

FIRST SESSION OF THE GOVERNING BODY OF THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE: 12-16 JUNE 2006

The first session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (the Treaty or ITPGR) convenes from 12-16 June 2006 in Madrid, Spain. The session will address a number of issues that the Governing Body is required to consider at its first meeting, such as the: rules of procedure and financial rules of the Governing Body; funding strategy for the Treaty implementation; budget and work programme for 2006/2007; and procedures and operational mechanisms to promote compliance and address issues of non-compliance. The Governing Body is further expected to adopt the standard Material Transfer Agreement (MTA), which is the instrument for implementing the Multilateral System (MS) of access and benefit-sharing at the core of the Treaty. According to the ITPGR, the Governing Body should determine at its first meeting the level, form and manner of payment, in line with commercial practice.

In addition, the agenda includes: arrangements for the appointment of the Secretary; establishment of a permanent technical advisory committee; implementation of Article 6 (sustainable use of plant genetic resources); approval of agreements between the Governing Body and the International Agriculture Research Centers (IARCs) of the Consultative Group on International Agricultural Research (CGIAR) and other relevant international institutions; the relationship between the Governing Body and the Global Crop Diversity Trust; and the relationship between the Governing Body and the Commission on Genetic Resources for Food and Agriculture (CGRFA).

A BRIEF HISTORY OF THE ITPGR

Concluded in the framework of the UN Food and Agriculture Organization (FAO), the ITPGR is a legally binding instrument that targets the conservation and sustainable use of plant genetic resources for food and agriculture (PGRFA) and equitable benefit-sharing, in harmony with the Convention on Biological Diversity (CBD), for sustainable agriculture and food security. The Treaty establishes a MS for facilitated access to a specified list of PGRFA, balanced by benefit-sharing in the areas of information exchange, technology transfer, capacity building

and commercial development. The list of crops in Annex I defines the Treaty's scope and includes 35 crop genera and 29 forage species. The Treaty entered into force on 29 June 2004, ninety days after the deposit of its 40th instrument of ratification. One hundred and two countries and the European Community have now ratified the Treaty.

The Treaty's negotiations were based on the revision of the non-binding International Undertaking on PGRFA (IU). The IU was originally based on the principle that PGRFA should be "preserved ... and freely available for use" as part of the common heritage of mankind. This principle was subsequently subjected to "the sovereignty of States over their plant genetic resources," according to FAO Resolution 3/91. In April 1993, the CGRFA decided that the IU should be revised to be in harmony with the CBD.

Negotiations spanned seven years. From 1994 to 1998, the CGRFA met in five extraordinary and two regular sessions to develop the structure of, and refine, a draft negotiating text. From 1999-2001, a contact group chaired by Amb. Fernando Gerbasi (Venezuela) held six sessions to address contentious issues, including the list of crops to be included in the MS, benefit-sharing, intellectual property rights (IPRs) to materials in the MS, financial resources, genetic materials held by the IARCs, and definition of key terms. CGRFA's sixth extraordinary session (Rome, June-July 2001) attempted to conclude negotiations, but delegates did not reach agreement on the definitions of "PGRFA" and "genetic material," the application of IPRs to materials in the MS, the IU's relationship with other international agreements, or the list of crops to be included in the MS. The session adopted the text and transmitted outstanding issues to the FAO Council.

The 121st FAO Council and an Open-ended Working Group held under its auspices (Rome, October-November 2001) resolved outstanding issues, and on 3 November 2001, the 31st FAO Conference adopted the ITPGR by a vote of 116 in favor, zero against and two abstentions. As part of the interim arrangements, CGRFA, acting as the ITPGR Interim Committee, was convened to: prepare draft rules of procedure and draft financial rules for the ITPGR Governing Body, and a budget proposal; propose procedures for compliance; prepare draft agreements to be signed by the IARCs and the Governing Body; draft a standard MTA for facilitated access, including terms for commercial benefit-sharing; and initiate cooperative arrangements with the CBD Conference of the Parties (COP).

FIRST MEETING OF THE ITPGR INTERIM

COMMITTEE: During the first meeting of the CGRFA acting as the ITPGR Interim Committee (Rome, Italy, October 2002), delegates adopted the rules of procedure for the Interim Committee and established an Open-ended Working Group to propose draft rules of procedure and financial rules for the Governing Body, and draft procedures for compliance. They also adopted the terms of reference for an Expert Group to address the terms of the standard MTA.

MTA EXPERT GROUP: The expert group on the terms of the standard MTA (Brussels, Belgium, October 2004) discussed a series of issues forwarded by the first meeting of the ITPGR Interim Committee, including: definition of terms; level, form and manner of payment; and a potential exemption for developing country small farmers. The group considered options on the terms of the standard MTA, discussed its draft structure, and recommended that the Interim Committee establish an intersessional contact group to draft the elements of the standard MTA.

