



The International Treaty
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



Standard Material Transfer Agreement

equity and food for all





www.planttreaty.org



FOR MORE INFORMATION CONTACT:

International Treaty on Plant Genetic Resources for Food and Agriculture
Food and Agriculture Organization of the United Nations
Viale delle Terme di Caracalla • 00153 Rome • Italy
Tel: +39 0657053441 • Fax: +39 0657056347
E-mail: pgrfa-treaty@fao.org

TC/D/10520E/1/01.09/1500

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INTRODUCTION

Agriculture and biodiversity play a crucial role in the key challenges humanity will face in the coming decades. The important issue of global food security and the concern on country and regional interdependence on plant genetic resources for food and agriculture helped to conclude the negotiations leading to the adoption of the International Treaty on Plant Genetic Resources for Food and Agriculture by the FAO Conference in 2001.

Plant genetic resources for food and agriculture are the raw material indispensable for crop genetic improvement, whether it is done by means of farmers' selection, classical plant breeding or modern biotechnologies. They are distinct to other genetic resources and essential in adapting to unpredictable environmental changes and future human needs.

The International Treaty establishes, in Part IV, a Multilateral System of Access and Benefit-sharing to provide facilitated access to a number of plant genetic resources for food and agriculture. Article 12 specifies that the facilitated access is provided pursuant to a Standard Material Transfer Agreement (SMTA). This is a standardized contract that favours the actual transfer of the materials by simplifying the negotiation process, reducing transactions costs, and shortening order-to-delivery time.

The adoption of the Treaty was the first and most important step for the establishment of the Multilateral System. However, its entry into force in June 2004 was not enough for the gene pool to become operational and work began in earnest to operationalize its provisions. In adopting the International Treaty, the FAO Conference decided to establish an Expert Group to develop and propose recommendations on the terms of the Standard Material Transfer Agreement. Furthermore, it requested the Interim Committee of the Treaty to prepare, on the basis of the work of the Expert Group, "a draft Standard Material Transfer Agreement" for consideration by the Governing Body.

The Expert Group on the Terms of the Standard Material Transfer Agreement met in Brussels, at the invitation of the European Commission, from 4 to 8 October 2004. There the basic lines for the draft Standard Material Transfer Agreement were laid down and the result was reported to the Second Meeting of the Interim

Committee (Rome, 15 - 19 November 2004), which established a Contact Group for the Drafting of the Standard Material Transfer Agreement.

The Contact Group met twice: in Hammamet, Tunisia, from 18 to 22 July 2005, with financial support provided by the United States of America; and in Alnarp, Sweden, from 24 to 28 April 2006, at the invitation of Sweden. The participants to the meeting elaborated a draft text adopted with a resolution by Contracting Parties during the First Session of the Governing Body of the ITPGRFA, which took place in Madrid from 12 to 16 June 2006.

Contracting Parties expected the terms of the Standard Material Transfer Agreement to be attractive to both providers and recipients of plant genetic resources for food and agriculture accessed from the Multilateral System, in order to encourage wide participation. They emphasized that, in addition to the mandatory sharing of benefits arising from commercialization, the voluntary sharing of monetary and non-monetary benefits is also crucial for the effective implementation of the Multilateral System. On that occasion, the *need* of sharing the benefits arising from the use of plant genetic resources through the mechanisms of information exchange, access to and transfer of technology, and capacity-building was also recognized by Contracting Parties.

The SMTA provides for two different types of payments: mandatory and voluntary. Where the product is not available without restriction, the recipient is required to make a payment of a fixed percentage of the sales of the commercialized Product to the Multilateral System. Where the Product is available without restriction, the recipient is encouraged to make voluntary payments to the Multilateral System. The normal rate for monetary benefit-sharing is set at 1.1 % of the Sales of the Product less 30%. The Recipient may opt for an alternative payment scheme.

During the period from 1 January to 1 August 2007, more than 98,000 samples were distributed under the SMTA.

At its Second Session in 2007, the Governing Body endorsed the option that an interpretative footnote would be included to the relevant provisions of the SMTA, indicating that those provisions should not be interpreted as precluding the use of the SMTA for transfer of *non-Annex I* material, collected before the entry into force of the Treaty. The footnote would be included in all language versions of the SMTA used by the International Agricultural Research Centres under Article 15.1(b), thus avoiding the need for two versions of the SMTA.

The text of the SMTA is presented in this booklet.

