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粮食及
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et
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Unidas
para la
Agricultura
y la
Alimentación

Point 11 de l'ordre du jour provisoire

**TRAITÉ INTERNATIONAL SUR LES RESSOURCES PHYTOGÉNÉTIQUES
POUR L'ALIMENTATION ET L'AGRICULTURE**

DEUXIÈME SESSION DE L'ORGANE DIRECTEUR

Rome (Italie), 29 octobre – 2 novembre 2007

**EXAMEN DE L'ACCORD DE TRANSFERT DE MATÉRIEL QUI DOIT
ÊTRE UTILISÉ PAR LES CENTRES INTERNATIONAUX DE RECHERCHE
AGRONOMIQUE POUR LES RESSOURCES PHYTOGÉNÉTIQUES UTILES À
L'ALIMENTATION ET À L'AGRICULTURE NON INCLUSES À
L'APPENDICE 1 DU TRAITÉ**

1. L'Article 15.1 b) du Traité stipule que

« Les ressources phytogénétiques pour l'alimentation et l'agriculture autres que celles énumérées à l'Annexe 1 du présent Traité et collectées avant l'entrée en vigueur de celui-ci, qui sont détenues par les CIRA, sont disponibles conformément aux dispositions de l'ATM actuellement en vigueur conformément aux accords conclus entre les CIRA et la FAO. Cet ATM est amendé par décision de l'Organe directeur au plus tard à sa deuxième session ordinaire, en consultation avec les CIRA, conformément aux dispositions pertinentes du présent Traité, en particulier les Articles 12 et 13 », et sous certaines conditions additionnelles.

2. En application des dispositions de l'Article 15.1 b), le Secrétaire a envoyé une lettre le 10 juillet 2007 au Directeur général de Bioversity International, invitant les Centres internationaux de recherche agronomique (CIRA) du Groupe consultatif pour la recherche agricole internationale (GCRAI) à préparer un document de travail contenant un avis technique concernant l'amendement de l'Accord de transfert de matériel (ATM). La lettre est jointe en *Annexe 1* au présent document.

Par souci d'économie, le tirage du présent document a été restreint. MM. les délégués et observateurs sont donc invités à ne demander d'exemplaires supplémentaires qu'en cas d'absolue nécessité et à apporter leur exemplaire personnel en séance. La plupart des documents de réunion de la FAO sont disponibles sur l'Internet, à l'adresse <http://www.planttreaty.org>

3. Suite à la réception de ladite lettre, les CIRA du GCRAI ont débattu de cette question pendant l'intersession avec le concours de Bioversity International qui a facilité et coordonné les travaux.
4. Le 4 septembre 2007, le Secrétaire a reçu une communication de Bioversity International au nom des CIRA du GCRAI, fondée sur les résultats d'un processus de concertation étendu à l'ensemble du système et présentant les conclusions dégagées. Le rapport indique que les consultations avec les CIRA sur l'application des dispositions de l'Article 15.1 b) du Traité ont été menées à bien et rend compte des résultats.
5. Le rapport figure en *Annexe 2* au présent document tel qu'il a été reçu de Bioversity International au nom des CIRA du GCRAI.
6. La proposition soumise par les Centres du GCRAI souligne l'intérêt, du point de vue de l'efficacité administrative, de ne pas avoir à utiliser deux différents ATM, d'autant qu'ils doivent, aux termes de l'Article 15.1 b) du Traité, contenir des dispositions fondamentalement identiques pour le partage des avantages. En conclusion, il ressort que *« les Centres marquent une nette préférence pour l'option d'un instrument unique, l'Accord type de transfert de matériel, régissant le transfert de matériel détenu par les Centres, qu'il soit énuméré ou non à l'Annexe 1. »*
7. L'Organe directeur est invité à examiner l'amendement de l'ATM ci-joint en vue de son adoption et à prendre toute décision nécessaire.

Annexe I



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Our Ref.: PL 40/31

Your Ref.:

Rome, 10 July 2007

Dear Mr Frison,

The Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture will hold its second session in Rome, from 29 October to 2 November 2007.

