

JAPAN

Contribution received in reply to UPOV Circular E-22/058, of April 12, 2022

Japan's Delegation are pleased to express gratitude for the contribution of UPOV Office and WG-HRV member countries. We would make following comments on the documents of WG-HRV.

WG-HRV/1/4

PROPOSALS CONCERNING THE EXPLANATORY NOTES ON ACTS IN RESPECT OF HARVESTED MATERIAL UNDER THE 1991 ACT OF THE UPOV CONVENTION

(c) Unauthorized use of propagating material

Paragraph 4

Japan emphasizes that the enforcement of rights over harvested material should not be based on the premise that there was an infringement of breeder's rights stipulated in Article 14(1), but rather on the premise that there was no permission from the breeder to use the propagating material for the purpose of obtaining the harvested material. If permission of the use of propagating material was limited to acts stipulated in Article 14(1) as stated in the current explanatory note, it would be impossible to enforce breeders right stipulated in Article 14(2) as Article 14 (2) requires the harvested material to be obtained through the unauthorized use, authorization of which is not stipulated in Article 14(1). Japan would like to raise inconsistencies between the wordings of the two paragraphs and the revision of the explanatory note to remedy such inconsistencies, as follows.

First, the present paragraph 4 is inconsistent with the difference in words in the Article 14(1)(a) and the Article 14(2). While Article 14(1)(a) refers to the "acts" which requires breeder's authorization, Article 14(2) requires the harvested material to be obtained through the unauthorized use. The "unauthorized use" does not necessarily correspond to the "acts" which requires breeder's authorization.

Secondly, if Article 14(2) is interpreted as the present paragraph 4, the harvested material obtained through the stolen seed does not meet the condition of the Article 14(2) and consequently the breeder cannot exercise his right to that harvested material because stealing and cultivating the propagating material of protected variety is not given by the Article 14(1).

For these reasons, Japan proposes that paragraph 4 to be changed as the first two sentences in the proposal from ISF, CIOPORA, CropLife International, Euroseeds, APSA, AFSTA, and SAA. “Unauthorized use” should be defined as “the use of the propagating material of the variety for the purpose of producing harvested material without the breeder’s consent”.

Regarding the last three paragraph of their proposal, we can continue to have broad and further discussion.

Regarding the phrase “(e.g., courts, enforcement authorities, PVP offices)” in their proposal, a PVP office does not have such authority to order those who are trading/exporting/importing the harvested material to provide any information concerning cases. So, the wording “PVP offices” should be deleted.

Paragraph 5

Related with the proposal on Paragraph 4, Japan would propose that Paragraph 5 to be changed as follows:

“(…)

In relation to ‘unauthorized use’ of propagating material, the acts such as planting and growing (cultivation) the propagating material of the protected variety for the purpose of producing harvested material without the breeder’s authorization would be included in the ‘unauthorized use’ of propagating material.

Thus, subject to Articles 15 and 16, ‘unauthorized use’ refers to the acts listed in (i) to (vii) above in respect of propagating material and the relevant acts such as planting and growing (cultivation) the propagating material for the purpose of producing harvested material in the territory concerned, where such authorization was not obtained.”

Paragraph 7

Related with the proposal on Paragraph 5, Japan would propose that Paragraph 7 to be changed as follows:

Article 14(1)(b) of the 1991 Act of the UPOV Convention further states that ‘[t]he breeder may make his authorization subject to conditions and limitations’. Thus, subject to Articles 15 and 16, ‘unauthorized use’ also refers to the acts listed

in Article 14(1)(a) (i) to (vii) and the relevant acts that are not undertaken in accordance with the conditions and limitations established by the breeder.

For example, if the breeder puts conditions and limitations to produce harvested material in authorizing his right in respect of propagating material, the production of harvested material in breach of those conditions and limitations should be considered as unauthorized use.

(d) Reasonable opportunity to exercise his right

Paragraph 13

Regarding the proposal from ISF, CIOPORA, CropLife International, Euroseeds, APSA, AFSTA, and SAA, “The term ‘his right’, in Article 14(2) of the 1991 Act, relates to the breeder’s right in the territory concerned where the propagating material is used”, Japan has concerns.

It is considered that, this proposal does not always apply to all member countries, just to the countries within Intergovernmental Organization, such as European Union. So, original text should retain. New text should be written separately, if necessary.

WG-HRV/1/5

PROPOSALS CONCERNING THE EXPLANATORY NOTES ON PROVISIONAL PROTECTION UNDER THE UPOV CONVENTION

Paragraph 5

Japan appreciates the positive proposal on “Provisional Protection” from ISF, CIOPORA, CropLife International, Euroseeds, APSA, AFSTA, and SAA.

When filing an application overseas, it inevitably takes time to publish the application due to quarantine or application procedures, leaving a gap in the time until provisional protection. On the other hand, the cultivation from seed or seedling taken illegally to abroad can spread immediately, and the breeder's right can no longer be exercised on the seed in time.

The Proposal raises important issues that will lead to the protection of the common interests of all member countries, and Japan supports this proposal in its essence.

However, the current Article 13 of UPOV Convention, stipulates provisional protection to be provided at each contracting party upon filing/publication of the

application of that country and that each contracting party shall choose the starting point of the provisional protection to be either the filing or the publication of the application, and this should be noted in the above proposal.

Therefore, Japan is willing to move the discussion further for provisional protection that be commenced in all UPOV member states at the unified starting point (e.g., date of filing of an application in any member state) without ruling out the possibility of amending the UPOV Convention.