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PLANT VARIETY PROTECTION



Gazette and Newsletter
of the International Union
for the Protection of
New Varieties of Plants
(UPOV)

UPOV

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The International Union for the Protection of New Varieties of Plants (UPOV)—an international organization established by the International Convention for the Protection of New Varieties of Plants—is the international forum for States interested in plant variety protection. Its main objective is to promote the protection of the interests of plant breeders—for their benefit and for the benefit of agriculture and thus also of the community at large—in accordance with uniform and clearly defined principles.

Plant Variety Protection is a UPOV publication that reports on national and international events in its field of competence and in related areas. It is published in English only—although some items are quadrilingual (English, French, German and Spanish)—at irregular intervals, usually at a rate of four issues a year. Requests for addition to the mailing list may be placed with:

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The picture on the front cover shows the species
Bolusanthus speciosus,
painted by Mrs. Elise Buitendag (South Africa)

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GAZETTE

ACCESSION TO THE 1978 ACT OF THE UPOV CONVENTION

PARAGUAY

On January 8, 1997, the Government of Paraguay deposited its instrument of accession to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, and on October 23, 1978, with the Secretary-General of UPOV.

The 1978 Act of the Convention entered into force in respect of Paraguay on February 8, 1997. On that date, Paraguay became the thirty-

second member State of UPOV and the thirtieth member State bound by the 1978 Act.

According to the notification filed with the Secretary-General together with the instrument of accession, protection is available in respect of the following botanical taxa (the Spanish and Latin names appeared in the notification, whereas the English, French and German common names have been added, without guarantee of concordance, by the Office of the Union):

Latin	English	Français	Deutsch	Español
<i>Brassica napus</i> L.	Rapeseed, Swede Rape, incl. Oilseed Rape	Colza	Raps	Canola, Colza
<i>Glycine max</i> (L.) Merrill	Soya Bean, Soybean	Soja	Sojabohne	Soja
<i>Gossypium</i> spp.	Cotton	Cotonnier	Baumwolle	Algodón
<i>Helianthus annuus</i> L.	Common Sun- flower	Tournesol, So- leil	Sonnenblume	Girasol
<i>Oryza sativa</i> L.	Rice	Riz	Reis	Arroz
<i>Sorghum</i> spp.	Sorghum	Sorgho	Mohrenhirse	Sorgo
<i>Triticum</i> spp.	Wheat	Blé	Weizen	Trigo
<i>Zea Mays</i> L.	Corn, Maize	Maïs	Mais	Maíz

EXTENSION OF PROTECTION TO FURTHER GENERA AND SPECIES

SWEDEN

By virtue of the Law No. 470 of June 11, 1996, amending the Plant Breeders' Rights Law No. 392 of 1971, protection was extended to the following botanical taxa with effect from July 1, 1996 (the English and Latin

names have been communicated by the Swedish authorities, whereas the French, German and Spanish common names have been added, without guarantee of concordance, by the Office of the Union):

Latin	English	Français	Deutsch	Español
<i>Chaenomeles</i> Lindl.	Flowering Quince	Cognassier du Japon	Japanische Quitte	Membrillero japonés
<i>Clematis</i> L.	Clematis	Clématite	Waldrebe	Clemátide
<i>Dracaena</i> spp.	Dragon Tree, Dracena	Dragonnier, Dracaena	Drachenbaum	Drago
<i>Euphorbia</i> spp.	Spurges	Euphorbe	Wolfsmilch	Lechetrezna, Titimaro, Tar- tago
<i>Kalanchoë</i> Adans.	Kalanchoë	Kalanchoë	Kalanchoë	Kalanchoë
<i>Pelargonium</i> L'Her. ex Ait.	Geranium, Pelargonium, Stork's Bill	Géranium, Pe- largonium	Pelargonie	Geranio, Pe- largonía
<i>Philadelphus</i> spp.	Mock Orange	Seringa	Pfeifenstrauch, Falscher Jasmin	Jeringuilla, Celinda

NEWSLETTER**THE FOURTEENTH EXTRAORDINARY SESSION OF THE COUNCIL**

The Council of the International Union for the Protection of New Varieties of Plants (UPOV) held its fourteenth extraordinary session in Geneva, on April 29, 1997, under the chairmanship of Mr. Bill Whitmore (New Zealand), President of the Council.

At that session, the Council took the following decisions:

(a) It decided to give a positive advice on the conformity of the legislation of the Republic of Moldova with the provisions of the 1991 Act;

(b) It decided to give a positive advice on the conformity of the regulations of the European Community with the provisions of the 1991 Act;

(c) It decided to give a positive advice on the conformity of the legislation of the Kingdom of Morocco with the provisions of the 1991 Act;

(d) It decided to give a positive advice on the conformity of the legislation of the People's Republic of China with the provisions of the 1978 Act;

(e) It decided, upon the recommendation of the Consultative Committee and without taking a vote, to adopt the following decision:

“The Council of the International Union for the Protection of New Varieties of Plants, at its fourteenth extraordinary session held on April 29, 1997, decided that, even after the coming into force of the 1991 Act of the Convention pursuant to Article 37(1) of that Act, any State which has

(a) asked the Council of UPOV, pursuant to Article 32(3) of the 1978 Act, for its advice in respect of the conformity of its laws with that Act prior to the coming into force of the 1991 Act, and

(b) received positive advice from the said Council or, if that advice recommended certain changes in its laws, changed its laws accordingly to the satisfaction of the Office of the Union

may deposit an instrument of accession to the 1978 Act in accordance with that Act at any time prior to the first anniversary of the coming into force of the 1991 Act.”

PLANT VARIETY PROTECTION THROUGHOUT THE WORLD IN 1996

At its thirtieth session held on October 23, 1996, the Council of UPOV noted the written and oral reports given by representatives of member States and international or-

ganizations on the development of plant variety protection and related matters in their country or at international level. A record of the statements is given below.

Member States

ARGENTINA

Situation in the Legislative Field

On February 28, 1996, the National Seed Institute (INASE) adopted Resolution No. 35/96 to regulate the procedure to be followed by producers wishing to use their own seed under the "farmer's privilege."

Situation in the Administrative Field

In 1995, 181 applications for protection were filed and 80 titles of protection were issued; 376 applications for entry in the National Register of Cultivars were filed and 92 entries were made, bringing the total of registered varieties to 640.

In 1996, until September 30, 71 applications for protection were filed and 82 titles of protection were issued; 417 applications for entry in the National Register were filed and 251 entries were made.

Situation in the Technical Field

The release of genetically modified organisms into the environment is regulated in Argentina by the National Commission for Agricultural Biotechnology (CONABIA), on which INASE is represented.

In 1996, five titles of protection were issued for genetically modified soybean varieties that are resistant to glyphosate.

Activities for the Promotion of Plant Variety Protection

Technical experts from Bolivia, Brazil, Colombia, Ecuador and Paraguay visited INASE in 1995 to acquaint themselves with the protection and registration procedures of Argentina.

Argentina actively contributes through its delegates from INASE to the drafting of the draft Agreement, between a number of member States of the Latin-American Integration Association (ALADI), on the Harmonization of the Norms and Policies Relating to the Rights of Breeders of Plant Varieties.

The President of INASE, Mrs. Adelaida Harries, holds the presidency of the Seed Committee of ALADI for the July 1995-July 1997 term, and Argentina provides the technical secretariat of the Committee through INASE.

With respect to MERCOSUR, Argentina also contributed actively to the drafting of a draft Agreement on the Harmonization of the Norms and Policies Relating to the Rights of Breeders of Plant Varieties.

At national level, meetings were held with seed producers and traders to inform them on the scope of protection and the exceptions.

Developments in Related Fields of Activities

The 1996 Annual Meeting of the OECD Systems of Varietal Certification of Seed

Moving in International Trade took place in Buenos Aires and was organized by INASE.

INASE is not only competent for plant variety protection and national listing matters, but also for seed certification and control. In the framework of its activities in the latter area, it gives effect to the breeder's right by requesting proof of the breeder's authorization in respect of seed from protected varieties put into circulation.

AUSTRIA

Situation in the Legislative Field

The calendar for the adjustment of the law to the 1991 Act has not been fixed yet.

The application and examination fees have been increased.

Cooperation in Examination

An administrative agreement with France is in preparation.

Situation in the Administrative Field

From January 1 to August 31, 1996, 23 applications were received and 22 titles were issued; 178 titles were in force on August 31.

Developments in Related Fields of Activities

The draft new seed law has been released for comments. The results will be submitted to Parliament as soon as possible.

The implementing regulations to the Genetic Engineering Law (Official Journal No. 510/94) will be published as soon as possible. Austria has not approved any release yet.

BELGIUM

Situation in the Legislative Field

The completion of the draft new plant variety protection law should start in 1997.

No change in existing legislation is anticipated in the short term, except for an extension of protection to further genera and species.

Cooperation in Examination

Two agreements—with Denmark and France—are awaiting confirmation. New agreements or amendments to existing agreements may be concluded on the basis of the requests for extension of protection to further taxa.

Situation in the Administrative Field

The computerization of the Service for the Protection of New Plant Varieties has been under way since the end of 1994. The programs are now available, and the data on the files are being loaded. Once this has been completed, Belgium will be able to contribute to the UPOV database on CD-ROM.

From the entry into force of the system for the protection of new plant varieties to August 31, 1996, 2,070 applications for protection have been filed and 1,538 certificates issued, of which 757 are still in force. From September 1, 1995, to August 31, 1996, 292 titles of protection were issued.

Developments in Related Fields of Activities

The revision of the regulation on the production, control and certification of seed of

agricultural crops is nearing completion and should be applicable as from 1997. The reorganization of the "Propagating Material" Service, which has this regulation within its attributions, is under study.

The orders for the implementation of the royal decree on the marketing of fruit plants for the production of fruit, ornamental plants, vegetable plants and propagating material of those plants with the exception of vegetable seeds have been all published.

A royal decree transposing Council Directive 90/220/EEC on the release of genetically modified organisms into the environment and a royal decree instituting a system of scientific determination of biosecurity are in preparation.

CANADA

Situation in the Legislative Field

Regulations are in place for 39 species. Regulations should be in place for all species by late 1997. Preliminary discussions on the 1991 Act of the Convention have been initiated with members of the industry affected by this legislation.

Situation in the Administrative Field

Canada has been receiving applications for plant breeders' rights since November 6, 1991. As of October 7, 1996, the Office received 962 applications and granted 274 rights.

DENMARK

Situation in the Legislative Field

National legislation

An amended Plant Variety Protection Act entered into force on January 1, 1996, and brought the Danish legislation into conformity with the 1991 Act of the Convention.

Varieties of all genera and species are eligible for protection in accordance with the amended Act. The period of protection remains unchanged (25 years for all species except potato, for which the period is 30 years).

An Order which implements the provisions on the use of farm-saved seed entered into force on August 1, 1996. The Order follows very

closely the corresponding provisions made under Council Regulation (EC) No. 2100/94 on Community plant variety rights, in particular as regards the species covered by the Order. The royalty for the use of farm-saved seed may not exceed 50% of the normal royalty on certified seed for the same variety. The setting of a maximum fee to be paid by the user reflects a decision of the Danish Parliament, which interpreted the term "sensibly lower" used in the said Council Regulation to mean an amount not exceeding 50% of the normal license fee.

Ratification of the 1991 Act of the Convention

The amended law made it possible for Denmark to ratify the 1991 Act of the Convention. The instrument of ratification was deposited on April 26, 1996.

Cooperation in Examination

In the autumn 1995, it had been planned to revise the agreements on cooperation in examination concluded with other member States. Due to special circumstances, the revision has been delayed and is still pending.

Situation in the Administrative Field

In 1995, 98 applications for plant breeders' rights were received, as follows:

Agricultural crops	42
Fruit	3
Vegetables	3
Ornamentals	50
<i>Total</i>	98

In 1995, the number of titles of protection issued was 221:

Agricultural crops	54
Fruit	5
Ornamentals	160

Landscape	2
<i>Total</i>	221

In the period from January 1 to September 1, 1996, 37 applications for protection were received and 90 titles of protection were issued.

Compared to 1994, there was a reduction of 204 applications in 1995 or 67.5%. The reduction concerns mainly ornamentals and agricultural crops (- 76% and - 22%, respectively). The reduction is the result of the introduction of the Community plant variety rights system, to which 260 applications originating from Denmark were submitted.

Situation in the Technical Field—Genetically Modified Organisms

Variety Testing

As the variety testing for both plant breeders' rights and variety listing is to be self-financed by fees paid by the applicants, the reduction of the number of applications affects the financial situation in respect of tests for distinctness, uniformity and stability severely. The number of varieties going into testing for value for cultivation and use is expected to decrease also as an ever-increasing number of varieties of agricultural crops are commercialized within the European Union on basis of the Common Catalogue.

A report on the future of variety testing in Denmark is expected to be finalized in October 1996. The financial difficulties might lead to a need for reconsidering the present organization of the variety testing.

Genetically Modified Plants

In 1995, the Plant Directorate, Division of Gene Technology and Variety Testing, was asked by the Ministry of Environment to comment on 210 EU Summary Notification

Information Formats (SNIFs) concerning experimental releases of genetically modified plants. In the period from January 1 to August 31, 1996, the Directorate reviewed a further 217 SNIFs.

In 1995, applications for EU marketing approval of genetically modified plants of leaf chicory, maize, soybean and rapeseed (two) have been assessed. The Directorate has assessed further applications for rapeseed and maize (two) in the period from January 1 to August 31, 1996.

