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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

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EXAMINATION OF THE CONFORMITY OF THE LEGISLATION OF BELARUS WITH THE UPOV CONVENTION

Document prepared by the Office of the Union

Introduction

1. By a letter dated October 17, 1995, addressed to the Secretary-General of UPOV, from the Deputy Minister for Agriculture of Belarus, Mr. Shakolo, Belarus informed the Secretary-General that Belarus was considering accession to the 1978 Act of the UPOV Convention and requested the advice of the Council of UPOV on the conformity of the Plant Variety Patent Law of Belarus (hereinafter referred to as "the Law"), with the 1978 Act of the UPOV Convention (hereinafter referred to as "the 1978 Act"). An English translation of the Law was attached to the letter and is reproduced in the Annex.
2. Belarus did not sign the 1978 Act. Accordingly, under Article 32(1)(b) of that Act it must deposit an instrument of accession in order to become a member States of UPOV on the basis of that Act. Under Article 32(3) of the 1978 Act, an instrument of that kind can only be deposited by Belarus if it has requested the advice of the Council on the conformity of its laws with the provisions of the 1978 Act and if the decision of the Council embodying the advice is positive.
3. In its eleventh extraordinary session held on April 22, 1994, the Council accepted that it was necessary to so interpret the modifications to the 1978 Act introduced by the 1991 Act as to enable States to be bound simultaneously by and to be for all practical purposes in conformity with both Acts and that, accordingly, a law which conforms with the provisions of

the 1991 Act, will necessarily conform with the provisions of the 1978 Act (See the Report of the session, document C(Extr.)/11/6 at paragraph 14).

4. The analysis of the Law which follows is in the order of the substantive provisions of the 1991 Act. The assumption is made that conformity with these provisions results *ipso facto* in conformity also with the requirements of the 1978 Act. This analysis has been submitted to and accepted by the authorities of Belarus.

Legal Basis for the Protection of New Varieties in Belarus

5. The protection of new plant varieties in Belarus will be governed by the Law and by general rules and implementing regulations made by the Patent Office of Belarus and the Cabinet of Ministers of Belarus under the Law.

6. Article 41 of the Law (hereinafter called "the International Treaty Provision") provides that where an international treaty to which Belarus is party contains provisions different from those specified in this Law, the former shall prevail. Accordingly, if Belarus accedes to the 1991 Act of the UPOV Convention, any lack of conformity between the Law and the 1991 Act will be remedied by the International Treaty Provision.

Article 1 of the 1991 Act: Definitions

7. Article 1 of the Law contains a definition of "variety" which substantially conforms with that in Article 1(vi) of the 1991 Act.

Article 2 of the 1991 Act: Basic Obligation of the Contracting Parties

8. Article 2 of the 1991 Act requires a State acceding to the 1991 Act to grant and protect breeders' rights. "Breeder's right" is defined in Article 1 of the 1991 Act to mean "the right of the breeder provided for in this Convention." The title of protection created by the Law is called a "plant patent" (See Article 3 of the Law). The right provided for breeders of plant varieties in the form of a plant patent corresponds to the "breeder's right" of the 1991 Act. The analysis which follows demonstrates that the Law enables Belarus to fully perform the obligation of the said Article 2.

Article 3 of the 1991 Act: Genera and Species to be Protected

9. The second introductory paragraph of the Law specifies that the list of plant genera and species which are to be protected shall be established in a list to be approved by the Cabinet of Ministers of Belarus. This provision enables Belarus, by appropriate regulations, to conform with Article 3 of the 1991 Act. The application of the International Treaty Provision will require the Council of Ministers to exercise its powers under the said provisions so as to protect all plant genera and species ten years after the accession of Belarus to the 1991 Act.

Article 4 of the 1991 Act: National Treatment

10. Article 39 of the Law provides that "foreign natural persons and legal entities shall enjoy the rights provided for in this Law and other legislative acts on the protection of new varieties of plants of the Republic of Belarus on the same footing as natural persons or legal entities of Belarus." Upon the accession of Belarus to the 1978 and 1991 Acts, nationals of member States of UPOV bound by the said Acts will accordingly receive national treatment in conformity with Article 3 of the 1978 Act and Article 4 of the 1991 Act.

Articles 5, 6, 7, 8 and 9 of the 1991 Act: Conditions of Protection

11. Article 2 of the Law reproduces, almost verbatim, the text of Articles 5 to 9 of the 1991 Act while retaining aspects of the text of Article 6 of the 1978 Act. Article 2 contains the whole of the substance of, and accordingly conforms with, Articles 5 to 9 of the 1991 Act. Article 42 contains provisions establishing a transitional limitation of the requirement of novelty which satisfies Article 6(2) of the 1991 Act.

Article 10 of the 1991 Act: Filing of Applications

12. Article 38 of the Law expressly provides that the breeder shall have the right to file an application for protection abroad and may choose the UPOV member State in which to file the first application. The Law accordingly conforms with Article 10(1) and (2) of the 1991 Act. The last paragraph of Article 38 reproduces the substance of Article 10(3) of the 1991 Act.

Article 11 of the 1991 Act: Right of Priority

13. Article 12 of the Law permits a claim for priority based upon an earlier application in a UPOV member State to be made in an application filed in Belarus during the period of twelve months from the date of the earlier application as required by Article 11(1) of the 1991 Act. Article 12 of the Law gives the applicant three months to file a certified copy of the earlier application and two years to furnish documents, information and material. Article 12 of the Law thus meets the requirements of Article 11 of the 1991 Act.

