



CAJ/54/7

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Fifty-Fourth Session
Geneva, October 16 and 17, 2006

REPORT

adopted by the Administrative and Legal Committee

Opening of the session

1. The Administrative and Legal Committee (CAJ) held its fifty-fourth session in Geneva on October 16, 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 Morocco had deposited its instrument of accession on September 8, 2006, and had become the sixty-second member of the Union on October 8, 2006.
5. The Delegation of Morocco expressed its appreciation for the welcome which Morocco had received on becoming member. The statement made by the Delegation of Morocco is reproduced in Annex II to this document.

Adoption of the Agenda

6. The CAJ adopted the agenda as presented in document CAJ/54/1.

Explanatory Notes on Variety Denominations Under the UPOV Convention

7. The Vice Secretary-General introduced document CAJ/54/2. He mentioned that two corrected documents in German, CAJ/53/5 Corr. and C/40/12 Corr., were available.

8. The Vice Secretary-General informed the CAJ that an electronic mail had been received from the International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA), on August 10, 2006, concerning Note 2.3.3(c) of Annex II to document CAJ/53/2 “Draft Explanatory Notes on Variety Denominations under the UPOV Convention”. The Office of the Union had replied that, as reflected in the report of the fifty-third session of the CAJ which had been adopted by correspondence on August 4, 2006 (see document CAJ/53/5, paragraphs 36 to 42 and 63), the CAJ had agreed to retain the text of Explanatory Note 2.3.3(c) of Annex II to document CAJ/53/2 unchanged.

9. The Vice Secretary-General further informed the CAJ that an electronic mail had been received from the European Seed Association (ESA), on October 10, 2006, expressing its support for the adoption of the “Explanatory Notes on Variety Denominations under the UPOV Convention”, contained in the Annex to document C/40/12, in particular with regard to the text of Explanatory Note 2.3.3(c).

10. The CAJ took note that the electronic mails of CIOPORA and ESA would be distributed at the seventy-second session of the Consultative Committee during the preliminary examination of document C/40/12.

11. The CAJ took note of the contents of document CAJ/54/2.

TGP Documents

12. In advance of the discussions on documents TGP/4/1 “Constitution and Management of Variety Collections”, TGP/9/1 “Examining Distinctness”, TGP/10/1 “Examining Uniformity” and document CAJ/54/3, the Chair provided a brief overview of the purpose of the TGP documents. He recalled that, in 1974, UPOV had adopted the “General Introduction to the Guidelines for the Examination of Distinctness, Homogeneity and Stability of New Varieties of Plants”, the purpose of which was to provide guidance on principles for the examination, with the aim of helping to achieve harmonization in the examination of varieties throughout the members of the Union. When revising the General Introduction in 2002 (new document TG/1/3 “General Introduction to the Examination of Distinctness, Uniformity and Stability (DUS) and the Development of Harmonized Descriptions of New Varieties of Plants”), it had become apparent that it would be helpful to supplement the general principles in that document with additional practical guidance in a series of associated documents—the TGP documents. The Chair noted that the development of TGP documents in relation to the DUS examination could be seen as another element in the preparation of information materials concerning the UPOV Convention and, in addition to being published in their own right, the TGP documents would be used in support of various UPOV activities. In particular, the Office of the Union anticipated that the General Introduction and the TGP documents would form the basis of an advanced module on “DUS Testing” for inclusion in the Distance Learning course program.

13. The Chair explained that the Technical Committee has invited the CAJ to comment on the drafts of document TGP/4/1, TGP/9/1 and TGP/10/1 because they concerned matters which had important administrative and legal aspects. He confirmed that the comments made by the CAJ would be considered by the Technical Committee at its forty-third session in March 2007 and explained that the CAJ would have a further opportunity to consider new versions of those TGP documents at a future session.

TGP/4 “Constitution and Management of Variety Collections” (document TGP/4/1 Draft 7)

14. Document TGP/4/1 Draft 7 was introduced by the Technical Director. The following proposals were made by the CAJ:

Sections	Proposals
2.1.1.1 (i)	to delete “this is the most effective solution, but rather expensive.”
2.1.1.1 (ii)	to reword to include the possibility of a full description according to the UPOV Test Guidelines being produced by other parties, e.g. breeders or non-members of the Union first sentence: to delete reference to establishing distinctness, since distinctness would not be established at that point in the examination second sentence to read: “In the case of similar varieties, the environmental effect on the expression of characteristics is such that, in general, this is likely not to be a satisfactory basis for excluding varieties from the growing trial or other tests;”
2.1.2.3 (i)	to delete “and of having authenticated living plant material available in the framework of enforcement of the plant breeders’ right”, because that does not relate directly to the examination of distinctness
2.2.1.2 (ii)	to elaborate on the meaning of “the climatic conditions for which it is adapted”
2.2.2.2 (i)	to delete “widely”
3.1	to delete “varieties” after “varieties of common knowledge” (in the English text only)
3.1.2.2.2	in relation to the proposal of the Technical Working Party for Agricultural Crops (TWA) that “UPOV might develop a model contract / agreement between authorities and breeders for inclusion in document TGP/5 ‘Experience and Cooperation in DUS Testing’ as a part of the revision of that document” (see document CAJ/54/3, paragraph 5), it was suggested that it would be more appropriate to seek to provide examples of contracts / agreements between authorities and breeders

