



The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



Items 11.2, 11.3 and 11.4 of the Provisional Agenda

FOURTH SESSION OF THE GOVERNING BODY

Bali, Indonesia, 14 – 18 March 2011

**REPORT ON THE IMPLEMENTATION OF THE MULTILATERAL SYSTEM
OF ACCESS AND BENEFIT SHARING**

Note by the Secretary

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- i) *The Governing Body, at its Third Session, requested the Secretary to prepare a comprehensive report to its Fourth Session on the status of non-monetary and monetary benefit-sharing, as provided for in Articles 13.2a, b, c and d of the International Treaty, and for this purpose to request information from Contracting Parties, international institutions having signed agreements under Article 15, and private sector entities, and decided to review the implementation of the Multilateral System at its Fourth Session.*
- ii) *In the current biennium, both Contracting Parties and the International Agricultural Research Centers (IARCs) of the Consultative Group on Agricultural Research (CGIAR), and other relevant international institutions have provided more detailed information about their use of the Standard Material Transfer Agreement and Multilateral System. This has allowed, for the first time since the Treaty entered into force, the preparation of a more comprehensive report on the functioning of the Multilateral System, as requested by the Governing Body.*
- iii) *This document contains the report requested by the Governing Body based on information provided by Contracting Parties and other international institutions on their implementation of the Multilateral System and their experiences in the use of the Standard Material Transfer Agreement. This document also contains the outputs of the meetings of the Ad Hoc Technical Advisory Committee for consideration and adoption by the Governing Body.*
- iv) *The Governing Body is being invited to review the information contained in this document and to give any further guidance it considers appropriate for continued effective functioning of the Multilateral System. In this regard, possible elements of a Resolution are provided for consideration by the Governing Body.*
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I. INTRODUCTION

1. Article 19.3 of the Treaty provides that

“The functions of the Governing Body shall be to promote the full implementation of this Treaty, keeping in view its objectives, and, in particular, to:

- (a) provide policy direction and guidance to monitor, and adopt such recommendations as necessary for the implementation of this Treaty and, in particular, for the operation of the Multilateral System.”

2. Part IV of the Treaty establishes the Multilateral System of Access and Benefit-sharing;¹ Part V covers the supporting components, including the role and contributions of the International Agricultural Research Centers (IARCs) of the Consultative Group on Agricultural Research (CGIAR) to the Multilateral System of Access and Benefit-sharing (Multilateral System); and Article 18, *Financial Resources*, specifies that the financial benefits arising from Article 13.2d are part of the Treaty’s Funding Strategy.

3. The Treaty, which entered into force on 29 June 2004, also foresees certain specific reviews and assessments to be carried out by the Governing Body, regarding the implementation of the Multilateral System. These are covered in document IT/GB-4/11/13, *Reviews and assessments under the Multilateral System, and of the implementation and operation of the Standard Material Transfer Agreement*.

4. The present document addresses the Multilateral System as a whole and provides a progress report regarding the implementation of the System. The report shows that there is now more information than was previously available, as a number of Contracting Parties and international institutions provide such relevant information. Hence, the report provides, to a significant degree, a clearer idea of the functioning of the Multilateral System. This represents an important and positive step forward for the System, which is due to the efforts made by some Contracting Parties to collect and provide the relevant data.

5. The document also provides an update on activities and events that occurred between the Third Session of the Governing Body and 31 December 2010, as well as steps taken with respect to the operation of the Standard Material Transfer Agreement (SMTA). Its primary focus is on the provisions of the Treaty, particularly Part IV of the Treaty and Article 15, and on the measures that Contracting Parties and others are taking to bring the Multilateral System into full operation. A number of other matters regarding the implementation of the Multilateral System are dealt with under other items of the agenda, for which other documents have been prepared. In those cases, the present document will not enter into the matter in depth, but a cross-reference will, where relevant, be made to the relevant document. The other relevant documents are the following:

- IT/GB-4/11/13, *Reviews and assessments under the Multilateral System, and of the implementation and operation of the Standard Material Transfer Agreement*;
- IT/GB-4/11/14, *Report of the Chair of the Third Party Beneficiary Committee*;
- IT/GB-4/11/15, *Report on the operations of the Third Party Beneficiary*;
- IT/GB-4/11/18, *Policy coherence and complementarity of the work of the Commission on Genetic Resources for Food and Agriculture and of the Governing Body*;
- IT/GB-4/11/19, *Vision paper on the development of the global information system in the context of Article 17 of the Treaty*; and
- IT/GB-4/11/22, *Relationship with the Convention on Biological Diversity*.

¹ Article 11, *Coverage of the Multilateral System*, Article 12, *Facilitated access to plant genetic resources for food and agriculture within the Multilateral System*, and Article 13, *Benefit-sharing in the Multilateral System*.

6. The document concludes with a brief over-all picture of the implementation status of the Multilateral System, and identifies possible elements of a Resolution on the implementation of the Multilateral System, for consideration by the Governing Body.

II. MAJOR DEVELOPMENTS IN THE INTERNATIONAL ENVIRONMENT OF IMPORTANCE TO THE IMPLEMENTATION OF THE MULTILATERAL SYSTEM

7. At its Third Session, the Governing Body

Request[ed] the Secretary to continue participating in relevant meetings of the World Intellectual Property Organization, the International Union for the Protection of New Varieties of Plants and the World Health Organization;

8. Discussions are continuing at the World Intellectual Property Organization's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) to advance key substantive issues and the work it is undertaking on traditional knowledge and genetic resources. Text-based negotiations on these issues are also being undertaken through intersessional working groups. As requested by the Governing Body, at its Third Session, the Secretariat has been, and will continue to participate and monitor the discussions at WIPO.

9. Article 1.2 of the Treaty provides that the objectives of the Treaty "will be attained by closely linking this Treaty to the Food and Agriculture Organization of the United Nations and to the Convention on Biological Diversity".

10. The Treaty is in harmony with the Convention on Biological Diversity (CBD) and requires its Secretary to cooperate in particular with the CBD Secretariat.² The Governing Body has also repeatedly emphasized the need to maintain close relationship with the Convention, and called for the strengthening of the collaboration between their two Secretariats.

11. The Secretaries of the Treaty and the CBD have recently signed a Memorandum of Cooperation where both Secretariats undertake to cooperate, in particular, in capacity-building regarding access and benefit-sharing in plant genetic resources for food and agriculture.

12. At its First Session, the Governing Body

*emphasized the need to continue cooperation with the Convention on Biological Diversity. [It] welcomed, in particular, the invitation of the Eighth Conference of the Parties to collaborate in the implementation of the cross-cutting initiative on biodiversity for food and nutrition, and the invitation to its Secretariat to participate in the Liaison Group of the Biodiversity-Related Conventions.*³

13. At its Second Session, the Governing Body

*called for continued collaboration with the Convention on Biological Diversity, especially in regard to the conservation and sustainable use of agricultural biological diversity, and access and benefit sharing.*⁴

14. At its Third Session, the Governing Body requested the Secretary

"to continue enhancing the collaboration with other international organizations, especially the Convention on Biological Diversity in regard to the conservation and sustainable use of agricultural biological diversity, access to plant genetic resources and

² Article 20.5.

³ Paragraph 49, document, IT/GB-1/06/Report.

⁴ Paragraph 85 of the document, IT/GB-2/07/Report, *Report of the Second Session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture.*

benefit-sharing; stressing the importance of collaboration during forthcoming negotiations on the International Regime on Access and Benefit-sharing which are to be completed at the earliest possible time before the 10th Meeting of the Conference of Parties in 2010 in Japan”.

15. In this context, the Secretariat regularly participates in relevant processes of the CBD, especially the several meetings of the *Ad Hoc* Open-ended Working Group on Access and Benefit-sharing (ABS) that negotiated the International Regime on Access and Benefit-sharing.
16. At its Tenth Session, the Conference of Parties (COP) to the CBD adopted the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization (Nagoya Protocol), which is of direct relevance to the Treaty.
17. In approving the Nagoya Protocol (Decision X/1), the COP recognized the International Treaty as one of the four complementary instruments that constitute the International Regime. Several aspects need to be taken into account with regard to the cooperation on access and benefit-sharing with the Convention on Biological Diversity, including in the framework of the *Nagoya Protocol*. Additional information on the relevance of the Protocol to the Treaty and its Multilateral System are contained in the document, IT/GB-4/11/22, *Relationship with the Convention on Biological Diversity*.
18. The Nagoya Protocol also recognized
the interdependence of all countries with regard to genetic resources for food and agriculture as well as their special nature and importance for achieving food security worldwide and for sustainable development of agriculture in the context of poverty alleviation and climate change and acknowledging the fundamental role of the International Treaty on Plant Genetic Resources for Food and Agriculture and the FAO Commission on Genetic Resources for Food and Agriculture in this regard.
19. Taking into account the significant progress so far achieved in the implementation of the Multilateral System of the Treaty, the Governing Body might wish to consider further elaboration of work in the area of access and benefit-sharing, to ensure that the special nature of plant genetic resources for food and agriculture, its distinctive features and problems needing distinctive solutions are taken into account in the development and implementation of national access and benefit-sharing legislation and other measures that might have implications for the Multilateral System.
20. Provision is made within the draft Work Programme for related activities, including capacity building, information gathering, awareness raising, and possible joint activities with the CBD Secretariat.

III. COVERAGE OF THE MULTILATERAL SYSTEM (ARTICLES 11 AND 15.1a)

A. Plant genetic resources held by Contracting Parties

21. Article 11.1 of the Treaty states that the Multilateral System comprises all plant genetic resources for food and agriculture listed in *Annex I* of the Treaty that are “under the management and control of the Contracting Parties and in the public domain”.
22. At its Third Session, the Governing Body
4. Request[d] all Contracting Parties to report on their plant genetic resources for food and agriculture that are in the Multilateral System, in accordance with Article 11.2 of the International Treaty, and, according to national capacities, to take measures to make information on these resources available to potential users of the Multilateral System;

23. The Governing Body also

Stresse[d] the importance of documenting the plant genetic resources for food and agriculture within the Multilateral System, so that they may be accessed for the purpose of utilization and conservation for research, breeding and training for food and agriculture using the FAO/IPGRI Multicrop Passport Descriptor List; and

Welcome[d] the efforts underway to coordinate and improve information systems documenting plant genetic resources for food and agriculture, based on existing information systems, which should build the basis of the Global Information System, foreseen in Article 17, consistent with Article 12.3b, of the International Treaty.

24. The Treaty provides that all Contracting Parties' plant genetic resources of the crops in *Annex I* and meeting the criteria of the Treaty's Article 11.2 are in the Multilateral System. The availability of plant genetic resources for facilitated access is the first building block of the Multilateral System.

25. 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 that had been made available.

26. At its Second Session, the Governing Body "*requested the Secretary to continue gathering information on the assessment of progress in the inclusion of plant genetic resources in the Multilateral System*".

27. By a further Circular State Letter of 11 June 2008, the Secretary accordingly drew Contracting Parties' attention to the outstanding request for such information. A sample letter of notification of inclusion of material in the multilateral system was distributed with the Circular State Letter, and is attached as *Appendix 3* to the current document.

28. Since the conclusion of the Third Session of the Governing Body, a number of new notifications of plant genetic resources that are in the Multilateral System have been received by the Secretariat. At the time of preparing this document (January 2011), the following Contracting Parties had provided such information, including earlier notifications, in differing levels of detail:⁵ Brazil, Canada, Czech Republic, Denmark, Finland, Iceland, Norway and Sweden (The Nordic Genetic Resource Centre), Estonia, Germany, Jordan, Lebanon, Madagascar, Namibia, the Netherlands, Portugal, Romania, Spain, Sudan, Switzerland, the United Kingdom and Zambia, as well as a collective report by the European Region.⁶ The list of notified inclusions is available on the Treaty website at: http://www.planttreaty.org/inclus_en.htm. Considering that there are 127 Contracting Parties to the Treaty, a significant number of Contracting Parties is yet to provide information or notify the Secretariat of plant genetic resources for food and agriculture within their jurisdictions that are in the Multilateral System.

29. As reported to the Governing Body at its Third Session, a number of Contracting Parties—both developing and developed countries—have continued to bring to the notice of the Secretary a variety of difficulties they are facing in interpreting the relevant provisions of the Treaty, and a number have continued to ask for advice and assistance, which, as far as possible, the Secretary has provided, on an *ad hoc* basis. In addition, the *Ad Hoc* Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System during its meetings provided further advice that the Secretariat found very helpful in addressing some of the questions and concerns that have been raised by Contracting Parties and other users of the Multilateral System.

⁵ Information on notifications related to the material included in the Multilateral System of Access and Benefit-sharing is posted on the Treaty's website at http://www.planttreaty.org/inclus_en.htm.

⁶ The report covers accessions of *Annex I* material reported from 22 countries from the European Region or catalogued in EURISCO amounting to 318,001 accessions. See the document, IT/GB-4/11/Inf. 9, *Compilation of Submissions by Contracting Parties on the Implementation of the Multilateral System*.

B. Plant genetic included by natural and legal persons within the jurisdictions of Contracting Parties

30. By Article 11.2 of the Treaty:

“With a view to achieving the fullest possible coverage of the Multilateral System, the Contracting Parties invite all other holders of plant genetic resources for food and agriculture listed in Annex I to include these plant genetic resources for food and agriculture in the Multilateral System”.

31. Under article 11.3 of the Treaty, Contracting Parties also agreed to take appropriate measures to encourage natural and legal persons within their jurisdiction 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.

32. The only direct reports from natural or legal persons within the jurisdiction of a Contracting Party were made available to the Governing Body during its Third Session. The notifications of the inclusion of these materials were 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).

