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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

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ADDENDUM TO DOCUMENT C/37/15

REPORTS BY REPRESENTATIVES OF STATES AND
INTERGOVERNMENTAL ORGANIZATIONS ON THE LEGISLATIVE,
ADMINISTRATIVE AND TECHNICAL FIELDS

Document prepared by the Office of the Union

The Annexes I to IX to this document (in the alphabetical order of the names of the States in French) contain the reports from Argentina, Chile, Spain, Paraguay, Portugal, Czech Republic, Slovenia, the Food and Agriculture Organization of the United Nations and the European Union.

[Annex I follows]

ANNEX I

ARGENTINA

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

1.1 Amendments to the Law and Regulations

Adaptation to the 1991 Act of the Convention. The various departments of the Secretariat of Agriculture, Animal Husbandry, Fisheries and Food (National Seeds Commission and Seeds Unit) have been examining the subjects covered by the 1991 Act of the UPOV Convention, the issues raised by its practical application to the country and the various aspects that should be dealt with in the national legislation to be enacted with a view to the adaptation of our law to the provisions of this new international treaty.

Other amendments, including those concerning fees. In order to clamp down on the black market for seeds and regulate Resolution No. 35 of 1996 of the National Seed Institute (which lays down the requirements to be met to qualify for the “farmer’s privilege”) and determine the legal origin of the seed acquired, Resolution No. 52 of July 15, 2003, was enacted by the Secretariat of Agriculture, Animal Husbandry, Fisheries and Food; it places farmers who grow soya, barley and cotton under the obligation, when the Secretariat calls upon them to do so, to declare the quantities by variety of seed actually used or to be used for sowing in the growing cycle concerned, and to file the relevant documentation attesting the acquisition or origin of that seed, on pain of the imposition of a fine.

Legislation is in preparation with a view to an increase in the present tariffs.

1.2. Case law

A synopsis of administrative case law concerning the farmer’s privilege and variety denominations is submitted for inclusion in the UPOV website.

The administrative authority has moreover found for the first time for the lapse of a property title due to the breeder’s failure to supply a live sample with the same characteristics as those given in the description.

A legal proceeding that is now going on was started by a firm against the administrative authority seeking the invalidation of a property title relating to a two inbred lines of sunflower, on the grounds that the owner of the property title was not the breeder and that the lines were derived from another line owned by itself, not by the applicant firm.

Those interested in examining the details of the administrative case law of the former INASE can use either of the e-mail addresses cgiann@sagpya.minproduccion.gov.ar or rviola@sagpya.minproduccion.gov.ar

2. Cooperation in Examination

Work continued on the implementation of cooperation systems within the framework provided by UPOV, with the results of DUS tests being accepted from the offices of France, Germany and the Netherlands for ornamental species of foreign origin.

3. Situation in the Administrative Field

- Changes in administrative structure

On November 24, 2000, by Decree No. 1104, the National Executive disbanded the National Seed Institute (INASE), the self-contained body that had been set up by Decree No. 2817 of December 30, 1991, as the implementing body of Seed Law No. 20.247 and its Implementing Decree No. 2183/91.

Decree 1104/00 provided for the cessation of the functions of board members of the Institute and transferred its human, material and financial resources to the Secretariat of Agriculture, Animal Husbandry, Fisheries and Food.

In spite of the disbandment of INASE, its present organizational structure has been retained with five directorates; Registration of Varieties, Certification and Control, Quality, Legal Affairs and Administrative Services, and two coordinating bodies, Biotechnology and Human Resources, and the staff of each one of them.

A draft law for the reinstatement of INASE has now been tabled in Parliament on the initiative of the new political authorities.

- Changes in administrative procedures and systems

Since the disbandment of INASE, the duration of the administrative procedures for the renewal of property titles has lengthened on account of the centralization introduced.

These delays are due to the involvement of new entities in the processing work, especially a new legal unit for monitoring and administrative processing, while property titles are at present issued by the Secretary of Agriculture instead of by the President of INASE, as they were previously.