TGP/9 “Examining Distinctness” (document TGP/9/1 Draft 7)

15. Document TGP/9/1 Draft 7 was introduced by the Technical Director.

16. In relation to Section 2.3.3.2, the Delegation of Australia requested clarification of a situation where the text of a TGP document was inconsistent with the General Introduction. The Technical Director noted that it would not be ideal to have such a situation, but that it

might be unavoidable in certain cases. He suggested that, where such an inconsistency occurred, in the first instance it should be stated in the relevant part of the TGP document concerned that there was an inconsistency with the General Introduction and an explanation for the inconsistency provided. The situation would thereafter be resolved at the subsequent revision of the General Introduction.

17. The Delegation of the European Community noted that proposals made by the TWA (see document CAJ/54/3, paragraph 5) would be appropriate to improve Section 2.6 of document TGP/9/1 Draft 7.

18. In relation to Section 6.2.1 of document TGP/9/1 Draft 7, the representative of the International Seed Federation (ISF) noted that, as a part of an application for a plant breeder's right, some authorities required the breeder to submit full variety descriptions of reference varieties. He considered that such information was not from an independent source and placed a burden on the breeder.

19. The Delegation of the United States of America wondered if the representative of ISF was suggesting that a breeder-based testing system was not appropriate in UPOV.

20. The representative of ISF considered that breeders were in favor of providing full descriptions of their candidate varieties and differences with, not full descriptions of, similar varieties.

21. The Delegation of France noted that the use of variety descriptions produced in different environments and provided by different sources was a matter which could be considered by the Technical Committee.

TGP/10 "Examining Uniformity" (document TGP/10/1 Draft 4)

22. In relation to Section 2.3.1 (b), the representative of ISF noted that rape seed had a substantial level of cross-pollination, but was often considered to be self-pollinated. He wondered why rape seed had not been included as an example. The Technical Director explained that the intention was to give only clear-cut examples and that the Test Guidelines would provide crop-specific guidance for cases such as rape seed.

23. The Delegation of the European Community noted that further substantive work was required on some sections of document TGP/10/1 Draft 4 and supported the proposal of the TWA (see document CAJ/54/3, paragraph 5) that a new draft of the document should be reviewed by the Technical Working Parties (TWPs) in 2007.

Molecular Techniques

24. The Vice Secretary-General introduced document CAJ/54/4. He recalled that, as mentioned in Annex II of document CAJ/54/4, the proposals of the *Ad hoc* Subgroup of Technical and Legal Experts of Biochemical and Molecular Techniques (BMT Review Group) in relation to the possible use of molecular tools for variety identification were subject to the outcome of the discussions in the Consultative Committee concerning the role of UPOV in matters concerning the enforcement of plant breeders' rights.

25. In response to a request for clarification of the role of the Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular (BMT) and the BMT Review Group, the Office of the Union provided a PowerPoint presentation containing an organigram of the relevant UPOV bodies involved in biochemical and molecular techniques¹.
26. The Delegation of the United States of America expressed its understanding of the role of UPOV in considering the possible use of molecular techniques in the examination of DUS, but expressed doubts about any role that UPOV might have in relation to the use of molecular techniques in the enforcement of plant breeders' rights, other than providing a forum for discussion of the techniques. With regard to the assessment of the possible use of molecular techniques in the examination of DUS, as presented in document CAJ/54/4, Annex II, Section 2.2(i)(1), the Delegation expressed concern that the wording might be interpreted to imply that molecular techniques could not be used alongside existing, phenotypic characteristics. It noted that a combination of molecular techniques and phenotypic characteristics could have advantages.
27. The representative of CIOPORA noted that molecular techniques would be used in the enforcement of plant breeders' rights, regardless of their use in the examination of DUS. He encouraged UPOV to work on molecular techniques in relation to enforcement in support of the needs of breeders in that area.
28. The representative of ISF noted that different molecular techniques might be used in different court cases concerning the enforcement of plant breeders' rights and proposed that the role of UPOV should be to endorse suitable techniques and to expand variety descriptions to include molecular information.
29. The Delegation of Japan noted the importance of the enforcement of plant breeders' rights and explained that molecular techniques had provided support in some cases of infringement.
30. With regard to the assessment of the possible use of molecular techniques in the examination of DUS, as presented in document CAJ/54/4, Annex II, Section 2.2(i)(3), the Delegation of France suggested adding "and the TC" after "CAJ" in both occurrences in paragraph 3. With respect to the role of the BMT, it emphasized the importance of not restricting the work of that group.
31. The CAJ noted that the extension of the terms of reference of the BMT Review Group concerning the possible use of molecular tools for variety identification in relation to the enforcement of plant breeders' rights, as set out in document CAJ/54/4, Annex II, Section 2.2(ii), was a matter to be considered by the Consultative Committee.
32. The CAJ considered that the composition of the BMT Review Group should not be made too formal and proposed to delete the final sentence of document CAJ/54/4, Annex II, Section 2.2(iii).

