



TWV/46/39 Prov.
ORIGINAL: English
DATE: June 7, 2012

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
Geneva

TECHNICAL WORKING PARTY FOR VEGETABLES

Forty-Sixth Session
near the city of Venlo, Netherlands, June 11 to 15, 2012

REPORTS ON DEVELOPMENT IN PLANT VARIETY PROTECTION
FROM MEMBERS AND OBSERVERS

Document prepared by the Office of the Union

1. The Technical Committee (TC), at its forty-seventh session held in Geneva, from April 4 to 6, 2011, agreed to request the Office of the Union to invite experts to submit written reports to the Office of the Union in advance of the Technical Working Party (TWP) sessions in order that a document containing those reports could be prepared by the Office of the Union. The TC noted that TWP experts would be invited to make a brief oral summary of their written report at the session and would also be encouraged to make reports under the agenda item "Experiences with new types and species", as appropriate. The TC also noted that TWP experts would have an opportunity to raise questions concerning matters of interest (see document TC/47/26 "Report on the Conclusions", paragraphs 9 and 10).

2. Written reports were requested by the Office of the Union in Circular E12/125. The following reports were submitted (in alphabetical order):

Members of the Union: Annexes I to VI: Brazil, European Union, France, Japan, Poland, Slovakia

Observer Organizations: Annexes VII and VIII: European Seed Association, International Seed Federation

[Annexes follow]

ANNEX I

MEMBER OF THE UNION: BRAZIL

1. The National Plant Variety Protection Service (SNPC), of the Ministry of Agriculture, Livestock and Food Supply (MAPA), is the national authority for the examination of applications and for granting plant breeders' rights in Brazil.
2. In 2011, SNPC received 324 applications: 153 for agricultural crops, 112 for ornamentals, 34 for fruit crops, 11 for vegetables, 9 for forest trees and 5 for forage crops.
3. From these 11 applications for vegetables, 8 were for Lettuce, and 1 each for Watermelon, Melon and Onion.
4. Regarding the promotion of plant variety protection, the SNPC has offered two Distance Learning Courses: one on "Intellectual Property on Agribusiness", since 2009, for more than 2,500 professionals; and one specifically on "Plant Variety Protection" for 400 participants in 2010 and 150 participants in 2011.
5. In 2011, SNPC hosted 3 important events in Brasília, Brazil: (i) a GAIA Software Workshop, organized jointly by SNPC, GEVES, France and UPOV, and attended by representatives from Brazil, Chile, Mexico, and Uruguay; (ii) the fortieth Technical Working Party for Agricultural Crops (TWA/40) and the thirteenth Working Group on Biochemical and Molecular Techniques, and DNA-profiling in Particular (BMT/13).

[Annex II follows]

ANNEX II

MEMBER OF THE UNION: EUROPEAN UNION

In 2011, the Community Plant Variety Office (CPVO) of the European Union received 3,184 applications for Community Plant Variety Rights (CPVR). This represents an increase of 10.3% compared with the previous year and the highest number ever received during one year. By the end of 2011, in total 18,899 Community titles were in force; during 2011, 2,585 titles for protection had been granted.

The vegetable sector had the highest-ever figure of 460 annual applications in 2011 (15% of total), which represented a 14% increase over the previous year. The main species were, in the order of their importance, Lettuce, Tomato, Pepper, French Bean, Pea.

The Community Plant Variety Office has a new President. On September 1, 2011, Mr. Martin EKVAD took up his duties for a period of five years. In March 2012, the mandate of the Vice President, Mr. Carlos Godinho, was prolonged for another five years by the Council of the European Union.

The centralized database of variety denominations received a new name, the CPVO Variety Finder, and contains more than 720,000 denominations from national listing and plant variety rights registers. Almost 20% of these belong to the vegetable sector. Since November 2011 the President of the CPVO has decided to make the database available on its public website. The initial aim of the database is the verification of the suitability of a proposed variety denomination with regard to similarity, but it turns out that it is also a useful tool in order to search for varieties of common knowledge. EU based applicants use this database also to pre-check their denomination proposals for similarity. During 2011, 60,000 tests were performed by users.