As provided by Article 20 of the Treaty, I am currently preparing the documentation for the forthcoming session of the Governing Body, having recently taken up office as Secretary of the Governing Body. As you are aware, the Governing Body of the Treaty, at its first session, invited inputs from a wide range of stakeholders regarding issues of relevance to the implementation of the Treaty, to be reported at its second session. I am attaching for your information a copy of the provisional agenda of the second session, which was recently finalized by the Bureau of the second session of the Governing Body.

In preparing the required documentation, I am pleased to invite Bioversity International, on behalf of the Centers of the Consultative Group on International Agricultural Research, to contribute to three agenda items (Agenda Item 8, 11 and 13) of the second session, and to provide to the Secretariat of the Governing Body the following documentation:

1. Agenda item 8, 'Implementation of the Funding Strategy of the Treaty':

The Governing Body invited the Consultative Group on International Agricultural Research (CGIAR) to provide, through its activities, support to the implementation of the Funding Strategy, and to report to the Governing Body on these activities (Resolution 1/2006, paragraph 6). I am pleased to invite you to provide a report on such support by the CGIAR.

2. Agenda item 11, 'Consideration of the Material Transfer Agreement (MTA) to be used by International Agricultural Research Centers (IARCs) for Plant Genetic Resources for Food and Agriculture (PGRFA) not included in Annex I of the Treaty':

Article 15.1(b) of the International Treaty states that "Plant genetic resources for food and agriculture other than those listed in Annex I of this Treaty and collected before its entry into force that are held by IARCs shall be made available in accordance with the provisions of the MTA currently in use, pursuant to agreements between the IARCs and the FAO. *This MTA shall be amended by the Governing Body no later than its second regular session, in consultation with the IARCs.*" This provision of the Treaty is reflected in the Model Agreement for use with the IARCs, which was adopted by the Governing Body and signed by the IARCs and the FAO on behalf of the Governing Body of the Treaty at the first session in Madrid last year.

.../...

Mr Emile Frison
Director General
Bioversity International
Maccarese

Specifically, Article 2(b) of the Agreements states that “This MTA shall be amended by the Governing Body *no later than its second regular session*, in consultation with the Centre, in accordance with the relevant provisions of the Treaty, especially Articles 12 and 13” under certain conditions. Pursuant to Article 15.1(b) of the Treaty itself and the afore-mentioned Agreements which are in force between the Governing Body and the IARCs, I am pleased to invite you to provide a working document on proposals for the implementation of Article 15.1(b) of the Treaty for the second session of the Governing Body.

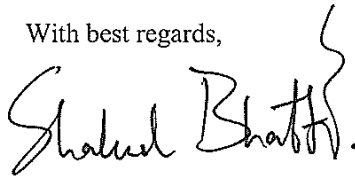
3. Agenda item 13, ‘Implementation of Article 6, *Sustainable use of plant genetic resources*’:

At its first session, the Governing Body invited relevant institutions and organisations to submit to the Secretary information on policy and legal measures relevant to Article 6.1 of the Treaty, as well as other relevant information, for example on workshops or studies. The compilation of such information together with information on relevant measures undertaken by the IARCs and others should serve as a basis to assess progress in implementing Article 6, at a future session of the Governing Body.

Pursuant to the Governing Body’s requests, unified system-wide submissions and positions on these issues would simplify the consideration of the issues by the Governing Body at its second session. In light of the forthcoming summer break and the translation times required before issuance of the documents, I would be grateful for your drafts by the end of July 2007 or shortly thereafter.

I remain at your disposal for any further information you may require on the International Treaty and the second session of its Governing Body. I look forward to receiving your contributions and working together in the future on the implementation of the Treaty.

