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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

**Twenty-fifth Ordinary Session
Geneva, October 24 and 25, 1991**EXAMINATION OF THE CONFORMITY OF THE LAWS OF URUGUAY
WITH THE UPOV CONVENTIONDocument prepared by the Office of the UnionIntroduction

1. By letter dated September 3, 1991, Ing. Agr. Alvaro Ramos Trigo, Minister for Livestock, Agriculture and Fisheries of Uruguay, has requested the advice of the Council of UPOV, pursuant to Article 32(3) of the 1978 Act of the UPOV Convention (hereinafter referred to as "the 1978 Act"), on the conformity of the laws of Uruguay with the 1978 Act. The letter is reproduced in Annex I to this document.
2. Uruguay did not sign the 1978 Act. Accordingly under Article 32(1)(b) of the 1978 Act, in order to become a member of UPOV, Uruguay must deposit an instrument of accession, but before doing so, it must ask the Council of UPOV pursuant to Article 32(3) to advise it in respect of the conformity of its laws with the provisions of the 1978 Act. An instrument of accession may be deposited if the Council's advice is positive.
3. Laws relating to the protection of new varieties of plants have existed in Uruguay since September 1981. Such laws, whilst drawing inspiration from the 1961 Act of the Convention, did not conform with the provisions of the 1961 Act of the Convention or the 1978 Act. A meeting took place in 1985 in the Offices of UPOV between Ing. Agr. Gustavo Blanco Demarco, Assistant Director, Seeds, in the Executive Unit for Seeds of the Ministry of Livestock, Agriculture and Fisheries of the Uruguay Government, and a former Vice Secretary-General of UPOV, Dr. Heribert Mast, during which the conformity of the laws of Uruguay with the UPOV Convention was discussed. The meeting was followed up by Dr. Mast in a detailed letter to the said Assistant Director.

4. Changes that had been made in the laws of Uruguay were discussed in correspondence between the Office of UPOV and the Government of Uruguay in 1989, and in July 1990, the Vice Secretary-General paid an official visit to Uruguay during the course of which he was informed by the Minister for Agriculture of Uruguay that his country intended to modify its laws so as to conform with the UPOV Convention and to seek membership of UPOV. Following upon the visit of the Vice Secretary-General to Uruguay, the Office of UPOV has made suggestions from time to time in correspondence concerning changes proposed to the relevant laws of Uruguay.

The Legal Basis for the Protection of New Plant Varieties in Uruguay

5. The legal basis for the protection of new varieties in Uruguay is contained in:

(i) Law 15,173 of August 13, 1981, which establishes legal norms for the production, certification, commercialization, export and import of seed, as amended by Law 15,554 of May 21, 1984 (the parts of these laws which relate to the protection of new varieties of plants (hereinafter referred to as "the Law") are reproduced in Annex II to this document);

(ii) Decree 84/983 which establishes, pursuant to Law 15,173, detailed legal rules relating to the production, certification and commercialization of seed and for the protection of the property in new plant varieties, as amended by Decree 418/987 of August 12, 1987, and by a further Decree (as yet unnumbered) of September 17, 1991 (the parts of the texts of these Decrees (apart from Article 3 of the Decree of September 17, 1991) which relate to the protection of new varieties of plants are reproduced in a consolidated form (hereinafter called "the Decree") in Annex III to this document); Article 3 of the Decree of September 17, 1991 is separately reproduced in Annex III).

(iii) a resolution designating the Grain Directorate (DIGRA) of the Ministry of Agriculture and Fisheries acting through its Director as the Executing Agency responsible for the administration and implementation of Law 15,173 and Decree 84/983;

(iv) formal resolutions of the Director of the Grain Directorate extending protection to Avena spp., Festuce arundinacea, Glycine max, Hordeum vulgare, Lolium multiflorum, Lotus subbiflorus, Triticum aestivum and Trifolium pratense.

