May 2005

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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Items 3 and 4 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

CONTACT GROUP FOR THE DRAFTING OF THE STANDARD MATERIAL TRANSFER AGREEMENT

Hammamet, 18-22 July 2005

COMPILATION OF COMMENTS RECEIVED ON THE FIRST DRAFT STANDARD MATERIAL TRANSFER AGREEMENT PREPARED BY THE SECRETARIAT

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COMPILATION OF COMMENTS RECEIVED ON THE FIRST DRAFT STANDARD MATERIAL TRANSFER AGREEMENT PREPARED BY THE SECRETARIAT

INTRODUCTION

1. The Terms of Reference of the Contact Group,[1] adopted by the Second Meeting of the Commission on Genetic Resources for Food and Agriculture Acting as Interim Committee for the International Treaty on Plant Genetic Resources for Food and Agriculture, state that:

> "*the Secretariat of the Commission, with the support of the Legal Office, under the guidance and supervision of the Chair of the Contact Group in consultation with the Chairs of the regional groups and the Chair of the Second Meeting of the Interim Committee, shall prepare the first draft of the Standard MTA, for consideration by the first meeting of the Contact Group*".

2. The Chair of the Contact Group, in his letter of 11 February 2005 (see *Annex I*), accordingly sought comments on the draft Standard Material Transfer Agreement from the Chairs of regional groups. Comments were received from one region and a number of individual countries.

3. In his letter of 6 May 2005 (see *Annex II*), the Chair of the Contact Group noted, in relation to the comments received, that:

> "*the replies are a heterogeneous mix from regions and countries; there is a lack of geographical balance; and there is a lack of balance between developed and developing countries. In addition, at the technical level, the total number of replies received is small and the replies contain a mixture of comments on the first draft text, proposals for new draft text, and statements of national opinions and preferences. Taken together, these political and technical considerations make it difficult to make modifications to the text in a fair and equitable way. In the light of these considerations, and following consultation with the FAO Legal Office and Commission Secretariat, I have come to the conclusion that the original draft, as prepared by the Secretariat, should form the basis of discussions in the Contact Group.*
>
> *"I also propose that those regions/countries that have submitted replies should determine how they might be used. For those regions/countries that agree, I have asked the Secretariat to prepare a document which collates the replies submitted, which would be tabled at the meeting of the Contact Group. Those regions/countries that would prefer not to have their comments published as submitted to the Secretariat may wish themselves to circulate their views to other countries or may simply wish to use them during the course of the negotiations.*

4. The present document compiles the replies from those regions and countries that raised no objection to their comments being published. Certain comments were in the form of "tracked changes" in the text of the draft Standard Material Transfer Agreement: these have been transformed to text, with every effort being made to ensure that the text accurately reflects the views expressed.

5. In his letter of 2 June 2005 (see *Annex III*), the Chair of the Contact Group drew attention to the regional consultations, which will precede the meeting of the Contact Group, and the opportunity this would provide for the establishment of regional positions on the draft Standard Material Transfer Agreement:

[1] CGRFA/IC/CG-SMTA-1/05/Inf.1.

"*The Contact Group meeting will be preceded by two days of regional consultations, on 15 and 16 July 2005. Facilities will be provided for all Regions to meet individually, and these days will also provide an opportunity for contact between Regions, to facilitate a successful meeting.*

I would ask that, as far as possible, Regions seek to establish regional positions in the form of proposed draft text for the draft Standard Material Transfer Agreement. This would help considerably in focussing the negotiations. Regional proposals for draft text would then be submitted to the Secretariat at the end of Regional consultations on 16 July, so that they may be translated and circulated to the Contact Group.

This is important, because I propose to read through the entire text of the draft Standard Material Transfer Agreement, incorporating any additional options for text that the Regions may propose, before beginning the actual negotiations on the text.

By my letter of 6 May 2005 (attached for ease of reference), I asked Regions whether they wished the comments they, and countries in their Region, had earlier submitted to be made public. The comments of those that agreed will be available in document CGRFA/IC/CG-SMTA-1/05/3, Compilation of comments received on the first draft of the Standard Material Transfer Agreement*, and posted on the FAO website at http://www.fao.org/ag/cgrfa/cgmta1.htm. Regions may therefore wish to review the comments from their Region, in preparing their proposed draft texts.*"

COMMENTS RECEIVED FROM REGIONS ON THE FIRST DRAFT STANDARD MATERIAL TRANSFER AGREEMENT PREPARED BY THE SECRETARIAT

NORTH AMERICA REGION

1. PREAMBLE

We would prefer that the second sentence of paragraph 1.h be quoted directly from Article 13.2 of the Treaty, as follows: The Contracting Parties have also agreed that benefits shall be shared through the following mechanisms: the exchange of information, access to and transfer of technology, capacity-building, and the sharing of the benefits arising from commercialization.

2. PARTIES TO THE MTA

The descriptions of "Provider" and "Recipient" should include the names of authorized officials.

3. DEFINITIONS

As noted in the "Explanatory Notes," the Expert Group recommended that the definitions should be considered only after the substantive provisions, such as the payment provisions, have been agreed upon. Some terms that should be considered for inclusion at the appropriate time are "Derived Material", "Product" and "Net Sales."

4. SUBJECT MATTER

Acceptable as drafted.

5. GENERAL PROVISIONS

As noted in the "Explanatory Notes," the Expert Group did not agree on the need for inclusion of General Provisions, and we would prefer that this section be deleted. A provision indicating that the Treaty should guide interpretation and implementation of the MTA is not necessarily helpful to MTA parties or arbitrators. Interpretation is dealt with under Section 8.

6. PROVIDER RIGHTS/OBLIGATIONS

We agree with the inclusion of Articles 12.3b and 12.3c of the Treaty, which appear as paragraphs 6.1.a and 6.1.b in the draft MTA. However, the inclusion of Articles 12.3e and 12.3f, which appear as paragraphs 6.1.c and 6.1.d of the draft, is confusing within the context of the MTA, since these provisions would not apply to many Providers. In fact, 6.1.d is a Recipient obligation.