¹ The Office of the Union has posted an organigram of UPOV bodies on the first restricted area of the UPOV website at http://www.upov.int/restrict/en/upov_structure_index.html.

33. The CAJ agreed that a revised version of document CAJ/54/4 should be prepared for the fifty-fifth session of the CAJ to be held on March 29, 2007, reflecting the comments made in the fifty-fourth session of the CAJ and the advice of the Consultative Committee.

Development of Information Materials Concerning the UPOV Convention

34. The Vice Secretary-General introduced document CAJ/54/5 which provided information on the developments concerning the composition of the Administrative and Legal Committee Advisory Group (CAJ-AG). He reported that the consultations among the Latin-American countries concerning the two experts from that region had not yet been concluded.

35. The CAJ took note of the contents of document CAJ/54/5 and its Annex.

Enforcement of Plant Breeders' Rights

36. The Vice Secretary-General introduced document CAJ/54/6.

37. The Delegation of Japan provided further information on the Workshop on the Enforcement of Plant Breeders' Rights under the UPOV Convention, organized in cooperation with UPOV, which was to be held in Tokyo from November 15 to 17, 2006. The Japanese Government believed that the enforcement of breeders' rights was very important in order to make the breeder's right more effective. The Delegation expected more than 100 participants, with speakers from the Japanese public and private sectors and from members of the Union. The Workshop included a technical visit to the Narita Airport branch of Tokyo customs and to the National Center for Seed and Seedlings. Through that Workshop, the Delegation hoped to exchange information and to explore areas for future cooperation.

38. The Delegation of the European Community considered that it was important to have a dialogue with breeders, legal experts and all services entrusted with the enforcement of plant breeders' rights. In that connection, relevant seminars had been organized, the first being held in 2005, in Brussels, Belgium, with 250 participants and the second in Warsaw, Poland, with 160 participants. A third seminar was planned at the beginning of 2007 in Madrid, Spain.

39. The Delegation of the Republic of Korea reported that, in connection with the tenth session of the BMT, the Korean Society for Seed, Science and Industry and the Korean National Seed Management Office, in cooperation with UPOV, were organizing an International Symposium on the Application of Molecular Techniques for Plant Breeding and in Plant Variety Protection on November 24, 2006, in Seoul. That Symposium was intended to provide a forum to discuss molecular tools and technical issues.

40. The representative of CIOPORA expressed his satisfaction in relation to the activities organized by the European Community, Japan and the Republic of Korea concerning the enforcement of plant breeders' rights. He also praised the efforts made by the Polish authorities to strengthen the enforcement tools available in Poland.

41. The CAJ took note of the contents of document CAJ/54/6 and the information provided by the Delegations of the European Community, Japan and the Republic of Korea.

UPOV Information Databases

42. The Technical Director provided an update on developments concerning the GENIE database, the UPOV Code System and the Plant Variety Database (UPOV-ROM).

43. In relation to the Plant Variety Database (UPOV-ROM), it was recalled 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. It was explained that 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;

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

(d) another circular to be issued to members of the Union who did not contribute data to the UPOV-ROM, or who did 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 required particular assistance in submitting data.

44. That program had not yet been launched because the Office of the Union was in the process of finalizing a data submission table which could be used for submission for data to both the UPOV-ROM and the Community Plant Variety Office (CPVO) database. A number of prototypes had been developed jointly by UPOV and CPVO in order to make the table as user-friendly as possible.

45. With regard to the inclusion of UPOV codes in the data submitted for the UPOV-ROM, the Technical Director reported that 60% of the entries contained in the UPOV-ROM had been supplied with UPOV codes. Almost all of the data provided to UPOV via the CPVO had been UPOV coded, in particular the data from the European Community, most of the member States of the European Community, Norway and Switzerland. In addition, Bulgaria, Canada and South Africa were already providing UPOV codes for all their entries.