- Activities

In the technical field: In the course of 2002 and up to August 2003, property titles were granted in respect of 105 plant varieties. So far 1,631 plant varieties have been granted protection since the National Registry of Cultivar Ownership in Argentina started operating (1981). The distribution of these granted titles by group of species to which the various varieties protected by a breeders' rights system belong is as follows:

Cereals:	32%
Oil-bearing crops:	27%
Forage plants:	21%
Vegetable crops:	10%

Fruit species:	5%
Ornamental species:	3%
Industrial crops:	2%

In the course of 2003 applications were filed for varieties of species of which we have had no experience in this country to date, namely *Nierembergia linearifolia* and *Eucalyptus* L.; protection applications for these are currently being processed.

In the legal field: The former INASE has been working on the introduction of legal criteria for the implementation of the farmer's privilege, including the setting of fines among other things for violations of breeders' rights, and a comparative study has been conducted of the various laws relating to the farmer's privilege.

4. Situation in the Technical Field

The National Register of Cultivar Ownership is kept by the staff of the Varieties Registry of the Secretariat of Agriculture. The Registry has six technical staff responsible for DUS testing on the various groups of species.

Apart from that, this period was spent on the continued sowing of reference collection plots for the species wheat and soya, which had started in 1994 and 1996 respectively. In addition the species oats, barley, rye and dry bean have been included in the collections kept by the Registry with a view to verifying variety characteristics in the field. The sowing and the tests were carried out in the test fields of the Agronomy Faculty of the University of Morón by the technical staff of the Varieties Registry.

Work continued on the verification of DUS tests carried out by applicants on the species soya, wheat and maize (inbred lines). Inspections in the field were also carried out to determine the maintenance of varietal purity on varieties of wheat and soya.

The Varieties Registry has continued to work together with the Laboratory of Molecular Markers of the Quality Directorate on various aspects of the use of molecular markers and their potential for the DUS testing of soya and in the identification of the varieties under examination.

5. Activities for the Promotón of Plant Variety Protection

(a) Technical staff of the Varieties Registry took part in the Training Course on Plant Variety Protection for Latin American Countries organized and financed by the Government of Spain, UPOV and WIPO.

Staff also took part as speakers in the following courses:

(b) Workshop on the Use, Handling and Protection of the Native Germ Plasm of Patagonia, organized by INTA, the Government of Santa Cruz Province, the Government of the Province of Tierra del Fuego, the National University of Southern Patagonia and the Southern Center for Scientific Research – August 2003.

- (c) Postgraduate course on Electrophoresis and Identification of Wheat and Ryegrass Varieties, given at the National University of Entre Ríos – Oro Verde – August 2003.
- (d) The Legal Unit took part as speakers in a Grain Symposium held in the town of Rosario, Santa Fe Province, in September 2003, at which presentations were made on the grain sector, the Argentine legal system governing seeds and the intellectual property in plant varieties, and also on the UPOV system.
- (e) In September 2003 the Information Bulletin of the Seeds Unit was re-issued: among other news items it includes lists of protected and commercial varieties and information on plant variety protection in our country and also on the legal aspects of the farmer's privilege.
- (f) Internal seminars were held for the staff of the Seeds Unit and members of the National Seeds Commission with a view to making the UPOV system known and analyzing the various provisions of the 1991 Act.

RELATED AREAS OF ACTIVITY OF INTEREST TO UPOV

- (a) The National Catalogue of Cultivars – varieties authorized for sale – is periodically brought up to date, and is available to anyone requesting it in electronic format (mlabar@sagpya.minproduccion.gov.ar).
- (b) The Seeds Unit has drawn up a draft text on the requirements to be met and administrative procedures to be followed for the approval of transgenic varieties under the Seeds Law and their connection with intellectual property, which is now being studied.
- (c) The Seeds Unit has been working with the Patent Administration of the Institute of Industrial Property on the drafting of Guidelines on the Patenting of Live Material and Natural Substances by a Joint Biotechnology Commission; the Commission has settled by common consent and clearly established the various criteria governing the patentability of live material, and stated the principle according to which plant varieties shall be protected only by the UPOV system.

