



The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



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

Rome, Italy, 6 – 7 November 2012

REPORT

Introduction

1. The Fourth Meeting of the *Ad Hoc* Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System was held at the FAO Headquarters in Rome, Italy, from 6 to 7 November 2012. The list of participants is contained in *Appendix 3* to this Report.

Agenda Item 1. Opening of the meeting and election of the Co-Chairpersons

2. Mr Shakeel Bhatti, Secretary of the Governing Body, welcomed the members of the Committee and the observers to the meeting. He recalled that this was the only Committee that was being convened twice in the current biennium, thus affirming the relevance of its work to the implementation of the Multilateral System and the SMTA. Mr Bhatti recalled the developments in the course of the year, particularly the rescheduling of the second meeting of the Intergovernmental Committee on the Nagoya Protocol, which had led to the rescheduling of the third meeting of this Committee and the resulting short lapse of time that occurred between the previous meeting and the present one. He acknowledged the efforts which members of the Committee had made to consult in the short time available in their regions and to attend the meeting, and thanked them for their efforts. He informed the Committee of positive developments in FAO relevant to the Treaty, namely that a new Director, Mr Clayton Campanhola, had arrived to head the FAO Plant Production and Protection Division, in which the Treaty is hosted, and welcomed Mr Campanhola.

3. Mr Clayton Campanhola, Director, Plant Production and Protection Division, FAO, briefed the participants about the new strategic planning process of FAO in 2012, which would produce a reduction and re-focusing of the strategic objectives towards more measurable activities and a result-based management framework. He expressed the hope that the connection of the Treaty to this process would be optimized, in particular to contribute with its programmes and activities to the pursuit of sustainable agriculture. Mr Campanhola highlighted the importance of expanding the list of crops and forages in *Annex I* of the Treaty for the fostering of local production and the availability of quality seeds to smallholder farmers. In his views, the Treaty is also particularly relevant to the broader FAO strategic objectives in the areas of norms and standard-setting, as well as action plans related to preventing natural resources degradation, biodiversity policy, and enhancing resilience to climate change.

4. The meeting agreed that Messrs. Fernando Latorre García (Europe Region) and Eng Siang Lim (Asia Region) should continue to act as Co-Chairpersons to guide the proceedings of the meeting.

Agenda Item 2. Adoption of the agenda

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

6. The Committee recommended that, should it further be reconvened by the Governing Body, in light of concerns raised about the short lapse of time between the previous meeting and the present one, there should be an interval of at least eight months between any of its meetings, in order to allow for more time for the Secretariat to collate a significant number of issues for its consideration. This would also allow for adequate preparations within the Regions ahead of each meeting for the consideration of those issues.

Agenda Item 3. Report on the implementation of the SMTA and the Multilateral System

7. Mr Kent Nnadozie, Senior Treaty Officer, FAO, reported on the implementation of the Multilateral System, and highlighted the progress that had taken place in the operation of the Multilateral System since the last meeting of the Committee in July 2012. He reported that the Secretariat had been working on improving the operations of the Multilateral System, in particular on the information technology systems that support it. He highlighted the progress made in the functioning of *Easy SMTA*, the voluntary tool developed by the Secretariat that combines SMTA generating and reporting functions. It has a new design and workflow that guides users in a step-by-step process that is intuitive and easy to use. It also offers several additional functions, such as uploading spreadsheet files listing the *Annex I* material being transferred, which clearly saves time. So far, about half a million accessions have already been reported through electronic means to the Governing Body.

8. It was noted that a number of Contracting Parties had also been reporting on non-*Annex I* material which were transferred using agreements similar to the SMTA and that the records are being stored in *Easy SMTA*, the voluntary tool developed by the Secretariat. It was further noted that such information was being provided at the discretion of the concerned Contracting Parties and this process involved no extra costs nor constituted additional burden to the information systems of the Multilateral System, since these information systems are largely automated.

