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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

COUNCIL

Thirty-Eighth Ordinary Session
Geneva, October 21, 2004

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

Document prepared by the Office of the Union

1. According to the practice introduced on the occasion of the twenty-sixth ordinary session of the Council, it is recommended that the reports from the representatives of States (members and observers) and intergovernmental organizations on the situation in the legislative, administrative and technical fields of plant variety protection and related areas be submitted in writing, in advance, to increase the ability of the Council to carry out its tasks effectively.
2. Written reports have been requested by the Office of the Union in the invitation circulars relating to this session and a model format has been proposed for the purpose. The reports submitted by the following States are reproduced in Annexes I to XX (in the alphabetical order of the names of the States in French): Germany, Argentina, Belgium, Bolivia, Spain, Kyrgyzstan, Lithuania, Mexico, Panama, Netherlands, Poland, Republic of Korea, Czech Republic, Romania, United Kingdom, Serbia and Montenegro, Sweden, Tunisia, Turkey and the European Community.

[Annex I follows]

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

1.1 Nothing to report

1.2 Nothing to report

1.3 Nothing to report

2. Cooperation in Examination

Conclusion of an agreement with Hungary in preparation.

3. Situation in the Administrative Field

Nothing to report

4. Situation in the Technical Field

Nothing to report

5. Activities for the Promotion of Plant Variety Protection

During the period under review the Federal Plant Varieties Office received delegations from the following members: China, Norway, Spain, Ukraine and Uruguay.

RELATED FIELDS OF ACTIVITY

Nothing to report

[Annex II follows]

ANNEX II

ARGENTINA

PLANT VARIETY PROTECTION1. Situation in the Legislative Field

- 1.1 The Argentine Republic continued its work on a draft law to bring about the country's accession to the 1991 Act of the UPOV Convention, the move having been sponsored by the National Seeds Institute (INASE) with the approval of the Secretariat of Agriculture, Animal Husbandry, Fisheries and Food. Since the beginning of 2004, meetings have been held in this connection with the various sectors involved for the purpose of publicizing the draft.
- 1.2 With effect from January 1, 2004, the fee schedules for services rendered by INASE were amended by Resolution No. 528/03 of the Secretariat of Agriculture, Animal Husbandry, Fisheries and Food.
- 1.3 The Argentine Republic recognizes plant breeders' rights in varieties of all genera and species. In the course of 2004, protection was granted to varieties of species which hitherto have not benefited from property titles in the country, namely: *Nierembergia linearifolia*; *Eucaliptus grandis*; *Tecoma* sp.; *Grindellia chiloensis*; *Lilium* sp. It should be mentioned that the plant varieties for which the country has granted property titles in the country are of national origin.

2. Cooperation in Examination

The Argentine Republic is keeping in force the system of cooperation in examination provided by UPOV, especially for ornamental species.

3. Situation in the Administrative Field

By National Law No. 25.845 of January 6, 2004, INASE was given back its economic and financial self-management status and its Directorate. The Institute had been wound up by the National Executive in November 2000. With effect from January 2004 onwards, INASE became the implementing body of Law No. 20.247 of the Argentine Republic on Seeds and Phyto-genetic Creations and the Regulations under it.

Also, by resolution of the Presidency of INASE, it was decided that six regional liaison offices of INASE would be created within the country, with a view to ensuring an effective presence and institutional activity for inspections and the various assignments that by law are entrusted to INASE throughout the national territory.

4. Situation in the Technical Field

Technical examination to ascertain compliance with the requirements for plant variety protection takes place at the Varieties Registry of INASE (DRV).

Between January 1 and August 31, 2004, the Argentine Republic received 80 applications for plant variety protection and granted protection to 138 plant varieties through the issue of property titles. In the latter total, the following breakdown will be noted:

Cereals:	30 Titles
Oil-bearing:	42 Titles
Forage:	22 Titles
Industrial:	12 Titles
Ornamental:	3 Titles
Fruit:	19 Titles
Forest:	9 Titles
Horticultural:	1 Title

INASE is conducting reference collection sowings of these species, soya, wheat, oats, barley and rye. Checks were also made on breeder testing. This exercise makes it possible for certain novel characteristics to be analyzed with a view to inclusion among the national descriptors for the characterization of wheat and soya varieties.

5. Activities for the Promotion of Plant Variety Protection

Since the restoration of its self-contained status, INASE has been actively participating in various activities at the national level with a view to publicizing the objectives of Law No. 20.247, among them the protection of the ownership of phylogenetic creations.

The publication of the information bulletin INASE INFORMA also resumed, with among other things, lists of protected varieties and various articles on plant variety protection in the country.

INASE took part in the following events at the national and international level, acting as spokesman on subjects concerning plant breeders' rights:

- INTA - INASE technical interchange meeting (Buenos Aires, May 2004)
- Workshop on native germplasm with ornamental potential (Buenos Aires, June 2004)
- INTA - INASE technical interchange meeting (Concordia, Entre Ríos Province, June 2004)
- EEA INTA Castelar technical and interchange visit (Buenos Aires, June 2004)
- Panamerican Seed Seminar (Asunción, Paraguay, July 2004)
- Seminar on Intellectual Property (Montevideo, Uruguay, July 2004)

RELATED FIELDS OF ACTIVITY

- INASE periodically publishes, in electronic form, the National Catalogue of Varieties, which includes varieties passed for marketing and also those for which there is a property title in force;
- In January 2004, the Secretariat of Agriculture, Animal Husbandry, Fisheries and Food issued Resolution No. 46, which created the National Registry of Operators Working with Genetically Modified Plant Organisms and the National Listing of Genetically Modified Plant Organisms. Both, the Registry and the Listing, form part of the National Seeds Institute.
- In July 2004, the Secretariat of Agriculture, Animal Husbandry, Fisheries and Food authorized the marketing of products and by-products that contain transformation factor NK603 for the species Maize, which gives resistance to the active ingredient of the weedkiller glyphosate to varieties containing it.
- INASE is a participating member of the National Commission on Genetic Resources created within the Secretariat of Agriculture, Animal Husbandry, Fisheries and Food.
- INASE has been a member, as an official body, of the Argentine Association for the Soya Production Chain since August 2004.
- The Secretariat of Agriculture, Animal Husbandry, Fisheries and Food, together with the Secretariat of Industry, has approved the Guidelines on the Patentability of Live Material, which form part of the national policy on the patentability of live material, it being expressly stated in that policy that in the Argentine Republic plant varieties are protected by the UPOV plant breeders' rights system.

[Annex III follows]

ANNEX III

BELGIUM

PLANT VARIETY PROTECTION1. Situation in the Legislative FieldAdaptation to the 1991 Act of the Convention

This project is in progress. The draft law will be considered by the Variety Rights Council in the autumn of 2004.

Access to plant variety protection under the 1991 Act is nevertheless still possible on Belgian territory through the Community Plant Variety Office by virtue of the European provisions on the subject.

2. Cooperation in Examination

No change.

3. Situation in the Administrative Field- Changes in the Administrative Structure

No change.

- Volume of Activity – Status on August 31, 2004

Since the entry into force of the plant variety legislation in Belgium and up to August 31, 2004, 2,229 applications for protection have been registered and 1,785 certificates issued, including 343 that are still in force.

DEVELOPMENTS IN RELATED FIELDS OF ACTIVITYNational Catalogues of Varieties

- Draft enactment transposing Directives 2003/90/EC and 2003/91/EC forwarded to the procedure Minister within the Walloon Government under the title: Order of the Walloon Government on Testing for the Inclusion of Varieties of Agricultural and Vegetable Species in the National Catalogue.
- Order of the Government of the Brussels-Capital region dated May 27, 2004, transposing 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 concerning as regards the characteristics to be covered as a minimum by the

examination and minimum conditions for examining certain varieties of agricultural plant species.

- Order of the Government of the Brussels-Capital region of May 27, 2004, transposing 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 plant species.
- *Ministerieel besluit van 29 maart 2004 betreffende de kenmerken waartoe het onderzoek van bepaalde rassen van landbouw - en groentegewassen zich ten minste moet uitstrekken, en de minimumeisen voor dat onderzoek*
= Ministerial Order of March 29, 2004, concerning the characteristics to be covered as a minimum by the examination and the minimum conditions for examining certain varieties of agricultural and vegetable plant species.

