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Submission No: 2

Ms J Morris
Enquiry Secretary
Joint Standing Committee on Treaties
Department of House of Representatives
Parliament House
CANBERRA ACT 2600

RECEIVED
16 DEC 2002

BY: *h. b. Gould*

Submission 4
Treaties Tabled Nov/Dec
02

Dear Ms Morris

**International Treaty on Plant Genetic Resources for Food and Agriculture:
Reply to question taken on notice during 9 December 2002 public hearing of the
Joint Standing Committee on Treaties**

I refer to the Joint Standing Committee on Treaties' public hearing on possible Australian ratification of the International Treaty on Plant Genetic Resources for Food and Agriculture (the Treaty). Officers of this Department and of the Office of International Law in the Department of the Attorney-General's took one question on notice during the hearing, namely that seeking the reason for the references in Article 25, 27 and 28 of the Treaty to the International Atomic Energy Agency (IAEA).

The Treaty has been concluded under Article XIV of the Food and Agriculture Organization (FAO) Constitution. Conventions and treaties made under Article XIV of the FAO Constitution are required to contain membership provisions that provide for members of the IAEA to join the Treaty. The text of Article XIV of the FAO Constitution is at Attachment A.

Further to our response to the Committee's question on intentions of other countries, I enclose for information a copy of a media release by the European Commission on European Union signature of the Treaty.

We will keep you informed of any progress in the number of ratifications. I note that since the 9 December hearing, Myanmar has been listed on the FAO's website as having accepted the Treaty, bringing to twelve the number of formal acceptances.

If you require further information for the Committee's inquiry, please contact Kristiane Herrmann (tel: 6272 4670) or Felicity Moran (6272 4322).

Yours sincerely

Craig Burns
General Manager
Trade Policy
13 December 2002

Attachment A

Article XIV Conventions and Agreements

1. The Conference may, by a two-thirds majority of the votes cast and in conformity with rules adopted by the Conference, approve and submit to Member Nations conventions and agreements concerning questions relating to food and agriculture.

2. The Council, under rules to be adopted by the Conference, may, by a vote concurred in by at least two thirds of the membership of the Council, approve and submit to Member Nations:

- a. agreements concerning questions relating to food and agriculture which are of particular interest to Member Nations of geographical areas specified in such agreements and are designed to apply only to such areas;
- b. supplementary conventions or agreements designed to implement any convention or agreement which has come into force under paragraphs 1 or 2 (a).

3. Conventions, agreements, and supplementary conventions and agreements shall:

- a. be submitted to the Conference or Council through the Director-General on behalf of a technical meeting or conference comprising Member Nations, which has assisted in drafting the convention or agreement and has suggested that it be submitted to Member Nations concerned for acceptance;
- b. contain provisions concerning the Member Nations of the Organization, and such non-member States as are members of the United Nations, any of its specialized agencies or the International Atomic Energy Agency, and regional economic integration organizations, including Member Organizations, to which their Member States have transferred competence over matters within the purview of the conventions, agreements, supplementary conventions and agreements, including the power to enter into treaties in respect thereto, which may become parties thereto and the number of acceptances by Member Nations necessary to bring such convention, agreement, supplementary convention or agreement into force, and thus to ensure that it will constitute a real contribution to the achievement of its objectives. In the case of conventions, agreements, supplementary conventions and agreements establishing commissions or committees, participation by non-member States of the Organization that are members of the United Nations, any of its specialized agencies or the International Atomic Energy Agency or by regional economic integration organizations other than Member Organizations, shall in addition be subject to prior approval by at least two-thirds of the membership of such commissions or committees. Where any convention, agreement, supplementary convention or agreement provides that a Member Organization or a regional economic integration organization that is not a Member Organization may become a party thereto, the voting rights to be exercised by such organizations and the other terms of participation shall be defined therein. Any such convention, agreement, supplementary convention or agreement shall, where the Member States of the organization do not participate in that convention, agreement, supplementary convention or agreement, and where other parties exercise one vote only, provide that the organization shall exercise only one vote in any body established by such convention,

agreement, supplementary convention or agreement, but shall enjoy equal rights of participation with Member Nations parties to such convention, agreement, supplementary convention or agreement;

- c. not entail any financial obligations for Member Nations not parties to it other than their contributions to the Organization provided for in Article XVIII, paragraph 2 of this Constitution.

4. Any convention, agreement, supplementary convention or agreement approved by the Conference or Council for submission to Member Nations shall come into force for each contracting party as the convention, agreement, supplementary convention or agreement may prescribe.

5. As regards an Associate Member, conventions, agreements, supplementary conventions and agreements shall be submitted to the authority having responsibility for the international relations of the Associate Member.

6. The Conference shall make rules laying down the procedure to be followed to secure proper consultation with governments and adequate technical preparations prior to consideration by the Conference or the Council of proposed conventions, agreements, supplementary conventions and agreements.

