



Disclaimer: unless otherwise agreed by the Council of UPOV, only documents that have been adopted by the Council of UPOV and that have not been superseded can represent UPOV policies or guidance.

This document has been scanned from a paper copy and may have some discrepancies from the original document.

---

Avertissement: sauf si le Conseil de l'UPOV en décide autrement, seuls les documents adoptés par le Conseil de l'UPOV n'ayant pas été remplacés peuvent représenter les principes ou les orientations de l'UPOV.

Ce document a été numérisé à partir d'une copie papier et peut contenir des différences avec le document original.

---

Allgemeiner Haftungsausschluß: Sofern nicht anders vom Rat der UPOV vereinbart, geben nur Dokumente, die vom Rat der UPOV angenommen und nicht ersetzt wurden, Grundsätze oder eine Anleitung der UPOV wieder.

Dieses Dokument wurde von einer Papierkopie gescannt und könnte Abweichungen vom Originaldokument aufweisen.

---

Descargo de responsabilidad: salvo que el Consejo de la UPOV decida de otro modo, solo se considerarán documentos de políticas u orientaciones de la UPOV los que hayan sido aprobados por el Consejo de la UPOV y no hayan sido reemplazados.

Este documento ha sido escaneado a partir de una copia en papel y puede que existan divergencias en relación con el documento original.



C/25/11

ORIGINAL: English

DATE: October 18, 1991

# 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 ARGENTINA WITH THE UPOV CONVENTION

Document prepared by the Office of the Union

#### Introduction

1. By Note dated October 18, 1991, the Permanent Mission to the International Organizations in Geneva of the Argentine Republic informed the Secretary-General that Argentina is considering the possibility of adhering to the 1978 Act of the UPOV Convention ("the 1978 Act") and requested the advice of the Council of UPOV, pursuant to Article 32(3) of the 1978 Act on the conformity of the laws of Argentina with the 1978 Act. The Note is reproduced in Annex I to this document.
2. Argentina did not sign the 1978 Act. Accordingly under Article 32(1)(b) of the 1978 Act, in order to become a member of UPOV, Argentina 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 Argentina since March 1973. 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. Correspondence was exchanged in 1978 between officials of the Ministry of Agriculture, Livestock and Fisheries of Argentina and the Office of UPOV concerning the conformity of the Argentine Law with the UPOV Convention. From 1989 onwards, Argentina has been represented by observers in the Council of UPOV and has indicated its interest in modifying its laws and acceding to the UPOV Convention.

4. In July 1990, the Vice Secretary-General paid an official visit to Argentina during the course of which he was informed by high officials of the Secretariat of Agriculture, Livestock and Fisheries that Argentina 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 Argentina, the Office of UPOV has made suggestions from time to time in correspondence concerning changes proposed to the relevant laws of Argentina so as to bring them into conformity with the 1978 Act.

#### The Legal Basis for the Protection of New Plant Varieties in Argentina

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

(i) Law 20.247 of March 1973, which establishes legal norms for the production and marketing of seed, provides agricultural producers with a guarantee of the identity and quality of the seed they acquire and protects property in phytogenetic creations. Law No. 20.247 (hereinafter referred to as "the Law") is reproduced in Annex II to this document);

(ii) Decree No. 50/89 which establishes, pursuant to Law 20.247, detailed legal rules relating to the production, certification and commercialization of seed and for the protection of the property in new plant varieties, which Decree will be repealed by a further Decree (as yet unnumbered) of October 1991. Such further Decree (hereinafter called "the Decree") is reproduced in Annex III to this document).

6. The Decree has been signed by the Secretary of Agriculture, Livestock and Fisheries of Argentina and awaits the signature of the President of the Argentine Republic. The advice of the Council is sought on the basis of the Law and the Decree.

7. The procedures relating to the accession of Argentina to an international Convention under the laws of Argentina require the incorporation of the provisions of the 1978 Act into the domestic law of Argentina by a procedure involving the passage by the Congress of Argentina of a law authorizing accession in which the text of the 1978 Act of the Convention will be incorporated. This procedure must be completed before Argentina can deposit an instrument of accession. When incorporated into the domestic laws of Argentina, 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

8. 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 19 of the Law provides for the establishment of a National Register of Cultivar Ownership, the purpose of which is to protect the property rights of the breeders of new varieties. Chapters VI to IX of the Decree contain detailed provisions, confirming that a new plant variety in accordance with the provisions of the Decree, be the subject of a title of ownership." Article 23 of the Law provides for the transfer of ownership of such titles to successors in-title, subject to the recording of change of ownership in the National Register of Cultivar Ownership. The object and purpose of the Law and the Decree which is to be made thereunder is consistent with the objectives and purpose of the 1978 Act.

Article 2 of the 1978 Act: Form of Protection

9. The Law and Decree together provide for the granting by the implementing authority of a title of property 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 Argentina contain no express exclusion of plant varieties from patenting. However, the Patent Office of Argentina does not, in practice, grant patent protection for plant varieties. Accordingly the practical effects of the laws of Argentina conform with Article 2 of the 1978 Act.

Article 3 of the 1978 Act: National Treatment

10. Article 26 of the Law provides that an application for a title of ownership for a foreign cultivar shall be granted provided that the country in which the cultivar originates affords similar rights to Argentine phylogenetic creations. Article 3 of the UPOV Convention requires that both natural and legal persons resident in a member State and nationals of member States not resident in a member State must receive equivalent treatment to that which each member State accords to its own nationals. The Argentine Law provides for reciprocity but not on the basis of the residence or nationality of applicants but on the basis of the country in which a cultivar originates. This provision does not accord with Article 3 of the 1978 Act. Article 26 of the Law further provides that the maximum term of ownership for applications in relation to "foreign cultivars" shall be that remaining up to expiry of the rights in the country of origin. Accordingly, foreign applicants do not necessarily receive the same treatment as Argentine nationals applying for protection for varieties of the same species at the same time. This provision of Article 26 also fails to conform with Article 3 of the 1978 Act.

11. The authorities in Argentina have explained to the Office of the Union that the procedure relating to the incorporation of the provisions of the Convention into the Argentine domestic law will correct this anomaly.

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

12. Article 19 of the Law provides for the establishment of a National Register of Cultivar Ownership for the purpose of protecting the property rights of the creators and discoverers of new cultivars. There is no provision in the Argentine Law restricting protection to particular genera or species. The Argentine Laws accordingly conform with Article 4 of the 1978 Act.

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

13. Article 41 of the Decree specifies the scope of protection of the breeder by reference to a list of acts in relation to "planting material" which require the authorization of the breeder. The list of acts includes all the acts listed in Article 14(1) of the 1991 Act of the Convention, plus some additional acts. "Planting material" is defined in Article 1 of the Decree as "any plant organ, not only seed in the strict botanical sense, but also fruit, bulbs, tubers, buds, cuttings, cut flowers and any other structures, including nursery plants, whenever intended or used for sowing, for planting or for propagation." The scope of protection is at least equivalent to that provided by Article 1) of the 1978 Act.

11-46

14. Article 27 of the Law and Article 44 of the Decree provide for the re-use of seed by farmers in terms which draw upon the language of Article 15(2) of the 1991 Act and which are consistent Article 5(1) of the 1978 Act. Article 27 of the law excludes from the scope of the breeder's protection the use or sale of the end product of the variety as raw material or foodstuff, which is also consistent with Article 5(1) of the 1978 Act.