9. With regard to the inclusion of material in the Multilateral System, Mr Nnadozie informed the Committee that the activities of the round of projects under the First Call of the Benefit-sharing Fund had been concluded and that material resulting from those projects was being incorporated in the Multilateral System, including those from Peru, Morocco and Costa Rica. Discussions were also underway with other projects on the modalities for inclusion, including the option of depositing the relevant material in national genebanks.

10. The Committee suggested that it would be useful for the Secretariat to provide an update on the development of and progress with the implementation of technology support to the Multilateral System, including the amount and modalities of funding it, to the Governing Body at its Fifth Session.

Agenda Item 4. Recent developments of relevance to the implementation of the Multilateral System and the SMTA

11. The Committee considered document IT/AC-SMTA-MLS 4/12/2. In addition to the information contained in the document, the Committee received several updates from its members and observers on activities relevant to the implementation of the Multilateral System.

12. A representative of the Europe Region informed the Committee of on-going initiatives to implement the Multilateral System at the regional level through EURISCO, which indicates the material included in the Multilateral System and is therefore a useful tool to provide information to the Governing Body. In follow up to Governing Body Resolution 4/2011, a member of the FAO Permanent Representation of Indonesia, on behalf of Brazil and Indonesia, informed the Committee that they had jointly organized a workshop on a platform for the co-development and transfer of technologies and intended to establish the platform, continue to work with existing partners and invite more partners to join. The statement made is in *Appendix 2* to this Report. The Committee appreciated these initiatives and advised that the further work they carry out be reported to the Governing Body at its Fifth Session.

13. The expert from Bioversity International informed the Committee of recent developments in the implementation of the Joint Capacity Building Programme on the implementation of the Multilateral System, which was set up by the Treaty, FAO and Bioversity International. Results of the Programme, which is overseen by the Secretary, will include, *inter alia*, policy options for implementing the Multilateral System, identification of plant genetic resources for food and agriculture in the Multilateral System, studies on germplasm flows, community genebanks and changing demands for plant genetic resources for food and agriculture in the countries concerned to adapt to climate change, and strengthened national capacity to participate in the Multilateral System.

14. The expert from the International Seed Federation informed the Committee of the recently adopted policy statement by the International Seed Federation concerning the need for a single regime on access and benefit-sharing dealing with genetic resources for food and agriculture for plant breeding, which emphasizes on the need for administrative simplicity at the national level to enable compliance with access and benefit-sharing requirements by the private sector.

15. The expert from civil society informed the Committee of recent developments within civil society organizations, which might potentially lead to increased requests from smallholder farmers for access to material in the Multilateral System.

16. The Committee considered that, despite being in its formative stages and pending entry into force, the Nagoya Protocol and related processes remained of high importance to the Treaty. In this regard, the presence and space for the Treaty in the various relevant work tracks needed to be secured consistently in order not only to promote inter-agency partnerships but, most importantly, also to promote coordination between the different implementing authorities at the national level. The Committee commended the Secretariat for its efforts to cooperate with the Secretariat of the Convention on Biological Diversity and requested the Secretariat to continue and further intensify its collaboration with the Secretariat of the Convention on Biological Diversity along the lines established in the Joint Initiative and Memorandum of Cooperation between the two Secretariats.

17. The Committee requested the Secretariat to continue monitoring and participating in the relevant processes related to the Nagoya Protocol and the Convention on Biological Diversity in order to promote practical and harmonious interfaces between general access and benefit-sharing requirements and the operation of the Treaty and its Multilateral System, both nationally and internationally.

18. With regard to the work of the *Ad Hoc* Technical Working Group on Access and Benefit-Sharing (Working Group) of the Commission on Genetic Resources for Food and Agriculture (Commission), the Committee noted the report of the Working Group. The Committee, in particular, welcomed the recommendation of the Working Group encouraging countries that have not done so, to ratify or accede to the Treaty as soon as possible and promote its full implementation in regard to plant genetic resources for food and agriculture. It also noted the invitation to the Governing Body, in its continued governance of plant genetic resources for food

and agriculture, to continue to closely coordinate with the Commission in order to address, in a complementary way, the distinctive features and specific uses of genetic resources for food and agriculture, especially in light of the development of access and benefit-sharing measures at both national and international levels.

