Current situation of enforcement related to protection of breeder's right in Japan

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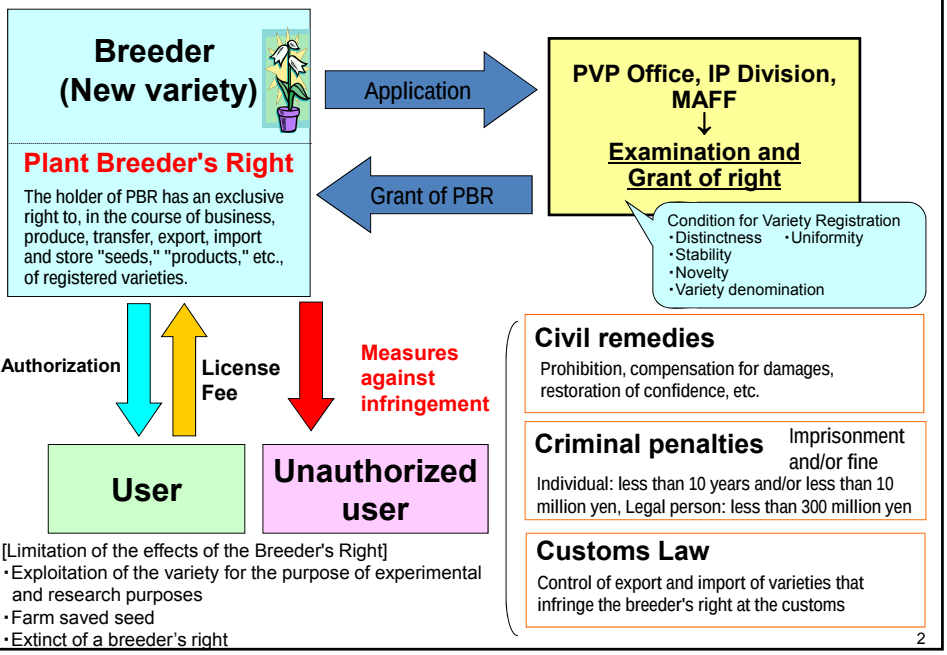
Contents

1 History of PVP System

1947 "Agricultural Plant Variety Protection and Seed Act"
1961 UPOV Convention Adopted (Entry into force in 1967)
1978 "PVP and Seed Act"
Amendment on UPOV Convention (1978 UPOV Convention)
1982 Accession to the 1978 UPOV Convention
1991 Amendment on UPOV Convention (1991 UPOV Convention/Entry into force in 1998)
1998 Full-Amendment on "PVP and Seed Act"
Accession to the 1991 UPOV Convention
2003 Amendment on "PVP and Seed Act"
・Reinforcement of penal regulation, etc.
2005 Amendment on "PVP and Seed Act"
・Duration of Plant Breeder's Right: 25 years (30 years for Woody Plants)
・The effect of PBR extended to certain processed products
2007 Amendment on "PVP and Seed Act"
・Reinforcement of penal regulation
・Special Provisions for smooth remedies on Civil Procedure
・Rational indication of registered varieties