33. As already reported to the Governing Body at its Third Session, there have also been a number of expressions of interest, which have continued in the last intersessional period, by the private sector and non-governmental organizations in including their plant genetic resources for food and agriculture in the Multilateral System. Many raised various legal and technical questions regarding the interpretation of their rights and obligations under the SMTA, if they are to do so. In this regard, the Secretary sought the advice of the *Ad Hoc* Advisory Technical Committee, which is detailed in section IX of this document.

34. At its Third Session, the Governing Body took a number of decisions regarding the inclusion of plant genetic resources for food and agriculture in the Multilateral System by natural and legal persons, including the decision to review the matter at this Fourth Session. Relevant aspects of the review as well as an update on the status of inclusion of plant genetic resources in the Multilateral System by natural and legal persons are addressed in document, IT/GB-4/11/13, *Reviews and assessments under the Multilateral System, and of the implementation and operation of the Standard Material Transfer Agreement*.

C. Plant genetic resources held by International Institutions, under Article 15

35. The following international institutions have included their collections of plant genetic resources for food and agriculture in the Multilateral System, by agreements with the Governing Body:⁷

<i>International Institution</i>	<i>Agreement Signed</i>
Africa Rice Centre	16 October 2006
Bioversity International	16 October 2006
International Maize and Wheat Improvement Centre	16 October 2006
International Centre for Agricultural Research in the Dry Areas	16 October 2006
International Crops Research Institute for the Semi-Arid Tropics	16 October 2006
International Institute of Tropical Agriculture	16 October 2006

⁷ Further details of the agreements and the related collections are available on the Treaty’s Website at: http://www.planttreaty.org/inclus_en.htm.

International Livestock Research Institute	16 October 2006
International Potato Centre	16 October 2006
International Rice Research Institute	16 October 2006
World Agroforestry Centre	16 October 2006
Tropical Agricultural Research and Higher Education Centre (CATIE)	16 October 2006
International Coconut Genebank for African and the Indian Ocean	5 February 2007
International Coconut Genebank for the South Pacific	9 May 2007
Mutant Germplasm Repository of the FAO/IAEA Joint Division	18 July 2007
International Cocoa Genebank	1 June 2009
Secretariat of the Pacific Community (SPC) Centre for Pacific Crops and Trees (CePaCT)	1 June 2009

36. The collections of these international institutions still form, by far, the largest group of resources currently known to be in the Multilateral System, and are being exchanged through the SMTA.

37. The document, IT/GB-3/09/23 *Progress report on partnerships, synergies and cooperation with other organizations, including agreements between the Governing Body and the IARCS and other relevant international institutions under Article 15 of the Treaty*, provides more information on this subject.

38. The document, IT/GB-4/11/Inf. 5, *Experience of the CG Centres with the Implementation of the Agreements with the Governing Body, with particular reference to the Use of the Standard Material Transfer Agreement for Annex I and Non-Annex I Crops*, contains a comprehensive report by the IARCs of the CGIAR. According to the Report, the IARCs alone collectively hold 693,752 accessions, which form part of the Multilateral System.

39. During the period from 1 August 2008 to 31 December 2009, the IARCs distributed total of 608,644 samples of *Annex I* plant genetic resources for food and agriculture under the Standard Material Transfer Agreement, while a total of 41,902 samples of *Annex I* germplasm were received by them.

40. The report further indicates that 327 samples of non-*Annex I* germplasm were acquired by five IARCs, while a total of 5,372 samples of non-*Annex I* plant genetic resources for food and agriculture were distributed under the SMTA. Additional facts and figures, including the further breakdown of the distribution and acquisition of plant genetic resources for food and agriculture by the Centres are available on the Treaty's website at http://www.itpgrfa.net/International/cgiarc_centers_data

41. On 20 September 2010, the Secretariat communicated to International Institutions that have signed agreements with the Governing Body under Article 15 of the Treaty a request for information on their collections as well as their distribution of plant genetic resources for food and agriculture using the SMTA.

42. The Tropical Agricultural Research and Higher Education Centre (CATIE) reported that as of July 8, 2008, it began distributing plant genetic resources for food and agriculture in its collections using the SMTA. The report by CATIE indicates that it had distributed about 377 accessions between 2008 and 2010, using the SMTA, while it received about 23 samples under the SMTA.

43. The Secretariat of the Pacific Community (SPC) Centre for Pacific Crops and Trees (CePaCT) reported that since June 2009, 358 accessions (6,979 plants) of banana, breadfruit, cassava, potato, sweet potato and yam, have been distributed to 15 countries, using the SMTA. According to it, CePaCT has received no indication that any recipients of the germplasm in these countries are experiencing problems regarding the use of the SMTA.

44. It, however, observed that with regard to payment modalities under Article 6 of the SMTA, recipients have opted for both 6.7 and 6.11, in the case of commercialization. It was of the

view that it is likely that there was not a clear understanding as to the interpretation of the two options, which highlighted need for capacity building in the use of the SMTA to ensure clear understanding of its provisions.

45. The Mutant Germplasm Repository of the FAO/IAEA Joint Division also provided a report on its collection of Mutant Stocks, which also contained information the distribution of plant genetic resources for food and agriculture, using the SMTA.

46. The full reports of the international institutions, submitted in response to the Secretary's request are contained in the document, IT/GB-4/11/Inf. 10, *Experiences of International Institutions with the Implementation of the Agreements with the Governing Body under Article 15 of the Treaty, with particular reference to the Use of the Standard Material Transfer Agreement for Annex I and Non-Annex I Crops*, and made available for the information of the Governing Body.

D. Plant genetic resources received from the Multilateral System, which recipients are obliged to make available

47. Article 6.3 of the SMTA provides that:

In the case that the Recipient conserves the Material supplied, the Recipient shall make the Material, and the related information [...], available to the Multilateral System using the Standard Material Transfer Agreement.

48. The effectiveness of this clause depends on a person looking for plant genetic resources knowing that a previous Recipient has the material he wants. As reported to the Governing Body at its Third Session, it is notable that the practice of the IARCs of the CGIAR is to make public the Recipient of Material, which makes this possible.⁸ Information is not available on the practices of other Providers.

E. Documenting the plant genetic resources within the Multilateral System

49. The formal notification of plant genetic resources for food and agriculture included in the Multilateral System is one measure of what the Multilateral System comprises. For plant breeding and conservation, however—which are the purposes of facilitated exchange—full, easily accessible information on individual accessions is necessary, or they are not usable. In this sense, material can only be said to be effectively “in” the Multilateral System if it is adequately and publicly documented.

50. For this reason, the *Sample letter of notification of inclusion of material in the Multilateral System* (in Appendix 3) requests information about the website⁹ where “*detailed data on the composition of the collection and user procedures to order samples are readily available*”, and “*the website [url address] that provides access to the collection's database*”.

51. Major international collections, and those of developed country Contracting Parties, usually have web-sites that provide such information,¹⁰ and some of the larger developing countries also provide such services to breeders. As reported to the Governing Body at its Third Session, many smaller developing countries face significant financial, technical and institutional problems in providing public—preferably on-line—information on resources that are in the Multilateral System, and will require assistance in order to do so effectively.

⁸ See, for example, http://www.planttreaty.org/smta/irri_en.htm

⁹ Available at ftp://ftp.fao.org/ag/agp/planttreaty/agreements/models/inclu_e.doc

¹⁰ See, for example, the International Rice Research Institute's database, at <http://www.iris.irri.org/>, or the German National plant genetic resources system portal at <http://www.genres.de/pgrdeu/>.

52. A webpage has been established on the Treaty website, where notifications received from Contracting Parties, IARCs and natural and legal persons regarding material that they have included in the Multilateral System are posted.¹¹ The webpage currently provides full-text copies of all notifications received or a link to the collection where the resources are being held, as well as and a downloadable form-letter of notification.

53. As further reported to the Governing Body at its Third Session, the Secretariat has implemented the Data Store for the purposes of the Third Party Beneficiary in the form of a secure database hosted at the servers of the United Nations Information and Computing Centre (UNICC) in Geneva. The Data Store is up and running since September 2010 and receives SMTA information from an on-line system developed from an open source platform and operated by the Secretariat. Through the on-line system the Data Store receives and saves information in two different ways: information on SMTAs reported individually and information on SMTAs reported in batch mode by large providers of material, mainly the IARCs referred to in Article 15 of the International Treaty. A number of Contracting Parties have also expressed interests in this reporting mode, and are working out the details and processes with the Secretariat.

54. The Reporting System is voluntary and will have to evolve to store information of SMTAs reported to the Secretariat on paper. The Secretariat, in consultation with a selected group of experts, is undertaking a further in-depth analysis of the different options that can be offered to the provider to make reporting easier, including optical character recognition (OCR) technologies.

55. The use of web certificates has also increased users' confidence. These are provided by a certified trustworthy verification agent to avoid possible fraudulent practices such as phishing, and are in line with the most advanced industry standards and practices.

56. During the next biennium the Secretariat will need to guarantee continuity of the electronic reporting services created to support the operation of the SMTA and improve some of the functions of the system, in particular the development and implementation of standards for the exchange of SMTA data with major providers, the translation of the system into other official languages of the Treaty and the archiving and indexing of SMTAs received on paper.

57. Provision is, therefore, made in the draft Work Programme and Budget for this critical element of the functioning of the Multilateral System.

IV. FACILITATED ACCESS TO PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE WITHIN THE MULTILATERAL SYSTEM (ARTICLE 12)

A. Legal and other appropriate measures to provide access through the Multilateral System

58. By Article 12.2 of the Treaty:

The Contracting Parties agree to take the necessary legal or other appropriate measures to provide such access to other Contracting Parties through the Multilateral System. To this effect, such access shall also be provided to legal and natural persons under the jurisdiction of any Contracting Party, subject to the provisions of Article 11.4.

59. There has been no specific request from the Governing Body to Contracting Parties to report on the legal and other appropriate measures that they are taking to provide access, through the Multilateral System, to other Contracting Parties and to legal and natural persons within the jurisdiction of any Contracting Party. While some Contracting Parties have clearly done so, some Contracting Parties—as noted in Section II above—have brought to the notice of the Secretariat the difficulties that are they are facing in interpreting the relevant provisions of the Treaty, and in

¹¹ http://www.planttreaty.org/inclus_en.htm.

harmonizing these with other elements of their legal systems. This has been described as one of the factors causing the low level of reporting on plant genetic resources for food and agriculture that are in the Multilateral System. It also means that facilitated access, by many Contracting Parties, is not yet fully functional.

60. One matter that has been raised is that of harmonizing access and benefit-sharing legislation with the provisions of Article 12.3h of the Treaty, where:

“Without prejudice to the other provisions under this Article, the Contracting Parties agree that access to plant genetic resources for food and agriculture found in in situ conditions will be provided according to national legislation or, in the absence of such legislation, in accordance with such standards as may be set by the Governing Body”.

61. The *Ad Hoc* Advisory Technical Committee had considered the issue at its first and second meetings, as one of the issues raised by stakeholders and brought to their attention by the Secretary.

62. The Committee was of the opinion that the provisions of Article 12.3h apply to material under the management and control of Contracting Parties, and in the public domain, and consequently, that the scope of possible future standards established by the Governing Body under Article 12.3h should be limited to *in situ* material that is under the management and control of Contracting Parties, and in the public domain.

63. The Committee agreed that the work undertaken on Article 12.3h needs to be further developed, in particular with regard to the relationship between Article 12.3h and other provisions in Article 12, and the implications of national legislation for access to *in situ* plant genetic resources, and specifically to those resources that are part of the Multilateral System.

64. The Committee, however, noted that the Governing Body has not yet decided to initiate the preparation of standards under Article 12.3h, and agreed that it would keep the matter under review, and examine it further in the future, including the possible preparation of elements of standards for consideration by the Governing Body.

65. The Governing Body may wish to note these deliberations and explore the issue further by requesting the *Ad Hoc* Advisory Technical Committee to examine how Article 12.3h might best be implemented.

V. BENEFIT-SHARING IN THE MULTILATERAL SYSTEM (ARTICLE 13)

A. Sharing the benefits of the use of plant genetic resource for food and agriculture: information exchange, access to and transfer of technology; and capacity-building

66. By Resolution 4/2009, the Governing Body

Request[d] the Secretary to prepare a comprehensive report to its Fourth Session on the status of non-monetary and monetary benefit-sharing, as provided for in Articles 13.2a, b, c and d of the International Treaty, and for this purpose to request information from Contracting Parties, international institutions having signed agreements under Article 15, and private sector entities;

67. Accordingly, the Secretary further requested Contracting Parties and international institutions having signed agreement with the Governing Body under Article 15 of the Treaty to provide information to enable him prepare the report as requested by the Governing Body.

68. The benefit-sharing provisions of Article 13.2 of the Treaty, which are considered in this section, are primarily obligations on Contracting Parties, as well as international institutions as

requested by the Governing Body. The contractual benefit-sharing obligations on parties to SMTAs are considered separately in this document.

69. By Article 13.2 of the Treaty:

“The Contracting Parties agree that benefits arising from the use, including commercial, of plant genetic resources for food and agriculture under the Multilateral System shall be shared fairly and equitably through the following mechanisms: the exchange of information, access to and transfer of technology, capacity-building, and the sharing of the benefits arising from commercialization, taking into account the priority activity areas in the rolling Global Plan of Action, under the guidance of the Governing Body”.