19. The Committee restated that the scope of the Treaty was all plant genetic resources for food and agriculture, and that the Governing Body, therefore, had the mandate and authority to decide and carry out work on all matters within this scope, including any further work on access and benefit-sharing for plant genetic resources for food and agriculture. It noted that such work should therefore be carried out by the Governing Body and advised the Governing Body to continue its close collaboration with other bodies regarding access and benefit-sharing, in particular the Convention on Biological Diversity and the Commission. It requested the Secretariat to continue coordinating with the Secretariat of the Commission in order to promote complementarity in the work of the two bodies and avoid duplication of efforts. The Committee recommended that the outcomes and follow up processes be brought to the attention of the Governing Body at its Fifth Session, in particular with a view to reaffirming the mandate and authority of the Governing Body on all plant genetic resources for food and agriculture; deciding on any possible role it might wish the Committee to play on any related future work; and ensuring that the Governing Body performs its functions in accordance with its mandate on access and benefit-sharing for plant genetic resources for food and agriculture.

Agenda Item 5. The Policy and Principles on the Management of Intellectual Assets of the Consultative Group on International Agricultural Research

20. The Committee considered document IT/AC-SMTA-MLS 4/12/3. The representative of the Consortium Office of the CGIAR described the process involved in the development of the Principles on the Management of Intellectual Assets (the Principles) and explained the role of the Principles in the new structure of the CGIAR, noting that the Principles were agreed by both the Consortium and the Fund Council as part of the CGIAR Common Operational Framework. He explained that the Principles were intended to be in full harmony with the agreements signed between the CGIAR Centers and the Governing Body of the Treaty in 2006 related to the management of collections held by the CGIAR Centers. He also clarified that the principles on limited exclusivity agreements and incorporation of third party intellectual assets would operate to guide the Centres in areas where the Treaty and the SMTA leave considerable flexibility as to the conditions, additional to those in the SMTA, under which providers may transfer Plant Genetic Resources under Development.

21. The Committee noted the Principles and highlighted the need for transparency and availability of information on the application of the Principles. It requested the Secretariat to follow the process of development of implementation guidelines to the Principles, and related processes, in close consultation with the Consortium Office, and provide the Governing Body with the relevant information.

Agenda Item 6. Options for reflecting clarifications to the SMTA

22. The Committee considered document IT/AC-SMTA-MLS 4/12/4. It thanked the FAO Legal Office and the Secretariat for the preparation of the document, containing options for reflecting the clarifications to the SMTA and an analysis of such options, including the draft explanatory notes that might accompany the SMTA. It expressed concern that this document had been issued too late for adequate consultations by the regional groups before the meeting.

23. In considering the three categories of clarifications that were put before it, the Committee noted the view expressed by the FAO Legal Office that the clarifications arising out of the

Resolutions of the Governing Body that specify or clarify specific provisions of the SMTA, were already binding on the users of the SMTA and needed to be reflected in one form or another.

24. The Committee considered that it would also be useful to reflect, in one form or another, the third category of clarifications, which consisted of simple textual adjustments to enhance clarity. However, the Committee took note of a number of concerns expressed by some members with regard to some of the proposed clarifications. It agreed that more time was needed to examine these proposed clarifications before recommending them to the Governing Body for reflection in one form or another.

25. The Committee, therefore, agreed to suspend further discussion of the issue so that members could consult within their regional groups and bring forward, via online exchanges and prior to resuming the discussions, proposals for addressing the clarifications to the SMTA.

Agenda Item 7. Creating legal space for the Treaty in the context of access and benefit-sharing regimes

26. The Committee considered document IT/AC-SMTA-MLS 4/12/5, regarding legal space for the Treaty and its Multilateral System in particular, in the context of access and benefit-sharing frameworks. It re-affirmed the views expressed in the report of its third meeting on this topic. The Committee stressed the need to promote coordination at the national level, in particular between respective national focal points of the Treaty and the Convention on Biological Diversity so that they could harmonize their views and adopt a more comprehensive approach to access and benefit-sharing. It also recommended that efforts should continue to be made to facilitate regular interactions among other relevant actors involved in the national implementation processes of both agreements, such as farmers and farmers' organizations, NGOs and the private sector, including through convening meetings.

