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

**COUNCIL**

**Thirty-Eighth Ordinary Session**  
**Geneva, October 21, 2004**

ADDENDUM TO DOCUMENT C/38/11

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 I to X to this document (in the alphabetical order of the names of the States in French) contain the reports from South Africa, Australia, Hungary, Ireland, Israel, Norway, Portugal, Slovakia, Slovenia and Ukraine.

[Annex I follows]

## ANNEX I

## SOUTH AFRICA

PLANT VARIETY PROTECTION1. Situation in the Legislative Field

1.1 South Africa has not yet ratified the 1991 Convention.

1.2 Several requests for the extension of protection to further plant genera and species were lodged with the Department of Agriculture. These include *Adenanthos* spp., *Ajuga* spp., *Bouvardia* spp., *Brunfelsia latifolia*, *Ceanothus dentatus*, *Chlorophytum* spp., *Iris* spp., *Cuphea hyssopifolia*, *Lespedeza sericea*, *Limonium*, *Merwillia* spp., *Murraya paniculata*, *Sambucus* spp., *Stenotaphrum secundatum*, *Symphoricarpus albus*, *Watsonia* spp., *Weimannia* spp., *Agathosma* spp., *Nandina* spp., *Desmodium subsericeum*, *Neonotonia wightii*, *Dactyloctenium australe*, and *Zizyphus jujube*.

1.3 The new fees in terms of the Plant of the Plant Breeders' Right Act became effective from April 1, 2004. The fees are increased on an annual basis.

2. Cooperation in Examination

There were no further developments in this regard.

3. Situation in the Administrative Field

During the period September 1, 2003, until August 30, 2004, 224 applications for plant breeders' rights were received, of which 111 rights were granted.

On August 30, 2004, there were 806 new applications under consideration and 1655 plant breeders' rights in force. More information is provided in the table below:

	Agricultural Crops	Vegetable Crops	Ornamental Crops	Fruit Crops	Total
Applications received	52	7	127	38	224
Plant Breeders' Rights Granted	51	18	28	14	111
Valid Plant Breeders' Rights	533	239	651	232	1655
Applications under consideration	96	17	427	266	806

South Africa is still experiencing difficulties with the issuance of PBR within the novelty requirements of UPOV (4 or 6 years). For example, by the time that the potential of a variety has been tested and evaluated in Europe, two or three years of sales have already elapsed in Europe. After another two to three years in quarantine and a further three to four years in South Africa, the varieties are normally “too old” to obtain plant breeders’ rights in South Africa.

We are also concerned with a new trend developing in South Africa where certain holders of PBR do not sell a variety to someone, but only the right to use the variety. The material remains the property of the plant breeder. This is conducted on the basis of a contract between the relevant parties.

4. Situation in the Technical Field

Due to the development of more and more closely related varieties, the differences between varieties are constantly becoming smaller and smaller, making it increasingly difficult to distinguish between varieties.

Open-pollinated maize varieties are still very popular and are being bred continually in South Africa, especially for the African market. However, the maintenance of these varieties can be problematic.

South Africa is still experiencing problems relating to the presence of some varieties on the variety list even though the sales of these varieties are very low. To partly address this situation, the South African National Seed Organization (SANSOR), an official assignee of the rationalized, national seed certification schemes in South Africa, is now charging their members a nominal fee (voluntary) for keeping varieties on the variety list. The money generated in this way is used as funding to investigate potential infringements of plant breeders’ rights.

5. Activities for the Promotion of Plant Variety Protection

Seminars, courses and workshops are held on an ongoing basis throughout the year to inform and educate people with regard to plant breeders’ rights and variety lists.

6. Related Field of Activities

South Africa has commercialized genetically modified (GM) cotton, maize and soybean. GM varieties within these three crops have been released during the past year.