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

Program for the Fifty-Fifth Session

1. Opening of the session
2. Adoption of the agenda
3. Report on developments in the Technical Committee

4. TGP documents
5. Molecular techniques
6. Development of information materials concerning the UPOV Convention
7. Explanatory notes on variety denominations under the UPOV Convention
8. Enforcement of plant breeders' rights
9. UPOV information databases
10. Program for the fifty-sixth session
11. Closing of the session

47. 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

Julian JAFTHA, Director, Genetic Resources Management, Directorate: Genetic Resources,
Private Bag X973, Pretoria 0001 (tel.: +27 12 319 6214 fax: +27 12 319 6329
e-mail: dgr@nda.agric.za)

Kanthi NAGIAH (Ms.), Head, Legal Services, Department of Agriculture, Private Bag X250,
Pretoria 0001 (tel.: +27 12 319 7329 fax: +27 12 325 7391 e-mail: hls@nda.agric.za)

Joan SADIE (Mrs.), Principal Agricultural Food and Quarantine Officer, Directorate: Genetic
Resources Management, Private Bag X5044, Stellenbosch 7599 (tel.: +27 21 809 1648
fax: +27 21 887 2264 e-mail: JoanS@nda.agric.za)

ALBANIE / ALBANIA / ALBANIEN / ALBANIA

Petrit TOPI, Director, National Seeds and Seedlings Institute, Ministry of Food and
Agriculture, Rr. Siri Kodra, Tirana (tel.: +355 4 230324 fax: +355 4 230324
e-mail: petrítottopi@yahoo.com)

Vlash TIRANA, Head, Department for Variety Testing, National Seeds and Seedlings
Institute, Ministry of Food and Agriculture, Rr. Siri Kodra, Tirana
(tel.: +355 4 230 324 fax: +355 4 230 324)

ALLEMAGNE / GERMANY / DEUTSCHLAND / ALEMANIA

Hans Walter RUTZ, Regierungsdirektor, Bundessortenamt, Osterfelddamm 80,
30627 Hannover (tel.: +49 511 9566613 fax: +49 511 9566904
e-mail: hanswalter.rutz@bundessortenamt.de)

ARGENTINE / ARGENTINA / ARGENTINIEN / ARGENTINA

Marcelo Daniel 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)

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)

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)

AZERBAÏDJAN / AZERBAIJAN / ASERBAIDSCHAN / AZERBAIJÁN

Jalal ALIYEV, Member of Parliament, Institute of Botany, Potamdar Shosse, 40, Baku (fax: +994 12 5980682 e-mail: asaf@baku-az.net)

Asaf HAJIYEV, Member of Parliament, F. Agayev str., 9, 1141 Baku (tel.: +994 12 5980684 fax: +994 412 5980682 e-mail: asaf@baku-az.net)

BELGIQUE / BELGIUM / BELGIEN / BÉLGICA

Camille VANSLEMBROUCK (Mme), Ingénieur, Office de la propriété intellectuelle, Responsable des sections Droit d'obtenteur et Brevets, 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@economie.fgov.be)

BOLIVIE / BOLIVIA / BOLIVIEN / BOLIVIA

Jorge Alberto ROSALES KING, Director Ejecutivo, Oficina Regional de Semillas, Programa Nacional de Semillas, Ministerio de Desarrollo Rural, Agropecuario y Medio Ambiente, Av. Santos Dumont / Calle Cap. Dardo Arana 180, Casilla postal 2736, 3095 Santa Cruz de la Sierra (tel.: +591 33 523272 fax: +591 33 523056
e-mail: jorgerosales@semillasantacruz.org)

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)

CANADA / KANADA / CANADÁ

Valerie SISSON (Ms.), Commissioner, Plant Breeders' Rights Office, Canadian Food Inspection Agency (CFIA), 2, Constellation Crescent, Ottawa, Ontario K1A 0Y9 (tel.: +1 613 221 7521 fax: +1 613 228 4552 e-mail: vsisson@inspection.gc.ca)

Elizabeth PRENTICE-HUDSON (Mrs.), Examiner, Plant Breeders' Rights Office, Canadian Food Inspection Agency (CFIA), 2 Constellation Crescent, Ottawa, Ontario K1A 0Y9 (tel.: +1 613 221 7529 fax: +1 613 228 4552 e-mail: eprentice@inspection.gc.ca)

CHILI / CHILE

Enzo CERDA, Jefe, División de Semillas, 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 Yanmei (Mrs.), Deputy Director, Division for American and Oceanian Affairs, International Cooperation Department, State Intellectual Property Office (SIPO), P.O. Box 8020, 6, Xitucheng Road, Haidian District, Beijing 100088 (tel.: +86 10 6208 3488 fax: +86 10 6201 9615 e-mail: liyanmei@sipo.gov.cn)

