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Report 74

Treaty tabled on 28 March 2006

Agreement for Establishment of the Global Crop Diversity Trust

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Resolution of appointment

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report upon:

a) matters arising from treaties and related National Interest Analyses and proposed treaty actions presented or deemed to be presented to the Parliament;

b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:

   (i) either House of the Parliament, or

   (ii) a Minister; and

c) such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.

List of abbreviations

ACIAR	Australian Centre for International Agricultural Research
ATSE	Australian Academy of Technological Sciences and Engineering
AusAID	Australian Agency for International Development
CGIAR	Consultative Group on International Agricultural Research
DAFF	Department of Agriculture, Fisheries and Forestry
FAO	United Nations Food and Agriculture Organization
GCDT	Global Crop Diversity Trust
IARC	International Agricultural Research Centre
IPGRI	International Plant Genetic Resources Institute
NIA	National Interest Analysis
UK	The United Kingdom of Great Britain and Northern Ireland
US	United States of America

List of recommendations

2 Agreement for Establishment of the Global Crop Diversity Trust

Recommendation 1

The Committee supports the *Agreement for Establishment of the Global Crop Diversity Trust*, done at Rome on 1 April 2004 and recommends that binding treaty action be taken.

1

Introduction

Purpose of the report

1.1 This Report contains advice to Parliament on the review by the Joint Standing Committee on Treaties of the *Agreement for Establishment of the Global Crop Diversity Trust* (Rome on 1 April 2004) tabled in Parliament on 28 March 2006.[1]

Background

1.2 On 6 April 2006, the Hon Alexander Downer MP, Minister for Foreign Affairs informed the Committee that Australia was seeking to secure a position on the Executive Board of the Global Crop Diversity Trust (Executive Board).[2]

1.3 The Minister stated that Australia's position on the Executive Board would ensure appropriate consideration of Australia's interests. Further the Committee was informed that Australia's campaign to secure a position on the Executive Board would be strengthened if it could become party to the Trust Agreement at the time of the Executive Board's first meeting. The Committee received evidence that the Board's first meeting is scheduled to take place from 12 to 15 June 2006.

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1 Australia, House of Representatives 2004-05-06, *Votes and Proceedings*, No. 91, p. 1026; Senate 2004-06, *Journal*, No. 77, p. 1993.

2 Minister for Foreign Affairs, *Submission 1*.

1.4 To allow Australia to seek a position on the Executive Board, the Committee has treated review of this treaty as urgent, even though under the 20 sitting day inquiry period provision for this treaty action, the Committee would not be required to table its report until mid August 2006.

Briefing documents

1.5 The advice in this Report refers to the National Interest Analysis (NIA) prepared for the proposed treaty action. This document is prepared by the Government agency responsible for the administration of Australia's responsibilities under the treaty. Copies of the NIA may be obtained from the Committee Secretariat or accessed through the Committee's website at:

www.aph.gov.au/house/committee/jsct/28march2006/tor.htm

1.6 Copies of the treaty action and NIA may also be obtained from the Australian Treaties Library maintained on the internet by the Department of Foreign Affairs and Trade. The Australian Treaties Library is accessible through the Committee's website or directly at:

www.austlii.edu.au/au/other/dfat/

Conduct of the Committee's review

1.7 The review contained in this Report was advertised in the national press and on the Committee's website.[3] Letters were also sent inviting comment from all State Premiers, Chief Ministers, Presiding Members of Parliament and from individuals who have expressed an interest in being kept informed of proposed treaty actions such as this. A list of submissions received and their authors is at Appendix A.

1.8 The Committee also received evidence at a public hearing held on 8 May 2006. A list of witnesses who appeared before the Committee at this public hearing is at Appendix B. A transcript of evidence from the

3 The Committee's review of the proposed treaty action was advertised in *The Australian* on 5 and 19 April 2006. Members of the public were advised on how to obtain relevant information and invited to submit their views to the Committee, both in the advertisement and via the Committee's website.