The procedures relating to the accession of Uruguay to an international Convention under the laws of Uruguay require the incorporation of the provisions of the Convention into the domestic law of Uruguay. When so incorporated the provisions of the Convention will take precedence over the domestic law. Accordingly if in any respect there should be an inconsistency between the domestic law and the 1978 Act, the 1978 Act will prevail.

Article 1(1) of the 1978 Act: The Purpose of the Convention

6. Article 1(1) of the 1978 Act provides "that the purpose of this Convention is to provide to the breeder of a new plant variety or to his successor in title ... a right." Article 15 of the Law provides for the Executing Agency to establish a Cultivar Ownership Register, the purpose of which is to protect the property rights of the breeders of new varieties. Article 52 of the Decree confirms that a new plant variety may, in accordance with the provisions of

the Decree, be the subject of a "title of ownership." Article 18 of the Law and Article 53 of the Decree provide for the transfer of ownership of such titles to successors in title, subject to the recording of changes in ownership with the Executing Agency. The objectives and purpose of the Law and the Decree made thereunder are consistent with the objectives and purpose of the Convention.

Article 2 of the 1978 Act: Form of Protection

7. The Law and Decree together provide for the granting by the Executing Agency of a "title of ownership" for new plant varieties which constitutes a "special title" for the purposes of Article 2 of the 1978 Act. The laws relating to patents in Uruguay contain no express exclusion of plant varieties from patenting. However, the Patent Office of Uruguay does not, in practice, provide patent protection for any of the species for which titles of ownership are provided for plant varieties. Accordingly the practical effects of the laws of Uruguay conform with Article 2 of the 1978 Act.

Article 3 of the 1978 Act: National Treatment

8. Article 68 of the Decree provides that breeders resident abroad shall enjoy the same rights as breeders resident in Uruguay provided that the legislation of the breeder's country of residence offers protection for the species which such breeders seek to protect in Uruguay. The laws of Uruguay accordingly provide for protection of foreign breeders generally subject to a reciprocity principle and conform with Article 3 of the 1978 Act.

Article 4 of the 1978 Act: Botanical Genera and Species Which May or Must be Protected

9. Article 15 of the Law provides for the protection of plant varieties and expresses no limitation. Article 55 of the Decree provides that any variety (other than a first generation hybrid) of a species specified by the Executing Agency shall be eligible for protection. The Director of the Grain Directorate has to date extended protection to eight species so that the laws of Uruguay currently conform with the provisions of Article 4 of the 1978 Act.

Article 5 of the 1978 Act: Rights Protected - Scope of Protection

10. Article 52 of the Law provides that "the title of ownership of a plant variety shall confer on its owner the exclusive right to produce, introduce, multiply, offer or undertake to sell, sell or otherwise exploit by any means, reproductive or vegetative propagating material of a protected variety." Article 52 provides a scope of protection which is at least equivalent to the minimum scope of protection required by Article 5(1) of the 1978 Act.

11. The provisions of Article 52 are, however, qualified by Article 54 of the Decree. Article 54(a) provides that the rights of the holder of a title of ownership do not extend to "the product of cultivation when used or sold as a raw material or food." This provision accords with the 1978 Act since the minimum scope of protection required by Article 5 of the 1978 Act does not extend to the marketed products such as raw material or food.

12. Article 54(b) of the Decree provides that the rights of the holder of a title of ownership do not apply when "seed is stored or sown for personal use but not for commercial purposes." The minimum scope of protection required by Article 5(1) of the 1978 Act extends to "the production for purposes of commercial marketing, the offering for sale, and the marketing" of seed of a protected variety. The storage and sowing for personal use fall outside such minimum scope of protection so that the provisions of Article 54(b) do not conflict with Article 5 of the 1978 Act.

13. Article 5(2) of the 1978 Act provides that the authorization of the breeder may be made subject to such conditions as he may specify. Article 53 of the Decree states that the title of ownership is "eligible for any type of contractual dealing" and thus conforms with Article 5(2) of the 1978 Act.

