PLANT VARIETY PROTECTION

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

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UPOV

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 three 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
Rice (*Oryza sativa* L.)
painted by Mr. Takeo Mouri (Japan)
courtesy of Tsukuba Botanical Garden, National Science Museum, Japan

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ACCESSION TO THE 1991 ACT OF THE UPOV CONVENTION

AUSTRALIA

On December 20, 1999, the Government of Australia 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, on October 23, 1978, and on March 19, 1991, with the Secretary-General of UPOV.

The 1991 Act entered into force for Australia one month after the deposit of its instrument of accession, i.e., on January 20, 2000.

EXTENSION OF PROTECTION TO FURTHER GENERA AND SPECIES

RUSSIAN FEDERATION

The State Commission of the Russian Federation has announced that, with effect from November 1, 1999, and January 11, 2000, protection was extended to the following genera and species:

Latin	English	Français	Deutsch	Español
Actinidia kolomikta Maxim., *Actinidia polygama* Maxim., *Actinidia arguta* Planch., *Actinidia purpurea* Rehd., *Actinidia giraldii* Diels.	Actinidia	Actinidia	Strahlengriffel	Actinidia
Fagopyrum esculentum Moench.	Buckwheat	Sarrasin, Blé noir	Buchweizen	Alforfón
Lens culinaris Medik.	Lentil	Lentille	Linse	Lenteja
Schisandra chinensis (Turc.) Baill.				
Sesamum indicum L.	Sesame	Sésame	Sesam	Sésamo

NEWSLETTER

ANNUAL REPORT OF THE SECRETARY GENERAL FOR 1999
(thirty-first year)

I. CONSTITUTIONAL MATTERS

1. The Council of UPOV decided at its fourteenth extraordinary session, held on April 29, 1997, that those States that had requested the Council's advice on the conformity of their legislation with the 1978 Act of the UPOV Convention prior to the entry into force of the 1991 Act might, subject to their fulfilling the conditions set by the Council, deposit an instrument of accession to the 1978 Act before the first anniversary of the entry into force of the 1991 Act, that is, before April 24, 1999.

2. At its thirty-third ordinary session, held on October 20, 1999, the Council unanimously decided to reconfirm the decision described above and to authorize the Secretary-General, after consultation with the President of the Council, to accept instruments of accession to the 1978 Act by India, Nicaragua and Zimbabwe provided that the depositing State had, in the opinion of the Secretary-General after consultation with the President of the Council, acted expeditiously to complete its legislation and any UPOV formalities and to effect the deposit.

II. COMPOSITION OF THE UNION

Number of Members

3. On December 31, 1999, the membership of the Union was 44, namely six more than on December 31 of the previous year. That is due to the following events which occurred in 1999:

(a) On March 23, China deposited its instrument of accession to the 1978 Act. The latter entered into force for China on April 23.

(b) On April 13, Kenya deposited its instrument of accession to the 1978 Act. The latter entered into force for Kenya on May 13.

(c) On April 21, Bolivia deposited its instrument of accession to the 1978 Act. The latter entered into force for Bolivia on May 21.

(d) On April 23, Brazil and Panama deposited their instruments of accession to the 1978 Act. The latter entered into force for Brazil and Panama on May 23.

(e) On June 29, Slovenia deposited its instrument of accession to the 1991 Act of the Convention. The latter entered into force for Slovenia on July 29.

4. The 44 member States are the following: Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Canada, Chile, China, Colombia, Czech Republic, Denmark, Ecuador, Finland, France, Germany, Hungary, Ireland, Israel, Italy, Japan, Kenya, Mexico, Netherlands, New Zealand, Norway, Panama, Paraguay, Poland, Portugal, Republic of Moldova, Russian Federation, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Trinidad and Tobago, Ukraine, United Kingdom, United States of America, Uruguay.

Position in Relation to the Various Acts of the Convention

5. On December 31, 1998, the situation was as follows:

(a) two States were bound by the 1961 Act as amended by the 1972 Act;

(b) the 1978 Act was the most recent Act binding 27 States;

(c) the 1991 Act was the most recent Act binding nine States.

6. In addition to the accessions reported above, the following events took place in 1999:

(a) On January 22, the United States of America deposited its instrument of ratification of the 1991 Act. The latter entered into force for the United States of America on February 22;

(b) On December 20, Australia deposited its instrument of accession to the 1991 Act. The latter will enter into force for Australia on January 20, 2000.

7. On December 31, 1999, the position of the member States in relation to the various Acts of the Convention was thus as follows:

(a) two States were bound by the 1961 Act as amended by the 1972 Act, namely Belgium and Spain;

(b) the 1978 Act was the most recent Act binding 30 States, namely Argentina, Australia (but only until January 20, 2000), Austria, Bolivia, Brazil, Canada, Chile, China, Colombia, Czech Republic, Ecuador, Finland, France, Hungary, Ireland, Italy, Kenya, Mexico, New Zealand, Norway, Panama, Paraguay, Poland, Portugal, Slovakia, South Africa, Switzerland, Trinidad and Tobago, Ukraine, Uruguay;

(c) the 1991 Act was the most recent Act binding 12 States, namely Bulgaria, Denmark, Germany, Israel, Japan, Netherlands, Republic of Moldova, Russian Federation, Slovenia, Sweden, United Kingdom, United States of America.

8. Article 30(2) of the 1991 Act provides as follows:

"(2) [*Conformity of laws*] It shall be understood that, on depositing its instrument of ratification, acceptance, approval or accession, as the case may be, each State or intergovernmental organization must be in a position, under its laws, to give effect to the provisions of this Convention."

9. In 1999, to the knowledge of the Office of the Union, Finland and Ireland passed laws to adapt their systems of protection to the 1991 Act; a draft new law was before Parliament in Spain. Accordingly, the number of member States which have laws which conform in all respects with the 1991 Act reached 17. Most other member States have adopted amendments in line with that Act or drawn up draft laws.

10. The table annexed to this report is a synopsis of the position of the various States in relation to the various Acts of the Convention as of December 31, 1999.

Future Members

11. Under Article 34(3) of the 1991 Act,

"Any State which is not a member of the Union and any intergovernmental organization shall, before depositing its instrument of accession, ask the Council to advise it in respect of the conformity of its laws with the provisions of this Convention."

12. Requests for the advice of the Council were filed in the period under review by the following eight countries:

(a) Slovenia, by letter of February 4;

(b) Romania, by letter of February 23;

(c) Georgia, by letter of March 1;

(d) Costa Rica, by letter of March 22;

(e) Lithuania, by letter of July 3;

(f) Tajikistan, by letter of August 16;

(g) Republic of Korea, by letter of September 3;

(h) Egypt, by letter of October 17.

13. At its sixteenth extraordinary session, held on March 26, the Council examined the laws of four States and took the decisions described below (where relevant, it asked the Office of the Union to offer its assistance to the Governments in finalizing legislation):

(a) It decided that the law of Slovenia conformed in all respects with the Convention.

(b) It decided to advise the Governments of Romania and Georgia that their Laws, after adoption of suitable regulations, provided the basis for laws conforming with the Convention, and that they might then deposit an instrument of accession to the Convention.

(c) It decided to advise the Government of Costa Rica that the Bill submitted for the advice of the Council provided the basis for a law conforming with the Convention, and that after the enactment into law of the Bill with no substantial alterations, and after the adoption of suitable regulations, it might deposit an instrument of accession to the Convention.

14. At its thirty-third ordinary session, held on October 20, the Council examined the laws of four States and took the decisions described below (where relevant, it asked the Office of the Union to offer its assistance to the Governments in amending or finalizing legislation):

(a) It decided to advise the Government of Lithuania that the Law, being based upon the principles of the 1978 Act, did not incorporate some important provisions of the 1991 Act, and that upon the adoption of the necessary amendments to the satisfaction of the Office of the Union and the making of implementing regulations, it might deposit an instrument of accession to the Convention.

(b) It decided to advise the Government of Tajikistan that the Law, after the adoption of suitable regulations, provided the basis for a law conforming with the Convention, that it might deposit an instrument of accession to the Convention after making such regulations, and that it might wish to correct some minor deviations and inconsistencies at the earliest opportunity;

(c) It decided to advise the Government of the Republic of Korea that the Law in its main provisions incorporated the substance of the Convention, that it might deposit an instrument of accession to the Convention, and that it might wish to correct some deviations and inconsistencies at the earliest opportunity.

(d) It decided to advise the Government of Egypt that the Draft Decree when supplemented by provisions on provisional protection and the publication of information provided a basis for a law conforming with the Convention, and that after the adoption of a Decree based upon the Draft and incorporating the said provisions it might deposit an instrument of accession to the Convention.

15. On December 31, 1999, the following 16 States and the European Community had initiated the procedure for accession to UPOV: Belarus, Costa Rica, Croatia, Egypt, Estonia, Georgia, India, Kyrgyzstan, Lithuania, Morocco, Nicaragua, Republic of Korea, Romania, Tajikistan, Venezuela and Zimbabwe.

III. SESSIONS OF THE COUNCIL AND ITS SUBSIDIARY BODIES

Council

16. The Council held its sixteenth extraordinary session on March 26, under the chairmanship of Mr. Ryusuke Yoshimura (Japan), to examine the requests for advice submitted by Costa Rica, Georgia, Romania and Slovenia, under Article 34(3) of the 1991 Act.

17. The Council held its thirty-third ordinary session on October 20, again under the chairmanship of Mr. Ryusuke Yoshimura. The session was attended by observers from 11 non-member States[1] and seven international organizations.[2]

18. At that session, the Council took the following main decisions:

(a) It pronounced on the conformity of the legislation of Egypt, Lithuania, the Republic of Korea and Tajikistan with the 1991 Act.

(b) On a recommendation by the Consultative Committee, it authorized the Secretary-General, after consultation with the President of the Council, to accept instruments of accession to the 1978 Act by India, Nicaragua and Zimbabwe provided that the depositing State had, in the opinion of the Secretary-General after consultation with the President of the Council, acted expeditiously to complete its legislation and any UPOV formalities and to effect the deposit.

(c) It approved the report by the Secretary-General on the activities of the Union in 1998 and noted the report on activities during the first nine months of 1999.

(d) It approved the progress reports of its various subsidiary bodies and either drew up or approved their work plans for the coming year.

(e) It approved the program and budget of the Union for the 2000-2001 biennium.

(f) It decided to renew the designation of Switzerland as auditor of the accounts of UPOV up to and including the year 2003.

(g) It unanimously elected for three-year terms, which will expire at the close of the thirty-sixth ordinary session of the Council, in 2002,

(i) Mr. Wieslaw Pilarczyk (Poland) as Chairman of the Technical Working Party on Automation and Computer Programs;

(ii) Mr. Josef Harsanyi (Hungary) as Chairman of the Technical Working Party for Fruit Crops;

(iii) Ms. Elizabeth Scott (United Kingdom) as Chairman of the Technical Working Party for Ornamental Plants and Forest Trees;

(iv) Mrs. Julia Borys (Poland) as Chairman of the Technical Working Party for Vegetables.

Consultative Committee

19. The Consultative Committee held its fifty-seventh session on March 26, under the chairmanship of Mr. Karl Olov Öster (Sweden). It heard a report from the Vice Secretary-General on the status of accessions to the 1978 Act and reports by the representatives of the member States on developments with respect to the application of the 1991 Act. It discussed the review, then underway, of Article 27.3(b) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement).

20. The Consultative Committee held its fifty-eighth session on October 19, also under the chairmanship of Mr. Karl Olov Öster. The Committee essentially prepared the thirty-third ordinary session of the Council and, having been informed of the wish of the Vice Secretary-General to retire, decided on the procedure to be followed for the appointment of a new Vice Secretary-General.

Administrative and Legal Committee

21. The Administrative and Legal Committee held its thirty-ninth session, on March 25 under the chairmanship of Mr. John V. Carvill (Ireland). The session was attended by observers from three non-member States[3] and three international organizations.[4]

22. The Committee examined the notion of breeder and the notion of trees and vines for the purposes of the provisions on novelty and the duration of protection. It noted a document describing a point of law with respect to the effects of a priority claim that is currently being considered within the European Patent Organization (EPO) and whose solution might have repercussions on plant variety protection law; it also noted the plans of WIPO with regard to the setting up of a dedicated communication system (WIPOnet) offering a variety of other services.

23. The Committee held its fortieth session on October 18, also under the chairmanship of Mr. John V. Carvill. The session was attended by observers from four non-member States[5] and three international organizations.[6]

24. The Committee examined again the notion of breeder and requested a position paper on the subject. It also examined again the notion of trees and vines and requested a document setting out possible recommendations to member States and possible provisions for adoption, at the appropriate time, when the special treatment for trees and vines would be eliminated. It had a discussion on the "breeder's exemption" and the legality of contractual clauses aiming at its elimination.

1 Croatia, Estonia, Greece, India, Lithuania, Morocco, Nicaragua, Oman, Republic of Korea, Romania, Tunisia.

2 World Trade Organization (WTO), Organization for Economic Co-operation and Development (OECD), European Community (EC), International Seed Testing Association (ISTA), Association of European Horticultural Breeders (AOHE), International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL), International Federation of the Seed Trade (FIS).

3 Brazil, Nicaragua, Romania.

4 European Community (EC), International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL), International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA).

5 India, Morocco, Republic of Korea, Romania.

6 European Community (EC), International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL), International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA), International Federation of the Seed Trade (FIS).

Technical Committee

25. The Technical Committee held its thirty-fifth session from March 22 to 24 under the chairmanship of Mrs. Elise Buitendag (South Africa). The session was attended by observers from three non-member States[7] and four international organizations.[8]

26. On the basis of the preparatory work done by the Technical Working Parties, the Committee adopted Test Guidelines for the following 16 taxa: apple rootstocks; cymbidium; dill; grapevine; leek; okra; onion, shallot; opium/seed poppy; pyrus rootstocks; radish; black radish; rhubarb; rye; statice; walnut; weeping fig.

27. The Committee also had before it progress reports from the Technical Working Parties, and it outlined the Working Parties' future work. It then considered questions raised by the Working Parties on the basis of the experience of member States in the conduct of distinctness, uniformity and stability tests on new plant varieties. Among other things it confirmed its decision that a difference caused by an endophyte should not establish distinctness.

Technical Working Parties

28. The Technical Working Parties held the following sessions outside Geneva:

(a) The Technical Working Party for Agricultural Crops (TWA) held its twenty-eighth session in Ottawa (Canada) from June 22 to 25 under the chairmanship of Mrs. Françoise Blouet (France). A subgroup on cotton and rice met in the same place on June 21.

(b) The Technical Working Party on Automation and Computer Programs (TWC) held its seventeenth session in Helsinki (Finland) from June 29 to July 2 under the chairmanship of Mr. J. Law (United Kingdom).

(c) The Technical Working Party for Fruit Crops (TWF) held its thirtieth session in Nitra (Slovakia) from September 6 to 10 under the chairmanship of Mr. C. Barnaby (New Zealand).

(d) The Technical Working Party on Ornamental Plants and Forest Trees (TWO) held its thirty-second session in Pruhonice (Czech Republic) from September 13 to 18 under the chairmanship of Mr. J. Barendrecht (Netherlands).

(e) The Technical Working Party for Vegetables (TWV) held its thirty-third session in Hanover (Germany) from June 5 to 9 under the chairmanship of Mr. B. Bar-Tel (Israel).

29. The basic task of four of the Working Parties consists in drawing up Test Guidelines. They submitted drafts to the Technical Committee for adoption for the following taxa: sunflower (TWA); pear (TWF); gerbera, iris, kangaroo paw, Osteospermum (TWO); industrial chicory; witloof, chicory (TWV). They produced others for the following taxa, to be submitted to the professional organizations for comment: brome, red clover, subterranean clover, cotton, white mustard, fodder radish, rice (TWA); *Calluna*, Guzmania, *Hippeastrum*, Zantedeschia (TWO); globe artichoke, curly kale, fennel, garlic, swede, tomato, turnip (TWV).

30. The Technical Working Party on Automation and Computer Programs discussed various possibilities for reducing efforts and costs associated with variety testing (incomplete block designs for the tests, reduction of the number of reference varieties, reduction of the number of growing cycles, e.g. from three to two). It noted that that the Windows version of the DUSTNT program developed by the United Kingdom experts was now available; it encouraged more States to make use of that freely available software, which would facilitate further harmonization among member States.

Working Group on Biochemical and Molecular Techniques and DNA Profiling in Particular

31. The Working Group did not meet in 1999.

IV. COURSES, SEMINARS AND WORKSHOPS

32. From January 19 to 21, UPOV co-organized with the *Organismo International Regional de Sanidad Agropecuaria* (OIRSA) and the World Intellectual Property Organization (WIPO) a Workshop in San José (Costa Rica), on plant variety protection laws for the following Central American and Caribbean countries: Costa Rica, Cuba, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua and Panama. Argentina, Colombia, Uruguay and the European Union provided speakers.

33. On February 15, UPOV jointly organized with WIPO and the World Trade Organization (WTO), for the members and observers of the joint organizers, a Symposium in Geneva on the Protection of Plant Varieties under Article 27.3(b) of the TRIPS Agreement.

34. UPOV jointly organized with WIPO and WTO three Workshops on the Protection of Plant Varieties under Article 27.3(b) of the TRIPS Agreement:

(a) on March 18 and 19, in Bangkok, in cooperation with the Government of Thailand and with a financial contribution from the Government of New Zealand, for members in the Asia and the Pacific Region;

(b) on May 3 and 4, in Cairo, in cooperation with the Government of Egypt, for countries of the Arab Region and Turkey; the program included presentations on national experience and plans to implement *sui generis* systems in Egypt, Algeria, Morocco, Oman, Tunisia and Turkey.

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7 Brazil, Egypt, Romania.

8 European Community (EC), Organization for Economic Co-operation and Development (OECD), International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL), Association of Plant Breeders of the European Community (COMASSO).

(c) on May 6 and 7, in Nairobi, in cooperation with the Government of Kenya, for anglophone African countries; the program included presentations on national experience and plans to implement *sui generis* systems in Kenya, Uganda, United Republic of Tanzania, Zambia and Zimbabwe.

35. From May 17 to 21, UPOV organized, jointly with the Ministry of Science and Technology, the Ministry of Agriculture and the State Forestry Administration of China, in cooperation with the Yunnan Provincial Government and with financial support from the Ministry of Agriculture, Forestry and Fisheries of Japan, an International Seminar in Kunming (China) on Technological Innovation and the National Implementation of the Protection of New Varieties of Plants. In addition to participants from China, there were participants from Malaysia, the Philippines, the Republic of Korea, Thailand and Vietnam. Japan, New Zealand and the United Kingdom provided speakers.

36. UPOV and WIPO organized in the Baltic States, in each case in cooperation with the Ministry responsible for agriculture in the host country, national Seminars on the Protection of Plant Varieties under the UPOV Convention, the Patent System and the TRIPS Agreement:

(a) on June 15, in Tallin (Estonia);

(b) on June 17, in Riga (Latvia);

(c) on June 21, in Vilnius (Lithuania).

Finland and the European Patent Office provided speakers. The seminars provided an opportunity for detailed discussions with the Governments concerning their laws for the protection of new plant varieties and their interest in becoming member States of the Union.

37. From July 5 to 16, UPOV organized a Briefing Workshop in Cambridge (United Kingdom) on Plant Variety Protection under the UPOV Convention. The Workshop was organized in cooperation with the Ministry of Agriculture, Forestry and Fisheries of Japan, the Ministry of Agriculture, Fisheries and Food and the National Institute of Agricultural Botany of the United Kingdom. Participants in the Workshop came from Bangladesh, Bulgaria, China, Croatia, Egypt, India, Indonesia, Kenya, Kyrgyzstan, Malawi, Mauritius, Sri Lanka, Thailand, Trinidad and Tobago, Turkey, Uganda, United Republic of Tanzania, Zambia and Zimbabwe, and from the African Regional Industrial Property Organization (ARIPO) and the Organization of African Unity (OAU). The Governments of France, Japan and the United Kingdom provided speakers.

38. UPOV cooperated with the *Instituto Nacional de Semillas* of Argentina in the organization of a Latin-American Regional Seminar on the 1991 Act of the UPOV Convention. The Seminar was held in Buenos Aires on August 10 and 11; it also benefited from support provided by the *Asociación Argentina de Protección de las Obtenciones Vegetales* (ARPOV) and the American Seed Trade Association (ASTA). The Governments of Brazil, Chile, Colombia and Uruguay and the Community Plant Variety Office provided speakers.

39. A National Seminar on the Protection of New Plant Varieties, organized by the Cuban Industrial Property Office in cooperation with UPOV, was held in Havana from October 4 to 6. The Government of Spain and the Community Plant Variety Office provided speakers.

40. UPOV and WIPO organized, in cooperation with the Ministry of Agriculture and Food of Georgia and the National Intellectual Property Center, a Seminar on the Protection of Plant Varieties under the UPOV Convention, the Patent System and the TRIPS Agreement for the benefit of the countries of the region (Armenia, Azerbaijan, Georgia): The Seminar took place in Tbilisi from October 5 to 7. The Republic of Moldova, the Russian Federation, Ukraine and the European Patent Office provided speakers. The seminar provided an opportunity to meet with national delegations from Armenia, Azerbaijan and Georgia.

V. RELATIONS WITH MEMBER STATES

41. Australia—On June 7, the Vice Secretary-General had discussions, in Canberra, with Mr. Doug Waterhouse, Registrar, Plant Breeders' Rights Office, with Mr. Ian Thompson, Assistant Secretary, Field Crops, Agricultural Industries Division, Department of Agriculture, Fisheries and Forestry, and with Mr. Tim Roseby, First Assistant Secretary, Agriculture, Industries Division, and three members of the Plant Breeders' Rights Advisory Committee, Ms. Cheryl McCaffrey, Mr. David Moore and Mr. Hugh Roberts.

42. On June 8, the Vice Secretary-General had discussions in Canberra with officials of the Trade Negotiations Division, Department of Foreign Affairs and Trade.

43. Bolivia—On April 21, the Vice Secretary-General received the visit of Mrs. Silvia Avila Seifert, Ambassador and Permanent Representative of Bolivia in Geneva, who deposited the instrument of accession of Bolivia to the 1978 Act of the UPOV Convention.

44. Brazil—On April 23, Mr. Luiz César Gasser, Second Secretary, Permanent Mission of Brazil in Geneva, called on the Vice Secretary-General to deposit the instrument of accession of Brazil to the 1978 Act of the UPOV Convention.

45. China—On March 22, the Vice Secretary-General received a visit from the following representatives of the Chinese Government who discussed arrangements for the forthcoming regional seminar in Kunming, and the deposit of the instrument of accession of China to the 1978 Act of the UPOV Convention: Mr. Ruichun Duan, Vice Secretary-General, Ministry of Science and Technology; Mr. Yunkun Li, Deputy Director General, Department of Science and Technology, State Forestry Administration; Mrs. Sanba Hang, Division Director, Department of Rural and Social Development, Ministry of Science and Technology; Mrs. Ping Zou, Division Chief, Division of Intellectual Property and Achievement Management, Department of Sci-Technology and Education, Ministry of Agriculture; and Mrs. Yangling Zhao, First Secretary for Science and Technology, Permanent Mission of China in Geneva.

46. On March 23, the same persons were present when Mr. Hou Zhengi, Counsellor in the Permanent Mission of China in Geneva, deposited the instrument of accession of China to the 1978 Act of the UPOV Convention with the Vice Secretary-General.

47. On May 17, the Vice Secretary-General and officials of the Union, as well as officials from UPOV member States, participated in the opening ceremony for the UPOV Day in EXPO '99, an International Horticultural Exposition in Kunming. They subsequently participated in the International Seminar on Technological Innovation and the National Implementation of the Protection of New Varieties of Plants organized by UPOV in cooperation with the Governments of China and Japan on May 18 and 19.

48. On May 20, in Beijing, the Vice Secretary-General and officials of the Union held discussions with officials of the State Forestry Administration and, on May 21, with officials of the Ministry of Agriculture.

49. France—On September 27, the Vice Secretary-General and an official of the Union visited Paris for discussions with Mr. Francis Heux, Head of the *Bureau de la sélection végétale et des semences* of the Ministry of Agriculture and Fisheries, concerning the funds in trust contributed by his Ministry to UPOV. Also present were Miss. Nicole Bustin, Secretary General of the *Comité de la protection des obtentions végétales* (CPOV), and Mr. François Burgaud, responsible for international affairs in the *Groupement national interprofessionnel des semences* (GNIS).

50. Germany—On September 2, the Vice Secretary-General participated in the celebration, in Hanover, of the 50th Anniversary of the formation of the Federal Office of Plant Varieties (*Bundessortenamt*). In a separate ceremony, he presented UPOV medals to officials of the *Bundessortenamt* who had served as chairpersons of main UPOV committees or of Technical Working Parties.

51. Ireland—On January 14, the Office of the Union wrote to Mr. John V. Carvill, Controller of Plant Breeders' Rights, with comments on the Plant Varieties (Proprietary Rights) (Amendment) Bill, 1997.

52. Kenya—On April 13, the Vice Secretary-General received the instrument of accession of Kenya to the 1978 Act of the Convention from Mrs. Juliet Gicheru, First Secretary, Legal Affairs, Permanent Mission of Kenya, and from Mr. Chepsiror, Ministry of Foreign Affairs in Nairobi.

53. On September 8, the Office of the Union received the visit of Mr. Lukas Sese, Kenya Industrial Property Office, who was en route to a meeting organized by the Quaker United Nations Office on "TRIPS Art. 27.3(b): definitions, compatibility with the CBD and *sui generis* systems."

54. New Zealand—On February 25, the Vice Secretary-General discussed with Mr. Bill Whitmore, Commissioner of Plant Variety Rights, the possibility of Mr. Whitmore representing UPOV in a meeting in Bangkok (Thailand) on Seed Policies and Systems in the Asian Region that was to be organized by the Food and Agriculture Organization of the United Nations (FAO) in cooperation with the Asia and Pacific Seed Association (APSA).

55. Panama—On April 23, Mr. Leonardo A. Kam Binns, Ambassador and Permanent Representative of Panama in Geneva, called on the Vice Secretary-General to deposit the instrument of accession of Panama to the 1978 Act of the UPOV Convention.

56. United Kingdom—On February 1, the Vice Secretary-General attended a dinner given by the Ambassador and Permanent Representative of the United Kingdom, Mr. Roderick M.J. Lyne, CMG, in honor of the visit of Mr. Brian Wilson, MP, Ministry for Trade.

57. On February 24, the Vice Secretary-General arranged with Mr. David Boreham, Controller, Plant Variety Rights Office, for him to speak on the subject of plant variety protection at a conference organized in Nyanga (Zimbabwe) from March 8 to 11, by the African Regional Intellectual Property Office (ARIPO), the European Patent Office (EPO) and the Patent Office of the United Kingdom.

58. On March 1, the Vice Secretary-General visited Cambridge to discuss with Dr. Simon Draper, Deputy Director, National Institute of Agricultural Botany (NIAB), proposals to organize a two-week course in Cambridge on plant variety protection in 1999.

59. United States of America—On January 22, Mrs. Soching Tsai, First Secretary, and Mr. Edward R. Cummings, Counsellor for Legal Affairs, United States Permanent Mission in Geneva, deposited with the Vice Secretary-General the instrument of ratification of the 1991 Act of the UPOV Convention of the United States of America.

60. On February 19, the Vice Secretary-General spoke on the telephone with Ms. Ann-Marie Thro, newly appointed Commissioner of the Plant Variety Protection Office.

VI. RELATIONS WITH NON-MEMBER STATES AND REGIONAL ORGANIZATIONS

States and Organizations of North Africa and Western Asia

61. WANA (West Asia and North Africa) Seed Network—On May 5 and 6, an official of the Union participated as an observer, in Cairo (Egypt), in the Third Council of the WANA Seed Network.

62. Algeria—On February 16, the Vice Secretary-General received a visit from Mr. Amor Bouhnik, Director General, *Institut algérien de normalisation et de propriété industrielle* (INAPI), Mr. O. Si Laabi, *Directeur de la normalisation, qualité et protection*, Mrs. F. Madi, *Administrateur, Ministère de l'industrie*, and Mr. A. Assabaii, *Directeur général* du *CNCSP*. They explained that their country's proposals to introduce plant variety protection were at a late stage of consultation.

63. Egypt—On March 23, the Vice Secretary-General had discussions with Mr. Gamal Aissa Attya, Director, Plant Breeders' Rights and Variety Registration Department, Ministry of Agriculture.

64. On May 10 and 11, the Vice Secretary-General participated, in Cairo, in the Third Egyptian National Seed

Conference, giving a presentation on plant variety protection systems.

65. On November 19, the Vice Secretary-General wrote to Assistant Secretary Eng. Fawzy Zaky Shaheen, Under-Secretary for Seed Certification and Head of CASC, Ministry of Agriculture, concerning the conformity of a proposed draft Decree with the 1991 Act of the UPOV Convention.

66. Jordan—On September 2, the Office of the Union received the visit of Mrs. Maha Ali, Researcher, Ministry of Industry and Trade, WTO Unit, and Mrs. Hana Al-Bitar, Trademark Examiner, Directorate of Trade Registration and Industrial Property Protection, Ministry of Industry and Trade, and was informed that a draft law on plant variety protection was being prepared by the Ministry of Agriculture.

67. Lebanon—On July 7, the Office of the Union wrote to Mr. Hassan Machlab, Head, Department of Plant Breeding, Agriculture Research Institute, to provide information on plant variety protection and UPOV.

68. On November 12, an official of the Union made a presentation on plant variety protection to a group of Members of Parliament, headed by Mr. Élie Ferzely, Vice-President, and Mr. Chaker Abou-Sleiman, President of the Commission for Administration and Justice.

