

**AGREEMENT FOR ESTABLISHMENT OF THE
GLOBAL CROP DIVERSITY TRUST.
DONE AT ROME ON 1 APRIL 2004**

[2006] ATNIF 2

Documents tabled on 28 March 2006:

National Interest Analysis [2006] ATNIA 11

**with attachment on consultation
and
Executive Board nomination process diagram**

Text of the proposed treaty action

Background information:

Current status list

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

Agreement for Establishment of the Global Crop Diversity Trust, done at Rome on 1 April 2004 [2006] ATNIF 2

Nature and timing of proposed treaty action

1. It is proposed that Australia accede to the *Agreement for Establishment of the Global Crop Diversity Trust* ('the Establishment Agreement') in accordance with article 4(2) of the Establishment Agreement. The establishment of the Global Crop Diversity Trust ('the Trust') was approved by the United Nations' Food and Agriculture Organisation ('FAO') Commission on Genetic Resources for Food and Agriculture at its Ninth Regular Session in October 2002. The Establishment Agreement and the Constitution were approved by the Trust's Interim Panel of Eminent Experts at its Second Meeting on 2-4 October 2004.

2. The Establishment Agreement entered into force generally on 21 October 2004. It will be open for definitive signature until 31 March 2006, after which date it will become open for accession by States (article 4). The Establishment Agreement will enter into force for Australia immediately upon definitive signature or upon the deposit of Australia's instrument of accession (if after 31 March 2006). The Government proposes to deposit Australia's instrument of accession as soon as practicable.

3. The Trust shall operate within the framework of the *International Treaty on Plant Genetic Resources for Food and Agriculture* [2002] ATNIF 14 ('the International Treaty') as an essential element of the funding strategy of the International Treaty. The International Treaty was adopted by member states of the FAO on 3 November 2001 and came into force generally on 29 June 2004. Australia signed the International Treaty on 10 June 2002, ratified it on 12 December 2005 and it will enter into force for Australia on 12 March 2006. The Establishment Agreement of the Trust is an autonomous legal instrument and is thereby separate to the International Treaty.

4. A speedy accession to the Establishment Agreement would enhance Australia's ability to influence the selection process for the Executive Board, both through the Donor Council meeting in April 2006 and through the inaugural meeting of the Governing Body of the International Treaty in June 2006.

Overview and national interest summary

5. The aim of the Trust is to establish a permanent endowment fund to finance the *ex situ* conservation of crop genetic diversity. The Trust will also provide technical and capacity building assistance to eligible collections of genetic resources to meet required standards, and promote and assist the development of a rational and efficient system of crop diversity conservation in genebanks around the world.

6. Australia has been a driving force in the progress of the Trust to date as we rely more heavily than most countries on imported genetic resources for food and agricultural research. Australia has worked to ensure the Trust develops as an effective and transparent organisation, protecting crop diversity and food security globally. Acceding to the Establishment Agreement will help Australia maintain a prominent role in the management of the Trust. Maintaining the focus and effectiveness of the Trust will ensure Australian access to the genetic resources necessary for developing new and profitable crops.

Reasons for Australia to take the proposed treaty action

Objective and role of the Trust

7. Agricultural biodiversity underpins food security and is at risk both in the field (*in situ*) and in genebanks (*ex situ*). The decline in agricultural biodiversity has accelerated in the last 25 years, due to population pressure and land clearing.

8. Genebanks are places for the conservation, management and reproduction of crop varieties and their wild relatives. There are approximately 1470 genebanks in national, regional and international institutes around the world, of which 65% are located within developing countries. Together these genebanks hold over 5.4 million samples of plant material. Most of these genebanks are subject to annual funding. In at least 60% of the world's genebanks funding has remained static or decreased since 1996, resulting in the inability of many to effectively conserve their collections.

9. 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 Global Crop Diversity Trust aims to secure the long-term conservation aims of the International Treaty through long-term funding.