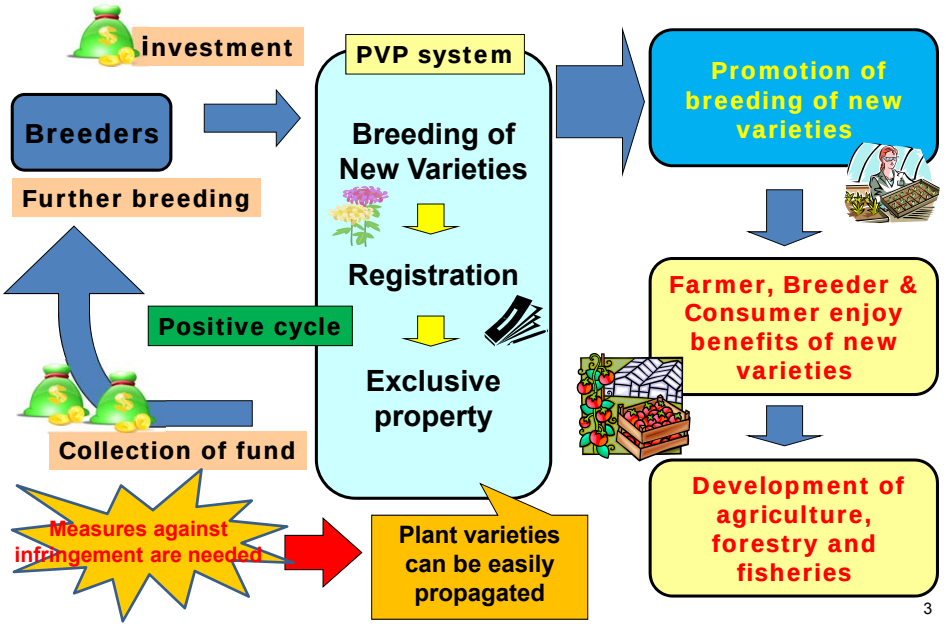
1

2 Outline of PVP System



2

3 Significance of PVP System



3

4 Measures against infringement of Plant Breeder's Right under Plant Variety Protection and Seed Act

Various provisions for inhibition of infringement of a breeder's right and recovery of credit.

○Injunction (Article 33)

The holder of a breeder's right may demand a person who infringes or is likely to infringe his/her breeder's right to discontinue or destruction of the propagating material, the harvested material or the processed products which is a component of the act of infringement.

○Presumption of Amount of Damages (Article 34)

Lighten the burden of proving the act of infringement by presuming the amount of the profits to be the amount of damage suffered by the holder of the breeder's right

○Presumption of Negligence (Article 35)

Lighten the burden of proving the act of infringement by presuming a person who has infringed a breeder's right of another person to have been negligent in the commission of the said act of infringement.

○Protective Order (Article 40)

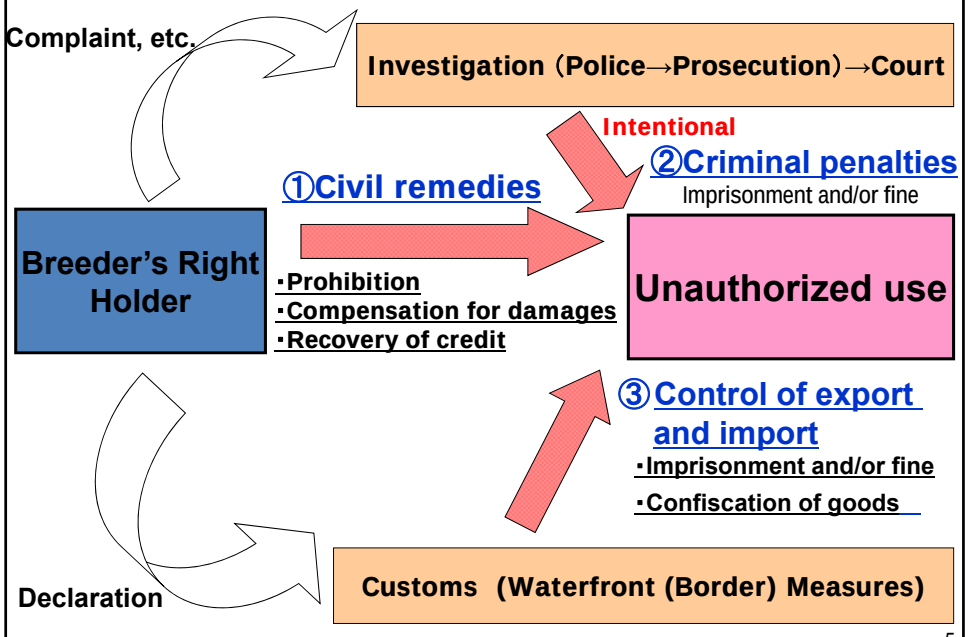
It became possible to litigate with protecting trade secrets by prohibiting the use of the trade secrets for any purpose other than those for the proceedings of the litigation, etc.

