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The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



Item 8 of the Draft Provisional Agenda

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

Rome, Italy, 6-7 October 2012

MISCELLANEOUS QUESTIONS¹

I. INTRODUCTION

1. The Terms of Reference established by the Governing Body at its Fourth Session stipulates that

the Ad Hoc Advisory Technical Committee will advise the Secretary on implementation questions raised by users of the Standard Material Transfer Agreement and the Multilateral System, 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. This document contains two questions received by the Secretariat from users of the Multilateral System (MLS) and the Standard Material Transfer Agreement (SMTA). These questions are being brought to the attention of the Committee for advice and guidance.

II. TRANSFER OF PLANTING MATERIAL AFTER MULTIPLICATION

3. A National Focal Point has approached the Secretariat with the following question concerning the use of the SMTA.

4. A national genebank has received a request from a nursery in the same country to multiply planting material of local traditional varieties of an Annex I crop (i.e. apple) and transfer the multiplied planting material (i.e. 40,000 grafts) to the nursery. The nursery intends to sell the planting material on the open market and offers monetary consideration to the genebank for the multiplication. The varieties are included in the MLS. The question is as to whether the genebank shall use the SMTA to transfer the planting material.

5. The question of general application is the following. In cases where the transfer of *Annex I* planting material, after multiplication, is requested for the purpose of subsequent sale of the planting material, is the SMTA the appropriate instrument to be used for the transfer?

¹ In accordance with the request of the *Ad Hoc* Technical Advisory Committee, and the Terms of Reference established by the Governing Body, this document was prepared for the exclusive purpose of facilitating the Committee's deliberations. Any opinion or position expressed in the document is not to be attributed to the Secretariat of the International Treaty on Plant Genetic Resources for Food and Agriculture.

6. In addressing the question, the Committee may wish to consider:
- whether the transferred planting material may be considered a product, in the meaning of the SMTA;
 - that the primary purpose of the transfer is not research, breeding or training; nor is direct cultivation by farmers.

III. FEES FOR GERMPLASM DISTRIBUTION

7. The manager of a public genebank of a Contracting Party has approached the Secretariat with an issue related to charging of fees to recipients of material incorporated in the Multilateral System.
8. The genebank is reviewing its policy on the recovery of costs. In this context, the question arises as to whether the costs of accessing, packaging and mailing germplasm or also the costs of producing and conserving germplasm, can be recovered through fees charged to recipients.
9. Article 12.3(b) of the Treaty and Article 5a) of the SMTA establish that:
- “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.”
10. Hence, the question of general application is the following. Is the “minimal cost involved”, in the sense of Article 12.3(b) of the Treaty and Article 5a) of the SMTA, to be considered as including the transaction costs of germplasm distribution or as also including the cost of producing and conserving germplasm?

IV. CONCLUSION

11. The Committee is invited to examine these questions and, taking into account the state of implementation of the Multilateral System, provide any advice and opinion that it considers appropriate in the circumstances.