



**Food and Agriculture
Organization of the
United Nations**



The International Treaty
**ON PLANT GENETIC RESOURCES
FOR FOOD AND AGRICULTURE**

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**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

**ENHANCING THE FUNCTIONING OF THE MULTILATERAL SYSTEM:
ELABORATION OF THE REVISED SMTA**

**NOTE BY THE CO-CHAIRS ON THE OUTCOME OF THE FRIENDS OF THE
CO-CHAIRS GROUPS**

Executive Summary

Following Resolution 1/2015, a variety of information sources were used in preparing the draft revised Standard Material Transfer Agreement.

The Co-chairs considered the recommendations received from the three Friends of the Co-Chairs Groups that dealt with user and crop categories; access mechanisms and payment rates; and a possible termination clause, respectively.¹

The Co-Chairs have summarized the outcomes of the discussions of the Friends of the Co-chairs Groups in the present note.

¹ The full reports of the Friends of the Co-chairs Groups are contained in documents IT/OWG-EFMLS-5/16/Inf. 4, IT/OWG-EFMLS-5/16/Inf. 5 and IT/OWG-EFMLS-5/16/Inf. 6.

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CHAIRS GROUPS**

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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. Following up on this Resolution, the Co-chairs established three Friends of the Co-Chairs Groups (FoCC Groups) at the beginning of 2016. The three groups dealt with the following topics respectively: (1) user and crop categories, (2) access mechanisms and payment rates, and (3) termination clause. The Terms of Reference for each of these groups were established by the Co-chairs. The Co-Chairs decided to keep the groups small for cost-efficiency but have guaranteed the participation of experts, in their personal capacities, from all Regions and stakeholder groups across the different groups. All three groups have reported to the Co-chairs on the outcome of their work. In their work, the FoCC Groups considered inputs from various stakeholder groups. The reports of the FoCC Groups have been made available as information documents and may serve to provide more technical details and motivations for the recommendations made by the FoCC Groups, in order to allow a more comprehensive analysis by the Working Group of the issues under the mandate given by the Governing Body to the Working Group.

3. The group on user and crop categories has finished its work. The group on access mechanisms and payment rates has reported on the issue of access mechanisms. As per the request of the Co-chairs, this group will only address the issue of payment rates after the upcoming meeting of the Working group. The group on termination clause has provided an interim report but has not finalised its work since finalisation of the termination clause should ideally be undertaken after all other provisions of the Standard Material Transfer Agreement (SMTA) have been agreed by the Working Group.

4. Through this note the Co-chairs wish to convey the main messages to the Working Group that they have taken from the three reports, in an effort to facilitate the work of the Working

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

Group in its upcoming meeting. The Co-chairs are of the opinion that the recommendations contained in these three reports are coherent, and sufficiently advanced to allow consideration and decision-making in the Working Group regarding a renewed SMTA text.

An overview of main recommendations

5. The main recommendations are:

- a) The FoCC on User and Crop categories advised that groupings of crops into categories is not desirable, since categories could not be clearly associated with specific characteristics per crop or user (e.g. realization of benefits), would increase complexity, and would inevitably be arbitrary. Regarding the introduction of user categories the FoCC was of the opinion that crop categories could not be established in a way that is technically robust, easily understood and likely to improve income flows. However, it did consider that a classification of users of the Multilateral System could be based on levels of turnover of seed sales, thereby allowing for a “simple solution” for small entities below a certain turnover level. Finally, the FoCC reported that small-scale farmers in developing countries could be granted an exemption from the use of the SMTA or from payment.
- b) The FoCC on Access Mechanisms and Payment Rates - in its interim report – concluded that all payments under the SMTA would need to be mandatory, bearing on the future of Article 6.8 of the current SMTA. It also concluded that a subscription system for all PGRFA (as opposed to the current list of crops contained in Annex 1) would meet a number of important criteria set by the FoCC, whereas a combination of a subscription system with a single access mechanism could increase user acceptance as compared to a single subscription system but would also add a layer of complexity and increase the risk of lack of balance and coherence in accessing germplasm from the Multilateral System.
- c) The FoCC on Access Mechanisms and Payment Rates was also of the opinion that the proposals made would not require an amendment of the Treaty or a separate international legal instrument. (This would still be necessary to accommodate a potential expansion of the scope of the Multilateral System, note Co-chairs.) In anticipating its future work, the FoCC noticed that the absolute rates as well as the balance between individual rates would affect the attractiveness of access to Multilateral System germplasm for users. Finally, this FoCC suggested the need for a “launch mechanism”, which would involve binding commitments of users (to subscribe), of collection holders (to place genetic resources in the Multilateral System), and of Contracting Parties (to directly support the BSF) in order to enable mutual trust and ensure that the renewed system will be acceptable to all stakeholders and will function as expected.
- d) The FoCC on the Termination Clause considered whether both expiry (automatic) and termination/withdrawal (at user request) would be needed. It also considered which obligations that the user would have entered into would continue. It concluded that benefit-sharing obligations on the use of the accessed germplasm would have to continue for a set number of years, whereas a set of other obligations would continue indefinitely, including to use the materials only for ‘conservation and use for research, breeding and training for food and agriculture’; to not take out intellectual property rights that would restrict facilitated access to the materials in the form received; to pass on the same materials under a new SMTA; to report transfers to the Governing Body, whereas the right of the Third Party Beneficiary to monitor and initiate legal proceedings would not be terminated either. The FoCC did not yet come to a conclusion regarding ongoing obligations on PGRFA under Development.