public hearing may be obtained from the Committee Secretariat or accessed through the Committee's website at:

www.aph.gov.au/house/committee/jsct/28march2006/hearings.htm

2

Agreement for Establishment of the Global Crop Diversity Trust

Introduction

2.1 The *Agreement for Establishment of the Global Crop Diversity Trust* (the Agreement) will operate within the framework of the *International Treaty on Plant Genetic Resources for Food and Agriculture*[1] (the International Treaty). The International Treaty was signed by Australia on 10 June 2002, ratified on 12 December 2005 and entered into force for Australia on 12 March 2006. The Agreement is an autonomous legal instrument and separate to the International Treaty.[2]

2.2 The International Treaty provides a binding international framework for the conservation, sustainable use and exchange of plant genetic resources for food and agriculture for global food security. The Agreement through the establishment of the Global Crop Diversity Trust (the Trust) aims to secure the long term conservation aims of the International Treaty through long term funding.[3]

2.3 The Committee was informed that prompt accession to the Agreement would enhance Australia's ability to influence the selection process for the Executive Board through the Donor Council

1 The Committee's review of the *International Treaty on Plant Genetic Resources for Food and Agriculture* is included in its Report 68: Treaties tabled on 7 December 2004 (5) and 9 August 2005.

2 National Interest Analysis (NIA), para. 3.

3 NIA, para. 9; Ms Annmaree O'Keeffe, *Transcript of Evidence*, 8 May 2006, p. 40.

Meeting in April 2006 and the inaugural Governing Body Meeting of the International Treaty in mid June 2006.[4]

2.4 In relation to Australia attending the Trust's Executive Board meeting, a representative from the Department of Agriculture, Fisheries and Forestry (DAFF) stated:

> … there are two processes running parallel. One is the meeting of the trust and the other is the meeting of the governing body of the treaty. They are connected in the sense that the governing body of the treaty at that meeting will decide on its set of members for the trust. So there are two broad issues here. Firstly, we need to be clear that we are fully supportive of the trust, and that is one of the reasons why we are having this meeting at the moment. Secondly, we need to be clear that we appreciate the connections between the trust and the treaty. In order to maximise our capacity to influence the outcomes of the governing body we need to ratify the treaty and it would help significantly if we were seen to have lined up all the possible actions that we need to take in order to complete this suite of activities. So that is the real sense ... We need to have… gone through the processes which are necessary for us to be fully-fledged members of this complex of treaties and then use that to improve our bargaining position when these meetings actually occur.[5]

Overview

Background

2.5 Genetic diversity is central to agricultural innovation and allows for the breeding of crops that will increase production and enhance the capacity to manage new and existing threats from pests and diseases, climate change and environmental degradation.[6]

4 NIA, para. 4.

5 Mr John Madden, *Transcript of Evidence*, 8 May 2006, pp. 44-45.

6 NIA, para. 13.

2.6 In the last 25 years, the accelerated decline in agricultural diversity due to population pressures and land clearing has put the security of food sources at risk in the field (in situ) and in genebanks (ex situ).[7]

2.7 Genebanks conserve, manage and reproduce crop varieties and their related wild species. There are approximately 5.4 million samples of plant material held in 1470 genebanks in national, regional and international institutes. Of these genebanks, 65 per cent are located in developing nations and receive annual funding. Since 1996, at least 60 per cent of funding for the world's genebanks has not changed or has decreased. This has had a negative impact on the conservation of plant material collections.[8]

2.8 Australia's competitiveness in agriculture is heavily dependent on plant breeding programs using internationally sourced plant genetic material. Therefore, it is vital for Australia that national, regional and international collections of plant genetic material are appropriately conserved and made freely accessible.[9] In relation to this issue, a representative of the ATSE Crawford Fund[10] stated:

> … the most important plant genetic resources for Australia are not in Australia; they are outside in the international system and in the plant genetic resources of other countries. In order to maximise our ability to get access to those resources, we need to be a part of the system – we need to be a good player in the international scene.[11]

2.9 As a major agriculture producer and plant breeder, Australia has a national interest in ensuring the maintenance of continued access to genetic material held in international gene banks.[12]

2.10 The Trust also complements Australian aid program objectives with respect to poverty reduction and food security in developing partner countries. New varieties of high yielding crops help secure export

7 NIA, para. 7.

8 NIA, para. 8.

9 NIA, para. 12.

10 The Australian Academy of Technological Sciences and Engineering (ATSE) Crawford Fund promotes and supports international research and development activities in which Australian research organisations and companies are active participants. It supports the work of the Australian Centre for International Agricultural Research (ACIAR), the Australian Agency for International Development (AusAID), and the Consultative Group on International Agricultural Research (CGIAR). ATSE Crawford Fund, viewed 23 May 2006 <www.crawfordfund.org>.