10. The primary objective of the Trust is to ensure the long-term conservation and availability of plant genetic resources for food and agriculture with a view to achieving global food security and sustainable agriculture. It is a joint initiative of FAO and the International Plant Genetic Resources Institute ('IPGRI'). The main focus of the Trust will be securing the future of the key international collections under the Consultative Group on International Agricultural Research ('CGIAR') system ('Future Harvest Centres').

11. The Trust is a public-private partnership aiming to establish a permanent endowment of US\$260 million that will generate US\$10-14 million annually for the maintenance of eligible national, regional and international genebanks or collections of crop diversity. Pursuant to article 2 of the Annex to the Establishment Agreement, the Trust will give priority to the plant genetic resources listed in Annex 1 to the International Treaty or referred to in article 15.1(b) of the International Treaty. The endowment fund currently has US\$60 million in pledges. Whilst the overwhelming majority of funding received in the early stages has come from national governments, the Trust will shortly commence a fundraising phase concentrating on private sources. In particular contributions will be sought from North American and European corporations and private foundations.

Australia's national interest

12. Australian agriculture is heavily dependant for its continued international competitiveness on successful plant breeding programs. Almost all the material needed for those breeding programs must be accessed from collections overseas. Thus it is vital for Australia that national, regional and international collections of plant genetic material are appropriately conserved and made freely accessible. For example, more than 90% of wheats grown in Australia are from breeding germplasm collected at the Mexico-based research and seed centre CIMMYT (International Maize and Wheat Improvement Centre). Australian farms have yielded an estimated net annual benefit of AU\$147 million from the use of such germplasm.

13. As a major agricultural producer and plant breeder, Australia has a national interest in ensuring the maintenance of and continued access to genetic material held in genebanks around

the world. Genetic diversity is at the heart of agricultural innovation – it allows breeding of crops that will increase production as well as enhance the capacity to manage new and existing threats from pests and diseases, climate change and environmental degradation.

14. The Trust also complements the Australian aid program's objectives with respect to poverty reduction and food security in our development partner countries. New varieties of high yielding crops help secure export markets for agricultural produce and increase domestic and export earnings, thereby contributing to economic growth in a developing country. Growing a range of crops can help poor farmers provide a nutritionally balanced diet for their families, and crop diversity can reduce vulnerability to shocks and seasonal changes. Genebanks have proved invaluable in restoring agricultural production in countries such as Cambodia, Afghanistan and East Timor. Genebanks provide seeds for planting and can also be used to overcome disease such as taro leaf blight in Samoa.

15. The Australian Government announced a five-year commitment of AU\$16.5 million to the endowment fund of the Trust in the 2003-04 Budget. Thus far Australia has made payments totalling AU\$7.5 million through the aid program. The Grains Research and Development Corporation of Australia has also pledged US\$5 million (with US\$1.15 million paid). As of 19 December 2005, Australia had made the largest overall financial commitment to the Trust.

16. Australia's early and significant support for the Trust has positioned Australia at the forefront of the international effort to protect and promote genebanks. Accession to the Establishment Agreement of the Trust would formalise Australia's involvement in line with Australia's commitment to global crop diversity, and complement Australia's interests in the International Treaty, article 5 of which requires Contracting Parties to "cooperate to promote the development of an efficient and sustainable system of *ex situ* conservation".

17. There is to be a Relationship Agreement between the Trust and the Governing Body of the International Treaty. As the Governing Body of the International Treaty has yet to convene, this agreement is currently in draft form only and provides for the Governing Body to "provide overall policy guidance to the Trust on all matters within the purview of the International Treaty" (article 3). However, the Trust will have full executive independence. Australia will sit on the Governing Body and therefore will have some influence over the form of the Relationship Agreement and the inter-relationship between the Treaty's Governing Body and the Trust.

18. Accession would also be consistent with the leading role Australia has played in the formal establishment of the Trust and its ongoing efficient management and administration. Australia was elected Chair of the Donors' 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.

19. The Executive Board will have primary responsibility for the operations of the Trust, its budget and ensuring its policies are in line with those of the International Treaty. Members of the Executive Board will serve in a personal capacity. They will be appointed through various avenues. Attachment 2 explains graphically the sources of Board appointments and the overall composition of the Board.