27. The Committee commended the high level of cooperation and the on-going joint activities between the Secretariats of the Treaty and the Convention on Biological Diversity, and encouraged the Secretariat to continue in this regard. It welcomed the exploratory expert workshop being planned by both Secretariats in collaboration with GIZ and Bioversity International on promoting mutual supportiveness in the implementation of the Treaty and the Nagoya Protocol at the national level as a step in the right direction, and emphasised the importance of regional balance among its participants.

28. With regard to possible model provisions that may be inserted in national access and benefit-sharing legislation, the Committee proposed the following text for consideration and further recommendation to interested Contracting Parties by the Governing Body at its next Session:

“Pursuant to the obligations established by the International Treaty on Plant Genetic Resources for Food and Agriculture, access to and the transfer of plant genetic resources for food and agriculture covered by the Treaty, and sharing the benefits arising from their utilization, should be subject only to the conditions set out in or consistent with the said Treaty, as applicable.”

29. The Committee re-emphasized the need for the continued interaction between the different constituencies of the Treaty and the Convention on Biological Diversity, especially at the national level in the course of their implementation. It encouraged the Secretariat to continue its collaborative activities with the Secretariat of the Convention regarding the interface between the Treaty and the Nagoya Protocol, and to report to the Governing Body, as it was requested at its Fourth Session.

Agenda Item 8. Collection, conservation and distribution through the SMTA of samples of plant varieties protected by plant breeder's rights

30. The Committee considered document IT/AC-SMTA-MLS 4/12/6, which contained the question as to whether a genebank can collect, conserve and distribute samples of plant varieties protected by plant breeder's rights, without the right holder's consent, using the SMTA, in the jurisdiction where the plant breeder's rights apply and in other jurisdictions. The Committee also considered the question in relation to the possibility of including material protected by intellectual property rights in the Multilateral System.

31. The Committee recalled the opinion it had given on a related issue at its second meeting in September 2010. The advice of the Committee was that it is possible for such material to be put in the Multilateral System, 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. In the view of the Committee, 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.¹

32. The Committee confirmed its previous advice and considered that the specific question posed in the document would be outside of the operation of the Multilateral System, and thus not relevant to the mandate of the Committee.

Agenda Item 9. Other business and miscellaneous questions

33. The Committee considered document IT/AC-SMTA-MLS 4/12/7. The first general question posed in the document was whether the SMTA is to be used in cases where the transfer of *Annex I* planting material, after multiplication, is requested to a provider for the purpose of subsequent sale of the planting material. The Committee considered that, the purpose of the transfer being commercial sale, the transaction would not take place under the Multilateral System and, hence, it would not be mandatory to use the SMTA.

34. The second general question posed in the document was whether the “minimal cost involved”, in the sense of Article 12.3(b) of the Treaty and Article 5a) of the SMTA, may be considered as including the transaction costs of germplasm distribution or as also including the cost of producing and conserving germplasm. Recalling the spirit of the Treaty and the text of the relevant provisions, the Committee was of the opinion that the factors involved in calculating fees should be limited as far as possible, thus to cover only mailing or shipping costs and not germplasm producing and conservation costs. In light of the observations made by the representative of the CGIAR at the meeting, the Committee recommended that the issue of unreasonable requests in terms of scope or quantity of germplasm could be considered by the Governing Body at its next Session.

Agenda Item 10. Adoption of the report

35. The Committee adopted this Report and agreed to append the outcomes of its subsequent discussions on agenda item 6 as integral part of this Report.

Agenda Item 11. Closing of the meeting

¹ IT/AC-SMTA-MLS/2/10/Report, Appendix 6, *The practical and legal implications for natural and legal persons putting material in the Multilateral System*, question n. 12.

36. The Committee agreed to suspend the meeting in view of unfinished discussions under agenda item 6. It then requested the Secretariat to make the relevant arrangements regarding the date and venue for the continuation of the meeting.

