of the Treaty provided that the Governing Body should agree on “*the level, form and manner of the payment, in line with commercial practice*”. This, the Governing Body did at its First Session, in 2006, and its decisions on that occasion are incorporated in the current text of the Standard Material Transfer Agreement.

29. Article 13.2d(ii) further provides that

*“The Governing Body may, from time to time, review the levels of payment with a view to achieving fair and equitable sharing of benefits, and it may also assess, within a period of five years from the entry into force of this Treaty, whether the mandatory payment requirement in the SMTA shall apply also in cases where such commercialized products are available without restriction to others for further research and breeding”.*

30. In adopting the Standard Material Transfer Agreement by Resolution 2/2006, the Governing Body decided “*to review the levels of payment periodically, in conformity with Article 13.2d(ii) of the Treaty, starting from the Third Session of the Governing Body.*”

31. At its Third Session, the Governing Body postponed this review and decided “*to again review the level of payments, with a view to achieving fair and equitable sharing of benefits, at its Fourth Session*”.<sup>7</sup>

32. The Secretary brought this to the attention of Contracting Parties, in a Circular State Letter of 30 November 2009, and requested information for the preparation of the present report. This was followed by a notification to National Focal Points on 31 May 2010, highlighting the actions to be taken by Contracting Parties in the context of the Multilateral System of Access and Benefit-sharing. At the time of preparing this report, no relevant information has been received from any Contracting Party.

##### III.1.2 Current levels of payment

33. The Standard Material Transfer Agreement provides for two circumstances when mandatory payments are due from the Recipient, associated with the two options that effect the level of payment, from among which the Recipient may choose.

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<sup>7</sup> Paragraph 16, Resolution 5/2009.

***Mandatory annual payment on a Product-by-Product basis (Article 6.7)***

34. In accordance with Article 6.7 of the Standard Material Transfer Agreement, an annual mandatory payment shall be made on commercialization of any Product that is not freely available without restriction to others for further research and breeding and incorporates material received under a Standard Material Transfer Agreement. The level of payment is stipulated in Annex 2 of the Standard Material Transfer Agreement as follows:

*“If a Recipient, its affiliates, contractors, licensees, and lessees, commercializes a Product or Products, then the Recipient shall pay one point-one percent (1.1 %) of the Sales of the Product or Products less thirty percent (30%); except that no payment shall be due on any Product or Products that:*

*“(a) are available without restriction to others for further research and breeding in accordance with Article 2 of this Agreement;*

*(b) have been purchased or otherwise obtained from another person or entity who either has already made payment on the Product or Products or is exempt from the obligation to make payment pursuant to subparagraph (a) above;*

*(c) are sold or traded as a commodity.”*

***Mandatory annual payment on all Products of specific crops (Article 6.11)***

35. In accordance with Article 6.11, the terms of which a Recipient may accept for a specified crop or crops, a mandatory annual payment shall be made at a discounted rate, for all of a company’s Products of a particular crop, whether or not these incorporate material received under a Standard Material Transfer Agreement, and whether or not the Products are available without restriction. In this case, the level of payment is stipulated in Annex 3 of the Standard Material Transfer Agreement as follows:

*“The discounted rate for payments made under Article 6.11 shall be zero point five percent (0.5 %) of the Sales of any Products and of the sales of any other products that are Plant Genetic Resources for Food and Agriculture belonging to the same crop”* for which the Recipient has accepted Article 6.11 in the context of a Standard Material Transfer Agreement.

***Voluntary payments (Article 6.8)***

36. Article 6.8 encourages voluntary payments on commercialization of a Product that incorporates material received under a Standard Material Transfer Agreement, but which is not subject to mandatory payment under Articles 6.7 or 6.11. Voluntary payments under Article 6.8 are for Products that are available to others for further research and breeding. The Standard Material Transfer Agreement does not indicate a specific level of payment.

