

# THIRD WORLD NETWORK

## FIRST MEETING OF THE WORKING GROUP TO ENHANCE THE FUNCTIONING OF THE MULTILATERAL SYSTEM OF THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE (14 – 16 MAY 2014)

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### INTRODUCTION

The UN Food and Agriculture Organization's International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) has formally begun discussions that are anticipated to result in changes to the Treaty's multilateral access and benefit sharing system for crop genetic resources and, potentially, changes to the Treaty itself.

First at issue is how to generate more income for the Treaty's Benefit-Sharing Fund (BSF), which has languished with few contributions since the Treaty's entry into force in June 2004. It was anticipated that the BSF would mostly be funded by contributions by governments and payments from industry, which uses seeds in the Treaty's Multilateral System in its breeding programs. But government contributions have fallen well short of expectations, and there have been no payments at all from the US \$40 billion per year seed industry.

Coming up with a formula that results in industry contributing much more is a high priority, but some governments are also concerned that there are fewer kinds of seeds in the system than they would like. These countries endorse expanding the number of species in the Treaty's Multilateral System (MLS). A list of species, including many key global crops, enumerated in the Treaty's Annex 1 presently defines the scope of the MLS.

A driver of the process is the impending entry into force of the Nagoya Protocol to the Convention on Biological Diversity (CBD), which fleshes out the Convention's access and benefit sharing obligations. CBD obligations are applicable to agricultural biodiversity that is not specifically listed in the Treaty's Annex 1. Thus, agricultural species not listed in Annex 1 will shortly be covered by the Nagoya Protocol, in ratifying countries.

The Treaty, however, includes all plant genetic resources for food and agriculture (PGRFA) within its scope, and thus offers the possibility of expanding the coverage of the MLS. Whether or not this would be a good idea remains undecided. In general, developing countries are wary of expanding the list of crops, considering the benefit sharing system's shortfalls and would prefer to wait until the BSF is demonstrably fixed before considering whether or not the scope of the MLS should be expanded. Developed countries generally support expanding the list of crops sooner.

Some fixes to the standard material transfer agreement (SMTA), which implements the Treaty's benefit sharing obligations, are possible through a decision of the Treaty's Governing Body. These changes might alleviate benefit sharing shortfalls and be implemented in the shorter term. More radical changes to the SMTA would require a new round of ratifications under the Treaty, as would expansion of Annex 1.

## MEETING ORGANIZATION AND BACKGROUND

The Working Group to Enhance the Functioning of the Multilateral System of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) held its first meeting in Geneva from 14-16 May.

Co-chaired by Modesto Fernandez Diaz-Silveira of Cuba and Bert Visser of The Netherlands, the meeting began with reflections on what brought about the Working Group. “*In layman's terms,*” Visser observed, this is “*the first organized review of our multilateral system.*” The co-chairs noted that the Nagoya Protocol was likely to enter into force soon, that the Multilateral System (MLS) had not generated the expected flow of funding for the Treaty's Benefit-sharing Fund (BSF), and that participation in the MLS was lower than hoped for.

Contracting parties were represented on a regional basis, per a standard FAO formula, although they did not always intervene as regions.<sup>1</sup> Also invited were two representatives each from farmers' organizations, civil society organizations, the seed industry, and the Consultative Group on International Agricultural Research (CGIAR), whose genebanks serve as the backbone of the MLS.

Discussion began slowly. The co-chairs invited delegates to consider if the benefit sharing system as set forth in the Treaty would be sufficient, even if it worked correctly. Could it be made to work correctly, they asked. There were no takers for this meta-level discussion at the outset.

The co-chairs' questions reflected broadly felt concern that the high degree of complexity of the MLS is one of its largest problems. The system covers vast numbers of seeds from many of the world's most important crops, many of which are farmers' varieties. The MLS attempts to manage a flood of related standard material transfer agreements (SMTAs), which are the contracts that implement the benefit sharing provisions of the Treaty. The MLS constantly faces thorny and evolving intellectual property questions, concerns about loopholes, and is under pressure to address increasingly urgent conservation needs as on-farm diversity erodes and climate change takes hold.