Article 12 of the 1991 Act: Examination of the Application

14. Articles 14, 15 and 18 of the Law contain detailed provisions relating to the examination of candidate varieties and satisfy the requirements of Article 12 of the 1991 Act.

Article 13 of the 1991 Act: Provisional Protection

15. Article 17 of the Law provides measures designed to safeguard the interests of the breeder between filing and grant in terms which conform with Article 13 of the 1991 Act.

Article 14 of the 1991 Act: Scope of the Breeder's Right

16. Article 6 of the Law reproduces, almost verbatim, the substance of Article 14(1) and (2) of the 1991 Act.

17. Article 7 of the Law reproduces verbatim the provisions of Article 14(5) of the 1991 Act.

18. The Law accordingly conforms in all respects with Article 14 of the 1991 Act.

Article 15 of the 1991 Act: Exception to the Breeder's Right

19. Article 8 of the Law reproduces the substance of Article 15(1) of the 1991 Act. The Law makes no provision for an exception to the plant patentee's right under the option conferred by Article 15(2) of the 1991 Act.

Article 16 of the 1991 Act: Exhaustion of the Breeder's Right

20. Article 9 of the Law provides for exhaustion of the plant patentee's right in terms which closely resemble Article 16 of the 1991 Act.

Article 17 of the 1991 Act: Restrictions on the Exercise of the Breeders' Right

21. Article 17(1) of the 1991 Act provides that "except where expressly provided in this Convention, no Contracting Party may restrict the free exercise of a breeder's right for reasons other than of public interest." Article 27 of the Law permits the courts to grant compulsory licenses where the protected variety is not used or insufficiently used and the applicant for a compulsory license is unable to enter into a license agreement with the plant patent holder. Compulsory licenses must, *inter alia*, specify the amount of royalties which is payable. The requirements for the grant of a compulsory license can be taken to fall within the public interest condition of Article 17 of the 1991 Act. Although the Law does not specify that the amount of royalty fixed must constitute "equitable remuneration" as required by Article 17(2) of the 1991 Act, any possible lack of conformity in this respect is remedied by the International Treaty Provision.

Article 18 of the 1991 Act: Measures Regulating Commerce

22. The Law contains no provision which hinders the grant or exercise of the plant patent and thus conform with Article 18 of the 1991 Act.

Article 19 of the 1991 Act: Duration of the Breeder's Right

23. The third paragraph of Article 3 of the Law provides for a duration of protection for all species of 25 years from the date of registration of the variety in the State Register of Protected Varieties. This more than satisfies the requirements of Article 19 of the 1991 Act.

Article 20 of the 1991 Act: Variety Denominations

24. Article 13 of the Law contains provisions concerning variety designations which satisfy all the requirements of Article 20 of the 1991 Act.

Article 21 of the 1991 Act: Nullity of the Breeder's Right

25. Article 22 of the Law contains provisions concerning nullity which reproduce the substance of Article 21 of the 1991 Act.

Article 22 of the 1991 Act: Cancellation of the Breeder's Right

26. Article 23 of the Law contains provisions which reproduce the substance of Article 22 of the 1991 Act.

Article 30 of the 1991 Act: Implementation of the Convention

27. Article 30(1)(i) of the 1991 Act requires adhering States to provide for appropriate legal remedies for the effective enforcement of breeders' rights. Article 28 makes provision for the availability of the remedies of injunction and damages to the holder of the plant patent and also to an exclusive licensee (unless the license agreement provides otherwise).

28. Article 35 provides in addition that "Any person who, in pursuance of his duties, shows negligence or bad faith in ... the use of a variety or the payment of remuneration to its creators shall incur liability under the legislation in force."

29. The Law accordingly conforms with Article 30(i).

30. Article 30(1)(ii) of the 1991 Act requires adhering States to "maintain an authority entrusted with the task of granting breeders' rights ..." Article 30 of the Law appoints the Patent Office as the authority "to carry out an integrated policy in the field of the legal protection of varieties in Belarus," and describes in detail the powers of the Patent Office in relation to plant patents. Article 31 appoints the State Committee for the testing of varieties of Belarus as the authority responsible for the DUS testing of candidate varieties. The Law thus conforms fully with Article 30(1)(ii) of the 1991 Act.

31. Article 30(1)(iii) of the 1991 Act requires adhering States to publish information concerning applications and grants of breeders' rights and proposed and approved

denominations. Articles 16, 20 and 23 of the Law require the Patent Office to publish official information relating to applications accepted, grants and premature cancellation of grants. There is no provision in the Law concerning the publication of information on denominations submitted or approved. Appropriate provisions can be made in regulations. These provisions essentially satisfy the requirements of Article 30(1)(iii) of the 1991 Act.

General Conclusion

32. In the opinion of the Office of the Union, the provisions of the Law essentially conform with the provisions of the 1978 Act and the 1991 Act, and will enable Belarus to "give effect" to the provisions of the 1978 Act as required by Article 30(3) of the 1978 Act.

33. *The Council is invited to*

(i) take a positive decision on the conformity of the Plant Variety Patent Law of Belarus with the provisions of the 1978 Act, in accordance with Article 32(3) of that Act;

(ii) authorize the Secretary-General to inform the Government of Belarus of that decision.

[Annex follows]

C/29/13

ANNEX

Draft

Republic of Belarus

Plant Variety Patent Law

This Law shall govern both economic and moral relations arising out of the breeding (discovering, developing), legal protection and use of patented varieties of plants.

The provisions of this Law shall apply to the plant genera and species according to a list as established by the Cabinet of Ministers of the Republic of Belarus.

