



TWF/45/25

ORIGINAL: English

DATE: June 12, 2014

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

TECHNICAL WORKING PARTY FOR FRUIT CROPS**Forty-Fifth Session
Marrakesh, Morocco, May 26 to 30, 2014****REPORTS ON DEVELOPMENT IN PLANT VARIETY PROTECTION
FROM MEMBERS AND OBSERVERS***Document prepared by the Office of the Union**Disclaimer: this document does not represent UPOV policies or guidance*

1. The Technical Committee (TC), at its forty-seventh session held in Geneva, from April 4 to 6, 2011, agreed to request the Office of the Union to invite experts to submit written reports to the Office of the Union in advance of the Technical Working Party (TWP) sessions in order that a document containing those reports could be prepared by the Office of the Union. The TC noted that TWP experts would be invited to make a brief oral summary of their written report at the session and would also be encouraged to make reports under the agenda item "Experiences with new types and species", as appropriate. The TC also noted that TWP experts would have an opportunity to raise questions concerning matters of interest (see document TC/47/26 "Report on the Conclusions", paragraphs 9 and 10).
2. Written reports were requested by the Office of the Union in Circular E14/088. The following reports were received (in alphabetical order):

Members of the Union: Annexes I to XV: Australia, Brazil, European Union, France, Germany, Hungary, Japan, Mexico, Morocco, Netherlands, New Zealand, Poland, Romania, South Africa, Spain.

Organizations: Annex XVI: International Community of Breeders of Asexually Reproduced Ornamental and Fruit Plants (CIOFORA).

[Annexes follow]

TWF/45/25

ANNEX I

AUSTRALIA

The expert from Australia reported that the number of applications received for the 2013/2014 year was around 330. Approximately 25% of applications filed had been for fruit varieties. That number has slightly increased in recent years, which was 23% in 2011. The genera currently under test include; Prunus (105), Vitis (41), Malus (40), Fragaria (28), Vaccinium (27), Citrus (21), Rubus (17), Pyrus (8) and Olea (5).

[Annex II follows]

ANNEX II

BRAZIL

1. The National Plant Variety Protection Service – SNPC on the Ministry of Agriculture, Livestock and Food Supply (MAPA), is the national authority for the examination of applications and for granting Plant Breeder's Rights in Brazil.
2. In 2013, SNPC received 326 applications: agricultural crops (177), ornamentals (50), vegetables (35), fruit crops (28), forest trees (23) and forage crops (13).
3. Those 28 applications for fruit crops: *Vitis* L. (17), *Citrus* (04), *Malus domestica* (02), *Prunus persica* (02), *Punica granatum* (02) and *Rubus idaeus* (01).
4. Applications from Australia (05), USA (15), Israel and New Zealand (02 each) and Brasil (04).
5. 10 titles granted: *Malus domestica* (03), *Vitis* (03), *Vaccinium* (02), *Prunus persica* (01), *Rubus idaeus*(01).
6. Up to April 30, 2014, SNPC received 90 applications: agricultural crops (48), ornamentals (16), fruit crops (09), vegetables (10) and forage crops (07).

[Annex III follows]

EUROPEAN UNION

In 2013, Croatia joined the EU and hence the Community rights have become valid on the territory of 28 Member States.

The year 2013 was the record year in terms of the number of applications for the Community plant variety rights (CPVR). The Community Plant Variety Office of the European Union (CPVO) received 3 297 applications, which represented an increase of 15% compared to the previous year. A part of the strong increase observed in 2013 could be attributed to lowered application fee from EUR 900 to EUR 650 applicable as from the 1st January 2013. In 2013, the CPVO granted 2 706 titles for Community protection which represents the highest number ever granted within a calendar year. By the end of 2013, there were 21 576 Community plant variety rights in force. In 2013, a record number of 255 applications in the fruit sector was achieved; the most important crops were peach, strawberry and grapevine.

Variety Finder: The centralized database of variety denominations "CPVO Variety Finder" contained in 2013 over 850,000 denominations from national listing, plant variety rights registers and some unofficial registers. The database is available on the public website with a registration system, a login and password is delivered upon request. Over 83,000 tests were launched in the database in 2013; this represents an increase of 20% compared to 2012.

IT developments: As regards the online filling launched in 2010, the share of applications filed through this means has reached some 80% recently. The pilot project on sharing the online application tool with EU Member States has advanced significantly. Since April 2014, the CPVO has been serving the certificates of Community PBR titles only in the electronic version. The pilot project 'Exchange platform' was launched last year and more and more documents are exchanged electronically with examination offices via this platform.

Fruit experts' meeting of 2013: The meeting with fruit experts in 2013 took place in October. The meeting was attended by representatives of the CPVO's entrusted examination offices for fruit crops, CIOFORA and representatives of countries participating in the Multi-Beneficiary Programme. Discussions focused on acceptance of plant material to be provided for DUS testing, requesting submission of reference varieties and quarantine issues. Further progress was made on potential strategies to rationalise the DUS examinations for fruit crops, including the works on the R&D project on reducing the number of observation cycles for fruit varieties. It was established that reducing the number of observations cycles could lead to a less reliable variety description. The issue will be further investigated this year.

Apple open day: An apple open day was organised in cooperation with INRA-IRHS (the French Institute for Research in Horticulture and Seeds) and GEVES (Groupe d'étude et de contrôle des variétés et des semences) on the 18th December 2013 in Angers (France). Around 60 representatives actively involved in the apple sector participated in it. It was emphasized that mutations was an effective way of breeding new varieties which could be complementary to breeding by hybridisation, sometimes even necessary. Discussions were concentrated on possible improvements of the DUS testing of mutation varieties by more efficient collaboration with breeders at initial stages of applications and by a potential use of molecular techniques.

[Annex IV follows]

FRANCE

Since January 2014, DUS GEVES team has been reorganized.

- Clarisse Maton takes the general coordination of the DUS activities and the TLO CPVO representation,
- Virginie Bertoux and Richard Brand are the France representatives at UPOV,
- DUS Field crop activities are managed by Clarisse Maton (maize), Virginie Bertoux (oil crops, TWA France representation), Anne Lise Corbel (rape...) and DUS examinateurs,
- DUS ornamental activities are managed by Marie-Hélène Gandelin (CPVO ornamental contact) and Françoise Jourdan (UPOV TWO and CPVO ornamental contacts),
- DUS fruit activities are managed by Richard Brand and Marie-Hélène Gandelin (UPOV TWF and CPVO fruit contacts),
- DUS vegetables activities are managed by Pascal Coquin (national registration), Chrystelle Jouy and Stéphanie Christien (UPOV TWV and CPVO vegetable contacts), all charged of DUS activities with Jean Michel Retailleau and Carole Dirwimmer.
- Christophe Chevalier and Anne Lise Corbel are the France representatives to the TWC UPOV group.