LIU Ping, Vice Director General, Development Center for Science and Technology, Ministry of Agriculture, Building 18, Maizidian Street, Chao Yang District, Beijing (tel.: +86 10 64195086 fax: +86 10 65085601 e-mail: liuping@agri.gov.cn)

HUANG Faji, Deputy Division Director, Office for the Protection of New Plant Varieties, State Forestry Administration, East Street 18, Hepingli, Dongcheng District, Beijing 100714 (tel.: +86 10 8423 9104 fax: +86 10 8423 8883 e-mail: huangfaji@cnpvp.net)

RAO Zhi Hong, Deputy Division Director, Division of New Plant Variety Protection, Development Center for Science and Technology, Ministry of Agriculture, Room No. 512, Building 20, Maizidian Street, Beijing 100026 (tel.: 86 10 6592 7554 fax: 86 10 6592 3176 e-mail: cnpvp@agri.gov.cn)

COLOMBIE / COLOMBIA / KOLUMBIEN

Ana Luisa DÍAZ JIMÉNEZ (Sra.), Coordinador Nacional, Derechos de Obtentor de Variedades Vegetales 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 du Directeur Général, Direction Générale Santé et Protection des Consommateurs, Commission européenne, 4, rue Breydel, Office: B232-2/21, 1040 Bruxelles, Belgique (tel.: +32 2 295 9713 fax: +32 2 298 1227 e-mail: jacques.gennatas@ec.europa.eu)

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)

ÉQUATEUR / ECUADOR

Mauricio MONTALVO, Embajador, Representante Permanente, Misión Permanente,
80-82, rue de Lausanne, 1202 Ginebra, Suiza (tel.: +41 22 732 4955 fax: +41 22 732 4834
e-mail: onuginebra@mmrree.gov.ec)

Luis VAYAS VALDIVIESO, Primer Secretario, Misión Permanente, 80-82, rue de Lausanne,
1202 Ginebra, Suiza (tel.: +41 22 732 4955 fax: +41 22 732 4834
e-mail: lvayas@mmrree.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, 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, 71102 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, 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), Madison Building, West Wing, 600 Dulany Street,
FMDW 10A60, Alexandria, VA 22314 (tel.: +1 571 272 8474 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)

FÉDÉRATION DE RUSSIE / RUSSIAN FEDERATION / RUSSISCHE FÖDERATION /
FEDERACIÓN DE RUSIA

Yuri A. ROGOVSKIY, Deputy Chairman, Head of Method Department, State Commission of
the Russian Federation for Selection Achievements Test and Protection, Orlikov per., 1/11,
107139 Moscow (tel.: +70 495 208 67 75
fax: +70 495 411 83 66 e-mail: gossort@gossort.com)

Antonina TRETINNIKOVA (Ms.), Agronomist Expert, The State Commission of the Russian
Federation for Selection Achievements Test and Protection, Orlikov per., 1/11,
107139 Moscow (tel.: 7 495 207 4944 fax: 7 495 411 8366 e-mail: gossort@gossort.com)

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)

Kirsi Marjatta HEINONEN (Ms.), Agricultural Counsellor, Head of Unit, Food and Health, Ministry of Agriculture and Forestry, Hallituskatu 3 A, P.O. Box 30, FIN-00023 Government (email: kirsi.heinonen@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)

Joël GUIARD, Directeur adjoint, Groupe d'étude et de contrôle des variétés et des semences (GEVES), La Minière, F-78285 Guyancourt Cedex (tel.: +33 1 3083 3580 fax: +33 1 3083 3629 e-mail: joel.guiard@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)

BATICZ Csaba, Legal Officer, Legal and International Department, Hungarian Patent Office, Garibaldi u. 2, H-1054 Budapest (tel.: +36 1 474 5764 fax: +36 1 474 5965 e-mail: csaba.baticz@hpo.hu)

Gyula Attila KISS, Head, Section for Agriculture and Variety Protection, Hungarian Patent Office, Garibaldi u. 2, H-1054 Budapest (tel.: +36 1 474 5913 fax: +36 1 474 5914 e-mail: gyula.attila.kiss@hpo.hu)

IRLANDE / IRELAND / IRLAND / IRLANDA

Nicholas P. MCGILL, Controller of Plant Variety Rights, Crop Variety Evaluation Centre, Department of Agriculture and Food, Backweston Farm, Leixlip, Co. Kildare (tel.: +353 1 630 2900 fax: +353 1 628 0634 e-mail: nicholas.mcgill@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 5836 e-mail: michalsc@moag.gov.il)

JAPON / JAPAN / JAPÓN

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

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

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)

