

January 2011



# The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



## Item 11 of the Provisional Agenda

### FOURTH SESSION OF THE GOVERNING BODY

Bali, Indonesia, 14 – 18 March 2011

## REPORT OF THE SECOND MEETING OF THE *AD HOC* TECHNICAL ADVISORY COMMITTEE ON THE MULTILATERAL SYSTEM AND STANDARD MATERIAL TRANSFER AGREEMENT

### Introduction

1. By Resolution 4/2000, the Governing

*Request[ed] the Secretary to give priority to assisting users of the Standard Material Transfer Agreement to overcome any implementation problems such as those identified at the First Meeting of Experts on the Standard Material Transfer Agreement, including, subject to the availability of funds, through the convening of an Ad Hoc Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System, taking into account regional representation, according to the terms of reference as contained in the Annex to this Resolution.*

According to the *Annex* of this Resolution, the terms of reference of the Committee are to advise the Secretary on implementation questions raised by users of the Standard Material Transfer Agreement, which the Secretary brings to their attention on the basis of questions addressed and forwarded to the Secretary by Contracting Parties, international centres having signed agreements with the Governing Body under Article 15 of the Treaty and other users of the Standard Material Transfer Agreement.

2. The Second Meeting of the *Ad Hoc* Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System of the Treaty was held in Brasilia, Brazil, from 31 August to 2 September 2010, and hosted by the Government of Brazil. The Committee provided advice on a number of questions raised by users of the Standard Material Transfer Agreement.
3. Based on the advice received from the Committee, the Secretary has assisted users of the Standard Material Transfer Agreement, as a matter of priority, to overcome implementation problems, in accordance with the Resolution adopted by the Governing Body.
4. The Terms of Reference annexed to the Resolution of the Governing Body stipulated that, *The Ad Hoc Advisory Technical Committee will prepare a report at the end of a meeting, with responses to matters brought to its attention, and, where necessary, opinions on specific questions. These reports will be made available as information documents to the Fourth Session of the Governing Body.*
5. The Report of the Meeting is contained in the Annex of this document for the information of the Governing Body.
6. The Governing Body is invited to take note of the report, and to take any decisions necessary.

For reasons of economy, this document is produced in a limited number of copies. Delegates and observers are kindly requested to bring it to the meetings and to refrain from asking for additional copies, unless strictly indispensable.

Meeting documents are available on Internet at <http://www.planttreaty.org>

**ANNEX****IT/AC-SMTA-MLS 2/10/Report**

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| <b>SECOND MEETING OF THE <i>AD HOC</i> ADVISORY TECHNICAL COMMITTEE ON THE STANDARD MATERIAL TRANSFER AGREEMENT AND THE MULTILATERAL SYSTEM</b> |
| <b>Brasilia, Brazil, 31 August – 2 September 2010</b>   |
| <b>REPORT</b>   |

**Introduction**

1. The Second Meeting of the *Ad Hoc* Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System of the Treaty was held in Brasilia, Brazil, from 31 August to 2 September 2010. The list of participants is contained in *Appendix 9* to this Report.

**Agenda Item 1. Opening of the meeting**

2. The Secretary of the Governing Body, Dr Shakeel Bhatti, welcomed the members and highlighted the need for the effective operation of the Multilateral System and, consequently, the importance of this Committee.

3. He thanked the Government of Brazil for hosting this meeting of the Committee. He acknowledged in particular the support that the Brazilian Agriculture Research Corporation (EMBRAPA) had provided in the organization of the meeting. He noted that Brazil had over many years been one of the major proponents of an effective and authoritative multilateral access and benefit-sharing system under the Treaty. Consequently, Brazil had been one of the leading countries that had shaped the Multilateral System of the Treaty. The hosting of this meeting was thus the continuation of a long-standing and close relationship between Brazil and the Treaty. Mr Bhatti also acknowledged the excellent support that the Secretariat had received from the FAO Representation in Brazil.

4. He informed the Committee that the Multilateral System was now working and that in the practical implementation stage of the System, which the Treaty had now reached, the Secretariat was continuing to receive numerous operational and technical questions. Furthermore, as the Secretariat was observing an increasing use of the Standard Material Transfer Agreement (SMTA), in particular by the public sector, the Secretariat's workload involved in maintaining and operating the System was growing.

5. He indicated that he would provide the Report of the Committee to the Governing Body for information and include relevant items that the Committee had identified as requiring consideration of the Governing Body in the working documents.

6. In his statement on behalf of the FAO Representation in Brazil, Mr. Marcello Broggio welcomed members of the Committee to Brasilia. He underlined the outstanding positive relationship that FAO has with the government of Brazil and the relevant government institutions. He noted that Brazil had been a leader in South-South cooperation and mentioned, in particular, the technology transfer initiative it was currently executing in Africa.

7. On behalf of the President of EMBRAPA, Dr. Luciano Nass, from the International Affairs Office, warmly welcome participants to the new Tropical Agriculture Training Center's installations, specially designed to offer capacity building opportunities within South-South

collaboration programs. He noted that it was a pleasure to have the Committee meeting in Brasilia, at a time when genetic resources for food and agriculture are the centrepiece in many discussions regarding food security and climate change, the interdependence of countries in the sustainable use of genetic resources and the International Regime on Access and Benefit-sharing being discussed under the Convention on Biological Diversity (CBD).

8. He further explained that the co-sponsoring of the meeting was made possible as part of the program to celebrate 2010 as EMBRAPA's Year of Plant Genetic Resources, also supported by the Ministry of Agriculture, Livestock and Food Supply. He concluded by saying the Brazil had long been involved in the discussions that led to the Treaty and assured participants of EMBRAPA's commitment to fully support its implementation.

## **Agenda Item 2. Election of the Co-chairs**

9. Dr Bhatti drew attention to the need for the meeting to elect its officials. The meeting elected Messrs. Bryan Harvey and Eng Siang Lim as Co-Chairpersons to guide the proceedings of the meeting.

## **Agenda Item 3. Adoption of the Agenda and Time Table**

10. The meeting adopted its agenda, as given in *Appendix 1* to this Report.

## **Agenda Item 4. Status report on the implementation and operation of the SMTA and the Multilateral System**

11. Mr Kent Nnadozie, Secretariat of the Treaty, reported on developments related to the Multilateral System, and highlighted progress that had taken place in the operation of the Multilateral System since the last meeting of the Committee in January 2010.

12. He also drew attention to the concern expressed by the Governing Body, at its Third Session, that information on the inclusion of Plant Genetic Resources for Food and Agriculture in the Multilateral System by natural and legal persons within the jurisdiction of Contracting Parties was not yet available, and the urgency of obtaining such relevant information, in order to assess progress in the inclusion of material in the Multilateral System. He reiterated the need for the members of the Committee to assist in making information available to the Secretariat or otherwise assist in obtaining relevant information from their respective regions and institutions.

13. He informed the Committee that the Secretariat was at an advanced stage of completing the information technology systems that will facilitate SMTA operations in support to the Third Party Beneficiary's functions, based on *Resolution 5/2009* of the Governing Body and the information technology consultations conducted in the last biennium. The tools were being installed and would be housed at the United Nations Information and Computing Centre (UNICC) in Geneva.

14. He informed the Committee that the Secretariat had received the first, germplasm-based payment to the Benefit-sharing Fund of the Treaty, which resulted directly from genetic material transferred within the Multilateral System. This was a voluntary payment, because the material was currently not under a patent claim or other restrictions for research, breeding and training, but it provided a first, practical illustration that the Multilateral System and its Benefit-sharing Fund were functioning as foreseen.

15. The Secretary had also been able to make significant progress with the mobilization of funds for the Benefit-sharing Fund, with investments of more than 14.2 million US\$. These

investments in the Treaty exceeded the Strategic Plan projections, which foresaw a target of \$10 million by the end of 2010.

16. He informed the members of the Committee that the Secretariat had been monitoring the ongoing negotiations for an International Regime on Access and Benefit-sharing under the CBD. There were still several outstanding issues of importance on which agreement had not yet been reached by governments. The Secretariat would continue to monitor the process.

17. The Committee noted that it would be useful to make public the types of questions that the Secretariat had been receiving on a regular basis on the operations of the Multilateral System and the answers that had been provided, so that others might benefit from them. The Committee was informed that the Secretariat maintained a list of frequently asked questions and answers on the Treaty's website, which was updated on a regular basis and planned to incorporate the outcomes of the meetings of the Committee in future updates. The Committee noted that the International Agriculture Research Centers of the Consultative Group on International Agricultural Research (CG Centers) had also developed their own list of frequently asked questions and answers, and suggested that it might be more efficient if the two initiatives were integrated and could be presented to the Committee for advice and inputs, should it be reconvened in the future.

18. The Committee further suggested that more efforts should be made by natural and legal persons, or by the Contracting Parties in whose jurisdiction they were located, to supply information to the Secretariat on material that had been put in the Multilateral System, especially in view of the upcoming review by the Governing Body at its Fourth Session.

**Agenda Item 5. Restrictions on further transfer of plant genetic resources for food and agriculture under development**

19. The Committee considered document IT/AC-SMTA-MLS 2/10/5, regarding whether it is possible to put restrictions on the further transfer of this material to a third party, when transferring Plant Genetic Resources for Food and Agriculture under Development under an SMTA. The Committee agreed on the opinions and advice contained in *Appendix 2* to this Report in response to the set of questions and issues identified in that document.

**Agenda Item 6. Restoration of germplasm**

20. The Committee considered document IT/AC-SMTA-MLS 2/10/9, regarding whether restoration of germplasm to the original provider has to be under the SMTA, and agreed on the opinions and advice contained in *Appendix 3* to this Report in response to the set of questions and issues identified in that document.

**Agenda Item 7. The reporting obligations of parties under the SMTA**

21. At its previous meeting, the Committee had requested the preparation of an analysis of reporting obligations in the SMTA, and had before it a document that reviewed, in detail, the full range of such obligation, taking into account, in particular, the relevant decisions of the Third Session of the Governing Body (document IT/AC-SMTA-MLS/2/10/3). The Committee was of the opinion that these decisions now needed integration into the SMTA in a coherent manner, in order to facilitate its use by Providers and Recipients. The Committee was of the opinion that these updates were only clarifications.

22. In reviewing this document, the Committee also identified a number of minor, non-substantive, updates to the text of the SMTA that could resolve various uncertainties of formulation and cross-reference. Accordingly, the Committee recommended that the Secretary

bring to the attention of the Governing Body, for consideration and adoption, an integrated and updated text of the SMTA, as attached in *Appendix 4* to this Report.

23. Furthermore, the Committee identified a number of passages in the SMTA, where clarification of the meaning would help actual and potential users, as follows.
24. The Committee noted that, under *Article 6.4*, which relates to the transfer to a subsequent recipient of Plant Genetic Resources for Food and Agriculture, as received from the Multilateral System, the new material transfer agreement required by this article must contain the full text, and only the full text, of the SMTA, without modification.
25. It also noted that, under *Article 6.5*, which relates to the transfer to a subsequent recipient of Plant Genetic Resources for Food and Agriculture under Development, the transfer is to be effected through “a new material transfer agreement”. *Article 6.5a* provides that *Article 5a* of the SMTA will not apply. This is in itself legally adequate, and *Article 5a* does not need to be deleted. The new material transfer agreement should accordingly consist of the full text, and only the full text, of the SMTA, without modification.
26. The Committee also considered the transfer, by a Recipient who has opted for the alternative payments scheme under *Article 6.11*, of Plant Genetic Resources for Food and Agriculture under Development of that crop.
27. The provisions of paragraph 3 of *Annex 3* to the SMTA are as follows:

3. When the **Recipient** transfers **Plant Genetic Resources for Food and Agriculture under Development**, the transfer shall be made on the condition that the **subsequent recipient** shall pay into the mechanism established by the **Governing Body** under Article 19.3f of the **Treaty** zero point five percent (0.5 %) of the **Sales** of any **Product** derived from such **Plant Genetic Resources for Food and Agriculture under Development**, whether the **Product** is **available or not without restriction**.

28. The Committee noted that the current text of the SMTA does not provide guidance as to how the subsequent recipient is to be bound by the terms and conditions of the alternative payments scheme. For this to be possible, the following actions would need to be undertaken: (a) the Recipient now acting as Provider should indicate to the subsequent recipient that he is required to accept the alternative payment scheme for the Plant Genetic Resources for Food and Agriculture under Development in question; and (b) the subsequent recipient must accept these conditions. The Committee recommended that the Secretary invite the Governing Body to consider how these actions might be effected, based on the text contained in *Appendix 5* to this Report.
29. The Committee noted a concern raised by industry about the possible disincentive to choosing the alternative payment scheme that paragraph 3 of *Annex 3* of the SMTA may create.

#### **Agenda Item 8. Practical and legal implications for natural and legal persons putting material into the Multilateral System**

30. The first meeting of the Committee had initiated discussion of the practical and legal implications for natural and legal persons putting material into the Multilateral System, and agreed that further examination of a number of questions raised by industry was required. It had suggested that a paper be prepared, in consultation, in particular, with industry, with the aim of preparing a short, user-friendly and practical explanatory note that might be made available to natural and legal persons considering putting material into the Multilateral System.

