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# INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

## COMMITTEE OF EXPERTS ON INTERNATIONAL COOPERATION IN EXAMINATION

SECOND SESSION

Geneva, January 15 to 17, 1975

MODEL CONTRACT FOR  
JOINT TRIAL ARRANGEMENTS

Suggestions assembled by the Office of the Union

1. During the first session of the Committee of Experts on International Cooperation in Examination (November 1974), the Delegation of the Netherlands presented a draft of an agreement on "mutual utilization of the services for testing of varieties on distinctness, homogeneity and stability" between, on the one hand, the UK Minister of Agriculture, Fisheries and Food and the UK Controller of the Plant Variety Rights Office, and, on the other hand, the Netherlands Minister of Agriculture and Fisheries and the Netherland Board for Plant Breeders' Rights. The text of the draft was distributed during the session and reproduced as Annex I to the draft report on the first session of the Committee of Experts (document ICE/I/5).
2. The Committee of Experts invited each of its members to communicate in writing, by December 15, 1974, to the Office of UPOV, comments and suggestions on this draft, and asked the Office of UPOV to assemble the comments and suggestions in a working document for the Committee's next session (document ICE/I/5, paragraph 9(i)).
3. The draft agreement as corrected according to the wish expressed by Mr. Butler (Netherlands) in a letter dated November 27, 1974, is attached as Annex I to this document.
4. Dr. Böringer (Federal Republic of Germany) expressed, in a letter dated December 16, 1974, his agreement in principle with the draft agreement, and made some suggestions. A copy of his letter is attached as Annex II to this document.
5. Mr. Laclavière (France) also made a number of suggestions on the draft agreement, in a letter dated December 26, 1974. A copy of his letter is attached as Annex III to this document.
6. Mr. Doughty submitted a revised draft of the agreement, in a letter dated December 31, 1974. The letter and the revised draft of the agreement are attached as Annex IV to this document.

[Annex I follows]

## PROPOSAL OF THE NETHERLANDS

Draft Agreement  
on Mutual Utilization of the Services  
for Testing of Varieties on Distinctness,  
Homogeneity and Stability

1. The Minister of Agriculture, Fisheries and Food in the United Kingdom and the Controller of the Plant Variety Rights Office--hereinafter referred to as the Controller--on the one hand, and the Minister of Agriculture and Fisheries in the Netherlands and the Board for Plant Breeders' Rights--hereinafter referred to as the Board--on the other hand, agree hereby to provide mutual help and cooperation in the field of variety testing on distinctness, homogeneity and stability.

2. This agreement is to be understood as a special agreement under Article 30, paragraph (2), of the International Convention for the Protection of New Varieties of Plants of December 2, 1961.

3. The parties to this agreement under 1 agree that the technical variety testing on all applications made in either of the countries will be done by the Controller for the species:

- Chrysanthemum morifolium Ram.
- Lolium multiflorum Lam.
- Malus Mill. (except ornamentals)
- Medicago sativa L. and Medicago x varia Martyn
- Rheum L.
- Trifolium pratense L.

and by the Board for the species:

- Agrostis canina L.
- Agrostis gigantea Roth.
- Agrostis stolonifera L.
- Agrostis tenuis Sibth.
- Alstroemeria L.
- Dianthus caryophyllus L. (in glasshouses)
- Freesia Klatt
- Hyacinthus orientalis L.
- Poa annua L.
- Poa compressa L.
- Poa nemoralis L.
- Poa palustris L.
- Poa pratensis L.
- Poa trivialis L.
- Streptocarpus x hybridus Voss.
- Tulipa L.

4. The above lists of species are open for extension on agreement by the Controller and the Board. Any extension shall be recorded in a rider to this agreement.

5. The Controller and the Board agree that the final examination reports on variety testing--when positive, with descriptions--will be sent to the party on whose behalf the testing is done. In so far as the Council of UPOV has adopted a guideline for the conduct of tests on one of the species mentioned under 3, the examination within that species shall be carried out and the report and description shall be made according to the guideline. The description of the variety shall be made also in accordance with those guidelines.
6. In those cases where because of an action in law or otherwise the advice of the technical expert who actually carried out the examination of the variety is needed in the country which entrusted the testing to the other country, it is hereby agreed that the Controller or the Board shall make available the services of the respective expert. If any costs are involved which are not met by the party who invoked the services of the said expert, the Controller and the Board take it upon themselves to meet the expenses for such services.
7. As to the payments for the examinations done by the Controller on behalf of the Board or by the Board on behalf of the Controller, the recommendations in the Resolution on Fee Questions adopted in the meeting of the Council of UPOV from October 10 to 12, 1973 (UPOV/C/VII/23), shall apply.
8. When the Controller or the Board asks for the final examination report on a variety of a species not mentioned under 3, it is hereby agreed that such a report shall be supplied. All data concerning the trials on which the report was based shall be kept available. In those cases the above shall apply accordingly.
9. Technical details such as the application form to be used, the technical questionnaire to be filled in, the identification material needed, the time this must be made available to the Controller or the Board, and the date(s) and methods of payment of fees to each other, shall be settled between the Controller and the Board.
10. This agreement shall become effective as from January 1, 1975. However, it is understood that, for mutual help before that date, the above shall apply as far as possible.
11. Neither party shall seek to revoke this agreement without giving one year's notice to the other party. Before giving such notice, the parties shall consult each other.
12. Notwithstanding the one year's notice, in case of denunciation of the agreement, the trials entered upon before the ending of the term of the notice shall be finished and reported upon by the Controller or the Board.

