**ADVISORY COMMITTEE ON BIOTECHNOLOGY AND**

**21ST CENTURY AGRICULTURE**

***“Who Pays?” Working Group Conference call—April 10, 2012***

*Conference Call Summary*

A two-hour conference call was held, with Working Group (WG) members Paul Anderson, Daryl Buss, Angela Olsen, Leon Corzine, Melissa Hughes, Darren Ihnen, Philip Miller, and Robert Uram participating. Michael Schechtman, Executive Secretary, AC21, facilitated the conversation and the AC21 Chair, Russell Redding, also participated. Two other AC21 members who were not members of the working group, David Johnson and Jerry Slocum, also listened in on the conversation. The goals of call were to: consider a readout by the AC21 Chair from the briefing with the Secretary and Deputy Secretary on the outcome of the last AC21 plenary session; continue examination of all potential principles under consideration as guides to USDA in the choice of who should pay for a compensation mechanism, should it be decided by USDA that one is warranted; and prioritize agreed-upon principles

Mr. Redding provided a summary of the meeting that he and Dr. Schechtman had had with USDA Secretary Tom Vilsack and Deputy Secretary Kathleen Merrigan, at which the outcomes of the March 5-6, 2012 AC21 meeting were summarized and discussed. The report to the Secretary and Deputy Secretary focused on the output of the working groups (WGs), the panel discussion on how the private sector is managing coexistence, and the exploration of areas of agreement among AC21 members during discussions. It was noted that the Committee is divided roughly down the middle around the need for a compensation mechanism. He noted that the Secretary was not surprised at the current state of agreement among members, understood that all three elements of his charge to the group would need to be addressed in a reasoned response to it, but reiterated that he still hoped that the Committee could respond to charge. The Secretary expressed his continued appreciation to the AC21 for its hard work, but noted that his expectations remain high that the group can help him advance the dialogue and demonstrate that all sectors of agriculture can work together to advance coexistence. He indicated to Mr. Redding and Dr. Schechtman that not reaching agreement would be a statement in itself, but the wrong statement. He acknowledged that identifying a preferred mechanism might require numerous qualifications about that choice. He agreed with the statement made at the last plenary that whatever mechanism is identified, it should not be one that further divides agriculture. He noted that it may not be necessary to establish thresholds or triggers to establish a compensation mechanism. Discussing triggers might not be the best use of AC21’s time, and the marketplace might help determine how triggers might be set. He reiterated his view that this is the right group to have these discussions, as uncomfortable as they may be. He also noted that the issue of co-responsibility for coexistence is still a key one. Dr. Schechtman added that the Secretary had also emphasized that if there were no agreement, the issue would fall to the courts, which might not be the best way to make agricultural policy.

WG members asked for clarifications about a number of points made in the briefing. One WG member asked if the Secretary had provided any further indication of his thinking about how a coexistence mechanism might decrease litigation. Dr. Schechtman noted that the topic wasn’t discussed in any detail, but that there was no expectation that lawsuits could be entirely eliminated. However, decreasing the amount of concern around the overall issue of coexistence was the goal. The AC21 Chair added that the issue of coexistence needs to be considered in its broader context, not an organic versus GE discussion. One WG member noted that as a conventional farmer, he gets along well with his neighbors and the issue is contentious only in Washington DC. The Chair noted that however well most farmers may get along, there exist pockets of pain for which a public response may be necessary.

One WG member raised the issue of the language used in the organic equivalence agreement between the U.S. and the EU in which GE materials that may be present in organic products were referred to as “contaminants” and about the desirability of getting information from USDA about future such developments or initiatives before they are agreed upon. It was noted that the concerns that had been raised about the language in the agreement had been noted to senior USDA officials and to leaders of the National Organic Program. Another WG member inquired whether there had been any discussion about making recommendations as to stewardship practices that might promote coexistence and whether the Secretary recognized the distinction between leaving them as voluntary recommendations or making them mandatory as an important one. The Chair responded that the discussion did not get down into that level of detail. Dr. Schechtman added that the point had been made that providing a response to the third item of the charge, i.e., addressing stewardship measures, was not a substitute for addressing the compensation mechanism question. A WG member asked whether there had been additional discussion about the deadline for a response to the Charge, and the Chair noted that the expectation was still that committee would produce a final response to the Secretary’s charge by sometime this Fall. Another WG member asked whether the Secretary was sympathetic to the desire to gather more data on economic losses before making a recommendation, and Dr. Schechtman replied that the Secretary had acknowledged from the outset that he knew the data on losses would be incomplete, but that he had not felt that that fact should prevent the committee from completing its work. He added that had the issue not been recognized as a problem, the AC21 would not have been revived. The Secretary did not specifically identify places where new data could be acquired.

