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UPOV/C/V/7/Add.
Original: English
Date: September 20, 1971

INTERNATIONALER VERBAND
ZUM SCHUTZ VON
PFLANZENZÜCHTUNGEN

UNION INTERNATIONALE
POUR LA PROTECTION
DES OBTENTIONS VÉGÉTALES

INTERNATIONAL UNION
FOR THE PROTECTION OF
NEW PLANT VARIETIES

COUNCIL

Fifth Session

Geneva, October 13 to 15, 1971

ACCESSION BY SWEDEN

Report by the Secretary General

1. By letter of September 15, 1971, the Federal Political Department of Switzerland informed the Secretary General of UPOV of the fact that, by Note of August 30, 1971, the Royal Swedish Embassy in Berne had applied, in the name of the Swedish Government, for accession to the Convention for the Protection of New Varieties of Plants, in accordance with Article 32(2) of the Convention. Notification to the member States of the Union prescribed in the said Article was made on September 15, 1971.
2. The Swedish note of August 30, the letter of September 15 from the Federal Political Department, and the note to the member States are attached to this additional report as Annexes II, III and IV, Annex I being the Annex attached to document UPOV/C/V/7 (letter from the Swedish Ministry of Agriculture).

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3. An unofficial translation of the Swedish Law, prepared by the Swedish Ministry of Agriculture, is contained in Annex V, and an extract from the Swedish Decree, translated by UPOV, in Annex VI.

3. The Secretary General invites the Council to consider the Swedish application for membership of UPOV.

/Annexes follow/

The Royal Swedish Embassy presents its compliments to the Federal Department for Foreign Affairs and has the honour to state the following.

On the 27th May, 1971, the Swedish Government decided to apply for accession to the Convention for the Protection of New Varieties of Plants (UPOV) signed at Paris on December 2, 1961.

Acting upon instructions received and in accordance with paragraph 2 of Article 32 of the said Document the Royal Swedish Embassy has the honour hereby to submit to the Government of the Swiss Confederation a request by the Swedish Government for accession to the Convention. It is hoped that it will be possible for the Council of the International Union for the Protection of New Plant Varieties to consider this request at its next regular meeting in October.

In order to enable Sweden, i.a., to fulfil the provisions of the Convention, a new Plant Breeders' Protection Act has entered into force in Sweden on July 1, 1971, and a new authority for the protection of new plant varieties, the National Plant Variety Board, was established from the same date. The Board will periodically issue a publication containing i.a. all applications for registration of plant varieties and the consequential decisions by the Board.

To the Federal Department for Foreign Affairs,

BERNE

Adresse postale	Adresse	Téléphone	Télégramme	Télex
Case postale 36	Jungfraustrasse 1	031 / 43 00 70	Svensk	32 168
3000 BERNE 6		031 / 43 00 78 / 79		

According to a Royal Decree foreign breeders, who are citizens of or domiciled in a Member State of the UPOV or have produced plant varieties in such a State, will from the date of accession enjoy the same treatment, so far as the recognition and protection of the breeders' right are concerned, as is accorded to Swedish breeders.

A comprehensive report on the Swedish legislation in this field has been compiled by the Secretariat of the UPOV, and additional information on it has been given by Swedish observer delegations at meetings of the Council and the Consultative Working Committee.

From the date of accession Sweden will apply the provisions of the Convention to all the genera and species named in the list annexed to the Convention with the exception of one of the alternative species therein, Rice-Oryza sativa L., which for natural reasons is not produced in Sweden. Sweden will also from the same date apply the provisions of the Convention to the following genera and species not included in the said list, without availing itself of the right of limitation available under paragraph 4 of Article 4 of the Convention:

A. Agricultural plants

Agrostis spp.

Alopecurus pratensis L.

Beta vulgaris L. spp. vulgaris
var. altissima Döll

Beta vulgaris L. spp. vulgaris
var. crassa Alef.

Brassica napus L. var. oleifera
Metzger

Brassica napus L. var. napo-
brassica (L.) Rchb.

Brassica nigra (L.) W. Koch

Brassica oleracea L. ssp.
acephala DC.

