



# The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



## INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

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

Brasília, Brazil, 2 – 5 June 2015

## REPORT

### ITEM 1. OPENING OF THE SESSION

1. Minister José Raphael Lopes Mendes de Azeredo, Head of the Department of Environment and Special Themes of the Ministry of Foreign Relations, opened the meeting by welcoming the Working Group to Brazil. He underlined Brazil's full commitment to the Treaty, as well as the importance of the Working Group's task to develop a package of measures for the enhancement of the functioning of the Multilateral System, for consideration by the Governing Body at its next Session.
2. Sr. Hélcio Campos Botelho, Director of Intellectual Property and Technology Agriculture of the Ministry of Agriculture, Livestock and Food Supply, expressed his gratitude to those who had been involved in making the meeting in Brasília possible: the team from the Ministry of Agriculture, Embrapa, and the meeting organizers. He stressed that Brazil is actively implementing the Treaty, through policies such as the Program of Food Acquisition, the National Policy for Organic Production and Agroecology, and the Minimum Price Guarantee Policy.
3. Mr. Alan Bojanic, FAO Representative to Brazil mentioned that since the adoption of the Treaty by the FAO Conference fourteen years ago, it has become a major part of the Organization's work, and a model for a number of other international institutions. The Director-General, Sr. José Graciano da Silva, has repeatedly expressed his full support for the Treaty, as vital for international food security. FAO is convinced that the Treaty can be strengthened, and the current meeting, he said, would play a vital role in this.
4. The Co-chairs, Mr. Bert Visser (Netherlands) and Sr. Modesto Fernández Díaz-Silveira (Cuba) thanked Brazil and FAO for their support. They stressed the importance of focus and concrete results. They noted the substantial intersessional work that had taken place, including through participation in seed sector meetings.<sup>1</sup>
5. Mr. Shakeel Bhatti, Secretary of the Treaty, stressed the urgency of the moment. He noted that, in the recent International Seed Federation (ISF) Congress, its Secretary General, Mr. Michael Keller, had stated that, for the Treaty, it was a "now or never moment". He fully agreed: failure to reach consensus on the package of measures to improve the Multilateral System would erode confidence in the Treaty. In his view, a small window of opportunity still remained.

<sup>1</sup> The List of Participants is available at: [http://planttreaty.org/sites/default/files/3wg\\_list\\_participants.pdf](http://planttreaty.org/sites/default/files/3wg_list_participants.pdf)

## ITEM 2. ADOPTION OF THE AGENDA

6. The Co-chairs of the Working Group then took over.
7. The Working Group adopted its Agenda, as given in *Appendix 1*, with the agreement that, where possible, discussions on individual measures to enhance the Multilateral System under Agenda Item 3 would be condensed, in order to facilitate discussion time on the key outcomes of its work in the biennium, and on tasks that remained to be completed.

## ITEM 3. MEASURES TO ENHANCE THE MULTILATERAL SYSTEM TO BE CONSIDERED AND EVENTUALLY APPROVED BY THE GOVERNING BODY, AT ITS SIXTH SESSION

8. The Working Group reviewed the progress that has been made during the biennium, during the earlier meetings of the Working Group, in the development of the measures by which the functioning of the Multilateral System could be enhanced. These are:

- I. Increase the availability of plant genetic resources for food and agriculture through the Multilateral System;*
- II. Strengthen non-monetary benefit-sharing mechanisms, such as capacity-building, technology transfer and information exchange;*
- III. Develop a Subscription Model/System for users of plant genetic resources for food and agriculture under the Treaty;*
- IV. Other improvements to the SMTA to increase user-based payments and make it more user-friendly;*
- V. Other ways to enhance income to the Benefit-sharing Fund in a sustainable and predictable long-term manner; and,*
- VI. Expand the access and benefit-sharing provisions of the Treaty.*

9. It recognized the substantial progress that had been made in the biennium, while noting that not all tasks under the mandate had been finalised, and agreed to recommend that the Governing Body complete the package of measures, as described in Item 5 below. The Working Group welcomed the submissions received from Members of the Working Group, regional groups, and stakeholders.<sup>2</sup>

10. The Working Group accordingly concentrated on the further development of a possible Subscription Model/System, as all Regions expressed substantial support for such a measure. It therefore developed a list of elements that could be part of a Subscription Model/System and identified alternative features yet to be resolved. This list is contained in *Appendix 2*.