Contacts can also be established with M.Arnaud Deltour –General Director of GEVES, acting at UPOV- and Georges Sicard – Director of SEV GEVES –

In 2014, for national registration, 150 running applications are tested. It concerns mainly peach, apricot, apple and cherry. 44 varieties are proposed to be listed in 2013 : apricot 4, cherry 1, walnut 2, peach 28, apple 5, Prunus rootstock 3 and japonese plum 1.

The national registration decided also to open a list for apple varieties for orchard pollinisation.

We also test applications for PBR, mainly for CPVO and national agencies, for the same species : *Prunus* and *maloïdées*.

An apple CPVO/INRA/GEVES open day has been organized in december 2013 with two main aims:

- inform applicants and stake holders on the way DUS examination is established, with a review and demonstration on hundreds of varieties already tested.
- review possible evolution for the DUS examination of apple mutants, to optimise the examination without reduction of the minimal distances. Proposals have been established for:
 - a better DUS pre expertise of the applications so to determine sufficiently early the true “set” of varieties to be compared, so to avoid long DUS examination : providing classification key, fruits samples before “set” decision, serious and precise exchanges between examinateur and applicants, examinateur visits on candidate orchards...so re inforce the expertise.
 - taking account of “new” characteristics, such as coloration of the fruits in the weeks before the physiological maturity of the fruit,
 - taking account a complementary official DUS site in the Mediterranean area.

The biomolecular characterisation of the DUS collection of varieties for which France is entrusted by CPVO is running :

- in routine for peach and apricot,
- on the way for apple and pear,
- will start soon for cherry.

BioGEVES also offers bio molecular services to enterprises and Examination offices for these species, strawberry and palms.

[Annex V follows]

TWF/45/25

ANNEX V

GERMANY

In 2014 the Bundessortenamt started examinations of 59 new varieties of fruit species resulting in a total of 130 candidate varieties in 15 species, the most important of which were apple (31 candidates), strawberry (30), and raspberry (26).

In 2013 the Bundessortenamt started to establish a new Rubus network in the framework of the German Fruit Gene Bank. Another new network for European pear will be established in the course of this year.

[Annex VI follows]

HUNGARY

The Hungarian office was reorganised in 2012. The different agricultural areas of expertise were concentrated into the National Food Chain Safety Office within the frame of the public administration. The plant variety registration has obtained an independent vice-president. The Variety Testing Department of Horticultural Crops is in charge of the fruit DUS examination among other horticultural crops like vegetables, ornamentals, herbs and aromatic plants. 965 varieties of 52 species were involved in variety trials covering all horticultural sectors in 2013.

We are entrusted examination office by CPVO for some fruit species. The CPVO quality audit team visited Hungary in 2013. There was not assessed any technical non-conformity at the fruit sector. Currently applications of *Castanea crenata*, *Prunus avium* and its interspecific hybrid are tested for Community plant variety rights at our trial stations. Our department participated in the CPVO founded R&D project "Reducing the number of obligatory observation periods in DUS testing for candidate varieties in the fruit sector." In Hungary it is taken an increasing interest in variety protection, in this way we organised a seminar for breeders, propagation material producer and fruit growers with the representative of CIOPORA.

The new national regulation allows registering the conservation varieties on the national list as varieties with officially regarded description.

[Annex VII follows]

JAPAN

1. Number of application and granted in 2013

Number of application

year	No. of Applications	(2013/2012)	Fruit Crops	(2013/2012)
1978 to 2013	29,029	-	1,511	-
2012	1,110		39	
2013	1,054	(95%)	49	(126%)

Top 5 Applications of Fruit Crops (2013).

Apple: 17, Blueberry: 8, Japanese pear: 5, Orange: 4, Peach: 3

Number of granted

Year	No. of PBR Granted	(2013/2012)	Fruit Crops	(2013/2012)
1978 to 2013	22,919	-	1,222	
2012	881		35	
2013	752	(85%)	49	(140%)

Top 5 PBR Granted of Fruit Crops (2013).

Apple: 8, Orange: 8, Peach: 8, Grape: 8, Japanese pear: 5

2. Average duration of the examination procedure (from application to registration)

2012	2013	2014 (target)
2.34 year	2.48 year	2.3 year

[Annex VIII follows]

MEXICO

In Mexico plant varieties can be officially register by two modalities; one is through applying for registration in the National Catalog of Plant Varieties (CNVV), which does not confer exclusivity of use. The other is by the application of breeder's title, which confers the right to exclusive use for a specified time. The regulatory framework for this record type integrates by the Federal law of plant varieties and the Federal Law of Production, Certification and Trade of seeds.

During the first quarter of 2014, 11 breeders of 7 nationalities filed 32 applications for 12 plant species; 12 were for agricultural crops, 6 for fruit crops, 4 for ornamentals, and 10 for vegetables. Out of which 38% were filed by residents of Mexico, 32%, Netherlands, 9%, Japan, 9% by the United Kingdom, 6% by the United States of America, 3% by Israel and 3% by Australia. With these new applications the cumulative total to 1,739 compared to 111 species.

Currently, there are 203 registered breeders, of which the National Research Institute, Forestry, Agriculture and Livestock (INIFAP) tops the list with 275 applications, followed by Pioneer Hi-Bred International, Inc. with 130, Seeds and Monsanto Agricultural Products, SA de CV with 128, Driscoll Strawberry Associates, Inc. with 101, Seminis Vegetable Seeds, Inc. with 81, Meilland International, SA with 67 and 957 requests for additional 197 breeders.

At 31 March 2014, 31 countries applied, Mexico tops the list with 604, followed by the United States of America with 585, Netherlands 283, France 79, Germany 46 and others (26 countries) with 142 requests.

During the period 1996 to March 2014 have entered 740 applications for agricultural crops, 434 for ornamental and forestry, 365 for fruit, 197 for vegetable, 2 mushrooms and 1 seaweed.

In order of importance, in terms of number of the applications filed for species, there have been 373 filed for maize, 237 for rose, 115 for strawberry, 65 for cotton, 70 sorghum and 879 for other 106 species.

From the year 2002 to date, 1181 breeder titles were granted, distributed among the following species: 248 of corn, 137 of rose, 79 of strawberry, 51 of cotton, 70 of sorghum, 36 of cranberry, 33 of vines, 32 of potato, 32 of wheat, 30 of gerbera, 30 of raspberry and 428 between other 78 species.