Brassica rapa L. var. oleifera
Metzger
Brassica rapa L. var. rapifera
Metzger
Bromus arvensis L.
Bromus inermis Leys.
Camelina sativa (L.) Crantz
Cannabis sativa L.
Cynosurus cristatus L.
Dactylis glomerata L.
Festuca spp.
Glycine max (L.) Merrill
Helianthus annuus L.
Linum usitatissimum L.
Lupinus angustifolius L.
Lupinus luteus L.
Medicago spp.
Ornithopus sativus Brot.
Papaver somniferum L.
Phalaris arundinacea L.
Phleum spp.
Poa spp.
Secale cereale L.
Sinapis alba L.
Trifolium hybridum L.
Trifolium repens L.
Triticum aestivum L.
Vicia faba L. var. minor (Peterm.)
Vicia sativa L.
Vicia villosa Roth

B. Garden plants

1. Vegetables

Allium spp.
Anethum graveolens L.
Apium graveolens L.
Asparagus officinalis L.
Beta vulgaris ssp. vulgaris var.
conditiva Alef.

Brassica napus L. var. napo-
brassica (L.) Rchb
Brassica oleracea L.
Capsicum annuum L.
Cucumis melo L.
Cucumis sativus L.
Daucus carota L.
Lycopersicon esculentum P. Mill.
Pastinaca sativa L.
Petroselinum crispum (P.Mill.)
Nijm. ex Hill
Raphanus sativus L. var. niger Pers.
Raphanus sativus L. var. radricula
Pers.
Spinacia oleracea L.
Vicia faba L. var. major Harz

2. Fruit trees and berry plants

Malus spp.
Pyrus spp.
Prunus spp.
Fragaria spp.
Ribes spp.
Rubus spp.
Vaccinium spp.
Rootstocks of Malus, Pyrus,
Prunus and Ribes

3. Ornamental plants

Rosa spp.

The Royal Swedish Embassy avails itself of this opportunity to
renew to the Federal Department for Foreign Affairs the
assurances of its highest consideration.

Berne, August 30, 1971



End of Annex II;
Annex III follows

Federal Political Department
p.o. 411.80. - BN/lt

Berne, September 15, 1971

The Director General
World Intellectual Property
Organization
32, chemin des Colombettes
1211 Geneva 20

Sir,

We have the honor to bring to your notice that the Government of the Kingdom of Sweden, pursuant to Article 32(2) of the Paris Convention for the Protection of New Varieties of Plants, addressed to the Swiss Government on August 30, 1971, a request for accession to the said Convention.

We send you herewith, together with its annex, the notification which we are sending today, by virtue of the provisions of the above-mentioned Article, to the Governments of member States of the Union for the Protection of New Plant Varieties.

Yours faithfully,

FEDERAL POLITICAL DEPARTMENT
Legal Affairs Division

⌈End of Annex III;
Annex IV follows⌋

FEDERAL POLITICAL DEPARTMENT

Notification
to the Governments of Member States of the
Union for the Protection of New Plant Varieties

REQUEST FOR ACCESSION BY SWEDEN

Pursuant to Article 32(2) of the Paris Convention for the Protection of New Varieties of Plants of December 2, 1961, the Federal Political Department hereby notifies member States of the Union that the Kingdom of Sweden, by a Note from its Embassy in Berne, dated August 30, 1971, received on September 3, 1971, addressed to the Swiss Government a request for accession to the said Convention.

Interested Governments will find, enclosed herewith, a copy of the note in question.

Berne, September 15, 1971

/End of Annex IV;
Annex V follows/

Unofficial translation

Plant Breeders' Protection Act

It is hereby decreed as follows.

General rules

Art. 1

This Act is applicable to a plant variety belonging to a plant genus or plant species designated by the King in Council.

Art. 2

A breeder who has produced a plant variety in Sweden, or his successor in title, can by means of registration obtain the exclusive right to commercialize the variety in accordance with the provisions of this Act (plant breeder's right).

A breeder who is a Swedish citizen or is domiciled in Sweden or such a breeder's successor in title can acquire a plant breeder's right also to a variety which has been produced abroad.

To the extent deemed necessary for the fulfilment of the obligations of Sweden arising from international agreements with other countries and moreover provided that reciprocity exists or if the matter is of substantial public interest, the King in Council can decree that a plant breeder's right may be acquired also for a variety that has been produced in a foreign state by a person who is not a Swedish citizen, or domiciled in Sweden.

Art. 3

A plant variety will be registered only if

1. by at least one important characteristic it clearly differs from another variety that has become known before the date of the application for registration,
2. it is sufficiently homogeneous, having regard to such particular features as are determined by its sexual reproduction or vegetative propagation,
3. after propagation effected in accordance with the method of propagation indicated by the breeder, it is stable in its essential characteristics.