37. The members of the Committee thanked the Secretary and the Secretariat for the excellent preparations made for and the support provided to the meeting.

Report Appendix 1

FOURTH MEETING OF THE <i>AD HOC</i> ADVISORY TECHNICAL COMMITTEE ON THE STANDARD MATERIAL TRANSFER AGREEMENT AND THE MULTILATERAL SYSTEM

Rome, Italy, 6-7 November 2012

AGENDA

1. Opening of the meeting and election of the Co-Chairpersons
2. Adoption of the agenda
3. Report on the implementation of the SMTA and the Multilateral System
4. Recent developments of relevance to the implementation of the Multilateral System and the SMTA
5. The Policy and Principles on the Management of Intellectual Assets of the Consultative Group on International Agricultural Research
6. Options for reflecting clarifications to the SMTA
7. Creating legal space for the Treaty in the context of access and benefit-sharing regimes
8. Collection, conservation and distribution through the SMTA of samples of plant varieties protected by plant breeder's rights
9. Other business and miscellaneous questions
10. Adoption of the report
11. Closing of the meeting

Report Appendix 2

STATEMENT BY THE GOVERNMENT OF INDONESIA

Thank you, Mr Co-Chairperson, for this opportunity. With the permission of this Committee, I would like to deliver a statement on behalf of Dr. Haryono, Director General of the Indonesian Agency for Agricultural Research and Development (IAARD).

I have the pleasure to inform you of the results of a workshop on the Platform for the Co-Development and Transfer of Technologies under the Treaty.

The Treaty calls for technology transfer as a primary form of non-monetary benefit-sharing. The Governing Body of the Treaty (especially, at its Fourth Session in Bali, Indonesia) has called for measures to realize effective technology transfer and has invited Contracting Parties and other relevant stakeholder to explore innovative benefit-sharing measures.

Technology transfer related to plant genetic resources is crucial for agricultural development and has long been a strong request from developing countries in the Treaty.

IAARD has been facilitating discussions on technology transfer under the Treaty since 2010, when it organized a Global Consultation with Norway.

In 2011, Indonesia hosted the Fourth Session of the Governing Body and the Bali Ministerial Conference on the Treaty that adopted the Bali Ministerial Declaration. The Declaration refers to the importance of technology transfer for implementing the Treaty. The Governing Body, in Resolution 4/2011, requests Contracting Parties to explore technology transfer as one of the non-monetary benefit-sharing mechanisms of the Treaty. In July 2012, the 2nd High-level Roundtable on the Treaty, held at the Rio+20 Summit, adopted the Rio Six Point Action Plan. The first action point of the Rio Action Plan is to establish a Platform for the Co-Development and Transfer of Technologies.

In follow up to Resolution 4/2011 and the Rio Six Point Action Plan, IAARD and the Brazilian Agricultural Research Corporation (Embrapa) jointly organized a workshop on the Platform, in Brasilia, on 7-8 August 2012. As a result of the workshop and on behalf of its co-organizers of the workshop, I am pleased to inform you that we intend to establish the Platform, continue to cooperate with the working partners of the platform that have already joined and invite more working partners to adhere.

In our view, the most important next steps are to start-up the functioning of the platform rapidly by connecting it with other Treaty mechanisms, particularly the Benefit-sharing Fund (BSF). In the view of the working partners at the workshop held in August, the best connection will be by creating a window in the next Call for Proposals of the BSF.

Indonesia is both a financial investor in the Benefit-sharing Fund and a recipient implementing a BSF project. In both of these functions, I welcome this approach and am pleased to offer IAARD's support and expertise to make the Treaty benefit-sharing mechanisms even more synergistic, unique and connected.

We have also informed the first G-20 Meeting of Agricultural Chief Scientists (MACS) of the establishment of the Platform and of our intention to connect it with the Tropical Agriculture Platform.

I am pleased to inform you of these efforts which we are making, at the request of the Governing Body and in the implementation of its Resolutions.

Thank you, Mr Co-Chairperson.

On behalf of,
Dr. Haryono, DG IAARD, Ministry of Agriculture, Republic of Indonesia.

Report Appendix 3

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