

**INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR
FOOD AND AGRICULTURE (ROME, 3 NOVEMBER 2001)**

Documents tabled on 3 December 2002:

National Interest Analysis

Text of the Proposed treaty action

Current status list

NATIONAL INTEREST ANALYSIS: CATEGORY B TREATY

SUMMARY PAGE

International Treaty on Plant Genetic Resources for Food and Agriculture (Rome, 3 November 2001)

Date of Tabling of Proposed Treaty Action

1. 3 December 2002.

Nature and Timing of Proposed Treaty Action

2. It is proposed that Australia ratify the International Treaty on Plant Genetic Resources for Food and Agriculture ('the Treaty') in accordance with Article 26 of the Treaty. The Treaty was approved by the Conference of the Food and Agriculture Organization ('FAO'), through Resolution 3/2001, at its Thirty-first Session in Rome in November 2001.

3. Australia signed the Treaty on 10 June 2002. The Treaty will enter into force generally ninety days after the deposit of the fortieth instrument of ratification, acceptance, approval or accession, provided that at least twenty of these instruments are deposited by Members of the FAO. If Australia deposits its instrument before the commencement of the ninety day period, then the Treaty will enter into force for Australia at the same time it enters into force generally. If Australia deposits its instrument after the commencement of the ninety day period, the Treaty will enter into force for Australia ninety days after the deposit of Australia's instrument.

4. The Government proposes to deposit Australia's instrument of ratification as soon as practicable after the end of the tabling period.

Overview and National Interest Summary

5. The Treaty will provide a binding internationally agreed framework for the conservation, sustainable use and exchange of plant genetic resources for food and agriculture ('PGRFA') for global food security. The Treaty will help to secure reciprocal access to plant genetic material on which all countries (including Australia) depend to develop new varieties of grains, pasture and horticulture plants for food and agriculture.

6. The Treaty will build upon international cooperative arrangements established in 1983 through the non-binding International Undertaking on Plant Genetic Resources ('International Undertaking'). International developments in the early 1990s, including the entry into force of the Convention on Biological Diversity, led to a review of international cooperation. A major focus of this review was international public domain collections of plant genetic resources held in-trust for the global community under agreements between the FAO and International Agricultural Research Centres ('IARCs').

7. Australian food and agriculture sectors depend almost entirely on access to overseas sources for PGRFA for continued plant improvement and development. Ratification of the Treaty will enable Australia to secure access to PGRFA from other Parties to the Treaty and to benefit from the global system of conservation, use and exchange established by the Treaty. This new global system will cover the IARCs' in-trust collections which are especially significant to Australian interests.

Reasons for Australia to Take the Proposed Treaty Action

8. Australian food and agriculture sectors rely on development of varieties of grain crops and pasture and horticultural plants which derive almost entirely from plant genetic material sourced from other countries, including through material accessed from international collections important for global food security and held in-trust by the IARCs.
9. In 1983, the FAO established the International Undertaking. The International Undertaking has provided a basis for international cooperation in the use and exchange of plant genetic resources amongst Member States of the FAO, including Australia. In 1993, the FAO decided to commence a multilateral process to negotiate a new international instrument that would build upon and improve the International Undertaking to complement elements of the Convention on Biological Diversity. This process led to the adoption of the Treaty on 3 November 2001 at the Thirty-first Conference of the FAO.
10. The Treaty is intended to replace the International Undertaking. It will establish a binding international framework for cooperation in the conservation, sustainable use and exchange of plant genetic resources. This framework will apply in respect of PGRFA, which for the purpose of the Treaty covers any genetic material of plant origin of actual or potential value for food and agriculture and includes material such as plant propagating material and seeds used in the development of new grains, pasture and horticulture plants.
11. The centrepiece of the Treaty will be the Multilateral System of Access and Benefit-sharing ('Multilateral System'). The Multilateral System sets out a 'facilitated access' regime to govern access to, and exchange of, PGRFA that is listed in an Annex to the Treaty and which is under the management and control of the Contracting Parties to the Treaty and in the public domain. This would cover, at least, relevant public domain PGRFA under the management and control of the Commonwealth Government, with full potential for PGRFA under the management and control of others (including State and Territory Governments) to also be included. A key element of this regime involves development and use of a standard contract (known as the 'standard material transfer agreement') to govern facilitated access transactions. The Treaty also contains measures to encourage IARCs, individuals and organisations who hold PGRFA, to include that material in the Multilateral System.
12. Australian ratification of the Treaty would enable Australia to participate in the international framework of access and benefit-sharing. This framework is based upon the system that has been in place for many years under the International Undertaking.
13. Australian ratification of the Treaty would also enable Australia to participate in the Governing Body and to protect and advance Australia's interests in the range of matters that the Governing Body will address in the course of promoting the effective implementation of the Treaty. This would include operational details involving material transfer and agreements between the Governing Body and the IARCs for access to the IARCs' in-trust collections, and adoption of a funding strategy for the Treaty. The Governing Body will be composed of the Contracting Parties to the Treaty and will take its decisions by consensus.
14. If Australia did not ratify the Treaty, the capacity of Australian plant breeders to access PGRFA on which they rely from overseas sources (including from the IARCs) is likely to become more difficult and less cost effective. In addition, domestic plant breeding programs and the productivity and diversity in plant production necessary to maintain Australia's agricultural export performance would be at risk.