15. Article 25 of the Law and Article 43 of the Decree provide for the use of protected varieties as a source of initial variation in terms which conform with Article 5(3) of the 1978 Act.

16. Article 42 of the Decree provides that the breeder may make his authorization of the acts specified in Article 41, which establishes the scope of protection of the breeder, "subject to conditions defined by the breeder." This accords with Article 5(2) of the 1978 Act.

17. The provisions of the Laws of Argentina accordingly conform with Article 5 of the 1978 Act.

Article 6 of the 1978 Act: Conditions Required for Protection

18. Article 20 of the Law and Articles 26 and 27 of the Decree establish novelty, distinctness, homogeneity (uniformity), stability and the establishing of a suitable denomination as the conditions for the grant of protection, in terms that accord with the 1978 Act.

Article 7 of the 1978 Act: Official Examination

19. Article 21 of the Law and Articles 29 and 31 of the Decree provide for the examination of applications for protection and of varieties which are the subject of applications, in terms which accord with Article 7 of the 1978 Act.

Article 8 of the 1978 Act: Period of Protection

20. Article 22 of the Law and Article 37 of the Decree provide for the grant of protection for a maximum period of twenty years. The Argentine Laws accordingly provide for the grant of protection for a period which accords with the 1978 Act. The implementing authority has the power, however, to grant protection for lesser periods. The exercise of this power would not be in conformity with the 1978 Act. The incorporation of the 1978 Act into the domestic law of Argentina will remedy this potential non-conformity.

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

21. Article 28 of the Law and Articles 46 to 48 of the Decree provide for varieties to be declared of "restricted public use," on the basis of equitable compensation, where such declaration proves necessary to ensure adequate supplies in the country of the product obtained by growing the cultivar, and where the person enjoying the property rights does not satisfy the public need and such cultivar in the quantity and at the price considered reasonable. This provision meets the twin requirements of "public interest" and "equitable remuneration" of Article 9 of the 1978 Act.

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

22. Article 30 of the Law and Articles 35 and 36 of the Decree provide for the nullity and lapse of property rights in varieties in terms which accord with Article 10 of the 1978 Act.

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

23. There are no provisions in the Laws of Argentina which conflict with the provisions of Article 11 of the 1978 Act.

Article 12 of the 1978 Act: Right of Priority

24. Article 30 of the Decree provides for the granting of a right of priority in respect of applications for protection made in countries with which Argentina has bilateral or multilateral agreements that broadly correspond with the requirements of Article 12 of the 1978 Act. A priority applicant is given a period of two years (as provided by the 1991 Act of the Convention) rather than the period of four years of the 1978 Act in which to provide documentation and material required in support of the application.

Article 13 of the 1978 Act: Variety Denomination

25. Articles 17 and 20 of the Law and Articles 19, 20, 21 and 27 of the Decree together contain detailed provisions relating to variety denomination which accord with Article 13 of the 1978 Act.

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

26. There are no provisions in the Laws of Argentina which conflict with Article 14 of the 1978 Act.

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

27. Legal remedies for the effective defense of the title of ownership are provided by the general law of Argentina relating to property. Article 45 of the Decree expressly provides for appeals to the Federal Courts of Administrative Litigation not only from decisions of the administrative bodies created by the Law and the Decree but also on any incidental issue that arises which concerns the property in plant varieties. The Government of Argentina has entrusted the protection of new varieties of plants to an existing authority in Argentina, the National Seed Service (SENASE), as required by Article 30(1)(b) of the 1978 Act.

28. Article 38 of the Decree makes provision for informing the public of the grant of property rights in plant varieties and of cancellations and transfers, as required by Article 30(1)(c) of the 1978 Act.

Conclusion

29. The Laws of Argentina will, upon the final enactment of the Decree, essentially conform to the 1978 Act of the Convention.

30. The Council is invited:

(i) to take a decision on the conformity of the laws of Argentina 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 Argentina of that decision.

[Annex I follows]

C/25/11

[in English only]

ANNEX I

Note No. 137/91 - Reference FNS/Ido IV/200-1 from the  
Permanent Mission of the Argentine Republic  
to the Secretary General of UPOV, dated October 18, 1991

The Permanent Mission of the Argentine Republic to the International Organizations in Geneva presents its compliments to the Secretary-General of the International Union for the Protection of New Varieties of Plants ("UPOV") and wishes to inform him that the Argentine Republic is considering the possibility of adhering to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, and October 23, 1978 ("the UPOV Convention").

The Argentine Republic accordingly requests that the Council of UPOV advise it with respect to the conformity of its laws with the provisions of the UPOV Convention.

The law in question is Law 20.247 on Seed and Phylogenetic Creations of 1973. Also attached is a copy of the draft Reglementary Decree replacing Decree 59/89 which will shortly be formalized.

The Secretary-General is asked to present this request for the consideration of the Council of UPOV at its next meeting.

The Permanent Mission of the Argentine Republic to the International Organizations in Geneva avails itself of this opportunity of assuring the Secretary-General of the International Union for the Protection of New Varieties of Plants of the expression of its highest consideration.

Geneva, October 18, 1991

[Annex II follows]



## ANNEX II

**LAW ON SEED AND PHYTOGENETIC CREATIONS****CHAPTER I****General:**

Article 1.- The purpose of this Law is to promote efficient activities in the production and marketing of seed, to provide agricultural producers with a guarantee of the identity and quality of the seed they acquire and to protect property in phyto-genetic creations.

Article 2.- For the purposes of this Law:

- (a) "seed" shall mean any plant organ intended for sowing or propagation.
- (b) "phyto-genetic creation" shall mean any cultivar obtained by discovery or by the application of scientific knowledge to the inheritable improvement of plants.

Article 3.- The Ministry of Agriculture and Animal Husbandry, with the advice of the National Seed Commission, shall implement this Law and establish the requirements, standards and tolerance levels, both in general and for each class, category and species of seed.

**CHAPTER II****National Seed Commission:**

Article 4.- There shall be set up, within the jurisdiction of the Ministry of Agriculture and Animal Husbandry, a National Seed Commission having the nature of a collegiate body, with the functions and powers assigned to it by this Law and by the relevant regulations.

Article 5.- The Commission shall consist of ten (10) members appointed by the Ministry of Agriculture and Animal Husbandry. The members shall be required to have special knowledge of seed. Five (5) of the members shall be officials representing the State, of which two (2) shall belong to the National Directorate of Agricultural Control and Marketing, two (2) to the National Institute of Farming Technology and one (1) to the National Grain Board. Five (5) further members shall represent the private sector, one (1) of which shall represent the plant breeders, two (2) shall represent the production and marketing of seed and two (2) shall represent the users. The Ministry of Agriculture and Animal Husbandry shall determine which of the representatives of the State shall act as President and Vice-President of the Commission. The remaining persons comprising the Commission shall act as members of the Commission.

Each member of the Commission shall have an alternate appointed by the Ministry of Agriculture and Animal Husbandry, who shall act in the absence of the full member, having the same capacity as the member.

