

July 2010



# The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



<b>Item 4 of the Draft Provisional Agenda</b>
<b>INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE</b>
<b>SECOND MEETING OF THE <i>AD HOC</i> TECHNICAL ADVISORY COMMITTEE ON THE STANDARD MATERIAL TRANSFER AGREEMENT AND THE MULTILATERAL SYSTEM</b>
<b>Brasília, Brazil, 31 August – 2 September 2010</b>
<b>THE PRACTICAL AND LEGAL IMPLICATIONS FOR NATURAL AND LEGAL PERSONS PUTTING MATERIAL INTO THE MULTILATERAL SYSTEM<sup>1</sup></b>

## 1. INTRODUCTION

1. The first meeting of this Committee<sup>2</sup> initiated discussion of the practical and legal implications for natural and legal persons putting material<sup>3</sup> into the Multilateral System,<sup>4</sup> and recorded a brief Opinion.<sup>5</sup> It:

“agreed that further examination of all these questions was required, and recommended that a further paper be prepared, in collaboration with relevant stakeholders, in particular the industry, which would raise and examine relevant legal issues and practical questions arising from natural and legal persons putting material into the Multilateral System. The paper would form the basis for the preparation of a short, user-friendly and practical explanatory note that might be made available to those considering putting material into the Multilateral System.”

“The *Ad Hoc* Advisory Committee also recommended that the Treaty Secretariat provide more information, in the paper, on the recipients of project funding from the Global Crop

<sup>1</sup> In accordance with the request of the *Ad Hoc* Advisory Committee, this document was prepared for the exclusive purpose of facilitating the Committee’s deliberations. Any opinion or position expressed in the document is not to be attributed to the Secretariat of the International Treaty on Plant Genetic Resources for Food and Agriculture.

<sup>2</sup> Rome, 18-19 January 2010.

<sup>3</sup> In this document, “material” (lower case) is used to mean a plant genetic resource for food and agriculture; “Material” (upper case) is used to mean a sample of plant genetic resources for food and agriculture distributed under and SMTA, in accordance with the definition in *Article 3* of the SMTA.

<sup>4</sup> On the basis of document IT/AC-SMTA-MLS 1/10/6.

<sup>5</sup> IT/AC-SMTA-MLS 1/10/Report, *Appendix 5*.

Diversity Trust, or the Benefit-Sharing Fund, as well as the legal provisions requiring such recipients to make material, covered by the project funding, available under the terms of the Multilateral System. An example was given of a Contracting Party, which has followed the same approach, details of which will be provided at the next meeting.”

2. A lack of clarity, or of understanding, of the legal and practical implications of putting material into the Multilateral System appears to be one of the factors impeding natural and legal persons putting materials they hold into the Multilateral System. This note accordingly reviews a number of questions on which the Committee may wish to give opinions, so that a short, user-friendly and practical explanatory note may be prepared, which can help to allay misgivings.
3. In preparing this note, a number of relevant documents by industry bodies have been reviewed. These include: the annotations to the text of the Standard Material Transfer Agreement (SMTA), made by the European Seed Association on 15 June 2007;<sup>6</sup> and the *Note to the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture on the Standard Material Transfer Agreement*, of 1 October 2007, from the International Seed Federation.
4. Consultations were then held with the International Seed Federation, to verify that the issues that had been identified, and which are discussed in part 4 of this document, were those that mainly concerned the seed industry.

## 2. RELEVANT PROVISIONS OF THE TREATY AND CONSIDERATIONS OF THE GOVERNING BODY

5. The Treaty, in *Article 11, Coverage of the Multilateral System*—in addition to specifying the plant genetic resources for food and agriculture that Contracting Parties, and International Institutions are obliged to bring into the Multilateral System—provides, in *Article 11.3*, for natural and legal persons to also bring materials they hold into the Multilateral System, and:

11.4 Within two years of the entry into force of the Treaty, the Governing Body shall assess the progress in including the plant genetic resources for food and agriculture referred to in paragraph 11.3 in the Multilateral System. Following this assessment, the Governing Body shall decide whether access shall continue to be facilitated to those natural and legal persons referred to in paragraph 11.3 that have not included these plant genetic resources for food and agriculture in the Multilateral System, or take such other measures as it deems appropriate.