7. RECIPIENT RIGHTS/OBLIGATIONS

We agree with the inclusion of Articles 12.3a, 12.3d, 12.3g, 12.4 and 13.2d(ii) of the Treaty, which appear as paragraphs 7.2, 7.5, 7.7, 7.8, 7.14 and 7.15 of the draft MTA. It should be noted that the Expert Group only considered which provisions of the Treaty should be included in this section and did not agree to specific contract language. We believe the following language should be included to clarify the contractual rights and obligations:

Preceding Paragraph 7.8: In the case that the Recipient transfers the Material supplied under this Agreement to another person or entity, the Recipient shall do so under the Standard Material Transfer Agreement. The Recipient shall have no further obligations regarding the actions of a subsequent third party transfer.

New paragraph preceding paragraph 7.14: Subject to the requirements of paragraphs 7.14 and 7.15 below, the Recipient may commercialize a Product or Products. (Note: The requirement to share monetary benefits implies that the Recipient has the right to sell Products. This paragraph makes that right explicit, which is important to commercial Recipients who intend to develop Products with accessed Material).

8. INTERPRETATION

Paragraph 8.1 is in conflict with Article 12.5 of the Treaty, which makes clear that contract law should govern MTA disputes, not international law or decisions of the Parties. It should be deleted.

9. DISPUTE RESOLUTION/SETTLEMENT

9.2 Option 1 (c) should be amended as follows: Arbitration: If the dispute has not been resolved by mediation, the dispute will be submitted, by the agreement of both parties, for arbitration under the arbitration mechanism of an international body such as the International Chamber of Commerce.

Arbitration should take place by agreement of the parties. Otherwise, this provision would subject Contracting Parties (when they are MTA Parties) to arbitration without consent. This goes beyond the dispute settlement obligation in Article 22 of the Treaty, wherein Contracting Parties are not required to accept binding arbitration or the jurisdiction of the ICJ, but instead may elect to do so. Similarly, Contracting Parties should be able to elect to accept arbitration under MTAs, but should not be required to do so.

10. ADDITIONAL ITEMS

We agree with the provisions of paragraphs 10.1, 10.2 and 10.3. Paragraphs 10.4, 10.5 and 10.6 should not be included.

11. SIGNATURE/ACCEPTANCE

We prefer Option 3, but the explanatory notes should indicate that signature blocks are included so that if either the jurisdiction of the Provider or the jurisdiction of the Recipient requires that contracts must be signed, then that option is available. Otherwise, the shrink-wrap option applies, and the following language should be included: The Material is provided expressly conditional on acceptance of the terms of this MTA. Recipient's acceptance of the Material constitutes acceptance of the terms of this MTA.

COMMENTS RECEIVED FROM COUNTRIES ON THE FIRST DRAFT STANDARD MATERIAL TRANSFER AGREEMENT PREPARED BY THE SECRETARIAT

ARGENTINA

1. Preamble: We agree with the incorporation of the text of Articles 15.1 and 15.5 of the Treaty.

2. Paragraph 2.1 (Parties to the Agreement): We propose the following amendment: "The present material transfer agreement (hereinafter "this Agreement") is the MTA", deleting "is in conformity with".

3. Paragraph 3.1 (Definitions) : "*Commercializes*" means: "the act of selling, leasing or licensing a product for monetary consideration." (Option 1).

4. Paragraph 3.1 (Definitions) : "*Product*" means: "genetic material to be used for research and breeding".

5. Paragraph 3.1 (Definitions) : "*Incorporates*" means: "physical incorporation of any part of a genotype from materials accessed from the Multilateral System into a product." (Option 1).

6. Paragraph 3.1 (Definitions). The concept of "*available without restriction*" needs to be clarified to determine when a product is made available to others, without restriction, for research and breeding. We have therefore drafted a definition for inclusion in this section of the SMTA.

"*Available without restriction*" means "the ability to work on a product for purposes of research and breeding, without any legal or contractual obligation or biotechnological or technological restriction impeding the use of this product or any future product in the manner specified in the Treaty".

Explanatory note: we understand, at least under the protection system of the 'breeder's right', that a variety (material), even with IPR protection, can be used for research and breeding purposes without the need for any authorization from the owner of the variety. Such is the determination of the UPOV ACT of 1978, an exception that was maintained in the UPOV ACT of 1999 under "Exceptions to the Breeder's Right".

7. Paragraph 4.1. (Subject matter of the material transfer agreement/material to be transferred). We propose the following amendment: "The subject of this Agreement is the transfer from Provider to Recipient of: the plant genetic resources for food and agriculture specified in *Appendix 1* of this Agreement (hereinafter referred to as the "Material") and the related information referred to in *Appendix 1*, subject to the terms and conditions set out in this Agreement".

8. Paragraph 5. (General provisions). We propose that the general provisions remain in the MTA.

9. Paragraph 6.1a: (Rights and obligations of the provider). With regard to the need to track the individual accessions, the following should be added: "unless protected by intellectual property rights".

10. Paragraph 6.2: (Rights and obligations of the provider). With regard to Article 12.3h of the Treaty and its inclusion in this part of the SMTA: we suggest that this should not be included in the SMTA but dealt with by the Governing Body.

11. Paragraphs 6.3 to 6.5: (Rights and obligations of the provider). We suggest with regard to Articles 13.2a, 13.2b(i) and 13.2b(iii) of the Treaty that these concepts be deleted from this part of the MTA and that they be reflected in the Preamble.

12. Paragraph 6.6: (Rights and obligations of the provider). With regard to Article 12.4 of the Treaty, we agree that the matter should be considered in paragraph 7.8 of the SMTA under the rights and obligations of the recipient.

13. Paragraph 7.1: (Rights and obligations of the recipient). We suggest that this concept be deleted from this part of the SMTA but that reference to sovereignty be included in the Preamble.

14. Paragraphs 7.3 and 7.4: (Rights and obligations of the recipient). With regard to Articles 12.3b and 12.3c of the Treaty, we agree with the proposal in the explanatory notes.

15. Paragraph 7.5: (Rights and obligations of the recipient). We suggest further examination of the need for a definition of "in the form received from the Multilateral System" and that this be added to the provision.

16. Paragraph 7.6: (Rights and obligations of the recipient).With regard to Article 12.3f of the Treaty, we agree with the possible wording suggested in the explanatory notes.

17. Paragraph 7.7: (Rights and obligations of the recipient). We agree that in the case that the Recipient conserves the Material supplied, the Recipient shall make the Material available under the Multilateral System using the MTA.

18. Paragraph 7.8: (Rights and obligations of the recipient). We suggest the following amendment: In the case that the Recipient transfers the Material supplied under this Agreement to a new recipient, the Recipient shall do so under the same terms and conditions of this Agreement and shall notify the fact to the Governing Body or to the person designated to this effect.

