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**INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS**

GENEVA

**COUNCIL**

**Thirty-Fifth Ordinary Session**

**Geneva, October 25, 2001**

ADDENDUM TO DOCUMENT C/35/12

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

*Document prepared by the Office of the Union*

The Annexes to this document contain the reports from Australia, Colombia, Spain, Ireland, Japan, Mexico, Portugal, Romania, Czech Republic, the European Community (EC) and the Organisation for Economic Co-operation and Development (OECD).

[Eleven Annexes follow]

ANNEXI

AUSTRALIA

1. Situation in the Legislative Field

1.1 No amendments have been made to the law or the implementing regulations in 2000-2001

1.2 Caselaw

Cases parheard

Related to the *Grains Pool of Western Australia vs The Commonwealth [2000] HCA 14 (P34 of 1998)* (described in Australia country report for 1999 -2000), *Cultivaust Pty Ltd vs State of Western Australia (A11 of 1998)*, has been remitted to the Federal court as *Cultivaust Pty Ltd and the State of Tasmania vs State of Western Australia (S66 of 2001)* and consolidated with *Cultivaust Pty Ltd and the State of Tasmania vs Grains Pool of Western Australia (S104 of 1999)*.

Cultivaust is the licensee for a PBR variety of barley called 'Franklin' bred by the State of Tasmania. 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.

2. Cooperation with Examination

No change.

3.+4. Situation in the Administrative Field

The PBR office has accredited 26 Centralised Test Centres (CTCs) for DUS testing of the following 40 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*, *Ceratopetalum*, *Rosa*, *Euphorbia*, *Limonium*, *Raphiolepis*, *Eriostemon*, *Lonicera*, *Jasminum*, *Angelonia*, *Cuphea*, *Cynodon*, *Zoysia*, *Petunia*, *Calibrachoa*, *Hordeum*, and *Leptospermum*.

In addition PBR Australia maintains and updates weekly a Homepage ([www.affa.gov.au/pbr](http://www.affa.gov.au/pbr)) 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
2000/2001	318	310	10
Total 1988to2001	3250	2319	931

5. ActivitiesforthePromotionofPlantVarietyProtection

PBRAustraliahas beeninvolvedinthefollowingpromotionalactivities:

- 1 “Plant Breeders’ Rights”. A submission to the House of Representatives inquiry into Primary Producer Access to Gene Technology, Canberra 20 September 2000.
- 2 “PBR and Royalties ~ Facts, Fiction and Future,” AGFORCE Conference, Toowoomba, October 4, 2000.
- 3 “Australia’s experience in plant variety protection”. Indonesia Australia Specialised Training Project II, IPA Australia, Canberra, October 2000.
- 4 “Plant Breeder’s Rights”. A submission to Productivity Commission review of cost recovery, Canberra, December 2000.
- 5 “Plant Breeder’s Rights”. A submission to the House of Representatives Standing Committee on Primary Industries and Regional Services inquiry into bioprospecting, Canberra, March 2001.
- 6 “New Varieties, Why, What and Where of Plant Variety Rights” ~ Canberra Institute of Technology, School of Horticulture, March 2001.

[Annex II follows]

ANNEXII

COLOMBIA

1. Situation in the Legislative Field

As regards legislation, Resolution 03034 of December 22, 1999 was published and establishes provisions for the production, import, export, distribution and marketing of seeds to be sown in the country; the Resolution emphasizes that any material subject to the regime affording protection to the rights of breeders of plant varieties to be grown in the country shall be subject to the regulations in force on seed production; similarly, any person using the regulations shall demonstrate to the ICA the authorization of the breeder to carry out the desired activity, thereby allowing better supervision so as to prevent the breeder's rights being violated.

2. Cooperation in Examination

Cooperation is being undertaken with certain UPOV member countries in dispatching results of technical examinations. We have acquired excellent experience with the competent authorities in Germany and Holland through cooperation in carrying out tests of distinctiveness, uniformity and stability (DUS) for varieties of rose. We also wish to emphasize the broad cooperation offered by the Community Office of the European Union in sending us results of technical examinations of varieties for which protection is sought in Colombia.

