



The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



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Procedures to be followed by the Food and Agriculture Organization of the United Nations, acting as the Third Party Beneficiary, in carrying out its roles and responsibilities identified and prescribed in the Standard Material Transfer Agreement, under the Direction of the Governing Body of the Treaty

I have the honour to draw attention to the Reports of the First and Second Sessions of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (held in Madrid, Spain, 12 – 16 June 2006, and Rome, Italy, 29 October – 2 November 2007, respectively).¹

The Governing Body, at its First Session, adopted the Standard Material Transfer Agreement (SMTA).

In approving the SMTA, the Governing Body, invited the Food and Agriculture Organization of the United Nations to act “*as the Third Party Beneficiary, to carry out the roles and responsibilities as identified and prescribed in the SMTA, under the direction of the Governing Body, in accordance with the procedures to be established by the Governing Body at its next Session.*”²

At its Second Session, the Governing Body

requested the Secretary to prepare draft text setting out the procedures to be followed by FAO, when carrying out its roles and responsibilities as the Third Party Beneficiary, taking into account, in particular, FAO’s role as specialized agency of the United Nations, its privileges and immunities. It invited Contracting Parties, other governments and international organizations to comment on the draft text;

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To:
Contracting Parties
Other governments
International organizations

¹ Document IT/GB-1/06/Report, *Report of the First Session of the Governing Body* and Document IT/GB-2/07/Report, *Report of the Second Session of the Governing Body*. The Reports are available at the following internet address: www.planttreaty.org

² IT/GB-1/06/Report, p. 7.

decided to establish an Ad Hoc Third Party Beneficiary Committee, composed of seven representatives of Contracting Parties, with one representative nominated by each of the FAO Regions. The Committee's mandate is to consider the draft text prepared by the Secretary, and comments and submissions from Contracting Parties, other governments and international organizations. The Ad Hoc Committee shall prepare draft Third Party Beneficiary procedures to be submitted to the Governing Body at its next Session; and invited the Director-General of FAO to bring to the attention of the relevant bodies of FAO, the Governing Body's invitation, together with the procedures, once elaborated by the Ad Hoc Third Party Beneficiary Committee, and endorsed by the Governing Body.

Therefore, the decisions of the Governing Body envisage a number of steps in the finalization of the Third Party Beneficiary Procedures:

1. Preparation of an initial draft by the Secretariat;
2. Circulation of the draft to Contracting Parties, other governments and international organizations for comments;
3. Convening of the *Ad Hoc* Third Party Beneficiary Committee to consider the draft prepared by the Secretariat and any comments and submissions, and to prepare draft Third Party Beneficiary procedures for the consideration of the Governing Body;
4. Submission of the draft Third Party Beneficiary procedures to the Third Session of the Governing Body for its consideration and endorsement.


In accordance with the request of the Governing Body, the draft Procedures for the Third Party Beneficiary prepared by the Secretariat are herewith attached. The working language of the *Ad Hoc* Third Party Beneficiary Committee will be English. The document is therefore currently provided in English only and translation will be provided subject to availability of funds. Contracting Parties, other governments and international organizations are requested to send any comments on the draft text, in response to this invitation by the Governing Body.

All comments should be sent to:

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I should like to receive any comments no later than 15 November 2008, if possible.

Yours sincerely,



Shakeel Bhatti
Secretary
International Treaty on Plant Genetic Resources
for Food and Agriculture



**DRAFT PROCEDURES TO BE FOLLOWED BY THE FOOD AND AGRICULTURE
ORGANIZATION OF THE UNITED NATIONS, ACTING AS THIRD PARTY BENEFICIARY,
IN CARRYING OUT ITS ROLES AND RESPONSIBILITIES IDENTIFIED AND PRESCRIBED
IN THE STANDARD MATERIAL TRANSFER AGREEMENT, UNDER THE DIRECTION OF
THE GOVERNING BODY
(‘TPB PROCEDURES’)**

**Article 1
Designation of Third Party Beneficiary**

1. The Food and Agriculture Organization of the United Nations (‘FAO’) shall act as Third Party Beneficiary of the Standard Material Transfer Agreement under the direction of the Governing Body.
2. FAO will administer its role and responsibilities under these Procedures in accordance with the Basic Texts of FAO and in particular FAO’s Financial Regulations, Rules and directives of its Governing Bodies.
3. Nothing in these Procedures shall be deemed a waiver of FAO’s privileges and immunities.

**Article 2
Scope**

These Procedures apply to the Third Party Beneficiary, when carrying out its roles and responsibilities as identified and prescribed in the Standard Material Transfer Agreement, under the direction of the Governing Body.

**Article 3
Principles**

1. The Third Party Beneficiary shall act on behalf of the Governing Body of the Treaty and its Multilateral System, as foreseen in the Standard Material Transfer Agreement.
2. The Third Party Beneficiary shall perform its roles and responsibilities effectively, in a transparent, cost-effective, expeditious and, to the extent possible, non-adversarial manner.

