



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

S

Tema 11 del programa provisional

TRATADO INTERNACIONAL SOBRE LOS RECURSOS FITOGENÉTICOS PARA LA ALIMENTACIÓN Y LA AGRICULTURA

SEGUNDA REUNIÓN DEL ÓRGANO RECTOR

Roma, Italia, 29 de octubre – 2 de noviembre de 2007

EXAMEN DEL ACUERDO DE TRANSFERENCIA DE MATERIAL DESTINADO A LA UTILIZACIÓN POR LOS CENTROS INTERNACIONALES DE INVESTIGACIÓN AGRÍCOLA PARA LOS RECURSOS FITOGENÉTICOS PARA LA AGRICULTURA Y LA ALIMENTACIÓN NO INCLUIDO EN EL ANEXO 1 DEL TRATADO

1. El Artículo 15.1 b) del Tratado dispone lo siguiente:

“Los recursos fitogenéticos para la alimentación y la agricultura distintos de los enumerados en el Anexo I del presente Tratado y recogidos antes de su entrada en vigor que mantienen los CIIA se pondrán a disposición de conformidad con las disposiciones del Acuerdo de transferencia de material utilizado actualmente en cumplimiento de los acuerdos entre los CIIA y la FAO. El órgano rector modificará este Acuerdo de transferencia de material a más tardar en su segunda reunión ordinaria, en consulta con los CIIA, de conformidad con las disposiciones pertinentes del presente Tratado, especialmente los Artículos 12 y 13,” y con arreglo a determinadas condiciones adicionales.

2. En virtud del Artículo 15.1 b), el Secretario remitió una carta el 10 de julio de 2007 al Director General de Biodiversidad Internacional en la que invitaba a los Centros internacionales de investigación agrícola (CIIA) del Grupo Consultivo sobre Investigación Agrícola Internacional (GCIAI) a proporcionar un documento de trabajo que comprendiese aportes técnicos referentes a la modificación del acuerdo de transferencia de material (ATM). La carta se adjunta como *Anexo 1* del presente documento.
3. Tras recibirse la carta mencionada, los CIIA del GCIAI mantuvieron conversaciones sobre esta cuestión en el período entre reuniones, actuando Biodiversidad Internacional como institución facilitadora y coordinadora.
4. El 4 de septiembre de 2007 el Secretario recibió una comunicación de Biodiversidad Internacional en nombre de los CIIA del GCIAI basada en las consultas de todo el sistema y en la que se detallaban sus aportaciones. En el informe se explica que las consultas se habían llevado a

Por razones de economía se ha publicado un número limitado de ejemplares de este documento. Se ruega a los delegados y observadores que lleven a las reuniones los ejemplares que han recibido y se abstengan de pedir otros, a menos que sea estrictamente indispensable. La mayor parte de los documentos de reunión de la FAO se encuentran en el sitio de Internet <http://www.planttreaty.org>

cabo con éxito y se adjuntaba una comunicación sobre el resultado de las consultas con los CIIA por lo que se refiere a la aplicación del Artículo 15.1 b) del Tratado.

5. El informe figura en el *Anexo 2* del presente documento en la forma en que se recibió de Biodiversidad Internacional en nombre de los CIIA del GCIAl.

6. La propuesta presentada por los Centros del GCIAl destacaba la eficacia administrativa que suponía no tener que utilizar dos ATM diferentes, especialmente cuando, en virtud del Artículo 15.1 b), deben contener sustancialmente las mismas disposiciones en materia de puesta en común de beneficios. El resultado concluye con una *“preferencia clara de los Centros en el sentido de disponer de un solo instrumento, el ANTM, que regule la transferencia del material conservado por los Centros, tanto el comprendido como el no comprendido en el Anexo 1.”*

7. Se invita al Órgano Rector a examinar la enmienda adjunta al ATM a efectos de su aprobación y de la adopción de cualquier decisión necesaria al efecto.



