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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL**Thirty-Fourth Ordinary Session
Geneva, October 26, 2000****REPORTS BY REPRESENTATIVES OF STATES AND
INTERGOVERNMENTAL ORGANIZATIONS ON THE SITUATION IN
THE LEGISLATIVE, ADMINISTRATIVE AND TECHNICAL FIELDS***Document prepared by the Office of the Union*

1. According to the practice introduced on the occasion of the twenty-sixth ordinary session of the Council, it is recommended that the reports from the representatives of States (member States and observer States) and intergovernmental organizations on the situation in the legislative, administrative and technical fields of plant variety protection and related areas be submitted in writing, in advance, to increase the ability of the Council to carry out its tasks effectively.
2. Written reports have been requested by the Office of the Union in the invitation circulars relating to this session and a model format has been proposed for the purpose. The reports submitted by the following States are reproduced in Annexes I to XXV (in the alphabetical order of the names of the States in French): South Africa, Germany, Argentina, Australia, Austria, Belgium, Bolivia, Denmark, Ecuador, Spain, Russian Federation, Finland, Ireland, Japan, Kyrgyzstan, Mexico, Norway, New Zealand, the Netherlands, Poland, Slovakia, Slovenia, Switzerland, United Kingdom, Ukraine.
3. Bulgaria reported no changes since their last report.

[Annex I follows]

ANNEX I

SOUTH AFRICA

1. Situation in the Legislative Field

1.1 Although the revised Plant Breeders' Rights Act, 1976 (Act No. 15 of 1976) already came into operation during April 1996, there are still some concerns regarding ratification of the 1991 Convention. It is hoped that these will be resolved in the near future.

1.3 Requests for the extension of protection to further genera and species are still received from time to time. During the year under review, protection has been extended to 5 new genera and species and another 3 are in the process of being protected.

Plant Breeders' Rights fees were increased slightly in April 2000. This is an annual increase and fees are reviewed every year.

2. Cooperation in examination

- There were no further developments in this regard.

3. Situation in the Administrative Field

3.1 From October 1, 1999, to August 31, 2000, 172 applications for plant breeders' rights were received and 95 breeders' rights were granted. As at August 31, 2000, there were 473 applications under consideration and 1636 plant breeders' rights in force. Further details are given below.

	Agricultural Crops	Vegetable Crops	Ornamental Plants	Fruit Crops	Total
Applications received	38	9	93	32	172
Plant Breeders' Rights Granted	7	31	44	13	95
Valid Plant Breeders' Rights	482	249	673	232	1636
Applications under consideration	98	12	215	148	473

3.2 South Africa is still experiencing a few other problems:

- Varieties are submitted for PBR which are outside the 4 or 6 year novelty requirement of UPOV. Applicants always claim that although it appears that the material is too “old”, sales of the variety only started some years after the date on which the rights were granted. A simple solution to the problem would appear to be alteration of the novelty requirement to a certain number of years after the rights were granted, irrespective of whether sales transpired or not, as this would be a fixed date without any arguments. The matter is further complicated by the fact that certain countries allow sales as soon as an application has been submitted. Obtaining proof of commencement of sales is the big problem.
- When the applicant is not the breeder or owner of the variety, he is required to furnish written authorization allowing him to apply for variety listing or PBR. Applicants often cannot supply the necessary authorization, claiming that they cannot trace the owner. In the case of PBR the application is not accepted, but in the case of variety listing it is a problem. In terms of the Convention on Biological Diversity (CBD), each country has sovereign rights over its own resources and someone must authorize use of the material. Will it be necessary, therefore, to obtain authorization from the authority in the country concerned? How is the problem handled in other countries?
- Another recent development is that holders of rights are supplying propagating material to people without “selling” the material. The holder remains the owner of the material and the buyer is only allowed to propagate the variety. This is causing a lot of dissatisfaction as it also affects “breeders’ privilege”, because breeders are not allowed to use such material for breeding purposes. Although we are not quite sure about the whole situation, it seems that this is in direct conflict with the whole concept and principle of plant breeders’ rights. It is specifically a problem in South Africa where there are many problems if material is not made available to everybody and if certain people are excluded from using such material.

4. Situation in the Technical Field

Identifying differences between varieties is still South Africa’s biggest problem and each year more and more problems are encountered in distinguishing between varieties. This problem is aggravated because no fees are charged for keeping a variety on the variety list with the result that companies tend to keep varieties on the list even though they are no longer marketed. Certain farming communities that insist on planting “old”, “trustworthy” varieties cause the problem. Some of these varieties have been in existence for many, many years and some seed companies continue to produce seed. As they do not belong to anybody, the Department is unable to decide whom to hold responsible for the payment of maintenance fees on the variety list. We are currently considering whether the South African National Seed Organisation (SANSOR, who is representing virtually the whole seed trade) could be made responsible for the administration of the whole idea.

5. Activities for the Promotion of Plant Variety Protection

The organization of seminars, workshops and courses is continuing on an ongoing basis throughout the year for people who are interested in plant breeders' rights. The main topic is still the changes to the new Act and especially Farmers' Privilege and Farmers' rights. Discussions are presently being held amongst various groups and the Government to amend the clause in the Act that deals with Farmers' Privilege, especially as far as vegetatively propagated varieties are concerned. The strategy of the Department is to remove farmers' privilege from the Plant Breeders Rights Act and to include a new section in the Plant Improvement Act which will allow farmers to harvest seed only of varieties which are not protected by means of intellectual property rights or compulsory certification schemes.

Tremendous pressure is still being put on the Department to include a section on Farmers' Rights in the Plant Breeders' Rights Act. The Plant Breeders' Rights Act as well as the Plant Improvement Act have been placed on the list of Acts which will be reviewed by Parliament in 2000 and the section on Farmers' Rights must be finalized before this time.

6. Related Fields of Activities

The Genetically Modified Organisms Act (GMO Act – Act No. 15 of 1997) was implemented on December 1, 1999. Two regulatory bodies govern all activities involving genetic modification under the Act namely the Advisory Committee and the Executive Council. All recommendations by these two bodies are based on a scientific assessment of each individual application.

Due to the high costs for printing, stationery and postage, the South African Plant Variety Journal as well as our National Variety List are now available on the Internet and will not be posted any longer.

Our Internet address is: www.nda.agric.za

[Annex II follows]

1. Situation in the Legislative Field

1.1 No observations

1.2 No observations

1.3 No observations

2. Cooperation in Examination

No observations

3. Situation in the Administrative Field

No observations

4. Situation in the Technical Field

No observations

5. Activities for the Promotion of Plant Variety Protection

During the report period, the Federal Plant Variety Office received delegations from the following members of the Union: Russia, Ukraine, Moldova.

Related fields

- *Variety list*

A law to amend the Seed Trade Law is under preparation in order to transpose the EC Community rules.

- *Rulings in the field of genetic engineering*

In relation to approval for release under the Genetic Engineering Law, the Federal Plant Variety Office is currently examining 19 requests for variety approval.

[Annex III follows]

ANNEX III

ARGENTINA

1. Situation in the Legislative Field

1.2 Case law*

In 1999, the National Seed Institute (INASE) established administrative case law in the settlement of cases submitted to its consideration on the following topics:

(a) Breeders' rights, including:

- rejection of application for loss of novelty;
- the novelty criterion in trials and multiplication of pre-commercial material;
- the breeder and living samples;
- lapse for failure to pay fees;
- existence of living samples abroad;
- variety registration procedure:
 - powers of applicants
 - transfer: requirements to be satisfied;
 - publication for third parties due to lapse of the property title;
 - independence of the registration of a transgenic variety from questions of ownership and authorization for marketing.

(b) Infringements of breeders' rights.

(c) Farmer's privilege. Satisfaction of requirements to enjoy farmer's privilege.

Problems Encountered

- Lack of information from UPOV and also from the member countries on situations or cases that have led to problems in each of the member countries and their solutions.

It is therefore necessary for the legal sectors of organisms in the member countries to know which problems have occurred in the various countries and to know how they have been settled by the administrative and/or judicial organs, in order to deal with similar occurrences in their own countries when interpreting the protection norms, particularly the UPOV treaties, in a manner that is harmonized with the other countries, thus constituting international case law that could be cited in the relevant courts.

* The corresponding decisions are available to anyone interested at INASE.

- Lack of an explicit presumption with respect to the person of the breeder.
- Breeder's exception: definition of breeder, what type of enterprise may enjoy such advantage.
- Situation between the countries that have acceded to the various Acts of the UPOV Convention.
- The principle of national treatment and the situation of breeders in countries that have acceded to the 1978 Act of UPOV that protect specific numbers of species.
- Confidentiality and publicity of information with respect to hybrids and parent lines and their relations with TRIPS.
- The principle of most favored nation under TRIPS and the principle of national treatment in UPOV.
- UPOV activity in relation to farmers' local varieties. Applicability of the UPOV system to new subject matter of rights.
- Obligation to state in the applications for plant breeders' rights the origin of the resource.