19. Paragraphs 7.9 to 7.13: (Rights and obligations of the recipient). With regard to Articles 13.2, 13.2b, 13.2c, 13.2d(i) and 13.2d(ii), we agree with the suggestion in the explanatory notes.

20. Paragraphs 7.14 and 7.15: (Rights and obligations of the recipient). With regard to the level, form and manner of sharing the monetary benefits, we suggest the following:

- A distinction in payment should be made on the basis of whether the product is made available to third parties with or without restrictions, as set out in the paragraphs 7.14 and 7.15. Different levels of payment could thus be established.
- One possible form of payment would be: "An upfront payment plus a fixed percentage of sales by those carrying out plant breeding activities" (Bullets 3 and 4).

21. Paragraphs 7.14 and 7.15: We agree that there should be an **exemption from payment** for publicly funded research institutes and recipients engaged in research and development for purposes of technology transfer to farmers, unless they apply some form of restriction on the use of the seeds they produce. **Payment is encouraged from** commercial plant breeders that produce seeds on which there are no restrictions of use for researchers and breeders as defined in the Treaty. Commercial plant breeders that apply restrictions on the use of the seeds they produce should pay.

22. **Farmers and small farmers should be exempted from payment,** except if engaged in plant breeding for profit.

23. Paragraphs 7.16: We agree with Option 4 and define the concept of "*available without restriction*" as indicated under paragraph 6 of this report.

24. Paragraph 7.17: We suggest removing paragraph 7.17 from the MTA as this refers to the Contracting Parties and not to the parties to the Standard Material Transfer Agreement (Article 12.6 of the Treaty).

25. Paragraph 8.1: This provision seems inadequate. Also, depending on whether the dispute settlement mechanism is national or by arbitration or some other form, a clause needs to be inserted on the recognition and implementation of the settlement. Private international law has provisions that are materially oriented in a specific direction, so we could include a provision on the application of the law of the country of the provider or of the recipient depending on which offers the greater protection or accomplishment of the objectives of the Treaty/or a combination of the two, or, in the case of discrepancy, that which is more conducive to accomplishment of the objective of the MTA.

26. Paragraph 9.1: We agree with Option 2 and there could be a definition of what is meant by interested natural or legal person, or dispute settlement could be left to each national legislation or to arbitrators familiar with the subject of the dispute.

27. Paragraph 9.2: We suggest retaining the suggested options and further examining this topic. Each option has advantages and disadvantages: national courts could present problems of recognition and implementation of international arbitration and external resolution of cases, while arbitration presents the problem of enforcement of the settlement and the question of cost.

AUSTRALIA

Australia appreciates the work undertaken by the Secretariat, together with the Legal Office and Chairs of the Contact Group and Interim Committee in developing draft text for negotiations in the Contact Group.

The documentation prepared brings together the concepts explored by the meeting of experts in October 2004 into a more organised structure. We support the approach of using an explanatory memorandum in association with the draft text for the standard material transfer agreement.
We understand the Secretariat is still to consider how to deal with comments received. Australia considers the Secretariat first draft should be easy to follow, be clear and be kept in a simple format. Input to the preparation of the Secretariat text is distinct and separate from that which would be made once the negotiations commence i.e., comment at this stage is without prejudice to views of participants in the Contact Group, including views on options and structure. This should be made clear in the introduction to the Explanatory Memorandum.

The drafts of 21 January 2005 should be amended to clarify issues and to incorporate additional options identified in the lead up to negotiations. Subject to the nature of comments received comments could be made available as information documents.

While from our perspective the text broadly covers the range of views and options addressed by the Experts, we consider that on a number of matters views on some issues in the material prepared by the Secretariat goes beyond expert group findings. Material should be factual only.

Australia would like the following issues addressed in finalising the first draft.

1. TEXT UNDER GENERAL SECTION IN EXPLANATORY MEMORANDUM

Paragraph 3. Add to 2nd last sentence, ‘for which there was inconclusive guidance from the Expert Group findings and from the Treaty text relating to”. Delete last sentence.

2. PARTIES TO THE AGREEMENT

We consider this section needs further consideration by the Secretariat in both the draft MTA and the explanatory memorandum to clarify concepts. The current material is a blend of non operative and operative considerations. This may require a redraft of text and/or a different structure.
For example:

- Clauses 2.1 and 2.3 do not belong under a heading ‘parties to the agreement’. Recitals (preamble) and words such as ‘ agree as follows’ are non operative and would normally come before the commencement of operative provisions
- It is not clear what is behind or meant be the term ‘conformity’ in clause 2.1.
    - Is the standard MTA intended to be able to be modified to meet particular circumstances?
    - Does this mean that the draft is a compilation of principles and obligations that individuals should follow when preparing their own agreements?

3. DEFINITIONS

Explanatory memorandum paragraph 3.1 rephrase second sentence to explain why the Secretariat considers these definitions are required and identify the key provisions in the MTA where they arise so that delegations can consider their relevance and appropriateness in those contexts. As currently drafted the Secretariat view on definitions is contrary to that of the experts.

ARTICLE 6 RIGHTS AND OBLIGATIONS OF THE PROVIDER

6.1 The secretariat should clarify why it has chosen the signature approach and where changes would be required for the shrink-wrap approach.

ARTICLE 8 APPLICABLE LAW/JURISDICTION AND ARTICLE 9 DISPUTE SETTLEMENT.

The Secretariat should incorporate additional qualifications into this section to reflect that the Expert group discussed both issues together and that the findings are not conclusive. The following changes should be made to reflect expert group findings and the Treaty context.

- Article 8.1 should be placed in brackets as this is an option only, proposed by the Secretariat. The explanatory memorandum should also clarify that while this is one option, there were also views in the expert group which queried the need for such at all.
- Article 9. This should include reference in the introduction to 9.1 to the relevant Treaty provisions which provide guidance on dispute settlement for the MTA.

BRAZIL

ITEM 3. DEFINITIONS

Definition of "commercializes": “Option 1: "Selling, leasing or licensing a product for monetary consideration";

Definition of "product": Option 1: "A plant variety, breeding line, breeding material, genes, tissue or *in vitro* material, excluding grain".

Definition of "incorporates": Option 1: "Physical incorporation of any part of a genotype from materials accessed from the Multilateral System into a product".

ITEM 6. RIGHTS AND OBLIGATIONS OF THE PROVIDER

6.2. With regard to this paragraph, which refers to Article 12.3h of the Treaty, Brazil believes that the collection of genetic material should be through the application of national legislation.