During the first trimester of 2014, 72 breeders' titles were distributed in the following crops: 12 of corn, 7 of rose, 6 of cotton, 6 of vine, 6 of Carnation, 6 of chrysanthemum, 4 of sorghum and 25 in other 14 species. From the total of 1181 titles given to crops breeder, to March 31, 2014, remain in effect 1059.

FRUIT CROPS

During the first quarter of 2014, five breeders, Australia (1), the United Kingdom (2) and the United States of America (2), presented six requests corresponding to 3 fruit species. With these new requests the accumulated total of fruit crops ascended to 365 with respect to 32 species. At 31 March 2014, 22 countries have applied to fruit crops, the list is headed by US with 231, followed by Mexico with 61, Spain with 12, New Zealand with 10, Australia with 9, Israel with 8 and others (16 countries) with 34 applications. The most important crops because of the number of applications are: Strawberry (115), Raspberry (43), grapevine (40), blueberry (40) blackberry (19), apple (17), and avocado (17).

Since 2002 to date, 267 breeders' titles have been awarded to fruity varieties, distributed among the following species: 79 of strawberry, 36 of blueberry, 33 of grapevine, 30 of raspberry and 89 in other twenty two species. During the first trimester of 2014, 18 breeders' titles were distributed in the following fruit crops: Grapevine 6, avocado 3 Blueberry 3, strawberry 3, nectarine 1, raspberry 1 and papaya 1. From the total of 267 breeders' titles given to fruit crops, to March 31, 2014, remain in effect 251.

[Annex IX follows]

TWF/45/25

ANNEX IX

MOROCCO

Since 2002, date of implementation of the law 9/94 on plant variety protection:

- 500 applications were submitted, 240 PVP certificates were issued and 200 applications are still under examination;
- Protection expired for 16 varieties;
- Abandon of protection for 6 varieties;
- 11 Applications withdrawn;
- 24 Applications rejected;
- 20 PVP gazette published.

Since April 30, 2013, PVP status in Morocco is:

- 54 applications were submitted;
- 44 variétés were protected;
- Protection expired for **8** varieties;
- 3 Applications withdrawn.

[Annex X follows]

NETHERLANDS

Number of applications received

In 2013 1904 applications were received for testing for the first year for national listing and national and European Plant breeders rights. (In brackets the difference with 2012):

Ornamentals	972 (+11%)
Agriculture	144 (+10%)
Vegetables	788 (+20%)
Total	1904 (+15%)

This is an important increase and an all-time record high number of applications. The number of applications received in 2014 up till now, still shows a further increase, except for Ornamentals.

Registration

- The online version of the Netherlands Register of plant varieties (NRR) was included in the thoroughly revised website of the Dutch Board for Plant Varieties RvP (www.raadvoorplantenrassen.nl).
- The use of the i-portal for DUS-applications at Naktuinbouw has increased. Also the electronic exchange of application forms and reports with CPVO vice versa has been started in the beginning of 2014.
- Variety Denominations
In 2013 the CPVO published a new version of the explanatory notes for the checking of the suitability of variety denominations. The CPVO has explained the contents of these notes in a meeting with the Dutch breeding companies. The contacts between CPVO and Dutch Board for Plant Varieties/Naktuinbouw are strengthened in the field of exchanging visions on the suitability of variety denominations.
- Registration of fruit varieties
In the framework of the new Fruit species directive of the European Union, Naktuinbouw made an inventory of those fruit varieties that are being marketed in the Netherlands. As foreseen in the directive a distinction has been made in those varieties that were tested on the DUS principles for Plant Breeders' Rights, and can thus be certified, and other varieties. In 2014 descriptions of more than 1200 fruit varieties will have to be finished. We try to cooperate with other European (fruit) partners to exchange information.
For membership of the TWF, Gerard Bolscher (who will retire in May 2014) has been replaced by his successor Marco Hoffman.
- Developments in VCU
VCU testing of agricultural crops has been collectively financed by breeders and farmers in The Netherlands for a long time already. Due to reorganization of some public institutions there is no collective farmer's contribution anymore. From 2014 onwards VCU will be 100% financed by the breeders only.

Quality System

- The second CPVO-audit according to the standards for CPVO entrustment of all ca. 950 species was carried out in 2013. The renewed entrustment was formalized by the decision of the CPVO Administrative Council in March 2014.
- Updating common knowledge Vegetables. In 2013 Naktuinbouw started a project to update information of disease resistance characteristics from varieties of common knowledge. Another project is ongoing in cooperation with GEVES. In tomato, pea and lettuce GEVES and Naktuinbouw developed combined databases.

Training in DUS related activities

The sharing of knowledge is important in order to work on a global, harmonized and strong Plant Breeders Right system for the benefit of society. Naktuinbouw contributes to this principle on different levels.

- Naktuinbouw is involved in bilateral projects to exchange knowledge and to train staff of countries that are working in or on Plant Breeders Rights systems. Besides ongoing projects in China and India in 2013 the following projects started :
- In Ghana, where the Ghanaean authorities asked assistance in the setting up of a system now the PBR law was accepted by UPOV,
- in Rwanda, where advise was given on the agricultural policy including the necessity to provide for a good system of variety protection to promote in influx of better varieties,
- in Ukraine.

- in the United Republic of Tanzania where an adjusted form of the Wageningen PVP course will be given on location in the framework of capacity building in this new UPOV member.
- Annually, Naktuinbouw, with the help of UPOV and CPVO, is organising the PVP course in Wageningen, under coordination and supervision of Mrs. Laura Pinan Gonzales. In 2013 31 participants from 19 countries participated in this two week training.
- Four colleagues will follow in 2014 the tutor-education of the new UPOV distance learning course DL-305 “Examination of Applications for Plant Breeders’ Rights” (a joint effort of UPOV, Naktuinbouw and experts of other UPOV countries).
- In 2013 Naktuinbouw, in the framework of the internship programme received again 4 colleagues from the UPOV office (1), Zimbabwe (1) and the Republic of Korea (2). The colleagues work together with Naktuinbouw colleagues and thus learn the details of the DUS test work as it is performed in the Netherlands. The use of the Naktuinbouw helpdesk stabilised. Colleagues from all over the world find this opportunity to ask DUS related questions.
- Recently Naktuinbouw published a book; “framework for the Introduction of Plant Breeders’ Rights”. This book, written by Arnold van Wijk and Niels Louwaars is a guidance for practical implementation of a Plant Breeders’ Rights system in a country. We hope with this book, that contains lots of explanations and examples, to offer support to those colleagues who work in countries that recently started, or will start a (UPOV based) Plant Breeders’ Rights system.