The representatives of the private sector, whether full members or alternates, shall be appointed on the proposal of the most representative entities of each branch. Their term of office shall be of two (2) years. They may be reelected and may not be removed during their term of office, except on serious grounds. They shall receive an indemnity to be laid down each year on the proposal of the Ministry of Agriculture and Animal Husbandry.

Article 6.- The Commission shall take its decisions on a simple majority of the votes and the President shall have a casting vote in the event of equally divided voting. Such decisions shall be communicated to the Ministry of Agriculture and Animal Husbandry which, should it judge them to be pertinent, shall have them implemented by its specialized services.

Article 7.- The Commission shall have the following duties and powers:

- (a) To propose rules and interpretation criteria for implementing this Law.
- (b) To specify the species to be included under the "supervised" seed system.
- (c) To pronounce on any matter submitted to it by the technical services of the Ministry of Agriculture and Animal Husbandry in compliance with this Law and its regulations.
- (d) To consider and give opinions on draft official policies, laws, decrees, decisions and provisions of a national, provincial or municipal nature related to the subject matter of this Law as well as to the official agricultural produce marketing bodies.
- (e) To examine the evidence regarding presumed infringements of this Law and propose, as appropriate, application of the penalties laid down in Chapter VII.
- (f) To settle technical disputes arising between the services of the Ministry of Agriculture and Animal Husbandry and identifiers, merchants, distributors and users arising from the application of this Law and its regulations.
- (g) To propose to the Ministry of Agriculture and Animal Husbandry the fees to be levied for the services provided under this Law and also any amendment to those fees.

In addition to the duties and powers set out above, the Commission may propose such governmental measures as it holds necessary for improved compliance with the Law.

Article 8.- The Commission shall lay down its own internal working rules and shall have a standing Technical Secretariat.

It shall set up committees to deal with specific matters, which may be of a standing nature and which shall be composed in accordance with the above-mentioned rules.

### CHAPTER III

#### Seed:

Article 9.- Seed displayed to the public or supplied to users for any purpose must be duly identified and the following minimum particulars shall be specified on the container label:

- (a) Name and address of the identifier of the seed and his registration number.
- (b) Name and address of the merchant selling the seed and his registration number, where he is not the identifier.
- (c) Common name of the species and the botanical name for those species where it is required by regulation; in the event of a mixture of two (2) or more species, the term "mixture" together with the names and percentages of each of the components that individually or jointly exceed the total percentage established by regulation.

- (d) Name of the cultivar and its varietal purity, where appropriate; where such is not the case, the term "common" shall be given.
- (e) Percentage of physical--botanical purity, by weight, where it is less than the values laid down by regulation.
- (f) Germination percentage, as a figure, and the date of the analysis (month and year) where it is lower than the values laid down by regulation.
- (g) Percentage of weeds for those species where such is required by regulation.
- (h) Net content.
- (i) Harvest year.
- (j) Origin, in the case of imported seed.
- (k) "Category" of the seed where appropriate.
- (l) "Treated seed--poison" in red letters where the seed has been treated with a toxic substance.

Article 10.— The following "classes of seed are established:

- (a) "Identified." Seed that complies with the requirements of Article 9.
- (b) "Supervised." Seed that not only complies with the requirements for "identified" seed and obtains good results in officially approved tests, but is also subjected to official control during the stages of its production cycle. This class shall comprise the "categories": "original" (basic or fundamental) and "certified" in various grades.

The regulations may establish other categories within the above-mentioned classes.

The Ministry of Agriculture and Animal Husbandry, with the advice of the National Seed Commission, shall maintain within the supervised production system all those species that are subject thereto on the date of entry into force of this Law and may compulsorily incorporate into the "supervised" seed system such species as it deems fit for agronomic reasons or reasons of the general interest.

Article 11.— The importing and exporting of seed shall be subject to the arrangements under this Law in accordance with the rules laid down by the National Executive Power in order to protect and promote agricultural production within the country.

Article 12.— When settling disputes as to the quality of seed that is imported or exported, the international standards applicable to methods and processes for analysis and seed tolerances shall be applied.

Article 13.— There shall be set up, under the jurisdiction of the Ministry of Agriculture and Animal Husbandry, a National Register of Seed Trade and Supervision in which shall be entered, in accordance with the provisions to be laid down by regulation, all persons who import, export, produce supervised seed, process, analyse, identify or sell seed.

Article 14.— Any type of transfer of seed for the purposes of trade, sowing or propagation by third parties may only be effected by a person entered in the National Register of Seed Trade and Supervision and who shall be responsible, on transfer of the seed, for its correct labeling. The regulations shall lay down those cases where such responsibility may cease due to the passage of time or other factors.

Article 15.- The Ministry of Agriculture and Animal Husbandry, with the advice of the National Seed Commission, may prohibit or subject to special requirements and rules, either provisionally or permanently, over all or part of the national territory, the production, promotion or marketing of given seed where it deems fit for agronomic reasons or for reasons of the general interest.

When taking any of the above-mentioned measures, the Ministry of Agriculture and Animal Husbandry shall be required to lay down a sufficient period of time for their application to avoid damaging legitimate interests.

#### CHAPTER IV

##### National Register of Cultivars:

Article 16.- There shall be set up, under the jurisdiction of the Ministry of Agriculture and Animal Husbandry, a National Register of Cultivars in which shall be entered any cultivar identified for the first time in accordance with Article 9 of this Law; the entry must be sponsored by an agricultural engineer having a national title or a qualification recognized as equivalent. Cultivars of public knowledge on the date of entry into force of this Law shall be entered ex officio by the above-mentioned Ministry.

Article 17.- The application for entry of a cultivar shall state the name and address of the applicant, the botanical species, the name of the cultivar, the origin, the most distinctive characteristics in the view of the professional sponsor, and the source. The Ministry of Agriculture and Animal Husbandry, with the advice of the National Seed Commission, may establish additional requirements for the entry of certain species. Cultivars of the same species may not be entered with the same or a confusingly similar name; the denomination in the original language shall be respected, following the same criterion. Entry in the Register established by Article 16 shall not afford property rights.

Article 18.- Where the Ministry of Agriculture and Animal Husbandry, with the advice of the National Seed Commission, considers it proven that the name is the same or confusingly similar, it shall give priority to the name given in the first description of the cultivar in a scientific publication or in an official or private catalogue, or to the common name or, in case of doubt, to the first name entered in the National Register of Cultivars, the use of other denominations shall be prohibited as from a date to be laid down in each case.

#### CHAPTER V

##### National Register of Cultivar Ownership:

Article 19.- There shall be set up, under the jurisdiction of the Ministry of Agriculture and Animal Husbandry, a National Register of Cultivar Ownership for the purpose of protecting the property rights of the creators and discoverers of new cultivars.

Article 20.- The phytogenetic creations and cultivars that are distinguishable from the creations and cultivars already known on the filing date of the application for property rights and of which the individuals possess sufficiently homogeneous and stable hereditary characteristics through successive generations may be entered in the Register set up by Article 19 and shall

be considered "property" as provided by this Law. The appropriate action must be taken by the creator or discoverer, with the sponsorship of an agricultural engineer having a national title or a qualification recognized as equivalent, and the new cultivar must be identified with a name that complies with the relevant provisions of Article 17.