70. Articles 13.2 a, b and c, contain substantial and detailed provisions for the realization of such benefit-sharing, for all three mechanisms, and state that information will be exchanged through the information system provided for in Article 17 of the Treaty. Moreover, by Article 13.2d(i):

“The Contracting Parties agree, under the Multilateral System, to take measures in order to achieve commercial benefit-sharing, through the involvement of the private and public sectors in activities identified under this Article, through partnerships and collaboration, including with the private sector in developing countries and countries with economies in transition, in research and technology development”.

71. While a wide variety of relevant activities undoubtedly exist, there is no clear, overall picture of the situation, by which the effectiveness of this aspect of benefit-sharing may be assessed, and policies to promote and extend it may be promoted. The Governing Body may therefore wish to request that such a review be undertaken, for consideration at its Fifth Session.

72. The Indonesian Ministry of Agriculture and the Norwegian Ministry of Agriculture jointly organized the “Workshop on the International Treaty on Plant Genetic Resources for Food and Agriculture: Benefit-sharing in the Multilateral System”, in Bogor, Indonesia, from 9 to 11 March 2010. The aim of the workshop was to identify non-monetary benefit sharing opportunities other than those arising from commercialisation and as stated in Article 13 of the Treaty, with a focus on exchange of information, technology transfer and capacity building.

73. Participants agreed that plant genetic resources for food and agriculture and plant breeding must continue to contribute to sustain food security worldwide and help in adapting to climate change. The meeting discussed shortcomings in the current systems, identified priorities and pointed to strategic opportunities to meet the identified gaps.

74. Subsequent to the request by the Secretary for information, the CePaCT, IAEA and CATIE provided information on their activities to facilitate non-monetary benefit-sharing under the Treaty’s Article 13, comprising mainly of training and capacity-building activities. It is very likely that others may also have been carrying out similar activities but have yet reported on them.

B. Sharing of monetary and other benefits of commercialization

75. Article 13.2d(ii) of the Treaty makes provision for voluntary and mandatory monetary benefit-sharing on the commercialization of a Product that incorporates Material accessed from the Multilateral System, under an SMTA. It provides, *inter alia*, 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 MTA shall apply also in cases where such commercialized products are available without restriction to others for further research and breeding”.

76. 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.” This matter is addressed in document IT/GB-4/11/13, *Reviews and assessments under the Multilateral System, and of the implementation and operation of the Standard Material Transfer Agreement.*

C. Modalities of a strategy of voluntary benefit-sharing by Food Processing Industries

77. Article 13.6 provides that:

“The Contracting Parties shall consider modalities of a strategy of voluntary benefit-sharing contributions whereby Food Processing Industries that benefit from plant genetic resources for food and agriculture shall contribute to the Multilateral System”.

78. The Contracting Parties have not yet developed a specific strategy regarding voluntary contributions from the Food Processing Industries for the Governing Body, but at its Third Session the Governing Body adopted the *Strategic Plan for the Implementation of the Benefit-sharing Fund*, which incorporates a section on contributions from the private sector, including the Food Processing Industries. Nevertheless, no voluntary contributions have yet been received from the Food Processing Industries.

79. At its Third Session, the Governing Body *“invite[d] Contracting Parties to explore, including with relevant stakeholders, the development of innovative approaches to allow for the provision of resources to the Benefit-sharing Fund, including on a regular and predictable basis.”* The Governing Body assigned the *Ad Hoc Advisory Committee on the Funding Strategy* with the task to advise the Bureau and the Secretary on innovative approaches and other resource mobilization efforts. Initial discussions took place with the seed industry, but not the food processing industries.

80. Consequently, the draft Resolution on the Funding Strategy provides for the possible establishment of *“a Stakeholder Platform to bring together a wide range of stakeholders and donors to explore the development of innovative approaches to resource mobilization, including on a regular and predictable basis”.*

81. The Governing Body may wish to consider whether and how to take some action in this regard.

VI. THIRD PARTY BENEFICIARY PROCEDURES

82. The SMTA makes provision for a Third Party Beneficiary,

“representing the Governing Body and the Multilateral System, [who] has the right [...] to initiate dispute settlement procedures regarding rights and obligations of the Provider and the Recipient under [the Standard Material Transfer Agreement].”

83. In Resolution 2/2006, it invited FAO,

“as the Third Party Beneficiary, to carry out the roles and responsibilities as identified and prescribed in the Standard Material Transfer Agreement, under the direction of the Governing Body, in accordance with the procedures to be established by the Governing Body [...]”.

84. By Resolution 5/2009, the Governing Body adopted the *Procedures for the Operation of the Third Party Beneficiary*, and thanked *“the Director-General of FAO for having agreed in principle that FAO shall act as the Third Party Beneficiary, and requests him to bring these procedures to the attention of the relevant bodies of FAO, for formal approval”.*

85. As requested and in accordance with the FAO Basic Texts, the Committee on Constitutional and Legal Matters (CCLM) and the Council of FAO examined the Third Party Beneficiary (TPB) Procedures as approved by the Governing Body, together with related amendments to the Financial Rules.

86. The CCLM underlined that this mechanism provides an example of useful synergies between FAO and bodies established under Article XIV of the Constitution. The Council of FAO confirmed the decision of the CCLM and approved the TPB Procedures, which are now to be considered as fully operational.

87. The report of the Third Party Beneficiary submitted in accordance with the Third Party Procedures is contained in the document, IT/GB-4/11/15, *Report on the operations of the Third Party Beneficiary*.

VII. THE ROLE OF INFORMATION IN THE IMPLEMENTATION OF THE MULTILATERAL SYSTEM

88. The Multilateral System can be seen as a “virtual and distributed genebank”, because it comprises a very large number of plant genetic resources, held by a large number of governmental and private entities throughout the world, in order, as Article 11.1 of the Treaty provides:

“both to facilitate access to plant genetic resources for food and agriculture, and to share, in a fair and equitable way, the benefits arising from the utilization of these resources, on a complementary and mutually reinforcing basis”.

It is “virtual” in the sense that it is not an institution with a headquarters and dedicated staff, but relies on these entities to act for it.

89. For a plant breeder seeking useful materials, the Multilateral System is only as good as the information systems that describe these materials. Providing such information is a “distributed” function, not managed from the centre, but the task of genebank and information system managers, throughout the world. In implementing the Multilateral System, the Governing Body will need to draw on the support, creativity and goodwill of this community. A major challenge for this community will be to assist plant genetic resources managers in developing countries to play a full role in developing the international system, adequately documenting the material they hold within the Multilateral System, and facilitating access.

90. The Governing Body requested that the Third Party Beneficiary (i.e. FAO) at all times ensure the confidentiality of electronic data. This obligation comprises: industry-standard secured environment encryption during data transmission; secure hosting of the datastore in the UN Information and Computing Centre (UNICC) in Geneva; and encryption of the data, with separate encryption in the datastore of Provider and Recipient data, and of accession data.

91. The Governing Body, at its Third Session, also requested the Secretariat to:

“develop, in consultation with relevant organizations, appropriate and cost-effective processes to facilitate the submission, collection and storage of [SMTA] information in the implementation of Article 4.1 of the Third Party Beneficiary Procedures. In so doing, the Secretary shall apply adequate measures to ensure the integrity of information and, where required, confidentiality of the information so provided” (Resolution 5/2009).

92. To meet the above requests, the Secretariat signed a project agreement with UNICC to host the data store, including infrastructure support, operating system administration, system monitoring, backup and restore.

VIII. SUPPORT TO CONTRACTING PARTIES AND USERS OF THE MULTILATERAL SYSTEM

93. Article 13.4 of the Treaty provides that

The Governing Body shall, at its first meeting, consider relevant policy and criteria for specific assistance under the agreed funding strategy established under Article 18 for the conservation of plant genetic resources for food and agriculture in developing countries, and countries with economies in transition whose contribution to the diversity of plant genetic resources for food and agriculture in the Multilateral System is significant and/or which have special needs.

94. By Resolution 5/2009, the Governing Body

Stresse[d] the importance of assisting developing countries in this process [documenting their resources in the MLS], bilaterally, or through existing multilateral frameworks, such as the Joint FAO/International Treaty Secretariat/Bioversity International Capacity-building Programme.

95. Several Contracting Parties have expressed their need for support and capacity building, especially in documenting plant genetic resources for food and agriculture in the Multilateral System, as well as for the operationalization of the SMTA.

The Joint Capacity Building Programme

96. At its Third Session, the Governing Body welcomed the progress made within the joint capacity building programme for developing countries established by the Treaty, FAO and Bioversity International (Resolution 8/2009). The joint capacity building programme was designed to provide developing countries with technical assistance with implementation of the International Treaty and the Multilateral System in particular. At the third session indeed, the Governing Body also stressed the importance of assisting developing countries in the process of implementation of the Multilateral System through existing multilateral frameworks such as the joint capacity building programme (Resolution 4/2009).

97. The objectives of the joint capacity building programme are to improve knowledge among national stakeholders of issues underlying the implementation of the International Treaty and in particular the Multilateral System, as well as to upgrade the institutional, legal and administrative infrastructure for the operation of the Multilateral System.

98. In the period, September 2008 – August 2010, activities were structured in two main tiers, namely regional and national. At the regional level, a series of regional workshops were organized to raise awareness of the International Treaty among policy makers and other stakeholders, and to facilitate discussions on possible regional coordination for the implementation of the Multilateral System of Access and Benefit-Sharing. The workshops were run in close partnership with recognized regional organizations, such as the SADC Plant Genetic Resources Center, the Arab Organization for Agricultural Development (AOAD) and SPC.

99. In particular, a regional workshop with AOAD member countries mandated a team of legal experts to revise official legislative guidelines on the International Treaty. This exercise was carried out with the participation of representatives of AOAD and experts from FAO and Bioversity International. The new guidelines, including elements of a model law on the management of plant genetic resources for food and agriculture, were officially endorsed and circulated by AOAD to the twenty-two Member States of the Arab League for consideration.

100. In the same vein, the joint capacity building programme backstopped a regional workshop with SPC member countries, where, among other recommendations, SPC, in collaboration with experts from FAO and Bioversity International, was mandated to prepare an administrative scheme to authorize SPC to act as agent of Pacific Island countries in implementing the Multilateral System on their behalf and on request, both for the granting of access to countries outside the region and for requests for access to material from other countries outside the region. The resulting draft administrative scheme was approved by the Heads of Agriculture and Forestry Summit in September 2010 and is now operational.

101. At the national level, programme experts advised a number of national governments and

prepared draft technical recommendations on legal and administrative issues, including draft regulations and administrative instruments where appropriate. National workshops were convened in order to raise awareness on the International Treaty, consult with relevant national stakeholders and, where possible, develop or review the draft technical recommendations.

102. One of the most significant results under this second tier was the completion of national processes for notification of material in the Multilateral System and follow-up regulatory arrangements, for instance in Sudan and Madagascar. Other countries that were recipients of assistance are finalizing notifications of inclusion, and are expected to forward them to the Treaty Secretariat in due course.

103. The joint capacity building programme also registered significant progress in building international partnerships for capacity building. For instance, it interfaced with the access and benefit-sharing process within the CBD both at the inter-governmental level (i.e. the international negotiations) and at the national level (especially in ensuring legal space in their access and benefit-sharing domestic frameworks for the implementation of the Treaty). The memorandum of cooperation that was signed between the Secretariats of the Treaty and the CBD to promote joint initiatives for capacity building was concluded with the active engagement and significant inputs of the joint capacity building programme and envisages its involvement in future activities under the memorandum.

Current Status of the Joint Capacity Building Programme

104. Overall, the joint capacity building programme has been positioned in the current biennium as a multilateral framework for linking the inter-governmental processes of the Treaty to regional and national processes, in the form of direct technical assistance at regional and national levels or in the context of remote assistance to users of the Treaty systems.

105. However, after completing a first two-year cycle in the last quarter of 2010, the joint capacity building programme is currently in abeyance, due to lack of funding for the Secretariat to support it.

106. It is to be recalled that, at its Third Session, the Governing Body recognized:

“ ... the need to expand the duration of the joint capacity building programme to the full biennium 2010-2011 and the number of countries that receive assistance ...”

The Governing Body also invited on a voluntary basis additional funding and partners for expanding the joint programme (Resolution 8/2009).

IX. THE WORK OF THE AD HOC ADVISORY TECHNICAL COMMITTEE ON THE STANDARD MATERIAL TRANSFER AGREEMENT AND THE MULTILATERAL SYSTEM IN THE CURRENT BIENNIUM

107. By Resolution 4/2009, the Governing Body, *inter alia*:

Request[ed] the Secretary to give priority to assisting users of the Standard Material Transfer Agreement to overcome any implementation problems such as those identified at the First Meeting of Experts on the Standard Material Transfer Agreement, including, subject to the availability of funds, through the convening of an Ad Hoc Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System, taking into account regional representation, according to the terms of reference as contained in the Annex to this Resolution.

108. The *Ad Hoc* Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System met twice, in January and September 2010, respectively in Rome, Italy, and Brasilia, Brazil.

109. The reports of the Committee's meetings are available as information documents IT/GB-4/11/Inf. 7 and IT/GB-4/11/Inf. 8. In this section of the document, a summary of the Committee's approach to its work and outputs is provided. In the course of its deliberations, the Committee provided advice to the Secretary on a wide range of issues, which assisted the Secretary in responding to questions raised by the users and thereby enhanced effectiveness and transparency in the System. The Committee further advised the Secretary to bring a number of issues to the attention of the Governing Body. These issues are outlined in the following paragraphs.