LITUANIE / LITHUANIA / LITAUEN / LITUANIA

Sigita JUCIUVIENE (Mrs.), Deputy Director, Lithuanian State Plant Varieties Testing Center, Smelio 8, LT-10324 Vilnius (tel.: +370 5 234 3647 fax: +370 5 234 1862 e-mail: sigita.juciuviene@avtc.lt)

MAROC / MOROCCO / MAROKKO / MARRUECOS

Amar TAHIRI, Chef du Service du contrôle des semences et plants, Direction de la protection des végétaux, des contrôles techniques et de la répression des fraudes, Ministère de l'agriculture, du développement rural et des pêches maritimes, B.P. 1308, Rue Hafiane Cherkaoui, Rabat (tel.: +212 37 771085 fax: +212 37 779852 e-mail: amar.tahiri@menara.ma)

Mohammed BELHADRI, Chef de Bureau, Service du contrôle des semences et plants, Direction de la protection des végétaux, des contrôles techniques et de la répression des Fraudes (DPV CTRF), Ministère de l'agriculture, du développement rural et des pêches maritimes, B.P. 1308, Rue Hafiane Cherkaoui, Rabat (tel.: +212 37 779873 fax: +212 37 779852 e-mail: mbelhadri@hotmail.com)

M'hamed SIDI EL KHIR, Conseiller, Mission permanente, 18a, chemin Francois Lehmann, 1218 Grand Saconnex, Suisse (tel.: +41 22 734 8550 fax: +41 22 734 8630)

MEXIQUE / MEXICO / MEXIKO / MÉXICO

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 2213 fax: +52 55 5390 1441 e-mail: gat.snics@sagarpa.gob.mx)

NORVÈGE / NORWAY / NORWEGEN / NORUEGA

Haakon SØNJU, Registrar, Plant Variety Board, Moerveien, 12, P.O. Box 3, Mattilsynet, N-1431 Aas (tel.: +47 64 944400 fax: +47 64 944401 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 tel.: +47 2 2242753 e-mail: veslemoy.faafeng@lmd.dep.no)

NOUVELLE-ZÉLANDE / NEW ZEALAND / NEUSEELAND / NUEVA ZELANDIA

Maitland MALTBY, Assistant Commissioner of Plant Variety Rights, Plant Variety Rights Office, 330, High Street, Lower Hutt 5040 (tel.: +64 4 560 1624 fax: +64 4 560 1619 e-mail: maitland.maltby@iponz.govt.nz)

PARAGUAY

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

PAYS-BAS / NETHERLANDS / NIEDERLANDE / PAÍSES BAJOS

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

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)

Mireille C. LOTH (Mrs.), Legal Adviser, Department of Legal Affairs, Ministry of Agriculture, Nature and Food Quality, 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

Edward S. GACEK, Director, Research Centre for Cultivar Testing (COBORU), 63-022 Slupia Wielka (tel.: +48 61 285 2341 fax: +48 61 285 3558 e-mail: e.gacek@coboru.pl)

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

Alicja RUTKOWSKA-ŁOŚ (Mrs.), Head, National Listing and Plant Breeders' Rights Protection Office, Research Centre for Cultivar Testing (COBORU), 63-022 Slupia Wielka (tel.: +48 61 285 2341 fax: +48 61 285 3558 e-mail: a.rutkowska@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, 433 Anyang 6-dong, Anyangsi, Kyunggi-do 430-016, Anyang City, Kyunggi-do 430-016 (tel.: +82 31 467 0190 fax: +82 31 467 0161 e-mail: kjchoi@seed.go.kr)

LEE Hyung Gon, Patent Examiner, Korean Intellectual Property Office (KIPO), Government Complex - DaeJeon, 920 Dunsan-dong, Seo-gu, Daejeon Metropolitan City 302-701 (tel.: +82 42 481 5632 fax: +82 42 472 3514 e-mail: valjang@hanmir.com)

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

Natalia NADIOJCHINA (Mrs.), Chief Expert, Preliminary Examination Division, State Agency on Intellectual Property (AGEPI), 24/1, Andrei Doga str., 2024 Chisinau (tel.: +373 22 400 520 fax: +373 22 440 119 e-mail: natalia.nadiojchin@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)

Jiří SOUČEK, Senior Counsellor, Central Institute for Supervising and Testing in Agriculture (ÚKZÚZ), Plant Variety Testing Division, Section of Legislation and DUS Tests, Za opravnou 4, 150 06 Praha 5 - Motol (tel.: +420 257 211 755 fax: +420 257 211 752 e-mail: jiri.soucek@ukzuz.cz)

ROUMANIE / ROMANIA / RUMĂNIEN / RUMANIA

Adriana PARASCHIV (Mrs.), Head, Agricultural Division, State Office for Inventions and Trademarks (OSIM), 5, Ion Ghica, Sector 1, P.O. Box 52, 030044 Bucarest (tel.: +40 21 3155698 fax: +40 21 312 819 e-mail: adriana.paraschiv@osim.ro)