Research projects (highlights).

- Handhelds-project: The description for the DUS tests made in field conditions was made on paper for ornamental and vegetable crops in the past. In 2013 Naktuinbouw changed this procedure and now uses handhelds for this purpose. In 2014 the project continues in order to be able to also use handhelds for the comparison between applications and comparing varieties in the field trials.
 - Harmonization of disease resistance tests within the EU. In 2013 several tests were carried on within this CPVO project. Results are expected in 2014.
 - Ongoing projects: 1-project on change of crop management (from outdoor to indoor) for DUS in Helleborus, together with CPVO; 2-origin of chimera-like structures in Lily and a number of projects to study the possible effect on the DUS work of a change in growing media from soil to artificial media.
- Other:
- CIOPORA has contacted CPVO and Naktuinbouw about the setup of a new DNA-project in Rose together with BSA and NIAB. Discussion about a draft will be continued in 2014.

International Cooperation

With GEVES:

The on-going cooperation with GEVES was evaluated in the beginning of 2014. Activities will be intensified in joint data bases of vegetable varieties, joint resistance tests, dbases for photographs and descriptions of ornamental varieties (GEMMA), standardized color description techniques (AIM).

Projects in the CPVO R&D system

Naktuinbouw participates in a number of CPVO co-funded projects:

- The Harmores project; harmonization of disease resistance testing between a number of Examination Offices
- The potato Ringtest project to harmonize the testing of potato between the European Examination Offices
- Development of a European Potato database (containing molecular and morphological data) as a centralized collection of varieties of common knowledge.
- A project to study the possible effect of seed treatment on the DUS test in vegetables

Infringement cases

The use of the DUS sample and DNA data of the DUS samples for infringement purposes is under discussion in the Netherlands between the authorities and the industry. Also the question on ownership of the DUS sample itself plays a role in this discussion.

Miscellaneous

- The oldest part of our greenhouses was renewed and enlarged are ready for use since March 2014.

[Annex XI follows]

NEW ZEALAND

The Plant Variety Rights Office (PVRO) information technology system has now been in operation for over twelve months. Users' familiarity with the system is steadily increasing with almost 100% on line applications and the on line searching, variety descriptions and photos are being accessed more frequently.

Applications for fruit varieties in 2013/14 have increased slightly in comparison with the same period in 2012/13. Application numbers have been relatively consistent over the last few years, in the range of 27– 38 per year. The first application for a variety of *Punica granatum* was received in 2013 and the first application for a rootstock variety of *Poncirus trifoliata* was received in early 2014.

The number of applications for *Rubus* and *Vaccinium* varieties continues to increase and these genera are now significant fruit crops for protected varieties. Previously, applications mostly came from a New Zealand breeder and their facilities were used for testing in a cooperative arrangement with PVRO. Applications have now been received from a number of breeders and for several reasons this former testing arrangement is no longer viable. Recently the PVRO has reached an agreement for testing services with a berry fruit industry group and the first plantings on a new trial and collection site were made in winter 2013. Variety testing is expected to begin late in 2014.

For several years there has been significant disruption to kiwifruit testing due to the disease *Pseudomonas syringae* pv *actinidiae* (PSA). The former testing site had to be abandoned and alternative trial sites established. This process was complex and prolonged due to numerous restrictions on plant movement and other measures to contain the disease. Three growing trials were established in 2013 and DUS testing is anticipated to resume in late 2014.

[Annex XII follows]

TWF/45/25

ANNEX XII

POLAND

In Poland at the end of March 2014 there were 1246 protected varieties of which 128 for fruit plants (82 from national breeders and 46 from foreign): mainly apple, strawberry, pear, plum and raspberry. Currently we have 47 fruit varieties under tests. There are some tests for blueberry, raspberry and apple rootstock varieties for CPVO. Some further tests of blueberry varieties for CPVO will also start this year. The Research Centre for Cultivar Testing (COBORU) tests varieties of fruit plants for Estonia, Finland, Latvia and Lithuania. In May 2013 phytosanitary requirements for plant material delivered for DUS testing were established. Last year COBORU was audited by CPVO regarding DUS testing, including fruit plants. Newly designed edition of "Descriptive list for apple and pear" was published this year.

[Annex XIII follows]

ROMANIA

In the legislative field (2012 and 2013) were issued:

- Ministerial Order No. 170/2012 modifying the Ministerial Order No. 1348/2005 for the approval of the Rules regarding the testing and registration of agricultural plants;
- Ministerial Order No. 150/2012 regarding the approval of the Regulation for the implementation of the 255/1998 Law regarding the protection of new plant varieties.
- Ministerial Order No. 891/05.09.2013 modifying the Ministerial Order No 1348/2005 and the Ministerial Order No 1349/2005 for the approval of the Rules regarding the testing and registration of agricultural and vegetable species.

These orders are in compliance with the new EU directives regarding testing, registration and protection of varieties.

The cooperation with UKZUZ from Czech Republic and with COBORU, Poland in the field of DUS testing and the exchange of seed samples continued.

Our testing centers continue to be equipped with new agricultural machines and laboratory equipment.

It was approved by the Agricultural Ministry to construct individual irrigation systems for 6 testing centers.

This action is in the stage of feasibility studies.

In 2013, in the field of testing, 1842 varieties were tested : 1357 agricultural plant species, 405 vegetable, 35 fruit tree, 36 vine and 9 ornamental varieties and 125 varieties were registered in our national Official Catalogue: 83 varieties of agricultural plant species, 29 vegetables, 7 fruit trees, 3 vine and 3 ornamentals.

In addition, 40 applications for protection, and 67 protection titles were issued.

The reference collection and the database are constantly increasing.

We have applications for the new types and species: Kiwi, Ziziphus jujuba, goji, kaki.

