

## **The input from Japan to the Ad Hoc Open-Ended Working Group to Enhance the Functioning of the Multilateral System of Access and Benefit-Sharing**

This input is being submitted as a reply Notification “NCP GB7-004 Working Group” issued by the Secretary to the International Treaty on Plant Genetic Resources for Food and Agriculture (the Treaty), based on Resolution 1/2015.

The main issue in this discussion is to enhance the functioning of the Multilateral System of Access and Benefit-Sharing (MLS). It is important, therefore, to consider how to provide more attractive plant genetic resources (PGRs), through the MLS, to users, who are the payers to the Benefit-Sharing Fund (BSF). In this light, the Subscription System should be designed in a way that makes it easily accessible to every user as well as sustainable and feasible, fully taking into account the user’s interest.

It should be reminded that the Article 13.1 of the Treaty stipulates that facilitated access to PGRs under the MLS constitutes itself a major benefit accruing from the MLS. Undermining this benefit nullifies the basis of the Treaty itself.

In addition, it takes years to modify the MLS in case it requires amendment of the Treaty, and thus such modification is not practical.

The Standard Material Transfer Agreement (SMTA) 6.7 is linked to Article 13.2(d)(ii) of the Treaty. It should be noted that modification of the SMTA6.7 may require amendment to the Treaty. Such revision may cause serious adverse effects on plant breeding by discouraging the use of the MLS.

Furthermore, it is not necessary to modify the SMTA6.8 since this provision encourages the users to make voluntary payments. Discussion on developing the Subscription System, which is the mission given to the Working Group, should be given the priority.

In the above-mentioned Notification, input is requested on the following three issues;

1. User and Crop Categories;
2. Termination Clause; and
3. Access Mechanisms and Payment Rates.

Depending on the outcome of the discussion on ‘Access Mechanisms and Payment Rates,’ the fundamental assumption of ‘User and Crop categories’ and ‘Termination Clause’ may change. Therefore, the following replies to the question on ‘User and Crop Categories’ and ‘Termination Clause’ should not be interpreted to the prejudice of possible future comments on these matters.

## 1. Access Mechanisms and Payment Rates

- (1) The Subscription System should be easily accessible to every user as much as possible, or otherwise, it will be against “facilitated access” as stipulated in Article 12.1 of the Treaty. The Subscription System should be tested through a trial introduction to make sure that the system works in a sustainable and feasible manner satisfying the needs of the users.
- (2) The Subscription System should not be the sole access mechanism. This is because the user-based Subscription System is not necessarily in line with the basic principle of ABS, which is the fair and equitable sharing of the benefits arising out of “utilization” of genetic resources, as provided in the Convention on Biological Diversity.
- (3) In setting the payment rate(s) of the Subscription System, we need careful consideration when deciding the base for the charge, since the idea of the Subscription System contains the risk of expanding the deviation from the basic principle of ABS as mentioned above in para (2).
- (4) With a view to increasing funding to the BSF while maintaining the systems described in the SMTA6.7 and 6.8, it is worth considering of collecting a small fixed up-front payment equally from all users per number of genetic resources accessed.
- (5) It should be noted that the income of the BSF would not automatically increase by raising the payment rate on the SMTA6.7 and 6.8. The discussions should take into account the users’ intention and simulation of the financial inflow into the BSF.
- (6) If increasing monetary payments into the Subscription System is pursued, what can be the attraction for the users which meets their burden should be considered.
- (7) If sustainable and predictable income into the BSF is pursued, the number of PGRs contained in the MLS should be increased sustainably and predictably as well, for example, by setting a numerical target of the number of PGRs in the MLS. It should be reminded that PGRs in the MLS are the source of the benefits to be shared.
- (8) It is necessary to enhance provider’s incentive to register their PGRs on the MLS through modifying the operational rule of the BSF projects so that countries which deposit more PGRs in the MLS and/or which receive more access to their PGRs in the MLS are more preferentially selected as the country to be supported by the BSF.
- (9) In addition to increasing the number of genetic resources in the MLS, it is also important to improve the quality of PGRs held there. To realize this, we should start considering a system of collecting PGRs held in-situ and then transmit the collections to the MLS in the end (we should start establishing “standards” (to make this idea possible) as stipulated in the Article 12.3 (h) of the Treaty).

(10) In the discussion on the Subscription System to date, the users' obligation aspect is rather focused on. However, it should be reminded that the obligation is imposed both on the users (e.g., researchers and breeders) and the providers (e.g. genebanks) in the Treaty. It is important to note that the Subscription System cannot effectively function unless the system is designed in an operational and efficient manner from the providers' point of view.

## **2. User and Crop categories**

The idea of variable payment rates subject to User and Crop Categories should be tested in light of whether such differentiation is fair and equitable. It should be also reminded that, from a practical viewpoint, placing different payment rates based on the scale of the user (e.g. amount of sales of a legal person) faces operational difficulties because it requires confidential information of business entities. On the other hand, with the flat rate as described in 1(4), the larger companies will pay more up-front payment through larger number of access to PGRs in the MLS given their business size.

## **3. Termination Clause**

In introducing a Termination Clause, we should consider general commercial practice on this point.

## **4. Others**

If the SMTA is to be revised, it is necessary to secure a period to prepare for the introduction of the new SMTA and to set transitional measures where appropriate.