6.3 – 6.5. Brazil agrees with the explanatory note.

6.6. Brazil agrees with the explanatory note.

7. RIGHTS AND OBLIGATIONS OF THE RECIPIENT

7.1. Brazil agrees with the explanatory note.

7.3. Brazil agrees with the explanatory note.

7.4. Brazil agrees with the explanatory note.

7.6. Brazil agrees with the proposed wording in the explanatory note: "Genetic material that is supplied under the Agreement and which is protected by intellectual and other property rights shall be used only in a manner that is consistent with relevant international agreements, and with relevant national laws”.

7.9 – 7.13. Brazil believes that these articles should not be in the Standard Material Transfer Agreement because they are obligations on the Contracting Parties and not on the parties to the Agreement.

7.14 – 7.15. Brazil believes that the best option for the level, form and manner of sharing the monetary benefits would be: "The natural or legal person holding the license to market a plant genetic resource for food and agriculture accessed through the Multilateral System will pay a fixed percentage of monetary benefits arising from the plant genetic resource in question; this percentage should be based on the commercial value of the marketable products produced by the plant genetic resource for food and agriculture.”

On the question of whether different levels of payment should be established for different categories of recipients who commercialize such products or for different sectors and, if so, what those levels, various categories of recipients and sectors should be, Brazil believes that there should be two categories: 1) developing countries and 2) developed countries; and two classes of user: 1) seed-producing institutions, that is, companies that produce seed from plant genetic resources for food and agriculture accessed from the Multilateral System and that restrict its use; and 2) farmers, who should not have to make any payment.

On the question of whether to exempt from payment small farmers in developing countries and countries with economies in transition and, if so, who qualifies for exemption as a small farmer, Brazil believes that the best option would be: "No farmers will be required to contribute to the Multilateral System. Therefore, there is no need to qualify the term "farmers". The owner of a technology or variety who restricts its use will pay to the Multilateral System a percentage of the royalty received from the commercialization of the product. Farmers who are owners of such technology will pay. Anybody else who does not restrict the use of a given technology is encouraged to contribute on a voluntary basis to the Multilateral System".

With regard to the definition of monetary and other benefits for the purposes of the Standard Material Transfer Agreement, Brazil believes that "Monetary benefits can be defined as a percentage of royalties received by the owner of the technology. Other benefits arising from commercialization could come from donations and voluntary contributions. Other mechanisms, such as educative measures and marketing strategies, linked to conservation of genetic material, could be used as options for contributions".

7.16. Brazil believes that the best option is Option 1 "it is in the public domain, protected by Plant Variety Protection, or protected by a patent system and made available through royalty-free licences".

7.17. Brazil believes that there should be a provision that natural or legal persons should provide facilitated access in emergency disaster situations.

9. DISPUTE RESOLUTION/SETTLEMENT

9.1. Brazil believes that only the Provider or the Recipient should be able to initiate dispute settlement procedures (Option 1).

9.2. Brazil believes that any dispute arising from the Agreement should be resolved in the following manner (Option 1): a) Amicable dispute settlement: The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement by negotiation. If the dispute is not resolved within [**] days/months, either Party may initiate mediation as provided in subparagraph (b) below. b) Mediation: If the dispute is not resolved by negotiation, the Parties shall endeavour to settle the dispute by mediation through a neutral third party mediator, to be mutually agreed. If the dispute is not resolved within [**] days/months from the referral to mediation, either Party may initiate arbitration as provided in subparagraph (c) below. c) Arbitration: If the dispute has not been resolved by mediation, the dispute will be submitted for arbitration to a Panel of Experts established by the Governing Body for this purpose (Option 3). The result of such arbitration shall be binding on both Parties.

11. SIGNATURE/ACCEPTANCE

Brazil prefers Option 1.

CHILE

1. There could be a translation problem in paragraph 2.1. The Spanish version is confusing as it indicates that the present Agreement is in conformity with the Standard Material Transfer Agreement, thus referring to itself. We therefore suggest the following wording: "This Standard Material Transfer Agreement (hereinafter referred to as "this Agreement")" or "This Material Transfer Agreement (hereinafter referred to as "this Agreement") is the Standard Material Transfer Agreement".

2. Section 3 Definitions: For "Commercializes, we prefer Option 1.

3. Section 3 Definitions: For "Incorporates", we prefer Option 1.

4. We suggest that Section 5 on General Provisions should be incorporated into the body of the MTA.

5. With regard to paragraphs 6.3 to 6.5, as indicated in the explanatory notes, these Articles of the Treaty should be reflected in the Preamble to the Agreement.

6. In paragraph 6.6 referring to Article 12.4 of the Treaty, we agree with the suggestion in the explanatory notes that this be dealt with under the section on the rights and obligations of the recipient (paragraph 7.8 of the MTA).

7. In paragraph 7.1, we agree with the explanatory notes that sovereignty should be indicated in the Preamble and not in the substantive clauses of the MTA.

8. With regard to paragraph 7.3, we agree with the explanatory notes.

9. With regard to paragraph 7.4, We again agree with the explanatory notes.

10. With regard to paragraph 7.6, we agree in principle with the wording proposed in the explanatory notes, but this subject requires further attention.

11. With regard to paragraphs 7.14 and 7.15, we are not yet able make a decision as the matter is currently being discussed under the formulation of Chile’s Law on Access to Genetic Resources.

12. As regards paragraph 7.16, this issue should be examined by the Governing Body.

13. We require more time before being able to decide on the dispute settlement mechanisms.

14. Section 10 (Additional Items), ‘Guarantor’ and ‘Following the material’ are complex subjects that need to be further discussed.

COLOMBIA

GENERAL PROVISIONS

Origin of the genetic material: The FAO Legal Office has pointed out that from a legal point of view the origin of material exchanged under the Standard Material Transfer Agreement can be said to be the Multilateral System rather than individual countries. We do not agree with this statement as the Multilateral System is an instrument that helps to enhance the exchange of material but is not the place of origin of the material, which is why the text of the Treaty talks about material received from the Multilateral System, not material originating in the Multilateral System.

The disadvantage of the Legal Office's perception is that the country of origin loses rights should the materials be used for other purposes than those set out in the Treaty.

