

May 2016



The International Treaty ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



E

INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

FIFTH MEETING OF THE AD-HOC OPEN-ENDED WORKING GROUP TO ENHANCE THE FUNCTIONING OF THE MULTILATERAL SYSTEM

Geneva, Switzerland, 12-14 July 2016

REPORT FROM THE FRIENDS OF THE CO-CHAIRS GROUP ON USER AND CROP CATEGORIES

I. INTRODUCTION

1. Resolution 1/2015¹ of the Sixth Session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) requested the Ad hoc Open Ended Working Group to Enhance the Functioning of the Multilateral System of Access and Benefit-sharing inter alia:

“To invite written inputs or reports from all relevant stakeholders where needed and/or to establish small ad hoc Friends of the Co-Chairs groups, where needed, e.g. on user categories, on crop categories, on legal modalities, on payment rates, and on a termination clause, at the request of the Working Group or its Co-Chairs; the small ad hoc friends of the Co-Chairs groups would be requested to provide written input to the Co-chairs;”

2. A Friends of the Co-Chairs (FoCC) Group on User and Crop Categories was established at the beginning of 2016.² Its objectives were:

- To prepare information and a proposal for the Working Group to decide on the possibility of establishing different rates for different crops; and,
- To prepare information and a proposal for the Working Group to decide on the possibility

¹ *Measures to Enhance the Functioning of the Multilateral System of Access and Benefit-sharing.*

² Other two FoCC groups are considering access mechanisms and payment rates and a termination clause, respectively, and will also contribute inputs for the preparation of the revised SMTA to be discussed at the fifth Session of the Working Group.

of establishing different sets of obligations for different categories of users, for example based on turn-over, or on formal status and role, for example profit vs. non-profit organizations.

3. With respect to crop categories the FoCC was requested:

- To provide information on advantages and disadvantages of differentiating on payment rates by crop categories;
- To develop a proposal for the grouping of crops, taking into account the grouping provided above;
- To provide information on the criteria that were used for establishing the grouping of crops (e.g. volume of seed sales, profit margins); and,
- To provide information on the feasibility of using a crop grouping if the Governing Body would later decide to expand the coverage of the MLS, including to all PGRFA.

4. With respect to user categories the FoCC was requested:

- To develop a proposal defining user categories to be used in setting the benefit-sharing obligations of the revised SMTA;
- To provide information on the considerations made to develop such proposal; and,
- To analyze the possibility of exempting small-scale farmers in developing countries from the use of the SMTA, building upon the advice provided by Ad Hoc Advisory Technical Committee on the Standard Material Transfer Agreement and The Multilateral System.

5. The membership of the FoCC is given in *Appendix 1*. The terms of reference of this FoCC are provided in *Appendix 2*.

6. The FoCC Group held one conference call for a general discussion, exchanged views and reviewed available information on crop and user categories through email, and met in Rome to review and consider their findings. The group took account of the Reports of the four meetings of the Working Group, as well as the documentation prepared for these four meetings, including the Draft Revised Standard Material Transfer Agreement (IT/OWG-EFMLS-4/15/3) and the Commentary on Structural Elements for the Development of a Subscription Model/System (IT/OWG-EFMLS-4/15/4). During the period when the FoCC Group was active, submissions on user and crop categories were received from the following: European Seed Association, Third World Network, International Seed Federation, and from the ITPGRFA national focal point of the République centrafricaine.

7. The FoCC Group noted the importance of providing its results to the FoCC Group on Access Mechanisms and Payment Rates and that the exchange of ideas and information between the two groups could be possible at some stage, given the linkages of matters being discussed by the two groups.

II. GENERAL CONSIDERATIONS

8. The motivation behind establishing either crop or user categories is that they would be primarily a tool to enhance the flow of funds to the Benefit Sharing Fund of the ITPGRFA. While recognizing the importance of this, the group recognized that there may be trade-offs between use and income and felt that any changes resulting from the introduction of crop or user groups should not reduce other benefits arising from the Multilateral System (MLS) and should ideally increase them. Thus, introduction of crop or user groups should not reduce use of the MLS and the flow of genetic resources.

9. The Group focused on the technical aspects of introducing crop or user groups. These included economic and biological issues, considerations of the effect on use of genetic resources (and the patterns of use) and the likely consequences in terms of benefit flows from genetic resources at the point of commercialization.