69. On December 17, the Vice Secretary-General wrote to Mr. Rafael Debanné, President of the Agricultural Committee of the Beirut Chamber of Commerce, Industry and Agriculture, concerning the procedure for becoming a member State of UPOV.

70. Sultanate of Oman—On October 20, the Office of the Union received the visit Mr. Ali Hussein Al-Lawati, Director, Ministry of Agriculture and Fisheries, Department of Plant Production Research and discussed with him a draft law on plant variety protection.

71. Syria—On July 7, the Office of the Union wrote to Mr. Abdul Wahab Madarati, Cereals and Legumes Director, General Organization for Seed Multiplication, to provide information on plant variety protection and UPOV.

72. Tunisia—On February 16, Mr. M. Hamdi, *Directeur général, Direction générale des affaires juridiques, Ministère de l'agriculture*, and Mr. A. Bouziri, *Sous-directeur, Contrôle et certification des semences et plants*, left with the Office of the Union the latest draft of proposals for a new seed law incorporating provisions enabling the Government to establish a plant variety protection system.

States and Organizations of Sub-Saharan Africa

73. Organization of African Unity (OAU)—On April 7, the Vice Secretary-General received a visit from Mr. David Luke, Chief of Trade, Commerce and Tourism, at the Headquarters of the OAU, Addis Ababa (Ethiopia). They discussed issues of common interest to the two organizations.

74. African Regional Industrial Property Office (ARIPO)—On September 21, the Vice Secretary-General received a visit from Mr. Mzondi Chirambo, Director General ARIPO, with whom he discussed developments concerning the protection of plant varieties in the member States of ARIPO and the UPOV program of activities in Africa.

75. African Intellectual Property Organization (OAPI)—From February 22 to 25, an official of the Union attended, in Bangui (Central African Republic), the Diplomatic Conference at which the revised *Accord de Bangui* was opened for signature.

76. On July 28, the Office of the Union transmitted an *aide-mémoire* on plant variety protection for the purposes of the ratification of the revised *Accord de Bangui* and the accession to the UPOV Convention.

77. In September, during the sessions of the WIPO Assemblies, the Office of the Union received the visit of many delegates of OAPI member States and discussed with them the steps to be taken for the ratification of the revised *Accord de Bangui* and the accession to the UPOV Convention. It also prepared and transmitted an information document on varieties containing genes that would prevent the harvested seed from germinating.

78. Conference of Ministers of Agriculture of West and Central Africa (CMA/AOC)—From November 24 to 26, the Vice Secretary-General participated in the *Comité Technique de Suivi* of the Conference of Ministers of Agriculture of West and Central Africa (CMA/AOC) and in the Conference of Ministers, which were held in Abidjan (Côte d'Ivoire). The Conference recommended the member States of OAPI to ratify the revised *Accord de Bangui* which makes provision for the protection of plant varieties and urged its other member States to enact legislation conforming with the 1991 Act of the UPOV Convention.

79. East Africa—On January 18 and 19, the Vice Secretary-General participated in a workshop in Kampala (Uganda) on the impact of intellectual property rights on trade and agriculture in East Africa organized by the Agricultural Biotechnology Support Project (ABSP) of Michigan State University (United States of America), in cooperation with the Uganda National Council for Science and Technology, and with funding from USAID. During the course of the workshop he had discussions with: Dr. Robert N. Mshana, Executive Secretary, a.i., Science and Technology Research Commission, Organization of African Unity; Mr. Daudi B. Npiri, Agricultural Commissioner for Research and Training, Ministry of Agriculture and Cooperatives, Tanzania; Dr. Sabuni M. Mbaga, Acting Assistant Commissioner, Crop Development Department, of the same Ministry; and Dr. Bellah Mpofu, Head, Seed Services, Zimbabwe.

80. Burundi—On May 3, the Office of the Union wrote to Mr. Innocent Sabushimike, Director General of Industry, Ministry of Commerce, Industry and Tourism, and to Mr. Aloys Katihabwa, Director of the Department of Industrial Studies and Documentation of the same Ministry, to provide information on plant variety protection and UPOV.

81. Comoros—On May 3, the Office of the Union wrote to Mr. Oussoufa Haribou, Head of Section, Ministry of Energy, Industry and Handicrafts, to provide information on plant variety protection and UPOV.

82. Côte d'Ivoire—On June 3, an official of the Union wrote to Mr. Nagolo Soro, Director of Industrial Development, Ministry of Planning and Industrial Development, on the procedure for accession to UPOV.

83. Djibouti—On May 3, the Office of the Union wrote to Mr. Othman Aden Ahmed, *Chargé de mission*, Ministry of Commerce and Industry, and to Mr. Ali Ali Ahmed Ali, Head of the Industrial Development Section of the same Ministry, to provide information on plant variety protection and UPOV.

84. Ethiopia—On April 13, the Vice Secretary-General wrote to Mr. Abebe Belachew, of the newly established National Seed Industry Agency of Ethiopia, informing him that the Office of the Union was sending an extensive collection of UPOV materials to assist in the operations of his new office.

85. On July 7, the Office of the Union wrote to Mr. Getinet Gebeybu, General Manager, National Seed Industry Agency, to provide information on plant variety protection and UPOV.

86. Ghana—On November 19, the Vice Secretary-General wrote to Mrs. J. Oware, Principal State Attorney, Registrar General's Department, with the comments of the Office of the Union on a draft plant variety protection Bill.

87. Madagascar—On January 19, the Office of the Union sent information on plant variety protection and UPOV to Mrs. Yannick Ariane Rabemanantsoa Rasoarimanana, Secretary General of the Ministry of Agriculture and National Coordinator of the Seed Sector of Madagascar.

88. On May 3, the Office of the Union wrote to Mr. Julien Velontrasina, Director General of the Malagassy Industrial Property Office (OMAPI), and to Mrs. Malka Fleurette Miangozara, Head of the Multilateral Relations Section, Ministry of Commerce and Consumption, to provide information on plant variety protection and UPOV.

89. On August 30, the Office of the Union received the visit of H.E. Mr. Rija Rajohnson, Minister for Water Resources and Forestry, and Mr. Nomenjanabary A. Andriamanandrata, Director of the Sustainable Management of Forestry Resources, Ministry of Water Resources. They were accompanied by Mrs. Lisa Dean, Country Director, CARE International Madagascar, Mr. Alexander A.JF. Kroll, Ki, Plant International, and Mr. Alex Rübel, Director of the Zoo of Zurich (Switzerland). The discussions pertained to the contribution which plant variety protection offers in respect of biodiversity concerns.

90. On September 3, the Office of the Union received the visit of Mr. Lala Christian Michel Razafimandimby, Director of Communication, Cabinet Raketamanga.

91. On September 20 and 28, the Office of the Union received the visit of Mrs. Lalao Raketamanga, Director General of OMAPI, and provided information on plant variety protection.

92. On December 1, the Office of the Union received the visit of Mrs. Lalao Raketamanga and Mr. Alfred Rakotonjanahary, Director General of the National Office for Environment.

93. Mauritius—On February 17, the Vice Secretary-General received a visit from Professor Manrakhan, Head of the Food and Agricultural Research Council, and of Mr. Maghespren Chinappen, Principal Research and Development Officer, Ministry of Agriculture Food Technology and National Resources. He discussed their Government's proposals to enact a *sui generis* law for the protection of new plant varieties.

94. On September 2, the Office of the Union was informed by Mr. Maghespren Chinappen that it had been suggested that enabling provisions be included in the Plant Act to expedite the introduction of plant variety protection.

95. On November 9, the Vice Secretary-General received the visit of Mr. Maghespren Chinappen, who reported that Mauritius planned to add provisions to its new seed law enabling the preparation of provisions establishing a plant variety protection system.

96. On December 3, the Office of the Union sent comments to Mr. Maghespren Chinappen on the proposed amendments to the Plant Act designed to provide the basis for the plant variety protection system.

97. Rwanda—On May 3, the Office of the Union wrote to Mr. Theogene Munyazikwiye, Head of Division, Ministry of Youth, Sports, Culture and Professional Training, and to Mr. Innocent Twagirayezu, Attaché to the Directorate of Industry, Ministry of Commerce, Industry and Tourism, to provide information on plant variety protection and UPOV.

98. Zimbabwe—On April 14, the Vice Secretary-General wrote to Dr. Bellah Mpofu, Head, Seed Services, Ministry of Agriculture, with the comments of the Office of the Union on a draft Bill to amend the plant variety protection law of Zimbabwe so as to meet the comments of the Council of UPOV.

99. On August 25, the Vice Secretary-General wrote to Dr. Bellah Mpofu with the comments of the Office of the Union on the draft Bill.

States and Organizations of Latin America and the Caribbean

100. Caribbean—On October 15, the Office of the Union transmitted documents to Mrs. Barbara Graham for the purposes of a seminar on Caribbean Task Force to Facilitate Preparation of a Legal Frameork to Enforce Intellectual Property Rights in Agriculture organized by the Inter-American Institute for Cooperation in Agriculture (IICA) in St. Lucia from October 18 to 21, 1999.

101. Central America—From January 19 to 21, an official of the Union participated in a Workshop in San José, Costa Rica, on Plant Variety Protection Laws. The workshop provided an opportunity for detailed discussions with official representatives of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua and Panama.

102. Barbados—On September 28, the Office of the Union received the visit of Mr. Pat K.H. Cheltenham, Chairman of the Advisory Committee on Intellectual Property, and Mrs. Maureen Crane-Scott, Registrar, Corporate Affairs and Intellectual Property Office.

103. On October 27, the Vice Secretary-General met the Registrar of the Corporate Affairs and Intellectual Property Office, and the Permanent Secretary, Dr. Winston Small, of the Ministry of Agriculture and Rural Development. He subsequently participated in a meeting of ministries and agencies interested in plant variety protection organized by the Ministry of Industry and International Business, which was chaired by Mr. Pat Cheltenham.

104. On October 28, the Vice Secretary-General met Ms. Cynthia Herbert, Deputy Chief Parliamentary Counsel.

105. Colombia and Peru—From February 8 to 12, a training course for Mrs. Sylvia Teresa Bazan Leigh of the *Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual* (INDECOPI) of Peru, organized at the *Instituto Colombiano Agropecuario* (ICA), in Bogota (Colombia), was funded by the Office of the Union.

106. Cuba—On October 5, in connection with the National Seminar on Plant Variety Protection, organized by the Cuban Industrial Property Office in cooperation with UPOV, an official of the Union met Mrs. Rosa Elena Simeon Negrin, Ministry of Science and Technology.

107. On October 6, the official of the Union visited the Institute for Basic Crop and Agricultural Research (INIFAT) with a specialist from the Cuban Industrial Property Office.

108. Dominica—On February 10, the Vice Secretary-General wrote to Ms. S.M.A. Segopolo, Chief Parliamentary Draftsman, concerning her country's plant variety protection Bill.

109. On December 2, the Vice Secretary-General received a visit from the Hon. Anthony P. La Ronde, Attorney General, who expressed interest in seminars on the subject of plant variety protection, both for his country and for the members of the Organization of Eastern Caribbean States.

110. Jamaica—On August 27, the Secretary-General wrote to Mr. Phillip Paulwell, Minister for Commerce and Technology, concerning a proposed mission to Jamaica in October.

111. On September 23, the Vice Secretary-General received the visit of Mr. Phillip Paulwell, Minister, Ms. Diane Daley, Legal Director, Copyright Unit, and Ms. Nicole Foga, Legal Advisor, Ministry of Commerce and Technology. They discussed the preparation of a plant variety protection law and other developments in intellectual property in Jamaica.

112. On October 25, the Vice Secretary-General met in Kingston, Mr. Phillip Paulwell, Minister of Commerce and Technology, to discuss proposed legislation on plant variety protection. He also participated in a meeting of representatives of agencies interested in the protection of new varieties of plants, organized by the Ministry of Agriculture.

113. Nicaragua—On January 22, an official of the Union visited Managua City for discussions with Dra. Maria Solédad Perez de Ramirez, Director, Intellectual and Industrial Property Office, on the text of the draft law on plant variety protection prior to its being sent to the National Assembly.

114. During the week from October 18 to 22, the Office of the Union was in touch with officials of the Directorate of Competition and Transparency in the Markets concerning the debate in the National Assembly on the subject of plant variety protection, which culminated in the adoption of a new law on October 21.

115. Suriname—On November 9, the Vice Secretary-General received a visit of Mrs. Yvonne Roeplal-Soeratram, Head, Bureau of Industrial Property, Ministry of Justice and Police, who discussed the steps to be taken by the Government of Surinam to prepare a plant variety protection law.

States of Asia and the Pacific

116. Bhutan—On September 15, the Vice Secretary-General received the visit of Mr. Sohan Tobgay, Second Secretary in the Permanent Mission of Bhutan in Geneva.

117. India—On January 21, a delegation from the Government of Haryana State, India, comprised of Ms. Krishna Gehlawat, Minister of State for Agriculture, Ms. Shakuntala Jakhu, Director of Agriculture, Mr. Hem Chander Disodia, Commissioner and Secretary, Dr. Kartar Singh, Director of Horticulture, Panchkula, and Mr. Hawa Singh Lohan, Project Director, Integrated Watershed Development Project (Hills), visited WIPO. An official of the Union made a presentation on plant variety protection and UPOV.

118. On February 16, the Vice Secretary-General received a visit from Ms. Dolly Chakrabarty, Deputy Secretary Seeds, Ministry of Agriculture and Cooperatives, who explained that her Government's proposals were now ready in the form of a Bill, but that it was unlikely to be able to present the Bill to Parliament and complete the parliamentary procedure by April 24, 1999.

119. On April 12, the Vice Secretary-General wrote to Mr. Ramesh Jain, Additional Secretary, Ministry of Agriculture, with comments on an outline of proposed Indian legislation.

120. On April 22, the Vice Secretary-General was a guest at a reception given by the Ambassador and Permanent Representative of India in Geneva, Mrs. Savitri Kunadi, on the occasion of the visit to Geneva of Mr. N.K. Singh, Cabinet Secretary in the Indian Government.

121. On September 17, the Vice Secretary-General received the visit of Mr. Sharat Sabharwal, Deputy Permanent Representative of India in Geneva, with whom he discussed the closing of the 1978 Act to further accessions.

122. On October 13, the Vice Secretary-General gave a presentation on UPOV to five senior officials of the Agriculture Directorate of the Governments of Indian States.

123. On December 17, the Office of the Union received the information from Ms. Dolly Chakrabarty that the Protection of Plant Varieties and Farmer's Rights Bill, 1999, had been introduced in the Loc Sabha on December 14 and had been referred to a joint committee of both Houses of Parliament.

124. Fiji—On August 27, the Vice Secretary-General wrote to Mr. Isikili Mataitoga, Ambassador of Fiji in Brussels, with information on the UPOV Convention.

125. Mongolia—On September 23, the Vice Secretary-General received a visit of Mr. Gundegmaa Jargalsaikhan, responsible for law and international affairs in the Intellectual Property Office of Mongolia, for discussions on the protection of plant varieties in his country.

126. Republic of Korea—On August 27, the Vice Secretary-General wrote to Mr. Kim Sung Hun, Minister for Agriculture and, concerning the procedure for seeking the advice of the Council of UPOV on the conformity of his country's law with the 1991 Act.

127. Seychelles—On December 1, the Vice Secretary-General wrote to Mr. William M. Bell, Director, Legal Affairs and Research, Ministry of Foreign Affairs, with information on plant variety protection.

128. Singapore—On September 23, the Vice Secretary-General wrote to Ms. Liew Woon Yin, Registrar of Trade Marks and Patents of the Intellectual Property Office, concerning the protection of plant varieties in Singapore.

129. Thailand—On December 17, the Vice Secretary-General wrote to Mr. Wichar Thitiprasert, Director of the Plant Varieties Protection Office, Department of Agriculture, in response to his inquiry concerning the procedure for becoming a member State of UPOV.

130. Vanuatu—On October 18, the Office of the Union provided information on plant variety protection to Mrs. Patricia Simeoni, Vanuatu Agricultural Research and Training Centre, Department of Agriculture.

States and Organizations of Europe and Central Asia

131. Community Plant Variety Office (CPVO)—On September 28, the Vice Secretary-General attended a meeting of the Administrative Council of CPVO in Angers (France).

132. On December 13, the Vice Secretary-General and an official of the Union, took part in a meeting of the Administrative Council of the CPVO in Angers (France).

133. CIS Countries and Central and Eastern Europe—From February 8 to 12, an official of the Union participated in a Symposium on Seed Production in CIS Countries and in the Region of Central and Eastern Europe in Moscow (Russian Federation). During the symposium he met representatives of plant variety protection offices and senior officials from the Ministries of Agriculture of Armenia, Belarus, Bulgaria, Kyrgyzstan, Latvia, the Republic of Moldova, the Russian Federation, Tajikistan, Ukraine and Uzbekistan. He made two presentations on UPOV and plant variety protection.

134. Azerbaijan—On September 21, the Vice Secretary-General received a visit from Mr. Mir Yagub Seyidov, Head of the Patent Office of Azerbaijan, with whom he discussed the procedure for accession to the UPOV Convention.

135. Belarus, - On January 6, an official of the Union discussed with Mr. Valery I. Kudashov, Chairman of the Belarus State Patent Office, and other officials of his office, the accession of Belarus to the UPOV Convention.

136. On November 11, the Vice Secretary-General and an official of the Union, visited Minsk and met Mr. Yuri D. Moroz, Minister of Agriculture and Food, and officials of the Ministry, to discuss the accession of Belarus to the 1991 Act of the UPOV Convention. He subsequently participated in a meeting at the Belarus Patent Office, chaired by Mr. Valery Kudashov, its Chairman, with the participation of Mr. Leonid Voronetskiy, an official of the Cabinet of Ministers.

137. On November 12, the Vice Secretary-General and an official of the Union visited the Belarus Research Institute of Arable Farming and Fodder, at Zhodino, and gave a presentation on plant variety protection to some 26 researchers at agricultural research institutes of Belarus.

138. Croatia—On December 9, the Office of the Union wrote to Mrs. Kruna Cermak Horbek, Advisor, Ministry of Agriculture and Forestries, with suggestions concerning adjustments that were necessary to bring the law of Croatia into conformity with the 1991 Act.

139. Estonia—On January 29, the Office of the Union wrote to Mrs. Pille Ardel, Head of the Variety Control Department, Estonian Plant Protection Inspectorate, submitting comments and proposals on the draft of the changes to be made in the Plant Variety Rights Act.

140. Georgia—On September 22, the Vice Secretary-General received the visit of Mr. David Gabunia, Director General of the Georgian Patent Office, with whom he discussed the regional seminar that was to take place in his country from October 5 to 7.

141. Kazakhstan—On July 19 and 20, the Vice Secretary-General and an official of the Union visited Almaty. They had discussions Mrs. Rauschan Alchimbaeva, Deputy Director of the National Patent Office, from whom they learned that the plant variety protection law of Kazakhstan had passed through both Houses of the Legislature and awaited only the signature of the President. They also visited the National Academic Centre for Agrarian Research of the Ministry of Science and Higher Education, and the Iliskaya Crop Variety Research Centre of the Kazakh Institute of Agriculture and the National Headquarters of the State Commission for Agriculture Variety Testing.

142. On September 22, the Vice Secretary-General received a visit from Mr. Tolesh Kaudyrov, Director of the National Patent Office of Kazakhstan, and Mrs. Raushan Shan Alchimbaeva.

143. Former Yugoslav Republic of Macedonia—On August 23 and 24, the Office of the Union received a visit from a delegation of the Ministry of Agriculture, Forestry and Water Resources Management consisting of Mrs. Verica Dimaprovska, Advisor to the Minister, Ms. Roza Nakova, Inspector, and Mrs. Ljubica Trencevska. They discussed in detail the text of a draft seed law which would incorporate provisions designed to conform with the 1991 Act.

144. Tajikistan—On August 24, the Secretary-General wrote to Mr. Sh. Kabirov, Minister for Agriculture of Tajikistan, informing him that the subject of the conformity of the law of Tajikistan with the 1991 Act of the UPOV Convention would be placed upon the agenda of the October Council session.

145. Turkey—On February 9, the Vice Secretary-General wrote to Mr. Bahattin Bozkurt, Director, Seed Registration and Certification Centre, Ministry of Agriculture and Rural Affairs, concerning his country's draft plant variety protection Bill.

146. On April 15, the Vice Secretary-General wrote to Mr. Bahattin Bozkurt with the comments of the Office of the Union on the Bill.

147. Turkmenistan—On July 22 and 23, the Vice Secretary-General and an official of the Union traveled to Ashgabat, where they had discussions with Dr. Reshit Agabaev, Chairman, and Dr. Geldy Gurbanov, Deputy Chairman, Patent Office of Turkmenistan, and with Mr. R. Annaev, Head, Department of Plant Protection, and Mr. A. Durdyev, Head, Department of Scientific Support, Ministry of Agriculture. They subsequently visited the Institute of Experimental Biology and the Protection of Plants where they met its Director, Mr. Dovlet Babayev.

148. On September 21, the Vice Secretary-General received a visit from Dr. Geldy Gurbanov, Deputy Chairman of the Patent Office of Turkmenistan, and discussed the draft law for the protection of plant varieties which was under discussion in his country.

149. Uzbekistan—On March 5, the Vice Secretary-General wrote to Dr. Akil A. Azimov, Director, State Committee for Science and Technology of Uzbekistan, with the comments of the Office of the Union on the Law of Selection Achievements of his country.

150. On July 21, the Vice Secretary-General and an official of the Union visited Tashkent, where they had discussions with Mr. Akil A. Azimov and with Mr. Zayr Z. Ziyatov, Chairman, and Mr. Takhir B. Berdimuradov, Deputy Chairman, State Commission for Variety Testing, who announced that they proposed to modify their national law to conform with the 1991 Act of the UPOV Convention before joining the Union.

151. Yugoslavia—On February 16, the Vice Secretary-General received a visit from Dr. Jan Kisgeci, Director, Federal Institute for Plant and Animal Genetic Resources, together with staff from his Institute. Dr. Kisgeci left a copy of a draft plant variety protection law, modified so as to take into account earlier comments from the Office of the Union.

VII. RELATIONS WITH INTERNATIONAL ORGANIZATIONS

Governmental and Semi-Governmental Organizations

152. World Intellectual Property Organization (WIPO)—On January 22, the Vice Secretary-General and officials of the Office of the Union conducted an internal briefing session on UPOV and the UPOV Convention for staff of the Cooperation for Development Sector of WIPO.

153. On March 23, an official of the Union presented a lecture on Article 27.3(b) of the TRIPS Agreement and plant variety protection at a Symposium in Bangui (Central African Republic) on the Implementation of the TRIPS Agreement organized jointly by WIPO and WTO for French-speaking African countries.

154. On May 11 and 12, an official of the Union participated in the National Seminar in Abidjan (Côte d'Ivoire) on the TRIPS Agreement organized by WIPO in cooperation with the local authorities; he made a presentation on Article 27.3(b) of the TRIPS Agreement and plant variety protection.

155. On November 12, an official of the Union presented a lecture on plant variety protection at the session in French of the WIPO Academy on Intellectual Property.

156. World Trade Organization (WTO)—On July 7 and 8, an official of the Union participated as an observer, in Geneva, in a session of the (WTO) Council for TRIPS.

157. On October 14, the Secretary-General provided to the Chairman of the Council for TRIPS, Ambassador Carlos Perez de Castillo, a report on the technical assistance activities of UPOV relevant to the implementation of the TRIPS Agreement.

158. Convention on Biological Diversity (CBD)—On April 16, an official of the Union wrote to the Secretariat of the Convention on Biological Diversity providing comments on a paper entitled "Consequences of the use of the new technology for the control of plant gene expression for the conservation and sustainable use of biological diversity" that was eventually submitted to the fourth meeting of the Subsidiary Body for the Provision of Scientific, Technical and Technological Advice (SBSTTA) held in Montreal from June 21 to 25.

159. On June 4, the Office of the Union wrote to the Secretariat of the Convention on Biological Diversity to provide comments on a document entitled "The relationship between intellectual property rights and the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights and the Convention on Biological Diversity," that was to be submitted to the Intersessional Meeting on the Operation of the Convention (June 28 to 30, 1999, Montréal, Canada).

160. Food and Agriculture Organization of the United Nations (FAO)—From April 19 to 23, an official of the Union participated as an observer in the eighth regular session, in Rome (Italy), of the (FAO) Commission on Genetic Resources for Food and Agriculture.

161. Organisation for Economic Co-operation and Development (OECD)—From May 19 to 21, an official of the Union participated as an observer, in Paris, in the Annual Meeting of the Representatives of the Designated Authorities responsible for the implementation of the OECD Schemes for the Varietal Certification of Seeds Moving in International Trade.

162. Consultative Group for International Agricultural Research (CGIAR)—On August 31 and September 1, the Vice Secretary-General attended a meeting, in The Hague (Netherlands), of the Central Advisory Service on Proprietary

Technology of the CGIAR, organized by the International Service for National Agricultural Research (ISNAR).

163. International Centre for Agricultural Research in Dry Areas (ICARDA)—On May 8 and 9, the Union was represented by the Vice-Secretary General and an official of the Union in a Workshop in Cairo on Plant Variety Protection: Current Status and Implications for the Development of the Seed Industry in WANA (West Asia and North Africa), organized ICARDA. A presentation was made by an official of the Union on "Acceding to the UPOV Convention: How and Why?"

164. Inter-American Institute for Cooperation in Agriculture (IICA)—On January 21, an official of the Union received the visit of Mr. Enrique Alarcon, Director of the Department of Science and Technology and Natural Resources, IICA, San José (Costa Rica).

165. International Plant Genetic Resources Institute (IPGRI)—On March 8, the Vice Secretary-General participated in a Policy Workshop in Rome (Italy) for the Board of Trustees of IPGRI. He presented a paper on plant variety protection.

166. On March 9, the Vice Secretary-General participated in the thirteenth IPGRI Board Meeting and the tenth Board Meeting for the International Network for the Improvement of Banana and Plantain (INIBAP) in Rome. The Board Meetings coincided with a special event designed to celebrate the twenty-fifth Anniversary of the formation of IPGRI and its predecessor, the International Board for Plant Genetic Resources. The Board endorsed a strategic objective of IPGRI which was to secure closer relations with UPOV.

167. International Service for National Agricultural Research (ISNAR)—On September 9, the Vice Secretary-General participated in a Workshop on the Impact of Globalization on Agricultural Research and Development Strategies in Developing Countries in The Hague (Netherlands), organized by ISNAR.

168. International Vine and Wine Office (OIV)—On February 16, the Office of the Union transmitted a note on plant variety protection to Mr. Georges Dutruc-Rosset, Director General, OIV, for submission to the Expert Group on Vine Breeding at its session of March 9.

169. World Seed Conference 1999—From September 6 to September 8, the Vice Secretary-General participated in the World Seed Conference 1999, in Cambridge, United Kingdom, co-organized by the International Seed Testing Association (ISTA), FIS/ASSINSEL, OECD and UPOV, acting as Session Leader in Session III, which was entitled "Seeds and the Law."

Non-governmental organizations

170. Association of European Horticultural Breeders (AOHE)—On February 5, an official of the Union participated, in Paris (France), in the General Assembly of AOHE and made a presentation on the UPOV Convention and recent developments.

171. International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL) and International Federation of the Seed Trade (FIS)—From May 30 to June 4, the Vice Secretary-General took part in the FIS/ASSINSEL World Congresses in Melbourne, (Australia).

172. Licensing Executives Society International (LESI)—On March 2, the Vice Secretary-General participated in a meeting between officials of WIPO and Mr. Planton Mandros, President, Mr. Heinz Goddar, President Elect, and Mr. Tom Small and Mr. Dennys Watson, Co-Chairs, of LESI, who wished to discuss the results of the joint WIPO-UPOV-WTO Symposium and progress on the review of Article 27.3(b) of the TRIPS Agreement.

VIII. OTHER EXTERNAL RELATIONS ACTIVITIES

173. On March 5, an official of the Union lectured on plant variety protection at the Federal Intellectual Property Institute (OFPI) in Bern (Switzerland).

174. On March 18, the Vice Secretary-General, in Bangkok, took part in a live telephone debate with Professor Johnson Ekpere, Consultant to the Organization of African Unity (OAU) in Lagos, on developments in intellectual property protection relating to plants in Africa. The discussion was broadcast by the BBC World Service.

175. On March 30, the Vice Secretary-General participated in a meeting of the Organizing Committee of the World Seed Conference held at the Swiss Federal Agricultural Research Centre at Changins (Switzerland).

176. On April 1, the Vice Secretary-General attended the funeral of Mr. Victor Desprez at Cappelle-en-Pévèle (France), a Life President of the International Federation of the Seed Trade and an outstanding figure in the world seed industry.

177. On April 8, the Vice Secretary-General corresponded with Mr. Sunil Archak, Researcher, National Research Centre on DNA Fingerprinting, New Delhi, on the subject of *CoFab*, a draft of a proposed international convention on the protection of plant varieties for developing countries, which is promoted by certain NGOs.

178. On April 23, the Vice Secretary-General took part in a meeting in Vevey, Switzerland, organized by the Quaker United Nations Office in Geneva, entitled "Choosing *Sui Generis* Systems: Options and Processes."

179. On May 14, an official of the Union lectured, in Wageningen (Netherlands), at the Third International Course on Plant Variety Protection organized by the Centre for Plant Breeding and Reproduction Research (CPRO-DLO).

180. In the week of June 14, the Office of the Union received the visit of Mrs. Jayashree Watal, Visiting Scholar, Institute for International Economics, Washington D.C., who was preparing a book on the TRIPS Agreement and developing countries.

181. On July 1, an official of the Union lectured in a post-graduate course on intellectual property held by the Federal Institute of Technology, Zurich (Switzerland).

