

1. Cabinet Paper on the Ad Hoc Open-ended Intersessional Working group on Article 8(j) and Related Provisions of the Convention on Biological Diversity

Office of the Minister of Foreign Affairs

Chair,  
Cabinet Business Committee

**WORKING GROUP ON ARTICLE 8(J) AND RELATED PROVISIONS OF THE CONVENTION ON BIOLOGICAL DIVERSITY: NEW ZEALAND POSITION**

**Proposal**

1 [Information not related to the OIA request]

**Executive Summary**

2 The fourth meeting of the Article 8(j) Working Group is to be held in Spain in January 2006. Article 8(j) concerns the protection of traditional knowledge of indigenous and local communities relevant for the conservation and sustainable use of biological diversity, and encourages the equitable sharing of benefits arising out of the utilisation of this knowledge.

3 The Working Group will consider a number of issues that will be of interest to New Zealand, including elements of *sui generis* systems of protection for traditional knowledge, criteria for access to funding for indigenous and local community groups wishing to attend CBD meetings, and potential socio-economic impacts of genetic use restriction technologies (GURTs) and, in particular, a proposal for an interim moratorium on *sui* technologies.

4.46 [Information not related to the OIA request]

**Genetic Use Restriction Technologies (GURTs)**

GURTs comprise a suite of genetic modification technologies that allow the activity of different genes to be turned on or off during the life of a plant. There are no commercial uses of plants using this technology anywhere in the world. The item on GURTs is an unusual and, in most respects, inappropriate item for the Article 8(j) Working Group. It was referred to the Working Group by the COP on the recommendation of the CBD's scientific advisory body, the SBSSTA, after an ad hoc expert

advisory group<sup>1</sup> and then the SBSTTA itself were unable to reach agreement on proposed recommendations regarding the development of regulatory frameworks for field-testing and commercial use of GURTs.

The COP has invited the Working Group to consider the potential socio-economic impacts of GURTs on indigenous and local communities. The focus of attention is likely to be on whether the COP should endorse the development regulatory frameworks not to approve GURTs for field testing and commercial use and to impose a moratorium on the technology.

[withheld under OIA s6(a) & s9(2)(f)]

49 Officials consider this move to restrict the use of GURTs generally to be misconceived:

- It assumes that all GURTs are harmful whereas New Zealand recognises that like other modern biotechnologies, GURTs are not inherently good or bad.

- The drive to restrict all GURTs is motivated by concern about a particular technology that can make seeds sterile so that they cannot be used in subsequent generations unless the genetic sterility switch is deactivated. However, this technology, dubbed "terminator technology" by NGOs, is only one example of GURTs technology. Other applications involve changing gene activity without causing seed sterility. Furthermore, sterility of plants and saving and replanting of seeds is not solely a GURT's issue. For example, the production of hybrid maize varieties through traditional breeding involves the production of hybrid seed which cannot be saved and replanted effectively.

The Royal Commission on Genetic Modification recommended that sterility technologies be one tool in the strategy for New Zealand to preserve opportunities, especially for cross-pollinating crops (Recommendation 13.4).

The risks and benefits of GURTs should be considered on a case-by-case basis as recommended by our Royal Commission and implemented by the Hazardous Substances and New Organisms (HSNO) legislation. A moratorium on GURTs could prevent access to the information required to assess whether the

<sup>1</sup> Ad Hoc Technical Expert Group (AHTEG) on the Potential Impacts of Genetic Use Restriction Technologies (GURTs) on Smallholder Farmers, Indigenous and Local Communities and Farmers' Rights (UNEP/CBD/SBSTTA/9/INF/6)

technologies are safe. Contained field trials of new GURTs may be required to gain the necessary information to assess fully their potential impacts on indigenous and local communities and farmers' rights.

Currently, New Zealand is not using GURTs in the field.

[withheld under OIA s6(a) & s9(2)(f)] many of those supporting the moratorium will be proposing its long term or permanent application.

[withheld under OIA s6(a) & s9(2)(f)]

52 It should be noted that New Zealand's position on the moratorium is likely to receive considerable attention. New Zealand's support of Canada's raising procedural questions and querying whether there is already a moratorium on GURTs attracted strong criticism from environmental NGOs and one New Zealand political party during the last CBD SBSTTA. (Some interest groups assert that CBD Decision V/5 (2000) amounts to a 'de facto moratorium' on the use of GURTs. We do not consider that this Decision amounts to a binding moratorium.) The fact that the Article 8(f) Working Group brings together pro-indigenous and anti-GM views makes this forum highly valuable.