Elena Craita BURCA (Mrs.), Examiner, State Office for Inventions and Trademarks, Str. Ion Ghica No. 5, Sector 1, 030044 Bucarest (tel.: +40 21 3155698 fax: +40 21 3123819 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, Sector 1, 011464 Bucarest (tel.: +40 213 774442 fax: +40 213 184408 e-mail: mihaela_ciora@yahoo.com)

Oana MARGINEANU (Ms.), Head of Legal Bureau, Legal and International Cooperation Division, 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.margineanu@osim.ro)

Cornelia Constanta MORARU (Ms.), Head, Legal Affairs Division, State Office for Inventions and Trademarks, Str. Ion Ghica No. 5, Sector 1, 030044 Bucarest (tel.: +40 21 313 2492 fax: +40 21 3123819 e-mail: moraru.cornelia@osim.ro)

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

Siobhán COSTELLO (Miss), Head of Policy Unit, Plant Variety Rights Office and Seed Division, Department for Environment, Food and Rural Affairs (DEFRA), White House Lane, Huntingdon Road, Cambridge CB3 0LF (tel.: +44 1223 342359 fax: +44 1223 342386 e-mail: siobhan.costello@defra.gsi.gov.uk)

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)

SUÈDE / SWEDEN / SCHWEDEN / SUECIA

Christina TÖRNSTRAND (Ms.), Legal Adviser, Ministry of Agriculture and Consumer Affairs, Fredsgatan, 11, 103 33 Stockholm (tel.: +46 8 405 1107 fax: +46 8 206 496 e-mail: christina.tornstrand@agriculture.ministry.se)

SUISSE / SWITZERLAND / SCHWEIZ / SUIZA

Manuela BRAND (Frau), Leiterin Büro für Sortenschutz, Sektion Zertifizierung, Pflanzen- und Sortenschutz, 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), Juristin, Sektion Zertifizierung, Pflanzen- und Sortenschutz, 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 HAMDY, Directeur général, Direction générale des affaires juridiques et foncières, 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)

II. OBSERVATEURS / OBSERVERS / BEOBACHTER / OBSERVADORES

ALGÉRIE / ALGERIA / ALGERIEN / ARGELIA

Nadia HADJERES (Mme), Directrice Générale, Centre national de certification et de contrôle des semences et plants, Ministère de l'agriculture, 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)

MALAISIE / MALAYSIA / MALASIA

Sofian MOHD. SALLEH, Director General, Department of Agriculture Malaysia, 17th Floor, Federal Government Administrative Centre, Wisma Tani, Lot 4G2, Precint 4, 62632 Putrajaya (tel.: 603 88884069 fax: 603 88885069 e-mail: dato_sofian@doa.gov.my)

Cheah LEE SHEN, Deputy Director, Crop Quality Control Division, Department of Agriculture Malaysia, 17th Floor, Federal Government Administrative Centre, Wisma Tani, Lot 4G2, Precint 4, 62632 Putrajaya (tel.: +603 8870 3453 fax: +603 8888 7639 e-mail: cheahls@doa.gov.my)

RÉPUBLIQUE DOMINICAINE / DOMINICAN REPUBLIC /
DOMINIKANISCHE REPUBLIK / REPÚBLICA DOMINICANA

Luz Adelma GUILLEN (Sra.), Encargada de la Oficina de Seguimiento a la Reforma y Modernización del Sector Agropecuario, Secretaria de Estados de Agricultura, Av. Fray Cipriano de Utrera, Centro de los Heroes, Santo Domingo (tel. +809 533 7522 fax: +809 532 1263 e-mail: luzadelma@verizon.net.do)

Nora GÓMEZ GUZMÁN (Sra.), Encargada de Solución de Controversias de la Oficina de Tratados Comerciales Agrícolas, Autop. Duarte Kibi, Jardines Norte, Santo Domingo (tel.: +809 547 3888 fax: +809 732 2963 e-mail: noragomezguzman@gmail.com)

José SÁNCHEZ, Encargado División Certificación de Semillas, Secretaria de Estado de Agricultura, Autop. Duarte Kibi, Jardines Norte, Santo Domingo (tel.: +809 547 3888 fax: +809 732 2963)

Gladys Josefina AQUINO (Srta.), Consejera, Misión Permanente, 63, rue de Lausanne, 1202 Ginebra, Suiza (tel.: +41 22 715 3910 fax: +41 22 741 0590 e-mail: josefina.aquino@rep-dominicana.ch)

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: kyilmaz@tagem.gov.tr)