Adding to the challenges, the Treaty does not enjoy universality. Agricultural heavyweights including the United States, China and Argentina have not joined. When companies access the same seed that is in the MLS from a different seed bank source (frequently US public sector seed banks) that does not require benefit sharing, this is termed “avoidance”. The result is the reduced participation of many plant breeding companies in the MLS.

Gene sequencing and synthesis technologies also pose a looming challenge to the Treaty's SMTA, which is not well adapted to cover situations of material transfer in the form of digital data (e.g. the sequence of genes in MLS seeds).

With no parties ready to start discussion with the overarching questions, per its mandate from the 5<sup>th</sup> meeting of the ITPGRFA Governing Body in Muscat, Oman (September 2013), the Working Group moved to begin to review a number of options identified for creating reliable and predictable BSF funding.

## WORKING GROUP DISCUSSION

**ANGOLA, speaking for the AFRICAN REGION,** began. Angola said that the BSF needed to be fully operational for the Treaty to work. It said the BSF was especially important for Africa, which

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<sup>1</sup> In the course of the meeting, it was sometimes unclear if interventions were made on a regional or national basis. In this report, interventions clearly made as a region are identified as such. In cases where an intervention's status was not made explicit, it has been attributed to the speaking country.

has a large interest in BSF projects. Angola noted, however, that while there were hundreds of applicants, in the present BSF round (funded by voluntary contributions from European governments) only 19 or 20 would be selected. Africa's priority was to see that users of the MLS, here primarily meaning companies that use MLS seeds in breeding programs, supported it.

**MALAYSIA, representing the ASIAN REGION**, said the option for benefit sharing in the SMTA that is most frequently used (Article 6.7) reflected the principle that if an MLS user didn't place a direct restriction (typically an intellectual property claim) on a seed, then benefit sharing would be on a voluntary basis (Article 6.8). Malaysia said it should be considered if Article 6.8 should be revisited to create a mandatory benefit sharing requirement, bearing in mind the need to differentiate between types of users (e.g. large corporations versus public sector breeders).

Malaysia said that the Treaty had been negotiated with the expectation of voluntary donations to the BSF from developed countries, but that these had largely not materialized, although perhaps this was in part attributable to economic conditions. It asked developed countries how they planned to increase donations, and said “*If you're not going to make any, then just tell us.*” It was up to developed countries, Malaysia said, to explain how they planned to make BSF funding predictable and consistent.

**SPAIN, spoke briefly for the EUROPEAN REGION**. It cited the Governing Body's reference to user-based payments and said the committee should “*focus on factors in our hands*” (i.e. industry payments and not government contributions). Spain said users (industry) should be “*engaged as much as possible.*” It said that the Working Group should consider the problems of avoidance and transaction costs, and should “*revisit the availability of material*”, a reference to Europe's frustration that the national seed collections of many parties are not available through the MLS.

(Developing countries counter that much of their diversity is already in the MLS, in the form of farmers' varieties collected by the CGIAR and its predecessors, and available from the CGIAR genebanks. Developing countries also cite resources constraints and note that some developed country collections haven't been placed in the system either.)

**FRANCE** then took the floor for a longer intervention. It again said that the mandate of the group was to look at user-based payments, and it repeated Spain's complaint about access to developing country seed collections. France also wanted the millions of SMTAs signed since 2006 to be followed up upon (they are data-based by the Treaty Secretariat), as it was surprised that not a single mandatory payment had been made by industry. France noted a lack of information on this subject. (The Secretariat later offered to provide aggregated information on the SMTAs, which it said are considered confidential.)

**ECUADOR** was in agreement with Africa. It doubted mandatory payments would emerge from the existing SMTA, and said users and contracting parties needed to be part of the solution. Ecuador said the dialog on the MLS needed to move forward as too much time was spent repeating the same things.