11. The Working Group discussed ways in which a Subscription Model/System could be developed and implemented, and agreed that a step-by-step approach should be followed. The first step would be the incorporation of the Subscription Model/System into a revised Standard Material Transfer Agreement (SMTA), primarily through the revision of Article 6.11. The Working Group believes this could be considered at the Sixth Session of the Governing Body. A second step would deal with the modalities by which the Subscription Model/System would be completed in a larger framework, through a revision of, or a Protocol to, the Treaty.

12. The Working Group then developed a list of elements that should be considered, in order to improve the SMTA, and to enhance user-based payments to the Benefit-sharing Fund of

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<sup>2</sup> The submissions have been compiled and are available at the following url:  
[http://planttreaty.org/sites/default/files/3wg\\_submissions.pdf](http://planttreaty.org/sites/default/files/3wg_submissions.pdf)

the Treaty, including by making the SMTA more user-friendly. This list is contained in *Appendix 3*.

**ITEM 4. INTERIM MEASURES TO MAINTAIN THE OPERATIONS OF THE  
BENEFIT-SHARING FUND, PENDING FINAL ADOPTION OF THE PACKAGE OF  
MEASURES TO ENHANCE THE FUNCTIONING OF THE MULTILATERAL SYSTEM  
OF ACCESS AND BENEFIT-SHARING**

13. The Working Group was informed of the status of funds that were likely to be available for the fourth round of the Benefit-sharing Fund. The Working Group recognized that, in the short term, Contracting Parties will need to continue to be major contributors to the Benefit-sharing Fund.

**ITEM 5. CONCLUSIONS AND RECOMMENDATIONS  
TO THE GOVERNING BODY, AT ITS SIXTH SESSION**

14. During its three meetings, the Working Group has discussed in considerable detail a number of elements that need to be addressed in the final package of measures to be prepared for the consideration and decision by the Governing Body.

15. While there is substantial agreement on a number of elements — in particular the interest in establishing a Subscription Model/System, as the primary payment mechanism in the Treaty's access and benefit-sharing system — consensus has not yet been reached on certain elements, where various options remain for consideration.

16. The fact that many actors are involved in the process — governments of Contracting Parties to the Treaty, as well as the seed sector and farmers organizations— requires the development of sound mechanisms, able to attract more providers and users and to enhance the functioning of the Multilateral System, which take into account the many developments over the fourteen years since the adoption of the Treaty.

17. The Working Group **recalls** that the Multilateral System has not achieved all objectives for which it was constructed. While it has made good improvement regarding access with an increasing number of SMTAs, it has not achieved its monetary benefit-sharing functions, and availability under the MLS. To date, there has been no SMTA-based payment to the Benefit-sharing Fund. A failure to overcome the structural problems in the current working of the Multilateral System will put the future of the Treaty as a whole at risk.

18. It further **agrees** that these structural problems, such as transaction costs, the avoidance of SMTA material and the problem of voluntary payments, alternative sources of materials, the variation of the levels of payment, and different categories of recipient, cannot be overcome by revision of the SMTA alone, but recognizes some immediate changes could be done to make early progress on this.

19. The Working Group **accordingly recommends** to the Governing Body at its Sixth Session that it consider how the remaining work can best be concluded. Elements of the remaining work are identified below. Where consensus has not been reached, the alternatives are identified in square brackets. The Working Group **accordingly recommends** that the Governing Body decide on which options should be retained for further development, in its relevant resolution.