Suggestions

- Creation of a database in which the member countries could enter case law that referred to plant variety protection and also any information having a relation to the subject matter and which is an issue of international interest, such as genetic resources, access and norms for grant, farmers' rights, farmers' privilege, etc.

2. Cooperation in Examination

The Argentine Republic has received, to date, examination reports within the framework of cooperation in examination, from France, Germany and the Netherlands for varieties of the species *Rosa L.* It has also received examination reports from the Netherlands for the species *Ficus benjamina L.*

3. Situation in the Administrative Field

The current legal framework for affording protection to a plant variety in Argentina is Law No. 20247 on Seed and Phytogenetic Creations, its Implementing Decree No. 2183 of 1991, Law 24376 on Accession to the 1978 Act of UPOV and Resolution No. 631/92 that establishes provisions on the procedure for entry of varieties in the National Register of Cultivar Ownership.

In 1999, breeders' rights were granted to 126 varieties by means of a property title. Of the total number of property titles granted, 33% corresponded to varieties of oleaginous species, 30% to varieties of cereal species and 17% to varieties of forage species. The remaining 235 were for varieties of ornamental species (8%), fruit species (7%), industrial crops (3%) and vegetables (2%).

Since the entry into force of the plant variety protection system in 1981, breeders' rights have been granted to 1326 varieties of which 62% were varieties of national origin and 38% varieties of foreign origin.

Eleven court actions were instituted to collect the fines imposed in 1999 and 2000 for infringement of breeders' rights.

The Legal Affairs Directorate of INASE dealt with 69 cases in 1999 and 19 cases in 2000 of infringements to Law No. 20.247 on Seed and Phylogenetic Creations.

4. Situation in the Technical Field

The Variety Registration Directorate of the National Seed Institute of Argentina (INASE) comprises six technical members responsible for examining distinctness, uniformity and stability. There was continued participation by two agronomy students placed with the technical staff for managing the reference collections held by INASE and for recording observations on those collections.

The sowing of reference collections has continued, corresponding to cultivars of the species: soya bean, colza and winter cereals, that have been continuously kept since 1994. Those collections are sown for the purpose of checking the descriptions of the varieties they contain. Those collections continue to be sown on the trial fields of the Faculty of Agronomy of the University of Moron, with which INASE maintains an agreement.

The technical officers of each sector in the Variety Registration Directorate of INASE continue to make visits to the trial fields in order to check the differentiation characteristics described for the varieties under study in the DUS trials of the breeders. Such checks are specifically carried out for varieties of soya bean, in-bred lines of maize, in-bred lines of sunflower and wheat.

During the current year, the maintenance plots for varietal purity for the winter cereal group were controlled.

5. Activities for the Promotion of Plant Variety Protection

Staff of INASE participated in various workshops and seminars in relation with the protection of plant varieties, held within the country, at which they explained the basic features of the plant variety protection system, the requirements for protection and the procedures for obtaining such right. Likewise, staff of INASE gave presentations at various courses and seminars held in Bolivia, Chile, Costa Rica and Nicaragua on the experience of Argentina in the implementation of the breeders' rights system.

INASE received various technical delegations from Latin American countries which it familiarized with the activities and implementation carried out in Argentina with respect to the plant variety protection system.

Related Fields of Activities of Interest to UPOV

Argentina has a National Catalogue of Cultivars in which it includes all those varieties which, in accordance with the applicable legislation, are approved for marketing.

INASE is working at national level in conjunction with other national bodies in dealing with topics such as the patenting of genes and plants and exceptions to patentability; traditional knowledge and resources and the rights of farmers and local and native communities and plant genetic resources for food and agriculture.

In August 2000, activities were initiated in relation to training courses with respect to the accreditation system for audit, to familiarize the future accredited inspectors with the general principles of the accreditation system in its technical and legal aspects.

In relation with the release of genetically modified organisms, Argentina possesses a body of inspectors in that field constituted by the National Inspection Commission for Agricultural Biotechnology, a scientific and technical body which, since 1991, has been analyzing and recommending, or not, trials in the laboratory, the greenhouse or the field of genetically modified organisms, analyzing them case by case and taking all decisions on a consensus. For that purpose, Argentina possesses specific regulations for restricted trials, for the flexibility of conditions for carrying out the sowing and has established requirements and criteria for assessing the innocuity as foodstuffs for man and animals of genetically modified material. INASE has been part of this Commission since its institution.

[Annex IV follows]

ANNEX IV

AUSTRALIA

1. Situation in the Legislative Field

1.1 Amendment of the law and the implementing regulations

Three sets of amendments have been made to the *Plant Breeder's Rights Act 1994* (the Act) and the implementing regulations with the intention of: improving access to the Plant Breeder's Rights scheme by breeders; rectifying some administration anomalies and increasing the efficiency of the PBR office

Specifically the Act was amended to:

- allow varieties in different classes of plants to have the same or similar names,
- remove the requirement to hold duplicate copies of the Plant Breeder's Rights (PBR) Register in each State or Territory,
- allow varieties that became ineligible (for PBR) in the transition from PVR to PBR to be accommodated under PBR,
- extend the time limit allowed to applicants to advise of change of ownership,
- allow for test growing to be undertaken on a cost recovery basis at the request of another Union for the Protection of New Varieties of Plants (UPOV) member state,
- allow all costs associated with a test growing for revocation to be recovered from the party in the wrong,
- correct transcription/typographic errors in the Act, Schedule and Regulations.

1.2 Case law

Grains Pool of Western Australia vs The Commonwealth [2000] HCA 14 (P34 of 1998)

The Grains Pool of Western Australia (GPWA) launched an action in the High Court of Australia attempting to invalidate both the *Plant Breeder's Rights Act 1994* and its predecessor the *Plant Variety Rights Act 1987*. The basis of the case is that at the time the Acts came into force they were beyond the constitutional powers of Commonwealth of Australia. It was argued that the Acts were not appropriate to fulfil Australia's obligations under the UPOV Convention as revised, nor did they meet the essential requirements of the patent of inventions as required by section 51(xviii) of the Australian Constitution.

The full bench of the High Court unanimously ruled that both Acts were valid as they were within the constitutional power of the Commonwealth in respect of the patent of inventions. The full text of the judgement is available from:

www.austlii.edu.au/au/cases/cth/high_ct/2000/14.html

Cases part heard

A11 is a retaliatory action in response to another High Court case (Cultivaust Pty Ltd vs State of Western Australia, A11 of 1998). Cultivaust is the licensee for a PBR variety of barley called 'Franklin'. Cultivaust claim that their rights in relation to exports have been infringed by legislation administered by the State of Western Australia which establishes a monopoly in favour of the GPWA to export prescribed grain including barley. As A11 potentially turned on the outcome of P34, it was adjourned part heard.

In a further action in the Federal Court (Cultivaust Pty Ltd vs Grains Pool of Western Australia S104 of 1999) is seeking unspecified damages in relation to GPWA's export of 'Franklin'. S104 was adjourned in advance of a decision in P34 and is set to resume on 14 April 2000.

1.3 Accession to UPOV 1991

On 20 December 1999 Australia deposited an instrument of accession to the UPOV Convention as revised in 1991. Accordingly Australia became bound by that Convention on 20 January 2000.

2. Cooperation in Examination

As a result of the amendments related to cost recovery (above), cooperative arrangements are being planned with several countries.

3. & 4. Situation in the Administrative Field

The PBR office has accredited 18 Centralised Test Centres (CTCs) for DUS testing of the following 33 plant types: Potato, Sugar Cane, Canola, Wheat, Oats, Clematis, *Mandevilla*, *Diascia*, *Argyranthemum*, *Pelargonium*, Perennial Ryegrass, Tall Fescue, Tall Wheat Grass, White Clover, Persian Clover, *Bracteantha*, *Aglaonema*, *New Guinea Impatiens*, *Bougainvillea*, *Verbena*, *Agapanthus*, *Camellia*, *Lavandula*, *Osmanthus*, *Rosa*, *Euphorbia*, *Linonium*, *Raphiolepis*, *Eriostemon*, *Lonicera*, *Jasminum*, *Angelonia*, and *Cuphea*.

In addition PBR Australia maintains and updates weekly a Homepage (www.affa.gov.au/agfor/pbr/pbr.html) that includes PBR information, downloadable forms for electronic lodgement; and a searchable copy of current applications and grants.

Financial Year	Applications received	Applications completed	Applications pending
1999/00	402	270	132
Total 1988 to 2000	2933	2009	924

5. Activities for the Promotion of Plant Variety Protection

PBR Australia has been involved in the following promotional activities:

- 1 'Plant Breeders Rights'. A submission to the House of Representatives inquiry into Primary Producer Access to Gene Technology, Canberra 20 September 2000.
- 2 'Australia's experience of plant variety protection using a *sui generis* system' ~ University of Technology Faculty of Law Seminar, Sydney 20 October 1999
- 3 'Master Class in IP Aspects of Biotechnology' ~ Asia Pacific Intellectual Property Law Institute Murdoch University School of Law, Perth 2 December 1999.
- 4 'New varieties & Plant Breeder's Rights', Darwin 8 October 1999.
- 5 'New Varieties, Why, What and Where of Plant Variety Rights' ~ Canberra Institute of Technology, Canberra 14 March 2000
- 6 'Australia's experience in plant variety protection' Indonesia Australia specialised training project, IP Australia, Canberra 16 February 2000, 17 May 2000 and 21 June 2000
- 7 'Implementing PBR in Australia'. Workshop to delegation of officials from Korea, Canberra 26 June 2000.

