



منظمة الأغذية
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联合国
粮食及
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Food
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des
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pour
l'alimentation
et
l'agriculture

Organización
de las
Naciones
Unidas
para la
Agricultura
y la
Alimentación

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RENEWAL OF THE AGREEMENTS BETWEEN THE INTERNATIONAL AGRICULTURAL RESEARCH CENTRES OF THE CGIAR AND FAO AND DRAFT REVISED MATERIAL TRANSFER AGREEMENT

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**RENEWAL OF THE AGREEMENTS BETWEEN THE INTERNATIONAL
AGRICULTURAL RESEARCH CENTRES OF THE CGIAR AND FAO AND
DRAFT REVISED MATERIAL TRANSFER AGREEMENT**

I. INTRODUCTION

1. The Commission, at its Sixth Extraordinary Session in June 2001 adopted a Resolution noting that the current agreements entered into force between the International Agricultural Research Centres of the CGIAR system and FAO were subject to renewal in 2002 and requesting the Director-General of FAO and the Directors-General of those Centres that have signed agreements with FAO to collaborate in the preparation of a revised Material Transfer Agreement that will, as appropriate, take into account the provisions of the revised Undertaking and support an effective transition. The Commission requested at its Sixth Extraordinary Session that the draft Material Transfer Agreement be presented to the Ninth Regular Session of the Commission for its consideration.

II. RENEWAL OF THE “IN-TRUST” AGREEMENTS

2. On 26 October 1994, a series of agreements were signed between twelve International Agricultural Research Centres¹ and FAO. The Agreements were originally concluded for a period of four years and were to be automatically renewed for further periods of four years unless notice of non-renewal is given in writing by either Party not less than 180 days before the end of any four year period. In accordance with this provision, and in accordance with the instructions of the Commission, the agreements were automatically renewed in 1998, pending the revision of the International Undertaking. The deadline for the giving of notice of non-renewal was in April 2002. The agreements will thus be automatically renewed on 26 October 2002 for a further period of four years. The agreements, however, also provide that they can be amended at any time by mutual agreement of the parties. They can also be terminated at any time by either party on one year's notice.

III. REVISED MATERIAL TRANSFER AGREEMENT

3. The Material Transfer Agreement currently in use by the International Agricultural Research Centres does not form part of the “In-Trust” Agreements, nor were material transfer agreements in any form specifically provided for, or mentioned in those agreements. However, the form and content of the Material Transfer Agreement currently in use is a

¹ Centro Internacional de Agricultura Tropical (CIAT); Centro Internacional de Mejoramiento de Maíz y Trigo (CIMMYT); Centro Internacional de la Papa (CIP); International Center for Agricultural Research in the Dry Areas (ICARDA); International Center for Research in Agroforestry (ICRAF); International Crops Research Institute for the Semi-Arid Tropics (ICRISAT); International Institute for Tropical Agriculture (IITA); International Livestock Centre for Africa (ILCA); International Plant Genetic Resources Institute (IPGRI)/International Network for the Improvement of Banana and Plantain (INIBAP); International Rice Research Institute (IRRI); West Africa Rice Development Association (WARDA); Centre for International Forestry Research (CIFOR). A further agreement has been signed relating to the International Coconut Resources (COGENT) network.

product of consultation between the Centres and FAO under the Agreements, and were reported to the Commission.

4. Further consultations were held between the Centres and the FAO Secretariat regarding the revisions that would be required to support an effective transition between the present system and the system envisaged under the International Treaty on Plant Genetic Resources for Food and Agriculture. A draft revised Material Transfer Agreement (MTA) reflecting those consultations, and which has received initial approval by the Directors-General of the Centres concerned, is attached to this document. Once the revised MTA has been discussed and approved by the Commission, the text will be submitted again to the Centres for formal approval by their Boards of Trustees. *Annex 1* sets out the revised MTA, and *Annex 2* shows the revisions that have been made to the MTA currently in use by the Centres. The endnotes set out in *Annex 1*, are intended for the information of the Commission in considering the text of the draft revised MTA, and not for inclusion in the MTA. The footnotes are for inclusion in the MTA.