Progress has been slow. At its last session,<sup>7</sup> the Governing Body therefore decided to postpone this assessment until its Fourth Session, because of a lack of information. *In Resolution 4/2009, The Multilateral System of Access and Benefit-sharing*, the Governing Body:

7. *Expresse[d] its concern* that information on the inclusion of plant genetic resource for food and agriculture in the Multilateral System by natural and legal persons within the jurisdiction of Contracting Parties on which to base its assessment of the progress in including these plant genetic resources for food and agriculture in the Multilateral System, is not yet available;
8. *Reiterate[d] the urgency* of obtaining the appropriate information it needs to assess progress in the inclusion in the Multilateral System of plant genetic resources for food and agriculture held by natural and legal persons within the jurisdictions of Contracting Parties. Such information should comprise:

<sup>6</sup> ESA\_07.0152.3, *eSMTA text and European seed industry comments*.

<sup>7</sup> At which stage, only two natural and legal persons had notified the Secretary that they had brought Materials into the Multilateral System.

- The holders of the collections;
- The crops included;
- The total number of accessions.

### 3. HOW IS MATERIAL “PUT INTO THE MULTILATERAL SYSTEM”?

#### 3.1 *By providing Material under an SMTA*

6. Once a Provider has sent a Recipient a sample of material of one of the crops in *Annex 1* to the Treaty under a duly completed SMTA, this Material is, without any ambiguity, in the Multilateral System. The SMTA creates an obligation on the Recipient and any subsequent recipients to sequentially enact a chain of SMTAs, as they pass the Material on to others, such that the rights and obligations in the SMTA apply equally to all subsequent Providers and Recipients, and the rights of the Multilateral System are maintained intact.

7. Putting material into the Multilateral System in this way does not, in legal terms, require any previous commitment or action on the part of the natural or legal person.

8. The Treaty contains no provision precluding anyone from providing any plant genetic resources for food and agriculture to anyone else, under a private contract that uses the exact same text as the SMTA, and thereby effectively makes those resources part of the Multilateral System (in the case of *Annex 1* material), or subject to the same terms and conditions (in the case of any other materials). Nor does the Treaty contain any impediment to either, or both, of the parties to the SMTA being outside the jurisdiction of a Contracting Party.

9. Once in the Multilateral System, through transfer under an SMTA, a Provider may not revoke the status of the Material. The obligations on a recipient continue, even if the Provider disappears.

#### 3.2 *By undertaking to provide material under an SMTA*

10. At another level, “putting material into the Multilateral System” can be understood to mean that a person has undertaken to provide it to others, on request, in accordance with the provisions of the Treaty, which are substantially embodied in the SMTA.

11. Contracting Parties—as an obligation under the Treaty—have undertaken to provide facilitated access to relevant plant genetic resources for food and agriculture,<sup>8</sup> as have International Institutions that have signed agreements with the Governing Body, as a condition of these agreements.<sup>9</sup> No individual private or legal person, however, has such a prior legal obligation to do so, and the Treaty is silent as to how such persons (other than International Institutions holding germplasm collections) may signify that they agree to make such an undertaking.

12. The first meeting of the Committee briefly discussed ways by which a natural or legal person might make such a declaration, by notification to the Treaty Secretariat, or by an equivalent public statement. A sample *Letter of notification*, in *Annex 1* to this document, is available on-line at [http://www.planttreaty.org/inclus\\_en.htm](http://www.planttreaty.org/inclus_en.htm). The Committee may wish to consider whether this sample letter (which is primarily intended to be used by Contracting Parties) is well adapted for use by natural and legal persons, or whether it could be improved.

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<sup>8</sup> By *Article 12.2*.

<sup>9</sup> By *Article 15.1a*.

13. The two legal persons that have already communicated to the Secretary of the Treaty that they have put material into the MLS, did so by a letter of notification, which the Secretary in turn reported to the Governing Body, and posted on the Treaty website.<sup>10</sup>

14. Neither notification to the Secretariat, nor an equivalent public statement, is legally binding, whereas the Agreements with International Institutions under *Article 15* of the Treaty are. The Committee may wish to consider whether there would be any practical advantage to the Treaty in the Governing Body enacting a legally binding agreement with natural and legal persons wishing to put material into the Multilateral System.