**III.2 Assessment of whether the mandatory payment requirement under the Standard Material Transfer Agreement shall also apply in cases where commercialized products are available without restriction to others for further research and breeding**

***III.2.1 Mandate, and process to date***

37. Article 13.2d(ii) of the Treaty provides that

*“The Governing Body [...] may also assess, within a period of five years from the entry into force of this Treaty, whether the mandatory payment requirement in the MTA shall apply also in cases where such commercialized products are available without restriction*

*to others for further research and breeding”.*

38. The Treaty entered into force on 29 June 2004, and the review mentioned in Article 13.2d(ii) of the Treaty therefore fell due in June 2009. The Third Session of the Governing Body was held from 1 to 5 June 2009. On that occasion, the Governing Body decided

*“to postpone the review of whether the mandatory payment requirement shall also apply in cases where commercialized products are available without restriction to others for further research and breeding to its Fourth Session;”*

39. As in the case of the review of the level of payment, the Secretary brought this to the attention of Contracting Parties, in the Circular State Letter of 30 November 2009, and requested relevant information. This was followed by a further notification to National Focal Points on 31 May 2010. At the time of preparing this report, no information has been received from Contracting Parties.

### ***III.2.2 Mandatory and voluntary payments***

40. As noted above, all payments in accordance Articles 6.7 and 6.11 of the Standard Material Transfer Agreement are mandatory, and payments under Article 6.8 are voluntary. The difference between Articles 6.7 and 6.8 is that, in the case of Article 6.7, the Product in question is not available without restriction to others for further research and breeding, and in the case of Article 6.8, it is available for such purposes.

41. There is to date very little information regarding the effects of these clauses on payment, in terms of:

- the number of Products being commercialized that incorporate material received under an Standard Material Transfer Agreement;
- the number of mandatory payments and of voluntary payments; and
- the level of voluntary payments, in relation to the value of the Products in question.

42. The Secretariat has, so far, not received any mandatory payment in accordance with either Article 6.7 or 6.11. One voluntary payment, in the sum of US\$ 1190, has been received. The material from which the Product in question was developed by Agriculture and Agri-Food Canada (AAFC), was accessed before the entry into force of the Treaty, and therefore not under a Standard Material Transfer Agreement, but the developers felt it was important to make a voluntary payment to the Benefit-sharing Fund, and have stated that they will endeavour to make an annual voluntary payment for the duration of the market life of the Product. No information is available as to the level of payment that this represents, that is, the rate on the basis of which it is calculated *vis-à-vis* the total sales of the product.

43. There is also a question of the schedule of reporting and of payment, which effects the availability of information:

- Payments under Article 6.7 are on a Product-by-Product basis, and only on commercialization. Because plant breeding is a slow process, it is unlikely that payments will begin to mount up rapidly.
- Payments under Article 6.11, on the other hand, are due annually, following notification to the Secretary of acceptance of the option. A few such notifications have been received, but no payments have yet been made against any of them.<sup>8</sup>

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<sup>8</sup> The Report from the European Region notes that total of 1,741 Standard Material Transfer Agreement have been issued by German institutions, and that “Germany has expressed a rough estimation that more than 90 % of all SMTAs follow the benefit-sharing provisions according Art. 6.7, which would mean, less than 10 % of all SMTAs would follow the benefit-sharing provisions according Art. 6.11”. No notifications of acceptance have yet been received in this regard.

44. The decision of the Governing Body regarding reporting and payment schedules was only taken in its last Session, and the digital data management and information technology support tools requested by the Governing Body are due to be deployed within 2011. More consistent information, which may be useful in evaluating the revenue streams likely to flow from mandatory and voluntary payments, may therefore become available in the near future.

#### IV. CONCLUSIONS

45. The information base for these reviews has improved since the last Session in relation to the plant genetic resources for food and agriculture being incorporated in the Multilateral System by natural and legal persons whom Contracting Parties regarded as forming part of their national plant genetic resources systems, and on whom they have reported. The information available to date, however, largely relates to one region, where such institutions hold considerable greater numbers of accessions than do strictly government institutions.