[Annex II follows]

ANNEX II

AUSTRALIA

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

- 1.1 No amendment to the *Plant Breeder's Rights Act 1994* or its Regulations for the relevant year.
- 1.2 Case law: Federal Court Decision – *Cultivaust Pty Ltd & The State of Tasmania v Grain Pool Pty Ltd & The State of Western Australia* [2004] FCA 638 (May 2004).

The following is a brief overview of the outcome of this case. The comprehensive and authoritative judgment is available at:

[http://www.austlii.edu.au/au/cases/cth/federal\\_ct/2004/638.html](http://www.austlii.edu.au/au/cases/cth/federal_ct/2004/638.html)

Cultivaust is the holder of an exclusive licence, granted by the State of Tasmania, in relation to its barley variety 'Franklin' as allowed under the *Plant Breeder's Rights Act 1994* (PBR Act)

In a single judge Federal Court of Australia decision handed down on May 21, 2004, all of the causes of action pleaded by Cultivaust Pty Ltd were unsuccessful:

INTELLECTUAL PROPERTY – whether the conduct of Grain Pool Pty Ltd (formerly the Grain Pool of Western Australia, GPWA) contravened the applicants' PBR rights under the *Plant Variety Rights Act 1987* (Cth) (PVR Act) and the PBR Act.

*The Court found that the GPWA had not infringed Tasmania's PBR for a number of reasons including (i) neither Cultivaust nor Tasmania had sought to exercise the PBR in relation to the commercial disposal by growers of crops grown from farm-saved seed; and (ii) the then allowable exemptions allowed the GPWA to store and sell Franklin for malting purposes.*

CONTRACT – whether Cultivaust and the GPWA entered into a contract or reached an agreement concerning the payment of production levies and/or end point royalties

*The Court found that (i) no agreement was entered into and (ii) the exchange of communications between the parties, even though it contained a very general offer of "future assistance", did not amount to an enforceable agreement or commitment by the GPWA with respect to its future conduct.*

ESTOPPEL – whether the GPWA was estopped by its conduct from denying that:

1. Cultivaust agreed to supply Franklin barley seed in 1992 for the limited purpose of growing trials in that year;

2. The GPWA agreed to recognize, and act upon, that limited purpose so that it would not receive and sell Franklin barley grain other than for that limited purpose, without the further authorization of Cultivaust; and
3. In any event, the knowledge by GPWA of the conditions on which Franklin barley seed was provided for the 1992 growing trial in Western Australia was sufficient to preclude the GPWA from acting inconsistently with those conditions.

*The Court found that Cultivaust's hopes or expectations for an agreement with the GPWA, including a production levy on Franklin barley, were the result of its commercial judgments and strategies, and not an assumption of fact resulting from the conduct of the GPWA.*

EQUITY – fiduciary relationship – whether there existed a fiduciary relationship between Cultivaust and the GPWA

The claim of fiduciary duty is an alternative to the claim of infringement of Tasmania's PBR rights.

*The Court found that the dealings between Cultivaust and the GPWA were those of arms-length commercial negotiations and the GPWA did not assume any obligation to act other than in its own interests or the interests of Western Australian barley growers.*

TRADE PRACTICES – whether the GPWA unlawfully attempted to reach an understanding with other statutory grain marketing boards about the level of any production levy or end point royalty to be paid in respect of Franklin barley

*The Court found that "there was no actual interference, even if there was an attempt to do so".*

On July 21, 2004, Cultivaust Pty Ltd lodged an appeal to the Full Bench of the Federal Court against the adverse judgment from the single judge of the Federal Court that their rights in relation to 'Franklin' barley had not been infringed by the Grain Pool Pty Ltd. There is no indication that the other commercial matters will be pursued. The hearing date is yet to be set, though it is unlikely to be heard before February 2005.