SECOND MEETING OF THE ITPGR INTERIM

COMMITTEE: At its second meeting (Rome, Italy, November 2004), the ITPGR Interim Committee agreed to establish an open-ended intersessional working group to address the rules of procedure and financial rules for the Governing Body, the funding strategy and procedures for compliance, since a previous intersessional working group, established by the first session of the Interim Committee, did not meet due to lack of funds. Delegates heard a report from the Expert Group on the terms of the standard MTA and agreed on the terms of reference for an intersessional contact group to draft the standard MTA for the Governing Body's consideration. They also heard a progress report on intersessional activities, including the ITPGR entry into force, and a report on cooperation with relevant international bodies.

INTERSESSIONAL HIGHLIGHTS

FIRST MEETING OF THE MTA CONTACT GROUP:

The first meeting of the Contact Group for the Drafting of the Standard MTA (Hammamet, Tunisia, July 2005) resolved many non-controversial issues and set out the basic structure of the agreement. A number of controversial issues remained outstanding, such as: dispute settlement, including whether arbitration would be binding or not; the benefit-sharing mechanism and payment; and an African proposal to add a legal person representing the Governing Body, as a third-party beneficiary, as part of the MTA to monitor its execution.

OPEN-ENDED WORKING GROUP ON RULES OF PROCEDURE, FINANCIAL RULES, COMPLIANCE AND FUNDING STRATEGY:

The Open-ended Working Group on the Rules of Procedure and the Financial Rules of the Governing Body, Compliance, and the Funding Strategy of ITPGR (Rome, Italy, December 2005) reviewed and revised the draft rules of procedure, the draft financial rules, a draft resolution on the funding strategy with the strategy in an annex and recommended their consideration by the first meeting of the Governing Body. Among other things, the Working Group requested information on how the Governing Body might set priorities for the use of resources under the funding strategies. In addition, the Working Group reviewed governments' submissions on compliance and prepared a draft resolution on procedures and operational

mechanisms to promote compliance and address issues of non-compliance, and submitted it for consideration by the first meeting of the Governing Body.

CARTAGENA PROTOCOL COP/MOP-3: The third meeting of the CBD COP serving as the Meeting of the Parties to the Cartagena Protocol on Biosafety (Curitiba, Brazil, March 2006) adopted a compromise package on documentation requirements for living modified organisms for food, feed and processing (LMO-FFPs), requesting parties to take measures to ensure that documentation accompanying LMO-FFPs in commercial production is in compliance with the requirements of the country of import and clearly states: in cases where the identity of the LMO is known through identity preservation systems, that the shipment "contains" LMO-FFPs; and in cases where the identity of the LMOs is not known, that the shipment "may contain" LMO-FFPs.

CBD COP-8: The eighth meeting of the CBD COP (Curitiba, Brazil, March 2006) decided, *inter alia*, that regarding the international regime on access and benefit-sharing under negotiation, the Working Group on Access and Benefit-Sharing (ABS) complete its work at the earliest possible time before COP-10 in 2010, on the basis of the ABS-4 outcome document, which is considered as reflecting the range of parties' views at ABS-4, as well as other inputs. The COP further requested the collaboration and contribution of the Working Group on Article 8(j) (traditional knowledge) to the mandate of the ABS Working Group, by providing views on the elaboration and negotiation of an international ABS regime relevant to traditional knowledge and, where practicable, to make arrangements to have one meeting of the ABS Working Group convened immediately following the Article 8(j) Working Group. On the development of *sui generis* systems for the protection of traditional knowledge, the COP urged parties and governments to develop, or recognize, national and local *sui generis* models for the protection of traditional knowledge with the full and effective participation of indigenous and local communities. On agricultural biodiversity, the COP adopted a decision containing a framework for the initiative on biodiversity for food and nutrition, and a framework for action for the soil biodiversity initiative. Finally, COP-8 decided to reaffirm a COP-5 ban on field testing of genetic use restriction technologies and rejected case-by-case risk assessments.

SECOND MEETING OF THE MTA CONTACT GROUP:

The second meeting of the Contact Group for the Drafting of the Standard Material Transfer Agreement (Alnarp, Sweden, April 2006), tasked with finalizing the draft to be considered and adopted by the first session of the Treaty's Governing Body, agreed on a draft standard MTA to be used for exchange of material covered by the MS established by the Treaty, with a number of issues remaining unresolved. While delegates recognized the third party beneficiary, an institution representing the Governing Body and the MS, questions regarding the third party beneficiaries' rights remained unresolved. Other text also remains bracketed on: the definitions of "product" and "sales," and the formula for benefit-sharing; obligations of the recipient in the case of subsequent transfers of material; dispute settlement; and applicable law. Contact group Chair Eng Siang Lim (Malaysia) established an intersessional Friends of the Chair group, to attempt to resolve pending issues prior to the first meeting of the Treaty Governing Body.