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

ORGANIZACION
DE LAS NACIONES
UNIDAS PARA
LA AGRICULTURA
Y LA ALIMENTACION

Anexo I
منظمة
الأمم المتحدة
والزراعة
للأمم
المتحدة

Viale delle Terme di Caracalla, 00153 Rome, Italy

Facsimile: +39 0657053152

Telephone: +39 0657051

Our Ref.: PL 40/31

Your Ref.:

Rome, 10 July 2007

Dear Mr Frison,

The Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture will hold its second session in Rome, from 29 October to 2 November 2007.

As provided by Article 20 of the Treaty, I am currently preparing the documentation for the forthcoming session of the Governing Body, having recently taken up office as Secretary of the Governing Body. As you are aware, the Governing Body of the Treaty, at its first session, invited inputs from a wide range of stakeholders regarding issues of relevance to the implementation of the Treaty, to be reported at its second session. I am attaching for your information a copy of the provisional agenda of the second session, which was recently finalized by the Bureau of the second session of the Governing Body.

In preparing the required documentation, I am pleased to invite Bioversity International, on behalf of the Centers of the Consultative Group on International Agricultural Research, to contribute to three agenda items (Agenda Item 8, 11 and 13) of the second session, and to provide to the Secretariat of the Governing Body the following documentation:

1. Agenda item 8, 'Implementation of the Funding Strategy of the Treaty':

The Governing Body invited the Consultative Group on International Agricultural Research (CGIAR) to provide, through its activities, support to the implementation of the Funding Strategy, and to report to the Governing Body on these activities (Resolution 1/2006, paragraph 6). I am pleased to invite you to provide a report on such support by the CGIAR.

2. Agenda item 11, 'Consideration of the Material Transfer Agreement (MTA) to be used by International Agricultural Research Centers (IARCs) for Plant Genetic Resources for Food and Agriculture (PGRFA) not included in Annex I of the Treaty':

Article 15.1(b) of the International Treaty states that "Plant genetic resources for food and agriculture other than those listed in Annex I of this Treaty and collected before its entry into force that are held by IARCs shall be made available in accordance with the provisions of the MTA currently in use, pursuant to agreements between the IARCs and the FAO. *This MTA shall be amended by the Governing Body no later than its second regular session, in consultation with the IARCs.*" This provision of the Treaty is reflected in the Model Agreement for use with the IARCs, which was adopted by the Governing Body and signed by the IARCs and the FAO on behalf of the Governing Body of the Treaty at the first session in Madrid last year.

.../...

Mr Emile Frison
Director General
Bioversity International
Maccarese

Specifically, Article 2(b) of the Agreements states that “This MTA shall be amended by the Governing Body *no later than its second regular session*, in consultation with the Centre, in accordance with the relevant provisions of the Treaty, especially Articles 12 and 13” under certain conditions. Pursuant to Article 15.1(b) of the Treaty itself and the afore-mentioned Agreements which are in force between the Governing Body and the IARCs, I am pleased to invite you to provide a working document on proposals for the implementation of Article 15.1(b) of the Treaty for the second session of the Governing Body.

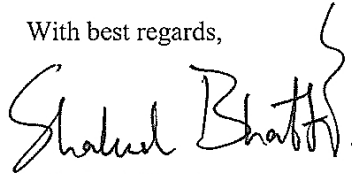
3. Agenda item 13, ‘Implementation of Article 6, *Sustainable use of plant genetic resources*’:

At its first session, the Governing Body invited relevant institutions and organisations to submit to the Secretary information on policy and legal measures relevant to Article 6.1 of the Treaty, as well as other relevant information, for example on workshops or studies. The compilation of such information together with information on relevant measures undertaken by the IARCs and others should serve as a basis to assess progress in implementing Article 6, at a future session of the Governing Body.

Pursuant to the Governing Body’s requests, unified system-wide submissions and positions on these issues would simplify the consideration of the issues by the Governing Body at its second session. In light of the forthcoming summer break and the translation times required before issuance of the documents, I would be grateful for your drafts by the end of July 2007 or shortly thereafter.

I remain at your disposal for any further information you may require on the International Treaty and the second session of its Governing Body. I look forward to receiving your contributions and working together in the future on the implementation of the Treaty.