31. In reviewing this question based on document IT/AC-SMTA-MLS/2/10/2, the Committee was of the opinion that there were various ways in which natural and legal persons can put material into the Multilateral System. These included:

- Providing a recipient with a sample of material of one of the crops in *Annex 1* to the Treaty under a duly completed SMTA. This 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 obligations under the Multilateral System are maintained intact. 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.
- At another level, “putting material into the Multilateral System” can be understood to mean that a person has undertaken (by notification to the Secretary of the Treaty or equivalent public statement) to provide it to others, on request, through the SMTA. Contracting Parties—as an obligation under the Treaty—have undertaken to provide facilitated access to relevant plant genetic resources for food and agriculture,<sup>1</sup> as have International Institutions that have signed agreements with the Governing Body, as a condition of these agreements.<sup>2</sup> No individual private or legal person, however, has such a legal obligation to do so. Notification to the Secretary, or an equivalent public statement, creates a legitimate expectation on the part of potential recipients that the materials in question will be made available under an SMTA, on request.
- A simple and practical way, by which a natural or legal person can put material into the Multilateral System, is to donate it to an institution that has already undertaken to hold material within the Multilateral System, such as a national or international genebank. There is, however, no obligation on any institution already holding materials in the Multilateral System to accept a material that is offered to it, for inclusion in the Multilateral System. 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.

32. 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*, had stressed the importance of documenting the plant genetic resources for food and agriculture within the Multilateral System.

33. In sum, it could be considered that a material held by a natural or legal person is “in” the Multilateral System 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 through 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, or
- iv. has donated a sample to an institution that has already undertaken to hold material within the Multilateral System.

34. Any material transferred by a legal or natural person under an SMTA is in the Multilateral System.

35. The Committee finalised the short, user-friendly and practical explanatory “Questions and Answers” that are contained in *Appendix 6* to this Report.

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<sup>1</sup> By *Article 12.2*.

<sup>2</sup> By *Article 15.1a*.

**Agenda Item 9. Non-food/feed uses of plant genetic resources for food and agriculture**

36. At its previous meeting, the Committee had requested the preparation of a working document on non-food/feed industrial uses in the context of the Treaty and the SMTA. The Committee reviewed the analysis presented in document IT/AC-SMTA-MLS 2/10/8 and examined the following points.

***Transfer of plant genetic resources for food and agriculture for non-food/feed uses***

37. *Article 12.3a* of the Treaty provides that:

*Access shall be provided solely for the purpose of utilization and conservation for research, breeding and training for food and agriculture, provided that such purpose does not include chemical, pharmaceutical and/or other non-food/feed industrial uses.*

38. The Committee was of the opinion that, based on this provision, Contracting Parties are only obliged to provide plant genetic resources for food and agriculture under the facilitated access regime established by the Multilateral System when the conditions set out in *Article 12.3a* are met. Contracting Parties are not obliged by the Treaty to distribute under facilitated access conditions materials in the Multilateral System for purposes other than utilization and conservation for research, breeding and training for food and agriculture.

39. The Committee was of the opinion that Contracting Parties have the freedom to determine under which instrument and conditions access to materials in the Multilateral System could be provided for non-food/feed uses. The Committee also considered that, if so wished by a Contracting Party, access for non-food/feed may be provided under conditions similar, *mutatis mutandis*, to those applicable under the SMTA, including the payment obligations.

***The limitation on use in the SMTA***

40. *Article 6.1* of the SMTA provides that:

*The Recipient undertakes that the Material shall be used or conserved only for the purposes of research, breeding and training for food and agriculture. Such purposes shall not include chemical, pharmaceutical and/or other non-food/feed industrial uses.*

41. The Committee considered that recipients of plant genetic resources for food and agriculture under the SMTA are bound by the express limitation imposed by these provisions. The Committee was of the opinion that acceptance of the SMTA makes it unnecessary to obtain an additional declaration from the party requesting material on intended use.

42. However, in cases where the party requesting material informs the prospective provider that the intended use is non-food/feed, or when it is otherwise obvious that the requested material is intended for non-food/feed purposes, the Committee believed that the prospective provider, under a general obligation of due diligence, should refuse facilitated access and take the required steps to ensure that the terms and conditions that the respective Contracting Party may have established for the distribution of materials for non-food/feed uses are applied. This should not put, however, an excessive burden on prospective providers, such as the need to undertake an investigation about the current or intended activities of the requesting party, such that would hamper the effective and efficient functioning of the Multilateral System.

***Multiple-use crops***

43. The second sentence of *Article 12.3a* of the Treaty reads as follows:

*In the case of multiple-use crops (food and non-food), their importance for food security should be the determinant for their inclusion in the Multilateral System and availability for facilitated access.*

44. The Committee considered that this provision, in referring to multiple-use crops (food and non-food), deals with the coverage of the Multilateral System and presupposes that multiple-use plant genetic resources for food and agriculture are included in the list contained in Annex I of the Treaty. In the views of the Committee, these provisions imply that multiple-use crops should be transferred under the facilitated access regime when intended for food/feed and that, consequently, use of the SMTA is required in these cases. Accordingly, multiple-use materials of Annex I crops and forages should be transferred under an SMTA whenever their intended use is food/feed.

45. The Committee was of the view that whenever a recipient receives samples of multiple-use crops for non-food/feed purposes, the instrument under which he received them should bind him to an obligation to sign an SMTA in case the material is subsequently used for food and agriculture or Plant Genetic Resources for Food And Agriculture under Development are to be transferred for use for food and agriculture. The Committee noted that the draft material transfer agreement developed by the Genetic Resources Policy Committee (GRPC) of the Consultative Group on International Agricultural Research could result in substantial resources becoming available to the Multilateral System and may provide a useful reference for those interested in using it.

46. The Committee considered that additional examination of this issue would be required taking into account further experience in the implementation of the Multilateral System.

47. The Committee recommended that the Secretary bring the above analysis by the Committee to the attention of the Governing Body for consideration.

**Agenda Item 10. *In situ* material and the Multilateral System: standards for access**

48. The Committee considered document IT/AC-SMTA-MLS 2/10/6, prepared at its request, which, *inter alia*, described the relevant provisions of the existing *International Code of Conduct on Plant Germplasm Collecting and Transfer* that regulate the technical aspects of *in situ* collection.

49. The Committee re-affirmed its opinion that the provisions of *Article 12.3h* apply to material under the management and control of Contracting Parties, and in the public domain, and consequently, that the scope of possible future standards established by the Governing Body under *Article 12.3h* should be limited to *in situ* material that is under the management and control of Contracting Parties, and in the public domain.

50. The Committee agreed that the work undertaken on *Article 12.3h* needs to be further developed, in particular with regard to the relationship between *Article 12.3h* and other provisions in *Article 12*, and the implications of national legislation for access to *in situ* plant genetic resources, and specifically to those resources that are part of the Multilateral System.

51. The Committee further recognized that the Governing Body has not yet decided to initiate the preparation of standards under *Article 12.3h*, and agreed that it would keep the matter under review, and examine it further in the future, including the possible preparation of elements of standards for consideration by the Governing Body.

**Agenda Item 11. Transfer and use of plant genetic resources for food and agriculture under the SMTA – transfer to farmers for direct use for cultivation**

52. In the context of transfer and use of plant genetic resources for food and agriculture under the SMTA, the Committee requested, at its first meeting, a working document to discuss the question as to the extent to which the Contracting Parties, CG Centers and other International Institutions that have concluded agreements with the Governing Body under *Article 15* of the Treaty (International Institutions) can make plant genetic resources for food and agriculture available directly to farmers for their direct use for cultivation, and whether such transfers should be under the SMTA.

53. The Secretariat developed a working document exploring the issue, with inputs received from Bioversity International (document IT/AC-SMTA-MLS/2/10/6).

54. The Committee noted the importance of making available material for use for cultivation in farmers' fields, but also noted that direct use by farmers for cultivation did not fall within the purposes for which plant genetic resources for food and agriculture shall be made available under the Multilateral System through the SMTA.

55. The Committee agreed that there is no problem in CG Centers and other International Institutions making available to farmers plant genetic resources for food and agriculture that they have developed from materials acquired from the Multilateral System. This was their prerogative as developers of the material.

56. The Committee also considered that there is no legal problem with the CG Centers and other International Institutions making material available to farmers for direct use where that material was held in trust.

57. The problems arise with making available for direct use for cultivation materials that have been received under the SMTA, since the terms of the SMTA require that the use of the material be restricted to research, breeding and training.

58. In general, the Committee concluded that if material acquired from the Multilateral System under the SMTA is to be made available for direct use for cultivation, this would require the express permission of the provider who transferred it to the CG Centres or other International Institutions.

59. The Committee also considered that, when making plant genetic resources for food and agriculture available for direct use for cultivation only, the SMTA would not be the appropriate instrument to use.

60. The Committee agreed on the conclusions set out in *Appendix 7* to this Report for the guidance of CG Centers and other International Institutions.

## **Agenda Item 12. Drafting of the Handbook to the Implementation of the Multilateral System**

61. At its previous meeting, the Committee had considered the *Draft options and guide on practices, procedures and measures for the implementation of the Multilateral System* (Options and Guide). The Committee felt the Options and Guide, which are being developed by the Secretariat, to be a useful additional tool in the efforts to provide assistance to users of the Multilateral System and the SMTA. Members of the Committee had agreed that they would provide general advice as well as whatever inputs and information they could, in the course of the development of the document.

62. The Committee considered the document, *Draft outline of options and guide on practices, procedures and measures for the implementation of the Multilateral System* (document IT/AC-SMTA-MLS/2/10/10), containing an updated draft, which had been revised and restructured based on initial comments received by the Secretariat. The updated draft document was renamed *Handbook to the Implementation of the Multilateral System of the International Treaty on Plant*

*Genetic Resources for Food and Agriculture* (Handbook), in order to avoid any misreading of the nature and status of the document and to address related concerns.

63. The Committee re-affirmed that the draft Handbook was a useful tool and agreed that the new structure of the draft Handbook and its new title were a better reflection of the objective of the tool, which is to assemble user-friendly information on the Multilateral System and the SMTA. The information contained in it was largely factual, and based on the legal texts and the decisions of the Governing Body, as well as the outcomes of the work by its subsidiary bodies.

64. The Committee encouraged the Secretary to continue the development of the draft Handbook, including through the progressive updating of the draft Handbook with the decisions of the Governing Body and the outcomes of the work by its subsidiary bodies as well as with relevant information received from Contracting Parties, users of the Multilateral System and other stakeholders.

65. Members of the Committee provided some general comments and suggestions for enhancing the draft Handbook, and further agreed that they would provide general advice and comments as well as whatever inputs and information they could, in the course of the further development of the Handbook, including on inclusion of material in the Multilateral System by natural or legal persons.

### **Agenda Item 13. Other business and miscellaneous questions**

#### ***Draft Business Plan of the Governing Body***

66. The Committee considered document IT/AC-SMTA-MLS 2/10/11, *Draft Business Plan of the Governing Body*. The Secretary informed the Committee that the Bureau, at its first meeting, had recommended that, in order to receive the widest possible expert input into the preparation of the Business Plan, it should be included as a standing item of the agenda of relevant subsidiary bodies of the Governing Body, in particular the *Ad Hoc* Advisory Committee on the Funding Strategy and the *Ad Hoc* Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System.

67. The Committee reviewed *Target 1, Operating and Developing the Multilateral System*, of the Draft Business Plan and commended the current draft as being well prepared, precise and thorough. It made a number of suggestions to be taken into account in the revision of the draft Business Plan, which would be considered by the Bureau at its next meeting. The updated draft Target 1 is attached in *Appendix 8* to this Report. Members of the Committee also agreed that they would provide additional comments and input in the further development of the document.

#### ***Review of the implementation of the Multilateral System and the SMTA by the Governing Body***

68. The Committee noted that a number of issues related to the Multilateral System were due for review, assessment and decision by the Governing Body at its forthcoming session, including *Articles 11.4, 13.2d* of the Treaty. It suggested that the Secretariat prepare the working documents necessary for the Governing Body to undertake this work.

#### ***Future work of the Committee***

69. The Committee expressed its satisfaction with progress made in carrying out the task given it by the Governing Body at its Third Session. It agreed that assistance to users of the Multilateral System and the SMTA remains essential for the proper functioning of Treaty mechanisms and for retaining the confidence of users and stakeholders. The Committee provided a forum for the consideration and analysis of technical issues related to the implementation of the Multilateral System and the SMTA. The positive atmosphere under which the Committee carried out its mandate made it possible to provide considered advice to the Secretary. It would be valuable for the overall effective implementation of the Multilateral System, that the Committee would again

be convened in the forthcoming biennium, to advise the Secretary regarding the many matters that arise in this stage of the early development of the Multilateral System.

**Agenda Item 14. Adoption of the Report**

70. The Committee adopted this Report.

**Agenda Item 15. Closing of the meeting**

71. The members of the Committee thanked the Government of Brazil for hosting the meeting, and the management and staff of EMBRAPA for the excellent facilities and hospitality as well as the logistic support that contributed to the success of the meeting. The Committee also thanked the Secretariat for the excellent preparations it had made, in particular for the documentation for the meeting.

