**ADVISORY COMMITTEE ON BIOTECHNOLOGY AND**

**21ST CENTURY AGRICULTURE**

***Size and Scope of Risks Working Group Conference call—April 20, 2012***

*Conference Call Summary*

A two-hour conference call was held, with Working Group (WG) members Lynn Clarkson, Michael Funk, Latresia Wilson, Josette Lewis, Isaura Andaluz, Adrianne Massey, and Douglas Gurian-Sherman participating. Michael Schechtman, Executive Secretary, AC21, facilitated the conversation and the AC21 Chair, Russell Redding, also participated in the discussions. One AC21 members who was not a member of the working group, Angela Olsen, also listened in on the conversation. The goals of call were to: consider a readout by the AC21 Chair from the briefing with the USDA Secretary and Deputy Secretary by him and Dr. Schechtman on the last AC21 plenary session, consider the potential that the WG may obtain additional relevant data on size and scope of risks; and consider an additional request to USDA relating to the gathering of data on GE-related economic losses.

Mr. Redding reported on the briefing of Secretary Vilsack and Deputy Secretary Merrigan. He noted that the purpose of the briefing was both to report on the outcomes at the last plenary session and to seek guidance from them as to how to move forward. He reported on salient features of the plenary session: the reports of the working groups, the panel discussion on how industry manages unintended low-level GE presence, the existing divisions within the AC21 on the need for a compensation mechanism, and the efforts to explore areas of agreement. The Secretary thanked the Committee for their work, reiterated his support of committee’s thinking around grower education, stewardship etc. The Secretary was not surprised with the outcomes of the discussions to date, but reiterated his hope that AC21 could provide its best thinking on compensation mechanisms. He had come into the meeting fairly well informed about dynamics of the meeting. His expectations remain high that the AC21 will nonetheless respond to its 3-point charge, and to demonstrate that agriculture as a community can work together. He noted that not reaching agreement is itself a statement but it’s the wrong statement. The Secretary is still looking to the AC21 to identify a preferred compensation mechanism, recognizing that it is also important that whatever that mechanism is, it must be a mechanism that does not further divide agriculture, and that recognizes that everyone benefits from coexistence. He expressed the view that it may not be necessary to establish triggers to define a compensation mechanism and working on such triggers may not be the best use of AC21’s time. He thought it would be fine for the AC21 to work through some hypotheticals around such mechanism, taking into account sensitivities among different interests on the AC21. He expressed the view that the Committee needs to do best job it can with the data it has, and can establish context around its report in a preface address topics like prevention, stewardship, etc. Dr. Schechtman added that the Secretary reiterated that if the AC21 cannot advance solutions to this problem, solutions will likely fall to the courts, which might not be the best venue to come up with solutions that take into account the realities of agriculture.

One WG member requested clarification on the idea of “hypotheticals.” The Chair suggested that the committee might proceed with the assumption that there was a pool of money to be devoted to compensation, regardless of where it came from, and then ask what a compensation mechanism might look like. One might assume that the pool of money came from different sources, then look at each potential mechanism and see how it might function. Perhaps such an exercise would lead to a little more clarity. Another WG member noted that setting up a system to pay people after there is a problem doesn’t solve the problem. Dr. Schechtman noted that the discussion of such mechanisms might be only part of a report. One WG member indicated that she was not optimistic that committee members would break out of established positions but thought that examples might be useful.

In the context of greater inclusion of farmers that might experience GE-presence-related risks, Dr. Schechtman wondered whether there might be a way to expand the group of farmers who might be eligible for compensation. One WG member noted that GE producers also might potentially be affected by the unintended presence of GE crops carrying new functional traits that change the properties of the commodity they intend to produce. The Chair noted that the Secretary had indicated in his briefing that he saw the committee’s discussions to be broader than “GE versus organic,” so that such an expansion would be consistent with that thinking. A member noted that all producers have an interest in achieving greater purity in their production, and noted that Japanese buyers have suggested to him that they are contemplating sourcing their soybean purchases from sources other than the U.S. because of their belief that the U.S. is not doing enough to address purity concerns.