A plant variety is regarded as known if material thereof has been commercially offered for sale or otherwise supplied, or if it has been included in, or notified for, an official list of varieties, appears in a reference collection accessible to the public, or has been accurately described in written matter accessible to the public, or if it has otherwise come to the knowledge of the public.

Registration may not be made if plant material of the variety with the consent of the breeder or of his successor in title has been commercialized in Sweden before the date of the application for registration, or outside Sweden more than four years before the said date.

Art. 4

A plant breeder's right means that, with the exceptions stated below, no one except the holder of the plant breeder's right (variety holder) may without the latter's permission commercialize the plant variety by

1. producing or importing into Sweden plant material of the variety with the aim that the material shall be offered for sale for purposes of propagation or otherwise be supplied for such purposes,
2. offering for sale or otherwise supplying plant material of the variety for purposes of propagation,

3. in cases when repeated use of the plant material is necessary for the production of plant material of another variety, using plant material of the variety for such production and with the aim that the produced material shall be offered for sale for purposes of propagation or otherwise be supplied for such purposes.

With respect to ornamental plants, the plant breeder's right also means that no one except the variety holder may, without the latter's permission, use plants or parts of plants as propagating materials for the commercial production of cut flowers or other materials for purposes of ornamentation.

Art. 5

The King in Council may decree that an application for registration of a plant variety which has previously been mentioned in an application for protection outside Sweden, shall, when the first paragraph and the third paragraph of Article 3 are applied, be deemed to be made at the same time as the application outside Sweden, if the applicant so requests.

In the decree there shall be stated the more detailed conditions subject to which such priority may be enjoyed.

The registration application and its treatment

Art. 6

Registration according to this Act is made in the Plant Variety Register which is kept by the National Plant Variety Board.

Upon registration of a Plant Variety the denomination of the variety shall also be registered.

Art. 7

Application for registration of a plant variety is to be made in writing to the National Plant Variety Board.

The application shall contain a clear description of the variety, with a special statement of the characteristic or characteristics distinguishing the variety from other varieties, and a proposal or proposals for a denomination of the variety. The name of the breeder shall be stated in the application. If registration is sought by anyone other than the breeder, the applicant shall furnish proof of his right to the variety.

There shall be attached to the application document a certificate signed by the applicant attesting on his honour that the variety, as far as the applicant is aware, has not before the date when the application is made, or when it shall be deemed to be made in accordance with the provisions of Article 5, become known in a manner which in accordance with the provisions of the third paragraph of Article 3 prevents registration.

When the application is made, the applicant shall supply plant material of the variety in a quantity necessary for testing the variety.

The applicant shall pay a stipulated fee of application.

Art. 8

The denomination of a variety shall make it possible to distinguish the plant variety from other varieties.

The denomination of a variety may not be approved if it

1. consists of figures only,
2. is manifestly of a nature to mislead the public,
3. conflicts with a law or other statutory instrument or with public order or if it is of a nature to give offence,
4. can be confused with a variety denomination which has been entered or proposed for entry in the Plant Variety

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Register or other official list of varieties for the same plant or for a closely related species of plant, or which is used on propagating material of such a variety,

5. can be confused with a trademark, name, company's name or other designation for which anyone other than the applicant enjoys protection and which would have constituted an obstacle to the registration of the variety denomination as a trademark for material of a plant variety or for goods of a similar kind,

6. can be confused with a trademark for material of a plant variety or for goods of a similar kind, for which trademark the applicant enjoys protection.

Provided that reciprocity exists, the King in Council may direct that a variety denomination that has been registered or applied for registration in a foreign state may, notwithstanding the first paragraph be registered in Sweden, unless there are particular reasons against such a course of action.

Art. 9

A request may not be made in one and the same application for the registration of two or more plant varieties.

Art. 10

An applicant who is not resident in Sweden shall have an authorized representative domiciled in this country who has the right to represent him in all matters concerning the application.

Art. 11

If the applicant has not observed the regulations with respect to application, or if there is any other obstacle to approval of the application, the applicant shall be called upon in an official notice to express his views within a stipulated period of time or to make a rectification.

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If the applicant neglects within the prescribed time to submit a statement, or to take action to remedy a fault to which attention has been drawn, the application will be cancelled. A reminder to this effect shall be included in the official notice to the applicant.

Art. 12

If there is still an obstacle to approval of the application even after a statement has been submitted, and if the applicant has had an opportunity to express his views regarding the obstacle, the application shall be rejected, unless there are grounds for giving the applicant a new official notice.

