

Report of the Eleventh Meeting of the CGIAR Private Sector Committee

The World Bank, Washington DC, USA
October 23, 1999

The 11th meeting of the CGIAR's Private Sector Committee (PSC) was held at the World Bank in Washington DC, USA on October 23, 1999 under the chairmanship of Sam Dryden. Members Claudio Barriga, Bachrinarayan Barwale, Wallace Beversdorf, Barry Thomas and Florence Wambugu attended. Robert Horsch and Seizo Sumida could not attend. Selçuk Özgediz and Waltraud Wightrian represented the CGIAR Secretariat.

The committee also interacted with Dr. Per Pinstrup-Andersen, Director General of the International Food Policy Research Institute (IFPRI) and incoming Chair, Center Directors Committee (CDC).

Agenda:

1. *Opening Session*
2. *The Impending Impasse in Advanced Breeding and Use of Proprietary Technology*
3. *Other Business*
4. *Future Meetings*

1. **Opening Session**

Sam Dryden opened the meeting by welcoming the new members to the Private Sector Committee (PSC). Members adopted the proposed agenda.

Selçuk Özgediz provided a brief history of the PSC since its founding in 1995, concentrating on the committee's *raison d'être*, and the development of its mission statement and work program. He then explained that the structure of the partnership committees had changed as a result of the findings of the Third System Review, and subsequent discussions by the CGIAR at ICW98 and the Consultative Council meeting last January.

During its last meeting in March in Hattersheim, Germany, the PSC had discussed these issues extensively (see Report of the Tenth Meeting for details) and made suggestions to the CGIAR about the committee's future role, composition, size, and working procedures. Members agreed that the PSC should provide policy advice to the CGIAR based on its members' experience of private sector views and practices. The committee has since been reconstituted, according to these suggestions. The PSC now consists of 8 members; 5 of whom were appointed recently: Barriga, Barwale, Horsch, Thomas, Wambugu.

For the benefit of the new members, Özgediz explained the committee's mode of operation, i.e.:

- Members are appointed by the CGIAR Chairman on a personal capacity for a 3-year (renewable) term
- Attendance at meetings is required
- Meetings are convened as and when needed, and based on a specific theme

- Participation in CGIAR meetings is welcomed
- Expenses are covered on request
- Committee Chair attends CGIAR meetings and reports to the Group
- Minutes are distributed to the CGIAR.

Özgediz provided a brief overview of developments in the CGIAR, and informed members of the outcome of the search for a new chair of the CGIAR's Technical Advisory Committee (TAC), and the CGIAR/NAS biotechnology conference that was held on October 21-22. The private sector was adequately represented, both as presenters and conference participants.

2. The Impending Impasse in Advanced Breeding and Use of Proprietary Technology

Dryden introduced the main theme for this meeting of the PSC, i.e., "The Impending Impasse in Advanced Breeding and Use of Proprietary Technology". This theme was a logical follow-up to the discussions held in previous meetings and the committee's concern that centers could easily face litigation if the proper licensed use of proprietary technologies (PT) is in question.

Understanding the impasse. The committee then analyzed the impending impasse, based on a recently conducted survey by ISNAR (published by CAB International¹). It appears that:

- 8 CGIAR centers are involved in breeding activities
- Centers use a total of 166 applications of proprietary technologies and materials
- For many applications of PT, written agreements were lacking and centers were unable to obtain clear knowledge or information regarding the type of IPR provided for a particular proprietary tool
- Even if Material Transfer Agreements (MTAs) were obtained, they normally only secure permission for research, not subsequent dissemination
- Centers could inadvertently infringe upon legal conditions regarding the dissemination of future products derived from these inputs (possibly as early 'down the road' as 2 years—*Dryden, personal information*).

The committee was concerned that the lack of clear legal arrangements may pose a 'contributory infringement' problem for CGIAR investors. It recommended that the System should urgently develop guidelines which could be adopted across the board.