**BRAZIL** said “*Use of the instruments depends on the accomplishment of what has been committed,*” and said that it wanted the MLS to be more “*attractive,*” “*so that more funds get in.*”

**AFRICA** said that while economic crises may be partially to blame for low voluntary contributions from governments, global seeds sales nevertheless continue to rise, and yet benefit sharing still wasn't happening.

(Most estimates of the value of the global seed trade place it between US \$40 and \$45 billion dollars per year, about 2/3 of which are seeds of crops listed in Annex 1. Presently industry pays no mandatory benefit sharing on this sum, nor has it made voluntary donations to the BSF.)

**NORWAY**, which has contributed to the BSF, said that voluntary contributions from governments to the BSF were increasing, so at least there was a positive trend. It agreed with others, however, that the

mandate from the Oman meeting was to look at user-based payments.

**CANADA**, which throughout the meeting spoke as the **NORTH AMERICAN REGION** (the US is not an ITPGRFA Party), conservatively signaled that there was a “*need to understand how the SMTA was designed to work.*” It asked what was preventing materials from going into the system and about who uses them. Canada wanted users to say what they need in order to start paying into the system.

**AUSTRALIA, for the SOUTHWEST PACIFIC**, similarly wished to understand practical causes of avoidance in order to figure out “*how to provide incentives to get industry to engage with the system.*”

The **International Seed Federation (ISF), for the SEED INDUSTRY**, said it wanted to exchange views on “*total expectations*” for the BSF, and that these should put on the table. “*We want to know the expectations,*” ISF stated, “*to see if they can be reached.*”

**SWITZERLAND** said the discussion hadn't tackled the question of how to use funds. It suggested that industry should be involved in “*objective setting or taking a role in how decisions are made.*”

**ECUADOR** was skeptical of Switzerland's suggestion. It said that involving industry in BSF spending decisions was not on the agenda. **AFRICA** supported Ecuador, saying that the existing BSF procedures were adequate, but the level of funding was not.

**INDUSTRY** replied that expectations needed to be “*realistic*”. It said the “*Nobody wants to give a blank check.*” “*People in our sector want to know what they're looking at,*” industry said.

**ASIA** said that it did not expect many voluntary donations over the next 10 years given the economic situation. Industry should explain how it thought BSF funding should be increased, it said.

**FRANCE** and **ECUADOR** both asked **INDUSTRY** to explain the importance of the MLS to it.

**INDUSTRY** reiterated that it wanted to talk about expectations. It said breeders are more frequently using seeds of “modern” varieties in breeding programs, rather than material from the MLS. Using the MLS, industry somewhat cryptically said, was a “*business decision*”.

**ASIA (Malaysia)** noted that, so far, the system was based on sales of seed. It asked for industry's views. If the MLS continues to rely on seed sales as the basis to calculate benefit sharing, what did industry expect the approach to yield?

Turning to the CGIAR, Malaysia said that the CGIAR profited from partnerships in which it provides industry with materials based on MLS seeds, but that the CGIAR kept such revenues for itself. Could income from these partnerships be made a source of funding for the MLS?

**FRANCE** echoed Asia's interest in learning more about the CGIAR's private sector partnerships. “*Nobody seems to object,*” France said, but the matter should be looked into.

The farmers' organization **LA VIA CAMPESINA (LVC)** said that “users” should be considered to be the large companies, who it also said often maintain large seed collections. On France's criticism of developing countries and placing seeds in the MLS, it said that France had only put older seeds in the System, and not all of its collections. More transparency and honesty about collections in developed countries was needed, it said. LVC said the committee should acknowledge changes in breeding techniques and technology meant that the MLS would be accessed by large companies less often in the future, and that this needed to be taken into account, because a system that linked income to a dwindling number of accesses may not work.

**“Innovative approaches” for MLS funding**

In the afternoon, the Working Group moved to specifically discuss a number of “innovative approaches” for MLS funding identified by the Ad Hoc Advisory Committee on the Funding Strategy, a predecessor to the present Working Group.