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**Report Appendix I**

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| <b>SECOND MEETING OF THE <i>AD HOC</i> ADVISORY TECHNICAL COMMITTEE<br/>ON THE STANDARD MATERIAL TRANSFER AGREEMENT AND THE<br/>MULTILATERAL SYSTEM OF THE TREATY</b> |
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| <b>Brasilia, Brazil, 31 August – 2 September 2010</b> |
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| <b>AGENDA</b> |
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1. Opening of the meeting
2. Election of the Co-Chairs
3. Adoption of the agenda and time table
4. Status report on the implementation and operation of the SMTA and the Multilateral System
5. Restrictions on further transfer of plant genetic resources for food and agriculture under development
6. Restoration of germplasm
7. The reporting obligations of parties under the SMTA
8. Practical and legal implications for natural and legal persons putting material into the Multilateral System
9. Non-food/feed uses of plant genetic resource for food and agriculture
10. *In situ* material and the Multilateral System: standards for access
11. Transfer and use of plant genetic resources for food and agriculture under the SMTA – transfer to farmers for direct use for cultivation
12. Drafting of the Handbook to the Implementation of the Multilateral System
13. Other business and miscellaneous questions
14. Adoption of the report
15. Closing of the meeting

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**Report Appendix 2**

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**Restrictions on further transfer of Plant Genetic Resources for Food and Agriculture under Development****Opinion**

1. The Committee considered whether it is possible to put restrictions on the further transfer of this material to a third party, when transferring Plant Genetic Resources for Food and Agriculture under Development under an SMTA. The Committee concluded that the Provider has the discretion to decide who may access such materials. It further concluded that he has the right to oblige the Recipient, if he so wishes, not to transfer these Plant Genetic Resources for Food and Agriculture under Development to a third party. It noted that such additional conditions would, in normal commercial practice, be confidential, and contained in a separate document that does not need to be transmitted to the Governing Body.
2. This conclusion is based on the following elements.
3. A Recipient of a Plant Genetic Resources for Food and Agriculture under Development is not obliged to make those materials available under an SMTA, on request. *Article 6.5* of the SMTA (which regulates the transfer of Plant Genetic Resources for Food and Agriculture under Development) provides that such resources shall be transferred “*under the terms and conditions of the Standard Material Transfer Agreement, through a new material transfer agreement*”. *Article 6.5a* further provides “*that Article 5a of the Standard Material Transfer Agreement shall not apply*”. *Article 5a*, which contains an obligation on a Recipient of Plant Genetic Resources for Food and Agriculture under Development to make these available to others, therefore does not operate in the case of a transfer of Plant Genetic Resources for Food and Agriculture under Development.
4. *Article 6.6* of the SMTA allows a Provider to attach additional conditions to the transfer of Plant Genetic Resources for Food and Agriculture under Development:  
*Entering into a material transfer agreement under paragraph 6.5 shall be without prejudice to the right of the parties to attach additional conditions, relating to further product development ...*
5. From the above provisions of the SMTA, it is clear that a person holding or transferring Plant Genetic Resources for Food and Agriculture under Development may refuse access to them. Moreover, as every transfer of a Plant Genetic Resources for Food and Agriculture under Development in the chain of development that may lead to a commercialized product is to be effected in accordance with *Article 6.5* of the SMTA, all the subsequent Recipients enjoy this right.
6. The developer (or the chain of developers) of Plant Genetic Resources for Food and Agriculture under Development therefore has unlimited discretion as to whether or not to make these resources available, from their initial transfer until the time of the commercialization of a Product that incorporates them.
7. In the light of the above, the Committee considered that a Provider may, in the exercise of his discretion under *Article 6.5a* of the SMTA, require a Recipient to exclude another person from access to his Plant Genetic Resources for Food and Agriculture under Development, in transferring such resources. This requirement would form part of the “additional conditions” that, in accordance with *Article 6.6* of the SMTA, a Provider may attach to the transfer of Plant Genetic Resources for Food and Agriculture under Development.

8. The purpose of *Article 6.6* of the SMTA is to make possible normal commercial practice regarding sales of improved material and commercial cooperation in the seed sector, in such a way that Products may be developed, from which the Benefit-sharing Fund may benefit at the time of their commercialization. The Committee recognised that normal commercial practice includes the ability of the purchaser of an improved material, or of breeders cooperating in the development of an improved material, to exclude others from access to their material. The inability to do so might make such cooperation impossible.

9. The Committee considered that nothing in the SMTA requires the additional terms imposed by a Provider of Plant Genetic Resources for Food and Agriculture under Development on a Recipient to be publicly disclosed. While, in accordance with *Articles 6.5* and *5e* of the SMTA, the Provider is obliged to transmit certain information to the Governing Body, when transferring Plant Genetic Resources for Food and Agriculture under Development, this information does not include the additional conditions. Moreover, *Annex 2, Part III (iv)* of *Resolution 5/2009* of the Governing Body provides that the information that is transmitted shall at all times be maintained in strict confidentiality, and that access to the data shall be strictly restricted to the Third Party Beneficiary, in the context of the possible initiation of dispute settlement.

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**Report Appendix 3**

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**Restoration of Germplasm****Opinion**

1. The Committee was of the opinion that the term “restoration” typically refers to situations where plant genetic resources for food and agriculture of *Annex I* crops and forages are requested for restoration to the provider or the competent authority of the territory from which they were originally collected. The Committee noted that some provisions of the Treaty are relevant to restoration issues. These are: i) *Article 15.1(a)* and *Article 15.1(b)(ii)*; and ii) *Article 12.4* and *Article 12.6*.

2. Based on the analysis of those Treaty provisions as provided in document AC-SMTA-MLS 2/10/9, the Committee recognized that there were three possible options for the treatment of the issue of restoration of plant genetic resources for food and agriculture of *Annex I* crops and forages, which could be viewed as being compatible with the wording of the Treaty:

- (a) Require all restoration of plant genetic resources for food and agriculture of *Annex I* crops and forages to be subject to acceptance of the SMTA;
- (b) Require all restoration of plant genetic resources for food and agriculture of *Annex I* crops and forages to be subject to acceptance of the SMTA with the exception of material transferred in emergency disaster situations for the purpose of re-establishing agricultural systems;
- (c) Not treat restoration as an act of facilitated access requiring the use of the SMTA.

3. The Committee noted that the interpretation under c) above would be consistent with the practice of many Contracting Parties and international institutions. The Committee was of the view that the restoration of germplasm should not be considered an act of facilitated access requiring the use of the SMTA. However, such an interpretation would require a clear understanding of the concept of “restoration” lest the integrity of the Multilateral System be undermined.

4. The Committee considered that the most obvious case of restoration is where germplasm has been collected from *in situ* conditions in a country and conserved in a collection outside the country, and the original germplasm has been lost in some way: the germplasm is then restored to the competent authority of the country concerned. This is the situation contemplated in *Article 15.1(b)(ii)* of the Treaty in respect of non-*Annex I* plant genetic resources for food and agriculture held by the CG Centers.

5. The Committee also considered that any definition of “restoration” should also cover the restoration of breeding material that has been developed by national programmes. It further considered that the concept should also be extended to cases where plant genetic resources for food and agriculture held by a genebank or other collector, including material held by a natural or legal person, is placed voluntarily in the Multilateral System and is made available to another genebank or other collector, and the original plant genetic resources for food and agriculture is then lost: the germplasm is then restored to the original genebank or other collector concerned.

6. An understanding covering all situations could be the following:

**“Restoration” in practice means the return of samples of plant genetic resources for food and agriculture to the Provider or the competent authority of the territory in which they were collected from *in situ* conditions or which bred the plant genetic resources for food and agriculture in its programmes or to the legal or natural person that placed the plant genetic resources for food and agriculture in the Multilateral System.”**

7. The Committee recommended that the Secretary present its opinion to the Governing Body for consideration.

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**Report Appendix 4**

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**The reporting obligations of parties under the SMTA**

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**The Standard Material Transfer Agreement,  
annotated with elements that may be integrated into the text**

**Text proposed for deletion is ~~struck through~~; and text proposed for insertion is double-underlined.**

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**STANDARD MATERIAL TRANSFER AGREEMENT****PREAMBLE****WHEREAS**

The International Treaty on Plant Genetic Resources for Food and Agriculture (hereinafter referred to as “the **Treaty**”)<sup>3</sup> was adopted by the Thirty-first session of the FAO Conference on 3 November 2001 and entered into force on 29 June 2004;

The objectives of the **Treaty** are the conservation and sustainable use of **Plant Genetic Resources for Food and Agriculture** and the fair and equitable sharing of the benefits arising out of their use, in harmony with the Convention on Biological Diversity, for sustainable agriculture and food security;

The Contracting Parties to the **Treaty**, in the exercise of their sovereign rights over their **Plant Genetic Resources for Food and Agriculture**, have established a **Multilateral System** both to facilitate access to **Plant Genetic Resources for Food and Agriculture** and to share, in a fair and equitable way, the benefits arising from the utilization of these resources, on a complementary and mutually reinforcing basis;

Articles 4, 11, 12.4 and 12.5 of the **Treaty** are borne in mind;

The diversity of the legal systems of the Contracting Parties with respect to their national procedural rules governing access to courts and to arbitration, and the obligations arising from international and regional conventions applicable to these procedural rules, are recognized;

Article 12.4 of the **Treaty** provides that facilitated access under the **Multilateral System** shall be provided pursuant to a Standard Material Transfer Agreement, and the **Governing Body** of the **Treaty**, in its Resolution 1/2006 of 16 June 2006, adopted the Standard Material Transfer Agreement.

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<sup>3</sup> *Note by the Secretariat:* as suggested by the Legal Working Group during the Contact Group for the Drafting of the Standard Material Transfer Agreement, defined terms have, for clarity, been put in bold throughout. [Footnotes to be re-numbered accordingly]

## ARTICLE 1 — PARTIES TO THE AGREEMENT

1.1 The present Material Transfer Agreement (hereinafter referred to as “**this Agreement**”) is the Standard Material Transfer Agreement referred to in Article 12.4 of the **Treaty**.

1.2 **This Agreement** is:

BETWEEN: (*name and address of the provider or providing institution, name of authorized official, contact information for authorized official\**) (hereinafter referred to as “the **Provider**”),

AND: (*name and address of the recipient or recipient institution, name of authorized official, contact information for authorized official\**) (hereinafter referred to as “the **Recipient**”).

1.3 The parties to **this Agreement** hereby agree as follows:

## ARTICLE 2 — DEFINITIONS

In **this Agreement** the expressions set out below shall have the following meaning:

“**Available without restriction**”: a **Product** is considered to be available without restriction to others for further research and breeding when it is available for research and breeding without any legal or contractual obligations, or technological restrictions, that would preclude using it in the manner specified in the **Treaty**.

“**Genetic material**” means any material of plant origin, including reproductive and vegetative propagating material, containing functional units of heredity.

“**Governing Body**” means the **Governing Body** of the **Treaty**.

“**Multilateral System**” means the **Multilateral System** established under Article 10.2 of the **Treaty**.

“**Plant Genetic Resources for Food and Agriculture**” means any **genetic material** of plant origin of actual or potential value for food and agriculture.

“**Plant Genetic Resources for Food and Agriculture under Development**” means material derived from the **Material**, and hence distinct from it, that is not yet ready for **commercialization** and which the developer intends to further develop or to transfer to another person or entity for further development. The period of development for the **Plant Genetic Resources for Food and Agriculture under Development** shall be deemed to have ceased when those resources are **commercialized** as a **Product**.

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\* *Insert as necessary. Not applicable for shrink-wrap and click-wrap Standard Material Transfer Agreements.*

A “shrink-wrap” Standard Material Transfer Agreement is where a copy of the Standard Material Transfer Agreement is included in the packaging of the **Material**, and the **Recipient’s** acceptance of the **Material** constitutes acceptance of the terms and conditions of the Standard Material Transfer Agreement.

A “click-wrap” Standard Material Transfer Agreement is where the agreement is concluded on the internet and the **Recipient** accepts the terms and conditions of the Standard Material Transfer Agreement by clicking on the appropriate icon on the website or in the electronic version of the Standard Material Transfer Agreement, as appropriate. [*Footnotes to be re-numbered accordingly*]

“**Product**” means **Plant Genetic Resources for Food and Agriculture** that incorporate<sup>4</sup> the **Material** or any of its genetic parts or components that are ready for **commercialization**, excluding commodities and other products used for food, feed and processing.

“**Sales**” means the gross income resulting from the **commercialization** of a **Product** or **Products**, by the **Recipient**, its affiliates, contractors, licensees and lessees.

“**To commercialize**” means to sell a **Product** or **Products** for monetary consideration on the open market, and “**commercialization**” has a corresponding meaning. **Commercialization** shall not include any form of transfer of **Plant Genetic Resources for Food and Agriculture under Development**.

### ARTICLE 3 — SUBJECT MATTER OF THE MATERIAL TRANSFER AGREEMENT

The **Plant Genetic Resources for Food and Agriculture** specified in *Annex 1* to **this Agreement** (hereinafter referred to as the “**Material**”) and the available related information referred to in Article 5b and in *Annex 1* are hereby transferred from the **Provider** to the **Recipient** subject to the terms and conditions set out in **this Agreement**.