182. On June 10 and 11, the Vice Secretary-General and an official of the Union lectured in the Seed Policies and Regulations Harmonization Training Program for Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan, organized under the Cochran Fellowship Program of the United States Department of Agriculture at the Seed Science Center, Iowa State University, Ames, Iowa. They had discussions with officials responsible for seed policy, including plant variety protection, in the participating countries.

183. On November 3, the Vice Secretary-General participated in the East European Seed Trade Meeting in Prague, organized by the Czech and Moravian Plant Breeders and Seed Trade Association, and gave a general presentation on plant variety protection under the UPOV Convention.

184. On November 25, an official of the Union participated as a panelist in a discussion on *L'Introduction de plantes transgéniques en agriculture: évaluation et critères de décision* at a course organized by the *Centre International de Hautes Études Agronomiques Méditérranéennes* (CIHEAM) in Saragossa (Spain).

IX. PUBLICATIONS

185. The Office of the Union published:

(a) an Arabic version of the UPOV Model Law on the Protection of New Varieties of Plants;

(b) updated editions, covering every event affecting the composition of the Union, of the information leaflet on UPOV and plant variety protection in English, Arabic, Chinese, French, German, Russian and Spanish;

(c) one supplement to Part I of the "Collection of Important Texts and Documents" in English, French, German and Spanish;

(d) two issues of the periodical *Plant Variety Protection*;

(e) six update discs in the series constituting the UPOV central database (*UPOV-ROM Plant Variety Database*).

MEMBER STATES OF THE UNION

(December 31, 1999)

State	Date of Signature[1]	Date of Deposit of Instrument[1, 2]	Date Upon Which State Became Bound[1]
Argentina	- - - -	- - November 25, 1994 -	- - December 25, 1994 -
Australia	- - - -	- - February 1, 1989 December 20, 1999	- - March 1, 1989 January 20, 2000
Austria	- - - -	- - June 14, 1994 -	- - July 14, 1994 -
Belgium	December 2, 1961 November 10, 1972 October 23, 1978 March 19, 1991	November 5, 1976 November 5, 1976 - -	December 5, 1976 February 11, 1977 - -
Bolivia	- - - -	- - April 21, 1999 -	- - May 21, 1999 -
Brazil	- - - -	- - April 23, 1999 -	- - May 23, 1999 -
Bulgaria	- - - -	- - - March 24, 1998	- - - April 24, 1998
Canada	- - October 31, 1979 March 9, 1992	- - February 4, 1991 -	- - March 4, 1991 -
Chile	- - - -	- - December 5, 1995 -	- - January 5, 1996 -
China	- - - -	- - March 23, 1999 -	- - April 23, 1999 -

1 *1st line*: International Convention for the Protection of New Varieties of Plants of December 2, 1961
2nd line: Additional Act of November 10, 1972
3rd line: Act of October 23, 1978
4th line: Act of March 19, 1991.

2 of ratification where the State has signed the Convention or the Additional Act, as the case may be; of ratification, acceptance or approval if the State has signed the Act of 1978; of accession where it has not signed the text concerned.

State	Date of Signature[1]	Date of Deposit of Instrument[1, 2]	Date Upon Which State Became Bound[1]
Czech Republic3	- - - -	- - - -	- - January 1, 1993 -
Denmark	November 26, 1962 November 10, 1972 October 23, 1978 March 19, 1991	September 6, 1968 February 8, 1974 October 8, 1981 April 26, 1996	October 6, 1968 February 11, 1977 November 8, 1981 April 24, 1998
Ecuador	- - - -	- - July 8, 1997 -	- - August 8, 1997 -
Finland	- - - -	- - March 16, 1993 -	- - April 16, 1993 -
France	December 2, 1961 November 10, 1972 October 23, 1978 March 19, 1991	September 3, 1971 January 22, 1975 February 17, 1983 -	October 3, 1971 February 11, 1977 March 17, 1983 -
Germany	December 2, 1961 November 10, 1972 October 23, 1978 March 19, 1991	July 11, 1968 July 23, 1976 March 12, 1986 June 25, 1998	August 10, 1968 February 11, 1977 April 12, 1986 July 25, 1998
Hungary	- - - -	- - March 16, 1983 -	- - April 16, 1983 -
Ireland	- - September 27, 1979 February 21, 1992	- - May 19, 1981 -	- - November 8, 1981 -
Israel	- - - October 23, 1991	November 12, 1979 November 12, 1979 April 12, 1984 June 3, 1996	December 12, 1979 December 12, 1979 May 12, 1984 April 24, 1998
Italy	December 2, 1961 November 10, 1972 October 23, 1978 March 19, 1991	June 1, 1977 June 1, 1977 April 28, 1986 -	July 1, 1977 July 1, 1977 May 28, 1986 -

1 *1st line*: International Convention for the Protection of New Varieties of Plants of December 2, 1961
2nd line: Additional Act of November 10, 1972
3rd line: Act of October 23, 1978
4th line: Act of March 19, 1991.

2 of ratification where the State has signed the Convention or the Additional Act, as the case may be; of ratification, acceptance or approval if the State has signed the Act of 1978; of accession where it has not signed the text concerned.

3 Continuation of the accession of Czechoslovakia (instrument deposited on November 4, 1991; State bound on December 4, 1991).

State	Date of Signature[1]	Date of Deposit of Instrument[1, 2]	Date Upon Which State Became Bound[1]
Japan	- - October 17, 1979 -	- - August 3, 1982 November 24, 1998	- - September 3, 1982 December 24, 1998
Kenya	- - - -	- - April 13, 1999 -	- - May 13, 1999 -
Mexico	- - July 25, 1979 -	- - July 9, 1997 -	- - August 9, 1997 -
Netherlands	December 2, 1961 November 10, 1972 October 23, 1978 March 19, 1991	August 8, 1967 January 12, 1977 August 2, 1984 October 14, 1996	August 10, 1968 February 11, 1977 September 2, 1984 April 24, 1998
New Zealand	- - July 25, 1979 December 19, 1991	- - November 3, 1980 -	- - November 8, 1981 -
Norway	- - - -	- - August 13, 1993 -	- - September 13, 1993 -
Panama	- - - -	- - April 23, 1999 -	- - May 23, 1999 -
Paraguay	- - - -	- - January 8, 1997 -	- - February 8, 1997 -
Poland	- - - -	- - October 11, 1989 -	- - November 11, 1989 -
Portugal	- - - -	- - September 14, 1995 -	- - October 14, 1995 -

1 *1st line*: International Convention for the Protection of New Varieties of Plants of December 2, 1961
2nd line: Additional Act of November 10, 1972
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4th line: Act of March 19, 1991.

2 of ratification where the State has signed the Convention or the Additional Act, as the case may be; of ratification, acceptance or approval if the State has signed the Act of 1978; of accession where it has not signed the text concerned.

State	Date of Signature[1]	Date of Deposit of Instrument[1, 2]	Date Upon Which State Became Bound[1]
Republic of Moldova	- - - -	- - - September 28, 1998	- - - October 28, 1998
Russian Federation	- - - -	- - - March 24, 1998	- - - April 24, 1998
Slovakia3	- - - -	- - - -	- - January 1, 1993 -
Slovenia	- - - -	- - - June 29, 1999	- - - July 29, 1999
South Africa	- - October 23, 1978 March 19, 1991	October 7, 1977 October 7, 1977 July 21, 1981 -	November 6, 1977 November 6, 1977 November 8, 1981 -
Spain	- - - March 19, 1991	April 18, 1980 April 18, 1980 - -	May 18, 1980 May 18, 1980 - -
Sweden	- January 11, 1973 December 6, 1978 December 17, 1991	November 17, 1971 January 11, 1973 December 1, 1982 December 18, 1997	December 17, 1971 February 11, 1977 January 1, 1983 April 24, 1998
Switzerland	November 30, 1962 November 10, 1972 October 23, 1978 March 19, 1991	June 10, 1977 June 10, 1977 June 17, 1981 -	July 10, 1977 July 10, 1977 November 8, 1981 -
Trinidad and Tobago	- - - -	- - December 30, 1997 -	- - January 30, 1998 -
Ukraine	- - - -	- - October 3, 1995 -	- - November 3, 1995 -

1 *1st line*: International Convention for the Protection of New Varieties of Plants of December 2, 1961
2nd line: Additional Act of November 10, 1972
3rd line: Act of October 23, 1978
4th line: Act of March 19, 1991.

2 of ratification where the State has signed the Convention or the Additional Act, as the case may be; of ratification, acceptance or approval if the State has signed the Act of 1978; of accession where it has not signed the text concerned.

3 Continuation of the accession of Czechoslovakia (instrument deposited on November 4, 1991; State bound on December 4, 1991).

State	Date of Signature[1]	Date of Deposit of Instrument[1, 2]	Date Upon Which State Became Bound[1]
United Kingdom	November 26, 1962 November 10, 1972 October 23, 1978 March 19, 1991	September 17, 1965 July 1, 1980 August 24, 1983 December 3, 1998	August 10, 1968 July 31, 1980 September 24, 1983 January 3, 1999
United States of America	- - October 23, 1978 October 25, 1991	- - November 12, 1980 January 22, 1999	- - November 8, 1981 February 22, 1999
Uruguay	- - - -	- - October 13, 1994 -	- - November 13, 1994 -

Total: 44 member States

1 *1st line*: International Convention for the Protection of New Varieties of Plants of December 2, 1961
2nd line: Additional Act of November 10, 1972
3rd line: Act of October 23, 1978
4th line: Act of March 19, 1991.

2 of ratification where the State has signed the Convention or the Additional Act, as the case may be; of ratification, acceptance or approval if the State has signed the Act of 1978; of accession where it has not signed the text concerned.

ADDRESSES OF PLANT VARIETY PROTECTION OFFICES IN UPOV MEMBER STATES

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website: www.daff.gov.au/agfor/pbr/pbr.html

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Plant Breeders' Rights Council
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Plant Breeders' Rights Office
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(KEPHIS)
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Fax (254-2) 44 89 40 / 44 00 87
e-mail kephis@nbnet.co.ke

MEXICO

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Telex 75 180 rikilt
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Plant Variety Rights Office
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Fax. (64-3) 325 29 46

NORWAY

Plantesortsnemnda
(The Plant Variety Board)
Frøkontrollen
N-1432 Ås
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Ministry of Agriculture
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SLOVENIA

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TRINIDAD AND TOBAGO

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Intellectual Property Office
Ministry of Legal Affairs
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UKRAINE

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UNITED STATES OF AMERICA

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Patent and Trademark Office
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Página Web : www.chasque.apc.org/inase

Not yet member of UPOV

EUROPEAN UNION

Postal address:
Community Plant Variety Office
P.O. Box 2141
F-49021 Angers Cedex 02
France

Visitors'address:
Les Plateaux du Maine
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F-49004 Angers
France
Tel. (33-2) 41 36 84 50
Fax. (33-2) 41 36 84 60

BOOK REVIEW

VEGETABLE SEED PRODUCTION

Raymond A. T. George

1999. CABI Publishing, Wallingford.
2nd Edition. 328 pp. ISBN 0 85199 336 2. £49.95 US$90.00.

The second edition of this book is welcome as it updates a subject for which there are few published texts. The structure of the book follows that of the first edition: the first seven chapters give background reference and theoretical information, and the remainder of the book provides useful practical information on seed production.

The first chapter describes the role and importance of the vegetable seed industry and summarises the main variety testing and seed quality control systems used world wide. This edition has been updated to take account of recent developments in Image Analysis and biochemical and molecular techniques, although the size and scope of the book limit the level of detail.

The next six chapters cover the basic principles of seed production, agronomy, the harvesting, processing and storage of seed and seed handling and quality control. This is well presented and gives the reader broad information with references for further research.

The remaining chapters provide a useful description of the factors involved in practical seed production for the most important vegetable species or crops. Each chapter is concerned with several crops within a botanical family, pooling common crop information where appropriate. The origin of each crop and its main morphological, or use, types are followed by information on the main factors which affect seed production: agronomy, sowing rates, plant spacing, soils and nutrition, irrigation, flowering, pollination, isolation, previous cropping, roguing stages, seed production systems, harvesting, threshing and processing, seed yield/ grain weight, and pathogens.

This edition is similar in size and content to the first edition published in 1985. The style is clear and concise and is easier to read, but some sentences are very long for readers with English as a second language. Information is generally well laid out with clear headings and page titles, but the position of tables listing the main pathogens in Chapters 8-13, is confusing. Most tables are placed in the text for the next crop, for example, the table of Parsnip pathogens occurs in the text for Parsley.

In chapter 1, in Table 1.4 (classification of runner bean cultivars), the seed colour information in column 3 is not aligned with other columns, despite being accurately presented in the first edition.

References have been brought together at the end of the book, rather than at the end of each chapter. The inclusion of references to UPOV Guidelines for the Conduct of Tests for Distinctness, Uniformity and Stability is welcome, but seven of these were incorrectly numbered and one of these was out of date. In addition, two other references had the author's name spelled incorrectly. The Latin names for crops in the UPOV references are written in normal text, whilst the abbreviations for authors, convarietas and varietas are in italics, which is the reverse of the usual convention.

The number of photographs has been reduced from the first edition, but some of those remaining are out of date and not very useful. The photograph of Pea stipule, leaf, tendril and pod characters on page 194 would be better removed, or updated to show a wider range of variation.

The lists of characteristics for each crop could have been presented in tables and the number reduced to a subset of the most appropriate characters for seed production purposes. It is questionable whether the continuously expressed characters should be included, as they would not be very useful for assessing varietal identity and purity.

Unfortunately information is not consistently up to date throughout the book and some useful basic texts are not included in the references. The

International Code of Nomenclature for Cultivated Plants cited is 1980, whereas the current version was published in 1995. The use of the abbreviation cv. to indicate a variety epithet is no longer used, and although the author states that ISTA stabilised names (1988) are followed, *Brassica campestris* is still being used for Turnip rather than *Brassica rapa*.

Although EEC lists are mentioned in the section on cultivar release, there is no mention of the European Community Plant Variety Office, established in 1995, in the section on Plant Breeders' Rights.

The development of Leek F1 hybrid varieties is mentioned with a 1992 reference, but there is no indication that seed is now sold commercially.

A wide range of crops is included, though much of the book is orientated to temperate European crops, some of which are of minor importance. The technical information on crops has been well researched, but there are some minor gaps. In Pea, although combinable and Mangetout peas are described, there is no mention of semi-leafless or snap (sugar) peas. Some seed production information on sugar peas would have been useful, as maintenance can be difficult due to the development of fungal infection if wet weather is experienced prior to harvest. In addition, roguing at each regeneration is necessary to minimise the high level of spontaneous mutation caused by the pod parchment genes.

Despite the comments above, this edition provides students with broad, well-organised, easily readable information on seed production, seed technology, the seed industry and plant variety and seed systems. Although a book of this size cannot be a comprehensive manual, it is a useful text for people involved in practical seed production.

F. N. Green
Scottish Agricultural Science Agency

CASE LAW

TRANSGENIC PLANT / NOVARTIS II - DECISION OF DECEMBER 20, 1999

Case Number: G 0001/98

DECISION
of the Enlarged Board of Appeal of 20 December 1999

Appellant:
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Representative:
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Referring Decision: Decision of the Technical Board of Appeal 3.3.4 dated 13 October 1997 in case T 1054/96 - 3.3.4.

Composition of the Board: Chairman: P. Messerli

Members: R. Teschemacher
G. Davies
B. Jestaedt
P. Lançon
J.-C. Saisset
P. van den Berg.

SUMMARY OF FACTS AND SUBMISSIONS

I. In its decision T 1054/96 (Transgenic plant/NOVARTIS, OJ EPO 1998, 511), Technical Board of Appeal 3.3.4 referred the following points of law to the Enlarged Board of Appeal under Article 112(1)(a) EPC:

(1) To what extent should the instances of the EPO examine an application in respect of whether the claims are allowable in view of the provision of Article 53(b) EPC that patents shall not be granted in respect of plant varieties or essentially biological processes for the production of plants, which provision does not apply to microbiological processes or the products thereof, and how should a claim be interpreted for this purpose?

(2) Does a claim which relates to plants but wherein specific plant varieties are not individually claimed ipso facto avoid the prohibition on patenting in Article 53(b) EPC even though it embraces plant varieties?

(3) Should the provisions of Article 64(2) EPC be taken into account when considering what claims are allowable?

(4) Does a plant variety, in which each individual plant of that variety contains at least one specific gene introduced into an ancestral plant by recombinant gene technology, fall outside the provision of Article 53(b) EPC that patents shall not be granted in respect of plant varieties or essentially biological processes for the production of plants, which provision does not apply to microbiological processes or the products thereof?

II. The application in suit before the referring Board relates to the control of plant pathogens in agricultural crops. It contains claims to transgenic plants comprising in their genomes specific foreign genes, the expression of which results in the production of antipathogenically active substances, and to methods of preparing such plants. The plants according to the invention are able to kill or inhibit the growth of pathogens. The referring Board considers the above questions relevant to any assessment of the patentability of the claims.

III. In so far as they are relevant to this decision, the considerations of the referring Board may be summarised as follows:

Product claims to plants

The product claims of the application in suit covered plants which might or might not belong to a plant variety. In examining a claim for the purpose of Article 53(b) EPC, the claim had to be construed in the same way as when considering novelty or inventive step. The normal principle for these latter purposes was that a patent was granted for everything falling within the scope of the claim. If a claim also covered varieties, then the patent was granted also for varieties. In so far as a potential embodiment was a variety, it was not patentable.

Board 3.3.4 could not accept the appellant's argument that a claim comprising more than a single variety was permissible. It did not appear to the Board to comply with the normal rules of logic. If the argument were accepted, the prohibition of Article 53(b) EPC could be avoided by drafting a claim to a plant with some characteristics of any actual embodiment left unspecified. The concept that specific embodiments of an in

vention, namely the actual plant varieties, should not be patentable, but that it should be possible to have a broad claim to plants, the scope of which would include all such varieties, was a notion quite alien to patent law in general. It would leave a fundamental anomaly at the heart of patent law as it related to plants.

The legislative history suggested that all problems posed by the patenting of self-reproducing living organisms at the level of higher plants or animals were simply to be by-passed by excluding them from patentability under the EPC. At the time the Strasbourg Patent Convention and the EPC were drafted, it was inconceivable that varieties could be obtained with the help of techniques including microbiological steps. Thus, the legislator could not have intended that plant varieties should be patentable as products of microbiological processes. A genetically-engineered plant variety bore no relation to what was originally meant by the product of a microbiological process, whereas it was virtually indistinguishable in type from conventionally-produced plant varieties. The prohibition in Article 53(b) EPC rather suggested an intention to exclude plant varieties from protection until such time as the legislator reconsidered the matter. Comparing the provisions of Article 52(2) and Article 53(b) EPC, the Board considered that only the latter exclusion concerned developments falling into the legal category of inventions. The case law of the Boards of Appeal in cases relating to Article 52(2) EPC did not offer a useful analogy to the legal status of plant varieties. It concerned situations where subject-matter excluded only "as such" under Article 52(3) EPC was used as part of a combination, which as a whole could be considered to be an invention. Rather, the case law relating to Article 52(4) EPC was considered relevant which found methods, although not expressly directed to a method of treatment of the human body, unpatentable for the very reason that they could also serve as therapeutic methods of treatment of the human body which were excluded from patentability. Even if one essential historical reason for the exclusion of plant varieties was the prohibition of double protection in Article 2(1) of the International Convention for the Protection of New Varieties of Plants (UPOV Convention), this did not necessarily lead to the conclusion that in the application of Article 53(b) EPC its plain wording was to be disregarded.

The mere fact that a plant variety was obtained by means of genetic engineering was no reason to give the producer of such a variety a privileged position. Granting patents for new types of plants developed since Article 53(b) EPC was enacted, in order to meet the interests of the inventors active in this new field, was a matter for a revision conference of the Contracting States, since it would extend the scope of the EPC beyond that originally agreed. Furthermore, it appeared to be inconsistent with subsequent practice as illustrated by the UPOV Convention 1991 and the Community Regulation on Community Plant Variety Rights, both of which provided for the protection of plant varieties produced by genetic engineering. From the draft EC Biotechnology Directive it could be understood that, in all cases where a concept of genetic engineering applicable to more than one variety was the invention, the resulting products should be patentable, even if they were plant varieties. This would lead to the conclusion that the appellant's "more than one variety approach" would be most compatible with the draft Directive. On the other hand, it could also be considered that the draft Directive would be satisfied by permitting claims to the process resulting in the plant.

Claims for essentially biological processes

With regard to the question whether a process can be defined as an essentially biological process excluded under Article 53(b), first half-sentence, EPC, the referring decision considers three approaches:

(a) By analogy with the case law applying to Article 52(4) EPC, only processes comprising exclusively non-biological process steps could be considered as non-essentially biological within the meaning of Article 53(b) EPC.

(b) In T 320/87, it was held that the decision had to be taken on the basis of the essence of the invention taking into account the totality of human intervention, and its impact on the results achieved. As discussed in T 356/93, this would have the consequence that a process containing at least one essential technical step, which could not be carried out without human intervention and which had a decisive impact on the final result, did not fall under the exclusion.

(c) To escape the prohibition of Article 53(b) EPC, the approach adopted in Article 2 No. 2 of the draft EC Biotechnology Directive would require at least one clearly identified non-biological process step but would allow any number of additional essentially biological steps.

The referring Board saw no conflict between, on the one hand, the plant variety indirectly enjoying patent protection under Article 64(2) EPC as the direct product of a patented process for the production of the variety and, on the other hand, the plant variety as such not being patentable under Article 53(b) EPC. Therefore, method claims for the manufacture of plants should not be examined as to their patentability in the light of Article 64(2) EPC.

IV. In conclusion, the position of Board 3.3.4 may be summarized as follows:

Question 1

Product claims:

Irrespective of the wording used in a claim, it was necessary to decide whether the claim was in whole or in part directed to subject-matter for which a patent should not be granted. The fact that plant varieties were covered by a claim could not be ignored. For the purpose of Article 53(b) EPC, a claim was to be construed in the same way as when considering novelty and inventive step. If a potential embodiment was a plant variety, it was not patentable.

Essentially biological processes

The Board did not state a preference for any one of the three approaches outlined in the referring decision to deciding whether a process can be defined as an essentially biological process.

Microbiological processes and their products

Genetically engineered varieties were covered by the prohibition on granting patents for plant varieties under Article 53(b) EPC even if the variety should in some sense be considered the product of a microbiological process.

Question 2

According to the normal rules of logic, it could not be deduced from the plain wording of Article 53(b) EPC that a patent should not be granted for a single plant variety but might be granted if its claim covered more than one variety.

Question 3

Method claims for the manufacture of plants should not be examined as to their patentability in the light of Article 64(2) EPC, ie claims for the manufacture of plants by means of genetic engineering were allowable.

Question 4

Plant varieties obtained by means of genetic engineering did not fall outside the exclusion from patentability in Article 53(b) EPC.

V. The appellant in T 1054/96 suggested answering the questions posed as follows:

Question 1

The instances of the EPO were obliged to take into account relevant provisions of international conventions in their interpretation of the EPC, such as Article 53(b) EPC. Thus, the interpretation of the EPC needed to be brought into line with the terms of the EC
Biotechnology Directive.

Question 2

A claim that did not specifically relate to plant varieties but to transgenic plants having certain
features was allowable in the case of an invention the technical feasibility of which was not confined to a particular plant variety.

Question 3

Article 64(2) EPC should not be considered a bar to patentability when a claim was concerned that related to a method for the production of transgenic plants.

Question 4

The recombinant origin of a plant did not make any difference to the question whether or not a plant variety was excluded from patentability by Article 53(b) EPC.

VI. In support of its position, *inter alia* the appellant described the approach taken by the referring Board as an "infringement test", holding a claim as a whole not patentable if it covered an embodiment which was excluded from patentability by Article 53(b) EPC. Such an approach would contradict the practice of the EPO of granting claims which might encompass aesthetic creations explicitly excluded from patentability according to Article 52(2) EPC. Similarly, a claim to a gene would be excluded under the Board's approach, if the protection extended to a plant variety carrying the gene as now specifically laid down in Article 9 of the EC Biotechnology Directive. In examining the examples in the description, the Board failed to examine whether the contribution to the art in the application as a whole was a true generic invention. If a technical teaching was applicable to plants in general and was not restricted to the provision of one specific plant variety, the applicant should be entitled to broad claims defining this technical contribution, regardless of whether these claims also embraced plant varieties. *Sui generis* protection for individual plant varieties could not give adequate protection for the broadly-applicable technical teaching. In its communication accompanying the summons to oral proceedings, Board 3.3.4 had mentioned the need to prevent discrimination against plant breeders: actually the Board had interpreted Article 53(b) EPC more narrowly than the interested plant breeders' groups ever had, discriminating against technical inventors whose teachings could be exploited by plant breeders without remuneration.

From a technical point of view, Board 3.3.4 was not correct in assuming that a stable insertion of a desired gene into an existing plant variety would lead to another variety which differed from the untransformed starting material only in the desired feature. After the stable integration of the introduced DNA into the genome, several steps of crossing and back-crossing were necessary to arrive at a homogeneous plant which might represent a variety.

In discussing the "more than a single variety" approach, the referring Board did not take due account of the meaning of the notion of plant variety for the relationship between patent protection and *sui generis* plant variety rights. As was evident from decision T 49/83, the crucial issue was whether a specific technical teaching could, in principle, be protected as subject-matter under the special plant varieties protection scheme. If yes, no protection was available under Article 53(b) EPC. If not, the teaching had to be viewed as subject-matter eligible for patent protection.

VII. The President of the EPO took the following position:

Question 1

Product claims

The term "plant variety" had to be ascertained by relying on definitions developed in the plant breeders' rights system. The subject-matter excluded by Article 53(b) EPC was the same as the subject-matter protectable under that system. A group of plants merely characterised by one or more single feature(s) fell short of qualifying as a plant variety. The exclusion of plant varieties should not be extended to cover other product inventions related to plants.
Essentially biological processes

A process for the production of plants was essentially biological if it consisted entirely of natural phenomena, these being

understood as including the methods used by conventional plant breeders, such as crossing or selection.

Microbiological processes

A microbiological process for the production of plants was patentable.

Question 2

A claim which embraced plant varieties without claiming them individually did not fall under the exclusion in Article 53(b) EPC.

Question 3

Article 64(2) EPC should not be taken into account when considering what claims are allowable.

Question 4

Plant varieties were not patentable even if produced by a microbiological process, by modern genetic technology or by a process which was not essentially biological.

VIII. Many statements pursuant to Article 11b of the Rules of Procedure of the EBA were filed.
Statements in favour of the patentability of claims comprising transgenic plants were filed by professional groups in the industrial property field *(epi*, CIPA, Deutsche Vereinigung für gewerblichen Rechtsschutz und Urheberrecht [Fachausschuß für Pflanzenzüchtungen]), Industry Groups (UNICE, BioIndustry Association [UK], European Crop Protection Association), applicants active in the field of plant breeding (PGS, Monsanto) and attorneys.

In general, they stressed that Article 52(1) EPC expressed the general principle that patents should be granted for any inventions. Exceptions to this principle should be construed narrowly.

The wording of Article 53(b), first half-sentence, EPC allowed different interpretations. In interpreting the provision, its purpose and the intention of the legislator had to be taken into account. Apparently, the legislator did not intend to exclude plants in general, otherwise the term "plant varieties" would not have been used to define the field of exclusion. The provision was intended to implement the ban on double protection contained in the UPOV Convention 1961. However, it was not its purpose to exclude subject matter not eligible for protection under the plant breeders' rights system. In particular, it could not have been the intention of the legislator to exclude transgenic plants from patentability since it was not technically feasible to produce such plants at the time the EPC was drafted. Therefore, the term plant varieties in Article 53(b) EPC had the same meaning as in the UPOV Convention and the excluding provision should only apply if such varieties were claimed *per se*. Inventions in the field of genetic engineering of plants had to be considered technical subject-matter. The essence of the invention concerning a transgenic plant was the preparation of the DNA construct which was microbiological in nature. To discriminate against inventors investing their time, effort and resources in the production of improved plants would deprive them of the justified return on their investment.

Regarding question 3, it was submitted that Article 64(2) EPC was related to infringement proceedings to be dealt with by national law and that the provision was no basis for restricting subject-matter eligible for patent protection. In some statements, the view was taken that methods of genetic engineering had to be considered microbiological processes within the meaning of Article 53(b), 2nd half-sentence, EPC. Plant varieties produced by such processes should not fall within the exclusion of the 1st half-sentence of that Article since the provision was not restricted to the products directly obtained by a microbiological process. The opposite view was based on the argument that a microbiological process meant a process involving or performed upon or resulting in microbiological material. According to these criteria, a microbiological process could not result in a plant variety. Special treatment of genetically-produced plant varieties was not justified. IX. The following statements objecting to the patentability of claims comprising transgenic plants were filed:

The Community Plant Variety Office (CPVO) preferred the approach according to which a claim covering, or potentially covering, a plant variety should be rejected whether or not the variety was the product of a microbiological process. The exclusion of plant varieties from patentability would be seriously undermined if it could be circumvented simply by formulating claims sufficiently widely to avoid express reference to an individual plant variety. On the other hand, the CPVO stated that they had no difficulty with the acceptance of claims in relation to plant material not in the fixed form of a plant variety which would admit the possibility of protecting a plant variety containing a patented invention. There was a conflict between Articles 53(b) and 64(2) EPC and it should not be possible to circumvent the former by relying on Article 64(2) EPC if the product of a claimed process was a plant variety. There was no choice but to take Article 64(2) EPC into account when considering whether a claim was "in respect of" a plant variety. If this was the case the claim should be rejected.

X. Greenpeace submitted that it was not admissible to circumvent the exclusion in Article 53(b) EPC by disguising claims to plant varieties by use of broader terms such as plants, species or seed. A narrow interpretation of the provision, allowing claims to plant varieties, would be contrary to both its wording plants, plant varieties or seed as the product of a microbiological process. Furthermore, the patenting of plant varieties was contrary to the position taken by several Contracting States, in particular Germany. In addition, the patenting of seed would have negative social and economic consequences; it would especially disadvantage farmers and traditional plant breeders. Such consequences had to be considered in the framework of Article 53(a) EPC.

