**ADVISORY COMMITTEE ON BIOTECHNOLOGY AND**

 **21ST CENTURY AGRICULTURE**

***Potential Compensation Mechanisms Working Group Conference call—May 4, 2012***

*Draft Conference Call Summary*

A two-hour conference call was held, with Working Group (WG) members Douglas Goehring, Barry Bushue, Laura Batcha, Brian Endres, and Jessica Adelman participating. Michael Schechtman, Executive Secretary, AC21, facilitated the conversation, and the AC21 Chair, Russell Redding, also participated. Four AC21 members who were not members of the working group, Gregory Jaffe, David Johnson, Isaura Andaluz, and Leon Corzine, as well as one ex officio member from the Department of State, Jack Bobo, and one USDA resource person, Kent Lanclos, also listened in on the conversation. The goals of call were to: consider any further thoughts on possible compensation mechanisms; see whether WG members have any preferences among potential mechanisms or hybrid approaches among them; discuss how a compensation mechanism might be relevant for GE growers’ purposes; discuss how a compensation mechanism might function; and identify a rapporteur to report out at the upcoming May 29-30, 2012 AC21 plenary session.

Dr. Schechtman began the meeting by asking whether WG members had any new thoughts to add on the spectrum of compensation mechanisms thus far discussed. No such ideas were forthcoming. The discussion then turned to WG member preferences among the three compensation mechanism options. The Chair noted that there had been some support for the idea of a pilot program expressed by a number of members at the last AC21 plenary session. One WG member indicated that her preferred approach would be an indemnification/compensation fund, and added that she was open to the idea of setting up a pilot project to test it out. She also expressed openness to a hybrid approach, but indicated that any approach must involve all sectors of the agricultural community. Another WG member expressed conditional support for crop insurance or a risk retention group approach, but added that in his view, developing a hybrid approach would be a huge challenge. Another WG member inquired whether a compensation mechanism under the Secretary’s charge would be available for economic damages to farmers growing GE crops caused by unintended GE presence. Dr. Schechtman indicated that the Secretary’s charge would cover such situations as well. The member indicated that if such coverage was possible, then a risk retention group approach might be appropriate, although economic data relating to losses are still inadequate. He expressed concern with a pilot project approach, noting that whether or not pilot programs are effective and cost-effective, they have a way of turning into permanent programs. He added that at the last AC21 plenary session there had been discussion but not overall acceptance, of the idea of a pilot program.

One WG member questioned whether, if a risk retention group approach were adopted, it would be adequate to provide coverage for future potential loss scenarios relating to GE producers. One such scenario might be that of a grower of glyphosate-tolerant corn, if he suffered economic damage as a result of unintended presence of GE material from a corn variety with a functional trait, such as high amylase corn. Another WG member indicated that he was not convinced that a big problem exists, though he acknowledged that there may be instances of neighbors not getting along. He noted that it is not possible to protect farmers against all risk. A WG member responded that there was no attempt to do so, but added that setting up a risk retention group would not be furthering coexistence but would rather be farmer risk management through self insurance. Another WG member supported this position, noting that setting up a risk retention group would alleviate people’s responsibility for the effects of their own actions on others. By contrast, he argued, coexistence is about how you take responsibility. He warned against giving people a free pass to do whatever they want to do regardless of the impacts on their neighbors.

Another WG member expressed a different view, noting the complexity of agriculture and the model of business interruption insurance that farmers may carry. He noted that farmers who grow for a specific market may not have insurance that specifically covers their situation day we’re impacted by something. He noted that while producers of identity-preserved products get premiums for their products, they have not yet been willing to share their premiums with others who might have to contribute for a compensation mechanism or for enhanced stewardship. Another member noted that market premiums and benefits do not only accrue to identity-preserved producers. She argued that there must be advantages for the growers of GE crops or farmers wouldn’t plant them. Under current circumstances, those who grow GE crops are asking others to bear the economic risks resulting from those crops being planted. Another WG member pointed out the range of choices that farmers make for their own production, some involving lower input costs, some to derive product premiums. He noted that in the future, some premiums may disappear as traits get more complex and are increasingly stacked together. Another WG member pointed out that he makes particular choices because they work for his particular situation. Once he has made those choices, he indicated, he believes that it is his responsibility to make sure what that his farm practices work for his situation. He did not believe that having one farmer pay for another farmer’s choices would not in the end support coexistence. He said that there are relatively few instances of neighbor-to-neighbor problems and that organic production is still a very small proportion of agricultural production.

Another member pointed out that organic production is a more significant component of food production than had been acknowledged: it is currently at 4% of food. It is a much smaller component of row crops—significantly less than 1%—because it is a challenge for organic producers to enter that market. Consequently, the organic value chain for those crops looks overseas for supply. She argued that that situation is not right for U.S. agriculture in the long term, and added that the committee would not have been assembled it the current situation was working well. She added that farmers’ decisions are not merely production choices, but are also influenced by consumer acceptance, which is playing an increasingly determinative role in agriculture.

Dr. Schechtman noted that in an ideal situation, a compensation mechanism would rarely need to be invoked for payment. He added that he was hopeful that there might be some additional information by the upcoming plenary session documenting at least some actual economic losses that might put some of the estimates in better perspective.

One WG member noted that producers have a role in providing information to consumers regarding their choices and that USDA could play a greater role in educating consumers as well. He supported ongoing efforts at farm gate to try to mitigate risks, but expressed reluctance to support any action that would compromise the U.S.’ ability to provide abundant and affordable food. He expressed support for setting up a private risk retention group because it would provide flexibility and allow for indemnification, and could be more easily changed that government-overseen programs.