Article 21.- The application for property rights in the new cultivar shall set out the characteristics required by Article 20 and shall be accompanied by seed and samples of the cultivar if so required by the Ministry of Agriculture and Animal Husbandry. The Ministry may subject the new cultivar to laboratory and field tests and trials in order to confirm the claimed characteristics and may accept as evidence the reports on trials previously carried out by the applicant for property rights and reports by official services.

On the basis of such elements of judgment and with the advice of the National Seed Commission, the Ministry of Agriculture and Animal Husbandry shall decide whether to grant the corresponding title of ownership. Until such title is granted, the cultivar concerned may not be sold or offered for sale. The owner shall be required to keep a living sample of the cultivar at the disposal of the Ministry of Agriculture and Animal Husbandry during the term of validity of the title concerned.

Article 22.- The title of ownership of a cultivar shall be granted for a term of not less than ten (10) nor more than twenty (20) years, depending on the species or group of species, in accordance with the provisions of the regulations. The title of ownership shall contain the date of issue and the date of expiry.

Article 23.- The title of ownership of a cultivar may be assigned on condition that the corresponding transfer be entered in the National Register of Cultivar Ownership. If not entered, the transfer shall not be enforceable against third parties.

Article 24.- The property right in a cultivar shall belong to the person who has obtained the cultivar. The persons involved in the work relating to the phylogenetic creation or the discovery of a new cultivar shall have no rights in the exploitation of the cultivar on their own behalf, unless they have the authorization of the owner.

Article 25.- Ownership of a cultivar shall not prevent other persons from using the cultivar for creating a new cultivar, which may be entered in the name of its creator without the consent of the owner of the phylogenetic creation used to obtain it, provided that the original cultivar does not have to be used in a permanent manner to produce the new cultivar.

Article 26.- A title of ownership sought for a foreign cultivar must be filed by its creator or by his duly authorized representative residing in Argentina and shall be granted on condition that the country in which it originates affords similar rights to Argentine phylogenetic creations. The maximum term of ownership in such cases shall be that remaining up to expiry of the rights in the country of origin.

Article 27.- The property rights in a cultivar shall not be infringed by anyone who, for any reason, furnishes seed of the cultivar with the owner's permission or who holds back and sows seed for his own use or who uses or sells as raw material or foodstuff the product obtained by growing the phylogenetic creation.

**Article 28.-** The title of ownership of a cultivar may be delared of "restricted public use" by the National Executive Power, on a proposal by the Ministry of Agriculture and Animal Husbandry, on the basis of equitable compensation for the owner where such declaration proves necessary to ensure adequate supplies in the country of the product obtained from growing the cultivar and where the person enjoying the property rights does not satisfy the public need for seed of such cultivar in the quantity and at the price considered reasonable. During the period during which a cultivar is declared to be of "restricted public use," the Ministry of Agriculture and Animal Husbandry may allow it to be used by interested persons who are able to provide satisfactory technical guarantees and who duly register with the Ministry. The declaration by the Executive Power may or may not state the compensation to be paid to the owner or such compensation may be determined between the parties concerned. Where the parties fail to agree, the National Seed Commission shall lay down the compensation by a decision that shall be appealable before the Federal Court. The negotiation of the agreement on compensation may under no circumstances delay the availability of the cultivar, which shall be immediately available following the declaration by the National Executive Power; failure to comply shall make the owner punishable in accordance with this Law.

**Article 29.-** The declaration of "restricted public use" in respect of a cultivar shall be effective for a term of not more than two (2) years. Extension for a further period of the same duration may be declared only by a new, reasoned decision of the National Executive Power.

**Article 30.-** The title of ownership of a cultivar shall lapse for the following reasons:

- (a) Renunciation by the owner of his rights, in which case the cultivar shall fall into the public domain.
- (b) Where it is shown that the title has been obtained by means of fraud in respect of third parties, in which case the rights shall be transferred to their legitimate owner where he can be identified, failing which it shall fall into the public domain.
- (c) Expiry of the statutory term of ownership, from which time onwards it shall fall into the public domain.
- (d) Where the owner is not able to furnish a sample of the cultivar having the same characteristics of the original, at the request of the Ministry of Agriculture and Animal Husbandry.
- (e) Failure to pay the annual fee to the National Register of Cultivar Ownership within six (6) months of a duly substantiated demand for payment, in which case the cultivar shall fall into the public domain.

#### CHAPTER VI

##### Fees and Subsidies:

**Article 31.-** The National Executive Power, on a proposal by the Ministry of Agriculture and Animal Husbandry and with the advice of the National Seed Commission, shall lay down fees for the following cases:

- (a) Entry, annual renewal and certification in the National Register of Cultivar Ownership.
- (b) Entry and annual renewal in the National Register of Seed Trade and Supervision.
- (c) Provision of official labels for "supervised" seed.
- (d) Seed analysis and cultivar tests.
- (e) Services requested.
- (f) Registration of laboratories and other ancillary services.

Article 32.- On a proposal by the Ministry of Agriculture and Animal Husbandry and with the advice of the National Seed Commission, the Executive Power may grant under the conditions laid down by the regulations, subsidies, special promotional credits and tax exemptions to cooperatives, official agencies, persons and enterprises with domestic capital that deploy their efforts for phyto-genetic creation. The funds to cover such expenditure shall be set off against the "Seed Law" special account.

Article 33.- On a proposal by the Ministry of Agriculture and Animal Husbandry and with the advice of the National Seed Commission, the Executive Power may award prizes as an incentive to plant breeding technicians who, through their work in the various official agencies, contribute new cultivars possessing outstanding properties and being of significant benefit to the national economy. The funds required for this purpose shall be set off against the "Seed Law" special account.

Article 34.- A special account, with the heading "Seed Law," shall be opened and shall be administered by the Ministry of Agriculture and Animal Husbandry, to which shall be credited the funds obtained from fees, fines, donations and other income and amounts to be determined in the general budget of the Nation, and to which shall be debited the expenditure and investments required to keep up the services, subsidies and prizes referred to in this Law. Any funds not spent during one financial year shall be carried forward to the following financial year.

## CHAPTER VII

### Penalties:

Article 35.- Any person who displays or furnishes for any purpose seed not identified in the manner laid down by Article 9 and the regulations or who makes a false statement in the specifications on the container label shall receive a reprimand in the case of a simple error or omission and, in other cases, be liable to a fine of between one hundred pesos (\$100) and one hundred thousand pesos (\$100,000) together with confiscation of the merchandise if it cannot be put into proper condition for marketing as seed. In such case, the Ministry of Agriculture and Animal Husbandry may authorize the owner to sell the confiscated merchandise for consumption or destruction as determined by the regulations.

Article 36.- Any person who distributes seed of cultivars not registered in the National Register of Cultivars shall be liable to confiscation of the merchandise and a fine of between one thousand pesos (\$1,000) and sixty

thousand pesos (\$60,000). The fine shall be adjusted by reference to the offender's background and to the economic value of the seed.

Article 37.- Any person who identifies or sells, with the correct or other identification, seed of cultivars whose propagation and marketing have not been authorized by the owner of the cultivar shall be liable to a fine of two thousand pesos (\$2,000) and one hundred thousand pesos (\$100,000).

Article 38.- Any person who acts contrary to decisions taken under Article 15 shall be liable to a fine of between two thousand pesos (\$2,000) and one hundred thousand pesos (\$100,000) and confiscation of the infringing merchandise.