Other interesting aspects of this case so far relate to the Court's view that:

- the opportunity to impose a production levy or end point levy is intended to be exercised with respect to lawfully acquired propagating material at the time of its acquisition;
- the harvest from farm-saved seed, except for further farm-saved seed, is to be treated as if it were propagating material to which section 11 operates, i.e., it is propagating material the subject of PBR;
- authorized sale of the initial seed does not exclude from the operation of PBR all subsequent generations of crop from seed originally purchased from the grantee;

- exhaustion of PBR by the sale of initial seed does not extend to cover the sale of second and subsequent generations of crops, assuming they are grown from retained farm-saved seed.

## 2. Cooperation with Examination

Cooperation agreements have been signed with the CPVO in relation to *Protea cynaroides*, *Leptospermum* and *Pauwlownia*.

## 3. & 4. Situation in the Administrative Field

The Australian PBR office has accredited 34 Centralised Test Centres (CTCs) for DUS testing of the following 48 plant types: *Agapanthus*, *Aglaonema*, *Ananas*, *Angelonia*, *Antirrhinum*, *Anubias*, *Argyranthemum*, *Bougainvillea*, *Bracteantha*, *Calibrachoa*, *Camellia*, *Canola*, *Ceratopetalum*, *Clematis*, *Cuphea*, *Cynodon*, *Dahlia*, *Dianella Diascia*, *Eriostemon*, *Euphorbia*, *Hordeum*, *Jasminum*, *Lavandula*, *Lonicera*, *Limonium*, *Mandevilla*, *New Guinea Impatiens*, *Leptospermum*, *Oats*, *Osmanthus*, *Osteospermum*, *Pelargonium*, *Perennial Ryegrass*, *Persian Clover*, *Petunia*, *Plectranthus* Potato, *Raphiolepis*, *Rhododendron*, *Rosa*, *Sugar Cane*, *Tall Fescue*, *Tall Wheat Grass*, *Verbena*, *Wheat*, *White Clover* and *Zoysia*.

In addition, the Australian PBR office maintains and updates weekly a Homepage ([www.daff.gov.au/pbr](http://www.daff.gov.au/pbr)) that includes PBR information, downloadable forms; and a database including information on current applications, variety descriptions, images and grants.

Financial Year	Applications received	Applications completed	Applications pending
2003/2004	412	292	
Total 1988 to 2004*	4,434	3,261	1,176

\*= as at 30 June 2004

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

PBR Australia has been involved in the following promotional activities:

1. Harmonizing Australian/Chinese Plant Breeder's Rights (PBR) intellectual property legislation, standards and procedures. Training of a senior Chinese PVP examiner in Australian PBR administration. April – October 2003.
2. "Fortune Favours the Prepared Mind: PBR" ~ Canberra Institute of Technology, October 31, 2003.
3. "A statutory research exemption: required and workable?" ACIPA Symposium – Freedom to Tinker: Patent Law and Scientific Research - March 19, 2004.

[Annex III follows]

## PLANT VARIETY PROTECTION

### 1. Situation in the Legislative Field

Hungary became bound by the 1991 Act of the UPOV Convention on January 1, 2003. (Earlier Hungary was bound by the 1978 Act of UPOV Convention from 1983.)

Hungary became a member State of the European Union on May 1, 2004. Upon accession, Community plant variety rights under Council Regulation (EC) No. 2100/94 of July 27, 1994, were extended to the territory of Hungary; and the provisions of the said regulation are directly applicable in Hungary.

The Act XXXIII of 1995 on the Protection of Inventions by Patents (the Patent Act) also provides for the protection of plant varieties. It was substantially modified in 2002; the modifications on plant variety protection entered into force on January 1, 2003. The Patent Act is harmonized with the 1991 Act of the UPOV Convention and the Council Regulation (EC) No. 2100/94 of July 27, 1994, on Community plant variety rights. According to the changes, the national system provides *sui generis* protection for plant varieties, whereas earlier it was part of the patent protection. Plant variety protection is for 25 years from the date of the grant of plant variety protection or, in the case of trees and vines, for 30 years from such date.

The national system is open for all plant genera and species.