[Annex XIV follows]

SOUTH AFRICA

With regards to applications and valid Plant Breeders' Rights for 2013 the following is reported:

- An additional 29 taxa have been declared in terms of the Plant Breeders' Rights Act during 2013.
- 309 PBR applications were received of which 30% were for Agricultural crops, 39% for Ornamental crops, 27% for Fruit crops and 4% for Vegetable crops.
- As of December 2013, a total of 2607 varieties had valid plant breeder's rights in South Africa, of which 34% were for Ornamental crops, 34% for Agricultural crops, 23% for Fruit crops and 9% for Vegetable crops. The top three crops for each crop are:

FRUIT CROPS
1. <i>Prunus persica</i> (L.) Batsch var. <i>nucipersica</i> Schneid. (105)
2. <i>Vitis</i> L. (71)
3. <i>Prunus persica</i> (L.) Batsch (105)

ORNAMENTAL CROPS
1. <i>Aloe</i> L. (46)
2. <i>Chrysanthemum</i> L. (65)
3. <i>Rosa</i> L. (341)

AGRIC CROPS
1. <i>Solanum tuberosum</i> L. (93)
2. <i>Triticum</i> L. (83)
3. <i>Zea mays</i> L. (352)

VEGETABLE CROPS
1. <i>Allium cepa</i> (34)
2. <i>Phaseolus vulgaris</i> L. (36)
3. <i>Solanum lycopersicum</i> L. (49)

PBR's granted in 2013 only are as follows:

Agricultural crops: 101
 Vegetable crops: 16
 Fruit crops: 66
 Ornamental crops: 71

White CONV 86
 White open pollinated 6
 White GMO 73
 Yellow CONV 69
 Yellow GMO 118

[Annex XV follows]

TWF/45/25

ANNEX XV

SPAIN

Spain inform that we have consolidate the reference collections for the new species started last year in the examination center of Valencia , refered to Diospirus Caqui, Punica granatum and Eriobotrya japónica. During this year we will start with the new examination center for subtropical species ,located at Malaga in the south of Spain, refered to varieties of Annona Cherimoya. Other subtropical species are considering to be included in the future activity of our Office (OEVV).

To improve the training of the experts involved in the 15 different examination centers of the OEVV we developp in february in Madrid during a week a Seminar for management and requirements for DUS examination, with participation of responsables of CPVO and UPOV office.

[Annex XVI follows]

CIOPORA

1. CIOPORA Position Papers on IP

After more than 18 months of intensive discussions the CIOPORA members in the last Annual General Meeting of CIOPORA in The Hague, NL, on 1 and 2 April 2014, have approved four Position Papers on IP, namely on Minimum Distance ("Distinctness"), Scope of the Right, Breeders' Exemption and Exhaustion.

The Position papers are attached as Appendix, and CIOPORA heartily invites the TWO and TWF to take note of the Positions.

The TWO and TWF may consider to including the discussion of the Positions, particularly the one on Minimum Distance, on the agenda of their next meetings.

2. DNA data bases

The CIOPORA Crop Sections Cut-Rose (IRBA), Gypsophila and Fruit are considering the set-up of comprehensive DNA databases, for the use in DUS examinations (selection of reference varieties), in the determination of EDV and in enforcement.

3. Next CIOPORA AGM

The next CIOPORA Annual General Meeting shall take place on 23 – 26 March 2015 in Tel Aviv, Israel.

The venue of the AGM 2016 shall be Istanbul, Turkey.

[Appendix follows]

TWF/45/25

ANNEX XVI

APPENDIX

CIOPORA

POSITION PAPERS ON IP

Minimum Distance
The Scope of the
Right Breeders'
Exemption
Exhaustion

2014

CIOPORA
P.O. Box 13 05 06
D-20105 Hamburg
GERMANY

Visit address:
Gaensemarkt 45
20354 Hamburg

Tel: +49 (0)40-555-63-702
Fax: +49 (0)40-555-63-703

www.ciopora.org

CIOPORA position
on
Minimum Distance / Distinctness

as approved by its Annual General Meeting on 02 April 2014 in The Hague, NL

Key statements:

- CIOPORA demands a sufficient minimum distance between varieties for an effective Plant Variety Right.
- Since new varieties are bred, selected and introduced mainly for commercial targets, the requirement “clearly” should be seen as a judgmental and evaluative requirement, and should not end in a simple search of a botanical difference.
- The requirement “clearly distinguishable” should be assessed on characteristics important for the crop concerned; in this regard new important characteristics may be taken into consideration. Accordingly, a new type of characteristics (“relevant for the determination of clearly distinguishable”) should be included into chapter 4.8 of TGP/3 and the test-guidelines should determine for each characteristic whether it is considered relevant for the determination of “clearly distinguishable”.
- The relevant authorities should have the continuing obligation to take into consideration additional characteristics proposed by applicants, if such additional characteristics are important for the determination of “clearly distinguishable”.
- Differences in unimportant characteristics only should not lead to a clearly distinguishable variety.
- In order to be clearly distinguishable, the distance between two varieties in regard to their important characteristics must be sufficiently broad. Particularly in regard to pseudo-qualitative characteristics and quantitative characteristics a difference of only one note in general should not be considered as a sufficiently broad distance. The decision should be made on a crop by crop basis.
- Varieties with the same note in the UPOV test-guideline for a given characteristic should not be considered to be clearly distinguishable with respect to that characteristic. The possibility to search for a difference in a subsequent growing trial if such difference was not clear in the first properly performed examination should be eliminated.
- The possibility of randomized “blind” testing in case of doubts over the distinctness of a candidate variety should also be eliminated. In case of a doubt over distinctness, the candidate variety cannot be considered to be clearly distinguishable from the reference variety.
- The decision on which characteristics are relevant for the determination of “clearly distinguishable”, on how many of such characteristics must differ from each other and on the distance between such characteristics should be made on a crop-by-crop basis by a panel of experts, including representatives of the breeders of the crop concerned.

Full text:

Minimum distance

CIOPORA demands a sufficient minimum distance between varieties for an effective Plant Variety Right.

The TRIPS agreement requires that a ‘sui generis’ system for the protection of plant varieties is effective. One of the most important requirements for effective PBR protection is a sufficiently broad minimum distance between varieties. An insufficient distance between varieties results in multiple weaknesses of the protection:

- The exclusive right of the breeder of the first variety is weakened. The exclusive right is mainly determined by the scope of protection. If PBR protection is granted for other very similar varieties, these other varieties are considered to be clearly distinguishable from the first variety, and thus fall out of the scope of the right of the first variety.
- The purpose of IP protection to support the commercial interest of the innovators is disregarded by not differentiating between important and unimportant characteristics.
- The obligation of the breeder to maintain his protected variety true-to-type is at risk if no tolerance is allowed. The breeder will potentially not be able to fulfill his obligation to maintain the variety true to type, if already very minor differences lead to a new variety.
- A fair examination of candidate varieties is not given anymore, because the environmental variation of the phenotypic appearance of the reference varieties compared to the previous years and to the year of their initial examination makes it extremely difficult for the examination offices to judge if the reference variety is still the one which has been granted protection – particularly in species where no living reference collection exist.
- The enforcement of PBR is very difficult, because very soon a plant runs out of the scope of protection if the plant differs from the variety description in only one or two minor characteristics.
- The phenotypic variation within a variety, caused by environmental influences or by cultivation methods, is larger than the variation tolerated between two separate varieties. This makes it very difficult to identify a plant in the production and trade chain.