The WG then turned to brief consideration of each of the remaining suggested principles that might be used to guide the decision on who pays for a compensation mechanism, should the decision to establish such a mechanism be made. The list of potential principles that had not yet been discussed is the following:

* Autonomy
* Autonomy and farmer choice
* Basis on reasonable contracts
* Coequal status of science and values
* Community
* Contractual responsibility
* Proportionality
* Encouragement of good neighbor relations.
* Equity
* Equity in treatment of different risks
* Equality in treatment of (different) grower segments.
* Fairness
* Flexibility
* Funding by the parties responsible for the new cost
* Inclusiveness
* Preservation of choice
* Reliance on science
* Shared responsibility
* Should be designed to minimize the need for compensation
* Voluntary participation
* Avoidance of policy or regulation that discourages innovation.[[1]](#footnote-1)

The discussion proceeded as follows:

“Autonomy”, “autonomy and farmer choice,” and “preservation of choice” were thought to be redundant, and were collapsed into one element, “Autonomy and farmer choice.” One member explained the meaning of the principle as “farmers’ ability to choose the cropping system that suits their needs, subject to market forces, costs and benefits, and individual farm constraints. One WG member expressed some concern that reference to “market forces” was code for a “majority rules” situation. The originator of the meaning of the principle indicated that the desire was for all production methods to thrive, with the recognition that not everyone can grow whatever they want. The other WG member expressed the view that many organic farmers grow crops organically not in direct response to market forces but because they believe it is the way crops should be grown. She acknowledged that organic farmers are not trying to change the ecosystem they are in and grow crops unsuited for that ecosystem. After this discussion, “autonomy and farmer choice” was agreed upon as a principle to be brought forward.

“Basis on reasonable contracts” was agreed upon as a principle to bring forward.

“Coequal status of science and values” was thought to be ambiguous and in need of context, and was removed from the list.

“Community” and “Encouragement of good neighbor relations” were thought to be essentially equivalent, except that “encouragement of neighbor relations” was seen as less ambiguous. “Encouragement of good neighbor relations” was accepted and “Community” deleted.

“Proportionality” was thought to be ambiguous, and different members had different understandings of what it might mean, e.g., proportionality to the amount of risk introduced, to field size, or something else. Because of the lack of clarity, it was struck from the list.

“Equity,”, “Equity in treatment of different risks,” “Equality in treatment of (different) grower segments, and “Fairness” were all thought to be related. With the explanation from a WG member that “Equity” could be interpreted to mean that “the party introducing a new crop should be responsible for the new costs incurred,” there was no consensus on its inclusion. (This also resulted in elimination of the element “Funding by the parties responsible for the new cost” further down the list.) “Equity in treatment of different risks” was explained by one WG member as connoting that having GE presence does not insulate farmers from risk and such presence should be anticipated in contracts. Treatment of such risks should not be considered as unique relative to treatment of other risks, e.g., pests, invasive species, and quality standards. With this explanation, there was no consensus on inclusion of “Equity in treatment of different risks.” “Fairness” as a broad concept was recognized as a principle upon which all ought to be able to agree, but some WG members thought that it was too ambiguous to be useful. One WG member suggested that the Secretary ought to be able to decide what is fair, and that WG members ought to be able to agree on its inclusion at a high level. The suggestion was made that “Fairness” replace the word “Equality” in “Equality in treatment of (different) grower segments,” and further discussion led to the formulation “Fairness in treatment of different production practices, without a preference for one practice over another,” which was agreed upon.

“Flexibility” was thought to be unclear and was stricken from the list.

“Inclusiveness” was also thought to be unclear, with the possible interpretation that everybody is required to pay, and was stricken from the list.

“Reliance on science” was modified to read “Based on sound science” and was agreed upon.