Control of Seeds and Seedlings - Certification

- Order of the Walloon Government of March 4, 2004, on the marketing of seed of oil-bearing and fibrous plants.
- *Besluit van de Vlaamse regering van 3 oktober 2003 houdende reglementering van de handel in en de keuring van zaaizaad van oliehoudende planten en vezelgewassen*
= Order of the Flemish Government regulating the trading and inspection of seed of oil-bearing and fibrous plants.
- Order of the Walloon Government of March 4, 2004, on the marketing of seed of oil-bearing and fibrous plants.
- Order of the Walloon Government of May 15, 2003, on the production and marketing of reproductive material of forest species.
- Order of the Government of the Brussels-Capital region of March 24, 2004, on the production and marketing of reproductive material of forest species.
- *Besluit van de Vlaamse regering van 3 oktober 2003 betreffende de procedure tot erkenning van bosbouwkundig uitgangsmateriaal en het in de handel brengen van bosbouwkundig teeltmateriaal*
= Order of the Flemish Government of October 3, 2003, on the procedure for approving source material and the marketing of reproductive material of forest species.
- *Ministeriële besluit van 2 juni 2004 tot vaststelling van een technisch controlereglement betreffende het bosbouwkundig teeltmateriaal*
= Ministerial Order of June 2, 2004, introducing technical inspection rules for reproductive material of forest species.
- Order of the Walloon Government of July 17, 2003, on the marketing of the vegetative propagating material of vines.

- *Besluit van de Vlaamse Regering van 24 oktober 2003 betreffende het in de handel brengen van vegetatief teeltmateriaal voor wijnstokken*
= Order of the Flemish Government of October 24, 2003, on the marketing of the vegetative propagating material of vines.

Legislation on the Dissemination and Marketing of GMOs

- Transposition into Belgian law of European Parliament and Council Directive 2001/18/CE of March 12, 2001, on the deliberate release into the environment of genetically modified organisms.

Legal Protection of Biotechnological Inventions

- Transposition of European Parliament and Council Directive 98/44/CE of July 6, 1998, on the protection of biotechnological inventions: on April 23, 2004, the Council of Ministers adopted an agreement on a preliminary draft law. On June 14, 2004, the Council of State pronounced on the draft. The draft law is to be presented to Parliament without delay.
- Commission Regulation 772/2004(EC) of April 27, 2004, on the application of Article 81(3) of the Treaty to categories of technology transfer agreements: the Regulation entered into force on May 1, 2004.
- European Parliament and Council Directive 2004/48/CE of April 29, 2004, on the enforcement of intellectual property rights. The Directive on the application of intellectual and industrial property rights, like copyright and related rights, trademarks, designs or patents, was adopted in April 2004. The member States have to introduce the legislative, regulatory and administrative provisions necessary to comply with this Directive by April 29, 2006, at the latest.

[Annex IV follows]

ANNEX IV

BOLIVIA

PLANT VARIETY PROTECTION1. Situation in the Legislative Field

The fees for variety protection have changed as follows:

The costs are fixed by the National Seeds Committee, which at its meeting on October 16, 2002, by Resolution No. 11/2002, introduced the following tariff:

ANNUAL MAINTENANCE	Group I	Group II
(in US dollars)	US\$	US\$
REGISTRATION (including first year of maintenance)	500	300
No. of Varieties Protected at National Level *		
1 – 20	1000	300
21 – 25	900	
26 – 30	700	
31 – 35	600	
> 35	500	

* The reference is to the number of varieties protected at the national level at the time of filing of the application for protection: the cost decreases as the number of protected varieties increases, and can fall as low as US\$500 (for Group I).

Group I – contains agro-industrial or extensively grown species like soya, rice, cotton, sorghum, sunflower, hard maize and wheat as well as ornamental, fruit and vegetable species.

Group II – includes species of social interest or under development: sweet potato, quinoa, broad bean, green pea, haricot bean, starchy maize, garlic, oats, barley, sesame and peanut.

Where protection is applied for in respect of a variety of one of the above species, the Coordination Unit will be responsible for ascertaining to which group it belongs according to the spirit of the National Seeds Committee Resolution. It too will decide on the transition of a species from Group II to Group I as a result of the stage it has reached in its development.

3. Situation in the Administrative Field

Since the implementation of the provisions of Ministerial Resolution 040 of 2001, the farmers' privilege has been defined as follows:

“The privilege is extended solely to producers who have agricultural land of 200 hectares or less under cultivation, within which maximum areas of 100 hectares shall be allowed for soya, wheat, maize, sorghum, sunflower and cotton, 50 hectares for rice and 20 hectares for other species.”

The implementation of this measure has made it possible to clarify conceptually the application of the privilege. No serious difficulties have yet been encountered in that connection, indeed the clarification has strengthened the national system. Favorable comments have moreover been received from FIS and from various countries, notably MERCOSUR members.

RELATED FIELDS OF ACTIVITY

This year the Swiss MIGROS conglomerate signed a contract for access to genetic resources with the Government of Bolivia with a view to the commercial use of native varieties of sweet potato, this being the first time that a national resource of this kind has been transferred under the terms of the International Convention on Genetic Resources. SEPA, a national company producing sweet potato seed, was involved in ensuring that the resource in question reached Switzerland effectively and safely (meaning the right variety and in conformity with health regulations). Clauses were written into the contract that accord material advantages for their commercial activities to the farmers historically responsible for the improvement and maintenance of this genetic resource.

[Annex V follows]

ANNEX V

SPAIN

PLANT VARIETY PROTECTION1. Situation in the Legislative Field

Organic Law 15/2003, of November 25, 2003, amending Organic Law 10/1995 of November 23, 1995, on the Criminal Code, has been published in the Official Bulletin of the State.

Article 101 of Organic Law 15/2003 added paragraphs 3 and 4 to Article 274 of the Criminal Code (Organic Law 10/1995) on offenses against special property, recognized by Law 3/2000 of January 7, 2000 on the Legal Regime of Plant Variety Protection, targeting those who violate the breeders' rights in plant varieties protected under that Law.

The reform of the Criminal Code does not actually call for any amendment of Law 3/2000.

Article 104 of Organic Law 15/2003 amended paragraph 1 of Article 287 of the Criminal Code (Organic Law 10/1995), removing the requirement of prosecution for the offenses concerned at the instigation of the victim, with the result that prosecution can now take place *ex officio*.

Finally it should be pointed out that the reform affects not only the breeders' rights provided for in Law 3/2000 (national protection) but also the varieties protected under Council Regulation 2100/94 (EC) of July 27, 1994, on Community plant variety rights, in that the text in question provides that the protection of the rights recognizes by it shall be afforded in every member State in the same way and with the same scope as the legislation concerned accords to nationally protected varieties.

In addition, the incorporation in Spanish statutory law of Council Directive 2004/48/EC of April 29, 2004, which introduces certain measures on the enforcement of intellectual and industrial property rights, is at present undergoing study.

2. Cooperation in Examination

The Spanish Office of Plant Varieties continued to cooperate with the Community Plant Variety Office in the processing of applications for Community titles and in the conduct of technical reports on DUS tests on behalf of the Community Office.

A number of individual countries are also cooperated with.

3. Situation in the Administrative Field

Fifty-seven applications for plant variety titles were received in 2003.

The number of plant variety titles in force as of December 31, 2003, was 791.

4. Activities for the Promotion of Plant Variety Protection

A great deal of activity has been going on at the national level in the form of seminars and technical meetings intended to convey information to all interested sectors on the Community, Spanish and international plant variety protection systems.

Work continued on bilateral cooperation and on cooperation with the Office of the Union, with assistance being lent especially to the Latin American region. The training of experts also continued.

ACTIVITIES IN OTHER AREAS

The Register of Commercial Varieties is open to 52 agricultural, 51 vegetable and 26 fruit species (including rootstocks, strawberries and vines).

To date there are 143 applications being processed at the Registry of Commercial Varieties for varieties containing genetically-modified organisms of the species cotton, maize and sugar beet. In the Spanish List of Commercial Varieties, there are 16 maize varieties that contain genetically modified organisms (GMOs).

Royal Decree 178/2004 of January 30, 2004, has been published in the Official Bulletin of the State; it approves the general regulations for the development and implementation of the new Law 9/2003 of April 25, 2003, establishing the legal regime for the confined use, deliberate release and marketing of GMOs.

On March 31, 2004, the Kingdom of Spain ratified the International Treaty on Plant Genetic Resources for Food and Agriculture.

[Annex VI follows]

ANNEX VI

KYRGYZSTAN

PLANT VARIETY PROTECTION1. Situation in the Legislative Field

1.1 Amendment to the act and regulations; Aligning National Legislation with the 1991 Act of the UPOV Convention

- The Kyrgyz Republic joined the International Union on June 26, 2000, after acceding to the 1991 Act of the UPOV Convention.
- At present, the State Agency of Science and Intellectual Property within the Government of the Kyrgyz Republic is working on updating the Kyrgyz Republic Law “On Legal Protection of Selection Achievements”. This draft is to be presented to the Parliament of Kyrgyzstan.
- The Ministry of Agriculture, Water and Processing Industries of the Kyrgyz Republic is currently preparing amendments to the KP Law “On seeds”.