IV. CONCLUSIONS AND SUGGESTED ACTION BY THE COMMISSION

5. The Commission is invited to consider and approve the attached draft revised MTA.

*ANNEX 1***DRAFT REVISED MATERIAL TRANSFER AGREEMENT****MATERIAL TRANSFER AGREEMENT (MTA)¹**

1. The plant genetic resources for food and agriculture (hereinafter referred to as the “material”) contained herein is being furnished by the [Centre] under the following conditions:

Designated Germplasm

2. The [Centre] is making the material described in the attached list available as part of its policy of maximizing the utilization of genetic material for research, breeding and training taking into account the provisions of the International Treaty on Plant Genetic Resources for Food and Agriculture adopted by the Thirty-first Session of the FAO Conference on 3 November 2001. The material was either developed by the [Centre]; or was acquired prior to the entry into force of the Convention on Biological Diversity; or if it was acquired after the entering into force of the Convention on Biological Diversity, it was obtained with the understanding that it could be made freely available for any agricultural research or breeding purposes.

3. The material is held in trust under the terms of an agreement between the [Centre] and FAO dated 26 October 1994, and the recipient has no rights to obtain Intellectual Property Rights (IPR) on the material or related information.

4. The recipient may utilize and conserve the material for research, breeding and training for food and agriculture and may distribute it to other parties provided such other parties are also willing to accept the conditions of this agreement.²

5. The recipient, therefore, hereby agrees not to claim ownership over the material to be received, nor to seek IPR over that material or its genetic parts or components, in the form received, or related information. [*see endnote^A*]

Benefit-Sharing [*see endnote^B*]

6. The recipient further agrees to ensure that any subsequent person or institution to whom he/she may make samples of the material available, is bound by the same provisions and undertakes to pass on the same obligations to future recipients of the material.

7. The [Centre] makes no warranties as to the safety or title of 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 the attached phytosanitary certificate. The recipient assumes full responsibility for complying with the recipient nation’s quarantine/biosafety regulations and rules as to import or release of genetic material.

¹ The attention of the recipient is drawn to the fact that the details of the MTA, including the identity of the recipient, will be made publicly available.

² This does not prevent the first or subsequent recipients from releasing or reproducing the material for purposes of making it directly available to farmers or consumers for cultivation, provided that the other conditions set out in the MTA are complied with.

8. Upon request, the [Centre] will furnish information that may be available in addition to whatever is furnished with the material. Recipients are requested to furnish the [Centre] performance data collected during evaluations.

9. The material is supplied expressly conditional on acceptance of the terms of this Agreement. The recipient's acceptance of the material constitutes acceptance of the terms of this Agreement.

ENDNOTES

^A The words used in Article 12.3(d) of the Treaty in respect of Annex 1 material are as follows: “The recipient hereby agrees not to claim any intellectual property rights or other rights that limit the facilitated access to the plant genetic resources for food and agriculture, or their genetic parts or components, in the form received from the Multilateral System.” It may be difficult to include this new wording in the Interim MTA at this stage since it refers to a distinction between Annex 1 material and crops not included in Annex 1 and incorporates the whole concept of “facilitated access” to such material.

^B The Commission on Genetic Resources for Food and Agriculture has asked the Director-General of FAO and the Directors-General of the CGIAR Centres to collaborate in the preparation of a revised MTA that will, as appropriate, take into account the provisions of the new Treaty and support an effective transition. An important innovation of the new Treaty is its provision on benefit-sharing and in particular the provisions of Article 13.2(d)(ii), which requires that the standard MTA under which facilitated access is to be provided shall include a requirement that a recipient who commercializes a product that is a plant genetic resource for food and agriculture and that incorporates material accessed under the Multilateral System, shall pay into the mechanism set up under the International Treaty an equitable share of the benefits arising from the commercialization of that product, except whenever such a product is freely available without restriction to others for further research and breeding, in which case the recipient is not obliged, but is encouraged to make such a payment. The level, form and manner of the payment are to be determined by the Governing Body of the Treaty at its first meeting in line with commercial practice. This provision could be reflected in the interim MTA using wording drawn from Article 13.2(d)(ii) of the Treaty such as the following: *“If the material provided under this Material Transfer Agreement is incorporated in a product that is a plant genetic resource for food and agriculture that is commercialized, then the recipient shall pay into the mechanism set up under the International Treaty* an equitable share of the benefits arising from the commercialization of that product, except whenever such a product is freely available without restriction to others for further research and breeding, in which case the recipient is not obliged, but is encouraged to make such a payment. The level, form and manner of the payment shall be determined by the FAO Commission on Genetic Resources for Food and Agriculture in line with commercial practice**.”*