At present the criteria are before the Secretaries of Agriculture, Animal Husbandry, Fisheries and Food and Industry, awaiting consideration and approval.

- (d) Resolution No. 39 of July 11, 2003, has been issued by the Secretariat of Agriculture, Animal Husbandry, Fisheries and Food; it establishes the regime for the release into the environment of the genetically modified plant organisms. It will enter into force on January 10, 2004.
- (e) The Seeds Unit forms part of the Biotechnology Unit, created within the Secretariat of Agriculture, Animal Husbandry, Fisheries and Food for the purpose of standardizing criteria and drafting proposals on matters relating to agricultural and livestock biotechnology falling within the competence of the various organs of the Secretariat.

(f) The Seeds Unit took part in the course of 2002 and 2003 in various meetings organized by the Genetic Resources Coordination Unit of the Secretariat of Agriculture, Animal Husbandry, Fisheries and Food with a view to analyzing the various aspects of the International Treaty on Plant Genetic Resources for Food and Agriculture, especially those connected with intellectual property.

1. CASE LAW ON THE FARMER'S PRIVILEGE

- To qualify for the farmer's privilege, it is necessary to show that the original seed has been acquired legally.
- The exchange or transfer of seed of a protected variety by a farmer without the breeder's permission is punished under Law No. 20.247.
- Seed obtained on the basis of grain acquired from third parties is not considered legally acquired for the purposes of determining whether it is farmer's seed.
- If the reserves of seed of a variety covered by a valid property title are more than the quantity eventually used by the farmer, and if the use to which that surplus is put cannot be verified by the implementing authority through the fault of the farmer, there is reason to impose sanctions because there has been identification without the breeder's permission, and no other use that is exempt from permission has been proved.
- The farmer's privilege may not benefit any person associating with a farmer who supplies his reserved seed because, the seed being for his own use and not for third-party use, such use may not be shared.
- Unless the permission of the owner of the variety is obtained, the farmer's privilege may not be used to cover seed derived from other seed acquired from the owner for the purpose of certifying and marketing the production derived from it; royalties should be paid on such seed.
- Proving the farmer's privilege is the obligation not of the handler or depositary but of the farmer.
- Seed for the farmer's own use may be used only by the farmer himself for his own purposes, which situation does not obtain where part of a field is rented against a percentage of the eventual production, as in such a situation both parties are sharing in the result obtained from the use of the seed of a variety protected by a property title.
- One fundamental characteristic for determining who the farmer is who reserves and uses seed without violating the breeder's rights (farmer's privilege) is the matter of who takes the business risk of the production; it could be maintained that the beneficiary of the law is only the person who takes the risks inherent in his own farming business, whether he works it himself or through third parties from whom he receives services whose reward is not subject to the success of the crop, or alternatively in his own fields or on land rented for a set amount that is not subject to the success of the crop.

- The identification or sale of seed belonging to a variety covered by a registered property title is not an infringement if the acts are performed with the consent of the owner of the variety, which has to exist at the time of making the inspection, consent obtained later being irrelevant; while it is true that the relations between the breeder and the person identifying or selling seed are a matter of private law, Law No. 20.247 on Seed and Phylogenetic Creations, which punishes the identification or sale of seed without the breeder's authorization, is a matter of public law, and does not allow rectification after an infringement has been committed.