“Shared responsibility” was discussed at length. The question was raised as to whether the phrase would, in fact be a subheading or an implied meaning for “coexistence.” One WG member suggested that the concept needed to include recognition of all the measures that the seed and biotechnology industries and all farmers are taking to manage coexistence. Dr. Schechtman inquired whether that interpretation would imply that there were no additional responsibilities on anyone’s part. The WG member who had spoken indicated that there is always more that can be done on a voluntary basis, and pointed to the successful example of canola management in Canada undertaken by the industry to manage their unintended GE presence problem. Another member agreed that “shared responsibility” applied in the broad context, but may not apply in the “who pays” discussion. He raised the distinction between economic harm or loss versus new introduced costs. Another WG member noted that “responsibility” can be interpreted in different ways, as narrow “legal responsibility” and as “shared stewardship.” Another WG member noted that in the “shared stewardship” context, it was an extension of “Encouragement of good neighbor relations.” Another WG member reminded participants that in the context of the “who pays” discussion, there would be the need to address whether there would be any shared cost structure. If not, then the element should be deleted. In her view, it would not make sense to include it if all costs would be borne by the same entities bearing them now. Another WG member suggested that making a blanket decision for who should pay under all circumstances would be very difficult. Another member noted that if mandatory stewardship measures are not put in place, establishing a compensation mechanism would be required to address the problem. Another WG member asked whether a compensation mechanism would be intended to cover only losses or the costs of doing business as well. Dr. Schechtman explained that the Charge referred specifically to economic losses alone, but noted that addressing element #3 of the AC21’s Charge could also result in changes related to the cost of doing business.

Two members noted the importance of contracts in these discussions. One WG member noted that if there is no shared responsibility, then one party bears all the costs. He noted that organic production requires long-term commitment and imposes certain burdens, and organic farmers cannot simply switch their production practices in response to market forces. Another WG member noted that GE crops are roughly 90% of all corn and soy production, so that organic production is not encroaching on GE production. Dr. Schechtman noted his impression from the discussion that “shared responsibility” seemed like an agreed upon concept for coexistence in general, but not an agreed upon concept for “who pays.” The Chair noted that the Secretary had referred to the situation where two GE producers would need to address coexistence concerns between the two of them, and that the hope would be that each farmer would be responsible for his/her actions. He didn’t see how it was possible to move away from the issue of responsibility: including it enables the conversation about good neighbor relationships. One member indicated, however, that including it in the “who pays” principles was an approach he could not support. Another WG member noted that when he had in the past grown identity-preserved crops, he had borne all the associated costs, and that he had never seen any problems between farmers growing different types of GE crops. The potential issue of impacts of crops with new functional traits and responsibility in those circumstances was raised. One WG member thought this was a minor and hypothetical issue, and that it would be a dangerous track to conjecture on for products that may or may not exist over the next 20 years. He added that in situations to date, if in his production he was unable to provide enough buffer to his neighbor to provide adequate protection, then his neighbor might participate in his premium. He worried how broadly the idea of “shared responsibility” in this context would be construed. He further noted that in organic production, GE materials are prohibited in practice but are not prohibited substances. Another member clarified that the prohibition centers on intent to use the excluded practice and the challenge is to define what the “intentional” concept means. Organic certifiers are currently grappling with this issue. It was noted that regardless of whether a farmer may or may not lose organic certification as a result of GE presence in his/her products, markets for those products may be affected by that presence. Another member suggested that farmers would then be producing to an “organic plus” certification, and what might happen would not be loss of a market, but rather failure to meet a contractual obligation which had been taken on because of the economic incentive to sign such contracts. Another WG member noted that because the organic marketplace is so consumer-driven, participants need to work hard to meet consumer expectations. The reality is that the market is not as contractually based as one might think. The conclusion reached was that “shared responsibility” was agreed to as a “general subheading” for coexistence, but there was no consensus on including it as a principle to help guide a “who pays” decision. The Chair thanked all WG members for the important discussions, but raised the question as to how a “who pays” consideration could be structured without some kind of shared responsibility.

By the conclusion of the call, only the following potential principles have not yet been discussed:

* Should be designed to minimize the need for compensation
* Voluntary participation
* Avoidance of policy or regulation that discourages innovation.

The current list of principles on which there is consensus is the following:

* Clarity
* Autonomy and farmer choice
* Encouragement of good neighbor relations
* Fairness in treatment of different production practices, without a preference for one practice over another
* Based on sound science

1. Inadvertently omitted from the previous meeting summary. [↑](#footnote-ref-1)