RIGHTS AND OBLIGATIONS OF THE PROVIDER

As was discussed at the meeting in Brussels, the shrink-wrap approach is too weak to ensure compliance with the terms of the Treaty and of the Material Transfer Agreement itself, first because the new customs and security measures introduced at ports and airports allow the authorities to open a consignment, thus automatically negating the presumption of acceptance of the terms and conditions.

We believe the best way of ensuring compliance with provisions is to have a signature before the supply of the material.

With regard to paragraph 6.1c, "If the Provider of the material is also the developer, then it is clear that his or her agreement to access has already been given…"

We consider that this new wording to express Article 12.3e adds little in substance but certainly creates confusion.

RIGHTS AND OBLIGATIONS OF THE RECIPIENT

Paragraph 7.6. We also consider that the possible wording "Genetic material that is supplied under this Agreement and which is protected by intellectual and other property rights shall be used only in a manner that is consistent with relevant international agreements, and with relevant national laws" goes beyond what is stated in Article 12.3f.

Paragraph 7.17. While we correctly need to examine whether Contracting Parties should adopt measures to guarantee that natural and legal persons facilitate access in emergency disaster situations, the idea of transferring such an obligation is somewhat delicate.

BODY OF THE AGREEMENT

RIGHTS AND OBLIGATIONS OF THE PROVIDER

In paragraph 6.1 replace "Material is transferred" with "Material is supplied".

The other observations were made with regard to the explanatory notes.

The agreement and notes sent to us will be examined by all bodies concerned before the meeting in July, so that we can come with an agreed position.

ECUADOR

3. DEFINITIONS

"*Commercializes"* means the act of [making a request for a plant genetic resource for food and agriculture in the Multilateral System, with a view to commercializing a product] [, and shall not include the act of applying for an intellectual property right]. (Option 4).

"*Product* " means a plant variety, breeding line, breeding materials, genes, tissue or *in vitro* material, excluding grain (Option 1).

"*Incorporates*" means incorporation of any part of genetic material accessed from the Multilateral System in a product that results in an expressed trait that is of value (Option 4).

6. RIGHTS AND OBLIGATIONS OF THE PROVIDER

6.2 Article 12.3h deals with the means of collection of genetic material from *in situ* conditions and provides for the application of relevant national law or such standards as may be set by the Governing Body. A standard approach to this, which would be required for the Standard Material Transfer Agreement, is not, therefore, possible. This issue is one, however, that the Governing Body may wish to consider outside the context of the Standard Material Transfer Agreement. We believe that this matter should be dealt with by applying national legislation.

6.5 We agree with the legal point of view stated in the explanatory notes in paragraphs 6.3, 6.4 and 6.5.

6.6 We agree with the explanatory notes.

7. RIGHTS AND OBLIGATIONS OF THE RECIPIENT

7.3 We agree with the explanatory notes.

7.4 We agree with the explanatory notes.

7.6 We agree with the explanatory notes as concerns "Genetic material that is supplied under this Agreement and which is protected by intellectual and other property rights shall be used only in a manner that is consistent with relevant international agreements, and with relevant national laws".

7.14 As regards payment, levels, payment to small farmers and monetary benefits:

- For the level, form and manner of sharing the monetary benefits: The natural or physical person that holds the license to commercialize a plant genetic resource for food and agriculture that has been accessed from the Multilateral System will pay a fixed percentage of the monetary benefits resulting from the plant genetic resource in question; this percentage should be based on the commercial value of the marketable products that are produced by the plant genetic resource for food and agriculture in question.
- On the question of whether different levels of payment should be established for various categories of recipients who commercialize their products or for different sectors, and, if so, what those levels, categories of recipients and sectors should be: there should be two categories: 1) developing countries and 2) developed countries; and two classes of user: 1) seed-producing institutions, in other words companies that produce seed from plant genetic resources for food and agriculture accessed from the Multilateral System and that restrict its use; and 2) farmers, who should not have to make any payment.

- On the question of whether to exempt from payment small farmers in developing countries and in countries with economies in transition: No farmers will be required to contribute to the Multilateral System. Therefore, there is no need to qualify "farmers". The owner of a technology or variety who restricts its use will be responsible for paying into the Multilateral System a percentage of the royalty received from the commercialization of the product in question. Farmers who are owners of such technology will pay. Anybody else who does not restrict the use of a given technology is encouraged to contribute on a voluntary basis to the Multilateral System.
- On the question of how to define monetary and other benefits for the purpose of the Standard Material Transfer Agreement: Monetary benefits can be defined as a percentage of royalties received by the owner of the technology. Other benefits arising from commercialization could come from donations and voluntary contributions. Other mechanisms, such as educative measures and marketing strategies, linked to conservation of genetic material, could be used as options for contributions.

7.16 A product is considered to be available without restriction to others for further research and breeding when it is in the public domain, protected by Plant Variety Protection, or protected by a patent system and is made available through royalty-free licenses (Option 1).

7.17 We believe that there should be a provision that natural and legal persons should provide facilitated access in emergency disaster situations, without specifying whether the exception is through the Contracting Parties. The Governing Body may therefore wish to consider the question of whether the Contracting Parties should take measures to ensure that this obligation is passed on to such natural and legal persons.

9. DISPUTE RESOLUTION/SETTLEMENT

9.1 Dispute settlement may only be initiated by the Provider or the Recipient (Option 1).

9.2 Any dispute arising from this Agreement shall be resolved in the following manner:

a) Amicable dispute settlement: The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement by negotiation. If the dispute is not resolved within [**] days/months, either Party may initiate mediation as provided in subparagraph b) below.

b) Mediation: If the dispute is not resolved by negotiation, the Parties shall endeavour to settle the dispute by mediation through a neutral third party mediator, to be mutually agreed. If the dispute is not resolved within [**] days/months from the referral to mediation, either Party may initiate arbitration as provided in subparagraph c) below.

c) Arbitration: If the dispute has not been resolved by mediation, the dispute will be submitted for arbitration to the arbitration mechanism of the International Chamber of Commerce. (Option 1).

The result of such arbitration shall be binding on both Parties.

9.4 Ideally, the question of dispute settlement should comply with Articles 21 and 22 of the Treaty when determining how this should apply in the MTA. If this is not possible, the alternative is for arbitration to be binding on both Parties.

10. ADDITIONAL ITEMS

Guarantor

10.4 We agree with the suggestion in the explanatory note; this matter needs to be discussed and determined by the Contact Group.

Following the material

10.5 The issue of following the material is vital. Thought is needed on how some neutral institution can do this. There will also need to be assurance that it is up to the task.