2. CASE LAW ON DENOMINATIONS AND PROPERTY TITLES

- The application for registration of a variety has to state the name that the applicant is giving to it, which has to be final; this is why it is felt that applications with tentative denominations, which moreover are not allowed by the legislation in force, should be rejected.
- Changing the name of a variety that is already registered can only be allowed if there are compelling reasons for doing so.
- The provision that allows the existing denomination of a variety to be combined with a trademark or similar designation does not prevent the inclusion of the breeder's trademark in the name of a variety, even if unregistered. Likewise the provision that lays down the characteristics that a denomination should meet, and those that it need not meet, also does not prohibit a personal trademark from forming part of the name of the variety.
- A change in the denomination of a registered variety has to be recognized where the denomination is a trademark registered by a third party with the Trademarks Directorate of the National Institute of Industrial Property to distinguish a Class 31 product (seed), which prevents the free marketing of the variety, apart from which it could mislead or confuse as to the characteristics, value or identity of the variety or the breeder's identity.
- If the property title has been granted on the basis of a particular description which the owner subsequently wishes to amend, it follows that the description to be amended does not describe the material as it actually is, and therefore the property title has to be declared lapsed.
- It emerges from the legal provisions that, if the variations are not sufficient for the subject matter to be considered a new variety, they will not be taken into account as a criterion of distinctness, whereas if they are sufficient, and if the owner of the registered variety wishes to avail himself of property rights in the material that has undergone the variations, he will have to register it as a new variety, as the variations will make it possible for the material to be regarded as possessing the characteristics of distinctness. The material will then of course have to meet also the other requirements laid down by the provisions.

- There is no doubt that the elements to be taken into account to determine whether a registered variety is different from another filed for registration will be those that were required or were present at the time at which the first was registered. There is likewise no doubt, however, that if, at the time of the registration of the first, certain information was not demanded, for instance information on behavior in the face of particular threats, whether from disease, pests or environmental factors, and on the basis of the information actually supplied by the person seeking the new registration the two varieties are differentiated specifically by those characteristics not originally evaluated, the sample filed by the owner of the first has to be accepted *prima facie* as valid, provided that it corresponds to the characteristics it possessed when registered, and the new characteristics observed are not incompatible with them, or with other elements that might arise from the data obtainable at the time of the registration of the first variety.

[Annex II follows]

ANNEX II

CHILE

1. Situation in the Legislative Field

1.1. Amendments to the Law and Regulations

The Decree amending the Regulations under Law No. 19.342 of 1994 (on the Rights of Breeders of New Plant Varieties), consideration of which began in 2001, is currently undergoing its final review, so that one can expect signature and publication in the Official Gazette in the first quarter of 2004. The Amending Decree contains some definitions and touches on aspects such as the “farmer’s privilege” and the punishment of infringers of breeders’ rights.

As far as adaptation to the 1991 Act of the UPOV Convention is concerned, the amendment of Law 19.342 to bring it into line with the new Act is currently at the preliminary draft stage; the various sectors involved (creators of varieties, associations of exporters, etc.) were asked for their views on the preliminary draft in the early months of 2003 to enable them to make the appropriate submissions.

The preliminary draft is expected to start the processing stage before Congress in the course of 2004, and within three years Chile will have brought its legislation into line with the 1991 Act.

1.2. ---

1.3 Extension of Protection to Other Genera and Species

Chilean legislation provides that breeders’ rights may be exercised in relation to all botanical genera and species.

By September 15, 2003, protection had been granted to varieties of 48 different species (23 agricultural, 16 fruit and 9 ornamental), representing an increase of five species (Cucumis Melo, Pisum Sativum, Ficus Microcarpa, Hibiscus spp. and Zantedeschia spp.) compared with the situation on September 30, 2002.

2. Cooperation in Examination

No cooperation agreements have been entered into with other countries.

3. Situation in the Administrative Field

During the period between January 1, 2002, and September 15, 2003, breeders' rights were recognized in 57 new varieties. Of this total number of registrations, 20 (35%) were for agricultural species, 25 (44%) for fruit crops and 12 (21%) for ornamentals.