Derya ÖZEN (Mrs.), Engineer, Ministry of Agriculture and Rural Affairs, General Direction of Protection and Control Office, Yenimahalle – Ankara (+90 312 4174 176 e-mail: deryamozen@hotmail.com)

Yesim BAYKAL (Mrs.), Counsellor, Permanent Mission to the WTO, Case postale 1837, 1215 Geneva 15, Switzerland (tel.: +41 22 791 70 10 fax: +41 22 791 70 20 e-mail: mission.turkey-wto@ties.itu.int)

III. ORGANISATIONS / ORGANIZATIONS /
ORGANISATIONEN / ORGANIZACIONES

ASSOCIATION INTERNATIONALE DES PRODUCTEURS HORTICOLES (AIPH) /
INTERNATIONAL ASSOCIATION OF HORTICULTURAL PRODUCERS (AIPH) /
INTERNATIONALER VERBAND DES ERWERBSGARTENBAUES (AIPH) /
ASOCIACIÓN INTERNACIONAL DE PRODUCTORES HORTÍCOLAS (AIPH)

Mia HOPPERUS BUMA (Miss), Secretary, Committee for Novelty Protection, International Association of Horticultural Producers (AIPH), P.O. Box 280, 2700 AG Zoetermeer, Netherlands (tel.: +31 79 347 0707 fax: +31 79 347 0405 e-mail: mbuma@vbn.nl)

COMMUNAUTÉ INTERNATIONALE DES OBTENTEURS DE PLANTES
ORNEMENTALES ET FRUITIÈRES DE REPRODUCTION ASEXUÉE (CIOPORA) /
INTERNATIONAL COMMUNITY OF BREEDERS OF ASEXUALLY REPRODUCED
ORNAMENTAL AND FRUIT-TREE VARIETIES (CIOPORA) / INTERNATIONALE
GEMEINSCHAFT DER ZÜCHTER VEGETATIV VERMEHRBARER ZIER- UND
OBSTPFLANZEN (CIOPORA)

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)

Dominique THÉVENON (Mrs.), Board Member, Star Fruits, Route d'Orange, 84860 Caderousse, France (tel.: +33 490 11 93 53 fax: +33 490 11 93 51 e-mail: dominique.thevenon@wanadoo.fr)

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

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

Juan Carlos MARTÍNEZ GARCÍA, Intellectual Property Manager, DISASEM, S.L., c/Tarbes 10, Entlo., 22005 Huesca, Spain (tel.: +34 976 212197 fax: +34 976 226410 e-mail: jcm@disasem.com)

Pierre ROGER, Directeur de la propriété intellectuelle, Germplasm Preservation, Groupe Limagrain Holding, Boîte postale 1, 63720 Chappes, France (tel.: +33 4 7363 4069 fax: +33 4 7364 6737 e-mail: pierre.roger@limagrain.com)

IV. BUREAU / OFFICER / VORSITZ / OFICINA

Krieno FIKKERT, 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
Pia HUBER (Mrs.), Administrative Officer

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

STATEMENT BY THE DELEGATION OF MOROCCO

Mr. Chairman,
Ladies and Gentlemen,

On behalf of the Kingdom of Morocco and the Ministry of Agriculture, Rural Development and Maritime Fisheries, the Delegation of the Kingdom of Morocco wishes to thank you for the warm welcome given to it by UPOV. We are very honored that our country has become a member of the Organization.

On September 8, 2006, the Kingdom of Morocco deposited its instrument of accession to the 1991 Act of the UPOV Convention and became the sixty-second member of UPOV on October 8, 2006.

On April 24, 1997, Morocco requested that Law No. 9-94 on the Protection of New Varieties of Plants, adopted on December 19, 1996, be examined in order to establish the extent to which it complied with the UPOV Convention. The UPOV Council decided that the provisions of Law 9-94 are in compliance with the provisions of the 1991 Act of the UPOV Convention.

The protection of new varieties of plants in Morocco is governed by Law No. 9-94 and by the implementing provisions established by two decrees and seven orders. In Morocco, protection is granted to 76 plant genera and species. To date, 175 applications have been filed, 111 of which have been granted protection.

The Advisory Committee on the Protection of New Varieties of Plants is responsible for giving an opinion to the Minister for Agriculture on all matters relating to the protection of new varieties of plants. The Committee is chaired by the Directorate for the Protection of Plants, Technical Inspection and Repression of Fraud. The bodies responsible for the administrative and technical aspects of the official approval of varieties are also responsible for the aspects relating to the protection of new varieties of plants.

We wish to highlight the assistance given to Morocco by the Office of the Union, to which we express our grateful thanks. We also wish to thank the countries that have helped Morocco in implementing the Law on the Protection of New Varieties of Plants, in particular France and the United States of America.

[End of Annex II and of document]