1.2 Short-term perspectives, existing problems

- The State Commission on variety testing, within the Ministry of Agriculture, Water and Processing Industries of the Kyrgyz Republic (State Commission), has established methods in accordance with UPOV principles and conducts the following crops: barley, cotton, maize, oats, potatoes, rye, triticale and wheat.
- The DUS examination of the following crops is planned in the near future: buckwheat, cabbage, forage legumes, lucerne, mangel beet, pea, rape, red beet, sorghum, soybean, sugar beet, sunflower, tobacco, tomato.

1.3 Extension of protection to further genera and species

- In 2003, the Ministry of Agriculture, Water and Processing Industries of the Kyrgyz Republic granted protection to 108 varieties.
- At present, protection has been granted to 124 plant varieties.

2. Cooperation in Examination—New agreements, early agreements and planning

An agreement on cooperation in testing and the protection of plant varieties between the Ministry of Agriculture, Water and Processing Industries of the Kyrgyz Republic and the Ministry of Agrarian Policy of Ukraine was concluded in 2003.

Kyrgyzstan is preparing all the necessary domestic procedures for signature of the agreement on plant variety legal protection, adopted on March 16, 2001, in Moscow between CIS countries.

3. Situation in the Administrative Field

Changes in administrative structure; Updating of statistics previously presented to the Office of the Union:

There are no changes in the administrative system.

In accordance with the Kyrgyz Republic Law “On Legal Protection of Selection Achievements”, an application for variety protection is filed with Kyrgyzpatent. Within two months, the Kyrgyzpatent Examination Department of selection achievements carries out a preliminary examination for compliance of the application with “Rules of composition, filing and examination of selection achievement patent granting”. Kyrgyzpatent publishes information concerning the application in the Official Gazette “Intellectualdyk Menchik”, and then passes the seed and application documentation to the State Commission for the DUS examination. After field tests and laboratory tests, the State Commission passes a report on eligibility for protection to Kyrgyzpatent, which registers a selection achievement in the State Register, grants a patent and then publishes the information on the patent in the Official Gazette.

Foreign applicants file their applications through a patent attorney.

In addition to the DUS examination, the State Commission conducts an examination for addition to the varieties catalogue in the Kyrgyz Republic, and publishes annually the Catalogue of varieties and hybrids permitted for use.

Seed certification is the responsibility of the Republican Seed Inspection, within the Ministry of Agriculture, Water and Processing Industries of the Kyrgyz Republic.

Publications: Information about filed applications and legislative amendments, including the legal protection of selection achievements, are published in the Official Gazette “Intellectualdyk Menchik”.

Technical assistance: Technical assistance to the State Commission for variety testing is rendered with the assistance of the International Bank in framework of the Supporting Project. The project renders aid in the form of specialized agricultural equipment.

Catalogues of varieties permitted for sale; seed certificate: The Catalogue of plant varieties permitted for use is published annually by the Ministry of Agriculture, Water and Processing Industries. A certificate of conformance is granted to varieties after their registration.

[Annex VII follows]

ANNEX VII

LITHUANIA

PLANT VARIETY PROTECTION1. Situation in the Legislative Field

1.1 Amendments of the law and the implementing regulations

- Law on Plant Variety Protection of the Republic of Lithuania (Official Journal, 2001, No 104-3701) [sent to the Office of the Union];
- Regulation No 1473 of the Government of the Republic of Lithuania of September 19, 2002, regarding Replacement of Regulation of the Republic of Lithuania No. 1458 December 15, 2000, concerning Fees Rates (Official Journal, 2002, No. 93-3987) [sent to the Office of the Union];
- Order No. 14 of the Director of Lithuanian State Plant Varieties Testing Center of August 5, 2003, on the Approval of Application Forms for Plant Variety Protection and Technical Questionnaires Forms for all Protected Plant Species;
- Order No. 3 D – 371 of the Minister of Agriculture of the Republic of Lithuania of June 23, 2004, regarding remuneration [sent to the Office of the Union];

1.2 Law on Plant Variety Protection of the Republic of Lithuania;

1.3 Order No 288 of the Minister of Agriculture of the Republic of Lithuania of August 1, 2002, on the Approval of the List of Plant Genera and Species of the Varieties which are Subject to Legal Protection in the Republic of Lithuania and on the Appointment of the Administrator of the List of Protected Varieties in the Republic of Lithuania (Official Journal, 2002, No. 79-3354) [sent to the Office of the Union].

2. Cooperation in Examination

- bilateral agreement of August 11, 2000, with the Polish Research Centre for Cultivar Testing regarding performing DUS tests.

3. Situation in the Administrative Field

- according to Order No. 16 of Director of Lithuanian State Plant Varieties Testing Center of September 10, 2003, Commission for Evaluation of Applications for Variety Protection is approved;
- plant variety protection shall be approved by the order of Director of Lithuanian State Plant Varieties Testing Center;
- procedures for plant varieties protection are provided in the Law on Plant Variety Protection of the Republic of Lithuania.

4. Situation in the Technical Field

- DUS tests are performed by the Polish Research Centre for Cultivar Testing according to bilateral agreement of August 11, 2000.

5. Activities for the Promotion of Plant Variety Protection

- On November 5 and 6, 2003, and on June 15, 2004, Lithuania participated in the meetings of the Administrative Council of the Community Plant Variety Office (CPVO) in Angers, France, and on September 17, 2003 - in the meeting in Brussels, Belgium;
- On April 1, 2004, Lithuania participated in the forty-ninth session of the Administrative and Legal Committee of the Office of the International Union for the Protection of New Varieties of Plants (UPOV) and, on April 2, 2004, in the sixty-seventh session of the Consultative Committee in Geneva, Switzerland;
- Information Bulletin for Plant Breeder's Rights and National List No. 2 of Lithuanian State Plant Varieties Testing Center was published in June 2004.

RELATED FIELDS OF ACTIVITIES

- Each year, the Lithuanian National List of Varieties is approved by the order of Director of Lithuanian State Plant Varieties Testing Center. Propagating material of each variety from each plant species can be certified according to Mandatory Requirements, prepared according to the relevant EU directive;
- Law on the National Plant Genetic Resources of the Republic of Lithuania (Official Journal, 2001, No. 90-3144) provides preservation of genetic resources.

[Annex VIII follows]

ANNEX VIII

MEXICO

PLANT VARIETY PROTECTION1. Situation in the Legislative Field

1.1 Changes in Fees:

Service	MX Pesos		US\$ (approx.)			
Examination and processing of application	9,447		821			
Issue of record of filing	502		44			
Issue of breeder's certificate	4,623		402			
Recognition of a priority rights	502		44			
Change of denomination	1,276		111			
Registration of transfer of protection rights	893		78			
Certified copy of certificate	255		22			
Registration of renunciation of rights	1,276		111			
Copy of description of protected variety	255		22			
Corrections attributable to the user	166		14			
ANNUAL FEE BY GROUP	A		B		C	
	MX Pesos	US\$ (approx.)	MX Pesos	US\$ (approx.)	MX Pesos	US\$ (approx.)
Year 1	2,569	223	1,930	168	1,285	112
Year 2	3,855	335	3,212	279	1,927	168
Year 3	4,498	391	3,855	335	2,570	223
Year 4	4,140	360	4,498	391	3,212	279
Year 5	6,425	559	4,141	360	3,855	335
Years 6 to 15	7,710	670	6,425	559	4,140	360
Year 6 and thereafter	4,140	360	4,498	391	3,212	279

A: Cereals and sweet potato

B: Oil-bearing, forage, vegetable and ornamental species

C: Fruit and forest species, ornamental shrubs and trees and those not included in A or B.

1.2 Reforms to the Federal Law on Plant Varieties (LFVV):

Work has started on the revision and acceptance stage of proposals for the reform of the Federal Plant Varieties Law to incorporate features conforming to the 1991 Act of the UPOV Convention.

2. Cooperation in Examination

Cooperative arrangements with the Plant Varieties Office of the Netherlands are being implemented, the aim being to enable breeders to purchase the findings of DUS examinations carried out by the Dutch authorities for the grant of breeders' certificates in Mexico.