The total number of protected varieties as of September 15, 2003, is given below:

SPECIES	PROTECTED VARIETIES		
	Local	Foreign	Total
Agricultural	51	53	104
Fruit	5	174	179
Ornamental	1	69	70
TOTAL	57	296	353

4. Situation in the Technical Field

There have been no changes in this area.

ACTIVITIES FOR PLANT VARIETY PROMOTION

In November 2002 a meeting was held with various authorities in the national agricultural sector (ANPROS Breeders' Committee, Association of Exporters, Associations of Nurserymen, Fedefruta, etc.) to explain the fundamental differences between the 1978 and 1991 Acts of the UPOV Convention, and also to agree on a common strategy for strengthening breeders' rights.

The catalogue of protected varieties of potato in Chile was published in the second half of 2002.

[Annex III follows]

ANNEX III

SPAIN

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

The Law on the Regime for the Legal Protection of New Plant Varieties currently in force in Spain is applicable to all plant genera and species, including the relevant hybrids.

The administrative proceedings for ratification of the 1991 Act are now being conducted.

2. Cooperation in Examination

The Spanish Office of Plant Varieties has continued to cooperate with the Community Plant Variety Office in receiving applications for Community titles and in producing technical reports on DUS testing for the Community Office.

There was also cooperation with a number of individual countries.

3. Situation in the Administrative Field

In 2002 a total of 90 applications for plant variety titles were received.

The number of plant variety titles in force on December 31, 2002, was 972.

4. Activities for Plant Variety Promotion

Intense activity has been going on at the national level in the form of seminars and technical meetings with a view to supplying information to all interested circles on the Community, Spanish and international systems for the protection of new plant varieties.

Bilateral cooperation and cooperation with the Office of the Union continued, especially the assistance to the Latin American region. The training of experts also continued.

From June 30 to July 11, 2003, the Third Training Course on Plant Variety Protection for Latin American Countries took place, organized by the International Union for the Protection of New Varieties of Plants (UPOV) in cooperation with the Spanish Plant Variety Office (SPVO), the National Institute of Agricultural and Food Research and Technology (INIA) and the World Intellectual Property Organization. The course was held in Madrid, Seville and Valencia and included technical visits to variety testing centers and companies. Forty technical staff from 21 countries took part. The subjects were covered by staff from the Office of the Union, the Community Plant Variety Office, SPVO and INIA and also by technical staff from other administrations and the private sector.

ACTIVITIES IN OTHER SECTORS OF INTEREST TO UPOV

The Registry of Commercial Varieties has in its records 52 agricultural species, 51 vegetable species and 26 fruit species (the latter including rootstocks, strawberries and vines).

The Registry of Commercial Varieties has received 103 applications for varieties containing genetically modified organisms of the species cotton, maize and sugar beet; these are under examination. The Spanish List of Commercial Varieties includes seven varieties of maize containing genetically modified organisms.

[Annex IV follows]

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

1.1 Amendments to the Law and Regulations: no change.

- Adaptation to the 1991 Act: Paraguay has not yet investigated the possibility of accession.
- Other amendments: fees for applications, registrations and maintenance undergo amendment according to variations in the minimum daily wage established by the Government.

1.2 Case law: nothing to report.

1.3 Extension of protection to other genera and species: Resolution No. 440/01 extended the national registration of protected and commercial varieties to all botanical genera and species.

2. Cooperation in Examination: nothing to report.

3. Situation in the Administrative Field

3.1 Changes in administrative structure: no changes have taken place.

3.2 Changes in procedures and systems: no changes have taken place.

3.3 Applications for Breeders' Titles.

<u>2002</u>	<u>National species</u>	<u>Foreign species</u>
Soya		1
Wheat		4
<u>2003</u>		
Wheat	2	
Cotton	2	2
Transgenic soya		8

4. Situation in the Technical Field: nothing to report.

5. Activities for the Promotion of Plant Variety Protection

- Meetings / seminars: participation at the request of those interested.
- Publication of a leaflet on plant variety protection.