In today's reality, based on the UPOV 1991 Act, even a very small difference between two varieties makes the varieties clearly distinguishable in the eyes of the examination offices. Based on a pure botanical approach, all characteristics of a species are considered to be equally essential. In contrast to the UPOV 1978 Act, no differentiation is made anymore between characteristics important or unimportant for a variety. As a consequence, even a difference in one unimportant characteristic can make a variety clearly distinguishable from another variety in the eyes of the examination offices.

This systematical and inbuilt narrowing of the distances between varieties is supported by UPOV even more, by allowing for example randomized blind tests if doubts exist over the distinctness of two varieties.

This pure botanical approach runs contrary to the legal character of intellectual property protection and devaluates the requirement of "clearly distinguishable" in Article 7 of the UPOV 1991 Act to a sole measurement of a difference in at least one characteristic in the meaning of Article 1 (vi) of the UPOV 1991 Act (definition of variety).

As a result, the initial improvement of the UPOV 1991 Act compared to the UPOV 1961 and 1978 Act, aiming at a better control of "varieties, which are not clearly distinguishable from the protected variety" (Article 14 (5) (a) (ii) of the 1991 Act) has been impeded by this botanical approach.

Taking into consideration the weaknesses resulting from too small minimum distance and from the undifferentiated evaluation of important and unimportant characteristics, CIOFORA requires the following changes in the DUS examination:

- Since new varieties are bred, selected and introduced mainly for commercial targets, the requirement "clearly" should be seen as a judgmental and evaluative requirement, and should not end in a simple search of one botanical difference.
- The requirement "clearly distinguishable" should be assessed on characteristics important for the crop concerned; in this regard new important characteristics may be taken into consideration. Accordingly, a new type of characteristics ("relevant for the determination of clearly distinguishable") should be included into chapter 4.8 of TGP/3¹, and the test-guidelines should determine for each characteristic whether it is considered relevant for the determination of "clearly distinguishable".

¹ TGP/3: "GENERAL INTRODUCTION TO THE EXAMINATION OF DISTINCTNESS, UNIFORMITY AND STABILITY AND THE DEVELOPMENT OF HARMONIZED DESCRIPTIONS OF NEW VARIETIES OF PLANTS"

- The relevant authorities should have the continuing obligation to take into consideration additional characteristics proposed by applicants, if such additional characteristics are relevant for the determination of “clearly distinguishable”.
- Differences in unimportant characteristics only should not lead to a clearly distinguishable variety.
- In order to be clearly distinguishable, the distance between two varieties in regard to their important characteristics must be sufficiently broad. Particularly in regard to pseudo-qualitative characteristics and quantitative characteristics a difference of only one note in general should not be considered as a sufficiently broad distance. The decision should be made on a crop by crop basis.
- Varieties with the same note in the UPOV test-guideline for a given characteristic should not be considered to be clearly distinguishable with respect to that characteristic. If a difference was not clear in the first properly performed examination, the possibility to search for a difference in a subsequent growing trial, according to chapter 5.2.3.2.4 of TGP/9, should be eliminated.
- The possibility of randomized “blind” testing according to chapter 6.4 of TGP/9 in case of doubts over the distinctness of a candidate variety should also be eliminated. In case of a doubt over distinctness, the candidate variety cannot be considered to be clearly distinguishable from the reference variety.
- The decision on which characteristics are relevant for the determination of “clearly distinguishable”, on how many of such characteristics must differ from each other and on the distance between such characteristics should be made by a panel of experts, including representatives of the breeders of the crop concerned.

CIOPORA suggests that these changes, which first have to be included into the general UPOV TGP documents, should afterwards be included into the single UPOV test guidelines gradually, species by species, by the Technical Working Parties and the Technical Committee, taking into consideration the input of the breeders.

The changes should not have retroactive effects for varieties which are already on the market or for which protection has been granted.

CIOPORA position
on
The Scope of the Right

as approved by its Annual General Meeting on 02 April 2014 in The Hague, NL

Key statements:

- CIOPORA requests UPOV and its member countries to harmonize the definition of propagating material world-wide.
- Propagating material should include any material of a plant from which, whether alone or in combination with other parts or products of that or another plant, another plant with the same characteristics can be produced.
- CIOPORA requests the clarification that propagating material that (in a technical sense), has been harvested is considered exclusively as propagating material. Only material of a variety which is not capable, by any means, of producing another plant with the same characteristics should be considered to be harvested material in the legal sense.
- CIOPORA requests that harvested material should be protected directly and per se.
- CIOPORA requests that products that are obtained directly from material of a protected variety should be protected directly and per se.
- CIOPORA requests to include into the scope of rights the use of propagating material for the production of harvested material.
- CIOPORA requests that the EDV concept is clarified and implemented in a sufficiently broad way. CIOPORA is in the process of developing a comprehensive position on this matter.
- CIOPORA requests that the concept of varieties, which are not clearly distinguishable from the protected variety, will be restored and its meaning be sufficiently broadened, by establishing a sufficiently broad minimum distance between varieties.

Full text:

The scope of the Right

1. The protected material

According to Article 14 (1) of the UPOV 1991 Act the following acts in respect of the propagating material of the protected variety shall require the authorization of the breeder: (i) production or reproduction (multiplication), (ii) conditioning for the purpose of propagation, (iii) offering for sale, (iv) selling or other marketing, (v) exporting, (vi) importing and (vii) stocking for any of the purposes mentioned in (i) to (vi), above.

According to Article 14 (2) of the UPOV 1991 Act the acts as listed above shall apply also to harvested material, including entire plants and parts of plants, that has been obtained through the unauthorized use of propagating material of the protected variety, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material.

Additionally, according to Article 14 (3) of the UPOV 1991 Act, the UPOV members may – optionally - provide that the acts as listed above apply also to products made directly from harvested material of the protected variety falling within the provisions of paragraph (2) through the unauthorized use of the said harvested material, unless the breeder has had reasonable opportunity to exercise his right in relation to the said harvested material.

Although the terms are key terms in the UPOV system, the UPOV Acts do not include a definition of “propagating material” and “harvested material”.