Article 39.- Any person who provides information or who carries out advertising in a manner that is misleading or may mislead as to the quality or condition of seed, or who withholds or misrepresents information he is required to give by this Law, shall be liable to a reprimand or a fine of between one thousand pesos (\$1,000) and sixty thousand pesos (\$60,000).

Article 40.- In addition to the penalties provided for in Articles 33 to 39 and in Article 42, persons referred to in Article 13 may also be subject to provisional or final suspension from the National Register of Seed Trade and Supervision and thus be prohibited from exercising any activity governed by this Law during the period of suspension insofar as they may infringe this Law and its regulations in their capacity as importers, exporters, seed producers, processors, analysts, identifiers or sellers.

Article 41.- Persons or entities required under Article 13 to register in the National Register of Seed Trade and Supervision who fail to do so shall be liable to a reprimand and shall be required to regularize the situation within fifteen (15) days of receipt of notification. In the event of non-compliance, they shall be liable to a fine of one thousand pesos (\$1,000). In the event of a second or third offense, the fine shall be a maximum of sixty thousand pesos (\$60,000).

Article 42.- Failure to justify the use made of official labels acquired for "supervised" seed within the periods of time laid down by the regulations shall be punishable by a fine of twice the value determined for each label as laid down in Article 31(d).

Article 43.- The seller shall be required to refund to the buyer the price of seed bought in infringement plus the cost of carriage. The buyer shall be required to return the seed he has not sown, together with the respective containers. Any expenditure resulting from this action shall be borne by the seller.

Article 44.- The Ministry of Agriculture and Animal Husbandry may periodically publish the results of its inspections and samplings. It may also publish its decisions imposing penalties in two (2) newspapers, one (1) of which--at least--shall be a newspaper of the locality where the infringer resides.

Article 45.- Officials acting under this Law may carry out an inspection, take samples, and effect analyses and tests of seed stored, transported, sold or offered or displayed for sale at any time or place. They shall have access to any premises where seed is held and may request or examine any documents relative to seed. They may prevent or directly oppose the sale and movement of any lot of seed presumed to be in infringement for a period not exceeding thirty (30) days.



To this end, the Ministry of Agriculture and Animal Husbandry may in all cases where it deems fit, request the effective cooperation of other official agencies, as well as the assistance of the police

Article 46.- The penalties for infringement of this Law and its regulations shall be imposed by the Ministry of Agriculture and Animal Husbandry, following a decision by the National Seed Commission. The persons on whom penalties have been imposed may appeal for reconsideration to the Ministry within ten (10) working days following notification of the penalty.

Article 47.- The infringer may appeal from an adverse decision of the Ministry of Agriculture and Animal Husbandry to the Federal Court after paying the fine concerned within thirty (30) days of notification of the adverse decision.

Article 48.- Application of the penalties under this Chapter shall not preclude such penalties as may be applicable for infringement of other statutory provisions.

#### TRANSITIONAL PROVISIONS

Article 49.- The holders of cultivars provisionally entered under Law No. 12.253 at the time of entry into force of this Law may request ownership of those cultivars as laid down in Chapter .

Article 50.- Articles 22 to 27--Chapter Promotion of Genetics--of Law No. 12.253 are hereby repealed together with any other provision contrary to this Law.

Article 51.- Chapters I and II shall enter into force on the day that this Law is promulgated, the other Chapters and Articles 49 and 50 shall enter into force six (6) months after the promulgation of this Law. The Ministry of Agriculture and Animal Husbandry may postpone for up to eighteen (18) months the application of Article 9 for such seed as it deems fit.

Article 52.- [Publication, etc.]

Law No. 20.247

[Annex III follows]

C/25/11

[in English only]

ANNEX III

PROPOSED DECREE OF OCTOBER 1991

BUENOS AIRES,

**HAVING REGARD** to file No. 1560/91 of the Registry of the Secretariat of Agriculture, Livestock and Fisheries in which the **NATIONAL SEED COMMISSION** proposes the repeal of Decree No. 50 of January 17, 1989, a regulation made under Law No. 20.247, and its replacement by a new legal instrument,

**CONSIDERING:**

That Article 34 of Decree 2476 of November 26, 1990, establishes the need to reorganize and strengthen the plant inspection functions of national agricultural production, particularly that which is destined for external markets.

That the said Article foresees, moreover, the creation of a specialized organization for this purpose which would enable a more efficient application of Law No. 20.247 and secure a greater participation in the international seed market.

That, likewise, the creation of an organization as described requires that its activities be seen within the framework of regulations appropriate to the objective.

That the said regulations should conform to those international agreements and standards which secure an effective protection of intellectual property, in order to afford the legal certainty necessary for the increase of investment in the seed sector.

That such conformity will result in greater incentives for the breeding and commercialization of new varieties of planting materials, will guarantee for farmers a basic input of high quality for agricultural production together with clear rules for the development of the national seed market.

That the new regulations will embody the experience accumulated since the entry into force of Law 20.247 and language which reflects the national and international progress in the relevant technology.

That the authority to establish this Decree arises from Article 86 indent 2) of the National Constitution.

Therefore,

**THE PRESIDENT OF THE ARGENTINE NATION  
DECREES:**

**CHAPTER I - GENERAL**

**ARTICLE 1.-** For the understanding of the concepts used in Law No. 20.247 and in these Regulations,

- (a) "Seed" or "planting material" means any plant organ, not only seed in the strict botanical sense, but also fruit, bulbs, tubers, buds, cuttings, cut flowers and any other structures, including nursery plants, whenever intended or used for sowing, for planting or for propagation.
- (b) "Plant genetic creation" means any variety or cultivar, whatever its genetic nature, obtained by discovery or by incorporation and/or application of scientific knowledge.
- (c) "Variety" means a group of plants within a single botanical taxon of the lowest known rank which can be defined by the characteristics that are the expression of a given genotype or combination of genotypes and can be distinguished from other groups of plants of the same botanical taxon by at least one of the said characteristics. A particular variety may be represented by several plants, a single plant or by one or several parts of a plant, provided that such part or parts can be used for the production of entire plants of the variety.
- (d) "Breeder" means the person who breeds or discovers a variety or cultivar.

#### **CHAPTER II - NATIONAL SEED COMMISSION (CONASE)**

ARTICLE 2.- The NATIONAL SEED COMMISSION (CONASE) shall exercise the function of adviser under Article 7 of the Law No. 20.247 under the jurisdiction of the SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES which will exercise full powers as the implementing authority under the said Law.

ARTICLE 3.- In the cases for which provision is made in indents d) and e) of Article 7 of Law No. 20.247, the NATIONAL SEED COMMISSION (CONASE) shall give its opinion within a period of FIFTEEN (15) days. It can request a single extension of time of fifteen days when the completion of the task requires it. At the expiration of the said period, the implementing authority shall act on the matter without further formalities.

ARTICLE 4.- The Technical Secretariat of the NATIONAL SEED COMMISSION (CONASE) shall perform its functions within the ambit of the implementing authority under Law No. 20.247 jointly with the committees provided for in Article 8 of the said Law.

#### **CHAPTER III - IMPLEMENTING AUTHORITY**

ARTICLE 5.- The SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES, as the implementing authority under Law No. 20.247, shall perform the tasks described in Article 6 of this Decree by means of the NATIONAL SEED SERVICE (SENASE), or any organization which replaces it in the future.

