

International Treaty on Plant Genetic Resources for Food and Agriculture

Introduction

- 2.1 The *International Treaty on Plant Genetic Resources for Food and Agriculture* (the Treaty) was approved by the Food and Agriculture Organization (FAO) at its 31st session in Rome in November 2001. The Treaty will provide a binding international framework for the conservation, sustainable use and exchange of plant genetic resources for food and agriculture (PGRFA) for global food security.¹ This framework is designed to ensure the fair and equitable sharing of benefits arising from PGRFA.
- 2.2 The Treaty was negotiated over a seven year period, and is intended to replace the non-binding International Undertaking on Plant Genetic Resources (the International Undertaking) established under the FAO in 1983. The International Undertaking provides the basis for current international cooperation in the use of PGRFA for members of the FAO. This includes Australia.²

1 National Interest Analysis (NIA), para. 5.

2 NIA, paras 5-6.

Overview

- 2.3 All countries depend on the use of PGRFA to develop new varieties of grains, pasture and horticultural plants for food and agriculture. This Treaty builds upon the International Undertaking while complementing elements of the Convention on Biological Diversity. The Convention on Biological Diversity was a forerunner to the Treaty and led to a review of international cooperation in this area.³ The focus of the review was FAO agreements with International Agricultural Research Centres (IARCs) regarding international public domain collections of plant genetic resources held in trust.⁴
- 2.4 Australian food and agriculture sectors rely on the development of varieties of grain crops and pasture and horticultural plants, derived almost entirely from overseas plant genetic material. This includes collections held by IARCs.⁵
- 2.5 The Treaty would impose a system of minimum reciprocal rights of access and benefit sharing between contracting parties, under a multilateral system. The Australian Government would be required to ensure that the standard Material Transfer Agreement (MTA),⁶ to be adopted by the Governing Body,⁷ is used to facilitate access transactions. Procedures for the recognition and enforcement of the MTA would be subject to jurisdictional requirements that apply under Australian law.⁸ Obligations under the Treaty regarding material exchange would be in regard to material held in the public domain under Australian Government control.⁹ This would exclude material held in State collections.¹⁰

3 NIA, para. 6.

4 NIA, para. 6.

5 NIA, para. 8.

6 The MTA provides the legal basis for the flow of plant genetic material for research, development, training and conservation under the treaty. Paul Morris, *Transcript of Evidence*, 9 December 2002, p. 18.

7 The Governing Body consists of contracting parties to the Treaty and makes decisions by consensus. The Governing Body considers operational details involving material transfer and arrangements between itself and IARCs for access to their collections. The Governing Body also considers a funding strategy for the Treaty. NIA, para. 13.

8 NIA, para. 17.

9 Paul Morris, *Transcript of Evidence*, 14 March 2005, p. 36.

10 William Campbell, *Transcript of Evidence*, 14 March 2005, p. 36.

- 2.6 Under the terms of the Treaty, the Australian Government would be required to provide certain non-confidential data to an information system. This would include providing access to technologies for the conservation, characterisation, evaluation and use of PGRFA and the genetic material required to transfer this technology.

Entry into force

- 2.7 On 29 June 2004 the Treaty entered into force internationally. As of 14 March 2005 a total of 66 nations had ratified the Treaty,¹¹ including Canada, Germany, Italy, Spain, Switzerland and the United Kingdom. That number has now risen to 73.¹² The United States is a signatory to the Treaty but has not ratified it. Japan, China and Russia have not signed up to the Treaty.¹³

Implementation and costs

- 2.8 Implementation of the Treaty does not require amendment to domestic legislation and may be undertaken administratively. Ratification of the Treaty would involve costs to support the activities of the International Secretariat and Australia's participation in the work of the Governing Body.¹⁴

Review of the Treaty during the 40th Parliament

- 2.9 The Treaty was signed by Australia on 10 June 2002 and was first tabled in Parliament on 3 December 2002, during the 40th Parliament. The Committee held a public hearing on 9 December 2002 to examine the proposed treaty action.
- 2.10 Following the public hearing, the Committee received information highlighting industry concerns about the operability of the treaty and the timing of its entry into force. The Committee then requested further information from the Department of Agriculture, Fisheries and Forestry Australia (AFFA) about industry concerns. The Committee held another public hearing on 3 March 2003 to resolve

11 Mr Paul Morris, *Transcript of Evidence*, 14 March 2005, p. 27.

12 As of 11 October 2005, <www.fao.org/Legal/TREATIES/033s-e.htm>.

13 Mr Paul Morris, *Transcript of Evidence*, 14 March 2005, p. 38.

14 NIA, paras 27-28.

issues raised by industry groups. In addition to AFFA, representatives from the following organisations attended the public hearing: the Australian Seed Federation (ASF);¹⁵ Grains Council of Australia (GCA); and the Grains Research and Development Corporation (GRDC).