As a consequence of the absent definition of propagating material in the UPOV Acts, many of the UPOV member states have a – to some extent significant - different definition for propagating material. As a consequence, one and the same material of a variety is considered in one country to be propagating material, while in another country it is considered to be harvested material. This causes confusion in the international trade and runs contrary to the aim of UPOV to harmonize the IP protection for plant varieties.

CIOPORA requests from UPOV and its member countries to harmonize the definition of propagating material world-wide. Propagating material should include any reproductive or vegetative material of a plant from which, whether alone or in combination with other parts or products of that or another plant, another plant with the same characteristics can be produced.

Additionally, CIOPORA requests the clarification that propagating material that (in a technical sense) has been harvested is considered exclusively as propagating material. Only material of a variety which is not capable, by any means, of producing another plant with the same characteristics should be considered to be harvested material in the legal sense.

Harvested material and products directly obtained from propagating or harvested material should be covered directly and without limitations.

Harvested material of protected vegetatively reproduced ornamental and fruit varieties needs to be protected directly and per se, without the restrictions and conditions as given in the current UPOV 1991 Act. Given the large number of countries with an increasing production and export of horticultural products, but without effective IP protection for plant varieties, the restricted protection of harvested material causes a lot of confusion, uncertainties and the severe risk of wide loopholes, which can make the protection for vegetatively reproduced ornamental and fruit varieties ineffective.

Protecting directly and per se harvested material is to the benefit of the honest growers and producers, too. They pay royalties anyway and suffer from unlicensed propagation and production of harvested material. Particularly imports of fruits from countries with limited or no protection can be controlled more effectively if the harvested material is protected directly.

Taking into consideration the fast growing amount of processed products, such as fruit juice, being processed in many parts of the world and being imported into other countries, products that are obtained directly from material of a protected variety must be protected directly and per se, too, as far as vegetatively reproduced ornamental and fruit varieties are concerned.

CIOPORA, therefore, requests that harvested material and products that are obtained directly from material of a protected variety should be protected directly and per se.

2. The acts which require the authorization of the title holder

According to Article 14 of the UPOV 1991 Act the following acts in respect of the propagating material of the protected variety shall require the authorization of the breeder: (i) production or reproduction (multiplication), (ii) conditioning for the purpose of propagation, (iii) offering for sale, (iv) selling or other marketing, (v) exporting, (vi) importing and (vii) stocking for any of the purposes mentioned in (i) to (vi), above.

In the horticultural industry the cut-flowers, fruits and plants are the main added-value products. The use of propagating material for the production of such products is one of the most important acts in the production chain. Therefore, it needs to be included within the scope of rights in order to allow the title-holders to license said acts.

Even under a broad concept of “propagating material”, as it is described above, the use of propagating material for the production of harvested material needs to be covered by the scope of the right.

CIOPORA strongly requests to include into the scope of rights the use of propagating material for the production of harvested material.

3. Varieties which fall under the scope of the protected variety

According to Article 14 (5) of the UPOV 1991 Act the authorization of the title holder is also required for acts listed in paragraphs (1) to (4) of this Article in regard to:

- (i) varieties which are essentially derived from the protected variety,
- (ii) varieties which are not clearly distinguishable from the protected variety and
- (iii) varieties whose production requires the repeated use of the protected variety.

In its 'Green Paper', CIOPORA articulated its appreciation about the extension of protection manifested in Article 14 (5) and expressed its hope that this Article corrects the existing loophole in regard to "cosmetic breeding". As a precondition to the closing of this loophole, CIOPORA mentioned: "These new provisions oblige the authorities in charge of the examination of distinctness to be more rigorous when evaluating the minimum distances between varieties for the grant of a title of protection."

However, in practice it turns out that the inclusion of Article 14 (5) does not keep its promises to better protect existing protected varieties. The EDV-concept is still heavily disputed and some circles try to limit this concept as far as even possible. Regarding varieties which are not clearly distinguishable from the protected variety it turns out that in today's reality the provision of Article 14 (5) (ii) of the UPOV 1991 Act is devoid of meaning, as even a very small difference between two varieties makes the varieties clearly distinguishable in the eyes of the examination offices (see also the CIOPORA Position Paper on Minimum Distance of 2 April 2014). Only the extension to "repeated use" seems to work, but this is not of importance for vegetatively reproduced ornamental and fruit varieties.

CIOPORA, therefore, requests that the EDV concept is clarified and implemented in a sufficiently broad way. CIOPORA is in the process of developing a comprehensive position on this matter.

Additionally, CIOPORA requests that the concept of varieties, which are not clearly distinguishable from the protected variety (Article 14 (5) (ii)) will be restored and its meaning be sufficiently broadened, by establishing a sufficiently broad minimum distance between varieties (see also the CIOPORA Position Paper on Minimum Distance of 2 April 2014)).

CIOPORA position
on
Breeders' exemption

as approved by its Annual General Meeting on 02 April 2014 in The Hague

Key statements:

- CIOPORA supports a breeders' exemption that contains the use of commercialized plant material of protected varieties for further breeding.
- CIOPORA requests that the commercialization of any variety, which falls under the scope of a protected variety, shall require the authorization of the title holder of the protected variety.
- The breeders' exemption should read: The breeder's right shall not extend to acts done for the purpose of breeding other varieties.

Full Text:

Breeders' exemption

According to Article 15 (1) (iii) of the UPOV 1991 Act the breeder's right shall not extend to acts done for the purpose of breeding other varieties, and, except where the provisions of Article 14 (5) apply, acts referred to in Article 14 (1) to (4) in respect of such other varieties.

The breeders' exemption is imbedded in the UPOV PBR system since its beginning. It is a unique feature in IP protection systems. The underlying rationale for the breeders' exemption was that without unrestricted access to existing genetic variation advances in breeding would be hampered.

The current breeders' exemption consists of two components:

- The free use of protected plant material for further breeding
- The - limited - commercialization of the new breeding result.

The free use of protected plant material for further breeding is the component of the breeders' exemption which has not changed since the beginning of the UPOV system.

What has changed in the course of time is the limitation of the commercialization of the breeding result: while in the UPOV 1961 Act and 1978 Act (Article 5.3) the breeders' exemption was limited only when the repeated use of the protected variety is necessary for the commercial production of another variety, in the UPOV 1991 Act, Article 15 (1) (iii) in combination with Article 14 (5) was meant to limit the breeders' exemption to a greater extent - at least on paper - by prohibiting the free commercialization of three groups of varieties:

- (i) varieties which are essentially derived from the protected variety (where the protected variety is not itself an essentially derived variety),
- (ii) varieties which are not clearly distinguishable from the protected variety and
- (iii) varieties whose production requires the repeated use of the protected variety.