Variety Testing of a Genetically Modified Plant Variety

In 1996, the first genetically modified plant variety entered into official variety test-

ing in Denmark. The variety is a fodder beet of Danish origin and is the subject of an application for both plant breeders' rights and variety listing.

Developments in Related Fields of Activities

Notification of the Plant Variety Protection Legislation to the WTO Council for TRIPS

The Danish legislation on plant variety protection and the bilateral agreements for co-operation in examination concluded with other UPOV member States have been notified to the WTO Council for TRIPS

FINLAND

Situation in the Legislative Field

Preparatory work with a view to adjusting the law to the 1991 Act of the Convention has started, and the interested circles are being consulted.

Protection was extended to 47 further species as from January 12, 1996.

Cooperation in Examination

The administrative agreement concluded with Germany has been amended and an agreement has been concluded with Denmark.

Situation in the Administrative Field

From October 4, 1995, to September 13, 1996, 16 applications were received and 70 titles were issued.

GERMANY

Situation in the Legislative Field

The work on the draft law amending the Plant Variety Protection Law and the consultations have been pursued.

Cooperation in Examination

The administrative agreement concluded with the Plant Variety Board of Finland has been extended. The Federal Office of Plant

Varieties will examine, on behalf of the latter, the varieties of the species *Brassica napus* ssp. *oleifera* (rapeseed); the results of the technical examinations made by one of the offices will be taken over by the other for three soft fruit species.

It has been agreed with the Institute for Agricultural Quality Control of Hungary that the results of the technical examinations made by one of the offices for *Pisum sativum* (pea) or *Triticum durum* (hard wheat) will be taken over by the other.

Activities for the Promotion of Plant Variety Protection

Technical training has been given to staff members of the variety offices of the successor States of the former Soviet Union.

Developments in Related Fields of Activity

National List

A draft law amending the Seed Trade Law, with a view to adapting some of the latter's provisions to the planned changes to the Plant Variety Protection Law, has been prepared.

Genetic Engineering

The Federal Office of Plant Varieties is discussing with the competent authority a possible concentration of the procedures relating to genetic engineering, plant variety protection and national listing.

Genetic Resources

Germany organized the International (FAO) Technical Conference on Plant Genetic Resources which was held in Leipzig from June 17 to 23, 1996, and currently examines its implications for variety legislation.

IRELAND

Situation in the Legislative Field

Adaptation of the Law to the 1991 Act of the Convention

The Memorandum of Government to amend the Plant Varieties (Proprietary Rights) Act, 1980, has been finalized and circulated to other Government Departments for comment; it will be submitted to Government by the end of September 1996. Legislation will then be prepared and placed before the Dail (Parliament). It is not possible to state at this stage how long this procedure will take.

Case Law

There was one application for a compulsory license lodged with the Controller

for the potato variety 'Cultra.' However, on examination of the application, it was established that the claim made by the applicant related to a seed certification problem. The application was rejected by the Controller on the basis that it appeared that the conditions for the consideration of a compulsory license were not met.

Situation in the Administrative Field

Following the introduction of the Community plant variety rights system, in April 1995, the number of applications for national rights has dropped considerably. Many of the national rights for "newer" varieties were also converted into Community rights. While some applications for national rights are still being received for agricultural

crops, many applications in future may be for ornamental plants.

The Controller has provided information to breeders on completion of the application and related forms for Community rights.

The Controller changed address on August 19, 1996. His new address is: Department of Agriculture, Food and Forestry, Agriculture House, Kildare St., Dublin 2 (phone: +353-1-6072079, fax: +353-1-6616263).

A new computer package was organized to provide UPOV with information on national listing and plant breeders' rights for the CD-ROM system. Particular problems were encountered in this respect as no database existed previously for national listing. The existing

plant breeders' rights program had been written in D-base 3 and had to be adjusted to Windows 95.

Developments in Related Fields of Activities

Genetic resources as they relate to plants and animals are now receiving considerable attention in Ireland. The Minister for Agriculture, Food and Forestry established an Advisory Committee in July 1996. A primary role of this Committee will be to promote better coordination of activities in conservation of genetic resources among the various interested circles involved. Since conservation also includes utilization, these activities should become an integral part of both the national breeding and the national conservation policies.

ISRAEL

Situation in the Legislative Field

The Law on the Rights of the Breeders of Plant Varieties has been amended and adapted to the 1991 Act of the Convention and on June 3, 1996, Israel deposited its instrument of ratification with the Secretary-General.

Protection now extends to all plant genera and species.

Cooperation in Examination

An agreement on cooperation in examination with Denmark is under way, and an agreement with the European Community is planned.

JAPAN

Situation in the Legislative Field

Preparatory work is being undertaken to make the amendments to the Seeds and Seedlings Law that are necessary for its adaptation to the 1991 Act of the Convention.

Protection was extended to 15 genera and species, with effect from July 5, 1996. As a result of the extension, a total of 467 plants

are currently eligible for plant variety protection in Japan.

Cooperation in Examination

The Government of Japan has communicated with the Governments of Denmark, Germany, the Netherlands and the United

Kingdom for the establishment of agreements on cooperation in examination.

Activities for the Promotion of the Protection of Plant Varieties

The Japanese Government has contributed to the UPOV seminars on the nature of

and rationale for the protection of plant varieties under the UPOV Convention which were held in India, Bangladesh and Viet Nam in the period from September 12 to 20, 1996.

A seminar for countries of the Central Asian region will also be held in Kyrgyzstan from November 11 to 16, 1996.

NETHERLANDS

Situation in the Legislative Field

The law of June 26, 1996, approving the 1991 Act of the Convention and amending the Seeds and Planting Material Act was published on July 23, 1996, in *Staatsblad* No. 398. The approval of the 1991 Act came into force on July 24, 1996, and the instrument of acceptance of the Act was deposited with the Secretary-General on October 14, 1996. The amendments to the Seeds and Planting Material Act will enter into force on a future date specified in a separate order of the Queen. The Ministry of Agriculture, Nature Management and Fisheries is preparing a general administrative order on the "farmer's privilege." It is due to be submitted to the Council of State for advice shortly.

The Board for Plant Breeders' Rights is setting up a system of administrative fees for its services with respect to Community plant variety rights applications.

For transparency reasons, the Board decided to publish important decisions on applications for protection in the Gazette.

Cooperation in Examination

On June 15, 1995, the bilateral administrative agreement with Finland was agreed upon. In May 1995, draft agreements were sent to Norway, Sweden and South Africa. In

September 1995, Japan sent in a draft agreement intended to facilitate certain aspects of the administrative procedure between Japan and the Netherlands.

Situation in the Administrative Field

In 1995, the number of applications filed for plant breeders' rights showed, probably due to the entry into operation of the Community plant variety rights system, a considerable reduction of 23%: 1,183 applications were received as against 1,540 in 1994.

The examination entrusted to foreign authorities showed again a decrease, from 538 to 354; the number of requests for information—coming from abroad—on tests conducted in the Netherlands showed a decrease from 484 to 280.

In the period from January 1 to September 1, 1996, 655 applications were received.

In 1995, the activities of the Board were dominated by the entry into operation of the Community plant variety rights system. The processing of the "conversion" applications (the majority of the 977 applications for Community protection filed through the Board) and the huge number of inquiries by telephone caused a considerable workload for

the Secretariat. The Board thought it useful to inform breeders on the Community system through the Gazette, in close cooperation with the United Kingdom authorities. Furthermore, the Chairman and the Secretary participated in various meetings in Brussels. The attribution of the technical examination to the various research institutes of the Community member States is to be discussed in the near future.

Situation in the Technical Field

Following questions whether there can be free competition between research institutes, a study on a possible system of certification regarding DUS tests (both for protection and marketing purposes) has been initiated by the Minister for Agriculture, Nature Management and Fisheries. The Board is of the opinion that a qualified and permanent structure is still necessary to support the authority in the technical field. A similar discussion about free competition between the research institutes within the European Union might also arise in the near future within the framework of the Community plant variety rights system.

Activities for the Promotion of Plant Variety Protection

The Board received a delegation of Japan twice and informed them about the implementation of the 1991 Act of the Convention at national level. Delegations from China and India were received to be informed about the plant breeders' rights system in the Netherlands. The authorities were further pleased to organize the meetings of three UPOV technical working groups on the adaptation and improvement of examination standards.

Developments in Related Fields of Activities

In June 1996, the Parliament unanimously voted in favor of the opinion that the scope of a patent granted for a biotechnological invention should be limited to the invention itself. This means that the plant or the animal in which the patented invention comes to expression should be "free." The Government was also asked to express this opinion in the discussions in the Council of the European Union on the draft directive on this subject.

NEW ZEALAND

Situation in the Legislative Field

On September 2, 1996, as part of the Law Reform (Miscellaneous Provisions) Act 1996, certain non-controversial amendments to the Plant Variety Rights Act 1987 came into effect. The important changes are:

(a) A completed technical questionnaire must be supplied at the time of application.

(b) As soon as implementing regulations come into effect, a representative color photograph must be supplied at the time of

application for all fruit, ornamental and tree varieties.

(c) Section 16(2)(h) of the Plant Varieties Rights Act 1987, which provided for the cancellation of a plant variety right if the grantee failed to comply with a compulsory licence or a compulsory sales order, was repealed.

During the period there has regrettably been no progress towards amending the Plant Variety Rights Act 1987 to bring it into conformity with the 1991 Act of the Convention.

Situation in the Technical Field

Change in the Testing System

In 1980, in the early years of the PVR scheme, a move was made for many crops away from the system of official DUS testing at a central site. In the case of fruit varieties, and ornamentals other than roses, a system of official testing on the applicant's property became the norm. For agricultural varieties, a system of breeder testing came into effect.

In recent years, as the number of applications has steadily grown and as the difficulty of establishing distinctness has increased, there has been a gradual move back towards DUS testing at a central site and towards greater involvement of the PVR Office in the testing. This trend continued during 1996 with respect to agricultural varieties. It was mutually agreed by applicants and the PVR Office that in the case of the major arable and pasture crops, there should be a move from the current system of breeder testing back to a system of DUS testing under the control of the PVR Office. The move is expected to give cost savings for applicants and produce a higher level of technical rigor in the testing.

While it had been hoped to move to such a system on a formalized basis on June 1, 1996,

it was not possible to implement the necessary regulatory changes by that time. In order to meet the expectations of applicants, the PVR Office is in the meantime prepared to conduct central testing of the crops concerned should the applicants so request, at a cost equivalent to the fee expected to be charged once the system becomes formalized.

Protection for Microscopic Fungi

Plant variety protection has been granted for two varieties or strains of *Acremonium*, an endophyte (a microscopic organism living in the seeds and plants) of ryegrass (*Lolium*).

Activities for the Promotion of Plant Variety Protection

The Commissioner of Plant Variety Rights, Mr. Bill Whitmore, participated in the UPOV Regional Seminar on Variety Testing for Tropical and Sub-tropical Crops Under the UPOV Convention held in Medan (Indonesia) from December 5 to 7, 1995.

He also joined the Vice Secretary-General in Beijing from June 26 to 28, 1996, for discussions with officials of the State Council on the Chinese draft legislation on the protection of new varieties of plants.

NORWAY

Situation in the Legislative Field

The Regulations Relating to the Plant Breeder's Right have been revised with effect from February 6, 1996. The main amendment is that plant breeders' rights may now be granted for varieties of all genera and species of plants, including hybrids between genera or species. Minor amendments have also been made in respect of the publication procedure.

Cooperation in Examination

Norway received 56 DUS reports from other member States.

Situation in the Administrative Field

From January 1 to December 31, 1995, 45 applications have been received and 60 titles were issued. The grants were as follows

Barley	2
Begonia	2
Oat	3
Poinsettia	21
Potato	4
Rhododendron	6
Rose	20
Wheat	2

Seventy-five titles were in force on August 1, 1996.

Situation in the Technical Field

Experience is being gained on DUS-testing of cloudberry (*Rubus chamaemorus* L.).

POLAND

Situation in the Legislative Field

The new Seed Industry Law entered into force on January 20, 1996. In its part concerning plant variety protection, the Law is adjusted to the 1991 Act of the Convention. Implementing provisions to the law have been made in two decrees of the Minister for Agriculture and Food Economy, of which one sets out the fees for plant variety protection. Detailed provisions concerning *inter alia* the application procedure, variety testing and the granting procedure are included in four decisions of the Director of the Research Centre for Cultivar Testing (COBORU). The decisions and an extract from the decree of the Minister concerning fees will be published, in English, in an annex to the next edition of the Gazette.

Poland has taken steps to accede to the 1991 Act of the Convention. The Minister for Agriculture and Food Economy gave the necessary instructions to the competent Government authorities. Accession to the 1991 Act should take place soon, but it is difficult to give a precise date.

Protection has been extended to further genera and species, bringing the total to 302 taxa.

Cooperation in Examination

Bilateral agreements for cooperation in examination have been signed with the Czech Republic, Hungary and Slovakia.

Activities for the Promotion of Plant Variety Protection

The program of assistance to some East European countries is continuing. Practical training on DUS testing was organized in COBORU in the period from May 26 to June 2, 1996, for five participants from the State Committee for Variety Testing of Belarus, and two from the State Committee of Ukraine for Plant Variety Testing and Protection.

Practical training on the methods of variety testing and assessment, and summer pruning of fruit trees, was organized from August 4 to 11, 1996, for four participants from Belarus.