110. At its first meeting, as stipulated in its terms of reference, the Committee examined a number of questions that were outstanding from the meeting of experts convened during the previous biennium. Those questions included:

- criteria for identifying plant genetic resources for food and agriculture (PGRFA) that, under Article 11.2 of the International Treaty, are under the management and control of Contracting Parties, and in the public domain;
- the possible content of incentive measures, under Article 11.3 of the International Treaty, to encourage natural and legal persons within their jurisdiction who hold *Annex I* plant genetic resources for food and agriculture to include such plant genetic resources for food and agriculture in the Multilateral System.

111. With regard to Article 11.2 of the Treaty, the Committee noted that all plant genetic resources for food and agriculture of crops and forages listed in *Annex I* of the Treaty that are "under the management and control of the Contracting Parties and in the public domain" are automatically part of the Multilateral System. However, the actual use of material depends on information being made public about what materials are available and where they may be accessed, along with related non-confidential information.

112. The Committee also noted that the legal situation as to what should be regarded as material under the management and control of the Contracting Party and in the public domain may well vary from country to country. It recognized the desirability of a coherent approach in the application of these concepts, which are at the heart of the Multilateral System.

113. In considering the meaning of these concepts, the Committee was of the opinion that the expression "*under the management*" means that a Contracting Party has the power to undertake acts of conservation and utilization in relation to the material: it refers to the capacity to determine how the material is handled and not to the legal rights to dispose of the PGRFA. The ordinary meaning of "*control*" in this context focuses on the legal power to dispose of the material. In other words, it is not sufficient that the plant genetic resources for food and agriculture be 'managed' by a Contracting Party (e.g. through conservation in a genebank); it must also have the power to decide on the treatment to be given to such resources.

114. The Committee considered that the expression, "*of the Contracting Parties*", includes material held by structures of the central national administration, such as government departments and national genebanks. It may or may not cover material held by autonomous or quasi-autonomous entities normally considered to be part of the national plant genetic resources system.

115. On the term, "*in the public domain*", the Committee noted that the concept should be understood in the context of intellectual property law, as referring to material or information that is not subject to intellectual property rights.

116. With regard to Article 11.3 of the International Treaty, the opinion of the Committee was that the decision on what measures to establish in order to encourage natural and legal persons to include material in the Multilateral System is at 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).

117. As indicated, the Committee had recommended that the Secretary bring a number of issues to the attention of the Governing Body. These issues are elaborated in the following section of this document, and include:

- The reporting obligations of parties under the SMTA;
- Non-food/feed uses of plant genetic resources for food and agriculture;
- Restoration of plant genetic resources for food and agriculture.

The reporting obligations of parties under the SMTA

118. With regard to reporting obligations of parties under the SMTA, the Committee reviewed, in detail, the full range of such obligations, taking into account, in particular, the relevant decisions of the Third Session of the Governing Body. The Committee was of the opinion that these decisions now needed integration into the SMTA in a coherent manner, in order to facilitate its use by Providers and Recipients. Those decisions regard:

- the frequency of Provider's obligation to report, which is "at least once every two calendar years"; and
- the information to be reported on for the Third Party Beneficiary to perform its functions, in accordance with the *Annex* to the Third Party Beneficiary Procedures (Resolution 5/2009).

119. With regard to the decisions of the Governing Body on information to be reported on for the Third Party Beneficiary, the Committee suggested:

- adding a footnote to clarify that a Provider transmitting a copy of the completed SMTA shall, in the case of shrink-wrap SMTAs, report information on the date and recipient of the shipment;
- reformatting *Annex I* to the SMTA to include information on crops and accessions;
- adding text to *Annex I* to the SMTA to allow a Provider of plant genetic resources for food and agriculture under development to identify the accession of the material previously received from the Multilateral System and specify that the Plant Genetic Resources for Food and Agriculture under Development being transferred are derived from the Material received under an SMTA;
- in the context of the option for the crop-based alternative payment scheme, updating *Annex 4* to the SMTA to:
 - specify the crop or crops to which the alternative payment scheme applies, as required by the Governing Body in Resolution 4/2009;
 - add the full set of information required by the Governing Body for the Third Party Beneficiary, to identify the SMTA in respect of which the alternative payment scheme is being made;
 - clarify that once the *Annex Is* notified to the Governing Body for one or more crops, the alternative payment scheme is operative for any subsequent SMTA for the same crop or crops, without the need to repeat the notification.

120. The Committee was of the opinion that all these updates are only clarifications that do not alter any of the obligations of Providers and Recipient, but simply set them forth in a single document.

121. In reviewing the reporting obligations, the Committee also identified a number of minor, non-substantive, updates to the text of the SMTA that could resolve various uncertainties of formulation and cross-reference. Those updates consist of:

- Replacing "Third Party Beneficiary" with FAO and deleting related explanatory footnotes that are now outdated;
- Clarifying that additional conditions attached to the transfer of plant genetic resources for food and agriculture under development should be contained in a separate

agreement between the parties to the transfer and are not to be reported on to the Governing Body;

- Identifying the Recipient's obligation to report on the material received from the Multilateral System in the context of the reporting obligations that are connected to product-based payments, as contained in Annex 2 to the SMTA;
- In the context of alternative payment-related reporting obligations of the Recipient, rectifying textual imprecisions in the cross-referencing from Annex 3 to Annex 2 to the SMTA.

122. Furthermore, the Committee identified a number of passages in the SMTA, where clarification of the meaning would help actual and potential users, as follows:

- The Committee noted that, under Article 6.4 of the SMTA, which relates to the transfer to a subsequent recipient of Plant Genetic Resources for Food and Agriculture, as received from the Multilateral System, the new material transfer agreement required by this article must contain the full text, and only the full text, of the SMTA, without modification.
- It also noted that, under Article 6.5 of the SMTA, which relates to the transfer to a subsequent recipient of Plant Genetic Resources for Food and Agriculture under Development, the transfer is to be effected through "a new material transfer agreement". *Article 6.5a* provides that *Article 5a* of the SMTA will not apply. This is in itself legally adequate, and *Article 5a* does not need to be deleted. The new material transfer agreement should accordingly consist of the full text, and only the full text, of the SMTA, without modification.
- The Committee also considered the transfer, by a Recipient who has opted for the alternative payments scheme under Article 6.11, of Plant Genetic Resources for Food and Agriculture under Development of that crop.

123. The provisions of paragraph 3 of Annex 3 to the SMTA are as follows:

3. When the *Recipient* transfers *Plant Genetic Resources for Food and Agriculture under Development*, the transfer shall be made on the condition that the *subsequent recipient* shall pay into the mechanism established by the *Governing Body* under Article 19.3f of the *Treaty* zero point five percent (0.5 %) of the *Sales* of any *Product* derived from such *Plant Genetic Resources for Food and Agriculture under Development*, whether the *Product* is *available or not without restriction*.

124. These updatings and actions regarding the SMTA are reflected in contained in *Appendix 1* to this Report. The Committee recommended that the Secretary invite the Governing Body to consider them for adoption.

125. The Committee noted that the current text of the SMTA does not provide guidance as to how the subsequent recipient is to be bound by the terms and conditions of the alternative payments scheme. For this to be possible, the following actions would need to be undertaken:

- (a) the Recipient now acting as Provider should indicate to the subsequent recipient that he is required to accept the alternative payment scheme for the Plant Genetic Resources for Food and Agriculture under Development in question; and
- (b) the subsequent recipient must accept these conditions.

126. Based on a recommendation by the Committee on how to bind the subsequent recipient of Plant Genetic Resources for Food and Agriculture under Development to the alternative payment scheme of Article 6.11, the Governing Body is invited to consider the text contained in *Appendix 2* to this document, which might constitute an additional *Annex* to the SMTA.

Non-food/feed uses of plant genetic resources for food and agriculture

127. The Committee considered the issue of non-food/feed industrial uses of plant genetic resources for food and agriculture in the context of the International Treaty and focussed on three distinct questions:

- Transfer of plant genetic resources for food and agriculture for non-food/feed uses;
- The limitation on use in the SMTA;
- Multiple-use crops.

128. With regard to transfer of plant genetic resources for food and agriculture for non-food/feed uses, Article 12.3a of the International Treaty provides that

Access shall be provided solely for the purpose of utilization and conservation for research, breeding and training for food and agriculture, provided that such purpose does not include chemical, pharmaceutical and/or other non-food/feed industrial uses.

129. The Committee was of the opinion that, based on this provision, Contracting Parties are only obliged to provide plant genetic resources for food and agriculture under the facilitated access regime established by the Multilateral System when the conditions set out in Article 12.3a are met. Contracting Parties are not obliged by the International Treaty to distribute, under facilitated access conditions, materials in the Multilateral System for purposes other than utilization and conservation for research, breeding and training for food and agriculture.

130. The Committee was also of the opinion that Contracting Parties have the discretion to determine under which instrument and conditions access to materials in the Multilateral System could be provided for non-food/feed uses. The Committee also considered that, if it so wished a Contracting Party may provide access for non-food/feed under conditions similar, *mutatis mutandis*, to those applicable under the SMTA, including the payment obligations.

131. With regard to the limitation on use in the SMTA, Article 6.1 of the SMTA provides that

The Recipient undertakes that the Material shall be used or conserved only for the purposes of research, breeding and training for food and agriculture. Such purposes shall not include chemical, pharmaceutical and/or other non-food/feed industrial uses.

132. The Committee considered that recipients of plant genetic resources for food and agriculture under the SMTA are bound by the express limitation imposed by these provisions. The Committee was of the opinion that acceptance of the SMTA makes it unnecessary to obtain an additional declaration from the party requesting material on intended use. However, in cases where the party requesting material informs the prospective provider that the intended use is non-food/feed, or when it is otherwise obvious that the requested material is intended for non-food/feed purposes, the Committee believed that the prospective provider, under a general obligation of due diligence, should refuse facilitated access and take the required steps to ensure that the terms and conditions that the relevant Contracting Party may have established for the distribution of materials for non-food/feed uses are applied. This should, however, not put an excessive burden on prospective providers, such as the need to undertake an investigation about the current or intended activities of the requesting party, such that would hamper the effective and efficient functioning of the Multilateral System.

133. With regard to multiple-use crops, the second sentence of Article 12.3a of the Treaty reads as follows:

In the case of multiple-use crops (food and non-food), their importance for food security should be the determinant for their inclusion in the Multilateral System and availability for facilitated access.

134. The Committee considered that these provisions, in referring to multiple-use crops (food and non-food), deals with the coverage of the Multilateral System and presuppose that multiple-use plant genetic resources for food and agriculture are included in the list contained in *Annex I* of

the International Treaty. In the view of the Committee, these provisions imply that multiple-use crops should be transferred under the facilitated access regime when intended for food/feed and that, consequently, use of the SMTA is required in these cases. Accordingly, multiple-use materials of *Annex I* crops and forages should be transferred under an SMTA whenever their intended use is for food or feed.

135. The Committee's view was that whenever a recipient receives samples of multiple-use crops for non-food/feed purposes, the instrument under which he received them should bind him to an obligation to sign an SMTA in case the material is subsequently used for food and agriculture or Plant Genetic Resources for Food And Agriculture under Development are to be transferred for use for food and agriculture. The Committee noted that the draft material transfer agreement developed by the Genetic Resources Policy Committee (GRPC) of the Consultative Group on International Agricultural Research, as an example of agreements that connect plant genetic resources for food and agriculture exchanged outside of the Multilateral System to the mechanisms of the Multilateral System, in particular the benefit-sharing provisions, could result in substantial resources becoming available to the Multilateral System and may provide a useful reference for those interested in using it. The Committee considered that additional examination of this issue would be required taking into account further experience in the implementation of the Multilateral System.

Restoration of PGRFA

136. The Committee considered the issue of whether restoration of germplasm to the original provider has to be under the SMTA and was of the opinion that the term "restoration" typically refers to situations where plant genetic resources for food and agriculture of *Annex I* crops and forages are requested for restoration to the provider or the competent authority of the territory from which it was originally collected. The Committee noted that relevant provisions of the Treaty are those in: i) Article 15.1(a) and Article 15.1(b)(ii), dealing respectively with *Annex I* plant genetic resources for food and agriculture held by the CG Centers, and samples of *in situ* material collected by the CG Centers; ii) Article 12.4 and Article 12.6, dealing respectively with facilitated access under the SMTA, and re-establishment of agricultural system in emergency disaster situations.

137. Based on the analysis of those Treaty provisions, the Committee recognized that there are three possible options for the treatment of the issue of restoration of plant genetic resources for food and agriculture of *Annex I* crops and forages, which could be viewed as being compatible with the wording of the Treaty:

- a) Require all restoration of plant genetic resources for food and agriculture of *Annex I* crops and forages to be subject to acceptance of the SMTA;
- b) Require all restoration of plant genetic resources for food and agriculture of *Annex I* crops and forages to be subject to acceptance of the SMTA with the exception of material transferred in emergency disaster situations for the purpose of re-establishing agricultural systems;
- c) Not treat restoration as an act of facilitated access requiring the use of the SMTA.

138. The Committee noted that the interpretation under c) above would be consistent with the practice of many Contracting Parties and international institutions. The Committee was of the view that the restoration of germplasm should not be considered an act of facilitated access requiring the use of the SMTA. However, such an interpretation would require a clear understanding of the concept of "restoration" lest the integrity of the Multilateral System be undermined.

139. The Committee considered that the most obvious case of restoration is where germplasm has been collected from *in situ* conditions in a country and conserved in a collection outside the country, and the original germplasm has been lost in some way: the germplasm is then restored to the competent authority of the country concerned. This is the situation contemplated in Article

15.1(b)(ii) of the Treaty in respect of non-*Annex I* plant genetic resources for food and agriculture held by the CG Centres.