ACTIVITIES IN RELATED SECTORS OF INTEREST TO UPOV

- Proposed resolution on the conduct of trial growings for agricultural and quality testing of varieties with a view to entry in the National Register of Commercial Varieties (RNCC).
- Development of a draft Biosafety Law on Modified Live Organisms, currently before the National Congress for approval.
- Cartagena Protocol on Security of Biotechnology under the Convention on Biological Diversity: signed by the Government of Paraguay on May 3, 2001, currently before the National Congress for ratification.
- Project entitled “Development of the National Framework of Biotechnological Security for Paraguay” for national and institutional strengthening within the framework of the World Project of the United Nations Environment Programme (UNEP) and the Global Environment Facility (GEF). For the implementation of the Cartagena Protocol.
- Project request to the FAO for support in the formulation of a national biotechnology policy for sustainable rural development and food safety: the objective of the project is to create a programming and operational environment favorable to the safe and sustainable application of biotechnology to the promotion of sustainable agricultural and livestock development; currently awaiting approval.

[Annex V follows]

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ANNEX V

PORTUGAL

At present, in Portugal, the number of species covered by plant breeders' rights legislation is close to 100 species. We are expecting to increase that number next year in order to cover the most important forest species that can be grown in Portugal.

Concerning the relationship between the legislation on plant breeders' rights and the biodiversity-connected matters, we are following the evolutions that are taking place at CBD level and also in the Council for TRIPS.

We would also like to inform that the process of ratification of the International Treaty on Plant Genetic Resources for Food and Agriculture is in due course.

[Annex VI follows]

ANNEX VI

CZECH REPUBLIC

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

1.1 Amendments of the law and the implementing regulations

Act No. 408/2000 Coll. on the protection of plant variety rights and the amendment to Act No. 92/1996 Coll. on plant varieties, seed and planting material of cultivated plants, as last amended (Act on the protection of plant variety rights), was amended by Act No. 219/2003 Coll. of 25 June 2003, on the marketing of seed and planting material, which entered into force on 30 August 2003.

1.2 Case law: No observations.

1.3 Extension of protection to further genera and species: No change.

2. Cooperation in Examination

Agreement proposals on cooperation with Croatia, Germany and Slovenia are in preparation.

3. Situation in the Administrative Field

In the period from October 1, 2002, to August 31, 2003, 102 applications for protection were received and 101 titles were issued. At the last date, 721 titles were in force and 331 applications pending.

4. Situation in the Technical Field

Arrangements for use of the protocols for DUS tests as issued by the Administrative Council of the Community Plant Variety Office of the European Union are done (according with Commission Directive 2002/8/EC).

RELATED FIELDS OF ACTIVITIES

- National list of varieties

On August 30, 2003, Act No. 219/2003 Coll. of June 25, 2003, on the marketing of seed and planting material, entered into force. This Act implements EC rules in the field of seed and planting material.

Preparatory works on a notification of varieties listed in the Czech national list of varieties for inclusion into the common catalogue of varieties are in progress.

- Genetically modified organisms

A new Act replacing Act No. 153/2000 Coll., on the use of genetically modified organisms and products, is under preparation.

- Genetic resources

Act No. 148/2003 Coll. of April 4, 2003, on genetic resources of plants and microorganisms, entered into force on June 22, 2003.

[Annex VII follows]

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

On the basis of new Agricultural Seeds and Propagative Material Act, new Rules on the procedure for acceptance of a variety in the national catalogue of varieties and on keeping of the national catalogue of varieties have been adopted in April 2003. A set of sub-law regulations dealing with the marketing of seeds and propagating material of agricultural crops, vegetables, ornamentals and fruit crops have been adopted in September 2003.

2. Cooperation in Examination

The bilateral agreements of cooperation with Austria, Croatia, Czech Republic, Hungary and Slovakia are still under preparation.

We continue cooperation in the field of DUS examination with Croatia, the Czech Republic, Hungary and Slovakia.

