



منظمة الأغذية  
والزراعة  
للأمم المتحدة

联合国  
粮食及  
农业组织

Food  
and  
Agriculture  
Organization  
of  
the  
United  
Nations

Organisation  
des  
Nations  
Unies  
pour  
l'alimentation  
et  
l'agriculture

Organización  
de las  
Naciones  
Unidas  
para la  
Agricultura  
y la  
Alimentación

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## Item 2 of the Draft Provisional Agenda

**COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE  
ACTING AS  
INTERIM COMMITTEE OF THE INTERNATIONAL TREATY  
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE**

**SECOND MEETING OF THE CONTACT GROUP FOR THE DRAFTING OF  
THE STANDARD MATERIAL TRANSFER AGREEMENT**

**Alnarp, Sweden, 24 - 28 April 2006**

**DRAFT PROVISIONAL ANNOTATED AGENDA AND TIME-TABLE**

### 1. Election of seven Vice-Chairs representing the regions

According to the Terms of Reference for the Contact Group, “*The Chair of the Expert Group shall be the Chair of the Contact Group. There will be Vice-Chairs representing the regions. The Chair and the Vice-Chairs will constitute the Bureau*”. As Mr Lim Eng Sian was Chair of the Expert Group, he will act as Chair of the Contact Group. The Vice Chairs elected for the First Meeting of the Contact Group were Mr Tewolde Berhan Gebre Egziabher (Africa), Mr Rashid Anwar (Asia), Mr Bert Visser (Europe), Mr Hadil da Rocha Vianna (Latin America and the Caribbean), Mr Bryan L. Harvey (North America), Mr Javad Mozafari (Near East), and Mr John Madden (Southwest Pacific).

### 2. Adoption of the agenda and time-table

The present document contains the draft Provisional Annotated Agenda and the time-table, for the consideration of the Contact Group.

### 3. Presentation of regional positions

Under this agenda item, regions are invited to present their positions on the main outstanding issues regarding the negotiation of the Standard Material Transfer Agreement. The intention is that positions will be clarified, but negotiations reserved until Agenda Item 4.

#### 3.1 Regional positions on commercialization and benefit-sharing

The issues to be considered would include both mandatory and voluntary benefit-sharing, the circumstances under which monetary benefit-sharing would be triggered, and the means by which it would be calculated. In considering these issues, the Contact Group may wish to refer to the document, *Commercial Practice in the Use of Plant Genetic Resources for Food and Agriculture*.<sup>1</sup> The relevant Articles in the First

<sup>1</sup> Background Study Paper No. 27.

For reasons of economy, this document is produced in a limited number of copies. Delegates and observers are kindly requested to bring it to the meetings and to refrain from asking for additional copies, unless strictly indispensable.

The documents for this meeting are available on Internet at <http://www.fao.org/ag/cgrfa/cgmta2.htm>

Draft of the Standard Material Transfer Agreement<sup>2</sup> include Articles 7.9, 7.10, 7.12, 7.14 and 10.4; the associated definitions in Article 3 of “to commercialize”, “product”, “to incorporate”, “available without restriction”, “net sales” and “gross income”, and *Appendix 2*.

### **3.2 Regional positions on the Third Party Beneficiary and dispute resolution/settlement**

Regions are invited to present their positions on the need for, and the means of including, provisions within the draft Standard Material Transfer Agreement, establishing rights and a role for the Third Party Beneficiary, recognizing that providers of plant genetic resources for food and agriculture have no incentive to seek to enforce the provisions of the Standard Material Transfer Agreement. The provisions regarding dispute resolution/settlement of the Standard Material Transfer Agreement are integral to the issue of the Third Party Beneficiary. In considering these issues, the Contact Group may wish to refer to the document, *International Arbitration*.<sup>3</sup> The relevant Articles in the First Draft Standard Material Transfer Agreement include Articles 5.2, 5.3, 5.4, 6.1e, 7.4, 7.7, 8.1, and the whole of Article 9.

### **3.3 Regional positions on signature/acceptance**

Regional groups are invited to present their positions on the means by which the parties to the Standard Material Transfer Agreement (the provider and the recipient) signify acceptance of the terms of the Standard Material Transfer Agreement. Different possible approaches include signature, “shrink-wrap” and “click-wrap”. An analysis of the options is contained in the document, *Methods of Expressing Acceptance of the Terms and Conditions of MTAs: Shrink-wrap and Click-wrap Agreements*.<sup>4</sup> The relevant Article of the First Draft Standard Material Transfer Agreement is Article 11.

### **3.4 Regional Positions on Appendix 1 and information**

Regional groups are invited to present their positions on the provisions contained in Appendix 1 of the First Draft Standard Material Transfer Agreement, which, it is proposed, would identify the plant genetic resources for food and agriculture associated with the particular Standard Material Transfer Agreement and include information related to that material. Relevant Articles in the First Draft SMTA include Articles 4.1, 6.1, 7.6 7.7, 7.11, and 7.12.