Since end of March 2010, the CPVO is able to offer to applicants the possibility of e-filing for a large number of species which enables to file an application for Community rights on-line via a secured site. Over half of all vegetable applications are now filed this way, and new electronic questionnaires for other vegetable crops will become available in the coming months.

Following the implementation of the so-called "one key, several doors" principle, whereby DUS test reports produced by any "CPVO-entrusted" authority in the EU are accepted for listing or protection purposes throughout the Community, an independent technical audit (QAS) of the CPVO continued audits during 2011. Since the introduction of the system, 18 positive entrustment decisions have been taken by the Administrative Council, against two negative decisions. Seven audits still have to be conducted to conclude the first audit cycle of three years.

Since April 2012, the original of the Decision to grant Community Plant Variety Rights and Certificates of Protection will no longer be issued on paper but as electronic documents bearing an electronic signature. The documents are available for the title holder on a secured area of the CPVO web site.

The CPVO has agreed to co-finance a three year R&D project entitled "Harmonisation of resistance tests to diseases for DUS testing – 2". This collaborative project between France (coordinator), Spain, Netherlands, United Kingdom, Hungary, Czech Republic, Germany, and the European Seed Association, will be focusing on harmonizing the resistance tests to selected host/pathogen combinations in the DUS testing of lettuce, pea and pepper, so that these can eventually be integrated into the corresponding CPVO test protocols. The project will commence in mid-2012, and is a follow-up project to the successful original R&D project "Harmonisation of resistance tests to diseases for DUS testing" on French bean and tomato a few years earlier.

The CPVO had the occasion to visit the joint DUS trials being undertaken by Naktuinbouw in the Netherlands and UKZUZ in the Czech Republic for French bean, cabbage and onion varieties being applied for Dutch national listing. This way of doing "parallel" testing is something which the CPVO is interested in implementing for its own technical examinations in the future, and a similar visit is foreseen to GEVES in France to find out more on the matter. The CPVO expects to draw up a document with working rules on "parallel testing", for discussion at its annual vegetable experts meeting in December 2012.

The CPVO has been made aware by some vegetable seed companies of their concerns on the use of patents filed before the European Patent Office (EPO) for certain breeding traits, like disease resistance for a particular pathogen. The fear is that the patenting of such traits will not allow for its use in creating the same or similar traits in varieties being developed by other breeding companies, thus possibly leading to a monopoly situation by the patent holder. The CPVO has had recent a recent meeting with the EPO to start

to start to discuss the matter and to learn more about the respective intellectual property protection system to ensure that there are no mutual conflicts.

[Annex III follows]

ANNEX III

MEMBER OF THE UNION: FRANCE

Groupe d'étude et de contrôle des variétés et des semences (GEVES) quality management system

- Audit for the renewal of the ISO 9001 - V2008 certification

The audit for the renewal of the ISO 9001: 2008 of GEVES was held from April 2 to 6, 2012. It was conducted by LRQA (Lloyds Register Quality Assurance). The auditor has recommended the renewal of the ISO 9001 certification for GEVES and the new certificate has been delivered from May 8, 2012, to April 29, 2015.

- Audit by the Community Plant Variety Office(CPVO)

From April 7 to 19, 2012, the CPVO audit took place at GEVES. It was conducted by two technical auditors and by Gerhard Schuon, CPVO's quality manager, according to the quality reference plan of CPVO.

Regulatory developments

- Law No. 2011-1843 of 8 December 2011 on plant variety protection certificates

France, which is already one of the seventy members of UPOV, became the forty-ninth member to become bound by the 1991 Act of the UPOV Convention. The 1991 Act will enter into force for France on May 27, 2012, one month after the deposit of its instrument of ratification.

- Creation of the National Office for Plant Breeders' Rights (INOV)

INOV (Instance Nationale des Obtentions Végétales) replaced the Committee on Plant Variety Protection (CPOV) on March 1, 2012, and has its office in GEVES Headquarters in Beaucouzé. Mrs. Virginie BERTOUX is in charge of the management of INOV.