○Measures for Recovery of Credit (Article 44)

It became possible to recover the credit of the holder of the breeder's right which was harmed by infringement by means of other than the compensation for damages.

4

5 Effect of PBR against infringement



5

6 Penal Provisions of PVP and Seed Act (1)

Penal provisions against infringement of a breeder's right are able to prohibit infringement

○Infringement of a breeder's right (Article 67, Article 73. 1(1))

Infringing a breeder's right intentionally shall be punished by

⇒Individual: imprisonment with work for not more than ten years or by a fine of not more than 10,000,000 yen, or combination thereof

Legal person: fine of not more than 300,000,000 yen

○ Prohibition of Fictitious manifestation of intention (Article 56, 69, 73. 1(2))

Placing a mark of registered variety or a confusing mark therewith on propagating material of anonregistered variety or transferring the propagating material of a nonregistered variety with a said mark of registered variety intentionally shall be punished by

⇒ Individual: imprisonment with work for not more than three years or by a fine of not more than 3,000,000 yen.

Legal person: fine of not more than 100,000,000 yen

6

6 Penal Provisions of PVP and Seed Act (2)

○Crime of Breach of Protective Order (Article 70, 73. 1(1))

Failing to comply with the protective order shall be punished by

⇒ Individual: imprisonment with work for not more than five years or by a fine of not more than 5,000,000 yen, or combination thereof

Legal person: fine of not more than 300,000,000 yen

※Decrease of property value of trade secrets occurs equally whether the crime is committed in Japan or abroad

⇒The crime shall also apply to a person who commits the said crime abroad. (Article 70. 3)

Obtaining a variety registration by means of a fraudulent act shall be punished by

⇒Individual: imprisonment with work for not more than three years or by a fine of not more than 3,000,000 yen.

Legal person: fine of not more than 100,000,000 yen

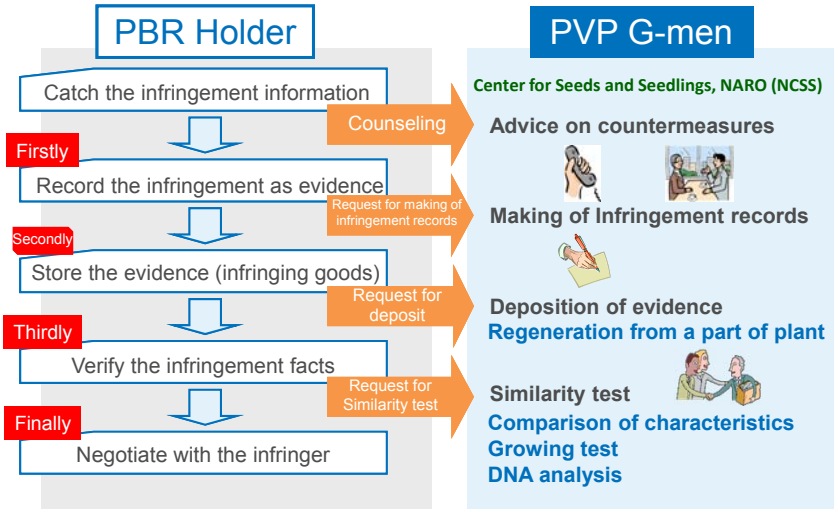
7

7 Plant Variety Protection Advisers (PVP G-men)

- PVP G-men had been established in 2005 in order to encourage the protection of PBR.
- Main Activities
  - (1) Consultation and advice for countermeasures against infringement of plant breeder's right
  - (2) Collection and provision of information on infringement of plant breeders' rights
  - (3) Implementation of similarity tests
  - (4) Preparation of infringement situation record
  - (5) Storage of plant deposits
- Number of staff: 20 in 2015
- Number of consultation by PVP G-men has been increasing year by year since 2005. From 2011 consultation of utilization of new varieties was added as a new field of consultation to the activities of PVP G-men.