20. Important Executive Board decisions will need to be made in 2006 and, in addition to filling the Chair of the Donors' Council, Australia is nominating a member for the inaugural Executive Board. Several national agencies (such as the Department of Agriculture, Fisheries and Forestry, the Grains Research and Development Corporation, the Australian Centre for International Agricultural Research, the Commonwealth Scientific and Industrial Research

Organisation and the Australian Academy of Technological Science and Engineering Crawford Fund) support Australia pursuing a seat on the Executive Board.

21. Prompt accession to the Establishment Agreement would enhance Australia's ability to influence the selection process for the Executive Board.

22. A decision not to accede to the Establishment Agreement, or to delay accession, may increase the vulnerability of Australia's food supply and agricultural exports to threats posed by pests, disease and climate change in the long term. This could occur in the event of Australia not being able to positively influence the management of the Trust. Accession, on the other hand, will enable Australia to campaign strongly for an Executive Board position, which will in turn help Australia positively influence the governance of the Trust.

Obligations

23. The purpose of the Establishment Agreement is the establishment of the Trust *per se*. It does not place substantive or financial obligations on State Parties. Obligations upon States with respect to the conservation of plant genetic resources for food and agriculture have been imposed by the International Treaty. The Establishment Agreement does not impose further obligations.

24. The Trust is to operate in accordance with its Constitution set out in the Annex to the Establishment Agreement. The Constitution provides that the Trust shall establish an endowment fund and seek to raise funds (via donations) from various sources (including governments, corporations and individuals). Accordingly, the Trust's finances will be composed entirely of voluntary contributions.

Implementation

25. Implementation of the Establishment Agreement would not require amendment to domestic legislation and may be undertaken administratively. As noted above, accession to the Establishment Agreement would not impose any new obligations upon Australia.

Costs

26. Accession to the Establishment Agreement would not result in any financial contributions or costs to the states and territories. There will also be no additional cost to industry. As noted, contributions to the Trust's endowment fund and administration costs are made on a voluntary basis. In 2003-2004 Australia pledged a total of AU\$16.5 million over five years. There is likely to be some small administrative costs to the Government, to support Australia's work in the Donors' Council and potentially the Trust's Executive Board. However, these costs will arise as a result of Australia's role within these organs, rather than as a result of Australia's accession to the Establishment Agreement.

Regulation Impact Statement

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

Future treaty action

28. Article 3 provides that amendments to the Establishment Agreement other than to the Annex may be proposed by any party to the Agreement. Amendments shall come into force for all parties on the deposit of instruments of ratification, acceptance or approval by two-thirds of

the parties to the Agreement. Amendments to the Establishment Agreement will be subject to Australia's domestic treaty processes, including consideration by JSCOT.

29. Amendments to the Annex (which contains the Constitution of the Trust) are adopted by the Executive Board of the Trust and shall be notified by the Depository (being the Director-General of FAO) to all parties to the Establishment Agreement. Amendments to the Annex shall come into force for all parties on their approval by a majority of the parties to the Establishment Agreement.

30. The Establishment Agreement does not provide for the negotiation of future related legally binding instruments.

Withdrawal or denunciation

31. Pursuant to article 6 of the Establishment Agreement, any party to the Agreement may, by written instrument to the Depository, denounce the Establishment Agreement. Such denunciation shall become effective three months after the date on which such an instrument is received. Withdrawal or denunciation of the Establishment Agreement will be subject to Australia's domestic treaty processes, including consideration by JSCOT.

Contact details

International Section

Australian Agency for International Development (AusAID)

**Agreement for Establishment of the Global Crop Diversity Trust,
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[2006] ATNIF 2**

The Australian Agency for International Development (AusAID) has consulted with other Commonwealth government departments and agencies, state and territory government departments, rural research and development corporations, peak agricultural industry and plant breeding bodies, other non-government organisations, universities and cooperative research centres. Extensive consultations were also conducted by the Department of Agriculture, Fisheries and Forestry during the seven-year period of negotiations and then ratification process for the International Treaty on Plant Genetic Resources for Food and Agriculture. The Establishment Agreement relates to a small sub-set of the issues dealt with by the International Treaty.