ARTICLE 6.- The following shall be the functions of the NATIONAL SEED SERVICE (SENASE):

- (a) to keep the National Register for Seed Trading and Certification and to publish periodically the lists of establishments that constitute its sections;
- (b) to keep the National Register of Cultivars, to effect the registration ex officio of plant genetic creations that are a matter of common knowledge and to publish specific catalogues periodically;

- (c) to keep the National Register of Cultivar Ownership and to issue cultivar property titles;
- (d) to effect botanical, agricultural and industrial inspections of varieties that have been or are to be registered, and also of material subject to certification in plant research establishments;
- (e) to lay down provisions for the registration, operation and supervision of establishments that produce "certified" seed, and also of any other category of establishments that it sees fit to regulate;
- (f) to lay down with the advice of the NATIONAL SEED COMMISSION (CONASE) provisions for the registration and supervision of the growing and production of the various categories of seeds;
- (g) to carry out inspections of establishments producing certified and/or identified seed;
- (h) to carry out the inspection of planted material submitted for certification, and to authorize the sale of the production achieved;
- (i) to arrange for the printing of official labels for the identification of certified seed;
- (j) to sell the official labels to certified establishments;
- (k) to carry out the inspection of seed on sites of production, processing, trading or transport;
- (l) to determine the characteristics and procedures for the packing and labelling of planting material;
- (ll) to supervise the publicizing of the agronomic characteristics of varieties;
- (m) to supervise the import and export of seed under Law No. 20.247;
- (n) to direct the Official Board of Comparative Testing of Registered Cultivars, and to publish findings periodically;
- (ñ) to direct the Central Seed Testing Station and its associated laboratories; to lay down the provisions for the authorization and operation of seed-analysis laboratories;
- (o) to supervise the seed trade, exercising the police powers established by Article 45 of Law No. 20.247;
- (p) to publish periodically the results of the inspections and samplings provided for in Article 44 of Law No. 20.247;
- (q) to ensure compliance with Article 39 of Law No. 20.247;
- (r) to provide for control over the production and transport of seed prior to its identification;
- (s) to determine the fate of seed confiscated under Articles 35 to 38 of Law No. 20.247;

- (t) to provide the NATIONAL SEED COMMISSION (CONASE) with all information that may be requested of it for the satisfactory operation of the latter body;
- (u) to lay down provisions for the operation of quality certification schemes organized by species or groups of species;
- (v) to lay down provisions whereby the National Register for Seed Trading and Certification registers for publicity purposes, and at the request of interested parties, standard license contracts and/or ordinary licenses granted by breeders or associations of breeders and third parties;

The NATIONAL SEED SERVICE (SENASE) may, in order to carry out the afore-said functions better, seek the advice of the NATIONAL SEED COMMISSION (CONASE) on matters within its competence.

ARTICLE 7.- The SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES may delegate the functions provided for in subparagraphs (g), (h), (j), (k), (ll), (o), (p), (q), (r) and (s) or Article 6 of this Decree by means of special arrangements with official agencies at national, provincial or municipal level, which shall remain under the supervision and direct responsibility of the implementing authority, subject to a prior ruling by CONASE. It may likewise entrust collaborative functions to private bodies with respect to the assignments provided for in subparagraphs (g), (h), (j), (k) and (n) of the said Article 6, by means of special arrangements under the supervision and direct responsibility of the implementing authority, subject to a prior ruling by the NATIONAL SEED COMMISSION (CONASE).

#### CHAPTER IV - SEED

ARTICLE 8.- For the purposes of the interpretation of Article 9 of Law No. 20.247, it shall be presumed that:

- (a) seed "exposed to the public" means all that which is available for delivery for whatever reason and in respect of which advertising, the display of samples, trading, offering for sale, display for sale, transactions, exchanges or any other forms of marketing take place, whether on properties or in premises, warehouses, depots, fields, etc., either in bulk or in containers of any kind.
- (b) Seed "delivered to users for whatever reason" means all that seed which is:
  - I. in vehicles destined for users;
  - II. in the possession of users.

Seed that has not been identified or is in the process of being identified and does not fall into the above categories shall be regarded as not exposed to the public.

Supervision of the production and transport of seed prior to identification shall be organized by the SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES jointly with the organization which is competent in the particular case.

The Law 19.982 on the Identification of Merchandise as amended shall apply subsidiarily for the purposes of identification.

ARTICLE 9.- "Label" means any label, tag or printed slip of any kind pasted, stamped or tied on to the seed package or container. The implementing authority shall lay down rules concerning the use, characteristics and constituent materials of labels, packages and containers and any other elements suitable for identifying, containing or protecting planting material.

ARTICLE 10.- The class of "identified" seed shall include the following categories:

- (a) "common": where the name of the variety is not given;
- (b) "listed": where the name of the variety is given. The implementing authority shall specify the cases in which the cultivar may or should be mentioned, for which purpose it may seek the advice of the NATIONAL SEED COMMISSION (CONASE).

ARTICLE 11.- The class of "certified" seed contains the following categories:

- (a) "original" (basic or initial): the progeny of genetic, prebasic or elite seed, produced in such a way as it retains its purity and identity;
- (b) "certified first-propagation" (registered): the first-generation offspring of "original" seed;
- (c) "certified subsequent-propagation": seed produced from "original" or "first-propagation" planting material or from any earlier propagation stage; the implementing authority shall specify the stages of propagation;
- (d) "hybrid": planting material obtained as a result of the production cycle of first-generation hybrid cultivars.

ARTICLE 12.- The SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES, on the advice of the NATIONAL SEED COMMISSION (CONASE), shall determine the species in respect of which it shall be mandatory or optional to produce and sell seed corresponding to the "certified" class.

Planting material corresponding to species where certification is optional may be marketed as "identified" except in the case of hybrid cultivars.

ARTICLE 13.- The import and export of seed shall take place through the agency of the SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES, which may grant or refuse import or export licenses in the light of an assessment of their compliance with requirements pertaining to registration, quality, health and certification of origin that have to be met by any seed according to its species, cultivar and destination, the latter term being understood to mean direct distribution, propagation or testing.

The import of seed of species declared "agricultural pests" is prohibited.

ARTICLE 14.- The SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES shall lay down, on the proposition of the NATIONAL SEED SERVICE (SENASE), the maximum and minimum periods determining liability for the quality of planting material.

The sale or display to the public of seed whose liability period has expired shall be prohibited.

The liability of the identifier or retailer shall end if, when the merchandise has been delivered, it is found that the containers have been tampered with or that the merchandise has been improperly stored by others.

The fact of pasting, stamping or attaching a label on to a package or container shall have the character of a sworn declaration on the part of the person who does so.

#### CHAPTER V - NATIONAL REGISTER OF CULTIVARS

ARTICLE 15.- The National Register of Cultivars shall be organized in sections by species, botanical varieties or lower taxons where appropriate, according to the rules laid down by the NATIONAL SEED SERVICE.

ARTICLE 16.- Those new or undisclosed cultivars that meet the requirements of Article 18 of this Decree shall be entered in the National Register of Cultivars, as shall, ex officio, those that are a matter of common knowledge on the date of entry into force of Law No. 20.247.

