

Comments of the Russian Federation on document UPOV/EXN/HRV/2 Проект 2
at the ninth session of CAJ-AG in Geneva on October 14 and 17, 2014.

First of all, we would like to thank the UPOV Office for presentation in the document considered comments and proposals made by the Russian Federation on previous drafts of documents concerning acts in respect of harvested material.

To be exactly, those our comments concern the breeder's right on harvested material and, a principal disagreement between position of the Russian Federation and positions of authors of the drafts mentioned consists of a different interpretation (explanation) of the wording established in Article 14 (2) "unauthorized use of propagating material".

What, exactly, should be authorized?

We think that considering provisions of Articles 14, 15 and 16 of the UPOV Convention the breeder's authorization refers to acts in respect of propagating material and also to acts in respect of harvested material produced from a batch of propagating material on acts with which the breeder's authorization has not been obtained. In this case the breeder should prove that he has had no reasonable opportunity to exercise his right on the said batch of propagating material.

Significance of Article 14 (2) consists of that it provides the breeder to take legal steps against the persons, producing in the territory or importing to the territory, propagating material without his (breeder's) authorization and hence to exercise his right in the territory of protection and to have applicable remuneration.

Draft

And now, please, note our remarks directly on document UPOV/EXN/HRV/2 Проект 2

1. We support all *GENERAL COMMENTS* from Argentina (*Comment: Argentina^a*) except 1.1(c).
Explanation. See. The text below.

2. Words in par 1 "the harvested material must have been obtained through the **unauthorized use** of propagating material" would be applicable to replace with words: "*the harvested material must have been obtained through a batch of propagating material on acts with which, considering Articles 15 and 16, the breeder's authorization has not been obtained according to Article 14 (1) (a)* ".

Explanation.

Production of harvested material under Article 14 (1)(a) of the UPOV Convention does not fall within the breeder's right. Harvested material shall produce as in a country of protection and in the third-parties' countries without any limitations of the breeder.

Export of a variety material batch, which has been sold or marketed by the breeder or with his consent to a country where no protection was, would require applicable breeder's authorization. Amount of the variety material exported, a country/exporter and a royalty amount shall be established in a license contract. The breeder has no right to stipulate any conditions on acts with the material exported in another country.

3. Paragraphs 2 and 3 need another edition.

Explanation.

The paragraphs wording does not provide a clear explanatory concerning the term «harvested material». Concept «entire plants and parts of plants» equally concerns the term «propagating material».

The legislation of the Russian Federation establishes the following:

«Propagating material means entire plants or parts of plants applied for reproduction of a variety»;

«Harvested material means entire plants or parts of plants applied for the purposes different that purposes of reproduction of a variety ».

4. We support Proposal 3.1: Argentina^a and Proposal 3.2: Unated States of America^b

Explanation.

Harvested material shall be recognized batches of a variety material (plants and parts of plants) witch in fact have not been applied for the purpose of the variety reproduction. However, a batch of commodity grain conditioned may be used for the purpose of the variety reproduction and, in this case it shall be recognized as propagating material.

5. We do not support Proposal 3.3: CIOPORA^e.

Explanation.

At determination of a category of a material of a variety it is impossible to be guided by potential possibility to use the variety material as propagating material. See also explanation on par 4.

6. The words "... and in other territories..." and the last item in Proposal 4.1 "4. Should be deleted.

Explanation

The breeder has no right on protection in respect of acts with a variety material in the territories where PBR granting has not been initiated or should not be granted. (See Proposal 4.3: Russian Federation^b).

7. We support Proposal 4.2: Argentina^a.

8. We do not support Proposals 4.4 and 4.5. Unated States of America^d.

9. We support Proposal 4.6. APBREBES^h.

10. We do not support Proposal 4.7: CIOPORA^e.

11. We do not support Proposal 4.8: ESA^c.

12. The first item in Proposal 6.1: Russian Federation^b should be changed for the following:

"The last item of Paragraph 6 to write in the following wording:

«Thus, considering Articles 15 and 16, "unauthorized use" in Article 14(2) means production of harvested material trough batches of propagating material which have been obtained and marketed without breeder's authorization".

13. Paragraph 7 and Alternative texts should be deleted.

Explanation

See Proposal 7.2: Russian Federation^b

14. We support Proposal 7.1: Argentina^a.

15. We do not support Proposal 7.3: Unated States of America^d, Proposal 7.4: Crop Life International^k and Proposal 7.5 ESA^c

16. Paragraph 8 should be deleted.

Explanation

See Proposal 8.1: Russian Federation^b

17. Paragraph 9 should be deleted.

Explanation

See Proposal 9.2 Russian Federation^b

18. We support Proposal 9.3: Unated States of America^d and Proposal 9.4: APBREBES^h

19. We do not support Proposal 9.5: ESA^c.

Explanation

Any person having intention to produce propagating material is obliged to obtain the breeder's authorization on acts with propagating material. Any conditions and limitations should not regulate such acts of the third parties.

20. Paragraphs 10, 11 and 12 should be deleted.

See Proposals 10.1.; 11.1: и 12.1: Russian Federation^b.

21. We support Proposal 12.1: Argentina^a and Proposal 12.3: APBREBES^h.

22. Concerning Paragraph 14 see Proposal 14.2: Russian Federation^b.

23. The alternative text in Paragraph 14 to allocate in particular paragraph (not alternative). The last sentence should be deleted.

24. We support Proposal 14.1: Argentina^a.

25. We support Proposal 14.3: APBREBES^h.

26. Illustrative examples should be developed in accordance with the proposals agreed and approved. The proposals should not initiate any wrongful circumstances for the breeder's right arising on harvested material.

27. We support Proposal 15.1: Argentina^a.

28. Example 1(a) and 1(b) should be deleted.

Explanation

No breeder's authorization required under Article 16(1)(ii)(Exhaustion of the breeder's right) for export to Country B of material of Variety A marketed by the breeder. It is well known for developers of the document, isn't it? (See also Proposal Example 2.1: Russian Federation^b.)

29. We support Proposal 1.2: Unated States of America^d.

30. Text of Example 2. Illustration 2(a) would be applicable to write in the following wording:

"Variety 2 is not produced in Country A, e.g., Banana variety, the breeder does not exercise his right in respect of propagating material (the propagating material is not produced

and not imported) and use his right through the right on harvested material imported (for example, Banana fruits)".

Illustration 2(b) should be deleted.

Explanation

Illustration 2(a) concerns asexually propagated varieties too. If harvested material is produced in country of a variety protection (for example, apple or potato varieties), a breeder implements his right by means of licensing for import of a landing material of the variety protected.

31. We support Proposal 2.2: Unated States of America^d.

32. Example 3. should be deleted.
(See Proposal Example 3.1: Russian Federation^b.)

33. We do not support Proposal 3.2: Unated States of America^d.

34. Example 4. Illustration 4(a). Alternative 2(a) should be deleted.

35. Example 4. We support Illustration 4(a). Alternative 2(b).

36. Example 4. Illustration 4(b) should be deleted.

37. Example 5 should be deleted. (See Proposal Example 5.1: Russian Federation^b.)

38. Example 6. should be deleted. (See Proposal Example 6.1: Russian Federation^b.)

We support Proposal 6.3: *APBREBES*^h

39. The wording of Example 7 would be to change under Proposal Example 7.1: Russian Federation^b.

Example 7 to place the first as the similar circumstance of the breeder's right arising on harvested material is the basic one for suppression of infringements of the rights to acts in respect of propagating material in the territory of protection.

THANK YOU FOR ATTENTION!