10. In the opinion of the Group any differentiation by crop or user groups that might be established should be able to be implemented in ways that are seen to be fair and feasible. Any groupings or categories of crops or users should be easily understood and used and should be robust enough to be applicable in the case of changes to the MLS through e.g. extension to an increased number of crops or the introduction of a subscription system. The principles used to develop categories should be transparent and encourage rather than discourage use of the genetic resources in the MLS. The group was of the opinion that in order to work, the benefit sharing system in the revised MLS should be as simple as possible and that this should be an important criteria to guide their discussions.

The nature of the innovation process

11. The use of plant genetic resources involves a number of actors from different groups. Genetic resources collections need to be established, characterized and evaluated; research is required to understand the control and expression of desirable traits; extended screening may be needed to identify desired trait combinations and phenotypes; preliminary and pre-breeding efforts are often needed over a number of years before final development and release of improved varieties (in itself a complex process) can occur. All of these different activities can bring benefits even when they do not lead to direct financial returns that can be realized through the existing benefit sharing mechanism.

12. As recognized by the Treaty, the economic value of genetic resources mainly arises from their use as a resource for innovation. For the MLS, the BSF captures a proportion of this value at the point of first commercialization - e.g. the release of a new product (variety) that is a Plant Genetic Resource for Food and Agriculture and that incorporates Material obtained from the MLS. The Treaty provides for the Governing Body to decide reviewing for which commercialized products a mandatory payment shall be required. However, many of the benefits from innovations may not be fully reflected in the monetary contributions made to the BSF such as knowledge from research that facilitates identification and utilization of other accessions, and the access to new

improved material through the breeders' exemption.³

13. It needs to be also pointed out that not all PGRFA users are direct MLS recipients. In addition it is generally assumed that commercial users of PGRFA integrate the following activities in their operations: breeding, plant variety release and seed production. But for example many end MLS recipients of germplasm incorporating genetic resources obtained from the MLS are only licensing varieties for seed producers to commercialize, and such recipients do not know how much turnover the seed producers obtain from the seeds commercialized of a given crop variety. Value may be realized from part of the research and development chain that is not captured by the Multilateral System. More generally, benefits (economic, social and cultural) accrue along the chain from the first use (characterization and evaluation) of genetic resources to the final consumer of a new improved product. Many of the societal benefits from the use of genetic resources are not reflected in flows to the BSF, indeed it may only be possible to capture a very small share of the overall benefits. To a very large extent, PGRFA in the MLS are an international public good that might be best recognized through direct contributions by Contracting Parties independently of any crop or user categories and, potentially might offer a greater flow of funds to the BSF.

Future trends

14. The further development of the MLS should take account of likely or possible trends in the management and use of genetic resources. For many, if not most crops, the increasing use of molecular methods, phenotyping and genotyping are resulting in significantly increased information on genetic resources. While some have suggested that use will increase with the rise of these new tools, it has also been argued that the need for researchers and breeders to access large numbers of accessions to identify those of most value to them is likely to diminish. In terms of numbers, this may result in a decreasing use of the genetic resources in the MLS although those accessed may have a much greater usefulness, as preliminary screening and evaluation of a larger number of possible resources will not be needed. The value of the information maintained by genebanks will on the other hand become much higher. Furthermore, the increasing use of gene editing techniques are likely to also increase the value of information on gene and DNA sequences that lie well outside the range of species covered by the MLS.

15. The MLS enhancement will have to consider that users will increasingly use such tools to conduct plant breeding. This does not mean that these techniques will necessarily replace traditional plant breeding at a global scale but rather that the trend will be that use of PGRFA will diversify in the near future, with different users making divergent use of MLS materials.

III. CROP CATEGORIES

16. A primary rationale for establishing crop categories is that different crops have very different volumes (of production, seed sales etc.) and profit margins. In the next paragraphs we consider the different crop characteristics that might be used to establish crop categories, the possible advantages and disadvantages of each and the extent to which these meet the criteria

³ *Identifying Benefit Flows – Studies on the Potential Monetary and Non-Monetary Benefits arising from the ITPGRFA.* The link to the referred document is: <http://www.planttreaty.org/content/identifying-benefit-flows>

listed above.