List of Organisations consulted during the Negotiation and Proposed Ratification of the Agreement for Establishment of the Global Crop Diversity Trust

Commonwealth Departments and Agencies

Department of Foreign Affairs and Trade
Department of the Environment and Heritage
Attorney-General's Department
Department of Agriculture, Fisheries and Forestry
The Treasury
Department of Finance and Administration
Department of Industry, Resources and Tourism
Department of Education, Science and Training
Australian Centre for International Agricultural Research
Commonwealth Scientific and Industrial Research Organisation
Office of Regulation Review (Productivity Commission)
IP Australia

State and Territory

Queensland

Department of Primary Industries

New South Wales

Department of Primary Industries

Victoria

Department of Primary Industries

Tasmania

Department of Primary Industries, Water and Environment

South Australia

Department of Primary Industries and Resources

Western Australia

Department of Agriculture

Northern Territory

Department of Primary Industry, Fisheries and Mines

Australian Capital Territory

Chief Minister's Department

Non-government

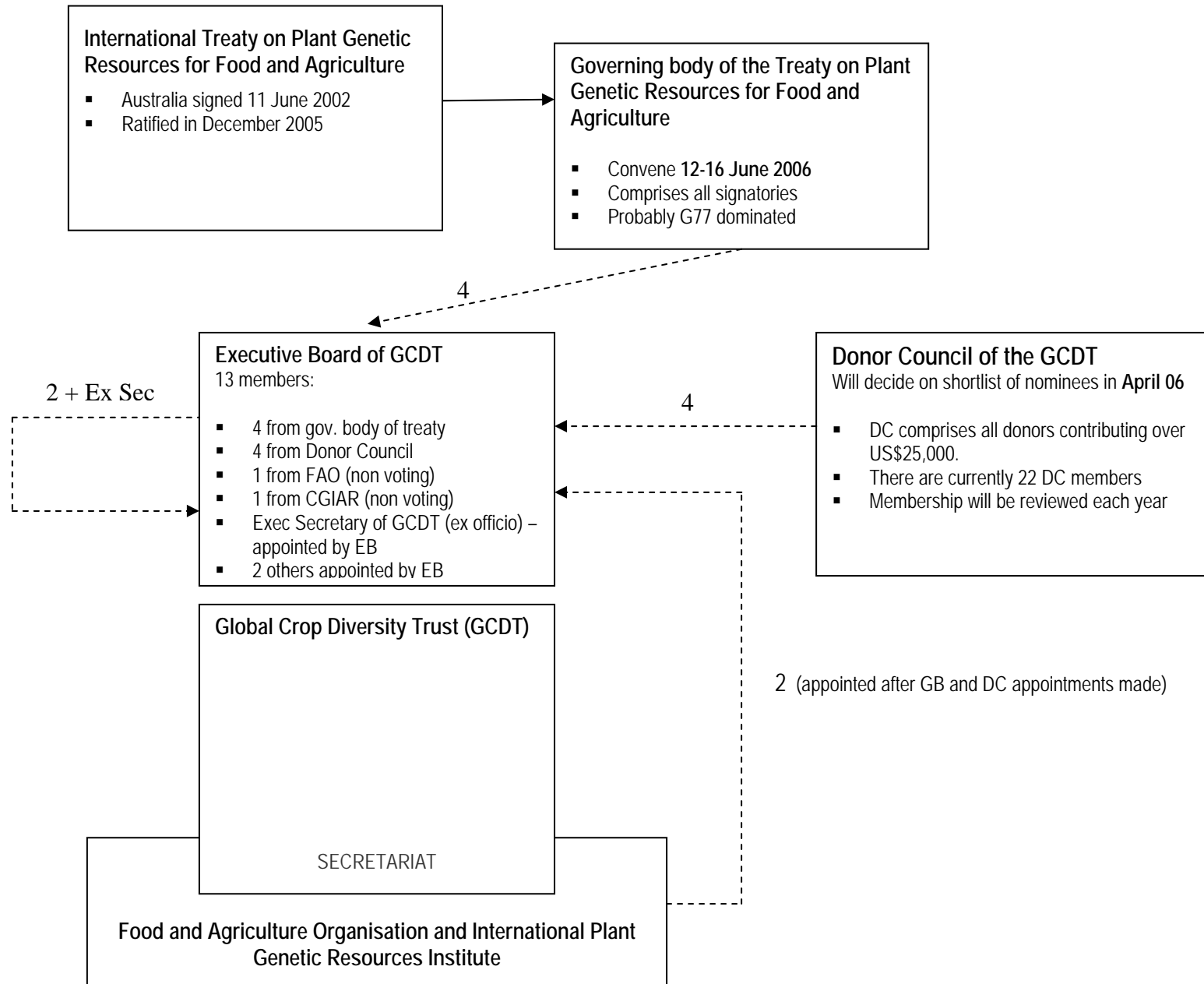
ATSE Crawford Fund
AWB Ltd

Grains Council of Australia
National Association of Forest Industries
National Farmers' Federation
Seed Industry Association of Australia Ltd
Cotton Australia Ltd
Ricegrowers' Association of Australia
Horticulture Australia Ltd
Australian Biotechnology Association
Cooperative Research Centres Association Inc
Australian Conservation Foundation
Avcare Ltd
CropLife Australia Limited
Greenpeace Australia
National Environmental Law Association
Pulse Australia
Australian Vice-Chancellor's Committee
Grains Research and Development Corporation
Agrifood Awareness Australia Ltd
AusBiotech Ltd
Australian Oilseeds Federation Inc
Grain Growers Association
Plant Health Australia Ltd
Rural Research and Development Corporation
GeneEthics Network
BSES Limited