Art. 13

If anyone claims before the National Plant Variety Board that he has a better right to the plant variety than the applicant, and if the case is doubtful, the Board may call upon him to bring an action before a court of law within a certain period at the risk that otherwise his claim will be disregarded when further consideration is given to the application.

If the dispute concerning a better right to the variety is before a court of law, the application for registration can be declared to be in suspense until a final judgement is pronounced in the case.

Art. 14

If anyone shows the National Plant Variety Board that he has a better right to the plant variety than the applicant, the Board shall transfer the application to him if he so requests. The person who has an application transferred to him shall pay a new fee of application.

If transfer is requested, the application may not be cancelled, rejected or approved until the request has been finally examined.

Art. 15

If the application documents are complete and there is no obstacle to registration, the National Plant Variety Board shall publish the application in order to give the public an opportunity to submit objections to the application.

Objections shall be made in writing to the National Plant Variety Board within a period determined by the Board.

Art. 16

The National Plant Variety Board shall make arrangements for tests with material of the plant variety, unless for particular reasons this is considered unnecessary. A stipulated fee shall be paid for the tests.

Art. 17

After the period for statement of objections to the application has expired and tests with material of the plant variety have been concluded, the application will be taken up for further consideration. Articles 11 to 14 will be applicable when such consideration is given to the application.

The applicant shall be given an opportunity of expressing his views on any objection made and any test carried out.

Art. 18

An appeal against a final decision of the National Plant Variety Board on a matter concerning application for registration of a plant variety may be made by the applicant if the decision has been made against him. Against a decision whereby an application has been approved although an objection has been submitted in the proper manner, an appeal may be made by the person who has made the objection. If the objector withdraws his appeal, it may nevertheless be tried if particular reasons exist.

An appeal may be made by the applicant against a decision whereby a request for transfer in accordance with the provisions of Article 14 has been approved. The person who has submitted a request for transfer may make an appeal against a decision whereby the request has been rejected.

Art. 19

Appeals in accordance with the provisions of Article 18 are to be lodged with the National Board of Agriculture within two months from the date of the decision. The person who wishes to lodge an appeal shall within the same period pay a stipulated appeal-fee at the risk that otherwise the appeal will not be considered.

If the decision has been made against him, the applicant may lodge an appeal against a decision of the National Board of Agriculture. An appeal is to be lodged to the King within two months from the date of the decision.

Art. 20

If an application for registration of a plant variety is approved and the decision to that effect gains legal force, the variety shall be entered in the Plant Variety Register, and the registration shall be published.

A decision to cancel or reject an application that has been published in accordance with the provisions of Article 15 shall be published after the decision has gained legal force.

Period of validity of plant breeder's right

Art. 21

A plant breeder's right is valid from the date when the application for registration was approved and can be maintained in force for fifteen years, or - as far as vines, fruit trees and their rootstocks, forest trees and ornamental trees are concerned - eighteen years, calculated

from the beginning of the year immediately after the year in which the decision of registration has gained legal force.

Use of variety denomination

Art. 22

A person who commercially offers for sale or otherwise supplies propagating material of the plant variety for which registration has been made shall in so doing use the denomination registered for the variety, and shall continue to use it after the protection period for the variety has expired or the plant breeder's right has otherwise ceased.

A registered denomination of a variety or a denomination that can be confused with such a registered denomination may not be used for another variety of the same or of a closely related plant species or for material of such a variety, as long as the registration of the denomination continues.

Annual fees

Art. 23

Unless otherwise determined by the provisions of Article 49, a stipulated annual fee shall be paid for a plant breeder's right for every calendar year, calculated from the beginning of the year immediately after the year in which the application for registration has been approved.

The annual fee falls due for payment on the first day of the calendar year to which it refers. The annual fee for a year that has begun before the plant variety has been registered, or within two months thereafter, does not, however, fall due for payment until two months after the date of the registration. The annual fee may not be paid before registration has been made, or earlier than six months before the calendar year to which the fee refers.

The annual fee may, with the increase that is stipulated, be paid within six months after the due date.

Subsequent checking

Art. 24

In order to check the stability of a registered plant variety, the National Plant Variety Board may call upon the variety holder to supply the Board with propagating material of the variety as well as with necessary documents and information.

Licence, transfer, etc.

Art. 25

If the variety holder has permitted another person to commercialize a registered plant variety (licence), the latter may not transfer his right further unless an agreement to that effect has been concluded.