11 Dr Robert Clements, *Transcript of Evidence*, 8 May 2006, p. 41.

12 NIA, para. 13.

markets for agricultural produce and increase domestic and export earnings, thereby contributing to economic growth in a developing country.[13]

The Global Crop Diversity Trust

2.11 The Agreement will provide for a permanent endowment fund (through the establishment of a Trust) to finance the ex situ (gene bank) conservation of crop genetic diversity.[14] The Trust is a joint initiative of the United Nations Food and Agriculture Organization (FAO) and the International Plant Genetic Resources Institute (IPGRI). The focus of the Trust will be securing the future of the key international collections under the Consultative Group on International Agricultural Research (CGIAR) system.[15]

2.12 The Trust will:

- provide technical and capacity building assistance to eligible collections of genetic resources to meet required standards
- promote and assist the development of a rational and efficient system of crop diversity conservation in gene banks internationally.[16]

Financing the Global Crop Diversity Trust

2.13 The Trust is a public-private partnership whose finances will be sourced entirely from voluntary contributions. The permanent endowment will be US$260 million and will generate US$10-14 million annually for the maintenance of eligible national, regional and international gene banks or collections of crop diversity.[17] While the majority of funding received in the early stages has come from national governments, the Trust will shortly commence fundraising, concentrating on private sources. Contributions will be sought from North American and European Corporations and private foundations.[18]

2.14 As of 19 December 2005, Australia has made the largest overall financial commitment to the Trust. The Australian Government has

13 NIA, para. 14.

14 NIA, para. 5.

15 NIA, para. 10.

16 NIA, para. 5.

17 The endowment fund currently has US$60 million in pledges.

18 NIA, para. 11; Ms Annmaree O'Keeffe, *Transcript of Evidence*, 8 May 2006, p. 40.

made payments of A$7.5 million through the aid program and the Grains Research and Development Corporation of Australia has pledged US$5 million and paid US$1.5 million of this amount.[19]

2.15 The Committee was informed that accession to the Agreement would formalise Australia's involvement in line with Australia's commitment to global crop diversity and complement Australia's interests in the International Treaty.[20]

Australia and the Executive Board of the Trust

2.16 The Executive Board will have responsibility for the operation of the Trust, control over its budget and ensure its policies are in line with those of the International Treaty. Members of the Executive Board will serve in a personal capacity and be appointed through various methods.[21] The Committee was provided with a flow diagram of the appointment process, which has been reproduced at the end of this chapter.[22]

2.17 The Committee was informed that Australia has taken a leading role in the establishment of the Trust and its ongoing management and administration. The Australian Government favours accession to the Agreement to continue Australia's participation in the Trust, especially in view of the fact that important Executive Board decisions will need to be made in 2006.[23]

2.18 In addition to being Chair of the Donor's Council, Australia is nominating a member of the inaugural Executive Board. Australia was elected Chair of the Donor's Council of the Trust for an initial term of three years at the inaugural meeting of the Council in October 2005. In this role, Australia will be responsible for selecting four members of the Executive Board of the Trust in the first half of 2006.[24] A number of Australian agencies support Australia's pursuit of a seat on the Executive Board.[25]

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19 NIA, para. 15.

20 NIA, para. 16.

21 NIA, para. 19.

22 NIA, Attachment 2.

23 NIA, para. 18.

24 NIA, para. 18.

25 These agencies are: DAFF, the Grains Research and Development Corporation, the Australian Centre for International Agricultural Research, the Commonwealth Scientific

2.19 Of the thirteen members of the Executive Board, four are from the Governing Body of the International Treaty and four are from the Donor Council.[26] There is also one each from the FAO and CGIAR, both of which have a non voting role. The Executive Secretary of the Trust will be an ex officio member and there will be two others appointed by the Executive Board.[27] Australia will have two votes on the Executive Board, one from AusAID and another from the Grains Research and Development Corporation.[28]