PORTUGAL

Situation in the Legislative Field

Protection has been extended very recently to 45 further species, bringing the total to 88.

Work is still carried out on the adaptation of the law to the 1991 Act of the Convention, and efforts are made to issue the first draft before the end of the year.

Situation in the Administrative Field

Since the last ordinary session of the Council, ten applications were received, for Citrus, rose and vine. Tests were completed for 15 varieties, for which a decision can now be taken.

Activities for the Promotion of Plant Variety Protection

Communications have been presented at two seminars and a promotion leaflet has been issued.

SOUTH AFRICA

Situation in the Legislative Field

The Plant Breeders' Rights Act, 1976 (Act No. 15 of 1976), which was revised in terms of the 1991 Act, was passed by Parliament and published as the Plant Breeders' Rights Amendment Act, 1996 (Act No. 15 of 1996), on April 19, 1996. It is envisaged that South Africa's instrument of ratification of the 1991 Act of the Convention will be deposited with the Secretary-General before the end of 1996. The necessary documents are being prepared at present.

The Department of Agriculture still receives requests for extension of protection to

further genera and species. During the year under review, protection has been extended to 13 genera and species.

Situation in the Administrative Field

From October 1, 1995, to August 31, 1996, 169 applications for plant breeders' rights were received and 137 plant breeders' rights were granted. As at August 31, 1996, there were 415 applications under consideration and 1055 plant breeders' rights in force. Further details are given below

	Agricultural Crops	Vegetable Crops	Ornamental Plants	Fruit Crops	Total
Applications Received	64	19	62	24	169
Plant Breeders' Rights Granted	61	27	26	23	137
Plant Breeders' Rights Valid	344	174	363	174	1055
Applications Being Considered	96	20	215	84	415

Situation in the Technical Field

It is becoming increasingly difficult to distinguish between varieties as the differences

are getting smaller and smaller and the number of varieties is increasing. In the case of maize, for instance, there are 150 white and 150 yellow varieties on the variety list.

Activities for the Promotion of Plant Variety Protection

The Assistant-Director, who is responsible for variety testing in South Africa, has given various lectures to different groups of people regarding the changes in the Plant Breeders' Rights Act which emanated from the 1991 Act of the Convention. During these lectures the reasons for the changes were explained. It may be necessary to amend the present Act in one or two instances. Some resistance has been encountered regarding the fact that the Department now has the right to inform the holder of a plant breeder's right that his rights have been violated. The general feeling is that it is the responsibility of the holder of the right to enforce his rights and that the Department should not interfere in such matters at all.

Developments in Related Fields of Activities

Legislation in respect of genetically modified organisms is in an advanced stage of development and a final draft of the Act is currently being prepared for submission to the relevant Parliamentary Committee. Genetically manipulated varieties may, however, cause problems where such varieties cannot be morphologically distinguished from the initial variety.

South Africa has become a member of the Southern African Development Community (SADC) and has subsequently joined the Regional programme on the conservation and sustainable utilization of plant genetic resources. A National Committee to coordinate these issues with regard to food and agriculture has also been inaugurated during the period under review.

SPAIN

Situation in the Legislative Field

The preparatory work for the revision of the Plant Variety Protection Law has progressed during the past year. The first draft of a draft Bill to be submitted to the various interested circles for comments has been finalized recently. That document provides for a system that is in line with the 1991 Act of the Convention, with various aspects being treated as in Regulation No. 2100/94 of the European Union.

The fees were increased by 3.5% on January 1, 1995, through the Law on the National Budget. New regulations are being prepared to change the amount of the fees, essentially to cover the operating costs through the incoming fees.

Five orders of the Ministry for Agriculture, Fisheries and Food established the possibility of granting protection in Spain for va-

rieties whose breeders or successors in title are natural or legal persons having their place of residence or registered office in Australia, Austria, New Zealand, Portugal or Uruguay.

Situation in the Administrative Field

Eighty-one applications were received and 244 titles of protection were issued, bringing the total of titles in force to 1,112.

The Spanish Office continued to work with the Community Plant Variety Office in the reception of applications for Community plant variety rights.

As a result of the reorganization of the Ministry for Agriculture, Fisheries and Food, the National Institute for Seeds and Nursery Plants became the General Subdirectorate for Seeds and Nursery Plants. There was no change in attributions, means or premises.

Activities for the Promotion of Plant Variety Protection

An intense activity was deployed at national level through seminars and technical meetings to provide information to all interested circles on the new system of Community Plant Variety Rights established by Regulation (EC) No. 2100/94.

Bilateral cooperation and cooperation involving the Office of the Union has been continued, assistance having been provided in particular in the Latin-American region (Cuba, Ecuador and Panama). The same applies for cooperation in the training of experts. Courses were organized for technical staff from Algeria, Brazil, Egypt and Panama on the legisla-

tive, procedural, organizational and technical aspects of protection and national listing.

Developments in Related Fields of Activities

The Spanish Register of Commercial Varieties concerns 92 agricultural and horticultural species. It was recently extended to 11 fruiting and rootstock species.

The first applications concerning varieties containing genetically modified organisms have been received and are under study from the point of view of both the provisions on the release of genetically modified organisms and the entry in the Register of Varieties.

SWEDEN

Situation in the Legislative Field

The work on the draft for a new Plant Variety Protection Law based upon the 1991 Act of the Convention is in progress. A Bill might be presented to Parliament in early 1997.

Two Articles have been added to the current law, one to provide that the filing of an application for a Community plant variety right with the National Plant Variety Board will be subject to payment of a fee (fixed at 300 Swedish kronas), and the other to provide that the infringement of a Community plant variety right will be prosecuted according to the penal rules applicable to national rights.

The appeal fee (900 Swedish kronas) has been abolished.

Protection has been extended to *Chaenomeles* Lindl. (flowering quince), *Clematis* L., *Dracaena* spp., *Euphorbia* spp. (spurges), *Kalanchoë* Adans., *Pelargonium* L'Hér. ex Ait., *Philadelphus* spp. (mock orange).

Cooperation in Examination

Sweden has withdrawn the offer to test *Allium schoenoprasum* L. (chives) and *Anethum graveolens* L. (dill), and existing bilateral agreements will be amended accordingly.

UKRAINE

Activities for the Promotion of Plant Variety Protection

Representatives of the State Committee for Plant Variety Testing and Protection participated in the following:

(a) a seminar on seed policy (United States of America, February 1996);

(b) a practical training course at the National Institute of Agricultural Botany

(NIAB) on the use of computer programs for variety testing (United Kingdom, May 1996);

(c) the Congress of the International Federation of the Seed Trade (FIS) (Netherlands, May 1996);

(d) a seminar organized by the World Bank, the Department of Agriculture of the United States of America and the University of

Iowa on seed policy (Kyiv, Ukraine, May 1996);

(e) a practical training course on the identification and description of plant varieties organized by NIAB (United Kingdom, June 1996).

The Register of Plant Varieties for 1996, indicating the varieties proposed for sale, has been published.

UNITED KINGDOM

Situation in the Legislative Field

A draft Bill for the amendment of the Plant Varieties and Seeds Act 1964 to adapt it to the 1991 Act of the Convention will be published in the autumn for full consultation with the industry.

There was no increase in fees for plant breeders' rights and they remain at the 1994-95 level in 1996-97. Renewal fees equal to 50% of the existing rates have been introduced for varieties protected under a national right and subsequently granted a Community plant variety right, for which breeders wish to leave open the possibility of resuming the operation of the national right once the Community right has been either surrendered or terminated.

In the longer term it is intended to extend protection to the whole plant kingdom. In the short term, it is intended to extend protection to the following during 1996:

Ornamentals: *Fremontodendron*, x *Halimicistus sahuicii*, *Helichrysum*, *Lavandula*, *Myosotis palustris*, *Myosotis scorpioides*, *Platycodon grandiflorus*, *Tagetes*;

Fruits: Almond, Apricot, Nectarine, Peach, Peach x Almond rootstocks;

Oilseed Crops: Quinoa.

Cooperation in Examination

The United Kingdom has signed a bilateral agreement with Japan, due to come into effect on September 30, 1996, in which the authorities agree to take over each other's examination reports.

The United Kingdom is also negotiating an agreement with Norway, in which the United Kingdom offers to test *Campanula*, *Chrysanthemum*, holly and apple varieties on behalf of the Norwegian authority.

Situation in the Administrative Field

During the year ended March 31, 1996, 295 applications were received (47.2% decrease over previous year), 363 grants were issued (3.5% decrease), 266 grants were terminated (11.3% increase) and 1,904 grants were renewed (7.1% increase).

The big decrease in applications is in large part due to the introduction of the Community plant variety rights system, but the precise extent is not known. The increase in the number of grants terminated is also largely due to breeders applying for Community rights and terminating national rights.

Community Plant Variety Rights

Following the introduction of the Community plant variety right giving breeders, *in-*

ter alia, the right to claim royalties on farm-saved seed, there has been much continuing complaint and the Ministers have received many letters on this issue.

URUGUAY

Situation in the Legislative Field

No initiative has been taken so far on the adaptation of national legislation to the 1991 Act of the Convention.

Protection now applies to 22 species belonging to 17 genera, and an extension to six further species is planned. There is a need to, and an interest in, applying the protection system to fruit species. This requires initial and on-the-job training of technical staff and, in turn, the assistance of member States. The necessary financial means are being sought.

Cooperation in Examination

No initiative has been taken so far, but cooperation is necessary, especially for fruit species.

Situation in the Administrative Field

The creation of the National Seed Institute, described in the previous report, has been approved by one Chamber of the Parliament.

Activities for the Promotion of Plant Variety Protection

Drafts have been prepared, within the Latin-American Integration Association (ALADI) and the Southern Common Market

(MERCOSUR), to harmonize policies and promote plant variety protection.

A contribution was made to the Fifteenth Pan-American Seed Seminar to be held in Gramado (Brazil) from October 28 to 30, 1996, and it has been suggested to include a panel on plant variety protection, with the participation therein of UPOV.

Delegations from Bolivia and Brazil have been received to inform them on the implementation of the protection system in Uruguay, both at technical and administrative levels, and to enable them to meet with Uruguayan breeders.

The Official Gazette has been set up, and two issues have been issued.

Developments in Related Fields of Activities

Special regulations on the release of genetically modified organisms are being implemented; current work is based on risk analyses and on the national rules governing phytosanitary matters and national listing. Tests and seed multiplication under strict security measures have been authorized, and also the release of a transgenic soybean variety and material thereof.

The authorities participate actively in all international and regional activities relating to the conservation and the use of, and access to, plant genetic resources.

International and Intergubernamental Organizations

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)

Since last year, Iran was admitted to the Beet Seed Scheme and the participation of South Africa was extended to the Maize and Sorghum Scheme. The application of Bolivia to the Herbage and Oilseed Scheme (to be applied in the beginning to oilseed species only) is in progress, as is the extension of the participation of Slovenia to the Cereal Seed Scheme. In addition, Estonia and Ukraine are officially candidates to the admission to the OECD Seed Schemes, and several countries, including South-American countries, Egypt, India and Indonesia, have shown interest to join the OECD Seed Schemes.

The last Annual Meeting of the Designated Authorities took place in March 1996 in Argentina and provided an opportunity to develop fruitful relations with the host country and neighboring countries. This meeting was preceded by a workshop on issues surrounding trade of transgenic varieties and a working group meeting on accreditation.

The voluntary temporary experiment on the accreditation of non-official bodies for field inspection is now involving eight countries (Argentina, Canada, Denmark, France, Netherlands, Sweden, United Kingdom and United States of America) for

one or several groups of species, with positive results. It was agreed to continue the experiment, subject to repeal, on an annual basis.

The OECD Council should take a decision very soon to confirm the rules for certification of oilseed hybrid cultivars for an indefinite period (these rules were initially adopted for a three-year period, ending in December 1996).

Subject to funding approval, a collaboration is being set up with the European Union relating to field post-control of sunflower and cotton certified seeds. It should start with the EEC comparative trials to be sown in 1997 in Seville (Spain) for sunflower and Thessaloniki (Greece) for cotton.

Apart from the OECD Cultivar List published annually, new updated editions for the Seed Schemes and for the Manual for crop inspection and control plots are about to be completed.

OECD would like to develop electronic availability of the Cultivar List, including possible arrangements with UPOV.