From a systematical point of view, the reference in Article 15 (1) (iii) to the varieties listed in Article 14 (5) (ii) and (iii) is incorrect: only varieties which are essentially derived from the protected variety are necessarily the result of breeding with the protected variety. Varieties which are not clearly distinguishable from the protected variety can be developed by using other material than the protected variety (e.g. the same parents of the protected variety), and varieties whose production requires the repeated use of the protected variety are usually the result of sexual reproduction of plants, but not of breeding work. The main reason for this systematical error is obviously that UPOV on the one hand wanted to maintain the "traditional" possibility

to commercialize varieties resulting from breeding with a protected variety, while on the other hand it wanted to further limit the breeders' exemption by prohibiting the commercialization of two more types of varieties.

In order to have a systematically correct structure, the breeders' exemption should be re-structured. Additionally, in order to adapt the PBR system to the current environment in modern breeding and to make it suitable for the challenges in the future, the breeders' exemption should be fine-tuned.

Additionally, it should be clarified that the free use covers only material, which has been put on the market by the breeder or with his consent. Plant material, which for example has been handed over to an examination office for purposes of DUS examination, should not be freely available for further breeding. The same applies to material which has for example been propagated illegally or has been stolen from the breeder or obtained by another unlawful activity.

In conclusion, CIOPORA is in favor of the free use of commercialized plant material of protected varieties for further breeding, provided that the commercialization of the breeding results does not weaken the exclusive right in the protected innovation.

CIOPORA, therefore, supports a breeders' exemption that contains the use of commercialized plant material of protected varieties for further breeding.

CIOPORA requests that the commercialization of any variety, which falls under the scope of a protected variety, shall require the authorization of the title holder of the protected variety².

Such varieties shall be:

- varieties which are not clearly distinguishable from the protected variety
- varieties which are essentially derived from the protected variety
- varieties whose production requires the repeated use of the protected variety. Therefore, for the sake of clarification and convenience, the second part of the current breeders' exemption (... and, except where the provisions of Article 14 (5) apply, acts referred to in Article 14 (1) to (4) in respect of such other varieties) should be deleted and the breeders' exemption should read:

The breeder's right shall not extend to acts done for the purpose of breeding other varieties.

Such change of the wording of the breeders' exemption will correct its current structure and will, in combination with a clarification of the EDV concept and a broadening of the Minimum Distance strengthen the breeders' right.

² This solution is comparable with the "limited" breeders' exemption in some Patent laws, such as the Unitary Patent in the EU and the Patent laws in Germany, France and Switzerland

CLOPORA position
on
Exhaustion

as approved by its Annual General Meeting on 02 April 2014 in The Hague

The 1991 Act of the UPOV Convention has introduced in its Article 16 the principle of “Exhaustion” of the PBR; a principle, which is known in all Intellectual Property Protection systems. The UPOV 1991 Act establishes exhaustion in form of national exhaustion³. National exhaustion has the effect that products, which have been marketed by the title- holder or with his consent in the protected territory, fall in the public domain in this territory, so that the title-holder can exert his right to said products only once in this territory.

The exhaustion provision in the UPOV 1991 Act reads:

Article 16 Exhaustion of the Breeder’s Right

- (1) [Exhaustion of right] The breeder’s right shall not extend to acts concerning any material of the protected variety, or of a variety covered by the provisions of Article 14(5), which has been sold or otherwise marketed by the breeder or with his consent in the territory of the Contracting Party concerned, or any material derived from the said material, unless such acts
 - (i) involve further propagation of the variety in question or
 - (ii) involve an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.
- (2) [Meaning of “material”] For the purposes of paragraph (1), “material” means, in relation to a variety:
 - (i) propagating material of any kind,
 - (ii) harvested material, including entire plants and parts of plants, and
 - (iii) any product made directly from the harvested material.
- (3) [“Territory” in certain cases] For the purposes of paragraph (1), all the Contracting Parties which are member States of one and the same intergovernmental organization may act jointly, where the regulations of that organization so require, to assimilate acts done on the territories of the States members of that organization to acts done on their own territories and, should they do so, shall notify the Secretary-General accordingly⁴.

On one side the exhaustion provision in the UPOV 1991 Act is very broad. It covers not only acts concerning the plant material marketed by the title-holder or with his consent, but also acts concerning any material derived from said material. On the other side it explicitly excludes specific acts from the exhaustion, namely the further propagation of the variety in question and the export of specified material into countries which do not provide for protection for the genus or species concerned.

CLOPORA is of the opinion that the exhaustion provision in the UPOV Act should be modernized and adapted to the current circumstances.

³ In contrast to this the concept of international exhaustion includes that a product, which has been marketed somewhere in the world by the title-holder or with his consent, falls into the public domain in the protected territory.

⁴ Here the principle of regional exhaustion, as practiced e.g. in the EU, is allowed, too.

It is obvious and correlates to the exhaustion rules in other IP systems that the PBR in a territory in principle shall be exhausted for material, which has been marketed by the title holder or with his consent in the territory where the PBR is effective.

Taking into consideration the heterogeneous protection of plant varieties in the world and the capacity of propagation material to reproduce itself true-to-type, it is reasonable to limit the exhaustion of the PBR for the export of the propagating material⁵ into a country, which does not protect varieties of the plant genus or species to which the variety belongs.

As far as material is concerned, which is produced from the material marketed by the title- holder or with his consent (in the following "produced material"), the PBR should be exhausted only for produced material, if and to such extent its production has been licensed, and provided that the produced material is not subsequently used for other propagation or multiplication.

In the first instance it is a matter of the parties concerned (title-holder and licensee) to draft the scope of the license and to precisely describe the acts covered by the license.

However, in that regard it can be assumed that, if for example the title-holder or his licensee sells apple trees to an apple grower without any specific agreement, the apple grower has been granted an unlimited implied license to produce and sell apples from these trees in the territory, where the PBR is valid. A cut-rose grower buying rose plants without a specific agreement has the implied right to produce cut-roses for the purpose of selling them – directly or via the trade chain - to end-consumers in the territory, where the PBR is valid.

Once more it shall be clarified that exhaustion of any PBR shall be strictly limited to the very territory where the PBR is in effect. The marketing of material in a protected territory shall trigger the exhaustion only for this very territory. Any import of said material or material produced from it into another territory, where a (parallel) PBR exists, requires a separate authorization (license) of the respective title-holder. CIOPORA is opposed to any form of international exhaustion.

[End of Annex XVI, Appendix, and of document]

⁵ Propagating material as described in the position paper "Scope of the Right".