If the licence is included in a business, however, it may be transferred when the business or part thereof is transferred, unless otherwise agreed. In such a case the transferor shall still be responsible for ensuring that the licence agreement is fulfilled.

Art. 26

If a plant breeder's right has passed to another person, or if a licence has been granted or transferred, then if so requested and on payment of a stipulated fee a note to that effect shall be made in the Plant Variety Register. If it is shown that a licence that has been noted in the Register has ceased to be valid, the note shall be removed.

The first paragraph is correspondingly applicable with respect to a compulsory licence.

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In a case or matter concerning a plant breeder's right, the variety holder shall be deemed to be the person who has last been entered in the Plant Variety Register in that capacity.

Art. 27

If the market is not supplied with propagating material of a registered plant variety on reasonable terms and to the extent that is required in consideration of the national economy or other public point of view, a person who wishes to commercialize the variety in Sweden can obtain a compulsory licence for that purpose, if there is no acceptable reason for the negligence. A compulsory licence also includes the right to receive, from the variety holder, propagating material of the variety to the extent that is reasonable.

Art. 28

A compulsory licence may not be issued except to a person who can be assumed to be capable of utilizing the plant variety in an acceptable manner and in conformity with the licence.

A compulsory licence does not constitute an obstacle to utilization of the variety by the variety holder himself or to the granting of a licence by him. A compulsory licence cannot pass to another person except together with a business in which it is utilized or in which it has been intended that the utilization shall take place.

Art. 29

A compulsory licence will be issued by the court, which will also determine the extent to which the plant variety may be utilized, and stipulate the payment and other terms for the licence. When substantially changed circumstances require such a step, the court can when requested to do so

cancel the licence or stipulate new terms for it.

Cessation of a plant breeder's right, etc.

Art. 30

If an annual fee is not paid in accordance with the provisions of Article 23, the plant breeder's right is void from the beginning of the year for which a fee has not been paid.

Art. 31

If a plant variety has been registered contrary to Article 1 or Article 2 or to the first paragraph 1 or third paragraph of Article 3, and if the obstacle still exists, the court shall when an action is brought on that account annul the registration. However, the registration may not be annulled because the person who has received the registration has been entitled to only a certain part of the plant breeder's right.

An action based on the fact that a plant variety has been registered for a person other than the person who is entitled thereto in accordance with the provisions of Article 2 may be brought only by the person who claims to be entitled to the variety. An action shall be brought within one year after the plaintiff has obtained knowledge of the registration and the other circumstances on which the action is based. If the variety holder acted in good faith when the variety was registered or when the plant breeder's right passed to him, an action may not be brought later than three years after the registration.

In other cases, an action may be brought by anyone who suffers injury from the registration, and, if it is required in the public interest, by an authority designated by the King in Council.

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Art. 32

If a plant variety has been registered for a person other than the person who is entitled to it by the provisions of Article 2, the court shall when an action is brought by the person who is entitled, transfer the registration to him. An action shall be brought within the period stated in the second paragraph of Article 31.

Art. 33

If a variety holder has not complied with an official notice from the National Plant Variety Board in accordance with the provisions of Article 24 and if such negligence constitutes an obstacle to trustworthy subsequent checking of the plant variety, the Board shall remove the variety from the Register.

If it is found that a registered plant variety has not retained the characteristic or characteristics which, when the registration was made distinguished the variety from other varieties, the National Plant Variety Board shall remove the variety from the Register.

Art. 34

If the variety holder declares in writing to the National Plant Variety Board that he waives the plant breeder's right, the Board shall remove the plant variety from the Register.

If a plant breeder's right is distrained upon or if there is a dispute before the court concerning transfer of registration, the variety may not be removed from the Register at the request of the variety holder as long as the distraint continues or the dispute has not been finally settled.

Art. 35

If a variety designation has been registered contrary

to this Act and if the reason still exists why registration should not be made, the National Plant Variety Board shall register a new denomination for the plant variety. The same rule applies if the registered denomination of a variety has manifestly been of a nature to mislead the public or has become contrary to public order or of a nature to give offence.

In a case such as is referred to in the first paragraph, a variety holder shall be given an opportunity to propose a new denomination.

The registered denomination of a variety for which the protection period has expired or the plant breeder's right has otherwise ceased, may at the request of the variety holder or for another reason be removed from the Plant Variety Register after the National Plant Variety Board has given consideration to the matter, if the denomination is no longer used.