TITLE I

LEGAL PROTECTION OF VARIETIES OF PLANTS

Article 1

Definitions

For the purposes of this Law:

"harvested material" shall mean entire plants or parts of plants disposed of for the purposes other than reproduction of a variety;

"propagating material" shall mean plants, seeds, seedlings, bulbs or any other parts of plants intended for the purposes of multiplication;

"creator (breeder) of a variety" shall mean the person who, by his creative activity, bred the variety;

"variety" shall mean a group of plants which, irrespective of whether the conditions of patentability are fully met, can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, and can be distinguished from any other group of plants of the same botanical taxon by the expression of at least one of the said characteristics. The variety may be represented by a plant or by two or more plants, or by a part or by two or more parts of a plant, provided that the part or the parts in question may be used for reproduction of entire plants of the variety.

"protected variety" shall mean a variety registered in the Official Register of Protected Varieties of the Republic of Belarus (hereinafter referred to as the "Register of Protected Varieties").

Article 2

Conditions of Patentability of a Plant Variety

A variety shall be granted legal protection where the variety is

- new,
- distinct,
- uniform and
- stable.

A variety shall be deemed to be new if, at the date of filing of the application for the grant of a plant patent (hereinafter referred to as the "application"), propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder or his successor in title, for purposes of exploitation of the variety

- in the territory of the Republic of Belarus earlier than one year before that date, and
- in the territory of any other State earlier than four years or, in the case of trees and of vines, earlier than six years before the said date.

The variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence, at the date of the filing of the application, is a matter of common knowledge.

Common knowledge may be established by reference to the fact that it is public knowledge that another variety is produced, reproduced, conditioned for the purpose of propagation, stocked for any of the above-mentioned purposes, offered for sale, sold, exported or imported.

The filing of an application for the granting of a title of protection for another variety, in any country, shall be deemed to render that other variety a matter of common knowledge, provided that the application leads to the granting of a patent, of a breeder's right or of any similar means of protection or to the entering of the said other variety in the official register of varieties.

The variety shall be deemed to be uniform if, having regard to the particular features of its propagation, its plants are sufficiently uniform in their characteristics.

The variety shall be deemed to be stable if its essential characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each cycle.

The essential characteristics which permit a variety to be defined and distinguished may be either morphological or physiological, but, in any case, must be capable of precise description.

Article 3

Legal Protection of the Variety

The right to a variety is protected by the State and shall be attested by a plant variety patent (hereinafter referred to as a "plant patent").

The plant patent shall be granted by the State Patent Office of the Republic of Belarus (hereinafter referred to as the "Patent Office") and shall attest the authorship of the variety, the priority date of the variety and the exclusive right of the owner of the plant patent to use the variety, except for limitations specified in this Law.

The plant patent shall produce its effects for 25 years following the date of registration of the variety in the Register of Protected Varieties.

The scope of protection of a variety shall be defined by its official description registered in the Register of Protected Varieties and by the sample of plant material of the variety in the reference collection of the State Committee for the Testing of Varieties to the Republic's Authority for the Administration of Agriculture (hereinafter referred to as the "State Committee").

The official description should contain the morphological, physiological and other characteristics of the variety on which the grant of the plant patent is based; if deemed necessary, it may be supplemented or amended by the State Committee.

TITLE II

CREATORS AND PLANT PATENT OWNERS

Article 4

Creator (Breeder) of the Variety

The person whose creative work has resulted in the variety shall be recognized as the creator (breeder).

Where the variety is the result of the joint creative work of two or more persons, those persons shall all be recognized as joint creators. The conditions governing the exercise of the rights in the variety jointly created by two or more persons shall be determined by agreement between them.

Persons who have made no personal creative contribution to the breeding of the variety, having merely provided the creator (or creators) with technical, organizational or material assistance, or helped in the securing of rights in the variety, shall not be recognized as joint creators.

The authorship of the variety shall belong to the creator and shall be an inalienable personal right. That right shall benefit from protection of unlimited duration.

The creator of the variety who is not the owner of the plant patent in that variety shall receive remuneration from the owner of the plant patent on the basis of agreement between them.

Article 5

Owner of the Plant Patent

The plant patent shall be granted:

- to the creator (or creators);
- to the person or persons (whether natural persons or legal entities) who, subject to the existence of a contract, is or are mentioned by the creator (or creators) in the application or in the request filed with the Patent Office prior to the registration of the variety;
- to the creator's heir.

Where a salaried employee (hereinafter referred to as “employee”) creates a service variety as a result of a specific task entrusted to him by his employer, the plant patent shall be granted to the employer if the employee and the employer have entered into a contract that so provides.

A variety shall be deemed to be a service variety if the variety relates to the employer’s area of activity, and if the employee created it in connection with work forming part of his duties, or used data or means that his employer has put at his disposal.

In such a case the employee shall be bound to inform his employer in writing of the service variety that he has created. The employer, in his turn, shall inform the employee in writing, within three months following the date on which he received the said information from him, whether he intends to apply for a plant patent. If the employee and the employer have not entered into a contract concerning the right to the plant patent, or if the employer has elected not to apply for a plant patent or failed to respond within the three-month period, the plant patent shall be granted to the employee who created the variety. In that case the employer shall be entitled to use the variety under conditions specified in a license agreement.

Other relations concerning service varieties created by employees in the course of their work shall be regulated by the laws of the Republic of Belarus.

