



CAJ/53/5

ORIGINAL: English

DATE: August 4, 2006

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

**Fifty-Third Session
Geneva, April 6, 2006**

REPORT

adopted by the Administrative and Legal Committee

Opening of the Session

1. The Administrative and Legal Committee (CAJ) held its fifty-third session in Geneva on April 6, 2006, under the Chairmanship of Mr. Krieno Fikkert (Netherlands).
2. The list of participants is reproduced in Annex I to this report.
3. The session was opened by the Chair, who welcomed the participants.
4. The Chair informed the CAJ that Iceland had deposited its instrument of accession on April 3, 2006, and would become the sixty-first member of the Union on May 3, 2006.
5. The Chair confirmed that the report of the fifty-second session of the CAJ had been adopted by correspondence (document CAJ/52/5) and was available on the UPOV website. The Chair further informed the CAJ that the following change to paragraph 44 was made to the draft report (document CAJ/52/5 Prov.) at the request of the Delegation of Australia:

“44. The Delegation of Australia noted the comments made by the Delegation of the European Community about the discretionary nature of the recommendations and, on that basis, agreed to retain the text of Draft Explanatory Note 4(a) unchanged. The Delegations of ~~Australia~~ and Germany agreed to retain the text of Draft Explanatory Note 4(a) unchanged.”

Adoption of the Agenda

6. The CAJ adopted the agenda as presented in document CAJ/53/1.
7. The Chair invited the Chair of the Technical Committee (TC) to report on the forty-second session of the TC, which took place in Geneva from April 3 to 5, 2006. He noted that the Chair of the TC would make oral reports on the document regarding the “Situation in UPOV concerning the possible use of molecular markers in DUS examination” and on developments concerning TGP documents under items 3 and 6 of the agenda, respectively.
8. The Chair of the TC reported that the TC had considered document BMT Guidelines (proj.5) and had agreed to investigate the possibility of a practical exercise, involving a small number of crops, in the development of an exchangeable database. The TC had noted the developments concerning the possible use of molecular tools for variety identification in relation to the enforcement of plant breeders’ rights, technical verification and the consideration of essential derivation. The TC had agreed to the establishment of a crop subgroup for vegetatively propagated varieties, which was expected to meet in conjunction with the sessions of the Working Group on Biochemical and Molecular Techniques and DNA Profiling in Particular (BMT), to consider horizontal matters concerning vegetatively propagated crops. It was agreed that the existing Crop Subgroups for Potato, Rose and Sugarcane might continue to meet as individual crop subgroups, in particular in conjunction with the sessions of the relevant Technical Working Parties (TWPs), where considered useful. The TC had agreed to the extension of the Crop Subgroup for Wheat to cover both wheat and barley.
9. The Chair of the TC informed the CAJ that the TC had noted the comments made by the TWPs to the CAJ and the developments in the CAJ concerning variety denomination classes. She further reported that the TC had discussed the results of the model studies concerning the publication of variety descriptions and the comments of the TWPs.
10. The Chair of the TC reported that the TC had adopted a total of 23 Test Guidelines and noted that the TWPs planned to work on a total of 63 Test Guidelines in 2006 (25 revisions and 38 new Test Guidelines). The TC had considered the updated list of genera and species for which authorities have practical experience in the examination of DUS and heard that the number of genera and species for which members of the Union had practical experience had increased from 1,721 in 2005 to 1,906 in 2006.
11. The Chair of the TC informed the CAJ that the proposed draft agenda for the forty-third session of the TC to be held in Geneva in 2007 followed the same agenda as for April 2006 session with the addition of an item for “Applications for breeders’ rights covering a combination of lines”, which might give rise to issues of relevance for the CAJ.
12. The representative of the International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA) welcomed the establishment of a crop subgroup for vegetatively propagated varieties and noted that its first meeting might take place in conjunction with the BMT session of November 23 to 26, 2006, in Seoul, Republic of Korea.

Molecular Techniques

13. The Chair recalled paragraph 22 of document CAJ/52/5, where the CAJ had noted that, on the basis of comments in the CAJ, the document on molecular techniques, contained in the Annex to document CAJ/50/4, required a substantial editorial reworking. It had agreed that the comments of the CAJ should be reported to the TC, which could decide whether to undertake the reworking of the document.

14. The Chairperson of the TC made an oral report on the document “Situation in UPOV concerning the possible use of molecular markers in DUS examination” (document TC/40/9 Add.). She informed the CAJ that the TC had discussed document TC/40/9 Add. (presented to the CAJ as the Annex to document CAJ/50/4) and the comments made in the fifty-second session of the CAJ, held on October 24, 2005, on that document. The TC had concluded that it would not be appropriate to undertake a reworking of the document. Instead, it had reaffirmed its support for the presentation of the situation, set out in documents TC/38/14-CAJ/45/5 and TC/38/14 Add.-CAJ/45/5 Add., which presented the proposals developed in the *Ad hoc* Crop Subgroups, the recommendations of the *Ad hoc* Subgroup of Technical and Legal Experts on Biochemical and Molecular Techniques (BMT Review Group) concerning those proposals and the opinion of the TC and the CAJ regarding the recommendations of the BMT Review Group. In addition, it had considered that any proposals to reconsider the situation in UPOV concerning the possible use of molecular markers in DUS examination should be referred to the BMT Review Group.

15. The CAJ took note of the conclusion of the TC that it would not be appropriate to rework document TC/40/9 Add. and the reaffirmation of the support of the TC for the presentation of the situation as set out in documents TC/38/14-CAJ/45/5 and TC/38/14 Add.-CAJ/45/5 Add.

Draft Explanatory Notes on Variety Denominations under the UPOV Convention

16. The Vice Secretary-General introduced documents CAJ/53/2 (Draft explanatory notes on variety denominations under the UPOV Convention) and CAJ/53/2 Add. (Addendum to Draft explanatory notes on variety denominations under the UPOV Convention), a document prepared by the Office of the Union on the basis of comments received from the Delegation of Australia on March 14, 2006. The Vice Secretary-General explained that due to some difficulties with the internet communications of UPOV, the submission by the Delegation of Australia did not reach the Office of the Union in time to be reflected in document CAJ/53/2.

17. The Delegation of the European Community said that it had no difficulties with the text of Annex II to document CAJ/53/2. The Delegation noted that the rules of the European Community for the denominations differed in very few respects from the recommendations in Annex II to document CAJ/53/2, but taking into account the non-binding nature of the document, it was open to consider possible amendments as proposed by the Delegation of Australia in document CAJ/53/2 Add.

Paragraph 1 of Annex II to document CAJ/53/2

18. The Delegation of the United States of America recommended that the second sentence under Explanatory Note 1.2 should be modified in line with the footnote in order to clarify that, where a name is registered as a trademark, the use of the same name as a variety

denomination may transform the trademark into a generic name. In such a case, the trademark may become liable for cancellation.

19. The Delegation of Argentina agreed with the need for the modification requested by the Delegation of the United States of America and explained that a breeder who was the holder of a trademark that may be used as a variety denomination, was aware of the risk he was taking by allowing the transformation of his trademark into a generic name.

20. The Delegation of the European Community also expressed its support for the comments made by the Delegations of Argentina and the United States of America and explained that, under the European Community system, it was the breeder that bore the risk involved in using a trademark as a variety denomination.

21. The CAJ agreed that the second sentence of Explanatory Note 1.2 should be modified in line with footnote 3.

Paragraph 2 of Annex II to document CAJ/53/2

22. The representative of the International Seed Federation (ISF) explained that, in order for inbred lines to be a suitable example of what might be considered to be an established practice within a limited circle of specialists, the term “marketed” should be replaced by “used” in Explanatory Note 2.2.2(a).

23. The Delegation of the United States of America expressed its support of the suggestion made by the representative of ISF.

24. The CAJ agreed that Explanatory Note 2.2.2(a) should be amended as follows:

“(a) for varieties ~~marketed~~ used within a limited circle of specialists, the established practice should reflect that specialist circle (e.g. inbred lines);”

25. In relation to Explanatory Note 2.2.2(b), the CAJ agreed with the proposal in paragraph 2 of document CAJ/53/2 Add. to amend the subparagraph as follows:

“(b) accepted market practices for particular variety types (e.g. hybrids) and particular species (e.g. Medicago, Helianthus).”

26. In relation to Explanatory Note 2.3.1(b), the Delegation of the European Community considered that the proposal in paragraph 4 of document CAJ/53/2 Add. was already covered by the existing text. The Delegation explained that, if a variety was large and white, it would not have a problem in accepting the denomination “large white”.

27. The Delegation of the United States of America expressed its support of the proposal in paragraph 4 of document CAJ/53/2 Add., because it considered that the additional explanation added to the understanding of the text.

28. The Delegation of Romania expressed its agreement with the intervention of the Delegation of the European Community.

29. The representative of CIOPORA considered that “large white” as a denomination for a variety of chrysanthemum would be confusing.

30. The Delegations of Argentina and Chile were in favor of accepting both examples “Sweet” and “Large white” under Explanatory Note 2.3.1(b).

31. The Chair recalled the non-binding nature of the recommendations and suggested the inclusion of the additional text and examples if they were considered to be useful.

32. The CAJ agreed to amend the text of Explanatory Note 2.3.1(b) as follows:

“(b) refer to specific characteristics of the variety in such a way that the impression is created that only the variety possesses them, whereas in fact other varieties of the species in question also have or may have the same characteristics; for example where the denomination consists solely of descriptive words that describe attributes of the variety that other varieties in the species may also possess.”

“Example 1: ‘Sweet’ for a fruit variety

“Example 2: ‘Large white’ for a variety of chrysanthemum”

33. The Delegation of China referred to Explanatory Note 2.3.3(a) and explained that, in the Chinese language, one character could be understood as one word, so a difference of one character would result in a completely different denomination.

34. The CAJ agreed to delete the terms “one character” in Explanatory Note 2.3.3(a) and, consequently, Explanatory Note 2.3.3(a) would be amended as follows:

“(a) As a general recommendation, a difference of only one letter, ~~one character,~~ or one number may be considered to be liable to mislead or cause confusion concerning the identity of the variety ...”

35. The CAJ agreed to the proposal in paragraph 5 of document CAJ/53/2 Add. to delete the text “‘Anne’ and ‘Anna’ could cause confusion” under Explanatory Note 2.3.3(a)(i) resulting in the following amendments:

“Example 1: in the English language, ‘Harry’ and ‘Larry’ would not cause confusion; However, ~~“Anne” and “Anna” could cause confusion~~ ‘Bough’ and ‘Bow’ might also cause confusion (in phonetic terms);”

36. In relation to the proposal concerning paragraph 8 of document CAJ/53/2 Add. for Explanatory Note 2.3.3(c) with regard to the re-use of denominations, the representative of ISF preferred the existing wording and considered that the proposed amendment would be impossible to implement, thereby introducing legal insecurity for the users of the system.

37. The representative of CIOPORA expressed support of the intervention made by the representative of ISF and provided the example of fruit trees and garden roses cultivated in private gardens as examples of the difficulty in deciding that a variety was no longer in cultivation. In practice, it would be difficult for the authority to find the information in order to reach a conclusion that the variety was no longer in cultivation.