During the process of consultations, the GeneEthics Network voiced concern that the Trust provides only for the conservation of *ex situ* germplasm and that *in situ* conservation is thereby neglected. In relation to this concern, we wish to note 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 (article 5(d)). The Trust is one of the few, and certainly 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. Furthermore, the Establishment Agreement now has international legal personality in its current form, and despite provision for its amendment (article 3), the Government considers it highly unlikely that *in situ* conservation would ever be incorporated into the Trust's objectives.

The issue of ensuring equitable access and benefit-sharing of the genetic material to be supported by the Trust was also raised by the GeneEthics Network. The function of the Establishment Agreement relates only to the Trust's establishment and governance issues, as opposed to substantive rights and duties. The issues of access and benefit-sharing have been addressed by the International Treaty in its article 10.2. Questions of access will be matters that may be handled within the Trust's governance structures where appropriate. Apart from these issues, the GeneEthics Network indicated broad support for the Trust.

The government received responses from approximately one third of organisations contacted. All responses, including those of the Ministers with a portfolio interest in the Trust (Department of Foreign Affairs and Trade, Department of Environment and Heritage, Department of Agriculture, Fisheries and Forestry and the Attorney-General's Department) support Australia's proposed accession to the Establishment Agreement.



CURRENT STATUS LIST

State Parties to the Establishment Agreement of the Global Crop Diversity Trust

Arab Republic of Egypt 1 April 2004

Cape Verde 1 April 2004

Jordan 15 April 2004

Republic of Togo 4 May 2004

Morocco 21 June 2004

Syrian Arab Republic 25 June 2004

Independent State of Samoa 29 June 2004

Federal Democratic Republic of Ethiopia 15 July 2004

Kingdom of Tonga 23 August 2004

Republic of Peru 23 August 2004

Republic of Mali 6 October 2004

Republic of Ecuador 7 October 2004

Colombia 21 October 2004

Kingdom of Sweden 21 October 2004

Republic of Mauritius 24 November 2004

Serbia and Montenegro 24 November 2004

Republic of Cameroon 14 February 2005

Cambodia 6 May 2005

Islamic Republic of Pakistan 23 May 2005

Romania 22 June 2005

Uganda 14 September 2005