Article 6

The Rights of the Plant Patent Owner

The following acts in respect of the propagating material of the protected variety shall require the authorization of the owner of the plant patent:

- (a) production or reproduction (multiplication),
- (b) conditioning for the purpose of propagation,
- (c) offering for sale,
- (d) selling or other marketing,
- (e) exporting,
- (f) importing,
- (g) stocking for the purposes mentioned in (i) to (vi), above.

The owner of the plant patent may at his discretion make any such authorization subject to conditions and limitations.

The acts referred to in indent one of this Article in respect of harvested material obtained through the unauthorized use of propagating material of the protected variety shall also require the authorization of the owner of the plant patent, unless the owner has had reasonable opportunity to exercise his right in relation to the said propagating material.

Article 7

Essentially Derived and Certain Other Varieties

The provisions of Article 6 of this Law shall also apply in relation to

- varieties which are essentially derived from the protected variety where the protected variety is not itself an essentially derived variety,
- varieties which are not clearly distinguishable in accordance with Article 2 from the protected variety and
- varieties whose production requires the repeated use of the protected variety.

A variety shall be deemed to be essentially derived from another variety ("the initial variety") when

- it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety;
- it is clearly distinguishable from the initial variety; and
- except for the differences which result from the act of derivation it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

Essentially derived varieties may be obtained by the selection of a natural or induced mutant, or of a somaclonal mutant, the selection of a mutant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.

Article 8

Exceptions to the Rights of the Plant Patent Owner

The rights of the owner of the plant patent shall not extend to

- acts done privately and for non-commercial purposes;
- acts done for experimental purposes; and
- acts done for the purpose of breeding other varieties and, except where the provisions of Article 7 of this Law apply, acts referred to in Article 6 of this Law in respect of such other varieties.

Article 9

Exhaustion of the Plant Patent Owner's Rights

The plant patent owner's rights shall not extend to acts concerning any material of the protected variety which has been sold or otherwise marketed by the owner of the plant patent or with his consent in the territory of the Republic of Belarus or which has been exported by him into a country which does not protect varieties of the botanical species to which the variety belongs for processing or final consumption purposes.

The provisions of indent one of this Article shall not apply where the selling or other marketing involves further propagation of the variety in question or an export of material of the variety to enable the propagation of the variety in a country which does not protect varieties of the plant genus or species to which the variety belongs.

TITLE III

PROCEDURE FOR THE GRANT OF THE PLANT PATENT

Article 10

Application for a Plant Patent

The application for a plant patent shall be filed with the Patent Office:

- by the creator (breeder);
- by the employer where the circumstances specified in indent two of Article 5 of this law obtain;
- by the person, whether natural person or legal entity, to whom the creator or the employer has contractually assigned the right to file an application or to whom that right has been transferred by succession.

The application may be filed through a patent attorney registered to practice before the Patent Office or through an authorized agent resident in the Republic of Belarus.

Natural persons residing outside the Republic of Belarus or legal entities having their headquarters in a foreign country shall, for the grant and maintenance of plant patents in the Republic of Belarus, only act through patent attorneys or authorized agents.

The application shall relate to one variety and shall contain:

- a completed application form as supplied by the Patent Office;
- a completed technical questionnaire as supplied by the Patent Office;
- a power of attorney where the application is filed through a patent attorney or an authorized agent;
- a document attesting payment of the prescribed fee or exemption from such payment or the existence of circumstances that warrant a partial reduction in the said fee.

The requirements that have to be met by the elements constituting an application shall be specified by the Patent office.

For the purposes of the examination, the Patent Office may require the furnishing of other necessary documents and plant materials.

Article 11

Assignment of the Right to the Plant Patent and of the Right to Use a Variety

The right to the plant patent and the right conferred by the plant patent to use the variety may, under the plant patent transfer or under the license contract, be assigned to any natural person or legal entity.

The contract shall be registered with the Patent Office, failing which it shall be deemed null and void.

Article 12

Priority of a Variety

The priority of a variety shall be determined by the date of receipt, by the Patent Office, of the application containing the elements referred to in indent four of Article 10 of this Law.

The priority of a variety may be determined by the date on which an initial application in respect of the same variety was filed in a State with which the Republic of Belarus is party to a bilateral or international multilateral agreement for the protection of plant varieties, provided that the Patent Office receives the application for which such priority is claimed within 12 months from the said date.

The applicant who wishes to avail himself of the right of priority of the initial application shall state the fact on filing the application with the Patent Office. A copy of the documents which constitute the first application, certified to be a true copy by the authority with which that application was filed and samples or other evidence that the variety, which is the subject matter of both applications is the same, shall be furnished within a period of three months.

The applicant shall be allowed a period of two years after the filing of the application, where the first application has been rejected or withdrawn, in which to furnish any necessary documents or materials required for the purpose of the examination.

Article 13

Variety Denomination

The variety shall be designated by a denomination which will be its generic designation.

The denomination of a variety must be short. It must enable the variety to be identified. It must be different from every denomination which designates an existing variety of the same botanical species or of a closely related species. The denomination must not be liable to mislead or to cause confusion concerning the characteristics, origin or value of the variety, or the identity of the creator or of the plant patent owner.

The denomination of a new variety shall be submitted by the applicant to the Patent Office. If it is found that such denomination does not satisfy the requirements of indent one of this Article, the Patent Office shall refuse to register it and shall require the applicant to propose another denomination within a period of two months.

The denomination shall be registered in the Register of Protected Varieties at the same time as the protected variety is registered therein.

When the protected variety is offered for sale or otherwise marketed, it shall be permitted to associate a trade mark, trade name or other similar indication with the registered variety denomination, provided that, where such an indication is so associated, the denomination must nevertheless be easily recognizable.