For those purposes:

- (a) "new or undisclosed variety" means any variety that has been identified for the first time, is covered by a property title issued by the implementing authority or has not yet been recorded, with a similar description, at the time of its submission to the National Register of Cultivars;
- (b) "variety that is a matter of common knowledge" means any variety that has appeared in scientific publications or in official or private catalogues in the country, or has been declared to be in the public domain in countries with which reciprocity agreements exist, and the characteristics of which, as required by Article 17 of Law No. 20.247, are known.

ARTICLE 17.- Varieties already registered under Decree No. 50/89 shall remain on record in the official registers kept by the implementing authority.

ARTICLE 18.- The application form for entry in the National Register of Cultivars shall have the character of a sworn statement and shall be filed with the implementing authority subject to compliance with the following requirements:

- (a) name, address and registration number of the applicant in the National Register for Seed Trading and Certification;
- (b) name, address and professional registration number of the agronomist sponsoring the registration;
- (c) common and scientific names of the species;
- (d) name of the variety;
- (e) establishment and locality in which the variety has been produced, with an indication where appropriate of the country of origin;
- (f) morphological, physiological, health, phenological and physico-chemical features, and the most striking industrial or technological properties that allow it to be distinguished. Photographs, drawings or any other commonly-accepted technical means of illustrating morphological aspects shall be enclosed.

ARTICLE 19.- For the purposes of compliance with the provisions of subparagraph (d) of the foregoing Article, it shall be considered that:

(a) varieties to be registered must be designated by a denomination intended to be its generic designation in accordance with the provisions of Article 17 of Law No. 20.247; that denomination shall combine the following characteristics:

- I. it shall permit identification of the variety;
- II. it may not be composed solely of numerals, except where that is a common practice in the designation of varieties;
- III. it may not mislead or confuse as to the characteristics, value or identity of the variety or as to the identity of its breeder;
- IV. it must be different from any denomination that designates a pre-existing variety of the same botanical species or a similar species in any other country;

The NATIONAL SEED SERVICE (SENASA) may refuse the registration of a variety whose denomination does not combine the aforesaid characteristics, and shall demand the proposal of another denomination within 30 days of the notification of refusal;

(b) The implementing authority may in addition require the breeder to change the denomination of a variety when:

- I. it affects prior rights granted by another country;
- II. registration is sought for a denomination different from the one registered for the same cultivar in a State or States with which the Argentine Republic has signed agreements on the subject.

ARTICLE 20.- Any person who places on sale or in any way markets or handles in any capacity planting material of a variety protected by a property title shall be obliged to make use of the denomination of that variety, even after the property title has expired, provided that previously-acquired rights are not affected thereby. The denomination of the variety may likewise be accompanied by a trademark or trade name or similar sign, in so far as it does not mislead as to the denomination of the variety or the name of the breeder.

ARTICLE 21.- If a cultivar is registered in the National Register of Cultivar Ownership, the approved denomination thereof shall be registered at the same time as the property title concerned is granted.

ARTICLE 22.- The implementing authority may request the submission of additional information on agronomic properties: genetic origin, proof of health status, agro-ecological qualities and proof of industrial value.

ARTICLE 23.- The NATIONAL SEED SERVICE (SENASA) shall regulate the registration of varieties in the National Register of Cultivars, which shall be given priority according to the hour and date of submission, and which may be registered either provisionally or finally, while registration may also be refused, and the exercise of the rights deriving from grant suspended, or rights already registered may be cancelled, where anomalies or defects that warrant such a step are detected. The measure shall be subject to appeal by referral to the Federal Courts of Administrative Litigation.



ARTICLE 24.- The National Seed Service (SENASE) shall satisfy itself of the authority or scientific value of catalogues or publications invoked in cases of synonymy, and shall set the date from which the simultaneous use of different names for the same variety is to be prohibited.

ARTICLE 25.- Where varieties belonging to a species whose registration has been organized and implemented have not themselves been registered or where their registration has been cancelled in the National Register of Cultivars, their distribution on whatever grounds shall be prohibited.

#### CHAPTER VI - CONDITIONS FOR THE GRANT OF TITLES OF OWNERSHIP

ARTICLE 26.- For a variety to be the subject of a property title it shall meet the following conditions:

- (a) Novelty: It shall not have been offered for sale or sold by the breeder or with his consent:
  - I. in the national territory, before the date of filing the application for inscription in the National Register of Cultivar Ownership;
  - II. in the territory of another State with which the Argentine Republic has a bilateral or multilateral agreement on the subject for a period greater than FOUR (4) years or, in the case of trees or vines, for a period greater than SIX (6) years before the application for inscription in the National Register of Cultivar Ownership;
- (b) Distinctness: It must be clearly distinguishable by means of one or more characteristics, from any other variety whose existence is a matter of common knowledge at the time of the filing of the application. In particular, the filing of an application for the granting of a breeder's right or for the entering of another variety in an official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder's right or to the entering of the said other variety in the official register of varieties, as the case may be.
- (c) Uniformity: Subject to predictable variations due to the specific features of its propagation, it must retain its most significant hereditary characteristics in a sufficiently uniform manner;
- (d) Stability: its most significant hereditary characteristics must remain true to the description thereof after repeated propagation, or, in the case of a particular cycle of propagation, at the end of each such cycle.

ARTICLE 27.- The grant of a property title in a variety, in so far as it meets the conditions specified in this Title and the denomination of the variety conforms to the provisions of Articles 19, 20 and 21 of this Decree, may not be made subject to any additional condition other than payment of the appropriate fee.

#### CHAPTER VII - RECORDING IN THE NATIONAL REGISTER OF CULTIVAR OWNERSHIP

ARTICLE 28.- The National Register of Cultivar Ownership shall be organized in sections by species, botanical varieties or lower taxons where appropriate, as directed by the implementing authority.

ARTICLE 29.- The application for registration in the National Register of Cultivar Ownership shall have the character of a sworn statement, and shall be filed with the implementing authority, subject to compliance with the following requirements:

- (a) name, address of the breeder or discoverer or his national representative if appropriate;
- (b) name, address and professional registration number of the agronomist sponsoring the registration;
- (c) common and scientific names of the species;
- (d) name proposed for the variety;
- (e) establishment and locality in which the variety was bred;
- (f) description: this must cover the morphological, physiological, health, phenological and physico-chemical features, and also the industrial or technological properties that allow it to be identified; drawings, photographs or any other commonly-accepted technical means of illustrating morphological aspects shall be enclosed;
- (g) justification of novelty: reasons for which it is considered that the variety possesses new and undisclosed character, with evidence of differentiation in relation to existing varieties;
- (h) verification of stability: date on which the cultivar was propagated for the first time as such, for verification of stability;
- (i) origin: national or foreign, with an indication in the latter case of the country of origin;
- (j) reproductive or vegetative propagation mechanism;
- (k) other additional conditions for species that so require, as established by the NATIONAL SEED SERVICE (SENASA).

The implementing authority may, when it considers this necessary, require field trials and/or laboratory tests for the verification of the characteristics attributed to the new cultivar.

ARTICLE 30.- The filing of the application for the registration of a variety in any State with which the Argentine Republic has a bilateral or multilateral agreement on the subject shall give the applicant priority for TWELVE (12) months for its registration in the National Register of Cultivar Ownership: that period shall be calculated as from the day following that of first filing in any such State. On its expiration, the applicant shall have a period of TWO (2) years in which to submit the documentation and material required by Article 29 of this Decree.