### ***3.3 By documenting the material***

15. The Multilateral System functions as a distributed genebanking system, from which plant breeders and others can request materials. In practical terms, it is only as good as the information on what the materials and their characteristics are, where they are held and by whom, and how they may be obtained. The Governing Body, in *Resolution 3/2009*:

1. *Stress[d]* the importance of documenting the plant genetic resources for food and agriculture within the Multilateral System, so that they may be accessed for the purpose of utilization and conservation for research, breeding and training for food and agriculture using the FAO/IPGRI Multicrop Passport Descriptor List.
2. *Welcome[d]* the efforts underway to coordinate and improve information systems documenting plant genetic resources for food and agriculture, based on existing information systems, which should build the basis of the Global Information System, foreseen in Article 17, consistent with Article 12.3b, of the International Treaty.

### ***3.4 By providing the material in question to a person or institution, who has already undertaken to hold material in the Multilateral System***

16. A simple and practical way, by which a natural or legal person can put material into the Multilateral System, is to donate it to some person or institution, who has already undertaken to hold material within the Multilateral System. The most likely institution with which such an arrangement can be made is a national, regional or international genebank. There is, however, no obligation on any person already holding materials in the Multilateral System to accept a material that is offered to it, for inclusion in the Multilateral System.

17. As the material in question is not yet in the Multilateral System, it can be transferred without an SMTA. In practical terms, a letter, for example, is adequate.

### ***3.5 A possible definition***

18. The legal effect of “putting material into the Multilateral System” by providing it under an SMTA is clear, and requires no prior step. Natural and legal persons, who are considering “putting material into the Multilateral System”, are in fact considering whether to undertake to provide material, and wish to understand (in practical terms) what will be expected of them, and (in legal terms), what their rights, obligations and liabilities will be.

19. In sum, it may be considered that a material held by a natural or legal person is “in” the Multilateral System when:

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<sup>10</sup> The *Association pour l'Etude et l'Amélioration du Maïs*, and the National Institute for Agricultural Research of France (INRA) have informed the Secretary of collections of Maize with a total number of 500 accessions which are included in the Multilateral System of the Treaty. The *Association Française des Semences de céréales à paille et autres espèces Autogames* (AFSA), and the National Institute for Agricultural Research of France (INRA) have informed the Secretary of French collections of bread wheat with a total number of 1800 accessions which are included in the Multilateral System of the Treaty. The letters notifying the Secretary of their undertaking are available at [http://www.planttreaty.org/inclus\\_en.htm](http://www.planttreaty.org/inclus_en.htm).

- a. It was received under an SMTA; or
  - b. When that person:
    - i. has undertaken by notification to the Secretary, or equivalent public statement, to make the material available in accordance with the Multilateral System, and under an SMTA;
    - ii. has adequately and publicly documented the material, so that it may be requested for research, breeding and training for food and agriculture; and
    - iii. abides by that undertaking.
20. In this light, (1) a notification is the declaration of an intention to legally put material into the Multilateral System, through the use of the SMTA, and (2) the definitive act that legally brings material into the Multilateral System is its transfer under an SMTA.

#### **4. PRACTICAL AND LEGAL IMPLICATIONS**

21. The following are a variety of matters that have been raised on various occasions by natural and legal persons that are considering putting material into the Multilateral System. Many concern more generally the SMTA, which is the instrument that they, as Providers, would use in distributing the material they make available. Though the act of putting material into the Multilateral System is specific to Providers, not Recipients, members of the seed industry, who are considering putting materials into the Multilateral System, frequently at the same time ask information on matters that are properly the business of Recipients. These are not considered here.

22. The analysis below takes the form of question and answer, and in this way provides a possible first draft of the “short, user-friendly and practical explanatory note” that the Committee suggested. For coherence in preparing this text, it was necessary to embody in it certain opinions, and it is, of course, entirely open to the Committee to question and disagree with these, in improving the text. A simple, well-formulated note, which responds to questions posed by the industry, could act as an encouragement, and create and incentive for companies to bring materials they hold within the framework of the Multilateral System.