46. This points to the importance of the measures that Contracting Parties are taking to encourage such entities to effectively implement the Multilateral System. Some information on the measures that Contracting Parties have taken is now available, but the geographical coverage is sparse.

47. Almost no information is, however, available regarding material incorporated in the Multilateral System by private commercial entities, except in certain cases regarding public-private administrative arrangements within national plant genetic resources systems, again with a very limited geographical coverage. No private commercial entity has notified the Secretary directly of incorporations in the Multilateral System.

48. The *Ad Hoc* Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System has identified more clearly the ways in which private sector natural and legal persons can incorporate materials in the Multilateral System. It is evident that in some cases materials are, for example, being contributed to genebanks that make them available within the Multilateral System. To obtain a clearer picture of such matters, however, more focused research and surveys would be necessary.

49. There is essentially no information base of relevance to the level of payments, and mandatory and voluntary payments. This is partly because of the lengthy processes of plant breeding and the fact that the Standard Material Transfer Agreement's reporting and payment schedule was only adopted at the last Session, and because the digital data management and information technology support tools requested at that Session are due to be deployed within 2011.

50. The *Draft Business Plan of the Governing Body*, as prepared by the Secretariat and reviewed by the Bureau, with inputs from the Subsidiary Bodies in the current biennium, foresees that "*preparatory work will be carried out inter-sessionally for the reviews, assessments and decisions to be undertaken by the Governing Body*", and that preparatory research, analysis and information gathering will be required.

51. The Governing Body may wish to undertake or commence the process for these reviews at the current Session, or may decide to further postpone it. The following elements which the Governing Body may wish to consider for inclusion in a Resolution on the Multilateral System of Access and Benefit-sharing assume that the reviews and assessments are again postponed, and would need to be finalized in accordance with the decisions of the Governing Body in this regard.

52. The experience of the last Session, and the better understanding that has now been obtained of the various ways in which natural and legal persons in the private sector can include plant genetic resources for food and agriculture in the Multilateral System, suggest clearly that adequate information for these reviews and assessments will not be forthcoming from reporting alone. The Governing Body may accordingly wish to request the Secretary to undertake preparatory research, analysis and information gathering for its next session, and to reconvene the

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*Ad Hoc* Technical Advisory Committee on the Standard Material Transfer Agreement and Multilateral System to assist the Secretary. This, too, is reflected in the draft Resolution.

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*Appendix*

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**RESOLUTION \*\*/2011**  
**THE MULTILATERAL SYSTEM OF ACCESS AND BENEFIT-SHARING**  
**Draft elements regarding the reviews and assessments**  
**due under Articles 11.4 and 13.2d(ii) of the Treaty**

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**The Governing Body,****Recalling** that

- a) In Article 11.3 of the Treaty, Contracting Parties agreed to take appropriate measures to encourage natural and legal persons within their jurisdictions who hold plant genetic resources for food and agriculture listed in *Annex I* to include such plant genetic resources for food and agriculture in the Multilateral System;
- b) Article 11.4 of the Treaty provided that, within two years of the entry into force of the Treaty, the Governing Body should assess the progress in including these plant genetic resources for food and agriculture in the Multilateral System, and that, following this assessment, the Governing Body should decide whether access shall continue to be facilitated to those natural and legal persons that have not included these plant genetic resources for food and agriculture in the Multilateral System, or take such other measures as it deems appropriate;
- c) At its Second Session, the Governing Body had decided to postpone this assessment of progress until its Third Session, and that at its Third Session it further postponed the assessment until this Fourth Session;
- d) At its Third Session, it requested all Contracting Parties to report on the appropriate measures that they are taking, in accordance with Article 11.3 of the Treaty, to encourage natural and legal persons within their jurisdictions to include plant genetic resources for food and agriculture in the Multilateral System, according to national capacities, and to provide information on the collections of legal persons not part of the government, whom they regard as forming part of their national plant genetic resources systems and who are willing to make such information available;