3. Situation in the Administrative Field

From September 2002 up to September 2003, 6 applications were filed and 4 new titles of protection issued. Total number of titles in force is 48 (agricultural crops: 23; vegetables: 5; fruit crops: 5; ornamentals: 15).

4. Developments in Related Fields of Activities

National List of Varieties is under revision in the framework of harmonization with the EU requirements.

Four new issues of Slovenian Plant Breeder's Rights and Variety Registration Gazette have been published since September 2002.

[Annex VIII follows]

ANNEX VIII

FOOD AND AGRICULTURE ORGANIZATION (FAO)
OF THE UNITED NATIONS

Both under its Regular and Field Programs, FAO provides technical assistance to governments as well as at regional and/or sub-regional level, in the formulation of policies, strategies and legislation in the field of plant genetic resources for food and agriculture and related matters, including plant variety protection. In this respect, from 2002, FAO assisted the Government of Kenya drafting new legislation on plant variety protection in line with the 1991 Act of the UPOV Convention, and is currently providing technical and legal assistance to the Government of Iran.

On November 3, 2001, the thirty-first session of the Conference of the Food and Agriculture Organization of the United Nations adopted, by consensus and as a binding international agreement, the International Treaty on Plant Genetic Resources for Food and Agriculture (PGRFA). The Treaty establishes a Multilateral System of Access to plant genetic resources and Benefit-sharing that applies to a list of crops that cover about 80% of the world's food calories intake from plants, and is in harmony with the Convention on Biological Diversity (CBD). The Treaty has been ratified by thirty-two countries and will enter into force on the ninetieth day after the deposit of the fortieth instrument of ratification, acceptance, approval or accession. The entering into force is expected in the next six months. States that have ratified it will make up its Governing Body. At its very first meeting, this Governing Body will decide on important questions, such as the level, form and manner of monetary payments on commercialization, the standard material transfer agreement for plant genetic resources, mechanisms to promote compliance with the Treaty, and the funding strategy. A country may therefore consider it important to be among the first to ratify, so as to ensure that its national interests can be taken into account at the Governing Body's first meeting.

A Global Crop Diversity Trust has been established as a funding mechanism which aims to support the conservation of key collections of crop diversity around the world, in perpetuity. The Trust will be an integral part of the funding strategy established under Article 18.1 of the International Treaty on Plant Genetic Resources for Food and Agriculture, and will be under the overall policy guidance of the Governing Body of the Treaty.

Finally, expert workshops were organized in June 2003 to discuss seed policy elements that may need consideration in light of new international developments, including the adoption of the International Treaty on PGRFA. A working document presenting the conclusions and recommendations will be discussed at the second session of the Working Group on PGRFA, technical advisory body to the Commission on Genetic Resources for Food and Agriculture. In addition, FAO is implementing regional projects for the harmonization of seed rules and regulations, including plant variety protection aspects in West African and countries members of the South African Development Community.

[Annex IX follows]

ANNEX IX

EUROPEAN UNION

I. LEGISLATION

New fees scheme for the Community Plant Variety Rights system: Commission Regulation 569/2003 of March 28, 2003, amending Regulation 1238/95 establishing implementation rules for the application of Council Regulation 2100/94 as regards the fees payable to the Community Plant Variety Office.

DUS protocols for national listing in the E.U.:

Agricultural plant species: Commission Directive 2003/90/EC of October 6, 2003, setting out implementing measures for the purposes of Article 7 of Council Directive 2002/53/EC as regards the characteristics to be covered as a minimum by the examination and the minimum conditions for examining certain varieties of agricultural plant species.

Vegetable species: Commission Directive 2003/91/EC of October 6, 2003, setting out implementing measures for the purposes of Article 7 of Council Directive 2002/55/EC as regards the characteristics to be covered as a minimum by the examination and the minimum conditions for examining certain varieties of vegetable species.