##### **4.1 What exactly is meant by material put into the Multilateral System?**

- Putting material into the Multilateral System, in one sense, means identifying specific accessions, lines, races or varieties, and undertaking to make a sample of these available, under an SMTA.
- When a sample of one of these is then provided to a Recipient under an SMTA, this creates obligations on the part of the Recipient that mean that this sample, in the form received, and as modified by that Recipient, or subsequent Recipients, is legally part of the Multilateral System. So only individual samples are put into the Multilateral System.
- When the Provider puts material into the Multilateral System, this does not entail giving up any rights he may have over the genetics of that accession, line, race or variety.

##### **4.2 What are the basic obligations of someone putting material into the Multilateral System, by informing the Secretary of the Treaty?**

- The person undertakes, for specific plant genetic resources for food and agriculture (information about which he provides to the Secretary at the same time as notification of making them available) to:
  - Provide a sample of these resources to any person requesting them,

- Include all available passport data and any other associated available non-confidential descriptive information, and
- Provide the sample free, or at a minimal cost.<sup>11</sup>

The person should publicly provide adequate information on these resources, for plant breeders who are thinking of using them, for example, on a web-site. Such descriptions should ideally include the information on the FAO/IPGRI Multicrop Passport Descriptor List.<sup>12</sup>

**4.3 Is there an obligation to maintain forever material put into the Multilateral System?**

- No, but, in practical terms, if for any reason specific plant genetic resources for food and agriculture are no longer available, the person is requested to inform the Secretary, and correct any publicly available information.<sup>13</sup>

**4.4 Can the person putting material put into the Multilateral System continue to use it, without being bound by the conditions of the SMTA?**

- Yes, because he has entered into no legal obligation to apply the terms and conditions of the SMTA to that material.
- However, if that person subsequently accepts back from another person, under an SMTA, the same Material, or a product under development that derived from that same Material, that SMTA would be binding.

**4.5 Are Plant Genetic Resources for Food and Agriculture under Development in the Multilateral System?**

- The SMTA provides that access to Plant Genetic Resources for Food and Agriculture under Development shall be at the discretion of its developer, during the period of its development.
- Plant Genetic Resources for Food and Agriculture under Development refers to Material that has been received under a previous SMTA (and therefore in the Multilateral System), not to material held by a breeder that has not been received under and SMTA, and which is still in a development stage.

**4.6 Can the person putting material into the Multilateral System transfer the same material to (1) other units of his company or institution, or (2) commercial partners and affiliates without using the SMTA?**

- Transfers to other units of the same company or institution (the same legal person) need not be made under the SMTA. If these units transfer the material outside the same company or institution, an SMTA should be used.
- Transfers to commercial partners and affiliates (different legal persons) should be under an SMTA.

**4.7 May one discriminate between persons requesting material, and supply it to some and not to others?**

- The spirit of the Treaty requires that all persons under the jurisdiction of a Contracting Party should be treated equally, and not discriminated against.

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<sup>11</sup> SMTA, *Article 5.2*

<sup>12</sup> *Resolution 3/2009*, article 2.

<sup>13</sup> Even *Article 15* agreements do not engage the institutions to maintain each and every accession in perpetuity, nor are Contracting Parties so obliged.

**4.8 May one transfer material put into the Multilateral System to a Recipient in a non-Contracting Party?**

- Yes, nothing in the Treaty or the SMTA prevents it, but there is no obligation to do so.

**4.9 Can a person under the jurisdiction of a non-Contracting Party put material into the Multilateral System?**

- Yes, nothing in the Treaty or the SMTA prevents it.

**4.10 Must a person putting material into the Multilateral System, and wishing to continue to use it, divide those resources into (1) a part for the Multilateral System, and (2) a part for its own use?**

- No. That person is not bound by the conditions of an SMTA for material it puts into the Multilateral System. Legal obligations are only created when material is transferred to another person under an SMTA.<sup>14</sup>

**4.11 Can material protected by intellectual property rights be put into the Multilateral System?**

- Yes, provided that the spirit of the Multilateral System—that all material in it should be freely available to others for research, breeding and training for food and agriculture—is respected. Intellectual property rights that are not compatible with such free access are to be considered would need to be waived, for the material to be transferred under an SMTA.