### ARTICLE 4 — GENERAL PROVISIONS

4.1 **This Agreement** is entered into within the framework of the **Multilateral System** and shall be implemented and interpreted in accordance with the objectives and provisions of the **Treaty**.

4.2 The parties recognize that they are subject to the applicable legal measures and procedures, that have been adopted by the Contracting Parties to the **Treaty**, in conformity with the **Treaty**, in particular those taken in conformity with Articles 4, 12.2 and 12.5 of the **Treaty**.<sup>5</sup>

4.3 The parties to **this Agreement** agree that (~~the entity designated by the **Governing Body**~~)the Food and Agriculture Organization of the United Nations,<sup>6</sup> acting on behalf of the **Governing Body** of the **Treaty** and its **Multilateral System**, is the third party beneficiary under **this Agreement**.

4.4 The third party beneficiary has the right to request the appropriate information as required in Articles 5e, 6.5c, 8.3 and *Annex 2, paragraph 3*, to **this Agreement**.

4.5 The rights granted to the (~~the entity designated by the **Governing Body**~~)Food and Agriculture Organization of the United Nations above do not prevent the **Provider** and the

<sup>4</sup> As evidenced, for example, by pedigree or notation of gene insertion.

<sup>5</sup> In the case of the International Agricultural Research Centres of the Consultative Group on International Agricultural Research (CGIAR) and other international institutions, the Agreement between the Governing Body and the CGIAR Centres and other relevant institutions will be applicable.

<sup>6</sup> *Note by the Secretariat:* by Resolution 2/2006, the Governing Body “invite[d] the Food and Agriculture Organization of the United Nations, as the Third Party Beneficiary, to carry out the roles and responsibilities as identified and prescribed in the Standard Material Transfer Agreement, under the direction of the Governing Body, in accordance with the procedures to be established by the Governing Body at its next session”. Upon acceptance by the FAO of this invitation, the term, “the entity designated by the Governing Body”, will be replaced throughout the document by the term, “the Food and Agriculture Organization of the United Nations”. [Footnotes to be re-numbered accordingly].

**Recipient** from exercising their rights under **this Agreement**.

## ARTICLE 5 — RIGHTS AND OBLIGATIONS OF THE PROVIDER

The **Provider** undertakes that the **Material** is transferred in accordance with the following provisions of the **Treaty**:

- a) Access shall be accorded expeditiously, without the need to track individual accessions and free of charge, or, when a fee is charged, it shall not exceed the minimal cost involved.
- b) All available passport data and, subject to applicable law, any other associated available non-confidential descriptive information, shall be made available with the **Plant Genetic Resources for Food and Agriculture** provided;
- c) Access to **Plant Genetic Resources for Food and Agriculture under Development**, including material being developed by farmers, shall be at the discretion of its developer, during the period of its development;
- d) Access to **Plant Genetic Resources for Food and Agriculture** protected by intellectual and other property rights shall be consistent with relevant international agreements, and with relevant national laws;
- e) The **Provider** shall inform the **Governing Body** at least once every two calendar years about the Material Transfer Agreements entered into, either by:

Option A. Transmitting a copy of the completed Standard Material Transfer Agreement,<sup>7</sup>

or

Option B. In the event that a copy of the Standard Material Transfer Agreement is not transmitted,

- i. ensuring that the completed Standard Material Transfer Agreement is at the disposal of the third party beneficiary as and when needed;
- ii. stating where the Standard Material Transfer Agreement in question is stored, and how it may be obtained; and
- iii. providing the following information:
  - a) The identifying symbol or number attributed to the Standard Material

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<sup>7</sup> In the event that the copy of the completed Standard Material Transfer Agreement that is transmitted is shrink-wrap, the **Provider** shall also include information as to (a) the date on which the shipment was sent, and (b) the name of the person to whom the shipment was sent, in accordance with Article 10, Option 2 of the SMTA.

Transfer Agreement by the Provider:

- b) The name and address of the Provider:
- c) The date on which the Provider agreed to or accepted the Standard Material Transfer Agreement, and in the case of shrink-wrap, the date on which the shipment was sent;
- d) 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;
- e) The identification of each accession in Annex I to the Standard Material Transfer Agreement, and of the crop to which it belongs.

according to a schedule to be established by the ~~Governing Body~~. This information shall be made available by the **Governing Body** to the third party beneficiary.<sup>8</sup>

**ARTICLE 6 — RIGHTS AND OBLIGATIONS OF THE RECIPIENT**

- 6.1 The **Recipient** undertakes that the **Material** shall be used or conserved only for the purposes of research, breeding and training for food and agriculture. Such purposes shall not include chemical, pharmaceutical and/or other non-food/feed industrial uses.
- 6.2 The **Recipient** shall not claim any intellectual property or other rights that limit the facilitated access to the **Material** provided under **this Agreement**, or its genetic parts or components, in the form received from the **Multilateral System**.
- 6.3 In the case that the **Recipient** conserves the **Material** supplied, the **Recipient** shall make the **Material**, and the related information referred to in Article 5b, available to the **Multilateral System** using the Standard Material Transfer Agreement.
- 6.4 In the case that the **Recipient** transfers the **Material** supplied under **this Agreement** to another person or entity (hereinafter referred to as “the **subsequent recipient**”), the **Recipient** shall
- a) do so under the terms and conditions of the Standard Material Transfer Agreement, through a new material transfer agreement; and
  - b) notify the **Governing Body**, in accordance with Article 5e.

On compliance with the above, the **Recipient** shall have no further obligations regarding the

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<sup>8</sup> ~~Note by the Secretariat:~~ The Standard Material Transfer Agreement makes provision for information to be provided to the **Governing Body**, in the following Articles: 5e, 6.4b, 6.5c and 6.11h, as well as in *Annex 2*, paragraph 3, *Annex 3*, paragraph 4, and in *Annex 4*. Such information should be submitted to:

The Secretary   
 International Treaty on Plant Genetic Resources for Food and Agriculture  
 Food and Agriculture Organization of the United Nations   
 I-00153 Rome, Italy

actions of the **subsequent recipient**.

6.5 In the case that the **Recipient** transfers a **Plant Genetic Resources for Food and Agriculture under Development** to another person or entity, the **Recipient** shall:

- a) do so under the terms and conditions of the Standard Material Transfer Agreement, through a new material transfer agreement, provided that Article 5a of the Standard Material Transfer Agreement shall not apply;
- b) identify, in *Annex 1* to the new material transfer agreement, the ~~M~~material received from the **Multilateral System**, and specify that the **Plant Genetic Resources for Food and Agriculture under Development** being transferred are derived from ~~the~~ that Mmaterial;<sup>9</sup>
- c) notify the **Governing Body**, in accordance with Article 5e; and
- d) have no further obligations regarding the actions of any **subsequent recipient**.

6.6 Entering into a material transfer agreement under paragraph 6.5 shall be without prejudice to the right of the parties to attach additional conditions, relating to further product development, including, as appropriate, the payment of monetary consideration.<sup>10</sup>

6.7 In the case that the **Recipient** commercializes a **Product** that is a **Plant Genetic Resource for Food and Agriculture** and that incorporates **Material** as referred to in Article 3 of **this Agreement**, and where such **Product** is not **available without restriction** to others for further research and breeding, the **Recipient** shall pay a fixed percentage of the **Sales** of the **commercialized Product** into the mechanism established by the **Governing Body** for this purpose, in accordance with *Annex 2* to **this Agreement**.

6.8 In the case that the **Recipient** commercializes a **Product** that is a **Plant Genetic Resource for Food and Agriculture** and that incorporates **Material** as referred to in Article 3 of **this Agreement** and where that **Product** is **available without restriction** to others for further research and breeding, the **Recipient** is encouraged to make voluntary payments into the mechanism established by the **Governing Body** for this purpose in accordance with *Annex 2* to **this Agreement**.

6.9 The **Recipient** shall make available to the **Multilateral System**, through the information system provided for in Article 17 of the **Treaty**, all non-confidential information that results from research and development carried out on the **Material**, and is encouraged to share through the **Multilateral System** non-monetary benefits expressly identified in Article 13.2 of the **Treaty** that result from such research and development. After the expiry or abandonment of the protection period of an intellectual property right on a **Product** that incorporates the **Material**, the **Recipient** is encouraged to place a sample of this **Product** into a collection that is part of the **Multilateral System**, for research and breeding.

6.10 A **Recipient** who obtains intellectual property rights on any **Products** developed from the **Material** or its components, obtained from the **Multilateral System**, and assigns such intellectual

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<sup>9</sup> The material referred to here is the material originally received from the **Multilateral System**.

<sup>10</sup> Additional conditions attached to the transfer of **Plant Genetic Resources for Food and Agriculture under Development** should be contained in a separate agreement between the parties to the transfer, instead of in the new material transfer agreement provided for under *Article 6.5a*. The **Provider** is not obliged to transmit such a separate agreement, or information about it, to the **Governing Body**, when reporting in accordance with *Article 6.5*.

property rights to a third party, shall transfer the benefit-sharing obligations of **this Agreement** to that third party.

6.11 The **Recipient** may opt as per *Annex 4*, as an alternative to payments under Article 6.7, for the following system of payments:

- a) The **Recipient** shall make payments at a discounted rate during the period of validity of the option;
- b) The period of validity of the option shall be ten years renewable in accordance with *Annex 3* to **this Agreement**;
- c) The payments shall be based on the **Sales** of any **Products** and of the sales of any other products that are **Plant Genetic Resources for Food and Agriculture** belonging to the same crop, as set out in Annex 1 to the **Treaty**, to which the **Material** referred to in *Annex 1* to **this Agreement** belongs;
- d) The payments to be made are independent of whether or not the **Product** is **available without restriction**;
- e) The rates of payment and other terms and conditions applicable to this option, including the discounted rates are set out in *Annex 3* to **this Agreement**;
- f) The **Recipient** shall be relieved of any obligation to make payments under Article 6.7 of **this Agreement** or any previous or subsequent Standard Material Transfer Agreements entered into in respect of the same crop;
- g) After the end of the period of validity of this option the **Recipient** shall make payments on any **Products** that incorporate **Material** received during the period in which this Article was in force, and where such **Products** are not **available without restriction**. These payments will be calculated at the same rate as in paragraph (a) above;
- h) The **Recipient** shall notify the **Governing Body** that he has opted for this modality of payment. If no notification is provided the alternative modality of payment specified in Article 6.7 will apply.

#### ARTICLE 7 — APPLICABLE LAW

The applicable law shall be General Principles of Law, including the UNIDROIT Principles of International Commercial Contracts 2004, the objectives and the relevant provisions of the **Treaty**, and, when necessary for interpretation, the decisions of the **Governing Body**.

#### ARTICLE 8 — DISPUTE SETTLEMENT

8.1 Dispute settlement may be initiated by the **Provider** or the **Recipient** or ~~(the entity designated by the **Governing Body**)~~ the Food and Agriculture Organization of the United Nations, acting on behalf of the **Governing Body** of the **Treaty** and its **Multilateral System**.

8.2 The parties to **this Agreement** agree that the ~~(the entity designated by the **Governing Body**)~~ Food and Agriculture Organization of the United Nations, representing the **Governing Body** and the **Multilateral System**, has the right, as a third party beneficiary, to initiate dispute settlement procedures regarding rights and obligations of the **Provider** and the **Recipient** under **this Agreement**.

8.3 The third party beneficiary has the right to request that the appropriate information, including samples as necessary, be made available by the **Provider** and the **Recipient**, regarding their obligations in the context of **this Agreement**. Any information or samples so requested shall be provided by the **Provider** and the **Recipient**, as the case may be.

8.4 Any dispute arising from **this Agreement** shall be resolved in the following manner:

- a) Amicable dispute settlement: The parties shall attempt in good faith to resolve the dispute by negotiation.
- b) Mediation: If the dispute is not resolved by negotiation, the parties may choose mediation through a neutral third party mediator, to be mutually agreed.
- c) Arbitration: If the dispute has not been settled by negotiation or mediation, any party may submit the dispute for arbitration under the Arbitration Rules of an international body as agreed by the parties to the dispute. Failing such agreement, the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce, by one or more arbitrators appointed in accordance with the said Rules. Either party to the dispute may, if it so chooses, appoint its arbitrator from such list of experts as the Governing Body may establish for this purpose; both parties, or the arbitrators appointed by them, may agree to appoint a sole arbitrator, or presiding arbitrator as the case may be, from such list of experts. The result of such arbitration shall be binding.

## ARTICLE 9 — ADDITIONAL ITEMS

### Warranty

9.1 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**.

### Duration of Agreement

9.2 **This Agreement** shall remain in force so long as the **Treaty** remains in force.

## ARTICLE 10 — SIGNATURE/ACCEPTANCE

The **Provider** and the **Recipient** may choose the method of acceptance unless either party requires **this Agreement** to be signed.

### Option 1 –Signature\*

I, (*Full Name of Authorized Official*), represent and warrant that I have the authority to execute **this Agreement** on behalf of the **Provider** and acknowledge my institution's responsibility and obligation to abide by the provisions of **this Agreement**, both by letter and in principle, in order to promote the conservation and sustainable use of **Plant Genetic Resources for Food and Agriculture**.

Signature..... Date.....  
Name of the **Provider** .....

