

Implications of Various Options For Enhancing the Functioning of the Multilateral System of Access and Benefit Sharing

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THE *AD HOC* OPEN-ENDED WORKING GROUP TO
ENHANCE THE FUNCTIONING OF THE MULTILATERAL
SYSTEM

Multilateral System of Access and Benefit Sharing (MLS)

Article 10 – MLS

Article 11 – Coverage of the MLS

Article 12 – Facilitated Access to PGRFA within the MLS

Article 13 – Benefit Sharing

- a) Exchange of information
- b) Access to and transfer of technology
- c) Capacity–building
- d) Sharing of monetary and other benefits of commercialization

**TERMS OF REFERENCE FOR THE
AD HOC OPEN-ENDED WORKING GROUP TO ENHANCE THE FUNCTIONING OF THE
MULTILATERAL SYSTEM OF ACCESS AND BENEFIT-SHARING**

Decides to establish, in the forthcoming biennium, an *Ad Hoc* Open-ended Working Group to Enhance the Functioning of the Multilateral System of Access and Benefit-sharing, with the following Terms of Reference:

- I. To develop a range of measures for consideration and decision by the Governing Body at its Sixth Session that will:
 - (a) Increase user-based payments and contributions to the Benefit-sharing Fund in a sustainable and predictable long-term manner, and
 - (b) Enhance the functioning of the Multilateral System by additional measures.
 - Line (a) and line (b) are to be addressed in subsequent meetings, respectively.

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II. For this purpose, the Secretariat should prepare a number of short, strategic preliminary studies, taking into account all available information, including the recent study, *Assessing the potential for monetary payments from the exchange of plant genetic resources under the Multilateral System of the International Treaty on Plant Genetic Resources for Food and Agriculture*. These studies should include:

- A study estimating income to be expected from possible changes, consistent with the objectives of the Treaty, in the provisions governing the functioning of the Multilateral System, taking into account reports of the *Ad Hoc* Advisory Committee on the Funding Strategy and the *Ad Hoc* Technical Advisory Committee on the Multilateral System and SMTA;
- A policy and legal study on the feasibility and effects of such changes;
- A study on how to enhance mechanisms for capacity-building, technology-transfer and information-exchange;
- An analysis of the factors that influence the willingness of stakeholder groups to make contributions to the Benefit-sharing Fund and to access plant genetic resources for food and agriculture from the Multilateral System.

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III. On the basis of the above studies, with a view to achieving enhanced access and increased fair and equitable sharing of benefits, the Working Group will:

- (a) Review the functioning of the Multilateral System and the SMTA, in particular, the benefit-sharing provisions of the SMTA;
- (b) Analyse the options to enhance the functioning of the Multilateral System;
- (c) Consult with relevant Stakeholder Groups; and
- (d) Draft and prepare for consideration and decision of the Governing Body the range of measures that it proposes.

Measures to Enhance the Functioning of the MLS

Article 11 – Coverage of the MLS

- 11.1 – Annex 1 Crops – still the same
- 11.2 – Voluntary Notification - <http://www.planttreaty.org/inclusions>
also national websites - for example https://www.gene.affrc.go.jp/?db_pl_mls;
regional initiatives such as EURISCO
- 11.3 – Appropriate measures by Contracting parties to encourage legal and natural persons to include PGRFA in the MLS
- 11.4 – Governing Body to assess 11.3 and decide on appropriate measures on facilitated access to legal and natural persons
- 11.5 – ex situ collections of CGIAR Research Centres – the major player. Implications for CGIAR arising from decisions on 11.4

Measures to Enhance the Functioning of the MLS

Article 12 – Facilitated Access

- 12.2 – Contracting parties to take necessary legal or other appropriate measures to provide facilitated access. Policy and legal space under CBD/Nagoya Protocol/ national biodiversity access legislation.
- 12.3 a) Policy/legal/administrative space for other purposes and multiple–use crops

Measures to Enhance the Functioning of the MLS

- 12.3 b) Free of charge or minimal cost
- 12.3 c) Passport data and non-confidential descriptive information shall be made available
- 12.3 d) Shall not claim any intellectual property or other rights that limit facilitated access
- 12.4 e) Access to PGRFA under development at the discretion of its developer

Measures to Enhance the Functioning of the MLS

- 12.3 f) Access to PGRFA protected by intellectual and other property rights consistent with relevant international agreements and relevant national laws
- 12.3 h) Access to in situ collection will be provided according to national legislation or standards set by Governing Body