8

8 Services of Plant Variety Protection Advisers (PVP G-men)（1）

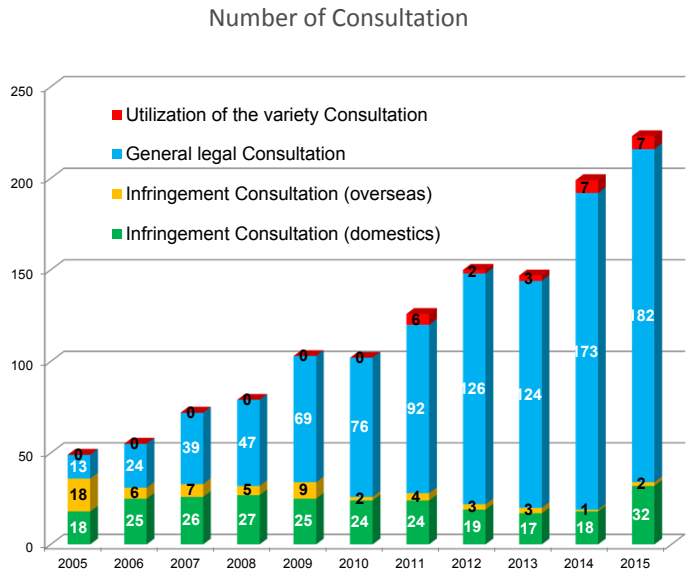


[Consult with a lawyer if necessary]

Contract of authorization | **Settlement** | **Appeal to the court** | **Border measures by customs**

9

8 Services of Plant Variety Protection Advisers (PVP G-men) （2）

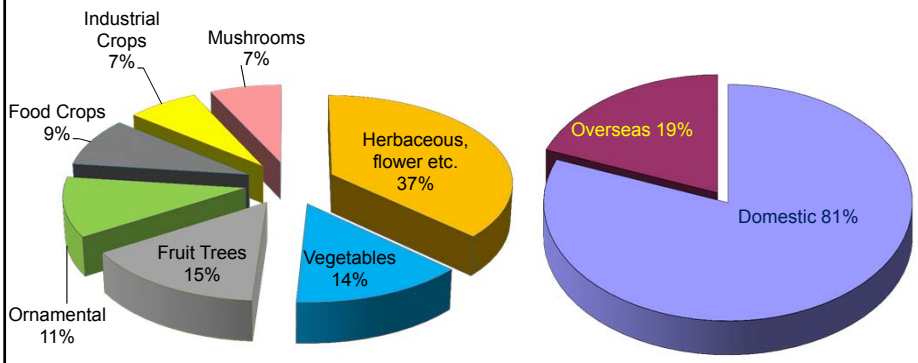


10

8 Services of Plant Variety Protection Advisers (PVP G-men) （3）

Infringements Consultation

Total number: 315 (2005/4/1～2016/3/31)



11

9 Cases of infringement in which PVP G-men were involved

(1) Chrysanthemum “Iwanohakusen”

- In February 2006, the holder of PBR requested PVP G-men to make a similarity test between chrysanthemum imported from China that was suspected as Iwanohakusen taken into China without authorization and true Iwanohakusen. In November 2006, the test result showed that similarity between the two varieties is extremely high.
- The holder of PBR filed a lawsuit against the importer to seek its compensation but was not able to win the case because the trueness of Iwanoihakusen used in the similarity test became a disputed point.
- Afterwards, in June 2008, the holder of PBR received information related to import of Iwanohakusen by the same importer and searched a local wholesale market with PVP G-men and obtained goods suspected of infringing its breeder’s right.
- While PVP G-men kept the goods suspected of infringing as deposits and were scheduled to use them for similarity test, the holder of breeder’s right and the importer reached a settlement before obtaining the test result.