3. Situation in the Administrative Field

In 2000, 81 applications for protection were filed, eight percent of which correspond to varieties resulting from national research, and in the same year 51 breeder certificates were also issued.

Our database currently holds a total of 580 applications received and 345 breeder certificates issued. Of the applications, 35 were Colombian and the remainder were from foreign sources, Holland being the country with the highest number of filings. An analysis of the information by species shows that the rose continues to be the most common (61 per cent), followed by the carnation (13 per cent) and chrysanthemum (seven per cent).

The fourth and fifth editions of the Protected Plant Varieties Gazette were published in 2000 and 2001 respectively.

Five protocols were drawn up for tropical species based on UPOV guidelines. On the basis of the guidelines, visits were made for the purposes of observing, analyzing and evaluating the characteristics of each of the varieties subject to the protection process, and in addition 13 distinctiveness, uniformity and stability tests were conducted for varieties of the cotton, rice, sugarcane, garlic and soybean species in 2000.

4. SituationintheTechnicalField

During the year 2000, laboratory protocols were standardized for characterizing and differentiating protected varieties of the rice and rose species. For that purpose, protocols designed for the characterization and differentiation of other plant varieties were adapted and modified by means of SDS -PAGE electrophoresis of proteins.

5. ActivitiesforthePromotionofPlantVarietyProtection

Work is currently being done with breeders and/or their legal representatives toward the establishment of a civil association based on the need to strengthen the protection for the rights of breeders of plant varieties in Colombia, in order to defend the breeders' rights and interests, monitor the implementation and enhancement of the legislation, and provide technical, legal and administrative advice for official and private bodies. On August 21, 2001 the first meeting was held for that purpose, at which actions to be carried out were defined for the successful establishment of the organization that will be known as COLPOV.

Lectures are being given in universities on the dissemination of the register, its operation and legislation in Colombia. Similarly, transfers to different national bodies are being made through seminars, meetings and conferences, so as to broaden the scope of the protection afforded to plant varieties.

[Annex III follows]

ANNEX III

SPAIN

1. Situation in the Legislative Field

Law 3/2000 on the Regime for the Legal Protection of Plant Varieties, in force in Spain, applies to all plant genera and species, including the relevant hybrids.

2. Cooperation in Examination

The Spanish Office of Plant Varieties has continued to cooperate with the Community Plant Variety Office (CPVO) in receiving applications for Community Titles and in producing reports for the Community Office.

3. Situation in the Administrative Field

In the period from September 1, 2000 to September 1, 2001, 60 Plant Breeder Title applications were received, and the number of Titles in force as of the latter date was 1,021.

Pursuant to Royal Decree 908/2001, of July 27, which amends the basic structure of the Ministry of Agriculture, Fisheries and Food, the Spanish Office of Plant Varieties is attached to the Directorate General for Agriculture of the Department in question.

The Spanish Office of Plant Varieties is the unit responsible for carrying out the duties entrusted to the Ministry of Agriculture, Fisheries and Food in relation to supervising the production, import, certification and marketing of nursery seeds and plants, and the application of international seed certification and marketing systems. In addition, the Office is responsible for managing the Register of Commercial Varieties (National Catalog of Plant Varieties) and the Register of Protected Varieties (granting of Rights of Breeders of Plant Varieties).

4. Activities for the Promotion of Plant Varieties

Intense activity has developed on a national scale through seminars and technical meetings designed to provide information for all the sectors concerned regarding the Community, Spanish and international system of protection for plant varieties.

5. Activities in other sectors of interest to UPOV

The Register of Commercial Varieties containing details of 52 agricultural species, 48 horticultural species, and 18 fruit species and stocks, as well as for the Strawberry and Vine.

