

# International Treaty on Plant Genetic Resources for Food and Agriculture

The International Treaty on Plant Genetic Resources for Food and Agriculture (The International Treaty) came into effect on the 29 June 2004. The International Treaty provides for the conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable benefit sharing from using these resources. The Treaty is required to be in harmony with the Convention on Biological Diversity.

The International Treaty covers plant materials forming part of the 'Multilateral System'. This includes the plant materials identified in the International Treaty (the Annex 1 materials) that are under the management and control of the government and in the public domain, the ex situ collections of CGIAR identified as part of the scheme and any other contributions.

Transfers of International Treaty materials are governed according to a standard material transfer agreement (SMTA) between the provider of the plant materials and the recipient of the plant materials. The standard material transfer agreement sets out the terms and conditions of access, use and benefit sharing, and addresses a number of intellectual property matters.

## Scope of the International Treaty

The standard material transfer agreement deals with three forms of the plant material:

- **Plant materials 'in the form received' from the Multilateral System** with available passport data and non-confidential descriptive information
- **Plant materials 'under Development'** derived from the originally provided material that is being changed up to the stage of a commercialized 'Product'
- **Plant materials as a 'Product'** that incorporates the plant material received, or any of its genetic parts or components ready for commercialization (excluding commodities and other products used for food, feed and processing)

The standard material transfer agreement only covers access to materials for use or conservation for the purpose of research, breeding and training for food and agriculture. Any other uses, including chemical, pharmaceutical and other industrial uses are outside the bounds of the standard material transfer agreement and require a separate agreement.

All issues of access to genetic resources, other than human genetic resources and those resources covered by Annex 1 of the International Treaty and subject to the standard material

transfer agreement, are governed by the Convention on Biological Diversity and the Nagoya Protocol on Access to Genetic Resources and Benefit Sharing. (See Fact Sheet Int-7.)

## Obligations on the plant material provider

- Provide relevant plant material passport data (accession numbers etc)
- Provide non-confidential descriptive information about the plant materials
- Ensure that any intellectual property covering the plant materials is consistent with international and national laws

## Obligations on the plant material recipient

- Refrain from claiming intellectual property over the plant materials (and their genetic parts or components) 'in the form received'
- Share benefits arising from commercialisation of received plant materials, or their parts or components
- Impose the same rights and obligations in a separate agreement, on any transfers of received plant materials and its progeny developments

## Benefit sharing obligations

Benefit sharing obligations depend on whether the recipient restricts further research and breeding uses of the commercialised product:

- **With restrictions:** The recipient is required to pay a fixed percentage of the sales value for the particular Product and of the sales value of other products belonging to the same crop.
- **Without restrictions:** Recipients are encouraged to make voluntary payments to the financial mechanism established by the Governing Body.

## Resolving disputes

Dispute settlement can be initiated by the provider, the recipient or an entity acting on behalf of the International Treaty Governing Body. The dispute should be addressed at first instance through 'good faith' negotiation, failing this mediation, and then failing this arbitration.

## Claiming IP over International Treaty plant materials

The standard material transfer agreement restricts recipients from claiming intellectual property where the claim would restrict access to the plant materials (and their genetic parts or components) in the form received for use or conservation for research, breeding and training for food and agriculture.

This leaves open the possibility of claiming intellectual property over:

- Any materials received so long as access to the materials for research, breeding and training for food and agriculture is allowed (possibly through a non-exclusive license)
- Any developments to the plant materials received
- Any developments over genetic parts or components of the plant materials received

Importantly, recipients of any plant materials that are already protected by intellectual property must continue to respect those restrictions.

## Transfer and exhaustion of Standard Material Transfer Agreement terms and conditions

The terms and conditions of the standard material transfer agreement generally follow the genetic resources:

- **For recipients transferring** – Recipients must impose the same rights and obligations on any transfers of received plant materials and their progeny and developments where the transfer is for use or conservation for the purposes of research, breeding and training for food and agriculture.
- **For recipients commercialising** – When sold as a product on an open market the benefit sharing obligations take effect and the vendor is not obliged to pass on the same rights and obligations to the purchaser unless the purchaser is going to use or conserve the plant materials for research, breeding and training for food and agriculture.
- **For purchasers of commercialised products** – The purchaser of a product sold on an open market that was derived from plant materials covered by a standard material transfer agreement is not automatically bound by the standard material transfer agreement.
- **Other uses** – Where the use changes from research, breeding and training for food and agriculture to something that does not involve commercialisation of the received materials the recipient is obliged to negotiate terms and conditions including benefit sharing with the provider.

## Farmers' rights

The International Treaty is the first binding international instrument to give formal recognition to farmers' rights. (See Fact Sheet Int-8.)

Further information is available on the official International Treaty website at <http://www.planttreaty.org>.

This fact sheet was produced as part of a collaboration between the CGIAR Consortium and the Australian Centre for Intellectual Property in Agriculture (ACIPA) to research international intellectual property issues relating to agriculture.

This fact sheet is for information purposes only. It is designed to assist in general understanding of legal rights and obligations: It is not tailored to any particular fact, situation or requirements and should not be relied upon for legal advice.

Further Fact Sheets are available on the ACIPA website <http://acipa.edu.au/fact-sheets.html>.