



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 8 of the Draft Provisional Agenda

**INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES
FOR FOOD AND AGRICULTURE**

FIRST SESSION OF THE GOVERNING BODY

Madrid, Spain, 12-16 June 2006

DRAFT STANDARD MATERIAL TRANSFER AGREEMENT

1. At its second meeting, the Interim Committee for the International Treaty on Plant Genetic Resources for Food and Agriculture established the Contact Group for the Drafting of the Standard Material Transfer Agreement.¹
2. The Contact Group established the text of the draft Standard Material Transfer Agreement as well as of a draft Resolution for the consideration of the Governing Body whereby the Governing Body can adopt the Standard Material Transfer Agreement. These are contained in the present document. As prepared by the Contact Group, the draft Standard Material Transfer Agreement is in annex to the draft Resolution.
3. As recommended by the Contact Group, the Governing Body is invited to review and adopt the draft resolution, and the draft Standard Material Transfer Agreement.
4. In addition to recommending review and adoption of the draft Resolution, the Contact Group made further recommendations regarding the implementation of the Standard Material Transfer Agreement and related matters. The Governing Body is invited to refer to the document, *Report of the second meeting of the Contact Group for the Drafting of the Standard Material Transfer Agreement*.²

¹ CGRFA/MIC-2/04/REP, *Report of the Contact Group on the Drafting of the Standard Material Transfer Agreement*, para. 11.

² CGRFA/IC/CG-SMTA-2/REP, para. 14.

**Draft Resolution for the Consideration of the Governing Body
Resolution */2006 of the Governing Body**

ADOPTION OF THE STANDARD MATERIAL TRANSFER AGREEMENT

The Governing Body

Recalling that the objectives of the International Treaty on Plant Genetic Resources for Food and Agriculture (“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;

Recalling, that, in furtherance of the objectives of conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of benefits arising out of their use, Part IV of the Treaty establishes a Multilateral System of Access and Benefit-sharing (“Multilateral System”), which is efficient, effective, and transparent, 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, in order to receive the full support of the International Community;

Recalling further that under Article 12.4 of the Treaty facilitated access to the Multilateral System shall be provided pursuant to a Standard Material Transfer Agreement adopted by the Governing Body;

Recalling further that, under the same provision, the Standard Material Transfer Agreement shall contain the provisions of Articles 12.3a, d and g, as well as the benefit-sharing provisions set forth in Article 13.2d(ii) and other relevant provisions of the Treaty, and the provision that the recipient of plant genetic resources for food and agriculture shall require that the conditions of the material transfer agreement shall apply to the transfer of plant genetic resources for food and agriculture to another person or entity, as well as any subsequent transfer of those plant genetic resources for food and agriculture;

Noting that the Standard Material Transfer Agreement should be in conformity with the Treaty, effective and should ensure the efficient and transparent implementation of the Multilateral System;

Emphasizing that the Standard Material Transfer Agreement is crucial for the implementation of the Treaty;

Recognizing that the terms of the Standard Material Transfer Agreement should be attractive to both providers and recipients of plant genetic resources for food and agriculture accessed from the Multilateral System, in order to encourage their participation in the Multilateral System;

Emphasizing 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;

Recognizing that, under the Multilateral System, Contracting Parties shall share 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;

Recognizing that the Contracting Parties agree that benefits arising from the use of plant genetic resources for food and agriculture that are shared under the Multilateral System should flow primarily, directly and indirectly, to farmers in all countries, especially in developing countries, and countries with economies in transition, who conserve and sustainably utilize plant genetic resources for food and agriculture.

1. *Adopts* the Standard Material Transfer Agreement contained in *Annex 1* of this Resolution;
2. *Urges* Contracting Parties to the Treaty to take measures necessary for the implementation of the Standard Material Transfer Agreement;
3. *Invites* the (*name of legal person representing the Governing and the Multilateral System*) to take on the responsibility of acting on behalf of the Governing Body of the Treaty and its Multilateral System, as Third Party Beneficiary, in accordance with the relevant provisions of the standard material transfer agreement;
4. *Urges* Contracting Parties to take the steps necessary to implement the non-monetary benefit-sharing provisions of the Treaty, as articulated in Article 13 of the Treaty;
5. *Invites* users of material received under the Standard Material Transfer Agreement to make voluntary contributions to the Multilateral System, and to share the non-monetary benefits arising from the use, including commercial, of plant genetic resources for food and agriculture fairly and equitably through the exchange of information, access to and transfer of technology, and capacity-building, taking into account the priority activity areas in the rolling Global Plan of Action;
6. *Welcomes* the decisions of International Agricultural Research Centres (IARCs) of the Consultative Group on International Agricultural Research that hold *ex situ* collections in trust to sign agreements with the Governing Body of the Treaty under which the Centres shall make available material included in the Multilateral System in accordance with the Standard Material Transfer Agreement and invites other relevant international institutions to enter into similar agreements with the Governing Body;
7. *Urges* all other holders of the plant genetic resources for food and agriculture listed in *Annex 1* to the Treaty to include these plant genetic resources in the Multilateral System and urges Contracting Parties to take appropriate measures in accordance with Article 11.3 of the Treaty.