Problems encountered: The legislation does not regulate what happens if the holder of the plant variety protection requests a change of the variety denomination after the grant of plant variety protection.

### 2. Cooperation in Examination

According to paragraphs (3) and (4) of Article 114/R of the Patent Act, the results of experimental testing (DUS examination report) carried out by a competent foreign authority may be taken into consideration with the consent of such authority (...). The costs of experimental testing shall be borne by the applicant. Therefore, the Hungarian Patent Office (HPO) took steps to conclude agreements with national and regional offices on the provision of DUS examination reports from the relevant offices to the HPO.

In the course of the procedure, the HPO sends an official request for a DUS report to the relevant Office; the request conforms to the UPOV request form. In the request, it is indicated that the relevant Office should send the invoice directly to the applicant. The applicant pays the fee to the relevant Office. After receipt of the fee, the relevant Office sends the DUS report to the HPO with the declaration of the relevant Office's consent to the use of the DUS report in the procedure before the HPO.

The HPO has already concluded an agreement with the Community Plant Variety Office (CPVO) in 2003 and with the *Bundessortenamt* (German National Office) in 2004. The HPO has also initiated the same cooperation with the Offices of Spain and the United Kingdom.

3. Situation in the Administrative Field

The HPO is authorized to grant protection to plant varieties. In the national system, the HPO is responsible for the examination of novelty, denomination and unity [one application for one variety] and for the registration of plant varieties, while the National Institute for Agricultural Quality Control (OMMI) is responsible for the biological examination (DUS testing).

4. Situation in the Technical Field

The technical examination is carried out by the National Institute for Agricultural Quality Control, so the HPO cannot give information about this issue.

5. Activities for the Promotion of Plant Variety Protection

The HPO publishes and distributes leaflets explaining the system of plant variety rights in Hungary and also organizes seminars concerning this topic. The Office has a website on which information can be found on plant variety right issues.

The educational activity of the HPO contributes to the development of Hungarian industrial property culture; the representatives of the HPO deliver lectures on the system of plant variety protection.

The HPO is invited by the breeding institutes to participate in the demonstration of their new varieties, and the HPO is also represented at the sensory judgment of the plant variety.

There are different competition possibilities in order to promote innovative and agricultural research activities in Hungary. One of them invites entries to apply for financial help to gain and maintain plant variety protection in a foreign country. The other one provides assistance for the breeding of new varieties or the development of certain features (e. g. improve disease resistance) of the variety.

RELATED FIELDS OF ACTIVITIES

The Act of 1998 on Genetic Modification addresses the genetic modification of natural organisms; the use, release, placing on the market, exportation, importation and transportation of genetically modified organisms and the products generated thereof. This Act is harmonized with Council Directive 90/219/EEC of April 23, 1990, on the contained use of genetically modified micro-organisms, and Directive 2001/18/EC of the European Parliament and of the Council of March 12, 2001, on the deliberate release into the environment of genetically modified organisms.

[Annex IV follows]

ANNEX IV

IRELAND

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

- Preparation for ratification of the UPOV Convention (1991) is nearing completion.

2. Cooperation in Examination

- There is no change in this area.

3. Situation in the Administrative Field

- Mr. J. Carvill has retired as Controller of Plant Breeders Rights.
- Dr. David McGilloway has replaced Mr. Donal Harney in the Office of Plant Breeders Rights.
- No change in office procedures or systems.
- Since 1981, 522 applications for Plant Breeders' Rights have been received. 388 rights were issued and as of September 30, 2004, 78 rights are in force.
- Problems encountered include rights holders not informing relevant authorities of changes of address etc., and the issue of variety denominations and trade marks.

4. Situation in the Technical Field

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

5. Activities and 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.

DEVELOPMENTS IN RELATED FIELDS

- The area of Plant Genetic Resources continues to be quite active. In 2004, a total of 7 plant-related conservation projects were approved for funding by the Department of Agriculture and Food.
- The 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 schemes.