I, (*Full Name of Authorized Official*), represent and warrant that I have the authority to execute **this Agreement** on behalf of the **Recipient** and acknowledge my institution's responsibility and obligation to abide by the provisions of **this Agreement**, both by letter and in principle, in order to promote the conservation and sustainable use of **Plant Genetic Resources for Food and Agriculture**.

Signature..... Date.....  
Name of the **Recipient**.....

### Option 2 – Shrink-wrap Standard Material Transfer Agreements\*

The **Material** is provided conditional on acceptance of the terms of **this Agreement**. The provision of the **Material** by the **Provider** and the **Recipient's** acceptance and use of the **Material** constitutes acceptance of the terms of **this Agreement**.

### Option 3 – Click-wrap Standard Material Transfer Agreement\*

- I hereby agree to the above conditions.

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\* Where the **Provider** chooses signature, only the wording in Option 1 will appear in the Standard Material Transfer Agreement. Similarly where the **Provider** chooses either shrink-wrap or click-wrap, only the wording in Option 2 or Option 3, as appropriate, will appear in the Standard Material Transfer Agreement. Where the "click-wrap" form is chosen, the **Material** should also be accompanied by a written copy of the Standard Material Transfer Agreement.



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*Annex 2*

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**RATE AND MODALITIES OF PAYMENT UNDER ARTICLE 6.7 OF THIS AGREEMENT**

1. If a **Recipient**, its affiliates, contractors, licensees, and lessees, **commercializes** a **Product** or **Products**, then the **Recipient** shall pay one point-one percent (1.1 %) of the **Sales** of the **Product** or **Products** less thirty percent (30%); except that no payment shall be due on any **Product** or **Products** that:

(a) are **available without restriction** to others for further research and breeding in accordance with Article 2 of **this Agreement**;

(b) have been purchased or otherwise obtained from another person or entity who either has already made payment on the **Product** or **Products** or is exempt from the obligation to make payment pursuant to subparagraph (a) above;

(c) are sold or traded as a commodity.

2. Where a **Product** contains a **Plant Genetic Resources for Food and Agriculture** accessed from the **Multilateral System** under two or more material transfer agreements based on the Standard Material Transfer Agreement only one payment shall be required under paragraph 1 above.

3. The **Recipient** shall submit to the **Governing Body**, within sixty (60) days after each calendar year ending December 31st, an annual report setting forth:

(a) the **Sales** of the **Product** or **Products** by the **Recipient**, its affiliates, contractors, licensees and lessees, for the twelve (12) month period ending on December 31<sup>st</sup>;

(b) the amount of the payment due;

(c) the material received from the **Multilateral System**, from which the **Product** or **Products** were derived; and

(ed) information that allows for the identification of any restrictions that have given rise to the benefit-sharing payment.

4. Payment shall be due and payable upon submission of each annual report. All payments due to the **Governing Body** shall be payable in *United States dollars (US\$)*<sup>11</sup> for the following account established by the **Governing Body** in accordance with Article 19.3f of the **Treaty**:

FAO Trust Fund (USD) GINC/INT/031/MUL,  
IT-PGRFA (Benefit-sharing),  
HSBC New York, 452 Fifth Ave., New York, NY, USA, 10018,  
Swift/BIC: MRMDUS33, ABA/Bank Code: 021001088,  
Account No. 000156426<sup>12</sup>

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<sup>11</sup> *Note by the Secretariat:* The **Governing Body** has not yet considered the question of currency of payment. Until it does so, Standard Material Transfer Agreements should specify United States dollars (US\$).

<sup>12</sup> *Note by the Secretariat:* This is the Trust Account provided for in Article 6.3 of the Financial Rules, as approved by the **Governing Body** at its First Session (*Appendix E* to IT/GB-1/06/Report).

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*Annex 3*

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**TERMS AND CONDITIONS OF THE ALTERNATIVE PAYMENTS SCHEME UNDER  
ARTICLE 6.11 OF THIS AGREEMENT**

1. The discounted rate for payments made under Article 6.11 shall be zero point five percent (0.5 %) of the **Sales** of any **Products** and of the sales of any other products that are **Plant Genetic Resources for Food and Agriculture** belonging to the same crop, as set out in Annex 1 to the **Treaty**, to which the **Material** referred to in *Annex 1* to **this Agreement** belong.
2. Payment shall be made in accordance with ~~the banking instructions set out in paragraphs 3a, 3b and 4 of Annex 2 to this Agreement, provided that paragraphs 3a, 3b and 4 of Annex 2 shall apply to the Sales of any Products and to the sales of any other products that are Plant Genetic Resources for Food and Agriculture of the crop or crops for which the Recipient has opted for the alternative payments scheme.~~
3. When the **Recipient** transfers **Plant Genetic Resources for Food and Agriculture under Development**, the transfer shall be made on the condition that the **subsequent recipient** shall pay into the mechanism established by the **Governing Body** under Article 19.3f of the **Treaty** zero point five percent (0.5 %) of the **Sales** of any **Product** derived from such **Plant Genetic Resources for Food and Agriculture under Development**, whether the **Product** is **available or not without restriction**.
4. At least six months before the expiry of a period of ten years counted from the date of signature of **this Agreement** and, thereafter, six months before the expiry of subsequent periods of five years, the **Recipient** may notify the **Governing Body** of his decision to opt out from the application of this Article as of the end of any of those periods. In the case the **Recipient** has entered into other Standard Material Transfer Agreements, the ten years period will commence on the date of signature of the first Standard Material Transfer Agreement where an option for this Article has been made.
5. Where the **Recipient** has entered or enters in the future into other Standard Material Transfer Agreements in relation to material belonging to the same crop[s], the **Recipient** shall only pay into the referred mechanism the percentage of sales as determined in accordance with this Article or the same Article of any other Standard Material Transfer Agreement. No cumulative payments will be required.

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*Annex 4*

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**OPTION FOR CROP-BASED PAYMENTS UNDER THE ALTERNATIVE PAYMENTS  
SCHEME UNDER ARTICLE 6.11 OF THIS AGREEMENT**

I (full name of **Recipient** or **Recipient's authorised official**) declare to opt for payment in accordance with Article 6.11 of **this Agreement**, for the following crop or crops:

.....

Signature.....

Date.....<sup>13</sup>

**Address of Recipient:**

.....  
.....  
.....  
.....

**Name and Address of Provider:**

.....  
.....  
.....  
.....

**Provider's Standard Material Transfer**

**Agreement identifying symbol or number:**

.....

**Date of the Standard Material Transfer Agreement.**

.....

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<sup>13</sup> In accordance with Article 6.11h of the Standard Material Transfer Agreement, the option for this modality of payment will become operative only once notification has been provided by the **Recipient** to the **Governing Body**. The signed declaration opting for this modality of payment must be sent by the **Recipient** to the **Governing Body** at the following address, whichever method of acceptance of **this Agreement** (signature, shrink-wrap or click-wrap) has been chosen by the parties to **this Agreement**, and whether or not the **Recipient** has already indicated his acceptance of this option in accepting **this Agreement** itself:

The Secretary,  
International Treaty on Plant Genetic Resources for Food and Agriculture  
Food and Agriculture Organization of the United Nations  
I-00153 Rome, Italy.

The signed declaration must be accompanied by the following:

- The date on which **this Agreement** was entered into;
- The name and address of the **Recipient** and of the **Provider**;
- A copy of *Annex 1* to **this Agreement**.

Once notification has been provided by the **Recipient** to the **Governing Body** for one or more crops, the payment rate of alternative payments scheme is operative for any subsequent Standard Material Transfer Agreement entered into in respect of the same crop or crops, for the period of specified in *Article 6.11b*. During this period, no further notification in respect of this crop or these crops is required.

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**Report Appendix 5**

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**TRANSFER OF PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE  
UNDER DEVELOPMENT, TO WHICH THE ALTERNATIVE PAYMENTS SCHEME  
UNDER ARTICLE 6.11 APPLIES**

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Whereas, I (*name and address of the provider or providing institution, name of authorized official, contact information for authorized official*),

Am transferring to you (*name and address of the recipient or recipient institution, name of authorized official, contact information for authorized official*),

Plant Genetic Resources for Food and Agriculture under Development identified in *Annex 1* of the Standard Material Transfer Agreement between us, (*insert the identifying symbol or number attributed to the Standard Material Transfer Agreement by the Provider*), dated (*insert date*);

Whereas, I have opted for the alternative payments scheme provided for in Article 6.11 of the Standard Material Transfer Agreement;

Paragraph 3 of *Annex 3* to the Standard Material Transfer Agreement requires that you shall pay zero point five percent (0.5 %) of the Sales of any **Product** derived from these **Plant Genetic Resources for Food and Agriculture under Development**, whether the **Product** is available or not without restriction, in accordance with the banking instructions set out in paragraph 4 of *Annex 2* to the Standard Material Transfer Agreement.

In the event that you transfer these **Plant Genetic Resources for Food and Agriculture under Development**, or **Plant Genetic Resources for Food and Agriculture under Development** derived from them, to a **subsequent recipient**, you are required to do so under the exact same terms as in this Agreement, and under a Standard Material Transfer Agreement.

This transfer of **Plant Genetic Resources for Food and Agriculture under Development** is conditional on your accepting these conditions by signing and returning this Agreement to:

The Secretary,  
International Treaty on Plant Genetic Resources for Food and Agriculture  
Food and Agriculture Organization of the United Nations  
I-00153 Rome, Italy

Signed: .....

Date: .....

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**Report Appendix 6**

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**The practical and legal implications for natural and legal persons putting material into the multilateral system**

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- 1 What exactly is meant by “putting material” 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, on request, 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.
  - A natural or legal person may also very easily and effectively put material into the Multilateral System by providing it to an institution that already has an obligation to make materials it holds available under the Multilateral System, such as a national genebank in a Contracting Party, or an International Institution that has concluded an agreement with the Treaty to do so.
- 2 Can the person putting material into the Multilateral System continue to use it, without being bound by the conditions of the SMTA?**
  - Undertaking to make samples of material available under the Multilateral System, providing them under an SMTA, or giving a sample or samples to an institution that has undertaken to make material available under the Multilateral System, in no way limits a natural or legal person’s normal freedom to operate with the rest of that material.
  - If a natural or legal person who has provided material under an SMTA has, for example, lost the original material, he may request a sample of that material from the person to whom it was provided, and receive it back without an SMTA being used.
- 3 Must a person undertaking to make material available under 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, because that person is not bound by the conditions of an SMTA for this material.
- 4 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 the notification of making them available) to:
    - provide a sample of these resources to any person requesting them under the Multilateral System, through an SMTA,
    - include all available passport data and any other associated available non-confidential descriptive information, and
    - provide the sample free of charge, or at a minimal cost.

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

**5 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.

**6 May materials of crops be provided under an SMTA?**

- The Treaty provides that only crops in *Annex I* to the Treaty are in the Multilateral System. Nothing, however, prevents non-*Annex I* materials to be provided under the same terms and conditions as *Annex I* crops, through use of the SMTA, as a number of Contracting Parties and International Institutions are doing.

**7 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 is therefore in the Multilateral System), not to material held by a breeder that has not been received under an SMTA, and which is still in a development stage.

**8 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, in response to a request under the Multilateral System, an SMTA should be used.
- Transfers to commercial partners and affiliates (different legal persons) as part of normal business practice may be made without the use of an SMTA.

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

- The basic principles of the Treaty requires that all persons under the jurisdiction of a Contracting Party who request a sample of material under the Multilateral System should be treated equally, and not discriminated against.

**10 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.

**11 Can a person under the jurisdiction of a state that is not a Contracting Party to the Treaty put material into the Multilateral System?**

- Nothing in the Treaty or the SMTA prevents it, though the national legislation of a State that is not a Contracting Party to the Treaty may do so.

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

- Yes, provided that the basic principle 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 would need to be waived, for the material to be transferred under an SMTA.

**13 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.
  - 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:
        - 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.
- If the Provider chooses Option B, there is a legal obligation to keep the relevant information safe and unaltered. Under both options, where there is a physically signed SMTA, the signed document should be kept.
- If a natural or legal person has given a sample to an institution that has already undertaken to hold material within the Multilateral System, that institution is responsible for reporting on any SMTA under which it makes this material available.

**14 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.”

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

- No.

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

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

**17 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 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 the SMTA. There is, however, no obligation on a Provider of a material under the Multilateral System to maintain samples of materials provided.

**18 If a legal person is wound up, sold, or subdivided, are obligations transferred?**

- If a legal person 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 legal person 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 a legal person is subdivided, provision should be made for any relevant records relating to SMTAs issued, and any remaining reporting obligations, to be transferred to one of the successor entities.

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**Report Appendix 7**

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**Transfer and use of plant genetic resources for food and agriculture under the SMTA – transfer to farmers for direct use for cultivation****Opinion**

Note for Guidance to CG Centers and other International Institutions that have signed agreements with the Governing Body under Article 15 of the International Treaty (hereinafter referred to as “Centers”) on making available plant genetic resources for food and agriculture for direct use for cultivation.