38. The Delegation of Canada expressed its support of the intervention made by the representative of ISF.

39. The Delegation of Australia explained that the proposed text under paragraph 8 of document CAJ/53/2 Add. reflected the guidance and examples provided under Article 27.2 of the International Code of Nomenclature for Cultivated Plants (ICNCP).
40. The Delegation of France expressed its support for the existing version of Explanatory Note 2.3.3(c) in Annex II of document CAJ/53/2.
41. The Delegation of Colombia referred to its own policy and explained that in Colombia the re-use of denominations was not accepted and there were no exceptions to that rule.
42. The CAJ agreed to retain the text in Explanatory Note 2.3.3(c) as set out in Annex II to document CAJ/53/2.
43. Discussions took place in relation to the proposal under paragraph 9 in document CAJ/53/2 Add. concerning the example under Explanatory Note 2.3.4.
44. The Delegation of the European Community considered that, even in those cases where the breeder agreed, it would still be misleading to allow the use of a breeder's name in the denomination of a variety bred by a different breeder.
45. The Delegation of Mexico noted that, in practice, not only did the use of the name of the breeder indicate the identity of the breeder, but abbreviations might also indicate the identity of the breeder.
46. The Delegation of Argentina explained that, in the context of a breeder granting exclusive licenses, the authority in Argentina did not accept a change of the name of the breeder incorporated in the denomination. The licensee could add his name to the label, but was not permitted to change the name of the breeder incorporated in the denomination, even with the agreement of the licensor/breeder.
47. The Delegation of South Africa considered that in situations where a variety denomination is proposed in order to honor another breeder, the full name of the breeder would be incorporated, not only a prefix or abbreviation.
48. The Delegation of the United States of America expressed concern at any broadening of the examples, the purpose of which was to clarify the provision in the Convention.
49. The Chair wondered whether the example might itself introduce confusion and suggested consideration of its deletion.
50. The Delegations of France and Spain agreed with the proposal of the Chair to delete the example.
51. The CAJ agreed to present Explanatory Note 2.3.4 "Identity of the Breeder" as reproduced in Annex II to document CAJ/53/2 without the example, resulting in the following amendment:

“The variety denomination should not mislead or cause confusion concerning the identity of the breeder.”

“Example: a variety denomination incorporating the name of a breeder, if he is not the breeder of the variety.”

52. The representative of ISF agreed with the aim of the proposal under paragraph 10 of document CAJ/53/2 Add. to simplify Explanatory Note 2.4.2 in order to avoid repetition, but noted that the terms “in general, the re-use of denominations is discouraged but” had been added to the text.

53. The Chair explained that the additional words reproduced the principle already incorporated under Explanatory Note 2.3.3(c) in order for the deletion under Explanatory Note 2.4.2 to be phrased in an appropriate manner.

54. The CAJ agreed to the simplification of Explanatory Note 2.4.2 as proposed in document CAJ/53/2 Add., resulting in the following amendment:

“2.4.2 The following explanation is for the purposes of variety denominations and without prejudice to the meaning of a ‘variety whose existence is a matter of common knowledge’ in Article 7 of the 1991 Act and in Article 6(1)(a) of the 1978 Act and the 1961 Convention. In general, the re-use of denominations is discouraged but, under exceptional circumstances (see section 2.3.3(c)), ~~if a variety (the “old” variety) has ceased to exist and the re-use of the denomination for a new variety is not liable to mislead or to cause confusion concerning the identity and/or the characteristics of the new variety,~~ the denomination of an old variety could, in principle, be registered for a new variety.”

55. The CAJ agreed to add a reference to the “General notice and disclaimer” of the UPOV-ROM in Explanatory Note 2.5.3, as proposed in paragraph 12 of document CAJ/53/2 Add., resulting in the following amendment:

“2.5.3. It is recommended that the UPOV Plant Variety Database (“UPOV-ROM”) is used in the process to check if, in the territory of any member of the Union, the proposed denomination is different from denominations of existing varieties of the same genus or, if appropriate, variety denomination class (see Appendix III). Attention is drawn to the ‘General Notice and Disclaimer’ of the UPOV-ROM to ensure that the information contained in the UPOV-ROM is considered in an appropriate way.”

56. The Delegation of Belgium proposed the establishment of a list of focal points on variety denomination matters of the authorities of the members of UPOV that could be updated regularly in order to facilitate exchange of information on variety denomination matters.

57. The Vice Secretary-General offered to prepare a circular inviting the representatives of the members of the Union to the Council to advise if the contact details for requesting information on variety denomination matters should be: (a) general contact details of the Plant Variety Protection Office as provided in the UPOV website or (b) the contact details of a particular official in the Plant Variety Protection Office of the member concerned. Based on the replies received to that circular, a list could be established and posted in the first restricted area of the UPOV website.

58. The CAJ endorsed the proposal made by the Delegation of Belgium, and welcomed the offer made by the Vice Secretary-General.

Appendix II to Annex II to document CAJ/53/2

59. In relation to Appendix II to document CAJ/53/2, “Model reply for observations on proposed variety denominations submitted to another member of the Union”, the Delegation of South Africa noted that the CAJ had requested that a new box “The applicant has changed the proposed denomination for the variety” be added. It wondered whether there was a particular reason to use the term “withdrawn” instead of “changed”.

60. In reply to the comment made by the Delegation of South Africa, the Chair explained that a change of a proposed denomination would imply that the initial denomination was withdrawn and, in relation to the new proposed denomination, the examination procedure should start from the beginning.

61. The Delegation of South Africa was satisfied by the explanation provided by the Chair.

Appendix III to Annex II to document CAJ/53/2

62. In relation to the proposal in paragraph 13 of document CAJ/53/2 Add., the CAJ agreed to incorporate the following footnote in relation to Classes 203 and 204 of Appendix III to Annex II of document CAJ/53/2:

“Classes 203 and 204 are not solely established on the basis of closely related species.”

63. In order to facilitate the finalization of a text of the Draft Explanatory Notes to be submitted for adoption by the Council at its fortieth session on October 19, 2006, the CAJ agreed that an updated version of the Draft Explanatory Notes, incorporating the changes agreed by the CAJ at its fifty-third session, would be incorporated in Annex II of the draft report of that session (Annex II of document CAJ/53/5 Prov.).

Development of Information Materials Concerning the UPOV Convention

64. The Vice Secretary-General introduced document CAJ/53/3.

65. The Delegation of South Africa requested that the expert from South Africa to be included in the Administrative and Legal Committee Advisory Group (CAJ-AG) in the Annex of document CAJ/53/3 should be Mr. Julian Jafta, Senior Manager, Directorate: Genetic Resources Management, National Department of Agriculture.

66. The Delegation of the Czech Republic noted that, in order for the CAJ-AG to assist the CAJ in the elaboration of high quality documents, the composition of the CAJ-AG should be well balanced. It considered that the composition as presented in the Annex to document CAJ/53/3 was well balanced except that an expert or experts from Central European members of the Union were missing. It observed that there was a difference between being a member of the CAJ-AG and participating on an *ad hoc* basis as proposed in paragraph 7 of document CAJ/53/3.

67. The Vice Secretary-General recalled that it had been agreed by the CAJ (document CAJ/52/4 and paragraph 62 of document CAJ/52/5), that the Office of the Union, in consultation with the Chair of the CAJ, would identify experts to participate in the Advisory Group. Therefore, the Office of the Union in consultation with the Chair of the CAJ, could give further consideration to the proposal made by the Delegation of the Czech Republic.

68. The Delegation of the European Community expressed its support for the approach set out in document CAJ/53/3 and encouraged the CAJ-AG to function in an open and transparent manner.

69. The Delegation of the Netherlands requested an explanation on the priorities of the CAJ-AG in relation to the preparation of documents for the CAJ concerning information materials on the UPOV Convention.

70. The Vice Secretary-General referred to paragraph 6 of document CAJ/53/3, which identified the list of provisions of the UPOV Convention, agreed by the CAJ, where materials were most urgently required.

71. The Chair recalled that the CAJ-AG would report regularly to the CAJ on the progress of its work. If the CAJ decided to modify the priorities or to add additional provisions, it could direct the CAJ-AG accordingly.

72. The Delegation of the European Community welcomed the explanation provided by the Vice Secretary-General and the Chair that the priorities would be defined by the CAJ-AG within the list of priorities agreed by the CAJ, unless otherwise decided by the CAJ.

TGP Documents

73. The Chair of the TC informed the CAJ that the TC had discussed a number of TGP documents. In particular, it had discussed TGP/4 “Constitution and Management of Variety Collections”, TGP/9 “Examining Distinctness” and TGP/10 “Examining Uniformity”, and found that there was a good level of agreement on the drafts presented. It was hoped that the CAJ would consider drafts of TGP/4, TGP/9 and TGP/10 at its fifty-fourth session, on October 16 and 17, 2006, in order that the TC would have the possibility to finalize those documents in April 2007.

74. The CAJ took note of the oral report made by the Chair of the TC.

Enforcement of Plant Breeders’ Rights

75. The Vice Secretary-General introduced document CAJ/53/4.

76. The Delegation of the European Community reported that a Seminar had been organized in Brussels in October 2005 on the enforcement of plant breeders’ rights for officials, legal experts and breeders of the European Union. A new seminar had been planned for May 2006 in Poland to look at enforcement of plant breeders’ rights in Central European countries and in a number of the new European Community member States. The European

Community had adopted two Directives in 2004 relevant for the enforcement of plant breeders' rights, which included measures that customs authorities might take in relation to products that were suspected of infringing plant breeders' rights.

77. The CAJ took note of the contents of document CAJ/53/4 and noted that the outcome of the deliberations on the enforcement of plant breeders' rights by the Consultative Committee at its seventy-first session on April 7, 2006, would be reported to the CAJ at its fifty-fourth session on October 16 and 17, 2006.

UPOV Information Databases

78. The Technical Director provided an update on developments concerning the GENIE database, the UPOV Code System and the Plant Variety Database (UPOV-ROM). He reported that the GENIE database would include the updated variety denomination classes according to any revision of document UPOV/INF/12 Rev.

79. In relation to the Plant Variety Database (UPOV-ROM), the Technical Director reported that the Office of the Union planned to launch a program encouraging all contributors to start using the UPOV codes in their data and encouraging all members of the Union who had not contributed data to start doing so. The starting point for that program would be the following synchronized actions:

(a) the posting on the first restricted area of the UPOV website of spreadsheets containing all UPOV codes;

(b) the posting on the first restricted area of the UPOV website of a data submission table allowing data to be provided without the use of TAG format, together with guidance notes in all UPOV languages on how to use the data submission table. A demonstration to provide guidance on how to submit data in the table was made in conjunction with the TC on April 5, 2006;

(c) a circular to be issued inviting contributors to contact the Office of the Union if they require assistance in starting to use the UPOV codes; and

(d) another circular to be issued to members of the Union who do not contribute data to the UPOV-ROM, or who do not contribute data on a regular basis, informing them of the introduction of the data submission table and inviting them to contact the Office of the Union if they require particular assistance in submitting data.

80. To further emphasize the status of the data in the UPOV-ROM, the Office of the Union had recently updated the general notice and disclaimer and placed it at the beginning of the User Guide.

81. As regards the development of a web-based plant variety database, the Office of the Union would investigate the potential for the development of a common searching platform to be provided for certain databases relevant for variety denomination searching purposes. The Office of the Union planned to make a report on that matter at the forty-third session of the TC in April 2007.