3. Situation in the Administrative Field

3.1 Applications for breeders' certificates (position in August 2004)

By Origin	#	%
Mexican	224	38
United States	215	37
French	59	10
Dutch	44	8
Others (7)	41	7
TOTAL	583	100

By Species	#	%
Maize	146	25
Rose	135	23
Strawberry	47	8
Sorghum	30	5
Cotton	31	5
Sweet potato	21	4
Other (45)	173	30
TOTAL	583	100

By Applicant		#	%
1	INIFAP	100	17
2	Monsanto Seeds and Agro-products	69	12
3	Pioneer Hi-Bred International, Inc.	54	9
4	Meilland Star Rose	38	7
5	Driscoll Strawberry Associates, Inc.	35	6
6	Jackson & Perkins Wholesale, Inc.	30	5
7	Delta and Pine Land Company	30	5
	Others (64)	227	39
	TOTAL	583	100

3.2 Measures to clear the backlog

Of these applications, 69% have been processed and, in order to reduce the backlog due to a number of legal and administrative situations (mentioned in the 2003 report), in addition to action undertaken in the previous year (CPVO-SNICS arrangements, legal and administrative measures to shorten certificate issue procedures, strengthening of the administrative structure of SNICS for variety registration, among other things), a special program has been set in motion to deal with every one of the applications for breeders' titles filed in the shorter term (six months).

4. Situation in the Technical Field

4.1 In 2004, Mexico took part in the meetings of UPOV Technical Working Parties (TWA, TWF, TWO and TWV). Noteworthy was its involvement in the drafting of the technical guidelines for Prickly Pear (*Opuntia*), Dahlia (*Dahlia*), Marigold

(*Tagetes*), Amaranth (*Amaranthus*), Husk Tomato (*Physalis*), Hawthorn (*Crataegus*) and Coffee (*Coffea*).

4.2 Designation of Mexico as President of the UPOV Council.

5. Activities for the Promotion of Plant Variety Protection

5.1 Participation of three Mexican technical experts in a course at the Community Plant Variety Office (CPVO), to receive training in organizational structure, conduct of DUS testing, collections of reference varieties, systematization of data and possibilities for cooperation on species of mutual interest.

5.2 Awareness and training programs on intellectual property and plant breeders' rights at regional level:

- Participation in training events organized by the Mexican Institute of Industrial Property (IMPI)
- Exposé delivered to producers of Chile (*Capsicum spp*) in the State of Zacatecas, Mexico.
- Participation in a series of conferences organized by the Mexican Association for the Protection of Intellectual Property (AMPPI).

RELATED FIELDS OF ACTIVITY

Plant genetic resources for food and agriculture

Work continued on the program of plant genetic resources for food and agriculture (RFAA), with an investment of 1.1 million US\$ in the current year, using ten networks of Avocado, Custard Apple, Agave, Kidney Bean, Fruit Species, Maize, Prickly Pear, Vegetable Species, Ornamentals and Germplasm Banks, with the participation of public universities, non-governmental organizations and dedicated scientific and technological research centers.

2002 saw the approval of 73 projects submitted by 18 institutions, while in 2003, the figure was 80 projects submitted by 20 organizations and, in 2004, 125 projects submitted by 27 participating agencies; the latter are being considered for a ruling in accordance with the following strategic criteria: Preservation and Improvement *in situ*; Preservation *ex situ*; Use of Plant Genetic Resources; Institutional Consolidation and Capacity Building.

[Annex IX follows]

ANNEX IX

PANAMA

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

- 1.1 Panama joined the International Union for the Protection of New Varieties of Plants (UPOV), 1978 Act, on May 23, 1999. Law No. 23 of July 15, 1997, contained in its Title V the provisions for the protection of new plant varieties in Panama. It is regulated by Executive Decree No. 13 of March 19, 1999.
- 1.2 By virtue of Resolution N° ALP-047-ADM-03 of July 15, 2003, the new members of the Council for the Protection of New Varieties of Plants for the period from 2003-2005 were appointed.
- 1.3 An interagency convention was signed between the Ministry of Commerce and Industries and the Institute for Agro-Livestock Research of Panama (IDIAP), in which the undertaking was made to devote such a concerted effort as was necessary and possible to promote the development of new plant varieties for the benefit of society, and to safeguard breeders' rights with a view to encouraging variety improvement.
- 1.4 The Consultative Committee will submit new genera to the Council for the Protection of New Varieties of Plants (COPOV) for consideration, including: *Brachiaria* spp, *Solanum tuberosum*, *Sorghum* spp, *Ananas comosus*, *cucumis melo*, *citrullus lanatus (thunb.)* and others which, it is hoped, will be declared by Panama in the coming months.
- 1.5 New varieties coming from the Republic of China (Taiwan) are awaited.

2. Cooperation in Examination

- 2.1 The Institute of Agro-Livestock Research of Panama (IDIAP), by virtue of an interagency convention with the Ministry of Commerce and Industries, will not be charging for technical examinations in connection with national applications. The Faculty of Agro-Livestock Sciences will be authorized to conduct the technical examinations on all varieties submitted by the Institute of Agro-Livestock Research of Panama.

3. Situation in the Administrative Field

- 3.1 By virtue of Resolution 1150 of February 17, 2004, Panama's first certificate of registration of breeders' rights, N° 1-00 (25 years, from February 17, 2004, to February 17, 2029) was granted to Plant Sciences, Inc., Berry R & D., for the Endurance strawberry.

- 3.2 Provision was made for publication in September 2004 of the third Bulletin of Plant Varieties and for the grant of the second breeders' rights certificate in Panama before the end of the year.
- 3.3 Panama has a computerized system for the processing of breeders' rights, and tests are being conducted prior to the introduction of electronic filing of applications.
- 3.4 In 2004, up to the time of writing this report, six new registrations have been applied for. See Table No. 1, which is an update on document C/36/7.

Table 1. Document C/36/7

Year	Applications filed by:			Titles granted			Titles Expired or Cancelled in Reference Year	Titles in Force at end of Reference Year
	residents	Non-residents	Total	Residents	Non-residents	Total		
2000	-	1	1	-	-	-	-	-
2001	-	-	-	-	-	-	-	-
2002	-	4	4	-	-	-	-	-
2003	-	1	1	-	-	-	-	-
2004*	5	1	6	-	1	1	-	1

* Data updated as of August 31, 2004.
Source: Department of Plant Varieties

4. Situation in the Technical Field

- 4.1 Inclusion of the Plant Varieties Unit (UVV) in the organizational structure of the Institute of Agro-Livestock Research of Panama (IDIAP). This step was necessary to officialize and legalize the Unit in the administrative structure and to give it space and responsibilities within the Technical Commission of the Council for the Protection of New Varieties of Plants (COPOV).
- 4.2 Drafting of the document entitled Provisions for the Testing of Distinctness, Uniformity and Stability of New Varieties of Plants in the Republic of Panama (DUS examination). The document contains the provisions and procedures for the technical examination of plant varieties in the Republic of Panama, an essential requirement for the grant of breeders' rights by the Directorate General of the Industrial Property Registry (DIGERPI).
- 4.3 Conduct of technical examinations on five varieties of the Institute of Agro-Livestock Research of Panama (IDIAP), using the sworn statement procedure, with a view to registration and the grant of breeders' rights. The material is as follows: IDIAP 2503 (Rice), IDIAP 3003 (Rice), PB-0103 (Maize), IDIAP R3 (Kidney Bean) and Centenario (Pumpkin).

- 4.4 Apart from the confirmatory examinations received from Colombia, for rice, and from the Community Plant Variety Office, no examination results have been received from other countries. See Table No. 2, updating document C/36/5.

Table 2. Document C/36/5

N°	TAXON	State offering	State receiving	States exchanging
		examination	examination reports	examination reports
172	Strawberry	CPVO	PA	-
288	Rice	CO	PA	-

5. Activities for the Promotion of Plant Variety Protection

- 5.1 Follow-ups were conducted on the training given this year to various persons including producers, importers, academics, public livestock quarantine officials, customs officers, judges, prosecutors and technical people, in the importance and enforcement of breeders' rights, including the following lectures: Importance of Breeders' Rights, Processing and Enforcement of Breeders' Rights in Panama, DUS Testing and Relations Between Commercial Registration and Breeders' Rights. Table 3 gives an account of the above.

Table 3. Staff Trained by Sector in Panama

<u>Place</u>	<u>Date</u>	Producers Importers Users	Public Sector	Academics and Professionals	Total
Legal system Attorneys	September 2003	-	-	15	15
V Congress of the College of Agriculture Engineers of Panama	October 17, 2004	15	7	20	42
Faculty of Law and Political Science, Latin University of Panama	July 20, 2004	-	-	44	44
Other Seminars					
Faculty of Law and Political Science University of Panama	July 15, 2004	-	-	25	25
Total		15	7	104	126

Source: Council for the Protection of New Varieties of Plants.

5.2 Next training seminar: September – December 2004:

- Law students of USMA
- Law students of the University of Panama
- Students of the Faculty of Agro-Livestock Science (FCA)
- Syndicated members of the National College of Attorneys
- Producers and technical staff from the Agro-Livestock Sector, Eastern Area.