PLANT VARIETY PROTECTION STATISTICS

for the Period 1990-1995

	State	Year	Applications filed by:			Titles issued to:			Titles having ceased to be in force in refer- ence year	Titles in force at end of reference year
			Residents	Non- residents	Total	Residents	Non- residents	Total		
AR	Argentina	1990	-	-	-	-	-	-	-	-
		1991	40	39	79	27	11	38	20	315
		1992	80	23	103	110	28	138	-	453
		1993	62	29	91	88	31	119	52	520
		1994	109	232	341	93	101	113	13	620
		1995	124	57	181	52	28	80	9	691
AT	Austria	1990	-	-	-	-	-	-	-	-
		1991	-	-	-	-	-	-	-	-
		1992	-	-	-	-	-	-	-	-
		1993	3	-	3	117	55	172	1	171
		1994	11	4	15	2	-	2	9	164
		1995	18	4	22	21	3	24	6	182
AU	Australia	1990	53	81	134	13	53	66	-	88
		1991	48	63	111	17	44	61	-	149
		1992	65	123	188	35	31	66	13	202
		1993	147	129	276	32	67	99	5	296
		1994	-	-	-	-	-	-	-	-
		1995	142	170	312	51	63	114	24	481
BE	Belgium	1990	29	110	139	3	49	52	47	369
		1991	29	97	126	20	88	108	60	417
		1992	59	141	200	14	63	77	75	419
		1993	36	213	249	14	70	84	56	447
		1994	39	133	172	42	206	248	72	623
		1995	35	68	103	52	245	297	96	824

PLANT VARIETY PROTECTION STATISTICS

for the Period 1990-1995

	State	Year	Applications filed by:			Titles issued to:			Titles having ceased to be in force in refer- ence year	Titles in force at end of reference year
			Residents	Non- residents	Total	Residents	Non- residents	Total		
CA	Canada	1990	-	-	-	-	-	-	-	-
		1991	-	-	-	-	-	-	-	-
		1992	14	149	163	-	-	-	-	-
		1993	18	88	106	3	48	51	51	-
		1994	67	114	181	13	60	73	-	124
		1995	66	199	265	15	68	83	4	203
CH	Switzerland	1990	17	43	60	4	70	74	26	385
		1991	12	79	91	11	47	58	39	404
		1992	5	67	72	3	73	76	25	455
		1993	18	92	110	9	56	65	31	489
		1994	6	134	140	9	95	104	44	549
		1995	18	95	113	9	99	108	53	604
CL	Chile	1990	9	14	23	8	10	18	15	132
		1991	11	30	41	4	24	28	7	153
		1992	11	27	38	-	12	12	-	165
		1993	5	17	22	10	9	19	6	178
		1994	11	28	39	11	7	18	28	168
		1995	11	44	55	7	66	73	14	227
CO	Colombia	1995	1	-	1	-	-	-	-	-
CZ	Czech Republic	1990	-	-	-	-	-	-	-	-
		1991	-	-	-	-	-	-	-	-
		1992	-	-	-	-	-	-	-	-
		1993	51	39	90	-	-	-	-	-
		1994	71	49	120	59	33	92	-	92
		1995	64	48	112	125	68	193	2	283

PLANT VARIETY PROTECTION STATISTICS

for the Period 1990-1995

	State	Year	Applications filed by:			Titles issued to:			Titles having ceased to be in force in refer- ence year	Titles in force at end of reference year
			Residents	Non- residents	Total	Residents	Non- residents	Total		
DE	Germany	1990	941	372	1,313	427	238	665	476	4,008
		1991	786	332	1,118	292	284	576	507	4,038
		1992	728	348	1,076	330	261	591	601	4,028
		1993	799	477	1,276	409	274	683	566	4,145
		1994	708	383	1,091	430	311	741	470	4,393
		1995	413	183	596	555	325	880	654	4,619
DK	Denmark	1990	68	163	231	48	172	220	156	1,018
		1991	83	159	242	75	175	250	92	1,176
		1992	131	192	323	57	137	194	162	1,208
		1993	93	196	289	84	190	274	175	1,307
		1994	85	217	302	62	192	254	186	1,375
		1995	27	70	97	63	159	222	177	1,420
ES	Spain	1990	86	214	300	34	68	102	54	654
		1991	117	237	354	-	-	-	10	644
		1992	43	140	183	81	148	229	110	763
		1993	67	193	260	61	112	173	44	892
		1994	83	130	213	96	210	306	218	980
		1995	50	66	116	-	-	-	6	974
FI	Finland	1990	-	-	-	-	-	-	-	-
		1991	-	-	-	-	-	-	-	-
		1992	-	-	-	-	-	-	-	-
		1993	10	11	21	-	-	-	-	-
		1994	14	43	57	6	14	20	-	20
		1995	9	42	51	12	15	27	1	46

PLANT VARIETY PROTECTION STATISTICS

for the Period 1990-1995

	State	Year	Applications filed by:			Titles issued to:			Titles having ceased to be in force in refer- ence year	Titles in force at end of reference year
			Residents	Non- residents	Total	Residents	Non- residents	Total		
FR	France	1990	687	337	1,024	552	271	823	346	3,519
		1991	577	299	876	377	193	570	405	3,684
		1992	670	343	1,013	355	211	566	429	3,821
		1993	654	390	1,044	-	-	-	418	3,403
		1994	601	265	866	910	643	1,553	428	4,528
		1995	513	163	676	542	277	819	537	4,810
GB	United Kingdom	1990	188	300	488	98	215	313	238	1,759
		1991	201	245	446	118	241	359	289	1,829
		1992	220	274	494	156	262	418	260	1,987
		1993	262	285	547	132	174	306	228	2,065
		1994	280	302	582	200	219	419	261	2,135*
		1995	165	157	322	113	227	340	232	2,243
HU	Hungary	1990	65	32	97	14	18	32	3	107
		1991	59	51	110	20	29	49	12	144
		1992	60	21	81	37	29	66	16	194
		1993	44	41	85	42	33	75	-	269
		1994	35	38	73	15	36	51	47	273
		1995	76	93	169	20	37	57	28	302

* as amended in their notification

PLANT VARIETY PROTECTION STATISTICS

for the Period 1990-1995

	State	Year	Applications filed by:			Titles issued to:			Titles having ceased to be in force in refer- ence year	Titles in force at end of reference year
			Residents	Non- residents	Total	Residents	Non- residents	Total		
IE	Ireland	1990	9	19	28	3	9	12	21	108
		1991	4	22	26	7	14	21	25	102
		1992	-	32	32	-	19	19	20	101
		1993	5	14	19	3	17	20	9	112
		1994	5	22	27	2	35	37	15	134
		1995	1	12	13	5	24	29	12	151
IT	Italy	1990	93	197	290	45	36	81	-	694
		1991	120	180	300	80	245	325	-	1,019
		1992	89	207	296	31	72	103	-	-
		1993	96	188	284	-	-	208	-	-
		1994	115	183	298	-	-	115	-	-
		1995	-	-	-	-	-	-	-	-
JP	Japan	1990	404	167	571	415	61	476	158	2,095
		1991	610	112	722	376	42	418	170	2,343
		1992	620	97	717	310	47	357	171	2,529
		1993	494	335	829	319	149	468	247	2,750
		1994	678	279	957	336	83	419	186	2,983
		1995	766	213	979	507	91	598	134	3,447
NL	Netherlands	1990	971	484	1,455	541	271	812	476	3,674
		1991	1,000	431	1,431	563	292	855	697	3,832
		1992	872	529	1,401	688	285	973	683	4,122
		1993	940	544	1,484	885	398	1,283	759	4,646
		1994	991	550	1,541	569	379	948	833	4,761
		1995	945	238	1,183	691	359	1,050	750	5,061

PLANT VARIETY PROTECTION STATISTICS

for the Period 1990-1995

	State	Year	Applications filed by:			Titles issued to:			Titles having ceased to be in force in refer- ence year	Titles in force at end of reference year
			Residents	Non- residents	Total	Residents	Non- residents	Total		
NO	Norway	1990	-	-	-	-	-	-	-	-
		1991	-	-	-	-	-	-	-	-
		1992	-	-	-	-	-	-	-	-
		1993	-	1	1	-	-	-	-	-
		1994	9	49	58	-	-	-	-	-
		1995	11	34	45	4	56	60	-	60
NZ	New Zealand	1990	33	95	128	17	43	60	25	403
		1991	34	37	71	43	48	91	32	462
		1992	27	77	104	28	61	89	24	527
		1993	44	95	139	26	46	72	36	563
		1994	79	102	181	29	88	117	30	650
		1995	79	78	157	38	103	141	35	756
PL	Poland	1990	53	127	180	18	-	18	2	73
		1991	112	136	248	35	34	69	1	141
		1992	55	152	207	25	102	127	16	252
		1993	94	122	216	63	124	187	18	421
		1994	112	166	278	64	89	153	44	530
		1995	99	177	276	83	115	198	53	675
PT	Portugal	1990	-	-	-	-	-	-	-	-
		1991	6	8	14	-	-	-	-	-
		1992	-	5	5	1	4	5	-	5
		1993	2	6	8	-	1	1	-	6
		1994	1	18	19	-	3	3	-	9
		1995	-	3	3	-	-	-	-	9

PLANT VARIETY PROTECTION STATISTICS

for the Period 1990-1995

	State	Year	Applications filed by:			Titles issued to:			Titles having ceased to be in force in refer- ence year	Titles in force at end of reference year
			Residents	Non- residents	Total	Residents	Non- residents	Total		
SE	Sweden	1990	25	64	89	15	49	64	28	330
		1991	61	47	108	16	37	53	56	327
		1992	78	49	127	10	30	40	40	327
		1993	36	70	106	23	57	80	36	371
		1994	55	99	154	20	34	54	39	386
		1995	53	28	81	14	66	80	34	432
SK	Slovakia	1990	-	-	-	-	-	-	-	-
		1991	-	-	-	-	-	-	-	-
		1992	-	-	-	-	-	-	-	-
		1993	19	39	58	4	-	4	-	4
		1994	14	14	28	31	16	47	4	47
		1995	19	48	67	23	12	35	42	135
UR	Uruguay	1994	-	-	-	-	-	-	-	22
		1995	19	9	28	3	5	8	3	27
US	United States of America Plant VarietyA Protection Act	1990	254	18	272	122	9	131	24	2,336
		1991	257	14	271	197	18	215	133	2,418
		1992	271	16	287	308	32	340	95	2,663
		1993	294	14	308	227	13	240	104	2,799
		1994	276	19	295	201	7	208	121	2,886
		1995	-	-	352	-	-	215	88	3,013

PLANT VARIETY PROTECTION STATISTICS

for the Period 1990-1995

	State	Year	Applications filed by:			Titles issued to:			Titles having ceased to be in force in refer- ence year	Titles in force at end of reference year
			Residents	Non- residents	Total	Residents	Non- residents	Total		
US	United States of America Plant Patent ActB	1990	255	163	418	153	165	318	132	3,979
		1991	227	236	463	237	116	353	157	4,175
		1992	192	162	354	196	125	321	249	4,247
		1993	220	141	361	236	206	442	176	4,513
		1994	231	228	459	283	216	499	173	4,839
		1995	232	220	452	201	186	387	186	5,040
ZA	South Africa	1990	100	51	151	40	43	83	19	502
		1991	39	32	71	43	24	67	25	599
		1992	67	58	125	61	83	144	45	698
		1993	65	94	159	94	49	143	50	791
		1994	76	164	240	53	31	84	90	781
		1995	64	141	205	76	164	240	41	984
	TOTAL	1990	4,385	3,104	7,489	2,649	1,937	4,586	2,309	26,681
		1991	4,436	2,902	7,338	2,570	2,010	4,580	2,748	28,527
		1992	4,329	3,290	7,619	2,743	2,157	4,900	3,070	29,235
		1993	4,579	3,922	8,501	3,180	2,410	5,798	3,016	31,243
		1994	4,795	4,078	8,883	3,606	3,269	6,990	3,357	35,168
		1995	4,092	2,754	7,198	3,340	2,946	6,501	3,279	38,707

A = Applications and protection certificates for sexually reproduced plant varieties under the Plant Variety Protection Act

B = Applications and patents for asexually reproduced plant varieties under the Plant Patent Act

CASE LAW

REPUBLIC OF SOUTH AFRICA

EXTRACT OF DECISION OF APPEAL BOARD

In the matter of the appeal against Plant Breeders' Rights
Registration ZA 92824 SUGRAONE in the name of Sunworld Inc.

DECIDUOUS FRUIT BOARD

First Appellant

SOUTH AFRICAN PLANT
IMPROVEMENT ASSOCIATION

Second Appellant

UNIFRUCO LIMITED

Third Appellant

and

THE REGISTRAR OF PLANT
BREEDERS' RIGHTS

First Respondent

SUNWORLD INC.

Second Respondent

This is a decision of an Appeal Board constituted in terms of Section 42 of the South African Plant Breeder's Rights Act No. 15 of 1976 in the matter of an appeal lodged by the Appellants against Plant Breeders' Rights Registration No. ZA 92824 for SUGRAONE in the name of Sunworld Inc., the Second Respondent. (...)

(...)

While much was made at the hearing of the exact nature of the appeal, it was clear to the members of the Appeal Board that, in order to determine if Registration ZA 92824 was properly granted thereon, they effectively had to place themselves (...) at the date of filing of Application No. PT 428, in order to determine if ZA 92824 was properly granted thereon.

After the proceedings leading up to the appeal hearing had been instituted, Plant Breeders' Rights Act No. 15 of 1976 was amended further, by way of Plant Breeders' Rights Amendment Act. No. 15 of 1996 which came into force on 19 April 1996. Hereinafter, the Plant Breeders' Rights Act as it was when these proceedings were instituted and as it was immediately prior to 19 April 1996 will be referred to as the "unamended Act", whereas the Act, as it was after the Amendment Act came into force on 19 April 1996, will be referred to as the "amended Act."

As an introduction, the papers show that a Mr. John Garabedian of Fresno, California, discovered an early (with reference to ripening thereof) seedless sultana grape, which also displayed firm stem attachment and muscat flavor. This new variety or cultivar first became known under the denomination BERENDA WHITE, and US Plant Patent No. 3106 was granted therefor in April 1972. This variety or cultivar was later marketed as SUPERIOR SEEDLESS, and eventually as SUGRAONE.