Possible bases for crop categories

Crop market size, production volume and use

17. Market size, seed sales and area of production show great variation between crops. The scale of production and demand for seed of major staples (rice, wheat, maize, potato) is several orders of magnitude greater than that for minor staples such as quinoa, finger millet or teff although these latter are of considerable local, national or regional significance. Fruit and vegetable crops show similar differences with respect to volumes of seed (or propagating material) demand and sales and areas of production.

18. However, while market size is often measurable for major crops, it often does not reflect profitability or the potential value of genetic resource use and shows great differences between countries and regions reflecting the relative importance of different crops in different areas of the world. A further complication is that a single crop may in fact be used in a number of different ways that each in turn vary in importance and market size. The kind of differences can be illustrated with two examples: (1) Beet includes sugar beet, forage and vegetable types all of which with their own market size, demand for seed and patterns of use; (2) Market size and demand for seed is also quite different for barley grown for malting in Europe and for food in the Middle East. Many other examples exist of the country or regional variable nature of market size and of the variation in the specific products of interest such as the Brassica complex, sorghum and beans. For some crops, very specific niche markets exist for certain varieties or types of varieties.

19. A further complication results from the fact that many individual characters are only relevant to a small part of the total area sown to a particular crop, e.g. genes for resistance to diseases that only affect crops grown in certain ecosystems (e.g. in warmer environments) or for characters that are only important under particular agronomic conditions (e.g. upland or deepwater rice).

20. In some cases crops are also substitutable with respect to the product. For example, sugar may be obtained from sugar beet or sugar cane or other crops and there are many different sources of different oils. This adds another layer of complexity to the introduction of crop categories.

Profitability of breeding and seed production

21. It is suggested that profit margins for crops and within crops are very variable and that differences could be captured through the establishment of categories. There is limited publicly available or easily accessible information on profitability at the crop level although published information on company profits (often involving a number of different crops) may exist in some countries (and not in others) and some associated information might be used (e.g. on product innovation, turnover).

22. The profit margin that a breeder can expect from producing a new variety depends, inter alia on: i) the overall size of the market for the improved variety and seed; ii) the nature and extent of competition; iii) the cost of producing and distributing seed for that particular market; and iv) the actual cost of breeding the new variety. All these vary not only from crop to crop but

also from country to country and within a country depending on factors such as the actual use of a crop, local and international prices, markets, food or feed preferences, distance of seed production from market, and food or feed processing costs. They will also vary depending on the breeding institution(s) involved, e.g. a small breeding company might have higher overhead costs than a large one, and a heavily capitalized company have lower operating costs than one that has received less capital investment. Costs such as labour and energy also vary widely from country to country.

23. There are further complexities in considering the development of categories in ways that reflect some aspect of profitability such as the separation between variety breeding, seed production and sale of the improved variety. This differs between crops, companies and countries. The breeding and production and sale of many vegetable varieties for the professional market is mostly managed within the same company while the breeding, production and sale of the same variety for the amateurs' market may be managed by different companies. The breeding and production of forage cereals is frequently managed by different companies, while this is not the case for maize. The situation may also differ with regard to minor crops such as strawberry, asparagus and many others.

Research intensity and use of genetic resources

24. Crops differ considerably with respect to the research efforts made on their improvement and on the use of genetic resources (from the MLS or elsewhere) as part of this effort. Both research efforts and use of genetic resources can be closely linked with breeding and improvement and undertaken by breeding entities (private or public) or may be undertaken more or less independently e.g. by university departments or national research centres. Pre-breeding efforts remain largely associated with the public sector.

25. There are also significant within crop differences in respect of research intensity and genetic resource use as well as differences between countries that might need to be reflected in the establishment of crop categories. It is not clear how crop categories would capture in any meaningful way the research that takes place within universities or research organizations not directly involved in variety production - for example, that involved in understanding the genetic basis of disease resistance or abiotic stress tolerance which may be crop related but also has the potential to inform breeding efforts of many other crops (e.g. the work on model plants such as rice, *Medicago truncatula* or *Arabidopsis thaliana* used in omics' sciences).

26. It has been suggested that establishing crop categories might be used to encourage the use of genetic resources, especially of minor crops with low profitability. Evidence is not available that the marginal cost of accessing materials through the MLS is a significant disincentive to use of the MLS for minor crops. Indeed the reverse might be the case with the introduction of categories adding complexity and increasing costs in ways that act to limit use of the MLS.