5.3 Printed publications include the following:

- November 12, 2003: publication of Official Bulletin No. 135, Volume II, on plant varieties protected in Panama. This document was sent in pdf to the various countries party to the UPOV Convention, and is available on the Department's website <http://www.digerpi.gob.pa>
- Promotion of Genetic Improvement in Plants, *La Crítica*, Sunday June 13, 2004, by Hilda Y. Cubilla S.
- Panama Grants its First Breeders' Rights, *La Crítica*, Sunday June 13, 2004 by Hilda Y. Cubilla S.
- Pamphlets, copies of talks, applications for registration and copies of Law 23 of July 15, 1997, are handed out at all talks.

RELATED FIELDS OF ACTIVITY

In 2004, three commercial varieties were registered for rice ((Fedearroz 50, Colombia XXI and CFX-18).

The rice variety CFX-18 of the CLEARFIELD program, for the control of the Red Rice (*Arroz Rojo*) condition, was registered with the National Seeds Committee.

[Annex X follows]

NETHERLANDS

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

- 1.1. Amendments of the law and implementing regulations: No amendments of the present legislation were realized.

There was good progress in the work on the new ‘Seeds and Planting Materials Act’, which includes the provisions of national PBR. In June 2004, the draft of that act was presented to Parliament. Further to defending the draft in Parliament, the government will devote a lot of time to secondary legislation related to the new law during the coming 12 months.

The PBR provisions in the new law are more or less the same as in the present law. One of the main objectives of the new law is to consolidate several activities with regard to PBR granting, admission of varieties and registration of forestry parcels into one organization, the future ‘Board for plant varieties’. Under the present legislation those activities are spread over four authorities. The actual distinctness, uniformity and stability (DUS) and value for cultivation and use (VCU) testing will be performed by testing stations, which are mostly private organizations.

Under the new law the various fees of the Board will be related to the actual costs. This means that costs of dealing with applications (for PBR and/or admission) should be covered by the application fees, the costs of testing should be covered by the testing fees and the costs of maintaining the register should be covered by annual fees. This principle has important implications for the level of the future testing fees and the future annual fees. Since present testing fees in the Netherlands do not cover all testing costs (a part of those costs is covered by annual fees) those fees will increase. The annual fees (probably one flat rate annual fee for all species) will decrease dramatically.

- 1.2. Case law: The Board received an objection to the proposed denomination ‘Princess Máxima’ for a tulip variety. The objection was based on the ground that trademark was valid in class 31 for the ‘Maxima’. The Board rejected the objection on the basis that there is no risk of confusion between ‘Maxima’ and ‘Princess Máxima’. The holder of the trademark filed an appeal. The court decided that there is a serious risk of confusion. Consequently the breeder of the tulip variety was asked to propose a new denomination.
- 1.3. Extension of protection to further genera and species: The Dutch law on PBR has been applicable to the whole plant kingdom since 1997.

- 1.4. Cooperation in examination: A bilateral agreement with Kenya was concluded in January 2004. The agreement concerns the taking over of reports from the Netherlands. On the basis of the agreement Kenya took over a great number of reports and descriptions.

Invitations to conclude bilateral agreements were sent to China, Colombia, Ecuador, Mexico and Russia. The negotiations with Colombia look promising. China is studying possible cooperation.

2. Situation in the Administrative Field

No changes

3. Situation in the Technical Field

No changes

4. Activities for the Promotion of Plant Variety Protection

In the framework of a Dutch government project, aimed at putting the Indonesian PBR system into operation, a Dutch team of experts visited Indonesia in 2003 and 2004. According to the Indonesian authorities, that PBR system is about to be put into operation.

In October 2003, a Dutch delegation visited China to give lectures on procedural and technical aspects of PBR. Later in that year Chinese delegations (one with officials from the State Forest Administration; one with judges, scientists, civil servants and breeders) paid visits to Holland, during which PBR was discussed.

A Dutch-Turkish project on PBR and seed legislation started in 2004. Several working trips to both countries took place. The Turkish PBR legislation will, according the Turkish officials, enter into force in 2004. The Dutch counterpart was informed that Turkey is planning to accede to UPOV.

RELATED FIELD OF ACTIVITIES

Nothing to report.

[Annex XI follows]

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

On the day of the Republic of Poland's accession to the European Union (May 1, 2004), the two new Acts concerning seed industry - the Law on the Legal Protection of Plant Varieties of June 26, 2003 and the Seed Act of June 26, 2003 (the "Law") - came into force.

The provisions concerning national listing, production, control and marketing of seed material are harmonized with the existing regulations in the European Union.

The Law of June 26, 2003 on the Legal Protection of Plant Varieties has been published in the Polish Official Journal, 2003, No 137, item 1300 (*Dziennik Ustaw Nr 137/2003, poz. 1300*). The Law contains provisions which make possible the existence of two PBR systems on the territory of Poland, i.e. national and the community plant variety rights systems.

The following implementing regulations of the Law on the Legal Protection of Plant Varieties came also into force on the day of Poland's accession to the European Union:

The Decree of the Minister of Agriculture and Rural Development of February 17, 2004 on fees for the lodging of an application for Plant Breeders' Rights protection, for DUS testing and for the granting and the maintenance of the titles of protection (P.O.J. No 60/2004, item 567).

The Decree of the Minister of Agriculture and Rural Development of March 5, 2004, on application form for the grant of a Plant Breeder's Right (PBR) and the technical questionnaire form (P.O.J. No 60/2004, item 569).

The Decree of the Minister of Agriculture and Rural Development of March 1, 2004, concerning the quantity of seed material necessary for conducting the distinctness, uniformity and stability tests and the submission dates (P.O.J. No. 60/2004, item 568).

Fees for Plant Breeders' Rights protection [sent to the Office of the Union].

The Law establishes provisions in respect of breeders' rights for their varieties, based on the 1991 Act of the UPOV Convention.

On August 15, 2003, Poland became the twenty-fourth State acceding to the 1991 Act of the UPOV Convention.

Since November 1, 2000, varieties of all plant genera and species have been eligible for protection by PBR.

The Law provides, *inter alia*, that the duration of the breeders' right for varieties of potato, vines and trees is 30 years from the date of the grant of the breeders' right, and 25 years for all other varieties.

2. Cooperation in Examination

The Research Centre for Cultivar Testing (COBORU) in Słupia Wielka cooperates in DUS examination with different countries.

COBORU has bilateral agreements with the Czech Republic, Hungary and Slovakia.

Unilateral agreements are in force with Latvia and Lithuania. Poland carries out DUS testing for the Latvia and Lithuania authorities. These agreements cover different species of agricultural, vegetable and fruit plants.

Recently, Poland has, more and more frequently, received requests for technical examination results from authorities of other UPOV members.

Poland actively participates in the ring test program organized by different European countries (not only EU members). This year, carrot varieties have been a subject of this test.

3. Situation in the Administrative and Technical Field

From January 1 to September 10, 2004, 179 new applications for PBR, including 150 domestic and 29 foreign, were submitted for national protection.

Three hundred and forty-five titles of protection have been granted. In total (as of September 10, 2004) 2,220 varieties are protected in Poland.

Details on statistics are given below (see table).

Table

Crops	Applications for PBR 1.01. – 10.09.2004			Grant of PBR 1.01. – 10.09.2004			Titles having ceased	Titles in force at 10.09.2004
	domestic	foreign	together	Domestic	foreign	together		
Agricultural	83	10	93	60	46	106	23	662
Vegetables	24	1	25	43	16	59	-	287
Ornamentals	32	18	50	28	140	168	219	1170
Fruit trees and berry plants	6	-	6	6	1	7	5	96
Miscellaneous	5	-	5	-	5	5	-	5
Total	150	29	179	137	208	345	247	2220

RELATED FIELDS OF ACTIVITIES

The UPOV Technical Working Party for Agricultural Crops (TWA) held its thirty-third session, in Poznań and Słupia Wielka, Poland, from June 28 to July 2, 2004. The session was attended by 71 participants from 29 countries.

The meetings of *ad hoc* crop subgroups of the Working Group on Biochemical and Molecular Techniques and DNA-Profiling in Particular (BMT) for Wheat, Potato and Sugarcane also took place in Poznań, on June 28, 2004, in conjunction with the TWA session.

On the day before the session, a Preparatory Workshop was held, with the participation of 44 persons.

Training:

A training course for ten specialists from the Ministry of Agrarian Policy of Ukraine, the State Service on Right Protection for Plant Varieties was organized by COBORU from May 31 to June 4, 2004;

A training course for five specialists from the State Commission for Crops Variety Testing and Registration of the Republic of Moldova was organized by COBORU from June 27 to July 3, 2004. These courses covered different matters related to plant variety protection, national listing, DUS testing, administrative and legal issues.

Six plant breeders from the Lithuanian Institute of Agriculture attended a training course organized by COBORU, from July 6 to 8, 2004, concerning the conduct of DUS testing for cereals.