[Annex II follows]

## ANNEX II

Original: German

Translation of a letter from Dr. Böringer (Federal Republic  
of Germany) to the Office of the International Union  
for the Protection of New Varieties of Plants (UPOV)

December 16, 1974

Re: Centralization of the Examination of New Varieties of Plants;  
Draft Agreement

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I agree with the contents of the draft prepared by the Netherlands in cooperation with the United Kingdom; however, I should like to present the following points for your consideration:

In order to ensure that an arrangement is made between the parties to the agreement in cases in which a UPOV guideline does not yet exist, the possibility could be envisaged of adding after the second sentence of paragraph 5 the following sentence: "In so far as the examination has not been conducted according to UPOV guidelines, the country conducting the examination shall inform the country asking for the examination, at the earliest possible opportunity, when it intends to change the principles of its examination."

In addition, I should like to draw your attention to the fact that paragraph 5 deals with two cases:

- (a) the conduct of the examination (in the second sentence), and the making of the description of the variety (in subparagraph 2);
- (b) the mailing of the examination results (in the first sentence).

Chronologically it would be advisable to adopt the above-mentioned order of the rule, possibly under two different paragraphs.

In order to clarify the fact that the right and the interest of the breeder under the national law will not be endangered by the agreement, the following rules should be added: "The country conducting the examination shall ensure that it will neither use the reproductive material for other purposes such as for the conduct of the examination nor hand it out to third persons. The country conducting the examination shall allow the applicant to inspect on his wish the bases of the examination, including the field test of the deposited variety."

The time limit for denouncing the agreement provided for under 11 seems to be too short since the country asking for examinations will have difficulties in concluding another arrangement for the conduct of the examinations within one year; a period of at least two years should therefore be envisaged for the time limit for denunciation.

[Annex III follows]

## ANNEX III

Original: French

Translation of a letter from Mr. B. Laclavière,  
Secretary-General of the French Committee  
for the Protection of New Plant Varieties,  
to the Vice Secretary-General of UPOV

December 26, 1974

Re: Joint Trial Arrangements

You will find below the observations we wish to make at present on the draft agreement on technical cooperation which was submitted by the delegation of the Netherlands during the first meeting of the Committee of Experts on International Cooperation in Examination:

1. It is necessary to introduce rules stating who is responsible--and under what conditions--for maintaining the reference collection, as well as rules concerning the possibility of granting access to the collection to official or private technical experts, at their request.
2. It seems that the experts of the country for which the examination is carried out must have the opportunity to take part in observations and, as the case may be, in the final decision. One ought to consider whether interested professional groups should be given the possibility of taking part in such decisions.
3. Consideration should be given to the question of the language in which the results of the examination will be given.

[Annex IV follows]

**THE PLANT VARIETY RIGHTS OFFICE**

White House Lane, Huntingdon Road,  
Cambridge CB3 0LF  
Telephone: Cambridge (0223) 76381, ext. 340

Our ref. AD 61  
31 December 1974

Dr H Mast  
Vice Secretary General  
Office of the Union for the  
Protection of New Plant Varieties  
32 Chemin des Colombettes  
1211 Geneva 20  
SWITZERLAND

Dear Dr Mast

In accordance with paragraph 9(i) of the draft report (ICE/1/5) of the Committee meeting held on 7 November 1974, I am enclosing a revised draft of the agreement we seek to reach with the Netherlands. I must apologise for not having been able to send this to you before but hope it will be in time for you to consider and prepare your working document for the next meeting on 15 January. I look forward to meeting you again then.

With best wishes for the New Year.

Yours sincerely

H A DOUGHTY  
Controller

Enc

Bilateral Agreement Between  
the United Kingdom and the Netherlands  
Draft Revised by the United Kingdom

1. The United Kingdom Seeds Executive, hereafter referred to as the Executive, and the Controller of Plant Variety Rights Office, hereafter referred to as the Controller, on the one hand and the Minister of Agriculture and Fisheries in the Netherlands and the Board for Plant Breeders' Rights, hereafter referred to as the Board, on the other hand hereby agree to establish a system of mutual help and cooperation in the field of variety testing on distinctness, homogeneity and stability.