7. Two copies in the authentic language or languages of any convention, agreement, supplementary convention or agreement approved by the Conference or the Council shall be certified by the Chairman of the Conference or of the Council respectively and by the Director-General. One of these copies shall be deposited in the archives of the Organization. The other copy shall be transmitted to the Secretary-General of the United Nations for registration once the convention, agreement, supplementary convention or agreement has come into force as a result of action taken under this Article. In addition, the Director-General shall certify copies of those conventions, agreements, supplementary conventions or agreements and transmit one copy to each Member Nation of the Organization and to such non-member States or regional economic integration organizations as may become parties to the conventions, agreements, supplementary conventions or agreements.

Brussels, 28 May 2002

European Union will sign a new international treaty on agricultural biodiversity

Commissioner David Byrne has welcomed the decision of the EU's Council of Ministers yesterday that the European Union will sign the International Treaty on Plant Genetic Resources for Food and Agriculture. The Treaty aims to protect the world's most important agricultural plant species in order to safeguard global food security. The Treaty provides for free access to plant genetic resources for research and breeding. Recipients marketing products arising from that access will have to pay back into the system an equitable share of the monetary and other benefits.

"We must preserve and improve the diversity and quality of the food on offer in the EU"; said David Byrne, Commissioner responsible for Health and Consumer Protection. Research and breeding for the improvement and diversification of food production requires access to a wide range of agricultural biodiversity, particularly as fruit and vegetables are concerned. In this respect the International Treaty on Plant Genetic Resources for Food and Agriculture guarantees access to a wide range of natural resources. An example is the "Brassica" complex, which comprises vegetable crops such as cabbage, rapeseed, mustard, cress, rocket, radish, and turnip; important components of the European cuisine. Therefore it is important for the European Union to become party to the Treaty. An early joint action for simultaneous signature by the European Union and its Member States will give a political signal to other nations to join.

On 3 November 2001 the Conference of the UN Food and Agriculture Organisation of the United Nations (FAO) approved the Treaty in Rome. The International Treaty will be set up in harmony with the Convention on Biological Diversity (CBD). It is a major breakthrough because of its legally binding nature and the combination of free access to agricultural plant species with the sharing of commercial benefits of such access.

Owing to the clash of different interests and opinions, the negotiations have been a long and painstaking process. The European Union, represented by the European Commission, and its Member States have contributed to these negotiations. The EU has negotiated constructively in the FAO bodies and has launched various actions to keep and accelerate the progress of the negotiations, through official and informal contacts to all parties involved in the dialogue.

The sharing of commercial and other benefits through the use of genetic resources deriving from developing countries has been a controversial issue in the North-South dialogue. Therefore, the provisions regarding benefit sharing are an essential element of the Treaty and their successful implementation will be the key to the success of the Treaty. The European Union will continue its constructive contribution in the negotiations in the Interim Committee for the International Treaty on Plant Genetic Resources for Food and Agriculture.

The initial suggestion of the European Union was to cover all agricultural crops by a multilateral system under the Treaty. However, the current limited list of crops excludes many important species. The European Union will continue its efforts to take in additional crops. The text of the Commission's proposal on the signature (COM(2002) 197 final), and the text of the Treaty are available on the Internet at:

http://europa.eu.int/eur-lex/en/com/reg/en_register_151040.html

Background

The first international binding agreement covering biodiversity was the Convention on Biological Diversity (CBD), adopted in 1992, did not cover agricultural crops. The parties at this Convention recognised the distinct characteristics and problems related to genetic resources for agricultural research and breeding and the need for specific solutions based on the 1983 International Undertaking on Plant Genetic Resources. One hundred and thirteen countries have adhered to the International Undertaking. In 1994, the FAO initiated inter-governmental negotiations on the revision of the International Undertaking, in order to adopt it as a legally binding agreement, in harmony with the CBD. The new international agreement had to include, in particular:

- rules for the world-wide conservation of existing plant genetic resources for food and agriculture, to prevent further genetic erosion, and
- a multilateral system of access to such resources for research and breeding purposes, and of "sharing of benefits" arising from research and breeding with donors of material made available under that system.

The resulting International Treaty on Plant Genetic Resources for Food and Agriculture was approved by the Conference of the UN Food and Agriculture Organisation (FAO) on 3 November 2002, with 116 favourable votes and two abstentions. There were no votes against.

The Treaty combines policy areas under the responsibility of both the European Union and its Member States. Therefore the European Commission and the EU Member States participated in the negotiations. The mixed competence also requires joint simultaneous action regarding both signature and deposit of the respective instruments of ratification or approval by the European Union and its Member States. The Treaty is open for signature until 4 November 2002. Eleven states have signed so far. It will enter into force when ratified by at least 40 states. The European Union and its Member States intend to give a political signal to other parties through early signature, presumably at the beginning of June 2002, in Rome.

The length of the negotiations reflects the difficulties in reaching agreement on matters related to intellectual property rights, benefit sharing, and the list of crops covered by the Treaty.

The implementation of the benefit-sharing provisions will require additional negotiations. These will presumably start in autumn 2002, in the Interim Committee for the International Treaty on Plant Genetic Resources for Food and Agriculture. One of the objectives of the Committee will be to prepare the framework of a standard Material Transfer Agreement.

The European Union intends to use its influence to increase the number of crops included in the Multilateral System under the Treaty. The current list includes 35 food crops and 29 forages. However, this will not be easy to achieve, due to the requirement of "consensus" for all decisions of the future "Governing Body" under the Treaty.