Rome, 18 July 2008

STANDARD MATERIAL TRANSFER AGREEMENT*

PREAMBLE

WHEREAS

The International Treaty on Plant Genetic Resources for Food and Agriculture (hereinafter referred to as “the **Treaty**”)¹ was adopted by the Thirty-first session of the FAO Conference on 3 November 2001 and entered into force on 29 June 2004;

The objectives of the **Treaty** are the conservation and sustainable use of **Plant Genetic Resources for Food and Agriculture** and the fair and equitable sharing of the benefits arising out of their use, in harmony with the Convention on Biological Diversity, for sustainable agriculture and food security;

The Contracting Parties to the **Treaty**, in the exercise of their sovereign rights over their **Plant Genetic Resources for Food and Agriculture**, have established a **Multilateral System** both to facilitate access to **Plant Genetic Resources for Food and Agriculture** and to share, in a fair and equitable way, the benefits arising from the utilization of these resources, on a complementary and mutually reinforcing basis;

¹ *Note by the Secretariat:* as suggested by the Legal Working Group during the Contact Group for the Drafting of the Standard Material Transfer Agreement, defined terms have, for clarity, been put in bold throughout.

* In the event that the SMTA is used for the transfer of Plant Genetic Resources for Food and Agriculture other than those listed in Annex I of the Treaty:

The references in the SMTA to the “Multilateral System” shall not be interpreted as limiting the application of the SMTA to Annex I Plant Genetic Resources for Food and Agriculture, and in the case of Article 6.2 of the SMTA shall mean “under this Agreement”;

The reference in Article 6.11 and Annex 3 of the SMTA to “Plant Genetic Resources for Food and Agriculture belonging to the same crop, as set out in Annex I to the Treaty” shall be taken to mean “Plant Genetic Resources for Food and Agriculture belonging to the same crop”.

Articles 4, 11, 12.4 and 12.5 of the **Treaty** are borne in mind;

The diversity of the legal systems of the Contracting Parties with respect to their national procedural rules governing access to courts and to arbitration, and the obligations arising from international and regional conventions applicable to these procedural rules, are recognized;

Article 12.4 of the **Treaty** provides that facilitated access under the **Multilateral System** shall be provided pursuant to a Standard Material Transfer Agreement, and the **Governing Body** of the **Treaty**, in its Resolution 1/2006 of 16 June 2006, adopted the Standard Material Transfer Agreement.



FAO/F. Lopez

ARTICLE I – PARTIES TO THE AGREEMENT

1.1 The present Material Transfer Agreement (hereinafter referred to as “**this Agreement**”) is the Standard Material Transfer Agreement referred to in Article 12.4 of the **Treaty**.

1.2 **This Agreement** is:

BETWEEN: (*name and address of the provider or providing institution, name of authorized official, contact information for authorized official*)* (hereinafter referred to as “the **Provider**”),

AND: (*name and address of the recipient or recipient institution, name of authorized official, contact information for authorized official*)* (hereinafter referred to as “the **Recipient**”).

1.3 The parties to **this Agreement** hereby agree as follows:

ARTICLE 2 – DEFINITIONS

In **this Agreement** the expressions set out below shall have the following meaning:

“*Available without restriction*”: a **Product** is considered to be available without restriction to others for further research and breeding when it is available for research and breeding without any legal or contractual obligations, or technological restrictions, that would preclude using it in the manner specified in the **Treaty**.

* *Insert as necessary. Not applicable for shrink-wrap and click-wrap Standard Material Transfer Agreements.*

A “shrink-wrap” Standard Material Transfer Agreement is where a copy of the Standard Material Transfer Agreement is included in the packaging of the **Material**, and the **Recipient’s** acceptance of the **Material** constitutes acceptance of the terms and conditions of the Standard Material Transfer Agreement.

A “click-wrap” Standard Material Transfer Agreement is where the agreement is concluded on the internet and the **Recipient** accepts the terms and conditions of the Standard Material Transfer Agreement by clicking on the appropriate icon on the website or in the electronic version of the Standard Material Transfer Agreement, as appropriate.

“Genetic material” means any material of plant origin, including reproductive and vegetative propagating material, containing functional units of heredity.

“Governing Body” means the **Governing Body** of the **Treaty**.

“Multilateral System” means the **Multilateral System** established under Article 10.2 of the **Treaty**.

“Plant Genetic Resources for Food and Agriculture” means any **genetic material** of plant origin of actual or potential value for food and agriculture.

“Plant Genetic Resources for Food and Agriculture under Development” means material derived from the **Material**, and hence distinct from it, that is not yet ready for **commercialization** and which the developer intends to further develop or to transfer to another person or entity for further development. The period of development for the **Plant Genetic Resources for Food and Agriculture under Development** shall be deemed to have ceased when those resources are **commercialized** as a **Product**.

“Product” means **Plant Genetic Resources for Food and Agriculture** that incorporate² the **Material** or any of its genetic parts or components that are ready for **commercialization**, excluding commodities and other products used for food, feed and processing.

“Sales” means the gross income resulting from the **commercialization** of a **Product** or **Products**, by the **Recipient**, its affiliates, contractors, licensees and lessees.

“To commercialize” means to sell a **Product** or **Products** for monetary consideration on the open market, and “**commercialization**” has a corresponding meaning. **Commercialization** shall not include any form of transfer of **Plant Genetic Resources for Food and Agriculture under Development**.

² As evidenced, for example, by pedigree or notation of gene insertion.