Availability and supply of crop genetic resources

27. Availability and accessibility are important aspects of the use of genetic resources⁴ and

⁴ Fowler, C., & Hodgkin, T. (2004). PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE: Assessing Global Availability 1. *Annu. Rev. Environ. Resour.*, 29, 143-179.

analyses of usage of the MLS show distinct differences between crops which may reflect these. The existence of well-maintained collections that contain substantial fractions of the overall genetic diversity of a crop, amounts of available characterisation and evaluation data, ease of use of an accession in crop improvement, crop breeding system and the overall diversity present within the crop have all been noted as important factors affecting use of genetic resources. For example wheat, with well characterised collections available within the MLS, self-pollination and a rather narrow genetic base, is a crop where use of genetic resources has been relatively high while maize is often cited as an example of a crop where use of genetic resources collections is low (a cross-pollinated crop with high diversity available within breeding materials).

28. For many crops supply-related issues are complicated by differences that exist within countries and the institutions involved in the different stages of crop improvement. These issues are also complicated by the changing nature of the needs and interest of breeders. Productivity and disease related concerns are being added to by an increasing interest in tolerance to abiotic stresses and nutritional content reflecting new producer and consumer interests. The use of genetic resources also changes significantly with the development of techniques such as phenotyping and probes to identify desirable sequences in large collections. These may or may not be crop specific. Often the demand for genetic resources varies depending on crop use (for food, forage or niche uses) and show sub-crop differences as well as differences in the expected genetic gain from the use of MLS based genetic resources.

29. Not all of the genetic resources, accessed through the MLS, will end up in some final marketed product. In fact a majority will not. As noted above, the ratio of 'accessed' to 'included in marketed variety' will change as information from genebanks improves and methods of screening develop. This ratio is likely to be as much influenced by the complexity of the breeding challenge (the trait or desired improvement) as by the crop and is very difficult to predict (consider the examples of the search for resistance to Ug99).

Factors influencing the establishment of crop categories

Information requirements

30. Each of the entry points discussed above for establishing crop categories requires specific information. Information is rarely sufficient to take account of the country and use differences noted above or to reflect the divergent interest of different breeders and other users in different parts of the world. Some types of information have been reviewed and used e.g. 1) Product innovation (IPR) databases (2) Genealogy information, and (3) PGR distribution data (Srinivasan 2015). However commercial seed market information at country and crop level is not readily available and might not really exist (e.g. no detailed data for vegetable crops or individual fodder plant species).

31. Obtaining information that would adequately capture differences in profitability for different crops in different situations is unlikely to be feasible given the many different complicating factors referred to above. How do large multinational companies that declare profit on a wide range of operations in different countries disaggregate information by crop, type of crop product and country, in ways that could be used? How would the differences between these entities and small national companies producing specific varieties of the same crops for a specific market but with quite different profit margins be captured?

ITPGRFA developments

32. The Treaty is evolving and the procedures for implementing its provisions are changing. One issue discussed by the FoCC Group was the likely impact of the adoption of a subscription-based approach to payment for the MLS. The Group could not identify any likely changes in respect to its analysis of crop categories (see below with respect to user categories) that would result from the adoption of a subscription approach.

33. The expansion of Annex I is another possible development. The identification of crop categories combined with an expansion of Annex 1 would increase substantially the complexity of the system. More information would be needed and the range of variation in market size, patterns and types of use, profitability, research investment, availability and supply would also be considerably increased.

Users and breeders perspectives

34. The inter-related and integrated nature of use (and of users) makes it desirable to include the perspectives of all users with respect to crop categories. If use by one group (e.g. researchers) is negatively affected by crop categories any benefits to other users downstream may be lost. At present there is insufficient evidence of the benefits to all user groups of introducing crop categories.

35. In conclusion, the grouping of crops into categories is considered not to be desirable since:

1. Categories or groupings are not clearly associated with specific characteristics associated with either crops or users (e.g. realization of benefits from use of genetic resources of an individual crop, specific features always associated with identified user groups);
2. The introduction of categories would, of necessity, be associated with increased complexity because of the need to develop sub-categories based on other unlinked criteria;
3. The division into categories would inevitably have to be arbitrary rather than 'natural'. Any groupings used should as far as possible be clear and distinct and easily identifiable and understood, which is not the case in categorizing on the basis of crops.