With best regards,



Shakeel Bhatti
Secretary

International Treaty on Plant Genetic Resources
for Food and Agriculture

**THE OUTCOME OF CONSULTATIONS WITH THE INTERNATIONAL
AGRICULTURAL RESEARCH CENTRES (IARCS) OF THE CONSULTATIVE GROUP
ON INTERNATIONAL AGRICULTURAL RESEARCH ON THE IMPLEMENTATION
OF ARTICLE 15.1(B) OF THE TREATY**

1. Article 15.1.b of the International Treaty on Plant Genetic Resources for Food and Agriculture provides that:

“Plant genetic resources for food and agriculture other than those listed in Annex 1 of this Treaty and collected before its entry into force that are held by IARCS shall be made available in accordance with the provisions of the MTA currently in use pursuant to the agreements between the IARCS and the FAO. This MTA shall be amended by the Governing Body no later than its second regular session, in consultation with the IARCS, in accordance with the relevant provisions of this Treaty, especially Articles 12 and 13, ...”

2. Consultations have been held between the Secretariat of the Treaty and Bioversity on behalf of the IARCs during the intersessional period.

3. The unanimous preference of the Centres would be for the MTA to be amended to bring it into line with the SMTA as adopted by the Governing Body at its First Session in June 2006. In other words the clear preference of the Centres would be to have one instrument only, the SMTA, governing the transfer of both Annex 1 and non-Annex material held by the Centres.

4. The reasons expressed for this preference are the following:

- a. Under Article 15.1 (b) of the Treaty, as reflected in Article 2(b) of the Agreements between the Centres and the Governing Body of the Treaty, the MTA is to be amended “in accordance with the relevant provisions of [the] Treaty, especially Article 12 and 13”. These articles set down the conditions applicable to access and benefit sharing for materials under the Multilateral System, which are reflected in the provisions of the SMTA itself. The Centres thus consider that the Governing Body in adopting the SMTA at its First Session in June 2006 has already in essence performed the task of amending the MTA to bring it into accordance with the Treaty and in particular its Articles 12 and 13.
- b. The Centres also consider that the use of the same MTA for both Annex 1 and non-Annex 1 material would also simplify procedures for the distribution of germplasm held by the Centres and hence reduce costs.

5. In expressing this preference, the Centres acknowledged that, in many ways, it would have been preferable to be able to use a shorter MTA, with fewer complexities than are included in the SMTA. Nonetheless, the Centres recognize that the SMTA itself was the result of many years of discussion and negotiation among the Contracting Parties to the Treaty. One of the Centres has also pointed out the special difficulties arising out of collections of tree germplasm. These difficulties have already been brought to the attention of the Commission on Genetic Resources for Food and Agriculture in the Second Joint Statement of FAO and the CGIAR Centres on implementation of the 1994 In Trust Agreements, and are also referred to in the Statement of the CG Centres issued at the time of signature of the Agreements with the Governing Body of the Treaty in October 2006.

6. The Centres have also noted that the wording of Article 6 of the SMTA and of some of the Annexes to the SMTA make specific reference to Annex 1 of the Treaty. The use of the SMTA for the transfer of non-Annex 1 material might therefore call for the adoption by the Governing Body of some interpretation or other clarification regarding the meaning to be given to these words in the context of non-Annex 1 material.

7. In this context the Centres have identified the following two possible options.

8. The **first option** would be to include a **cover note** with the SMTA stating that, in accordance with the decision of the Governing Body, the SMTA can be used for non-Annex 1 materials. This note would not be considered an amendment of the SMTA. It could be included with the SMTA for transfers of both Annex 1 and non-Annex 1 materials, thereby relieving the Centres of the need to keep track of two different MTAs.

9. The **second option** would be to include a interpretative footnote or series of footnotes to relevant provisions of the SMTA indicating that these provisions should not be interpreted as precluding the use of the SMTA for transfers of non-Annex 1 material. The interpretative footnote or footnotes should not be seen as amendments to the SMTA, so much as clarifications of its meaning. They would be included in all versions of the SMTA and thus avoid the need for two versions of the SMTA.