2.20 The Committee heard that in agricultural research, Australia benchmarks itself against such nations as Canada, the United States of America (US) and also International Agricultural Research Centres (IARCs). These IARCs include leading centres such as the International Centre for the Improvement of Maize and Wheat in Mexico, the International Rice Research Institute in the Philippines and the International Potato Centre in Peru.[29]

2.21 The Committee also heard that only one member nation of the Cairns Group[30], Pakistan, has become a State Party to the Agreement. In relation to this point DAFF stated:

> The negotiations to get money to go into a trust are quite complicated. Some countries, for reasons of national policy, find it quite difficult to invest money in a trust, so they are seeking other ways of making their investment. The understanding … is that of the major developed countries that you might expect to contribute, the European nations are close to agreeing to be major donors, in particular … the UK and Germany.[31]

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and Industrial Research Organisation, the Australian Academy of Technological Science and Engineering Crawford Fund. NIA, para. 20.

26 One of the members of the Donor Council is from Australia. Ms Annmaree O'Keeffe, *Transcript of Evidence*, 8 May 2006, p. 41.

27 Ms Annmaree O'Keeffe, *Transcript of Evidence*, 8 May 2006, p. 41.

28 Mr Vincent Logan, *Transcript of Evidence*, 8 May 2006, p. 41.

29 Dr Robert Clements, *Transcript of Evidence*, 8 May 2006, p. 41.

30 The Cairns Group is a specific issue trade coalition of 18 agricultural exporting countries focused on influencing the World Trade Organisation's Doha round of negotiations. Australia is a founding member and current Chair of the Cairn's Group. Member nations include: Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, Pakistan, Paraguay, Philippines, South Africa, Thailand and Uruguay. The Cairns Group, viewed 23 May 2006 <www.cairnsgroup.org>.

31 Dr Robert Clements, *Transcript of Evidence*, 8 May 2006, p. 42.

2.22 The Committee is concerned that amongst the Member States of this Agreement there are so few members of the Cairns Group or nations which Australia would benchmark itself against in the area of agricultural research.

2.23 DAFF also gave a possible reason for the small number of countries who are States Parties to the Agreement.

> It may well be that they have not put quite so much money into the trust. … this is an issue for which some countries find it difficult to get traction in a policy sense. We have been able to ensure that the right level of attention is being paid to these issues. It may well be that equivalent officers and officials in other countries have not been as successful as we have.[32]

2.24 Further, Italy is seeking to be the home nation for the Trust and is currently in the process of arranging a permanent site and infrastructure for the Trust.[33] The policy positions of the US and New Zealand are not known, although the US has contributed US$5.5 million to the Trust. Canada is interested in making a significant contribution on the Executive Board and has contributed C$10 million to the Trust.[34]

2.25 In addition, DAFF informed the Committee that:

> We have recently sought advice from a number of developed countries to see what their intentions are in terms of contributing to the trust and, as a result of that, some have started their processes, others are still considering it. It is early days at the moment. We understand that there are a number of countries looking at it. We will just have to see how things develop, but we are providing a little bit of pressure to those countries to see what they can do.[35]

Consultation

2.26 Consultation occurred with relevant Commonwealth Government departments and agencies, State and Territory Government departments, rural research and development corporations, peak

32 Mr John Madden, *Transcript of Evidence*, 8 May 2006, p. 45.
33 Mr John Madden, *Transcript of Evidence*, 8 May 2006, p. 42.
34 Ms Annmaree O'Keeffe, *Transcript of Evidence*, 8 May 2006, p. 43.
35 Mr John Madden, *Transcript of Evidence*, 8 May 2006, p. 42.

agricultural industry and plant breeding bodies, other non government organisations, universities and cooperative research centres. Extensive consultation was also conducted by DAFF during the seven-year period of negotiations and then ratification of the International Treaty. The Agreement resolves some of the issues dealt with by the International Treaty.[36]

2.27 The Government received responses from approximately one third of organisations contacted. All responses including those of the Ministers[37] with a portfolio interest in the Trust support Australia's accession to the Agreement.[38]

