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The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

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

Geneva, Switzerland, 14-16 May 2014

PREPARATION OF STUDIES BY THE SECRETARIAT, AS MANDATED BY THE GOVERNING BODY

1. Introduction

1. The Governing Body has requested the Working Group to develop a range of measures for consideration and decision by the Governing Body at its Sixth Session that will:

- (a) Increase user-based payments and contributions to the Benefit-sharing Fund in a sustainable and predictable long-term manner, and
- (b) Enhance the functioning of the Multilateral System by additional measures.

2. For this purpose, the Governing Body requested the Secretariat to prepare a number of short, strategic preliminary studies, taking into account all available information, including the recent study, *Assessing the potential for monetary payments from the exchange of plant genetic resources under the Multilateral System of the International Treaty on Plant Genetic Resources for Food and Agriculture (Potential)*. These studies should include:

- A study estimating income to be expected from possible changes, consistent with the objectives of the Treaty, in the provisions governing the functioning of the Multilateral System, taking into account reports of the Ad Hoc Advisory Committee on the Funding Strategy and the Ad Hoc Technical Advisory Committee on the Multilateral System and SMTA;
- A policy and legal study on the feasibility and effects of such changes;
- A study on how to enhance mechanisms for capacity-building, technology-transfer and information-exchange;
- An analysis of the factors that influence the willingness of stakeholder groups to make contributions to the Benefit-sharing Fund and to access plant genetic resources for food and agriculture from the Multilateral System.

3. This information document provides, in *Appendix 1*, a synoptic description of the four studies under preparation by the Secretariat. The document *Preparations for future meetings of*

*the Working Group (Preparations)*¹ identifies the inputs expected during the biennium, including the studies, and seeks guidance from the Working Group with regard to the scheduling of delivery of such inputs. The Secretariat is preparing the studies building upon, and expanding on, the research undertaken to elaborate the recent study *Potential* and in collaboration with other institutions and experts that have relevant knowledge in the Treaty and the areas of research. Some of the research needed to underpin the preparation of the studies is subject to the availability of extra-budgetary resources and the Secretariat is in consultation with a number of donors to ensure delivery of the studies. Part of the delivery may depend in its timing on the timing of funding being available.

¹ IT/WG-EFMLS-1/14/5.

APPENDIX 1

SYNOPSIS OF STUDIES UNDER PREPARATION BY THE SECRETARIAT

Study 1: Estimating income to be expected from possible changes, consistent with the objectives of the Treaty, in the provisions governing the functioning of the Multilateral System, taking into account reports of the *Ad Hoc* Advisory Committee on the Funding Strategy and the *Ad Hoc* Technical Advisory Committee on the Multilateral System and SMTA

This study aims to provide technical and structural information to the Working Group, to assist it in further pursuing the innovative approaches already identified by the *Ad Hoc* Advisory Committee on the Funding Strategy, in the previous biennium, and additional approaches that may be identified by the Working Group.

The study will seek to assemble background information for the Working Group, in relation to the innovative approaches that involve revisiting SMTA Articles 6.7 and 6.11, and the relationship between these articles.

It will further develop the analysis of the value of the international market for seeds and planting materials, by crop and crop group, with a focus on vegetables, in order to provide relevant information to the Working Group for the consideration of the innovative approach under discussion with the Vegetable Breeders' Working Group.

It will investigate the potential values of income to the Benefit-sharing Fund resulting from products commercialized under patent protection, and products commercialized under Plant Variety Protection. It will develop practical tools by which the Working Group can project the likely income deriving from the combination of any values it may wish to consider for these two groups of commercialized products.

The study will be purely technical and will not make any proposals for the levels of payment, as these matters are for decision by the Governing Body, but will seek to provide a technical and analytical framework, to assist the Working Group in its deliberations, and allow it to quantify the likely outcome of any levels it may consider recommending to the Governing Body.

The study will develop and implement methodologies for establishing a parity point for payment levels, in terms of payment levels under SMTA Articles 6.7/6.8 and 6.11, and innovative approaches derived from them, that is, the relative levels at which recipients are as

likely to choose one payment option as the other. It will draw on Study 4, to identify the likelihood of decision-makers in the seed industry choosing one payment option or another, and will seek to identify the reasons behind these decisions. The objective is to assist the Working Group in considering a balanced approach to the two payment levels, such that one approach does not, by a process akin to Gresham's Law, drive out the other approach. Thus the questions addressed by the study correspond to the Governing Body's recognition that the innovative approaches "are interlinked and interdependent, and need to be addressed together" (Resolution 2/2013).

Study 2: A policy and legal study on the feasibility of the changes and the effects of the changes**A policy and legal study on the feasibility and effects of the changes involved in the innovative approaches under consideration**

The study will consider the legal framework of which the Treaty is a major constituent, and the implications for the ways in which the Governing Body may seek to adopt and implement innovative approaches.