14. Article 54(c) of the Decree provides for the free use of protected varieties as sources of initial variation in breeding but removes from this free use the repeated and systematic use of the protected variety for commercial production of other plant varieties. The laws of Uruguay accordingly conform with Article 5(3) of the 1978 Act.

15. The provisions of the laws of Uruguay conform with Article 5 of the 1978 Act.

Article 6 of the 1978 Act: Conditions Required for Protection

16. Article 16 of the Law provides that the heritable characteristics of plant varieties inscribed in the Register of Varietal Property must be homogeneous and stable in successive generations and must enable the variety to be distinguished from other varieties known at the time of registration.

17. Article 56 of the Decree lays down the conditions for the grant of a title of ownership. Article 56(a) specifies the novelty requirement in terms that conform with Article 6(1)(b) of the 1978 Act. The last two sentences of Article 56(a) make provision for a transitional limitation on the requirement of novelty that accords with Article 38 of the 1978 Act. Paragraphs (b), (c) and (e) of Article 56 of the Decree conform respectively with Article 5(a), (c) and (e) of the 1978 Act.

Article 7 of the 1978 Act: Official Examination

18. Article 72 of the Decree provides that the Executing Agency shall, inter alia, be responsible for such technical verifications as it considers necessary for the purpose of granting titles of ownership of plant varieties. Article 76 provides that as from the date of grant of a provisional title (which under the laws of Uruguay may be granted at the conclusion of the formal examination of the application), "the Executing Agency shall undertake such proving trials as it considers appropriate." These provisions accord with the provisions of Article 7(1) and (2) of the 1978 Act.

19. Articles 75, 76 and 77 of the Decree together provide for a system of provisional protection which accords with Article 7(3) of the 1978 Act.

Article 8 of the 1978 Act: Period of Protection

20. Article 17 of the Law provides that the detailed conditions of the title of variety ownership shall be established by the Ministry of Agriculture and Fisheries but that the title should not be for less than ten years or more than twenty years. Article 57 of the Decree reproduces the substance of this provision but specifies that the period of protection runs from the date of the provisional grant of protection. Since the protection rights of the recipient of a provisional grant are very similar to those of the recipient of a final grant, the provisional grant is tantamount to a final grant. It is thus possible for the Executing Agency to grant protection which accords in substance with Article 8 of the 1978 Act.

Article 9 of the 1978 Act: Restriction in the Exercise of Rights Protected

21. Article 19 of the Law provides that at the request of the Ministry of Agriculture, the Executive Power of Uruguay can declare a title of ownership to be for "public use" for a period no greater than two years in the general public interest of securing the availability of the end product of the variety and subject to adequate compensation of its proprietor. Articles 61 to 67 of the Decree cover the same subject in more detail, repeating the requirement of the "general interest" and providing detailed procedures for securing the compensation of the breeder. The provisions of the Uruguay laws accordingly conform with Article 9 of the 1978 Act.

Article 10 of the 1978 Act: Nullity and Forfeiture of the Rights Protected

22. Article 20 of the Law provides that the title of ownership shall be terminated if the title was secured by fraud, if the proprietor is unable to supply a sample of the variety with its original characteristics or if the proprietor fails to pay the necessary fees to maintain his rights. These general provisions accord with Article 10 of the 1978 Act.

23. Article 59 of the Decree provides for the revocation or lapse of the title of ownership:

(i) when the conditions of uniformity and stability laid down in this Decree are no longer being observed;

(ii) when the holder is unable to supply propagating material able to produce the variety "in the manner" specified at the time of grant;

(iii) when it is established that the novelty and distinctness requirements of Article 56(a) and (b) of the Decree were not effectively complied with at the time of grant;

(iv) when renewal fees are unpaid.