Any person who offers for sale or markets propagating material of the protected variety shall be obliged to use the denomination of that variety within the territory of the Republic of Belarus or within the territory of any State with which the Republic of Belarus is party to a bilateral or international multilateral agreement for the protection of plant varieties, even after the expiration of the term of the plant patent in that variety, except where prior rights prevent such use.

Prior rights in a trade mark, trade name or other similar indication, when in possession of third persons who are not applicants, shall not be affected.

If, by reason of a prior right, the use of the denomination of a variety is forbidden to the person who is obliged to use it, the Patent Office shall have the right to require that the plant patent owner submits another denomination for the variety.

The variety denomination submitted to the Patent Office must be the same as that submitted in any State with which the Republic of Belarus is party to a bilateral or international multilateral agreement for the protection of plant varieties. Such denomination shall be accepted by the Patent Office, unless it considers such denomination unsuitable by virtue of indent one of this Article.

Article 14

Examination of the Application

The examination of the application, which shall consist in an examination as to form and a substantive examination, shall be carried out by the Patent Office in accordance with this Law and the implementing regulations thereof drawn up by the same Office.

The applicant shall have the right, on his own initiative or at the request of the official patent examiner, to intervene, in person or through his patent attorney or authorized agent, to settle questions raised in the course of the examination as to form and the substantive examination.

In the course of the examination the applicant shall have the right, on his own initiative or upon request, to complete, specify or correct elements of the application, on condition that the identity of the variety in respect of which the application is filed remains the same.

Additional elements filed at the invitation of the Patent Office or of the State Committee shall be filed within two months following the date of receipt of the invitation. The response period may be prolonged at the applicant's request, provided that the said request reaches the Patent Office before the current period expires. In that case the examination period shall be prolonged accordingly.

If the applicant has failed to keep to the prescribed period or has not responded to the examiner's invitation, the application shall be deemed to have been withdrawn.

The application may be withdrawn at the applicant's request.

Applications taken into consideration by the Patent Office shall not be returned to the applicant.

Article 15

Examination of the Application as to Form

The application shall undergo examination as to form within one month following the date of receipt thereof by the Patent Office.

The examination as to form of the application shall serve to ensure that the requisite documents are all present and to determine whether the claimed variety in respect of which the application is made relates to the subject matter eligible for protection under this Law.

If necessary, the applicant may be invited to supply more details on his application within two months following the date of receipt of the invitation. In that case the examination period shall be prolonged accordingly.

If it is found that the variety in respect of which the application is made does not relate to the subject matter eligible for protection under this Law, or that the applicant has not provided the necessary additional details within the time set or that he has not submitted the documents that were missing on the date of receipt of the application, the said application shall not be taken into consideration and the applicant shall be notified accordingly.

If the application is taken into consideration, the Patent Office shall inform the applicant of the priority date that it has accorded to the variety.

In the event of disagreement with the decision taken on the examination as to form, the applicant shall have the right to appeal to the Examination Appeal Board of the Patent Office (hereinafter referred to as the "Appeal Board") against the decision within two months following the date on which he received notice thereof. The appeal shall be ruled upon within one month following receipt thereof.

Article 16

Publication of the Application

The Patent Office shall publish the particulars of every application that has successfully undergone examination as to form on expiration of a period of six months from the date of completion of the said examination. The list of published particulars shall be determined by

the Patent Office. After the particulars of the application have been published, any person shall have the right to acquaint himself with the application documents.

Publication of the particulars of the application shall not take place where, before the publication period expires, the decision to grant a plant patent has been taken or the application has been withdrawn or has been the subject of a final decision of refusal.

The creator of the variety may forgo being mentioned as such on publication of the particulars of the application if he is not the prospective owner of the plant patent.

Article 17

Provisional Legal Protection

A variety in respect of which an application has been filed shall enjoy provisional legal protection as from the date of publication of the particulars of the application and up to the date of registration of the variety in the Register of Protected Varieties.

Any natural person or legal entity using the claimed variety during the period specified in indent one of this Article shall pay compensation to the owner of the plant patent after the grant thereof, in an amount to be determined by agreement between the parties. The provisional legal protection shall be deemed never to have been granted where a final decision of refusal has been taken.

During the period of the provisional legal protection, the applicant shall enjoy the rights of the owner of the plant patent as referred to in Articles 6 and 7 of this law.

Article 18

Substantive Examination of the Application

The substantive examination of the application shall serve to determine the priority date of the variety where that date has not been determined in the course of the examination as to form, and to ascertain whether the variety is patentable.

The substantive examination shall include the ascertaining of the novelty of the variety, and also the assessment of the distinctness, uniformity and stability of the variety and shall be performed within the time limits and on the basis of testing techniques to be established by the State Committee.

In the course of the assessment of the distinctness, uniformity and stability of the variety the State Committee may, if deemed necessary, base its assessment:

- on growing or other tests with material of the variety carried out by the State Committee;

- on test results obtained under agreements concluded with organizations, institutions or individual persons of the Republic of Belarus, or with the competent authorities for testing

varieties in States with which the Republic of Belarus is party to bilateral or multilateral agreements for the protection of plant varieties;

- on tests conducted by or on behalf of the applicant whether inside or outside the Republic of Belarus.

The State Committee may require the applicant to furnish all the necessary information, documents or propagating material, or to invite the applicant to conduct certain tests by himself.