140. The Committee also considered that any definition of “restoration” should also cover the restoration of breeding material that has been developed by national programmes. It further considered that the concept should also be extended to cases where plant genetic resources for food and agriculture held by a genebank or other collector, including material held by a natural or legal person, is placed voluntarily in the Multilateral System and is made available to another genebank or other collector, and the original plant genetic resources for food and agriculture is then lost: the germplasm is restored to the original genebank or other collector concerned.

141. In the view of the Committee, an understanding covering all situations could be that “restoration” in practice means the return of samples of plant genetic resources for food and agriculture to the Provider or the competent authority of the territory in which they were collected from *in situ* conditions or which bred the plant genetic resources for food and agriculture in its programmes or to the legal or natural person that placed the plant genetic resources for food and agriculture in the Multilateral System.

Future work of the Committee

142. The Committee expressed its satisfaction with progress made in carrying out the task given it by the Governing Body at its Third Session. It agreed that assistance to users of the Multilateral System and the SMTA remains essential for the proper functioning of Treaty mechanisms and for retaining the confidence of users and stakeholders. The Committee provided a forum for the consideration and analysis of technical issues related to the implementation of the Multilateral System and the SMTA. The positive atmosphere under which the Committee carried out its mandate made it possible to provide considered advice to the Secretary. It would be valuable for the overall effective implementation of the Multilateral System, that the Committee would again be convened in the forthcoming biennium, to advise the Secretary regarding the many matters that arise in this stage of the early development of the Multilateral System, with a particular emphasis on the preparatory process for the reviews and assessments foreseen in Articles 11.4 and 13.2d(ii) of the Treaty (see document IT/GB-4/11/13, *Reviews and assessments under the Multilateral System, and of the implementation and operation of the Standard Material Transfer Agreement*).

143. The Governing Body may wish to consider, in light of the Work Programme it may adopt at this Session, whether and under what terms of reference the Committee could continue its work, taking into account the progress so far made and other considerations. For this purpose, draft terms of reference are contained in *Appendix 5* to this document for the consideration of the Governing Body.

IX. REVIEW OF THE MATERIAL TRANSFER AGREEMENT BEING USED BY THE INTERNATIONAL AGRICULTURAL RESEARCH CENTRES OF THE CONSULTATIVE GROUP ON INTERNATIONAL AGRICULTURAL RESEARCH AND OTHER RELEVANT INTERNATIONAL INSTITUTIONS, FOR PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE NOT INCLUDED IN ANNEX I OF THE TREATY

A. Background

144. At its Second Session, the Governing Body endorsed the use of the SMTA by the International Agricultural Research Centres, for plant genetic resources for food and agriculture other than those listed in *Annex I* of this Treaty and collected before its entry into force, with an interpretative footnote or series of footnotes that indicated that certain of its provisions should not

be interpreted as precluding such use of the SMTA.¹² It also decided that it would review these measures during its consideration of the SMTA at its current Session.¹³

145. At its Third Session, the Governing Body

noted that at its Second Session it endorsed that interpretative footnotes or series of footnotes would be included to relevant provisions of the Standard Material Transfer Agreement (SMTA) for transfers of non-Annex I material collected before the entry into force of the International Treaty to be used by the International Agricultural Research Centres (IARCs) of the Consultative Group on International Agricultural Research. The Governing Body also noted that the IARCs commenced using the Standard Material Transfer Agreement with footnotes on 1 February 2008, and that the IARCs still have only limited experience with the use to date. The Governing Body further noted that although the IARCs have used the SMTA for a relatively short time, the impression of the Centres is that the SMTA is attracting increasing acceptance by potential recipients as they become more familiar with its terms. The Governing Body decided that it would further review these measures at its Fourth Session.

B. Experiences of the International Agricultural Research Centres in the Use of the Standard Material Transfer Agreement for Non-Annex I Crops

146. Document IT/GB-4/11/Inf. 5, *Experience of the CG Centres with the Implementation of the Agreements with the Governing Body, with particular reference to the Use of the Standard Material Transfer Agreement for Annex I and Non-Annex I Crops*, reports on the experience of the IARCs in this use of the SMTA as endorsed by the Governing Body at its Second Session.

147. The IARCs commenced using the SMTA with footnotes on 1 February 2008, and the experience of the Centres indicates that no potential recipients explicitly refused to accept materials under the SMTA. The Centres' reported further that, with one or two notable exceptions, the impression of the Centres continues to be that the SMTA is attracting increasing acceptance by potential recipients as they become more familiar with its terms.

148. Other relevant international institutions that responded to the request for information – IAEA, CATIE, and SPC CePaCT reported that they have also been utilizing the SMTA, as adapted, for the transfer of plant genetic resources for food and agriculture in their collections. They did not indicate experiencing any objections from recipients on account of the additional explanatory footnotes. The SPC CePaCT reported that it had “received no indication that any recipients of the germplasm in these countries are experiencing problems regarding the use of the SMTA”. It did, however, highlight the “need for capacity building in the use of the SMTA to ensure clear understanding”.

149. The Governing Body is invited to take note of document IT/GB-4/11/Inf. 5 *Experiences of the IARC of the CGIAR with the Implementation of the Agreements with the Governing Body, with particular reference to the Use of the Standard Material Transfer Agreement for Annex I and Non-Annex I Crops*, and to take any decisions necessary.

¹² Paragraph 68, IT/GB-2/07/Report.

¹³ Ibid.

XI. CONCLUSIONS: THE CURRENT STATE OF IMPLEMENTATION OF THE MULTILATERAL SYSTEM

150. Since the establishment of the Multilateral System a large number of providers have begun to utilize the SMTA to transfer material under the Treaty. The Secretariat has also received an original copy of an SMTA concluded by a provider, who was previously a recipient having received the relevant material under a different SMTA. This is the first reported example of an established chain of SMTAs.

151. The Third Session of the Governing Body was a major step forward for the implementation of the Multilateral System, as many milestones were reached at the Session. The implementation of the far-reaching Resolutions adopted in relation to the Multilateral System is now underway and in good progress.

152. It is particularly of significant importance to maintain the efforts and momentum at this juncture in the operation of the Multilateral System as the Treaty enters into a new legal operating environment.

153. There is need for financial resources, in particular on the Joint Implementation Programme, to continue the efforts at building the capacity, and creating awareness about the Treaty and its Multilateral System.

154. Following the successful start up of the Multilateral System, over 100,000 accessions are being exchanged annually, through the SMTA. On the other hand, the great bulk of this exchange is represented by the collections of the IARCS of the CGIAR and other international institutions, and of established genebanks in developed countries.

155. The Multilateral System is also a success, in that a number of its constituent elements have been or are being put in place, in particular the SMTA, the Third Party Beneficiary and information technology tools.

156. On the other hand, this review of the state of implementation of the Multilateral System suggests that there is still need for more information, of all types and at all levels, and that improving all aspects of the available information is an immediate priority.

157. The identification and documentation of material within the Multilateral System has so far been partial and erratic. Many Contracting Parties appear to have not yet taken the steps necessary to document their relevant plant genetic resources, and to facilitate access to them. There is a need to support the relevant authorities and entities, particularly in developing countries, in improving the information base.

158. Although there has been significant improvement in the notification by Contracting Parties, there is therefore not yet adequate information on the plant genetic resources of Contracting Parties, public sector non-governmental organizations, and private sector companies and breeders that are in the Multilateral System, for the Governing Body to be able to monitor its implementation, and undertake the reviews foreseen in the Treaty or requested by the Governing Body.

159. In addition, a number of Contracting Parties and natural and legal persons have expressed the need for technical and legal advice, regarding, *inter alia*: the scope of "Material"; *in situ* Material; the type of use; benefit-sharing and availability without restriction to others for further research and breeding; reporting issues; contractual issues; and legislative, administrative and policy matters. These problems have apparently resulted in a number of Contracting Parties not yet having taken the steps necessary to make their relevant plant genetic resources for food and agriculture available through the Multilateral System and the SMTA. The work of the *Ad Hoc* Technical Advisory Committee on the Standard Material Transfer Agreement and Multilateral System, and the advice it provided the Secretary on a range of issues have been very useful in addressing some these concerns and questions.

160. Given the current state of the implementation of the Multilateral System and availability of information, three short-term priorities must therefore be:

- (1) to promote the complete documentation of Materials “in” the Multilateral System;
- (2) to document exchange under the Multilateral System through SMTA operations; and
- (3) to assist Contracting Parties and users of the Multilateral System to resolve the legal and technical uncertainties that are impeding the inclusion of plant genetic resources in the Multilateral System.

161. During the past biennium, the Secretary has worked with Contracting Parties and other users of the Multilateral System, to promote the exchange of experience and the documentation of best practices, help improve understanding of the Multilateral System and the SMTA. It is therefore proposed that, during the forthcoming biennium, this work be continued.¹⁴

162. The expected coming into force of the Nagoya Protocol clearly presents opportunities for closer collaboration between the Treaty and the CBD, as well as opportunities for synergies and mutual supportiveness as Contracting Parties proceed towards its ratification and implementation. The Governing Body may therefore wish to consider establishing a dedicated work process that will, *inter alia*, examine the implications, assess capacity-building needs as well as facilitate positive interface with the work of the Convention, including, for instance, by constituting a small working group to articulate the relevant issues and make recommendations on these issues.

XII. POSSIBLE ELEMENTS OF A DECISION BY THE GOVERNING BODY

163. Possible elements of a draft resolution for actions the Governing Body may wish to take in relation to the Multilateral System and the Standard Material Transfer Agreement are contained in *Appendix 4* to this document.

¹⁴ Financial provision has accordingly been made in the document IT/GB-4/11/27, *Draft Work Programme and Budget 2010/2011*.

APPENDIX 1

The Standard Material Transfer Agreement, annotated with elements that may be integrated into the text

Text proposed for deletion is ~~struck through~~; and text proposed for insertion is double-underlined.

STANDARD MATERIAL TRANSFER AGREEMENT

PREAMBLE

WHEREAS

The International Treaty on Plant Genetic Resources for Food and Agriculture (hereinafter referred to as “the **Treaty**”)¹⁵ was adopted by the Thirty-first session of the FAO Conference on 3 November 2001 and entered into force on 29 June 2004;

The objectives of the **Treaty** are the conservation and sustainable use of **Plant Genetic Resources for Food and Agriculture** and the fair and equitable sharing of the benefits arising out of their use, in harmony with the Convention on Biological Diversity, for sustainable agriculture and food security;

The Contracting Parties to the **Treaty**, in the exercise of their sovereign rights over their **Plant Genetic Resources for Food and Agriculture**, have established a **Multilateral System** both to facilitate access to **Plant Genetic Resources for Food and Agriculture** and to share, in a fair and equitable way, the benefits arising from the utilization of these resources, on a complementary and mutually reinforcing basis;

Articles 4, 11, 12.4 and 12.5 of the **Treaty** are borne in mind;

The diversity of the legal systems of the Contracting Parties with respect to their national procedural rules governing access to courts and to arbitration, and the obligations arising from international and regional conventions applicable to these procedural rules, are recognized;

Article 12.4 of the **Treaty** provides that facilitated access under the **Multilateral System** shall be provided pursuant to a Standard Material Transfer Agreement, and the **Governing Body** of the **Treaty**, in its Resolution 1/2006 of 16 June 2006, adopted the Standard Material Transfer Agreement.

¹⁵ ~~Note by the Secretariat: as suggested by the Legal Working Group during the Contact Group for the Drafting of the Standard Material Transfer Agreement, defined terms have, for clarity, been put in bold throughout. [Footnotes to be re-numbered accordingly]~~

ARTICLE 1 — PARTIES TO THE AGREEMENT

1.1 The present Material Transfer Agreement (hereinafter referred to as “**this Agreement**”) is the Standard Material Transfer Agreement referred to in Article 12.4 of the **Treaty**.

1.2 **This Agreement** is:

BETWEEN: (*name and address of the provider or providing institution, name of authorized official, contact information for authorized official**) (hereinafter referred to as “the **Provider**”),

AND: (*name and address of the recipient or recipient institution, name of authorized official, contact information for authorized official**) (hereinafter referred to as “the **Recipient**”).

1.3 The parties to **this Agreement** hereby agree as follows:

ARTICLE 2 — DEFINITIONS

In **this Agreement** the expressions set out below shall have the following meaning:

“**Available without restriction**”: a **Product** is considered to be available without restriction to others for further research and breeding when it is available for research and breeding without any legal or contractual obligations, or technological restrictions, that would preclude using it in the manner specified in the **Treaty**.

“**Genetic material**” means any material of plant origin, including reproductive and vegetative propagating material, containing functional units of heredity.

“**Governing Body**” means the **Governing Body** of the **Treaty**.

“**Multilateral System**” means the **Multilateral System** established under Article 10.2 of the **Treaty**.

“**Plant Genetic Resources for Food and Agriculture**” means any **genetic material** of plant origin of actual or potential value for food and agriculture.

“**Plant Genetic Resources for Food and Agriculture under Development**” means material derived from the **Material**, and hence distinct from it, that is not yet ready for **commercialization** and which the developer intends to further develop or to transfer to another person or entity for further development. The period of development for the **Plant Genetic Resources for Food and Agriculture under Development** shall be deemed to have ceased when those resources are **commercialized** as a **Product**.

* *Insert as necessary. Not applicable for shrink-wrap and click-wrap Standard Material Transfer Agreements.*

A “shrink-wrap” Standard Material Transfer Agreement is where a copy of the Standard Material Transfer Agreement is included in the packaging of the **Material**, and the **Recipient’s** acceptance of the **Material** constitutes acceptance of the terms and conditions of the Standard Material Transfer Agreement.