24. Subparagraphs (i) and (ii) of paragraph 23 above together accord with Article 10(2) and 10(3)(a) of the 1978 Act, subparagraph (iii) of paragraph 23 above accords with Article 10(i) of the 1978 Act, and subparagraph (iv) of paragraph 23 above accords with Article 10(3)(b) of the 1978 Act, without expressly identifying the incidence of nullity and forfeiture. The possibility of cancellation of improperly obtained protection e.g. the case of fraud for which provision is made in Article 20 of the Law, is implicit in Article 10 of the 1978 Act. It is now referred to more expressly in Article 21(1)(iii) of the 1991 Act of the Convention.

Article 11 of the 1978 Act: Free Choice - Application in Other Member States - Independence of Protection

25. There are no provisions in the laws of Uruguay which conflict with the provisions of Article 11 of the 1978 Act.

Article 12 of the 1978 Act: Right of Priority

26. Article 69 of the Decree provides for the granting of a right of priority in respect of applications for protection made in UPOV member States that broadly corresponds with the requirements of Article 12 of the 1978 Act. Further reference to the right of priority is made in Article 73 of the Decree.

27. No express reference is made in the Law of Uruguay to the period of four years which should be allowed, pursuant to Article 12(3) of the 1978 Act, to applicants for the provision of documents and material pursuant to applications for which priority is claimed and indeed the period may possibly conflict with the requirement in Article 76 of the Decree that trials must be completed within three years. This provision would not, however, necessarily conflict with the period of two years that has been substituted for the period of four years in the 1991 Act of the Convention. The incorporation of the 1978 Act into the domestic law of Uruguay will remedy any inconsistency with the 1978 Act.

Article 13 of the 1978 Act: Variety Denomination

28. Article 16 of the Law requires that varieties be given a denomination that enables them to be clearly identified. Article 56(e) of the Decree requires that varieties be given a denomination as a condition of protection while Article 3 of the Decree of September 17, 1991, reproduces verbatim the provisions of Article 13 of the 1978 Act. The laws of Uruguay accordingly conform with Article 13 of the 1978 Act.

Article 14 of the 1978 Act: Protection Independent of Measures Regulating Production, Certification and Marketing

29. There are no provisions in the laws of Uruguay which conflict with Article 14 of the 1978 Act.

Article 30 of the 1978 Act: Implementation of the Convention on the Domestic Level

30. Legal remedies for the effective defense of the title of ownership are provided by the general law of Uruguay relating to property and are not specifically referred to in the Law or the Decree. The Government of Uruguay has entrusted the protection of new varieties of plants to an existing authority in Uruguay, the Grain Directorate, as required by Article 30(1)(b) of the 1978 Act.

31. Article 75 of the Decree makes provisions for informing the public of applications in relation to which the Executing Agency proposes to issue a grant of provisional protection as required by Article 30(1)(c) of the 1978 Act.

Conclusion

32. The laws of Uruguay appear to essentially conform to the 1978 Act of the Convention.

33. The Council is invited:

(i) to take a decision on the conformity of the laws of Uruguay with the provisions of the 1978 Act of the Convention in accordance with Article 32(3) of that Act,

(ii) to authorize the Secretary-General to inform the Government of Uruguay of that decision.

[Annex I follows]

ANNEX I

Minister of Livestock, Agriculture and Fisheries

Montevideo, September 3, 1991

The Vice Secretary-General
 Union for the Protection of
 New Varieties of Plants (UPOV)
 Barry Greengrass, Esq.

Dear Sir,

I have the honor to address myself to the Executive Secretary in connection with the decision of the Government of this country to effect the deposit of an instrument of accession to the International Convention for the Protection of New Varieties of Plants, signed in Paris on December 2, 1961, and amended by Additional Acts adopted in Geneva on November 10, 1972, and October 23, 1978.

In view of the foregoing and pursuant to the provisions of Article 32(3) of the Convention, we respectfully request you to arrange for the examination of the conformity of the relevant Uruguayan legislation at the forthcoming meeting of the Council of the International Union for the Protection of New Varieties of Plants.