1. Centers have the right to make improved material they have developed from plant genetic resources for food and agriculture acquired from the Multilateral System available to farmers for direct use.
2. Centers may make plant genetic resources for food and agriculture in their collections available to farmers for direct use for cultivation where those plant genetic resources for food and agriculture were held in trust.
3. Plant genetic resources for food and agriculture received under the SMTA can be made available to farmers as unimproved material for direct use for cultivation only if there is a separate express permission from the provider allowing for such distribution.
4. No such permission would be required where germplasm is being restored to farmers that originally provided it.
5. Plant genetic resources for food and agriculture distributed to farmers for direct use for cultivation should not be transferred with the SMTA. They should be transferred with a statement that the material can be used directly for cultivation. The following is a suggested wording for the statement:  
  
“This material can be used by the recipient directly for cultivation, and can be passed on to others for direct cultivation.”
6. Where plant genetic resources for food and agriculture are transferred for both research and breeding and for direct use for cultivation, or where it is unclear whether the transfer is for one or the other purposes, then both the SMTA and the statement giving express permission for direct use for cultivation should be used, except in cases where the germplasm is being restored.

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**Report Appendix 8**


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**DRAFT BUSINESS PLAN OF THE GOVERNING BODY**

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**Target 1: Operating and Developing the Multilateral System**
**2.1.1 Background**

The Multilateral System of Access and Benefit-sharing (MLS) is one of the cornerstones of the Treaty and its most innovative mechanism. Its implementation means no less than establishing a new global system of access and benefit-sharing (ABS) and making it work on a daily basis down to the level of individual genetic resource-transfers and the transfer of individual monetary and other benefits. The Treaty's comparative advantage is that the MLS is at present the only fully functional international ABS system and is being referenced as a possible model by international organizations, processes and fora across the United Nations (including the CBD, UNCLOS and WHO) and the private and public sectors.

**2.1.2 Relevant Articles**

*Article 10,* Multilateral System of Access and Benefit-sharing;

*Article 11,* Coverage of the Multilateral System;

*Article 12,* Facilitated access to plant genetic resources for food and agriculture within the Multilateral System;

*Article 13,* Benefit-sharing in the Multilateral System;

*Article 15,* Ex Situ Collections of Plant Genetic Resources for Food and Agriculture held by the International Agricultural Research Centres of the Consultative Group on International Agricultural Research and other International Institutions, and

*Article 16,* International Plant Genetic Resources Networks.

**2.1.3 Goals**

Goal 1: Completing the establishment of the core systems and processes of the Multilateral System

Goal 2: Generating policy support and further guidance on the development of the Multilateral System

Goal 3: Monitoring the operations of the Multilateral System

**Goal 1: Completing the Establishment of the Core Systems and Processes of the Multilateral System**
***a) Identification, Inclusion of, and facilitation of access to Material in the Multilateral System, including through the development of relevant information technology tools***

The availability of plant genetic resources for facilitated access is the foundation of the Multilateral System. The question of what material is included in the Multilateral System is addressed in Article 11 of the Treaty, 'Coverage of the Multilateral System'. Article 11.2 of the Treaty provides 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. With a view to achieving the fullest possible coverage of the Multilateral System, the Contracting Parties invite all other holders of the plant genetic resources for food and agriculture listed in Annex I to include these plant genetic resources for food and agriculture in the Multilateral System.*

By Article 11.3 of the Treaty, Contracting Parties

*agree to take appropriate measures to encourage natural and legal persons within their jurisdictions who hold plant genetic resources for food and agriculture listed in Annex I to include such plant genetic resources for food and agriculture in the Multilateral System.*

By a Circular State Letter of 3 November 2006, the Interim Secretary requested Contracting Parties to provide:

*Information on all plant genetic resources for food and agriculture made available [...] includ[ing] by natural and legal persons within their jurisdictions.*

In the first five years of the existence of the Treaty, only a limited number of Contracting Parties have provided information regarding the collections that are available through the Multilateral System. Less information is available regarding measures taken to encourage the inclusion of material by natural and legal persons, with the notable exception of material held by the international centres of the Consultative Group on International Agricultural Research and provided for in Article 15. Moreover, in official communications and through informal contacts, a number of Contracting Parties, including both developing and developed countries, have brought to the notice of the Secretary a variety of difficulties they are facing in interpreting the relevant provisions of the Treaty, and a number of them have asked for advice and assistance, which, as far as possible, the Secretary has provided, on an *ad hoc* basis.

The Governing Body and the Secretary will, therefore, continue to encourage Contracting Parties to provide information on material that is available through the Multilateral System and regarding measures that they have taken to encourage legal and natural persons holding material to include that material in the Multilateral System. This information will then be made publicly available, primarily through the Treaty's website, as a key element in providing facilitated access to plant genetic resources for food and agriculture through the Multilateral System.

- *References*

- ❖ Report of the Second Session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (IT/GB-2/07/Report).
- ❖ Assessment of Progress in the Inclusion in the Multilateral System of Plant Genetic Resources for Food and Agriculture held by Natural or Legal Persons (IT/GB-3/09/12).
- ❖ Review of the Implementation of the Multilateral System (IT/GB-3/09/13).
- ❖ ...

- *Priority Objectives*

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- ❖ **Review the level of information**, including both notifications of material available by **Contracting Parties** and submissions of material by **natural and legal persons**. At the opening of this planning period the level of information received and the frequency at which such information is received, are relatively low. This limits the operation of the Multilateral System.

- ❖ Review the submission of collections held by natural or legal persons and determine action to facilitate these submissions. The Treaty provides for a **review of the submission of collections held by natural or legal persons** and it is projected that periodic reviews will be needed on a continuing basis.
  - ❖ Review the status of the Multilateral System with respect to ***in situ* material**, in the light of the provisions of *Article 12.3h* of the Treaty. This exercise is to understand and promote the linkages between the operation of the Multilateral System and PGRFA found in *in situ* conditions. The exercise may also feed into a process for the elaboration of standards by the Governing Body under *Article 12.3h* of the Treaty. The exercise shall be carried out through a participatory process involving a wide and representative range of stakeholders as appropriate and under the guidance of the Governing Body.
  - ❖ **Publicity on need to provide and update information on material available** under the Multilateral System, including in *in situ* conditions. It appears that many holders of material are not aware of the need to provide information regarding the availability of that material through the Multilateral System. Similarly, information that has been submitted may need to be periodically updated, as collections of material are rarely static.
  - ❖ **Liaison with holders of plant genetic resources for food and agriculture** as an active follow up to more passive publicity approaches. This will target holders of significant collections or those that are considered otherwise strategically significant as a priority.
  - ❖ **Further development and deployment of information technology systems to support the implementation of the Multilateral System**, *inter alia*, to assist users of the Multilateral System to fulfil their obligations; to facilitate identification, inclusion of and access to material; to provide practical support to the user of the Standard Material Transfer Agreement; and, in general, to bring the Multilateral System into full and effective operation.
- *Partnerships and Responsibilities*

**The Governing Body** will periodically review the information provided to the Secretary to determine what action, if any, is needed to further encourage Contracting Parties to act. As required by Article 11.4, **the Governing Body** will also periodically review the situation regarding the submission of collections held by natural or legal persons and determine any action that may be necessary to facilitate these submissions. **The Secretary** will publicise the need for, and means to, the provision of information on material available under the Multilateral System and maintain and regularly update the availability of this information online. **The Secretary** will liaise with **plant genetic resources networks, private sector actors, non-governmental organisations and other actors that may hold plant genetic resources for food and agriculture** that might be included in the Multilateral System. **The Secretary** will also act on any decisions that the Governing Body may make in this area. Information systems will be developed in close cooperation with international, regional and national institutions managing collections, and maintaining and publishing data.

- *Resources*

The principal resource required for this activity is staff time, with USD\_\_\_\_\_ being required to collate information received from Contracting Parties and to make this information available online, for the development of the relevant information technology systems that provide support to users of the Multilateral System. Staff time will also be required for the preparation of periodic communications to Contracting Parties and for liaison with partners. It is expected that these demands on staff time will be relatively consistent throughout the planning period. It is not

currently projected that future decisions by the Governing Body in this area will require more substantial resources than are planned for here.

Estimated overall resource requirements for the planning period: USD \_\_\_\_\_

- *Outcomes*

By the close of the current planning period, information regarding the material available under the Multilateral System from a majority of the Treaty's Contracting Parties should be available through the Treaty website. Information should also be available regarding material available from a range of natural and legal persons holding material in the jurisdictions of diverse Contracting Parties or non-Contracting Parties. The information technology systems that will facilitate SMTA operations, including in support of the operations of the Third Party Beneficiary should also be completed and deployed.

***b) Frameworks for the Promotion of Benefit-sharing***

Benefit sharing is the second of the two pillars of the Multilateral System and comes in a range of forms that are provided for in Article 13 of the Treaty. Article 13.2 provides that

*The Contracting Parties agree that benefits arising from the use, including commercial, of plant genetic resources for food and agriculture under the Multilateral System shall be shared fairly and equitably through the following mechanisms: the exchange of information, access to and transfer of technology, capacity-building, and the sharing of the benefits arising from commercialization, taking into account the priority activity areas in the rolling Global Plan of Action, under the guidance of the Governing Body.*

Paragraphs a, b and c of Article 13.2 contain provisions for the realization of non-financial benefit-sharing, including that information will be exchanged through the information system provided for in Article 17 of the Treaty. These paragraphs are supplemented by the contractual obligations of Article 6.9 of the Standard Material Transfer Agreement:

*The Recipient shall make available to the Multilateral System, through the information system provided for in Article 17 of the Treaty, all non-confidential information that results from research and development carried out on the Material, and is encouraged to share through the Multilateral System non-monetary benefits expressly identified in Article 13.2 of the Treaty that result from such research and development. After the expiry or abandonment of the protection period of an intellectual property right on a Product that incorporates the Material, the Recipient is encouraged to place a sample of this Product into a collection that is part of the Multilateral System, for research and breeding.*

Article 13.2d(i) provides that:

*The Contracting Parties agree, under the Multilateral System, to take measures in order to achieve commercial benefit-sharing, through the involvement of the private and public sectors in activities identified under this Article, through partnerships and collaboration, including with the private sector in developing countries and countries with economies in transition, in research and technology development.*

Article 13.2d(ii) of the Treaty makes provision for voluntary and mandatory monetary benefit-sharing relating to commercialization.

Article 13.6 provides that:

*The Contracting Parties shall consider modalities of a strategy of voluntary benefit-sharing contributions whereby Food Processing Industries that benefit from plant genetic resources for food and agriculture shall contribute to the Multilateral System.*

The different forms of benefit-sharing mechanisms require different approaches and support, although they are all exclusively the concern of Contracting Parties and the parties to individual standard material transfer agreements. Given the Governing Body's oversight role, information on all forms of benefit-sharing activity is a necessity, while this same information may also provide users of the Multilateral System with a resource on options for the development of future benefit-sharing related activities. The need for any activities relating to food processing industries remains to be determined by the Governing Body.

Benefit sharing under the Treaty is, at the opening of this planning period, in its infancy with relatively few arrangements that the Secretariat and Governing Body are formally aware of. As a result, emphasis will be placed on coordination and information sharing to facilitate review by the Governing Body as well as to assist Contracting Parties and natural and legal persons in developing benefit-sharing relationships. Activities relating to financial benefit-sharing are considered in target 2 within the scope of the funding strategy.

- *References*

- ❖ Report of the First Session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (IT/GB-1/06/Report).
- ❖ Report of the Second Session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (IT/GB-2/07/Report).
- ❖ Review of the Implementation of the Multilateral System (IT/GB-3/09/13).
- ❖ Review of the Implementation and Operation of the Standard Material Transfer Agreement (IT/GB-3/09/14).
- ❖ ...

- *Priority Objectives*

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- ❖ Benefit-sharing in the Multilateral System includes both **non-commercial and commercial benefit-sharing mechanisms** and equal attention should be given to implementing all these mechanisms. While the SMTA provisions operationalize two options for **commercial benefit-sharing**, much **additional work will be required to implement the non-commercial benefit-sharing mechanisms**, namely **exchange of information, technology transfer and capacity building** for plant genetic resources for food and agriculture. The implementation of these mechanisms will have to begin with exploratory information gathering and **conceptual groundwork**. It may then move towards the identification of options and **practical implementation** of the mechanisms.
- ❖ **Review progress in benefit-sharing arrangements.** The Treaty is the first international legal instrument to make benefit-sharing fully and practically operational worldwide through its four benefit-sharing mechanisms. It is thus at the forefront of benefit-sharing for plant genetic resources. Given the newness of the mechanisms, the Governing Body has requested the Secretary to **review the operation of the benefit-sharing arrangements** and this review will require an extensive information gathering and analytical exercise, in order to provide the relevant information and analysis to the Governing Body. **Based on this progress review the Governing Body will be able to take further policy decisions** and other relevant organizations may model their benefit-sharing mechanisms on the experiences of the Treaty.
- ❖ **Review of the modalities of benefit-sharing.** The Treaty foresees that at certain points in time, the Governing Body will review the modalities of benefit-sharing such as levels of

payment in commercial benefit-sharing and whether the mandatory payment requirement shall apply also in cases where such commercialized products are available without restriction to others for further research and breeding. The Governing Body might undertake such reviews in due course during the planning period or beyond, which, if it was to be undertaken, would require **preparatory research, analysis and information gathering**.