Of these approaches, for several years the “African Proposal”, a system suggested by Africa during the negotiation of the ITPGRFA, has increasingly been viewed as most promising basis on which the MLS might be extricated from its benefit sharing problems. Although the Proposal was not favored by developed countries when it was put forward, it was incorporated in a form into the SMTA as Article 6.11, as one option that users can select for benefit sharing.

In outline, the African Proposal is that companies that access seeds of a crop from the MLS will pay for a period of years a percentage (presently 0.5%) of their sales of seeds of that crop into the BSF. It is a notably different approach than Article 6.7 (a mandatory payment in the event of intellectual property claim) and Article 6.8 (voluntary contribution).

Africa has consistently backed the idea and, over the course the Treaty's implementation it has attracted more interest. Nevertheless, no company has yet selected it as its form of benefit sharing when accessing MLS seed. (Companies instead opt for Article 6.7, which has not yielded any income since the Treaty's inception.)

**NORWAY, for the EUROPEAN REGION**, said it favored revisiting article Article 6.11 as well as expanding the MLS, both in terms of the number of crops it covers (i.e. the Treaty’s Annex 1), and the number of accessions of them (i.e. placing more collections in the System).

**CANADA** agreed that the MLS could be expanded in scope and size. Canada thought that industry should “*tell us what that value is,*” (of the MLS), adding that the committee would have to figure out how to “*entice users into opting to pay*”.

In contrast **MALAYSIA** offered that Asia, except possibly Japan, thought there was a need to look at providers of material into the system and how to make the system attractive to them. The Treaty covers all plant genetic resources for food and agriculture (PGRFA), Malaysia said, but to place more seeds in the MLS required both sides to be happy.

**IRAN, for the NEAR EAST REGION**, said that the MLS needed to evolve with technology and the times, but that parties didn't have a completely free hand because changes need to be based upon the Treaty itself. Iran thought the MLS needed to be more than a club offering memberships to users, that it needed to include contracting parties too.

**AFRICA** said that in its view there would be no discussion of adding species to the Annex until the benefit sharing mechanism was fixed. If the users were unwilling to pay, then they were disregarding the principles of the Treaty. The African Proposal, it said, was straightforward and easy to use, and could be refined to ensure the flow of benefits into the system.

**MALAYSIA** expressed a need for an immediate flow of benefits into the system and that revisiting Article 6.11 could create that. Malaysia preferred, however, a mandatory version of that alternative called the Norwegian Proposal, for governments to fund the BSF through taxes on seed sales. But Malaysia was flexible, it said benefits could flow from companies or governments. Each country could organize its own system to come up with its share. If this approach succeeded over a period of 10 years, Malaysia said, parties could consider expanding Annex 1.

**SPAIN, for the EUROPEAN REGION**, said simplicity is a key factor. It agreed that ways to improve Article 6.11 should be explored, including the idea of a club. Spain said there should be no need for tracking material in the new system, and that by changing the SMTA parties might avoid

complex changes to the Treaty that would require re-ratification.

**AUSTRALIA, for the SOUTHWEST PACIFIC**, wanted short and long term solutions. The MLS should not be based on remuneration for access to specific seeds, Australia thought, saying governments “can simplify 6.11.” Australia said its industry wanted for payments to be predictable.

**FRANCE** signaled support for track and trace of material.

**AFRICA** supported revisiting Article 6.11 which, it said, did not require tracing and tracking, and was an approach less prone to disputes.

**SWITZERLAND** thought there was risk with Malaysia's idea of leaving much up to individual countries, which Switzerland thought might make one country more attractive than another. If it was the Norwegian Proposal, it should be the same across the seed sector, in each country.

**MALAYSIA** replied that a country could simply take over the obligation on behalf of its users, who still sign the SMTA but the country takes over the obligation of payment into the MLS.

**CANADA** said the Norwegian Proposal was not an option for it.

**INDUSTRY** said “*We don't see anything in the Norwegian Proposal,*” and did not want a system to track and trace.

This confused **CANADA**, whose delegate said she was a plant breeder herself, and that breeders kept meticulous records. **INDUSTRY** replied that what it meant was that some breeders don't write things down or store data in form designed to be shared with others. Also, it said, some breeders generate large populations from multiple parents, sometimes making origins unclear.