In the current year, no applications for entry in the Register of Commercial Varieties have been received for varieties containing genetically modified organisms. The Spanish List of Commercial Varieties includes two varieties of maize which contain genetically modified organisms.

[AnnexIV follows]

1. 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 is in place since 14/12/2000 under Statutory Instrument No. 489 of 2000 Plant Varieties (Proprietary Rights) (Amendment) Act, 1998 (Commencement) Order, 2000.

2. Cooperation in Examination

There is no change in this area.

3. Situation in the Administrative Field

- No change in administrative structure.
- No change in office procedures or systems.
- Since 1981, 506 applications for Plant Breeders' Rights have been received. 377 rights were issued and as of 13th August 2001, 90 rights are in force.
- Problems encountered include rights holders not informing relevant authorities of changes of address etc.

4. Situation in the Technical Field

There is no change in the situation in the technical field.

5. Activities for the Promotion of Plant Variety Protection

There is no active promotion except through the publication of the Bi -annual Gazette and an outline of broad activities in some governmental publications.

6. Developments in Related Fields

- The area of Genetic Resources continues to be very active particularly in relation to plant genetic resources. In 2001 a total of 6 plant related conservation projects were approved for funding.
- A National Catalogue of Agricultural Plant Varieties is maintained by this office, and all varieties contained in this publication are eligible to be included in the Seed Certification scheme.

[Annex V follows]



ANNEXV

JAPAN

1. Situation in the Administrative Field

The National Center for Seeds and Seedlings which is in charge of DUS testing, seed quality testing and certification in Japan, has reorganized as Independent Administrative Institution (independent from the Government) on April 1, 2001.

2. Activities for the Promotion of Plant Variety Protection

The Japanese Government, in cooperation with Japan International Cooperation Agency (JICA), opened the training course as one of the JICA training programs for overseas participants from the year 2000. Ten participants from nine countries are participating in this course from October 9 to November 28, 2001.

The Japanese Government has invited the UPOV Technical Working Party for Ornamental Plants and Forest Trees (TWO) to Nagano. Forty-six participants from 15 countries or organizations participated in the TWO and it was very successful.

The Japanese Government has contributed to the UPOV workshops and seminars. An Asian Regional Technical meeting and Workshop were held in Beijing from July 23 to 26, 2001. Japanese Government official participated in the meeting. The next meeting will be held in the Republic of Korea in 2002. National seminars will be held in Bangladesh, India and some other countries in 2002.

[Annex VI follows]

## ANNEXVI

## MEXICO

1. Situation in the Legislative Field

Modification of fees ( Validity: July 1 to December 31, 2001 )

Consideration and processing of application	\$8,425		
Issue of filing certificate	\$448		
Granting of breeder title	\$4,123		
Recognition of right of priority	\$448		
Change of denomination	\$1,138		
Registration of succession of rights of protection		\$797	
Certified copy of the title	\$228		
Registration of renunciation to the right			\$1,138
Copy of the description of the protected variety	\$228		
For correction of mistakes by the user	\$148		
<b>ANNUAL APPROVAL/GROUP</b>	<b>A</b>	<b>B</b>	<b>C</b>
Year 1	\$2,276	\$1,709	\$1,138
Year 2	\$3,415	\$2,845	\$1,707
Year 3	\$3,984	\$3,415	\$2,276
Year 4	\$4,553	\$3,984	\$2,845
Year 5	\$5,691	\$4,554	\$3,415
Year 6 to 15	\$6,829	\$5,691	\$4,553
Year 16 ff.	\$4,553	\$3,984	\$2,845

2. Situation in the Technical Field

In 2000, there was participation in the meetings of the UPOV specialized groups on vegetable, ornamental and fruit species, in which emphasis was placed on the submission of proposals for guides relating to the Prickly Pear (*Opuntia*), Cempasuchil (*Tagetes*) and Dahlia (*Dahlia*).