We would inform you that the relevant Uruguayan legislation is to be found in the following texts:

Law No. 15.173	of August 13,	1981
Law No. 15.554	of May 21,	1984
Decree No. 84/983	of March 24,	1983
Decree No. 418/87	of August 12,	1987
Decree No.	of September ,	1991
Presidential Res. No. 261/83	of June 22,	1983
DIGRA Resolution	of May 16,	1986
DIGRA Resolution	of August 16,	1988
DIGRA Resolution	of December 17,	1990
DIGRA Resolution	of July 8,	1991
DIGRA Resolution	of August 19,	1991
DIGRA Resolution	of August 19,	1991

Sincerely yours,

(signed)
 Alvaro Ramos Trigo
 Minister of Livestock, Agriculture and Fisheries

ART/AV

[Annex II follows]

ANNEX II

I. Law 15.173 Enacting Provisions to Regulate the Production, Certification, Marketing, Export and Import of Seed

The Council of State has approved the following

DRAFT LAW

Chapter I

1. - The purpose of this Law shall be to regulate the production, certification, marketing, export and import of seed, to assure agricultural producers of the identity and quality thereof and to protect the ownership of plant genetic creations.

(.....)

Chapter V

Register of Cultivar Ownership

15. - The Executive Unit created under Section 3 shall keep a Register of Cultivar Ownership, the purpose of which shall be to protect the property rights of the creators of new cultivars.

16. - Any plant genetic creation or cultivar that has homogeneous and stable hereditary characteristics over successive generations and can be distinguished from other known creations or cultivars at the time of registration may be entered in the aforesaid Register.

The registration of the new plant genetic creation or cultivar shall include a name that clearly identifies it.

17. - The title of ownership relating to a cultivar shall be issued by the Ministry of Agriculture and Fisheries, and may not be granted for a period of fewer than ten years or more than 20 years.

18. - The title of ownership relating to a cultivar may be transferred, in which case the transfer shall be entered in the Register of Cultivar Ownership.

19. - On a proposal by the Ministry of Agriculture and Fisheries, the Executive Authority may declare a title of ownership "in the public interest" for a period not exceeding two years, subject to prior and adequate compensation of the owner, when it is considered to be in the public interest to have access to the product of the growing of the subject matter thereof.

20. - The title of ownership shall lapse when the owner renounces his rights, when it is proved to have been fraudulently obtained from third parties, when the owner does not have a sample of live material possessing the same characteristics as the original, or in the case of failure to make a payment to the Register of Cultivar Ownership.

Chapter VI

21.

II. Law No. 15.554 Amending Provisions of Law No. 15.173 Regulating the Production, Marketing and Certification of Seed

The Council of State has approved the following

DRAFT LAW

1. -

3. - Breeders and seed producers shall conduct their activities under the technical responsibility of a professional agricultural engineer.

In the event of infringement of the provisions of the foregoing paragraph, the sanctions provided in Section 38 of Law 15.173 of August 13, 1981, shall be applicable to the firms in question.

Repetition of the infringement shall make the firm liable to exclusion from the General Register of Producers and Traders.

4. - The technicians responsible, namely the agricultural engineers, who infringe the provisions laid down in Law 15.173 of August 13, 1981, and the regulations enacted thereunder shall be liable to the following sanctions:

- (i) warning;
- (ii) the fines specified in Section 38 of Law 15.173 of August 13, 1981;
- (iii) suspension from activity as seed technicians for a period of up to one year.

Sanctions shall be graduated and ordered by the Minister of Agriculture and Fisheries, which shall take due account of the nature and seriousness of the offense, the degree of guilt of the offender and whether or not the offense is a repetition, for which purpose the Executive Unit shall keep a register of infringers.

Firms shall have corporate responsibility for the monetary sanctions imposed on the aforesaid technicians.

5. - The Executive Authority may order the procurement as a matter of urgency of the product of a cultivar declared "in the public interest" pursuant to the provisions of Section 19 of Law 15.173 of August 13, 1981. To that end the procedure specified in Section 3 of Law 10.247 of October 15, 1942, shall be observed.

