



A de facto certificate of source

The Standard Material Transfer Agreement under the International Treaty¹

Introduction

Negotiations are underway to create an international regime (or regimes) governing access to genetic resources and benefit-sharing within the framework of the Convention on Biological Diversity (CBD). As part of this process, the Eighth Conference of the Parties to the CBD (COP 8) decided to establish a group of technical experts. Its roles are (1) to explore and elaborate possible options for an internationally recognized certificate of the origin/source/legal provenance of genetic resources and (2) to analyse the practicability, feasibility, costs and benefits of such a certificate.²

A useful and significant precedent for this group of experts to consider is the role played by the Standard Material Transfer Agreement (SMTA) within the multilateral system of access and benefit-sharing created by the International Treaty on Plant Genetic Resources for Food and Agriculture.

The special nature of plant genetic resources for food and agriculture (PGRFA)

A combination of factors distinguishes PGRFA from other categories of genetic resources. Human intervention is one such factor, as it has created and maintained today's crops and without it they would disappear. PGRFA are, in addition, widely spread around the world and countries depend upon them for their food security. By the same token, countries also depend upon each other to provide access to PGRFA. Such interdependency can be seen in the many international exchanges of plant genetic materials that support research, breeding and production, as well as within the history of individual cultivars, which incorporate PGRFA from numerous countries and regions.³

These factors make it extremely difficult, and in many cases impossible, to identify countries of origin for crops that have been widely exchanged and that may have developed their distinctive properties in any number of different areas.⁴ This

is very different from the situation of wild endemic plant species, which evolved without human intervention and were not subject to frequent exchanges with other countries.⁵

The Standard Material Transfer Agreement under the International Treaty and certificates of origin/source/provenance

The issues of interdependence and food security discussed above were taken into consideration by the international community when the International Treaty on Plant Genetic Resources for Food and Agriculture (which covers all types of PGRFA) was negotiated in harmony with the CBD. The Treaty created, among other things, a multilateral system of access and benefit-sharing (MLS). Parties to the Treaty have agreed to facilitate access to the genetic resources of the crops and forages listed in Annex I of the Treaty for the purposes of research, breeding and training for food and agriculture.⁶ These crops and forages are selected "according to criteria of food security and interdependence".⁷ Which crops are covered by Annex I at any given time is a matter decided by the Governing Body of the Treaty in accordance with the procedures set out in the Treaty.⁸

The MLS includes PGRFA that are in the public domain and under the management and control of Contracting Parties and, in addition, those that have been placed voluntarily in the MLS by their holders. The MLS does not cover only those PGRFA held by States. Under Article 15 of the Treaty, international institutions may sign agreements placing their *ex situ* collections within its purview. Agreements to this effect have, for example, been signed with international agricultural research centres (see Box).

Access to the PGRFA of such crops and forages is to be provided either free of charge or at a minimal cost. The multilateral system therefore provides for a common pool of genetic material available for the purposes of research, breeding and training.

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All transfers of Annex I materials within the MLS are subject to the Standard Material Transfer Agreement (SMTA) adopted by the Governing Body of the Treaty during its first session in June 2006. The SMTA includes a mandatory monetary benefit-sharing clause. This clause is triggered when recipients commercialize new products that are PGRFA and that incorporate materials accessed from the MLS, if those products are not available without restriction for use by others for further research or breeding.¹⁰

In such instances, the SMTA states that the commercializer will contribute 1.1% of gross sales (minus 30% to allow for sales costs) to the international benefit-sharing fund created by the Treaty. The SMTA also encourages voluntary payments when PGRFA products are available without restriction. The use of such funds is controlled by the Treaty's Governing Body.

These monetary benefits arising from the use of PGRFA in the MLS will flow primarily to farmers, especially those in developing countries and countries with economies in transition, who conserve and sustainably utilize PGRFA. In this way, the Treaty provides both for multilateral access and for multilateral benefit-sharing.

This multilateral system of access and benefit-sharing was created by governments in the exercise of their sovereignty.¹¹ By pooling these resources, they disassociate the sharing of benefits from the identification of the country of origin or supply of genetic resources. Access and benefit-sharing are both structured on a multilateral basis: materials are received from the MLS, which is recognized as the source of the genetic resources, and benefits flow back to the MLS.

Information concerning the genetic material supplied under the SMTA must be provided along with the material concerned. Such information includes all available passport data and any other associated non-confidential descriptive information.¹² In each case, the information provided will vary depending upon its availability.

Research centres' collections within the framework of the International Treaty

On 16 October 2006, the 11 international agricultural research centres of the Consultative Group on International Agricultural Research (CGIAR) that hold *ex situ* germplasm collections signed agreements under Article 15 of the International Treaty.⁹ These agreements placed the *ex situ* collections of PGRFA held by those centres (some 650 000 accessions of the world's most important crops) within the purview of the Treaty. The Tropical Agricultural Research and Higher Education Center (CATIE) also signed such an agreement on the same date.