From September 3 to 7, the 30<sup>th</sup> meeting of the TWA was held in Texcoco, Mexico and was attended by 53 representatives from 23 countries (Australia, Brazil, Canada, Colombia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Holland, Hungary, Japan, Kenya, Mexico, New Zealand, Norway, Republic of Korea, South Africa, Spain, Sweden and United Kingdom) and four international organizations (FIS/ASSINSEL, CPVO, European Union and UPOV). 40 of the participants were foreigners and 13 were Mexican (Álvarez, De Lucio & Partners, A.C., Basham, Ringe and Correa, S.C., Becerril, Coca & Becerril, S.C., Clarke Modet, INIFAP, Monsanto, Postgraduate College, PRONASE, SNICS, UACH and UAM -X).

3. SituationintheAdministrativeField

Breedertitleapplications (SituationasatSeptember30,2001 )

<b>ByOrigin</b>		
	<i>Number</i>	<i>Relative tototal</i>
Mexico	196	42%
UnitedStates	165	35%
Holland	44	9%
France	42	9%
Other(7)	20	5%
<b>TOTAL</b>	<b>467</b>	<b>100%</b>

<b>BySpecies</b>			
		<i>Number</i>	<i>Relativeto total</i>
1. Maize		128	27%
2. Rose		109	23%
3. Strawberry		35	7%
4. Sorghum		29	6%
5. Cotton		26	6%
6. Potato		19	4%
Other(40)		120	27%
<b>TOTAL</b>		<b>467</b>	<b>100%</b>

<b>ByApplicant</b>			
		<i>#</i>	<i>%</i>
1	INIFAP	93	20%
2	AsgrowMexicana,S.A.deC.V.	60	13%
3	PioneerHi -BredInternational,Inc.	45	10%
4	BearCreekGardens,Inc.	30	6%
5	MeilandStarRose	28	6%
6	DeltaandPineLandCompany	25	5%
7	DriscollStrawberryAssociates,Inc.	20	4%
	Others(53)	166	36%
	<b>TOTAL</b>	<b>467</b>	<b>100%</b>

[AnnexVIIfollows]

C/35/12Add.

ANNEXVII

PORTUGAL

The Plant Breeders' Rights range of species has been enlarged in May this year and covers now 97 species.

We are following the evolutions concerning the revision of Article 27.3(b) in the framework of the Council for TRIPS meetings and the relationship between the agreement on TRIPS and biodiversity-related issues.

We continue to work on the revision of our national legislation in order to put it in accordance with the 1991 Act of the UPOV Convention.

[Annex VIII follows]

CZECHREPUBLIC

1. Situation in the Legislative Field

1.1 Amendments of the law and the implementing regulations.

On 1 February 2001, Act No. 408/2000 Coll. of 25 October 2000, on the Protection of Plant Variety Rights, entered into force. This Act is in conformity with the 1991 Act of the UPOV Convention. An Act amendment concerning fees is under preparation.

1.2 No observations.

1.3 Extension of protection to further genera and species .

Act No. 408/2000 Coll. extends protection to all plant genera and species.

2. Cooperation in Examination

An extension of the bilateral Administrative Agreement on cooperation with OMMI, Hungary, is in preparation. The agreement proposal on cooperation with Slovenia is still awaiting confirmation.

3. Situation in the Administrative Field

With effect from 1 February 2001, the Central Institute for Supervising and Testing in Agriculture is the responsible authority in the field of plant variety rights .

In the period from October 1, 2000, to October 1, 2001, 119 applications for protection were received and 67 titles were issued.

4. Related Fields of Activities

— National list of varieties

A Bill on marketing of seed and planting material in order to implement the Community rules is under preparation.

— Patents

The new Act No. 206/2000 Coll., on protection of biotechnological inventions, entered into force on 1 October 2000.

— Geneticallymodifiedorganisms

ActNo. 153/2000Coll., on use of genetically modified organisms and products,  
enteredintoforceon1January2001.