XI. Individuals and groups committed to the protection of the environment or animals and similar goals filed over 600 letters. The letters expressed in general terms, and to a large extent in identical wording, the concern of their authors about the grant of patents for animals and plants. They supported the approach taken in T 356/93 and T 1054/96, arguing that

the patenting of plants and animals would be contrary to the wording of Article 53(b) EPC and, therefore, *contra legem*.

REASONS FOR THE DECISION

1. The referral of the points of law is admissible under Article 112(1)(a) EPC.

2. Question 1 is very broad. It overlaps with questions 2 to 4 and covers numerous aspects of the examination of inventions in the field of higher life forms. It seems preferable, therefore, first to deal with the more specific questions 2 to 4. The answers to those questions will demonstrate that a separate answer to question 1 is not required. As concerns the interpretation of the term "essentially biological processes", see point 6 below. Although the referral is considered admissible, it does not follow that all the questions posed need to be answered in the same degree of detail.

3. Question 2

Claims comprising but not individually claiming plant varieties and Article 53(b), 1st half-sentence, EPC 3.1 In considering whether the condition in Article 53(b), 1st half-sentence, EPC that "the patent is in respect of plant varieties" is fulfilled, the referring Board makes a distinction between a substantive and a literal approach. According to the substantive approach as proposed in the referring decision, a patent is said to be granted in respect of plant varieties if a claim covers plant varieties (Reasons, point 16). According to the alternative literal approach, Article 53(b) EPC is satisfied if the words "plant variety" do not appear in a claim.

Clearly, it is not the wording but the substance of a claim which is decisive in assessing the subject-matter to which the claim is directed. However, it does not follow that the subject-matter of a claim may be equated with the scope of a claim. In assessing the subject-matter of a claim, the underlying invention has to be identified. In this respect, it is relevant how generic or specific the claimed invention is. An inventor who has invented fastening means characterised in that they consist of a specific material has invented neither a nail, nor a screw, nor a bolt. Rather his invention is directed to fastening means generally. This is not a question of form but of substance: the applicant may claim his invention in the broadest possible form, ie the most general form for which all patentability requirements are fulfilled. If he has made an invention of general applicability, a generic claim is not the consequence of the verbal skill of the attorney, as the referring decision seems to suggest (Reasons, point 20), but of the breadth of application of the invention.

In the referring decision, it is expressly stated that the invention can be carried out by modifying plants which may or may not be varieties (Reasons, point 12, 13). Furthermore, it is assumed that one of the main applications of the claimed subject-matter is plant varieties (Reasons, point 11). The referring decision does not give any indication that carrying out the invention is restricted to individual varieties to be modified. Nor does the decision suggest that the result of the modification by genetic transformation is necessarily a plant variety.

Varieties have been generally considered to be the result of the breeding process (cf *Böringer*, Industrial Property Rights and Biotechnology, Plant Variety Protection No. 55, June 1988, page 45, point 1.1). In essence, this means they are the result of the processes of selection and crossing, including modern techniques such as cell fusion which do not occur under natural conditions. This seemed self-evident so long as breeding was the only way to obtain new plants. The case law of the EPO has found, drawing on Article 2(2) of the UPOV Convention 1961, that plant varieties means a "multiplicity of plants which are largely the same in their characteristics and remain the same within specific tolerances after every propagation or every propagation cycle" (T 49/83, Propagating material/ CIBA-GEIGY, OJ EPO 1984, 112, Reasons, point 2, confirmed in T 320/87, Hybrid plants/LUBRIZOL, OJ EPO 1990, 71, Reasons, point 13). Under Article 1(vi) of the UPOV Convention 1991, plant varieties are defined as follows:

"Variety means a plant grouping within a single botanical taxon of the lowest 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;"

The definitions in Article 5(2) of the EC Regulation on Community Plant Variety Rights as well as under Rule 23b(4) EPC, which entered into force on 1 September 1999, are identical in substance. The reference to the expression of the characteristics that results from a given genotype or combination of genotypes is a reference to the entire constitution of a plant or a set of genetic information. *(Van der Kooij*, Introduction to the EC Regulation on Plant Variety Protection, London 1997, Article 5, paragraph 2; see *also Byrne*, Commentary on the Substantive Law of the UPOV 1991 Convention, London 1991, page 20 ff).

In contrast, a plant defined by single recombinant DNA sequences is not an individual plant grouping to which an entire constitution can be attributed *(Wuesthoff-Leßmann-Würtenberger*, Handbuch zum deutschen und europäischen Sortenschutz, Weinheim 1999, paragraph 116). It is not a concrete living being or grouping of concrete living beings but an abstract and open definition embracing an indefinite number of individual entities defined by a part of its genotype or by a property bestowed on it by that part. As described in more detail in the referring decision, the claimed transgenic plants in the application in suit are defined by certain characteristics allowing the plants to inhibit the growth of plant pathogens (Reasons, point 11, Annex I, point 8). The taxonomic category within the traditional classification of the plant kingdom to which the claimed plants belong is not specified, let alone the further characteristics necessary to assess the homogeneity and stability of varieties within a given species. Hence, it would

appear that the claimed invention neither expressly nor implicitly defines a single variety, whether according to the definition of "plant variety" in Article 1(vi) of the UPOV Convention 1991, or according to any of the other definitions of "plant variety" mentioned above.

This also means that it does not define a multiplicity of varieties which necessarily consists of several individual varieties. In the absence of the identification of specific varieties in the product claims, the subject-matter of the claimed invention is neither limited nor even directed to a variety or varieties.

3.2 However, this does not answer the question whether or not the exclusion in Article 53(b), 1st half-sentence, EPC applies: the provision "European patents shall not be granted in respect of plant varieties" has to be interpreted. According to the referring Board, it would be illogical to hold that those words mean that a patent should not be granted for a single plant variety but might be granted if its claims were to cover more than one variety (Reasons, point 36).

3.3 The referring Board saw no alternative, when examining a claim for the purpose of Article 53(b) EPC, to construing the claim in the same way as when considering novelty and inventive step (Reasons, point 15). For the sake of clarity, it should be noted that the approach taken by the referring Board is not an "infringement test", contrary to the appellant's submissions. In order to exclude from patenting subject-matter which is not novel or inventive, all embodiments within the claims must be examined. In contrast, the question of infringement arises when a specific embodiment is alleged to be within the scope of the claimed invention. In this case, the features of the allegedly-infringing embodiment have to be compared with the features of the relevant claim according to the rules of interpretation applied by the Courts responsible for deciding on infringement cases. This may include examining whether a feature of the claim is realized in equivalent form.

3.3.1 The referring Board came to its conclusion without refuting an argument based on the wording of the provision: whereas the exclusion for processes is related to the production of plants, the exclusion for products is related to plant varieties. The use of the more specific term "variety" within the same half-sentence of the provision relating to products is supposed to have some meaning. If it was the intention to exclude plants as a group embracing in general varieties as products, the provision would use the more general term plants as used for the processes.

3.3.2 In addition, the referring decision touches on the question whether its approach would apply not only to claims for plants embracing plant varieties but also to claims for genes contained in plant varieties (Reasons, point 22). Indeed, it can be seen as the logical consequence of the referring Board's viewpoint that any genetic material for introduction into a plant would have to be excluded from product protection.

3.3.3 Furthermore, the approach taken by the referring Board cannot be applied consistently to all requirements for patentability. It may be helpful to look at the neighbouring exclusion in Article 53(a) EPC and ask what the situation would be if a claim were to cover something immoral or contrary to "ordre public". Suppose that a claimed invention defined a copying machine with features resulting in an improved precision of reproduction and suppose further that an embodiment of this apparatus could comprise further features (not claimed but apparent to the skilled person) the only purpose of which would be that it should also allow reproduction of security strips in banknotes strikingly similar to those in genuine banknotes. In such a case, the claimed apparatus would cover an embodiment for producing counterfeit money which could be considered to fall under Article 53(a) EPC. There is, however, no reason to consider the copying machine as claimed to be excluded since its improved properties could be used for many acceptable purposes.

A similar situation concerning the requirement of sufficient disclosure in Article 83 EPC may be found in the case law concerning biotechnological inventions. In decision T 361/87 of 15 June 1988 (not published in OJ EPO), it was decided that the non-availability of some particularly effective strains in a class of microorganisms is immaterial so long as other suitable strains are available to the skilled person. This meant that a claim directed to the use of the whole class of microorganisms could be granted, although specific strains comprised in this class were not available to the public. In other words, although specific embodiments covered by the claim could not be carried out, the claim was held allowable (see also T 292/85, OJ EPO 1989, 275, Polypeptide expression/ GENENTECH I). Hence, the anomaly assumed by the referring Board does not exist. Rather, the examples show that the rule assumed by the referring Board that an invention is not patentable because it covers an embodiment which does not fulfil the requirements for patentability is not without exception. Therefore, the answer to the question "which interpretation is the correct one?" has to be given in the light of the context as well as the object and purpose of the provision. It may also be observed that, in the parallel situation of animals in T 19/90 (OJ EPO 1990, 476, Onco-mouse/HARVARD, Reasons, point 4.8), the refusal of the application on the ground that the patenting of animals was excluded under Article 53(b) EPC was set aside and the case was referred back to the Examining Division to examine whether the subject-matter of the application was an animal variety.

3.4 The referring decision states correctly that Article 53(b) EPC is derived from Article 2(b) of the Strasbourg Patent Convention (SPC). The historical background may contribute to an understanding of Article 53(b) EPC since the provisions on patentability thereof follow closely the corresponding provisions in the SPC (*Haertel*, Münchner Gemeinschaftskommentar zum EPÜ, Einführung, München 1984, Geschichtliche Entwicklung, paragraph 28; *Mousseron*, Traité des Brevets, Paris 1984, paragraph 145, at page 165). The provision on plant varieties in the SPC, however, differs in an important respect from its counterpart in the EPC: whereas in Article 53(b) EPC plant varieties are excluded, Article 2(b) SPC stipulates that "the Contracting States shall not be bound to provide for the grant of patents in respect of plant varieties" (emphasis added). In other words, the EPC opted for a particular approach, whereas the SPC left the matter open to national legislators as one of several possibilities.
This open-ended approach in the SPC was provided in order to solve a dilemma for the legislator which would otherwise have existed: on the one hand, SPC Contracting States are

obliged under Article 1 SPC to grant patents for any inventions which are susceptible of industrial application, which are new and involve an inventive step. On the other hand, UPOV member States were allowed under Article 2(1) UPOV Convention 1961 to recognise the right of the breeder by the grant of either a special plant breeders' right or of a patent; however, simultaneous protection for the same botanical genus or species was not allowed. This so-called ban on dual protection (abandoned in the UPOV Convention 1991) made it necessary for member States of the Council of Europe to exclude patent protection for varieties for which plant breeders' rights were obtainable *(Mousseron, supra*, paragraph 429, at page 449; Germany: Denkschrift zum Straßburger Patentübereinkommen, Bundestagsdrucksache 73712, zu Artikel 2, page 379, 1st paragraph). Thus, under the SPC, plant varieties were not regarded *per se* ineligible for patent protection. Rather, this question was left open intentionally (Denkschrift, *supra*, page 378, last full paragraph).

It was clear at the time that processes for the production of higher life forms and the products thereof involved special problems concerning the criteria for patentability, in particular, as regards reproducibility. However, in different European countries, patents were granted for varieties (for Germany see *Wuesthoff*, Biologische Erfindungen im Wandel der Rechtsprechung, GRUR 1977, 404, at page 407; for other countries see *Neumeier*, Sortenschutz und/oder Patentschutz für Pflanzenzüchtungen, Köln 1990, page 31 ff). In implementing Article 2(b) SPC, several Contracting States excluded the grant of patents only for varieties included in the list of varieties annexed to the Plant Varieties Protection Law (Belgium: Article 4(1) n° 1 de la loi du 28 Mars 1984; Germany: § 1(2) Nr. 2 PatG 1968 idF des Sortenschutzgesetzes v. 20. Mai 1968; France: Art. 7(2), paragraphe 4, de la loi n° 68-1, comme modifiee par l'Art. 34 de la loi n° 70-489; Spain: Art. 5(1)(b) of the Law 11/1986 on Patents. See also Groups Reports on Question 93 -Biotechnology, AIPPI Annuaire 1987/V). The UPOV Convention 1961 did not oblige its member States to protect varieties belonging to all botanical genera and species but provided in its Article 4 for the progressive application of its provisions. Therefore, in the early years of UPOV, plant breeders' rights were only available in respect of a few species in the above countries, whereas in respect of the majority of species patentability was not excluded. In summary, it is clear from Article 2(b) SPC and its implementation by some of its Contracting States that this provision was not based on the concept that there should be no patent protection for plant varieties. Rather, it was intended to ensure that Contracting States should not be bound to grant patents for subject-matter for which patents were excluded under the ban on dual protection in the UPOV Convention 1961. This leaves open the question whether the purpose of Article 53(b) EPC differs from the corresponding SPC provision.

3.5 When the legislator drafted the requirements for patentability in the EPC, the basis was the harmonization already achieved by the SPC in the framework of the Council of Europe (Memorandum on the setting up of a European system for the grant of patents, Doc. BR/2/69, section II.1; Reports on the Preliminary Draft Convention for a European System for the Grant of Patents, Luxembourg 1970, General Report, point 5; Article 10(b) of this Draft is identical with the final version of Article 53(b) EPC). In the early nineteen sixties, the work on both Conventions proceeded in parallel. Whereas it was possible for most provisions of the SPC concerning patentability simply to be transferred to the EPC, this was not the case with Article 2(b) SPC since a choice had to be made whether or not to make use of the possible exclusion of patents in respect of plant varieties. It was not appropriate for the legislator to allow the grant of patents for plant varieties in general because some EPC Contracting States offered plant variety protection under the UPOV-System and were prevented under the ban on dual protection from granting patents. Nor was it possible under the EPC to exclude patent protection only in respect of those varieties for which a plant breeders' right was available (the approach taken by Belgium, Germany, France and Spain in their national legislation, see the preceding point). Plant breeders' rights at a European level were not available and at the national level the availability of plant breeders' rights differed from country to country. To take account of the specific situation in each designated State for each individual application would have been contrary to the principle of uniform patent protection in all Contracting States (cf Article 118 EPC). For these reasons, the most obvious choice was to make full use of the possibility in Article 2(b) SPC to exclude the grant of patents in respect of plant varieties entirely *(Mousseron, supra*, paragraph 429, at page 450).

3.6 This background suggests that the purpose of Article 53(b) EPC corresponds to the purpose of Article 2(b) SPC: European patents should not be granted for subject-matter for which the grant of patents was excluded under the ban on dual protection in the UPOV Convention 1961. This is confirmed by the brief remark in the travaux préparatoires to the effect that the provision in the EPC simply follows Article 2 of the Strasbourg Convention (Reports on the Preliminary Draft Convention, *supra*, Report by the British Delegation on Articles 1 to 30, page 12, point 25).

3.7 Accordingly, inventions ineligible for protection under the plant breeders' rights system were intended to be patentable under the EPC provided they fulfilled the other requirements of patentability.

The idea that the exclusion in the EPC should correspond to the availability of protection in UPOV was expressed in the early stages of the preparatory work on the EPC. In the remarks on Article 12 of the *Haertel* Draft 1961 proposing the exclusion of inventions relating to processes of breeding of plant or animal varieties, it was said that it remained to be considered whether the patentability of technical processes for breeding new plants (eg by radiation) had to be taken expressly into the Draft or whether this was self-evident from general principles. Previously, in the *"Haertel* Study" of July 7, 1960 (page 13f), the parallel work on the preparation of the UPOV Convention was mentioned in connection with possible exceptions to patentability.

This corresponds to remarks made by *Pfanner* on Article 2(b) SPC after the majority of member States of the Council of Europe had decided to protect plant varieties by plant breeders' rights and not by patents (Vereinheitlichung des materiellen atentrechts im Rahmen des Europarats, GRUR Int. 1962, 545, at page 548). Moreover, in the EEC "Patents" Working Party the distinction between biological and technical breeding processes was also discussed (Report on the 5th meeting, Doc.

IV/2767/61, page 8). After consultation with interested parties, it was decided to add a clarification to Article 10b of the May 1962 Draft according to which the exclusion did not apply to microbiological processes and the products thereof (Report on the 10th meeting, Doc. 9081/IV/63, page 65). This historical background shows at least an intention to protect by the plant breeders' rights system biological developments for which the patent system was less suited *(Pfanner, supra)* and to keep technical inventions related to plants within the patent system.

There is nothing in the travaux préparatoires to suggest that Article 53(b) EPC could or even should exclude subject-matter for which no protection under a plant breeders rights' system was available. From the plant breeders' side, representations were also made calling for the elements of plant variety protection and patent protection to be harmonized in such a way that together the two forms of protection would constitute a single comprehensive system of industrial property protection for plant innovations permitting neither overlapping nor gaps in the protection of eligible subject-matter *(Böringer, supra,* at point 3.2.3). In this respect, the purpose of Article 53(b) EPC is quite different from the purpose of Article 52(4) EPC. In the latter provision, gaps in the protection of eligible subject-matter are deliberately accepted in order to free from restraint non-commercial and non-industrial medical and veterinary activities (G 5/83, OJ EPO 1985, 64 –Second medical indication/EISAI, Reasons, point 27).

Therefore, the comparison drawn in the referring decision with Article 52(4) EPC (Reasons, points 62 ff) does not assist in arriving at the correct interpretation of Article 53(b) EPC. 3.8 It has already been stated that the subject-matter of a claim covering but not identifying plant varieties is not a claim to a variety or varieties (see above point 3.1). It follows that such an invention cannot be protected by a plant breeders' right which is concerned with plant groupings defined by their whole genome but not by individual characteristics *(Greengrass,* Recent Phenomena in the Protection of Industrial Property, Plant Variety Protection No. 57, 1989, page 28, at page 57). Whereas in the case of a plant variety, the breeder has to develop a plant grouping fulfilling in particular the requirements of homogeneity and stability, this is not the case with a typical genetic engineering invention in a claim such as that referred to in question 2. The inventor in the latter case aims at providing tools whereby a desired property can be bestowed on plants by inserting a gene into the genome of those plants. Providing these tools is a step which precedes the further step of introducing the gene into a specific plant. Nevertheless, it is the contribution of the inventor in the genetic field which makes it possible to take the second step and insert the gene into the genome of any appropriate plant or plant variety. Choosing a suitable plant for this purpose and arriving at a specific, marketable product, which will mostly be a plant variety, is a matter of routine breeding steps which may be rewarded by a plant breeders' right. The inventor in the genetic engineering field would not obtain appropriate protection if he were restricted to specific varieties for two reasons: first, the development of specific varieties will often not be in his field of activity and, second, he would always be limited to a few varieties even though he had provided the means for inserting the gene into all appropriate plants.

3.9 The objections to patentability submitted by Greenpeace under Article 53(a) EPC fall outside the scope of the referred questions. The Board recognizes that these objections raise questions which are of interest to many members of the public. It is, therefore, appropriate to note that Article 52(1) EPC expresses the general principle of patentability for inventions which are industrially applicable, new and inventive (G 05/83, *supra,* Reasons, point 22). The EPO has not been vested with the task of taking into account the economic effects of the grant of patents in specific areas and of restricting the field of patentable subject-matter accordingly. The standard to apply for an exclusion under Article 53(a) EPC is whether the publication or the exploitation of the invention is contrary to *ordre public* or morality. Although the positions adopted in society on genetic engineering are controversial (see eg the contributions in Eposcript Vol. 1, Munich 1993, Genetic Engineering - The New Challenge), there is no consensus in the Contracting States condemning genetic engineering in the development of plants under the above criteria. On the contrary, the Directive of the European Parliament and of the Council on the legal protection of biotechnological inventions (No. 98/44/EC of 6 July 1998 [hereinafter: Biotechnology Directive]) establishes that promotion of innovation in this field is considered necessary in Europe. In particular, Article 12 thereof takes account of the interests of the breeder who cannot acquire or exploit a plant variety right without infringing a patent. Under the conditions of paragraph 3 of the provision, the breeder is entitled to a compulsory licence subject to payment of an appropriate royalty. The possibilities of the patentee to use the patent as a means of restricting access to important breeding material are thereby substantially restricted.

3.10 In summary, according to Article 53(b) EPC, a patent is "in respect of plant varieties" and shall not be granted if the claimed subject-matter is directed to plant varieties. In the absence of the identification of a specific plant variety in a product claim, the subject-matter of the claimed invention is not directed to a plant variety or varieties within the meaning of Article 53(b) EPC. This is why it is, contrary to the conclusions of the referring Board, in agreement with the rules of logic that a patent shall not be granted for a single plant variety but can be granted if varieties may fall within the scope of its claims. The conclusion of the referring Board is based on the premise that a claim is necessarily "in respect of" a certain subject if it may comprise this subject. For Article 53(b) EPC, this interpretation is, as set out above, at odds with the purpose of the provision. It disregards the fact that Article 53(b) EPC defines the borderline between patent protection and plant variety protection. The extent of the exclusion for patents is the obverse of the availability of plant variety rights. The latter are only ranted for specific plant varieties and not for technical teachings which can be implemented in an indefinite number of plant varieties.

This is not a question of arithmetical logic but based on the purpose of plant variety rights to protect specific products which are used in farming and gardening *(Wuesthoff-Leßmann-Würtenberger, supra,* paragraph 96). Similarly, the example given in *amicus curiae* briefs stating that polygamy cannot be allowed if bigamy is forbidden, although plausible at first glance, turns out to be less persuasive. In the same way as the ban on bigamy forbids marrying several persons, it is not per-

mitted to claim several specific plant varieties. It is not sufficient for the exclusion of Article 53(b) EPC to apply that one or more plant varieties are embraced or may be embraced by the claims.

4. Question 3

The relevance of Article 64(2) EPC

Although put more broadly, the question seems to relate to process claims only (see Reasons, point 80, 88). Taking as its starting point that plant varieties must not be covered by claims to plants, the referring Board poses the question whether under Article 64(2) EPC process claims can be allowed when the product directly obtained by the claimed process is or covers a plant variety. In the light of the answer to the preceding question, question 3 appears to have lost its relevance: if a plant variety may be covered by a product claim, there is little room for the argument that protection for the variety derived from a claimed process could be inconsistent therewith. For the avoidance of any doubt, question 3 is answered in conformity with the established case law according to which the protection conferred by a process patent is extended to the products obtained directly by the process, even if the products are not patentable *per se* (Case Law of the Boards of Appeal of the EPO, 3d ed. 1998, II.B.6.1 and 6.2). This practice takes account of the purpose of the provision and is in accordance with its location in the EPC. The requirements on patentability to be examined by the EPO are contained in Part II, Chapter I EPC (Articles 52 to 57); Article 64(2) EPC belongs to Part II, Chapter III, containing provisions concerning the effects of patents and patent applications and is to be applied by the Courts responsible for deciding on infringement cases. The referring Board also comes to the conclusion that Article 64(2) EPC does not affect the examination of claims for the manufacture of plants (Reasons, point 88). The protection of the product obtained by a patented process is of particular importance in situations where product protection is not available *(Hahn*, Der Schutz von Erzeugnissen patentierter Verfahren, Köln 1968, page 196 ff; *Mathély*, Le droit européen des brevets d'invention, Paris 1978, page 368 ff). From this purpose it also becomes clear that the protection of the product obtained by a patented process has nothing to do with product-by-process claims which, although containing process features, belong to the category of product claims, whereas the derived product protection is the effect of a process claim (BGH 1 IIC 136 - Red Dove, Reasons, II.B.2).

5. Question 4

Plant varieties as products of processes using recombinant gene technology

5.1 In answering question 4 one could consider the genetic modification of plant material to be a microbiological process within the meaning of Article 53(b), 2nd half-sentence, EPC. Starting from the assumption that Article 53(b), 2nd half-sentence, EPC is *lex specialis*, it could be concluded that the *lex generalis* in the first half-sentence of the provision does not apply to situations covered by the *lex specialis*.

5.2 Processes of genetic engineering, however, are not identical with microbiological processes. The term microbiological processes in the provision was used as synonymous with processes using microorganisms. Microorganisms are different from the parts of living beings used for the genetic modification of plants. On the other hand, it is true that cells and parts thereof are treated like microorganisms under the current practice of the EPO (T 356/93, Plant cells/PLANT GENETIC SYSTEMS, OJ EPO 1995, 545, Reasons, points 32 to 34). This appears justified since modern biotechnology has developed from traditional microbiology and cells are comparable to unicellular organisms.

5.3 This does not, however, mean that genetically-modified plants are to be treated as products of microbiological processes within the meaning of Article 53(b), 2nd half-sentence EPC. Such an analogy and formal use of rules of interpretation would disregard the purpose of the exclusion as identified above (Points 3.6 f). The exclusion in Article 53(b) EPC was made to serve the purpose of excluding from patentability subject-matter which is eligible for protection under the plant breeders' rights system.

As already emphasized by the referring Board, it does not make any difference for the requirements under the UPOV Convention or under the Regulation on Plant Variety Rights, how a variety was obtained. Whether a plant variety is the result of traditional breeding techniques, or whether genetic engineering was used to obtain a distinct plant grouping, does not matter for the criteria of distinctness, homogeneity and stability and the examination thereof. This means that the term "plant variety" is appropriate for defining the borderline between patent protection and plant breeders' rights protection irrespective of the origin of the variety. The argument that the legislator of the EPC did not envisage the possibility of genetically-modified plant varieties and for this reason could not have had the intention of excluding them from patentability cannot be accepted. Laws are not restricted in their application to situations known to the legislator. Since plant varieties are excluded, the only question is the conditions under which they are excluded. The Enlarged Board of Appeal supports the view of the referring Board (Reasons, point 92) that the mere fact of being obtained by means of genetic engineering does not give the producers of such plant varieties a privileged position relative to breeders of plant varieties resulting from traditional breeding only. Given the purpose of Article 53(b) EPC, question 4 has to be answered in the negative. Article 4(1)b and (3) of the Biotechnology Directive, using language corresponding to Article 53(b) EPC, is intended to be interpreted in the sense outlined above, since Recital 32 of the Directive postulates that a new plant variety bred as a result of genetically modifying a particular plant variety is still excluded from patent protection, even if the genetic modification is the result of a biotechnological process.

6. Question 1

Extent of examination under Article 53(b) EPC Most of the problems discussed by the referring Board under question 1 have been dealt with in the replies to questions 2 to 4. This is not the case with the question how to decide whether a process can be defined as an "essentially biological process".

In respect of the method of preparing transgenic plants claimed in the application in suit, the referring decision raised the ob-

jection that the claims were not clear and concise because no identifiable method steps were recited (Reasons, point 23 ff.). Instead, every means of obtaining the stated plant were claimed, including "essentially biological processes for producing plants" which would fall under the prohibition of Article 53(b), 1st half-sentence, EPC. In considering the crossing step using conventional breeding techniques, issues arose as to what process steps were allowable in a claim having regard to that prohibition. In its observations to the Enlarged Board of Appeal on the referring decision, the appellant explained not having been made aware of the objections earlier. The appellant expressed its willingness to make the required amendments to meet these formal objections. It may be assumed from that offer that the appellant is willing to restrict the method claims to identifiable method steps in order to exclude essentially biological processes. In this situation, the relevance to the application having given rise to the referral of the question how to decide whether a process can be defined as an essentially biological process has not yet been clarified. To offer guidance in this respect without having a sound factual basis for doing so is inappropriate.

For these reasons, there is no need for any further reply to question 1 beyond the answers already given to questions 2 to 4

ORDER

FOR THESE REASONS IT HAS BEEN DECIDED THAT:

The questions of law referred to the Enlarged Board of Appeal are answered as follows:

1. See answers to questions 2 to 4.

2. A claim wherein specific plant varieties are not individually claimed is not excluded from patentability under Article 53(b) EPC, even though it may embrace plant varieties.

3. When a claim to a process for the production of a plant variety is examined, Article 64(2) EPC is not to be taken into consideration.

4. The exception to patentability in Article 53(b), 1st half-sentence, EPC applies to plant varieties irrespective of the way in which they were produced. Therefore, plant varieties containing genes introduced into an ancestral plant by recombinant gene technology are excluded from patentability.

The Registrar: J. Rückerl

The Chairman: P. Messerli

LEGISLATION

BOLIVIA

GENERAL REGULATIONS ON SEED CERTIFICATION AND INSPECTION

SECRETARIAT RESOLUTION No. 064/96*

La Paz, 9 August 1996

WHEREAS:

Paragraph 5 of Secretariat Resolution No.026/96 of April 4, 1996 repealed Secretariat resolution No.79/95 of August 3, 1995, and gave the National Seed Directorate responsibility for preparing regulations adapted to the current legal framework of the Administrative Decentralization of the Executive, for the purpose of implementing Supreme Decree No.23069 of February 28, 1992;

DECIDES:

To approve the following General Regulations on Seed Certification and Inspection, containing 51 Articles, and to give the National Seed Directorate responsibility for their implementation and enforcement.

GENERAL REGULATIONS ON SEED CERTIFICATION AND INSPECTION

Scope, Objectives and Functions

Article 1

These Regulations are intended to promote the production and use of high-quality seeds through their certification and inspection. They establish the standards and rules for implementation of Supreme Decree No.23069 of February 28, 1992 and Secretariat Resolution No.026/96 of April 4, 1996 on certification of the production, conditioning, distribution, domestic and foreign trading of seeds.

Article 2

The certification and inspection procedures are for the purpose of providing farmers with high-quality seeds and preventing the introduction and dissemination of common harmful weeds, untested plant material and/or seeds bearing pests and/or diseases.