82. The CAJ took note of the oral report made by the Technical Director on UPOV information databases.

Publication of Variety Descriptions

83. The Vice Secretary-General made an oral report on the meeting of the *Ad hoc* Working Group on the Publication of Variety Descriptions (WG-PVD) which took place on April 5, 2006. He reported that 11 participants took part in the meeting which covered the following agenda items: Report of progress in the model studies and discussions / conclusions of the Technical Working Parties (document TC/42/9); Report of discussions in the TC (oral report) and the recommendations of the WG-PVD.

84. The Vice Secretary-General reported that the recommendations agreed by the WG-PVD were as follows:

(a) to invite the TWPs and the TC to develop a list of criteria for the use of descriptions obtained from different locations and sources (the experts from France and Germany would provide some key points as a starting point for discussion);

(b) to invite the TWPs to consider crops where those criteria might be satisfied such that the use of descriptions obtained from different locations and sources would be useful. For those selected crops, to investigate the value of the existing grouping / asterisked characteristics, or possibly other characteristics, in the grouping of varieties based on descriptions from different locations and sources (a “reality” check).

85. The CAJ took note of the oral report made by the Vice Secretary-General on the meeting of the WG-PVD.

Program for the fifty-fourth session

1. Opening of the session
2. Adoption of the agenda
3. Explanatory notes on variety denominations under the UPOV Convention
4. TGP documents (documents TGP/4/1 “Constitution and Management of Variety Collections”, TGP/9/1 “Examining Distinctness”, TGP/10/1 “Examining Uniformity”)
5. Molecular techniques
6. Development of information materials concerning the UPOV Convention
7. Enforcement of plant breeders’ rights

8. UPOV information databases
9. Program for the fifty-fifth session
10. Closing of the session

86. The present report has been adopted by correspondence.

[Annexes follow]

ANNEXE I / ANNEX I / ANLAGE I / ANEXO I

LISTE DES PARTICIPANTS / LIST OF PARTICIPANTS /
TEILNEHMERLISTE / LISTA DE PARTICIPANTES

I. MEMBRES / MEMBERS / VERBANDSMITGLIEDER / MIEMBROS

(dans l'ordre alphabétique des noms français des membres/
in the alphabetical order of the names in French of the members/
in alphabetischer Reihenfolge der französischen Namen der Mitglieder/
por orden alfabético de los nombres en francés de los miembros)

AFRIQUE DU SUD / SOUTH AFRICA / SÜDAFRIKA / SUDÁFRICA

Joan SADIE (Mrs.), Principal Agricultural Food and Quarantine Officer, Directorate: Genetic Resources Management, Private Bag X 5044, Stellenbosch 7599 (tel.: +27 21 809 1648 fax: +27 21 887 2264 e-mail: JoanS@nda.agric.za)

ALLEMAGNE / GERMANY / DEUTSCHLAND / ALEMANIA

Udo VON KRÖCHER, Präsident, Bundessortenamt, Osterfelddamm 80, 30627 Hannover (tel.: +49 511 956 6603 fax: +49 511 956 6904 e-mail: Postfach.Praesident@bundessortenamt.de)

Michael KÖLLER, Justiziar, Bundessortenamt, Osterfelddamm 80, 30627 Hannover (tel.: +49 511 9566624 fax: +49 511 563362 e-mail: michael.koeller@bundessortenamt.de)

ARGENTINE / ARGENTINA / ARGENTINIEN

Carmen Amelia M. GIANNI (Sra.), Directora de Asuntos Jurídicos, Instituto Nacional de Semillas (INASE), Paseo Colón 922, 3 piso, of. 308/310, 1063 Buenos Aires (tel.: +54 11 4349 2430 fax: +54 11 4349 2421 e-mail: cgianni@inase.gov.ar)

Marcelo LABARTA, Director de Registro de Variedades, Instituto Nacional de Semillas (INASE), Paseo Colón 922, 3 piso, of. 347, 1063 Buenos Aires (tel.: +54 11 4349 2445 fax: +54 11 4349 2444 e-mail: mlabarta@inase.gov.ar)

Jorge R. TORRES, Registro de Variedades, Instituto Nacional de Semillas (INASE), Av. Paseo Colón 922, 3 piso, of. 347, 1063 Buenos Aires (tel.: +54 11 4349 2445 fax: +54 11 4349 2444 e-mail: jtorres@inase.gov.ar)

Inés FASTAME (Srta.), Secretario de Embajada, Misión Permanente, Case postale 536, 1215 Ginebra 15, Suiza (tel.: +41 22 929 8600 e-mail: ines.fastame@ties.itu.int)

AUSTRALIE / AUSTRALIA / AUSTRALIEN

Doug WATERHOUSE, Registrar, Plant Breeder's Rights Office, IP Australia, P.O. Box 200, Woden ACT 2606 (tel.: +61 2 6283 7981 fax: +61 2 6283 7999
e-mail: doug.waterhouse@ipaaustralia.gov.au)

Fatima BEATTIE (Mrs.), Commissioner of Patents, IP Australia, P.O. Box 200, Woden ACT 2606 (tel.: +61 2 6283 2002 fax: +61 2 6283 7999
e-mail: fatima.beattie@ipaaustralia.gov.au)

AUTRICHE / AUSTRIA / ÖSTERREICH

Heinz-Peter ZACH, Leiter des Referates III 9c für Saatgut und Sortenwesen, Bundesministerium für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft, Stubenring 12, A-1010 Wien (tel.: +43 1 711 002795 fax: +43 1 513 8722
e-mail: heinz-peter.zach@bmlfuw.gv.at)

BELGIQUE / BELGIUM / BELGIEN / BÉLGICA

Camille VANSLEMBROUCK (Mme), Ingénieur, Office de la propriété intellectuelle, North Gate III, 16, blvd. du Roi Albert II, B-1000 Bruxelles (tel.: +32 2 277 8275
fax: +32 2 277 5262 e-mail: camille.vanslebrouck@mineco.fgov.be)

BRÉSIL / BRAZIL / BRASILIEN / BRASIL

Daniela DE MORAES AVIANI (Mrs.), Coordinator, National Plant Variety Protection Service (SNPC), Ministry of Agriculture, Livestock and Supply, Esplanada dos Ministérios, Bloco 'D', Anexo A, Sala 249, Brasilia D.F. 70043-900 (tel.: +55 61 3218 2549
fax: +55 61 3224 2842 e-mail: daniela@agricultura.gov.br)

BULGARIE / BULGARIA / BULGARIEN

Panayot DIMITROV, Head, Chemistry, Biotechnology, Plant Varieties and Animal Breeds Department, Patent Office, 52B, Dr. G.M. Dimitrov. Blvd, BG-1040 Sofia (tel.: +359 2 9701466 fax: +359 2 8708325 e-mail: pdimitrov@bpo.bg)

Todor Hristov GADEV, General Secretary, Executive Agency for Variety Testing, Field Inspection and Seed Control, Ministry of Agriculture and Forestry, 125 Tzarigradsko Street, Block 1, BG-1113 Sofia (tel.: +359 2 870 4191
fax: +359 2 870 6517 e-mail: gadev@iasas.government.bg)

CANADA / KANADA / CANADÁ

Valerie SISSON (Ms.), Commissioner, Plant Breeders' Rights Office, Canadian Food Inspection Agency (CFIA), 2, Constellation Crescent, Ottawa, Ontario K1A 0Y9
(tel.: +1 613 225 2342 fax: +1 613 228 4552 e-mail: vsisson@inspection.gc.ca)

Sandy MARSHALL (Ms.), Examiner, Plant Breeders' Rights Office, Canadian Food Inspection Agency (CFIA), 8th Floor - 2 Constellation Crescent, Ottawa, Ontario K1A 0Y9
(tel.: +1 613 225 2342, ext. 7525 fax: +1 613 228 4552 e-mail: smarshall@inspection.gc.ca)

CHILI / CHILE

Juan Carlos SILVA POBLETE, Director, División de Semillas, Servicio Agrícola y Ganadero (SAG), Ministerio de Agricultura, Avda. Bulnes 140, piso 2, Casilla 1167-21, Santiago (tel.: +56 2 345 1560 fax: +56 2 697 2179 e-mail: juancarlos.silva@sag.gob.cl)

Enzo CERDA, Jefe, Subdepartamento: Registro de Variedades, Servicio Agrícola y Ganadero (SAG), Ministerio de Agricultura, Avda. Bulnes 140, piso 2, Casilla 1167-21, Santiago (tel.: +56 2 345 1565 fax: +56 2 697 2179 e-mail: enzo.cerda@sag.gob.cl)

CHINE / CHINA

LI Dongsheng, Vice President, Office for the Protection of New Varieties of Plants, State Forestry Administration, 18 Hepengli East Street, 100714 Beijing (tel.: +86 10 84238705 fax: +86 10 64213084 e-mail: lidongsheng@cnpvp.net)

ZHOU Jianren, Division Director, Office for the Protection of New Varieties of Plants, State Forestry Administration, 18 Hepingli East Street, Beijing 100714 (tel.: +86 10 84239104 fax: +86 10 8423 8883 e-mail: webmaster@cnpvp.net)

SONG Min, Senior Researcher, Department for Science and Technology, Ministry of Agriculture, 11 Nongzhaiguan Nahli, Nandajie, 100081 Beijing (tel.: +86 10 6891 9634 fax: 86 10 6891 9634 e-mail: songm@caas.net.cn)

ZHENG Yongqi, Research Professor, Forestry Institute, China Academy of Forestry, Beijing 10091 (tel.: +86 10 6288 8565 fax: +86 10 6287 2015 e-mail: zhengyq@caf.ac.cn)

ZHANG Baoyu, Project Administrator, International Cooperation Department, State Intellectual Property Office (SIPO), P.O. Box 8020, Beijing 100088 (tel.: +86 10 6208 3488 fax: +86 10 6201 9615 e-mail: zhangbaoyu@sipo.gov.cn)

COLOMBIE / COLOMBIA / KOLUMBIEN

Ana Luisa DÍAZ JIMÉNEZ (Sra.), Coordinador Nacional, Derechos de Obtentor de Variedades y Producción de Semillas, Instituto Colombiano Agropecuario (ICA), Calle 37, # 8-43, Piso 4, Bogotá D.C. (tel.: +57 1 232 8643 fax: +57 1 232 4697 e-mail: obtentores.semillas@ica.gov.co)

COMMUNAUTÉ EUROPÉENNE / EUROPEAN COMMUNITY / EUROPÄISCHE
GEMEINSCHAFT / COMUNIDAD EUROPEA

Jacques GENNATAS, Conseiller auprès du Directeur général adjoint, Direction générale santé et protection des consommateurs, Commission européenne, 232, rue Belliard, Office: B232-9/4, 1040 Bruxelles, Belgique (tel.: +32 2 295 9713 fax: +32 2 296 9399 e mail: jacques.gennatas@cec.eu.int)

Bart KIEWIET, President, Community Plant Variety Office (CPVO), 3, boulevard Maréchal Foch, B.P. 2141, 49021 Angers Cedex 02, France (tel.: +33 2 4125 6412 fax: +33 2 4125 6410 e-mail: kiewiet@cpvo.eu.int)

Martin EKVAD, Legal Advisor, Community Plant Variety Office (CPVO), 3, boulevard Maréchal Foch, B.P. 62141, 49021 Angers Cedex 02, France (tel.: +33 2 4125 6415 fax: +33 2 4125 6410 e-mail: ekvad@cpvo.eu.int)