Conclusions and recommendations of the co-chairs

6. The Co-chairs have concluded that all three FoCC delivered important outputs. Furthermore, their recommendations do indeed strengthen each other and provide for a coherent outline for a renewed SMTA. In evaluating the results of the FoCC, the Co-chairs are in particular of the opinion that the Working Group should consider simple rather than complex provisions for a renewed SMTA, and in that context that a subscription system as the only mechanism of access to PGRFA in the Multilateral System forms a preferred option. The Co-chairs have therefore requested the Secretariat to elaborate a draft text for a renewed SMTA based on the recommendations described above, for discussion in the Working Group in its upcoming meeting.

7. In addition, the Co-chairs invite the Working Group to:

During the fifth meeting:

- Take our review of main recommendations presented above as the initial building blocks for the revision of the SMTA;

In preparation for the sixth meeting:

- Consider at the closure of its meeting the need for the FoCC on Access Mechanisms and Payment Rates and the FoCC on Termination Clause to continue their work under renewed mandates;
- Consider the establishment of a new FoCC on Scope and Legal Instrument of the Multilateral System, in order to develop considerations, conditions and recommendations regarding the expansion of the scope of the Multilateral System to all PGRFA, and to propose an appropriate instrument to realise such expansion.

The future of the Treaty

8. The fifth meeting of the Working Group will concentrate on the revision of the SMTA as one important measure to enhance the functioning of the Multilateral System. The work undertaken by the Co-Chairs since the Governing Body last met has focused in delivering such important outcome.

9. In undertaking the exercise of revising the SMTA, the Working Group needs to be ambitious and at the same time realistic. We need also a vision for the future of the Treaty.

10. The Co-chairs wish to take note of remarks made by several stakeholders that the Multilateral System is currently mainly regarded as a pool of tradeable assets (the accessions placed in the Multilateral System and the genes contained in those accessions) and not as a common responsibility of the global community to guarantee future food security and sustainable production at the global level. If the Working Group focuses only in the revision of the SMTA, there is little chance to change the vision that regards the Multilateral System as a pool of tradeable assets.

11. The Co-chairs therefore wish to convey and support the conviction of many stakeholders, including participants in the three FoCC, that user-based payments would potentially provide for an essential but simultaneously limited contribution to the Benefit-Sharing Fund, and that an enhanced functioning of the Multilateral System would absolutely require financial contributions of Contracting Parties on a sustainable and predictable basis, no matter what the details of a renewed SMTA and an Multilateral System functioning at an enhanced level will be. The Co-

chairs believe it to be crucial that such signal is given by the Working Group to the Governing Body, and that the Governing Body prepares for political decision-making enabling such transition.

12. The Co-chairs believe this to be vital for the future of the Treaty. The Working Group will have the possibility to discuss measures to enhance the functioning of the Multilateral System beyond the revision of the SMTA under Agenda Item 5 of the fifth meeting of the Working Group. In order to facilitate the discussion, the Co-Chairs will present the note *Enhancing the functioning of the Multilateral System: measures beyond the elaboration of the revised SMTA*.