The Patent Office shall base the results of the substantive examination as to distinctness, uniformity and stability on the report and the opinion of the State Committee and shall take the decision to grant a plant patent or to refuse the application.

The applicant shall have the right to acquaint himself with the documents used in the course of the examination, and to inspect the testing procedure.

The applicant may, within two months following the date on which he received the decision on his application, request copies of the documents cited against it, and also test results.

Article 19

Appeal Against the Decision on the Application and Restoration of Rights Determined by Time Limits

In the event of disagreement with the decision taken on the substantive examination, the applicant shall have the right, within three months following the date on which he received the decision or, if he so requested, copies of the documents cited against his application or test results, to appeal to the Appeal Board stating his arguments. The appeal shall be considered within four months following the date of receipt thereof. In the case of a complex application, that period may be prolonged with the agreement of the applicant. The applicant shall have the right, either in person or through his agent, to take part in the consideration of his appeal.

The applicant may appeal to the courts against the ruling of the Appeal Board within a period of one year following the date on which the said ruling was made.

The applicant who has failed to observe the time limits specified in indents three and four of Article 14, in indents three and six of Article 15, in indent seven of Article 18 and in indents one and two of Article 19 of this Law may have his rights restored by the Patent Office if he presents a legitimate excuse and pays a fee.

The request for restoration of a right determined by a time limit may be filed not later than twelve months after the time limit in question has expired.

Article 20

Publication of the Particulars of the Plant Patent

The Patent Office shall, after the decision to grant a plant patent has been taken, and subject to the payment of the issue fee by the applicant, publish the particulars of the plant patent in its official Bulletin. Those particulars shall include the name of the plant patent owner and the name of the creator (or creators), except where the latter has (or have) elected not to be mentioned as such, the effective date of the plant patent, the denomination of the protected variety and the description thereof.

The full list of published particulars shall be determined by the Patent Office.

The plant patent owner shall have the right to file with the Patent Office a request for correction of unintentional mistakes in the plant patent, provided that the scope of legal protection is not thereby extended.

Article 21

Registration of the Variety and Grant of the Plant Patent

At the same time as it publishes the particulars of the plant patent, the Patent Office shall register the variety in the Register of Protected Varieties and shall grant a plant patent to the person in whose name the plant patent has been applied for. If a plant patent has been applied for in the name of two or more persons, one plant patent shall be issued to them.

The layout of the Register of Protected Varieties and that of the plant patent and the list of particulars included therein shall be determined by the Patent Office.

Where the creator is not the plant patent owner, the Patent Office shall issue him a breeder's certificate attesting his status as creator.

TITLE IV

NULLITY AND CANCELLATION OF THE PLANT PATENT

Article 22

Nullity of the Plant Patent

Throughout the period of its validity, a plant patent shall be declared null and void by any natural person or legal entity when it is established

(1) that the conditions of patentability as to novelty and distinctness of the protected variety were not complied with at the time of the grant of the plant patent;

(2) that, where the examination decision has been essentially based upon information and documents furnished by the applicant (breeder), the conditions of patentability as to uniformity and stability of the protected variety were not complied with at the time of the grant of the plant patent, or

(3) that the plant patent wrongly names the creator or the plant patent owner, unless it has been transferred to the true breeder or patent owner.

No plant patent shall be declared null and void for reasons other than those referred to in (1) to (3), above.

The opposition to the grant of the plant patent filed on the grounds referred to in (1) and (2) of indent one of this Article shall be considered by the Appeal Board within a period of six months following the date on which it was received. The opposition and the decision of the Appeal Board that lies therefrom shall be brought to the attention of the plant patent owner.

In the event of disagreement with the ruling taken by the Appeal Board on the grounds referred to in (1) and (2) of indent one, the opponent and the plant patent owner may, within six months following the date on which the ruling was made, appeal to the Courts.

The opposition to the grant of the plant patent filed on the grounds specified in (3) of indent one of this Article shall be considered by the Appeal Board on the basis of the Tribunal's decision on the authorship of a variety or on the identification of the plant patent owner.

Article 23

Premature Termination of the Plant Patent

The validity of the plant patent shall terminate prematurely in the event that:

- it is declared null and void under Article 22 of this Law;
- the plant patent owner fails to pay the annual plant patent maintenance fee by the prescribed time limit;
- the plant patent owner files a written request to that effect with the Patent Office;
- the conditions of patentability as to uniformity and stability of the protected variety are no longer fulfilled;
- the owner of the plant patent does not provide the Patent Office, after being requested to do so and within a prescribed period, with the information, documents or material deemed necessary for verifying the maintenance of the variety, or

- where the denomination of the variety is canceled, with another suitable denomination.

No plant patent shall be prematurely terminated for reasons other than those specified above.

The Patent Office shall publish information concerning the premature termination of the validity of the plant patent in its official Bulletin.

TITLE V

USE OF PROTECTED VARIETIES

Article 24

Use of the Protected Variety

Where two or more persons are owners of the same plant patent, their relations covered by that plant patent in the use of the protected variety shall be determined by an agreement between them. In the absence of an agreement each of the plant patent owners shall have the right to use the protected variety at his discretion, except with respect to the licensing and assignment of the plant patent.

Any natural person or legal entity wishing to use the protected variety in the territory of the Republic of Belarus shall enter into a license agreement with the owner of the plant patent.