[Annex V follows]

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

1.1 The implementation of the 1991 Act of the Convention was put in hand by the Plant Variety Office and the Federal Ministry for Agriculture and Forestry, Environment and Water. A first draft has been completed. The evaluation phase is planned for Autumn/Winter 2000. The orders under the new amending law (fees, extension of protection to further species) are also under preparation (time scale, see implementation for the 1991 Act).

2. Cooperation in Examination

No new examination agreements.

3. Situation in the Administrative Field

On 1 March 2000 the environmental agendas of the former Federal Ministry for Environment, Youth and Family were integrated into the Federal Ministry for Agriculture and Forestry. The newly created authority has the title: Federal Ministry for Agriculture and Forestry, Environment and Water.

Plant Variety Office Activities (Period 1 September 1999 to 31 August 2000)

Number of applications:	16
Number of titles granted:	11
Number of completions:	20
Number of current titles:	146

4. Activities for the Promotion of Plant Variety Protection

Visits by delegations from Lithuania, Croatia and Slovakia.

RELATED FIELDS

Seed

The Agricultural Amending Law 2000 entered into force on 8 July 2000.

Article 2 of this Federal Law (BGBl. I Nr. 39/2000) notifies the amendment of the Plant Material Law 1997 (BGBl. I Nr. 73/1997) concerning the placing on the market of plant material of ornamentals, vegetable and fruit species.

Article 4 of this Federal Law (BGBl I. Nr. 39/2000) notifies the amendment of the Seed Law 1997 (BGBl. I No. 72/1977 concerning the recognition, approval and placing on the market of seed and of variety approval.

This amendment contains the transposition of Directives 98/95/EC and 98/96/EC – large and small seed packages.

Patent and Competition Law

The Austrian Patent Office completed its work on the transposition of Directive 98/44/EC on the legal protection of biotechnological inventions and has submitted it to Parliament for further consideration.

Rulings in the Field of Genetic Engineering

So far, no releases have been approved in Austria.

[Annex VI follows]

ANNEX VI

BELGIUM

A. PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

– Amendments to the law and the implementing instruments

A Royal Decree appointing the members of the Plant Variety Protection Council was signed on 03/07/2000 and entered into force on 10 September 2000. (See copy attached).

Adaptation to the 1991 Act of the Convention

Finalization of the draft is ongoing. We hope that the new law can be adopted during the year 2001.

Access to plant variety protection in accordance with the 1991 Act still remains possible, however, on Belgian territory under the applicable European Regulations, through the Community Plant Variety Office.

European Regulation applicable in Belgium

– Commission Regulation (EC) No. 930/2000 of 4 May 2000 establishing implementing rules as to the suitability of the denominations of varieties of agricultural plant species and vegetable species which entered into force on 25 May 2000.

This Regulation is applicable to all varieties of agricultural plant species and vegetable species included in the common catalogue of varieties of agricultural plant species, the common catalogue of varieties of vegetable species and the varieties protected by a Community plant breeder's right. It is certain that the rules contained in this Regulation will be applied to Belgian plant breeders' rights and will henceforth replace the provisions of the Royal Decree of 20 December 1984 amending the Royal Decree of 22 July 1977 on the protection of new plant varieties, particularly with regard to the conditions that a denomination must satisfy.

2. Cooperation in Examination

Two agreements are still awaiting confirmation with France and Denmark.

Depending on requests for extension of protection to new taxa, new agreements may be concluded or existing agreements modified.

3. Situation in the Administrative Field

– Volume of activities – situation at 31.08.2000

As from the implementation of the legislation on the protection of new plant varieties in Belgium and up to 31 August 2000, 2205 applications for protection have been registered and 1608 certificates issued, of which 337 are still in force.

B. Developments in Related Fields of Activity Having an Interest for UPOV

– Control of seed and seedlings – certification

New Legislation

- A Ministerial Order approving the interprofessional agreements of an approved interprofessional body within the framework of seed production signed on 14/02/2000.
- A “framework” Royal Decree relating to the approval of interprofessional bodies in the field of production of fruit and ornamental seedlings was signed on 21/12/1999 and entered into force on 21/03/2000.
- A Royal Decree concerning the marketing of propagating material of ornamental plants was signed on 21/12/1999 and entered into force on 28/01/2000.

Legislation Under Preparation

Transposition of European Directives, viz. 98/95/EC, 98/98/EC and 99/105 EC:

- Royal Decree relating to the national catalogue of agricultural species and vegetable species
 - Royal Decree relating to the marketing of vegetable seed
 - Royal Decrees relating to trade in propagating material of various groups of agricultural species
 - Royal Decree relating to the marketing of forestry propagating material.
- Legislation on the Distribution and Marketing of GMOs

A draft European Directive amending Directive 90/220 is currently in the concertation procedure between the Council and the European Parliament and will have medium-term repercussions on Belgian legislation, particularly with respect to labelling.

– Legal Protection of Biotechnological Inventions

Transposition of European Parliament and Council Directive 98/44/EC of 6 July 1998 on the protection of biotechnological inventions.

- A preliminary draft law amending the Law of 28 March 1984 on patents for invention with respect to the patentability of biotechnological inventions and the situation of representatives is currently under discussion at governmental level before submission to Parliament.

[Annex VII follows]

ANNEX VII

BOLIVIA

1. Situation in the Legislative Field

1.1 Amendments to the Law and the regulations

Our country has undertaken various actions related to compliance with TRIPS, of which one has been the preparation of a preliminary draft law on the “Intellectual Property Code” in which a specific Book is included on plant variety protection.

The draft of that Book has been considered by UPOV in order to comply with the 1978 Act of which our country is a signatory.

Currently, the preparation stage has been completed and the draft is now being reviewed by the civil society and will subsequently be dealt with in the Chambers of Deputies and of Senators; this process is lengthy and approval cannot be hoped for before mid-2001.

1.3 Our country protects all genera and species (see document C/33/6).

2. Cooperation in Examination

There are no cooperation agreements.

3. Situation in the Administrative Field

There have been no changes in the administrative structure or in the administrative procedures and systems, except that a modification (improvement) is planned for the handbooks on which the procedures are based for the 2001 period.

Although 90% of activity in protected varieties occurs in the city of Santa Cruz, for the first time varieties have been protected through our Regional Seed Office in La Paz and it would seem that the flow of applications from that region is likely to increase.

4. Situation in the Technical Field

Experience has been acquired in the technical processes with the development for the second year of DUS plots for the main protected cultivars.

All this experience has been obtained in our Regional Seed Office in Santa Cruz.

Up to present, the catalogue of protected varieties has not yet been published, due to the limited activities that have taken place, but its publication is nevertheless foreseen for the near future.

5. Activities for the Promotion of Plant Variety Protection

A web page of the National Seed Program (PNS) has been developed which includes a special section on protection of breeders (www.semillas/renavapo/) in order to promote this subject matter and to make available to the public the application forms, database and applicable legislation.

A course in plant breeder protection for the benefit of researchers was given in the city of Santa Cruz on 23 June. Invitees from throughout the country attended that course; this activity is an annual event.

A plant breeder protection course for legal representatives is to be given (planned for the last week of September).

The aforementioned courses are given by the staff of the Coordination Unit and of the Regional Seed Office in Santa Cruz.

Engineer Margarita Soto, in charge of DUS at the ORS Santa Cruz, attended the training course on plant variety protection for Latin American countries organized by UPOV and held in Cartagena de Indias, Colombia, from 29 May to 2 June.

The Regional Seed Office of Santa Cruz has printed an information leaflet to provide knowledge of PBR in the country.

[Annex VIII follows]

ANNEX VIII

DENMARK

1. Situation in the Legislative Field

By Law 412/2000, the Danish Law on Plant Breeder's Rights has been amended in order to implement Article 12 of EU Directive 98/44/EC on Legal Protection of Biotechnological Inventions. By the amendment the holder of a patent is granted the right to exploit on reasonable conditions a patent which infringes a prior plant breeder's right.

3. Situation in the Administrative Field

In 1999, a total of 45 applications for plant breeder's rights were received (agricultural crops 27, ornamentals 18); this is 45% more than in 1998. The number of titles of protection issued was 26 (agricultural crops 19, fruit 2, ornamentals 5).

In the period from January 1 to September 1, 2000, 28 applications for protection were received and 22 titles of protection were issued.

Related Fields of Activities

Amendment of the Danish Law on Patents

By Law 412/2000, the Danish Law on Patents has been amended in order to implement EU Directive 98/44/EC on Legal Protection of Biotechnological Inventions. To implement Article 12 of the said directive, the holder of a protected variety is granted the right to exploit on reasonable conditions a protected variety, which infringes a prior patent.

