**ADVISORY COMMITTEE ON BIOTECHNOLOGY AND**

**21ST CENTURY AGRICULTURE**

***Potential Compensation Mechanisms Working Group Conference call—February 23, 2012***

*Conference Call Summary*

A two-hour conference call was held, with Working Group (WG) members Douglas Goehring, Barry Bushue, Laura Batcha, Jerry Slocum, Brian Endres, and Michael Sligh participating. Michael Schechtman, Executive Secretary, AC21, facilitated the conversation. Two AC21 members who were not members of the working group, Angela Olsen and David Johnson, also listened in on the conversation. The goals of call were to continue reviewing and discussing information provided by WG members evaluating characteristics of potential compensation mechanisms which had been compiled from them by Dr. Schechtman and to identify a rapporteur for the WG’s report at the March 5-6, 2012 AC21 plenary session.

At the outset of the call, Dr. Schechtman verified that WG members agreed that the previous WG summary was adequate and reminded member of the need to put aside the “who pays?” question in their discussions.

The WG began by discussing potential impacts of the three potential compensation mechanisms on litigation and potential litigants. Some WG members expressed the view that a crop insurance model would likely cut down on litigation. One WG member noted previous discussions referencing the potential that insurers who had to pay out GE-related claims might seek to litigate against farmers or others that they believed were responsible for the unintended GE presence that caused the loss. He indicated that instances of private agricultural insurance providers attempting to recoup their losses on policies that are but underwritten by the Federal government are extremely rare. In Texas and North Dakota, the biggest users of crop insurance, this does not happen. Two WG members supported this observation, but one other WG member noted that there still might be other types of legal actions that might be taken by groups or individuals, that might still be pursued, depending on the scope of coverage. He noted that some legal actions taken around, for example, the scope and adequacy of APHIS oversight of certain GE organisms, might be unaffected. Another WG member replied that it would be impossible to develop a compensation mechanism that would resolve all potential issues.

With respect to potential impacts on litigation and potential litigants of a compensation fund mechanism, one WG member noted that such a mechanism could make a claimant “whole”, it would eliminate the incentive for litigation. In response, another WG member noted that insurance or compensation never makes anyone “whole:” to do so invites abuse, fraud, and misuse, so some risk is always borne by famers. How a compensation fund is established and implemented, including who would administer and pay for it, will determine if there is litigation around the fund itself, perhaps by the potential funders. Another WG member expressed a view that it would have been better to have worked out all these details prior to the deregulation of GE crops, so that the current period of crisis could have been avoided.

With respect to a risk retention group compensation model, several WG members felt that there would likely be a significant decrease in litigation under that approach. It was explained that it offered a means for individuals to insure their own crops in the event of harm or damage. Because of the probable great difficulty in assigning blame and liability, this self-insurance approach would work better. Another WG member, however, noted that this approach would not be attractive to those seeking to protect identity-preserved crops, especially organic crops, in that it would just add costs to their narrow margins. Some seed producers might, however, find this useful. There was additional discussion of whether the tool would, in fact, be advantageous, and whether the underlying question was not the protection of their crops and their market price, but rather a desire to pass along all costs to technology developers.

One member noted current frustrations with the application of current forms of crop insurance for organic agriculture, under which there are specific surcharges, even though compensation is only provided based on the market prices for the commodity counterpart crops. It was noted that this is a problem with all crop insurance for identity-preserved crops. The fact that participants in a risk retention group would in essence be able to develop their own insurance product was noted. Another WG member noted that the broader the insurance coverage, the higher the premium will be. One other WG member remarked that because de facto thresholds for GE presence in some markets are so low, premiums would be high for them. Another member responded that the higher profit possibilities in those markets imply higher risks, and a risk retention group model would provide an opportunity for farmers to make logical choices and protect themselves. Such a model might even be of some interest to certain GE crop growers. An observer noted that part of the complexity of the current situation has arisen because of the increasingly sensitive molecular tests for GE detection. For some crops, like GE alfalfa, seed producers can have difficulty in producing a crop of adequate purity because of the biology of the crop, and therefore might find a risk retention group useful for their interests as well.

The WG then turned to discussion of incentives for development of upstream technologies and practices to prevent risk. One observer noted that in terms of “upstream technologies,” if new genetic tools were what were being considered, such products, if developed, may have some significant drawbacks. For example, they may add significantly to costs (e.g., because of patenting) and may only work for some crops. The WG was reminded that their earlier discussions of crop insurance mechanisms considered two types of mechanisms, one property-based and one liability-based. One WG member offered the view that a property-based mechanism would not provide incentives for upstream technology developments, but that liability-based insurance would provide incentives for farmers planting GE crops and technology providers to lessen their potential liability. Another WG member, however, thought that when a farmer purchases insurance, the entity from which he buys that insurance is likely to require certain steps to be taken to prevent risk. One other WG member, however, noted that even though best management practices are already recommended and in effect for the most part, they have not proven adequate, and they are expensive to implement. Dr. Schechtman provided a brief impression of some of the discussions in WG 4 around the issues of market based compensation and contractual responsibility for managing risk. Another WG member noted that how such compensation mechanisms are implemented could have overall impacts on the development of technology in general and that undesirable messages about support for technology may be sent. With regard to a compensation fund mechanism, apart from consideration of these overall impacts on technology development, implementation of such a fund would likely incentivize the development of risk mitigation tools.

The WG then discussed potential impacts on trade relations upon adoption of the three potential compensation mechanisms. With respect to a crop insurance approach, some members thought that implementing such an approach would have little impact on trade. One member, however, cautioned that adoption of compensation approaches will send a message to other markets and could become an issue in trade talks. With respect to potential impacts of a compensation fund on trade relations, some members felt that the effect would be neutral, but other members wondered whether instituting such a fund would send a signal to purchasers of U.S. organic and non-GE products that we have a problem in our production. This might be especially relevant for established customers. Another WG member, however, thought that it would have the opposite effect, reassuring our trading partners in GE-sensitive markets that steps are being taken to ensure containment. The overall alternative approach of putting better management schemes and practices in place, was raised. This would entail improved communication between farmers. One WG member noted, however, that in the absence of “teeth” in ensuring that management requirements are met and providing financial incentives to strengthen those requirements, the problem will not be solved.

There was very brief additional discussion on impacts of the three mechanisms on the overall rate of technology development and use. One member noted that any mechanism that strengthened GE containment and identity preservation could drive innovation in the field of classical plant breeding by ensuring that production of new varieties thus developed would be able to be successfully produced. Another member offered the view that ultimately, the decision on the “who pays?” question will likely have a greater impact on technology development than the type of compensation mechanism adopted.

Finally, the WG selected Jerry Slocum as the rapporteur to present the WG’s discussions at the March 5-6, 2012 AC21 plenary session.