The Commission may wish to give its guidance on whether such a provision on mandatory commercial benefit sharing would be appropriate in the revised interim MTA given that the Commission may not wish to prejudge the outcome of negotiations that will take place in the Governing Body on the operational aspects of the Treaty’s commercial benefit-sharing provision. Pending any such decisions, the Commission may deem it appropriate, given that voluntary commercial benefit-sharing is also envisaged in Article 13.2(d)(ii) of the Treaty, to include a provision relating to voluntary commercial benefit-sharing, perhaps along the following lines: *“If the material provided under this Material Transfer Agreement is incorporated in a product that is a plant genetic resource for food and agriculture that is commercialized, then the recipient is encouraged to pay into the mechanism set up under the International Treaty* an equitable share of the benefits arising from the commercialization of that product.”*

* In the period prior to the establishment of such a mechanism by the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture, payment shall be made into a Trust Fund designated by FAO.

** Once the International Treaty on Plant Genetic Resources for Food and Agriculture enters into force, the Governing Body of the Treaty will determine the level, form and manner of such payment, in line with commercial practice.

ANNEX 2

**DRAFT REVISED MATERIAL TRANSFER AGREEMENT
(SHOWING REVISIONS)****MATERIAL TRANSFER AGREEMENT (MTA)¹**

The plant genetic resources for food and agriculture (hereinafter referred to as the “material”) contained herein is being furnished by the [Centre] under the following conditions:

Designated Germplasm

The [Centre] is making the material described in the attached list available as part of its policy of maximizing the utilization of genetic material for research, breeding and training taking into account the provisions of the International Treaty on Plant Genetic Resources for Food and Agriculture adopted by the Thirty-first Session of the FAO Conference on 3 November 2001. The material was either developed by the [Centre]; or was acquired prior to the entry into force of the Convention on Biological Diversity; or if it was acquired after the entering into force of the Convention on Biological Diversity, it was obtained with the understanding that it could be made freely available for any agricultural research or breeding purposes.

The material is held in trust under the terms of an agreement between the [Centre] and FAO dated 26 October 1994, and the recipient has no rights to obtain Intellectual Property Rights (IPR) on the material germplasm or related information.

The recipient may utilize and conserve ~~reproduce the material seed for~~ research, breeding and training for food and agriculture ~~and use the material for agricultural research and breeding purposes~~ and may distribute it to other parties provided such other parties are the recipient is also willing to accept the conditions of this agreement.²

The recipient, therefore, hereby agrees not to claim ownership over the material germplasm to be received, nor to seek IPR over that material germplasm or its genetic parts or components, in the form received, or related information.

Benefit-Sharing

The recipient ~~He/She~~ further agrees to ensure that any subsequent person or institution to whom he/she may make samples of the material germplasm available, is bound by the same provisions and undertakes to pass on the same obligations to future recipients of the material germplasm.

The [Centre] makes no warranties as to the safety or title of 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 the

¹ The attention of the recipient is drawn to the fact that the details of the MTA, including the identity of the recipient, will be made publicly available.

² This does not prevent the ~~first or subsequent~~ recipients from releasing the material seed for purposes of making it directly available to farmers or consumers for cultivation, provided that the other conditions set out in this MTA are complied with.

attached phytosanitary certificate. The recipient assumes full responsibility for complying with the recipient nation's quarantine/biosafety regulations and rules as to import or release of genetic material.

Upon request, the [Centre] will furnish information that may be available in addition to whatever is furnished with the material seed. Recipients are requested to furnish the [Centre] performance data collected during evaluations.

The material is supplied expressly conditional on acceptance of the terms of this Agreement. The recipient's acceptance of the material constitutes acceptance of the terms of this Agreement.