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Monsieur Michael Fakhri

Rapporteur spécial sur le droit à l'alimentation

Haut-Commissariat des Nations Unies aux droits de l'homme

Palais des Nations

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Référence : AL CHE 2/2024/ 352-05-02-00-6549/2

Genève, le 23 mai 2024

Monsieur le Rapporteur spécial,

Nous vous remercions pour votre communication du 25 mars 2024.

L'objet de votre lettre portant sur les négociations des accords de libre-échange entre des pays tiers et les Etats membres de l'Association européenne de libre-échange (AELE), je vous prie de trouver en annexe une réponse conjointe des Etats AELE.

Je vous prie d'agréer, Monsieur le Rapporteur spécial, l'assurance de ma haute considération.

Le Représentant permanent de la Suisse

Jürg Lauber
Ambassadeur

Annexe:

- Réponse des Etats AELE



EUROPEAN FREE TRADE ASSOCIATION

Ref. 24-1009

Your ref.:
AL LIE 1/2024
AL ISL 1/2024
AL NOR 1/2024
AL CHE 2/2024

Geneva, 21 May 2024

Observations in respect of the letter from the Special Rapporteur on the Right to Food

Your Excellency
Mr. Fakhri,

As Switzerland currently serves as the Chair of the European Free Trade Association (EFTA), I am writing to you on behalf of the four EFTA States (Iceland, Liechtenstein, Norway, and Switzerland) in response to your letters of 25 March 2024. In your letters, you bring attention to information you received regarding free trade agreement (FTA) negotiations between the EFTA States and India, Thailand, and Malaysia, specifically with regard to the 1991 Act of the International Union for the Protection of New Varieties of Plants (UPOV). The EFTA States take due note of your letters, the important matters they address, and the concerns raised therein. As invited, we have gathered the following observations.

I trust you will understand that EFTA is not in a position to discuss the details of ongoing negotiations. However, I can assure you that EFTA has not made and does not make the accession to UPOV 1991 or the adherence to its substantive provisions a prerequisite for the conclusion of an FTA. Potential provisions on the protection of plant varieties in the FTAs are subject to negotiations, taking into account the situations and positions of the EFTA States and the different states with which they are negotiating. The negotiations are based on the respective domestic legislation on the protection of plant varieties of the EFTA States and partnering countries, and their different relationships to UPOV. The provisions in an FTA may or may not contain references to UPOV.

WTO Members, under the TRIPS Agreement, have to provide for the protection of plant varieties, either through patents or a sui generis system or a combination thereof. The UPOV Convention establishes such a sui generis system, through its two versions of 1978 and

1991, with the latest version now being the only one accessible to new members. Also, other sui generis PVP systems have emerged fulfilling this criteria.

EFTA has traditionally used, as a starting point for negotiations, a proposal to refer to the 1978 and the 1991 acts of the UPOV convention, reflecting the different situations in EFTA States.

EFTA fully acknowledges that the obligation under TRIPS does not have to be fulfilled by joining UPOV or by adopting the most recent (1991) act. In our FTA negotiations, we recognise the national legislation and priorities of partner countries that do not wish to accede to UPOV 1991. This goes for all of EFTA's negotiation partners, including Thailand and Malaysia. EFTA's approach is illustrated in the variations that exist in articles related to plant variety protection in its FTAs, such as the recently concluded agreement between India and EFTA, which does not contain any reference to UPOV, as correctly pointed out in your letter.

As regards the connections between formal and informal or between international and local seed systems, EFTA recognizes that these systems play an important role in ensuring food security, and in addressing environmental challenges, such as climate change, drought stress, salinity, or new pests. EFTA also recognizes the fact that many farmers, especially smallholders in developing countries, obtain their seeds through a variety of seed systems. The importance of this diversity of systems is also being addressed internationally with active participation from EFTA States, for instance in UPOV's Working Group on Smallholder Farmers and in the framework of the International Treaty on Plant Genetic Resources for Food and Agriculture which recognizes Farmers Rights.

It should be kept in mind that a number of international instruments contain provisions that are particularly relevant for the conservation and sustainable use of genetic resources and traditional knowledge associated to these resources, as well as for the sharing of benefits arising out of the utilisation of these resources or knowledge. Such instruments include the Convention on Biological Diversity (CBD) and its Nagoya Protocol, as well as the International Treaty on Plant Genetic Resources for Food and Agriculture.

For these reasons, EFTA's current practice is to propose a supplemental provision regarding the protection of genetic resources and traditional knowledge. The EFTA States find it important to implement the FTAs and applicable international agreements related to genetic resources and traditional knowledge in a mutually supportive manner and to reflect this in the provisions of the FTAs. EFTA States also undertake activities in their international cooperation that strengthen local seed systems and food security for the benefit of small holder farmers.

EFTA is convinced that diverse plant varieties from all mentioned seed systems are highly relevant to meet the different needs and priorities of farmers, to achieve food security and a more sustainable agriculture.

With regard to impact assessments, EFTA mandated an independent consultant to conduct a Sustainability Impact Assessment (SIA) for the FTA under negotiation between EFTA and Thailand. This represents the first time EFTA is conducting an SIA for one of its FTAs. The final report with the findings of this assessment should be published in the coming weeks. The SIA is comprehensive in scope and includes an assessment of environmental and social impacts, including human rights. It covers all relevant provisions of the prospective FTA, including those regarding the protection of IPRs. As part of the assessment, the consultant held extensive consultations with stakeholders in the EFTA States and in Thailand.

I trust that this information provides the clarifications sought in your letter.

Sincerely yours,

The Chair of the EFTA Council

A handwritten signature in blue ink, appearing to read "Erwin Bollinger", with a long horizontal flourish extending to the right.

Erwin Bollinger
Ambassador