- *Partnerships and Responsibilities*

**The Secretary** with the assistance of **Contracting Parties** and **other users of the Multilateral System** will gather information on non-commercial benefit sharing and develop recommendations for conceptual frameworks for the exchange of information, technology transfer and capacity building. As conceptual frameworks are established, **the Secretary**, with the advice of **consultants and specialised institutions**, will develop draft recommendations of options to implement the conceptual frameworks. **The Secretary** will review the operation of the benefit sharing arrangements under the Treaty and report to the Governing Body. **The Secretary** will, as necessary, convene workshops and consultation meetings for the purposes of information gathering and obtaining the input of stakeholders. **The Governing Body** will consider the review provided by the Secretary and make appropriate policy decisions. **The Secretary** will undertake preparatory research, analysis and information gathering on the specific modalities of benefit sharing, such as the levels of payment in commercial benefit sharing and the applicability of mandatory payments. **The Governing Body** will periodically review the specific modalities of benefit sharing and make such decisions as it may deem appropriate.

- *Resources*

Resources in the form of staff time will be required to conduct the extensive exploratory exercises and subsequent implementation work to make the non-commercial benefit-sharing options functional. Consultants and expertise of specialized institutions will be required to develop options and strategies to put these mechanisms into practice. Additional resources will be required to hold exploratory workshops and consultation meetings in the early part of the planning period. In the latter part of the planning period, resources required might include funds needed for the establishment of relevant infrastructure and the establishment of operational partnerships.

Estimated overall resource requirements for the planning period: USD\_\_\_\_\_

- *Outcomes*

At the end of the planning period a clear understanding should exist of how all four benefit-sharing mechanisms can be made functional and initial, perhaps purely exploratory, progress should have been made towards the implementation of each one.

***c) Framework for the Operations of the Third Party Beneficiary***

The Standard Material Transfer Agreement makes provision for a Third Party Beneficiary,

*representing the Governing Body and the Multilateral System, [who] has the right [...] to initiate dispute settlement procedures regarding rights and obligations of the Provider and the Recipient under [the Standard Material Transfer Agreement].*

In Resolution 2/2006, the Governing Body invited FAO,

*as the Third Party Beneficiary, to carry out the roles and responsibilities as identified and prescribed in the Standard Material Transfer Agreement, under the direction of the*

*Governing Body, in accordance with the procedures to be established by the Governing Body [...].*

At its Second Session, the Governing Body established an *Ad Hoc* Third Party Beneficiary Committee to prepare draft Third Party Beneficiary Procedures for its consideration.

The establishment of the procedures for the Third Party Beneficiary concluded the basic foundational tasks in this area. However, at the opening of this planning period, it remains necessary to develop operational guidelines for the commencement and management of amicable dispute resolution and mediation proceedings under the Third Party Beneficiary Procedures in order to promote the effective functioning of the Third Party Beneficiary, which shall include appropriate cost containment measures. This will require the continuation, or re-convening, of the *Ad Hoc* committee already established by the Governing Body. It is projected that this process should be completed by the mid point of the planning period, allowing the Third Party Beneficiary to then focus its attention on the practical implementation of these procedures and operational guidelines, in particular as they relate to the movement and effective maintenance of information.

- *References*

- ❖ Report of the Second Session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (IT/GB-2/07/Report).
- ❖ Review of the Implementation of the Multilateral System (IT/GB-3/09/13).
- ❖ Report of the Chair of the Third Party Beneficiary Committee (IT/GB-3/09/11).

- *Priority Objectives*

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- ❖ **Development of draft Operational Guidelines** to supplement the Third Party Beneficiary Procedures, particularly in the area of alternative dispute resolution. This will **reduce the costs** of dispute resolution and provide a high degree of transparency and predictability, which will promote the objective of **resolving disputes at the most consensual level** possible as a means of increasing efficiency, encouraging collaboration.
- ❖ **Review of draft Operational Guidelines** to ensure that they consider diverse viewpoints and fully reflect the role and mandate of the Third Party Beneficiary in furthering the objectives of the Treaty.
- ❖ **Provision of information for use by the Third Party Beneficiary.** Effective dispute resolution is highly dependent on the availability of information and the more that this information can be available to the Third Party Beneficiary, the more **cost-effective and efficient** the dispute resolution process is likely to be. Ensuring that, when requested, the **confidentiality of sensitive information is guaranteed** is also of utmost importance as a measure that promotes confidence in the System.
- ❖ **Review of the operations of the Third Party Beneficiary.** The Third Party Beneficiary acts on behalf of the Governing Body and the Treaty due to practical reasons such as efficiency and its possession of legal personality. In order to ensure confidence in the System and good governance, it is imperative that the **Governing Body periodically review the operations of the Third Party Beneficiary** to ensure that they contribute to fulfilling the objectives of the Treaty and the relevant decisions of the Governing Body.

- *Partnerships and Responsibilities*

**The Governing Body** will continue or re-convene its *Ad Hoc Committee* to develop the Operational Guidelines for the Third Party Beneficiary. The **Secretary** will continue to provide administrative support and research to the development of the Operational Guidelines of the Third Party Beneficiary, in particular preparing a draft of the operational guidelines for the consideration of the *Ad Hoc Committee*. **The World Intellectual Property Organization's Mediation and Arbitration Centre** and other relevant international organizations will be asked to provide technical support in the preparation of the operational guidelines.

Once the Operational Guidelines have been established, **the Governing Body**, supported by **the Secretary**, will collate and maintain information required by the **Third Party Beneficiary** and submitted by the parties to standard material transfer agreements as required for cost-effective and efficient Third Party Beneficiary operations. **The Governing Body** will review the operations of the Third Party Beneficiary to ensure that the established procedures are effective in meeting the Governing Body's policy objectives.

- *Resources*

The existing *ad hoc* subsidiary body of the Governing Body will need to meet regularly during the early stages of the planning period to be able to effectively establish the Operational Guidelines and these meetings will need to be planned so as to allow effective reporting back to the Governing Body. The number of participants involved in the subsidiary body are expected to be relatively modest but the resources required for their participation will need to be supplemented by staff time and additional resources, particularly funds for specialized consultants, to allow the Secretary to effectively support the process.

It is not projected that more than minimal staff time will be needed to maintain the Third Party Beneficiary function once the Operational Guidelines have been formally agreed, although some additional research and administrative support might be required in the event of a dispute. Financial resources will be needed to establish the operating reserve for the Third Party Beneficiary and, depending upon events, perhaps to periodically replenish this reserve.

Estimated overall resource requirements for the planning period: USD \_\_\_\_\_

- *Outcomes*

By the close of the planning period the procedures of the Third Party Beneficiary and their application, including the necessary collection and maintenance of information, should be implemented in a routine manner.

## **Goal 2: Generating Policy Support and Further Guidance on the Development of the Multilateral System**

Article 19.3 provides that a function of the Governing Body is to "provide policy direction and guidance [...] in particular for the operation of the Multilateral System". It should be noted that, in addition to Contracting Parties, a number of potential Providers and Recipients have also brought to the attention of the Secretary various legal and technical questions regarding the international application of the Standard Material Transfer Agreement and the implications for the rights and obligations deriving from the answers to these questions. This has highlighted that the Governing Body's guidance will be central in ensuring coherence in the Multilateral System.

In the early stages of the operation of the Multilateral System, which will occur during this planning period, the focus of the Governing Body is expected to be on two main forms of policy guidance. The first is a general form that will develop guidelines for providers and

recipients of material under the Multilateral System and seek to compile experiences in the System's operation that can be shared among all users. In contrast, the second form of policy guidance by the Governing Body is expected to focus on detailed substantive questions regarding the operation, coverage and evolution of the System that will respond directly to queries raised by users.

### 10. References

7. Resolution 2/2006; the Standard Material Transfer Agreement
8. Review of the Implementation and Operation of the Standard Material Transfer Agreement (IT/GB-3/09/14).

### 11. Priority Objectives

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- ❖ **Reconvene the *Ad Hoc* Technical Committee on the Standard Material Transfer Agreement and the Multilateral System** to, *inter alia*, continue to consider issues raised by Contracting Parties and other users of the Multilateral System and continue to advise the Secretary on them. By the opening of this planning period, a number of questions and issues that cannot be easily addressed have continued to be raised. In order to ensure that these questions are addressed in a manner which combines cost-effectiveness and operational efficiency with legal certainty and the development of policy with transparency and multilateral governance, it is desirable and valuable for the overall effective implementation of the MLS, for the Committee to again be convened in the forthcoming biennium, to advise the Secretary regarding the many matters that arise in this stage of the early development of the MLS..
- ❖ **Document practices and procedures used to address problems** in the implementation of the Multilateral System. There are likely to be a range of challenges that arise in the implementation of the Multilateral System but that it is not necessary to forward to the level of the *Ad Hoc* Technical Committee. **Case studies of how Contracting Parties address such challenges** in a manner that furthers the objectives of the Treaty will assist other Contracting Parties in developing their own approaches and will also contribute to promoting harmony across the Multilateral System.
- ❖ **Conduct and complete the reviews and assessments and take the decisions on the operation of the Multilateral System** required by Articles 11.4 and 13.2d of Treaty. A number of reviews are foreseen by the Treaty, when the Governing Body so decides: following an assessment of the progress in the inclusion of plant genetic resources by natural and legal persons, a decision in accordance with Article 11.4 on whether access shall continue to be facilitated to those natural and legal persons; under Article 13.2d a review of the levels of payment, with a view to achieving fair and equitable sharing of benefits, and a decision on whether the mandatory payment requirement in the MTA shall apply also where commercialized products are available to others for further research and breeding. Preparatory work will be carried out inter-sessionally for the reviews, assessments and decisions to be undertaken by the Governing Body.
- ❖ **Develop a handbook to the implementation of the Multilateral System.** As a body of knowledge is developed regarding the types of challenges that occur in the implementation of the Multilateral System is developed, this body of knowledge can be categorised and compiled in a manner that provides an in-depth reference for implementing authorities, users of the Multilateral System, and other stakeholders.
- ❖ **Develop Provider and Recipient Procedures for the Multilateral System.** As the body of knowledge regarding the types and specifics of challenges that occur in the

implementation of the Multilateral System is gradually validated through continued experience, it may be possible to **loosely codify this knowledge and these experiences into summary procedures** that can be used as ready guides for providers and recipients using the Multilateral System. These procedures may also be useful to implementing authorities to inform their policy and regulatory development processes.

- ❖ **Conduct stakeholder consultations**, particularly in developing countries. As information regarding practices and procedures for the implementation of the Multilateral System and **guidelines for users** become available and materials based on that information are developed, it will be useful to broaden **consultations among relevant stakeholders** to ensure that the information and materials are of optimum relevance to all of their primary audiences.
  - ❖ **Capacity-building and awareness-raising** will be required to ensure that those with limited access to information or other constraints are able to access the information generated and materials developed to the maximum extent possible. This will serve the objectives of the Treaty by **promoting informed access to the Multilateral System and by broadening active participation** in the System.
- *Partnerships and Responsibilities*

**The Governing Body** will reconvene an *Ad Hoc* Technical Committee on the Standard Material Transfer Agreement and the Multilateral System. **Contracting Parties** will provide the Secretary with information on actual practices and procedures used to address problems and find solutions in the implementation of the Multilateral System. **The Secretary** will compile and forward relevant queries regarding the implementation of the Multilateral System to the ***Ad Hoc* Technical Advisory Committee on the Standard Material Transfer Agreement and the Multilateral System** for its consideration. **The Secretary** will use the information provided by Contracting Parties, supplemented by other sources of information, such as the deliberations of the ***Ad Hoc* Technical Advisory Committee on the Standard Material Transfer Agreement and the Multilateral System**, on national practices and procedures as necessary, to prepare a draft handbook to the implementation of the Multilateral System.

The ***Ad Hoc* Technical Advisory Committee on the Standard Material Transfer Agreement and the Multilateral System** will review the draft handbook and forward it to **the Governing Body** for its consideration. **The Secretary** will use the handbook to develop Provider and Recipient Procedures for the Multilateral System. The ***Ad Hoc* Technical Committee on the Standard Material Transfer Agreement and the Multilateral System** will review the draft Provider and Recipient Procedures for the Multilateral System and forward them to **the Governing Body** for its consideration. **The Secretary** will collaborate with **relevant individuals and organizations**, particularly **national focal points, farmers' organizations and national and international research centres**, to conduct stakeholder consultations and undertake capacity building and awareness raising activities regarding the handbook and the Provide and Recipient Procedures.

- *Resources*

Significant staff time and additional funds will be required for the collation, synthesis and supplementing of information provided on practices and procedures. The *Ad Hoc* Technical

Committee on the Standard Material Transfer Agreement and the Multilateral System will require funds and legal and administrative support for its meetings, which are likely to be several given the diverse tasks to be placed before the Committee. The guide and the Provider and Recipient Procedures will require significant amounts of staff time and funds to support research, legal drafting and consultation activities, as well as needing funds for publication and dissemination

activities. Stakeholder consultations, capacity building and awareness raising activities will all depend upon the availability of staff time and funds for each individual activity.

Estimated overall resource requirements for the planning period: USD \_\_\_\_\_

- *Outcomes*

The ready availability of accurate information and legal assistance that promote harmonised approaches to the implementation of the Multilateral System and create transparency, certainty and predictability for users.