[Annex XII follows]

ANNEX XII

REPUBLIC OF KOREA

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

Revisions of Legislation

(a) Revised Article 13-2 “Variety Protection for Known Varieties” to refer to the “publication of application” instead of the “publication of application for public inspection” as follows:

Article 13-2 Variety Protection for Known Varieties

(3) Among the varieties falling under any of the Items in Paragraph (1), the effect of the variety protection right of which establishment has been registered under Paragraph (1) of Article 55 shall not be extended to any exploitation that has been initiated before the publication of application for variety protection of the variety.

(4) Where variety protection has been granted under Paragraph (1), a person, who has been exploiting the protected variety or has been making preparation thereof, in the Republic of Korea, prior to the publication of application for variety protection, shall have a non-exclusive license on that variety protection right, but such non-exclusive license shall be limited to the purpose of commercial and industrial exploitation of the protected variety, which is being made or for which preparations have been made. In this case, the non-exclusive licensee shall pay an adequate remuneration as consideration to the variety protection right holder.

(b) Inserted two new Articles, 34-2, 34-3 related to provisional protection:

Article 34-2 Right to Provisional Protection

(1) After publication of his application, the applicant for variety protection shall have an exclusive right to commercially and industrially exploit the variety claimed in the variety protection application.

(2) After the publication of the application, where the application falls under any of the following items, the right under Paragraph (1) shall be deemed never to have arisen:

(i) where an application has been abandoned, invalidated or withdrawn; and

(ii) where the examiner’s decision that the application is to be rejected has become final and conclusive.

(3) Where a person having the right under Paragraph (1) has exercised the right and the application falls under either of the items in Paragraph (2), such person shall be liable to indemnify any damage caused to another party by exercising that right.

(4) Articles 84 through 90 shall apply *mutatis mutandis* to the right under Paragraph (1).

Article 34-3 Exercise of the Right of Provisional Protection
and Suspension of Litigation Proceedings

(1) Where a suit or an application for provisional attachment or provisional disposal has been filed with respect to the infringement of the right under Paragraph (1) of Article 34-2, the court may, if necessary, suspend the litigation proceedings by a ruling upon request, or *ex officio*, until the examiner's decision or the trial decision has become final and conclusive.

(2) No appeal shall lie from a ruling with respect to a request under Paragraph (1).

(3) When the reason for the suspension is no longer applicable, the court may revoke the ruling of suspension under Paragraph (1).

(c) Delete Articles 39 and 40 as a consequence of the introduction of the two new Articles 34-2, 34-3.

Article 39: deleted

Article 40: deleted

(d) Revision of Article 138(3)(i) as follows:

Article 138 Selling and Distribution of the Seeds

(3) Any person desiring to sell, by producing or importing, the seeds of a variety other than the seeds of a variety falling under any of the following items shall report to the Minister of the Ministry of Agriculture and Forestry with seed samples of the variety as follows:

(i) the seed of a variety for which published for publication of application has been rendered under Paragraph (1) of Article 34; and

ADDENDUM (December 11, 2003)

Article 1 Entry into Force

This Law shall enter into force 3 months after publication. However (3) and (4) of Article 13-2, 34-2, 34-3 39, 40 and (1) (ii) of Article 169 shall enter into force 1 year and 3 months after publication.

Article 2 Interim Measures for provisional Protection

The previous Law shall govern provisional protection for the varieties filed at the time of enforcement of this Law under (1) of the addendum against revisions (3) and (4) of Article 13-2, Article 34-2, 34-3, Article 39, Article 40 and (1) ((ii)) of 169.

2. Activities for the Promotion of Plant Variety Protection

Meetings, Seminars, etc.

1. Seminar

Title: Biotechnology, trademark and plant patent
Presented by three patent examiners from KIPO
Date: November 5, 2003
Hosted by NSMO

2. Symposium

Title: Evaluation of the Impact of PVP and the future of PVP in the Republic of Korea
Presented by five experts, participated 250 persons from national offices
Date: November 21, 2003
Hosted by NSMO

Visits to and from non-member States

1. Participation in UPOV/ASIA regional technical meeting:
Three staff members from NSMO/Republic of Korea, participated in UPOV/ASIA regional technical meeting for plant variety protection held in Hanoi, Viet Nam, from February 16 to 20, 2004.
2. Participation in the UPOV-INGER Workshop on the Protection of Plant Breeder's Rights:
One staff member from NSMO/Republic of Korea participated as a lecturer in the UPOV-INGER Workshop on the Protection of Plant Breeders' Rights, hosted by UPOV and INGER, held in Bangkok, Thailand, from February 23 to 24, 2004.
3. Hosting of UPOV Technical Working Party for Vegetables (TWV) meeting:
The thirty-eighth session of the TWV was held in Olympic Parktel, Seoul, from June 7 to 11, 2004. Twenty experts from UPOV member countries and around 40 national experts participated. Prior to the TWV session, a technical workshop on the examination of new varieties of plants under the UPOV Convention for national experts from the Republic of Korea was held on June 5. Seventy persons participated in this workshop.

Publication

Title: Korean Plant Variety Protection Report

The list of varieties registered from January 1 to December 31, 2003, was published as the “Korean Plant Variety Protection Report” and was distributed to the Office of UPOV, member countries of UPOV and related organizations. It will be published annually from 2004.

[Annex XIII follows]

ANNEX XIII

CZECH REPUBLIC

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

On May 1, 2004, the Czech Republic became a member of the EU. As a result of this accession, regulations on Community plant variety rights and all effective plant breeders' rights titles entered into force within the territory of the Czech Republic. Following the accession, a proposal amending Act No. 408/Coll. on the protection of plant variety rights is under preparation.

2. Cooperation in Examination

The Agreement on cooperation with Slovenia has been signed. Agreements on cooperation with Denmark, Germany and the Community Plant Variety Office are in preparation.

3. Situation in the Administrative Field

In the period from September 1, 2003, to September 1, 2004, 58 applications for protection were received and 30 titles were granted. On September 17, 2004, 675 titles were in force and 307 applications were pending.

4. Situation in the Technical Field

Arrangements for the enlargement of reference collections of varieties and for examination on behalf of the Community Plant Variety Office of the European Union have been made.

RELATED FIELDS OF ACTIVITIES

- Four decrees implementing provisions of Act No. 219/2003 Coll. (Seed Act) entered into force in the first half of 2004.
- Common catalogues of varieties of agricultural and vegetable species became effective on the territory of the Czech Republic on May 1, 2004.
- Act No. 78/2004 Coll., on the handling of genetically modified organisms and genetic products, entered into force on February 25, 2004.

[Annex XIV follows]

ANNEX XIV

ROMANIA

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

During 2004, the Romanian Law No. 255/1998 regarding plant variety protection was analyzed by EU experts in the framework of a PHARE program regarding the strengthening of intellectual property rights. On the basis of their observations and proposals, during 2003-2004, a PHARE program regarding technical assistance for strengthening the implementing authorities of intellectual property rights was organized and completed in July 2004.

A submodule (B4), regarding plant variety protection, for upgrading the intellectual property rights and related provisions was developed and, as a consequence, a new law regarding plant variety protection was drafted by the experts of the State Office of Inventions and Trademarks (OSIM) in cooperation with the EU legal experts.

Regulation No. 84/2003 on variety testing and registration was amended by Regulation No. 137/2004, made by State Institute for Variety Testing and Registration (ISTIS), which contains the new provisions regarding variety testing and variety denominations according to the EU directives and Regulation 930/2000.

2. Cooperation in Examination

A ring test for DUS tests of 15 carrot varieties, coordinated by the Netherlands, was organized in Romania, in cooperation with Eastern and Central European countries.

3. Situation in the Administrative Field

In Romania, from 96 existing applications for plant variety protection to OSIM, 49 titles of protection have been granted. Most titles were for Romanian varieties in respect of agricultural crops, vegetables, fruit trees, vineyards and medicinal plants.

Protection was granted on the basis of DUS tests performed by ISTIS.

A submodule for training OSIM and ISTIS selected staff in plant variety protection and registration in the EU was provided. Twelve experts from OSIM and ISTIS received training in various national plant variety offices with regard to implementing the EC directives and regulations.

Experts from OSIM participated at the Technical Working Parties for Agricultural Crops and the Technical Working Party for Fruit Crops.

4. Situation in the Technical Field

ISTIS elaborated the Official Catalogue of Plant Varieties for 2004.

In the field of seed certification, the control of the quality of seed by National Seed and Inspection, ISTH methodology and ISO 9001 and 17025, was implemented.

Training courses were organized for laboratory staff in order to improve the quality of seed analysis.

The territorial laboratories were provided with new apparatus and IT equipment.

[Annex XV follows]

ANNEX XV

UNITED KINGDOM

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

There have been no significant developments in the legislative field with regard to Plant Breeders' Rights following the ratification of the 1991 UPOV Convention in 1998.