ANNEX 1 TO THE DRAFT RESOLUTION**DRAFT STANDARD MATERIAL TRANSFER AGREEMENT****PREAMBLE****WHEREAS**

The International Treaty on Plant Genetic Resources for Food and Agriculture (hereinafter referred to as “the Treaty”) 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;

[Nothing in this Agreement shall be interpreted as implying in any way a change in the rights and obligations of the Contracting Parties under the Treaty and other international agreements.]

1. 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 provider or providing institution, name of authorized official, contact information for authorized official) (hereinafter referred to as “the Provider”),

AND: (name and address of recipient or recipient institution, name of authorized official, contact information for authorized official) (hereinafter referred to as “the Recipient”).³

[1.3 Contracting Parties to the Treaty shall take measures to ensure that parties to this Agreement that are under their jurisdiction meet the obligations in this Agreement.]

1.4 The parties to this Agreement hereby agree as follows:

³ In the event of shrink-wrap and click-wrap Standard Material Transfer Agreements, the information regarding the Provider and Recipient would not be entered textually into the Standard Material Transfer Agreement.

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.

“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.

“Product” means:

Option 1

[a plant variety, breeding line, breeding materials, genes or any other functional unit of heredity incorporating Material of actual or potential value accessed from the Multilateral System, excluding commodities.]

Option 2

[a plant genetic resource for food and agriculture developed by the recipient and derived from the Material, as defined in Article 3, through research and breeding that incorporates an identifiable trait of value, or, by pedigree, at least [twenty-five percent (25%)] of the Material accessed from the Multilateral System and that has undergone development.]

“Sales” means:

Option 1

[the gross income resulting from sales, licensing and contractual agreements, leasing and any other income arising from commercialization of a Product or Products, by the Recipient, its affiliates, contractors, licensees and lessees to an independent third party.]

Option 2

[the gross income resulting from sales, licensing and contractual agreements, leasing and any other income arising from commercialization of a Product or Products, by the Recipient, its affiliates, contractors, licensees and lessees to an independent third party, less

(a) discounts, in amounts customary in the trade, for quantity purchases, cash payments, or given to wholesalers and distributors,

(b) amounts repaid or credited by reason of rejection or return[, and

(c) any freight or other transportation costs, insurance, duties, tariffs and sales and excise taxes based directly on sales or turnover or delivery of a Product or Product].]

“*To commercialize*” means to sell, lease, or license a Product or Products for monetary consideration.

3. SUBJECT MATTER OF THE MATERIAL TRANSFER AGREEMENT

The plant genetic resources for food and agriculture specified in *Appendix 1* to this Agreement (hereinafter referred to as the “Material”) and the available related information referred to in Article 5b and in *Appendix 1* are hereby transferred from the Provider to the Recipient subject to the terms and conditions set out in this Agreement.

4. GENERAL PROVISIONS

4.1 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.

4.2 The parties to this Agreement agree that (*name of legal person representing the Governing Body and the Multilateral System*), acting on behalf of the Governing Body of the Treaty and its Multilateral System, is the third party beneficiary under this Agreement.

Option 1

[4.3 The (*name of legal person representing the Governing Body and the Multilateral System*), as the third party beneficiary, has the following rights:

(a) To monitor the execution of this Agreement; [the monitoring rights refer to the rights to request samples of any Product from the Provider and the Recipient, and information relating to the execution of their obligations under Articles 5 and 6.1, 6.2, 6.3, 6.4, 6.6, 6.7, 6.9, and 6.10];

(b) To initiate dispute resolution procedures, in the case of breach of the obligations under this Agreement, in accordance with Article 8.]