The **BERNE DECLARATION, on behalf of CIVIL SOCIETY ORGANIZATIONS**, said that Article 6.11 could not be fixed without also revisiting Article 6.7 (the alternative mandatory benefit sharing option). It noted that a drawback to the Norwegian Proposal (in its original form) was that it could only be applied to contracting parties, whereas a user-focused measure would bring in companies and other entities from non-parties when they accessed the system.

**INDUSTRY** reiterated its support for expanding the scope of the multilateral system.

**ASIA (Malaysia)** said its position was expansion could be considered only after the benefit sharing system proved effective over a period of 10 years.

**ECUADOR** counseled caution on expanding the MLS, and wanted a fix that would come faster than expanding the MLS, which would require modifying the Treaty. It offered that both the UN scale and seed sales could be applied in a funding solution.

**FRANCE** reiterated that countries were lagging behind in placing material in the MLS. It said that there were rich seed companies in developing countries that should pay their share too.

**NORWAY**, on the Proposal named for it, said that it had voluntarily contributed a small proportion of seed sales for 5 years. But the new obligations to discuss now should be for users, not for contracting parties. The seed industry, Norway said, could be contributing more.

Ending the first day's discussion, **INDUSTRY** clarified that it no longer wished to discuss a patent licensing platform under development that could be a potential funding approach for the MLS.

On Thursday the 15<sup>th</sup>, discussion began with **ANGOLA** reviewing the African Proposal's details

(already described).

**IRAN** then described a “Treaty-based” proposal. It includes a differentiation between types of users in benefit sharing payments. These would depend upon the degree to which the genetic resource was removed from the system – i.e. higher payments in cases of patents that impose the greatest restrictions on research and use, and a lower but still mandatory payment for commercialization under plant variety protection (PVP). The proposal would maintain a track and trace system. Iran said the proposal reflected concepts in the Treaty, would close loopholes, and could be implemented without amending the Treaty.

Responding to the Chair's request for regions to reflect on where the Working Group should focus moving forward, **NORWAY, for the EUROPEAN REGION**, noted support for the African Proposal and wondered if it was necessary to maintain an equal focus on all the proposals. In addition, Norway thought that “enhancing access” (expanding the scope and size of the MLS) deserved priority focus.

**FRANCE** did not favor differentiation between user groups and said payments based on a percentage of sales would work better and reflected the concept behind differentiation. It said that a plant breeder's proportion of sales income differed between crops – for instance it was quite low for wheat - and that needed to be taken into account. France did not object to studying licensing platforms, provided they were not for patents. France said that countries in the European Region were “*not in favor of developing the patentability of plant genetic resources*”. It favored revisiting Article 6.11 over Asia's preference for a mandatory version of the Norwegian Proposal.

**BRAZIL** said that more than one option could be implemented, so it wasn't necessarily productive to set them against one another now. Brazil said it does not support patenting of native plant traits and did not want to amend the Treaty at this time. Brazil said “*If there are payments for [PVP] protected varieties, this provides certainty versus the uncertainties of Nagoya Protocol.*” With such a payment system, Brazil thought expansion of the MLS could be considered, to all PGRFA, provided that everyone put their collections, including private collections, into the MLS. On the rate of payments under a revised Article 6.11, Brazil sought income projections as guidance. Concluding, Brazil said “*We need to go back to spirit of the Treaty pre-Annex 1.*”

(The Treaty, in its initial form, included Annex 1 as it exists today. Brazil's apparent meaning was to refer to early negotiations for the Treaty, when an MLS including more species was considered.)

**CANADA** agreed that reconsidering 6.11 was a possibility, including revising the present 0.5% rate (presumably downward, in Canada's view). Canada appreciated Brazil's comment on the spirit of the Treaty and said that “*Success will depend on the scope of the system and what it means for users,*” and that it “*needs to cover crops that users will be interested in.*” Unhurried, Canada was happy to leave all options on the table, even the Norwegian Proposal, despite rejecting its use in North America.