2. Cooperation in Examination

The United Kingdom continues to play an active role in the testing of various species for a number of countries and the Community Plant Variety Office (CPVO).

3. Situation in the Administrative Field

3.1 Website address

The website address of Defra's Plant Variety Rights Office and Seeds Division is as follows: <http://www.defra.gov.uk/planth/pvs/default.htm>

The Plant Variety Rights Office (PVRO) Plant Varieties and Seeds Gazette, which is published monthly, can be found at this address, in addition to other information relating to the Office.

4. Situation in the Technical Field

4.1 PBR Applications

There has been a continuing decrease in numbers of applications for UK PBR, a fact which can be attributed almost directly to the increase in the number of applications for Community Plant Variety Rights.

4.2 European Plant Breeders' Rights

The United Kingdom continues to contribute to the development and management of the EU system through membership of the CPVO Administrative Council and various working groups.

4.3 National Listing and PBR Review

The PVRO is finalizing a review of its National Listing and PBR systems, with the aim of achieving full cost recovery. The review covers the level and structure

of fees, plant variety testing systems, including use of breeders' data and collaborative agreements with other countries.

4.4 Technical Developments

The PVRO continues to support research and technical development aimed at improving the cost-effectiveness of variety testing. Attention is focused on electronic image capture and analysis, statistical techniques and molecular techniques.

5. Activities for the Promotion of Plant Variety Protection

The UK continues to receive visitors from overseas wishing to learn more about plant breeders' rights. This year, the PVRO has been pleased to welcome visitors from Romania and Poland.

[Annex XVI follows]

ANNEX XVI

SERBIA AND MONTENEGRO

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

The new Plant Variety Protection Law, which conforms to the 1991 Act of the UPOV Convention, will be adopted by the Parliament of State Community Serbia and Montenegro after harmonization between two states in State Community Serbia and Montenegro with respect to the legislation of intellectual property, in general, and plant variety protection.

2. Situation in the Administrative Field

In April 2004, the Ministry of Agriculture and Water Management of the Republic of Serbia was transformed to become the Ministry of Agriculture, Forestry and Water Management of the Republic of Serbia.

All activities related to plant variety registration (for both domestic and foreign plant varieties) are under the authority of the Republic of Serbia, Ministry of Agriculture, Forestry and Water Management, Department for Seed and Seedlings.

3. Activities for the Promotion of Plant Variety Protection

In November 2003, the Vice Secretary-General of UPOV, Mr. Rolf Jördens, participated in the Third Eastern European Seed Network Meeting in Belgrade and visited the Ministry of Agriculture and Water Management of Republic of Serbia, where he met with the Minister for Agriculture and Water Management.

With the purpose of defining and unifying the approach to DUS tests, the Republic of Serbia, Ministry of Agriculture, Forestry and Water Management, Department for Seed and Seedlings, participated in the international DUS project - Carrot Ring Test 2004. The participating countries (Czech Republic, Hungary, Bulgaria, Slovenia, Germany, Poland, Romania, the Netherlands and Serbia) organized DUS test trials for varieties of carrot. On September 23 and 24, 2004, in Naktuinbouw, Netherlands, a final meeting will take place, and the results from trials will be discussed. A ring test for potato is planned for 2005.

The Ministry of Agriculture, Forestry and Water Management, Department for Seed and Seedlings has started to prepare a collection of seed samples for DUS and post control tests.

RELATED FIELDS OF ACTIVITIES

- Catalogue of varieties authorized for sale (registered plant varieties): “The list of agricultural and forest plant varieties for 2004” is available free, in both printed and electronic format, on the web site of the Ministry of Agriculture, Forestry and Water Management of Republic of Serbia (www.minpolj.sr.gov.yu)
- The Ministry of Agriculture, Forestry and Water Management has prepared a draft of two new laws on Agricultural Seed Law and Seedlings Law.

[Annex XVII follows]

ANNEX XVII

SWEDEN

PLANT VARIETY PROTECTION

1. Situation in the Administrative Field

Number of applications received:

July 1, 2001, to June 30, 2002:	47
July 1, 2002, to June 30, 2003:	36
July 1, 2003, to June 30, 2004:	26

Number of titles of protection issued:

2001:	31 (24 agricultural 4 fruit and 3 ornamental)
2002:	34 (26 agricultural, 7 fruit and 1 ornamental)
2003:	30 (27 agricultural and 3 vegetables)

Number of grants valid as per July 1:

2002:	297 (212 agricultural, 3 vegetable, 33 fruit and 49 ornamental)
2003:	309 (229 agricultural, 4 vegetable, 34 fruit and 42 ornamental)
2004:	285 (205 agricultural, 7 vegetable, 33 fruit and 40 ornamental)

2. Situation in the Technical Field—Genetically Modified Organisms

At present, applications are pending for three genetically modified potato varieties. For one potato variety, the DUS test is completed and the decision is pending an EU decision on market release.

[Annex XVIII follows]

ANNEX XVIII

TUNISIA

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

1.1 – 1.3 Extension of protection to other genera and species:

Extension of protection to : Artichoke: *Cynara scolymus*
Garlic: *Allium Sativum* L.

Extension in progress.

2. Cooperation in Examination

Cooperation project with GEVES (France) planned.

3. Situation in the Administrative Field

- The Department for the Evaluation, Approval and Protection of Plant Varieties and External Relations was set up in 2001.
- Since the publication of the 1999 law based on the 1991 Act of the Convention, attempts are being made to adapt the procedures applied by UPOV members, and especially those applied by GEVES.
- The number of applications continues to increase; the number of official applications published is 31.
- Grant of the first plant variety certificate since the official accession to UPOV (August 2003).

4. Situation in the Technical Field

- The department in charge of plant variety protection was set up in 2001; no such structure existed before that date.
- DUS tests are at present being conducted on ten plant species for 31 approved applications for protection, while ten or more applications are still being examined for acceptability of the files.
- The first Tunisian plant variety certificate was issued in December 2003.
- Little experience of DUS testing is available as yet.

5. Activities for the Promotion of Plant Variety Protection

- A seminar was organized on the protection of plant variety and the UPOV system in March 2004.
- A project for training and technical assistance on plant variety protection is under consideration (BIRD credit).
- A project for cooperation with GEVES has been proposed and is still being considered.

[Annex XIX follows]

ANNEX XIX

TURKEY

PLANT VARIETY PROTECTION

Protection of the New Plant Varieties Studies in Turkey

Concerning the law for the protection of breeders' rights for new plant varieties, studies were started in 1996. These studies were based on the 1991 Act of the UPOV Convention, the EU Plant Variety Protection Directives and the Agreement on Trade-Related Aspects of Intellectual Property Rights of the World Trade Organization.

The law on the protection of breeder's rights for new plant varieties was accepted on January 8, 2004, by the Turkish Grand National Assembly and was published in the official Gazette, No. 25347 of January 14, 2004.

The law was prepared with reference to the 1991 Act of the International Union for the Protection of New Varieties of Plants (UPOV) and the EU directives (2100/94 EC and 1768/95 EC) related to breeder's rights.

The purpose of this law is to encourage the development of new plant varieties and to ensure protection of new varieties and breeders' rights. The protection of foreign breeders (nationals of the UPOV member countries) was developed in line with the reciprocity principles. The law covers all plants.

The regulation concerning the protection of breeders' rights for new plant varieties and the regulation concerning the implementation of the farmer's privilege, which are both prepared for the implementation of the law, came into force after publication in the official Gazette on August 12, 2004. Applications and objections must be made to the General Directorate of Protection and Control. Also these documents and the scope of these regulations shall be treated by this General Directorate, whilst the technical studies and relevant implementations are to be conducted by the Directorate of Seed Registration and Certification Center according to these regulations.

The fees mentioned in the Articles 33 and 34 of the regulation, concerning the implementation of Law No. 5042, shall be determined by the Ministry in the coming days and applications will start to be accepted together with carrying out the evaluation phases.

In order that this law could be implemented in our country in the best way within the frame of international agreements and rules, the training of technical staff and sector has been of great importance. In this context, a series of meetings, seminars and publications, with regard to the introduction of legislation concerning the protection of plant species, is planned to take place in the coming year.

We are aware of the necessity of carrying out the technical studies, strengthening the technical background, increasing the technical knowledge level of technical staff and the strengthening of international cooperation. In this context, such topics are included in the projects which are conducted within the scope of adaptability to the European Union.

Furthermore, the translation into English of the Regulation concerning the protection of breeders' rights for new plant varieties within the scope of Law No. 5042 regarding the Protection of Breeder's Rights for new plant varieties, together with the translated English version of the Regulation concerning the implementation of the farmer's privilege will be sent to the Office of the Union.