As regards South African Plant Breeders' Rights No. ZA 92824 granted for SUGRAONE on 20 October 1992, the original plant breeders' rights application therefor was filed on 26 July 1985 by Superior Farming Company (a Nevada Corporation), a predecessor to the Second Respondent in these proceedings, and allocated Application No. PT 428. The denomination used at all times was SUGRAONE. As stated, Plant Breeders' Rights No. ZA 92824 was eventually granted on 20 October 1992 to the Second Respondent with certain name changes and assignments having taken place, as emerges hereinafter. ZA 92824 was thus granted under the unamended Act.

(...)

During the course of the hearing, it was argued on behalf of the Appellants that the Appeal Board should apply the amended Act rather than the unamended Act in arriving in a decision herein. The Appeal Board is of the opinion that this argument is without merit. As indicated

hereinbefore, the Appeal Board places itself in the shoes of the Registrar in considering PT 428, and at the date of application of PT 428, and at that stage the unamended Act was in force, with any amendments thereto at that stage at best only being under consideration.

As regards the granting of ZA 92824, the Appeal Board confirms that this registration was properly granted by the Registrar under the unamended Act, with the Registrar having correctly applied the unamended Act and the Regulations in granting ZA 92824. These aspects also emerge more clearly when considering the individual grounds of appeal set out hereunder.

First Ground of Appeal

That the variety in respect of which Registration ZA 92824 was granted under the denomination SUGRAONE was not a new variety at the time of filing of PT 428, on which ZA 92824 was granted, in that, at the time of the application, propagating material of the variety had, with the agreement of the breeder:

- (i) **been sold in the Republic of South Africa for longer than one year;**
- (ii) **been sold for longer than six years in a convention country or in an agreement country.**

This ground of appeal (...) relates to Regulation 3(1)(a) of the Regulations promulgated under the unamended Act. In terms of Regulation 3(1)(a) a variety shall be deemed to be a new variety if

“(a) propagating material thereof has not at the time of the application for the relevant plant breeder’s right and with the agreement of the breeder concerned -

- (i) been sold in the Republic for longer than one year;
- (ii) in the case of any fruit tree or any root-stock thereof, any ornamental tree, any vine or root-stock thereof or any forest tree, been sold for longer than six years, and in the case of any other kind of plant, been sold for longer than four years in a convention country or any agreement country.”

The Appellants conceded, in the course of these proceedings, that the varieties known under the denominations BERENDA WHITE, SUPERIOR SEEDLESS, SS77, BLACK CAT, JD SEEDLESS and WHITE SULTANA are genetically identical to SUGRAONE, and thus identical to the variety for which US Plant Patent No. 3106 was granted. In other words, they are deemed to be the same variety as SUGRAONE, or merely SUGRAONE in other disguises.

It is clear that the Second Respondent, and its predecessor in title, went to extraordinary lengths to ensure that, although fruits of the variety SUGRAONE were sold commercially, propagating material thereof was strictly controlled, not made available to the public, and not sold commercially, for a considerable period of time. This enabled the Second Respondent validly to file PT 428 a number of years after US Plant Patent No. 3106 had been granted. The Second Respondent, and its predecessors in title, were thus, in the absence of clear evidence to the contrary, successful in ensuring that propagating material of the SUGRAONE variety was not freely and commercially made available to the public outside of South Africa, at least not prior to 26 July 1979, i.e. six years before the filing of PT 428. Any sales of propagating material of the SUGRAONE variety, or any of its genetic equivalents, BERENDA WHITE, SUPERIOR SEEDLESS, SS77, BLACK CAT, JD SEEDLESS and WHITE SULTANA, during this period were without the permission of the Second Respondent, or its predecessors in title. The same applies in respect of South Africa, for the period prior to 26 July 1984.

In interpreting “sold” as used in Regulation 3(1)(a), the Appeal Board is convinced that a narrow interpretation must, of necessity, be given thereto. If a wide interpretation were to be given to “sold”, then the original transfer of the SUGRAONE plant variety from the original breeder, Mr. Garabedian, to the original predecessor of the Second Respondent, i.e., Superior Farming Company (Nevada), would have to be taken into account, and could thus be deemed to be novelty destroying in terms of Regulation 3(1)(a). However, it is clear from Section 6 of the unamended Act that an application for the grant of a plant breeders’ right may be made by either the breeder or the successor in title of the breeder, thus clearly imputing a restrictive interpretation on “sold” as used in Regulation 3(1)(a).

Thus, the assignment of all proprietary rights to the BERENDA WHITE / SUPERIOR SEEDLESS / SUGRAONE variety (and which it seems must, of necessity, have included propagating material of the variety) to Superior Farming Company (Nevada) was not a general “sale” in the sense that it was sold openly and commercially, e.g. to the public, but rather a transfer of proprietary rights. The same applies in respect of the assignment thereof from Superior Farming Company (Nevada) to Western Fruit Acquisition Inc. Western Fruit Acquisition Inc. subsequently changed its name to Superior Farming Company (Delaware) which subsequently merged with Sunworld Inc., accompanied by an assignment of proprietary rights. The Appeal Board thus finds that these successive transfers of rights and which, as mentioned, must have included propagating material, were not open commercial sales as is clearly contemplated by Regulation 3(1)(a) but rather akin to the transfer of rights from a breeder to a person who derived the rights from the breeder as contemplated by Section 6 of the unamended Act.

It is also clear to the Appeal Board that the contractual relationships entered into between the Second Respondent (and its predecessors in title) with various breeders, in terms of which propagating material was supplied or transferred to the breeders for propagation material was supplied or transferred to the breeders for propagation and cultivation thereof on a restrictive basis, and cannot be deemed to be "sales" when interpreted restrictively. It is clear that the breeders were contracted to grow the propagating material on a restrictive basis and could not freely exercise all rights of ownership on the vines, e.g. were not entitled to dispose of the propagating material freely. The same restriction naturally did not apply to the fruits or harvested product obtained from the propagating material. Counsel for the Appellants argued, at the hearing, that interpreting "sold" in such fashion, would lead to the anomalous position that plant breeders' rights could be obtained successively in South Africa for the same variety, providing that propagating material of a variety has not been sold, even though the fruits thereof have been sold. The Appeal Board accepts that there may have been a deficiency in the unamended Act in this regard although, when regard is had to the spirit of the Act, it is doubtful whether the Registrar would in any event have granted successive plant breeders' rights for the same variety. In the amended Act, this is catered for in Section 2 thereof, which replaces Regulation 3 of the unamended Act. Sales of both propagating material and harvested products are now deemed to be novelty destroying.

The Appeal Board thus finds that the SUGRAONE variety still complied with the requirements of Regulation 3(1) at the time of filing of PT 428, on which ZA 92824 was granted, and the appeal fails on this ground.

Second Ground of Appeal

That the SUGRAONE variety, alternatively other varieties of the same kind of plant, existed and were a matter of common knowledge at the time of the filing of PT 428.

This ground of appeal (...) is based on Regulation 3(1)(c) in terms of which a variety shall be deemed to be a new variety if "it is by reason of any important characteristic clearly distinguishable from any other variety of the same kind of plant, the existence of which is a matter of common knowledge at the time of the application for the relevant plant breeder's right, whatever the origin, artificial or natural, of the initial variation from which it resulted, may be."

As indicated hereinbefore, it was conceded by the Appellants during these proceedings that SUGRAONE was genetically identical to other varieties such as SUPERIOR SEEDLESS, BLACK CAT, etc. and that these are thus all, in essence, the same variety. The interpretation of Regulation 3(1)(c) thus hinges around whether or not emphasis should be placed on "other" in reference to "other variety" therein, in which case the variety for

which plant breeders' rights protection is sought is excluded under Regulation 3(1)(c). Alternatively, if emphasis is not given to "other" in relation to the other variety referred to in Regulation 3(1)(c), then the variety in question must also be taken into account in assessing Regulation 3(1)(c).

In arguing that emphasis should be placed on "other", Counsel for the Second Respondent felt that regard can be had to the provisions of the UPOV Convention as it was at the time of filing of PT 428. Counsel for the Appellants argued strongly to the contrary.

The Appeal Board is of the opinion that regard can, and should, be had to the UPOV Convention as it was at the time of filing PT 428. It is clear from the lucid and helpful testimony given by Advocate Ronel van Zyl, a legal adviser to the Department of Agriculture, that the UPOV Convention played an important role when drafting earlier amendments to the Plant Breeders' Rights Act, as well as in preparing the Plant Breeders' Rights Amendment Act No. 15 of 1996. In particular, it is clear that, for a country to become a member of the UPOV Convention, its legislation must conform with the requirements of the latest UPOV Convention. Indeed, prior to Amendment Act No. 15 of 1996 being passed, it was submitted to UPOV for comment and was even amended in the light thereof, prior to being passed by the South African Legislature.

When regard is had to the UPOV Convention as it was at the time of filing of PT 428, it is clear that the variety under consideration for protection is excluded by the relevant portion (Article 6) of the UPOV Convention which corresponds to Regulation 3(1)(c). This interpretation is supported by an official UPOV publication on the UPOV Convention, as included in an affidavit submitted on behalf of the First Respondent.

Indeed, as pointed out by the Appeal Board at the hearing, if the interpretation sought to be placed on "other" by the Appellants were to apply, then, under the amended Act, this would lead to the situation where, in terms of Section 2(4) thereof, a breeder (or his successor) of a new variety would apparently be precluded from filing a non-convention application in South Africa after a basic plant breeders' rights application for the variety has been filed in a convention or agreement country.

The Appeal Board thus finds that the SUGRAONE variety was not a matter of common knowledge at the time of filing of Plant Breeders Rights Application No. PT 428, and the appeal also fails on this ground.

The Appeal Board is of the opinion that Regulation 3(1)(c) and its successor in the amended Act, i.e. Section 2 thereof, could possibly be worded more clearly in this regard, but it trusts that these finds will assist in future application of Regulation 3 and its successor, Section 2 of the amended Act.

Although these were not raised as grounds of appeal, it is clear that the SUGRAONE variety satisfied the Registrar as regards the other requirements of Regulation 3(1), i.e. Regulation 3(1)(d), i.e. that the variety was homogeneous, and Regulation 3(1)(e), i.e. that the SUGRAONE variety was stable with regard to essential characteristics thereof, and remains true to the description thereof after repeated reproduction or propagation. It emerged during the proceedings that the variety shows small deviations as influenced by soil and climatic conditions, but is clear that the variety generally was stable and homogeneous, and thus complied with the requirements of Regulations 3(1)(d) and (e).

Third Ground of Appeal

That the SUGRAONE variety was described in a publication accessible to the public namely United States Plant Patent No. 3106 issued on 11 April 1972 to John M. Garabedian (as at the date of filing of PT 428 and thus common knowledge at the time of filing PT 428).

It is clear, from what is set out hereinbefore, that the SUGRAONE variety was described in USA Plant Patent No. 3106. However, since SUGRAONE is genetically identical to, amongst others, BERENDA WHITE and SUPERIOR SEEDLESS, and since it is clear that US Plant Patent No. 3106 was granted for the same variety, the SUGRAONE variety was not common knowledge, in view of what is stated hereinbefore with respect to the second ground of appeal.

The appeal thus also fails on this ground.

(...)

Fifth Ground of Appeal

That the application form for the grant of the plant breeder's rights contained a material misrepresentation in that

- (a) the applicant declared that the variety had not been offered for sale or marketed at the time of the application; and**
- (b) the applicant failed to disclose that the variety was known as SUPERIOR SEEDLESS.**

These grounds are apparently based on Sections 11 and 33 of the unamended Act.

In regard to (a), in considering paragraph 8 of the application form (Schedule A), it is clear that it must be read in conjunction with Regulation 3(1)(a), i.e. that in respect of the "variety" referred to therein, it is propagating material thereof and not the harvested product or fruit thereof which is in question. This was supported by the testimony of Advocate van Zyl. Thus, the Appeal Board concludes that there was no material misrepresentation in regard to item (a), in the application form since the Sec-

ond Respondent had, as set out hereinbefore, gone to extraordinary lengths not to offer for sale or market propagating material of the variety, when a restrictive interpretation is placed on "sale or marketed" as hereinbefore discussed, specifically prior to 26 July 1979 outside South Africa and prior to 26 July 1984 in South Africa. It can be argued that sales of propagating material inside these periods should be reflected under paragraph 8 in Schedule A, but since such sales will not serve to destroy the novelty of the variety in terms of Regulation 3(1)(a), the Appeal Board finds that failure to disclose such sales cannot be regarded as being material, i.e. would not have been relevant to the grant or refusal of the right. However, the Appeal Board is of the opinion that Application Form A can be amended as regards this paragraph so as to avoid possible confusion.

As regards item (b), the Appeal Board finds that there may arguably be some merit to the Appellant's argument that the Respondent failed to disclose that the variety was previously known as "SUPERIOR SEEDLESS." The application form thus possibly contained a misrepresentation in this regard. However, from the evidence of the First Respondent, it is clear that this misrepresentation was not material since at the time that PT 428 was examined after the propagating material of the SUGRAONE variety was released from quarantine in 1988, the Registrar was aware that SUPERIOR SEEDLESS, WHITE SULTANA, BLACK CAT, JD SEEDLESS and SS77 were synonymous with SUGRAONE, i.e. were genetically identical thereto. Thus, the failure by the Applicant to disclose that the SUGRAONE variety was previously known as SUPERIOR SEEDLESS was not material, and if this information had in fact been disclosed on the application form, it should not have influenced the decision of the Registrar in any fashion.