Liability and obligation to provide compensation, etc.

Art. 36

If anyone infringes a plant breeder's right and does so intentionally, he shall be sentenced to a fine or to imprisonment for not more than six months.

A public indictment for an offence such as is referred to in the first paragraph may be presented only if the aggrieved party reports the offence for prosecution and if prosecution is required for particular reasons in the public interest.

Art. 37

A person who intentionally or through negligence infringes a plant breeder's right shall pay reasonable compensation for the utilization of the plant variety, as well as compensation for the further injury caused by the infringement. If the negligence is slight, the compensation can be adjusted.

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If anyone infringes a plant breeder's right without intention or negligence, he shall pay compensation for the utilization of the variety, if and in so far as this is reasonable.

An action regarding compensation for infringement of a plant breeder's right shall be brought within five years from the date upon which the injury occurred, at the risk that otherwise the right to compensation is forfeit.

Art. 38

At the request of the person who has suffered infringement of the plant breeder's right, the court can, in accordance with what is reasonable for the prevention of further infringement, decree that plant material with regard to which infringement exists shall be delivered in return for payment to the person who has suffered the infringement, or shall be destroyed. This rule does not apply to a person who in good faith has acquired the material or a special right to it and who has not himself infringed the plant breeder's right.

Material such as is referred to in the first paragraph may be confiscated if it can reasonably be assumed that an offence such as is referred to in Article 36 has been committed. The general provisions of the law with respect to confiscation in criminal cases are applicable in these circumstances.

Notwithstanding the provisions of the first paragraph the court can if so requested order that a holder of material such as is referred to in the first paragraph shall be entitled to have the disposal of the said material in return for a reasonable payment and on otherwise reasonable terms.

Art. 39

If anyone commercializes a plant variety such as is referred to in an application for registration, the provisions of this Act, regarding infringement of a plant breeder's right,

are correspondingly applicable if the application leads to registration. However, no liability may be imposed, and compensation for injury because of utilization that is carried on before the application has been published in accordance with the provisions of Article 15 may be determined only in accordance with the provisions of the second paragraph of Article 37.

The provisions of the third paragraph of Article 37 are not applicable if an action for compensation is brought not later than one year after the date of registration of the plant breeder's right.

Art. 40

If registration of a plant variety has been annulled by a judgement that has gained legal force, no penalty or order to pay compensation may be imposed or precautionary measure be enforced in accordance with the provisions of Articles 36 - 39.

If an action is brought regarding infringement of the plant breeder's right and if the person against whom the action is brought asserts that the registration should be annulled, the court shall upon his request declare the case to be in suspense until the question of annulment of the registration has undergone final examination. If no action is brought for this purpose, the court shall, when the case is declared in suspense, stipulate for him a certain period within which such action shall be brought.

Art. 41

A person who intentionally or through negligence infringes Article 22 shall be sentenced to a fine. He shall also provide compensation for injury caused. If the negligence is limited, no liability shall be imposed. The compensation can in such a case be adjusted.

Rules concerning legal procedure

Art. 42

A variety holder, or a person who on the basis of a licence may utilize a plant variety, can bring an action for a declaratory judgement on, whether because of the registration, he enjoys protection against another person, if uncertainty prevails regarding the circumstances and this is to his detriment.

Under the same terms, the person who carries on or who intends to carry on activities can bring an action against a variety holder for a declaratory judgement on whether any obstacle exists to the activity because of the registration.

If it is asserted in a case such as is referred to in the first paragraph that the registration should be annulled, the second paragraph of Article 40 shall be correspondingly applicable.

Art. 43

A person who wishes to bring action for annulment of registration of a plant variety, for transfer of registration or for the issue of a compulsory licence shall notify this to the National Plant Variety Board and inform each person who according to the Plant Variety Register holds a licence to utilize the variety. If a licensee wishes to bring an action for infringement of the plant breeder's right or for a declaratory judgement such as is referred to in the first paragraph of Article 42, he shall inform the variety holder thereof.

An obligation to give information in accordance with the provisions of the first paragraph will be deemed to have been fulfilled when information in a prepaid registered

letter has been mailed to the address noted in the Plant Variety Register.

If it is not shown when the action is brought that a notification or information has been made in accordance with the provisions of the first paragraph, the plaintiff shall be given time for this. If he fails to act within this time, no consideration may be given to his action.