With best regards,



Shakeel Bhatti
Secretary

International Treaty on Plant Genetic Resources
for Food and Agriculture

Annexe 2

THE OUTCOME OF CONSULTATIONS WITH THE INTERNATIONAL AGRICULTURAL RESEARCH CENTRES (IARCS) OF THE CONSULTATIVE GROUP ON INTERNATIONAL AGRICULTURAL RESEARCH ON THE IMPLEMENTATION OF ARTICLE 15.1(B) OF THE TREATY

1. Article 15.1.b of the International Treaty on Plant Genetic Resources for Food and Agriculture provides that:

“Plant genetic resources for food and agriculture other than those listed in Annex 1 of this Treaty and collected before its entry into force that are held by IARCS shall be made available in accordance with the provisions of the MTA currently in use pursuant to the agreements between the IARCS and the FAO. This MTA shall be amended by the Governing Body no later than its second regular session, in consultation with the IARCs, in accordance with the relevant provisions of this Treaty, especially Articles 12 and 13, ...”

2. Consultations have been held between the Secretariat of the Treaty and Bioversity on behalf of the IARCs during the intersessional period.

3. The unanimous preference of the Centres would be for the MTA to be amended to bring it into line with the SMTA as adopted by the Governing Body at its First Session in June 2006. In other words the clear preference of the Centres would be to have one instrument only, the SMTA, governing the transfer of both Annex 1 and non-Annex material held by the Centres.

4. The reasons expressed for this preference are the following:

- a. Under Article 15.1 (b) of the Treaty, as reflected in Article 2(b) of the Agreements between the Centres and the Governing Body of the Treaty, the MTA is to be amended “in accordance with the relevant provisions of [the] Treaty, especially Article 12 and 13”. These articles set down the conditions applicable to access and benefit sharing for materials under the Multilateral System, which are reflected in the provisions of the SMTA itself. The Centres thus consider that the Governing Body in adopting the SMTA at its First Session in June 2006 has already in essence performed the task of amending the MTA to bring it into accordance with the Treaty and in particular its Articles 12 and 13.
- b. The Centres also consider that the use of the same MTA for both Annex 1 and non-Annex 1 material would also simplify procedures for the distribution of germplasm held by the Centres and hence reduce costs.

5. In expressing this preference, the Centres acknowledged that, in many ways, it would have been preferable to be able to use a shorter MTA, with fewer complexities than are included in the SMTA. Nonetheless, the Centres recognize that the SMTA itself was the result of many years of discussion and negotiation among the Contracting Parties to the Treaty. One of the Centres has also pointed out the special difficulties arising out of collections of tree germplasm. These difficulties have already been brought to the attention of the Commission on Genetic Resources for Food and Agriculture in the Second Joint Statement of FAO and the CGIAR Centres on implementation of the 1994 In Trust Agreements, and are also referred to in the Statement of the CG Centres issued at the time of signature of the Agreements with the Governing Body of the Treaty in October 2006.

6. The Centres have also noted that the wording of Article 6 of the SMTA and of some of the Annexes to the SMTA make specific reference to Annex 1 of the Treaty. The use of the SMTA for the transfer of non-Annex 1 material might therefore call for the adoption by the Governing Body of some interpretation or other clarification regarding the meaning to be given to these words in the context of non-Annex 1 material.

7. In this context the Centres have identified the following two possible options.

8. The **first option** would be to include a **cover note** with the SMTA stating that, in accordance with the decision of the Governing Body, the SMTA can be used for non-Annex 1 materials. This note would not be considered an amendment of the SMTA. It could be included with the SMTA for transfers of both Annex 1 and non-Annex 1 materials, thereby relieving the Centres of the need to keep track of two different MTAs.

9. The **second option** would be to include a interpretative footnote or series of footnotes to relevant provisions of the SMTA indicating that these provisions should not be interpreted as precluding the use of the SMTA for transfers of non-Annex 1 material. The interpretative footnote or footnotes should not be seen as amendments to the SMTA, so much as clarifications of its meaning. They would be included in all versions of the SMTA and thus avoid the need for two versions of the SMTA.