2. In so far as plant breeders' rights are concerned this agreement is meant as a special agreement under Article 30 paragraph 2 of the International Convention for the Protection of New Varieties of Plants of December 2, 1961.

3. The parties to this agreement agree that the technical work on testing new varieties for all applications made in either of the countries will be carried out by the appropriate agricultural Departments in the United Kingdom and/or the Controller as the case may be for the species:

- *Chrysanthemum morifolium* Ram.
- *Lolium multiflorum* Lam.
- *Malus* Mill. (except ornamentals)
- *Medicago sativa* L. and *Medicago x varia* Martyn
- *Rheum* L.
- *Trifolium pratense* L.

and by the Board for the species:

- *Agrostis canina* L.
- *Agrostis gigantea* Roth.
- *Agrostis stolonifera* L.
- *Agrostis tenuis* Sibth.
- *Alstroemeria* L.
- *Dianthus caryophyllus* L. (in glasshouses)
- *Freesia* Klatt
- *Hyacinthus orientalis* L.
- *Poa annua* L.
- *Poa compressa* L.
- *Poa nemoralis* L.
- *Poa palustris* L.
- *Poa pratensis* L.
- *Poa trivialis* L.
- *Streptocarpus x hybridus* Voss.
- *Tulipa* L.

4. The lists of species in paragraph 3 are open for extension on agreement by the Executive and/or the Controller as the case may be and the Board. Any extension shall be recorded in a rider to this agreement.

5. The Executive and/or the Controller as the case may be and the Board agree that the final examination reports on variety testing will be sent to the party on whose behalf the testing has been undertaken. Where the reports are positive the variety description shall also be given. These reports and recommendations shall be provided in one of the three official UPOV languages i.e. English, French or German. In so far as the Council of UPOV has adopted a guideline for the conduct of tests on one of the species mentioned in paragraph 3 the examination within this species will be carried out and the report and description will



be compiled according to that guideline. [As a matter of administrative convenience the Executive agrees that the Minister of Agriculture and Fisheries in the Netherlands and the Board shall communicate with the Ministry of Agriculture, Fisheries and Food, White House Lane, Huntingdon Road, Cambridge, on all matters relating to new varieties which have been submitted for addition to a National List.]

6. The parties to this agreement undertake that the applicants and/or their duly accredited agents shall have access to the tests and to the information derived from those tests.
7. The parties to this agreement undertake either to maintain reference collections of propagating material or to require it to be produced by the holder of the rights or the maintainer as the case may be.
8. In those cases where because of an action in law or otherwise the advice of the technical expert who carried out the examination of the variety is needed in the country which entrusted the testing to the other country it is agreed that the respective authority shall make available the services of its expert. If any costs are involved which are not met by the party which invoked the services of the said expert the authority in the United Kingdom or the Board as the case may be will meet the expenses for the services.
9. In so far as the payments for the examinations of new varieties carried out by the Controller on behalf of the Board and vice versa are concerned, the recommendations in the resolution of fees questions adopted in the meeting of the Council of UPOV of October 10 to 12, 1973 (UPOV/C/VIII/23) shall apply. Similar arrangements shall apply in respect of the payments for the examinations carried out by the agricultural Departments in the United Kingdom on behalf of the Netherlands authorities and vice versa.
10. When the Controller or the Board asks for a final examination report on a variety of a species not mentioned under Section 3 it is agreed that such a report shall be supplied and all data of the tests on which the report was based shall be made available if required. Similar arrangements shall also apply in respect of any request made by the United Kingdom agricultural Departments and the Netherlands Minister of Agriculture and Fisheries. The provision of this agreement shall apply to any such reports which may be supplied by any party. The parties to this agreement agree that the details relating to this agreement including, inter alia, application forms, technical questionnaires, seed requirements and payments of fees will be settled between the Ministry of Agriculture, Fisheries and Food and/or the Controller as the case may be and the Board.
11. This agreement will come into force on January 1, 1975, and will be regarded as a memorandum for guidance for any cases dealt with or in the course of being dealt with before that date.
12. Proposals for the amendment or revocation of this agreement may be initiated by either of the parties to it. It is understood however that (a) neither party will seek to revoke the agreement without giving 1 year's notice to the other party and will enter into consultation before serving such notice, and (b) if the agreement is revoked in respect of all or any of the species referred to in paragraph 3 of this agreement, the tests entered upon before the revocation will be finalized and reported upon by the respective authorities.

[End of Annex IV  
and of document]