**4.12 What are the reporting obligations?**

- There are no reporting obligations, apart from the normal reporting obligations of a Provider under an SMTA, for natural and legal persons putting material in the Multilateral System.
- When transferring Material under an SMTA, the person doing so acts as a Provider, and accepts the reporting obligations of the SMTA, namely that:
  - In accordance with *Article 5e*, the Provider shall periodically inform the Governing Body about the Material Transfer Agreements entered into, at least once every two calendar years.<sup>15</sup>
  - This may be done by either:
    - (A) transmitting a copy of the completed SMTA,

*or*

  - (B) ensuring that the completed SMTA is at the disposal of the Third Party Beneficiary as and when needed;
    - stating where the SMTA in question is stored, and how it may be obtained; and
    - providing the following information:

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<sup>14</sup> It is reported that at least one national genebank —whose Materials are in the Multilateral System, and who applies an SMTA to all Materials that it transfers to others—accepts Materials from natural and legal parties on condition that they may be distributed under an SMTA, segregates a part of those Materials, and holds this under black-box conditions. Only this Material may be returned to the donor without an SMTA. This is a different situation, resulting from the legally stated conditions under which the genebank accepts donations.

<sup>15</sup> *Article 5e and Resolution 4/2009.*

- The identifying symbol or number attributed to the SMTA by the Provider;
  - The name and address of the Provider;
  - The date on which the Provider agreed to or accepted the SMTA, and in the case of shrink-wrap, the date on which the shipment was sent;
  - The name and address of the Recipient, and in the case of a shrink-wrap agreement, the name of the person to whom the shipment was made;
  - The identification of each accession in *Annex I* to the SMTA, and of the crop to which it belongs.<sup>16</sup>
- If the Provider chooses Option B, there is a legal obligation to keep the relevant information safe and unaltered, and, in the case of a physically signed SMTA, the signed document.

**4.13 Does a Provider incur any liability for Material distributed?**

- No. By *Article 9* of the SMTA, “The Provider makes no warranties as to the safety of or title to 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 any attached phytosanitary certificate. The Recipient assumes full responsibility for complying with the recipient nation’s quarantine and biosafety regulations and rules as to import or release of genetic material.”

**4.14 Does a Provider have a responsibility for the subsequent actions of a Recipient?**

- No.

**4.15 Can a Provider terminate an SMTA?**

- No, an SMTA remains in force so long as the Treaty remains in force.

**4.16 What are the rights and obligations of a Provider, in relation to dispute settlement?**

- The SMTA provides that “Dispute settlement may be initiated by the Provider”. However, the Provider has no obligation to initiate a dispute.
- The subject of a dispute would be moneys due to the Multilateral System, in which a Provider has no material interest. The Third Party Beneficiary would therefore act for the Treaty, and initiate a dispute, if necessary.
- A Provider would be under an obligation to provide the SMTA to the Third Party Beneficiary, if this has not already been done.
- The Third Party Beneficiary has the right to request that the appropriate information, including samples as necessary, be made available by the Provider, regarding its obligations in the context of this Agreement.<sup>17</sup>

**4.17 If a company is wound up, sold, or subdivided, are obligations transferred?**

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<sup>16</sup> *Resolution 4/2009.*

<sup>17</sup> *Article 8.3 of the SMTA.*



- If a company is wound up, and resources are to be discarded, the holder is invited to offer them to a national, regional or international genebank.
- If a company is sold or subdivided, the resulting companies may wish to reconfirm their undertaking to the Secretary, depending on who now has ownership of the material in question.
- If sub-divided, provision should be made for any relevant records, and any remaining reporting obligations, to be transferred to one of the successor companies.

**4.18** The question of non-food/non-feed uses—whether or not to use and SMTA in these cases; how to address dual-use crops; liability when the Product deriving from a Material, either supplied for food and feed uses, or for non-food/non-feed uses, is then used for other purposes; the fact that the end use of crops is often an unpredictable function of the market—are all matters that have been raised. The Committee is due to discuss non-food/non-feed uses under another item of its agenda. It may then be possible to add another question-and-answer item to the list above.