- 2.11 The ASF sought detailed information and discussion with the Australian Government and industry on the following issues:
- a. **Consultation** regarding the benefits or otherwise of ratification of the treaty.
 - b. **Funding** regarding administration of the treaty, for example, how funds will be raised and how the Governing Body will be financed.
 - c. **MTAs** – How MTAs will coexist with common law contracts, and technical, financial and policy areas which are yet to be discussed by the expert group.
 - d. **Legal implications of ratification** – The ASF does not accept AFFA's view that Australia would need legislative change to administer Australian obligations under the Treaty and sought further clarification from AFFA on this point.
 - e. **Scope of coverage of the Treaty** – The ASF is concerned that the Treaty will apply to all holders of PGRFA and allow the Australian Government to take whatever measures it deems necessary to include private PGRFA holdings.¹⁶
- 2.12 The GRDC and GCA expressed similar concerns to that of the ASF. In addition to funding, the GRDC was concerned that the costs associated with the Treaty may be borne by industry. The GRDC agreed with the ASF's stance on MTAs and the scope of coverage of the Treaty. The GRDC also drew attention to: the use of ambiguous language in relation to articles of the Treaty relating to MTA's; and the uncertainty of whether States and Territories may be required to modify existing practices, policies and provide access to PGRFA material.¹⁷
- 2.13 The GRDC observed that there is no evidence to support the statement in the NIA that the capacity of Australian plant breeders to access genetic resources from overseas is likely to become more

15 **Note:** The ASF appeared before the Committee under its previous name, the Seed Industry Association of Australia (SIAA). In this report, the SIAA is referred to by its current name, the Australian Seed Federation.

16 ASF, *Submission 5* (40th Parliament), pp. 1-4.

17 GRDC, *Submission 7* (40th Parliament), pp. 2-3.

difficult if Australia does not ratify the Treaty. Further, the GRDC stated that Australian participants involved in the exchange of germ plasm have not concluded that the proposed regime under the Treaty will improve access.¹⁸

- 2.14 The GRDC also expressed concern about the list of crops covered by the Treaty. For example, the Treaty excludes crops which Australian Industry would expect to see included as part of a comprehensive, effective, multilateral system. For example, soyabeans, peanuts, linseed, safflower, panicum, buckwheat and sesame and for the horticulture industry, tomatoes. The GRDC believes non-inclusion of such items could lead to disputes between Parties with Australian interests unable to be satisfied in the wider area of the multilateral negotiations.¹⁹
- 2.15 Another shared concern was the small number of countries that have ratified the Treaty, that the United States of America had not ratified, and Japan not signed up to the Treaty. Industry groups were concerned that the attitudes of these countries have not been explained and the reasons for their opposition or lack of interest have not been explored.²⁰
- 2.16 The GCA recommended that Australia as signatory to the Treaty may and should participate in the work of the Expert Group and the Interim Committee of which it can be a member without ratifying. This would provide an opportunity for the Australian Government to identify the costs and benefits of the Treaty to industry in a practical sense.²¹
- 2.17 Industry groups agreed that Australia should not ratify the Treaty until its exact impact and its associated costs and benefits in all areas had been identified and assessed to industry satisfaction.²²
- 2.18 AFFA undertook that it would facilitate further meetings between itself and the industry organisations, with a view to settle any outstanding issues of concern. In its supplementary submission dated November 2003²³ AFFA advised the Committee that it had addressed the issues raised through additional consultation with industry stakeholders.

18 GRDC, *Submission 7* (40th Parliament), p. 1.

19 GRDC, *Submission 7* (40th Parliament), p. 4.

20 GCA, *Submission 6* (40th Parliament), p. 2; GRDC, *Submission 7* (40th Parliament), p. 5.

21 GCA, *Submission 6* (40th Parliament), p. 2.

22 SIAA, *Submission 5* (40th Parliament), p. 2; GCA, *Submission 6* (40th Parliament), p. 2; GRDC, *Submission 7* (40th Parliament).

23 AFFA, *Submission 2.3* (40th Parliament).

- 2.19 The Committee was scheduled to table its review of the Treaty on 19 March 2003. Following evidence received at its public hearing of 3 March 2003 that several elements of the Treaty are ill-defined such as: benefit sharing, terminology, payments, and definitional terms,²⁴ the Committee chose to defer reporting on its review of the treaty, pending further consideration.
- 2.20 Due to the prorogation of the 40th Parliament on 31 August 2004, the Committee dissolved and review of the Treaty consequently lapsed.