2.28 The GeneEthics Network broadly supported the treaty action and raised two issues. The GeneEthics Network was concerned that the Trust provides only for the conservation for ex situ germplasm and that in situ conservation is thereby neglected. On this point the Committee was informed that significant funding for in situ collections is being made available through the Global Environment Facility and other environmentally oriented funding mechanisms. The International Treaty also makes provision for the conservation of in situ crops. The Trust is one of the few and the most significant funding sources for the ex situ conservation of plant material of potential value to food and agriculture. Its objectives are an important contributor to the future development of food and agriculture, both in Australia and globally. In addition, the Agreement in its current form now has an international legal status, and despite provision for its amendment, the Government considers it highly unlikely that in situ conservation would ever be incorporated into the Trust's objectives.[39]

2.29 The GeneEthics Network also raised the issue of ensuring equitable access and benefit sharing of the genetic material to be supported by the Trust. The Committee received evidence that the Agreement relates only to the establishment and governance of the Trust and not substantive rights and duties. Further, the Committee was informed that the International Treaty has addressed access and benefit sharing.[40]

36 NIA, Consultation Annex.

37 Ministers with portfolio responsibilities for the functions of the: Department of Foreign Affairs and Trade, Department of Environment and Heritage, Department of Agriculture, Fisheries and Forestry and the Attorney-General's Department. NIA, Consultation Annex.

38 NIA, Consultation Annex.

39 NIA, Consultation Annex.

40 NIA, Consultation Annex.

2.30 In addition, the Committee heard that the:

> GeneEthics Network raised seven points, largely of a technical nature. These points were mirrored by responses from the six private individuals. The NIA addressed some of these concerns and the executive secretary of the trust also responded to those concerns. Two state governments also raised concerns verbally that acceding to the establishment agreement might impose costs on states. However, assurances were made that there were no additional obligations and these eased those fears.[41]

Legislation

2.31 The Agreement may be implemented administratively and would not require amendment to existing legislation.[42]

Costs

2.32 There are likely to be small administrative costs to support Australia's work in the Donor Council and potentially the Trust's Executive Board. However, these costs will arise from Australia's role within the Council and Board, rather than from Australia's accession to the Agreement.[43]

2.33 In 2003-2004, the Australian Government pledged A$16.5 million over five years to the Trust's endowment fund and administration costs.[44]

Entry into force and withdrawal

2.34 The Agreement entered into force generally on 21 October 2004. The Agreement will enter into force for Australia upon signature or deposit of instrument of accession.[45]

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41 Ms Annmaree O'Keeffe, *Transcript of Evidence*, p. 40.
42 NIA, para. 25.
43 NIA, para. 26.
44 NIA, para. 26.
45 NIA, para. 2.

2.35 Withdrawal from the Agreement through deposit of written instrument would take effect three months after the date of receipt of the instrument.[46]

Conclusion and recommendation

2.36 The Committee is concerned that in the three-year period it was reviewing the *International Treaty on Plant Genetic Resources for Food and Agriculture* that the *Agreement for Establishment of the Global Crop Diversity Trust* was not brought to its attention.

2.37 The Committee is also concerned that there is only one other Cairns Group member and no other developed country member which Australia would benchmark itself against in agricultural research, party to this Agreement.

2.38 The Committee understands the argument presented by AusAID, that to be a member of the Global Crop Diversity Trust would improve Australia's chances of becoming a member of the Executive Board at the June 2006 meeting.

2.39 In this instance, the Committee fast-tracked the treaty review and is satisfied that it is in the national interest for Australia to become a member of the Global Crop Diversity Trust.