## **5. THE OBLIGATIONS OF RECIPIENTS OF PROJECT FUNDING FROM THE BENEFIT-SHARING FUND AND THE GLOBAL CROP DIVERSITY TRUST TO MAKE MATERIAL COVERED BY THE PROJECTS AVAILABLE UNDER THE TERMS AND CONDITIONS OF THE MULTILATERAL SYSTEM**

### **5.1 Projects of the Treaty's Benefit-sharing Fund**

23. At its Third Session, the Governing Body took the following decision, regarding the inclusion of materials resulting from projects supported by the Treaty's Benefit-sharing Fund:

plant genetic resources for food and agriculture listed in *Annex I* of the International Treaty resulting from projects funded by the Benefit-sharing Fund shall be made available according to the terms and conditions of the Multilateral System, and information generated by projects funded through the Benefit-sharing Fund shall be made publicly available within one year of the completion of the project.<sup>18</sup>

24. The Agreements between FAO and recipient organizations<sup>19</sup> for projects approved under the Benefit-sharing Fund accordingly stipulate that:

the Recipient Organization will make all plant genetic resources for food and agriculture listed in *Annex I* of the International Treaty on Plant Genetic Resources for Food and Agriculture (hereinafter referred to as "IT-PGRFA") that are within the scope of the Project available according to the terms and conditions of the Multilateral System of Access and Benefit-sharing, as established in the IT-PGRFA.

### **5.2 Projects of the Global Crop Diversity Trust**

25. The Global Crop Diversity Trust (Trust) operates "within the framework of the International Treaty on Plant Genetic Resources for Food and Agriculture ... as an essential element of its Funding Strategy".<sup>20</sup> The Governing Body provides overall policy guidance to the

<sup>18</sup> *Resolution 3/2009*, paragraph 9 (iii).

<sup>19</sup> The list of projects funded under the first cycle of the Benefit-sharing Fund is available at [ftp://ftp.fao.org/ag/agp/planttreaty/funding/pro\\_list09\\_01\\_en.pdf](ftp://ftp.fao.org/ag/agp/planttreaty/funding/pro_list09_01_en.pdf)

<sup>20</sup> *Constitution of the Global Crop Diversity Trust, Article 1.*

Trust.<sup>21</sup> The Trust applies similar provisions, requiring that material developed through its projects be available under the terms of the Multilateral System.

26. For the Trust's long-term grants for the maintenance of collections, there are four eligibility criteria. The second of these requires that:

the plant genetic resources are accessible under the internationally agreed terms of access and benefit-sharing provided for in the Multilateral System, as set out in the International Treaty.

27. In the case of the Trust's fixed-term grants<sup>22</sup>, standard terms apply for regeneration and safety duplication of priority crop collections. *Article 12, Availability of Regenerated Germplasm*, requires that:

All germplasm regenerated under the Project will be made available and otherwise dealt with in accordance with the terms and conditions of the Standard Material Transfer Agreement (SMTA) of the International Treaty on Plant Genetic Resources for Food and Agriculture, whether or not the germplasm was acquired under the SMTA.

## 6. AN EXAMPLE OF DOMESTIC INCENTIVE MEASURES<sup>23</sup>

28. Switzerland has taken active measures to facilitate the inclusion of PGRFA into the MLS. As a result, not only all accessions of the national seed genebank, but also all accessions of Swiss private organizations financed by the National Plan of Action on Plant Genetic Resources for Food and Agriculture (NAP-PGRFA) are included into the Multilateral System.

29. The national genebank of Switzerland is composed by two parts: first, the national seed genebank located at the Research Institute Agroscope Changins-Wädenswil, and second, the collections of the NAP-PGRFA, where vegetative propagated species are conserved. The Swiss national seed genebank conserves accessions in the public domain, presently about 11.500 accessions. Whether or not belonging to Annex I crops or not, all accessions are included in the MLS.

30. Further to the adoption of the Global Plan of Action for the Conservation and Sustainable Utilization of Plant Genetic Resources for Food and Agriculture in 1996, the Swiss government elaborated the NAP-PGRFA. Since 1999, the Federal Office for Agriculture has been financing projects dealing with the inventory, conservation, characterization, evaluation and sustainable use of PGRFA. According to existing contracts between the Swiss government and the recipient organizations, all accessions conserved, characterized or evaluated are part of the national genebank. This implies that, for seed propagated species, the accessions are directly included in the national seed genebank; while for vegetative propagated crops, the accessions are conserved in orchards, vineyards or *in-vitro* under the responsibility of the organization but are also part of the national genebank. As a result, all accessions of Swiss private organizations that are financed by the NPA-PGRFA are included into the MLS.