Plant Genetic Resources

An advisory committee on plant genetic resources was established in 1999. The committee gives advice to the Minister for Food, Agriculture and Fisheries and the Plant Directorate on conservation and exploitation of plant genetic resources for agriculture and food. Its members represent other ministries, agricultural science and education institutions and plant breeder's and farmer's organizations. The committee is involved in formulation of a national strategy on conservation and use of plant genetic resources for agriculture and food.

[Annex IX follows]

ANNEX IX

ECUADOR

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

1.1 Amendments to the Law and the regulations

A copy is attached of Decision No. CD-IEPI-99-008 issued by the Management Board of IEPI on 2 December 1999 laying down the fees to be collected by the Institute for the acts and services it provides.

1.2 Case law

No information.

1.3 Extension of protection to other genera and species (implemented or proposed)

In accordance with Articles 1 and 2 of Decision 345 of the Commission of the Cartagena Agreement, establishing a common system of protection for the rights of breeders of plant varieties, the Law on Intellectual Property provides in its Article 248 that protection by means of the grant of a breeder's certificate shall be afforded to all those cultivated plant genera and species that involve an inheritable improvement of the plant, on condition that cultivation and improvement are not prohibited for reasons of human, animal or plant health. Further, protection is not granted to tree species that have not been bred by man. The protection of plant varieties is subject to the provisions on the protection of the biological and genetic heritage of the country as specified in the second paragraph of Article 120 of the Law on Intellectual Property:

“All protection given to industrial property shall likewise ensure the protection of the country's biological and genetic heritage; consequently, the grant of product or process patents that relate to elements of the said heritage shall be conditional on those elements having been acquired legally.”

2. Cooperation in Examination

In the processing of a number of varieties of ornamental species DUS testing has been adopted on the basis of a request of the competent national authority in Ecuador made to the competent national authority in the country in which the technical examination has been carried out and the corresponding fees have been paid by the applicant. We have received the technical examination results for various varieties of *Rosa L.* and of *Alstoemeria L.* carried out in France, Germany and the Netherlands.

We have not concluded any agreements. Cooperation in examination was at the request of the competent national authority in its capacity as member of UPOV.

3. Situation in the Administrative Field

Changes in the administrative structure:

In accordance with the provisions of Articles 346 to 369 of the Law on Intellectual Property, competence for the protection of the rights of the breeders of plant varieties is the responsibility of the Ecuadorian Institute of Intellectual Property (IEPI), established as a public law legal person, with its own assets, administrative, economic, financial and operational autonomy, and with headquarters in the city of Quito.

IEPI comprises the following organs:

- the President;
- the Management Board;
- the Intellectual Property Committee;
- the National Directorate of Industrial Property;
- the National Directorate of Copyright and Related Rights;
- the National Directorate of New Plant Varieties.

Changes in procedures and systems (administrative):

The competent national authority for the registration of new plant varieties under the Law on Intellectual Property is the National Directorate of New Plant Varieties of IEPI, which replaces the registration office that operated under the National Farming Directorate of the Ministry of Agriculture and Animal Husbandry.

Activities (additional to the statistics already sent to the Office of the Union):

An annex updated to 1999 is added.

Participation as member of the Subregional Committee for the Protection of Plant Varieties of the Andean Community of Nations;

Special achievements, experienced gained, problems encountered, suggestions (including for the future work of the Union);

Inclusion of the National Directorate of New Plant Varieties in IEPI led to increased experience in the legal field with respect to the protection of the rights of breeders, particularly in the registration process.

It would be important for the Office of the Union to include in its working program the preparation of a seminar to study the scope of protection for genetically modified organisms under the patent system and the plant breeders' rights system.

4. Situation in the Technical Field

In addition to the procedure for approval of the tests referred to in item 2, there are negotiations with the autonomous National Institute of Agricultural Research — INIAP — to

conclude an agreement on the performing of technical examinations and an agreement on the maintaining of live samples has been concluded with that same institute.

5. Activities for the Promotion of Plant Variety Protection

No activities of this type have in fact been carried out by IEPI, except for technical assistance in our offices given to the staff of legal firms who request information on procedure. In addition, the President of IEPI issues legal advice when requested in writing by users.

RELATED FIELDS OF ACTIVITY OF INTEREST TO UPOV

- Catalogues of varieties authorized for sale; seed certification

This activity belongs to the Ministry of Agriculture and Animal Husbandry. IEPI is permanently in contact in order to coordinate activities related to the registers.

- Patents, competition law.

These two topics are regulated by the Law on Intellectual Property in Books II and IV, respectively.

- Rules and regulations in the field of genetic engineering (release of genetically modified organisms, etc.).

A general provision exists with regard to the release of genetically modified organisms in Article 89, item 3, of the Political Constitution of the Republic.

The Law on Environmental Management (Official Journal No. 245, of 30 July 1999) provides that the Ministry of the Environment is the national environmental authority with competence to “regulate, by means of biosecurity measures, the propagation, experimentation, use, marketing and import of genetically modified organisms, GMOs”.

The Ministry of Agriculture and Animal Husbandry is preparing a draft regulation on the biosecurity of agricultural produce, that is to be submitted for approval to the Minister.

- Research and development

This activity falls to INIAP, the universities and private firms. The research carried out by INIAP is mostly performed in agreement with the international research centers, such as CIMMYT.

- Genetic resources

Ecuador is recognized as a highly diversified country due to its wide biodiversity which, in addition, possesses a high degree on endemism. As far as the flora alone is concerned, there are some 20,000 to 25,000 species of vascular plants and it is thought that the diversity of non-vascular species is even higher. The latest

catalogue of vascular plants in Ecuador contains 16,087 species, of which 4,073 are endemic.

Within the framework of the Andean Community of Nations, Decision 391 of the Commission of the Cartagena Agreement on common arrangements for access to genetic resources, approved on 10 July 1996, is applicable. This decision regulates access to genetic resources and to products derived therefrom in the member countries: Bolivia, Colombia, Peru and Venezuela.

[Annex X follows]

Situation in the Legislative Field

On 7 January 2000, Law 3/2000 on the Legal Arrangements for the Protection of New Plant Varieties (BOE-10-1-2000) was approved and entered into force on 10 April 2000.

This new Law is adapted to the 1991 Act of the Convention.

Law 3/2000 is applicable to all plant genera and species, including hybrids of genera and species.

The first final provision modifies the Patent Law in that it excludes new plant varieties from patentability.

Article 25 of this Law governs compulsory licenses for dependency in those cases where a breeder is unable to obtain or exploit a breeder's right without infringing an earlier patent right or vice-versa.

Cooperation in Examination

The Spanish Plant Variety Office has continued its collaboration with the Community Plant Variety Office by receiving applications for Community titles and producing reports for that Community Office.

Situation in the Administrative Field

In the period between 1/9/1999 and 1/9/2000, 51 applications for new plant variety titles were received, bringing the number of titles in force at 1/9/2000 up to 987.

Royal Decree 557/2000 of 27 April on the Restructuring of the Ministerial Departments provides that the National Institute of Agrarian and Food Research and Technology, to which the Spanish Plant Variety Office (OEVV) belongs, is to be placed under the Ministry of Science and Technology. Nevertheless, close cooperation is maintained with the Ministry of Agriculture, Fisheries and Food.

Activities for the Promotion of New Plant Varieties

There have been intense activities at national level through seminars and technical meetings to provide information to all interested sectors concerning the Community, Spanish and international systems of protection for new plant varieties.

There has been continued bilateral cooperation and cooperation with the Office of the Union, providing assistance, in particular, to the Latin American region. The training of experts has likewise continued. Courses have been organized in Spain for technical staff from Argentina, Chile and Morocco with respect to the legislative, procedural, organizational and technical aspects of protection and registration of varieties.

A technical official of OEVV participated as a contributor in the National Seminar on the Protection of New Plant Varieties held in Havana, Cuba, from 4 to 6 October 1999, organized by the Cuban Industrial Property Office in cooperation with UPOV.

OEVV cooperated with the Office of the Union in carrying out the training course on the protection of new plant varieties for Latin American countries in Cartagena de Indias, Colombia, from 29 May to 2 June 2000. Twenty-five technical officials from 19 Latin American countries participated. The topics were presented by staff of the Office of the Union, of the Community Plant Variety Office and the Spanish Plant Variety Office.

A technical official of OEVV participated in the 19th cycle of joint meetings of CESM/PR from 15 to 17 August 2000 in Foz de Iguazú-Paraná, Brazil, presenting a paper on aspects of the protection and registration of hybrids and pure lines.

Activities in other Fields of Interest to UPOV

The register of commercial varieties was opened with 15 agricultural species, 48 horticultural species and 185 fruit and standard species, such as strawberry and vine.

Ninety-eight applications were received for the Register of Commercial Varieties with respect to varieties containing genetically modified organisms, of which 16 were for cotton, 78 for maize and 4 for sugar beet, which are currently being examined. The Spanish List of Commercial Varieties includes two maize varieties containing genetically modified organisms.