Art. 44

If in accordance with the Code of Judicial Procedure there is no competent court of law for an action concerning better right to a plant variety, for the annulment of registration of a variety or for transfer of such registration, for a compulsory licence or for a declaratory judgement in accordance with the provisions of Article 42, action shall be brought before Stockholm District Court.

Art. 45

A copy of a judgement or final decision in a case such as is referred to in Articles 13, 29, 31, 32, 36 - 39 or 42 shall be sent to the National Plant Variety Board.

Special rules

Art. 46

A variety holder who is not resident in Sweden shall have an authorized representative domiciled in this country who has the right to receive service on his behalf of writs, summonses and other documents in cases and matters concerning a plant breeder's right, with the exception of summonses in criminal cases and of official notices for a party enjoining him to appear personally before a court of law. The authorized representative shall be notified to the Plant Variety Register and shall be noted therein.

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If a variety holder has not notified an authorized representative in accordance with the provisions of the first paragraph, service can be made instead by mailing him the document that is to be served, in a prepaid letter to his address as noted in the Plant Variety Register. If a full address is not noted in the Register, the document can be served by publicly posting it in the premises of the National Plant Variety Board. An announcement regarding the service shall be published in the official gazettes. The document shall be deemed to have been served when these conditions have been fulfilled.

Art. 47

Provided that reciprocity exists, the King in Council may decree that Article 10 or Article 46 shall not apply to an applicant or variety holder who is resident in a particular foreign state, or who has an authorized representative domiciled in that state who has been notified to the National Plant Variety Board and who has authority such as is referred to in the said Articles.

Art. 48

An appeal against a final decision of the National Plant Variety Board, in accordance with the provisions of this Act, other than an appeal such as is referred to in Article 18, shall be lodged with the National Board of Agriculture within two months from the date of the decision. The person who wishes to make an appeal shall within the same period pay a stipulated appeal-fee at the risk that otherwise the appeal will not be considered.

An appeal against a decision of the National Board of Agriculture shall be addressed to the King and lodged within two months from the date of the decision.

Art. 49

Fees in accordance with this Act will be determined by the King in Council or, with respect to fees for tests in accordance with the provisions of Article 16, by an authority designated by the King in Council. When the annual fees are to be decided, the King in Council may decree that no fee shall be payable for one or more of the first years.

Art. 50

The King in Council may decree that a plant variety for which registration is sought may be examined by an authority in another state or by an international institution, and that the person who applies for registration for a variety for which he has previously sought registration in another state shall be obliged to report what the authority in that state has informed him concerning the examination of the conditions for registration.

This Act enters into force on 1st July, 1971.

An application for registration of a plant variety which has been included in the national list of varieties during the period 1st July 1968 - 30th June 1971 shall, when the first paragraph 1 and the third paragraph of Article 3 are applied, be deemed to be made at the same time as the entry in the national variety list, if the application for registration is made within six months after this Act enters into force.

⌊End of Annex V;
Annex VI follows⌋

Swedish Law Gazette:
1971:393

Extract from
Royal Decree on Plant Breeders' Rights
enacted
at the Palace of Stockholm on May 27, 1971

Article 1

The Plant Breeders' Rights Act (1971:392) shall be applied to plant varieties belonging to the botanical genera and species enumerated in the Annex to this Decree.

Article 2

In addition to the persons mentioned in Article 2(1) and (2) of the Plant Breeders' Rights Act (1971:392), plant breeders' rights may be granted to the following persons:

- (i) a breeder who has created a plant variety in a foreign State party to the Convention of December 2, 1961, for the Protection of New Varieties of Plants, hereinafter referred to as a member State, or his successor in title;
- (ii) a breeder who is a national of, or has his domicile in, a member State and who in circumstances other than those mentioned in (i) above has created a plant variety outside Sweden, or his successor in title.

Article 8

(1) If a new variety has been submitted for protection in a member State, and if an application for protection of the same variety has been filed in Sweden within twelve months from the day when the submission was made in the said member State (priority period), the filing of the application in Sweden shall be considered---for the purposes of Article 3(2)(i) and (3) of the Plant Breeders' Rights Act (1971:392)--to have been made on the date on which the application was filed in the said member State. The same shall apply if the plant variety has been submitted for protection in another country by means of an application with respect to which the Plant Varieties Board considers that special reasons justify equal rights with an application made in a member State.