Article 3

Public or private natural or legal persons engaged in the production, import, conditioning, transport, storage, trading, donation and distribution of seeds shall be subject to the certification and inspection procedure prescribed by these Regulations.

Article 4

The National Secretariat of Agriculture and Livestock (SNAG) shall be responsible for the certification and inspection of the production and trading of seeds, through the National Seed Directorate and the Seed Offices and Laboratories within Bolivia.

Article 5

Quality control shall replace the phytosanitary examination and the Plant Health Offices in the departmental Prefectures shall only issue export health certificates.

Structure and Functions of the National Seed Committee

Article 6

The National Seed Committee shall have the structure and powers defined in Articles 1 to 8 of Secretariat Resolution No.026/96.

Structure and Functions of the National Seed Directorate

Article 7

The National Seed Director shall be appointed by the National Secretary for Agriculture and Livestock and shall have the indicative powers defined in Articles 9 to 17 of Secretariat Resolution No.026/96. He shall also inform the National Committee and the Seed Committees of the availability of grants, financial resources and technical assistance and shall oversee the activities of the Coordinating Unit in relation to the National Registers of Varieties, Producers, Dealers and the Protection of New Plant Varieties, in coordination with the National Secretariat of Industry and Trade, as well as other competent bodies, and shall provide the SNAG with quarterly reports.

Structure and Functions of the Coordinating Unit

Article 8

In addition to the structure and functions set out in Chapter IV of Secretariat Resolution No.026/96, the Coordinating Unit shall:

(a) In coordination with the Seed Committees and other public or private institutions, carry out training, promotion and research programs, as well as any other activities aimed at increasing the use of high-quality seeds.

(b) Coordinate and support the Seed Committees in carrying out their activities.

*Translated by the Office of the Union.

Article 9

The staff of the Coordinating Unit shall be appointed in accordance with the internal regulations proposed by the National Committee and approved by the SNAG.

Structure and Functions of the Seed Committees

Article 10

The structure and functions of the Seed Committees indicated in Chapter V of Secretariat Resolution No.26/96 shall also include the authority:

(a) To propose the updating of legal provisions relating to seeds, through the National Seed Directorate.

(b) To supervise the work, plans and budget of the Seed Offices and Laboratories.

(c) To endorse previously approved species for inclusion in the certification process, through local and departmental seed programs.

Structure and Functions of the Seed Office and Laboratories

Article 11

The structure and functions of the Seed Offices and Laboratories shall be those defined in Article 20 of Secretariat Resolution No.26/96.

Categories of Seeds

Article 12

The following categories of seeds shall be recognized:

(a) Genetic. – Seed or vegetative propagating material derived from improvements directly controlled by a phytotechnician and constituting the original source for the production of succeeding generations. This category shall not be subject to inspection.

(b) Pre-basic. Material obtained from vegetative propagation in tissue culture in vitro and propagation in greenhouses which retain their genetic identity and have a high standard of health. This category shall be subject to inspection.

(c) Basic. – Material obtained from the genetic or pre-basic seed whose genetic identity specified by the phytotechnician or breeder remains unchanged. This category shall be subject to the certification process.

(d) Registered. – The progeny of the basic seed whose genetic identity remains unchanged, subject to the certification process in accordance with the relevant specifications laid down in the rules.

(e) Certified. - Seed derived from the preceding categories, subject to the certification process.

(f) Inspected. – Seed from the preceding categories, subject to the certification process.

(g) Emergency categories. – Categories reserved for emergency supplies. Their use is regulated in the General and Specific Rules on Seed Production.

National Register of Varieties

Article 13

The National Seed Directorate shall be responsible for the National Register of Varieties subject to the following regulations:

(a) The purpose of the National Register of Varieties is to establish a general administrative system for the varieties of seeds used in Bolivia and those which for any reason do not have the characteristics specified for their cultivation.

(b) Requirements for a variety: In order to be registered, a variety shall meet the following requirements:

(1) Be distinct from others listed in the National Register in at least one characteristic of agricultural importance.

(2) Remain stable: in other words, after reproduction or at the end of each cycle, it shall still conform to the description of the variety.

(3) Be uniform: in other words, individual examples are alike in all the characteristics taken into account in each case.

(c) Application for registration

1. Applicant. An application for registration of a variety shall be made by the breeder or his legal representative, domiciled in Bolivia.

2. Registration. Applications for registration shall be made to the National Directorate through the Seed Offices and Laboratories in Bolivia, accompanied by the information specified.

3. Documentation. In general, an application for registration shall contain at least the following information:

(a) Name and address of the applicant.

(b) Name and address of the breeder.

(c) Cultivation.

(d) Proposed name of the variety.

(e) Country of origin of the variety.

(f) Method of breeding.

(g) Description of the process to be used to conserve the variety.

(h) Distinctive characteristics of the new variety.

(i) Tests carried out and results thereof.

(j) Detailed description of the variety.

(k) Most appropriate ecological conditions for growing it.

(l) Where the applicant is not the breeder, proof of his authorization variety shall be provided. For foreign varieties, the substantiating documentation shall be legalized by the Bolivian Consulate in the country of origin and for varieties of Bolivian origin it shall be certified.

(d) Vegetative material: Applicants shall also furnish the vegetative material (seeds, tubercules, rhizomes, stolons, etc.) required for the relevant tests, as many times as required.

(e) Sworn declaration: Applicants shall present a sworn declaration indicating the characteristics of the new variety, specifying that it is new, distinct, uniform and stable.

(f) Field trials and laboratory tests: Where the information contained in the sworn declaration does not clearly determine that the material to be registered is a new variety, the National Seed Directorate of the SNAG shall conduct field trials and laboratory tests in order to corroborate the information.

(g) Approval or refusal: Based on the results of the foregoing information, the National Seed Directorate of the SNAG shall approve or refuse registration.

(h) List of varieties: for registered varieties, the National Directorate shall publish lists of the commercial varieties of cultivated species, species whose cultivation is restricted, protected or liberalized, resulting from the certification process, and others;

(i) Variety denomination: Each variety shall be designated by a single generic denomination that allows it to be identified without any confusion, consequently:

(1) It shall not consist solely of figures.

(2) It shall not be liable to mislead or cause confusion concerning the characteristics of the variety or the identity of other breeders or owners who possess other varieties.

(3) Where the variety has been bred abroad, it shall as far as possible retain the denomination of the place of origin.

(4) It shall not contain words such as "varieties", "cultivar", "form", "hybrid", "cross", "genetic", "basic", or other generic words.

(5) It shall be distinct from other varieties and shall not contain diminutives and/or synonyms of names of existing varieties in order to prevent confusion and to protect the right of registration.

(j) Grounds for refusal:

(1) If the documentation submitted is incomplete.

(2) If the variety is not uniform, stable and/or distinct.

(3) If the breeder's authorization has not been obtained.

(k) Disqualification from registration of a variety: A variety may be disqualified from registration:

(1) If it is proved that the documentation submitted is false.

(2) If it does not retain the characteristics for which it was registered.

(l) Fee: The cost of registering a variety shall comprise the following:

(1) The registration fee.

(2) The cost of field trials and/or laboratory tests prior to registration.

(3) The fee for verification by field trials or laboratory tests after registration.

Agronomic Approval

Article 14

A natural or legal person intending to produce and/or market seeds of varieties and/or hybrids in Bolivia shall comply with the following agronomic approval rules:

(a) The National Seed Directorate of the SNAG and the Seed Offices and Laboratories shall be responsible for testing for the purposes of agronomic approval and may utilize outside services therefor. If the applicant has an approved centre, subject to authorization it may carry out the field trials. Where any problem exists or is envisaged relating to the performance of a variety in the area where it is to be marketed and/or distributed, the competent Office and Laboratory shall request a prior technical study and, subject to its findings, the National Directorate shall suspend the trading and/or distribution of the product in order to safeguard agriculture in the region concerned.

(b) Duration of testing: Tests shall be carried out over at least two years during the same season. Subject to justification and where the Seed Office and Laboratory deems necessary, they may last for a longer period.

(c) Site of testing: For the purposes of approving a variety, the tests shall be carried out in the area recommended by the breeders.

(d) Application for approval: A person seeking approval of a variety shall provide the Seed Office and Laboratory

with a duly completed application for approval accompanied by the following documents:

(1) Certificate of the National Register of Varieties.

(2) Description of the variety's characteristics.

(3) Production zones.

(e) Supply of material for testing: The applicant shall furnish the Seed Office and Laboratory with the quantity of seed needed to carry out the tests.

The seeds and the documentation shall be provided within the following time limits:

(1) For summer sowing: testing application, until 30 August. Supply of material, until 30 September.

(2) For winter sowing: testing application, until 28 February. Supply of material, until 30 April.

(f) Test results: The Seed Office and Laboratory shall provide the Technical Commission of the competent Committee with the results of the test.

(g) Approval or refusal: On the basis of the results, the Technical Commission of the Seed Committee shall approve or refuse the trading, use and/or distribution of the seed variety seeking agronomic approval and shall inform the National Directorate for the purpose of confirmation and disclosure at the national level. Agronomic approval of a seed variety shall have legal effects for its trading within Bolivia.

(h) Fee: The person concerned shall pay the amount of the service approved by the competent Seed Committee and endorsed by the SNAG.

Variety Protection

Article 15

Pursuant to Decision No.345 of the Board of the Cartagena Agreement (JUNAC), which establishes protection for the rights of breeders of plant varieties, a natural or legal person that has created or bred a new variety may request protection for the variety through the competent national authority, designated as the National Secretariat of Agriculture and Livestock pursuant to Article 13 of Supreme Decree No. 23069, subject to the following regulations:

(a) a variety shall be considered as predominantly derived from the initial variety when it originates from this variety or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the original variety, particularly if it is clearly distinguishable from the initial variety and, except for the differences which result from the derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

(b) A natural or legal person who has bred or created a new variety may request a "Title of ownership", which gives the holder the right to prevent third parties from carrying out the following acts in respect of the reproductive or propagating material of the protected variety without his consent:

(1) Production, reproduction or propagation.

(2) Conditioning for the purposes of reproduction or propagation.

(3) Offering for sale.

(4) Selling or any other act which implies placing the reproductive or propagating material on the market for commercial purposes.

(5) Exporting.

(6) Importing.

(7) Stocking for any of the purposes mentioned in the preceding paragraphs.

(8) Commercial use of ornamental plants or parts thereof as propagating material with the aim of producing ornamental or fruit-bearing plants or parts of ornamental or fruit-bearing plants or cut flowers.

(9) Engaging in the acts specified in the preceding paragraphs in respect of the harvested product, including entire plants and parts of plants obtained through the unauthorized use of reproductive or propagating material of the protected variety, unless the holder has had reasonable opportunity to exercise his right in relation to the said reproductive or propagating material.

A breeder's certificate shall also grant the holder exercise of the rights specified in the preceding paragraphs in respect of varieties which are not clearly distinguishable from the protected variety, in accordance with subparagraph (g)(2) of these Regulations, and in respect of varieties whose production requires the repeated use of the protected variety, as well as varieties which are essentially derived from the protected variety, unless it is itself an essentially derived variety.

(c) The duly protected title of ownership is transferable and may be the subject of any type of contract. In the event of dispute, the matter may be brought before the ordinary courts. Changes in ownership shall be registered with the National Seed Directorate of the SNAG.

(d) A variety for which variety protection is sought shall meet the following requirements:

(1) Applications shall be accompanied by the following information:

(a) Name and address of the breeder.

(b) Cultivation.

(c) Proposed name of the variety.

(d) Germplasm from which it originated.

(e) Country of origin of the variety.

(f) Method of breeding.

(g) Description of the process to be used to conserve the variety.

(h) Distinctive characteristics of the new variety.

(i) Tests carried out and results thereof.

(j) Detailed description of the variety.

(k) Most appropriate ecological conditions for growing it.

(l) Where the applicant is not the breeder, he shall provide proof of his authorization to obtain protection of the variety. For foreign varieties, the substantiating documentation shall be legalized by the Bolivian Consulate in the country of origin and for varieties of Bolivian origin it shall be certified.

(2) Vegetative material: Applicants shall also furnish the vegetative material (seeds, tubercules, rhizomes, stolons, etc.) required for the relevant tests, as many times as required.

(3) Sworn declaration: Applicants shall present a sworn declaration indicating the characteristics of the new variety, specifying that it is new, distinct, uniform and stable, in accordance with these Regulations.

(4) Field trials and laboratory tests: Where the information contained in the sworn declaration does not clearly determine that the material to be protected is a variety that is distinct, stable and uniform, the National Seed Directorate of the SNAG shall conduct field trials and laboratory tests in order to corroborate the information.

(5) Approval or refusal: Based on the results of the foregoing information, the National Seed Directorate of the SNAG shall approve or refuse protection of the variety.

(6) List of protected varieties: The National Seed Directorate of the SNAG shall publish the list of varieties that have been protected.

(7) Denomination of new varieties: The denomination of new varieties shall comply with the following:

(a) A variety shall be given a denomination that is its generic designation.

(b) No rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the expiry of the breeder's right.

(c) The denomination must enable the variety to be identified. It may not consist solely of figures, except where this is an established practice for designating varieties in a particular country.

It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. It must be different from every denomination which designates, in the territory of any country, an existing variety of the same plant species or of a closely related species.

(d) The denomination of the variety shall be submitted to the National Seed Directorate of the SNAG by the breeder.

(e) If it is found that the denomination does not satisfy the requirements of the preceding paragraph, the authorities shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period.

The denomination shall be registered by the competent national authority at the same time as the breeder's right is granted.

(f) Prior rights of third parties shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of subparagraph (i) is obliged to use it, the competent national authority shall require the breeder to propose another denomination for the variety.

(g) A variety shall only be the subject of an application for a breeder's right under the same denomination in the territory of origin. The National Seed Directorate of the SNAG shall register the denomination proposed, unless it considers it unsuitable. In the latter case, it shall require the breeder to submit another denomination.

(h) The National Seed Directorate of the SNAG shall ensure that the competent national authorities of the other countries parties to the Cartagena Agreement are informed of matters concerning variety denominations. Any national competent authority may address its observations on the registration of a denomination to the authority which communicated that denomination.

(i) A person who, under any title, offers for sale, markets or disposes of propagating material of a protected variety shall be obliged to use the denomination of that variety, even after the expiry of the breeder's right in that variety, except where, in accordance with the provisions of paragraph (f), prior rights prevent such use.

(j) When a variety is offered for sale, marketed or disposed of under any title, the National Seed Directorate of the SNAG may authorize it to be associated with a trademark, trade name or other sign distinct from the registered variety denomination.

If such an indication is associated, the denomination must be easily recognizable.

(k) Denominations of a plant variety shall not be registered as trademarks or trade names.

(e) A title of ownership of a variety shall not give the holder the right to prevent third parties from using the protected variety if such use is:

(1) In a private context for non-commercial purposes.

(2) For experimental purposes, or

(3) For the purposes of breeding and exploiting a new variety, except in the case of a variety essentially derived from a protected variety. This new variety may be protected in the name of its breeder.

(f) The breeder's right shall not be infringed by persons who keep and sow the product obtained from growing the protected variety for their own use or for sale as a raw material or foodstuff, excluding commercial use of the reproductive or propagating material, including entire plants and parts thereof of fruit, ornamental and forest species.

(g) In addition to the above requirements, the variety must comply with the following characteristics:

(1) Be new: a variety shall be deemed to be new if the reproductive or propagating material, or harvested material of the variety, has not been sold or otherwise disposed of to others, by or with the consent of the breeder or his successor in title, for purposes of commercial exploitation of the variety. The condition of novelty shall no longer apply when:

(a) Exploitation was initiated at least one year before the date of filing the application for a title of ownership or the priority claimed if the sale or disposal took place within Bolivia or any country member of the Board of the Cartagena Agreement.

(b) Exploitation was initiated at least four years, or in the case of trees and vines at least six years, prior to the date of filing the application for a title of ownership or the priority claimed if the sale or disposal took place elsewhere than in Bolivia or in any other country member of the Board of the Cartagena Agreement.

(c) The condition of novelty shall not be lost through the sale or disposal of the variety to third parties, for example, when such acts:

1. Are the result of misuse to the detriment of the breeder or his successor in title.

2. Form part of an agreement to transfer the right in the variety provided that it has not physically been disposed of to a third party.

3. Form part of an agreement under which a third party, on behalf of the breeder, increases the stocks of the reproductive or propagating material.

4. Form part of an agreement under which a third party conducts field trials or laboratory tests or small-scale processing tests in order to evaluate the variety.

5. Are aimed at obtaining the harvested material that would have been obtained as a secondary or surplus product to the variety or the activities defined in subparagraphs 3 and 4 above.

6. Are carried out unlawfully.

(2) Be distinct: A variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of filing of the application for a title of ownership or the priority claimed.

The filing of an application for a title of ownership or for listing in the Official Register of crops shall render the variety a matter of common knowledge from that date provided that the application leads to the granting of a title of ownership or inclusion of the variety in the Register, as the case may be.

(3) Be uniform: A variety shall be deemed to be uniform if is sufficiently uniform in its essential characteristics in accordance with the systems of reproduction or propagation.

(4) Be stable: In its essential characteristics, in other words, the characteristics described by its breeder remain unchanged at the end of each cycle of propagation.

(h) The term of a title of ownership shall be 25 years for vines, trees including fruit trees, as well as their graft stock, and 20 years for all other species, computed from the date of grant of the title.

(i) When required to do so by the National Seed Directorate of the SNAG, the holder of a title of ownership shall provide a live sample of the protected variety possessing the same characteristics as originally defined, together with all the information needed to comply with these Regulations.

(j) The holder of a title of ownership shall pay the annual fee for protection according to the scale and regulations approved by the National Seed Directorate of the SNAG.

(k) A breeder who has duly filed an application for protection in another State shall enjoy a right of priority for a period of 12 months for the purpose of filing an application for protection. This period shall be computed from the date of filing of the first application. The day of filing shall not be included in the latter period.

(l) In order to benefit from the provision in subparagraph (k), the new submission shall include an application for protection, the claim of priority of the first application and, within a period of three months, a certified copy of the documents constituting the said application.

(m) A title of ownership shall expire for the following reasons:

(1) Termination of the legal period of the breeder's right, in which case the variety shall become available for public use.

(2) Renunciation of his right by the breeder, in which case the variety shall become part of the public domain.

(n) A title of ownership granted shall become null and void if it is established that:

(1) The conditions of novelty and distinctness established in these Regulations were not complied with at the time of the grant of the title of ownership.

(2) The grant of the title of ownership was essentially based upon information and documents furnished by the breeder and the conditions of uniformity and stability prescribed in these Regulations were not effectively complied with at the time of the grant of the title of ownership; or

(3) The title of ownership was granted to a person who was not entitled to it, unless it was transferred to the person who was so entitled.

No breeder's right shall be declared null and void for reasons other than those referred to in the preceding subparagraphs.

(ñ) A title of ownership shall be cancelled if it is established that:

(1) The conditions of uniformity and stability prescribed in these Regulations are not complied with.

(2) If, after being requested to do so, within a prescribed period:

(a) The breeder does not provide the authority with the information, documents or material deemed necessary for verifying the maintenance of the variety.

(b) Where the denomination of the variety is cancelled after the grant of the right, the breeder does not propose another suitable denomination.

(c) The annual fee for registering ownership of a variety has not bee paid within three months from its notification.

No breeder's right shall be cancelled for reasons other than those referred to in the preceding paragraphs.

(o) For the purpose of ensuring adequate supplies of a protected variety, for reasons of public interest, the National Secretariat of Agriculture and Livestock may declare a variety freely available, subject to fair compensation to the breeder. The National Seed Directorate of the SNAG shall determine the amount of the compensation after hearing the parties and on the basis of the extent of exploitation of the protected variety. While the declaration of free availability is in effect, the National Seed Directorate of the SNAG shall permit interested persons who offer sufficient technical and financial guarantees and register at its offices for this purpose to use the variety.

A declaration of free availability shall remain in effect as long as the grounds for it continue to exist, with a maximum of two (2) years, which may be extended for one further period of two years if the conditions for the declaration continue to exist after the expiry of the first two-year period.

(p) Breeders resident abroad shall enjoy equal rights with breeders resident in Bolivia.

(q) Any person seeking protection of a foreign variety shall:

(1) Indicate his legal domicile in Bolivia for this purpose or appoint an authorized representative.

(2) Where necessary, the National Seed Directorate of the SNAG may request reasonable proof showing that the applicant is entitled to protect the variety.

(3) Undertake to meet the legal provisions and the regulations applicable in Bolivia to the ownership of varieties.

(r) The National Seed Directorate of the SNAG shall be given the following responsibilities:

(1) To keep the Register of Ownership of Varieties.

(2) To grant, refuse, cancel or annul titles of ownership of varieties.

(3) Where necessary, it may itself obtain the technical proof it deems necessary for the purpose of granting

titles of ownership of varieties, or may do so through other bodies, and may seek confirmation or verification from similar bodies.

(4) To enter into relevant national or international treaties or agreements.

(5) At any time, to request information and samples of culture material of a variety from the holder of a title of ownership of the variety in question.

(s) A breeder shall enjoy provisional protection during the period between filing an application and grant of a title of ownership. Action for damages may only be brought after the title of ownership has been granted, but it may cover damage caused to the plaintiff as of publication of the application.

(t) After registration has been requested and the information has been examined, the National Seed Directorate of the SNAG shall publish once only in three (3) Bolivian newspapers a summary of the application, initiating a period of thirty (30) working days during which third parties may submit any claims. At the expiry of this period and if no objection has been lodged, the title of ownership shall be granted.

If any claim is made during this period, it shall be communicated to the applicant, who shall have sixty (60) working days to present his arguments. After reviewing the information, the National Seed Directorate of the SNAG shall grant the title or reject the application made.

(u) Transitional provision:

A variety that was not new when the National Register of Varieties was opened for the submission of applications may be protected, notwithstanding the provisions of subparagraph (f)(1) of these Regulations, if it meets the following criteria:

(1) The application is submitted during the year following the opening of the Register of Ownership for the genus or species to which the variety belongs, the date of February 1, 1996 being deemed the date of opening of the Register; and

(2) The variety has been entered in a register of varieties in any country member of the Board of the Cartagena Agreement or in a register of protected varieties in any country that has special legislation on the protection of plant varieties.

The duration of a title of ownership granted under this provision shall be in proportion to the period that has already elapsed after listing or registration in the country referred to in paragraph (2) above. If the variety has been registered in several countries, the earliest listing or registration shall apply.

Certification and Inspection of Seeds

Article 16

The Seed Offices and Laboratories shall be responsible for the following:

(a) Keeping the registers of producers, conditioners and importers of seeds.

(b) Certifying the origin and quality of seeds available to farmers.

(c) Monitoring and ensuring compliance with the technical specifications required for the cultivation, utilization and storage of seeds.

(d) Issuing and verifying certificates of origin and quality, as well as the labels for seeds produced.

(e) Inspecting imports to ensure that they meet the quality and adjustment criteria laid down in the legal provisions.

(f) Collecting the fees for certification, registration, use of labels and other services. The revenue shall be deposited in a special account opened by the Seed Committees.

Article 17

The standards for the certification of seeds shall specify the permitted tolerance levels for field inspections and laboratory tests.

Article 18

For the purposes of quality control, official inspectors shall have free access to farms, installations, stores, warehouses and other places where seeds are produced, conditioned, stored, sold or distributed.

Article 19

If it is found that the certified and inspected seeds do not meet the technical requirements, they may not be marketed or distributed on penalty of a fine and temporary or definitive cessation of the activity.

Article 20

Seed Offices and Laboratories, using the methodology and procedures of the OECD, AOSCA and other international institutions, shall be empowered to inspect fields used to produce seeds and to carry out laboratory tests on batches of seeds for export.

Article 21

Seed Offices and Laboratories shall be given properly trained staff for the purpose of controlling the quality of domestically produced and imported seeds.

Register of Seed Producers, Conditioners and Dealers

Article 22

Natural or legal persons engaged in selling and/or distributing seeds shall be registered in the National Register of Seed Dealers kept by the National Seed Directorate of the SNAG. The following information shall be submitted for this purpose:

(1) Name or company name.

(2) Name of the owner(s).

(3) Postal and telegraphic addresses.

(4) Capacity and type of warehouses or stores.

(5) Branches or agencies showing their addresses.

(6) Single Tax Registration number.

(7) Specification of the class and category of the seeds in which they deal.

Article 23

Natural or legal persons engaged in conditioning and/or producing seeds shall be registered with the Seed Office and Laboratory in their place of domicile. The following information shall be submitted for this purpose:

Conditioners

(1) Name or company name.

(2) Name of the owner(s).

(3) Postal and telegraphic addresses of the parent company and branches or agents.

(4) Specification of the class and category of the seeds which they condition.

(5) Details concerning the material facilities available such as warehouses, stores, equipment, etc., indicating their capacity.

(6) Single Tax Registration number.

Seed producers

(1) Name or company name of the nursery or producer.

(2) Name of the owner(s).

(3) Postal and telegraphic addresses and site.

(4) Specification of the class and category of the seeds which they produce.

(5) Single Tax Registration number.

(6) Identity card for individual persons.

Trade in Seeds

Article 24

Only seeds which meet the standards and registration requirements in force and which are designated as such on the official labels issued by the Seed Office and Laboratory may be sold to the public as certified seeds within the legally established categories. The person trading or distributing the seeds under any system shall be solely responsible for their quality.

Article 25

The use of the expression "Certified Seed" on any material that does not meet the established certification and inspection standards shall be banned on penalty of a fine, seizure or suspension of the establishment's operations.

Article 26

Any seed offered for sale, transported, distributed or donated shall also bear the official label issued by the competent Seed Office and Laboratory and shall be identified by the following information:

(a) Brand, name and address of the nursery or producer.

(b) Common name of the species and variety.

(c) Origin and source of the seed.

(d) Chemical treatment used.

(e) Net weight.

(f) Category.

Article 27

The transport of seeds in bulk shall require the label showing the number of the certificate of origin and quality issued by the competent Seed Office and Laboratory.

Article 28

The import of seeds shall be subject to prior authorization by the Seed Committee, which shall be issued on the basis of the report by the Seed Office and Laboratory and the Plant Health Department.

Article 29

Requests for the import of seeds shall be dealt with exclusively by the Seed Committee in the place where they are to be used and shall be verified by the Seed Office and Laboratory.

Article 30

In order to obtain approval for the import of any class or category of seed, importers shall furnish the competent Seed Committee with the following information:

(a) Species, variety, category of seed to be imported.

(b) Quality analysis and phytosanitary certificate issued by the competent authorities in the country of origin.

(c) Origin and quantity.

(d) Area of distribution and use in Bolivia.

(e) Customs post for the entry, destination and use of the seed.

Article 31

Varieties that are listed in the National Register of Varieties and have been verified may be marketed, distributed or entered in the certification program.

Article 32

The National Seed Directorate of the SNAG shall be empowered to propose the regulations for importing seed for its own use. Such seeds shall not be exempt from inspection and payment for the services furnished.

Article 33

Official bodies or individual establishments which import grains or other plant structures for exclusive use in industrial activities or for consumption may not under any circumstances use them as seed on pain of the penalties established in these Regulations.

Article 34

Publicity by producers and dealers concerning certified seeds shall correspond to the characteristics of the variety and the seed batch offered for sale. Violation of this provision shall lead to penalties for the offender.

Article 35

Distribution of imported seeds containing prohibited weeds, diseases or pests harmful for domestic agriculture shall be prohibited. The distribution of varieties not authorized in Bolivia shall also be prohibited.

Article 36

Standards for domestic and imported seeds relating to their purity, weeds, germination percentage, pests and diseases shall be laid down for each crop in a special publication which shall be revised at regular intervals.

Compliance with these standards shall be compulsory for any seeds intended for marketing, donation or distribution in Bolivia.

Seed Testing

Article 37

Seed Offices and Laboratories, following the rules of the International Seed Testing Association (ISTA), shall be empowered to take samples, inspect and test seeds transported, sold, offered for sale, donated or distributed for sowing or planting in order to verify that they meet the legal provisions in effect.

Article 38

Seed Offices and Laboratories shall have official seed testing laboratories for the purpose of verifying the quality of seeds produced in Bolivia or imported. These laboratories shall be exclusively authorized to issue official quality certificates.

Article 39

Subject to a special request, private laboratories shall be approved as accredited laboratories provided that they meet the minimum requirements fixed by the National Seed Directorate of the SNAG. These laboratories shall assist in quality control under the seed certification process.

Article 40

Laboratory reports for the purposes of certification or control of trade, transport and distribution of seeds in Bolivia shall show the category, variety, type, batch number, origin, harmful or tolerable seeds of weeds, seeds of other crops and varieties, inert matter, germination percentage, hard seeds, humidity, cultural value, date of test and name of the owner or agent.

Article 41

Any buyer of part of a batch of seeds who questions their quality may request the Seed Office and Laboratory to take samples and carry out the testing for purity and germination required within a period of fifteen (15) days from the date of purchase until just before the harvest in order to determine genetic identity. He may require the seller to refund the cost of the seed, including the payment of damages, if the seed does not meet the terms of the transaction. Complaints shall be made in writing to the competent Seed Office and Laboratory accompanied by the invoice or proof of purchase.

Article 42

If it is found that there are grounds for the complaint, the seller shall be obliged to reimburse the cost of the seed and freight to the buyer, without prejudice to the penalties laid down in the law. The buyer shall return the seed not utilized in its respective packets and the seller shall be responsible for the cost of return. The buyer may bring legal proceedings for the prejudice caused.

Violations and Sanctions

Article 43

A producer, importer or dealer in seeds or any other intermediary who produces, distributes, donates or sells seeds without approved registration in the National Register of Seed Dealers shall be punishable by a fine, as well as the seizure of the batches of seeds in his possession and the closure of his establishment.

