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Government of India
Ministry of Agriculture & Farmers Welfare
Department of Agriculture, Cooperation & Farmers Welfare
(Seed Division-V)

Shastri Bhawan, New Delhi
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To,

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Subject:- Fifth meeting of the *Ad Hoc* Open- Ended Working Group to Enhance the
Functioning of the Multilateral System of Access and Benefit- Sharing -
Invitation to send inputs and reports.

Sir,

The undersigned is directed to refer ITPGRFA's notification no. NCP GB7-004 Working Group dated 15.02.2016 seeking inputs and reports as contribution to the work of the *Ad Hoc* Open-Ended Working Group to Enhance the Functioning of the Multilateral System of Access and Benefit-Sharing regarding the subject mentioned above. The comments of India are as under.

At its Fifth Session, the Governing Body established the Working Group (WG), by Resolution 2/2013, with the mandate to develop a range of measures for consideration and decision by the Governing Body at its Sixth Session. At the Sixth Session the WG through Resolution 1/2015 discussed the measures to enhance the functioning of the multilateral system of access and benefit sharing that included:

- (a) Increase user-based payments and contributions to the Benefit-sharing Fund in a sustainable and predictable long-term manner, and
- (b) Enhance the functioning of the Multilateral System by additional measures

In the context of developing a package of measures to enhance the functioning of the Multilateral System, the establishment of a Subscription Model/System for access to plant

genetic resources for food and agriculture under the Treaty, and the sharing of benefits resulting from their use, has received substantial support from all Regions.

WG foresaw as a first step the incorporation of the Subscription Model/System into a revised Standard Material Transfer Agreement (SMTA).

The second step would then deal with the necessary completion of the System/Model in a larger legal framework, through an amendment of, or a Protocol to, the Treaty.

A formal amendment of the Treaty, or the development of a Protocol, would hence be necessary, if the overall Subscription Model/System is to provide for access to all, or some other PGRFA in future

It would appear necessary to establish a set of rights and obligations for subscribers in a substantive legal instrument, which could provide a legal basis, for example, for transfers of material between subscribers without the need for SMTA

Access Options

One of the decisions to be made is whether

- the Subscription Model/System should offer its subscribers access to all crops,
- or access only on a crop-by-crop basis,
- Or indeed whether both access options should be offered

Another decision to be made is whether the Subscription Model/System should offer, in addition to its subscription option or options, an option of individual access to single sample (as in the current SMTA Article 6.7).

The combination of different access options which the Subscription Model/System provide may be as follows:-

- Subscription to individual crops (1a),
- Or only to all crops as a group (1b),
- Choose between subscribing to one or more individual crops, or to all crops (1a or 1b),
- It could also provide an individual sample access option (2), as an alternative to the Subscription Model/System.

Each version of the system would require different changes to the SMTA, which would need to be consistent with any relevant provisions of an accompanying amendment of, or Protocol to, the Treaty.

Mandatory and voluntary payments

The WG has not reached any substantive agreement as to whether the enhanced Multilateral System should retain a provision for "voluntary payment", with proposals to

- (1) remove Article 6.8 and completely (leaving only Article 6.7 providing for mandatory payments);
- (2) "retain Article 6.8 and make it mandatory", or
- (3) Retain the option of voluntary payments.

It should be noted that these proposals are not mere alternatives, but are mutually inconsistent.

Most of the discussions turned specifically on whether or not to make payment for one or more categories of Products that currently attract only voluntary payments, such as those covered by PVP, mandatory, leaving other Products without any obligation to pay.

Moreover, making mandatory the payment for any product that is freely available for further research and breeding is currently not legally possible, because the Treaty, in Article 13.2d (ii), requires payments to be voluntary when "a Product is available without restriction to others for research and breeding". This may, however, be resolved, if the Governing Body invokes the provision of Article 13.2d(ii), whereby it may "assess... whether the mandatory payment in the SMTA shall apply also in cases where such commercialized Products are available without restriction to others for further research and breeding".

If the Governing Body decided to make payment for all Products mandatory in this way, then there would be no structural need for Article 6.8.