[Annex V follows]

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ANNEX V

ISRAEL

PLANT VARIETY PROTECTION

1. During the aforementioned period, 91 applications were submitted.
2. During that time, some of the Plant Breeders' Rights Council's activities were delayed due to personnel changes. Mr. S. Berland retired and was replaced by Mrs. M. Sgan-Cohen as Registrar. Other nominations are being contemplated.

[Annex VI follows]

PLANT VARIETY PROTECTION1. Situation in the Legislative Field

No changes have been made.

2. Cooperation in Examination

Norway received 37 DUS-reports from other member States.

3. Situation in the Administrative Field

From January 1 to December 31, 2003, 30 applications have been received. 38 titles were issued.

Grant of rights by crop kind were as follows:

<i>Agrostis capillaris</i>	1	<i>Hordeum vulgare</i>	1	<i>Sutera cordata</i>	1
<i>Argyranthemum frutescens</i>	2	<i>Malus domestica</i>	4	<i>Triticum aestivum</i>	1
<i>Begonia hiemalis</i>	5	<i>Pelargonium</i>	2		
<i>Calibrachoa</i>	2	<i>Petunia</i>	2		
<i>Brassica napus</i>	1	<i>Poa annua</i>	2		
<i>Euphorbia pulcherrima</i>	2	<i>Rosa</i>	12		

231 titles were in force on September 1, 2004.

[Annex VII follows]

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

An amendment of Article 7 of Decree Law No. 913/90 is in course, in order to extend the scope of plant breeders' rights protection to all plant genera and species.

2. Cooperation in Examination

The *Centro Nacional de Registro de Variedades Protegidas* continues to collaborate with plant breeders rights offices from other UPOV member States and with the Community Plant Variety Office.

3. Situation in the Administrative Field

Nothing new to add to the previous situation.

4. Situation in the Technical Field

Nothing new to add to the previous situation.

5. Activities for the Promotion of Plant Variety Protection

Nothing new to add to the previous situation.

[Annex VIII follows]

## PLANT VARIETY PROTECTION IN SLOVAKIA

### 1. Situation in the Legislative Field

The intellectual property rights concerning plant varieties are provided by the Variety Protection Law No. 132/1989 of the Collection of Laws.

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 December 19, 1995, and came into force on February 1, 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 the ratification of the 1991 Act has already started. After adoption of Regulations No. 345/1997 and No. 346/1997 by the National Council of the Slovak Republic on November 10, 1997, which came into force on January 1, 1998, we are in a position to ratify the 1991 Act and to deposit the instrument of accession.

Fees for tests necessary for granting a breeder's certificate and for legal protection are paid according to the Law No. 181/1993 Coll. of Laws 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 Coll. of Laws. This regulation has been in force since December 1, 1994, and is available in a Slovak and an English version for all applicants, holders of the breeder's certificate and agents of foreign companies at the ÚKSÚP Variety Testing Department.

### 2. Cooperation in Examination

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

ÚKZÚZ is testing for ÚKSÚP: alsike clover, carrot, cauliflower, celery, common bent, common vetch, creeping bent, crested dog's tail, crown vetch, flattened grass, garlic, Hungarian vetch, kentucky blue grass, lettuce, lucerne, mangold, meadow foxtail, radish, savoy cabbage, smooth meadow grass, spinach, tall oatgrass, tall fescue, Westerwold grass, wood meadow grass, all hybrids of grasses, 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 for COBORU (Polish Research Center for Cultivar Testing): birdsfoot trefoil, cocksfoot, eggplant, timothy, leek, melon and red fescue.

COBORU is testing for ÚKSÚP: broccoli, Brussels sprout, buckwheat, lupin, white mustard.

On July 1995, a bilateral agreement on DUS testing was concluded with Hungary.

ÚKSÚP is testing for OMMI: birdsfoot, eggplant, leek, melon, potato, red fescue, timothy.