[Annex XI follows]

ANNEX XI

RUSSIAN FEDERATION

1. Situation in the Legislative Field

- 1.1 There are no amendments to the law or to the rates of fees.
- 1.2 There have been no Court's decisions.
- 1.3 Extension of protection to further genera and species is undertaken annually. It is planning, in the near future, to add the following species to the protected list:

- Plant species:
 - ◇ *Prunus tomentosa* Thunbg,
 - ◇ *Allium fistulosum* L.,
 - ◇ *Allium ascalonicum* L.;

- Animal species:
 - ◇ *Acipenser Nicolucii*.

2. Cooperation in Examination

There are three previous agreements (to France, Poland and Hungary).

3. Situation in the Administrative Field

There are no changes.

4. Situation in the Technical Field

The State Commission has national methods for DUS testing (16 for plant species, 8 for animal species).

Information: We have network OS NT, DB AS/400 server a model 720, corporate web LAN Microsoft.

It would be desirable to have a final system of processing and analysis of outcomes of tests DUS.

5. Activities for the Promotion of Plant Variety Protection

Russian Seminars in: Moscow, Labinsk, Ekaterinbourg, Korenovsk.

Our specialists took part in the meeting of the Technical Working Party for Automation and Computer Programs held this year in Kyiv and in the meeting of the 29th session Technical Working Party for Agricultural Crops held this year in Uppsala.

Visits: Representatives from Armenia were present at the State Commission in July.

Foreign study tours for our specialists: 5 participants – in Germany.

Publications: The State Commission annually publishes 10 Official Bulletins; our experts' articles devoted to the problems of plant variety protection have been published in 25 magazines, catalogues and newspapers with an interest in plant propagation topics.

Technical assistance: Provision of information and guidance to the specialists and leaders of the State Commissions of Armenia, Ukraine, Republic of Moldova and to the representatives of different seed production associations.

Related Fields of Activities of Interest to UPOV

The State List of Selection Achievements Admitted for Usage is published annually.

[Annex XII follows]

C/34/11

ANNEX XII

FINLAND

Situation in the Legislative Field

The “biotechnology directive” has been implemented through legislation in Finland.

The Law Amending the Patent Law (No. 650/2000) and The Law Amending the Breeders’ Rights (No. 651/2000) (Article 24a - The Compulsory License). The laws entered into force on July 15, 2000.

Situation in the Administrative Field

In the period from October 1, 1999, to September 20, 2000, 14 applications for protection were received and 7 titles of protection were issued.

Developments in Related Fields of Activity

The revised Seeds Law (728/2000) shall enter into force on November 1, 2000.

[Annex XIII follows]

ANNEX XIII

IRELAND

Situation in the Legislative Field

The Plant Variety Rights (Proprietary Rights) (Amendment) Act was passed into law on November 25, 1998, bringing Irish Plant Variety Rights law fully into line with the 1991 UPOV Convention. Implementing national legislation should be fully in place by the end of 2000.

Situation in the Administrative Field

Since 1981, 506 applications for Plant Breeders' Rights have been received. 368 rights were issued and as of August 28, 2000, 104 rights are in force.

Developments in Related Fields

The area of genetic resources continues to be very active particularly in relation to plant genetic resources. In 2000, a total of 7 plant related conservation projects were approved for funding.

[Annex XIV follows]

ANNEX XIV

JAPAN

Cooperation in Examination

The Japanese Government has signed a bilateral agreement on cooperation in examination with New Zealand, which came into force on January 10, 2000.

Activities for the Promotion of Plant Variety Protection

The Japanese Government has contributed to the UPOV seminars and workshop. National seminars on the protection of new varieties of plants were held in the Philippines, Singapore, Malaysia and India, in February 2000, and also in Indonesia in August 2000. A Technical Coordination Meeting for Asian Plant Variety Protection Systems was held in Tsukuba, Japan, from May 17 to 19, 2000.

The Japanese Government, in cooperation with the Japan International Cooperation Agency (JICA), opened the study course as one of the JICA training programs for overseas participants from this financial year. Up to ten government officials from various countries are expected to participate in this course which will be held from October 16 to December 13, 2000.

An Asian Regional Technical Meeting will be held in China. National seminars will be held in Bangladesh, India, Cambodia and the Lao People's Democratic Republic in early 2001. An advisory mission will be sent to Vietnam in early 2001. These activities will have financial support from the Japanese Government.

[Annex XV follows]

ANNEX XV

KYRGYZ REPUBLIC

1. Situation in the Legislative Field

1.1 Amendment of the Law and Implementing Regulations

- Adaptation to the 1991 Act of the Convention
Kyrgyz Republic acceded to the 1991 Act of the UPOV Convention on June 26, 2000.
At present Kyrgyzpatent is working on the amendments and additions for implementation of the law of the Kyrgyz Republic.
- Other amendments, including in respect of fees
There are no amendments. The contribution to the membership of UPOV is 0,2 units.
- Short-term prospects; problems encountered
The conduct of DUS examinations is a comparatively new challenge for the Kyrgyz Republic, but thanks to assistance from the World Bank line (component: development of secondary services in seed farming) technical assistance was provided by Mr. Gerry Ovenden, A. Lincoln Agricultural Institute (New Zealand), and Mr. Christopher Niuem, National Institute for Agricultural Botany (United Kingdom).

At present, the State Commission on testing of agricultural crops under the Ministry of Agriculture and Water Resources (hereinafter referred to as State Commission) is conducting DUS examinations, according to the UPOV requirements, for the following crops: winter wheat, spring barley and potato. In addition it plans to include cotton and oats.

1.2 Case Law

There have been no precedents with regard to the protection of breeder's rights to date.

1.3 Extension of Protection to Further Genera and Species (made or planned)

The Ministry of Agriculture and Water Resources plans to arrange for the Government to consider one further species - tomato (*Lycopersicon lycopersicum* (L.) Karst ex Farwell) in addition to the existing 16 species.

Extension to further species will depend on the ability of the State Commission to conduct the tests, with trained experts, according to UPOV methods. For this reason, sufficient time and finance will be necessary.

2. Cooperation in Examination

- Agreements are under discussion or planned for the future
- Amendment of existing agreements
As Kyrgyzstan is a new member of UPOV, such agreements have not yet been concluded. Meanwhile, Kyrgyzpatent, jointly with the State Commission, is planning international cooperation on testing of plants with certain European and CIS countries member States of UPOV.

3. Situation in the Administrative Field

- Changes in administrative structure
- Changes in office procedures and systems
- Additions to the statistics already given to the Office of the Union

There have been no changes in the administrative system.

According to the Law of the Kyrgyz Republic “On Legal Protection of Selection Achievements,” applications for granting title of protection (patent) are submitted to Kyrgyzpatent. Selection Achievements Protection Division of Kyrgyzpatent conducts a two-month preliminary examination for compliance of the application with the “Rules of compilation, filing and consideration of an application for granting patent for selection achievements”. In cases where the submitted material conforms to the requirements, Kyrgyzpatent publishes all the data concerning the given application in the Official Bulletin “Intellectualdyk Menchik” and transfers the seed and materials to the State Commission for DUS examination. After field and laboratory testing, the State Commission provides a report on compliance for patentability to Kyrgyzpatent, which, in the case of a positive decision by the State Commission, registers the decision in the State Register of protected varieties, grants the patent and then publishes the relevant data in the Official Bulletin.

Foreign applicants should file their application through a patent attorney.

In addition to the DUS examination, the State Commission conducts an examination for admission to the list of varieties approved for use and issues, on an annual basis, a catalogue of varieties and hybrids approved for use.

Seed certification is organized by the Seed Inspection under the Ministry of Agriculture and Water Resources.

On September 1, 2000, 34 applications for selection achievements (breeds of animals and plant varieties, hybrids) had been submitted to Kyrgyzpatent. There were 24 positive decisions, 1 refusal, 5 withdrawal. At the same date, 15 patents were issued of which 4 were for plant varieties and hybrids.

There were no international applications filed during the accountable period.

- *Particular achievements, experience gained, problems encountered, suggestions* (including for the future work of the Union)

A foreign firm is planning to file applications for sugar beet hybrids (*Beta B. vulgaris L. sacharifera*). However, UPOV does not have Test Guidelines for sugar beet.

Clearly, title of protection will need to be based on the applicant's data if this complies with the requirements in the legislation.

Some difficulties have been seen with the commercialization of new protected varieties, as a result of insufficient experience and lack of information on breeders' experiences elsewhere in the world. It would be helpful if a regional symposium for CIS countries could be organized through UPOV in the near future.

Kyrgyzpatent suggests that, if it is technically feasible, Russian should be added to the existing list of four languages. Introduction of the Russian language could increase the access to documentation, improve correspondence with UPOV experts and breeders and would simplify the information exchange between Kyrgyzpatent and UPOV. We believe that this proposal would be supported among all CIS countries.

4. Situation in the Technical Field

(See under 3.)