(2) Sweet cherry “Benisyuho”

- In May 2005, a magazine devoted to gourmet printed an article that an Australian farmer would produce Benisyuho and export its harvested materials to Japan while Benisyuho was authorized to be produced only in Yamagata prefecture.
- Name of a person who had transferred seedlings of Benisyuho to the Australian farmer was shown in the article. Therefore, the holder of PBR questioned the person with PVP G-men. In November 2005, After obtaining evidence, the holder of PBR brought criminal charges against the Australian farmer.
- Afterwards, in July 2009, they reached a settlement subject to no export of seedlings, harvested materials, etc. to Japan until passage of three years after expiration of registration of Benisyuho.

12

10 Measures against infringement
（1） DNA identification

Development of DNA identification technique

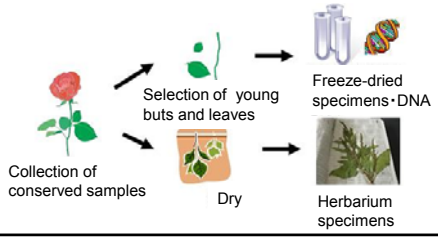
This technique is a very effective tool to identify goods infringing breeder's right because of the following reasons: (i) possible to quickly identify varieties; (ii) not influenced by growing environment and condition; (iii) applicable even if living bodies are difficult to be obtained; and (iv) possible to identify varieties based on samples derived from processed products, even in a case where plural varieties are utilized.

- MAFF has supported development of DNA identification technique and improvement of its precision through subsidies and commissioned projects.
- Center for Seeds and Seedlings has implemented DNA identification tests based on developed methods in response to requests of breeders, etc. (Charge: 33,390 yen)
- Now, it is possible to identify varieties of rice, strawberry, adzuki bean, kidney bean, sweet cherry, pea, tea, and Igusa rush. Aside from those plants, Methods for about 30 kinds of plants are under development.

Conservation of specimens

It is essential to secure true registered varieties so as to properly respond to infringement of breeder's right. Center for Seeds and Seedlings has conserved plants as freeze-dried specimens, DNA, or herbarium specimens since 2008 in response to requests of applicants when they are applied for their registrations

specimens	Herbarium	Freeze-dried	DNA
Numbers of conservation (as of the end of March 2016)	2,629	4,065	175



13

10 Measures against infringement
（2） Prevention of unintentional infringement

- So as to promote correct understanding and spread of plant variety protection system and breeder's right as well as prevent infringement of breeder's right, Japan's associations related to seed industry made PVP mark and registered it as a trademark on September 30, 2005.
- PVP mark is aimed at preventing unintentional infringement by indicating the mark on seed bags, catalogs, and so on of registered varieties and varieties whose applications are pending in combination with their denominations.

PVP PVP PVP PVP

Please use one of the four marks. There is not any limitation of the size and color .

※PVP stands for Plant Variety Protection

This mark shows that varieties have been registered or applied for registration.

This mark is indicated on seeds and seedlings of varieties registered or applied for registration based on the Plant Variety Protection and Seed Act Seed as well as harvested material obtained through their use and processed products specified by the Cabinet Order. New plant varieties are protected as intellectual property right (breeder's right) and there are cases where activities that varieties indicated with the mark are used without permission of the breeder's right holder for propagation, transfer, export, import, and so on) are subject to compensation and criminal punishment.

This mark was made and registered as a trade mark by the coordination of Japan's six associations related to seed industry (Japan Seed Trade Association, Japan Fruit Seedling &Clonal Association, Japan Grassland Agriculture and Forage Seed Association, Japan Association for Techno-innovation in Agriculture, Forestry and Fisheries, Edible Mushroom Spawn Association, and Society of Independent Breeders of Japan) so as to promote correct understanding and spread of plant variety protection system and breeder's right as well as prevent infringement of breeder's right.