Article 44

The following acts shall be punishable by a fine and, as the case may be, seizure of the seeds and/or closure of the establishment:

(a) Offering, using or distributing certified seeds (meaning all officially recognized categories), whether Bolivian or imported, which do not have or no longer have the qualities and characteristics laid down in the special rules applicable to the certification of seeds.

(b) Offering or distributing as seed common materials (grains, tubercules, cuttings, etc.) which have not undergone the certification process.

(c) Selling, distributing, donating or transporting seed without official certification labels or identification.

(d) Adulterating certified inspected seeds at any stage of production, conditioning or distribution.

(e) All acts intended to mislead the inspection authorities regarding the quality or origin of the seeds, as well as failure to comply with the technical specifications for production, conditioning, importing or storing seeds.

(f) Using false certificates, labels or other documents or falsifying them in relation to the investigation, registration, inspection, certification, production, transport, distribution, trading, import and export of seeds.

(g) Circulating advertising material that does not correspond to the actual characteristics of the seeds offered.

(h) Trading, distributing, donating, and/or transporting seeds whose sell-by date has expired.

(i) Trading, distributing and/or donating seeds treated with substances harmful to human or animal health without the notice "Unfit for use as a foodstuff" and the danger symbol on the package.

(j) Trading, distributing, donating and/or transporting emergency category seed in areas where the competent Seed Committee has not authorized such categories.

(k) Importing seed without the authorization of the competent Seed Committee.

(l) Importing seed without the relevant documentation.

(m) Using imported seed for purposes other than that for which it was authorized (research, own use, etc.) without prior authorization by the competent Seed Office and Laboratory.

(n) Trading, distributing and/or donating imported seed when the competent Seed Office and Laboratory has not verified that the batch meets the standards and rules for the certification of seeds.

(o) Trading, distributing and/or donating imported seed of agricultural species or varieties which are not officially allowed to be sown or have not been authorized for commercial production in Bolivia.

(p) Trading, distributing, transporting or donating seed of varieties that are not listed in the National Register of Varieties.

(q) Trading, using, distributing, transporting or donating seed that has been suspended by the competent Seed Office and Laboratory.

(r) Hampering or preventing in any way the inspection activities of the competent authority.

(s) Trading, distributing, transporting or donating seed of protected varieties without the consent of the holder of the title of ownership.

(t) Any act that violates the special regulations on the trading and conditioning of seeds.

Article 45

Officials of the National Seed Directorate, the Coordinating Unit, Seed Offices and Laboratories who produce, condition or market seeds on their own behalf shall be punishable by dismissal and shall be subject to legal proceedings. Failure to respect the legal provisions in effect regarding certification shall also be punishable.

Article 46

In cases not specifically mentioned but which involve failure to observe the standards and rules applying to seeds, the Seed Offices and Laboratories shall punish the infringers by fines, seizure, temporary or even definitive closure of their establishment or facilities.

Article 47

Infringement shall be punished by the Seed Committee through the Seed Offices and Laboratories, with the assistance of the police.

Article 48

The amount of the fines shall be determined by the Seed Committees and approved by the SNAG.

Article 49

Seeds and other material seized may be incinerated, destroyed or returned subject to compliance with the rules applicable. Fines imposed under these Regulations shall become part of the assets of the Seed Committee concerned. These funds shall be exclusively used to develop the Seed Offices and Laboratories.

Article 50

In cases not specified in these Regulations, the National Seed Directorate of the SNAG shall be empowered to issue the relevant administrative decisions.

Definitions and Terminology Used

Article 51

For the purposes of interpreting these Regulations on certification rules, standards and requirements, the following definitions shall apply:

1. Batch of seeds: Specific quantity of physically identifiable uniform seeds, for which a test certificate can be issued.

2. Breeder: Any natural or legal person who has created or discovered and developed a variety that is distinct from existing varieties, using several methods.

3. Certified seed: Seeds that have been handled in such a way that their identify and genetic purity have been properly maintained, under the Seed Certification process, from the field stage to the labelling stage, and divided into the following categories: basic, registered, certified and inspected.

4. Collaborator: Any producer who, under a contract with a nursery or seed producer, engages in the propagation of seeds.

5. Conditioner: any person or entity engaged in conditioning seeds.

6. Consumer: Any natural or legal person who buys seed for sowing or obtains it in any other way.

7. Cultural value: The percentage expression that defines the true value of the seed, obtained by multiplying the physical purity by the germination percentage divided by one hundred.

8. Dealer: Any natural or legal person engaged in buying and selling domestically produced and/or imported seeds.

9. Genetic purity: Number of individual examples that have the same genotype and phenotype characteristics.

10. Germination percentage: The number of normal seedlings obtained per one hundred seeds of the pure seed component during a germination test under the conditions and periods specified for each species.

11. Hard seeds: Seeds from plant species such as leguminosae, malvaceae, etc. which remain hard after germination because they have not absorbed water as their teguments are impermeable.

12. Harmful weed seeds: Weeds that are easily distributed, adapt easily, are aggressive and difficult to control in the field and constitute a serious risk in agricultural zones.

13. Hybrid: The first generation of cross-breeding under controlled conditions between progenitors with satisfactory genetic constitutions and variety purity.

14. Inert matter: Any foreign matter that is not a seed.

15. Information: The specifications, conditions, characteristics and other information on the seed, in addition to that shown on the label, and disseminated to the public and farmers by various means.

16. Inspection: The process of verifying the quality of seed by taking samples in the final packaging stage and/or during trading so as to ensure compliance with the regulations in force.

17. Label: Official printed indication showing the quality standards to be met by the seed in order to be marketed and/or distributed.

18. Legal person: A person, entity or partnership, corporation, company, physically or morally able to undertake duties and obligations. They are legal subjects in accordance with the country's laws.

19. Mixture: A combination of seeds of two or more species provided that none of them meets the minimum purity requirement established in the Regulations in order to be considered a single species.

20. Officially recognized: Recognized under the laws and regulations of Bolivia or by the government of any foreign country where the seed is produced.

21. Origin: Country, region or place where the seed is produced.

22. Processing or conditioning: Drying, cleaning, selecting, sorting, scarifying, applying chemical or physical treatments, packaging or any other operation intended to maintain and/or improve the quality of batches of seeds.

23. Prohibited weed seeds: Weed seeds with harmful characteristics which may not be included in batches of seeds for trading and/or distribution.

24. Pure seeds: Seeds of the predominant species in a sample undergoing quality testing after removing foreign and inert matter.

25. Seed: Any botanical structure of sexual or asexual origin intended for sowing, planting or propagation of a species.

26. Seed certification: Technical process for the official verification of quality, either in the field or in laboratories, carried out by Seed Offices and Laboratories.

27. Seed nursery: Area used to produce seeds of various categories.

28. Seed of other crops: Seeds of cultivated species other than the species being tested and present in the test sample.

29. Seed producer: Any properly registered natural or legal person who is directly engaged in or responsible for the propagation, conditioning and/or trading of seeds.

30. Seed quality: Seed of maximum physical and genetic purity, sanitary and physiological quality.

31. Species: Botanical group identified by a scientific name with specific morphological differences distinguishing it from others.

32. Suspension of sales: Administrative order by the competent authority halting the sale, use, distribution and movement of a specified quantity of seeds that do not meet the requirements laid down in the legislation and regulations in force.

33. Tolerable or common weed seeds: Any propagation structure whose presence in conjunction with seeds is permitted within the tolerance levels laid down in the Seed Standards.

34. Treated seeds: Seeds on which substances or processes have been used with the aim of encouraging germination and controlling certain pathogenic organisms, insects or other diseases which attack the seeds and/or seedlings.

35. Variety: A plant grouping within a single botanical taxon of the lowest known rank, which can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes and can be distinguished from any other plant grouping by the expression of at least one of the said characteristics. A particular variety may be represented by several plants, a single plant or one or more parts of a plant, provided that the said part or parts can be used to produce entire plants of the variety.

36. Variety mixture: Batch or content of a seed field which contains more than one variety of the same species.

37. Weed: Any plant that grows where it is not wanted.

For registration, publication and enforcement.
WHEREAS:

DENMARK

THE DANISH PLANT VARIETY PROTECTION ACT

Order No. 51 of 5 February, 1996*

This is to consolidate the Act on Plant Variety Protection, cf. Act No *866* of 23 December, *1987*, with the amendments that ensue from Act No. *1107* of 21 December 1994, and Act No. *1086* of 20 December, 1995.

CHAPTER 1

Scope of the Act

Article 1

(1) Varieties of all species and genera of plant may be protected as plant novelties if at the time of granting of protection they are

1) independent, by which is meant that they are distinguishable by one or more characteristics, or by a combination of characteristics, from any other variety known at the time when protection is applied for,

2) sufficiently uniform,

3) stable in their specific characteristics (main characteristics) when propagated in accordance with the method specified by the breeder and

4) new, by which is meant that the propagating material or harvested material of the variety has not prior to the application been offered for sale, sold or in any other manner transferred with the consent of the owner of the variety and with a view to commercial utilisation,

   a) in this country for more than one year, or

   b) in a foreign country for more than four years or, in the case of grape vines, trees and their root-stocks, for more than six years.

(2) Notwithstanding paragraph 1, no. 4, a variety is considered a novelty,

1) even though material of the variety has been sold or transferred

   a) to an official institution for legal purposes,

   b) to others in accordance with a contract or other legally binding arrangement with a view solely to propagation or treatment and storage for the purpose of propagation, provided that the recipient did not hold a right of disposal over the material of the variety, or

   c) by one company to another company, if one of the companies is owned by the other, or if both companies are owned by a third company, provided that none of the companies are cooperative societies, and

2) even though propagation material or harvested material of the variety produced from plants that have been cultivated for the purpose of experiments or breeding has been offered for sale, sold or transferred to others provided that this has happened without reference to the variety.

(3) Paragraph (2) does not apply to varieties used for the production of a hybrid variety if repeated use of the variety is necessary for the production, and if material of the hybrid variety has been sold or transferred to others.

Article 2

The Ministry of Agriculture and Fisheries may, as an exception, approve the protection of a variety that does not satisfy the conditions laid down in Article 1 (1), No. 4, if it is considered to be of economic interest to agriculture.

CHAPTER 2

Applications

Article 3

(1) An application for entry of a variety in the Register of Plant Novelties shall be submitted to the Board for Plant Novelties by the holder of the variety. If the holder is not resident in or does not have his registered office in a Member State of the European Union, such application shall be made by an agent, appointed by the applicant, who is resident in or has his registered office in Denmark.

(2) The applicant shall before the Board for Plant Novelties, cf. Article 22, produce evidence of his right to apply for entry of the variety to. If the application is made by an agent on behalf of the holder of the variety, the agent shall produce documentation of his authority to represent the owner in all matters relating to the application and registration.

(3) The Board may demand that the applicant furnish all such information as is deemed necessary to try the application

* Translation provided by the Danish authorities

and may fix a time-limit for this. The Board may further demand that material to be used for examination, cf Article 9, be submitted within a specified period.

(4) At the time of the making of the application, an application fee shall be paid.

Article 4

(1) The application is entered in the journal kept by the Board for Plant Novelties immediately after receipt, and a copy of the application provided with the Board of Plant Protection's note as to the date of entry in the journal shall be returned immediately to the applicant. Notice of the application shall be published by the Board for Plant Novelties.

(2) The journal shall be accessible to the public. However, this does not apply to information concerning the genealogical components of hybrid varieties and descriptions here of, if the applicant has requested that the information be treated as confidential.

Article 5

(1) The Board for Plant Novelties may delete an entry from the journal if the applicant does not furnish the information or testing material required by the Board pursuant to Article 3 (3) within the time-limit fixed by the Board.

Article 6

(1) From the date of filing of the application the applicant shall enjoy a right of priority to protection of the variety if any other person subsequently submits an application for protection of the same variety.

(2) At the request of the applicant the Board for Plant Novelties may establish priority for the application from the date of the first application for protection of the variety in any Member State of the International Union for the Protection of New Varieties of Plants (UPOV) if the first application was filed within the previous 12 months. The request shall be made at the time of the filing of the application in this country and shall be accompanied by documentation of the receipt of the first application.

Article 7

(1) As soon as possible after entry of the application in the journal the Board for Plant Novelties shall make a provisional examination to establish whether the variety may be considered to fulfil the conditions for protection. If based upon such examinations the Board finds that the conditions for protection are fulfilled, the Board shall publish a notice of the application together with an invitation to all concerned to make known within a specified time-limit any objections to the registration of the variety.

Article 8

(1) The Board for Plant Novelties shall refer any objections to the applicant's right to apply for protection of the variety to the ordinary law-courts. When the Board is informed of such legal proceedings, it shall furnish the application with a note to this effect.

(2) If on the basis of other objections the Board decides to delete the application from the journal and to discontinue its examination, a notice to this effect shall be published by the Board.

CHAPTER 3

Examination and registration

Article 9

(1) Before a variety for which an application has been filed can obtain protection, cf., however, Article 21, the Board for Plant Novelties shall establish whether the variety can be considered to fulfil the conditions for this, including whether it has the special characteristics mentioned in the application. To this end the Board shall arrange for an examination of the variety to the necessary extent.

(2) The applicant may be required to pay a fee to cover the costs incurred by the Board in connection with examining the variety.

Article 10

(1) If the variety is considered to satisfy the conditions for protection, the Board for Plant Novelties shall enter the variety in the Register of Plant Novelties under a variety denomination, which has been approved in accordance with provisions laid down by the Minister of Agriculture and Fisheries.

(2) The Board for Plant Novelties may refuse registration of a variety if the holder of the variety does not within a fixed time-limit comply with the Board's request to propose a name for the variety or fails to propose a new name, where the Board has found that the name proposed does not satisfy the conditions for approval.

(3) Where legal proceedings are pending, Article 8 (1), a note to this effect shall be made in the Register of Plant Novelties.

Article 11

(1) The plant novelty shall be designated by the approved variety denomination. This shall apply even after expiry of the period of protection.

(2) It shall be permitted to use an additional denomination for the new variety in connection with the variety denomination.

(3) At the request of the holder of the variety the Board for Plant Novelties may in special cases permit that the plant novelty be given another denomination than the one originally approved.

(4) The Minister of Agriculture and Fisheries shall lay down provisions on the denomination of plan novelties.

Article 12

(1) Simultaneously with the publication of the registration the Board for Plant Novelties shall issue a certificate of protection, which shall be delivered to the applicant against payment of a registration fee. The certificate of protection shall be valid for at period of one year, and the period of validity may be extended by one year at a time for up to 25 years or, for varieties of potatoes, up to 30 years, calculated from the date of issue of the certificate of protection, cf., however, article 21 (1).

(2) The validity of the certificate of protection is extended against payment of an annual registration fee to the Board for Plant Novelties.

(3) Irrespective of paragraph (1) of this section the Minister of Agriculture and Fisheries may lay down provisions to the effect that the validity of the certificate of protection for varieties of further specified species and genera can be extended for a period of up to 30 years.

Post-control

Article 13

(1) The Board for Plant Novelties may carry out post-control to ensure that the plant novelty is maintained satisfactorily by the holder of the variety.

(2) The holder of the variety shall within the time-limits fixed by the Board make the necessary plant material available for the post-control to be performed by the Board for Plant Novelties.

Removal

Article 14

(1) The Board for Plant Novelties deletes a plant novelty from the Register of Plant Novelties if

1) it is established that at the time of registration the plant novelty did not satisfy the conditions for entry laid down in Article 1,

2) at the post-control the Board finds that the plant novelty has not been maintained satisfactorily,

3) the Board receives a written request from the holder of the variety to this effect, or

4) the annual registration fee has not been paid.

(2) The Board for Plant Novelties may further delete a plant novelty from the Register of Plant Novelties if the holder of the variety does not within the time-limit fixed by the Board comply with the Board's request

1) to make available to the Board the material needed for the post-control or

2) to propose a new name for the variety in cases where the Board has subsequently found that the approved name does not satisfy the provisions laid down by the Minister of Agriculture and Fisheries.

(3) The plant novelty shall be deleted from the Register two months after notification of the holder of the variety of the decision of the Board for Plant Novelties unless before expiry of that period the case has been brought before the law-courts by the holder of the variety.

Article 15

(1) If a plant novelty has been deleted from the Register of Plant Novelties, it cannot be reentered in the Register. The Board for Plant Novelties shall publish a notice of the deletion and the reason for it.

CHAPTER 4

Scope of protection

Article 16

(1) Material of a plant novelty may only

1) be used for commercial production, propagation or treatment and storage with a view to propagation, and

2) be offered for sale, sold, transferred or stored with a view to sale or transfer subject to permission by the holder of the variety and only on the terms and conditions, including payment of an appropriate royalty, specified by the holder.

(2) The Minister of Agriculture and Fisheries may lay down provisions to the effect that any person propagating plant novelties of specified species for professional use on his own holding shall pay a royalty to the holder of the variety.

(3) Any person who propagates a plant novelty or sells propagating material of the plant novelty shall provide the holder of the variety with the information necessary for calculation and collection of royalty.

(4) Paragraphs (1) - (3) shall apply correspondingly

1) to harvested material obtained from the use of propagation material of a plant novelty, if the holder of the variety
   a) has not permitted such use of the material and
   b) has not had the possibility of exercising his rights to the material in accordance,

2) to varieties that
   a) are essentially derived from a plant novelty if this is not itself essentially a derived variety or

b) are not independent in relation to the plant novelty, cf. Article (1) (1), or

c) can be produced only by repeated use of the plant novelty.

(5) The Ministry of Agriculture and Fisheries may decide that on the conditions laid down in paragraph (4) no. 1, a) and b), paragraphs (1) - (3) shall also apply to products produced from propagation material of a plant novelty or any harvested material obtained therefrom.

(6) The conditions specified by the holder of the variety, cf. paragraph (1) may only concern the use and offer for sale as stated in paragraph (1), nos. 1 and 2, and royalties. The terms and conditions shall be reasonable and identical for all producers.

Article 17

Plant novelties may be used freely for research and breeding activities.

Article 18

(Repealed).

Article 19

(1) The question of whether the terms and conditions stipulated by the holder of the variety are in accordance with Article 16 (6) may be referred to the Terms Board for Plant Novelties, cf. Article 22 (1). Where the Board finds that the terms and conditions are against Article 16 (6), it may order the holder of the variety to change them.

(2) The holder of the variety shall not be entitled to demand a fee for the use of an additional variety denomination registered as a trade mark, cf. Article 11 (2), until after the expiration of a period of 25 (30 resp.) years, cf. Article 12 (3), calculated from the date of issue of the certificate of protection for the plant novelty irrespective of whether the registration is maintained throughout the period.

(3) Paragraph 2 shall not apply to propagating material of a variety protected in this country if the propagating material originates from a state which has not protected the variety.

Article 20

(1) If the Minister of Agriculture and Fisheries considers it necessary to ensure distribution of a plant novelty or to prevent substantial deterioration of the conditions for a branch of industry, he may after consultation with the Terms Board for Plant Novelties order the holder of the variety to give one or more persons permission for the commercial propagation and sale of propagating material of a plant novelty and to fulfil, or cause others to fulfil, orders for suitable propagating material within a reasonable time-limit. The provisions of Article 16 shall. apply correspondingly.

Article 21

(1) The terms and conditions referred to in Article 16 (1) may be applied the holder of the variety in the period from acceptance of the application for protection of a variety till its entry in the Register of Plant Novelties (the period of application), provided that the applicant notifies the Board for Plant Novelties thereof. The protection period stated in Article 12 shall in this case be calculated from the date of entry of the notice in the journal kept by the Board for Plant Novelties. The provisions of Articles 11 and 20 shall apply correspondingly during the period of application.

(2) Any royalties collected during the period of application shall be deposited by the producer on a blocked account in a financial institution in favour of the holder of the variety. The amount shall be released if the variety is entered in the Register of Plant Novelties. Otherwise, the deposited amount, inclusive of any interest accrued, shall be repaid to the producer.

(3) If the application for protection of a variety is withdrawn, or if the entry of the variety in the Register of Plant Novelties is refused, the variety may be used freely for propagation. A producer, who during the period of application has used the variety for propagation, shall be in the same position as if an unprotected variety had been used.

CHAPTER 5

Administration

Article 22

(1) The Minister of Agriculture and Fisheries shall set up a board, the Board for Plant Novelties, to administer the provisions of Chapters 2 and 3 of the Act, and a board, the Terms Board for Plant Novelties, to deal with disputes concerning the terms and conditions of royalties, cf. Chapter 4.

(2) The Minister of Agriculture and Fisheries shall lay down the composition and functions of the Boards in the rules of procedure.

Complaints

Article 23

(1) The decisions of the Board for Plant Novelties pursuant to Chapters 2 and 3 and the decisions of the Terms Board for Plant Novelties pursuant to Chapter 4 of this Act cannot be brought before another administrative authority.

Services etc.

Article 24

(1) Where the holder of the Plant Breeder's Rights is not resident in or does not have his registered office in this country, writs etc. may be served to a duly authorised agent who is resident or has his registered office in this country. In all other

cases, notices etc., shall be served in accordance with Article 159 of the Administration of Justice Act.

Fees

Article 25

(1) The Ministry of Agriculture and Fisheries may lay down provisions concerning

1) fees to cover the costs incidental to dealing with applications, cf. Article 3 (4), and to the prolongation of the validity of the certificate of protection, cf. Article 12 (2), and for total or partial covering of the costs of examination, cf. Article 9 (2),

2) interest in connection with late payment of fees, and

3) fees for letters of reminder.

(2) Distress may be levied on fees and interest charged pursuant to paragraph (1).

Article 26

(1) Any person who contravenes Article 16 (1), (3) or (4) shall be liable to a fine. Contravention of the said provisions is subject to private prosecution.

(2) Any person who

1) contravenes Article 11 (1), or

2) fails to comply with an order given pursuant to Article 19 (1), 2nd sentence, and Article 20 shall likewise be punished by a fine.

(3) Regulations issued pursuant to Article 11 (4) and Article 16 (2) and (5), may provide for punishment by a fine for contravention of the provisions of the regulations. Any contravention of regulations laid down according to Article 16 (2) and (5), shall be subject to private prosecution.

(4) Where a contravention has been committed by limited companies, private limited companies, co-operative societies, e.a., the punishment by a fine may be imposed on the company as such. Where contravention is committed by a local authority or by an intermunicipal enterprise, cf. Article 60 of the Local Administration Act, the punishment by a fine may be imposed on the local authority or the inter-municipal enterprise.

Coming into Force etc.

Article 27

(1) This Act shall come into force on 1 January, 1988.

(2) At the same time Act No. 205 of 16 June, 1962, on the Protection of Plant Breeders' Rights shall be repealed.

(3) Provisions laid down in the Act referred to in paragraph 2 shall remain in force until repealed by the Minister of Agriculture and Fisheries. Contravention of the provisions shall be punishable by a fine.

Article 28

(1) The provision laid down in Article 19 (3) shall apply to

1) plant novelties registered on 1 January, 1988, or later, and

2) registered plant novelties for which the holder of the variety after the coming into force of the Act exploits the right to an extended period of protection as set out in Article 12.

Article 29

(1) This Act shall not apply to the Faroe Islands and Greenland.

Act nr. 1107 of 21 December, 1994, on amendment of the Act on Plant Novelties came into force on 1 January, 1995.

Act no. 1086 of 20 December, 1995, on amendment of the Act on Plant Novelties contains the following provisions on coming into force etc.

Article 30

(1) The Act shall come into force on 1 January, 1996.

(2) Article 1 (3) as drawn up in Article 1, No. 2, of this Act shall apply only to varieties for which an application for protection was filed not later than 31 December, 1995.

(3) Article 16 (4), no. 2, as drawn up in Article 1, no. 11 of this Act, shall apply only to varieties that prior to 1 January, 1996, have not been transferred to an official body for a legal purpose or, with the consent of the holder of the variety and with a view to commercial utilisation of the variety, have been offered for sale, sold, or otherwise transferred.

The Ministry of Agriculture and Fisheries, 5 February 1996

MEXICO

REGULATIONS OF THE FEDERAL PLANT VARIETY LAW[1,2]

Ministry of Agriculture, Animal Husbandry and Rural Development

CHAPTER I

OBJECT

Article 1

The object of this enactment is to regulate the Federal Plant Variety Law. For administrative effects, its application and interpretation correspond to the Ministry.

Article 2

For effects of interpretation and application of these Regulations, the following terms shall be understood to mean:

I. Pertinent characteristics: Phenotypic and genotypic expressions of the plant variety that permit its identification;

II. Committee: The Plant Variety Assessment Committee;

III. Plant improver: Any natural person who has developed and obtained a plant variety on another's account;

IV. Genealogy: Set of elements that schematically define the ancestry and breeding process in obtaining a plant variety;

V. Law: The Federal Plant Variety Law;

VI. Propagation material: Any sexual or asexual reproduction material that may be used for the production or multiplication of a plant variety, including seeds for sowing and any whole plant or part of a plant from which whole plants or seeds may be obtained;

VII. Breeder: juristic or natural person who, through an improvement process, has obtained and developed a plant variety of any genus or species;

VIII. Improvement process: Technique or set of techniques and procedures that permit the development of a plant variety and that allow for its protection on the grounds of it being new, different, stable and homogeneous;

IX Registry: The National Registry of Plant Varieties referred to in article 33 of the Law;

X. Ministry: The Ministry of Agriculture, Animal Husbandry and Rural Development;

XI. SNICS: The National Service for the Inspection and Certification of Seeds, a decentralized Ministry body;

XII. Breeders Certificate: Document issued by the Ministry that recognizes and protects the rights of the breeder of a new, different, stable, homogeneous plant variety; and

XIII. Plant variety: Subdivision of a species that includes a group of individuals with similar characteristics and that is considered stable and homogeneous.

Article 3

The Ministry shall coordinate with the Federal Public Administration agencies and entities all aspects related to the protection of the rights of the breeder of new plant varieties. With this purpose, it shall liaise with state and municipal governments and with state, national and international, public and private institutions and organizations.

CHAPTER II

PROTECTION OF RIGHTS

Article 4.

The rights of the breeder and his/her assignees that are confirmed in the Law and in these Regulations shall be freely exercised, with no other limitations than those relevant to the protection of the biodiversity.

Article 5

In relation to the provisions of section A, article 3rd of the Law, the rural communities shall, at all time, have the right to use and commercially exploit the plant varieties that result from their practice, uses and customs.
Said communities shall permit the development of research activities and study that public and private institutions may perform with such plant varieties in order to protect the biodiversity.

Article 6

Recognition as plant breeder is a right that shall correspond to both the plant breeder him/herself and to the plant improvers who, on account of the former, have developed and obtained the plant variety.

[1] Published in the Official Gazette of the Federation on September 24, 1998.
[2] Translation provided by the Mexican authorities.

Plant improvers shall have the right to participate in the profits produced from applying the Law and these Regulations, providing an express prior agreement is made in which the proportion they shall receive is determined in accordance with the applicable legal provisions.

Article 7

Protection of foreign breeders' rights shall be granted in accordance with the provisions of the Law, these Regulations and the international treaties or agreements to which the United Mexican States are signatory.

The Ministry may refuse the registration of plant varieties to nationals of other countries when there is no international treaty or agreement with the country in question and the latter does not grant reciprocity to Mexican breeders.

Article 8

The privilege of making use of a protected plant variety without the breeder's consent, in the case of self use for sowing, shall correspond only to natural persons and shall be restricted to the amount of propagation material that the agricultural producer keeps or reserves to sow an area that does not exceed the limits established in the corresponding official Mexican norms.

Article 9

Any waiver of the breeder's rights shall be expressed in the forms the Ministry issues to this end and shall be presented to the Ministry's Legal Office. The plant breeder or his/her expressly authorized legal representative must ratify the waiver no later than thirty calendar days after the date of presentation. Should the waiver not be ratified, it will be considered as not having been presented.

Article 10

No later than ninety calendar days after the plant variety becomes part of the public domain, the Ministry shall issue the corresponding declaration, which must be published in the official journal of the Federal Government (Diario Oficial de la Federación). The protection of the rights referred to in article 4, section 11 of the Law shall expire, even though the respective declaration has not been published.

CHAPTER III

THE APPLICATION

Article 11

Whosoever attempts to make use of and exploit a new plant variety and its propagation material must prove that they developed and obtained it by means of an improvement process inherent to the genus and species in question.

Article 12

Applications for the protection of the rights of plant varieties breeder shall be presented before the SNICS on a form that the Ministry shall give free of charge to those interested. The following data shall be specified in the form:

I. The full name, nationality and address in national territory of the applicant for a breeders certificate;

II The full name of the plant improver, should there be one;

III. The full name of the common or legal representative, should there be one;

IV. The genus and species of the plant variety;

V. The proposed denomination of the plant variety;

VI. The type, progenitors, origin, genealogy and genotechnique method of obtaining the plant variety;

VII. Information, where appropriate, on the commercialization of the plant variety in Mexico or abroad;

VIII. Where appropriate, the percentage share corresponding to each of the breeders in making use of and exploiting the plant variety;

IX. The priority claim in terms of articles 10 and 11 of the Law and the relevant article of these Regulations; and

X. The beneficiaries designated by the applicant. Similarly, the statement, made under protest to say in truth that the information and data given to the Ministry are correct, shall be inserted.

The forms and technical guides shall be published in the Official journal of the Federal Government (Diario Oficial de la Federación).

Article 13

All applications shall be presented together with the following documents:

I. A technical report giving details of the characteristics of the plant variety for which protection is requested, based on the technical guides or official Mexican norms issued by the Ministry for each genus and species;

II. Proof of payment of duties; and

III. The legal instrument, where appropriate, in which the legal status of the legal representative is verified.

The documents referred to in the article and the complementary information must be written in Spanish or, where appropriate, must be accompanied by the corresponding translation done by an authorized translator.

Article 14

The SNICS shall keep a book of applications in which entries shall immediately be made of the data necessary to identify each application, in strict progressive order, according to date of presentation. Within a period of three working days following receipt of an application, the SNICS shall send said application to the Committee.