5. Activities for the Promotion of Plant Variety Protection

- *Meetings, seminars, etc.*

Kyrgyzpatent employees took part in the seminar "Protection of Plant Varieties according to UPOV Convention", organized in the United Kingdom, in July 1999; the seminar conducted by the World Bank for Reconstruction and Development; the project for supporting secondary agricultural services "Kyrgyz Seed Company and Development of Seed Industry" (December 1999, Bishkek); the national seminar on method of DUS testing (July 1999, Bishkek, Lector Mr. Gerry Ovenden - expert of A. Lincoln Agricultural Institute (New Zealand)); the WIPO meeting "Intellectual Property and Genetic Resources", Geneva, April 2000, as well as the UPOV Workshop on data handling and the TWC, Kyiv (July 2000).

Kyrgyzpatent is planning to conduct a national seminar in 2001 in cooperation with UPOV/WIPO.

We regularly organize meetings with breeders to provide practical and methodical assistance in the field of selection achievements protection. The Inter-institutional Department was established under Kyrgyzpatent, and this organizes lectures on legal protection of intellectual property, including selection achievements. We also issue publications on those topics.

- *Visits to and from non-member States*

There were no such visits.

- *Publications*

Publications concerning applications filed, patents granted, amendments in legislative base including legal protection of selection achievements are issued in Official Bulletin "Intellectualdyk menchik" which is distributed among 41 countries dealing with exchange of correspondence with Kyrgyzpatent.

- *Technical Assistance*

Within the frame of the project for supporting secondary services ASSP of the World Bank, technical assistance is provided to the State Commission for the development of DUS Testing. It is also expected to provide aid in special small-scale agricultural schemes.

Related Fields of Activities, of Interest to UPOV

- *Catalogues of Varieties Authorized for Sale; Seed Certification*

The Catalogue of plant varieties authorized for use is published annually by Ministry of Agriculture and Water Resources. At present, this includes more than 118 genera and 370 varieties and hybrids of plants with local suitability, and includes varieties from more than 20 foreign countries. A certificate of conformity is granted for the registered material.

- *Patents, Competition Law*

The following laws are included in the legislation of the Kyrgyz Republic: Patent Law (entered into force on February 4, 1998), which states that plant varieties and breeds of animal do not qualify as inventions (Art. 5. Terms of inventions patentability). However, it is emphasized in the law that legal protection of selection achievements is regulated under another law, particularly the Law of the Kyrgyz Republic "On Legal Protection of Selection Achievements" which covers non-traditional intellectual property subject matter.

The law of the Kyrgyz Republic concerning competition entitled as "The restriction of monopolistic activity, protection and development of competition" came into force on April 15, 1994. According to Art. 2, Part 3 of the law (Field of law application) this law does not apply to matters regulated as inventions or trademarks, with the exception of cases where there is the intentional use of rights to restrict competition.

The Law of the Kyrgyz Republic with regard to seed entered into force on July 25, 1997.

Art. 4 (Rules of production and certification of seed) of this law allows for growing and use of seeds of protected varieties only with the consent of the patentee.

Seeds for sowing and use should be certified by the authorized Inspection Body according to special regulation of the Kyrgyz Republic Government.

Seed analysis for the Kyrgyz Republic is carried out in accordance with standard documented procedures.

Methods of conducting field inspection, soil control, seed sampling and seed analysis and other technical documents are endorsed by the public body for agriculture (woods) management - Ministry of Agriculture and Water Resources.

Analysis of seed for export is carried out according to the International Seed Testing Association (ISTA) procedures for the control of seed quality.

A certificate of conformity is granted for seed conforming to public standards. Where seeds do not meet these standards, the results of the analysis are provided.

Exported seeds are accompanied by an international certificate of conformity.

- *Rules and Regulations in the Field of Genetic Engineering (release of genetically modified organisms, etc.)*

There are no rules or regulations in this field at present. However, the Government of the Kyrgyz Republic has raised the problem of marketing of products resulting from Genetically Modified Organisms with the appropriate ministries and officials.

- *Research and Development (innovations - new types of varieties, new techniques)*

A collection of winter wheat from ICARDA was made by the Scientific-Research Agriculture Institute, with a large number of samples obtained in the current year.

Two varieties of winter wheat with high quality baking features were created with the use of new methods, particularly molecular biological techniques.

- *Genetic Resources*

Kyrgyz Republic acceded to the International Convention on Biological Diversity in 1995.

The mechanism and conditions to provide access to genetic resources as well as the arrangements for benefit sharing have not yet been determined by legislation.

[Annex XVI follows]

ANNEX XVI

MEXICO

(1) Situation in the Legislative Field(a) Changes in fees (*applicable from 1 July to 30 September 2000*)

Examination and processing of applications			\$7,759
Issue of submission certificate			\$ 413
Issue of breeder's title			\$3,797
Recognition of priority right			\$ 413
Change of denomination			\$1,048
Registration of transfer of protection rights			\$ 734
Certified copy of the title			\$ 210
Registration of renunciation of rights			\$1,048
Copy of the description of the protected variety			\$ 210
Corrections on grounds attributable to the user			\$ 136
ANNUAL FEE/GROUP	A	B	C
Year 1	\$2,096	\$1,574	\$1,048
Year 2	\$3,144	\$2,621	\$1,572
Year 3	\$3,669	\$3,145	\$2,096
Year 4	\$4,193	\$3,669	\$2,621
Year 5	\$5,241	\$4,194	\$3,145
Years 6 to 15	\$6,289	\$5,241	\$4,193
Year 16 onwards	\$4,193	\$3,669	\$2,621

(2) Situation in the Administrative Field

(a) Institution of the Plant Variety Assessment Committee (16 June 200)

The Federal Law on Plant Varieties (25 October 1996) lays down the setting up of a Plant Variety Assessment Committee with the task of verifying compliance with the requirements of novelty, distinctness, uniformity and stability of varieties for which protection is sought. Likewise, it approves the proposed variety denomination.

This Committee, chaired by the Under Secretary for Agriculture and Animal Husbandry comprises three further representatives of the Agriculture Secretariat (National Seed Inspection and Certification Service) (SNICS) — which acts as Technical Secretary; the National Institute of Forest, Agricultural and Animal Husbandry Research (INIFAP); National Agricultural Health Commission (CONASAG), and the General Directorate of Agriculture; from the Mexican Industrial Property Institute (INPI); from the Secretariat of the Environment (SEMARNAP), and a representative of the National Public Agricultural Research Institutions. There is a further Records Secretary — who may speak but not vote — who reports to the Legal Directorate General of the Secretariat for Agriculture.

The tasks of the Committee include:

- ⊖ Determining the origin of applications for breeders' titles and their entry in the register;
- ⊖ Establishing the procedures for carrying out and assessing the technical field and laboratory trials;
- ⊖ Giving its opinion for the drafting of official Mexican norms with respect to the characters and evaluation of plant varieties for the purposes of description.

To carry out its tasks, the Committee is assisted by technical support groups made up of specialists for each genus or species.

(b) *Technical support groups*

Since 1995, as a stage in the preparation for drafting the former draft Federal Law on Plant Varieties, five technical support groups were constituted to act as plant variety experts and to give their opinions on variety identification, distinctness, stability and uniformity, and also on the guidelines for characterizing varieties.

The five current groups analyzed the various aspects of species: agricultural (cereals, oilseeds, forage and industrial); ornamental and forestry; horticultural; fruit and a special group on automation and special trials that supports the activities of the other groups (statistical methods, molecular markers, etc.).

These technical support groups – coordinated by SNICS — work collegially and to date governmental authorities and agencies, scientific associations, associations of producers, universities and research centers have participated.

Following the conclusion of a cooperation agreement with national academic institutions, it has been possible since 1997 to have the participation of experts from those institutions at 11 meetings of the various specialized working parties of UPOV (agricultural crops, ornamentals, vegetables, fruit crops, biochemical and molecular testing and statistical and electronic computer programs).

These activities have strengthened the presence of our country through specific contributions to the work on revising the technical guidelines for variety identification, and the elements and instruments inherent in protection, as also to create a national technical capability for dealing with these fields, reflected in:

- ⊖ Preparation of the draft guidelines for characterization of barbary fig varieties, for which it is the leader of the sub-group
- ⊖ Preparation of the draft technical guidelines for characterization of varieties of dahlia, tagetes and green tomato
- ⊖ Proposals for the guidelines on citrus, poinsettia and avocado
- ⊖ Venue for the meeting of the Technical Working Party on Agricultural Crops (TWA) in 2001.

3. Situation in the Technical Field

Applications for breeders' titles (situation on 28 August 2000)

	By Origin	
	<i>Quantity</i>	<i>Percentage of total</i>
Mexico	166	42%
United States	141	36%
France	40	10%
Netherlands	36	9%
Others (5)	11	3%
TOTAL	394	100%

	By Species	
	<i>Quantity</i>	<i>Percentage of total</i>
1. Maize	117	30%
2. Rose	98	25%
3. Strawberry	29	7%
4. Cotton	22	6%
5. Sorghum	22	6%
6. Potato	16	4%
Other (34)	90	23%
TOTAL	394	100%

	By Applicant	
	<i>#</i>	<i>%</i>
1. INIFAP	72	18%
2. Asgrow Mexicana, S.A. de C.V	60	15%
3. Pioneer Hi-Bred International, Inc.	33	8%
4. Bear Creed Gardens Inc.	30	8%
5. Meilland Star Rose	24	6%
6. Delta and Pine Land Company	22	6%
7. Driscoll Strawberry Associates Inc.	17	4%
Others	136	35%
TOTAL	394	100%

(4) *Plant genetic resources*

Since 1996, the National Seed Inspection and Certification Service (SNICS) is responsible for the inter-institutional coordination of policies, strategies and activities with respect to plant genetic resources for food and agriculture.