[Annex III follows]

ANNEX III

1. Consolidation of Relevant Extracts from Decree 84/983 and Amendments of that Decree Contained in Decree 418/987 and the Decree of September 17, 1991

Property Rights in New Plant Varieties

Article 52.- Any new plant variety shall be the subject of a "title of ownership," which shall confer on its holder the exclusive right to produce, introduce and multiply reproductive or vegetative propagating material of the plant variety concerned, and also to sell such material, offer it for sale, undertake to sell it and otherwise exploit it by any means, in accordance with the provisions of these Regulations.

Article 53.- The title of ownership of a plant variety, duly registered either provisionally or finally, shall be marketable, transferable or eligible for any type of contractual dealing, and shall be inheritable.

All changes of ownership shall be registered with the Executing Agency.

Article 54.- The plant variety that is the subject of the title of ownership may be used without rights accruing to the holder thereof and without any compensation when:

- (a) the product of cultivation is used or sold as a raw material or a food;
- (b) seed is stored or sown for personal use but not for commercial purposes;
- (c) the use is made by other breeders for experimental purposes or as a source of genetic material for the creation of new plant varieties, on condition that the protected plant variety is not used repeatedly and systematically for the commercial production of other plant varieties.

Article 55.- Any variety of such plant species as have been specified by the Executing Agency, with the exception of first-generation hybrids, shall be eligible for protection.

Article 56.- In order to be eligible for the protection afforded by Decree-Law No. 15.173 of August 13, 1981, a plant variety must fulfill the following requirements:

- (a) It must be new, in the sense that it must not have been offered for sale or marketed with the breeder's consent
 - (i) within the Republic, prior to the filing date of the application for protection and
 - (ii) outside the Republic for longer than six years in the case of vines and trees or for longer than four years in the case of all other plants.

It shall not be considered detrimental to the plant variety's novelty that it has been offered for sale or marketed within the country, with the breeder's consent, during a period of up to four years prior to the decision by the Executing Agency that the species to which the cultivar belongs qualifies for protection, provided that the application for protection is filed within a period not exceeding four months after the said decision by the Executing Agency.

- (b) It must be clearly distinguishable from any plant variety whose existence is a matter of common knowledge at the filing date of the application for protection with respect to at least one morphological, physiological, cytological, chemical or other important characteristic, be subject to little fluctuation and be capable of accurate description and recognition.
- (c) It must be sufficiently uniform in all its characteristics, according to its system of reproduction or propagation.
- (d) It must remain stable in its essential characteristics, in the sense that, at the end of each growing cycle carried out in the manner specified by its breeder, it retains the characteristics by which the said breeder defined it.
- (e) It must have been given a variety denomination which is acceptable for registration under the rules laid down in Article 3 of the Decree of September 17, 1991.

Article 57.- The term of validity of the title of ownership shall run from the time of its provisional grant and shall be neither less than ten years nor more than twenty years, according to the species involved, and pursuant to the rules laid down by the Executing Agency.

Article 58.- The holder of the title of ownership of a plant variety shall be under the obligation to supply, when called upon to do so by the Executing Agency, a live sample of the protected plant variety that possesses the same characteristics as those by which it was defined, and whatever information and documentation may be necessary for compliance with these Regulations.

Article 59.- The title of ownership of a plant variety shall be revoked or shall lapse, as the case may be, in the following circumstances:

- (a) At the request of the owner.
- (b) On expiry of the legal period of property protection.
- (c) When the conditions of uniformity and stability laid down in Article 56 of this Decree are no longer being observed.
- (d) When, on being requested to do so by the Executing Agency, the holder is unable to supply propagating material for the production of the plant variety in the manner specified at the time of the grant of the title.
- (e) When it is proved that the title has been obtained by defrauding a third party.