Obligations

15. The objective of the Treaty is the conservation and sustainable use of PGRFA and the fair and equitable sharing of the benefits arising from their use for sustainable agriculture and food security (Article 1). The Treaty would impose a range of obligations on Contracting Parties. The key obligations, which establish a system of minimum reciprocal rights of access and benefit-sharing between Contracting Parties, relate to the Multilateral System.

The Multilateral System

16. Australia would be required to provide access to relevant PGRFA to other Contracting Parties, to legal and natural persons under the jurisdiction of the Contracting Parties, and to IARCs which have concluded agreements on access with the Governing Body. Australia would also be required to encourage natural and legal persons within its jurisdiction who hold PGRFA to include those resources in the Multilateral System.

17. Australia would be required to ensure that the standard Material Transfer Agreement, to be adopted by the Governing Body, is used for facilitated access transactions (Article 12.4). Australia would be required also to provide for the enforcement of the terms of the standard Material Transfer Agreement as a contract under Australian law. Procedures for the recognition and enforcement of the standard Material Transfer Agreement would be subject to the jurisdiction requirements that apply under the relevant Australian law (Article 12.5).

18. Australia would also be required to provide access to ‘appropriate’ PGRFA for the purpose of re-establishing agricultural systems in emergency disaster situations, in cooperation with disaster relief coordinators (Article 12.6).

Benefit-sharing

19. Article 13 of the Treaty sets out a framework for the equitable sharing of benefits arising from the use, including commercial use, of PGRFA accessed under the Multilateral System. The framework would be overseen by the Governing Body.

20. Australia would be required, subject to applicable national laws and capabilities, to provide certain non-confidential information to an ‘information system’ (Article 13.2(a)). Australia would be required also to provide and/or facilitate, in accordance with national capabilities, access to technologies for the conservation, characterisation, evaluation and use of PGRFA that is under the Multilateral System (Article 13.2(b)). In relation to technologies that can be transferred only through genetic material under the Multilateral System, the Treaty will require access to this material to be provided subject to applicable property rights and access laws (Article 13.2(b)).

21. In relation to capacity-building, Contracting Parties would be required to give priority to establishing and strengthening training, education and facilities relevant to the conservation, sustainable use and development of PGRFA and to carry out research in developing countries (Article 13.2 (c)).

Sustainable use of PGRFA

22. Australia would be required to develop and maintain ‘appropriate’ policy and legal measures to promote the sustainable use of PGRFA (Article 6.1). Article 6.2 of the Treaty sets

out a non-exhaustive list of measures and activities that Australia could elect to implement in order to promote the sustainable use of PGRFA, if it were to be considered appropriate to do so.

Funding Strategy

23. Article 18 of the Treaty provides a framework for the development and implementation of a funding strategy by the Governing Body. The framework contains a number of elements including financial benefits arising from the use of PGRFA accessed through the Multilateral System, the provision of resources through bilateral, regional and multilateral channels and voluntary contributions by Contracting Parties, non-governmental organisations and the private sector (Article 18.4). Arrangements on the provision of funding by the Contracting Parties would be determined by the Governing Body.

Compliance and Dispute Settlement

24. Article 21 of the Treaty provides for the development of procedures and mechanisms to promote monitoring and compliance and to address issues of non-compliance. These mechanisms would be developed by the Governing Body.

25. The Treaty provides that Contracting Parties should seek to resolve any disputes concerning the interpretation or application of the Treaty by negotiations (Article 22.1).

26. The Treaty provides also that a Contracting Party may declare at any time that it accepts either arbitration or judicial settlement by the International Court of Justice, or both, as compulsory procedures for resolving any disputes that cannot be resolved by negotiation (Article 22.3). In the event that a Contracting Party has not made such a declaration, or where Contracting Parties in dispute have not accepted the same procedure for the settlement of disputes, the Treaty provides that a Party may invoke a compulsory process of conciliation (Article 22.4). It is not proposed that Australia make a declaration at this time.

Implementation

27. Changes to domestic legislation are not necessary to implement the Treaty. The Treaty can be implemented administratively, in the same manner as the current International Undertaking has been implemented. Some changes in the procedures of holders of *ex situ* PGRFA, particularly in relation to material transfer agreements, will be required so that such agreements conform with the requirements of the Treaty.

