



Item 5.1(b) of the Draft Provisional Agenda

**COMMISSION ON GENETIC RESOURCES
FOR FOOD AND AGRICULTURE**

**First Meeting of the Commission on Genetic Resources for Food and
Agriculture acting as the Interim Committee for the International Treaty
on Plant Genetic Resources for Food and Agriculture**

Rome, 9–11 October 2002

**TERMS OF REFERENCE FOR THE EXPERT GROUP
ON THE TERMS OF THE STANDARD
MATERIAL TRANSFER AGREEMENT**

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TERMS OF REFERENCE FOR THE EXPERT GROUP ON THE TERMS OF THE STANDARD MATERIAL TRANSFER AGREEMENT

I. INTRODUCTION

1. The Conference at its Thirty-first Session in November 2001 adopted Resolution 3/2001 adopting the International Treaty on Plant Genetic Resources for Food and Agriculture, and mandating interim arrangements for the implementation of the Treaty. As part of these interim arrangements, the Conference decided to set up an Expert Group to develop and propose recommendations, which may be considered by the Interim Committee for the Treaty, on the terms of the standard Material Transfer Agreement (MTA) to be used pursuant to Article 12.4 of the International Treaty. The Conference specified that such a group shall be composed of experts with technical or legal expertise with respect to the exchange of plant genetic resources for food and agriculture and relevant commercial practice. The Conference requested the Commission acting as Interim Committee for the Treaty to agree upon the terms of reference for the Expert Group at its first meeting. The standard MTA is to be adopted by the Governing Body of the Treaty at its first session.

II. PREVIOUS DISCUSSIONS ON THE TERMS OF REFERENCE

2. The establishment of the expert group was first discussed at a meeting of Friends of the Chair preceding the Hundred and Twenty-first Session of the FAO Council in November 2001. At that meeting, a proposal was put forward and limited discussions were held regarding possible terms of reference for the Expert Group. The discussions focussed on the following aspects of the terms of reference:

- i. The scope of work of the Expert Group;
- ii. The composition of the Expert Group;
- iii. The schedule for the completion by the Expert Group of its functions.

Draft Terms of reference following the above structure are set out in the *Annex* to this document.

III. CONCLUSIONS AND SUGGESTED ACTION BY THE INTERIM COMMITTEE FOR THE TREATY

3. The Interim Committee for the Treaty is invited to review the draft terms of reference set out in the *Annex* hereto, with a view to adopting terms of reference of the Expert Group at the present session. As resources will need to be made available to finance the necessary session or sessions of the Expert Group, the Commission's attention is drawn to the document CGRFA/MIC-1/02/10, *Intersessional work of the Commission acting as the Interim Committee for the International Treaty on Plant Genetic Resources for Food and Agriculture*, para. 9-13.

*ANNEX***DRAFT TERMS OF REFERENCE FOR THE EXPERT GROUP ON THE TERMS OF
THE STANDARD MATERIAL TRANSFER AGREEMENT*****I. Scope of the Work***

1. The Expert Group shall develop and propose recommendations, which may be considered by the Interim Committee for the Treaty, on the terms of the standard Material Transfer Agreement (MTA) to be used pursuant to Article 12.4 of the International Treaty.
2. In considering the issue of commercial benefit-sharing under Article 13.2d (ii), the Expert Group shall consider, *inter alia*:
 - What constitutes commercialization in terms of Article 13.2d (ii) of the Treaty?
 - What constitutes incorporation of material accessed from the Multilateral System?
 - When would a product be considered to be available without restriction to others for further research and breeding?
 - What should be the level, form and manner of payments in line with commercial practice?
 - Should different levels of payment be established for various categories of recipients who commercialize such products, and if so, what should those levels and various categories be?
 - In what circumstances should small-scale farmers in developing countries and in countries with economies in transition be exempted from the payments?

II. Composition of the Expert Group

3. The Expert Group shall be composed of experts nominated by Governments, with technical or legal expertise with respect to the exchange of plant genetic resources for food and agriculture and relevant commercial practice.
4. The group shall reflect an appropriate balance between developed and developing countries, with each FAO region being represented.
5. The Group shall comprise no more than *** members.

III. Schedule for the completion by the Expert Group of its functions

6. The Expert Group should hold its first meeting within *** months of the end of the current session of the Interim Committee for the Treaty, and should hold such meetings during the intersessional period as it considers necessary and for which extra-budgetary resources can be found, and should report on the progress of its work to the next session of the Interim Committee for the Treaty.