From January 2007, all transfers from the centre-held collections of PGRFA listed in Annex I of the Treaty will be subject to the Standard Material Transfer Agreement (SMTA) adopted by the Governing Body of the Treaty at its first session in June 2006. Non-Annex I PGRFA will be transferred subject to the Material Transfer Agreement currently in use by the centres, as amended by the Governing Body no later than its second session, which will be held in October 2007. Under the agreements, the centres recognize the authority of the Governing Body to provide policy guidance relating to their *ex situ* collections.

Of particular significance to the group of experts created by COP 8 is the fact that the SMTA requires suppliers of PGRFA from within the MLS to report transfers of materials to the Secretariat of the Governing Body of the International Treaty. The SMTA also requires any subsequent recipients of the materials to do the same.¹³

The SMTA confirms that the PGRFA being transferred come from the multilateral system established under the Treaty. In this sense, the SMTA functions as a certificate of source or provenance, with the source or provenance of the PGRFA being the MLS itself.

Conclusion

The specific and special nature of PGRFA was considered when the MLS created by the Treaty was being developed. This illustrates the importance of taking a nuanced approach to developing access and benefit-sharing regulations and related instruments that are tailored to specific categories of genetic resources and their uses.

The negotiation of an international regime on access and benefit-sharing in the framework of the CBD, and particularly the discussions on a certificate of origin/source/legal provenance, should consider how the MLS created by the Treaty functions in general and how the SMTA functions as a certificate of source in particular.

The balance of rights and obligations already worked out in the context of the Treaty's MLS and the use of the SMTA

cannot (and should not) be encumbered in any way with additional conditions or requirements of any kind.

The role of the SMTA in the MLS, and the way it can be used to keep track of transfers of materials and to link their use to benefit-sharing, is a very useful precedent for the Expert Group to consider.

Endnotes

- 1 The International Treaty on Plant Genetic Resources for Food and Agriculture. The issues presented in this note were previously submitted by Bioversity International for consideration by the Ad Hoc Open-ended Working Group on Access and Benefit-sharing and are included, albeit in a different format, in the 'Compilation of Submissions relating to the Matrix on the Analysis of Gaps,' UNEP/CBD/WG-ABS/INF/4, 15 December 2005, pp. 122–136, Annex III, 'Submissions from Relevant Organizations and Stakeholders: the International Plant Genetic Resources Institute'. Other previous policy briefs developed by the System-wide Genetic Resources Programme of the CGIAR (SGRP) for the Working Group on Access and Benefit-sharing and COP include:
 1. SGRP. 2006a. Developing access and benefit-sharing regimes: plant genetic resources for food and agriculture. SGRP, Rome, Italy. 4 pp. (Text submitted by SGRP to the Ad Hoc Open-ended Working Group on Access and Benefit-sharing at its third meeting, Bangkok, Thailand, 14–18 Feb 2005.)
 2. SGRP. 2006b. Annotated bibliography addressing the international pedigrees and flows of plant genetic resources for food and agriculture. SGRP, Rome, Italy. (Submitted by SGRP to the Ad Hoc Open-ended Working

Group on Access and Benefit-sharing at its fourth meeting, Granada, Spain, 30 January–3 February 2006, and the Eighth Conference of the Parties to the Convention on Biological Diversity, Curitiba, Brazil, 20–31 March 2006.)

- 2 Decision VIII/4C.
- 3 Fowler C, Hodgkin T. 2004. Plant genetic resources for food and agriculture: assessing global availability. Annual Review of Environmental Resources 29:143–179; SGRP 2006a, *supra* note 1; SGRP 2006b, *supra* note 1.
- 4 Fowler C. 2000. Implementing access and benefit-sharing procedures under the Convention on Biological Diversity: The dilemma of crop genetic resources and their origins. Proceedings of the GFAR-2000 Conference, 21–23 May 2000, Dresden, Germany. pp. 106–114.
- 5 The CBD defines the 'country of origin of genetic resources' as "the country which possesses those genetic resources in *in situ* conditions." In turn, the CBD defines '*in situ* conditions' as those "conditions where genetic resources exist within ecosystems and natural habitats, and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties." Pursuant to this definition, the CBD requires more than simply the identification of the country of origin of a crop—it requires the identification of the country of origin of the distinctive properties.
- 6 Article 12.1 of the Treaty.
- 7 Article 11.1 of the Treaty.
- 8 Article 24.2 of the Treaty.
- 9 The text of the agreements was adopted at the first meeting of the Governing Body of the International Treaty in June 2006.
- 10 Article 6.7 of the Standard Material Transfer Agreement.
- 11 Article 10.2 of the Treaty.
- 12 Article 12.3(c) of the Treaty; Article 5b of the Standard Material Transfer Agreement.
- 13 Article 5 of the Standard Material Transfer Agreement.