Measures to Enhance the Functioning of the MLS

- 12.4 Access provided under standard SMTA - providers using different technical means such as a direct ftp transfer, XML or the *Easy-SMTA*, on-line SMTA formation and reporting system to provide information on the use of the SMTA
- 12.5 Contractual disputes rest exclusively with the parties to those in the SMTAs
- 12.6 Access to appropriate PGRFA in emergency disaster situations

Measures to Enhance the Functioning of the MLS

Article 13 – Benefit-sharing in the MLS

- **13.2 a) Exchange of Information** – vision paper for the Global Information System on PGRFA at GB6?
- **13.2 b) Access to and transfer of Technology** - Platform for the Co-Development and Transfer of Technologies within the context of non-monetary benefit sharing under the Treaty
- **13.2 c) Capacity-building** - Joint Capacity-building Programme between Bioversity International and FAO
- **13.2 d) Sharing of monetary and other benefits of commercialization**

Measures to Enhance the Functioning of the MLS

- 13.3 Flow of benefits to farmers, especially in developing countries
- 13.4 Relevant policy and criteria for specific assistance under the funding strategy for conservation of PGRFA in developing countries
- 13.5 Effective implementation of Article 13 and funding strategy to fully implement the Global Plan of Action
- 13.6 Modalities of voluntary benefit sharing by the Food Processing Industries

Measures to Enhance the Functioning of the MLS

Options under consideration by the

AD HOC OPEN-ENDED WORKING GROUP TO ENHANCE THE FUNCTIONING OF THE MULTILATERAL SYSTEM

- Updates of the SMTA
- Increase user-based payments and contributions to the benefit-sharing Fund
- Extension of Annex 1 crops
- Enhance the mechanisms for capacity-building, technology-transfer and information-exchange
- Assess the Benefit-sharing Fund Projects

**Options under consideration by the
AD HOC OPEN-ENDED WORKING GROUP TO ENHANCE THE FUNCTIONING
OF THE MULTILATERAL SYSTEM**

- **Updates of the SMTA – 3 Options proposed by the AD HOC ADVISORY TECHNICAL COMMITTEE ON THE STANDARD MATERIAL TRANSFER AGREEMENT AND THE MULTILATERAL SYSTEM**
- a) incorporating all the clarifications or interpretations into the text of the SMTA, either into the main text or in the footnotes (Option 1); examined the proposed clarifications to and interpretations of the text of the SMTA, including its footnotes;
- b) reflecting the clarifications or interpretations in explanatory notes accompanying the SMTA (Option 2);
- clarifications to or interpretations of the SMTA could go in a Schedule to the SMTA

**Options under consideration by the
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Increase user-based payments and contributions to the benefit-sharing Fund

- 1. Revisiting Articles 6.7/6.8/6.11 of the SMTA.
- 2. Promoting regular seed sales-based contributions by Contracting Parties
- 3. Novel ways to attract use-based voluntary funding.
- 4. Upfront payments on access, to be discounted against payments due on the commercialization of a product.

Decision by the AD HOC OPEN-ENDED WORKING GROUP TO ENHANCE THE FUNCTIONING OF THE MULTILATERAL SYSTEM at its 1st Meeting

- agreed to keep all approaches under review, in preparation for the second meeting.
- wide support for revisiting SMTA Article 6.11, including in the context of its relationship with revisited Articles 6.7/6.8. There was agreement that it should be made as attractive as possible to users. There was agreement that any proposal should be made interesting to users. Less priority was given to considering two innovative approaches—novel ways to attract user-based voluntary funding, and up-front payments on access, during the meeting. In preparation for the next meeting, the possibility of making the innovative approach—promoting regular seed-sales based contributions — more attractive to Contracting Parties, should be considered.

Options under consideration by the
**AD HOC OPEN-ENDED WORKING GROUP TO ENHANCE THE FUNCTIONING
OF THE MULTILATERAL SYSTEM**

Extension of Annex 1 crops and enhance the mechanisms for capacity-building, technology-transfer and information-exchange

Decision by the **AD HOC OPEN-ENDED WORKING GROUP TO ENHANCE THE FUNCTIONING OF THE MULTILATERAL SYSTEM** at its 1st Meeting

- The Working Group, in its later meetings, would need to consider, as a whole, the expansion of Treaty access and benefit-sharing provisions, to enhance the functioning of the Multilateral System.

Assess the Benefit-sharing Fund Projects

- The *AD HOC* OPEN-ENDED WORKING GROUP TO ENHANCE THE FUNCTIONING OF THE MULTILATERAL SYSTEM at its 1st Meeting noted that assessing the ways in which the Benefit-sharing funds are being used, and demonstrating the effectiveness of the projects, and their relevance to donor and user priorities will increase the willingness of stakeholder groups to make contributions to the Benefit-sharing Fund.