**AUSTRALIA** agreed that at looking at Article 6.11 and a “membership fee” or “subscription fee” system might work, perhaps on a crop-by-crop basis or for general access to the system. It thought the present 0.5% payment level too high, and said opening discussion on Article 6.7 would depend upon how Article 6.11 turned out. Echoing Canada's deference to industry, Australia emphasized a need to make the MLS attractive for companies.

**LA VIA CAMPESINA** supported a larger BSF and opposed patenting. LVC was concerned about avoidance. It said that parties, in addition to users, had a responsibility to fund the BSF. LVC noted that checkpoints were being set up by countries under the Nagoya Protocol in order to monitor compliance with benefit sharing obligations. LVC offered that checkpoints to monitor seed sales might play a similar role for the MLS.

**FRANCE** said that it was not interested in expanding Annex 1 and again raised the issue of

developing countries not placing their collections in the MLS, triggering the usual exchange on the reasons with MALAYSIA and BRAZIL.

France's outspokenness, at times dissonant from its regional position, was a subject of comments in the corridors. Observers were curious of France's statements opposed to the expansion Annex 1, in view of a series of diverging statements by the European Region at this and other meetings.

**CIVIL SOCIETY** said that it was important for the committee to not simply compare income estimates from various options in reforming the MLS, but to specifically agree on mandatory minimum annual monetary payments and shape the system so that it would meet or exceed them. The obligations to meet this goal should apply to both industry and contracting parties.

At times during the meeting, passing references were made to a goal of US \$20 million per year, a figure which is rooted in the \$116 million 5.5 year funding target found in the Treaty's Strategic Plan for the Implementation of the Benefit-sharing Fund of the Funding Strategy. This figure has not been formally proffered or accepted, however, by the Working Group.

The genesis of this figure, and how it is rationalized against *in situ* conservation needs is unclear. Some longtime observers of the Treaty and its precursors say the figure is likely more rooted in old and informal understandings *vis-a-vis* CGIAR genebank budgets rather than costed and detailed needs assessments. In any event, projected figures for the BSF have never, as yet, been reached.

Observer organizations and some governments favor a higher figure, certainly justifiable against seed industry profits, particularly if questions about the administrative/absorption capabilities of the BSF can be satisfactorily resolved to ensure funding flows to farmer-led *in-situ* conservation and development projects.

## **FUTURE PLANS AND THE MULTI-STAKEHOLDER DIALOG**

The Committee then discussed how to organize studies being put together for its next meeting, deciding to prioritize work on the financial implications of different options and, in a separate paper, their legal and policy implications. Several delegations emphasized the need for the financial studies to be concise and for projections not to rely on too many assumptions.

The **EUROPEAN REGION** in particular sought a tight study focus on 6.11 and expanding the MLS, a ratcheting down on options that was generally resisted by developing countries. It was agreed that the latter options would receive priority in the studies, but not to exclude others.

**INDUSTRY** enthusiastically recalled the previous announcement of a multi-stakeholder dialog, organized by the CGIAR's Bioversity International, and designed to feed into the Working Group. It asked about the status of this dialog.

Co-Chair Visser replied that funding was sought for a dialog but that "*not enough donors*" were found, and that efforts had discontinued.

**BIOVERSITY INTERNATIONAL**, however, said that it and partners had merely postponed the effort until after the present meeting, and that the CGIAR still saw value in a dialog.

**CANADA** asked about the intercessional process, suggesting it would shed light on the need for a dialog.

Co-Chair Fernandez Diaz-Silveira responded that observers had been added to the Working Group in response to concerns about consultation. The Co-Chair said that the role of dialog was unclear, that is, where it fit in the broader scheme of the Working Group. The Co-Chair's personal opinion was that a

well-designed process replaced any need to develop a dialog.

Visser concluded that “*Maybe it suffices that currently there are no activities, and that only this floor would give rise to new activities.*” A multi-stakeholder dialog was not referenced in the final report.