Article 15

The Committee shall, in the first place, verify the data given in the application. When the application is seen to contain omissions, errors or defects not essential for the identification of the new plant variety the interested parties shall be required to proceed to make the corresponding correction, addition or clarification within a period of thirty working days.

Should the mistakes, omissions or misrepresentations be serious and imputable to the applicant and affect the determination with respect to the supposed new plant variety, the application shall be rejected out right and no corrections or rectification of the content will be admitted.

Article 16

The right of priority may be requested providing no more than twelve months have passed since presentation of the application abroad. To this end, the Ministry, through SNICS, shall be provided with data on the stage of the procedure or registration of said application and, within a period of three months, a certified copy of the corresponding documents.

The applicant for the breeder's certificate that has requested grant of the priority right shall have a period of four years, as of the date of expiry of the three month period referred to in the paragraph above, to provide the Ministry with any information, and where appropriate, propagation material for examination of the application.

Should the application presented abroad be rejected or withdrawn, the request for priority rights shall be without effect, and the applicant shall have six months, as of the date of rejection or withdrawal, to present to the Ministry any information and, where appropriate, propagation material for examination of the application.

The granting of priority rights does not imply concession of a breeder's certificate in benefit of the applicant or third parties.

Article 17

The information contained in the files of applications being studied and their annexes, may only be consulted by the applicant or persons authorized by him/her, except when the documentation is required by an administrative or legal authority, and the necessary measures to conserve their confidentiality must be observed.

CHAPTER IV

THE QUALIFICATION

Article 18

The Committee shall be chaired by the Undersecretary for Agriculture and Animal Husbandry of the Ministry and its Technical Secretary shall be the Director of the SNICS. The Records Secretariat shall correspond to the Ministry's Legal Office.

The three other representatives of the Ministry shall be the directors in chief of the National Institute for Forestry, Agricultural and Fisheries Research, the National Commission for Agricultural Health and the Ministry's Director General for Agriculture. All proprietary representatives may appoint their deputies.

Likewise, a proprietary and a deputy representative from the Ministry of the Environment, Natural Resources and Fisheries, from the Mexican Industrial Property Institute and one more, that shall be appointed by common agreement by the national public agricultural research institutions, shall also form part of the Committee.

Article 19

The Committee may request, from those who appointed them, the removal of their proprietary and deputy members, as a result of both lack of attendance at sessions and lack of fulfillment in the exercise of their corresponding functions or functions they have been entrusted with.

Article 20

The President shall direct the work, assign functions to its members and chair the Committee sessions.

The Technical Secretary shall execute the Committee's agreements, coordinate the work of the technical support groups and receive and process applications for breeder's certificates.

Article 21

The technical support groups shall function in a collegiate way, they shall consist of a minimum of three and maximum of six members and shall be coordinated by the Technical Secretary or whomever he may appoint as deputy. One of the members of each group shall be representative of the producers of the genus or species of plant variety in question, providing they are specialists in the matter. It will be the responsibility of the Technical Secretary to convene the corresponding organizations to integrate the respective technical support group. Should two or more candidates be proposed, the Committee shall decide who the representative will be.

Only producers' organizations duly registered with the Ministry may appoint representatives.

Article 22

Among other functions, the technical support groups shall act as experts in plant varieties, give their opinions on the identification of any plant variety, as well as on distinctness, stability and homogeneity as requisites for plant varieties.

Article 23

The Committee sessions will be private, unless there is prior agreement to hold them in public. In order for Committee resolutions to be valid, the attendance of 75% of its members will be necessary and these must include its proprietary or deputy President who shall have the deciding vote.

The Records Secretary shall call Committee sessions at least-five working days in advance of the date on which the sessions are to be held and shall invariably bring the order of the day and corresponding documentation.

The minutes of each session shall be drawn up in triplicate and signed by the attendants, including the Records Secretary; who shall bear witness to the proceedings and enter the minutes into therespective book.

Article 24

When the session called for cannot be held on the date previously established, a second session shall be called that must take place within the following fifteen working days and shall be held with the representatives that attend, providing the President and two other members are present.

Article 25

The Committee may do a study of the breeding work carried out by the applicant in order to develop and breed the plant variety.

Article 26

In accordance with article 7th, section I of the Law, the Committee shall determine if a plant variety satisfies the requirement of novelty, to which end it may seek the help of the competent areas of the Ministry and request the opinion of other agencies, entities or public institutions.

The Committee shall investigate if the plant variety has been commercialized outside the periods established in said section and shall consult the official registers of international organizations and of the countries with which agreements exist on the matter; similarly, the data and characteristics of the plant variety shall be circulated in media deemed to be suitable so that they become public knowledge.

Article 27

Each plant variety shall have a denomination that shall be considered as its generic designation. The denomination proposed by the applicant must meet the following requirements:

I. Permit that the plant variety be clearly identified;

II. Be clearly distinguishable from any other denomination given to a pre-existing plant variety of the same botanical species or a similar species, and not be likely to lead to error or give rise to confusion as to the characteristics, value or identity of the plant variety or the breeder's identity; and

III. Be subject, where relevant, to the provisions of the Industrial Property Law.

The use of the denomination shall not infringe on the previous rights of third parties even after protection has expired.

The denomination may not be composed of figures alone, except when it is a question of established practice in designating plant varieties.

Article 28

The Committee shall reject proposed denominations that do not meet the requirements established in the preceding article, in such a case the applicant will be required to propose another within a period of thirty calendar days after said applicant has received the corresponding notification.

The applicant may change the proposed denomination of the plant variety, providing the application is being processed and the change is justified to the satisfaction of the Committee.

Article 29

Having verified the requirement of novelty and approved the denomination of the plant variety, the Committee shall rule on the action to be taken with respect to the application. This resolution shall be immediately communicated to the Ministry so that the certificate of filing referred to in article 35 of these Regulations may be issued.

Article 30

The Committee may require that the applicant, in a period of three months, deliver the plant variety or its propagation material in the quantities it considers fitting, as well as the complementary documents and information its deems necessary. The application will not come into effect if the interested party does not comply with the requirements made in the period established.

Article 31

In order to verify the requirement of distinctness, the Committee may consider any characteristic that can be determined and accurately described as distinctive, so that the plant variety can be differentiated from others with no difficulty, independently of the nature of the pertinent characteristics mentioned in the technical report.

The pertinent characteristics that are used to distinguish a plant variety may be qualitative or quantitative. In both cases, variation shall be defined through levels of phenotypic expression, in terms of the needs of distinctness that, for levels that are not measurable, shall be of a discontinuous type and, in the case of the quantifiable levels, shall be continuous

between two extremes that shall be described in the respective technical guides or in the official Mexican norms.

With respect to the process of review, research or consultation carried out by the Committee, it must be proved that the plant variety can be distinguished, by at least one pertinent characteristic, from other protected plant varieties or plant varieties of the public domain.

Article 32

The requirement of stability of a plant variety shall be complied with if its pertinent characteristics maintain a high level of homogeneity after successive multiplication's in terms of the respective technical guides.

Article 33

A plant variety shall be considered to be homogeneous when its plant population is practically uniform or has variations within a reasonable, foreseeable range given the repeated multiplication, which must be accurately described in the technical report.

Article 34

If it is ruled in the fundamental resolution that the plant variety for which protection is requested is not new or has not been the result of creative activity or plant improvement work or does not meet any of the requirements of distinctness, homogeneity or stability, the Ministry shall notify the applicants thereof in writing specifying the analyses and reasons for which a breeder's certificate cannot be granted.

The interested parties may, within a period of sixty calendar days as of the date of notification of the negative ruling, express what they see fit, or insist, at their own cost, on a new examination of the application, to which end they shall argue the motives, references, causes, data or other reasons on which they base their petition.

CHAPTER V

CERTIFICATE OF FILING

Article 35

With the ruling justifying the application and in accordance with the respective format, the Legal Office shall issue the applicant with a certificate of filing. The applicants shall be notified of this within five working days of receipt of said ruling which shall be recorded in the Registry and published in the Official journal of the Federal Government (Diario Oficial de la Federación).

The certificate of filing shall contain at least the full names of the breeder and, where appropriate, the full names of the plant improvers that developed the plant variety on the breeder's account; the vulgar, or common or scientific name of the genus and species in question; its denomination and register number.

Should issue of a certificate of filing be denied, the applicant shall have a period of thirty calendar days from the date of notification to dispute the resolution.

Article 36

The validity of the certificate of filing shall expire on the date of issue of the corresponding breeders certificate, or, should this be denied and the applicant has exhausted the respective means of defense, when the competent legal body declares a non-appealable judgement as regards the justification or illegality of granting a certificate.

During the period of validity of the certificate of filing, the owner of the certificate may only make use of and exploit the plant variety and its propagation material himself or through third parties with his consent; under no concept may a lien be placed upon it or may it be transferred.

Article 37

Should a declaration of expiration of the certificate of filing be issued, the application for a breeders certificate shall be deemed not to have been presented, and the relative records in the Registry shall be cancelled. Said declaration shall be issued by the Legal Office and shall be published in the Official journal of the Federal Government (Diario Oficial de la Federación).

CHAPTER VI

THE GRANTING AND TRANSFER OF THE BREEDER'S CERTIFICATE

Article 38

The certificate must express, at least, the full name of the breeder and, where appropriate, the full names of the plant improvers; the common or vulgar and scientific name of the genus and species in question; its denomination; its register number and the dates of issue and end of validity.

Article 39

If, during the validity of the breeders certificate, the Ministry has elements and reasons to suppose that the protected plant variety has decreased or lost to a notable extent its identity as variety, the breeder or assignees may be required to contribute evidence or allow field inspections and laboratory tests, if necessary, in order to corroborate that the plant variety does not show alterations as to its original pertinent characteristics.

Article 40

Should the breeder's certificate be lost or destroyed, the Legal Office shall issue a certified copy of the document, which will have the same effects as the lost original. In all cases, the certified copies requested by the breeder or assignees shall be issued.

Article 41

The plant variety breeder or assignees may authorize third parties, through any legal title granted by a notary public, to make use of and exploit the plant variety and its propagation material, in an exclusive, total or partial way and on a temporary basis, for purposes of production, reproduction, distribution or sale, as well as for the production of other plant varieties and hybrids with commercial purposes.

The authorization referred to in the paragraph above may be subject to conditions established by the plant variety breeder that could be: concurrence in exploitation, production volumes, periods, payment of royalties or quality control.

CHAPTER V11

EMERGENCY LICENSES

Article 42

The Ministry, with the prior favorable opinion of the Ministry of Trade and Industrial Development, shall determine if extraordinary circumstances prevail in a region or in the whole country that affect the satisfaction of the basic needs of a sector of the population and if there is a risk that the production, provision or distribution of the benefits may be prevented, obstructed or made more expensive as a result the consequent deficiency in supply or provisions, a situation that could be solved in all or part with the exploitation of one or more protected plant varieties. This determination shall be published in the Official journal of the Federal Government (Diario Oficial de la Federación).

In such an event, the Office of the Director General for Agriculture shall act in accordance with the provisions of article 26 of the Law and with these Regulations.

Article 43

If the breeder shows interest in covering or participating in the emergency situation, he shall do so with the knowledge of the Office of the Director General for Agriculture within a period of five working days from the date on which the corresponding notification was received.

In all cases, the participation of the breeder in the emergency will be subject to the terms and conditions established by the Office of the Director General for Agriculture.

Article 44

Should the breeder not wish to participate in the terms of the preceding article, a notice, calling for public bidding, shall be issued to cover the emergency; the bidding shall be governed by the procedures and requirements laid down in the Procurement and Public Works Law.

Article 45

The adjudication of emergency licenses, where appropriate, shall be governed by the bases and procedures established in the notice that shall be issued by the Office of the Director General for Agriculture.

When there are no interested parties, the Ministry may produce and dispose of the plant variety in the quantities necessary to cover the emergency, paying the corresponding compensation to the breeder. The breeder shall always conserve the right to continue exploiting and making use of the plant variety.

Article 46

The Ministry, through the Office of the Director General for Agriculture, shall grant an emergency license, which shall be published in the Official journal of the Federal Government (Diario Oficial de la Federación). The license shall contain at least the following data:

I. The full name of the licensee;

II. The full names of the breeder or assignees and, where appropriates, of the plant improver that obtained the variety on account of the former;

III. The denomination and registration number of the plant variety;

IV. The amount of the compensation to be given to the breeder or assignees;

V. Rights, obligations and restrictions of the licensee;

VI. Mention that the license shall not be exclusive, may not be transferred nor subrogated under any circumstances; and

VII. Duration of validity.

Article 47

Emergency licenses may be extended by the Ministry only and as long as the circumstances that gave rise to their issue persist.

Article 48

If, during the validity of the emergency license, the plant variety object of the same becomes public domain, from this last date the licensee shall have no obligation to pay the breeder or assignees the compensation established in the notice.

CHAPTER VIII

THE NATIONAL REGISTRY OF PLANT VARIETIES

Article 49

For any recordable act to have an effect against third parties, it must be entered in the Registry records.

Article 50

The Registry shall function in accordance with the system, methods and procedures specified in the guidelines issued to this end by the Ministry.

Article 51

For effects of the Registry, plant varieties shall be assigned an identification number as soon as the requirement of novelty has been fulfilled and denomination approved. Similarly, the full names of the plant breeders and, where appropriates, the claim to priority rights over a plant variety shall be entered.

Article 52

The Ministry shall keep up to date a catalogue of public and private agricultural research institutions; foreign and national researchers and plant improvers with their full names, specialty, place of work and private address. To this end, it shall be helped by the central administrative units, decentralized organizations, and parastatal entities of the sector coordinated by the Ministry as well as by Mexican and foreign agricultural enterprises.

Article 53

Upon petition of the interested parties and having received previous payment of the corresponding duties, the Legal Office shall issue certified copies of the entries and records in the Registry as well as certificates of existence or lack of existence of entries.

Article 54

The content of the entries to be found in the registry books may be rectified providing there are errors of style or contents with respect to the recordable documents.

There will be errors of style when some words are written instead of others, and the insertion of some circumstance is omitted; or when on copying them from the original document a mistake is made concerning proper nouns, amounts or dates that does not alter the general meaning of the text of the entry. Rectification will be made at the government's initiative or upon petition of the party, invariably keeping in sight the document in which there is understood to be a mistake.

Error of content shall be taken to mean any error arising from omissions or deficiencies in the original document. The rectification shall proceed on the petition of the legally interested party by means of the presentation of a new document for entry. All other interested parties must be notified of this rectification. in both cases, the rectification will be noted down in the corresponding entry.

CHAPTER IX

NULLITY AND REVOCATION

Article 55

The procedure to declare a breeder's certificate null shall be substantiated in the Legal Office, at the government's initiative or on request of the interested party, and must be presented within a period of fifteen working days as of the date of publication of the certificate in the Official Journal of the Federal Government (Diario Oficial de la Federación).

Article 56

Nullity shall proceed when it is proved that the plant variety does not meet one of the requirements of novelty, distinctness, homogeneity and stability on the date on which the breeder's certificate was issued or when the certificate is in the name of someone who does not have the right to it.

The statement of nullity shall produce retroactive effects as of the date of issue of the certificate of filing. Where appropriate, the certificate holder against whom nullity is declared shall be responsible for damages caused.

Article 57

The breeder's certificate shall be revoked should any situation contemplated in article 40 of the Law arise. The declaration of revocation shall produce the annulment of the rights to make use of and exploit the plant variety as of the date of notification thereof.

Article 58

When the nullity or revocation of a breeder's certificate is requested, the interested party shall express in writing the motives and arguments on which the action is based and shall annex the proof he deems convenient.

The breeder, his representative or assignees shall be notified of the motion of nullity or revocation at the address given to the Registry so that they may proceed in accordance with the provisions of article 41 of the Law and provide the proof they consider necessary.

All kinds of proof will be admitted with the exception of depositions. Only those that have no relation with the case shall be rejected, be they contrary to the law or contrary to morals and to rights. The Committee shall be responsible for hearing the proof and its report shall be the basis for dictating the definitive resolution.

Article 59

Should the Ministry have elements relating to the situations referred to in articles 39 and 40 of the Law, it shall proceed of its own initiative, observing the prescriptions in the preceding article.

CHAPTER X

VISITS OF INSPECTION

Article 60

In order to prove or corroborate compliance with the Law and the Regulations, the SNICS may directly or through the Ministry's state offices order and practice ordinary or extraordinary visits of inspection at any time or place. The ordinary visits will be made on working days and during work hours, the extraordinary visits may be made at any time.

Article 61

The visits of inspection shall be subject to the provisions of the Law and these Regulations and, with respect to any unforeseen matter, to the Federal Administrative Procedures law.

Article 62

The Ministry, through the Office of the Director General for Agriculture, the SNICS and its state offices may inspect goods, persons and transportation vehicles with the objective of proving compliance with the provisions of the Law and these Regulations.

Article 63

If, during the visit of inspection, it is proved that any one of the infringements foreseen in the Law has been committed, the inspectors shall cautiously seize the goods object of the infringement, proceeding in accordance with the provisions of the Law and these Regulations with respect to the seizure of goods.

CHAPTER XI

PROVISIONAL MEASURES

Article 64

In the administrative procedures for the imposition of sanctions for infringements established by the Law, the Ministry, through the SNICS and the state offices, may also adopt the following provisional measures:

I. Order the withdrawal from circulation or prevent the circulation of plant varieties or propagation material that is infringing the rights protected by the Law;

II. Order that the objects, packing, wrappings, cases, stationery, advertising material and such with which any one of the rights protected by the Law is being infringed be withdrawn from circulation;

III. Seize the goods object of the violation of the rights protected by the Law; and

IV. Order the presumed transgressor to suspend or stop the acts that constitute a violation of the provisions of the Law.

Article 65

The practice of proceedings related to the adoption of provisional measures may only be variety and its propagation material.

The petition shall be made in writing, providing the information necessary to identify the presumed responsible persons or the goods, services or establishments with which or where an infraction foreseen in article 48 of the Law is being committed; the petition shall be accompanied by the proof in their power.

Article 66

Taking into account the seriousness of the infringement and the nature of the measure requested, the SNICS or state office shall determine the practice of the appropriate provisional measure, as well as the amount of the bond and the indemnity bond. Only the presentation of sureties granted by legally authorized institutions should be accepted.

Article 67

An increase in the amount of the bond may be required when, from the execution of the provisional measures, it becomes clear that the amount granted is not sufficient to respond to the damages that might be caused to the persons against whom the measure has been passed.

Article 68

The applicant for a provisional measure may attend the proceedings, in person or through an attorney, and make observations that will be set down in the records.

Article 69

The person responsible for executing the provisional measures must proceed as necessary in accordance with the provisions of the Federal Administrative Procedures Law.

Article 70

In the application of provisional measures, a circumstantial statement shall be drawn up in the presence of two witnesses proposed by the person involved in the proceedings, or appointed by the person responsible for them if the former refuses to propose them. The following information, as minimum, shall be set down in the statement:

I. Place, date and time of the beginning and end of the proceedings;

II. Name and position of the civil servant responsible;

III. Number and date of the official letter authorizing the provisional measures;

IV. Name, official name or trade name of the affected party, as well as of the persons involved in the proceedings;

V. Name and address of the witnesses;

VI. Brief list of facts and information relating to the proceedings;

VII. Inventory and destination of the secured goods, where appropriate, as well as the names of the depositories;

VIII. Observations made by the applicant for the measures;

IX. Declaration of the affected party or of the persons involved in the proceedings, and

X. Name and signature of those who took part include the witnesses.

The validity of the statement shall not be affected if any of the persons present decline to sign it, but their reason for not doing so must be expressed. In all cases, a copy of the statement shall be left with the person who attended to the proceedings.

Article 71

The persons against whom one of the provisional measures have been applied, shall have a period of thirty working days to present the observations they may have with respect to the adopted measure.

The SNICS may modify the terms of the measure applied, taking into account the arguments expressed by the affected party.

Article 72

The affected and the interested parties shall be notified of the application of the provisional measure adopted so that, within a period of thirty working days as of the date of notification, they may put down in writing what they deem fitting.

Article 73

The embargo of goods, based on the provisions contained in articles 42 and 45 of the Law shall be subject to the following:

I. The person responsible for applying the provisional measure shall indicate the goods object of the embargo, make the inventory and appoint the depositaries;

II. In the appointment of the depositaries, the persons or institutions proposed by the applicant for the measure, under his/her responsibility, shall be preferred;

III. If the appointment of the depositary should fall on the person involved in the proceedings, that person shall be considered the person responsible for the establishment;

IV. The depositary shall keep the seized goods in the address where the proceedings are to take place or, where appropriate, in the address indicated for such an end; for no motive may the depositary dispose of them and must keep them at the disposal of the Ministry;

V. The seized goods that must be concentrated in the Ministry shall be kept on the premises indicated to that end and under the responsibility of the SNICS or the corresponding state office;

VI. Could the seized goods lose value or deteriorate, the depositary shall look after them permanently and must inform the person so appointed of any damage observed or that he/she fears may reasonably ensue; and

VII. Where appropriate, the SNICS or the competent office shall pronounce the opportune measures, on prior agreement with the interested parties, in order to avoid the deterioration or loss of value of the seized goods or in order to determine their sale in the best conditions with the purpose of preventing their total loss.

Article 74

When the definitive resolution on the background to the controversy determines that an administrative infringement has been committed, the following shall apply with respect to the destination of the seized goods:

I. The petitioner and the transgressor may agree as to the destination of the goods or subject themselves to the decision of the Arbitration Commission in which case the goods may be put at the disposition of said Commission;

II. If legal proceedings have begun for mending the material damage or for the payment of damages, they shall be put at the disposition of the competent legal authority; and

III. If, after ninety calendar days from the date on which the definitive resolution was passed, none of the suppositions referred to in section I and 11 above have occurred, SNICS' Technical Council may:

a) Donate the seized goods to agencies and entities belonging to the Federal, State and Municipal Administration and public welfare or social security institutions when this does not affect the public interest, or

b) Destroy the goods.

Article 75

The embargo on the goods shall be lifted when:

I. The definitive resolution establishes that no administrative infringement has been committed;

II. The administrative sanction imposed is declared baseless or without effect in compliance with the legal resolution; and

III. By order of the competent legal authority.

Article 76

The Ministry shall make use of the necessary legal measures, including help from the public forces, in order to achieve the adoption of the provisional measures, the execution of sanctions and the application of the security measures that may proceed.

Article 77

On applying the provisional measures, care must be taken that they are not used as a means to violate professional secrets or research or to carry out acts that could constitute unfair competition.

Article 78

The petitioner may use the documentation relating to the application of a provisional measure to begin the corresponding lawsuit or to exhibit it in the writs of the processes under way or in the arbitration proceedings and must abstain from using it for other purposes, from disclosing it or communicating it to third parties.

Article 79

The Ministry through the competent instances, shall try at all times to reconcile the interests involved in controversies relative to the adoption of provisional measures and infringement of the rights covered by the Law and these Regulations. In all cases, priority shall be given to arbitration proceedings.

CHAPTER XII

ARBITRATION

Article 80

The Ministry, upon the request of the interested parties, shall act as arbiter in the controversies that may arise as a result of the application of the Law, of this enactment, of the official Mexican norms and the guidelines issued on the matter. Arbitration shall proceed in the following cases, among others:

I. In claims for payment for material damage or indemnity for damage;

II. When the rights granted by the Law and these Regulations are contested; and

III. In controversies on the maintenance, conservation, sale and destination of the seized goods.

Article 81

The Ministry shall appoint an Arbitration Commission to substantiate and resolve the matters submitted to its consideration. This Commission shall be comprised of three members including the Director General for Legal Affairs who shall chair it.

Article 82

The questions submitted to arbitration shall be processed and resolved in accordance with the provisions of the Law and these Regulations, by means of the procedure agreed to by the petitioners:

I. As friendly conciliator; or

II. Strictly following the arbitration procedure.

The interested parties shall opt for the procedure they deem fitting and shall express it formally as a commitment that shall be set down in the statement drawn up to that end, which they shall sign together with the members of the Commission.

Article 83

In the cases of a friendly settlement, the Commission, in a brief, clear and concise way, shall establish the questions to be subject to arbitration and shall make a resolution based on justice and good faith, without subjecting the proceedings to special formalities, but observing the essentials of the procedure. The carrying out of motions or objection processes shall not be accepted.

Any clarification on the resolution made may only be requested by the interested party and within a period of five working days following its notification.

None of the parties that may have opted for the procedure of a friendly settlement may change their decision after having fixed the points subject to arbitration.

Article 84

In the arbitration procedure that strictly follows the law the following terms shall prevail:

I. Five working days, from the day after making the commitment, for the presentation of the corresponding initial writ, in which the proof considered fitting must be offered;

II. Five working days, as of the day after the summons, for the reply and offering of proofs;

III. Fifteen working days, as of receipt of reply, for the Commission to admit and process the proof offered;

IV. Five working days for all parties, as of the termination of the probation stage, to formulate pleas; and

V. Fifteen working days, as of the formulation of the pleas or expiry of the term in which to do so, to dictate the decision.

The terms shall not be extended and notifications shall be made personally at the address indicated by the interested parties; when the terms have expired, the procedure shall follow its course, without the need to make accusations of nonappearance, and shall preclude the right that could have been exercised within these terms.

The Arbitration Commission shall decree expiration when one hundred and eighty calendar days have elapsed without a promotion being made by any of the parties.

Article 85

The Arbitration Commission may allege all the legal elements it deems necessary to resolve the questions relating to the controversy, without further limitations than those prohibited by the law or contrary to morals.

The administrative authorities shall help the Commission when so required and its resolutions shall admit no appeal.

Article 86

The decisions derived from the arbitration proceeding shall have the character of a definitive resolution.

CHAPTER XIII

ADMINISTRATE INFRINGEMENTS AND APPEAL FOR REVIEW

Article 87

All persons may denounce to the Ministry the existence of facts that may constitute any of the administrative infringements foreseen in the Law. The denouncer shall attempt to indicate them in writing, which shall be accompanied by any proof that can be offered.

Article 88

The SNICS shall impose the sanctions in accordance with the provisions of the Law, these Regulations and other applicable provisions.

Should there be seized goods, they shall be put at the disposition of the Treasury of the Federation for application in payment of the sanctions that may be imposed and costs incurred.

Article 89

The interested parties affected by the acts and resolutions of the Ministry that terminate the administrative procedure, a petition or that close a file, may file an appeal for review in the terms of the Federal Administrative Procedures Law.

TRANSITORY ARTICLES

FIRST. These Regulations shall come into effect the day after their publication in the Official Journal of the Federal Government (Diario Oficial de la Federación).

SECOND. The Ministry shall publish the formats referred to in article 12 of these Regulations within a period of sixty days after the publication of this enactment.

SLOVAKIA

LAW ON THE PROTECTION OF RIGHTS OF NEW VARIETIES AND ANIMAL BREEDS

No. 132/1989 Coll. Laws, dated 15 November 1989**

Amended: 22/1996 Coll. Laws

PART ONE

GENERAL PROVISIONS

Article I

Purpose and scope of application of the law

(1) The purpose of this Law is to regulate the rights and duties arising for physical and legal persons from the creation of new varieties of plants (hereinafter referred to as varieties and breeds of animals (hereinafter referred to as " breeds ") and from their commercial exploitation.

(2) This Law applies to the varieties of all genera and species of plants and those breeds of animals which can be listed in a generally binding regulation.[1])

(3) This Law shall not apply to any industrially produced micro-organisms, biotechnological producers and products obtained by the help of the same which are patentable.[1a])

Article 2

Definition of terms

For the purposes of this Law, the following words shall have the following meaning:

a) "Variety" shall mean a set of plants within a common lowest botanical taxon which, regardless of whether the terms for granting a Breeder 's Certificate are fulfilled, may be:

1. defined by the expression of characteristics arising from the given genotype or a combination of genotypes;

2. distinguished from any other set of plants by the expression of at least one of the said characteristics;

3. deemed to be unified owing to its ability to remain unchanged in propagation.

b) the propagating material of varieties shall mean seeds and plantings, as well as plants and their parts designated for further propagation.

c) a "breed" refers to an animal population derived from a single origin, with characteristic morphological and physiological features, capable of reproduction: besides "breed", this includes its lower taxons - races, strains and lines, as well as their hybrids. and eventually also utility breeds of farm animals.

d) animal breeds' "propagating material" refers to living animals, semen, oocytes, embryos and eggs to be used for further propagation.

e) the "creation" of a variety or a breed within the activities of a Slovak organisation shall mean the creation, development or discovery of a variety or a breed in connection with the fulfillment of duties arising from the employment contract, any membership or business relation to such organisation or any body under its material support.

f) the "commercial exploitation" of varieties and breeds shall include in respect of the propagating material or harvesting material of varieties and the propagating material of breeds - (i) the manufacture for sale (ii) treatment for the purpose of propagation (iii) the offering for sale (iv) the sale of (v) and the storing propagating material, harvesting material of varieties and propagating material of breeds and storing the same.

g) "Breeder" shall mean:

1. any natural person who discovered, developed or by his own breeding created a variety or a breed:

1.1. beyond any activities of a Slovak organisation on his own account in and his own name, or who has, on his own account, arranged by a contract in his own name a discovery, development, or creation of a new variety or breed by any third person;

1.2. within the activities of a Slovak organisation during his employment, or a similar working relationship, on such an organisation's account and in its name (hereinafter referred to as the " author "),

while the position of a natural person may be held by several persons, provided, they have been engaged in

*) Translation provided by the Slovakian authorities.

**) The Law was first enacted by the Federal Assembly of the Czechoslovak Socialist Republic

1) The Act of the Federal Ministry of Agriculture and Nutrition 134/1989 Coll. containing the list of economically important genera and species of planst and animals, as amended by the Act of the Federal Ministry of Economy 515/1991 Coll.