As indicated hereinbefore, the Appeal Board is given a wide discretion herein under Section 42 of the unamended Act. Thus, the Appeal Board has decided not to make a decision as regards the application to strike out submitted by the Counsel for the Second Respondent. In any event, in the light of the finding of the Appeal Board, this has no bearing on the decision of the Appeal Board.

The Appeal Board thus unanimously dismisses the appeal with costs on a party-to-party basis.

Obiter Dicta:

The Appeal Board is of the opinion that interpretation of the Plant Breeders' Rights Act No. 15 of 1976 could be facilitated by refraining from using therein obsolete botanical nomenclature. The Plant Breeders' Rights Amendment Act, No. 15 of 1996 went some way to improving this, but it is noted that the term "variety" is still used to refer to both wild plant variants and cultivated plants. In terms of the "International Code of Botanical Nomenclature" a cultivated plant variety is a cultivar.

The Appeal Board had considerable difficulty with interpreting Section 43 of the unamended Act, which was

referred to by both Counsel for the Appellants as well as by the Counsel for the Second Respondent. However, it is noted that under the Plant Breeders' Rights Amendment Act No. 15 of 1976, Section 43 has been deleted.

It is noted that the UPOV Convention, as it was at the time when PT 428 was under consideration, refers, in Article 6(b) thereof which is similar to Regulation 3(1)(a) merely to a variety and not to propagating material of the variety. It thus appears that the requirements of Regulation 3(1)(a) are less stringent than the UPOV Convention, although Section 3 of the amended Act has been brought more into line with the UPOV Convention.

Although this did not form a ground of appeal, Counsel for the Appellants nevertheless argued that the provisional protective direction applied for and granted should be set aside since the Registrar had not been furnished, when he issued the provisional protective direction, with such material as he required to enable him to consider the application for the grant of a plant breeders' right

(Section 14(2)(a) of the unamended Act). Specifically, he had at the time of direction not yet been supplied with propagating material. Section 14(2) of the unamended Act prescribes that "protective direction shall be issued only (a) if the Registrar is satisfied that such information facilities and material as he may require to enable him to consider the application for the grant of a plant breeders' right, have been furnished to him; and..." Testimony was given by Advocate van Zyl that, to await receipt of the propagating material could lead to substantial delays in granting provisional protective directions, which negates the effect thereof. It seems that the practice adopted by the Registrar may be contrary to the provisions of Section 14(2), but the Appeal Board has refrained from making a decision herein since this was not one of the grounds of appeal raised by the Appellants and in any event has no bearing on the outcome of the Appeal Board's decision in view thereof that, in terms of Section 16 of the unamended Act, the protective direction ceased to be of force on the date on which ZA 92824 was finally granted.

ARGENTINA

Resolution No. 35/96 of February 28, 1996

National Seeds Institute
Ministry of Economy and Public Works and Services
Secretariat of Agriculture, Fisheries and Food

HAVING REGARD TO the exception to the property rights of the breeders of new plant varieties provided for in Article 27 of Law No. 20.247, and regulated by Article 44 of Decree No. 2183/91, for farmers who reserve and sow seed for their own use, and

WHEREAS:

it is necessary to determine the requirements governing eligibility for that exception and the relevant procedures, with a view to ensuring the implementation thereof without jeopardizing the property rights of breeders in a system that is harmonized, balanced and fair to both parties,

it is necessary to introduce a labeling system that conforms to the realities of seed processing for personal use when to that end it has to be removed from the farmer's land and conveyed to the premises of third parties unrelated to him,

it is therefore appropriate to specify clearly the unlimited character of the liabilities and obligations of the producer and those of the processor in the aforementioned situation where events take place that are recognized as being subject to sanctions under Articles 35, 37 and 38 of Law No. 20.247 in dealings with third parties and this Institute,

pursuant to the provisions of Article 15 of Law No. 20.247 and 4(b) and 8(a) of Decree No. 2817/91, the Board of the National Seeds Institute is invested with the power to issue this administrative enactment,

the undersigned is competent to set her hand hereto by virtue of the power conferred on her by Article 9(d) of Decree No. 2817/91,

THE BOARD OF THE NATIONAL SEEDS INSTITUTE RESOLVES AS FOLLOWS:

Article 1

The conditions of eligibility for the "farmer's privilege" provided for in Article 27 of Law No. 20.247 are those specified below.

(a) the fact of being a farmer;

(b) the fact of having acquired the original seed legally;

(c) the fact of having grown the present seed from that legally acquired;

(d) the fact of reserving the amount of seed from the harvest that will be used for subsequent sowing, and identifying it according to its variety and quantity prior to processing.

There shall be no farmer's privilege when the farmer has acquired the seed for sowing by a route other than the reservation of his own seed, whether free of charge or for a consideration (purchase, exchange, donation, etc.);

(e) the purpose of the reserved seed shall be sowing by the farmer on his own farm for his own use. Purposes different from sowing by the farmer are not covered by Article 27 of Law No. 20.247. Purposes involving sale, permutation or exchange by the farmer or through an intermediary are expressly excluded.

The privilege shall benefit the farmer alone and not third parties.

(f) the seed reserved for personal use shall be kept apart from the grain, and its identity and individuality shall be preserved as from the time at which it is removed from the farmer's land and maintained throughout the stage of processing, conditioning and storage up to the time of sowing on the farmer's land.

Any person wishing to avail himself of the farmer's privilege shall prove compliance with the conditions laid down in this Article.

Article 2

Neither the authorization of the breeder under Article 44 of Decree No. 2183/91 nor labeling of seed under Article 9 of Law No. 20.247 shall be required where the farmer reserves, conditions, stores, deposits and sows the seed on any plot that forms part of his farm and does not go beyond the limits thereof.

For the purposes of this Article "farm" means the various pieces of land held by one and the same farmer, regardless of the regime according to which they are held.

In the event of the seed having to be moved from one plot to another belonging to the same owner, the move shall be covered by the appropriate documents (waybill, consignment note, clearance certificate, etc.). The said documents shall give the name of the farmer, the original plot and the destination plot, the amount and variety of the seed and the dates of dispatch and delivery of the seed; they shall be in the farmer's possession and shall be shown or handed over at the request of the National Seeds Institute.

Where the seed located on the farmer's land or farm is covered by either of the concepts of "display to the public" or "delivery to users for any reason" provided for in Article 8 of Decree No. 2183/91, that seed shall be labeled and the holder shall have in his possession a license from the owner of the cultivar, in the case of protected varieties, according to the various circumstances provided for in Article 41(c), (d), (g), (h), (i) and (j) of the said Decree.

Article 3

If the farmer decides to condition and/or store seed of a protected cultivar that is reserved for his own use in a cooperative, warehouse, nursery or other repository belonging to third parties, whether natural persons or legal entities, he shall, in sufficient time prior to the removal of the seed from his land, seek the authorization of the owner of the variety in a formal document (registered letter, telegram with advice of receipt, etc.).

The breeder-owner shall formally notify the farmer of the acceptance or rejection of the request for authorization within a period not exceeding 30 working days following the date of receipt thereof.

If the breeder fails to respond to the request for authorization by the expiry of the above time limit, his silence shall be deemed to constitute grant of the said request.

Article 4

The farmer who delivers seed to a third party for processing and/or deposit thereof with a view to personal use shall take responsibility for its identity (variety of the species), and shall so state on the identifying label.

Article 5

For the purposes of the foregoing Article, the processor or depositary shall demand of the farmer a document in duplicate, signed by him, which shall compulsorily contain the following particulars:

(a) full name of the farmer, with a mention, in the case of legal entities, of the corporate name and the position occupied by the signatory within the entity, together with the relevant authenticating stamp or seal;

(b) actual residence of the farmer, or corporate headquarters in the case of legal entities;

(c) number of the signatory's document;

(d) certification that the intended purpose of the seed delivered is exclusively personal use (Article 27 of Law No. 20.247);

(e) a declaration by the farmer producing the variety or varieties of seed to be delivered, stating expressly the gross amount in kilograms of each variety;

(f) a declaration stating the exact location of the farmer's plot or plots on which the seed is to be sown, with specific details of the place in which it or they are situated (department, municipality, etc.) and access roads by which they may be reached from the processing site;

(g) form of occupancy of the land mentioned under (f) (ownership, lease, bailment, etc.);

(h) period, including the probable dates of commencement and completion, of sowing of the seed for personal use on the land mentioned under (f);

(i) period of time during which the seed in question will remain on deposit, and approximate date of removal.

Article 6

The document shall be receipted by the processor or depositary, who shall mark on it the date of receipt and return a copy to the farmer, the original remaining in his possession.

The processor or depositary shall apply to the farmer for a copy of the authorization from the breeder-owner, or of the request for license where it has been refused, for each protected variety; the authorization shall be signed by the farmer and appended to the aforementioned document.

The processor or depositary shall be under the obligation to keep the documentation provided for in this Article on file, on his sole responsibility, for a minimum period of 18 months following receipt.

Should any of the particulars under Article 5 change, the farmer shall draw up a new document in duplicate that shows the changes in question and shall communicate it to the processor or depositary within a period of not more than seven days since he had knowledge of the

change, whereupon the processor or depositary shall proceed as mentioned above.

Article 7

The documents provided for in the foregoing Article shall have the character of a sworn declaration by the farmer, who shall take full responsibility for the changed information contained therein.

The processor or depositary shall be responsible for the accuracy of the particulars conveyed to him by the farmer and mentioned in Article 5(a), (b), (c) and (i), and shall verify the correctness thereof.

Article 8

The processor or depositary shall hand the farmer a certificate of deposit of the seed that the latter has delivered to him for personal sowing, which shall bear a pre-printed serial number.

The certificate of deposit shall give the name or corporate name and address of the farmer, the species and variety of the seed, its weight according to the official weighing carried out, the certificate to the effect that it is seed for personal use within the meaning of Article 27 of Law No. 20.247, the estimated date of the return of the seed to the farmer and a record of the submission by the farmer of the authorizations from the breeder-owners in the case of protected varieties.

Article 9

Once the farmer's seed has been processed, the packaging shall be given a special label which shall be distinguished by its color and characteristics from the labels used for the marketed seed, the dimensions of which shall not be less than 10 cm by 20 cm, and which shall legibly and prominently display the notice "Farmers' Seed for Personal Use—Article 27 of Law No. 20.247."

The label shall compulsorily give the following particulars:

- (a) full name of the farmer, or corporate name in the case of legal entities, and private or business address;
- (b) full name or corporate name, address and registration number in the National Register of Seed Trade and Inspection of the processor or identifier;
- (c) name of the species;
- (d) name of the cultivar;
- (e) percentage of physical-botanical purity by weight if below the values established by regulation;

(f) percentage of germination by number if below the values established by regulation;

(g) net contents;

(h) year of harvest;

(i) the notice "treated seed—poison," in red letters, if the seed has been treated with a toxic substance.

The following notice shall be added to the reverse side of the said label, prominently displayed in a visible place and in block letters: "the identity of this seed has been declared by residing in THE SEED TO WHICH THIS LABEL IS AFFIXED MAY NOT BE USED FOR ANY PURPOSE OTHER THAN SOWING ON HIS PROPERTY BY THE PERSON IDENTIFIED HERE, AS PROVIDED IN ARTICLE 44 OF DECREE NO. 2183/91. ANY SALE, MARKETING OR DELIVERY IN WHATEVER CONNECTION IS PROHIBITED, AND THOSE IN POSSESSION OF THE SEED SHALL BE LIABLE TO THE SANCTIONS PROVIDED FOR IN CHAPTER VII OF LAW No. 20.247."

Article 10

The processor or depositary shall be responsible for the correct labeling of the seed according to the foregoing Article, namely on labels supplied by the farmer or manufactured for him, and for having in his possession the authorization, or the request for authorization in the case of refusal, in the case of protected varieties, granted by the breeder-owners to the farmer as provided for in Article 6 of this Resolution. Where the farmer has not procured the authorization mentioned in the foregoing paragraph, the processor and/or depositary shall be under the obligation to make a formal request for a license from the breeder-owner to proceed with the conditioning and storage of the said seed in accordance with Article 41(b) and (i) of Decree 2183/91.

To that end, a copy of the document handed over by the farmer under Article 5 shall be enclosed with the request for a license.

The breeder shall respond within the period specified in Article 3, which provision shall apply entirely to the present situation. The processor, depositary or identifier who fails to meet the obligations specified in this Article shall be liable to the sanctions applicable under Chapter VII of Law No. 20.247.

Article 11

The documentation specified in the foregoing Articles shall be submitted to the inspectors of the National Seeds Institute at their request, subject to warning of the

application of the sanctions provided for in Articles 38 and 39 of Law No. 20.247.

Article 12

On refusal by the breeder-owner of the license required under either Article 3 or Article 10 of this Resolution, the farmer shall convey to INASE, without any further notice to that effect, copies of the request sent to the breeder and of the refusal sent back, duly signed by the person concerned and together with all the documentation specified in Article 5.

The farmer shall likewise state the name or corporate name, address and registration number in the National Register of Seed Trade and Inspection of the processor or depositary to whom his seed is to be delivered, the period during which the seed will be processed and on deposit and the probable date of the removal thereof; the date of sowing of the seed and the plot on which it is to be sown shall be formally notified to the Certification and Inspection Department 30 days before sowing takes place, together with a plan of the plot and certified copies of the documentation evidencing ownership.