20. In this context, the Working Group notes that, as the Funding Strategy adopted by the Governing Body provides, the resources under its direct control— that is, the Benefit-sharing Fund — include both user-based income and contributions by Contracting Parties and

stakeholders, and **recommends** that all such sources be addressed together in a package of measures, taking into account that the Benefit-Sharing Fund is part of the broader Funding Strategy of the Treaty.

21. The Working Group **recommends** a further process, to address current concerns regarding structural components of the Treaty, such as: the Funding Strategy, the Global Information System, the promotion of sustainable use, and Farmers' Rights, as well as the relationship with the implementation of the Nagoya Protocol. The strengthening of such components will support the enhancement of the Multilateral System. This will require some far-reaching decisions by the Governing Body, on the basis of which new mechanisms can be developed in a more complete form.

#### **Proposed tasks for further work**

a. As a first step, to elaborate the elements for a Subscription Model/System for user-based payments within the Multilateral System, which encourages the extensive use of the plant genetic resources for food and agriculture it contains, and therefore ensures sustainable and predictable income to the Benefit-sharing Fund, by revising the current SMTA.

i. [To design the Subscription Model/System as the benefit-sharing mechanism following access to the plant genetic resources for food and agriculture in the Multilateral System.]

ii. [To also explore an alternative benefit-sharing mechanism for occasional access to, and use of, individual samples from the Multilateral System. To design this alternative mechanism in such a way that:

1. [all commercialization of products derived from materials received will lead to mandatory benefit-sharing, as in the current SMTA Article 6.7, possibly against different rates.] OR

2. [voluntary benefit-sharing is retained as the payment option for products freely available for further research, breeding and training, as in the current SMTA Article 6.8.]]

iii. For each benefit-sharing mechanism proposed, to overcome the stumbling blocks to use of germplasm from the Multilateral System that have been identified, including the lack of termination provisions in the SMTA.

To enable the adoption by the Governing Body, at its Sixth Session, of a revised SMTA that includes provision for the Subscription Model/System, the Secretariat is requested to prepare a revised SMTA, a Registration Form, and other relevant materials. Submissions received by 27 June will be taken into account. The Working Group requests the Bureau of the Sixth Session of the Governing Body to consider the possibility of reconvening the Working Group just before the Sixth Session of the Governing Body, subject to the availability of financial resources.

b. This first step should include consideration of payment rates within the Treaty's access and benefit-sharing, taking into account the role of the Contracting Parties.

c. As a second step, to prepare a draft [amendment to the Treaty] / [Protocol to the Treaty] completing the Subscription Model/System and extending the crop coverage to [the scope of the Treaty itself, namely all plant genetic resources for food and agriculture,] [a defined list of crops], in harmony with enhanced benefit-sharing provisions.

d. To explore a proposal to develop a mechanism of contributions by Contracting Parties that will ensure sustainable and predictable income to the Benefit-Sharing Fund and other elements of the Funding Strategy, such as an amendment to the Funding Strategy.

e. To propose a target for the income to the Benefit-Sharing Fund for the 2018–2023 period, that

is meaningful and realistic, recognizing that opinions at how to arrive at the target still show divergence. The target should be based on such factors as: the current amount needed for the project cycle, allowing for incremental growth, in each cycle; a needs analysis that takes into account information sources such as the FAO *Global Plan of Action on Plant Genetic Resources for Food and Agriculture*.

f. To explore the consolidation of a long-term investment strategy for the Benefit-sharing Fund.

22. The Working Group further notes that it has not yet been possible to provide reasoned estimates of the likely income to the Benefit-sharing Fund that could result from the various payment options, because user-based income will depend first and foremost upon the attractiveness of the revised Multilateral System and the actual willingness of users to access material from the Multilateral System. Reasoned estimates will support meaningful decision-making. It therefore **recommends** that, in further developing the payment options, users be requested to express their willingness to use such options, and in this context project the likely income to the Benefit-sharing Fund.