— Geneticresources

A Bill on conservation and use of genetic resources of plants and  
microorganismsisunderpreparation.

[AnnexIXfollows]

ANNEXIX

ROMANIA

1. Situation in the Legislative Field

Romania, the forty -seventh Contracting Party of the UPOV Convention through its responsible authorities representatives, the State Office Inventions and Trademarks (SOIT) and the State Institute for V ariety Testing and Registration, is working to implement and improve plant variety protection.

Law No. 255 complies with the 1991 Act of the UPOV Convention and also with the provisions of EC Regulation 2100/94 on Community Plant Variety Rights.

According to Law No. 255, breeders' rights are provided by variety patents granted by the State Office Inventions and Trademarks (SOIT).

The examination procedure for granting a variety patent comprises a formal examination, a substantive examination and a technical examination, made by the national authority responsible with growing tests, namely the State Institute for Testing and Registration of Varieties (SITRV).

Any decision taken by SOIT or SITRV may be appealed to the SOIT or to the Law Court of Bucharest.

Law No. 75/1995 referring to the production of seed and propagating material, quality control and marketing was amended by the Ministry of Agriculture and sent to the Parliament.

The Government of Romania regulates the control of genetically modified organisms by Ordinance No. 49/2000.

2. Situation in the Administrative Field

Regarding the number of applications during 2000 -2001, 29 applications were filed with the State Office for Inventions and Trademarks as follows:

agricultural crops	13
vegetables	4
fruit trees and vines	12

A total of 151 variety patents are in force.

3. SituationintheTechnicalField

During 2001, experts from Romania actively participated in the UPOV Technical Working Parties for Fruit Crops and for Vegetables, contributing to the clarification of some matters regarding the new General Introduction and UPOV Test Guidelines.

Romanian experts in DUS testing, seed propagating, material quality control and certification from the regional laboratories, attended training courses in the Netherlands in the framework of a bilateral agreement for technical assistance signed between FAPS and the Romanian Ministry of Agriculture.

[AnnexXfollows]



ANNEX

EUROPEAN COMMUNITY/COMMUNITY PLANT VARIETY OFFICE (CPVO)

1. Situation in the Legislative Field

➤ Rules for variety denominations:

New rules governing variety denominations throughout the European Union, both for listing and for the community plant variety rights system, are in force since mid 2000. The CPVO is gaining experience using this detailed set of rules. A Working Group on Variety Denominations, including national and CPVO experts, has been recently set up. The terms of reference will cover ways to reduce the scope for different interpretations; streamline and shorten the procedures; to look at ways of simplification and further harmonising the rules; assess the merits of centralisation (within the EU) of the collection and maintenance of databases relating to variety denominations.

➤ Feasibility of the entry of the Community plant variety rights under the scope of the EU customs Council Regulation :

Under the regulation, the customs authorities may seize goods suspected of infringing intellectual property rights detected by their check on an application for action by the titleholder. Several related problems for such extension are under careful consideration.

2. Situation in the Technical and Administrative Fields

➤ For the performance of the required DUS tests, the Community Office uses the co-operation of a network of more than 20 examination offices inside the European Union. The CPVO has also contracts with the national Offices of Australia, Israel and New Zealand.

➤ For the preparation and carrying out of the examination of proposals for variety denominations, the assistance of 5 European national offices is now currently used.

➤ To improve the efficiency of the technical network, the Office organises several technical meetings:

- Annual meeting with the EU Examination Offices. Last year experts from 9 candidate countries to the EU adhesion, Switzerland and the UPOV Office participated in that meeting.

- Apple experts meeting: to evaluate the possibilities to reorganise the DUS testing within the Community in a way that each Examination Office is going to be specialised in a certain group of apple varieties, particularly taking into account the main different groups of mutants.