INASE shall, once in possession of the particulars and documentation required under this Article and any additional material that it may consider appropriate, proceed with the evaluation and verification of the claimed personal use, and shall issue a finding thereon.

Failure on the part of the farmer to submit all the documentation and information provided for in this Article within the periods prescribed, or such additional information as may have been specified in due time, shall result in rejection of the request for the exception provided for in Article 27 of Law No. 20.247.

Article 13

The foregoing shall be communicated, published and conveyed to the Official Registry.

Resolution No. 35/96.

(signed)

Adelaida Harries

President

National Seeds Institute (INASE)

CHILE

Law No. 19.342

On the Rights of Breeders of New Varieties of Plants

TITLE I

GENERAL PROVISIONS

Article 1

The breeder of a new plant variety shall enjoy protection of the right over the variety accorded to him and regulated by this Law.

Article 2

For the purposes of this Law:

(a) "Breeder" means the person, whether natural person or legal entity, who by natural means or genetic manipulation has discovered and thus bred a new variety of plant;

(b) "Plant variety" means a plant grouping within a single botanical taxon, whatever may be the distinctive element, of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder's right are fully met, can be

- defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,

- distinguished from any other plant grouping by the expression of at least one of the said characteristics and

- considered as a unit with regard to its suitability for being propagated unchanged;

(c) "Propagating material" means seed, fruit, plants or parts thereof intended for the reproduction of plants;

(d) "Reference specimen" means the smallest entity used by the breeder to maintain his variety, from which the representative sample for the registration of the variety is taken;

(e) "Department" means the Seeds Department of the Agriculture and Livestock Service;

(f) "Register" means the Register of Protected Varieties;

(g) "Protected varieties" means those entered in the Register of Protected Varieties.

Article 3

The right of the breeder of a new plant variety provides that the following shall be subject to his exclusive authorization:

(a) production of propagating material of the variety;

(b) sale, offering for sale or display for sale of the said material;

(c) marketing, import or export thereof;

(d) repeated use of the new variety for the commercial production of another variety;

(e) use of ornamental plants or of parts of such plants that are normally marketed for purposes other than propagation, with a view to the production of ornamental plants or cut flowers.

The right of the breeder may be exercised in relation to all botanical genera and species, and shall apply in general to the complete plant, including all types of flower, fruit or seed and any part thereof that may be used as propagating material.

The breeder's right shall not be deemed violated by any use made by a farmer, on his own farm, of the harvest from properly acquired reproductive material. On no account, however, may such material be advertised or transferred by any legal title as seed.

Article 4

The right of the breeder shall be established by the recording in the Register of Protected Varieties of an extract from the decision of the Certifying Committee ordering the recording and the grant of the corresponding title, which shall contain an objective description of the variety with reference to technical records.

Article 5

The breeder's right in a variety shall not prevent another person from making use of it to create a new variety

without having to seek the authorization of the breeder of the original variety that served as the means for breeding the new one.

The authorization of the breeder of the original variety shall nevertheless be required where that variety has to be used continually for the production of the new variety.

If the legal requirements are met, the new variety shall be recognized in the name of the breeder thereof.

Article 6

The breeder's right shall be marketable, transferable and inheritable, and the heir or assignee may use this right, derive benefit from it and dispose of it during the period that remained to his predecessor, in the same manner and under the same conditions as the said predecessor.

The owner of the right may grant such licenses as he considers appropriate for the use of the protected variety by third parties.

Any act or contract imposing limitations on the licensee that do not derive from the right of the breeder is prohibited, and any contrary clause shall be null and void.

Article 7

Where a breeder is in a situation of monopolistic abuse in the exploitation or marketing of the protected variety, according to the judgment of the Settlement Commission established by Decree-Law No. 211 of 1973, the revised and systematized text of which was confirmed by Supreme Decree No. 511 of 1980 of the Ministry of Economic Affairs, Development and Reconstruction, the said Commission shall direct the Seeds Department to grant non-voluntary licenses.

The ruling that punishes the abuse shall likewise specify the amount and manner of payment of the compensation that the licensee must pay to the owner of the right.

Article 8

The right provided by this Law shall be granted to breeders of new plant varieties that are distinct, homogeneous and stable. The applicant shall in addition comply with the requirement of Article 20 and with the formalities laid down in this Law for the grant of the right.

Article 9

The variety shall be considered new where it has not been marketed in the country or where it has been so marketed but without the consent of the breeder. The variety shall likewise be considered new where it has been marketed in the country with the breeder's consent but for no more than one year. The variety shall further be considered new where it has been marketed abroad with the breeder's consent, but for no more than six years in the case of forest trees, fruit trees, ornamental trees and vines and four years in the case of other species.

Article 10

A variety shall be distinct if it is distinguishable by one or more important characteristics from any other variety whose existence is a matter of common knowledge at the time of the application for protection. The filing in any country of an application for the grant of a breeder's right in a variety, or for the entry thereof in an official register of varieties, shall be deemed to make the said variety a matter of common knowledge as of the application date where the application leads to the grant of a breeder's right or to the entry of the variety in the official register of varieties, as the case may be.

The variety shall be considered homogeneous if it is sufficiently uniform in its relevant characteristics, subject to the foreseeable variation that may be expected from the particular features of its sexual reproduction or vegetative propagation.

The variety shall be stable if its essential characteristics remain unchanged after successive reproductions or propagations, or, where the breeder has specified a particular reproduction or propagation cycle, at the end of each such cycle.

Article 11

The term of protection, counted from the date of registration of the breeder's right, shall be 18 years for trees and vines and 15 years for other species.

The right of the breeder shall nevertheless remain in force only as long as he pays the fees and other charges for the registration and maintenance of his right at the intervals specified in the Regulations.

Varieties shall be considered public property where their periods of protection have expired or where the right in them has lapsed.

TITLE II

SEEDS DEPARTMENT OF THE AGRICULTURE AND LIVESTOCK SERVICE

Article 12

In addition to the responsibilities assigned to it by Decree-Law No. 1.764 of 1977 and the Regulations thereunder, the Agriculture and Livestock Service shall, through the Seeds Department, discharge the following functions and responsibilities:

- (a) carrying out all tests, trials and other work ordered by the Certifying Committee with a view to establishing that the variety in respect of which the application is filed complies with the requirements imposed by this Law;
- (b) keeping the Register of Protected Varieties and making such entries, sub-entries and annotations in it as may be ordered by the Certifying Committee;
- (c) granting the final or provisional variety title, subject to a favorable report from the Certifying Committee;
- (d) ensuring that protected varieties continue to show the characteristics specified in Articles 9 and 10;
- (e) issuing such reports and certificates as may be requested of it on matters within its competence;

Article 13

The Department shall be under the responsibility of a Director, who shall be a professional specialized in genetics, botany or agronomy and shall be appointed by the Minister for Agriculture.

Article 14

The present Register of Variety or Cultivar Ownership shall become the Register of Protected Varieties.

Article 15

A Variety Certifying Committee shall be responsible for the process of verifying compliance with the requirements imposed by this Law for the recognition of a breeder's right in a variety.

Article 16

The Certifying Committee referred to in the foregoing Article shall be composed of the Director of the Department or his deputy, who shall preside, and six members appointed by the Minister of Agriculture, who shall likewise be professionals specialized in genetics, botany or agronomy working in the public, private or academic sectors.

Article 17

The members of the Committee referred to in the foregoing Article shall remain in office for six years, and may be re-appointed at the end of that period. Should any member be prevented from discharging his functions, the Minister for Agriculture shall appoint a replacement in accordance with the foregoing Article.

Article 18

The Variety Certifying Committee shall be responsible for:

- (a) deliberating and pronouncing on applications for the recognition of a breeder's right, for which purpose it may order that such inspections, tests, trials and other action be conducted as may be appropriate;
- (b) recognizing, where appropriate, the right of the breeder in a new variety in either provisional or final form; ordering the recording thereof in the Register of Protected Varieties and the grant of the corresponding title;
- (c) recognizing the right of priority referred to in Article 22;
- (d) declaring the lapse of the breeder's right and ordering the cancellation of entries in the Register of Protected Varieties and of the corresponding titles where appropriate;
- (e) carrying out such other functions and duties as are entrusted to it by laws and regulations.

Article 19

The Variety Certifying Committee shall adopt its decisions by majority vote and, in the event of equally divided votes, the president shall have a casting vote.

TITLE III

RECOGNITION OF THE BREEDER'S RIGHT

Article 20

To secure the recognition of his right, the breeder shall complete the following formalities:

- (a) he shall file a written application with the Director of the Department in the form specified by the Regulations;
- (b) he shall enclose with his application such supporting material and documents as will prove that the variety to be registered complies with the require-

ments laid down by this Law and also attest the origin of the variety, together with a description of the botanical, morphological and physiological characteristics that enable it to be differentiated from any other well-known variety, with an express mention of any varieties that are similar;

(c) he shall submit to the Department a representative sample of the variety for which registration is sought, in such quantities as are specified by the Certifying Committee;

(d) he shall undertake to maintain the corresponding reference specimens throughout the period of validity of the registration, and specify the testing station or other place in which they are kept;

(e) he shall pay the fees and other costs for registration, and also those incurred for the annual maintenance of each variety on the Register.

Article 21

The breeder shall propose a name for the variety, which shall be the generic designation thereof. It shall in particular be different from any denomination which designates a pre-existing variety of the same or a similar botanical species.

The name shall be sufficiently distinctive, and may not consist solely of figures; it shall serve to avoid confusion with the names of other varieties already known, and must not mislead as to the characteristics of the variety or the identity of the breeder.

The name of a variety may not be registered as a trademark.

Article 22

When the protection of a variety has been previously applied for abroad, the breeder thereof shall have priority, for a period of one year following the filing date in the country of origin, for the filing of his application for protection in Chile. In the said application, the breeder shall elect domicile in Chile or appoint an authorized representative in the country for the purpose.

Where the new variety has already been protected abroad, the breeder thereof shall enclose a copy of the title or patent granted to him, duly authenticated and translated to the satisfaction of the Variety Certifying Committee.

Where the requirements imposed in the country of origin for the recognition of the breeder's right in the variety, and also the prior analyses, tests and certifications to which the variety is subjected in order to establish its compliance therewith, are similar or superior to

those laid down in this Law and the Regulations under it, the Certifying Committee may direct that a provisional title be granted on the terms specified in Article 33 of this Law, subject to verification of the facts.

Article 23

On the filing of an application for the grant of a breeder's right, the Director of the Department shall receive it and number it accordingly. He shall in addition examine and check all the background material filed with it, and any such material subsequently submitted by the person concerned.

Every application shall be transmitted to the Certifying Committee with a technical report which shall recommend either its rejection or its acceptance. In the latter case such inspections, tests and trials as are appropriate shall be proposed.

Article 24

On the acceptance for processing of an application, it shall be mandatory to publish an extract therefrom in the *Diario Oficial* in the manner specified in the Regulations, and there shall be a period of 60 days following the said publication for the filing of any opposition.

Article 25

Where opposition to an application for registration is filed, the Director of the Department shall communicate the opposition to the applicant for a period of 60 days so that the latter may assert his right.

Article 26

Should there be substantive, relevant facts in dispute, evidence in the case may be submitted for a period of 60 days, which period may be extended for a maximum of 60 days where one of the parties is domiciled abroad.

Article 27

The parties may make use of all forms of evidence permitted by the law. The provisions of the second paragraph of Article 64 of the Code of Civil Procedure shall also be applicable.

Article 28

Notice shall be given in the manner specified in the Regulations.

Article 29

When the period for the submission of evidence expires, the Director of the Department shall report to the Certifying Committee, which shall issue a final ruling.

Article 30

Where two or more applications are filed for the same variety, preference shall be given to the one with the strongest claim. In cases where it cannot be accurately determined which claim is strongest or where they are equally strong, preference shall be given to the earliest application.

Article 31

Where no opposition has been filed or where opposition has been settled in favor of the applicant, the Certifying Committee shall order the carrying out of such inspections, tests and trials as may be appropriate.

Article 32

Where the Certifying Committee decides that the variety filed for protection complies with the requirements specified in this Law, it shall order the Department to enter the variety in the Register of Protected Varieties and grant the corresponding title, subject to payment of the fee charged therefor.

Article 33

Without prejudice to the provisions of the foregoing Article, the Certifying Committee may order the provisional recording of a variety in the Register of Protected Varieties and the grant of the corresponding title even where the person concerned may not have submitted all the required background material or while the examination and analysis thereof is still proceeding. The provisional registration shall be subject to the time limit, procedure and other conditions set by the Certifying Committee.

The provisional title shall afford the applicant the rights specified in Article 3 of this Law throughout the period for which it has been granted. Where the owner of a provisional right is subsequently granted final protection, the duration of such final protection shall be calculated as from the date of the provisional registration.

Article 34

The entry in the Register of Protected Varieties concerning the variety and the corresponding title shall record the following particulars at least:

- (a) name of the variety;
- (b) name and address of the breeder and his representative, if any;
- (c) decision of the Certifying Committee recognizing the right and ordering the registration of the variety and the grant of the corresponding title;
- (d) whether the title and registration are final or provisional;
- (e) term of protection;
- (f) such other particulars as are specified by the Certifying Committee.

Article 35

The Department shall publish a list of titles granted and registrations effected in the Bulletin of the Register of Protected Varieties.

Article 36

A marginal note shall be made in the Register of Protected Varieties, alongside the entry on the variety concerned, of transfers, liens or seizures and any other limitations on the breeder's right.