10. The Centres discarded a third option, which would be to delete the references to Annex 1 and the Multilateral System, thereby producing a slightly revised version of the SMTA for use for non-Annex 1 materials. This would have the effect of obliging the Centres to keep track of two different MTAs, which would be administratively cumbersome.

11. The matter was considered by the CG Genetic Resources Policy Committee at its 21 Session in April 2007. The Committee recommended that including explanatory footnotes in the text of the SMTA would be the best approach. The next best approach would be to include the information on an explanatory cover page attached to the SMTA.

12. The Centres have noted that the option of including an explanatory footnote on the first page of the SMTA for transfers of both Annex 1 and non-Annex 1 material has been adopted by the national genebank of at least one Contracting Party (the Netherlands' Centre for Genetic Resources). By placing the footnote on the first page of the SMA, the approach taken by the national genebank in essence conflates the two options recommended by the CG Centres. A copy of the first page of the SMTA including this explanatory note as set out on the website of the national genebank is attached as appendix to this annex for the information of the Governing Body.

ACUERDO NORMALIZADO DE TRANSFERENCIA DE MATERIAL*

PREÁMBULO

CONSIDERANDO QUE

El Tratado Internacional sobre los Recursos Fitogenéticos para la Alimentación y la Agricultura (en lo sucesivo denominado “el **Tratado**”) fue aprobado por la Conferencia de la FAO en su 31º período de sesiones, el 3 de noviembre de 2001, y entró en vigor el 29 de junio de 2004;

Los objetivos del **Tratado** son la conservación y la utilización sostenible de los **recursos fitogenéticos para la alimentación y la agricultura** y la distribución justa y equitativa de los beneficios derivados de su utilización, en armonía con el Convenio sobre la Diversidad Biológica, para una agricultura sostenible y la seguridad alimentaria;

Las Partes Contratantes en el **Tratado**, en el ejercicio de sus derechos soberanos sobre sus **recursos fitogenéticos para la alimentación y la agricultura**, han establecido un **Sistema multilateral** para facilitar el acceso a los **recursos fitogenéticos para la alimentación y la agricultura** y compartir, de manera justa y equitativa, los beneficios derivados de la utilización de tales recursos, sobre una base complementaria y de fortalecimiento mutuo;

Se tienen presentes los artículos 4, 11, 12.4 y 12.5 del **Tratado**;

Se reconoce la diversidad de los sistemas legales de las Partes Contratantes respecto a sus normas de procedimiento que rigen el acceso a tribunales y al arbitraje, y las obligaciones derivadas de los convenios internacionales y regionales aplicables a esas normas;

El Artículo 12.4 del **Tratado** establece que deberá facilitarse el acceso al amparo del **Sistema multilateral** con arreglo a un acuerdo normalizado de transferencia de material, y el **Órgano Rector** del **Tratado**, en su Resolución 1/2006 de 16 de junio de 2006, adoptó el Acuerdo normalizado de transferencia de material.

1 Nota de la Secretaría: Con arreglo a lo propuesto por el Grupo de Trabajo Jurídico en el Grupo de Contacto encargado de la redacción del Acuerdo de transferencia de material normalizado, en aras de la claridad los términos definidos se han indicado en negrita en todo el texto.

* En caso de que el ANTM se utilice para la transferencia de recursos fitogenéticos para la alimentación y la agricultura diferentes de los enumerados en el Anexo 1 del Tratado:

Las referencias contenidas en el ANTM al "Sistema multilateral" no se interpretarán en el sentido de limitar la aplicación del ANMT a los recursos fitogenéticos para la alimentación y la agricultura enumerados en el Anexo 1 y, en el caso del Artículo 6.2 del ANTM, se entenderán “en virtud del presente Acuerdo”;

La referencia del Artículo 6.11 y del Anexo 3 del ANTM a los "recursos fitogenéticos para la alimentación y la agricultura pertenecientes al mismo cultivo, según lo establecido en el Anexo 1 del Tratado” se interpretará como “recursos fitogenéticos para la alimentación y la agricultura pertenecientes al mismo cultivo”.