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Mr. Shakeel Bhatti
Secretary General
ITPGRFA
Viale delle Terme di Caracalla,
00153 Rome
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Nyon, 18 March 2016

Ref NCP GB7-004: ISF's inputs as contribution to the work of the *Ad Hoc* Open-Ended Working Group to Enhance the Functioning of the Multilateral System (MLS) of Access and Benefit-Sharing

Dear Mr. Bhatti,

ISF would like to take the opportunity to provide you with the input of the seed industry on the topics addressed by the *Ad hoc* open-ended Working Group and the Friends of Co-Chair Groups.

This letter is intended to illustrate real-world commercial practices and to make the sMTA more attractive to users, thereby enhancing the benefit-sharing provisions of the MLS.

For the MLS to be attractive to commercial breeders the sMTA must:

- impose a minimal administrative burden (no unreasonable track & trace)
- be fair and equitable to all users (based on appropriate economic metrics and proportionate to a user's volume of seed sales)
- create no competitive disadvantages through encumbered material
- see a differentiated approach for final products that will be available with restrictions for research and breeding and final products that will be available without restrictions for research and breeding
- recognize that different crops have very different profit margins
- create legal certainty for users
- have a definite expiration timeframe (no in-perpetuity).
- oblige product-based benefit-sharing only when a tangible benefit is traced to MLS material.

In other words, commercial breeders cannot sign a sMTA if it creates a competitive disadvantage such as tracking and tracing and payments in perpetuity. Also related to creating a healthy competitive environment, payment terms should be attractive to small and medium sized companies as well as larger enterprises. Payments are only fair and equitable when expenses can be recovered through standard market practices. The sMTA must be easy to understand, comply with and transfer to third parties. It is also essential to recognize that some crops and their genetic resources are more valuable commercially¹.

Importantly, the sMTA must be acknowledged/accepted as an internationally-recognized certificate of compliance under the Nagoya Protocol and Convention on Biological Diversity.

It is well-known that different crops have different potentials for profit for commercial seed companies. We have stated our support for the development of this idea under Article 6.7. As such, Article 6.7, paragraph 1 could be changed to read:

“1. If a Recipient, its affiliates, contractors, licensees, and lessees, commercialized a Product or Products, then the Recipient shall pay zero point “X” percent (0.X%) of the Sales of the Product or Products multiplied by the “Crop Factor” in accordance with Annex 1 to this Agreement; except that no payment shall be due on any Product or Products that:”

The Crop Factor would be described in a table where all crops within Annex 1 would be assigned a value based on profitability. However, the crop factor would be below 1. ISF recommends the following crop categories:

Group 1	Group 2	Group 3
Asparagus	Apple	Banana/Plantain
Brassica complex	Barley	Breadfruit
Eggplant	Beans (<i>Phaseolus</i>)	Cassava
Maize	Beet	Chickpea
Rice	Carrot	Cowpea
Strawberry	Coconut	Faba Bean/Vetch
Sunflower	Citrus	Finger Millet
	Peas (<i>Pisum</i>)	Fodder Peas
	Rye	Grass Pea
	Wheat	Lentils
	Sorghum	Oats
		Pearl Millet
		Pigeon Pea
		Potato
		Sweet Potato
		Triticale
		Yams
		All forages

¹ The economic value of MLS material for these and all crops depends, in part, on the amount of investment it takes to develop a commercial product i.e., wild relatives require more investment in general than improved materials. Ultimately, a high cost of utilizing MLS material would lead to avoidance.

An important point to note is the interest of the seed industry is interested in extending the scope of the International Treaty to all crops used for breeding. This should be taken into consideration when setting up a crop group system. The respective document should then be designed in a way that is flexible for amendments and extensions.

ISF will provide further information to the ITPGRFA Secretariat on payment rates and termination clause according to the time limits set in the notification. We would like to indicate that all three topics are interdependent and the proposed concepts with regard to Crop and user categories, payment rates and termination clause have to be checked according to their compatibility.

Thank you in advance for your attention on these matters of particular importance for the seed industry and we are staying at your disposal in case you have any questions.

With my best regards,



Michael Keller
Secretary General