### **3.5 Regional positions on other issues**

Regional groups are invited to present their positions on any other issues they wish to raise in the context of these negotiations

## **4. Negotiation of the Standard Material Transfer Agreement**

Following the presentation of regional positions the Standard Material Transfer Agreement will be negotiated.

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<sup>2</sup> Document CGRFA/IC/CG-SMTA-2/06/3.

<sup>3</sup> Background Study Paper No. 25.

<sup>4</sup> Background Study Paper No. 26.

**5. Recommendations to the Governing Body on the implementation of the Standard Material Transfer Agreement, and preparation of a draft resolution for the consideration of the Governing Body**

The Contact Group is invited to consider what recommendations might be made to the Governing Body regarding actions it and Contracting Parties might take in order to facilitate the full, effective and transparent implementation of the Standard Material Transfer Agreement. Such recommendations might be contained in a resolution, through which the Governing Body would also adopt the Standard Material Transfer Agreement.

**6. Review of legal consistency of the Standard Material Transfer Agreement**

Subject to the agreement of the Contact Group, a Legal Expert Group might be established, made up of representatives on the Contact Group and advisors, to advise on legal aspects of the draft Standard Material Transfer Agreement. Under this Agenda Item, the Legal Expert Group might be asked to report on the legal consistency of the draft Standard Material Transfer Agreement, so that the Contact Group can take decisions as to its final draft wording.

**7. Other business**

**8. Adoption of the Report**

**NOTE**

Provision has been made for regional consultations, in preparation for the meeting of the Contact Group, on Friday and Saturday, 21 and 22 April 2006.

Sunday, 23 April 2006, is free

**Draft Provisional Time-table**

| <i>Time</i>                             | <i>Agenda Item</i>                                  | <i>Title</i>  | <i>Working Documents</i>                           |
|---|---|---|--|
| <b>Monday, 24 April 2006, morning</b>   |   |   |  |
| 10:00-11:00                             | 1   | Opening of the meeting<br>Election of seven Vice-Chairs representing the regions  |  |
| 11:00-11:30                             | 2   | Adoption of the agenda and time-table   | CGRFA/IC/CG-SMTA-2/06/1<br>CGRFA/IC/CG-SMTA-2/06/2 |
| 11:30-13:00                             | 3<br>3.1<br>3.2<br>3.3<br>3.4<br>3.5                | Regional positions on:<br>Commercialisation and benefit-sharing<br>The Third Party Beneficiary and dispute resolution/settlement<br>Signature/acceptance<br><i>Appendix 1</i> and information<br>Other issues |  |
| <b>Monday, 24 April 2006, afternoon</b> |   |   |  |
| 15:00-18:00                             | 3<br>3.1<br>3.2<br>3.3<br>3.4<br>3.5<br>(continues) | Regional positions on:<br>Commercialisation and benefit-sharing<br>The Third Party Beneficiary and dispute resolution/settlement<br>Signature/acceptance<br><i>Appendix 1</i> and information<br>Other issues |  |

| <i>Time</i>  | <i>Agenda Item</i> | <i>Title</i>   | <i>Working Documents</i> |
|--|--------------------|--|--------------------------|
| <b>Tuesday, 25 April 2006,<br/>morning and afternoon</b>   |                    |  |                          |
| 10:00-13:00<br>15:00-18:00                                 | 4                  | Negotiation of the Standard Material Transfer Agreement  | CGRFA/IC/CG-SMTA-2/06/3  |
| <b>Wednesday, 26 April 2006,<br/>morning and afternoon</b> |                    |  |                          |
| 10:00-13:00<br>15:00-18:00                                 | 4<br>(continues)   | Negotiation of the Standard Material Transfer Agreement  | CGRFA/IC/CG-SMTA-2/06/3  |
| <b>Thursday, 27 April 2006,<br/>morning and afternoon</b>  |                    |  |                          |
| 10:00-13:00<br>15:00-18:00                                 | 4<br>(continues)   | Negotiation of the Standard Material Transfer Agreement  | CGRFA/IC/CG-SMTA-2/06/3  |
| <b>Friday, 28 April 2006,<br/>morning and afternoon</b>    |                    |  |                          |
| 10.00-13.00  | 5                  | Recommendations to the Governing Body on the implementation of the Standard Material Transfer Agreement, and preparation of a draft resolution for the consideration of the Governing Body |                          |
|  | 6                  | Review of the legal consistency of the Standard Material Transfer Agreement  |                          |
|  | 7                  | Other business   |                          |
| 15:00-18:00  | 8                  | Adoption of Report   |                          |