- (f) When it is proved that the requirements specified in Article 56(a) and (b) were not effectively complied with when the title of ownership was granted.
- (g) When the annual fee has not been paid to the Registry of Plant Variety Ownership on expiry of a period of three months from the issue of a formal summons to pay.

Article 60.- A plant variety covered by a title of ownership shall become public property when the title lapses in the circumstances specified in subparagraphs (a), (b), (f) and (g) of the forgoing Article and where, in the circumstances specified in subparagraph (e), it is not legally possible to transfer the right to its legitimate owner.

Article 61.- On a proposal by the Ministry of Agriculture and Fishery, the Executive Power may, subject to whatever reports the latter may have considered it desirable to obtain, declare a title of ownership public property for a period not exceeding two years, subject to adequate advance indemnification of the owner, where the availability of the product of its cultivation is regarded as being in the general interest.

Article 62.- Once a title of ownership has been declared public property, the Executive Power shall submit the file concerning it to the Ministry of Agriculture and Fishery. The State Secretariat concerned shall, through the Executing Agency, in one and the same instrument, notify the decision to the owner and inform him that he has ten days within which to appoint a valuation expert.

Article 63.- Once the valuation expert has been appointed by the owner, the Executing Agency shall appoint its own, and the two experts shall work together to produce a valuation within a period of fifteen days, which valuation shall, on being approved by the competent authority, become the offer by the Administration.

Article 64.- The offer by the Administration shall be communicated personally to the owner, or to the person whom the latter may have appointed to represent him, informing him that he has to signify his acceptance or rejection of the said offer within a period of ten days.

Where no objection or observation is formulated, the administrative authority shall set the approximate date on which the plant variety is to be handed over and shall order the settlement of the sums payable to the owner.

Article 65.- Should the evaluation experts continually disagree on the valuation, they shall by common consent appoint a third party within a maximum period of three days, whereupon the final valuation shall be decided upon by the majority within the period referred to in Article 63 of this Decree.

Article 66.- If, on expiry of the period specified in Article 62 of this Decree, the owner has not appointed a valuation expert, the Executing Agency shall go ahead with the procedure, accomplishing the formalities referred to in the foregoing Articles with a view to effecting a valuation of the title of ownership of the plant variety declared public property.

Article 67.- In the event of the owner rejecting the offer by the Administration, indemnification shall be determined by the decision-making bodies that have jurisdiction in the relevant field.

Article 68.- Breeders resident abroad shall enjoy the same rights as breeders resident in the Republic, provided that the legislation of the country of residence recognizes and protects the latter's rights as breeders for varieties of the genus or species which any such breeders seek to protect in the Republic.

Article 69.- Where a breeder resident abroad wishes to register a plant variety he shall:

- (a) elect legal domicile in Uruguay for such purposes, or appoint an authorized representative in the country;
- (b) undertake to comply with all Uruguayan legal and regulatory provisions on the ownership of plant varieties.

Where a breeder resident abroad in a country which has a bilateral or multi-lateral agreement with Uruguay on the matter (hereinafter referred to as "an agreement country") has filed one or more applications to register a plant variety in one or more agreement countries, he shall enjoy a period of priority in the Republic for a period of twelve months calculated from the date of filing of the first such application. The application in the Republic shall be treated as if filed on the date of filing of this first such application.

Article 70.- No title of ownership shall be granted if, at the time of the filing of the application, the plant varieties have been made public property by their breeders.

Responsibilities of the Executing Agency

Article 71.- The Executing Agency shall have the following responsibilities:

- (a) Maintenance of the Register of Plant Variety Ownership.
- (b) Grant, refusal or revocation of the titles of ownership of plant varieties, both provisional and final, for reasons which shall be stated and the approval of varietal denominations.
- (c) Conduct, by itself or through other entities, of such technical verifications as it considers necessary for the purposes of granting titles of ownership of plant varieties, and also such consultations or verifications that have to be made with foreign agencies of comparable nature.
- (d) Participation in the conclusion of such national and international treaties or agreements as may be made in connection with the subject matter.
- (e) Requesting of information and growing material, on any occasion, from parties holding final or provisional titles of ownership.