Mexico is considered one of the five most diverse countries in the world, containing practically all the biomes that exist on earth. With only 1.5% of the total area of the continental mass, it possesses 10% of the species of vascular plants, occupying the first place in diversity with respect to the number of seed plants. This is of particular importance since Mexico applies protection to all plant genera and species.

It is hoped that before the end of 2000, SNICS will be able to make available to the public the National Report — in accordance with the FAO guidelines.

[Annex XVII follows]

ANNEX XVII

NORWAY

1. Situation in the Legislative Field

No changes have been made.

2. Cooperation in Examination

Norway received 39 DUS-reports from other member States.

3. Situation in the Administrative Field

From January 1 to December 31 1999, 37 applications have been received. 46 titles were issued.

Grant of rights by crop type were as follows:

Barley	7	Pelargonium	6	Rose	12
Cocksfoot	1	Petunia	4	Rye	1
Elatior Begonia	1	Potato	2	Strawberry	1
Oat	2	Poinsettia	3	Wheat	2
Osteospermum	3	Prunus	1		

190 titles were in force on August 28, 2000.

[Annex XVIII follows]

ANNEX XVIII

NEW ZEALAND

Situation in the Legislative Field

1. There have been no changes over the period in the legislative field. The New Zealand Plant Variety Rights law has not yet been adapted to the 1991 Act of the Convention.

2. A notice of appeals had been lodged on December 1, 1998, in the District Court against two decisions of the Commissioner. The appeals related to applications which had earlier been made separately by Mr. I.R. Gear and Mr. A. Owens for the same new variety of hydrangea. The decisions against which Mr. Gear had appealed were (i) to refuse a grant of plant variety rights to Mr. Gear, and (ii) to dismiss an objection by Mr. Gear against the application by Mr. Owens.

The decisions were essentially on the ground that, under New Zealand law and the UPOV Convention, Mr. Gear was not entitled to a grant because he was not the, or a , breeder/owner of the variety.

After a considerable delay the matter was resolved when, in April 2000 prior to a hearing by the Court, Mr. Gear withdrew the appeals. The Commissioner's decisions were then confirmed.

Cooperation in Examination

A bilateral memorandum between Japan and new Zealand was signed in January 2000. The memorandum deals with the taking over of examination reports.

An arrangement between the European Community Plant Varieties Office and New Zealand came into effect in May 2000. Under this arrangement, the Community Office will use as the basis for decisions on applications within the Community test reports from the New Zealand PVR Office. The arrangement applies to species listed in an annex to the arrangement. At this time, the only species listed are *Neotyphodium (Acremonium) spp* (fungal endophyte).

Situation in the Administrative Field

During the financial year ended June 30, 2000, 185 applications for plant variety rights were received (30 more than the previous year), 164 grants were issued (9 less) and 67 grants were terminated (2 less). At June 30, 2000, there were 1,155 valid grants (97 more).

Activities for the Promotion of Plant Variety Protection

A party of 15 South Korea government officials spent the day of June 29, 2000, at the Plant Variety Rights Office. Staff of the Office explained to and discussed with the visitors the requirements and procedures of the New Zealand plant variety rights scheme.

[Annex XIX follows]

ANNEX XIX

NETHERLANDS

Situation in the Legislative Field

Since the entry into force of the UPOV-treaty of 1991 in April 1998, there are no changes in the Dutch law or in Dutch regulations regarding the plant breeder's right.

The Dutch government made a proposal for the implementation of the Directive No. 98/44/EC on the legal protection of biotechnological inventions. This proposal affects, among others, paragraphs 42 and 43 of the Seed and Planting Material Act regarding the compulsory licence. The Dutch parliament has not yet adopted the proposal.

Cooperation in Examination

An extension of the bilateral Administrative Agreement with Germany on roses is in preparation. An agreement with Colombia concerning rose, rice, cotton and soya is under consideration.

Situation in the Administrative Field

The total number of applications in 1999 was 901. In 2000 the number of applications was 437 (per September 2000).

In 1999, 275 tests were placed with UPOV partners, and the Board issued 530 examination reports (412 to the CPVO and 118 to UPOV member States).

Activities for the Promotion of Plant Variety Protection

Between September 26, 1999 and October 7, 1999, on an invitation of the State Forestry Administration, a delegation of the Dutch Board for Plant Breeders' Rights visited different places in China to advise China about the administrative aspects of plant breeders' rights and about the research before a plant breeder's right is granted. As a result of these contacts a Chinese official undertook work placement at the Board from January, 1 to July, 1, 2000.

In June 2000, on request of Indonesia, a Dutch representative visited their country to make an inventory of the Indonesian system for plant breeder's rights. The background to this visit was Indonesia's wish to see if they fulfil the requirements of Article 27.3(b) of the TRIPS Agreement.

As in the previous year, a course on plant variety protection in May 2000, attended by over 30 participants from some 15 countries, was very successful. The course, organized together with the IAC (International Agricultural Centre) covered the legal, institutional and technical aspects of plant variety protection and touched upon other intellectual property rights systems for plants.

[Annex XX follows]

POLAND

Situation in the Legislative Field

Polish legislation for Plant Breeders' Rights, is a part of Polish Seed Industry Law. It is based on the 1991 Act of the UPOV Convention. We protect varieties of 302 taxa.

The amendments to the Polish Seed Industry Law have been passed by the Parliament. They are expected to be signed by the President and enter into force on November 1, 2000. The Law in the parts concerning National Listing and Seed Production adopts the existing arrangements in the European Union. In the scope of Plant Breeders' Rights, the amendments provide, *inter alia*,

- extension of PBR to all plant genera and species,
- duration of the Breeders' Rights: for varieties of potato, grape-wine and trees 30 years ; for varieties of remaining taxa 25 years,
- limitation of farmer's privilege.

Cooperation in Examination

Poland has concluded bilateral agreements on cooperation in variety examination with Czech Republic, Latvia, Lithuania, Slovakia and Hungary. The agreement with Bulgaria is being prepared for signature.

Poland together with the Czech Republic, France, Slovakia and Hungary has participated in ring tests on Cocksfoot, Lucerne and Tomato.

The discussion meeting on ring test results was held in Cavaillon and Montpellier (FR) on July 10 and 11, 2000.

Situation in the Administrative Field

From January 1 to September 15, 2000, 239 applications for PBR were received and 383 titles were granted. On September 15, 2000, there were 1,442 titles in force.

Details are given below.

Crops	Applications for PBR 1.01. – 15.09.2000			Grant of PBR 1.01. – 15.09.2000			Titles having ceased	Titles in force at 15.09.2000
	domestic	foreign	together	domestic	foreign	together		
Agriculture	57	21	78	53	18	71	1	389
Vegetables	8	4	12	11	4	15	-	187
Ornamental	10	120	130	21	269	290	5	807
Fruit trees and berry plants	3	16	19	4	3	7	-	59
Total	78	161	239	89	294	383	6	1,442

Related Fields of Activities

Poland does not have regulations concerning DUS testing of genetically modified (GMO) varieties.

Until regulations are approved and enter into force, we will entrust other countries with DUS testing for PBR purposes.

[Annex XXI follows]

ANNEX XXI

SLOVAKIA

Situation in the Legislative Field

The intellectual property of plant varieties are protected in accordance with the Variety Protection Law No. 132/1989 of the Collection of Laws.

The amendment (No. 22/1996 of the Collection of Laws) to the Law No. 132/1989 on the legal protection of new varieties of plants and breeds of animals was adopted in the National Council of the Slovak Republic on 19 December 1995 and came into force on 1 February 1996. This amendment brought the Slovak legislation into conformity with the 1991 Act of the Convention and also into conformity with the EC Council Regulation No. 2100/94. Preparatory work for ratification of the 1991 Act has already started. After adoption of Regulations No 345/1997 and No 346/1997 by National Council of the Slovak Republic on 10 November 1997 which came into force on 1 January 1998, we are in a position to ratify the 1991 Act and deposit the instrument of accession.

Situation in the Administrative Field

Since 1990 we have registered 838 applications for the legal protection of new plant varieties. There was a rejection of 117 applications. We have not accepted 84 applications. There are 453 varieties being tested and 183 Breeders Certificates.

We have registered during the year 2000: 15 Slovakian applications and 16 foreign applications for plant breeders rights: Czech Republic 4 applications, Germany 1 application, France 2 applications, USA 5 applications, Poland 2 applications and the Netherlands 2 applications.