At the same time, the decision was made to change the publication of the Official Gazette which is now available on Internet and no longer published on paper. This Gazette is accessible free of charge for all official authorities and through a subscription for any interested party

News about GEVES

- New postal address

GEVES

25 rue Georges Morel, CS 90024, 49071 Beaucouzé Cedex - France

- New Web site

<http://www.geves.fr/>

<http://www.cat.geves.info/>

- National List database
- UE Provisional Market Authorization

[Annex IV follows]

ANNEX IV

MEMBER OF THE UNION: JAPAN

1. Number of applications received and number of applications granted in 2011

(1) Number of applications received

Year	Total number	Vegetables	Mushrooms	Vegetables and Mushrooms
2010	1,038	53	16	69
2011	1,126	77	20	97
(2011/2010)	(108%)	(145%)	(125%)	(141%)
1978 to 2011	26,648	1720	505	2225

Top 5 Vegetable and Mushroom crops in 2011

Strawberry:17 Tomato:17 Melon:8 Shiitake:8 Lettuce:7 TOTAL:97

*Strawberry is classified into vegetable in Japan.

(2) Number of applications granted

Year	Number	Vegetables	Mushrooms	Vegetables and Mushrooms
2010	1,404	51	31	82
2011	1,139	88	20	108
(2011/2010)	(81%)	(173%)	(65%)	(132%)
1978 to 2011	21,286	1418	441	1859

Top 5 Vegetable and Mushroom crops in 2011

Strawberry:19 Tomato:15 Shimeji:14 Chinese cabbage:8 Cucumber:5 TOTAL:108

2. Average examination duration (from application to registration)

2010	2011	2014 (target)
2.5 year	2.4 year	2.3 year

3. Japanese Test Guidelines harmonized with UPOV TG (in 2011)

For Vegetables: Bitter Gourd, Broccoli, Brussels Sprout, and Cauliflower

4. PVP Office of JAPAN

MAFF has reorganized in September 2011.

Plant Variety Protection Office,

New Business and Intellectual Property Division

Food Industry Affairs Bureau

Ministry of Agriculture, Forestry and Fisheries (MAFF)

[Annex V follows]

ANNEX V

MEMBER OF THE UNION: POLAND

In Poland in 2011, the Research Centre for Cultivar Testing received 32 applications for the National List in the vegetable sector which represented a rise of 23% compared to the previous year.

However, there was a reduction in the number of applications for such crops as Pea, White Cabbage and Carrot, while there was an increase in such major crops as Onion, Cucumber, Pepper, Tomato, Broad Bean.

The number of applications for plant breeder's right increased compared to 2010. At the end of 2011, 265 varieties of vegetable were protected at national level.

Poland continued bilateral cooperation with many countries in the field of DUS testing: e.g. Czech Republic, Hungary and Slovakia and conducted DUS tests for countries such as Estonia, France, Germany, Latvia, Lithuania and Slovenia and also on behalf of the CPVO.

[Annex VI follows]

ANNEX VI

MEMBER OF THE UNION: SLOVAKIA

Number of applications for PVP and NLI

In 2011, the Ministry of Agriculture received 16 applications for plant breeder's rights, 9 titles were issued and 8 titles ceased to be in force. 384 titles were in force on December 31, 2010. In 2011, the ÚKSÚP received 461 new applications for NLI and 198 varieties were registered in the National list.

The majority of applications concern agricultural species, particularly cereals, Maize, Oil Seed Rape and Sunflower.

Legislation

Law No. 202/2009 on Plant Variety Rights approved on April 29, 2009, came into force on June 1, 2009. The law is in conformity with the 1991 Act of the UPOV Convention.

Cooperation

Central Controlling and Testing Institute in Agriculture (ÚKSÚP) cooperates actively in DUS testing with Czech Republic, Croatia, Denmark, Hungary, Poland, Serbia, Slovenia, Sweden and the Community Plant Variety Office (CPVO).

DUS testing

ÚKSÚP performs the DUS tests for a number of different species.

The Administrative Council of the CPVO at its session in March 2012 entrusted ÚKSÚP to perform the DUS tests within the scope of entrustment including vegetable species, agricultural species and fruit species.