OMMI is testing for ÚKSÚP: durum wheat, pepper, sorghum, squash and water melon.

A cooperation agreement with Slovenia is under preparation.

ÚKSÚP has been testing the following species for the Slovenian Agricultural Institute: timothy, cocksfoot, trefoil, dwarf French bean, red clover and tomato.

ÚKSÚP is testing tomato varieties for Estonia at the present time.

ÚKSÚP received in August 2004 a request from Denmark for testing of some grass species.

### 3. Situation in the Administrative and Technical Fields in the Years 2003 - 2004

From January 1 to December 31, 2003, 10 Slovakian applications and 30 foreign applications for plant breeder's rights have been registered.

Plant Breeder's Rights for 139 varieties were granted and 30 applications or grants were cancelled.

The number of applications up to June 30, 2004, was 24. Plant Breeder's Rights were granted for 12 varieties and 3 grants and 16 applications were cancelled. In total, there are 786 varieties covered by protection (including provisional protection for applications).

Whereas, according to 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 which covers the protection of all botanical genera and species, we have received applications for some ornamental and special genera not yet tested in Slovakia. We carry out the tests in cooperation with the UPOV member States.

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

The Variety Testing Department of the ÚKSUP (Central Controlling and Testing Institute in Agriculture) periodically publishes descriptions of newly registered varieties in the National List and the results of the VCU tests.

The Department also issues every three months “The Bulletin of Variety Testing Department of Central Controlling and Testing Institute in Agriculture of the Slovak Republic”. The Bulletin contains the Applications for the Plant Variety Rights and/or Addition to the National List, Variety Denominations, Proposed Variety Denominations, Changes in Variety Denominations, Withdrawal of Applications for Plant Variety Rights and/or Addition to the National List, Decisions, Grant of Plant Variety Rights and/or Addition to the National List, Rejection of Application for Grant of Plant Variety Rights and/or Addition to the National List, Cancellation of Grant of Plant Variety Rights and/or Addition to the National List, Changes in Person, Entry of further Maintainer of Variety on the National List, Cancellation of further Maintainer of Variety on the National List, Termination of Plant Variety Rights and/or Addition to the National List, Official Notices, Address List of Holders, Maintainers or Agents.

The Bulletin of Variety Testing Department is published by Variety Testing Department of Central Controlling and Testing Institute in Agriculture according to Regulation of the Government of the Slovak Republic No. 164/2004, and includes the information concerning applications for a Grant of Plant Variety Rights and varieties protected according to Act No. 132/1989 Coll. on Plant Variety Rights Protection; applications for Addition to the National List according to Act No. 291/1996 Coll. on Plant Varieties, Seed and Planting Material of Cultivated Plants and Varieties inscribed in the National List.

ÚKSÚP 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 and cooperate in DUS testing.

Our experts regularly participate in DUS ring tests.

Our experts also take part in the subgroups of experts preparing draft Test Guidelines for different species and the work of the Technical Working Parties.

Slovakia will host the Technical Working Party for Vegetables from June 6 to 10, 2005.

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

Application of the above-mentioned techniques in official testing is carried out by the ÚKSÚP 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 the breeding company Zeinvent Trnava.

In official testing of seeds and plant varieties, we mostly apply electrophoretic tests 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 uniformity, determination of admixtures.

Varieties: description of varieties by electrophoretogram, distinctness of varieties, uniformity testing, potential stability testing.

Electrophoretically tested species: barley, maize, oats, peas, potato, rye, soybean, triticale and wheat.

For barley, potato and wheat, there are complete electrophoretogram descriptions of all registered varieties

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

6. 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 for improving the DUS testing.

We would like to become an active member of UPOV and to be helpful in all fields.