Outsiders of the six associations can use the mark by submitting application of use to Japan Association for Techno-innovation in Agriculture, Forestry and fisheries. The number of applications from 2006 to 2012 were 24, which include applications from associations related to seed industry.

14

11 Infringement proceedings

Case example 1 (Shiitake mushroom)

In 2006, the holder of breeder's right of JMS 5K-16, registered variety of Shiitake mushroom, filed a case with Tokyo District Court (TDC), alleging that activities of those who produced Shiitake mushroom beds from purchased mushroom spawn and sold them constitute infringement of PBR and demanding injunction of production, transfer, and so on of mushroom spawn, disposal of equipment, compensation for damage of 6,454,519 yen caused by the unlawful act, and publication of apology in a newspaper.

In August, 2008, TDC found that the act corresponds to infringement of breeder's right and delivered judgment that orders the defendant to pay compensation of 2,075,000 yen to the plaintiff.

Case example 2 (Maitake mushroom)

In 2008, the holder of PBR of BO-101, registered variety of Maitake mushroom, filed a case with TDC, alleging that activities of those who produced Maitake mushroom from purchased mushroom spawn and sold them constitute infringement of breeder's right and demanding injunction of production, transfer, and so on of mushroom spawn, disposal of mushroom spawn, publication of apology in a newspaper, and compensation for damage of 11,453,589 yen.

In February 2009, TDC found that the act corresponds to infringement of breeder's right and delivered judgment that orders the defendant to dispose mushroom spawn and to pay compensation of 10,953,589 yen to the plaintiff.

15

11 Infringement proceedings

Case example 3 (Rice (Tsuyahime))

•In Apr. 2012, a worker of Yamagata prefecture found that seeds of Tsuyahime had been sold through a webpage of an individual and informed Yamagata Prefectural Police Department (YPPD) of the fact.

•After investigation, it became obvious that the suspect had germinated commercially-available brown rice of Tsuyahime and harvested its rice seeds, and sold them to three persons through the webpage from Nov. 2011 to Feb. 2012.

•In July 2012, YPPD arrested the suspect on suspicion of violating the PVP and Seed Act. (This is the first case where criminal penalty was applied to infringement of breeders' right in Japan as far as known to our division.)

•In Oct. 2012, the Yamagata District Court gave a sentence of one and half years' imprisonment with a three years' stay of execution, and a fine of 500,000 yen (the prosecution's demands: one and half years' imprisonment and a fine of 500,000 yen)

16

12 Waterfront measures

The Plant Variety Protection and Seed Act

○ Activities of export and import of seeds etc. infringing breeders' right are included in those infringing breeders' right (Article 2 (5) and Article 20 (1))

Customs Act

○ Prohibition of export and import of certain goods (Article 69-2 (1) (iv) and Article 69-11 (1) (x)

Goods prohibited to be exported and imported: goods infringing patent rights, utility model rights,…, breeder's right

※ Holders of breeder's right may demand an injunction of export and import (Article 69-4 (1) and Article 69-13 (1))

○ If exporting or importing goods infringing breeder's right,

⇒ Individual: imprisonment for not more than ten years or a fine of not more than 10,000,000 yen, or combination thereof