Moreover, the Governing Body may then also consider revising Article 6.7 and in particular the phrase, "where such Product is not available without restriction to others for further research and breeding".

This construction has been used IT/GB-6/15/4, draft revised Standard Material Transfer Agreement, on the Assumption that it is the only way to offer all the different options identified by the Working Group, without requiring amendment of the Treaty.

Possible Structure of the Subscription Model/System

The WG has been discussing the possibility of exempting certain types of users from payment obligation, with non-profit institutes, small enterprises, and public organizations being mentioned. Decisions need to be made on how to define the kinds of users that might be exempted.

India's Inputs for participation in the Fifth Meeting of the *Ad Hoc* Open-Ended Working Group to Enhance the Functioning of the Multilateral System of Access and Benefit-Sharing

I. Enhancing the Functioning of the Multilateral System of Access and Benefit-Sharing

1. Measures related to the Benefit-sharing Fund

India supports the range of measures to be adopted to increase user-based SMTA payments and other voluntary payments to the Benefit-sharing Fund, as till date, there has been no SMTA-based passed payment to the Benefit-sharing Fund and SMTA has not achieved its monetary benefit-sharing functions and availability under the MLS. These measures include:

- Establishing the subscription Model/System, as the primary payment mechanism in the Treaty's access and benefit-sharing system
- Attract more providers and users to enhance the functioning of the multilateral system which take into account many developments
- Overcome the structural problems in the current working of the MLS

The combination of different access options which the Subscription Model/System may be provided such as:

- subscription to individual crops
- to all crops as a group
- choose between subscribing to one or more individual crops, or to all crops
- It could also provide an individual sample access option, as an alternative to the Subscription Model/System.

India also supports the possibility of exempting certain types of users from payment obligations such as non-profit institutes, small enterprises, and public organizations.

2. SMTA – based Measures

Working Group had different perspectives on whether to make the voluntary payment option under Article 6.8 of the SMTA mandatory. India supports this option to make Article 6.8 as mandatory, however the other possibilities as outlined could be:

- Payment rate should be indicated under Article 6.8, regardless of payments being voluntary or mandatory;
- A requirement under Article 6.8 to be added for provision of non-monetary obligations, such as provision of information and inclusion in the Multilateral system of any material developed, in case that monetary benefit-sharing under Article 6.8 remains voluntary;
- Improvement of Article 6.11 in order to maximize its attractiveness to users;

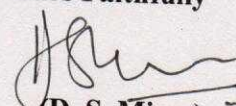
- If so such requirement under Article 6.8 added for provision of non-monetary obligations then particular attention to attract users to subscribe to Article 6.11, is needed, if payment under Article 6.8 remained voluntary;
- Legal implications of only retaining Article 6.11 as the sole option in the SMTA to be discussed;
- Measures to differentiate rates based on whether the products are available with or without restriction for further research and breeding, type of user and type of crop (was strongly supported by Asia Group);
- India also supports the need to conduct a detailed analysis on the question whether agreements should to be made between private sector representatives and the Governing Body or FAO

II. Enhancing the functioning of the multilateral system of access and benefit-sharing: additional measures

As non-monetary benefit sharing measures, the following measures are supported by India.

- Work of the Platform of Co-development and Transfer of Technology
- Implementation of the Global Information System, including Div Seek
- Dedicate a specific window or specific windows of the Benefit-sharing Fund to support capacity building, technology transfer and information-exchange
- Exploring possibilities of enabling the provision of voluntary contributions to support specific projects of the Benefit-sharing Fund
- Establishment and management of nationally important *in situ* and on-farm conservation heritage sites for plant genetic resources for food and agriculture
- Know-how of *in situ* conservation management
- Establishment of new and strengthening of existing programmes for training in management and utilization of plant genetic resources for food and agriculture
- Bilateral capacity development programmes
- Exploitation of registered varieties
- Trainings on project elaboration to increase the competitiveness of project proposals from gene bank teams.

Yours Faithfully


(D. S. Misra) 7/4/16

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