Option 2

[4.3 The (*name of legal person representing the Governing Body and the Multilateral System*), as the third party beneficiary, has the right to initiate dispute resolution procedures in accordance with Article 8, and to request that the relevant information be made available by the Provider and the Recipient, regarding their obligations in the context of this Agreement.]

4.4 The rights granted to the (*name of legal person representing the Governing Body and the Multilateral System*) above do not prevent the Provider and the Recipient from exercising their rights under this Agreement.

5. RIGHTS AND OBLIGATIONS OF THE PROVIDER

The Provider undertakes that the Material is transferred in accordance with the following provisions of the Treaty:

(a) Access shall be accorded expeditiously, without the need to track individual accessions and free of charge, or, when a fee is charged, it shall not exceed the minimal cost involved;

(b) All available passport data and, subject to applicable law, any other associated available non-confidential descriptive information, shall be made available with the plant genetic resources for food and agriculture provided;

[(c) Access to plant genetic resources for food and agriculture under development, including material being developed by farmers, shall be at the discretion of its developer, during the period of its development;]

[(d) Access to plant genetic resources for food and agriculture protected by intellectual and other property rights shall be consistent with relevant international agreements, and with relevant national laws;]

(e) The Provider shall periodically inform the Governing Body about the Material Transfer Agreements entered into, according to a schedule to be established by the Governing Body.

6. RIGHTS AND OBLIGATIONS OF THE RECIPIENT

6.1 The Recipient undertakes that the Material shall be used or conserved only for the purposes of research, breeding and training for food and agriculture. Such purposes shall not include chemical, pharmaceutical and/or other non-food/feed industrial uses.

6.2 The Recipient shall not claim any intellectual property or other rights that limit the facilitated access to the Material provided under this Agreement, or their genetic parts or components, in the form received from the Multilateral System.

[6.3 In the case that the Recipient obtains an intellectual property right that limits access for further research and breeding on a Product that contains any genetic material or components received from the Multilateral System under this Agreement, the Recipient shall notify this fact to the Third Party Beneficiary.]

6.4 In the case that the Recipient conserves the Material supplied, the Recipient shall make the Material, and the related information referred to in Article 5b, available to the Multilateral System using the Standard Material Transfer Agreement.

6.5 In the case that the Recipient transfers the Material supplied under this Agreement to another person or entity (hereinafter referred to as “the subsequent recipient”), the Recipient shall

(a) do so under the terms and conditions of the Standard Material Transfer Agreement, through a new material transfer agreement; and

(b) notify the Governing Body, in accordance with Article 5e.

On compliance with the above, the Recipient shall have no further obligations regarding the actions of the subsequent recipient.

Option 1

[6.6 Without prejudice to Article 6.7, in the case that the Recipient transfers a plant genetic resource for food and agriculture under development, obtained from the Material, to another

person or entity, the Recipient shall do so under the [Standard Material Transfer Agreement, [provided that Article 5a shall not apply].]/[relevant benefit-sharing obligations of the Standard Material Transfer Agreement] and shall notify the fact to the Governing Body of the Treaty or to the legal entity or organ designated to this effect.][The Recipient shall have no further obligations regarding the actions of any third party transferee.]

6.6bis The conclusion of a Material Transfer Agreement under Article 6.7 of shall be without prejudice to the right of the parties to attach additional conditions, relating to further product development.]

Option 2

[6.6 In the case that the Recipient transfers the Product under development and the related information referred to in Article 5b supplied under this Agreement, to another person or entity, the Recipient shall do so under the terms of a new material transfer agreement⁴ [and shall notify the fact to the Governing Body of the Treaty or to the person designated to this effect].][The Recipient shall have no further obligations regarding the actions of any third party transferee.]

6.7 In the case that the Recipient commercializes a Product that is a plant genetic resource for food and agriculture and that incorporates Material as referred to in Article 3 of this Agreement, and where such Product is not available without restriction to others for further research and breeding, the Recipient shall pay a fixed percentage of the Sales of the commercialized Product into the mechanism established by the Governing Body for this purpose, in accordance with *Appendix 2* to this Agreement. [In the case that this commercialization takes the form of licensing or leasing, the contracts shall stipulate that benefit-sharing obligations apply to the Recipient and his licensees or lessees in conformity with *Appendix 2*.]

6.8 In the case that the Recipient commercializes a Product that is a plant genetic resource for food and agriculture and that incorporates Material as referred to in Article 3 of this Agreement and where that Product is available without restriction to others for further research and breeding, the Recipient is encouraged to make voluntary payments into the mechanism established by the Governing Body for this purpose in accordance with *Appendix 2* to this Agreement.

