SESSION 2  
Summary of Overheads

S1

Session 2. Understanding and Using the Standard Material Transfer Agreement (SMTA)

S2

Schedule of Session 2 Understanding and Using the SMTA

10:45 – 11:15 The Standard Material Transfer Agreement (Presentation 4)
11:15 – 13:00 Understanding the SMTA (Exercise 4)
- --------------------- Lunch --------------------- 
14:00 – 16:00 Using the SMTA (Exercise 5)
- --------------------- Tea/Coffee Break ---------------------
16:15 – 17:00 Demonstration of Gene-IT Software for the SMTA
17:00 – 17:30 Feedback on the Day’s Activities and Evaluation
17:30 – 18:00 Closure of the Workshop

S3

Objectives of Session 2

➢ To understand the standard material transfer agreement
➢ To learn how to use the standard material transfer agreement
The Standard Material Transfer Agreement (SMTA)

What is a material transfer agreement?

A material transfer agreement (MTA) is the legal contract between a provider and a recipient that sets out the terms and conditions under which plant genetic resources are transferred.

Different types of material transfer agreements

- The standard material transfer agreement (SMTA)
- Additional conditions for PGRFA under development
- Other MTAs
The standard material transfer agreement (SMTA)

- Rationale for having an SMTA
- The Importance of the SMTA
- The negotiation of the SMTA

The nature and content of the SMTA

- Preamble
- Parties
- Definitions
- Subject Matter
- General Provisions
- Rights and Obligations of Provider
- Rights and Obligations of Recipient
- Applicable Law
- Dispute Settlement
- Additional Items
- Signature/Acceptance
- Annexes

What is the SMTA?

- The SMTA is a commercial contract drafted through international negotiations.
- It's not perfect, but it's all we have and we have to make it work.
- The SMTA looks complicated, but in fact the obligations are quite simple and not too onerous.
The International Treaty on Plant Genetic Resources for Food and Agriculture: Learning Module

### Law & Policy of Relevance to the Management of Plant Genetic Resources

#### 2.5.7 Obligations of the provider
- To make material under the multilateral system available expeditiously and free of charge
- To do so under the SMTA
- To list the material provided in the SMTA annex
- To inform the Treaty’s governing body about the SMTAs entered into
  - The governing body has adopted a schedule and requirements for reporting.
  - Secretariat has provided a website to facilitate reporting on SMTAs.

#### 2.5.8 Rights of the recipient
- Recipient can use the material for research, or for breeding or training.
- Recipient can develop new PGRFA products from the material and can protect them and commercialize them.
- But recipient cannot use materials for other purposes or for uses outside food and agriculture

#### 2.5.9 Obligations of the recipient
- Not to take out IPRs over the material accessed from the multilateral system that restrict its availability to others
- To make available to the multilateral system non-confidential information resulting from research and development on the material
- To make a mandatory payment to the multilateral system if the recipient . . .
  - develops a new PGRFA product derived from the material and
  - commercializes the new product and
  - restricts the availability of the new product to others for further research or breeding
- If further availability is not restricted, then payments are voluntary
Types of restrictions that trigger mandatory payments

- Patents of the US type that restrict availability for research or breeding
- Technological restrictions like genetic use restriction technologies (GURTs)
- Contractual or licence restrictions

*Plant breeder’s rights would not as a general rule trigger mandatory payments*

Types of payment schemes

- **Normal payment scheme**
  - 1.1% of gross sales less 30% (i.e., 0.77%)

- **Alternative payment scheme**
  - 0.5% of all sales of PGRFA of same crop
  - Payable whether or not availability of new products is restricted
  - Option for period of 10 years renewable
  - Exercise of option must be notified to the Treaty’s governing body

Methods of acceptance

- **SMTA allows for three methods of acceptance:**
  - Signature
  - ‘Click-wrap’ acceptance for internet orders
  - ‘Shrink-wrap’ acceptance (current practice)

- **Importance of ‘click-wrap’ form of acceptance**

- **FAO and Bioversity are developing appropriate software**
PGRFA under development

- Basically, breeders’ lines in process of development
- PGRFA under development to be available at discretion of developer during period of development
- If PGRFA are made available, must be under the terms of the SMTA
- Transfer can be subject to additional conditions, including payment of monetary consideration (This does not count as commercialization triggering mandatory benefit sharing.)

Third-party beneficiary

- Benefits under SMTA flow to multilateral system not to individual providers
- Providers have little incentive to enforce benefit-sharing obligations
- Multilateral system is the third-party beneficiary under the SMTA
- SMTA gives FAO the right to enforce third-party beneficiary rights
  - Arbitration
  - Provides solution to problems of compliance

What is the experience with the SMTA to date?

- CGIAR Centres
  - Centres’ Guide
  - Summaries
  - FAQs
- Countries
- FAO/Biodiversity Joint Programmes
  - Information systems
  - Assistance
Additional conditions for PGRFA under development

- Conditions are additional to those of SMTA
- Examples could include:
  - methods of making information available or
  - obligation to report information on material back to provider
- Model additional conditions now being developed

Extension of SMTA to cover transfer of non-Annex 1 material held by CG centres

- MTAs adopted under 1994 in trust agreements with FAO
- Amended by FAO Commission in 2004
- View of CG centres: just use the same SMTA
- At 2nd session, governing body authorized CG centres to use SMTA with explanatory footnotes for non-Annex 1 material collected before the Treaty's entry into force

Conclusions

- The SMTA could be simpler, but at least it is simpler than the other alternative.
- We need to gain experience of any problems with the SMTA and then improve its implementation.
- We need to do our best to make the SMTA and the multilateral system work