Dirk THEOBALD, Head of the Technical Unit, Community Plant Variety Office (CPVO), 3, boulevard Maréchal Foch, B.P. 62141, 49021 Angers Cedex 02, France (tel.: +33 2 4125 6442 fax: +33 2 4125 6410 e-mail: theobald@cpvo.eu.int)

CROATIE / CROATIA / KROATIEN / CROACIA

Ružica ORE-JURIĆ (Mrs.), Head of Plant Variety Protection and Registration, Institute for Seeds and Seedlings, Vinkovacka cesta 63c, HR-31000 Osijek (tel.: +385 31 275 715 fax: +385 31 275 701 e-mail: r.ore@zsr.hr)

Andreja MARTONJA-HITREC (Ms.), Senior Advisor, Ministry of Agriculture, Forestry and Water Management, Ul. grada Vukovara 78, HR-10 000 Zagreb (tel.: +385 1 610 6632 fax: +385 1 610 9202 e-mail: andreja.martonja@mps.hr)

DANEMARK / DENMARK / DÄNEMARK / DINAMARCA

Heidi ELBERLING (Mrs.), Scientific Adviser, The Danish Plant Directorate, Ministry of Food, Agriculture and Fisheries, Skovbrynet 20, DK-2800 Lyngby (tel.: +45 452 63731 fax: +45 452 63617 e-mail: hel@pdir.dk)

ÉQUATEUR / ECUADOR

Carlos JERVES ULLAURI, Director Nacional de Obtenciones Vegetales, Instituto Ecuatoriano de la Propiedad Intelectual (IEPI), República 396 y Almagro, Edificio Forum 300, Casilla Postal 89-62, Quito (tel.: +593 2 2508 000 fax: +593 2 2508 027 e-mail: cjerves@iepi.gov.ec)

ESPAGNE / SPAIN / SPANIEN / ESPAÑA

Luis SALAICES, Jefe de Área del Registro de Variedades, Oficina Española de Variedades Vegetales (OEVV), Ministerio de Agricultura, Pesca y Alimentación (MAPA),
Calle Alfonso XII, No. 62, E-28014 Madrid (tel.: +34 91 3476712 fax: +34 91 3476703
e-mail: luis.salaices@mapa.es)

ESTONIE / ESTONIA / ESTLAND

Pille ARDEL (Mrs.), Head, Variety Control Department, Plant Production Inspectorate,
Vabaduse sq. 4, EE-71020 Viljandi (tel.: +372 433 3946 fax: +372 433 4650
e-mail: pille.ardel@plant.agri.ee)

Renata TSATURJAN (Ms.), Chief Specialist, Plant Production Bureau, Ministry of
Agriculture, 39/41 Lai Street, EE-15056 Tallinn (tel.: +372 625 6507 fax: +372 625 6200
e-mail: renata.tsaturjan@agri.ee)

ÉTATS-UNIS D'AMÉRIQUE / UNITED STATES OF AMERICA /
VEREINIGTE STAATEN VON AMERIKA / ESTADOS UNIDOS DE AMÉRICA

Karen M. HAUDA (Mrs.), Attorney-Advisor, Office of International Relations,
U.S. Patent and Trademark Office (USPTO), Mail Stop International Relations,
P.O. Box 1450, Alexandria VA 22313-1450 (tel.: +1 571 272 9300 ext. 29
fax: +1 571 273 0085 e-mail: karen.hauda@uspto.gov)

Paul M. ZANKOWSKI, Commissioner, Plant Variety Protection Office, USDA National
Agricultural Library (NAL), Room 400, 10301, Baltimore Avenue,
Beltsville MD 20705 - 2351 (tel.: +1 301 504 5291 fax: +1 301 504 5581
e-mail: paul.zankowski@usda.gov)

FINLANDE / FINLAND / FINNLAND / FINLANDIA

Arto VUORI, Director, Plant Variety Rights Office, Ministry of Agriculture and Forestry,
Hallituskatu 3 A, P.O. Box 30, FIN-00023 Government (tel.: +358 9 160 53316
fax: +358 9 160 52203 e-mail: arto.vuori@mmm.fi)

FRANCE / FRANKREICH / FRANCIA

Bernard MATHON, Chef, Bureau de la sélection végétale et des semences, Ministère de
l'agriculture et de la pêche, DPEI / BSVS, 3, rue Barbet de Jouy, F-75349 Paris 07 SP
(tel.: +33 1 4955 4579 fax: +33 1 4955 5075 e-mail: bernard.mathon@agriculture.gouv.fr)

Nicole BUSTIN (Mlle), Secrétaire général, Comité de la protection des obtentions
végétales (CPOV), Ministère de l'agriculture et de la pêche, 11, rue Jean Nicot, F-75007 Paris
(tel.: +33 1 4275 9314 fax: +33 1 4275 9425 e-mail: nicole.bustin@geves.fr)

HONGRIE / HUNGARY / UNGARN / HUNGRÍA

Károly NESZMÉLYI, Director-General, National Institute for Agricultural Quality Control (NIAQC), Keleti Károly u. 24, P.O. Box 3093, H-1024 Budapest (tel.: +36 1 336 9100 fax: +36 1 336 9099 e-mail: neszmelyik@ommi.hu)

Marta POSTEINER-TOLDI (Mrs.), Vice-President, Hungarian Patent Office, Garibaldi u. 2, H-1054 Budapest (tel.: +36 1 311 4841 fax: +36 1 302 3822 e-mail: marta.posteinerne@hpo.hu)

IRLANDE / IRELAND / IRLAND / IRLANDA

Nicholas P. McGILL, Controller of Plant Breeders' Rights, National Crop Testing Centre, Department of Agriculture and Food, Backweston, Leixlip Co. Kildare (tel.: +353 1 630 2900 fax: +353 1 628 0634 e-mail: nicholas.mcgill@agriculture.gov.ie)

David McGILLOWAY, Office of the Controller of Plant Breeders' Rights, National Crop Variety Testing Centre, Department of Agriculture and Food, Backweston, Leixlip, Co. Kildare (tel.: +353 1 630 2913 fax: +353 1 628 0634 e-mail: david.mcgilloway@agriculture.gov.ie)

ISRAËL / ISRAEL

Michal SGAN-COHEN (Mrs.), Senior Deputy Legal Advisor and Registrar of Plant Breeders' Rights, Legal Department, Ministry of Agriculture and Rural Development, P.O. Box 30, Beit-Dagan 50200 (tel.: +972 3 948 5499 fax: +972 3 948 5898 e-mail: michalsc@moag.gov.il)

JAPON / JAPAN / JAPÓN

Keiji TERAZAWA, Director, Seeds and Seedlings Division, Agricultural Production Bureau, Ministry of Agriculture, Forestry and Fisheries (MAFF), 1-2-1 Kasumigaseki, Chiyoda-ku, Tokyo 100-8950 (tel.: +81 3 3591 0524 fax: +81 3 3502 5301 e-mail: keiji_terazawa@nm.maff.go.jp)

Mitsuru KAMEYA, Deputy Director, Seeds and Seedlings Division, Agricultural Production Bureau, Ministry of Agriculture, Forestry and Fisheries (MAFF), 1-2-1 Kasumigaseki, Chiyoda-ku, Tokyo 100-8950 (tel.: +81 3 3591 0524 fax: +81 3 3502 5301 e-mail: mituru_kameya@nm.maff.go.jp)

KENYA / KENIA

Evans O. SIKINYI, Manager, Plant Variety Rights Office, Kenya Plant Health Inspectorate Service (KEPHIS), P.O. Box 49592-00100, Oloolua Ridge, Karen, Nairobi (tel.: +254 20 884545 fax: +254 20 882265 e-mail: esikinyi@kephis.org)

LETTONIE / LATVIA / LETTLAND / LETONIA

Sergejs KATANENKO, Director, Plant Variety Testing Department, State Plant Protection Service, Lubanas iela, 49, LV-1073 Riga (tel.: +371 7365567 fax: +371 7365571 e-mail: sergejs.katanenko@vaad.gov.lv)

MEXIQUE / MEXICO / MEXIKO / MÉXICO

Enriqueta MOLINA MACÍAS (Srta.), Directora, Servicio Nacional de Inspección y Certificación de Semillas (SNICS), Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación (SAGARPA), Av. Presidente Juárez, 13, Col. El Cortijo, Tlalnepantla, Estado de México 54000 (tel.: +52 55 5384 2210 fax: +52 55 5390 1441 e-mail: enriqueta.molina@sagarpa.gob.mx)

Eduardo PADILLA VACA, Subdirector, Registro y Control de Variedades, Servicio Nacional de Inspección y Certificación de Semillas (SNICS), Av. Presidente Juárez 13, Col. El Cortijo, 54000 Tlalnepantla, Estado de México (tel.: +52 55 5384 2210 fax: +52 55 5390 1441 e-mail: gat.snics@sagarpa.gob.mx)

Alejandro F. BARRIENTOS-PRIEGO, Professor-Investigador, Departamento de Fitotecnia, Universidad Autónoma Chapingo (UACH), Km. 38.5 Carretera México-Texcoco, Chapingo, Estado de México 56230 (tel.: +52 595 5133 1008 ext. 1569 fax: +52 595 952 1569 e-mail: abarrien@gmail.com)

NORVÈGE / NORWAY / NORWEGEN / NORUEGA

Kåre SELVIK, Head of Plant Variety Board, Royal Ministry of Agriculture, P.O. Box 8007 Dep., N-0030 Oslo (tel.: +47 2 224 9253 fax: +47 2 224 2753 e-mail: kare.selvik@lmd.dep.no)

Haakon SØNJU, Registrar, Plant Variety Board, Moerveien, 12, N-1430 Aas (tel.: +47 64 944400 fax: +47 64 944410 e-mail: haakon.sonju@mattilsynet.no)

Veslemoy-Susanne GUNDERSEN FAAFENG (Ms.), Legal Advisor, Royal Ministry of Agriculture, Akersgt. 059, P.O. Box 8007 Dep, N-0030 Oslo (tel.: +47 2 2249277 e-mail: veslemoy.faafeng@lmd.dep.no)

PARAGUAY

Nelson Enrique MOLAS GONZÁLEZ, Director, Servicio Nacional de Calidad y Sanidad Vegetal y de Semillas (SENAVE), Dirección de Semillas (DISE), Gaspar R. de Francia, 685, c/ Ruta Mcal. Estigarribia, San Lorenzo (tel.: +595 21 582 201 fax: +595 21 584 645 e-mail: dise_senave@telesurf.com.py)

PAYS-BAS / NETHERLANDS / NIEDERLANDE / PAÍSES BAJOS

Krieno Adriaan FIKKERT, Head and Secretary, Board for Plant Varieties (Raad voor Plantenrassen), Postbus 27, NL-6710 BA Ede (tel.: +31 318 822 580 fax: +31 318 822 589 e-mail: k.a.fikkert@minlnv.nl)

Christianus M.M. VAN WINDEN, Account Manager Propagating Material, Ministry of Agriculture, Nature and Food Quality, Postbus 20401, NL-2500 EK The Haag (tel.: +31 70 378 4281 fax: +31 70 378 6156 e-mail: c.m.m.van.winden@minlnv.nl)