[6.9 The Recipient [shall]/[is encouraged to] make available to the Multilateral System [through the information system provided for in Article 17 of the Treaty,] all non-confidential information and share non-monetary benefits expressly identified in Article 13.2 of the Treaty that result from research and development carried out on the genetic Material and its components received from the Multilateral System. [After the expiry or abandonment of the protection period of an intellectual property right on a Product that incorporates Material that has been obtained from the Multilateral System, the Recipient [shall]/[is encouraged to] make this Product available to the Multilateral System for research and breeding.]

6.10 A Recipient who obtains intellectual property rights on any Products developed from genetic Material or its components, obtained from the Multilateral System, and assigns such intellectual property rights to a third party, shall transfer the benefit-sharing obligations of this Agreement to that third party.

[6.11 A Recipient who accesses plant genetic resources for food and agriculture from the Multilateral System may choose between the option in Article 6.7 and the option below for

⁴ “A new material transfer agreement” means a new material transfer agreement on the same terms and conditions as the Standard Material Transfer Agreement, in which the Recipient will be identified as the new provider.

mandatory payments on the income resulting from the commercialization of plant genetic resources for food and agriculture Products:

- a) The Recipient shall pay into the mechanism established by the Governing Body under Article 19.3f of the Treaty, *** % of the sales resulting from the commercialization of all Products that are plant genetic resources for food and agriculture belonging to a specific crop that is one of those listed in *Annex I* of the Treaty, whether or not that material has contributed to the commercial product and whether or not further breeding and research is limited or not by intellectual property rights or other rights.
- b) The Recipient shall have further access to Material of the same crop on the basis of the same signed Agreement for a period of *** (X, 5? 10?) years from its commencement.
- c) In the event that material that was accessed from the Multilateral System of the specific crop is incorporated into a Product belonging to different crop, then the percentage of the mandatory payment [will revert to the option in Article 6.7.]/[shall remain at the lower percentage level for payments on all the Products of this different crop, whether or not that material has contributed to the commercial product and whether or not further breeding and research is limited or not by intellectual property rights or other rights.]
- d) After the termination of the period as set out in paragraph (b) above, payments on any Products that later incorporate material accessed from the Multilateral System from the specified crop, whether or not further breeding and research is limited by intellectual property rights or other rights, will continue to be paid at the lower percentage level for [another] *** years.
- e) Payments shall be made in accordance with the banking instructions set out in *Appendix 2* to this Agreement./

7. APPLICABLE LAW

Option 1

[The applicable law shall be the general principles of the law of contract, taking into account the objectives and relevant provisions of the Treaty, and taking into account the relevant provisions of the UNIDROIT Principles of International Commercial Contract 2004.]

Option 2

[The applicable law shall be the General Principles of Law, the Treaty, and the decisions of the Governing Body. As appropriate, relevant national law will also be applicable.]

Option 3

[The applicable law shall be General Principles of Law as reflected in the UNIDROIT Principles of International Commercial Contracts 2004, taking into account the objectives and relevant provisions of the Treaty.]

8. DISPUTE RESOLUTION/SETTLEMENT

8.1 Dispute settlement may be initiated by the Provider or the Recipient or the (*name of legal person representing the Governing Body and the Multilateral System*), acting on behalf of the Governing Body of the Treaty and its Multilateral System.

[8.2 The Parties to this Agreement agree that the (*the legal entity identified by the Governing Body at its first session*), representing the Governing Body and the Multilateral System, [and acting exclusively at the direction of the Governing Body] has the right, as a third party beneficiary, to initiate dispute settlement procedures [on the issue of a recipient's compliance with payment obligations under Article 6.7.][in the case of a breach of an obligation under this Agreement.]]

8.3 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 the dispute by negotiation.

(b) Mediation: If the dispute is not resolved by negotiation, the parties may choose mediation through a neutral third party mediator, to be mutually agreed.

(c) Arbitration:

Option 1

[If the dispute has not been resolved by negotiation or mediation, any party may submit the dispute for arbitration to [an existing international arbitration mechanism]/[an arbitration mechanism of an international body, such as the International Chamber of Commerce]/[the International Chamber of Commerce Arbitration Rules or any other arbitration rules as agreed by the parties to the dispute]/[a Panel of Experts established, with the agreement of both parties, by the Governing Body, for this purpose.][The result of such arbitration shall be binding.]