11. SIGNATURE/ACCEPTANCE

(Option 1).

MALAYSIA

1. PREAMBLE

Para f: last line in paragraph (f) could read: " ...by other holders **in response to** the invitation of the Contracting Parties **under Article 11.2**".

Para h: Second sentence starting in line 4: "The Contracting Parties have also agreed that benefits **from the use, including commercial, of plant genetic resources for food and agriculture, shall be shared fairly and equitably** through the exchange of information ..."

2. PARTIES TO THE AGREEMENT

2.1 Relevance of square bracket such as in **[name and address of provider or providing institution]** and **[name and address of recipient or recipient institution]** needs to be clarified

3. DEFINITIONS

Additional terms proposed to be defined: "Public Domain"; "Provider or providing institution"; "Recipient or recipient institution".

"*Commercializes*" means: Malaysia would like to propose that "commercializes" should denote a wider scope. Alternate option suggested: "Selling, leasing, licensing or any other transaction of a product for monetary consideration."

"*Product*" means: Alternate option suggested: "A plant variety, breeding line, breeding materials, genes or any other functioning units of heredity, excluding grain."

"*Incorporates*" means: Option 2 is preferred. Incorporation of any part of genetic material accessed from the Multilateral System in a product, without taking into account the expression of a trait is the better definition although it is slightly different from Option 1 in as far as stressing a point on expression of a trait is not accounted for. Also as indicated in the report the definition as in Option 2 here is simple as opposed to Option 3 and Option 4 which are difficult and complex to determine for many traits.

5. GENERAL PROVISIONS

5.1 Suggested amendment: "This Agreement is entered into within the framework of the Multilateral System and shall be implemented and interpreted in accordance with the objectives and provisions of the Treaty."

6. RIGHTS AND OBLIGATIONS OF THE PROVIDER

General comment: The rights and obligations of the provider should be clearly classified/separately differentiated.

6.1d If this provision remains, add to the end of the sentence in (d) – " … relevant national laws, **provided that nothing in this Agreement shall be interpreted to create a hierarchy between the Treaty and other international agreements".**

7. RIGHTS AND OBLIGATIONS OF THE RECIPIENT

Query: the word 'non-food/ feed industrial uses' needs further clarification.

General comment: The rights and obligations of the recipient should be classified/separately differentiated.

7.6 If this provision remains, add to the end of the sentence the formulation of Art. 12.3f of the International Treaty on Plant Genetic Resources for Food and Agriculture – " … relevant national laws, **provided that nothing in this Agreement shall be interpreted to create a hierarchy between the Treaty and other international agreements"**.

7.8 Malaysia would like to propose in addition that the original Provider be informed when the material is supplied to another person or entity. Suggested Text: "In the case that the Recipient transfers the Material supplied under this Agreement to another person or entity, the Recipient shall do so under the Standard Material transfer agreement and inform the Provider."

7.14 Suggested Changes: "In the case that the Recipient commercializes a product that is a plant genetic resource for food and agriculture that incorporates genetic material supplied under this Agreement and where that product **is available with restriction** to others for further research and breeding, the Recipient shall pay [*See Explanatory Notes*] into the mechanism established by the Governing Body for this purpose in accordance with the banking instructions set out in *Appendix 2* to this Agreement."

7.16 Include as a Definition in Clause 3. Based on Articles 13.2d(ii), 12.3b, 12.3d, and 9 of the IT* on Plant Genetic Resources for Food and Agriculture: "available without restriction" means that a product is:

- in the public domain without any intellectual property or other rights claims, or
- protected by plant variety protection, or
- protected by patent and made available through royalty-free licenses or,
- protected by intellectual property or other rights claims where such claims are voluntarily suspended; or
- accessed free of charge or, if a fee is charged, the payment does not exceed the minimum cost necessary to effect that access, or
- without any technological or biotechnological restrictions that would preclude using it for any future product in a manner specified by the Treaty, or
- available to farmers in accordance with Article 9 of the Treaty and national law.

Option 5 is favoured with minor amendment. Proposed that the last sentence to be deleted: "the product can be used for research and breeding without any legal or contractual obligations, or biotechnological or technological restrictions, that would preclude using it or any future product in the manner specified by the Treaty. Availability is not dependent upon any specific type of intellectual property right claimed for the product but on how the owner of the intellectual property chooses to make the product available."

7.17 This obligation should be included for both the Provider and Recipient and thus the following clause should be part of Clause 6 and 7: "In emergency disaster situations the [Provider][Recipient] shall provide facilitated access to materials from the Multilateral System for the purpose of contributing to the re-establishment of agricultural systems, in cooperation with disaster relief coordinators and the national governments concerned."

9. DISPUTE RESOLUTION/ SETTLEMENT

9.1 Option 1 is preferred.

9.2 Malaysia suggests that the text under this article should reflect the mechanism and procedures as in Article 22 of the International Treaty on Plant Genetic Resources for Food and Agriculture.

10. ADDITIONAL ITEMS

Following the Material

10.5 "In the interest of transparency and in accordance with the purpose and objectives of the Treaty and MTA, the Recipient shall provide information to (an entity to be determined by the Governing Body) relating to intellectual property or other rights claims, and the commercialization of products under the MTA."

SENEGAL

3. DEFINITIONS

"*Commercializes*" means the act of selling, leasing or licensing a product for monetary consideration.

"*Product*" means a plant variety, breeding line, breeding materials, genes, tissue or *in vitro* material.

"Incorporates" means the incorporation of any part of a genetic material accessed from the Multilateral System, in a product, without taking into account the expression of a trait.

6. RIGHTS AND OBLIGATIONS OF THE PROVIDER

6.6 Delete.

7. RIGHTS AND OBLIGATIONS OF THE RECIPIENT

7.1 Delete.

7.3 Delete.

7.4 Delete.

7.14 If the recipient commercializes a product that is a plant genetic resource for food and agriculture that incorporates genetic material supplied under this Agreement and where the product is not available without restriction to other recipients for research and breeding purposes, the recipient or the natural or legal person holding the licence to commercialize the plant genetic resource for food and agriculture accessed from the Multilateral System will pay to the mechanism established by the Governing Body for this purpose, in accordance with the banking instructions set out in *Appendix 2* of this Agreement, a fixed percentage of the monetary benefits resulting from this plant genetic resource, based on the commercial value of the marketable products produced by the resource in question.

The percentage to be paid by the enterprise depends on the category of country: developing country or developed country.