In accordance with amendment No. 22/1996 Z.z., which covers plant variety rights for varieties of all botanical genera and species, we have received applications for some ornamental and special genera not yet tested in Slovakia. We will carry out the tests with the cooperation of the UPOV member States.

Fees

Fees for tests necessary for granting breeder's certificate and for legal protection are paid according to the Law No. 181/1993 on administrative payments. Fees were published as an amendment to the Regulation for application of plant varieties for legal protection according to the law No. 132/89. This regulation is in force from 1 December 1994 and is available in Slovak and English for all applicants, holders of the breeder's certificate and agents of foreign companies at the ÚKSÚP Variety Testing Department.

Cooperation in Examination

On February 19, 1993, Slovakia concluded a cooperation agreement on DUS testing with the Czech Republic. Slovak ÚKSÚP will test the following for ÚKZÚZ (Central Institute for Supervising and Testing in Agriculture): Dwarf French bean, French bean, cocksfoot, red fescue, sheeps fescue, timothy, small timothy, birdsfoot trefoil, melon, eggplant, popcorn, sugar maize, chestnut.

ÚKZÚZ tests the following 32 species for ÚKSÚP: (common vetch, Hungarian vetch, crown vetch, lucerne, alsike clover, creeping bent, common bent, meadow foxtail, tall oatgrass, crested dogs, tall fescue, Westerw grass, flattened grass, wood meadow grass, kentucky blue grass, smooth meadow grass, all interhybrids and intercorps hybrids of grasses, flax, garlic, celery, mangold, savoy cabbage, cauliflower, carrot, lettuce, radish, spinach, hop, black cherry, raspberry and all ornamental plant varieties which ÚKZÚZ is currently testing).

In 1994, an agreement on variety testing was concluded with Poland.

Since 1995 ÚKSÚP has been testing the following for COBORU (Polish Research Center for Cultivar Testing) timothy, red fescue, birdsfoot trefoil, cocksfoot, leek, melon, eggplant.

COBORU tests the following for ÚKSÚP: buckwheat, rye, triticale, lupin, white mustard, broccoli, Brussels sprout.

On July 1995, the bilateral agreement on DUS testing was concluded with Hungary. ÚKSÚP is testing for OMMI: potato, timothy, red fescue, birdsfoot trefoil, leek, melon, eggplant. OMMI is testing for ÚKSÚP: durum wheat, sorghum, pepper, watermelon, squash.

The cooperation agreement with Slovenia is under preparation. Currently ÚKSÚP is testing the following crops for the Slovenian Agricultural Institute: timothy, cocksfoot, birdsfoot trefoil, red clover, Dwarf French bean, tomato.

There is further cooperation under discussion between the Czech Republic, Hungary, Poland and Slovenia in the field of testing for fruit and vegetables.

Activities for the Promotion of Plant Variety Protection

The Variety Testing Department of the UKSUP (Central Agricultural Controlling and Testing Institute) periodically publishes descriptions of varieties newly registered in the National List and the results of the VCU tests. It organizes so-called "Open Days" at its own testing stations network. Specialists of the Variety Testing Department maintain close contacts with colleagues from foreign institutions cooperating in DUS testing. We have participated in the meeting on "DUS ring tests" for grasses and tomato which was held in Montpellier in France.

We took part in the "The Advisory Meeting of the Central European Countries and Other Members of UPOV" in Vienna, Austria, on August 31 and September 1, 2000.

The Variety Testing Department - Plant Breeders' Rights Office published "Plant Variety Protection Gazette - 2000" which is available in English at the ÚKSÚP Variety Testing Department in Bratislava.

Application of Biochemical, Molecular and Morphometrical Techniques in Seed and Variety Testing

Application of these techniques in official testing is carried out by the ÚKSÚP's Laboratory for biochemical and genetic testing. This laboratory is in charge of standardization of testing methods, development of new methods and coordination of testing activities in Slovakia. In the area of DNA markers, it cooperates with the Research Institute of Plant Production in Piešťany and in the area of isoenzyme analysis with breeding company Zeainvent Trnava.

In official testing of seeds and plant varieties we mostly apply electrophoretic tests by using storage proteins and isoenzymes according to standard ISTA methods and recommended UPOV methods (mostly PAGE, SDS-PAGE and starch gel electrophoresis). We use morphometric analysis of shape of seeds as the complementary phenotype test.

Tested parameters:

Seeds: authenticity of varieties, varietal homogeneity, determination of admixtures

Varieties: description of varieties by electrophoretogram, distinguishing varieties, homogeneity testing, potential stability testing

Electrophoretically tested species: wheat, barley, maize, oats, triticale, rye, potato, peas, soya bean

Morphometric tests: wheat, bean, potentially triticale and barley.

Genetic Sources

The new Genobank was established in Slovakia. The ÚKSÚP and the Genobank have prepared an agreement in stocking and maintaining a reference collection of protected varieties, example varieties etc.

Future Plans

We would like to maintain further cooperation with the UPOV member States and to continue in the "ring tests" which are a great contribution to the improvement of DUS testing and legal protection of new plant varieties.

[Annex XXII follows]

ANNEX XXII

SLOVENIA

Situation in the Legislative Field

Two further sub-law regulations, on the detailed procedure for the plant variety protection, and on farmer's privilege have been adopted. Now the all necessary sub-law regulations for the Protection of New Varieties of Plants Act have been adopted.

Cooperation in Examination

The agreements concerning the exchange of DUS reports with Great Britain, Germany and Austria are under revision and with Netherlands, France and Community Plant Variety Office under preparation. The bilateral agreement of cooperation with Czech Republic and Slovakia is under preparation.

We continue cooperation in the field of DUS examination with Hungary, Czech Republic and Slovakia and we have started co-operation with Croatia.

Situation in the Administrative Field

From the September 1999 up to September 2000, 5 applications were filed and 4 titles of protection issued. Total number of titles in force is 53 (agricultural crops 22; vegetables 5; ornamentals 26).

Developments in Related Fields of Activities

The new National List of Varieties, including the list of protected varieties, was published in August 2000.

The first Slovenian Plant Breeder's Rights and Variety Registration Gazette was published in August 2000.

[Annex XXIII follows]

C/34/11

ANNEX XXIII

SWITZERLAND

Situation in the Legislative Field

The amendment of the law with a view to ratification of the 1991 Act of the UPOV Convention is available in preliminary draft. Since the hearing of the circles outside the administration is being coordinated with that of an amendment to the Patent Law, it cannot be initiated before Spring 2001. The entry into force of the new law is not to be expected before Spring 2003.

Situation in the Administrative Field

Between 1 January and 31 August 2000, 64 applications were filed and 65 titles granted.

[Annex XXIV follows]

ANNEX XXIV

UNITED KINGDOM

Situation in the Legislative Field

There have been no significant developments in the legislative field with regard to plant breeders' rights following the ratification of the 1991 UPOV Convention in 1998.

Financial Situation

There has not been the annual increase in the fees for Plant Breeders' Rights in respect of application, test, grant and renewal fees because of a delay arising from the introduction of devolution in the United Kingdom.

Cooperation in Examination

The United Kingdom continues to play an active role in the testing of various species for a number of countries.

Situation in the Administrative Field

Following the retirement of Mr. David Boreham, his successor as Controller of Plant Breeders' Rights is Mrs. Heather Hamilton. Peter Button, former Technical Liaison Officer at the UK PVRO, has recently left to take up a post with UPOV. His successor is to be announced.

Trends in Applications and Grants for Protection

During the year ended 31 March 2000:

280 applications were received	(6.88% increase over last year)
179 Grants were issued	(0.5% increase over last year)
214 Grants were terminated	(8% decrease over last year)
1630 Grants were renewed	(3% decrease over last year)

European Plant Breeders' Rights

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

The UK will participate in the inauguration of the new CPVO building in mid-October.

The CPVO have recently agreed guidelines for the denomination of varieties.

Promotion of Plant Variety Protection

The United Kingdom continues to receive visitors from overseas wishing to learn more about plant breeders' rights and sees this as a positive development in international cooperation.

UK technical officers were involved in seminars in China and Japan.

Related Fields of Activities of Interest to UPOV

The UK has been reviewing its legislation on National Listing (NL), and new NL regulations are due to come into force later in the year.

A gm forage maize variety has been proposed for addition to the UK National List. Public representations have been received against the decision and a hearing is taking place in October.

The PVRO has been fully involved in the investigation into the adventitious presence of GMO's in seed of oilseed rape.

[Annex XXV follows]

ANNEX XXV

UKRAINE

Situation in the Legislative Field

The draft Law on the amendment of the Law on the Protection of Plant Variety Rights is under consideration in Supreme Council. The draft law conforms to the 1991 Act of the UPOV Convention.

Situation in the Administrative Field

During 1999, 8 applications were received:

potato	2
white cabbage	1
barley	1
wheat	1
maize	3

No rights have been granted yet.

Developments in other Fields of Activity

In August 2000, the Official Bulletin of the State Commission of Ukraine for Testing and Protection of Plant Varieties has been published and the Register for Plant Varieties of the Ukraine for 2000 has been published as well.

[End of Annex XXV and of document]