Option 2

[If the dispute has not been resolved by negotiation or mediation, any party may submit the dispute for arbitration under the Arbitration Rules of an international body as agreed by the parties to the dispute. Failing such agreement, the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce, by one or more arbitrators appointed in accordance with the said Rules. The result of such arbitration shall be binding.]

9. ADDITIONAL ITEMS

Warranty

9.1 The Provider makes no warranties as to the safety of or title to the Material, nor as to the accuracy or correctness of any passport or other data provided with the Material. Neither does it make any warranties as to the quality, viability, or purity (genetic or mechanical) of the Material being furnished. The phytosanitary condition of the Material is warranted only as described in any attached phytosanitary certificate. The Recipient assumes full responsibility for complying with the recipient nation's quarantine and biosafety regulations and rules as to import or release of genetic material.

[Duration of Agreement

9.2 This Agreement shall remain in force so long as the Treaty remains in force unless terminated in accordance with Article 9.3, in which case the obligations and rights contained in Article 6 shall survive the termination of this Agreement].

[Termination

9.3 Notwithstanding Article 9.2, either party to this Material Transfer Agreement may terminate this Material Transfer Agreement with immediate effect by giving notice to the other party if that other party breaches any provision of this Agreement.]

10. [SIGNATURE/ACCEPTANCE][SIGNATURE]Option 1

[Signed (*Provider*).....
 On behalf of (*Providing Institution*)*
 Date

Signed (*Recipient*).....
 On behalf of (*Recipient Institution*)*
 Date]

Option 2

[Acceptance and use of the Material constitutes acceptance of the terms and conditions of this Agreement.]

Option 3

[The Material is provided expressly conditional on acceptance of the terms of this Agreement. Recipient's acceptance of the Material constitutes acceptance of the terms of this Agreement.

Signatures: (*Optional, as may be required in some jurisdictions*).

I, (*Full Name of Authorized Official*), represent and warrant that I have the authority to execute this Agreement on behalf of the Provider and acknowledge my institution's responsibility and obligation to abide by the provisions of this Agreement, both by letter and in principle, in order to promote the conservation and sustainable use of plant genetic resources for food and agriculture.

Signature..... Date.....

I, (*Full Name of Authorized Official*), represent and warrant that I have the authority to execute this Agreement on behalf of the Recipient and acknowledge my institution's responsibility and obligation to abide by the provisions of this Agreement, both by letter and in principle, in order to promote the conservation and sustainable use of plant genetic resources for food and agriculture.

Signature..... Date.....

For click-wrap: I hereby agree to the above conditions.]

* As appropriate.

APPENDIX 1

LIST OF MATERIALS PROVIDED

This Appendix contains a list of the Material provided under this Agreement, including the associated information referred to in Article 5b.

This information is either provided below or can be obtained at the following website: (*URL*).

The following information is included for each Material listed: all available passport data and, subject to applicable law, any other associated, available, non-confidential descriptive information.

(*List*)

APPENDIX 2**[PAYMENT OF BENEFIT-SHARING]**

1. If a Recipient, its affiliates, contractors, licensees, and lessees, commercializes Product or Products, then the Recipient shall pay ** percent (** %) of the Sales of Product or Products; except that no payment shall be due on any Product or Products that:

(a) are available without restriction to others for further research and breeding in accordance with Article 2 of this Agreement;

[(b) have been purchased or otherwise obtained from another person or entity who either has already made payment on the Product or Products or is exempt from the obligation to make payment pursuant to subparagraph (a) above;]

(c) are sold or traded as a commodity.

[If the Net Income of the Recipient is restricted to license fees received the Recipient shall:

(a) either additionally pay ‘y’ percent (‘y’ %) of the Net Sales of the license/the lessee; or

(b) request its licensee/lessee to make the payment as referred to in the first sentence and inform the Multilateral System accordingly.]

2. The Recipient shall submit to the Governing Body, within sixty (60) days after each calendar year ending December 31st, an annual report setting forth:

(a) the Sales of the Product or Products by the Recipient, its affiliates, contractors, licensees and lessees, for the twelve (12) month period ending on December 31st;

(b) the amount of the payment due; and

(c) information that allows for the identification of any restrictions that have given rise to the benefit-sharing payment.

3. Payment shall be due and payable upon submission of each annual report. All payments due to the Governing Body shall be payable in (*specified currency*) for the account of (*the Trust Account or other mechanism established by the Governing Body in accordance with Article 19.3f of the Treaty*).