Dr. Schechtman inquired whether members thought a comp mechanism should be able to provide benefits for GE producers who suffer economic losses from unintended GE presence. One WG member noted that U.S. technology developers are losing their edge because products are getting approved earlier in other countries, in part because of lawsuits around regulatory decisions. She said that if the committee were to recommend that market-based conditions should be imposed on approvals, U.S. farmers would lose their edge. She suggested that technology companies need to be incentivized to develop new products. She indicated some preference for a risk retention group approach or enhanced mediation. Asked to clarify what was meant by “incentivizing technology companies, she noted that companies do not have freedom to operate in every country but can do research in several countries. Product timelines are already very long and companies are continuing to invest in the U.S., but there could be a tipping point after which, if processes are too long and cumbersome, efforts will move offshore.

One WG member questioned why, if litigation is creating disincentives for business operations, there is not more technology company receptivity to a middle ground mechanism that drives containment and lessens litigation. There was discussion of the roles of the various actors in this issue, farmers and technology providers, and the role of the marketplace versus government interventions in addressing such issues in instances when “public good” is invoked. It was noted that the government already intervenes considerably in the agricultural sector. One WG member noted that the chemical industry and the waste disposal industry have figured out how to apportion responsibilities around public goods, but noted that agriculture is seen as different by the many parties involved. He added that everyone always thinks that their own industry is highly regulated.

Dr. Schechtman inquired whether there were situations other than unintended presence of GE material from crops with functional traits under which GE farmers might become eligible for compensation. One WG member noted that there can be “hiccups” in the approval process for particular traits in certain foreign markets, but that there has been a history of working out those issues with the developer of the new products. Similarly, there is more input from the agricultural producer community to technology providers on new products that may pose potential concern for them. He noted concern about what kinds of isolation distances and other measures would be needed for farmers concerned about unintended presence of GE amylase corn. He added that producers work through these issues in order to deliver their products.

The Chair inquired of the WG where the middle ground is on this issue, suggesting that WG members may have lost sight of the “unintended” part of “unintended presence.” He expressed the view tht there is not one simple solution, and there is no substitute for good stewardship/prevention. He asked what the WG would bring forward to the next plenary and how the AC21 would advise the Secretary to address the future needs of agriculture around coexistence. He added that he did not subscribe to the notion that everything is fine. He asked how to advance the prevention/stewardship practices across the country, in areas where contracts aren’t used, and what provisions exist in contracts that affect the situation outside a farm’s boundaries.

Another WG member expressed the view that for her a middle ground would include not only a mechanism that furthers coexistence through good stewardship and containment, and also involves the participation of all affected parties. She asked whether there could be any configuration or hybrid mechanism that everyone would participate in, including biotechnology representatives. BE—if everyone is in, cost is spread out. Another WG member expressed the view that if there is public benefit, then Congress would fund a mechanism. He noted the fear that some have that if there were an indemnity fund, costs would get shifted to a small sector of society or onto agricultural producers.

The Chair noted that everyone benefits if the public has a continued positive view of the U.S. food system, but acknowledged that a lot of tension currently exists. He asked whether there was any way to take a third party system, such as the Excellence Through Stewardship system, and make it do more than it does now. He indicated that he viewed a compensation mechanism as a last resort, and that there should be a series of preconditioning steps that would need to take place before arriving at that point. On the point of a crop insurance mechanism, one WG member expressed the view that, rather than having everyone participate, such a mechanism would shift all burdens to the taxpayer, without specific participation by the GE side, and that such an approach would not in fact be a “move to the center.”

There was additional discussion of the risk retention group option as an option that was immediately implementable under current law, and that would address some of the risks under discussion. Another WG member, while expressing support for the idea of a spreading the cost for a mechanism to all taxpayers, noted the concerns of some that Congress would eventually try to push funding responsibility for the mechanism off onto agriculture. He noted that such an outcome would serve as an incentive to the agricultural community to make sure it did a good job on stewardship. He noted other models where the government initially sets up a fund which is then financed and supported by the industry it serves. He noted that Illinois has set up a grain insurance system (to address elevator failures) that that industry keeps up and running. In that case, there is a public benefit but the real beneficiaries are agricultural producers. The system is financed by a range of industry players, including agricultural banks and others. WG members pointed out that producers could elect to participate in such systems in some states, while participation was mandatory in others.

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The Chair inquired whether there might be some hybrid system might not involve government “overreach.” He noted that crop insurance might work particularly well in some regions but not others, adding that he was well aware that the insurance system for organic crops needs to be improvedOne WG member agree that insurance mechanisms for organic producers need to be fixed, but reiterated that the acceptability of a crop insurance mechanism would depend on everyone participating and boosting stewardship. She added that crop insurance could be part of an overall package, with other provisions to address those caveats

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Dr. Schechtman asked whether GE farmers who suffer economic losses as a result of unintended presence of GE material unapproved in some target markets should be eligible for compensation. Several members said no, one adding that nowadays farmers have assurance from the trait providers that they’ll be taken care of in the event such problems arise. There was some discussion of the adequacy of those arrangements. One WG member noted that no one is compensated for such problems per se, but there is an overall expectation in the marketplace that the paperwork will be done to prevent those problems from arising. .

WG members chose Barry Bushue to serve as rapporteur at the upcoming AC21 plenary session.