For the purposes of Article 13.2d, the benefits resulting from commercialization for which payment is to be made to the Multilateral System are defined as a percentage of net income from the sale, lease or licensing of a product derived from plant genetic resources for food and agriculture that have been accessed from the Multilateral System.

7.16 A product is considered as available without restriction for purposes of research and breeding when: it is accessed free of charge or, if a fee is charged, the payment does not exceed the minimum cost necessary to effect that access.

9. DISPUTE RESOLUTION/SETTLEMENT

9.1 Dispute settlement can be initiated by the Provider, the Recipient or a person duly appointed to represent the interests of third party beneficiaries under this Agreement.

9.2 Any dispute arising from this Agreement shall be resolved in the following manner:

a) Amicable dispute settlement: The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement by negotiation. If the dispute is not resolved within [**] days/months, either party may initiate mediation as provided in subparagraph b) below.

b) Mediation: If the dispute is not resolved by negotiation, the Parties shall endeavour to settle the dispute by mediation through a neutral third party mediator, to be mutually agreed. If the dispute is not resolved within [**] days/months from the referral to mediation, either Party shall initiate arbitration as provided in subparagraph c) below.

c) Arbitration: If the dispute has not been resolved by mediation, the dispute will be submitted for arbitration to a Panel of Experts established jointly by an existing international arbitration mechanism and the Governing Body**.**

The result of such arbitration shall be binding on both Parties.

10. ADDITIONAL ITEMS

10.6 Delete.

11. SIGNATURE/ACCEPTANCE

We prefer Option 1.

NEW ZEALAND

3. DEFINITIONS

"*Plant genetic resources for food and agriculture*" means any genetic material of plant origin of actual or potential value for food and agriculture covered by the Multilateral System;

"*Genetic material*" means any material of plant origin, including reproductive and vegetative propagating material, containing functional units of heredity covered by the Multilateral System;

"*Commercializes*" means the act of selling, leasing or licensing a product for monetary consideration;

"*Product*" means a new plant variety derived from material accessed through the Multilateral System;

"*Incorporates*" means: We believe the term does not need to be defined separately.

4. SUBJECT MATTER OF THE MATERIAL TRANSFER AGREEMENT/MATERIAL TO BE TRANSFERRED

4.1 An alternative: The Provider hereby grants the Recipient a license to use the Material and the related information listed or referred to in Appendix 1 subject to the terms and conditions of this Agreement".

6. RIGHTS AND OBLIGATIONS OF THE PROVIDER

6.1 It would be preferable to use the exact words from the Treaty in the text below.

7. RIGHTS AND OBLIGATIONS OF THE RECIPIENT

7.16 A product is considered to be available without restriction to others for further research and breeding when it is in the public domain, protected by Plant Variety Protection, or protected by a patent system and made available through royalty-free licences. ("available without restriction" should be defined in the definitions section)

8. INTERPRETATION (APPLICABLE LAW/JURISDICTION)

8.1 The applicable law may need to be defined, as a court would be likely to assert jurisdiction in any case. Perhaps the relevant law should be those things listed already in cl 8.1, plus that of the Provider's country. If the decisions of the Governing Body are included in this clause, this should reference the dispute resolution clause (9.2 in the current draft) other wise any decision the Governing Body made relating to anything could arguably be relevant for interpreting this contract.

9. DISPUTE RESOLUTION/SETTLEMENT

9.1 Dispute settlement may only be initiated by the Provider or the Recipient.

9.2 Option 1 preferred option with sub-option 3.

11. SIGNATURE/ACCEPTANCE

Option 1 preferred.

ANNEX I

LETTER OF 11 FEBRUARY 2005 FROM THE CHAIR OF THE CONTACT GROUP TO THE CHAIRS OF THE FAO REGIONAL GROUPS AND THE CHAIRMAN OF THE INTERIM COMMITTEE FOR THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

As Chair of the Contact Group for the Drafting of the Standard Material Transfer Agreement for the International Treaty on Plant Genetic Resources, I wish to inform you of certain issues about the preparation for the first meeting of the Contact Group, which will be held later this year. The dates for this meeting have not yet been fixed, but it is expected to be held in early summer.

The Second meeting of the Commission on Genetic Resources for Food and Agriculture acting as Interim Committee for the International Treaty Plant Genetic Resources for Food and Agriculture, decided that a Contact Group should be established for the drafting of the Standard Material Transfer Agreement. The Terms of Reference for the Contact Group[2] adopted by the Interim Committee state that "*the Secretariat of the Commission, with the support of the Legal Office, under the guidance and supervision of the chair of the Contact Group in consultation with the chairs of the regional groups and the chair of the Second Meeting of the Interim Committee, shall prepare the first draft of the Standard MTA, for consideration by the first meeting of the Contact Group".* I am pleased to inform you that I expect to send the first draft of the Standard Material Transfer Agreement to Chairs of the Regional Groups around the end of February. The Regional Groups will be asked to provide comments on this first draft within one month. This short deadline is necessary in order to ensure that the draft Standard Material Transfer Agreement will be ready for circulation to the members of the Contact Group at least eight weeks prior to its meeting, as required by its Terms of Reference.

I propose to establish a Legal Expert Group within the Contact Group, made up of two representatives from each FAO Region. These legal experts may be asked to consider issues of a purely legal nature that arise during the course of the meeting of the Contact Group. Following the letter from the Secretariat of the Commission on Genetic Resources for Food and Agriculture of 22 December 2004, which asked for nominations of representatives of your Region on the Contact Group before the end of February 2005, I would be grateful if you could take into account my proposal to establish a Legal Expert Group when making your region's nominations. Please submit these nominations to Mr José T. Esquinas-Alcázar, Secretary of the FAO Commission on Genetic Food Resources for Food and Agriculture, as soon as possible and **no later than 28 February 2005**.

[2] CGRFA/IC/CG-SMTA-1/05/Inf.1.