II. COMMUNITY PLANT VARIETY OFFICE (CPVO)

1. Situation in the Legislative Field

Rules for variety denominations:

The rules governing variety denominations throughout the European Union, both for listing and for the Community plant variety rights system, have been in force since mid 2000. With the experience gained from the use of these rules, the CPVO has set up a Working Group on Variety Denominations, including national experts, CPVO experts, the UPOV Office and the European Commission. The terms of reference covered ways:

- to reduce the scope for different interpretations;
- to streamline and shorten the procedures;
- to look at ways of simplification and further harmonizing the rules;
- to assess the merits of centralization (within the EU) of the collection and maintenance of databases relating to variety denominations.

As a result of this work, the Administrative Council of the CPVO has agreed to study the feasibility of a centralized database of variety denominations.

New fees schedule:

As already mentioned above, in March 2003 the Official Journal of the European Union published a revised fees schedule for the CPVR system. The DUS examination fees

have been increased for some crops. The annual fees have been fixed at a flat rate of 300 € for all crops.

2. Situation in the Technical and Administrative Fields

For the performance of the required DUS tests, the Community Office benefits from the cooperation of a network of more than 20 examination offices within the European Union. The CPVO has also contracts for a limited number of species with the national Offices of Australia, Israel and New Zealand.

To improve the efficiency of the technical network, the Office organizes on a regular basis several technical meetings:

- Annual meeting with the EU Examination Offices. The last meeting took place in November 2002: In addition to the representatives from the examination offices of the CPVO, experts from the candidate countries for EU accession, Switzerland, the UPOV Office and the European Commission participated in that meeting.
- Experts meetings for ornamentals, agricultural crops, vegetables and fruit have dealt with their specific problems.

DUS Technical protocols: To fulfill the requirements of the Community Basic Regulation, the DUS test must be performed following technical protocols adopted by the Administrative Council. The CPVO has prepared and implemented a plan aiming to produce Technical Protocols for the most important genera and species for which the CPVO did receive applications. The UPOV Test Guidelines are used as a basis for the work. Until now 52 Technical Protocols have been adopted and the Office plans to continue on this way.

Aiming to reach a full harmonization of the DUS work and procedures within the European Union for national listing and the Community plant variety protection system, the European Commission adopted new directives in 2003 (see chapter I. Legislation). According to the new rules, the DUS technical protocols of the CPVO must also be used for the national listing and the Common Catalogue.

3. Information Concerning the Functioning of the Community Plant Variety Protection

From October 2002 to October 2003, the CPVO received 2,447 applications. So far the year 2003 shows an increase of 14,5 % compared with the same period last year. In 2002, the CPVO granted 1,704 titles.

Since 1995, the Office has received 17,910 applications: 16% from countries outside the European Union and 84% from Member States of the EU.

The CPVO received applications for varieties belonging to more than 850 different genera/species. The breakdown by group as species is as follows:

- 60,6 % Ornamentals
- 23,2 % Agricultural crops
- 10,4 % Vegetables
- 5,5 % Fruit
- 0,2 % Miscellaneous

In addition to the bimonthly publication of its Official Gazette, the CPVO has set up a website (www.cpvo.eu.int). Amongst other general and technical information, updated lists of applications and grants can be consulted there. As from October 1, 2003, the website provides a new tool in order to facilitate the search of applications and titles granted under the Community system.

Since the year 2000, a special issue of the Gazette encompassing all varieties under community protection is published once a year.

4. Activities for the Promotion of Plant Variety Protection

The CPVO continues to cooperate in the promotion of the UPOV type PVR protection, providing speakers for seminars and specialized meetings organized by the UPOV Office and the EU Member States.

Preparations for the EU Enlargement: The CPVO has prepared an action plan in order to facilitate the integration in the Community PVR system of the 10 countries which will be acceding the EU in May 2004. On the date of the entry into force of the Accession Treaty, the CPVR system will be extended to the territories of the new Member States. This extension will undoubtedly make the system even more attractive for the breeders.

[End of Annex IX and of document]