53 Domestic criticism, particularly from the anti-GM campaign, will be intensified if New Zealand were to go as far as to block consensus on a moratorium recommendation.

[withheld under OIA s6(a) & s9(2)(f)] the delegation should be instructed to alert Wellington in advance of final action in the Working Group so that Ministers may be briefed and instructions confirmed.

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54-58 [information not related to the OIA request]

**Further comment**

59 As has happened at other CBD meetings, it is possible that the delegation may have to take issue with and even to oppose proposals put forward for adoption by the Working Group because they conflict with existing New Zealand policy or constrain the development of future policy options.

59(2)(5)

60-65 [information not related to the OIA request]

**Recommendations**

66 It is recommended that the Cabinet Business Committee:

1-4 [information not related to the OIA request]

**General stance of delegation**

5 Agree that the New Zealand delegation to the Working Group meeting should:

5.0 Be prepared to engage in discussions on the implementation of Article 8(b) and related provisions to protect New Zealand's interests in the issues under discussion and, where those provisions are consistent with New Zealand's interests, to assist the implementation of those provisions in practical and meaningful ways, and to that end should:

(i) make positive interventions to present existing Government policy;

(ii) promote positions that are consistent with New Zealand's approach in other international forums, including the United Nations General Assembly and related bodies, including the negotiations on the DDRIP, and the WTO;

5.2 Be in listening mode on items that fall outside existing Government policy but where required seek language that as a minimum recognises that any new international guidelines or other guidance elaborated by the Working Group would be subject to adoption by States through national legislation; and

5.3 Refer back to Wellington any proposals being considered for adoption by the Working Group that appear to conflict with New Zealand's other international commitments or domestic law or policy or may lead to commitments that may drive or limit domestic policy, or which may adversely affect New Zealand's interests in other international forums.

6 Agree that the coordination of any further instructions to the delegation should be through the Ministry of Foreign Affairs and Trade in consultation with the Department of the Prime Minister and Cabinet, and other interested departments.

7-11 [Information not related to the OIA request]

#### Genetic Use Restriction Technologies (GURTs)

12 Note that the Working Group will consider the potential socio-economic impacts of Genetic Use Restriction Technologies (GURTs) on indigenous and local communities.

13 Note that environment NGOs are calling for an international moratorium on the use of GURTs, and that this is not consistent with the New Zealand approach that the risks and benefits of such technology should be considered on a case-by-case basis, as covered in the Hazardous Substances and New Organisms legislation.

14 Note that while the focus of NGO concerns is on seed sterility technologies, the effect of the proposed moratorium would be to prevent the use of a much wider range of GM technologies that involve the activation of genes.

s9(2)(j).

[withheld under OIA s6(a) &

16 Agree that the delegation:

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s6(a) & s9(2)(f)]

[withheld under OIA]

[withheld under OIA s6(a) & s9(2)(f)]

[withheld under OIA s6(a) & s9(2)(f)] should report to Wellington before final action is taken so that Ministers may be briefed and instructions confirmed.

17 Note that New Zealand has been subject to criticism by international and domestic NGOs and political parties for its positions in the CBD on GURTs, and that this is likely to continue during the Working Group meeting.

#### Working Group Papers

18-19 [information not related to the OIA request]

Rt. Hon Winston Peters  
Minister of Foreign Affairs

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RELEASED

2. MFAT Final Report on GURTS concerning the Ad Hoc Open-ended Intersessional Working group on Article 8(j) and Related Provisions of the Convention on Biological Diversity.

Final report

Convention on Biological Diversity: Article 8(j) Working Group, Granada, 23-27 January

Agenda Item 10: Potential socio-economic impacts of genetic-use restriction technologies on indigenous and local communities.

16 NZ worked well. [withheld under OIA s6 (a)]. in the contact group to get references to the Rio Principle thus clarifying the precautionary approach. We supported others to secure the inclusion of "case-by-case analysis" consistent with domestic policy. The negative emphasis was weakened by the deletion of a reference to negative impacts of GURTS. The final recommendations represented a better result than the SBSTTA 10 outcome on GURTS.

[withheld under OIA s6(a) & s9(2)(f)]

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