Per Pinstrup-Andersen expressed his concern that the current public debate in Europe on genetically modified plants might spill-over to developing countries, resulting in reduced funding of biotech research, and impact export policies. Pinstrup-Andersen was particularly worried that further biotech research may be stalled and that new crops, dealing with Vitamin A and iron deficiency, drought or insect resistance etc. will no longer be produced. He noted the need to improve public awareness (based on best evidence) and concluded that CGIAR biotechnology research should develop products that the private sector is currently not interested in (e.g., varieties with traits of particular interest to small farmers or specific regions). Pinstrup-Andersen hoped that there would be a way whereby the CGIAR could collaborate with the private sector in releasing new varieties of particular interest to small farmers. This would facilitate the building up of markets that would be available for products produced by the private sector at some time in the future. Such an approach

¹ See Joel I. Cohen *et al.*: Managing Proprietary Science and Institutional Inventories for Agricultural Biotechnology, pp. 249-260 in: CAB International. 1999. *Managing Agricultural Biotechnology—Addressing Research Program needs and Policy Implications* (ed. J.I. Cohen)

could prevent 'flow-back' to the industrialized world and thus result in the private sector companies willing to permit dissemination.

Policy Implications. During the discussion it was pointed out that, in practice, such approaches may be difficult, even with best intentions on either side. Committee members pointed out that, for example, patents are individual documents that are governed by the laws of the countries in which they apply. In addition, titles to PT are not clear, and technology tools often involve sub-titles claimed by different companies. Also, several centers may work on the same commodity (e.g., IRRI, WARDA, CIAT and IITA carry out research on rice).

The PSC concluded that, at present, both bi-lateral and/or multilateral agreements between the private sector and CGIAR centers would be difficult to obtain. If the private sector was to provide royalty-free licenses for proprietary tools to benefit research that would help resource poor farmers, a 'waiver clause' would have to be included in the underlying agreements so that donating company could not be sued.

Ways to overcome the impasse. The committee explored several potential solutions to overcome the impending impasse, but there were flaws in each, i.e.:

- A 'foundation' could be created that could act as an intermediary between the private sector and centers, i.e., companies could provide royalty-free licenses to particular technologies to the foundation and centers could place their intellectual property.
Problem: patenting laws depend on jurisdiction; now 65, from 2002 onwards 130 countries will issue licenses/patents; ownership of technologies not clear in foreseeable future;
- Licenses could be based on geographic areas (market segmentation).
Problem: commodities are traded and may be exported from a particular area.
- Licenses for PT could be tied to end-users (subsistence farmers)
Problem: Few farmers are entirely disconnected from markets.
- CGIAR's stand on international public goods would need to be revisited, since this most likely acts as a barrier to access to technology. One possibility is to define a new category of goods, such as 'International Proprietary Goods.'

The PSC concluded that despite the uncertainties pointed out, fast action on the CGIAR's behalf was absolutely essential to avoid a serious risk of litigation. Centers should undertake a complete inventory of the PT used, find out who owns these tools, and determine what action is needed to be able to disseminate products.

Committee members agreed that there was a need to explore alternative organizational models to improve the efficiency of technology acquisition. The planned 'high level' dialogue (following preparatory meetings) between the Bank's president, the CGIAR Chairman and major CEOs would help in finding ways to move forward. The PSC would be ready to assist in setting up such a dialogue.

Public acceptance of biotechnology was considered another key dimension that required urgent action. The CGIAR could assist the private sector by providing public endorsements for biotechnology products and stress the common goal of ensuring food security and alleviating poverty in the developing countries.

Dryden agreed to discuss these issues in his meeting with the CGIAR Chairman.

3 Other Business

Nomination for the Genetic Resources Policy Committee (GRPC). The PSC nominated Dr. Bernard Le Buanec, Secretary General, FIS/ASSINEL, Switzerland, to represent the private sector on the GRPC.

Joint-sponsorship of case study on the impact of IPR on rice research. The PSC was invited by John V. D. Lewis of USAID to sponsor, jointly with the Global Forum, a workshop by IRRI and the Council for Partnership on Rice Research in Asia (CORRA). Using rice as a case study, the workshop is meant to offer an opportunity to dissect the management challenges of IPR at each step in the research and extension process through practical illustration. PSC and Global Forum representatives would work together in shaping the agenda and selecting the participants for this workshop. The PSC thought that this would be a good opportunity to demonstrate common goals and partnerships between the public and private sectors and accepted Lewis' invitation. *Action: Dryden.*

4 Future Meetings

The theme, date and place of the next meeting will be decided later.

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