**Noting** that there is as yet, in particular, very little information regarding plant genetic resources that private sector entities may be incorporating in the Multilateral System;

**Recalling** that

- a) Article 13.2d(ii) of the Treaty provides that the Governing Body may, from time to time, review the levels of payment with a view to achieving fair and equitable sharing of benefits;
- b) At its Third Session, the Governing Body had decided to review the level of payments, with a view to achieving fair and equitable sharing of benefits, at this Fourth Session;
- c) Article 13.2d(ii) further provides that the Governing Body may assess, within a period of five years from the entry into force of the Treaty, whether the mandatory payment requirement in the Material Transfer Agreement shall apply also in cases where commercialized products are available without restriction to others for further research and breeding;

- d) At its Third Session, the Governing Body had decided to postpone the review of whether the mandatory payment requirement shall also apply in cases where commercialized products are available without restriction to others for further research and breeding to this Fourth Session;

**Noting** that very little information has yet become available regarding actual and expected mandatory payments in accordance with Articles 6.7 and 6.11, and voluntary payments in accordance with Article 6.8, of the Standard Material Transfer Agreement;

**Reiterating** the importance of obtaining the relevant information it needs in order to undertake the reviews and assessments foreseen under Articles 11.4 and 13.2d(ii) of the Treaty;

- i) **Thanks** those Contracting Parties who have provided information on the collections of natural and legal persons not part of the government, whom they regard as forming part of their national plant genetic resources systems, and **encourages** them to continue to provide such information as and when it becomes available;
- ii) **Reiterates** its request to all Contracting Parties to provide such information as soon as possible;
- iii) **Further requests** all Contracting Parties to inform it of the appropriate measures they are taking, in accordance with Article 11.3, to encourage natural and legal persons within their jurisdictions to include plant genetic resources for food and agriculture in the Multilateral System, including those whom they regard as forming part of their national plant genetic resources systems, those in the private commercial sector and other natural and legal persons;
- iv) **Expresses its concern** that information on the inclusion of plant genetic resource for food and agriculture in the Multilateral System by natural and legal persons within the jurisdiction of Contracting Parties on which to base its assessment of the progress in including these plant genetic resources for food and agriculture in the Multilateral System, is not yet available, and that such information should comprise:
- The holders of the collections;
  - The crops included; and
  - The total number of accessions;
- v) **Recognizes** that there are various effective means by which natural and legal persons could include material in the Multilateral System, and that documenting such inclusions will require analysis and research, in consultation with stakeholders;
- vi) **Requests** private natural and legal persons, in particular commercial companies and breeders, to report on plant genetic resources for food and agriculture that they have included in the Multilateral System, and, in this context, invites the assistance of industry representative bodies in conveying this request to their members;
- vii) **Decides** to again postpone the reviews and assessments foreseen under Articles 11.4 and 13.2d(ii) of the Treaty to its Fifth Session;
- viii) **Requests** the Secretary to undertake the necessary research, and for this purpose to request information from Contracting Parties, international institutions that have concluded agreements under Article 15 of the Treaty, private sector entities and other natural and legal persons, in order to provide to its Fifth Session a comprehensive document for these reviews and assessments;
- ix) **Requests** the Secretary to develop, with advice from the *Ad Hoc* Technical Advisory

Committee on the Multilateral System and Standard Material Transfer Agreement, standard formats to enable Contracting Parties, international institutions having signed agreements under Article 15, and natural and legal persons, , to provide, as appropriate, information and report effectively on the various items mentioned in this Resolution, and the implementation of the Multilateral System and the operation of the Standard Material Transfer Agreement in general.

- x) ***Decides*** to reconvene the *Ad Hoc* Committee on the Multilateral System and the Standard Material Transfer Agreement, *inter alia*, to:
- Review the draft of the document prepared by the Secretary, provide advice or inputs, identify any additional information necessary, and make recommendations to the Governing Body on the organization of the reviews and assessments at its Fifth Session;
  - Review and finalize the standard formats mentioned above.