A “click-wrap” Standard Material Transfer Agreement is where the agreement is concluded on the internet and the **Recipient** accepts the terms and conditions of the Standard Material Transfer Agreement by clicking on the appropriate icon on the website or in the electronic version of the Standard Material Transfer Agreement, as appropriate. [*Footnotes to be re-numbered accordingly*]

“**Product**” means **Plant Genetic Resources for Food and Agriculture** that incorporate¹⁶ the **Material** or any of its genetic parts or components that are ready for **commercialization**, excluding commodities and other products used for food, feed and processing.

“**Sales**” means the gross income resulting from the **commercialization** of a **Product** or **Products**, by the **Recipient**, its affiliates, contractors, licensees and lessees.

“**To commercialize**” means to sell a **Product** or **Products** for monetary consideration on the open market, and “**commercialization**” has a corresponding meaning. **Commercialization** shall not include any form of transfer of **Plant Genetic Resources for Food and Agriculture under Development**.

ARTICLE 3 — SUBJECT MATTER OF THE MATERIAL TRANSFER AGREEMENT

The **Plant Genetic Resources for Food and Agriculture** specified in *Annex I* to **this Agreement** (hereinafter referred to as the “**Material**”) and the available related information referred to in Article 5b and in *Annex I* are hereby transferred from the **Provider** to the **Recipient** subject to the terms and conditions set out in **this Agreement**.

ARTICLE 4 — GENERAL PROVISIONS

4.1 **This Agreement** is entered into within the framework of the **Multilateral System** and shall be implemented and interpreted in accordance with the objectives and provisions of the **Treaty**.

4.2 The parties recognize that they are subject to the applicable legal measures and procedures, that have been adopted by the Contracting Parties to the **Treaty**, in conformity with the **Treaty**, in particular those taken in conformity with Articles 4, 12.2 and 12.5 of the **Treaty**.¹⁷

4.3 The parties to **this Agreement** agree that (~~the entity designated by the **Governing Body**~~)the Food and Agriculture Organization of the United Nations,¹⁸ acting on behalf of the **Governing Body** of the **Treaty** and its **Multilateral System**, is the third party beneficiary under **this Agreement**.

4.4 The third party beneficiary has the right to request the appropriate information as required in Articles 5e, 6.5c, 8.3 and *Annex 2, paragraph 3*, to **this Agreement**.

4.5 The rights granted to the (~~the entity designated by the **Governing Body**~~)Food and Agriculture Organization of the United Nations above do not prevent the **Provider** and the

¹⁶ As evidenced, for example, by pedigree or notation of gene insertion.

¹⁷ In the case of the International Agricultural Research Centres of the Consultative Group on International Agricultural Research (CGIAR) and other international institutions, the Agreement between the Governing Body and the CGIAR Centres and other relevant institutions will be applicable.

¹⁸ *Note by the Secretariat:* by Resolution 2/2006, the Governing Body “invite[d] the Food and Agriculture Organization of the United Nations, as the Third Party Beneficiary, to carry out the roles and responsibilities as identified and prescribed in the Standard Material Transfer Agreement, under the direction of the Governing Body, in accordance with the procedures to be established by the Governing Body at its next session”. Upon acceptance by the FAO of this invitation, the term, “the entity designated by the Governing Body”, will be replaced throughout the document by the term, “the Food and Agriculture Organization of the United Nations”. [Footnotes to be re-numbered accordingly].

Recipient from exercising their rights under **this Agreement**.

ARTICLE 5 — RIGHTS AND OBLIGATIONS OF THE PROVIDER

The **Provider** undertakes that the **Material** is transferred in accordance with the following provisions of the **Treaty**:

- a) Access shall be accorded expeditiously, without the need to track individual accessions and free of charge, or, when a fee is charged, it shall not exceed the minimal cost involved.
- b) All available passport data and, subject to applicable law, any other associated available non-confidential descriptive information, shall be made available with the **Plant Genetic Resources for Food and Agriculture** provided;
- c) Access to **Plant Genetic Resources for Food and Agriculture under Development**, including material being developed by farmers, shall be at the discretion of its developer, during the period of its development;
- d) Access to **Plant Genetic Resources for Food and Agriculture** protected by intellectual and other property rights shall be consistent with relevant international agreements, and with relevant national laws;
- e) The **Provider** shall inform the **Governing Body** at least once every two calendar years about the Material Transfer Agreements entered into, either by:

Option A. Transmitting a copy of the completed Standard Material Transfer Agreement,¹⁹

or

Option B. In the event that a copy of the Standard Material Transfer Agreement is not transmitted,

- i. ensuring that the completed Standard Material Transfer Agreement is at the disposal of the third party beneficiary as and when needed;
- ii. stating where the Standard Material Transfer Agreement in question is stored, and how it may be obtained; and
- iii. providing the following information:
 - a) The identifying symbol or number attributed to the Standard Material

¹⁹ In the event that the copy of the completed Standard Material Transfer Agreement that is transmitted is shrink-wrap, the **Provider** shall also include information as to (a) the date on which the shipment was sent, and (b) the name of the person to whom the shipment was sent, in accordance with Article 10, Option 2 of the SMTA.

Transfer Agreement by the Provider:

- b) The name and address of the Provider:
- c) The date on which the Provider agreed to or accepted the Standard Material Transfer Agreement, and in the case of shrink-wrap, the date on which the shipment was sent;
- d) The name and address of the Recipient, and in the case of a shrink-wrap agreement, the name of the person to whom the shipment was made;
- e) The identification of each accession in Annex I to the Standard Material Transfer Agreement, and of the crop to which it belongs.

according to a schedule to be established by the **Governing Body**. This information shall be made available by the **Governing Body** to the third party beneficiary.²⁰

ARTICLE 6 — RIGHTS AND OBLIGATIONS OF THE RECIPIENT

- 6.1 The **Recipient** undertakes that the **Material** shall be used or conserved only for the purposes of research, breeding and training for food and agriculture. Such purposes shall not include chemical, pharmaceutical and/or other non-food/feed industrial uses.
- 6.2 The **Recipient** shall not claim any intellectual property or other rights that limit the facilitated access to the **Material** provided under **this Agreement**, or its genetic parts or components, in the form received from the **Multilateral System**.
- 6.3 In the case that the **Recipient** conserves the **Material** supplied, the **Recipient** shall make the **Material**, and the related information referred to in Article 5b, available to the **Multilateral System** using the Standard Material Transfer Agreement.
- 6.4 In the case that the **Recipient** transfers the **Material** supplied under **this Agreement** to another person or entity (hereinafter referred to as “the **subsequent recipient**”), the **Recipient** shall
- a) do so under the terms and conditions of the Standard Material Transfer Agreement, through a new material transfer agreement; and
 - b) notify the **Governing Body**, in accordance with Article 5e.

On compliance with the above, the **Recipient** shall have no further obligations regarding the

²⁰ ~~Note by the Secretariat:~~ The Standard Material Transfer Agreement makes provision for information to be provided to the **Governing Body**, in the following Articles: 5e, 6.4b, 6.5c and 6.11h, as well as in *Annex 2*, paragraph 3, *Annex 3*, paragraph 4, and in *Annex 4*. Such information should be submitted to:

The Secretary
 International Treaty on Plant Genetic Resources for Food and Agriculture
 Food and Agriculture Organization of the United Nations
 I-00153 Rome, Italy

actions of the **subsequent recipient**.

6.5 In the case that the **Recipient** transfers a **Plant Genetic Resources for Food and Agriculture under Development** to another person or entity, the **Recipient** shall:

- a) do so under the terms and conditions of the Standard Material Transfer Agreement, through a new material transfer agreement, provided that Article 5a of the Standard Material Transfer Agreement shall not apply;
- b) identify, in *Annex I* to the new material transfer agreement, the ~~M~~material received from the **Multilateral System**, and specify that the **Plant Genetic Resources for Food and Agriculture under Development** being transferred are derived from ~~the~~ that Mmaterial;²¹
- c) notify the **Governing Body**, in accordance with Article 5e; and
- d) have no further obligations regarding the actions of any **subsequent recipient**.

6.6 Entering into a material transfer agreement under paragraph 6.5 shall be without prejudice to the right of the parties to attach additional conditions, relating to further product development, including, as appropriate, the payment of monetary consideration.²²

6.7 In the case that the **Recipient commercializes a Product** that is a **Plant Genetic Resource for Food and Agriculture** and that incorporates **Material** as referred to in Article 3 of **this Agreement**, and where such **Product** is not **available without restriction** to others for further research and breeding, the **Recipient** shall pay a fixed percentage of the **Sales** of the **commercialized Product** into the mechanism established by the **Governing Body** for this purpose, in accordance with *Annex 2* to **this Agreement**.

6.8 In the case that the **Recipient commercializes a Product** that is a **Plant Genetic Resource for Food and Agriculture** and that incorporates **Material** as referred to in Article 3 of **this Agreement** and where that **Product** is **available without restriction** to others for further research and breeding, the **Recipient** is encouraged to make voluntary payments into the mechanism established by the **Governing Body** for this purpose in accordance with *Annex 2* to **this Agreement**.

6.9 The **Recipient** shall make available to the **Multilateral System**, through the information system provided for in Article 17 of the **Treaty**, all non-confidential information that results from research and development carried out on the **Material**, and is encouraged to share through the **Multilateral System** non-monetary benefits expressly identified in Article 13.2 of the **Treaty** that result from such research and development. After the expiry or abandonment of the protection period of an intellectual property right on a **Product** that incorporates the **Material**, the **Recipient** is encouraged to place a sample of this **Product** into a collection that is part of the **Multilateral System**, for research and breeding.

6.10 A **Recipient** who obtains intellectual property rights on any **Products** developed from the **Material** or its components, obtained from the **Multilateral System**, and assigns such intellectual

²¹ The material referred to here is the material originally received from the **Multilateral System**.

²² Additional conditions attached to the transfer of **Plant Genetic Resources for Food and Agriculture under Development** should be contained in a separate agreement between the parties to the transfer, instead of in the new material transfer agreement provided for under *Article 6.5a*. The **Provider** is not obliged to transmit such a separate agreement, or information about it, to the **Governing Body**, when reporting in accordance with *Article 6.5*.

property rights to a third party, shall transfer the benefit-sharing obligations of **this Agreement** to that third party.

6.11 The **Recipient** may opt as per *Annex 4*, as an alternative to payments under Article 6.7, for the following system of payments:

- a) The **Recipient** shall make payments at a discounted rate during the period of validity of the option;
- b) The period of validity of the option shall be ten years renewable in accordance with *Annex 3* to **this Agreement**;
- c) The payments shall be based on 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, as set out in *Annex I* to the **Treaty**, to which the **Material** referred to in *Annex I* to **this Agreement** belongs;
- d) The payments to be made are independent of whether or not the **Product** is **available without restriction**;
- e) The rates of payment and other terms and conditions applicable to this option, including the discounted rates are set out in *Annex 3* to **this Agreement**;
- f) The **Recipient** shall be relieved of any obligation to make payments under Article 6.7 of **this Agreement** or any previous or subsequent Standard Material Transfer Agreements entered into in respect of the same crop;
- g) After the end of the period of validity of this option the **Recipient** shall make payments on any **Products** that incorporate **Material** received during the period in which this Article was in force, and where such **Products** are not **available without restriction**. These payments will be calculated at the same rate as in paragraph (a) above;
- h) The **Recipient** shall notify the **Governing Body** that he has opted for this modality of payment. If no notification is provided the alternative modality of payment specified in Article 6.7 will apply.

ARTICLE 7 — APPLICABLE LAW

The applicable law shall be General Principles of Law, including the UNIDROIT Principles of International Commercial Contracts 2004, the objectives and the relevant provisions of the **Treaty**, and, when necessary for interpretation, the decisions of the **Governing Body**.

ARTICLE 8 — DISPUTE SETTLEMENT

8.1 Dispute settlement may be initiated by the **Provider** or the **Recipient** or ~~(the entity designated by the **Governing Body**)~~ the Food and Agriculture Organization of the United Nations, acting on behalf of the **Governing Body** of the **Treaty** and its **Multilateral System**.

8.2 The parties to **this Agreement** agree that the ~~(the entity designated by the **Governing Body**)~~ Food and Agriculture Organization of the United Nations, representing the **Governing Body** and the **Multilateral System**, has the right, as a third party beneficiary, to initiate dispute settlement procedures regarding rights and obligations of the **Provider** and the **Recipient** under **this Agreement**.

8.3 The third party beneficiary has the right to request that the appropriate information, including samples as necessary, be made available by the **Provider** and the **Recipient**, regarding their obligations in the context of **this Agreement**. Any information or samples so requested shall be provided by the **Provider** and the **Recipient**, as the case may be.

8.4 Any dispute arising from **this Agreement** shall be resolved in the following manner:

- a) Amicable dispute settlement: The parties shall attempt in good faith to resolve the dispute by negotiation.
- b) Mediation: If the dispute is not resolved by negotiation, the parties may choose mediation through a neutral third party mediator, to be mutually agreed.
- c) Arbitration: If the dispute has not been settled by negotiation or mediation, any party may submit the dispute for arbitration under the Arbitration Rules of an international body as agreed by the parties to the dispute. Failing such agreement, the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce, by one or more arbitrators appointed in accordance with the said Rules. Either party to the dispute may, if it so chooses, appoint its arbitrator from such list of experts as the Governing Body may establish for this purpose; both parties, or the arbitrators appointed by them, may agree to appoint a sole arbitrator, or presiding arbitrator as the case may be, from such list of experts. The result of such arbitration shall be binding.