Costs

28. Ratification of the Treaty would involve some additional costs to support international secretariat activities under the Treaty after it enters into force and for Australian participation in the work of the Governing Body. These costs would be considered in a future budget context. Ratification would not involve additional compulsory payments to other Contracting Parties, such as developing countries or countries with economies in transition.

Consultation

29. This proposed action will have an impact on the States and Territories in that it will help secure access to overseas sources of PGRFA on which they depend for plant breeding programs in food and agriculture. This impact will mainly affect agricultural agencies dealing with *ex situ*

PGRFA falling within the scope of the Multilateral System. State and Territory interests have been addressed in the development of the Australian position for negotiations, signature and ratification. States and Territories would continue to be consulted on the development of Australian positions for meetings of the Treaty's Governing Body and would be invited to have representation on Australian delegations to those meetings.

30. The Department of Agriculture, Fisheries and Forestry has conducted wide ranging and extensive consultations in the development of Australia's position on the Treaty over the seven-year period of its negotiation and in the lead up to decisions on signature and ratification. This process has addressed stakeholder views. The consultation process has involved briefing papers and stakeholder contact through meetings and telephone discussion. Organisations consulted include other Federal Government Departments and agencies, State and Territory Governments, rural research and development corporations, peak agricultural industry and plant breeding bodies, other non-government organisations, universities and cooperative research centres. Details are at Attachment 1.

Regulation Impact Statement

31. The Office of Regulation Review, Productivity Commission has been consulted and confirms that a Regulation Impact Statement is not required.

Future Treaty Action

32. Article 23 provides that amendments may be made by consensus decision of the Governing Body. Any amendment made would not come into force until separately ratified by two-thirds of the Contracting Parties, and would not become binding on a Contracting Party unless that Contracting Party had ratified that particular amendment (Article 23).

33. The Treaty does not provide for the negotiation of future related legally binding instruments.

34. Article 30 declares that no reservations to the Treaty are permitted.

Withdrawal or denunciation

35. Article 32 provides that a Contracting Party may withdraw from the Treaty by notifying the Depositary (the Director-General of the FAO) in writing of its withdrawal. Such notice cannot be given unless the Treaty has been in force for at least two years. Any decision by Australia to withdraw from the Treaty would be subject to our domestic treaty process.

36. The Depositary is required to inform all Contracting Parties immediately and the withdrawal becomes effective automatically one year after receipt of the notification.

Contact details

FAO Plant Genetic Resources Treaty Section
Market Access and Biosecurity
Department of Agriculture, Fisheries and Forestry

List of Organisations Consulted during the Negotiation, Signature and Proposed Ratification of the International Treaty on Plant Genetic Resources for Food and Agriculture

Organisation

Commonwealth Departments and Agencies

Prime Minister and Cabinet
Foreign Affairs and Trade
AusAID
Australian Centre for International Agricultural Research
Attorney-General's
Environment and Heritage
Treasury
Finance
Industry, Resources and Tourism
IP Australia
Defence
Education, Science and Training
CSIRO

State and Territory

Queensland

Dept of the Premier and Cabinet
Dept of Primary Industries
Dept of State Development

New South Wales

Premier's Dept
NSW Agriculture

Victoria

Dept of Premier and Cabinet
Dept of Natural Resources and Environment

Tasmania

Dept of Premier and Cabinet
Dept of Primary Industries, Water and Environment

South Australia

Dept of the Premier and Cabinet
Primary Industries and Resources SA

Western Australia

Dept of the Premier and Cabinet
Dept of Agriculture
Northern Territory
Dept of the Chief Minister
Dept of Primary Industry and Fisheries

Australian Capital Territory

Chief Minister's Dept
Dept of Urban Services

Non-government

Research and Development Corporations

AWB Ltd

Business Council of Australia

Grains Council of Australia

National Association of Forest Industries

National Farmers' Federation

Seed Industry Association of Australia Ltd

Australian Food and Grocery Council

National Agricultural Commodities Marketing Association

Cotton Australia Ltd

Ricegrowers' Association of Australia

Australian Grain Marketing Federation

Australian Chamber of Fruit and Vegetable Industries

Australian Horticultural Exporters' Association

Australian United Fresh Fruit and Vegetable Association Ltd

Australian Vegetable and Potato Growers' Federation

Horticulture Australia Council

Horticulture Australia Ltd

Australian Apple and Pear Growers' Association

Australian Banana Growers' Council Inc

Australian Citrus Growers Inc

Australian Citrus Industry Council

Australian Potato Industry Council

Australian Rubus Growers' Association

Nursery and Garden Industry Australia

Potato Processors Association of Australia

Strawberries Australia Inc

Australian Biotechnology Association

Co-operative Research Centres Association Inc

Australian Conservation Foundation

Australian Council for Overseas Aid

Avcare

Greenpeace Australia

National Environmental Law Association

Australian Genethics Network

Australian Committee for International Union for Conservation of Nature

NSW Cut Flower Export Forum

Pulse Australia

Australian Vice-Chancellors' Committee