[Annex IX follows]

## PLANT VARIETY PROTECTION

### 1. Situation in the Legislative Field

Amendments to the Agricultural Seeds and Propagative Material Act were adopted in April and July 2004. Rules on the procedure for acceptance of a variety in the national catalogue of varieties and on keeping of the national catalogue of varieties were amended in March 2004. Sub-law regulations for the marketing of seed of fodder crops and beet, marketing of seed of vegetables and the marketing of seed of oil and fibre plants were amended in April 2004.

### 2. Cooperation in Examination

A bilateral agreement of cooperation with Austria, Croatia, Czech Republic, Hungary and Slovakia is still under preparation.

We continue cooperation in the field of DUS examination with Austria, Croatia and the Czech Republic and Hungary.

### 3. Situation in the Administrative Field

The administrative body responsible for plant variety protection has moved and changed its name. The body responsible for plant variety protection from January 1, 2004, is:

Phytosanitary Administration of the Republic of Slovenia  
Einspielerjeva 6  
1000 Ljubljana  
Slovenia

From September 2003 to September 2004, one application was filed and no new title of protection issued. Total number of titles in force is 47 (agricultural crops: 22; vegetables: 5; fruit crops: 5; ornamentals: 15).

## RELATED FIELDS OF ACTIVITIES

The new National List of Varieties, including the list of protected varieties, was published in April 2004.

The revision of National List of Varieties is being continued.

Four new issues of the Slovenian Plant Breeders' Rights and Variety Registration Gazette have been published since September 2003.

[Annex X follows]

ANNEX X

UKRAINE

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

- 1.1 At the beginning of 2005, it is planned to consider and approve by the Parliament of Ukraine the law of Ukraine “On the amendments to some laws of Ukraine” (in the case of varieties of plants) which provides for, as the first of its provisions, accession of Ukraine to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised in Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991.
- 1.2 On June 18, 2004, the Decree of the President of Ukraine “The matter of representation of Ukraine in the Council of the International Union for the Protection of New Varieties of Plants” has been issued, by which the Regulation with regard to the Representative in the Council of the International Union for the Protection of New Varieties of Plants was approved.
- 1.3 On June 17, 2004, the Parliament of Ukraine has adopted the law of Ukraine “On amendments to the Code of Ukraine”, “The administrative infringements concerning the responsibility for breaking of the legislation in the field of seed-growing and planting material”. This law entitled the official persons of the State Inspection on Right Protection for Plant Varieties to draw up the administrative records with the aim for its further transfer to the court which is engaged in cases connected with infringement of the legislation concerning the rights protection of varieties of plants or with the State Seed Inspections which consider the cases as regards the infringements of legislation in the field of seed-growing and planting material.
- 1.4 From January 1, 2004, the new Civil Code of Ukraine, which contains a separate chapter devoted to the intellectual property rights for the variety of plant, entered into force.
- 1.5 In May 2004, by order of the Ministry of Agrarian Policy of Ukraine, the List of plant genera and species, the varieties of which are subject to the state testing by the governmental authorities of examination on rights protection for plant varieties and their determining for the dissemination in Ukraine, was established.
- 1.6 The proposals for making alterations to the Resolution of the Cabinet of Ministers of Ukraine concerning the order and the amount of fees, which are applicable to the acquisition and realization of rights for plant varieties, were established. A considerable reduction of the list of fees as well as decreasing of their amounts was provided for.

In 2005, Ukraine plans to expand the list of the protected genera and species to 122.

## 2. Cooperation in Examination

In 2004, it has signed:

- The Agreement between the Government of Byelorussia and the Cabinet of Ministers of Ukraine concerning cooperation in the field of examination and protection of plant varieties;
- The Agreement between the Ministry of Agrarian Policy of Ukraine and the Ministry of Farming and Forestry of the Republic of Bulgaria concerning cooperation in the field of examination of the varieties of plants in compliance with requirements for distinctness, uniformity and stability and protection of breeders' rights.