ARTICLE 9 — ADDITIONAL ITEMS

Warranty

9.1 The **Provider** makes no warranties as to the safety of or title to the **Material**, nor as to the accuracy or correctness of any passport or other data provided with the **Material**. Neither does it make any warranties as to the quality, viability, or purity (genetic or mechanical) of the **Material** being furnished. The phytosanitary condition of the **Material** is warranted only as described in any attached phytosanitary certificate. The **Recipient** assumes full responsibility for complying with the recipient nation's quarantine and biosafety regulations and rules as to import or release of **genetic material**.

Duration of Agreement

9.2 **This Agreement** shall remain in force so long as the **Treaty** remains in force.

ARTICLE 10 — SIGNATURE/ACCEPTANCE

The **Provider** and the **Recipient** may choose the method of acceptance unless either party requires **this Agreement** to be signed.

Option 1 –Signature*

I, (*Full Name of Authorized Official*), represent and warrant that I have the authority to execute **this Agreement** on behalf of the **Provider** and acknowledge my institution's responsibility and obligation to abide by the provisions of **this Agreement**, both by letter and in principle, in order to promote the conservation and sustainable use of **Plant Genetic Resources for Food and Agriculture**.

Signature..... Date.....
Name of the **Provider**

I, (*Full Name of Authorized Official*), represent and warrant that I have the authority to execute **this Agreement** on behalf of the **Recipient** and acknowledge my institution's responsibility and obligation to abide by the provisions of **this Agreement**, both by letter and in principle, in order to promote the conservation and sustainable use of **Plant Genetic Resources for Food and Agriculture**.

Signature..... Date.....
Name of the **Recipient**.....

Option 2 – Shrink-wrap Standard Material Transfer Agreements*

The **Material** is provided conditional on acceptance of the terms of **this Agreement**. The provision of the **Material** by the **Provider** and the **Recipient's** acceptance and use of the **Material** constitutes acceptance of the terms of **this Agreement**.

Option 3 – Click-wrap Standard Material Transfer Agreement*

- I hereby agree to the above conditions.

* Where the **Provider** chooses signature, only the wording in Option 1 will appear in the Standard Material Transfer Agreement. Similarly where the **Provider** chooses either shrink-wrap or click-wrap, only the wording in Option 2 or Option 3, as appropriate, will appear in the Standard Material Transfer Agreement. Where the "click-wrap" form is chosen, the **Material** should also be accompanied by a written copy of the Standard Material Transfer Agreement.

Annex 2

RATE AND MODALITIES OF PAYMENT UNDER ARTICLE 6.7 OF THIS AGREEMENT

1. 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.

2. Where a **Product** contains a **Plant Genetic Resources for Food and Agriculture** accessed from the **Multilateral System** under two or more material transfer agreements based on the Standard Material Transfer Agreement only one payment shall be required under paragraph 1 above.

3. The **Recipient** shall submit to the **Governing Body**, within sixty (60) days after each calendar year ending December 31st, an annual report setting forth:

(a) the **Sales** of the **Product** or **Products** by the **Recipient**, its affiliates, contractors, licensees and lessees, for the twelve (12) month period ending on December 31st;

(b) the amount of the payment due;

(c) the material received from the **Multilateral System**, from which the **Product** or **Products** were derived; and

(ed) information that allows for the identification of any restrictions that have given rise to the benefit-sharing payment.

4. Payment shall be due and payable upon submission of each annual report. All payments due to the **Governing Body** shall be payable in *United States dollars (US\$)*²³ for the following account established by the **Governing Body** in accordance with Article 19.3f of the **Treaty**:

FAO Trust Fund (USD) GINC/INT/031/MUL,
IT-PGRFA (Benefit-sharing),
HSBC New York, 452 Fifth Ave., New York, NY, USA, 10018,
Swift/BIC: MRMDUS33, ABA/Bank Code: 021001088,
Account No. 000156426²⁴

²³ *Note by the Secretariat:* The **Governing Body** has not yet considered the question of currency of payment. Until it does so, Standard Material Transfer Agreements should specify United States dollars (US\$).

²⁴ *Note by the Secretariat:* This is the Trust Account provided for in Article 6.3 of the Financial Rules, as approved by the **Governing Body** at its First Session (*Appendix E* to IT/GB-1/06/Report).

Annex 3

**TERMS AND CONDITIONS OF THE ALTERNATIVE PAYMENTS SCHEME UNDER
ARTICLE 6.11 OF THIS AGREEMENT**

1. 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, as set out in *Annex 1* to the **Treaty**, to which the **Material** referred to in *Annex 1* to **this Agreement** belong.
2. Payment shall be made in accordance with ~~the banking instructions set out in paragraphs 3a, 3b and 4 of *Annex 2* to **this Agreement**, provided that paragraphs 3a, 3b and 4 of *Annex 2* shall apply to the **Sales** of any **Products** and to the sales of any other products that are **Plant Genetic Resources for Food and Agriculture** of the crop or crops for which the **Recipient** has opted for the alternative payments scheme.~~
3. When the **Recipient** transfers **Plant Genetic Resources for Food and Agriculture under Development**, the transfer shall be made on the condition that the **subsequent recipient** shall pay into the mechanism established by the **Governing Body** under Article 19.3f of the **Treaty** zero point five percent (0.5 %) of the **Sales** of any **Product** derived from such **Plant Genetic Resources for Food and Agriculture under Development**, whether the **Product** is **available or not without restriction**.
4. At least six months before the expiry of a period of ten years counted from the date of signature of **this Agreement** and, thereafter, six months before the expiry of subsequent periods of five years, the **Recipient** may notify the **Governing Body** of his decision to opt out from the application of this Article as of the end of any of those periods. In the case the **Recipient** has entered into other Standard Material Transfer Agreements, the ten years period will commence on the date of signature of the first Standard Material Transfer Agreement where an option for this Article has been made.
5. Where the **Recipient** has entered or enters in the future into other Standard Material Transfer Agreements in relation to material belonging to the same crop[s], the **Recipient** shall only pay into the referred mechanism the percentage of sales as determined in accordance with this Article or the same Article of any other Standard Material Transfer Agreement. No cumulative payments will be required.

Annex 4

**OPTION FOR CROP-BASED PAYMENTS UNDER THE ALTERNATIVE PAYMENTS
SCHEME UNDER ARTICLE 6.11 OF THIS AGREEMENT**

I (full name of **Recipient** or **Recipient's authorised official**) declare to opt for payment in accordance with Article 6.11 of **this Agreement**, for the following crop or crops:

.....

Signature.....

Date.....²⁵

Address of Recipient:

.....
.....
.....
.....

Name and Address of Provider:

.....
.....
.....
.....

Provider's Standard Material Transfer

Agreement identifying symbol or number:

.....

Date of the Standard Material Transfer Agreement.

.....

²⁵ In accordance with Article 6.11h of the Standard Material Transfer Agreement, the option for this modality of payment will become operative only once notification has been provided by the **Recipient** to the **Governing Body**. The signed declaration opting for this modality of payment must be sent by the **Recipient** to the **Governing Body** at the following address, whichever method of acceptance of **this Agreement** (signature, shrink-wrap or click-wrap) has been chosen by the parties to **this Agreement**, and whether or not the **Recipient** has already indicated his acceptance of this option in accepting **this Agreement** itself:

The Secretary,
International Treaty on Plant Genetic Resources for Food and Agriculture
Food and Agriculture Organization of the United Nations
I-00153 Rome, Italy.

The signed declaration must be accompanied by the following:

- ~~.....~~ The date on which **this Agreement** was entered into;
- ~~.....~~ The name and address of the **Recipient** and of the **Provider**;
- ~~.....~~ A copy of *Annex 1* to **this Agreement**.

Once notification has been provided by the **Recipient** to the **Governing Body** for one or more crops, the payment rate of alternative payments scheme is operative for any subsequent Standard Material Transfer Agreement entered into in respect of the same crop or crops, for the period of specified in *Article 6.11b*. During this period, no further notification in respect of this crop or these crops is required.

APPENDIX 2

ANNEX ...

**TRANSFER OF PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE
UNDER DEVELOPMENT, TO WHICH THE ALTERNATIVE PAYMENTS SCHEME
UNDER ARTICLE 6.11 APPLIES**

Whereas, I (*name and address of the provider or providing institution, name of authorized official, contact information for authorized official*),

Am transferring to you (*name and address of the recipient or recipient institution, name of authorized official, contact information for authorized official*),

Plant Genetic Resources for Food and Agriculture under Development identified in *Annex I* of the Standard Material Transfer Agreement between us, (*insert the identifying symbol or number attributed to the Standard Material Transfer Agreement by the Provider*), dated (*insert date*);

Whereas, I have opted for the alternative payments scheme provided for in Article 6.11 of the Standard Material Transfer Agreement;

Paragraph 3 of *Annex 3* to the Standard Material Transfer Agreement requires that you shall pay zero point five percent (0.5 %) of the Sales of any **Product** derived from these **Plant Genetic Resources for Food and Agriculture under Development**, whether the **Product** is available or not without restriction, in accordance with the banking instructions set out in paragraph 4 of *Annex 2* to the Standard Material Transfer Agreement.

In the event that you transfer these **Plant Genetic Resources for Food and Agriculture under Development**, or **Plant Genetic Resources for Food and Agriculture under Development** derived from them, to a **subsequent recipient**, you are required to do so under the exact same terms as in this Agreement, and under a Standard Material Transfer Agreement.

This transfer of **Plant Genetic Resources for Food and Agriculture under Development** is conditional on your accepting these conditions by signing and returning this Agreement to:

The Secretary,
International Treaty on Plant Genetic Resources for Food and Agriculture
Food and Agriculture Organization of the United Nations
I-00153 Rome, Italy

Signed:

Date:

APPENDIX 3

**SAMPLE LETTER OF NOTIFICATION OF INCLUSION OF MATERIAL
IN THE MULTILATERAL SYSTEM**

To the Secretary of the International Treaty
on Plant Genetic Resources for Food and Agriculture
Dr. Shakeel Bhatti
Food and Agriculture Organization of the United Nations
Viale delle Terme di Caracalla 1
00153 Rome, Italy

Subject: Notification regarding the contribution of the [name of the CP/Natural or Legal person] to the Multilateral System

The International Treaty on Plant Genetic Resources for Food and Agriculture (the Treaty) has established a Multilateral System of Access and Benefit-sharing.

Regarding the coverage of the Multilateral System, Article 11 specifies that the Multilateral System shall include all plant genetic resources for food and agriculture listed in *Annex I* that are under the management and control of the Contracting Parties and in the public domain, and that Contracting Parties invite other holders of the plant genetic resources for food and agriculture listed in *Annex I* to include these in the Multilateral System.

Herewith, the [name of the CP/Natural or Legal person] wishes to notify to you that the following plant genetic resources for food and agriculture listed in *Annex I* and maintained in [name of the CP] have been included in the Multilateral System.

1. The collections held by [name of the collection centre], [name of the country], located in XX. Through the website [url address] detailed data on the composition of the collection and user procedures to order samples are readily available.
2. The [name of species] collection held by the [name of the collection centre] located in XX [and consisting of...]. The website [url address] provides access to the collection's database.

Germplasm held in the collections listed above will be made available to users under the conditions of the Standard Material Transfer Agreement of the International Treaty on Plant Genetic Resources for Food and Agriculture.

APPENDIX 4

RESOLUTION **/2011**Implementation of the Multilateral System**

Recalling, that Part IV of the Treaty establishes a Multilateral System of Access and Benefit-sharing, which is efficient, effective, and transparent, both to facilitate access to plant genetic resources for food and agriculture, and to share, in a fair and equitable way, the benefits arising from the utilization of these resources, on a complementary and mutually reinforcing basis;

Recalling Resolution 4/2009 on the Multilateral System of Access and Benefit-sharing, adopted by the Governing Body at its Third Session;

Convinced of the crucial importance for the Treaty of bringing the Multilateral System of Access and Benefit-sharing into full and effective operation;

Convinced of the need to address the various elements of the Multilateral System as an integrated whole;

Recognizing that significant progress has been made in the implementation of the Multilateral System and the importance of maintaining current efforts and momentum in its implementation;

Recalling that under Article 12.4 of the Treaty, facilitated access to the Multilateral System shall be provided pursuant to a Standard Material Transfer Agreement adopted by the Governing Body;

Recognizing that, under the Multilateral System, in addition to the sharing of the benefits arising from commercialization of plant genetic resources for food and agriculture, Contracting Parties shall share the benefits arising from the use of plant genetic resources through the mechanisms of information exchange, access to and transfer of technology, and capacity-building;

Recalling that, in Article 11.3 of the International 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;

Recognizing that access to the information referred to in Article 13.2a is essential for the effective functioning of the Multilateral System and for the development of national capacity for the implementation of the Multilateral System;

Recognizing the importance of communication, education and public awareness for the successful implementation of the Multilateral System;

Further recognizing that, for the Multilateral System to be effective, it is also essential that information on the plant genetic resources for food and agriculture that are in the Multilateral System is made available in a manner that is accessible and usable by potential users;

Recognizing that enhanced cooperation and improved coordination with other international organizations is of particular importance for the sustainable functioning of the Multilateral System;

Recognizing that the objectives of the Treaty will be attained by closely linking the Treaty to the Food and Agriculture Organisation of the United Nations and to the Convention on Biological Diversity;

Welcoming the adoption of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (Nagoya Protocol), and **noting** that it is of major relevance for the attainment of the objectives of the Treaty and, in particular, the operation of the Multilateral System of the Treaty;

Acknowledging the ongoing fruitful collaboration with other international organizations, in particular, the Convention on Biological Diversity and the Consultative Group on International Agricultural Research and other relevant international institutions in the implementation of the Multilateral System;