IV. USER CATEGORIES

36. Various categories have been developed to classify users of the MLS. Thus the categories used in the EasySMTA, (the on-line information tool for the generation, use and reporting of SMTAs) are as follows:

- Individual
- Organization:

- CGIAR Centre
- Commercial Company
- Farmer
- Gene bank
- Germplasm Network
- National Agricultural Research Centre
- Non-governmental Organization
- Regional Organization
- University
- Other

37. CGIAR collections reporting to the Global Crop Diversity Trust (GCDT) through the CGIAR Research Program for Managing and Sustaining Crop Collections use the following classification.

- ARIs and Universities
- CGIAR centres
- Private / Commercial sector
- Farmers, farmer organizations, NGOs
- NARS or national genebanks
- International genebanks
- Individuals, unknown or other users

38. Other, even simpler ways for classifying the users receiving material are used by some organizations. Since 2008, IRRI's institution-wide classification of users that receive material through SMTAs (both material from the genebank and breeders) is as follows:

- Academic institution
- Individual
- Private sector commercial company
- Public sector

39. None of these classifications of different users is accompanied by definitions for the different user groups.
40. All of the different classifications described above present problems in their application to the definition of user groups for the MLS as suggested in the Group's TORs. Thus, ARI's and Universities increasingly include organizations, components or partners that undertake the commercialization of their products. Universities and NARS may collaborate on specific use activities with private sector commercial companies. Non-governmental organizations may support the development of commercial operations or be connected to private companies at national level. NARS in an increasing number of developing countries as well as CGIAR institutes enter into agreements with private companies for the commercialization of their products. This makes the classification of user groups vis-à-vis commercialization and the realization of benefits difficult.
41. The Group explored the possibility of developing a simple classification separating commercial and non-commercial users. While this is attractive in terms of simplicity and users could probably be classified appropriately it ignores the complexity of the use process as noted above. It also ignores the increasing trend noted above for non-commercial users such as universities and research institutes to have commercial arms.
42. The benefits from commercialization might be realized through an assessment of the profit of any organization that uses the MLS but this is unlikely to be possible given the difficulties of assessing profit. An alternative approach would be to use the turnover of the organization, or sales as currently reflected in the SMTA. Turnover could either be assessed from published materials or could be self-declared. In the latter case some independent verification would be desirable. Reporting and verification mechanisms may need to consider the oversight roles of the national focal points, governments or others.

43. A further development of this approach would be to classify users according to the extent to which they derive commercial benefit from use of the MLS. A sliding scale with different thresholds of payments could be developed based on commercial benefit (typically seed/propagating material sales, including via licensing). Such a system should include safeguards to ensure equitability, be transparent and encourage confidence. The introduction of a subscription based approach might link quite comfortably to this approach to a classification of users.

V. EXEMPTING SMALL SCALE FARMERS IN DEVELOPING COUNTRIES FROM THE USE OF THE SMTA

44. The FOCC Group was asked:
- To analyze the possibility of exempting small-scale farmers in developing countries from the use of the SMTA, building upon the advice provided by *Ad Hoc* Advisory Technical Committee on the Standard Material Transfer Agreement and The Multilateral System.

45. Article 13.2 of the Treaty states that the Governing Body may "decide on the need to exempt from such payments small farmers in developing countries and in countries with economies in transition." The Working Group, at its third meeting, made reference to the possibility of the exempting the farmers from the use of the SMTA.

46. The *Ad Hoc* Advisory Technical Committee on the Standard Material Transfer Agreement and The Multilateral System which provided advice to the Governing Body on practical implementation of the Multilateral System noted⁵ that

“ultimately, the use of PGRFA by farmers is the best way of conserving, sustainably using and developing crop and forage diversity.

To this end the committee members acknowledged the key importance of farmers being provided access to material through the MLS.