Breeders in vegetable sector

The Slovak Breeders and Seed Association submitted to the Constitutional Court of the Slovak Republic submission concerning the unconstitutionality of the current system of registering new varieties with regards to the DUS requirements including the disease resistance characteristics.

[Annex VII follows]

ANNEX VII

MEMBER OF THE UNION: UNITED KINGDOM

During 2011, in the United Kingdom the number of DUS applications was stable but low but with indications that there may soon be applications across a wider range of vegetable crops than has been seen of late.

The Seeds (National Lists of Varieties) (Amendment) Regulations 2011 (concerning Amateur and Conservation varieties) have been published. To date approximately 80 applications have been received for Amateur Variety registration on the United Kingdom National List

Further database development work was undertaken aimed at better documenting and characterizing crop inventories and reference collections. This work has been done in conjunction with a rationalization of the Science and Advice for Scientific Agriculture (SASA) Quality Assurance system (under ISO 9001:2008) and will facilitate the Community Plant Variety Office (CPVO) Entrustment audit due in 2013.

A series of online vegetable crop descriptive databases (for pea, parsnip and runner bean) have been populated with descriptive data and are awaiting final IT implementation. They should be published soon. (See <http://agricrops.org/menu.php> for a published example for agricultural crops).

SASA is about to begin participation in the part-funded CPVO R&D project on the "Harmonization of resistance tests to diseases for DUS testing". The disease tests of interest to the UK are *Fusarium oxysporum* f. sp. *pisi* (Pea Wilt Race 1) and *Ascochyta pisi* Race C.

[Annex VIII follows]

ANNEX VIII

OBSERVER ORGANIZATION: EUROPEAN SEED ASSOCIATION

The European Seed Association (ESA) had its Annual Meeting in October 2011 in Budapest, Hungary. A record number of 700 participants attended the event. More than 10 companies / organizations joined the ESA membership including national seed associations from Macedonia and the Ukraine.

European seed companies are stepping up their activities to enforce their Plant Breeders Rights. Following the foundation of the Anti-Infringement Bureau (AIB) focusing on vegetables and Breeders Trust (BT) focusing on potatoes. Earlier this year BT entered into agreements with grass seed companies to fight black market activities in grass seeds.

At the European level, the evaluation of different pieces of legislation in relation to seed marketing, plant health, GMO and Intellectual Property Rights is on-going.

ESA has finalized the revision of its position paper on Intellectual Property Rights. The most important element in relation to the interface between patents and plant breeder's rights is that ESA is in favor of free access to patented material for further breeding. Detailed information can be found on the ESA website: <http://www.euroseeds.org/position-papers/intellectual-property/>. An important recent development is that on May 9, 2012, the European Parliament adopted a motion calling upon the Commission to introduce a so-called limited breeder's exemption into the draft legislation on a European Patent, as proposed by ESA.

[Annex IX follows]

ANNEX IX

OBSERVER ORGANIZATION: INTERNATIONAL SEED FEDERATION

Intellectual Property: For the past two years the International Seed Federation (ISF) Intellectual Property Committee (IPC) and the ISF Breeders Committee (BC) have continued their work on the revision of the ISF View on Intellectual Property. Together the two committees have spent around 1,500 person hours on the revision process. Those who are involved in the discussions around IP know that this topic is a sure guarantee for animated debates, strong differences of opinion, and this revision process was no different from that. The aim has always been to adopt the new ISF View on IP at the ISF World Seed Congress 2012 in Rio de Janeiro. Deviating from previous years, it was decided to have two additional rounds of comments to the entire ISF membership, one in December 2011 and one in April 2012. Both rounds generated numerous comments which were discussed in the IPC and BC. Several hundreds of amendments were made as a result of these sets of comments. A clean version has gone out to the ISF members for a third and final round of comments, which ensures that everyone has had enough opportunity to study the paper well and provide feedback.