It will consider the capacity of the Governing Body to effect the changes envisaged, and legal technical issues involved, as well as the modalities that may be required (revision to the Treaty, adoption of a Protocol to the Treaty, decisions of the Governing Body, etc.), with an identification of the pros and cons of these modalities.

The study will provide legal technical information to the Working Group on the legal feasibility and options for making the changes involved in the innovative approaches under consideration by the Working Group, and on the possible legal and policy effects of those changes on the technical functioning of the System. Both the information concerning the feasibility as well as that concerning the effects will implement the attention given by the Governing Body in Resolution 2/2013 to “the interrelation and interdependence of the measures and the need to address them together”.

It will also identify specific formulations that may be required to give effect to the changes necessary, including in relation to establishing a legally coherent and inter-related packet of innovative approaches.

Study 3: A study on how to enhance mechanism for capacity-building, technology-transfer and information-exchange

The study will provide technical information for the Working Group, regarding possible ways for enhancing mechanisms for capacity-building, technology-transfer and information-exchange. Such matters will be of relevance to the Working Group in the second phase of its work (under line (b) of its terms of reference regarding additional measures to enhance the functioning of the System), and would thus be addressed only in subsequent meetings.

The study will take into account that the three mechanisms of non-monetary benefit-sharing provided under Article 13 of the Treaty are capacity-building, technology-transfer and information-exchange, Support to such non-monetary benefit-sharing is a funding priority of the Benefit-sharing Fund established by the Governing Body at its Second Session. A number of tools to promote such benefit-sharing have already been established by stakeholders and Contracting Parties, and been recognized by the Governing Body, in particular in its Programme of Work on Sustainable Use and related decisions.

It will identify possible substantive and operational interlinkages between these tools, as opportunities to enhance the use and exchange of plant genetic resources in the Multilateral System, by better connecting upstream and downstream stages in the use of plant genetic resources under the Treaty, through initiatives such as the existing training and capacity building programmes to support the implementation of the Multilateral System, public-private partnerships for pre-breeding, the platform for co-development and transfer of technology, and information systems initiatives under Articles 17 and 13.2(a) of the Treaty.

The study will also provide information on opportunities to enhance capacity-building, technology-transfer and information-exchange, by connecting non-monetary benefit-sharing with monetary benefit-sharing. It will cover not only the existing connections established by the Governing Body, through its funding priority for the Benefit-sharing Fund, and the relevant window in the third call for proposals, but will also explore possibilities for improving the substantive focus and operational efficiency of the Fund to implement this funding priority, by enhancing the existing tools and utilizing them as delivery mechanisms for a more effective implementation of monetary benefit-sharing. This could make the Benefit-sharing Fund more efficient, cost-effective and attractive for users of plant genetic resources, including as future contributors and donors to the Fund.

Study 4: An analysis of the factors that influence the willingness of stakeholder groups to make contributions to the Benefit-sharing Fund and to access plant genetic resources for food and agriculture from the Multilateral System

This study will analyse the factors that could influence the willingness of stakeholder groups to make contributions to an enhanced Multilateral System of Access and Benefit-sharing.

The Governing Body has requested to Working Group to develop a range of measures to enhance the functioning of the Multilateral System. These measures will focus on increasing income to the Benefit-sharing Fund but also on measure to improve the System with a view to, *inter alia*, achieve enhanced access. Enhancing the functioning of the Multilateral System should have a positive impact on the users of the System and generally of plant genetic resources for food and agriculture, in particular the research and breeding community, but also other Treaty stakeholder groups. The Governing Body has mandated the Working Group to consult with relevant stakeholder groups during the biennium.

The study will take into account all relevant available information from stakeholder groups on their willingness to participate in an enhanced Multilateral System. The Secretariat has invited all stakeholders groups, through Notification GB6 – 010, to provide relevant information for this purpose and the study will compile and analyse the information gathered. The study will also analyse the willingness of other Treaty stakeholder groups, such as donor agencies, foundations or funding prospects, to make contributions to the Benefit-sharing Fund. It will also identify options for increasing the willingness of stakeholder groups, such as donor agencies, foundations or funding prospects, through concrete measures, such as streamlined delivery procedures and tools, improved disbursement mechanisms for the funding priorities, innovative use of funding windows, adjusted programmatic focus, reduced project servicing costs, etc.

Stakeholders who use plant genetic resources under the Treaty are themselves developing innovative user-based approaches to realizing monetary benefit-sharing, within the context of the use of the SMTA, and other innovative approaches that can contribute to an adequate and sustainable flow of resources to the Benefit-sharing Fund. The Governing Body appealed to these stakeholders to assist the Working Group to develop such approaches. The aim of the study will be to understand how the Multilateral System can evolve to be more responsive to users' needs in ways consistent to the Treaty provisions and how users of the Multilateral System will react to the measures to enhance the Multilateral System. The study will describe users' preferences regarding the different innovative approached being explored by the Working Group and analyse possible behaviours of the users when taking decisions regarding development and implementation of innovative approaches to realize monetary benefit-sharing, as well as other measures to enhance the functioning of the Multilateral System.