Mireille LOTH (Mrs.), Legal Advisor, Department of Legal Affairs, Ministerie van Landbouw, Natuurbeheer en Visserij, Postbus 20401, NL-2500 EK The Hague (tel.: 31 70 378 4866 fax: 31 70 378 6127 e-mail: m.c.loth@minliv.nl)

POLOGNE / POLAND / POLEN / POLONIA

Julia BORYS (Ms.), Head, DUS Testing Department, Research Centre for Cultivar Testing (COBORU), PL-63-022 Slupia Wielka (tel.: +48 61 285 2341 fax: +48 61 285 3558 e-mail: j.borys@coboru.pl)

RÉPUBLIQUE DE CORÉE / REPUBLIC OF KOREA /
REPUBLIK KOREA / REPÚBLICA DE COREA

CHOI Keun-Jin, Examination Officer, National Seed Management Office (NSMO), Ministry of Agriculture and Forestry, 328, Jungangro Mananku, Anyangsi, Anyang City Kyunggi-do 430-016 (tel.: +82 31 467 0190 fax: +82 31 467 0161 e-mail: kjchoi@seed.go.kr)

JUNG Jin Wook, Patent Examiner, Food and Biological Resources Examination Division, Korean Intellectual Property Office (KIPO), Government Complex - DaeJeon, 920 Dunsan-dong, Seo-gu, Daejeon Metropolitan City 302-701 (tel.: +82 42 481 8167 fax: +82 42 472 3514 e-mail: naiad3@empal.com)

PARK Chan-Woong, Staff (Researcher, DUS Test), Variety Testing Division, National Seed Management Office, 433 Anyang 6-Dong, Anyang-si, Gyeonggi-do, Suweon 430-016 (tel.: +82 31 273 4146 fax: +82 31 203 7431 e-mail: chwopark@seed.go.kr)

SEO Jun Han, Patent Examiner, Food and Biological Resources Examination Division, Korean Intellectual Property Office (KIPO), Government Complex - DaeJeon, 920 Dunsan-dong, Seo-gu, Daejeon Metropolitan City 302-701 (tel.: +82 42 481 5637 fax: +82 42 472 3514 e-mail: junhans@kipo.go.kr)

RÉPUBLIQUE DE MOLDOVA / REPUBLIC OF MOLDOVA /
REPUBLIK MOLDAU / REPÚBLICA DE MOLDOVA

Vasile POJOGA, President, State Commission for Crops Variety Testing and Registration,
Stefan cel Mare str. 162, C.P. 1873, MD-2004 Chisinau (tel.: +373 22 220300
fax: +373 22 211 537 e-mail: csispmd@yahoo.com)

Ala GUŞAN (Mrs.), Head, Human Necessities, Chemistry Division, Inventions and Plant
Varieties Department, State Agency on Intellectual Property (AGEPI), 24/1 Andrei Doga str.,
MD-2024 Chisinau (tel.: +373 22 400515 fax: +373 22 440119 e-mail: office@agepi.md)

RÉPUBLIQUE TCHÈQUE / CZECH REPUBLIC /
TSCHECHISCHE REPUBLIK / REPÚBLICA CHECA

Ivan BRANZOVSKY, Head of Section, Plant Commodities Department, Ministry of
Agriculture, Tesnov 17, 11705 Praha 1 (tel.: +420 2 2181 2693 fax: +420 2 2181 2951
e-mail: ivan.branzovsky@mze.cz)

ROUMANIE / ROMANIA / RUMÄNIEN / RUMANIA

Adriana PARASCHIV (Mrs.), Head, Agriculture Examination Department, State Office for
Inventions and Trademarks (OSIM), 5, Jon Ghica, Sector 3, P.O. Box 52, 030044 Bucarest
(tel.: +40 21 315 5698 fax: +40 21 312 3819 e-mail: adriana.paraschiv@osim.ro)

Elena Craita BURCA (Mrs.), PVP Examiner, State Office for Inventions and Trademarks,
Str. Ion Ghica No. 5, Sector 3, 030044 Bucarest (tel.: +40 21 3123918 fax: +40 21 3155698
e-mail: burca.elena@osim.ro)

Mihaela Rodica CIORA (Mrs.), Head of Testing Department, State Institute for Variety
Testing and Registration, Ministry of Agriculture, Food and Forestry, 61, Marasti, Section 1,
011464 Bucarest (tel.: +40 213 774442 fax: +40 213 184408
e-mail: mihaela_ciora@yahoo.com)

Oana PISLARU (Ms.), Head, Legal Bureau, State Office for Inventions and Trademarks
(OSIM), 5, Jon Ghica, Sector 3, 030044 Bucarest (tel.: +40 21 312 1327
fax: +40 21 312 3819 e-mail: oana.paslaru@osim.ro)

ROYAUME-UNI / UNITED KINGDOM / VEREINIGTES KÖNIGREICH /
REINO UNIDO

Michael H. MILLER, Policy Administrator, Plant Variety Rights Office and Seeds Division,
Department for Environment, Food and Rural Affairs (DEFRA), White House Lane,
Huntingdon Road, Cambridge CB3 0LF (tel.: +44 1223 342 375 fax: +44 1223 342 386
e-mail: michael.miller@defra.gsi.gov.uk)

SINGAPOUR / SINGAPORE / SINGAPUR

Chwan Yiing Dennis LOW, Senior Assistant Director, Legal Policy and International Affairs, Intellectual Property Office of Singapore (IPOS), # 04.01 Plaza by the Park, 51 Bras Basah Road, Singapore 189554 (tel.: +65 6331 6580 fax: +65 6339 0252
e-mail: dennis_low@ipos.gov.sg)

SLOVAQUIE / SLOVAKIA / SLOWAKEI / ESLOVAQUIA

Bronislava BÁTOROVÁ (Mrs.), National Coordinator, Senior Officer, Department of Variety Testing, Central Controlling and Testing Institute in Agriculture (ÚKSÚP), Akademická 4, SK-949 01 Nitra (tel.: +421 37 655 1080 fax: +421 37 652 3086
e-mail: bronislava.batorova@uksup.sk)

SLOVÉNIE / SLOVENIA / SLOWENIEN / ESLOVENIA

Joze ILERSIC, Undersecretary, Phytosanitary Administration of the Republic of Slovenia, Einspielerjeva 6, SLO-1000 Ljubljana (tel.: +386 1 3094 396 fax: +386 1 3094 335
e-mail: joze.ilersic@gov.si)

SUISSE / SWITZERLAND / SCHWEIZ / SUIZA

Manuela BRAND (Frau), Leiterin Sortenschutz, Hauptabteilung Besondere Dienste und Produktionsmittel, Bundesamt für Landwirtschaft, Mattenhofstrasse 5, CH-3003 Bern (tel.: +41 31 322 2524 fax: +41 31 322 2634 e-mail: manuela.brand@blw.admin.ch)

Eva TSCHARLAND (Frau), Wissenschaftliche Mitarbeiterin, Hauptabteilung Besondere Dienste und Produktionsmittel, Bundesamt für Landwirtschaft, Mattenhofstrasse 5, CH-3003 Bern (tel.: +41 31 322 2594 fax: +41 31 323 5455
e-mail: eva.tscharland@blw.admin.ch)

TUNISIE / TUNISIA / TUNESIEN / TÚNEZ

Mares HAMDÍ, Directeur général des affaires juridiques et foncières, Direction générale des affaires juridiques et financières, Ministère de l'agriculture et des ressources hydrauliques, 30, rue Alain Savary, 1002 Tunis (tel.: +216 71 842 317 fax: +216 71 784 419
e-mail: mares.hamdi@iresa.agrinet.tn)

Tarek CHIBOUB, Directeur de l'homologation et du contrôle de la qualité, Direction générale de la protection et du contrôle de la qualité des produits agricoles, Ministère de l'agriculture et des ressources hydrauliques, 30, rue Alain Savary, 1002 Tunis (tel.: +216 71 800419
fax: +216 71 784419 e-mail: tarechib@yahoo.fr)

UKRAINE / UCRANIA

Victor V. VOLKODAV, Chairman, State Service on Right Protection for Plant Varieties,
15, Henerala Rodimtseva str., 03041 Kyiv (tel.: +380 44 257 9933 fax: +380 44 257 9934
e-mail: sops@sops.gov.ua)

Svitlana TKACHYK (Mrs.), Deputy Director, Ukrainian Institute for Plant Variety
Examination, 15, Henerala Rodimtseva str., 03041 Kyiv (tel.: +380 44 258 3456
fax: +380 44 257 9963 e-mail: sops@sops.gov.ua)

Oksana V. ZHMURKO (Mrs.), Head, Department for International Scientific and Technical
Cooperation, Ukrainian Institute for Plant Variety Examination, 15, Henerala Rodimtseva str.,
03041 Kyiv (tel.: +380 44 257 3456 fax: +380 44 257 9963 e-mail: sops@sops.gov.ua)

URUGUAY

Enzo BENECH, Presidente, Instituto Nacional de Semillas (INASE),
Cno. Bertolotti s/n y R-8 Km 29, Pando, 91001 Canelones (tel.: +598 2 288 7099
fax: +598 2 288 7077 e-mail: inasebenech@adinet.com.uy)

Gerardo CAMPS, Jefe Area Técnica, Instituto Nacional de Semillas (INASE),
Cno. Bertolotti s/n y R-8 Km 29, Pando, 91001 Canelones (tel.: +598 2 288 7099
fax: +598 2 288 7077 e-mail: inasecamps@adinet.com.uy)

II. OBSERVATEURS / OBSERVERS / BEOBACHTER / OBSERVADORES

ALGÉRIE / ALGERIA / ALGERIEN / ARGELIA

Ali MAATALLAH, Directeur central, Affaires juridiques et de la réglementation, Ministère
de l'agriculture et du développement rural (MADR), B.P. 43, Hacén Badi, El Harrach,
8791 Alger (tel.: +213 21 746406 fax: +213 21 429351 e-mail: alidajr2002@yahoo.fr)

Nadia HADJERES (Mlle), Directrice Générale, Centre national de certification et de contrôle
des semences et plants, 1 bis, rue Pasteur, B.P. 119, Hassenbadi El-Harrach, Alger 16200
(tel.: +213 21 529900 fax: +213 21 529695 e-mail: cncsp@hotmail.com)

GHANA

Grace Ama ISSAHAQUE (Mrs.), Senior State Attorney, Registrar-General's Department,
Ministry of Justice, P.O. Box 118, Accra (tel.: +233 21 664 691 fax: +233 21 666 081
e-mail: graceissahaque@hotmail.com)

INDONÉSIE / INDONESIA / INDONESIEN

HINDARWATI (Mrs.), Director, Centre for Plant Variety Protection, Ministry of Agriculture, Jl Harsono RM No. 3, Bldg E, 3rd floor, Ragunan Pasar, Minggu, Jakarta PUSAT 12550 (tel.: 62 21 781 6386 fax: 62 21 788 40389 e-mail: hindarwati@deptan.go.id)

MALAISIE / MALAYSIA / MALASIA

Mohd Hussin YUNUS, Director, Plant Quality Control Division, Department of Agriculture, Wisma Tani, Aras 7, Block 4G2, Precint 4, Pusat Pentadbiran Kerajaan Persekutuan, 62592 Putrajaya (tel.: 60 3 8870 3448 fax: 60 3 8870 7639 e-mail: hussin@doa.moa.my)