THE GOVERNING BODY,

Plant genetic resources held by Contracting Parties and forming part of the Multilateral System

1. **Thanks** those Contracting Parties that have notified the Secretary of the plant genetic resources for food and agriculture that are in the Multilateral System and **urges** them to continue to update their information as it becomes available;
2. **Requests** all Contracting Parties to report on their plant genetic resources for food and agriculture that are in the Multilateral System, in accordance with Article 11.2 of the Treaty, and, according to national capacities, to take measures to make information on these resources available to potential users of the Multilateral System;

Plant genetic included by natural and legal persons within the jurisdictions of Contracting Parties

3. **Reiterates** its concern that more information is required 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;
4. **Thanks** those Contracting Parties that have made information available on the inclusion of plant genetic resource for food and agriculture in the Multilateral System by natural and legal persons within their jurisdiction;
5. **Urges** natural and legal persons to take steps to include plant genetic resource for food and agriculture in the Multilateral System, and to inform the Secretary accordingly;
6. **Urges** Contracting Parties to take, as appropriate, legal, administrative, fiscal and other measure 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;

Plant genetic resources held by International Institutions, under Article 15

7. **Recognizes** the importance of the International Agricultural Research Centers of the Consultative Group on International Agricultural Research and other relevant International Institutions for the fulfilment of the objectives of the Treaty, and their valuable contributions to the development of its Multilateral System;
8. **Notes** the comprehensive report provided by the International Agricultural Research Centers of the Consultative Group on International Agricultural Research and other relevant International Institutions, the Tropical Agricultural Research and Higher Education Centre (CATIE), Secretariat of the Pacific Community Centre for Pacific Crops and Trees (CePaCT), and the Mutant Germplasm Repository of the FAO/IAEA Joint Division, and **thanks** them for providing such detailed and useful report, and further **encourages** them to continue providing the Governing Body with similar reports in future Sessions of the Governing Body;
9. **Invites** other relevant international institutions to enter into agreements with the Governing Body to put their collections of plant genetic resources for food and agriculture in the Multilateral System;

10. **Requests** the Secretary to continue enhancing the collaboration with the International Agricultural Research Centers of the Consultative Group on International Agricultural Research and other relevant International Institutions and, as far as feasible, providing them with advisory and technical support in the implementation of their obligations under the Multilateral System and, in particular, in their use of the Standard Material Transfer Agreement;

11. **Requests** the Secretary to take necessary steps to encourage further inclusion of plant genetic resources for food and agriculture in the Multilateral System by relevant international institutions.

Documenting the plant genetic resources for food and agriculture within the Multilateral System

12. **Stresses** the importance of the continued identification and documentation of the plant genetic resources for food and agriculture within the Multilateral System, so that they may be accessed for the purpose of utilization and conservation for research, breeding and training for food and agriculture using the FAO/IPGRI Multicrop Passport Descriptor List;

13. **Requests** the Secretary to continue gathering information on and documentation of plant genetic resources in the Multilateral System, including through the use of appropriate information technology tools, so that the plant genetic resources for food and agriculture may be used for plant breeding, research and training;

14. **Welcomes** the efforts underway to coordinate and improve information systems documenting plant genetic resources for food and agriculture, based on existing information systems, in order to develop and strengthen the Global Information System, foreseen in Article 17, consistent with Article 12.3b, of the International Treaty;

15. **Recognizes** that improving access to and availability of information in the Multilateral System continues to be an immediate priority and that there is a need to support the relevant authorities and entities, particularly in developing countries, in improving their capacity to provide, manage or access information in respect of the Multilateral System;

16. **Further requests** the Secretary, where feasible, to provide assistance to those Contracting Parties that may require support in identifying and reporting their plant genetic resources for food and agriculture that are in the Multilateral System;

Legal and other appropriate measures to provide access through the Multilateral System (Article 12.2)

17. **Urges** Contracting Parties, in accordance with Article 12.2, to take necessary legal and other appropriate measures to provide access to plant genetic resources for food and agriculture through the Multilateral System and requests them to report on such information, using the standard format to be prepared by the Secretary with the Support of the *Ad Hoc* Technical Advisory Committee on the Standard Material Transfer Agreement and the Multilateral System;

Implementation of the Standard Material Transfer Agreement

18. **Stresses** the to document exchanges under the Multilateral System through Standard Material Transfer Agreement operations, including through adequate reporting on concluded Standard Material Transfer Agreements in accordance with Resolution 5/2009;

19. **Requests** the Secretary to continue giving priority to assisting users of the Standard Material Transfer Agreement to overcome any implementation problems, including by reconvening the *Ad Hoc* Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System to continue and complete its work on the issues it identified during the last biennium and address other issues raised by users to the Secretary;

20. *Notes* the lack of implementation of non-monetary benefit-sharing and *requests* the Secretary to continue collecting information on the status of non-monetary and monetary benefit-sharing, as provided for in Articles 13.2a, b, c and d of the Treaty, and for this purpose to engage Contracting Parties and other stakeholders in providing information;
21. *Urges* Contracting Parties, international institutions having signed agreements under Article 15, and private sector entities to provide such information, using the standard format to the prepared by the Secretary with advice from the *Ad Hoc* Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System;
22. *Further requests* the Secretary to support Contracting Parties to take the necessary policy, legal and administrative measures for their national plant genetic resource systems, and natural and legal persons within their jurisdictions, to be able to use the Standard Material Transfer Agreement to provide facilitated access to plant genetic resources for food and agriculture;
23. *Invites* Contracting Parties and other relevant stakeholder to explore innovative benefit-sharing measures within the purview of Articles 13.2a, b, and c of the Treaty;

The Work of the *Ad Hoc* Technical Advisory Committee on the Multilateral System and Standard Material Transfer Agreement

24. *Thanks* the *Ad Hoc* Technical Advisory Committee on the Standard Material Transfer Agreement and the Multilateral System for their advice to the Secretary as well as the useful recommendations made for the effective implementation of the Multilateral System and the operation of the SMTA;
25. *Thanks* the government of Brazil for generously hosting and supporting the second meeting of the *Ad Hoc* Technical Advisory Committee;
26. *Approves* the updates to the SMTA, as contained in *Appendix ...* to this Resolution and requests the Secretary to publish the same and take all necessary measures to bring the updated version into operation, including by bringing it to the attention of all relevant stakeholder;
27. *Emphasizes* the need to further explore innovative approaches in engaging users of the Standard Material Transfer Agreement to make voluntary contributions to the Benefit-sharing Fund, in particular natural and legal persons from the seed and the food processing industry, and requests Contracting Parties to provide financial support for the Secretary to establish a Stakeholder Platform to bring together a wide range of such users to explore the development of innovative approaches to resource mobilization, including on a regular and predictable basis;
28. *Notes* the discussions of the Committee on the development of standards under Article 12.3h and *requests* it to examine further how this provision might best be implemented;
29. *Notes* the opinions and advice provided by the Committee at its first two meetings and *endorses* the opinions regarding non-food/feed uses and restoration of plant genetic resources for food and agriculture, as contained in the report of its second meeting;
30. *Further requests* the Committee to continue its work on the issues it had identified for further development and conclude its examination of those issues for consideration by the Governing Body at its Fifth Session.
31. *Agrees with* the opinion developed by the Committee on the Restoration of Germplasm and contained in *Appendix ...* to this Resolution.
32. *Decides* to reconvene the Committee in accordance with the terms of reference contained in *Appendix..._* to this Resolution,²⁶

²⁶ Pending the decision of the Governing Body on whether to reconvene the Committee, the terms of reference of the Committee from the 2010-11 biennium are reproduced in *Appendix ***.

33. **Decides** to again review the implementation of the Multilateral System at its Fifth Session;
34. **Requests** the Secretary to follow-up actively, with all measures required to obtain the information necessary;

Support to Contracting Parties and users of the Multilateral System

35. **Notes** the expression of the needs for support by developing countries in the implementation of the Multilateral System, taking into account their current capacities, as well as the additional need for support that will arise as the Nagoya Protocol enters into force;
36. **Welcomes** the progress made with the joint capacity building programme established by the Treaty, FAO and Bioversity International;
37. **Stresses** the crucial importance of assisting developing countries, including through existing coordinated multilateral frameworks, such as the Joint Capacity-building Programme and requests the Secretary to continue supervising the Joint Programme, based on the successful experience gained over the past two biennia;
38. **Expresses** the need to further extend the duration of the joint capacity building programme as well as its geographical coverage and **Invites** Contracting Parties to consider providing additional resources for the continuation of the Programme.
39. **Thanks** the Governments of Indonesia and Norway for convening a Global Consultation on Benefit-sharing under the Multilateral System and **requests** the Secretary to facilitate the necessary measures to implement the non-monetary benefit-sharing mechanisms of Articles 13.2a, b and c.
40. **Stresses** the need for coordination with other relevant international regimes related to access and benefit-sharing, in particular with capacity-building programmes under the Convention on Biological Diversity to ensure synergies and complementarities;

Major developments in the international environment of importance to the implementation of the Multilateral System

41. **Welcomes** the adoption of the Nagoya Protocol of the Convention on Biological Diversity;
42. **Acknowledges** the recognition of the International Treaty by the Conference of Parties of the Convention on Biological Diversity and in the Nagoya Protocol, as one of the four complementary instruments that constitute the International Regime on Access and Benefit-sharing;
43. Further **notes** that the Treaty and the Convention on Biological Diversity are in harmony one with another and that the Treaty, under Article 20, requires its Secretary to cooperate in particular with the Secretariat of the Convention on Biological Diversity;
44. **Commends** the Secretary for concluding the Memorandum of Cooperation with the Secretariat for cooperation and for enhancing cooperation with the CBD generally, especially in capacity-building dealing with access and benefit-sharing on plant genetic resources for food and agriculture and **emphasizes** the need to continue cooperation with the Convention on Biological Diversity in order to continue the harmonious relationship between the two agreements;
45. **Requests** the Secretary to continue enhancing the collaboration with the Convention on Biological Diversity in regard to access to plant genetic resources and benefit-sharing through, *inter alia*, participation in the relevant processes of the Convention and its Nagoya Protocol and specific joint activities with the Secretariat of the Convention;
46. **Urges** Contracting Parties to ensure, in adopting legal, administrative and policy measures

to implement both the Treaty and the Convention on Biological Diversity (or its Nagoya Protocol), that both agreements are implemented in harmony with each other and in a mutually supportive manner;

47. **Requests** the Secretary to continue participating in relevant meetings of the World Intellectual Property Organization, and other relevant international organizations including the International Union for the Protection of New Varieties of Plants and the World Health Organization, and to further collaborate with the above relevant organisations to ensure mutual supportiveness on issues related to access to genetic resources and benefit-sharing;

Review of SMTA used by the IARCs of the CGIAR for non-Annex I PGRFA

48. **Notes** that at its Second Session it endorsed that an interpretative footnote or series of footnotes would be included to relevant provisions of the Standard Material Transfer Agreement (SMTA) for transfers of non-Annex I material collected before the entry into force of the International Treaty to be used by the International Agricultural Research Centres of the Consultative Group on International Agricultural Research;

49. **Further** notes the continued successful use of the Standard Material Transfer Agreement by the International Treaty to be used by the International Agricultural Research Centres of the Consultative Group on International Agricultural Research, and decides to further review the measures at its Fifth Session.

Follow-up by the Secretariat

50. **Stresses** the importance of adequate information being provided to the Secretary on all the relevant issues by ..., so that a full report may be prepared for its Fifth Session.

APPENDIX 5

**DRAFT TERMS OF REFERENCE FOR
THE *AD HOC* ADVISORY TECHNICAL COMMITTEE ON THE STANDARD
MATERIAL TRANSFER AGREEMENT AND THE MULTILATERAL SYSTEM**

1. The *Ad Hoc* Advisory Technical Committee will advise the Secretary on implementation questions raised by users of the Standard Material Transfer Agreement, which the Secretary brings to their attention on the basis of questions addressed and forwarded to the Secretary by Contracting Parties, international centres having signed agreements with the Governing Body under Article 15 of the Treaty and other users of the Standard Material Transfer Agreement. The *Ad Hoc* Advisory Technical Committee shall take into account implementation problems such as those identified at the First Meeting of Experts on the Standard Material Transfer Agreement.
2. The *Ad Hoc* Advisory Technical Committee will comprise up to two members designated by each Region and up to five technical experts, including representatives of the CGIAR. In inviting these technical experts to a meeting of the *Ad Hoc* Advisory Technical Committee, the Secretary will have regard of the specific nature of the questions brought to his notice and the expertise needed to address these. Experts will be identified with due attention to the knowledge and skills required, understanding of the International Treaty and its Multilateral System, impartiality, and geographical balance. There will be two Co-Chairs, one from a developing country and one from a developed country Contracting Party, who will be elected from the members of the *Ad Hoc* Advisory Technical Committee.
3. The *Ad Hoc* Advisory Technical Committee will hold up to two meetings subject to the availability of funds.
4. The *Ad Hoc* Advisory Technical Committee will prepare a report at the end of a meeting, with responses to matters brought to its attention, and, where necessary, opinions on specific questions. These reports will be made available as information documents to the Fourth Session of the Governing Body. Where necessary, the *Ad Hoc* Advisory Technical Committee should discuss and consider questions regarding the Standard Material Transfer Agreement and the Multilateral System that may need to be brought to the attention of the Governing Body through the Secretary.
5. The *Ad Hoc* Advisory Technical Committee will report on the progress to the Secretary who will in turn report on this progress to the Fifth Session of the Governing Body.