**NORWAY** suggested that intercessional consultations should be relatively formal and transparent.

The regions and observers agreed that they would consult among their groups on the options, and it was reaffirmed that the contracting parties and observer groups were welcome to have additional members, as silent observers, at future meetings.

**LA VIA CAMPESINA** noted the particular challenges of finance, distance, and language that small farmers faced in the consultation process.

**ECUADOR, IRAN, and PERU** noted that the seed industry and users of MLS seeds were more diverse than the associations of mainly large seed companies sitting in representation. The International Seed Federation replied that it had members in all regions and would reach out to them.

A suggestion to have intergovernmental organizations, generally understood to be UPOV and the Convention on Biological Diversity, seated as observers with voice at upcoming meeting was not supported, although those organizations were invited to send silent observers.

The Committee then formally adjourned until a Friday afternoon session to adopt its report.

## **INFORMAL DISCUSSION**

On Friday morning, the co-chairs convened a well-attended informal discussion. It focused on two items – how to get users to engage in the MLS system, and how to deal with advances in gene synthesis and related technologies that were changing access and the plant breeding process.

The first item occupied the most time and took the form of exchanges with industry on how to make the system more “attractive” to companies. The discussion was deemed useful, although few new specifics emerged.

Observers from CSOs and farmers' organizations were disappointed at the cloying tone of some developed country delegates in these exchanges. Obtaining larger industry commitments to benefit sharing, observers said, is not about decorating a cake for industry's party. Rather it needs to be about applying the whip to have industry start paying an old and ongoing obligation.

An important issue receiving attention was industry's desire to have a say in the spending of funds it pays into the MLS. While a few developed country delegates expressed openness to this idea, developing country representatives, CSOs, and farmers were strongly opposed.

On the second issue, technological changes, CSOs emphasized when transferred in digital form, gene sequence and some plant characterization data must still be considered MLS material, and that benefit sharing provisions must be applied when MLS materials are accessed in the form of data. CSOs suggested that in addition to looking to discussions in the Nagoya Protocol, that the Working Group may find ideas in the work of WHO Pandemic Influenza Preparedness Framework, which is also grappling with implementation of multilateral benefit sharing obligations to digital transfers of sequence data.

But CSOs also expressed concern that even though everyone seemed to agree that the MLS needed to be made much simpler, focus tended towards complicated SMTA issues, seemingly continually made more complex by issues like gene synthesis, with no end in sight. Is it possible that there are simpler

ways to fix the benefit sharing system, CSOs asked?

Discussion drew attention to an initiative called “Div Seq”, about which a meeting was recently held in the United States. According to a delegate that attended that meeting, the Div Seq initiative intends to sequence genes of a large proportion of the world's genebank collections, presumably including many in the MLS. While the project could prove useful, it would pose implementation challenges for the ITPGRFA, which was conceived when gene synthesis technology was much less advanced.

Considering the many possible loopholes and challenges to the Treaty's benefit sharing model, at the conclusion of the session an influential developing country delegate wondered aloud if the fix for the system may not involve something significantly beyond revisiting Article 6.11.

## **REPORT ADOPTION**

On Friday afternoon (16 May), delegates met in a final session to adopt the Working Group's report. This session was lengthier than anticipated, mainly because developing countries felt the draft report was overly sympathetic to the European perspective on how the Group would proceed with its consideration of funding options, particularly the question of expanding the MLS.

At several places, developing countries justifiably objected to draft report text that did not closely reflect, or selectively reflected, what was said in previous sessions. These issues were resolved with compromise language.

## **FUTURE MEETINGS**

The Working Group anticipates two more meetings prior to the 6<sup>th</sup> Meeting of the ITPGRFA Governing Body, to take place in mid-2015.

The second Working Group meeting will be held in late November or early December 2014, with no location as yet specified (although likely Geneva or Rome). Brazil has extended an invitation to host a third Working Group meeting, as yet not fully funded, but which is anticipated to take place in May 2015.+