THAÏLANDE / THAILAND / TAILANDIA

Chutima RATANASATIEN (Mrs.), Senior Agricultural Scientist, Plant Varieties Protection Division, Department of Agriculture, Phahonyothin Road, Ladyao, Chatuchak, 10900 Bangkok (tel.: +66 2 561 4665 fax: +66 2 579 0548 e-mail: chutima_ratanasatien@yahoo.com)

TURQUIE / TURKEY / TÜRKEI / TURQUÍA

Kamil YILMAZ, Director, Variety Registration and Seed Certification Centre, Ministry of Agriculture and Rural Affairs, P.O. Box 107, 06172 Yenimahalle - Ankara (tel.: +90 312 315 8874 fax: +90 312 315 0901 e-mail: kyillmaz@tagem.gov.tr)

Hasan DOGAN, Head, Seed Certification and Registration Section (MARA), Koruma Ve Kontrol Genel Müdürlüğü, Akay Cad. No. 3, Bakanlıklara, Ankara (tel.: +90 312 417 4176 fax: +90 312 417 8198 e-mail: hasand@kkgm.gov.tr)

III. ORGANISATIONS / ORGANIZATIONS /
ORGANISATIONEN / ORGANIZACIONES

ORGANISATION AFRICAINE DE LA PROPRIÉTÉ INTELLECTUELLE (OAPI) /
AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI) / AFRIKANISCHE
ORGANISATION FÜR GEISTIGES EIGENTUM (OAPI) / ORGANIZACIÓN AFRICANA
DE LA PROPIEDAD INTELLECTUAL (OAPI)

Wéré Régine GAZARO (Mme), Chef, Service des brevets, Organisation africaine de la propriété intellectuelle (OAPI), B.P. 887, Yaoundé, Cameroun (tel.: +237 220 3911
fax: +237 220 5727 e-mail: were_regine@yahoo.fr)

COMMUNAUTÉ INTERNATIONALE DES OBTENTEURS DE PLANTES
ORNAMENTALES ET FRUITIÈRES DE REPRODUCTION ASEXUÉE (CIOPORA) /
INTERNATIONAL COMMUNITY OF BREEDERS OF ASEXUALLY REPRODUCED
ORNAMENTAL AND FRUIT-TREE VARIETIES (CIOPORA) / INTERNATIONALE

Edgar KRIEGER, Executive Secretary, International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA), (Administrative Office), Rothenbaumchaussee 78, 20148 Hamburg, Germany (tel.: +49 40 555 63 702
fax: +49 40 555 63 703 e-mail: info@ciopora.org)

EUROPEAN SEED ASSOCIATION (ESA)

Bert SCHOLTE, Technical Director, European Seed Association (ESA), 23, rue Luxembourg, 1000 Brussels, Belgium (tel.: +32 2 743 2860 fax: +32 2 743 2869
e-mail: bertscholte@euroseeds.org)

FÉDÉRATION INTERNATIONALE DES SEMENCES (ISF) / INTERNATIONAL SEED
FEDERATION (ISF) / INTERNATIONALER SAATGUTVERBAND (ISF) /
FEDERACIÓN INTERNACIONAL DE SEMILLAS (ISF)

Bernard LE BUANEC, Secretary General, International Seed Federation (ISF), 7, chemin du Reposoir, 1260 Nyon, Switzerland (tel.: +41 22 365 4420 fax: +41 22 365 4421
e-mail: isf@worldseed.org)

Jean DONNENWIRTH, International Intellectual Property Manager,
Pioneer Hi-Bred S.A.R.L., Chemin de l'Enseigne, 31840 Aussonne, France
(tel.: +33 5 6106 2084 fax: +33 5 6106 2091 e-mail: jean.donnenwirth@pioneer.com)

Huib GHIJSEN, IP Manager, Bayer BioScience N.V., Technologiepark 38, 9052 Gent, Belgium (tel.: +32 9 2430486 fax: +32 9 224 1923
e-mail: huib.ghijssen@bayercropscience.com)

IV. BUREAU / OFFICERS / VORSITZ / OFICINA

Krieno FIKKERT, Chair
Carmen Amelia M. GIANNI (Mrs.), Vice-Chair

V. BUREAU DE L'UPOV / OFFICE OF UPOV / BÜRO DER UPOV /
OFICINA DE LA UPOV

Rolf JÖRDENS, Vice Secretary-General
Peter BUTTON, Technical Director
Makoto TABATA, Senior Counsellor
Raimundo LAVIGNOLLE, Senior Counsellor
Yolanda HUERTA (Mrs.), Senior Legal Officer

[L'annexe II suit/
Annex II follows/
Anlage II folgt/
Sigue el Anexo II]

DRAFT

EXPLANATORY NOTES ON VARIETY DENOMINATIONS
UNDER THE UPOV CONVENTION

Preamble

1. The Council of the International Union for the Protection of New Varieties of Plants (UPOV) refers to the International Convention for the Protection of New Varieties of Plants (UPOV Convention), and in particular to Articles 5(2) and 20 of the 1991 Act, and Articles 6(1)(e) and 13 of the 1978 Act and the 1961 Convention, which provides that a variety must be given a suitable denomination which will be registered at the same time as the breeder's right is granted.
2. The Council recalls that, according to the relevant provisions of the UPOV Convention, a variety denomination must be suitable as a generic designation and must enable the variety to be identified; it must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder.
3. The Council emphasizes that the main purpose of these Explanatory Notes is to ensure that, as far as possible, protected varieties are designated in all members of the Union¹ by the same variety denomination, that the approved variety denominations establish themselves as the generic designations and that they are used in the offering for sale or marketing of propagating material of the variety, even after the expiration of the breeder's right.
4. Whilst noting that the only binding obligations for members of the Union are those contained in the UPOV Convention itself, the Council considers that the aim set out in paragraph 3 can only be achieved if the broadly worded provisions on variety denominations under the UPOV Convention are uniformly interpreted and applied by the members of the Union, and that the adoption of appropriate explanatory notes is therefore advisable. Those Explanatory Notes should not be interpreted in a way that is inconsistent with the UPOV Convention.
5. The Council considers that the adoption of such Explanatory Notes for the uniform interpretation and application of the provisions on variety denominations will be of assistance not only to the authorities² of members of the Union but also to breeders in their selection of variety denominations.

¹ "Member of the Union" means a State party to the 1961 Convention/1972 Act, the 1978 Act or a State or intergovernmental organization party to the 1991 Act (Article 1(xi) of the 1991 Act).

² The "authority" means the authority entrusted with the task of granting breeders' rights (Article 30(1)(ii) of the 1991 Act and Article 30(1)(b) of the 1978 Act and 1961 Convention).

6. The Council, having regard to the UPOV Convention (Article 26(h) of the 1991 Act and Article 21(h) of the 1978 Act and the 1961 Convention), under which it has the task of taking all necessary decisions to ensure the efficient functioning of the Union, and in the light of the experience acquired by members of the Union in connection with variety denominations, recommends that the authorities of the members of the Union,

(i) base their decisions on the suitability of proposed variety denominations on these Explanatory Notes;

(ii) take into account the guidance in these Explanatory Notes concerning the procedure for assessing the suitability of proposed variety denominations and the exchange of information;

(iii) provide comprehensive information concerning these Explanatory Notes, to assist breeders when selecting variety denominations.

Prior guidance on this matter, provided by the “UPOV Recommendations on Variety Denominations” (document UPOV/INF/12 Rev.), is superseded by these Explanatory Notes.

**EXPLANATORY NOTES ON VARIETY DENOMINATIONS
UNDER THE UPOV CONVENTION**

The Explanatory Notes below correspond to the paragraph numbers within Article 20 of the 1991 Act and Article 13 of the 1978 Act and 1961 Convention, unless indicated otherwise.

Paragraph 1

(Paragraphs 1 and 3 of Article 13 of the 1961 Convention)

[Designation of varieties by denominations; use of the denomination] The variety shall be designated by a denomination which will be its generic designation. Each member of the Union shall ensure that, subject to paragraph (4), no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the expiration of the breeder's right.

Explanatory Notes – Paragraph (1)

1.1. Article 5(2) of the 1991 Act and Article 6(1)(e) of the 1978 Act and the 1961 Convention require that the variety is designated by a denomination. Paragraph (1) provides for the denomination to be the generic designation of the variety, and subject to prior rights, no rights in the designation shall hamper the free use of the denomination of the variety, even after the expiration of the breeder's right. The obligation under paragraph (1) should be considered together with the obligation to use the variety denomination in respect of the offering for sale or marketing of propagating material of the variety (see paragraph (7)).

1.2. The obligation under paragraph (1) to allow for the use of the denomination in connection with the variety, even after the expiration of the breeder's right, is of relevance if the breeder of the variety is also the holder of a trademark which is identical to the variety denomination. It should be noted that where a name is registered as a trademark by a trademark authority, the use of the name as a variety denomination may transform the trademark into a generic name. In such cases, the trademark may become liable for cancellation³. In order to provide clarity and certainty in relation to variety

³ WIPO Publication N°489 "WIPO Intellectual Property Handbook"

Proper Use of Trademarks

"2.397 Non-use can lead to the loss of trademark rights. Improper use can have the same result, however. A mark may become liable for removal from the Register if the registered owner has provoked or tolerated its transformation into a generic name for one or more of the goods or services in respect of which the mark is registered, so that, in trade circles and in the eyes of the appropriate consumers and of the public in general, its significance as a mark has been lost.

denominations, authorities should refuse a variety denomination which is the same as a trademark in which the breeder has a right. The breeder may choose to renounce the trademark right prior to the submission of a proposed denomination in order to avoid its refusal.

2.398 Basically, two things can cause genericness: namely, improper use by the owner, provoking transformation of the mark into a generic term, and improper use by third parties that is tolerated by the owner. [...]

2.400 The basic rule is that the trademark should not be used as, or instead of, the product designation.
[...]

2.404 However, it is not enough just to follow these rules: the trademark owner must also ensure that third parties and the public do not misuse his mark. It is specifically important that the trademark should not be used as or instead of the product description in dictionaries, official publications, journals, etc.”

Paragraph 2

[Characteristics of the denomination] The denomination must enable the variety to be identified. It may not consist solely of figures except where this is an established practice for designating varieties. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in the territory of any member of the Union, an existing variety of the same plant species or of a closely related species.

Explanatory Notes – Paragraph (2)

2.1 *Identification*

Provisions under paragraph (2) emphasize the “identification” role of the denomination. Bearing in mind that the main objective of the denomination is to identify the variety, sufficient flexibility should be given to incorporate evolving practices in designating varieties.

2.2 *Solely of figures*

2.2.1 Paragraph (2) states that the denomination may not consist “solely of figures” except where this is an “established practice” for designating varieties. The expression “solely of figures” refers to variety denominations consisting of numbers only (e.g. 91150). Thus, denominations containing both letters and figures are not subject to the “established practice” requirement (e.g. AX350).

2.2.2 In the case of denominations consisting “solely of figures,” the following non-exhaustive elements may assist the authorities to understand what might be considered to be “established practice”:

(a) for varieties used within a limited circle of specialists, the established practice should reflect that specialist circle (e.g. inbred lines);

(b) accepted market practices for particular variety types (e.g. hybrids) and particular species (e.g. Medicago, Helianthus).