**Article 4
Information**

1. The Governing Body shall make available to the Third Party Beneficiary the information provided to it in accordance with the provisions of the Standard Material Transfer Agreement.

2. The Third Party Beneficiary may receive and use information on cases of non-compliance with the terms and conditions of the Standard Material Transfer Agreement from the Provider or Recipient ('Parties') under the Standard Material Transfer Agreement or other natural or legal persons.
3. The Third Party Beneficiary has the right to request that the appropriate information, including samples as necessary, be made available by the Parties, regarding their obligations in the context of the Standard Material Transfer Agreement.
4. Except as may be required in the settlement of disputes and for the purposes specified in Article 9 of these Procedures, and unless otherwise agreed by the Parties to the Standard Material Transfer Agreement, information received by the Third Party Beneficiary shall be treated as confidential.

Article 5 Amicable dispute settlement

1. Where the Third Party Beneficiary has received information on possible non-compliance with the terms and conditions of a Standard Material Transfer Agreement, it may request information in accordance with Article 8.3 of the Standard Material Transfer Agreement.
2. If the Third Party Beneficiary has reason to believe that the terms and conditions of a Standard Material Transfer Agreement may not have been complied with, it shall attempt in good faith to resolve the dispute by negotiation in accordance with Article 8.4a of the Standard Material Transfer Agreement and, in doing so, will send in writing to the Parties to the Standard Material Transfer Agreement:
 - (a) a summary of the relevant provisions of the Standard Material Transfer Agreement which may not have been complied with, and other relevant information ('summary of information');
 - (b) a notice requesting the Party that may not have complied with the Standard Material Transfer Agreement or the Parties to the Standard Material Transfer Agreement to attempt, in good faith, to resolve the dispute not later than six months after the issuance of the summary of information and the notice.

Article 6 Mediation

1. If the dispute cannot be resolved by negotiation within six months after the issuance of the summary of information and notice referred to in Article 5, paragraph 2 above, the Third Party Beneficiary shall commence or encourage the Parties to the Standard Material Transfer Agreement to commence mediation proceedings through a neutral third party mediator, to be mutually agreed in accordance with Article 8.4.b of the Standard Material Transfer Agreement.
2. The Third Party Beneficiary may propose as neutral third party mediator an expert from the list established by the Governing Body in accordance with Article 8.4c of the Standard Material Transfer Agreement.

Article 7 Arbitration

1. If a dispute has not been resolved by mediation within six months of the commencement of the mediation or if it otherwise appears that the dispute cannot be resolved within twelve months after the issuance of the summary of information and the notice referred to in Article 5, paragraph 2 (b) above, the Third Party Beneficiary may submit the dispute for arbitration in accordance with Article 8.4c of the Standard Material Transfer Agreement upon consultation with the Bureau of the Governing Body.
2. The Third Party Beneficiary may propose as arbitrator an expert from the list established by the Governing Body in accordance with Article 8.4c of the Standard Material Transfer Agreement.

Article 8 Expenditure

1. The Secretary of the Governing Body shall, as necessary, draw upon the Third Party Beneficiary Trust Fund to cover all costs and expenses incurred by the Third Party Beneficiary in carrying out its role and responsibilities.
2. FAO shall not be required to commence or continue the performance of its role and responsibilities of Third Party Beneficiary under these Procedures until the respective costs and expenses have been covered by the Third Party Beneficiary Trust Fund and it shall not be required to assume any liability in excess of the funds paid to that effect.
3. All financial accounts and statements of the Third Party Beneficiary Trust Fund shall be expressed in United States dollars and be subject exclusively to the internal and external auditing procedures laid down in the Financial Regulations, Rules and directives of FAO.

Article 9 Reporting

The Third Party Beneficiary shall submit to the Governing Body, at each of its Regular Sessions, a report setting forth:

- (a) the number of cases where it received information regarding non-compliance with the terms and conditions of a Standard Material Transfer Agreement;
- (b) the number of cases where it initiated dispute settlement;
- (c) the number of disputes settled through amicable dispute settlement, mediation or arbitration;
- (d) the number of pending disputes;
- (e) any legal questions that appeared in the context of dispute settlement and that may require the attention of the Governing Body;
- (f) the expenditure from the Third Party Beneficiary Trust Fund;
- (g) any estimate of the needs of the Third Party Beneficiary Trust Fund in the forthcoming biennium;
- (h) any other relevant non-confidential information.

Article 10 Amendments

These procedures may be amended by mutual agreement between the Governing Body and FAO.

Article 11
Entry into force

These Rules shall enter into force upon adoption by the Governing Body and the agreement by the Third Party Beneficiary, as stipulated in Article 2, to act as Third Party Beneficiary.