### **Goal 3: Monitoring the Operations of the Multilateral System**

Article 19.3(a) provides that the first function of the Governing Body is “to monitor ... the operation of the Multilateral System”. Monitoring is a major exercise, particularly because, at the start of the planning period, what is happening in the System is not known in transparent, reliable and empirically verified terms. Information is very limited on all key aspects of the Multilateral System, including: how much material is in the System; what material is it; how was it included; and, what is happening to it in the Multilateral System? Reliable data on these questions will be critical for: (1) the credibility of the System, (2) the planning and operation of the System, (3) the monitoring and review of the operation of the System by the Governing Body; and, (4) a sound information basis for policy decisions of the Governing Body on the future evolution of the Multilateral System, such as addressing climate change, changes in the regulatory environment, etc.

Significant quantitative data will be provided through the natural functioning of the Multilateral System and its Third Party Beneficiary. For example, information on material included in the Multilateral System will be generated as Contracting Parties and natural and legal persons make their respective notifications on this issue to the Secretary. Similarly, a certain level of aggregate statistics may be extracted from the records to be held by the Third Party Beneficiary, recognising the need to maintain strict confidentiality regarding some aspects of these records. The information gathered by the Third Party Beneficiary will include much information that will be relevant to the Governing Body’s duty to review the operations of the Multilateral System as a whole. Duplicating information-gathering efforts would create unnecessary costs as well as a burden on those submitting and processing information. If handled with the appropriate sensitivity, the development of statistical overviews and synthesis of relevant information will create a valuable information base for the Governing Body to fulfil its governance function under Article 19. Furthermore, submissions on experiences in the operation of the Multilateral System will continue to be sought from Contracting Parties and relevant organizations. However, it will be necessary to supplement these submissions with more active efforts to gather the necessary information.

- *References*

9. Report of the First Session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (IT/GB-1/06/Report).
10. Resolution 2/2006, The Standard Material Transfer Agreement.
11. Draft Work Programme and Budget for the 2008-09 Biennium (IT/GB-2/07/20).

- *Priority Objectives*

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- ❖ Documentation of measures by which Contracting Parties are implementing the Multilateral System. Some Contracting Parties have indicated that they are uncertain as to

the most effective means of implementing the Multilateral System. There is clearly no universal answer to these queries and the **documentation of measures taken** will highlight the **various administrative and legislative options available** and link these with experiences in their operation and implementation while also facilitating the drawing of general conclusions about the Multilateral System.

- ❖ **Statistical synthesis of SMTA operations for the Governing Body with appropriate measures to protect confidentiality.** Provision of adequate information will be valuable for the Governing Body's reviews of SMTA operations and the Multilateral System as a whole. However, duplicating information-gathering efforts would be, as well as an unnecessary cost, a burden on those submitting and processing information. Thus the **synthesising of relevant information, including the development of quantitative overviews**, will be an important task that will need to be handled sensitively. Analysis protocols which produce aggregate analyses while maintaining the strict confidentiality of SMTA data provided to the Governing Body will be developed to provide the Governing Body with an overview of the functioning of the SMTA and Multilateral System.
- ❖ **Reviews of the implementation and operation of the Standard Material Transfer Agreement.** The Standard Material Transfer Agreement is a complex instrument both in terms of its use and the concepts that underlie its elements. A number of stakeholders have indicated that they have had queries or uncertainties about the use of the Standard Material Transfer Agreement. Reviews of its implementation will, therefore, allow the **tailoring of information sharing, awareness raising and capacity building efforts** to address these queries and uncertainties. In the event of any more serious problems emerging, **periodic reviews of the implementation and operation of the Standard Material Transfer Agreement** will also facilitate the initiation of any **remedial action** that might be required.
- *Partnerships and Responsibilities*

**Contracting Parties, farmers' organizations and other relevant organizations** will be requested to document measures taken to implement the Multilateral System **The Secretary** will request **international, regional, national, non-government, and other relevant organizations** to submit case studies on the operation and implementation of the Multilateral System. **The Secretary** will commission case studies regarding key aspects of the operation and implementation of the Multilateral System. **Contracting Parties and relevant organizations**, particularly the **International Agricultural Research Centres of the Consultative Group on International Agricultural Research**, will be requested to provide information on the implementation and operation of the standard material transfer agreement. **The Governing Body** will periodically review the available information on the operation of the Multilateral System and, as necessary, make recommendations on future information gathering in addition to its reviews of the operations of the Multilateral System.

- *Resources*

Significant staff time will be needed to develop the terms of reference or guidelines for the several information requests and case studies planned in this area. It will also be necessary to devote significant time to reviewing the information that is submitted to provide preliminary analyses to the Governing Body. The Secretary will also need to encourage the support of research to be undertaken independently by partners and to secure funds to support commissioned work.

Estimated overall resource requirements for the planning period: USD \_\_\_\_\_

- *Outcomes*

By the close of the planning period, sufficient information should be generated, and regularly updated, to allow the Governing Body to periodically review the operations of the Multilateral System confident in the direct and representative values of the information on which these reviews will be based.

### **III. Conclusions**

This business plan for the implementation of the International Treaty aims to ensure that resource mobilization and resource utilization are optimally aligned to achieve the vision, mission and targets of the Treaty in an efficient, transparent, cost-effective, resource-based and results-oriented manner. It covers only the start-up phase of Treaty implementation in the medium term and will have to be reviewed and revised thereafter in accordance with experiences gained during this period and taking into account the changes which are taking place in the overall global policy environment and economic system including the outcomes of any necessary evaluation.

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**Report Appendix 9**

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**List of Participants**

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**AFRICA****Ms Hadyatou DANTSEY-BARRY**

Institut Togolais de Recherche Agronomique  
B.P. 1163  
Lomé, **Togo**  
Phone: +228 225 21 48  
Fax: +228 916 6189  
Email: [hadyabarry@yahoo.fr](mailto:hadyabarry@yahoo.fr)

**Mr Didier BALMA**

Directeur de la Recherche Scientifique  
Direction Générale des Enseignements et de la  
Recherche scientifique  
Institut de l'Environnement et de Recherches Agricoles  
01 BP 476 Ouagadougou 01  
Kamboinsé, **Burkina Faso**  
Phone: +226 50308269  
Fax: +226 50315003  
Email: [dbal@fasonet.bf](mailto:dbal@fasonet.bf); [Balma\\_didier@yahoo.fr](mailto:Balma_didier@yahoo.fr)

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**ASIA****Mr Eng Siang LIM**

No.8SS 15/5C  
Subang Jaya  
47500 Selangor, **Malaysia**  
Tel. +60 (3) 56338221  
E-mail: [eslim\\_choi@yahoo.com](mailto:eslim_choi@yahoo.com)

---

**EUROPE****Mr Siegfried HARRER**

Agency for Agriculture and Food (BLE)  
Information and Coordination Centre for  
Biological Diversity (IBV)  
Federal Agency for Agriculture and Food  
Deichmanns Aue 29  
53179 Bonn, **Germany**  
Phone: +49 228 6845 3240  
Fax: +49 228 6845 3105  
Email: [Siegfried.Harrer@ble.de](mailto:Siegfried.Harrer@ble.de)

**Mr Geert KLEIJER**

Director Swiss national gene bank  
ACW – Agroscope Changins Wädenswil  
Case postale 1012  
CH-1260 Nyon 1, **Switzerland**  
Tel +41 22 36 34726  
Fax +41 22 36 21325  
Email: [geert.kleijer@acw.admin.ch](mailto:geert.kleijer@acw.admin.ch)

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**LATIN AMERICA AND THE  
CARIBBEAN**

**Mr Carlos CORREA**  
Professor  
Intellectual Property Rights  
Uriburu 950  
IST F, Buenos Aires, **Argentina**  
Phone: +54 11 47916047  
Mobile: +54 9 11 44011620  
Email : [quiess@gmail.com](mailto:quiess@gmail.com)

**Ms Rosa Miriam DE VASCONCELOS**  
Advisory Office for Technology Innovation  
Brazilian Agricultural Research Corporation  
Ministry of Agriculture, Livestock and Food Supply  
Parque Estacao Biologica PqEB W3 Norte (final)  
Ed. Sede Caixa Postal 040315  
CEP 70770 - 901 Brasilia – DF, **Brazil**  
Phone: +55 61 3448 4825  
Fax: +55 61 3347 4158  
Email: [rosa.miriam@embrapa.br](mailto:rosa.miriam@embrapa.br)

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**NEAR EAST**

**Mr Mousa M. AL-FAYAD**  
Director of Biodiversity and Genetic Resource  
Directorate  
National Center for Agricultural Research and  
Extension  
P.O. Box 639, Baqa 19381, **Jordan**  
Phone: +962 777850914  
Fax: +962 64726099  
Email: [musaf20022002@yahoo.com](mailto:musaf20022002@yahoo.com)

**Mr Reda Mohamed Hassan RIZK**  
Chief Researcher  
National Gene Bank of Egypt  
Agricultural Research Centre  
Ministry of Agriculture and Land Reclamation  
9 Gammaa St., Giza 12619, **Egypt**  
Phone: +2023 5693241 – 5693248 – 5693359 ext. 42  
Fax: +2023 5693240  
Email: [redarizk@hotmail.com](mailto:redarizk@hotmail.com)

---

**NORTH AMERICA**

**Mr Bryan HARVEY**  
Plant Sciences Department  
University of Saskatchewan  
51 Campus Drive  
Saskatoon SK, S7N 5A8, **Canada**  
Phone: +1 306 966-579  
Email: [Bryan.Harvey@usask.ca](mailto:Bryan.Harvey@usask.ca)

---

**SOUTH WEST PACIFIC****Mr Geoff BUDD**

Executive Manager Legal & Procurement  
Grains Research and Development Corporation (GRDC)  
Level 1, 40 Blackall Street, Barton ACT 2600 Australia  
PO Box 5367, Kingston, ACT 2604,

**Australia**

Phone: +61 2 6166 4516

Fax: +61 2 6166 4599

Mobile: +61 0408 404 628

Email: [g.budd@grdc.com.au](mailto:g.budd@grdc.com.au)

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**EXPERTS**

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**Ms Anke VAN DEN HURK**

Plantum NL  
Vossenburchkade 68  
2805 PC Gouda, The Netherlands

Phone: + 31 182 688 668

Fax: + 31 182 688 667

Email: [a.vandenhurk@plantum.nl](mailto:a.vandenhurk@plantum.nl)

---

**Mr Gerald MOORE**

Honorary Fellow  
Bioversity International  
Via dei Cesareti, 23  
Marino

00040 Rome, Italy

Phone: +39 066118-280

Fax: +39 066197-9661

Email: [gerald.moore@pcg.it](mailto:gerald.moore@pcg.it)

---

**Mr Clive STANNARD**

10, rue St. Mary  
04300 Forcalquier, France

Phone: +33 961362129

E-mail: [clive.stannard@mac.com](mailto:clive.stannard@mac.com)

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**OBSERVERS**

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**Vice-Chair  
LATIN AMERICA AND THE  
CARIBBEAN****Ms Maria Cecília B. CAVALCANTE VIEIRA**

Environment Division - Ministry of External Relations  
Esplanada dos Ministérios, Bloco H, Anexo I, sala 439  
ZIP: 70.170-900, Brasilia, Brazil

Phone: + 55 61 34 11 68 96

Fax: + 55 61 34 11 84 46

Email: [maria.cavalcante@itamaraty.gov.br](mailto:maria.cavalcante@itamaraty.gov.br)

**SECRETARIAT OF THE INTERNATIONAL TREATY  
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE**

**Mr Shakeel BHATTI**

Secretary  
International Treaty on Plant Genetic Resources  
for Food and Agriculture  
Food and Agriculture Organization of the United Nations  
Viale delle Terme di Caracalla 1  
00153 Rome, Italy  
Phone: +39 0657053441  
Fax: +39 0657056347  
E-mail: [shakeel.bhatti@fao.org](mailto:shakeel.bhatti@fao.org)

**Mr Kent NNADOZIE**

Senior Treaty Officer  
International Treaty on Plant Genetic Resources  
for Food and Agriculture  
Food and Agriculture Organization of the United Nations  
Viale delle Terme di Caracalla 1  
00153 Rome, Italy  
Phone: +39 0657052465  
Fax: +39 0657053057  
E-mail: [kent.nnadozie@fao.org](mailto:kent.nnadozie@fao.org)

**Mr Francisco LOPEZ**

Treaty Support Officer  
International Treaty on Plant Genetic Resources  
for Food and Agriculture  
Food and Agriculture Organization of the United Nations  
Viale delle Terme di Caracalla 1  
00153 Rome, Italy  
Phone: +39 0657052465  
Fax: +39 0657053057  
E-mail: [francisco.lopez@fao.org](mailto:francisco.lopez@fao.org)

**FAO LEGAL OFFICE**

**Mr Daniele MANZELLA**

Legal Officer  
Legal Office  
Food and Agriculture Organization of the United Nations  
Viale delle Terme di Caracalla 1  
00153 Rome, Italy  
Phone: +39 0657056180  
Fax: +39 0657056347  
Email: [daniele.manzella@fao.org](mailto:daniele.manzella@fao.org)