

2007年10月



## 暂定议程议题 11

### 粮食和农业植物遗传资源国际条约

#### 管理机构第二届会议

2007年10月29日-11月2日，意大利罗马

### 审议各国际农业研究中心将要利用的 条约附件 1 中未包括的 粮食和农业植物遗传资源材料转让协定

#### 1. 条约第 15.1(b)条款规定

“国际农研中心持有而未列入本《条约》附件 I 的以及由其持有而在本《条约》生效前收集的粮食和农业植物遗传资源，应根据国际农研中心与粮农组织之间的协定按照现有《材料转让协定》的规定提供。管理机构应按照本《条约》的有关条款，尤其是第 12 和第 13 条的规定并按照下列条件，与国际农研中心磋商，最迟在其第二届例会上对该《材料转让协定》进行修正，”并带有一些附加条件。

2. 依照第 15.1(b)条款，秘书处于 2007 年 7 月 10 日向生物多样性国际总干事发送了一份信函，请国际农业研究磋商小组各国际农业研究中心提交一份工作文件，包括关于修正材料转让协定的技术投入。该信函见本文件附件 1。

3. 在收到该信函后，国际农业研究磋商小组各国际农业研究中心在生物多样性国际的促进和协调下就该问题进行了闭会期间磋商。

为了节约起见，本文件印数有限。敬请各位代表及观察员携带文件与会，如无绝对必要，望勿索取。粮农组织大多数会议文件可从因特网 <http://www.planttreaty.org> 网站获取。

4. 2007年9月4日,秘书收到了生物多样性国际代表国际农业研究磋商小组各国际农业研究中心根据全系统磋商和阐述其投入的一份通报。该报告指出成功地完成了磋商,并附有一份关于与各国际农业研究中心就实施条约第 15.1(b)条款磋商结果的报告。
5. 该报告以生物多样性国际代表国际农业研究磋商小组各国际农业研究中心提交的形式列入本文件附件 2。
6. 国际农业研究磋商小组各中心提交的建议强调了不必利用两个不同材料转让协定的行政效力,当它们必须按照条约第 15.1(b)条款在实质上含有相同的利益分享条款时尤其如此。结果认为“各中心明确倾向于仅有一个文书,即各中心持有的附件 1 中包括和未包括的材料转让须遵守的标准材料转让协定”。
7. 请管理机构审查所附标准材料转让协定修正案,以便通过,并作出任何必要的决定。



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

منظمة  
الاغذية  
والزراعة  
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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.

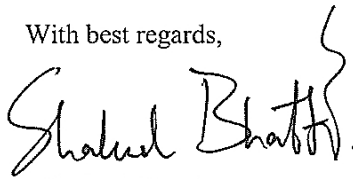
3. Agenda item 13, ‘Implementation of Article 6, *Sustainable use of plant genetic resources*’:

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

*Annex 2*

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**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**

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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.

## 《标准材料转让协定》<sup>\*</sup>

### 序言

#### 鉴于

《粮食和农业植物遗传资源国际条约》（以下简称“**条约**”）<sup>1</sup>已在 2001 年 11 月 3 日召开的粮农组织大会第三十一届会议上获得通过，并于 2004 年 6 月 29 日开始生效；

**条约**的宗旨是与《生物多样性公约》协调一致，为可持续农业和粮食安全而保存和可持续利用**粮食和农业植物遗传资源**，公正而平等地分享利用这些资源所产生的利益；

**条约**缔约方行使其关于**粮食和农业植物遗传资源**的主权，建立了一个**多边系统**，既方便获取**粮食和农业植物遗传资源**，又在互补和相互加强的基础上，公正而平等地分享和利用这些资源所产生的利益。

牢记**条约**第 4 条、第 11 条、第 12.4 款和第 12.5 款；

认识到各缔约方有关法院和仲裁的国家议事规则的法律体系多样化及适用于这些议事规则的国际和区域公约所产生的义务；

**条约**第 12.4 款规定，方便获取**多边系统**的材料将根据《标准材料转让协定》予以提供，**条约**的**管理机构**在其 2006 年 6 月 16 日第 1/2006 号决议中通过了《标准材料转让协定》。

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<sup>1</sup>秘书处的说明：根据《标准材料转让协定》起草接触小组期间的法律工作组建议，限定的术语为了醒目而以黑体表示。

<sup>\*</sup> 若标准材料转让协定用于转让条约附件 1 中未列出的粮食和农业植物遗传资源：在标准材料转让协定中提及“**多边系统**”不得解释为限制对附件 1 的粮食和农业植物遗传资源采用标准材料转让协定，在标准材料转让协定第 6.2 条的情况下则意味着“根据这一协定”；

标准材料转让协定第 6.11 条和附件 3 中提及“**条约附件 1 中规定的属于相同作物的粮食和农业植物遗传资源**”应意味着“属于相同作物的粮食和农业植物遗传资源”。