

International Treaty on Plant Genetic Resources for Food and Agriculture

The International Treaty on Plant Genetic Resources for Food and Agriculture (the Plant Treaty) came into effect on 29 June 2004. The Treaty provides for the conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of the benefits that accrue from the use of these resources.

A key feature of the Plant Treaty is its 'Multilateral System': a global mechanism to ensure access to plant materials and benefit sharing. The Multilateral System covers plant materials of 64 food and forage crop species that are listed in *Annex 1* of the Plant Treaty. These include plant materials that are under the management and control of governments and in the public domain, that are held by the Consultative Group for International Agricultural Research (CGIAR) and other gene banks as *ex situ* collections, and that individuals and institutions include as contributions to the Multilateral System.

Transfers of the Annex 1 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 SMTA sets out the terms and conditions of access, use and benefit sharing, and addresses a number of intellectual property matters.

Scope of the Plant Treaty

The SMTA of the Plant Treaty deals with three forms of the plant material:

1. plant materials 'in the form received' from the Multilateral System with available passport data and non-confidential descriptive information;
2. plant materials 'under development' derived from the originally provided material that is being changed up to the stage of a commercialised 'product'; and
3. plant materials as a 'product' that incorporates the plant material received, or any of its genetic parts or components ready for commercialisation (excluding commodities and other products used for food, feed and processing).

The SMTA 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 SMTA 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 Plant Treaty and subject to the SMTA, are governed by the

Convention on Biological Diversity (CBD) and the Nagoya Protocol (*see* Fact Sheet 14: Access to Genetic Resources under the CBD; and Fact Sheet 15: Nagoya Protocol).

Obligations of 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 of the plant material recipient

- Refrain from claiming intellectual property over the plant materials (and their genetic parts or components) 'in the form received' from the Multilateral System.
- 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 Treaty's Governing Body. The dispute should be addressed at first instance through 'good faith' negotiation, failing this mediation, and then failing this arbitration.

Claiming intellectual property over Plant Treaty materials

The SMTA 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.

This fact sheet is only for information purposes, and to assist you in understanding your legal rights and obligations in a general sense. It is not tailored to any particular fact, situation or specific requirements, and must not be relied on as legal advice.

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

Transfer and exhaustion of the terms and conditions of the SMTA

The terms and conditions of the SMTA 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 an SMTA is not automatically bound by the SMTA.
- 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 Plant Treaty is the first binding international instrument to formally recognise farmers' rights to plant genetic resources and associated traditional knowledge (*see* Fact Sheet 13: Farmers' Rights).