The problem highlighted by the Committee concerned difficulties associated with distributing materials to farmers using a written and signed SMTA, particularly small farmers in developing countries. The SMTA will not be in the language of many of those farmers. And if it were, many of them could not read it in any case. Expecting them to use the SMTA when they themselves pass it on to other farmers seems highly impractical.” (Opinion 6)

47. In Opinion 10 the Committee noted additionally:

“PGRFA distributed to farmers for direct use for cultivation should not be transferred with the SMTA. They should be transferred with a statement that the material can be used directly for cultivation. The following is a suggested wording for the statement:

This material can be used by the recipient directly for cultivation, and can be passed on to others for direct cultivation.”

48. There are many compelling reasons to support access by farmers to genetic resources in the MLS. The issues of accessibility to a wider range of diversity has become increasingly important as part of efforts to support adaptation to climate change. The contribution of diversity to farmer resilience and to livelihoods has been documented. A number of international projects have demonstrated the benefits of improved access by farmers to a wider range of crop diversity.⁶ At the same time a range of practices and supporting mechanisms have been developed and are rapidly being adopted in a number of countries (e.g. Community Seed Banks).

49. The Group agrees with the Opinions reported above that farmers should be exempt from use of the SMTA for direct cultivation. Its complexity, limited availability in many languages and lack of relevance to farmer-based use render it an unnecessary and undesirable instrument in the case of distribution of MLS material to farmers.

50. It should be noted that there is no universal definition of small-scale farmer. Grappling with a similar problem, the UN Committee on Global Food Security noted with respect to the concept of smallholder agriculture:

“The definition of smallholder agriculture cannot be rigid or one size fits all: there are

⁵ See the recently published booklet : http://www.planttreaty.org/sites/default/files/OPINIONS_MLS_SMTA_v1.pdf

⁶ e.g. Oxfam Novib project, Seeds for Needs work by Bioversity

many variations in each specific context at regional, national and local levels. Classifications based only on farm size can be misleading".⁷

51. Many countries have developed their own descriptions or classifications of farm scale or smallholder type. These involve classifications based on sources of income (e.g. Argentina), size of holding (e.g. Mozambique, Tanzania) and production practices (e.g. Cote d'Ivoire). In some countries the emphasis is on family farms (e.g. USA, Brazil). The classifications may be bi- or trimodal, the size of holdings in the different classes varies considerably and not all countries recognize and separate out a category of small, small-scale or smallholder farming.

52. The loss of monetary benefits to the MLS from granting an exemption to small-scale farmers in developing countries is not likely to be significant and the other benefits from improved access to genetic resources for farmers and potential increase use of that diversity would outweigh any loss. There remains a concern that farmers improvements might be hijacked by larger commercial entities without due recognition that some original materials were acquired through the MLS or that farmer access was used as a backdoor mechanism by some commercial enterprises but this problem already exists and granting farmer exemption is not likely to change its nature or extent.

53. In the case that the Governing Body wishes to provide an exemption for small-scale farmers in developing countries, as suggested in the Treaty, a possible approach might be to allow each country to use its own definition of small-scale farmers with a report to the Treaty on the definition used and the extent and nature of the use of this exemption.

VI. CONCLUSIONS

54. The Group considers that:

1. Crop categories could not be established in a way that is technically robust, easily understood and likely to improve income flows to the Benefit-sharing Fund. Differences in market size, profitability, turnover, research intensity and MLS use across and within countries and across and within crops makes the development of any categories essentially arbitrary and liable to create additional problems with respect to MLS use.
2. No satisfactory separation of user groups can be established given the complex and interconnected nature of use and the multiple roles that different types of user often play. A possible alternative would be the development of a classification of users of MLS based on the degree to which they derive commercial benefit from this use. The classification could be based on, levels of turnover or seed sales.
3. Small-scale farmers in developing countries could be granted an exemption from the use of the SMTA or from payment. A universal definition of small-scale farmers does not however exist and would probably be impossible to establish. As a result national definitions and mechanisms would need to be used. The processes used by countries to define "small farmer" would need to be reported to the Governing Body.

⁷ *Investing in smallholder agriculture for food security*. A report by the High Level Panel of Experts on Food Security and Nutrition, June 2013, FAO, Rome.