ARTICLE 31.- Any decision to grant a right of ownership of a variety shall require an examination for compliance with the conditions provided for in Chapter VI of this Decree. In the course of the examination, the NATIONAL SEED SERVICE (SENASA) may grow the variety or carry out other necessary tests or take into account the results of growing tests or other trials which have already been carried out. For the purposes of examination, the authority may require the breeder to furnish all the necessary information, documents or

material, which should be available to the implementing authority for the validation of the title of ownership.

ARTICLE 32.- The SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES, on the advice of the NATIONAL SEED COMMISSION (CONASE), shall enact provisions governing the procedure for the recording of cultivars in the Register. The provisions to be enacted shall be without prejudice to the right of third parties to make such oppositions as they consider appropriate.

ARTICLE 33.- The SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES, when it has all the facts of the case in its possession, shall decide on the grant of the property title and shall make the appropriate communication to the applicant and shall issue the title.

ARTICLE 34.- If the decision of the SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES is to refuse registration, this shall be brought to the notice of the applicant in order that he may produce specific proof concerning the aspects objected to within a maximum period of HUNDRED AND EIGHTY (180) days.

If the applicant does not contest the refusal of his application, he shall be regarded as having renounced it.

If he does contest the refusal, the SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES shall have THIRTY (30) days within which to pronounce on the subject, for which purpose it may seek the advice of the NATIONAL SEED COMMISSION (CONASE).

ARTICLE 35.- The breeder's right shall be declared null and void when it is established that, at the time of the grant of the title of ownership:

- (a) The conditions laid down in indents (a) and (b) of Article 26 were not effectively complied with.
- (b) Where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the conditions laid down in indents (c) and (d) of Article 26 were not complied with.

The right of the breeder shall not be declared null and void for reasons other than those referred to in this article.

ARTICLE 36.- The right of the breeder in a variety shall lapse in accordance with the provisions of Article 30 of law 20.247 for the following reasons:

- (a) The breeder surrenders his rights, in which case the variety falls into the public domain.
- (b) When it is shown that it has been obtained by fraud upon a third party, in which case the right shall be transferred to its legitimate owner if he can be identified. In the contrary case, it shall fall into the public domain.
- (c) Upon termination of the legal period of ownership, after which it passes into the public domain.
- (d) When the breeder is not in a position to provide the implementing authority with the materials considered necessary to control the maintenance of the variety, as required by Article 31 of this Decree.

- (e) For failure to pay the annual fee to the National Register of Cultivar Ownership for a period of SIX (6) months from the making of a demand for payment, after which the variety passes into the public domain.

The breeder may not be deprived of his right for reasons other than those mentioned in this Article.

**ARTICLE 37.-** Property titles for cultivars shall be granted for a maximum of TWENTY (20) consecutive years for all species.

The SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES may specify other, shorter periods, depending on the nature of the species.

**ARTICLE 38.-** When the property title has been granted, the relevant decision of the SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES shall be published in the Official Gazette at the expense of the party concerned.

Surrenders of titles, cancellations and transfers shall also be published at his expense.

**ARTICLE 39.-** Any transfer of the property title shall take place in the form of a request that states the names and addresses of the transferor and transferee, and shall be accompanied by the legal document evidencing the said transfer. The record of transfer shall be entered in the National Register of Cultivar Ownership and on the property title. The transferee shall remain subject to the same obligations as the transferor.

**ARTICLE 40.-** Where the breeding of a new variety has been achieved by two or more persons, ownership thereof shall be governed by the rules of the Civil Code on joint ownership.

In the case of persons who have collaborated in the breeding of the variety in the course of employment relations, the provisions of Article 82 of the Law on Employment Contracts, No. 20.744, and amendments thereto, shall apply.

#### **CHAPTER VIII - THE RIGHTS OF THE BREEDER. SCOPE AND RESTRICTIONS**

**ARTICLE 41.-** For the purposes of Article 27 and related Articles of Law No. 20.247, and also the present Regulations, the property rights granted to a breeder in respect of a variety shall have the effect of making his prior authorization necessary for the acts specified below in relation to the planting material of the protected variety:

- (a) Production or reproduction;
- (b) Conditioning for the purposes of propagation;
- (c) Offering for sale;
- (d) Sale or any other form of marketing;
- (e) Export;
- (f) Import;
- (g) Advertising, display of samples;

- (h) Exchange, transfer and any other form of commercial transaction;
- (i) Stocking for any of the purposes mentioned in subparagraphs (a) to (h);
- (j) Any other delivery, in whatever connection.

ARTICLE 42.- The breeder may make his authorization of the acts specified in the foregoing Article subject to conditions defined by himself, including for instance quality control, inspection of plots, volume of production, royalty percentages, periods, authorization to sublicense and other such restrictions.

Where a breeder makes a firm public offer of licensing, it shall be presumed that whoever carries out any of the acts specified in the foregoing Article has secured authorization therefor.

Article 43.- The ownership of a variety shall not prevent its use as a source of variation or as a provider of desirable characteristics in plant improvement work.

To that end, it shall not be necessary either to know the breeder or to secure his authorization. However, the repeated and/or systematic use of a variety as a necessary means of producing commercial seed shall require the authorization of the said owner.

ARTICLE 44.- The authorization of the breeder of a variety shall not be required, in accordance with the provisions of Article 27 of Law No. 20.247, when a farmer saves and uses as planting material on his own holding or estate, the product of the harvest which he has obtained by planting on the said holding or estate a protected variety.

ARTICLE 45.- Final decisions handed down by the administrative bodies created by Law No. 20.247 and by this Decree shall be subject to appeal before the Federal Courts of Administrative Litigation together with consequential decisions involving ownership of varieties which in the field of private law can result from the breach of other legal rules.

ARTICLE 46.- The "restricted public use" declaration shall be published in the Official Gazette and in one specialized publication, which latter shall request submissions from interested third parties, together with the minimum technical and economic guarantees and any other requirements that have to be met by such applicants.

ARTICLE 47.- Any exploitation under "restricted public use" provisions shall be registered by the implementing authority.

Interested third parties shall be registered by the same authority, with an indication of name and address, and of the locality and area of the exploitation to be undertaken and information on compliance with the technical and economic guarantees imposed.

ARTICLE 48.- The implementing authority shall undertake the verification of the existence of original seed of the "restricted public use" variety in the exploitation thereof by licensed third parties. Any surplus planting material shall be returned to the owner of the variety on expiry of the period for which "restricted public use" has been declared.

ARTICLE 49.- The names of varieties that become public property shall have the same character, even where they have also been registered as trademarks.

ARTICLE 50.- The fees and fines provided for in Chapters VI and VII of Law No. 20.247 as amended shall be paid to the implementing authority.

**CHAPTER IX - TRANSITIONAL PROVISIONS**

ARTICLE 51.- This Decree shall enter into force on the day following its publication in the Official Gazette.

ARTICLE 52.- Decree No. 50 of January 17, 1989, shall be repealed on the coming into force of this Decree.

ARTICLE 53.- This Decree is to be communicated, published, conveyed to the National Directorate of Official Registration and placed on record.

DECREE No.

[End of document]