It is also planned to sign a Cooperation Agreement between the State Service on Right Protection for Plant Varieties and the *Bundessortenamt* for the protection of the varieties of plants as well as an Agreement between the Ministry of Agrarian Policy of Ukraine and the Ministry of Agriculture of France in the field of examination of plant varieties.

## 3. Situation in the Administrative Field

From the beginning of 2004, the State Service on Right Protection for Plant Varieties received 252 applications for patents: 180 of these applications came from residents; and 72 from non-residents.

30 patents have been granted of which two were granted to non-residents; in 2004, two patents were terminated before expiry.

## 4. Situation in the Technical Field

For 2004, the number of the variety research stations conducting examination of plant varieties for their conformity with legal protection was increased to 9 trial locations and constitute, at present, 23 stations. The number of species which is subject to the protection in the territory of Ukraine was enlarged to 52 species. Starting from 2005, it is planned to undertake the protection of an additional 70 species. It was planned to carry out a progressive movement for the protection of all genera and species with consequent development of test guidelines.

During 2004, 26 test guidelines were developed and adjusted to the circumstances of Ukraine.

Ukrainian specialists developed DUS test guidelines for millet and buckwheat and identified example varieties to improve the examination for these crops.

The problems which have arisen in the technical sphere can be summarized as follows:

- absence of reference collections and collections of example varieties;
- problems connected with preservation of seeds of both candidate varieties and collection samples at the stations;

- difficulties connected with access to UPOV documents because of the absence of translation into Russian;

The Ukrainian party proposes the following:

- placing at the disposal of Russian-speaking member States of UPOV, as soon as possible, versions (in English) of UPOV documents to enable timely consideration.

The rules and regulations in regard to genetically modified organisms (GMO).

There is no regulated legislation concerning import, marking and marketing of GMO in Ukraine. Ukraine ratified the Cartagena Protocol on Biosafety and a draft of the law of Ukraine "On Biological preservation of the environment" is being prepared.

#### 5. Activities for the Promotòn of Plant Variety Protection

Meetings and seminars:

In March 2004, the State Service on Right Protection for Plant Varieties and Ukrainian Institute for Plant Variety Examination held a training seminar, organized for the experts of the State system on rights protection for plant varieties, on the problems of field examination of plant varieties for distinctness, uniformity and stability.

Between May 30 and June 5, 2004, the State Service on Right Protection for Plant Varieties and COBORU (Poland), jointly, conducted training of Ukrainian experts on the problems of field examination of varieties at the COBORU research center in Slupia Wielka (Poland).

Between May 30 and June 4, 2004, the experts of Ukrainian Institute for Plant Variety Examination were trained at the Federal Office of Plant Varieties (Germany) for the protection of plant varieties, the training being organized with the German Plant Breeders' Association (BDP).

On April 6 and 7, 2004, the International Scientific-Practical Conference "National and international aspects of plant breeding and examination of varieties of plants" took place in Kyiv with the participation of the leading breeders of the Institute of Field and Vegetable Crops, Novi Sad (Serbia and Montenegro).

On September 21 and 22, 2004, the First International Scientific-Practical Conference "Intellectual property for varieties of plants. The ways of harmonization and development" took place in Kyiv. Representatives from member States of the Single Economic Space (SES) and the Baltic countries participated in this conference. As a result of this conference, a Memorandum of cooperation between the Authorities of four member States of SES was signed.

During 2004, the following were published and circulated:

- extract from the State Register of Plant Varieties suitable for Dissemination in Ukraine in 2004;
- three editions of the Official Bulletin of the State Service on Right Protection for Plant Varieties with information in respect of varieties of plants;
- Catalogues with characteristics of plant varieties suitable for dissemination in Ukraine in 2004 (winter and spring crops, oil and fiber crops, fodder crops, sugar and fodder beet, vegetable crops, fruit and berry crops, vine, flower and ornamental crops);
- Agro-biological data of varieties of winter crops (wheat, triticale, rye, barley) which are suitable for dissemination in Ukraine in 2004.

[End of Annex X and of document]