

The Multilateral System of Access and Benefit Sharing

and the

Standard Material Transfer Agreement

Ruaraidh Sackville Hamilton

Outline

- **The MLS and the SMTA – what are they?**
- **What PGRFA are available with SMTA?**
- **What are the rights and obligations of the provider?**
- **What are the rights and obligations of the recipient?**

The Multilateral System

- **A standard system for the fair sharing of germplasm, data and benefits**
 - Simpler than bilateral negotiations for each transfer of germplasm
- **Agreed by all countries that are members of the International Treaty on Plant Genetic Resources**
- **Coverage restricted**
 - Germplasm of 64 crops
 - Use for only for research, breeding and training for food and agriculture

The Standard Material Transfer Agreement

- **A contract to be used for every transfer of material under the Multilateral System**
- **Defines the rights and obligations of Provider and Recipient**
- **Legally binding under international law**
 - Irrespective of whether provider and/or recipient are in countries that are Party to the Treaty
- **Text of the SMTA must not be changed**
- **Available in 6 languages at www.planttreaty.org/smta_en.htm**

What must be made available with SMTA?

- **Public domain PGRFA managed by governmental organizations in countries that are members of the Treaty, both *ex situ* and *in situ*;**
- **PGRFA conserved in international genebanks that have signed agreements with the Treaty;**
- **PGRFA held by anyone anywhere if it was acquired with SMTA**

What may be available with SMTA?

- **Everyone who holds PGRFA of the 64 crops is invited to share them with SMTA**
 - Private sector, NGOs, farmers, individuals ...
 - Public sector in non-member countries
 - Holders in member countries are **encouraged** to share
 - If they do not share, they may be denied future access
- **Breeding lines bred from PGRFA obtained with SMTA**
 - Available at discretion of breeder
 - If available, must share with SMTA
 - With possibility to add more conditions
- **Commercialised varieties bred from PGRFA obtained with SMTA**
 - Not available with SMTA → must pay

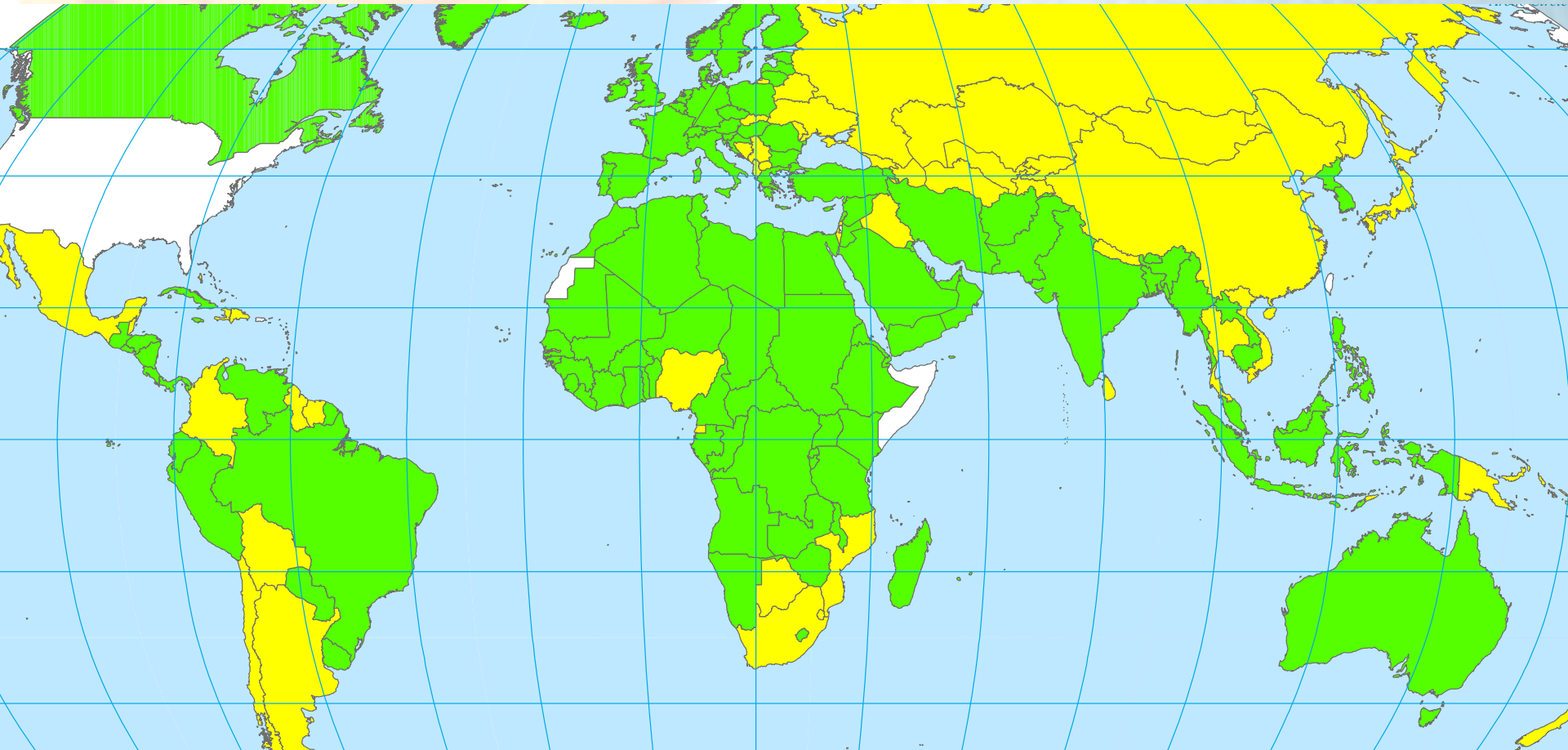
What is not available with SMTA?