10. The Centres discarded a third option, which would be to delete the references to Annex 1 and the Multilateral System, thereby producing a slightly revised version of the SMTA for use for non-Annex 1 materials. This would have the effect of obliging the Centres to keep track of two different MTAs, which would be administratively cumbersome.

11. The matter was considered by the CG Genetic Resources Policy Committee at its 21 Session in April 2007. The Committee recommended that including explanatory footnotes in the text of the SMTA would be the best approach. The next best approach would be to include the information on an explanatory cover page attached to the SMTA.

12. The Centres have noted that the option of including an explanatory footnote on the first page of the SMTA for transfers of both Annex 1 and non-Annex 1 material has been adopted by the national genebank of at least one Contracting Party (the Netherlands' Centre for Genetic Resources). By placing the footnote on the first page of the SMA, the approach taken by the national genebank in essence conflates the two options recommended by the CG Centres. A copy of the first page of the SMTA including this explanatory note as set out on the website of the national genebank is attached as appendix to this annex for the information of the Governing Body.

ACCORD TYPE DE TRANSFERT DE MATÉRIEL*

PRÉAMBULE**CONSIDÉRANT QUE**

Le Traité international sur les ressources phytogénétiques pour l'alimentation et l'agriculture (ci-après dénommé « le Traité »)¹ a été adopté par la Conférence de la FAO à sa trente et unième session, le 3 novembre 2001 et est entré en vigueur le 29 juin 2004;

Le Traité a pour objet la conservation et l'utilisation durable des **ressources phytogénétiques pour l'alimentation et l'agriculture** et le partage juste et équitable des avantages découlant de leur utilisation, en harmonie avec la Convention sur la diversité biologique, pour une agriculture durable et pour la sécurité alimentaire;

Les Parties contractantes au Traité, dans l'exercice de leurs droits souverains sur leurs **ressources phytogénétiques pour l'alimentation et l'agriculture**, ont établi un **système multilatéral**, tant pour favoriser l'accès aux **ressources phytogénétiques pour l'alimentation et l'agriculture** que pour partager de façon juste et équitable les avantages découlant de l'utilisation de ces ressources, dans une perspective complémentaire et de renforcement mutuel;

Compte tenu des articles 4, 11, 12.4 et 12.5 du Traité;

Compte tenu également de la diversité des systèmes juridiques des Parties contractantes au point de vue des règles de procédure nationales régissant l'accès aux tribunaux et à l'arbitrage et des obligations découlant des conventions internationales et régionales applicables à ces règles de procédure;

L'Article 12.4 du Traité dispose que l'accès facilité, conformément aux Articles 12.2 et 12.3 plus haut, est accordé conformément à un accord type de transfert de matériel dans le cadre du **Système multilatéral** et l'**Organe directeur** du Traité, par sa Résolution 1/2006 du 16 juin 2006, a adopté l'Accord type de transfert de matériel.

¹ Note du Secrétariat: comme l'a proposé le Groupe de travail juridique lors de la réunion du Groupe de contact pour la rédaction de l'Accord type de transfert de matériel, les termes définis ont, pour plus de clarté, été mis en caractère gras dans tout le texte.

* Au cas où l'ATM est utilisé pour le transfert de ressources phytogénétiques pour l'alimentation et l'agriculture autres que celles énumérées à l'appendice au Traité:

Les références au « Système multilatéral » figurant dans l'ATM ne seront pas interprétées comme limitant l'application de l'ATM à des ressources phytogénétiques pour l'alimentation et l'agriculture énumérées à l'appendice 1, et en ce qui concerne l'article 6.2 de l'ATM, signifieront « au titre du présent accord »;

La référence, dans l'article 6.11 et dans l'appendice 3 de l'ATM, aux « ressources phytogénétiques pour l'alimentation et l'agriculture qui appartiennent à la même espèce cultivée, comme indiqué dans l'appendice 1 au Traité », sera considérée comme signifiant « ressources phytogénétiques pour l'alimentation et l'agriculture qui appartiennent à la même espèce cultivée ».