Article 25

License Agreements

Under a license agreement the plant patent owner (licensor) grants the right to use the protected variety to a third party (licensee) within the limits specified in the agreement, and the latter undertakes to pay the licensor the agreed royalties and to perform such other acts as are provided for in the exclusive or non-exclusive license agreement. An exclusive license agreement confers on the licensee the exclusive right to use the protected variety within the territory and within the time limits specified in the agreement. The exclusive license may allow the licensee to grant sublicenses and to seek compensation from the plant patent infringer for damages. In the absence of any provision to the contrary in the exclusive license agreement, the licensor shall have the right to use the plant patent himself.

A non-exclusive license confers on the licensee the right to use the protected variety with third parties. The non-exclusive license allows the licensor to retain all the rights deriving from the plant patent, or to perform all the acts specified in Articles 6 and 7 of this

Law and to grant as many non-exclusive licenses as may be possible in respect of all or any of the acts referred to in the said Articles.

Article 26

Open Licenses

The owner of a plant patent may submit to the Patent Office, for official publication, a declaration in which he undertakes to grant any person the right to use the protected variety on the basis of a non-exclusive license.

In such a case the fee for the maintenance of the plant patent shall be reduced by 50% as from the year following the year of publication of the said declaration.

Any person wishing to use the protected variety shall be required to enter into a license agreement with the plant patent owner.

Article 27

Compulsory Licenses

In the event of non-use or insufficient use of the variety on the territory of the Republic of Belarus three years after the date of registration of the variety in the Register of Protected Varieties, any person who wishes to use the protected variety and is ready to do so may, if unable to enter into a license agreement with the plant patent owner, bring an action before the Courts with a view to the grant of a non-exclusive compulsory license, in which the limits of the use of the variety, the amount of royalties, the time limits and procedure for payment thereof, and also the amount of propagating material of the protected variety to be provided, shall be specified.

The compulsory license shall not be granted if the owner of the plant patent can prove that the non-use or insufficient use of the variety is justified by legitimate reasons.

The compulsory license may be terminated by the court during the whole period of its duration where the licensee fails to fulfill the conditions under which that license has been granted to him.

Article 28

Infringement of the Plant Patent

Any natural person or legal entity using a protected variety in a manner contrary to Articles 6 and 7 of this Law shall be deemed to be infringing the plant patent.

At the request of the owner of the plant patent, an order shall be issued that the infringement of the plant patent cease and the owner of the plant patent shall be compensated by the infringer for damages sustained in accordance with the laws in force in the Republic of Belarus.

The exclusive licensee may also bring an action against the infringer of the plant patent, except where the license agreement provides otherwise.

Article 29

Maintenance of Characteristics of the Protected Variety

The owner of the plant patent shall, throughout the whole period of the validity of the plant patent, maintain the protected variety in a condition ensuring that the variety continues to show characteristics defined for the protected variety at the date of the grant of the plant patent.

The owner of the plant patent shall be obliged to afford to the State Committee propagating material of the protected variety requested by that State Committee to conduct check tests as to distinctness, uniformity and stability, including also facilities to inspect the measures taken for the maintenance of the variety.

TITLE VI

INSTITUTIONAL BASIS FOR THE LEGAL PROTECTION OF VARIETIES AND DEFENSE OF THE RIGHTS OF CREATORS AND PLANT PATENT OWNERS

Article 30

The Patent Office

The Patent Office shall, in accordance with this Law, carry out an integrated policy in the field of legal protection of varieties. It shall receive applications for the grant of plant patents, undertake the examination thereof, reject applications or grant plant patents, register varieties, issue plant patents, publish official information, and issue general rules and implementing regulations under this Law.

Article 31

The State Committee

The State Committee shall assess the distinctness, uniformity and stability of varieties in respect of which applications have been filed, prepare reports and give opinions to the Patent Office on the distinctness, uniformity and stability of varieties and perform such other functions as are specified in the Regulations for testing varieties as to patentability to be enacted by the Cabinet of Ministers of the Republic of Belarus.

Article 32

Judicial Bodies Responsible for Hearing Disputes Arising From Infringements of Plant Patent Legislation

Disputes arising from infringements of plant patent legislation shall be within the jurisdiction of the people's district (or municipal) courts, the Municipal Tribunal of Minsk, the regional courts, the Supreme Court of the Republic of Belarus, the Patent Tribunal and the commercial courts.

Article 33

Competence of the Courts Responsible for Hearing Disputes Arising From Infringements of Plant Patent Legislation

The competence of district (or municipal) courts, the Municipal Tribunal of Minsk, the regional courts, the Supreme Court of the Republic of Belarus and the commercial courts, in particular, extend to disputes arising from:

- the authorship of a variety;
- the identification of the plant patent ownership;
- violations of the exclusive right to use a protected variety and of other economic rights of the plant patent owner;
- conclusion and implementation of license agreements for the use of a protected variety;
- the payment of compensation under this Law.

The nature of the disputes within the jurisdiction of the Patent Tribunal, and also the organization and method of operation of the Tribunal, shall be laid down by the Law of the Republic of Belarus on the Patent Tribunal of the Republic of Belarus.

Article 34

Liability for Infringement of Creators' (Breeders') Rights

Any person who usurps authorship, acquires the status of joint creator (breeder) by force or, without the consent of the creator, discloses the subject matter of the application, shall incur liability under the legislation in force.

Article 35

Liability for Infringement of Plant Patent Legislation

Any person who, in pursuance of his duties, shows negligence or bad faith in the making of an application, the use of a variety or the payment of remuneration to its creators shall incur liability under the legislation in force.

An official plant patent examiner shall incur disciplinary liability if he discloses the subject matter of an application prior to the publication thereof, except where that disclosure, by its nature, makes him liable to criminal sanctions under the legislation in force.