23. In the context of mobilizing donor support to activities under the Benefit-sharing Fund, the Working Group **recommends** that the Governing Body reconsider the current arrangements for projects carried out in the framework of the Benefit-sharing Fund, by strengthening the programmatic approach, in order to make support to the Benefit-sharing Fund more attractive:

1. By providing greater predictability to prospective donors, regarding the planned activities and targeted outputs and impacts of proposed projects, in order to enable them to make informed decisions regarding their potential contributions;
2. By improving thematic coherence between individual projects, and project cycles;
3. By developing a long-term investment strategy, with objectives and results;
4. By promoting synergy between the Benefit-sharing Fund and the Funding Strategy, of which the Benefit-sharing Fund is a part; and
5. By considering the feasibility and desirability of a donor council, or some similar body, to support the implementation of the Treaty.

24. The Working Group draws to the attention of the Governing Body that currently known income to the Benefit-sharing Fund is not adequate to maintain the forthcoming fourth project cycle at anything like the current levels. It therefore **recommends** that the Governing Body call on Contracting Parties to contribute funds to the Benefit-Sharing Fund on an *ad hoc* interim basis, for the years 2015–2017, in order to maintain momentum in the reshaping of the Multilateral System.

*Appendix 1***THIRD MEETING OF THE AD-HOC OPEN-ENDED WORKING GROUP TO  
ENHANCE THE FUNCTIONING OF THE MULTILATERAL SYSTEM****Brasilia, Brazil, 2-5 June 2015****AGENDA**

1. Opening of the meeting
2. Adoption of the agenda and time table
3. Measures to enhance the Multilateral System to be considered and eventually approved by the Governing Body, at its Sixth Session
  - Measure I: Increase the availability of plant genetic resources for food and agriculture through the Multilateral System
  - Measure II: Strengthen Non-Monetary Benefit-sharing Mechanisms, such as capacity-building, technology transfer and information exchange
  - Measure III: Develop a Subscription System for users of plant genetic resources for food and agriculture under the Treaty
  - Measure IV: Other improvements to the SMTA to increase user-based payments and make it more user-friendly
  - Measure V: Other ways to enhance income to the Benefit-sharing Fund in a sustainable and predictable long-term manner
  - Measure VI: Expand the access and benefit-sharing provisions of the International Treaty
4. Interim measures to maintain the operations of the Benefit-sharing Fund, pending final adoption of the package of measures to enhance the functioning of the Multilateral System of Access and Benefit-sharing
5. Preparations for the Sixth Session of the Governing Body
6. Other business
7. Adoption of the report

*Appendix 2***Elements that the Subscription Model/System will need to address**

<b>Elements of Subscription Model/System</b>	<b>Proposals</b>
Definition of who is eligible to subscribe to the Subscription Model/System, and under which conditions	All natural and legal persons, in Contracting Parties and non-Contracting Parties.
Procedures by which users subscribe to the Model/System	<p>Immediate step: Through a revised SMTA with information recorded in the database Easy-SMTA.</p> <p>Second step: Through a New SMTA, based on a revision of, or a Protocol to the Treaty.</p> <p>AND</p> <p>Supported by centralized registration with public access to non-confidential information.</p>
The scope of subscription, for example, whether on a crop-by-crop basis, or covering all the crops to which the Subscription Model/System applies	<p>To all plant genetic resources for food and agriculture, and not only the crops listed in Annex 1 to the Treaty, if there will be a revision of the Treaty; and to all crops of Annex I, if there is no revision of the Treaty.</p> <p>OR</p> <p>On a crop-by-crop basis for the crops covered under Annex 1, or for the crops covered under a revision of the Treaty.</p> <p>OR</p> <p>Allow the subscriber to contract on a crop-by-crop basis, or alternatively for all crops.</p>
Whether access under the Subscription Model/System is unlimited, or, for example, whether there should be a limit on the number of samples available to a single user, per year	<p>As a matter of principle, unlimited access.</p> <p>In practice, rules of procedure to make the Model/System operational might apply, including recognition of providers' real capacity to respond to requests of large numbers of accessions.</p>
Rights and obligations in the case of transfer of materials to (a) other subscribers, and (b) non-subscribers of the Model/System	<p>Transfers to other subscribers should be under the same conditions as those binding the first recipient.</p> <p>[Transfers to non-subscribers should require [ subscription and] acceptance of the SMTA.]</p>