ANNEX II

Letter of 6 May 2005 from the Chair of the Contact Group to the Chairs of the FAO Regional Groups and the Chairman of the Interim Committee for the International Treaty on Plant Genetic Resources for Food and Agriculture

As you know, the second meeting of the Commission on Genetic Resources for Food and Agriculture acting as Interim Committee for the International Treaty on Plant Genetic Resources for Food and Agriculture, decided that a Contact Group should be established for the drafting of the Standard Material Transfer Agreement. The Terms of Reference for the Contact Group (see copy attached) adopted by the Interim Committee state that "*the Secretariat of the Commission, with the support of the Legal Office, under the guidance and supervision of the chair of the Contact Group in consultation with the chairs of the regional groups and the chair of the Second Meeting of the Interim Committee, shall prepare the first draft of the Standard MTA, for consideration by the first meeting of the Contact Group"*. In line with these requirements, by my letter of 23 February 2005 I sought your comments on the draft Standard Material Transfer Agreement, prepared by the Secretariat, before its finalisation for submission to the Contact Group.

We have received comments from one region and a number of individual countries. However, from the political perspective, the replies are a heterogeneous mix from regions and countries, there is a lack of geographical balance, and there is a lack of balance between developed and developing countries. In addition, at the technical level, the total number of replies received is small and the replies contain a mixture of comments on the first draft text, proposals for new draft text, and statements of national opinions and preferences. Taken together, these political and technical considerations make it difficult to make modifications to the text in a fair and equitable way. In the light of these considerations, and following consultation with the FAO Legal Office and Commission Secretariat, I have come to the conclusion that the original draft, as prepared by the Secretariat, should form the basis of discussions in the Contact Group.

I also propose that those regions/countries that have submitted replies should determine how they might be used. For those regions/countries that agree, I have asked the Secretariat to prepare a document which collates the replies submitted, which would be tabled at the meeting of the Contact Group. Those regions/countries that would prefer not to have their comments published as submitted to the Secretariat may wish themselves to circulate their views to other countries or may simply wish to use them during the course of the negotiations. If you are not prepared for your comments to be published as proposed, I would be grateful if you could let Mr José T. Esquinas-Alcázar, Secretary of the Commission on Genetic Resources for Food and Agriculture, know as soon as possible, and **no later than Wednesday 18 May,** if you have not already done so**.** Please inform him at the following address:

José T. Esquinas-Alcázar
Secretary
Commission on Genetic Resources for Food and Agriculture
FAO
Viale delle Terme di Caracalla
00100 Roma
Italy
Fax: +39 06 57053057
E-mail: jose.esquinas@fao.org

I am copying this letter to the Permanent Representatives of those countries from your region who have provided me with their comments direct.

ANNEX III

Letter of 2 June 2005 from the Chair of the Contact Group to the Chairs of the FAO Regional Groups and the Chairman of the Interim Committee for the International Treaty on Plant Genetic Resources for Food and Agriculture

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As Chair of the *Contact Group for the Drafting of the Standard Material Transfer Agreement*, I am writing to inform you of a number of practical arrangements for the meeting of the Contact Group.

Date and place of the meeting

As you know, this meeting is being hosted by Tunisia, with the support of the United States of America, including for the participation of developing countries. Until the signature of the agreement with the Governments of the USA and of the Tunisian Republic, the date and place are subject to reconfirmation, but the meeting is planned to be held in Hammamet, Tunisia, on 18 to 22 July 2005.

Support for the participation of developing countries

I am informed that the United States of America will be supporting the participation of the Representatives from developing countries who have been nominated to the Contact Group. The United States will be contacting them directly. For this reason, would Regions please ensure that the full, up-to-date contact details of their Representatives are with the Secretariat? If these change, please inform the Secretariat immediately.

Regional Consultations

The Contact Group meeting will be preceded by two days of regional consultations, on 15 and 16 July 2005. Facilities will be provided for *all* Regions to meet individually, and these days will also provide an opportunity for contact *between* Regions, to facilitate a successful meeting.

I would ask that, as far as possible, Regions seek to establish regional positions in the form of proposed draft text for the draft Standard Material Transfer Agreement. This would help considerably in focussing the negotiations. Regional proposals for draft text would then be submitted to the Secretariat at the end of Regional consultations on 16 July, so that they may be translated and circulated to the Contact Group.

This is important, because I propose to read through the entire text of the draft Standard Material Transfer Agreement, incorporating any additional options for text that the Regions may propose, before beginning the actual negotiations on the text.

By my letter of 6 May 2005 (attached for ease of reference), I asked Regions whether they wished the comments they, and countries in their Region, had earlier submitted to be made public. The comments of those that agreed will be available in document CGRFA/IC/CG-SMTA-1/05/3, *Compilation of comments received on the first draft of the Standard Material Transfer Agreement*, and posted on the FAO website at http://www.fao.org/ag/cgrfa/cgmta1.htm. Regions may therefore wish to review the comments from their Region, in preparing their proposed draft texts.

Legal Expert Group

As I noted in my letter of 11 February (copy attached for ease of reference), I propose to establish a Legal Expert Group and will invite each Region to designate two members. It is important, therefore, that you have such legal expertise on your Region's delegation. This will be a closed group of those

nominated by the Regions to participate in it, and will meet at my request to consider issues of a purely legal nature that may arise during the course of the Contact Group meeting.

A number of Regions have raised the question of whether Advisers as well as Representatives may be members of the Legal Expert Group. Please note, therefore, that Advisers as well as Representatives may be nominated as a Region's members of the Legal Expert Group, provided that the following provisions of the Terms of Reference of the Contact Group apply to any Advisers who have been nominated to the Legal Expert Group, in regard to their position in meetings of the Contact group itself:

"A maximum of three advisers per country may be present in the meeting room, at any one time. Advisers will have no speaking rights."

This means that Advisers nominated to the Legal Expert Group may not attend meetings of the Contact Group, except as one of the three Advisers per country, and that they will have no speaking rights in the Contact Group.

Regional Nominations for the Bureau of the Contact Group

I should also like to recall my letter of 23 February (copy attached for ease of reference), in which I asked each Region to nominate a member for the Bureau, and informed you that I would be holding a short informal meeting with those nominated by the Regions on the afternoon of 14 July. Those designated should make their travel arrangements accordingly. This meeting will help me to prepare the work of the Contact Group, before the Regional consultations begin.

The Secretariat has informed me that it has so far only received the nominations for the Bureau members from the North American and European Regions. I should be grateful if the other regions could provide this information to Mr José T. Esquinas-Alcázar, at the following address, **no later than 17 June 2005**:

José T. Esquinas-Alcázar
Secretary, Commission on Genetic Resources for Food and Agriculture
FAO
Viale delle Terme di Caracalla
00100 Roma
Italy

Fax: +39 06 57053057
E-mail: jose.esquinas@fao.org

Please note that the actual composition of the Bureau will be decided by the Contact Group at its first session.