Officials and other employees of the Patent Office and of the State Committee shall not, for the duration of their employment and for three years following the termination thereof, either file applications or directly or indirectly acquire entitlement to a plant patent, or make applications on behalf of any person.

Article 36

Inheritance of Rights

The right to file an application, the right to a plant patent, the rights of the plant patent owner to a variety, and also the right to remuneration and profits out of the use of the variety, shall be inherited.

TITLE VII

FINAL PROVISIONS

Article 37

Plant Patent Fees

The performance of any legal acts in relation to plant patents shall be subject to the payment of plant patent fees and charges. A list of acts for which fees are payable, the amounts of the fees and the time limits for the payment thereof, and also the conditions governing exemption from fees and the reduction or reimbursement of fees, shall be determined by the Cabinet of Ministers of the Republic of Belarus.

The fees shall be payable by the applicant, the owner of the plant patent, and by another interested natural person or legal entity.

Article 38

Right to Protect Varieties Abroad

The creator (breeder) or his successor in title shall be entitled to file applications and apply for the grant of plant patents abroad.

The creator (breeder) or his successor in title may choose any State, with which the Republic of Belarus is bound by bilateral or international multilateral agreements for the protection of plant varieties, at whose competent authority to file his first application for the grant of a plant patent.

The creator or his successor in title may apply to the competent authorities of other States party to international multilateral agreements for the protection of plant varieties for the granting of plant patents without waiting for the grant to him of the plant patent by the competent authority of the State with which the first application was filed.

The Patent Office shall not refuse to grant a plant patent to the applicant who is a national of any State with which the Republic of Belarus is bound by bilateral or international multilateral agreements for the protection of plant varieties and shall not limit the duration of that plant patent on the ground that protection for the same variety has not been applied for, has been refused or has expired in any other such State.

Article 39

Rights of Foreign Natural Persons and Legal Entities and Stateless Persons

Foreign natural persons and legal entities and stateless persons shall enjoy the rights provided for in this Law and other legislative acts on the protection of new varieties of plants of the Republic of Belarus on the same footing as natural persons or legal entities of the Republic of Belarus.

Article 40

Rights of Enterprises Established in the Republic of Belarus with Foreign Capital

The provisions of this Law shall apply to enterprises established in the Republic of Belarus with foreign capital.

Article 41

International Treaties

If an international treaty to which the Republic of Belarus is party contains provisions different from those contained in this Law, the provisions of the said international treaty shall be applicable.

Article 42

Effects in Belarus of Authors' Certificates, Certificates or Applications Under the Regulations for the Legal Protection of New Varieties of Plants in the Soviet Union

The effects of authors' certificates or certificates for new plant varieties granted under the Regulations for the legal protection of new varieties of plants in the Soviet Union shall be valid in the territory of the Republic of Belarus in accordance with the provisions of the applicable legislation of the Soviet Union before this Law has entered into force.

Authors and applicants shall have the right to file joint requests for the grant of plant patents of the Republic of Belarus with respect to varieties in relation to which a 25-year term from the filing date of the application has not yet expired. The requests shall be filed with the Patent Office.

Applicants wishing to maintain the effects of their applications for the grant of authors' certificates for new varieties filed before this Law has entered into force, for which tests have been conducted by the State Committee for the Testing of Agricultural Crops to the Ministry for Agriculture and Food Economy of the Republic of Belarus and decisions have been taken with a view to their conditioning, shall have the right, jointly with authors, to request that they be granted plant patents of the Republic of Belarus if the said varieties fulfill the requirements of patentability under this Law.

The request shall be filed with the Patent Office within a period of 12 months after the entry into force of this Law.

The applications in respect of which the above-mentioned requests have been filed within the specified time limits shall be processed according to the provisions of this Law, except for the requirements of novelty under Article 2 thereof.

The plant patents of the Republic of Belarus granted on the requests for revalidation of the authors' certificates of the Soviet Union, under decisions on conditioning or on the basis of the applications the processing of which has not been completed, shall produce their effects from the date of their issue to the expiration of a 25-year term from the filing date of the application.

Article 43

The Entry Into Force

This Law shall enter into force on July 1, 1995.

The laws in force in the Republic of Belarus shall be applicable until the existing legislation is brought into conformity with this Law, in so far as such laws do not contravene the provisions thereof.

This law shall govern legal relations which came into existence after its entry into force.

Article 44

Institutional and Legal Procedures for Enacting this Law

Before this Law enters into force, the Cabinet of Ministers of the Republic of Belarus shall:

- establish the list of varieties to which this law is applied;
- adopt such rules and regulations within its competence as have been specified in this Law and bring into conformity with this Law the existing decisions of the Government;
- submit proposals for the approval by the Supreme Soviet of the Republic of Belarus concerning administrative and criminal sanctions against violations of this Law.

[End of document]

Translation of the
Letter from the Deputy Minister, Ministry of Agriculture, Minsk, Republic of Belarus
dated October 17, 1995

Dear Mr. Bogsch,

I have the honor to inform you that on April 26, 1995, the President of the Republic of Belarus signed the Law on Plant Variety Protection.

At the present time, the Government of Belarus considers the question of Belarus to accede to the Acts of 1961, 1972 and 1978 of the Convention.

Enclosed please find a copy of the law in Russian and English. By this letter, we ask the advice of the UPOV Council onto the conformity of the Belarus Law on Plant Variety Protection to the provisions of the above-mentioned Convention Acts.

Sincerely yours,

Shakolo
Deputy Minister
Ministry of Agriculture

October 17, 1995