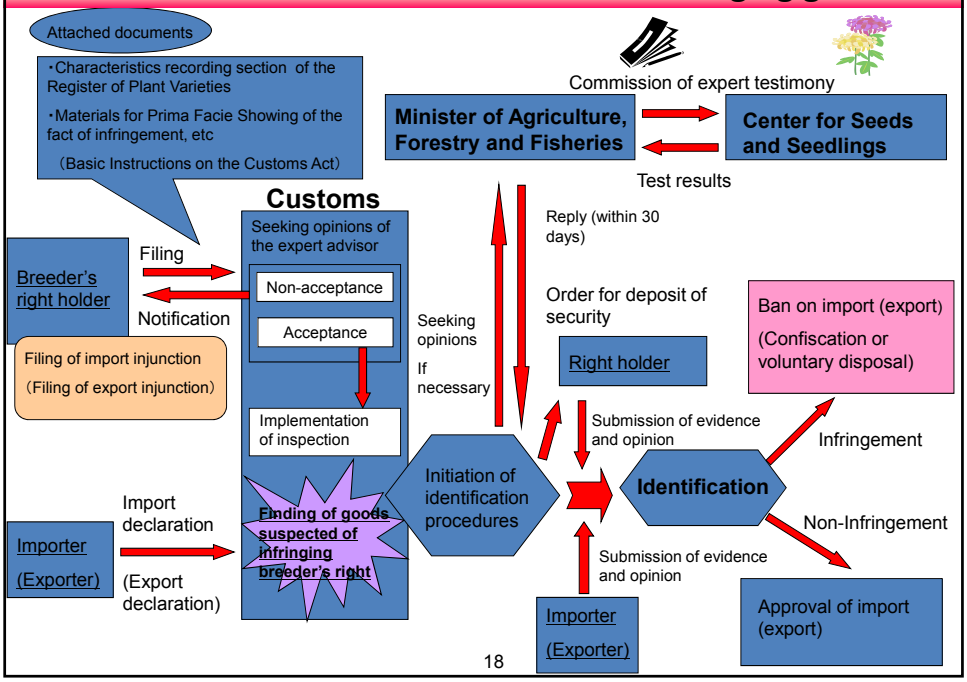
(Article 108-4 (2) and Article 109 (2))

Legal person: a fine of not more than 10,000,000 yen (Article 117 (1))

Effective prevention of infringing activities by prohibiting export and import of goods infringing breeders' right obviously, and imposing penalties

17

13 Waterfront measures related to infringing goods



18

14 Utilization of waterfront measures

- So as to improve the effectiveness of waterfront injunction related to goods infringing breeder's right, MAFF has implemented information exchanges with the Customs workers and transferred DNA identification techniques etc. to them. In addition, MAFF has given lectures on Plant Variety Protection and Seed Act to them a plurality of times every year.
- There have been results where injunction against import of rush "Hinomidori" from China was filed and actually done.

Characteristics of Hinomidori
✓Narrow stem
✓Few flower setting (flower scar)
✓Few discoloring of stem

※DNA identification techniques have been established for raw rush, tatami facing, and woven rush mat.

19

14 Utilization of waterfront measures（2）

(Reference) Injunction of goods infringing breeder's right : Igusa rush "Hinomidori"

- On December 2, 2003, Kumamoto prefecture filed injunction of the import to the Customs.
- On December 25, 2005, Nagasaki Customs Yatsushiro Branch Customs found 860 bags of raw rush "Hinomidori" (about 8,788 kg) produced in China that had been intended to be imported at Yatsushiro Port through the Customs inspection. On March 1, 2005, Yatsushiro Branch Customs pressed charges against a president of a company active in Kumamoto prefecture that produces and sells tatami facing to the Kumamoto District Public Prosecutors Office on suspicion of violating Customs Act (attempted import of banned import goods).
- On November 7, 2005, the Kumamoto District Public Prosecutors Office prosecuted. On February 1, 2006, the Kumamoto District Court sentenced the company to a fine of 1,000,000 yen and the president to one and half years' imprisonment with a four years' stay of execution.

- In 2011, Yokohama Customs ordered suspension of 1,815 Hinomidori's tatami facings that had been intended to be imported from China.
- Kumamoto prefecture demanded corrective action and improved management to the company that had attempted to import the said tatami facings.
- The company submitted a report to Kumamoto prefecture in January 2012 that indicates the following contents:
  (i) replacement of all the tatamis of a facility where the said tatami facings were found; and
  (ii) implementation of business improvement to secure prevention of recurrence.