[Annex XX follows]

ANNEX XX

EUROPEAN COMMUNITY

(Report prepared in close relation with the Community Plant Variety Office)

PLANT VARIETY PROTECTION1. Legislation'Access to documents' and 'Audit and control'

On June 18, 2003, the Council amended Council Regulation 2100/94 by adopting Regulation 1650/2003¹ to take effect during the period that this report covers. The changes were of an administrative nature and related to: firstly, public access to documents held by the Community Plant Variety Office ("CPVO"). As required by the new rules, the Administrative Council of the CPVO adopted implementing rules on access to documents at its meeting in March 2004; and secondly, rules on audit and control were introduced. The amendments were inserted as a new Article 33a.

Compulsory licensing

On 29 April 2004 the Council amended Article 29 of Council Regulation 2100/94 by adopting Regulation 873/2004.² Article 29 relates to compulsory licensing that may be granted on grounds of public interest. In its amended version, Article 29 clarifies that a non-exclusive compulsory license to use a protected variety, subject to payment of an appropriate royalty as equitable remuneration, may be granted to the holder of a patent for a biotechnological invention under certain specified limited circumstances.

Variety denominations

The Administrative Council of the CPVO has adopted new guidelines on variety denominations. The new rules are available on the CPVO website. The Commission has adopted amendments to Regulation 930/2000 establishing implementing rules as to the suitability of the denominations of varieties of agricultural plant species and vegetable species (pending publication in the Official Journal of the European Union).

The adoption of the above mentioned rules on variety denominations is the result of cooperation between national experts, CPVO experts and the European Commission with the aim of making the two sets of rules as similar as possible.

¹ Council Regulation (EC) No. 1650/2003 of June 18, 2003, amending Regulation No. 2100/94 on Community plant variety rights, OJ L 245/28, 29.9.2004.

² Council Regulation (EC) No. 873/2004 of April 29, 2004, amending Regulation No. 2100/94 on Community plant variety rights, OJ L 162/38, 30.4.2004.

Enlargement

On May 1, 2004, the EU was enlarged by ten new member States (the Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia) . No specific legislation was enacted in relation to plant variety rights as a result of the enlargement, but the enlargement has nevertheless had some legal effects as regards the Community plant variety right system. The most important effects to mention in this context can be summarized as follows:

The geographical scope of Community plant variety right titles in force at the date of enlargement was automatically extended to the territories of the new member States. A national title in force in a new member State at the date of enlargement for a variety already protected in the Community will still be valid but cannot be enforced, as long as the Community plant variety right for the variety is still in force. National plant variety rights may still be granted in the new member States after the enlargement unless the variety in question is protected at the Community level.

Enforcement of intellectual property rights

On April 29, 2004, the European Parliament and the Council adopted Directive 2004/48/EC on the enforcement of intellectual property rights.³ The directive concerns the measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights. The scope of the directive covers any infringement of intellectual property rights as provided for by Community law and/or by national law of the member States. Accordingly, infringements of Community plant variety rights as well as national plant variety rights in any of the member States of the European Union are covered. The directive includes an obligation on the member States to provide for a number of measures in their national laws relating to issues such as procedures and remedies, evidence, right of information, provisional and precautionary measures, injunctions and legal costs. The member States shall take the necessary measures to comply with the directive by April 29, 2006.

Customs action against goods suspected of infringing certain intellectual property rights

On July 22, 2003, the Council adopted Regulation 1383/2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights⁴. The Regulation shall apply with effect from July 1, 2004. The Regulation sets out conditions for action by the customs authorities when goods are suspected of infringing an intellectual property right in certain specified situations. The Regulation also contains provisions on actions to be taken relating to goods found to infringe an intellectual property right at the end of the prescribed procedure. The Regulation covers goods infringing intellectual property rights listed in the Regulation, which includes national plant variety rights under the laws of the member States and Community plant variety rights.

³ Directive 2004/48/EC of the European Parliament and of the Council of April 29, 2004, on the enforcement of intellectual property rights, OJ L 195/16, 2.6.2004.

⁴ Council Regulation (EC) No. 1393/2003 of July 22, 2003, concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights, OJ L 196/7, 2.8.2003.

2. Situation in the Technical and Administrative Fields

Enlargement: As mentioned above, from May 1, 2004, the European Union welcomed ten new member States. In order to integrate examination offices of those countries into the DUS network of the CPVO, some new member States expressed their interest in performing DUS tests on behalf of the Office for certain species. After evaluation by the CPVO and presentation to the Administrative Council, the DUS network is now enlarged by six further Examination Offices as from June 15, 2004.

Meetings: 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 2003: in addition to the representatives from the examination offices of the CPVO, experts from the candidate countries for EU accession, Switzerland, the UPOV Office, the European Commission and Breeders representatives participated in that meeting.
- *Experts meetings for ornamentals, agricultural crops, vegetables and fruit* have dealt with their specific problems.

DUS Technical protocols: To fulfil the requirements of the Community Regulation on PBR, the DUS examination must be performed following technical protocols adopted by the Administrative Council. The CPVO has prepared and implemented a work plan, aiming to produce technical protocols for the most important genera and species for which the CPVO has received applications. The UPOV Test Guidelines are used as a basis for that work. Currently, 78 technical protocols have been adopted and CPVO plans to continue this work. However, the most important species in terms of number of applications are already covered by a CPVO technical protocol.

3. Information concerning the functioning of the Community plant variety protection

Statistics: In June 2004, the Office received its 20,000th application. By the end of 2004, more than 10,000 varieties will be under active Community protection.

From October 1, 2003, to August 31, 2004, the CPVO received 2,389 applications. So far, the year 2004 shows an increase of 6.7% compared with the same period in 2002/2003. In 2003, the CPVO granted 1,869 titles.

Since 1995, the Office has received a total of 20,230 applications (as of August 31, 2004).

The CPVO has received applications for varieties of more than 950 different genera/species.

The breakdown by group of species is as follows:

- 60.8% Ornamentals
- 23.0% Agricultural crops
- 10.5% Vegetables
- 5.5% Fruit
- 0,2% Miscellaneous

Web site of the CPVO: In June 2004, the CPVO launched its new web site. The main changes are a better structure, and an improved search tool for the database of grants and applications. A restricted access area for Technical Liaison Officers is under development. The official CPVO Gazette will also be online soon.

The development of the variety denomination database is progressing according to schedule. It will therefore be operational from the beginning of 2005.

4. Activities for the Promotion of plant variety protection

The CPVO continues to cooperate in the promotion of the plant variety protection according to the UPOV Convention, providing speakers for seminars and specialized meetings organized by the UPOV Office, the EU Commission and the EU member States.

RELATED FIELDS OF ACTIVITIES

1. Catalogues of varieties authorized for sales; seed certification:

Background: Common Catalogue of Varieties of Agriculture Species and Common Catalogue of Vegetable Plant Species: both established in 1970 (Council Directives 70/457/EEC currently 2002/53/EC⁵ and 70/458/EEC currently 2002/55/EC⁶).

According to the relevant Community legislation, seed of varieties accepted in the member States in accordance with the Community criteria must not be subject in principle (derogations are envisaged) to any marketing restriction relating to the variety within the territory of the European Union.

The Common Catalogues are compiled on the basis of the national Catalogues of the member States.

Member States shall ensure that a variety is accepted only if it is distinct, stable and sufficiently uniform. The varieties (only agricultural plants, in general) must be of satisfactory value for cultivation and use.

Member States provide that the varieties accepted must be maintained according to accepted practices for maintenance of variety.

Two recent elements may be highlighted:

(a) On October 6, 2003 (Commission Directives 2003/90/EC⁷ and 2003/91/EC⁸), consistency was ensured between the Community Plant Variety Office (CPVO) technical protocols, or the UPOV Guidelines in so far as CPVO has not yet developed specific guidelines, and the conditions for the varieties (distinctness,

⁵ OJ L193, 20.7.2002, p.1

⁶ OJ L193, 20.7.2002, p.23

⁷ OJ L254, 8.10.2003, p.7

⁸ OJ L254, 8.10.2003, p.11

uniformity and stability) with a view to their acceptance into national catalogues of the member States.

(b) On May 14, 2004, the Commission published a first set of varieties, meeting the EU requirements⁹, listed in the new member States.

2. Genetic resources

On March 31, 2004, the European Community and nine of its member States deposited at the FAO their instruments of ratification of the International Treaty on Plant Genetic Resources for Food and Agriculture, making it possible for the Treaty to enter into force on June 29, 2004. The Treaty will facilitate access (for research and breeding) to seeds of the most important agricultural plant species. The sharing of commercial profits for the benefit of conservation and the sustainable use of genetic resources will be an important step forward in North-South relations.

[End of Annex XX and of document]

⁹ OJ C136A, 14.5.2004. p.1