Review of the Treaty during the 41st Parliament

- 2.21 On 18 November 2004, a new Joint Standing Committee on Treaties was established.²⁵ The *International Treaty on Plant Genetic Resources for Food and Agriculture* was re-tabled during the 41st Parliament on 7 December 2004 and automatically referred to the Committee for review. The Committee scheduled a public hearing on 14 March 2005 to ascertain whether industry organisations had any remaining areas of concern about the Treaty.
- 2.22 The Committee invited AFFA and representatives of the industry organisations who had appeared before the Committee during the 40th Parliament to the public hearing. AFFA continued to support ratification of the Treaty.²⁶ Industry organisations, such as the GCA and GRDC, although having previously held reservations regarding the details of the Treaty, expressed support for ratification of the Treaty.²⁷ The ASF however maintained that there are outstanding issues concerning administration of the Treaty and compliance with the MTA, which preclude it from determining whether or not it is in Australia's interest to ratify the Treaty.²⁸

24 Dr Ross Gilmour, *Transcript of Evidence*, 3 March 2003, p. 7; Mr Charles Willoughby, *Transcript of Evidence*, 3 March 2003, p. 15; Mr Christopher Melham, *Transcript of Evidence*, 3 March 2003, p. 21.

25 *Senate Journal*, 18 November 2004, p. 85; *House of Representatives, Votes and Proceedings*, No 3, 18 November 2004, p. 41.

26 Mr Paul Morris, *Transcript of Evidence*, 14 March 2005, p. 27.

27 Mr Mathew Munro, *Transcript of Evidence*, 14 March 2005, p. 29; Mr John Harvey, *Transcript of Evidence*, 14 March 2004, p. 32.

28 Mr Christopher Melham, *Transcript of Evidence*, 14 March 2005, p. 32.

- 2.23 AFFA advised the Committee that there were areas central to the Treaty which would be decided upon at the first meeting of the Treaty's Governing Body. The meeting is due to be held by 29 June 2006.²⁹ The Committee understands that it is the Government's goal for Australia to be involved in the Governing Body in order to be able to influence the outcome of decisions. This is especially the case in regard to payments and the contracts under which PGRFA exchanges would take place.
- 2.24 AFFA indicated that the MTAs would grant Australia access to overseas sources of PGRFA (public and private collections). AFFA has stated that this is important because ongoing improvement in plant breeding is essential to Australia's future competitiveness.³⁰
- 2.25 The ASF does not support this view, stating that: the Treaty is unnecessary as bilateral agreements already provide benefits in relation to the exchange of PGRFA;³¹ Australia would have access to international germ plasm through bilateral agreements whether or not the Government ratifies the Treaty;³² and ratification will mean opening up Australia's plant genetic resources to the international community which may have an adverse impact on maintaining investment in programs.³³
- 2.26 In relation to the current system of PGRFA exchange and the multilateral dimension to the Treaty, AFFA stated that:
- ... the current arrangements are in fact a multilateral system that is based on a common material transfer agreement. What the new system does is provide reciprocal rights of ... access and benefit sharing ... [which] ... has never been formally recognised. That is the side that is very important in the context of the standard material transfer agreement.³⁴
- 2.27 AFFA continues to support Australia's ratification of the Treaty to gain a seat on the Governing Body.³⁵

29 Mr Paul Morris, *Transcript of Evidence*, 14 March 2005, p. 33.

30 Mr Paul Morris, *Transcript of Evidence*, 14 March 2005, p. 27.

31 Mr Christopher Melham, *Transcript of Evidence*, 14 March 2005, p. 32.

32 Mr Christopher Melham, *Transcript of Evidence*, 14 March 2005, p. 30.

33 Mr Christopher Melham, *Transcript of Evidence*, 14 March 2005, p. 31.

34 Ms Kristiane Herrman, *Transcript of Evidence*, 14 March 2005, p. 41.

35 Mr Paul Morris, *Transcript of Evidence*, 14 March 2005, p. 39.

Conclusion and recommendation

- 2.28 The Committee acknowledges the views expressed by the ASF, GCA, GRDC and AFFA. The Committee also acknowledges the ASF's ongoing reservations about the administration of the Treaty and compliance with MTAs. Having taken into consideration the evidence received, the Committee believes that the Treaty will ensure that Australia continues to have access to overseas (other Parties) sources of PGRFA. This includes access to IARCs and the global system of conservation, sustainable use and exchange of PGRFA between Parties. The Committee understands that the Treaty will provide minimum reciprocal rights of access and formally recognised benefit sharing. The Committee believes that the concerns expressed to it by industry groups may be appropriately addressed by Australia's participation in the Governing Body. The Committee supports the Treaty and Australia's proposed goal of representation on the Governing Body.

Recommendation 1

The Committee supports the *International Treaty on Plant Genetic Resources for Food and Agriculture* and recommends that binding treaty action be taken.