UPOV: In the past year, ISF has participated in the UPOV meetings of the Technical Committee (TC), Legal and Advisory Committee (CAJ) and its Advisory Group (CAJ-AG), Council (C), Technical Working Parties for Agricultural (TWA) and for Vegetable Crops (TWV) and the Biochemical & Molecular Techniques WG (BMT). In all its interventions, ISF has argued for a strong, transparent and cost-effective system of Plant Breeders Rights which sees a high level of harmonization among UPOV member states. ISF made a presentation at the last CAJ-AG bringing forward its views on some of the draft Explanatory Notes which are currently under discussion. ISF continues to attend and contribute to the UPOV project on the Electronic Application Form.

WIPO: ISF attended this 20th session of the WIPO Intergovernmental Committee on Traditional Knowledge, Folklore and Genetic Resources. ISF also made presentations in two WIPO workshops on 'How the private and the public sectors use intellectual property to enhance agricultural productivity' (June 2011); and on 'Intellectual Property, Innovation and Food Security: workshop for sustainable wheat production in East Africa, a case study on the role of IP' (May 2012).

Field Crops: Breeders in different countries adopt varied systems for the collection of royalties on plant varieties. These may be collected at any suitable stage of the crop production cycle, but the owners of Intellectual Property (IP) typically make the collection at the earliest reasonable stage of distribution. Current legislation, structure of the seed business and prevailing farming practices in each country have an important influence on the type and effectiveness of the local royalty collection system.

In 2007, the ISF Field Crops Section has created a Working Group that has carried on a multi annual survey evaluating different systems developed in a number of countries from all regions of the world; wheat was chosen as the first crop to study. The final report has been completed: data from fourteen states has been assembled, analyzed and discussed; each participating country has prepared a description of the strengths and weaknesses of the mechanism in place in their country. This document is now ready for approval by the members of the Field Crops Section.

Communication: More than in the past, external communication has been ISF's focus for the past couple of years. It is important to reach out to a much broader audience with the right facts and positive contributions of the plant breeding and seed industry. Correct information and references to peer reviewed scientific studies are distributed via the ISF Twitter and Facebook pages and ISF has been releasing videos on YouTube that set things in the right perspective. It is important that the general audience understands what the seed industry is all about, how much time and money it takes to create a new variety, and who benefits from these new varieties. ISF has released two videos on YouTube (2010 and 2011) which were watched in total 13,000 times in 120 countries and the ISF twitter page has 178 tweets and 340 followers (mostly outside seed industry). ISF plans to release another video at the 2012 ISF World Seed Congress.

ISF Trade and Arbitration Rules: When watching a soccer match, or any other sport, it is clear that every game needs its rules. The same is true for the international seed trade where internationally agreed rules are of crucial importance. Since 1924, ISF has drafted and revised the ISF Trade Rules.

But as in sports these rules need to be revised from time to time to keep them up to date with modern day trade. Two years ago the members of the ISF Trade and Arbitration Rules Committee (TARC) took the bold decision to start from scratch and draft new trade rules. During their revision, these draft rules have passed through several rounds of comments among the ISF members. These new trade rules will be up for approval during the ISF World Seed Congress 2012 in Rio de Janeiro. Brazil will be hosting the World Cup Soccer in 2014 and the Olympic Games in 2016, so there's no better to place than the ISF World Seed congress 2012 in Rio de Janeiro as the venue for the adoption of entirely revised ISF trade rules.

The members TARC also started with a review of the ISF Procedure Rules for Dispute Settlement (the so-called 'Arbitration Rules').

World Seed Project: Since 2009, ISF together with UPOV, ISTA, OECD and FAO, has been engaged in the World Seed Project which seeks to strengthen the seed sector in developing countries. ISF's role in the project is to enhance the growth of the local seed industry to ensure farmer's access to improved varieties and seeds. The first pilot countries have been chosen, meetings have taken place with the Ministers of Agriculture, ensuring the country's commitment to the project, and interaction with donors has started. The work in 2 of the countries has already led to the first successes.

Continued growth: ISF reached 228 members in 2011. For the upcoming ISF World Seed Congress in June 2012 in Rio de Janeiro, 22 candidate members are up for approval. A recent survey showed that through its national seed associations ISF represents more than 7,500 companies in the seed sector.

[End of Annex IX and of document]