A WG member noted that to reach consensus around a response to the Secretary’s charge, confidence and trust among AC21 members and with senior officials will be very important. She noted, however, that labeling unintended GE material detected in organic products as contaminants (as was done in the recent U.S.-EU organic equivalency agreement) wasn’t helpful in this regard. Another member suggested that this sensitivity just points to the overall polarization on GE presence and that the term can be interpreted in different ways. The previous member noted an industry concern that even though Secretary Vilsack has charged the AC21 to lead from the middle, some members are concerned that not all the relevant issues are on table. She noted that some committee members are using other avenues outside the committee, including lawsuits, to bring independent pressure on USDA and various industry sectors on various aspects of the use of GE crops, and questioned the resolve of all parties to use the AC21 forum to make progress. She questioned, in the face of the various legal actions, what the expectations of USDA were in terms of impacts from the establishment of a compensation mechanism. Dr. Schechtman replied that there was certainly no expectation on the part of USDA that anything that the AC21 might recommend might eliminate all lawsuits, but that anything that might be seen as a constructive step forward, that might lower the temperature of the conversations around coexistence, would be seen as progress. Another WG member expressed his concern that without some progress, he could imagine that there could be farmer versus farmer lawsuits around coexistence. He noted that he had heard some parties mention the concept of “infringement of air rights” pertaining to their farms.

The Chair noted that the Secretary realizes that it is unrealistic to expect to resolve everything in the AC21’s report, but that developing a report forces a public conversation about these things and sets the table for future discussions. He suggested that the committee’s analysis would need to be structured to say, “if you want to have a compensation mechanism, here’s what it might look like… And here are a set of other things that will need to be addressed.” He cautioned WG members of the need to keep adjusting expectations and realize that the committee won’t deliver the perfect answer. In his view, that was okay. The report could identify what is needed to be done, provide some of the answers, and describe where further discussion will be needed.

Dr. Schechtman then inquired about WG members’ views on the prospects of obtaining additional new relevant data on the size and scope of risks. One WG member noted that he had spoken with Dr. Nicholas Kallaitzandonakes, who is in the process of writing up a very relevant study for publication, and that he has gotten a rough commitment from him to make the data available before the next AC21 plenary session. Dr. Schechtman noted that he had also talked with Dr. Kalaitzandonakes, who had indicated that the hold-up is in satisfying some data sources that their identities will be adequately protected. Another WG member noted that in Dr. Kalaitzandonakes’ presentation to the AC21 two meeting ago, there was mention of a mandatory program in Brazil relating to coexistence and asked whether USDA could reach out to the Brazilian government to get more information about that program and any data on its impacts. Dr. Schechtman indicated that he would talk with senior officials to make sure there was no problem with that request, and, assuming that were the case, would reach out to Brazilian authorities for such information. There was also question about the status of data gotten by the AC21 in the case of Canadian canola management for unintended GE presence. It was noted that the committee had obtained a general report of the practices adopted and the resulting effectiveness of managing the problem.

Dr. Schechtman noted that he had had a conversation the previous day with Dr. Catherine Greene from USDA’s Economic Research Service. She had noted that ERS is beginning to reach out to non-GE and organic companies that perform testing in order to get a better handle on economic losses from a broader swath of industry. Dr. Schechtman indicated that he had explained to Dr. Greene the concern on the part of some on the AC21 that the data they had examined addressed testing-based shipment rejections, not actual losses. He also noted that as defined in the committee’s charge, losses mean loss of premium, not expenses incurred as a cost of doing business, e.g., testing costs and the costs of planting buffer rows. Dr. Greene noted that it would be very difficult to get specific information on actual losses without extensive farmer interviews, but that doing a little of that might be possible. Dr. Schechtman noted that he had suggested to Dr. Greene that her survey of facilities that accept and test grain might be able to provide a minimum bound for the amount of losses that have been incurred because they might be able to document some shipments that, having been rejected, were purchased by them at a lower value or we diverted by them into a general commodity stream administered elsewhere. Dr. Greene indicated that it should be possible to ask about the quantity of such consignments. One WG member noted that it might be difficult to sort out such data.

Dr. Schechtman asked the WG whether there were any other types of data requests that it thought the AC21 might recommend to USDA on the topic under discussion. Some WG members thought that there might not be other data requests that should be made to USDA. One WG member suggested that it might be interesting to get data on unintended presence resulting from new recently deregulated crops, such as GE alfalfa. Dr. Schechtman requested clarification as to whether the issue being raised referred to the purity of seed of non-GE varieties of such crops and the conversation turned to whether there is any data on standards that companies use for seed that they market as “non-GE”. Dr. Schechtman suggested that it might be very difficult to get such confidential business information from companies. He recommended in any case that questions about seed purity would be better directed to the National Genetic Resources Advisory Council (NGRAC), the membership for which has just been announced. One WG member noted that “non-GE seed” has different meanings to different producers, ranging from 0-1% GE content. One major seed producer (both GE and non-GE) has made a decision a few years ago that they can no longer meet EU requirements for non-GE seeds for U.S.-produced seeds and has gone outside the U.S. to produce such non-GE seed. He also noted that there is no uniform standard for the meaning for non-GE seed even within the EU. He also asked whether USDA would distribute information about the members chosen for the NGRAC, and Dr. Schechtman said that he would find that information and distribute it.