Without such marginal notes, the said legal acts shall not be binding on third parties.

TITLE IV

LAPSE AND INVALIDITY OF THE BREEDER'S RIGHT

Article 37

The Certifying Committee may declare the breeder's right lapsed and order the cancellation of an entry in the Register of Protected Varieties and of the corresponding title in the following cases:

- (a) where the protection period has expired;
- (b) where the owner of the right expressly so requests;
- (c) where the breeder fails to provide the Department with such propagating material as permits the variety to be grown with its characteristics as defined at the time of the grant of protection;
- (d) where the breeder of the variety fails to comply with the obligation to keep reference material as provided in Article 20, under (d);

(e) where, in the event of a registration having been ruled provisional for want of the supporting material to be submitted by the person concerned, the said person fails to submit the material during the agreed term of such provisional registration;

(f) where the owner has not paid the fees and charges payable for keeping the said registration in force.

The Certifying Committee shall rule on lapse and cancellation on request or after a prior report by the Director of the Department.

Article 38

The breeder's right shall be invalidated in accordance with the general Law where it is found that the conditions concerning the novelty and distinctness of the variety provided by this Law were not effectively met on the date of the grant of the right.

TITLE V

APPEALS

Article 39

Decisions of the Certifying Committee concerning the acceptance or rejection of an application for registration, a provisional registration, the lapse of the right to protection, and the cancellation of an entry in the Register of Protected Varieties and of the corresponding title, shall be notified by the Director of the Department in a registered letter sent to the address of the person concerned.

Article 40

Decisions pronounced by the Certifying Committee on any of the subjects specified in the foregoing Article shall be appealable to the Arbitration Tribunal referred to in the fifth paragraph of Article 17 of Law No. 19.039* *, hereinafter referred to as "the Arbitration Tribunal." The appeal shall be accompanied by a statement of grounds and be lodged within a period of 15 working days following the date of notification of the contested decision.

Article 41

The appeal shall be lodged with the Director of the Department, who shall transmit it, together with its en-

closures, to the Arbitration Tribunal before the end of the third working day.

Article 42

The Arbitration Tribunal may, *ex officio* or at the request of the interested party, apply to the Director of the Department for reports on the substance of the appeal. It may likewise commission such expert reports as it considers appropriate.

Article 43

No appeal shall lie from the rulings of the Arbitration Tribunal.

TITLE VI

OFFENSES AND SANCTIONS

Article 44

The following shall be punished with minor detention or imprisonment of the lowest degree and a fine of five to 50 monthly tax units, without prejudice to the seizure of any material of the variety in his possession:

(a) Any person who, knowing that it is protected, propagates a variety and engages in any act with a view to marketing reproductive material of the variety without the consent of the owner of the breeder's right or without the license referred to in Article 7.

(b) Any person who, without the consent of the owner of the breeder's right, repeatedly uses genetic material of a protected variety in order to produce a new variety shall be liable to the same sanction.

(c) Any person who, knowing that it is protected, offers the variety for sale, distributes, imports, exports or markets or handles it in any way or on any ground so as to make it available for use as reproductive material.

(d) Any person who within the subsequent five years repeats any of the offenses provided for in this Article shall be liable to punishment with minor detention at the intermediate level and up to twice the amount of the fine previously imposed.

Material of the variety seized shall remain at the disposal of the breeder.

Article 45

The Agriculture and Livestock Service, on obtaining knowledge of an offending act that leads it to suspect that

* Law Establishing the Rules Applicable to Industrial Titles and the Protection of Industrial Property Rights.

one of the offenses provided for in the foregoing Article has been committed, may order the holding or immobilization of the propagated material of the protected variety in so far as the person concerned does not prove the legitimacy of his acquisition within the period allowed him for the purpose.

Where the person concerned fails to submit the appropriate supporting evidence within the said period, which may not be shorter than 30 days, or where the supporting evidence is insufficient, the Service shall, at the same time as it makes the relevant report, inform the court of the measures taken in accordance with the foregoing paragraph, and the court shall be responsible for pronouncing on the maintenance thereof.

Article 46

Breaches of the provisions of this Law that do not constitute offenses in terms of Article 44 shall be liable to administrative sanctions imposed by the Agriculture and Livestock Service in accordance with the procedure laid down in the law constituting the said Service, with fines of one to 30 monthly tax units, and double that amount for the repetition of an offense.

FINAL TITLE

Article 47

Articles 7, 8, 9, 10, 11, 12, 13 and 33 of Decree-Law No. 1.764 of 1977, and also all legal and regulatory provisions in force that are contrary to this Law, are hereby repealed.

TRANSITIONAL ARTICLES

Article 1

Entries in the Register of Variety or Cultivar Ownership created by Decree-Law No. 1.764 of 1977 shall be considered incorporated as of right in the Register of Protected Varieties established by this Law, and shall

remain in force for the periods and under the conditions specified therein.

Article 2

Applications for recording in the Register of Variety or Cultivar Ownership filed under Decree-Law No. 1.764 of 1977 and still pending on the date of entry into force of this Law shall continue to be processed according to the provisions of the said Decree-Law except where the person concerned expressly declares the wish to be made subject to the provisions of this Law.

Article 3

Until such time as the Regulations under this Law are enacted, the Supreme Regulatory Decrees governing the subject matter also provided for in the said Regulations shall continue to apply in so far as they are not contrary to the provisions thereof.

Article 4

Entries in the Register of Marks of the Ministry of Economic Affairs, Development and Reconstruction concerning names of varieties may not be renewed.

Article 5

Any references in Decree-Law No. 1.764 of 1977 or in other laws to the Technical Seeds Unit shall be construed as references to the Seeds Department of the Agriculture and Livestock Service.

Article 6

In the first appointment of members of the Certifying Committee referred to in Article 15, the Minister for Agriculture shall specify for three of them a term of office of three years, in order to establish a system of periodical partial renewal of the membership of the said Committee.

CHILE

Decree Approving Regulations under Law No. 19.342
on the Rights of Breeders of New Plant Varieties

Having regard to Law No. 19.342 on the Rights of Breeders of New Plant Varieties, Decree No. 18, of 1996, of the Ministry of Foreign Relations which promulgated the International Convention for the Protection of New Plant Varieties, and the power provided for in Article 32, under 8, of the Political Constitution of the Republic,

I DECREE AS FOLLOWS

The following Regulations under Law No. 19.342 on the Rights of Breeders of New Plant Varieties, hereinafter referred to as "the Law," are hereby approved:

Article 1

For the recognition of the breeder's rights referred to under Article 20(a) of the Law, an application shall be filed with the director of the Seeds Department of the Agricultural and Livestock Service, using the form supplied by the same Department, in an original with one copy which shall contain at least the following particulars:

- (a) identity of the breeder and of the person acting on his behalf;
- (b) name of the variety;
- (c) different basic characteristics of the variety, with a mention of genus and species;
- (d) place and year in which the variety was placed on the market;
- (e) previous registrations of the variety abroad, if any.

Article 2

Without prejudice to any other documentation that might be required by the Law, the application for recognition shall be accompanied by the following:

- (a) a power of attorney containing the personal particulars of the person acting on behalf of the breeder, if any;
- (b) a duly completed technical questionnaire.

Article 3

Every application shall be appropriately numbered, in strict order of receipt, with a mention of the hour and date of filing, all of which shall appear on the copy returned to the applicant.

Article 4

On the acceptance of an application for prosecution, the person concerned shall cause an extract from the said application to appear once in the Official Gazette on the first or the fifteenth of any month, or on the following day if either of those days is a public holiday. The extract shall contain at least the following particulars:

- (a) identity of the breeder and of his representative, if any;
- (b) name of the variety, and species to which it belongs;
- (c) number and date of the application;
- (d) different basic characteristics of the variety.

Article 5

Where opposition to the grant of breeders' rights is formulated, the appropriate notifications shall be made by registered letter sent to the addresses of those concerned, the time limits being counted from the day following that of the Post Office receipt stamp recording the delivery.

Article 6

The fees for registration and maintenance of breeders' rights shall be set according to the provisions of Article 7(ñ) of Law No. 18.755.

Article 7

Payment of the fees and charges for keeping the registration in force shall be made before the first of May of the following year.

Article 8

Any person who engages in the sale or marketing of reproductive or vegetative propagating material of a protected variety shall be obliged to make use of the denomination of that variety, even after the term of protection of the variety has expired, provided that such use is not contrary to the prior rights of third parties.

Article 9

Where protection for the variety has been sought previously abroad, the breeder shall be allowed four years, calculated from the expiry of the period of one year referred to in the first paragraph of Article 22 of the Law, within which to provide the Variety Description Committee with the additional documents and other material required by the Law.

FRANCE

Decree No. 95-1047 of December 28, 1995,
Amending the Intellectual Property Code (Regulatory Part)
with Respect to the Scope of Application
of New Plant Variety Certificates and the Term and Scope of Breeders' Rights

The Prime Minister,

Acting on a report by the Minister for Foreign Affairs
and the Minister for Agriculture, Fisheries and Food,

Having regard to the International Convention for the
Protection of New Varieties of Plants of December 2,
1961, as revised in Geneva on November 10, 1972, and
October 23, 1978, in conjunction with Decree No. 83-
294 of March 31, 1983, publishing that Convention,

Having regard to the Intellectual Property Code, par-
ticularly in Articles L.412-1, L.623-1 to L.623-35 and
R.412-1 to R.412-14,

Having heard the Council of State (Public Works
Section),

Decrees as follows:

Article 1

The provisions of Section 1 of Chapter III of Title II
of Book VI of the Intellectual Property Code (Regulatory
Part: Articles R.623-55 to R.623-67) are replaced by the
following provisions:

"Section 2

*"Scope of Application of New Plant Variety Certifi-
cates, Term and Scope of Breeders' Rights*

Article R. 623-55(1)

"New plant variety certificates may be issued,
subject to the conditions set out in Articles L.623-1
to L.623-35 and Articles R.623-1 to R.623-54, for
any variety belonging to a species of the plant king-
dom.

"Any foreigner having the nationality of a State
party to the International Convention for the Protec-
tion of New Varieties of Plants of December 2,
1961, as amended by the Additional Act of Novem-
ber 10, 1972, or having his place of residence, place
of business or establishment in one of those States
may obtain a new plant variety certificate for varie-
ties belonging to genera or species which enjoy in

that State the same protection and which are con-
tained in the list annexed to that Convention or in a
supplementary list drawn up in application of the
provisions of that Convention.

"Any foreigner having the nationality of a State
party to the International Convention for the Protec-
tion of New Varieties of Plants in the text revised on
October 23, 1978, or having his place of residence,
place of business or establishment in one of those
States may obtain a new plant variety certificate un-
der the same conditions as French nationals.

"(2) Foreigners who have neither the nationality of
one of the States referred to in paragraph (1) nor
their place of residence, place of business or estab-
lishment in one of such States may obtain new plant
variety certificates only if French nationals enjoy
reciprocity of protection from the State of which the
foreigner has the nationality or in which he has his
place of residence, place of business or establish-
ment.

"The list of those States whose legislation complies
with the condition of reciprocity shall be established
by orders issued by the Minister for Foreign Affairs
and the Minister responsible for Agriculture after
having heard the Committee for the Protection of
New Plant Varieties. These orders may contain a
limitative list of plant species for which the condi-
tion of reciprocity has been satisfied.

Article R.623-56

"The term of protection shall be of 20 years. For
forest, fruit or ornamental trees, for vines and for
perennial grasses and fodder legumes, potatoes and
endogamous lines used for the production of hybrid
varieties, the term of protection shall be set at 25
years.

Article R.623-57

"The breeder's right shall extend to all elements of
reproduction or vegetative propagation of the variety
concerned and to the whole plant and parts of the
plant of that variety.

Article R.623-58

“Any person who, on the occasion of any act of assignment, licensing or marketing of the varieties referred to in the preceding Articles, wishes to avail himself of the faculty provided by Article L.623-15 of adding to the variety denomination a trademark, whether such trademark is his own or has been licensed to him, shall be required to take the necessary precautions, particularly in correspondence, advertising, the establishment of trade catalogues, on packaging or labels, to ensure that the denomination is

sufficiently clear in its context that no confusion is likely to be created in the mind of the purchaser as to the identity of the variety.”

Article 2

The Minister for Foreign Affairs and the Minister for Agriculture, Fisheries and Food shall be responsible, each as far as he is concerned, with the application of this Decree, which shall be published in the Official Journal of the French Republic.

CALENDAR**UPOV MEETINGS IN 1997**

June 3 to 5 (Budapest, Hungary)	Technical Working Party on Automation and Computer Programs
September 1 to 5 (Svendborg, Denmark,)	Technical Working Party for Ornamental Plants and Forest Trees
September 8 to 12 (Wageningen, Netherlands)	Technical Working Party for Fruit Crops
October 27 (Geneva, Switzerland)	Administrative and Legal Committee
October 28 (Geneva, Switzerland)	Consultative Committee
October 29 (Geneva, Switzerland)	Council
November 10 to 14 (Montevideo, Uruguay)	Technical Working Party for Agricultural Crops
November 24 to 28 (Valencia or Almería, Spain)	Technical Working Party for Vegetables

OTHER MEETINGS IN 1997

May 26 to 30 (Stockholm, Sweden)	FIS ASSINSEL World Seed Congress
June 16 to 20 (Paris, France)	OECD Annual Meeting of the Representatives of National Designated Authorities