APPENDIX I***FRIENDS OF THE CO-CHAIRS GROUP ON USER AND CROP CATEGORIES: MEMBERSHIP***

Isabelle Clement Nissou, expert in plant genetic resources from the Groupement national interprofessionnel des semences et plants, France;

Stephanie Franck, President of the German Plant Breeders' Association and Shareholding Managing Director of the Pflanzenzucht Oberlimpurg Dr. Peter Franck ;

Geoff Hawtin, private consultant, Advisor to the Global Crop Diversity Trust (GCDT) and the International Treaty, previously DG of Bioversity International (then IPGRI) and CIAT, and Director of GCDT;

Toby Hodgkin (Facilitator), coordinator of the Platform for Agrobiodiversity Research, previously Principal Scientist, Bioversity International;

Javad Mozafari, Director General, Academic Relations & International Affairs, Agricultural Research, Education and Extension Organization (AREEO), Islamic Republic of Iran;

Maria Jose Sampaio, Coordinator of Global Policies, International Relations Office, Brazilian Agriculture Research Corporation (Embrapa), Ministry of Agriculture, Livestock and Food Supply, Brazil;

C.S.Srinivasan, Department of Food Economics and Marketing School of Agriculture, Policy and Development University of Reading, UK.

APPENDIX 2

FRIENDS OF THE CO-CHAIRS GROUP ON USER AND CROP CATEGORIES:

TERMS OF REFERENCE

Objectives

1. To prepare information and a proposal for the Working Group to decide on the possibility of establishing different rates for different crops; and
2. To prepare information and a proposal for the Working Group to decide on the possibility of establishing different sets of obligations for different categories of users, for example based on turn-over, or on formal status and role, for example profit vs. non-profit organizations.

Mandate

1. Differentiation on payment rates by crop categories

Different crops have very different production volumes and profit margins. For this reason, introducing a crop differentiation factor within the SMTA, in a practical and simple way, may be considered. Some user stakeholders have proposed attributing all crops to one of three categories, with a different multiplier factor for each. The possible grouping, as proposed by these stakeholders, is listed below by way of example. This table has not yet been discussed in the Working Group. While a differentiation by crop categories may be technically feasible, the Working Group may decide that it is not politically relevant or desirable.

Group 1	Group 2	Group 3
Beet	Apple	Banana/Plantain
<i>Brassica</i> complex	Asparagus	Breadfruit
Eggplant	Barley	Cassava
Maize	Beans (<i>Phaseolus</i>)	Chickpea
Rice	Carrot	Cowpea
Sorghum	Coconut	Faba Bean/Vetch
Strawberry	Citrus	Finger Millet
Sunflower	Oats	Grass Pea
	Peas (<i>Pisum</i>)	Lentils
	Potato	Pearl Millet
	Rye	Pigeon Pea
	Triticale	Sweet Potato
	Wheat	Yams
		All forages

This FoCC Group, in its written output to the Co-Chairs of the Working Group, is requested:

- To provide information on advantages and disadvantages of differentiating on payment rates by crop categories;
- To develop a proposal for the grouping of crops, taking into account the grouping provided above;
- To provide information on the criteria that were used for establishing the grouping of crops (e.g. volume of seed sales, profit margins); and
- To provide information on the feasibility of using a crop grouping if the Governing Body would later decide to expand the coverage of the MLS, including to all PGRFA.

2. Differentiation by user categories

The Working Group may wish to further consider the possibility of establishing different sets of obligations for different categories of users. These different categories may be based on a differentiation between: (1) entities with an annual seed sales turnover above and below a certain threshold of US\$ xxx; (2) entities where the annual payments to the Benefit-Sharing Fund would be above or below a certain threshold of US\$ xxx; and (3) the status and role of user organizations, e.g. commercial vs. non-profit.

This FoCC Group, in its written output to the Co-Chairs of the Working Group, is requested:

- To develop a proposal defining user categories to be used in setting the benefit-sharing obligations of the revised SMTA;
- To provide information on the considerations made to develop such proposal; and
- To analyze the possibility of exempting small-scale farmers in developing countries from the use of the SMTA, building upon the advice provided by *Ad Hoc* Advisory Technical Committee on the Standard Material Transfer Agreement and The Multilateral System.

Ways of operation

The FoC will have its own facilitator who will receive support from the Secretariat to prepare the written output that will be presented to the Working Group and other specific tasks as needed. Mainly electronic exchanges are foreseen. A meeting of two days may be needed. Communication will be in English only. At the request of the FoC members, the Co-chairs are available at all times for advice or participation in the discussions.

Reporting deadline

The reporting deadline is March 31, 2016.