(2) In order to benefit from the priority granted by paragraph (1) the applicant must claim priority, expressing his claim in the application to the Swedish authority, and

- (i) within three months from the date of application in Sweden, present copies of the documents relating to the first application, duly certified by the authority which received that application;
- (ii) within four years counted from the date of expiry of the priority period, submit the additional documents and the material necessary for the judgement of the question of priority.

Article 12

Any person who applies for protection in Sweden with respect to a plant variety which he has formerly submitted for protection in another State, shall be obliged to give information as to the views expressed by the authority in that State concerning the examination of the conditions for protection.

Article 13

A variety denomination which has been registered or submitted for registration in a member State shall be registered in Sweden, regardless of Article 8(1) and (2) of the Plant Breeders' Rights Act (1971:392), unless for special reasons this is not considered expedient.

Article 29

The fees provided for in the Plant Breeders' Rights Act (1971:392) shall amount to the following sums:

	Kr.
Application fee (Article 7(5))	400
Objection fee (Article 19(1))	300
Annual fee (Article 23)	
if paid not later than the day of payment	500
if paid later than the day of payment	600
Objection fee (Article 48)	300
Annotation fee (Article 26)	25

Trial fees according to Article 16 of the Plant Breeders' Rights Act (1971:392) shall be laid down by the National Board of Agriculture.

Article 32

Matters relating to plant breeders' rights shall be inserted in a Gazette to be published by the Plant Varieties Board.

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This Decree shall enter into force:

- (i) with respect to Articles 2, 8 and 13: on the date to be fixed by the Crown,
- (ii) with respect to the other Articles: on July 1, 1971.

A. Agricultural plants

Agrostis spp.
 Alopecurus pratensis L.
 Avena byzantina K. Koch
 Avena sativa L.
 Beta vulgaris L. ssp. vulgaris var. altissima Döll
 Beta vulgaris L. ssp. vulgaris var. crassa Alef.
 Brassica napus L. var. oleifera Metzger
 Brassica napus L. var. napobrassica (L.) Rchb.
 Brassica nigra (L.) W. Koch
 Brassica oleracea L. ssp. acephala DC.
 Brassica rapa L. var. oleifera Metzger
 Brassica rapa L. var. rapifera Metzger
 Bromus arvensis L.
 Bromus inermis Leys.
 Camelina sativa (L.) Crantz
 Cannabis sativa L.
 Cynosurus cristatus L.
 Dactylis glomerata L.
 Festuca spp.
 Glycine max (L.) Merrill
 Helianthus annuus L.
 Hordeum vulgare L.
 Linum usitatissimum L.
 Lolium spp.
 Lupinus angustifolius L.
 Lupinus luteus L.
 Medicago spp.
 Ornithopus sativus Brot.
 Papaver somniferum L.
 Phalaris arundinacea L.
 Phaseolus vulgaris L.
 Phleum spp.
 Pisum sativum L.
 Poa spp.
 Secale cereale L.
 Sinapis alba L.
 Solanum tuberosum L.
 Trifolium hybridum L.
 Trifolium pratense L.
 Trifolium repens L.
 Triticum aestivum L.
 Triticum durum Desf.
 Vicia faba L. var. minor (Peterm.)
 Vicia sativa L.
 Vicia villosa Roth
 Zea mays L.

B. Horticultural Plants

1. Vegetables

Allium spp.
 Anethum graveolens L.
 Apium graveolens L.
 Asparagus officinalis L.
 Beta vulgaris ssp. vulgaris var. conditiva Alef.
 Brassica napus L. var. napobrassica (L.) Rchb.
 Brassica oleracea L.
 Capsicum annuum L.
 Cucumis melo L.
 Cucumis sativus L.
 Daucus carota L.
 Lactuca sativa L.
 Lycopersicon esculentum P. Mill.
 Pastinaca sativa L.
 Petroselinum crispum (P. Mill.) Nijm. ex Hill
 Phaseolus vulgaris L.
 Pisum sativum L.
 Raphanus sativus L. var. niger Pers.
 Raphanus sativus L. var. radícula Pers.
 Spinacia oleracea L.
 Vicia faba L. var. major Harz.
 Zea mays L.

2. Fruit trees and
bacciferous plants

Malus spp.
 Pyrus spp.
 Prunus spp.
 Fragaria spp.
 Ribes spp.
 Rubus spp.
 Vaccinium spp.
 Rootstocks for Malus, Pyrus,
 Prunus and Ribes

3. Ornamentals

Dianthus caryophyllus L.
 Phaseolus coccineus L.
 Rosa spp.

/End of Annex
 and of document/