2.3 *Liable to mislead or to cause confusion*

Paragraph (2) states that the denomination must not be liable to “mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder.” These aspects are considered below:

2.3.1 *Characteristics of the variety*

The denomination should not:

(a) convey the impression that the variety has particular characteristics which, in reality, it does not have;

Example: a variety denomination “dwarf” for a variety which is of normal height, when a dwarfness trait exists within the species, but is not possessed by the variety.

(b) refer to specific characteristics of the variety in such a way that the impression is created that only the variety possesses them, whereas in fact other varieties of the species in question also have or may have the same characteristics; for example where the denomination consists solely of descriptive words that describe attributes of the variety that other varieties in the species may also possess.

Example 1: “Sweet” for a fruit variety;

Example 2: “Large white” for a variety of chrysanthemum.

(c) convey the impression that the variety is derived from, or related to, another variety when that is not, in fact, the case;

Example: a denomination which is similar to that of another variety of the same species or closely related species, e.g. “Southern cross 1”; “Southern cross 2”; etc., giving the impression that these varieties are a series of related varieties with similar characteristics, when, in fact, this is not the case.

2.3.2 Value of the variety

The denomination should not consist of, or contain, comparative or superlative designations

Example: a denomination which includes terms such as “Best”, “Superior”, “Sweeter”.

2.3.3 Identity of the variety

(a) As a general recommendation, a difference of only one letter or one number may be considered to be liable to mislead or cause confusion concerning the identity of the variety, except where the:

(i) difference of one letter provides for a clear visual or phonetic difference, e.g. if it concerns a letter at the beginning of a word:

Example 1: in the English language, ‘Harry’ and ‘Larry’ would not cause confusion; However, ‘Bough’ and ‘Bow’ might cause confusion (in phonetic terms);

Example 2: in the Japanese and Korean languages there is no difference between “L” and “R” sounds, thus “Lion” and “Raion” are exactly the same although these are distinguishable for English mother tongue speakers;

(ii) denominations consist of a combination of letters and figures;

(iii) denominations consist “solely of figures”.

(b) The use of a denomination which is similar to that used for a variety of another species or genera in the same denomination class (see section 2.5) may cause confusion.

(c) In order to provide clarity and certainty in relation to variety denominations, the re-use of denominations is, in general, discouraged, since the re-use of a denomination, even where that relates to a variety which no longer exists (see section 2.4.2) may, nevertheless, cause confusion. In some limited cases an exception may be acceptable, for example a variety which was never commercialized, or was only commercialized in a limited way for a very short time. In those cases, a suitable period of time after discontinued commercialization of the variety would be required before the re-use of the denomination in order to avoid causing confusion in relation to the identity and/or the characteristics of the variety.

2.3.4 Identity of the breeder

The variety denomination should not mislead or cause confusion concerning the identity of the breeder.

2.4 *Different from an existing variety of the same plant species or of a closely related species*

2.4.1 Paragraph (2) states that the denomination must be “different” from an existing variety of the same plant species or a closely related species⁴.

2.4.2 The following explanation is for the purposes of variety denominations and without prejudice to the meaning of a “variety whose existence is a matter of common knowledge” in Article 7 of the 1991 Act and in Article 6(1)(a) of the 1978 Act and the 1961 Convention. In general, the re-use of denominations is discouraged but, under exceptional circumstances (see section 2.3.3(c)), the denomination of an old variety could, in principle, be registered for a new variety.

2.5 *Variety denomination classes: a variety denomination should not be used more than once in the same class*

2.5.1 For the purposes of providing guidance on the third (see section 2.3.3(b)) and fourth sentences of paragraph 2 of Article 20 of the 1991 Act and of Article 13 of the 1978 Act and the 1961 Convention, variety denomination classes have been developed. A variety denomination should not be used more than once in the same class. The classes have been developed such that the botanical taxa within the same class are considered to be closely related and/or liable to mislead or to cause confusion concerning the identity of the variety.

⁴ Article 20(2) of the 1991 Act refers to “plant species” and Article 13(2) of the 1978 Act and 1961 Convention refers to “botanical species” the divergence in terminology does not contain any difference in substance.

2.5.2 The variety denomination classes are as follows:

(a) General Rule (one genus / one class): for genera and species not covered by the List of Classes in Appendix III, a genus is considered to be a class;

(b) Exceptions to the General Rule (list of classes):

(i) classes within a genus: List of classes in Appendix III: Part I;

(ii) classes encompassing more than one genus: List of classes in Appendix III: Part II.

2.5.3 It is recommended that the UPOV Plant Variety Database (“UPOV-ROM”) is used in the process to check if, in the territory of any member of the Union, the proposed denomination is different from denominations of existing varieties of the same genus or, if appropriate, variety denomination class (see Appendix III). Attention is drawn to the “General Notice and Disclaimer” of the UPOV-ROM to ensure that the information contained in the UPOV-ROM is considered in an appropriate way.

Paragraph 3

(Paragraph 4 of Article 13 of the 1961 Convention)

[Registration of the denomination] The denomination of the variety shall be submitted by the breeder to the authority. If it is found that the denomination does not satisfy the requirements of paragraph (2), the authority shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period. The denomination shall be registered by the authority at the same time as the breeder's right is granted.

Explanatory Notes – Paragraph (3)

3.1 If the authority has found no grounds for refusal under paragraph (2), and knows of no grounds for refusal under paragraph (4), the proposed denomination shall be registered, published and communicated to the authorities of the other members of the Union.

3.2 In the event of prior rights (paragraph (4)) or other grounds for refusal, any interested person may file an objection to the registration. The authorities of the other members of the Union may submit observations (See Draft Explanatory Notes of paragraph (6)).

3.3 Relevant objections and observations should be communicated to the applicant. The applicant should be given the opportunity to reply to the observations. If the authority considers the denomination unsuitable within its territory, it will require the breeder to submit another denomination. Failure to submit a proposal within the prescribed period should entail the rejection of the application.

3.4 The examination of the proposed denomination and of the other conditions for the protection of the variety are procedures which should be undertaken in parallel in order to ensure that the denomination can be registered at the time the breeder's right is granted.

Paragraph 4

(Paragraph 10 of Article 13 of the 1961 Convention)

[Prior rights of third persons] Prior rights of third persons shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph (7), is obliged to use it, the authority shall require the breeder to submit another denomination for the variety.

Explanatory Notes – Paragraph (4)

4. In deciding on the suitability of the proposed denomination and examining objections and observations in relation to prior rights of third persons, the following are intended to assist authorities.

(a) An authority should not accept a variety denomination if a prior right, the exercise of which may prevent the use of the proposed denomination, has already been granted to a third party under plant breeder's right law, trade mark law or any other intellectual property legislation. It is the responsibility of the title holder of a prior right to assert his rights through the available objection or court procedures. However, authorities are encouraged to make prior searches in relevant publications (e.g. official gazettes) and databases (e.g. UPOV-ROM) to identify prior rights for variety denominations. They may also make searches in other registers, such as trademark registers, before accepting a variety denomination.

(b) The notion of prior rights should include those rights which are in force, in the territory concerned, at the time of publication of the proposed denomination. For rights whose duration starts at the filing date of the application, the filing dates are those relevant for prior right considerations, provided those applications lead to the granting of rights.

(c) In the case of two conflicting proposed variety denominations (see paragraph (2)) in the same or different territories, the one with an earlier publication date should be retained and the relevant authority should request the breeder, whose proposed denomination was or might have been published at a later date, to submit another denomination.

(d) If, after the granting of a breeder's right, it is discovered that there was a prior right concerning the denomination which would have resulted in the rejection of the denomination, the denomination should be cancelled and the breeder should propose another suitable denomination for the variety. Article 22(1)(b)(iii) of the 1991 Act states that, if the breeder does not propose another suitable denomination, the authority may cancel the breeder's right.

(e) The following items provide some guidance on what might constitute a "prior right", the exercise of which may prevent the use of the proposed denomination:

(i) A trademark may be considered as a prior right when the proposed denomination is identical to a trademark registered for an identical good. For all practical purposes, such identity of goods is most likely to occur in respect of

trademarks registered for goods under Class 31 of the Nice Classification⁵, although it is recalled that, in certain countries, trademarks may also be protected on the basis of use and without registration. If the trademark and proposed denomination are not identical, but similar, the trademark, in some cases, may constitute a prior right, the exercise of which may prevent the use of the proposed denomination, and the breeder may be required to propose another denomination. If, in spite of the similarity between the proposed denomination and the trademark, the exercise of the latter will not prevent the use of the proposed denomination, the denomination may be accepted; rejections of denominations by the authority on the basis of similarity to a trademark will, in general, result from oppositions of trademark holders, observations of authorities responsible for trademark registration, or judgments from a competent court. In cases of mere similarity or small likelihood of association by users, waivers granted to breeders by prior trademark right holders could be a suitable solution.

(ii) If the proposed denomination is identical with or similar to a well-known mark, it may be unsuitable, even if the well-known mark applies to goods other than those appearing in Class 31 of the Nice Classification⁶;

(iii) Prior rights might also concern trade names⁷ and names of famous persons;

(iv) Names and abbreviations of intergovernmental organizations, which are excluded by international conventions from use as trademarks or parts of trademarks, are not suitable as variety denominations⁸;

(v) Prior rights concerning appellations of origin and geographical indications (e.g. “Scotch”) may exist under national legislation on grounds of common law or registration⁹;

(vi) In certain cases, prior rights in geographical names (e.g. names of cities or States) may exist; however, there is no general rule on these cases and assessment should be based on the probatory material presented on a case-by-case basis.

⁵ Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, of June 15, 1957, as revised in Stockholm on July 14, 1967, and Geneva on May 13, 1977, and amended on September 28, 1979.

⁶ Well-known marks are protected by the Paris Convention for the Protection of Industrial Property (Article 6*bis*) and the Agreement on Trade-Related Aspects on Intellectual Property Rights (Article 16.2 and 3 of the TRIPS Agreement). See also the 1999 WIPO Joint Recommendation Concerning Provisions on the Protection of Well-known Marks.

⁷ Article 8 of the Paris Convention.

⁸ This recommendation includes names and abbreviations notified pursuant to Article 6*ter* of the Paris Convention.

⁹ Articles 22 to 24 of the TRIPS Agreement provide for an obligation for WTO Members to protect geographical indications; the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration sets up international registration procedures for appellations of origin in the States party to that Agreement.

Paragraph 5

[Same denomination in all members of the Union] A variety must be submitted to all members of the Union under the same denomination. The authority of each member of the Union shall register the denomination so submitted, unless it considers the denomination unsuitable within its territory. In the latter case, it shall require the breeder to submit another denomination.

Explanatory Notes – Paragraph (5)

5.1 This provision reflects the importance of a single variety denomination for the effective operation of the UPOV system.

5.2 *Paragraph (5)* provides clear directions both for breeders and authorities:

(a) In relation to subsequent applications of the same variety, the breeder must submit in all members of the Union the denomination that was submitted with the first application. An exception to the above obligation might be appropriate when the proposed denomination is refused by one authority before the denomination is registered by any of the other members of the Union, in which case the breeder is encouraged to submit a new denomination to all authorities in order to obtain a single denomination in all territories.