- Vegetable experts have recently met to explore possibilities of DUS centralisation for inbred lines of several species.
- The centralisation of DUS testing for sugar beet components in Sweden has been agreed. The corresponding technical protocol for the DUS of this plant material is in the last steps of elaboration. Once finalised it will be presented to the UPOV competent technical bodies.
- The CPVO is now implementing a plan aiming to produce CPVO Technical Protocols for the DUS of the genera and species covered by the Community system. Priority lists for the different groups of crops have been drawn up. The adopted UPOV test Guidelines will be used as a basis for this work. e

### 3. Information Concerning the Functioning of the Community Plant Variety Protection

- From October 2000 to October 2001, the CPVO received 2,163 applications. So far 2001 shows an increase of 8.25% compared with the same period last year. Since the beginning of its activities, the CPVO has granted 8,010 rights, of which 1,568 last year.
- Since 1995, 13,406 applications have been received: 14.28% from countries outside the European Union and 85.71% from Member States of the EU.
- The CPVO received applications for varieties belonging to 655 different genera/species.

The breakdown by group as species is as follows:

- 58.5% Ornamentals
- 24.4% Agricultural crops
- 11.2% Vegetables
- 5.6% Fruit trees
- 0.3% Miscellaneous

- In addition to the periodical publication (bimonthly) of its Official Gazette, the CPVO maintains a website ([www.cpvo.eu.int](http://www.cpvo.eu.int)) for general information. Updated (every two weeks) lists of applications and grants are also included. Since the year 2000 a special issue of the Gazette is published mid-year encompassing all varieties under community protection.

### 4. Activities for the Promotion of Plant Variety Protection

- The CPVO continued the co-operation in the promotion of the UPOV type PVR protection, providing speakers for seminars and specialised meetings organised by the UPOV Office and the EU Member States.

- In cooperation with the European Commission/TAIEX, the Office has organised a seminar in Angers addressed to officials of the candidate countries to the EU accession. Legal, administrative and technical details of the PVR Community system were presented.

[Annex XI follows]

ANNEX XI

ORGANISATION FOR ECONOMIC CO-OPERATION  
AND DEVELOPMENT (OECD)

Several topics were discussed at the June 2001 Annual Meeting as follows:

Adventitious Presence of GM Seed

At the Annual Meeting, but also at a more recent Extended Advisory Group Meeting, some progress was made towards achieving consensus and starting an experiment on adventitious GM seed presence although no final decision could be made. OECD was asked to persevere in trying to advance the issue of collecting data and confronting the existing rules with the new technical situation.

Hybrid Cotton

A Working Group will be set up with all cotton-producing countries being asked to participate including Greece, Spain, Turkey, Egypt, Brazil, USA and others interested.

What is needed is the writing of Rules for F<sub>1</sub> hybrids but the situation of all types of hybrids will be considered. Current trade in hybrid cotton of already listed varieties will continue by tacit agreement.

Grass Seed Mixtures

The work will continue on the basis of a new paper and in the light of a new agreement expected in Brussels for next June. The certification will include the obligation for companies to keep records of analyses in a different way from single varieties.

New Species

*Elytrigia repens* and *Deschampsia cespitosa* (tufted hair grass) (in a few days) will be admitted on the list to be issued next December.

New Countries

Four new countries would become participating States before the end of December: Russia, Latvia, Yugoslavia, and Mexico (OECD Member country). This brings the number of adhering countries from the present 48 to 52.

CBD

The CBD has mentioned the OECD Schemes as an existing trade instrument which might be used for LMOs (“LM” seed more precisely) transportation across borders. Nairobi delegates received a document describing the Schemes with a copy of the letter sent by the Secretariat to the CBD Secretariat. The OECD approach is to provide whatever information is required and keep a waiting position. It is also prepared to cooperate with other international organizations (FAO/IPPC or others).

Other Issues

Other topics were discussed such as the developments of the accreditation experiment on sampling and testing, the main issues raised by the possible introduction of maize blend certification and oil seed varietal associations, provisional certification before registration and lot size.

[End of Annex XI and of document]