- (f) Advice on the occurrence of infringements, proposal of such sanctions and the amounts of such fines as may be appropriate under the circumstances.

Procedure for Obtaining the Title of Ownership

Article 72.- To obtain a title of ownership of a plant variety, an application shall be filed that has the character of a sworn statement, which shall record the following information:

- Species (common and scientific names).
- Name proposed for the new plant variety.
- Germ plasm from which it originated, with details of crossing.
- Method used for creation and maintenance.
- Description of the plant variety, which shall encompass such characteristics as shall have been specified by the Executing Agency for each species, and which shall permit identification thereof.
- Attestation that the new plant variety meets the requirements laid down in subparagraphs (a), (c), (d) and (e) of Article 56 of these Regulations.
- Name of the breeder.
- Source; in the case of plant varieties bred by a breeder resident abroad, the country of the breeder should be specified. If priority is claimed under Article 69 of this Decree, the applicant shall, within a period of three months from the date of the application, file a copy of the documents which constitute the first filing in an agreement country, certified to be a true copy by the authority which received it.
- Sponsoring agricultural engineer.
- Any other information or material that the breeder may consider necessary for the purposes of the application.

Article 73.- The Executing Agency may specify requirements additional or complementary to those of the foregoing Article according to the species concerned.

Article 74.- Once registration has been applied for and the application has been examined, the Executing Agency shall publish once only in three daily journals of the capital a summary of the application, thereby starting a period of thirty working days from that date for third parties to make any claims that may be appropriate. On the expiry of that period, if no such claim has been made, a provisional title of ownership shall be granted for the plant variety.

If a claim is filed during the period, it shall be brought to the notice of the applicant for the title, who shall have ten working days within which to make the appropriate rebuttals. On the basis of the file on the case, the Executing Agency shall proceed either to grant the provisional title or reject the application filed. In the event of doubt, the Executing Agency may take such action as it considers appropriate before so proceeding.

Article 75.- As from the date of grant of the provisional title, the Executing Agency shall undertake such proving trials as it considers appropriate within the period that shall have been laid down for each species. Within the same period the Executing Agency shall proceed either to grant or not to grant the final title of ownership of the plant variety. In no event shall the period of trials exceed three years.

Article 76.- The provisional title shall confer on its holder a right of priority for the use of the name of the plant variety and the right to introduce, propagate and market it in accordance with applicable provisions.

2. Article 3 of the Decree of September 17, 1991

Article 3(a).- A plant variety which is the subject of an application for a title of ownership shall be designated by a denomination destined to be its generic designation. No rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety even after the expiration of the protection.

- (b) The denomination must enable the variety to be identified. It may not consist solely of figures except where this is an established practice for designating varieties. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in any agreement country, an existing variety of the same botanical species or of a closely related species.
- (c) The denomination of the variety shall be submitted by the breeder to the Executing Agency. If it is found that such denomination does not satisfy the requirements of paragraph (b), the Executing Agency shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period. The denomination shall be registered at the same time as the title of ownership is issued.
- (d) Prior rights of third parties shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph (f), is obliged to use it, the Executing Agency shall require the breeder to submit another denomination for the variety.
- (e) A variety must be submitted in agreement countries under the same denomination. The Executing Agency shall register the denomination so submitted, unless it considers that denomination unsuitable. In the latter case, it may require the breeder to submit another denomination.

- (f) Any person who offers for sale or markets reproductive or vegetative propagating material of a variety which is the subject of a title of ownership shall be obliged to use the denomination of that variety, even after the expiration of the title of ownership of that variety, in so far as, in accordance with the provisions of paragraph (d), prior rights do not prevent such use.
- (g) When the variety is offered for sale or marketed, it shall be permitted to associate a trade mark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognizable.

[End of Annex III and of document]