(b) The essential obligation under paragraph (5) is that authorities should accept the denomination that was submitted and registered with the first application, unless such denomination is unsuitable in their territory (see section 5.3). On that basis, although certain provisions on variety denominations allow for authorities to develop individual guidance concerning best practices, the obligation under paragraph (5) should be given priority, unless there is direct conflict with the provisions of the UPOV Convention. In that respect, it is also recommended to avoid any narrow interpretation of the provisions of the UPOV Convention and related guidance or best practices, which could lead to the unnecessary refusal of variety denominations and, consequently, the unnecessary creation of synonyms for a variety;

(c) Due to different alphabetic scripts or systems of writing, it may be necessary to transliterate or transcribe the submitted denomination to enable its registration in another territory. In such cases, both the variety denomination submitted in the application and its transliteration or transcription are regarded as the same denomination. However, a translation would not be considered as the same denomination.

5.3 Whilst, a degree of flexibility is appropriate, the following non-exhaustive list may assist the authorities in deciding what is unsuitable. A proposed denomination may be refused by an authority of a member if it transpires that, despite best endeavors (see section 5.5), in its territory

- (a) it does not conform to the provisions in paragraphs (2) and (4); or
- (b) it is contrary to public policy.

5.4 In order to permit the correct identification of a variety registered with different denominations due to exceptional cases (see section 5.3 above), in different territories, a regional or international synonym register may be developed by UPOV and/or by some members of the Union.

5.5 To reduce the risk of a variety denomination being considered to be unsuitable within a territory in which protection is to be sought, members of the Union are encouraged to make available to other authorities and breeders, the criteria, guidance and best practices which they apply for variety denominations. In particular, authorities are encouraged to make available any electronic search functions which they use in the examination of denominations in a form which would allow the on-line checking of a proposed variety denomination, against databases of relevant varieties and, in particular, the UPOV Plant Variety Database. Members of the Union may also choose to provide customized variety denomination checking services. Members of the Union are encouraged to use the UPOV website to provide information on, and links to, such resources.

Paragraph 6

[Information among the authorities of members of the Union] The authority of a member of the Union shall ensure that the authorities of all the other members of the Union are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations. Any authority may address its observations, if any, on the registration of a denomination to the authority which communicated that denomination.

Explanatory Notes – Paragraph (6)

6.1 Provisions of paragraph (6) indicate the importance of cooperation and exchange of information among authorities.

6.2 The obligation to inform other members of the Union of matters concerning variety denominations relies on the exchange of official gazettes and other means of publication. It is recommended that the layout of the official gazette be based on the UPOV Model Plant Breeder's Right Gazette (document UPOV/INF/5), in particular, the chapters containing information on variety denominations, should be appropriately identified in the table of contents. However, the UPOV Plant Variety Database is an important mechanism by which to maximize the availability of information for members of the Union concerning variety denominations in a practical form.

6.3 Paragraph (6) provides for the possibility for a member of the Union to make observations if it considers that a proposed denomination in another member of the Union is unsuitable. In particular with respect to the provisions of paragraph (5), the authority should take into account all observations made by the authorities of other members when deciding on the suitability of a proposed denomination. If the observations refer to an obstacle for approval which, according to the provisions on variety denominations under the UPOV Convention, applies to all members, then the proposed denomination should be refused. If the observation refers to an obstacle to approval only in the member of the Union which has transmitted the observation (e.g. prior trademark right within that territory), the applicant should be informed accordingly. If it is envisaged that protection will be applied for, or if it can be expected that reproductive or propagating material of the variety will be marketed in the territory of the member of the Union which has transmitted the observation, the authority examining the proposed denomination should request the applicant to propose another denomination.

6.4 The authorities making observations and the authority conducting the examination should, as far as possible, endeavor to reach an agreement on the acceptability of a variety denomination.

6.5 It is recommended that a communication of the final decision be addressed to any authority which has transmitted an observation.

6.6 Authorities are encouraged to send information on variety denominations to authorities dealing with the protection of other rights (e.g. authorities responsible for registering trademarks).

6.7 A model form for observations on proposed denominations submitted in another member of the Union can be seen in Appendix I. A model form for a reply to observations can be seen in Appendix II. Copies of these communications should be sent at the same time to the authorities of the other members of the Union.

Paragraph 7

[Obligation to use the denomination] Any person who, within the territory of one of the members of the Union, offers for sale or markets propagating material of a variety protected within the said territory shall be obliged to use the denomination of that variety, even after the expiration of the breeder's right in that variety, except where, in accordance with the provisions of paragraph (4), prior rights prevent such use.

Explanatory Note – Paragraph (7)

7. If it is found that prior rights of a third party prevent the use of the registered variety denomination, the authority shall require the breeder to submit another denomination. Article 22(1)(b)(iii) of the 1991 Act provides that the breeder's right may be cancelled if “the breeder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination.”

Paragraph 8

[Indications used in association with denominations] When a variety is offered for sale or marketed, it shall be permitted to associate a trademark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognizable.

This provision is self-explanatory.

[Appendix I follows]

APPENDIX I TO ANNEX II

Model Form for Observations on Proposed Variety Denominations Submitted
to Another Member of the Union

From

Your ref.

Our ref.

Observations on a Submitted Variety Denomination

To

Submitted Variety Denomination: _____

Genus/Species (Botanical name): _____ UPOV Code: _____

Gazette: _____
(number/year)

Applicant: _____

Observations: _____

If the observations refer to a trademark or another right, name and address of the holder
thereof (if possible):

Copies sent to the authorities of the other members of the Union

Date:

Signature:

[Appendix II follows]

APPENDIX II TO ANNEX II

Model Reply to Observations on Proposed Variety Denominations Submitted
to Another Member of the Union

From

Your ref.

Our ref.

Reply to Observations on a Submitted Variety Denomination

To

In reply to your objection to the denomination [.....] for the variety of [Botanical name/UPOV code], we wish to inform you that:

1. In our opinion there is sufficient difference between the names and both in writing and pronunciation. Therefore the [authority] sees no reason to reject the denomination.
2. The [authority] accepted this denomination and no objections were received during the prescribed period after publishing.
3. This variety has been registered under this name on
4. First publication as proposed denomination in
5. The applicant has been requested for another denomination.
6. This is the same variety.
7. Application on the variety has been withdrawn/rejected.
8. The applicant has withdrawn the proposed denomination for the variety.
9. Other

Copies to the authorities of the other members of the Union

Date:

Signature:

[Appendix III follows]

APPENDIX III TO ANNEX II

UPOV Variety Denomination Classes:
A Variety Denomination Should not be Used More than Once in the Same Class

For the purposes of providing guidance on the third and fourth sentences of paragraph 2 of Article 20 of the 1991 Act and of Article 13 of the 1978 Act and the 1961 Convention, variety denomination classes have been developed. A variety denomination should not be used more than once in the same class. The classes have been developed such that the botanical taxa within the same class are considered to be closely related and/or liable to mislead or to cause confusion concerning the identity of the variety.

The variety denomination classes are as follows:

(a) General Rule (one genus / one class): for genera and species not covered by the List of Classes in this Appendix, a genus is considered to be a class;

(b) Exceptions to the General Rule (list of classes):

(i) classes within a genus: List of classes in this Appendix: Part I;

(ii) classes encompassing more than one genus: List of classes in this Appendix: Part II.

LIST OF CLASSES

Part I*Classes within a genus*

	<u>Botanical names</u>	<u>UPOV codes</u>
Class 1.1	Brassica oleracea	BRASS_OLE
Class 1.2	Brassica other than Brassica oleracea	other than BRASS_OLE
Class 2.1	Beta vulgaris L. var. alba DC., Beta vulgaris L. var. altissima	BETAA_VUL_GVA; BETAA_VUL_GVS
Class 2.2	Beta vulgaris ssp. vulgaris var. conditiva Alef. (syn.: B. vulgaris L. var. rubra L.), B. vulgaris L. var. cicla L., B. vulgaris L. ssp. vulgaris var. vulgaris	BETAA_VUL_GVC; BETAA_VUL_GVF
Class 2.3	Beta other than classes 2.1 and 2.2.	other than classes 2.1 and 2.2
Class 3.1	Cucumis sativus	CUCUM_SAT
Class 3.2	Cucumis melo	CUCUM_MEL
Class 3.3	Cucumis other than classes 3.1 and 3.2	other than classes 3.1 and 3.2
Class 4.1	Solanum tuberosum L.	SOLAN_TUB
Class 4.2	Solanum other than class 4.1	other than class 4.1

LIST OF CLASSES (Continuation)

Part II

Classes encompassing more than one genus

	<u>Botanical names</u>	<u>UPOV codes</u>
Class 201	Secale, Triticale, Triticum	SECAL; TRITL; TRITI
Class 202	Panicum, Setaria	PANIC; SETAR
Class 203*	Agrostis, Dactylis, Festuca, Festulolium, Lolium, Phalaris, Phleum and Poa	AGROS; DCTLS; FESTU; FESTL; LOLIU; PHALR; PHLEU; POAAA
Class 204*	Lotus, Medicago, Ornithopus, Onobrychis, Trifolium	LOTUS; MEDIC; ORNTP; ONOBR; TRFOL
Class 205	Cichorium, Lactuca	CICHO; LACTU
Class 206	Petunia and Calibrachoa	PETUN; CALIB
Class 207	Chrysanthemum and Ajania	CHRYS; AJANI
Class 208	(Statice) Goniolimon, Limonium, Psylliostachys	GONIO; LIMON; PSYLL_
Class 209	(Waxflower) Chamelaucium, Verticordia	CHMLC; VERTI; VECHM
Class 210	Jamesbrittania and Sutera	JAMES; SUTER
Class 211	Edible Mushrooms Agaricus bisporus Agaricus blazei Agrocybe cylindracea Auricularia auricula Auricularia polytricha (Mont.) Sacc. Dictyophora indusiata (Ventenat:Persoon) Fischer Flammulina velutipes Ganoderma lucidum (Leyss:Fries) Karsten Grifola frondosa Hericium erinaceum Hypsizigus marmoreus Hypsizigus ulmarius Lentinula edodes Lepista nuda (Bulliard:Fries) Cooke Lepista sordida (Schumacher:Fries) Singer Lyophyllum decastes Lyophyllum shimeji (Kawamura) Hongo Meripilus giganteus (Persoon:Fries) Karten Mycoleptodonoides aitchisonii (Berkeley) Maas Geesteranus Naematoloma sublateritium Panellus serotinus Pholiota adiposa Pholiota nameko Pleurotus cornucopiae var.citrinooleatus Pleurotus cystidiosus Pleurotus cystidiosus subsp. Abalonus Pleurotus eryngii Pleurotus ostreatus Pleurotus pulmonarius Polyporus tuberaster (Jacquin ex Persoon) Fries Sparassis crispa (Wulfen) Fries Tricholoma giganteum Massee	AGARI_BIS AGARI_BLA AGROC_CYL AURIC_AUR AURIC_POL DICTP_IND FLAMM_VEL GANOD_LUC GRIFO_FRO HERIC_ERI HYPSI_MAR HYPSI_ULM LENTI_ELO LEPIS_NUD LEPIS_SOR LYOPH_DEC LYOPH_SHI MERIP_GIG MYCOL_AIT NAEMA_SUB PANEL_SER PHLIO_ADI PHLIO_NAM PLEUR_COR PLEUR_CYS PLEUR_CYS_ABA PLEUR_ERY PLEUR_OST PLEUR_PUL POLYO_TUB SPARA_CRI MACRO_GIG

[End of Appendix III to Annex II and of document]

* Classes 203 and 204 are not solely established on the basis of closely related species.