<p>The trigger for payments, which could, for example, be annual payments, or payment on commercialization of certain products, or a combination of the two</p>	<p>For subscribers: annual payments based on sales of current products.</p> <p>OR</p> <p>Combination of two complementary payments: annual payments based on turnover, and payments on products commercialized under patent protection.</p> <p>FOR CONSIDERATION DURING THE DEVELOPMENT OF THE SECOND STEP:</p> <p>The possibility to have, for non-subscribers, an access fee as well as payment on commercialization on products derived from the accession.</p>
<p>Possible differentiation of payment levels according to type of protection asserted (for example, patents, PVP, technological protection, etc.)</p>	<p>No differentiation on the basis of the restriction on a product.</p> <p>OR</p> <p>Differentiation between [(1) products available without restriction to others for further research, breeding and training; (2) products with restricted access to others for further research, breeding and training; [and (3) products not protected by IPRs ]]</p>
<p>The possibility of establishing different payment rates for different crops</p>	<p>Differentiation by crop, taking into account the different profit margins for individual crops, to be accommodated for in a practical and simple way, if such a practical and simple way is possible.</p>
<p>The possibility of establishing different sets of obligations for different categories of users, for example, based on company turn-over, or for non-profit organizations</p>	<p>Different possible sets of obligations</p> <p style="padding-left: 40px;">No monetary benefit-sharing obligations for entities with an annual turnover on seed sales below USD XXX.</p> <p>AND/OR</p> <p style="padding-left: 40px;">No monetary benefit-sharing payments, where the annual benefit-sharing obligation would be less than USD XXX.</p> <p>AND/OR</p> <p style="padding-left: 40px;">No monetary benefit-sharing obligations for non-profit organizations.</p> <p>OR</p> <p>No differentiation</p> <p>Exchanges between small-scale farmers [in developing countries] will be exempted from [the use the SMTA] [monetary benefit-sharing obligations].</p>



<p>The period of validity of the subscription; procedures for renewal and termination; and residual transitional obligations</p>	<p>Period of subscription at least 10 years with option of renewal.</p> <p>Clear rules needed for residual transitional provisions, including future rights and obligations for using material accessed from the Multilateral System, for up to 10 years, depending on type of crops.</p> <p>Cancellation fee in case of termination before the end of the subscription period.</p>
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*Appendix 3*

**Elements that should be considered, in order to improve the SMTA,  
and make it more user-friendly**

Questions to be addressed	Proposals
Whether voluntary payments should continue to be an option, and for which products	<ul style="list-style-type: none"> <li>• Remove Article 6.8.</li> </ul> <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> <li>• Retain Article 6.8, and make it mandatory [at a lower rate]</li> </ul> <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> <li>• Retain the option of voluntary payments under Article 6.8</li> </ul>
The possible relationship between payment rates under a subscription model/system—whether or not it is implemented under Article 6.11—and Articles 6.7/6.8	<ul style="list-style-type: none"> <li>• Article 6.7 rate to be [ten] times the rate of Article 6.11, and Article 6.8 rate to be [five] times the rate of Article 6.11</li> </ul> <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> <li>• Article 6.7 rate to be at a substantially higher rate than Article 6.11</li> </ul>
Other changes to improve clarity and ease of use	Previous work by the <i>Ad Hoc</i> Technical Advisory Committee on the SMTA Multilateral System should be taken into account.
Possible introduction of a minimum incorporation threshold	There are, as yet, no elaborated positions, or consensus on this matter.

*Appendix 4***Submissions received from Members of the Working Group, regional groups,  
and stakeholders**

[http://planttreaty.org/sites/default/files/3wg\\_submissions.pdf](http://planttreaty.org/sites/default/files/3wg_submissions.pdf)

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**LATIN AMERICA AND THE  
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