- **PGRFA not included in the 64 crops listed in annex 1 of the Treaty**
- **PGRFA intended for non-food/feed purposes, e.g. biofuels, pharmaceuticals**
- **PGRFA subject to legal, contractual or technical restrictions on use**

IRRI

Parties to the Treaty and CBD

(1 Sept 2009)



 = Treaty: www.fao.org/Legal/TREATIES/033s-e.htm

 = CBD not Treaty: www.cbd.int/convention/parties/list

Rights and obligations of a Provider under the SMTA

Provider's rights

- **Provide access to lines that you are developing is at your own discretion**
- **If you provide access to your PGRFA under development, you may add ancillary conditions to SMTA**
 - Provided no change to or conflict with existing terms and conditions
 - e.g. you can
 - Charge fees / royalties for access
 - Can restrict access
 - Can require recipient to track and report use of the material

Provider's obligations

- **Must facilitate access to PGRFA under the MLS**
 - For as long as it is conserved
- **Don't charge more than basic cost**
- **Grant access to all data**
 - Passport + other associated available non-confidential descriptive information
- **Periodically inform the Governing Body about what germplasm has been provided**
- **Inform FAO on request of all requested details**
- **If providing germplasm protected by intellectual or other property rights, ensure compliance with relevant international agreements and national laws**

Rights and obligations of a Recipient under the SMTA

Recipient's rights:

Subject to certain conditions you may:

- **Conserve the germplasm**
- **Use it for breeding, research and training for food & agriculture**
- **Develop and commercialise products derived from it**
- **Claim intellectual property rights over the product(s) developed from it**
- **Distribute it to others**
- **Distribute derived breeding and research materials**
 - **With additional conditions if required**

Recipient's obligations (1)

- **Must not use the germplasm for “*chemical, pharmaceutical and/or other non-food/feed industrial uses*”, or any other purpose except research, breeding and training for food and agriculture**
- **Must not claim “*intellectual property or other rights that limit the facilitated access to the material ..., or its genetic parts or components, in the form received ...*”**

Recipient's obligations (2)

- **Must make available all non-confidential information resulting from the your own R&D on the germplasm**
- **If recipient keeps a sample or copy of the germplasm, must make it available to others**
- **If recipient provides the original germplasm or derived breeding lines or research materials to 3rd parties, you must do so under a new SMTA**
 - as provider in the new SMTA,
 - complying with provider's obligations

Recipient's obligations (3)

- **If commercialise a Product (e.g. improved variety) developed using germplasm received with an SMTA, and that product is not available without restriction to others for further breeding and research, must**
 - Pay a percentage of sales of the Product to the Governing Body
 - 0.77% of gross sales annually
 - Same percentage irrespective of number of MLS ancestors in pedigree
 - Submit annual reports to the GB on the liability to payment

Conclusion

- **The MLS introduces new rules for germplasm exchange, linked to commercialization**
- **Standard, potentially simple, efficient, effective to administer**
- **Need care understanding rights and obligations**
- **Providers often need to explain recipient's rights and obligations!**