Recommendation 1

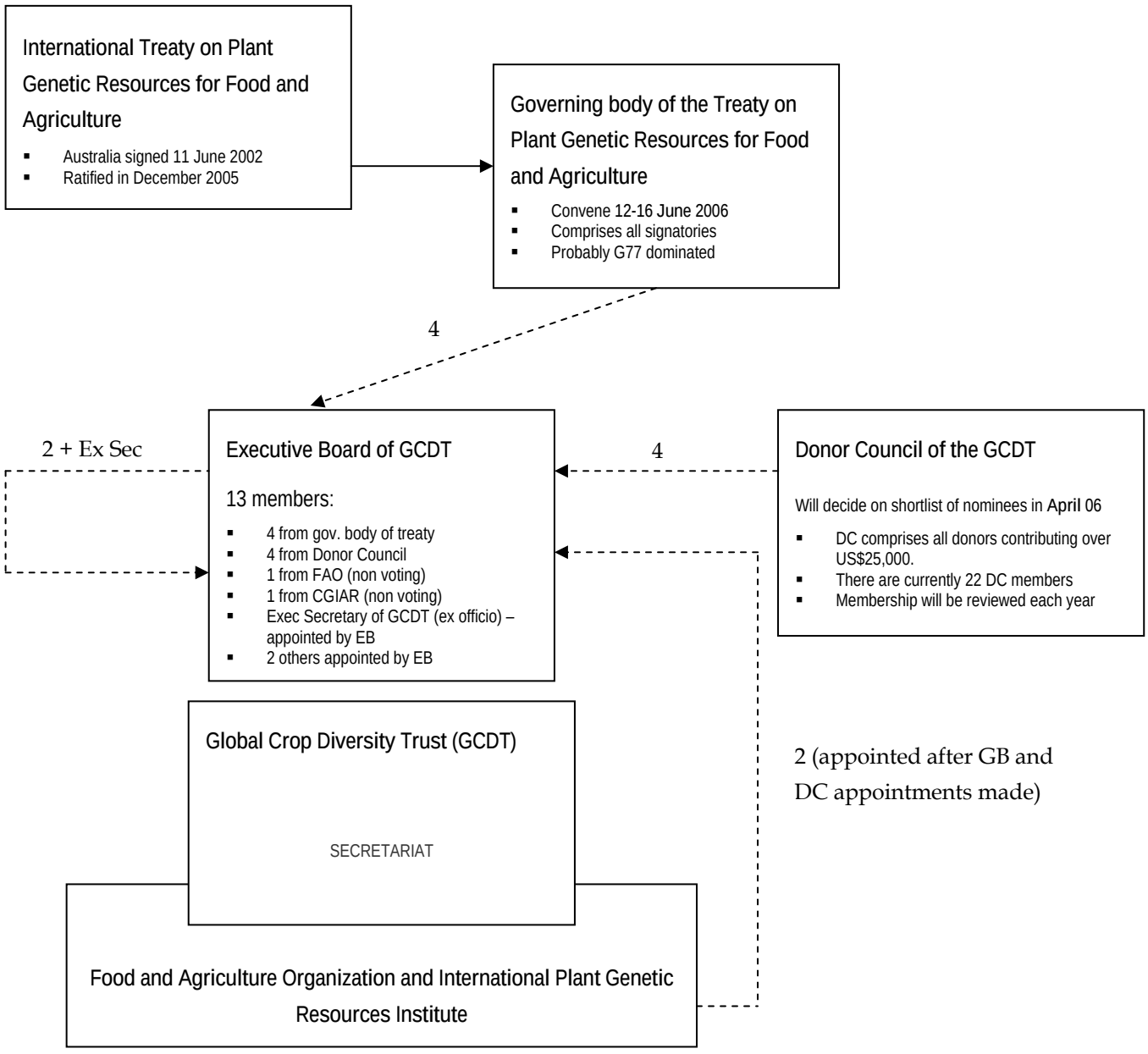
The Committee supports the *Agreement for Establishment of the Global Crop Diversity Trust*, done at Rome on 1 April 2004 and recommends that binding treaty action be taken.

Dr Andrew Southcott MP

Committee Chair

46 NIA, para. 31.

Global Crop Diversity Trust Executive Board appointment process[47]



47 NIA, Attachment 2.

A

Appendix A - Submissions

Treaty tabled on 28 March 2006

1 Hon Alexander Downer MP

2.5 Australian Patriot Movement

3 ACT Government

B

Appendix B - Witnesses

Monday, 8 May 2006 – Canberra

ATSE Crawford Fund

Dr Robert Clements, Executive Director

Attorney-General's Department

Mr William McFadyen Campbell, General Counsel, International Law

AusAID

Mr Pierre Huetter, Policy Officer, Fragile States and Africa

Ms Annmaree O'Keeffe, Deputy Director General, Global Programs Division

Department of Agriculture, Fisheries and Forestry

Mr John Madden Senior Manager, Trade and the Environment, International Technical Branch, International Division

Department of Foreign Affairs and Trade

Ms Elizabeth Peak, Executive Officer, International Law and Transnational Crime Section, Legal Branch

Mr Michael Jonathan Thwaites, Executive Director, Treaties Secretariat

Grains Research and Development Corporation

Mr Vincent Logan, Executive Manager, New Products