

**Joint Standing Committee on Treaties  
International Treaty on Plant Genetic Resources for Food and Agriculture**

**Supplementary Submission  
Department of Agriculture, Fisheries Forestry - Australia**

Consultations and ratification implications

During the hearing on 3 March 2003 the Grains Research and Development Corporation (GRDC), the Grains Council of Australia (GCA) and the Seed Industry Association of Australia (SIA) all recognised consultation by the Department of Agriculture, Fisheries Forestry - Australia (AFFA) in relation to the Treaty. They raised some issues in respect of these consultations involving their particular industry concerns about the scope of the multilateral system, terms of access and benefit sharing and funding.

Opportunities have been provided for stakeholders to contribute to the development of Australia's position throughout the negotiations on the Treaty.

AFFA has acknowledged during its consultation process on possible ratification that there are questions about operational elements of the Treaty's implementation which cannot be fully answered until they are further advanced through international discussions. The importance of ongoing commercial interest input, including from States and Territories, has been highlighted throughout with a commitment to ongoing consultations.

For the information of the Committee AFFA's communications on the Treaty with GRDC, GCA and SIA have covered the following:

- . analysis by the Attorney-General's Department of the Treaty's obligations at international law, which covers the elements raised by them on scope of the Treaty's obligations in respect of the multilateral system, facilitated access and benefit sharing and funding
- . identification of the Treaty obligations involving the multilateral system from an Australian perspective, indicating that domestic implementation would not involve legislative change and setting out the terms applying to the standard material transfer agreement
- . information relating to possible timing of ratification in terms of strategically positioning Australia in preparation for the Treaty's entry into force and the first meeting of the Governing Body
- . identification of the Treaty's specific provisions which protect private interests, including requirements in relation to private property and intellectual property rights, confidential information, access to material under development and national legislation, rights and obligations under other international agreements

- . explanation of the Treaty's consensus decision making provision
- . invitations to participate in, and contribute to, the ongoing development of Australia's position on issues affecting their interests, especially in operational arrangements involving the material transfer agreement and access to designated collections of the International Agricultural Research Centres
- . a Commonwealth, State and Territory teleconference in late September 2002 at which non government interests had the opportunity to discuss their concerns with all jurisdictions
- . offers of bilateral briefings and discussions in addition to regular broad based consultations.

In response to concerns involving the Treaty's standard material transfer agreement AFFA notes that:

- . neither existing contracts to access for plant genetic resources for food and agriculture nor the capacity of industry to enter such contracts in the future are impeded by the provisions of the Treaty
- . material transfer agreements, such as those envisaged in the Treaty, already underpin many exchanges of plant genetic resources and are not a new concept
- . the material transfer agreement used by the International Agricultural Research Centres (IARCs), and by which Australian researchers obtain access to relevant public domain material from the IARCs, contains many of the elements which the Treaty specifies in Article 12.4 must be included in the standard material transfer agreement (although not the mandatory benefit sharing element which is of concern to industry)
- . monetary benefit sharing arrangements in the Treaty derive from a proposal from the international seed association, of which the SIA is a member.

The GCA representative was unsure whether the GCA had the opportunity to contribute its views on the Treaty during its development (transcript - proof copy, p58). GCA, as a peak organisation, has received briefing papers and has been invited to attend all non government organisation briefing meetings relating to Australia's proposed position for the Treaty's final negotiating sessions during 2000 and 2001, and more recently in relation to signature, ratification and Australia's position for a first meeting of the Treaty's Interim Committee.

#### Legal matters, including bilateral, commercial and non-Party considerations

Discussion at the hearing covered a number of issues involving bilateral agreements, commercial arrangements, dealings involving non-Parties and provisions within the Treaty providing for reviews by the Governing Body on the achievement of the Treaty's objectives, such as the voluntary inclusion of non public domain material in the multilateral system (Articles 11.2 - 11.4).

In the context of the transcript of the hearing on Monday 3 March 2003 AFFA notes it is important to clarify and distinguish between rights and obligations involving Contracting Parties (that is the Commonwealth) and parties to commercial agreements (such as natural and legal persons under the jurisdiction of a Contracting Party) in matters involving use of the multilateral system.

Features especially important in addressing expressed concerns about the capacity of the agricultural industry sector to negotiate normal commercial transactions (such as those identified by GRDC) in other countries (either Parties or non-Parties) or which involve transactions other than those specified in the Treaty are as follows:

- . legal and natural persons in any Contracting Party can continue to exercise their rights to enter into commercial transactions in accordance with relevant domestic laws and any other relevant international agreements
- . the Treaty guarantees minimum reciprocal rights of facilitated access and benefit sharing between Contracting Parties to eligible plant genetic resources for food and agriculture held by Contracting Parties and by IARCs that have signed agreements with the Governing Body.

If Australian industry uses material subject to contractual arrangements arising from the standard material transfer agreement they will need to factor this into their commercial transactions. Depending on how the Governing Body settles terms for third party commercial transfers under the standard material transfer agreement and arrangements with the IARCs, it is possible Australian commercial interests could be affected whether or not Australia has ratified the Treaty. By early ratification Australia will be in a position to influence international outcomes consistent with Australian national interests.

The Treaty deals with non-Parties to the extent that "The Contracting Parties shall encourage any Member of FAO or other State, not a Contracting Party to this Treaty, to accept this Treaty" (Article 31). The Treaty's guarantee of minimum reciprocal rights of facilitated access and benefit sharing is available only to Parties and does not extend to non-Parties.

Article 11 anticipates the Governing Body reviewing certain matters, but does not contain a mechanism for amending the Treaty. Amendments to the Treaty must be made in accordance with Articles 23 and 24.

### Other Issues

#### *International perceptions*

Senator Tchen raised the issue as to whether the wrong signal would be sent to the international community if Australia becomes one of the nations visibly reluctant to ratify the agreement. (transcript - proof copy, p52).

Australia is recognised as a country whose agricultural industries are dependent on an open international system of exchange of plant breeding material, consistent with our interests in promoting a fair and open international trading system, particularly for

agricultural products. Our commitments to a fair and equitable system of exchange under the Treaty, and our views on making the Treaty workable, have been placed on the negotiating record and reiterated when signing the Treaty.

While Australia will be able to participate in activities preparing for entry into force of the Treaty, our standing would be diminished by delaying ratification.

*What is the necessity behind establishing a compulsory arrangement?*

Mr King (transcript - proof copy, p 49) sought information on the necessity for entering into a binding arrangement to replace cooperative arrangements.

There are many new policy and technological influences in the global environment in which agricultural industries operate. The international competitiveness of our food and agriculture sector depends heavily on a steady flow of plant breeding improvements. To be able to deliver these improvements, plant breeders must have access to plant genetic material which, for virtually all our commercial agricultural crops, needs to be sourced from overseas.

The voluntary arrangements under which there has been cooperation do not provide any guaranteed reciprocal rights for access to plant genetic resources for food and agriculture and for benefit sharing.

The framework established by the Treaty provides Contracting Parties with minimum reciprocal rights of facilitated access and benefits as between the Contracting Parties for plant genetic resources for food and agriculture under the Treaty's multilateral system. Treaty status provides a legal guarantee of these rights. By being on the Treaty's Governing Body Australia can ensure that access is guaranteed on fair and open terms for the benefit of all parties.

AFFA's response of 12 February to supplementary questions by the Committee also addresses this matter.