20

15 Challenge of Japanese PVP

Taken abroad without authorization

- Lack of awareness of necessity to protect PBR in foreign countries
  - Washoku becomes popular
    ↓
  - Japanese varieties (fruits, vegetables and crops) also become popular
    ↓
  - Many Japanese varieties are cultivated in foreign countries, while the PBR of these varieties are not protected in the said countries
    ↓
  - Lose business opportunity
    ↓
- Gov. encourages Japanese breeders to apply to foreign countries' PBR
- In order to facilitate PBR registration in foreign countries, Gov. decided to provide its examination reports at no charge

"Shine Muscat"

"Beni-hoppe"

21

16 Cases infringing breeder's right in Japan

Plants	Denominations	Holder of PBR	Outline
Adzuki bean	Kitanootome (Expiration: Mar. 2001) Syumari	Hokkaido	It was revealed by DNA identification tests conducted by Hokkaido in 2003 that seeds had been taken into China and their harvests had been imported into Japan. The importing company voluntarily refrain from importing Adzuki beans registered in Japan in response to warning of Hokkaido.
Straw-berry	Red pearl (Expiration: Nov. 2008)	Individual breeder	In 1998, some growers in Korea were permitted to use the seeds. However, the products were propagated and imported into Japan around 2000. The holder of PBR filed a lawsuit against importer and reached a settlement.
	Akihime (Expiration: Jan. 2007	Individual breeder	In 1996, some growers in Korea were permitted to use the seeds. However, in 2000, the products were propagated and imported into Japan.
	Tochiotome (Expiration: Nov. 2011)	Tochigi prefecture	I. In 2001, availability of Tochiotome produced in Korea was listed on Fruits Bulletin of Tokyo Central Wholesale Market. Tochigi prefecture inspected market participants but did not find physical evidence. The prefecture cautioned traders given its authorization with documents. II. In 2005, Tochiotome and Sayanoka were listed as strawberries produced in Korea on the brochure for Korean International Exhibition that Korea Agro-trade Center had made.
Kidney bean	Yukitebou (Expiration: Sep. 2010)	Hokkaido	It was revealed by DNA identification test conducted by Hokkaido in 2001 that seeds had been taken into China and the harvested materials had been imported and sold in Japan. The trader voluntarily refrained from importing kidney beans for manufacturing high-grade white bean jam in response to warning of Hokkaido.
Carnation	Four varieties including Hirucherutesu, etc.	Two seed companies	Seeds were propagated in China and the harvested materials were imported into Japan just before Mother's Day. On May 11, 2006, the holders of PBR warned the importer and they reached an agreement subject to payment of compensation from the importer. Moreover, in May 2007, similar harvested materials were found among goods imported by another importer and the holders of PBR warned the importer.
Orange stonecrop	Tottorifujita 1 gou	Seed company	In Jan. 2015, Tottori Police Station arrested a business operator for planting greening plants active in Osaka prefecture, etc. on suspicion of violating the PVP and Seed Act, alleging that they had sold 1,800 seedlings without authorization and planted around a toll gate of highway. In Feb. 2015, the Tottori District Public Prosecutors Office prosecuted.

22

17 Conclusion

- Penal provisions were enforced in the Plant variety Protection and Seed Act that responds to infringement of breeder's right. The notion that breeders' right should be protected by the holders themselves is fundamental. However, PVP G-men have been posted and advised them on how to cope with infringement of breeders' right.
- There have not been litigations concerning infringement of breeder's right in Japan so much. Most of them are civil cases but there have been criminal cases.
- With regard to crops of protected varieties that were taken abroad, waterfront measures are substantiated and MAFF has responded in cooperation with the Customs.
- Recently, there have been frequent cases where protected varieties taken abroad were produced on a large scale in the said countries. Therefore, it becomes an important task to protect new varieties abroad. The Government of Japan intends to promote application of varieties registered in Japan abroad.

23