31. The present budget for these projects, which is open for proposals by private and public organizations, is about 3 million Swiss francs per year. There are about 25 private organizations dealing with PGRFA, mainly with fruit trees, berries, grapevine and potatoes. All the private and public organizations are collaborating in the Swiss Commission for the Conservation of

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<sup>21</sup> *Relationship Agreement between the Global Crop Diversity Trust and the International Treaty on Plant Genetic Resources for Food and Agriculture, Article 3.*

<sup>22</sup> An interactive map that includes country-based information on regeneration grants and recipient institutions can be found at <http://www.croptrust.org/main/ourwork.php>.

<sup>23</sup> This section is based on information that was kindly provided by Mr. Geert Kleijer.

Cultivated Plants, which provides a concrete example of public-private partnership in the framework of the International Treaty.

## **7. CONCLUSIONS AND MATTERS FOR CONSIDERATION BY THE COMMITTEE**

32. Natural and legal persons who are considering putting materials into the Multilateral System are often, in fact, looking at the SMTA generally, rather than at what their specific obligations as Providers would be. Making clear that the only obligations they would assume, when distributing materials they have brought into the Multilateral System, are those of a Provider may remove a number of hesitations.

33. The legal effect of a notification of bringing material into the Multilateral System needs to be clarified, and considered separately from rights and obligations flowing from acting as a Provider, under the SMTA. The analysis in this document (Part 3, How is material “put into the *Multilateral System*”?) suggests a reading whereby (1) a notification is the declaration of an intention to put material into the Multilateral System, through the use of the SMTA, and (2) the definitive act that legally brings material into the Multilateral System is its transfer under an SMTA.

34. A further matter that can impede a favourable decision by a natural or legal person is the complexity of the SMTA itself, and the fact that, for a full understanding, the SMTA and *Annex 2, Part III, of Resolution 5/2009* (the reporting obligations of a Provider, under *Article 5e* of the SMTA) must be read together. In another document before the Committee IT/AC-SMTA-MLS 2/10/3, *The reporting obligations of parties to the Standard Material Transfer Agreement*, suggestions are made as to how this may be addressed.

35. Part 4 of the current document provides a question-and-answer text, which could form the basis of a short, user-friendly and practical explanatory note. The Committee is invited to consider the text.

36. Other matters identified in this review that the Committee may wish to discuss include (the relevant paragraphs of this document are referenced):

*Paragraph 13:* whether the sample letter for notification of inclusion (which is primarily intended to be used by Contracting Parties) is well adapted for use by natural and legal persons, or whether it could be improved.

*Paragraph 15:* whether there would be any practical advantage to the Treaty in the Governing Body enacting a legally binding agreement with natural and legal persons wishing to put material into the Multilateral System.

**Annex 1****SAMPLE LETTER OF NOTIFICATION OF INCLUSION OF MATERIAL IN THE  
MULTILATERAL SYSTEM**

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To the Secretary of the International Treaty  
on Plant Genetic Resources for Food and Agriculture  
Mr. Shakeel Bhatti  
Food and Agriculture Organization of the United Nations  
Viale delle Terme di Caracalla 1  
00153 Rome, Italy

**Subject:** notification regarding the contribution of the [name of the CP/Natural or Legal person] to the Multilateral System

The International Treaty on Plant Genetic Resources for Food and Agriculture (the Treaty) has established a Multilateral System of Access and Benefit-sharing.

Regarding the coverage of the Multilateral System, Article 11 specifies that the Multilateral System shall include all plant genetic resources for food and agriculture listed in *Annex I* that are under the management and control of the Contracting Parties and in the public domain, and that Contracting Parties invite other holders of the plant genetic resources for food and agriculture listed in *Annex I* to include these in the Multilateral System.

Herewith, the [name of the CP/Natural or Legal person] wishes to notify to you that the following plant genetic resources for food and agriculture listed in *Annex I* and maintained in [name of the CP] have been included in the Multilateral System.

1. The collections held by [name of the collection centre], [name of the country], located in XX. Through the website [url address] detailed data on the composition of the collection and user procedures to order samples are readily available.
2. The [name of species] collection held by the [name of the collection centre] located in XX [and consisting of...]. The website [url address] provides access to the collection's database.

Germplasm held in the collections listed above will be made available to users under the conditions of the Standard Material Transfer Agreement of the International Treaty on Plant Genetic Resources for Food and Agriculture.