1a) Art. 4, item c) of the Law 537/1990 Coll. on inventories, industrial patterns, and innovations.

the discovery, development, or creation of a variety or a breed by their own breeding research

2. any legal person, who:

2.1. is an employer of a natural person referred to in clause 1.2. above, when the costs of discovery, development, or creation of the new variety or a breed have been covered in its full or partial amount,

2.2. has the right of ownership or an economic right in respect of a variety or a breed,

while the position of a legal person may be held by several persons, provided that the variety or breed, have been discovered, developed, or created under their material support,

3. any legal successor of the natural person or the legal person referred to in clauses 1 and 2 above,

4. any foreign natural person or any foreign legal person who has the right to dispose of the variety or breed, having a contractual agent within the territory of the Slovak Republic[1b],

h) the "applicant" shall mean a breeder who is entitled to rile an application for the protection of a variety or a breed, the natural person shall be entitled file such an application only if the variety or breed has been discovered, developed or created by his own breeding research, in his own name and on his own account beyond any activities of a Slovak organisation; an applicant may be represented by several breeders provided that the variety or the breed has been discovered, developed or created by their material support

i) a holder of the Breeder 's Certificate shall mean anyone who has been granted the Breeder 's Certificate, or his legal successor.

PART TWO

THE GRANTING OF THE BREEDER'S CERTIFICATE AND THE RIGHTS AND DUTIES OF BREEDERS AND ORIGINATORS

Article 3

(1) The applicant shall be granted, on the basis of his application, a Breeder's Certificate in respect of a variety or a breed that complies with the conditions laid down in Articles 4 to 6.

(2) The Breeder's Certificate is to certify:

(a) the creation of a variety or a breed;

(b) the name of the variety or the breed, with an indication of the species (genus);

(c) the holder of the Breeder 's Certificate by stating the variety or breed's trade name and seat, only if a legal person, and his name, surname, and permanent residence is a natural person;

(d) the right of the owner of the Breeder 's Certificate to exploit the variety or the breed commercially;

(e) the dates of commencement and termination of the protection of the rights in respect of the variety or the breed.

Article 4

Conditions for the granting breeder's certification in respect of a variety

(1) The conditions for the granting of a Breeder 's Certificate in respect of a variety shall be satisfied if the variety is:

a) distinct,
b) uniform,
c) stable, and
d) new.

(2) The variety is distinguished if it is clearly distinct by the way of expression of at least one describable and well distinguished important characteristic (property) or expression of a combination of characteristics (properties) from any other variety generally known about upon the date of the filing of the application.

(3) The variety is consistent if it remains sufficiently uniform in the expression of those characteristics that are found in the tests for its distinguished character, as well as in the expression of any other characteristics referred to in the variety description, save for any deviations which may arise from certain peculiarities of propagation.

(4) The variety is stable if it maintains its original distinguished characteristics in each generation or after each cycle of propagation.

(5) The variety is "new" if its propagating or harvesting material has not been sold or otherwise disposed to others:

a) within the territory of the Slovak Republic previous to one year before the date of the riling the application (Art. 16),

b) within the territory of any other country:

1. in the case of varieties of fruit trees, forest or garden woods, or vines, previous to six years before the date of riling the application,

2. in the case of varieties of any other species, previous to four years before the date of the riling the application.

(6) The varieties of genera and species of plants to which this Law has not applied until this day, shall be deemed to be new even if they do not fulfil the conditions stipulated in the clause above.

1b) Art. 566 et seq. of the Commercial Code.

(7) A variety shall also be deemed to be new if propagating or harvesting material has been sold or otherwise disposed of to others without the breeder 's consent.

(8) For the purposes of this Law, a variety shall not be deemed to be sold or otherwise disposed to others and thus it is deemed to be new - also in cases where its propagating or harvesting material:

a) has been provided, under the terms and conditions stipulated in the Law, to the Ministry of Agriculture of the Slovak Republic (hereinafter referred to as the "Ministry") or any professional authority or organisation appointed by the Ministry for the purpose of determining characteristics and properties of the variety

b) has been used for a discovery, development or creation of any other variety

c) has been produced, propagated, treated after harvest or stored by a third person under a contract[1c], provided the breeder has continued to hold the exclusive right to the disposal of such propagating material of the variety; this shall not apply if the propagating material has been used as a component for the production of a hybrid variety which has been sold or otherwise disposed of to others

d) has been provided to a person who has been engaged in his own activity or, by way of his material support, in the discovery, development, or creation of the variety; unless said material is further sold or otherwise disposed of to others by such a person

e) has been used by a third party for experimental purposes

f) has been exhibited in any official or officially acknowledged exhibition under an international treaty[1d].

(9) For the purpose of reviewing the terms and conditions for granting a Breeder 's Certificate in respect of a variety, any other variety shall become generally known on the date of filing for an application in the Slovak Republic or abroad, provided that the application leads to the granting of the Breeder 's Certificate or entry into the national list of varieties.

Article 5

Conditions fo rhte granting of a breeder's certificate in respect of a breed

(1) The conditions for the granting of a Breeder's Certificate in respect of a breed to which special provisions[1e] apply shall be deemed to be complied with if the breed has been certified or released pursuant to the said special provisions less than one year before the filing of the application (Article 16).

(2) The conditions for the granting of the Breeder's Certificate in respect of a breed to which special provisions do not apply shall be deemed to be complied with if the breed is:

a) distinct by way of at least one major trait or property from any other breed that is commonly known of upon the date of the filing of the application

b) uniform to a level that is adequate to the biological properties of the breed concerned

c) stable in its major traits, while respecting the peculiarities ensuing from the environment in which the animals are bred

d) new

e) sufficiently large in number for reproduction

(3) The condition of novelty shall be deemed to be complied with if the breed has not been sold or offered for sale:

a) in the territory of the Slovak Republic for longer than one year before the date of the filing of the application,

b) in the territory of any other State for longer than six years before the date of the filing of the application.

(4) The fact that the breed has been sold or offered for sale without the approval of its breeder shall not be considered detrimental to its novelty.

Article 6

Denomination of the variety of the breed

(1) Each variety or breed should be labeled by a name which is its general name. If the variety or the breed has been permitted or registered in the Slovak Republic pursuant to special regulations[2], it shall bear the name in accordance with these regulations.

1c) Art. 527 and Art. 536 of the Commercial Code.

1d) Convention of International Exhibitions executed in Paris on November 22, 1928 (Collection of Laws and Regulations of the Czechoslovak State No. 46/1932 Coll.)

1e) Art. 527 and Art. 536 of the Commercial Code. Law of the Slovak National Council No. 110/1972 Coll. on the breeding of farm animals as amended by the subsequent Law of the Slovak National Council No. 256/1991 Coll. Law No. 102/1963 Coll. on fisheries as amended by Law No. 229/1991 Coll.

2) Law No. 61/1994 Coll. on the development of plant production as amended by the subsequent Law No. 132/1989 Coll. and Law of the Slovak National Council No. 184/1993 Coll. and Law of the Slovak National Council No. 285/1995 Coll.Law No. 110/1972 Coll.

(2) The denomination of a variety or a breed shall not:

a) consist solely of figures,

b) be identical or liable to cause confusion with a denomination used in the Slovak Republic or abroad for a variety or a breed of the same or a related species, or otherwise infringe upon the rights of other breeders,

c) be liable to mislead concerning the value, characteristics or origin of the variety or the breed, or the identity of the breeder or originator,

d) be identical or liable to cause confusion with the trademark, indication of source or geographical designation used for the same or similar products, with a famous trademark irrespective of the kind of product, or otherwise infringe upon the rights and protected interests of other persons,

e) be contrary to public interests,

f) be unsuitable for linguistic reasons.

(3) Foreign varieties or breeds shall retain their original names. Any other name may be used only provided that the original name does not comply with requirements stipulated in clause 2 above.

(4) The right of priority of any third persons in respect of the name of a variety or a breed shall not be affected. If the application for the protection of a variety or a breed shall affect the right of priority (Art. 16 clause 2) in respect of the name of a variety or a breed of a third person, the provision of Art. 17 clause I of this Law shall apply.

(5) The Ministry shall be liable for informing the public about any proposal of a name of a new variety or a breed for the purpose of ensuring the protection of the right of priority in respect of the name of a variety or a breed of third persons, and this liability shall be fulfilled by the timely riling of the application pursuant to Art. 18, clause I of this Law.

(6) In any business use of a variety or, a breed, a trademark, a trade name or a similar labelling may be a part of the name of the variety. However, the denomination of the variety or the breed should be clearly and easily distinguishable.

Article 7

Rights of Breeders

(1) The rights of breeders arising from the Breeder 's Certificate shall not be restricted by any third person in any way, save for in the exceptions stipulated in the Law.

(2) Commercial exploitation of any derived or any certain other variety shall be possible only with the a written consent of the holder of the Breeder 's Certificate pertaining to the original variety. The owner of the original variety shall have the right to receive at least a reasonable consideration from the commercial use of any derived variety.

(3) The "derived variety" shall mean a variety which is substantially derived from any protected variety, where the protected variety itself is not a substantially derived variety or is not secondarily derived from any variety which itself is substantially derived from any original variety, and

a) retains its essential characteristics resulting from the genotype or a combination of genotypes of the original variety,

b) is clearly distinguishable from the original variety,

c) substantially corresponds to the original variety in the expression of essential characteristics resulting from the genotype or a combination of genotypes of the original variety, except in the case of differences arising from derivation.

(4) A "certain other variety" shall mean a variety:

a) which is not clearly distinguishable from the protected variety (Art. 4, clause 1, item a),

b) of which the production requires repeated use of the variety for which a Breeder 's Certificate has been granted.

(5) The provisions used for protected varieties shall also apply to any derived varieties and certain other varieties accordingly, and

a) the Breeder 's Certificate shall show also the owner of the original variety (Art. 3, clause 2, item c),

b) before commencing the commercial exploitation of any derived or certain other variety, its owner or any other user shall agree in writing with the owner of the original variety upon the consideration from the commercial exploitation of the derived or certain other variety (Art. 8, clause I and Art. 7, clause 2), otherwise he shall not be authorised to commercially exploit the same.

(6) The breeder, having discovered, developed or created any variety or any breed within the activities of a Slovak organisation, shall have the right to have his name shown in the Breeder 's Certificate as its author, such right being untransferable.

(7) If more than one breeder contributed through their creative work to the discovery, development, or creation of a variety or a breed, they shall share their rights in proportion to their participation in the creation of the variety or the breed. If the shares of the breeders can not be determined, they shall be deemed to be equal.

(8) Any breeder, having discovered, developed or created a variety or a breed within the activities of a Slovak organisation, shall have the right to expect to receive from the holder of the Breeder 's Certificate a share from the license fees or finan-

cial benefits from the commercial exploitation of the variety or the breed (the right to receive consideration). The agreement upon the consideration should be made in writing.

Article 8

Rights and duties arising from the breeder's certificate

(1) The owner of the Breeder's Certificate shall have the exclusive right to exploit the variety or breed commercially; the variety or breed shall not be commercially exploited during the period of protection without his consent.

(2) Slovak organisations which are engaged in the State system of the care of the development of animal breeding on the basis of a licence issued pursuant to special provisions[1e] shall not be required to obtain such consent if the owner of the Breeder' Certificate in respect of a breed is a Slovak legal or physical person.

(3) The consent of the owner of the Breeder's Certificate shall not be required if the variety or the breed serves for the breeding of another variety or breed, this shall not apply to cases where such a variety or breed is used repeatedly as a component for the production of another variety or the formation of another breed for purposes of sale.

4) The right to commercially exploit a variety or a breed shall also include the. right to authorise such commercial exploitation to other persons. Such authorisation (licence) shall be granted by means of a written contract which shall include the conditions of use and an agreement on the licence fees.

(5) The holder of the Breeder 's Certificate may give his consent for a granted licence for the following licensed acts:

a) the production or propagating of propagating material of a variety or a breed,

b) treating material for the purposes of propagation,

c) offering for sale,

d) selling or any other form of trading,

e) export,

f) import,

g) storing for the purposes referred to in subparagraphs a) through f) above.

(6) The consent for performing any of the acts referred to in clause 5) above, may be made conditional or restricted by the holder of the Breeder' s Certificate.

(7) The consent of the holder of the Breeder 's Certificate shall be required also for performing the acts referred to in clause 5, items a) through g) related to the harvesting material of a variety or a breed.

(8) Any products from the propagating material of a variety or a breed and from the harvesting material of a variety for which a Breeder' s Certificate has been granted, may be produced under the written consent of the holder of the Breeder' s Certificate.

(9) Granting a consent for performing acts pursuant to clauses 5), 6), and 8) above shall be required also for any derived varieties and certain other varieties.

Article 9

(1) If a variety or a breed has been created by several originators in the framework of their activity for several Slovak organisations, those organisations shall, as co-owners of the Breeder 's Certificate, share the rights and duties in respect of the variety or the breed at the same ratio as the originators share their rights.

(2) The rights and duties of the co-owners of the Breeder's Certificate shall, in relation to third persons, be Joint and several. As for their mutual claims, they shall settle accounts according to their shares.

Article 10

Compulsory licences

(1) If the owner of a Breeder's Certificate refuses to authorise the commercial exploitation of the variety or the breed, or refuses to do so to the extent necessary, the Ministry may substitute for his authorisation, in the public interest, a compulsory licence.

(2) In the case where a compulsory licence is granted, the owner of the Breeder's Certificate shall be entitled to compensation through licence fees. If the owner of the breeder' s Certificate falls to reach agreement in respect of the value of the compensation with the organisation to the benefit of which the compulsory licence has been granted, the decision shall be made, upon the proposal of either of them, by an authority referred to in Article 25, due account being taken of the costs of the breeding of the variety or the breed and of the financial benefits expected from its commercial exploitation.

Article 10 A

Other restrictions upon the breeder's certificate

(1) The following performed activities shall not mean any loss of rights for the holder of the Breeder's Certificate:

a) for non-business activities,

1e) Art. 527 and Art. 536 of the Commercial Code. Law of the Slovak National Council No. 110/1972 Coll. on the breeding of farm animals as amended by the subsequent Law of the Slovak National Council No. 256/1991 Coll. Law No. 102/1963 Coll. on fisheries as amended by Law No. 229/1991 Coll.

2a) Art. 12a through 12h of the Law 105/1990 Coll. on private entrepreneurs, as amended by the Law 219/1991 Coll.

b) for testing purposes,

c) for the purposes of creation, development, or discovery another variety.

(2) The rights of the holder of the Breeder 's Certificate shall not be affected, when individual farmers[2a] propagate, on their own land, such varieties for which the Breeder 's Certificates have been granted and use the propagating material which was obtained by them by seeding or planting and harvesting on their own land. The conditions of this restriction shall be stipulated in the generally valid legal regulation to be issued by the Ministry.

(3) The protection of the rights of the holder of the Breeder's Certificate will not be provided pursuant to this Law if the propagating or harvesting material of a variety has been provided to any third person by the holder of the Breeder 's Certificate or upon his consent. However such person shall not use the same:

a) for any propagation, except in cases when such propagation was the intention of providing the same,

b) for export, except in cases when the exported material is intended for final consumption.

Article 11

Transfer of the breeder's certificate

(1) The owner of the Breeder's Certificate may transfer the Certificate to any other person by written contract. All the rights and duties ensuing from the Breeder's Certificate, except the rights of the originator, are thus passed on to the new owner. The owner of the breeder's Certificate shall be entitled to request the transferee to pay a financial compensation for the transfer.

(2) A co-owner of the Breeder's Certificate may transfer his share to any other co-owner. The Breeder's Certificate maybe transferred to a third person only if none of the co-owners accepts a written offer of transfer within a period of one month.

(3) The contract relating to the transfer of the Breeder's Certificate shall come into force on the day of its entry in the Register of Protected Varieties or in the Register of Protected Breeds, both Registers being kept by the Ministry; the entry shall be made upon payment of an administrative fee[3] .

(4) Any change in the person of the owner of the Breeder's Certificate other than through transfer in accordance with paragraphs (1) to (3) may only occur in cases determined by Law.

(5) Any change in the person of the owner of the Breeder's Certificate shall be entered in the Register of Protected Varieties or in the Register of Protected Breeds.

Article 12

Terms of validity of the breeder's certificate

The Breeder's Certificate shall be in force from the day of the filing of the application:

a) for 30 years in the case of varieties of hop, grapevine, fruit, ornamental and forest woody species and rootstocks thereof,

b) for 25 years in the case of varieties of other species,

c) throughout the duration of the breed in the case of breeds.

Article 13

Cancellation of the breeder's certificate

(1) The Ministry shall cancel the Breeder's Certificate, if:

a) the variety or the breed no longer shows any characteristics of homogeneity and stability ascertained at the time of granting the Breeder's Certificate,

b) the biological and documentary material for verification tests (Art. 22) fails to be submitted duly and in due time, of within the specified substitute time period,

c) the payment for performing the verification tests remains unpaid within the specified time period,

d) the holder of the Breeder 's Certificate fails to pay the administration fee in due time[3],

e) the holder of the Breeder 's Certificate shall announce in writing that he waives the Breeder's Certificate,

f) the holder of the Breeder 's Certificate fails to propose, within the specified time period, any new name of a variety or a breed if the original name has been cancelled.

(2) The cancellation of the Breeder 's Certificate shall be entered into the register of protected varieties or in the register of the protected breeds and shall be published in the Bulletin of the Ministry (hereinafter referred to as the "Bulletin") within three months from the date of its cancellation.

Article 14

Protection of the denomination

The denomination of a variety or a breed shall be used in the commercial exploitation of the variety or the breed and in fur-

3) The Law of the National Council of the Slovak Republic No. 145/1995 Coll. on administrative fees.

ther breeding. The denomination of the variety or the breed shall not be used for any other variety or breed of the same or a related species. not even after the termination of the Breeder's Certificate.

Article 15

Relationships with other countries

(1) Under the condition of reciprocity, any foreign physical and legal person shall have the same rights and duties as Slovak nationals, if the rights of the owners of Breeder's Certificates are involved and where the State (of which the former person is a member or where the person has their seat) provides protection in respect of the species of plants or animals concerned. The Breeder's Certificate may be granted despite the fact that the above condition is not complied with in cases deserving special consideration.

(2) Provisions of international agreements binding on the Slovak Republic shall remain unaffected.

PART THREE

PROCEDURE IN RELATION TO THE PROTECTION OF VARIETIES AND BREEDS

Article 16

Filing of the application

(1) The applicant (Article 2, item h) shall be entitled to file an application for the protection of a variety or a breed.

(2) The application shall be filed with the Ministry; the filing shall confer a right of priority on the applicant.

(3) The right of priority, as it may be derived from an international agreement, shall be claimed already in the application and shall be proved by due evidence within three months, failing which such a right of priority shall not be taken into consideration. The application shall contain the date and the name of the State of the first filing abroad from which the applicant derives his right of priority.

(4) The Ministry shall enter the applications in the order in which they have been delivered into the Register of Applications for new varieties or into the Register of Applications for new breeds. If the applicant fails to pay the administration fee[3] when filing the application or no later than within the time period set by the Ministry, the Ministry shall cancel the entry of the application in the Register of Applications and shall notify the applicant immediately in writing. At the same time, the Ministry shall publish a notice canceling the entry of the application in the Register of Applications in the Bulletin. By canceling the entry of the application in the Register of Applications, the applicant 's rights to file a new application for the protection of the same variety or breed shall not cease.

Article 17

Examination of the application

(1) If an application does not conform to the prescribed requirements, the Ministry shall request the applicant to remedy the insufficiencies within a prescribed period. In cases deserving special attention, the Ministry may assist in remedying the insufficiencies. If the insufficiencies are not remedied within the prescribed period, the procedure shall be discontinued. The applicant shall be notified of this eventuality at the time when the period is prescribed.

(2) If the applicant remedies the insufficiencies in due course, his night of priority shall remain unaffected.

(3) The requirements for the application shall be laid down by a generally binding regulation.

Article 18

Publication of the application

(1) The Ministry shall publish a notice about riled applications in the Bulletin within three months from the date of filing the application, and such notice should contain the information about the applicant, the name of the variety or the breed, the species name, and the information about its novelty. The decision on the objections shall be made by the Ministry. If an expert opinion is required for the decision on the objections (Article 20), the decision shall be made by the Ministry within three months from the receipt of the said expert opinion.

(2) A change in the applicant may be made:

a) with the approval of the applicant,

b) without his approval, on the basis of a valid decision from an authority referred to in Article 25.

(3) If during the course of the processing of the application, an argument arises as to whether the application has been filed by an entitled person, the Ministry shall continue to process the application, but the decision on the Breeder's Certificate shall only be issued after the decision from an authority referred to in Article 25 has come into force.

(4) Any change in the applicant shall be entered in the Register of Application in respect of New Varieties or the Register of Applications in respect of New Breeds.

(5) Any change of the information set forth in the application to be published should be published in the Bulletin within three months of such change.

3) The Law of the National Council of the Slovak Republic No. 145/1995 Coll. on administrative fees.

Article 19

Applications for the protection of Slovak varieties and breeds in other countries

(1) An application for the protection of a Slovak variety or a breed may be filed in another country even before filing such application in the Slovak Republic, and also in the event such application has never been filed by the applicant in the Slovak Republic.

(2) The person who files an application in respect of a Slovak variety or breed in another country shall notify the Ministry of the filing.

Article 20

Determination of the traits and properties of varieties and breeds

(1) Compliance with the conditions laid down in Articles 4 to 6 shall be examined by the Ministry on the basis of opinions of competent specialist authorities and organisations and, in the case of breeds to which special provisions apply[1e], on the basis of the decision of an appropriate authority.

(2) The competent specialist authorities and organisations shall, if requested to do so by the Ministry, determine the traits and properties of the varieties and breeds within a period determined upon agreement between them and the Ministry. For this purpose the applicant shall provide free of charge biological material and documentation to the competent specialist authority or organisation.

(3) When examining varieties and breeds, the competent specialist authorities and organisations may also use the results of tests performed in other countries.

(4) The competent specialist authorities and organisations shall be entitled, in relation to the applicant, to compensation for the operations associated with the examination of varieties and breeds, pursuant to the valid price regulations.

Article 21

The granting of the breeder's cerficiate

(1) After the receipt of the opinion of a professional body or organisation, or the resolution of a relevant authority, the Ministry shall decide about granting the Breeder 's Certificate within three months. If, based on the opinion, the Ministry shall not grant any Breeder's Certificate, it shall notify the applicant immediately in writing and, no later than within three months of the receipt of the opinion, it shall publish a resolution on rejecting the application for the protection of a variety or a breed in the Bulletin. Such resolution shall be subject to a review by the Court[3a].

(2) The decision on the granting of the Breeder's Certificate shall be entered in the Register of Protected Varieties or the Register of Protected Breeds. A Slovak originator who is not the applicant shall be given a copy of the Breeder's Certificate.

(3) The Breeder's Certificate shall be published in the Bulletin, within three months of the date of granting the Breeder 's Certificates in respect of varieties shall also be entered in the State Variety Book[4].

Article 22

Verification tests

(1) While the Breeder's Certificate is in force, the owner of the Breeder's Certificate shall maintain the variety or the breed. If doubts anise as to whether the variety or the breed still complies with the conditions laid down in Article 4 (1) b) and c) or in Article 5(2) b), c) and e), the owner of the Breeder's Certificate shall have the obligation, when requested to do so by the Ministry, to provide free of charge the biological material and documentation for the verification of compliance with the said conditions.

(2) The verification shall be performed by authorities and organizations entrusted with the tests by special provisions[5]. In the case of breeds to which no special provisions[1e] apply the verification shall be performed by authorities and organizations entrusted by the Ministry.

(3) The authorities and organizations referred to in paragraph (2) shall be entitled. in relation to the owner of the Breeder's Certificate. to compensation for the operations associated with the performance of the verification tests, pursuant to the valid price regulations. This provision shall not apply to the verification tests of breeds to which special provisions[1e] apply.

Article 23

Invalidity of breeder's certificate

(1) The Breeder's Certificate shall be invalid if:

a) it is later revealed that the conditions for granting the same have not been fulfilled,

b) it has been granted to a person who is not entitled for granting the same, in both cases mentioned above the Breeder 's Certificate shall be deemed not to have been granted at all.

1e) Art. 527 and Art. 536 of the Commercial Code. Law of the Slovak National Council No. 110/1972 Coll. on the breeding of farm animals as amended by the subsequent Law of the Slovak National Council No. 256/1991 Coll. Law No. 102/1963 Coll. on fisheries as amended by Law No. 229/1991 Coll.

3a) Sect. 244 et seq. of the Civil Court Code as amended by Law No. 180/1990 Coll. and Law No. 519/1991 Coll.

4) Law No. 61/1964 of Coll.

5) Law No. 61/1964 of Coll., Law of the Czech National Council No. 86/1972 of Coll.; Law of the Slovak National Council No. 110/1972 of Coll.; Law No. 102/1963 of Coll.

6) Law No. 71/1976 of Coll. on Administrative Procedure (Administrative Order).

(2) The invalidity of the Breeder 's Certificate shall be entered in the Register of Protected Varieties or in the Register of Protected Breeds and shall be published in the Bulletin within three months of the date of finding the invalidity of the Breeder 's Certificate pursuant to clause 1 above. The invalidity of the Breeder 's Certificate in varieties shall be also entered in the State Variety Book[4].

PART FOUR

JOINT, TRANSITIONAL AND FINAL PROVISIONS

Article 24

Administrative procedure

The procedure to be observed before the Ministry shall be governed by the General Administrative Rules[6], unless otherwise provided for in this Law.

Article 25

Settlement of disputes

Civil courts shall be competent to deciding disputes concerning legal, relationships based on this Law.

Article 26

Protection of Rights

In cases of infringement of a right protected under this Law, the owner of the Breeder's Certificate, or the originator if he is not the owner of the Breeder's Certificate. whose right has been infringed. may claim for the *infringement to* be enjoined by the law and the consequences of the infringement to be removed. If damage has been caused by the infringement, the person who suffered the damage shall be entitled to *compensation. In* cases of harm other than damage to property, the injured person shall be entitled to adequate satisfaction, which may also take the form of monetary compensation.

Article 27

Penal sanctions against organisations

(1) Any entrepreneur[6a],

a) with the validity term of the Breeder' s Certificate

1. commercially exploiting a variety or a breed without the approval of the holder of the Breeder's Certificate,

2. not using the registered name while commercially exploiting a variety or a breed, or using the registered name for another variety or breed of the same or related species,

b) fails to notify the Ministry of his application for the protection of a Slovak variety or a breed in another country (Art. 19, clause 2),

shall be liable for a fine which may be imposed by the Ministry, not exceeding the amount of SKK 1.000,000. In the event of any repeated unauthorised infringement of the rights of the holder of the Breeder's Certificate referred to in clauses a) and b) above, the Ministry may impose an additional fine not exceeding SKK 2,000,000 within the time periods referred to in Art. 27, clause 3 of the Law.

(2) In determining the fine, the Ministry shall consider mainly the seriousness, manner. duration and consequences of the infringement.

(3) The fine may only be imposed within one year of the day on which the Ministry learned of the infringement and within three years of the day on which the *infringement was* committed. The fine shall be paid within 30 days of the day on which the decision concerning its imposition came into force.
(4) Monies drawn from the fines shall be paid into the State Budget.

Article 28

Misdemeanors

(1) Any natural person, without being entitled to do so, commercially exploiting a variety or a breed for which a Breeder 's Certificate has been issued or failing, to notify the Ministry of his application for the protection of a variety or a breed in another country (Art. 19, clause 2) shall be deemed to have committed a misdemeanor for which he maybe liable for a fine imposed by the Ministry not exceeding SKK 20,000[7]. In the event of any repeated infringement upon the right of the holder of the Breeder's Certificate in the manner mentioned above, the Ministry may impose an additional fine not exceeding SKK 50,000.

(2) The provisions of a special legal regulation[7] shall apply to misdemeanor proceedings.

Article 29

Enabling provisions

(1) The Ministry, upon agreement with the Ministry of Agriculture and Food of the Czech Republic, the Ministry of Agriculture and Food of the Slovak Republic, the Ministry of

6a) Sect. 2, clause 2 of the Commercial Code.

7) Law of the Slovak National Council No. 372/1990 Coll. on misdemeanours, as amended by the Law of the Slovak National Council No. 524/1990 Coll., the Law of the Slovak National Council No. 266/1992 Coll., the Law of the Slovak National Council No. 295/1992.; the Law of the Slovak National Council No. 511/1992.; the Law of the Slovak National Council No. 237/1993.; the Law of the Slovak National Council No. 42/1994; the Law of the Slovak National Council No. 248/1994.; the Law of the Slovak National Council No. 249/1994.; the Law of the Slovak National Council No. 250/1994.

Forestry, Water Management and the Woodworking Industry of the Czech Republic. the Ministry of Forestry, Water Management and Woodworking Industry of the Slovak Republic and the Federal Ministry of Foreign Trade, shall issue a generally binding regulation for the implementation of Article 1(2).

(2) The Ministry, upon agreement with the Ministry of Agriculture and Food of the Czech Republic and the Ministry of Agriculture and Food of the Slovak Republic, shall issue a generally binding regulation for the implementation of Article 7(5) and Article 17(3).

Article 30

Transitional provision

(1) The varieties which, on the basis of special provisions[4], have been entered as original varieties in the state Variety Book before the entry into force of this Law and have not been commercially exploited for longer than 10 years before the entry into force of this Law, as well as the existing breeds which have been certified or released pursuant to special provisions[1e] may be the subject of applications for protection in accordance with this Law. The provisions of Article 7(3) shall not apply to those varieties.

(2) The applications referred to in paragraph (1) shall be filed within 12 months from the day on which this Law enters into force.

(3) The owner of a Breeder 's Certificate may commercially exploit the variety or the breed only if the variety or the breed for which the Breeder 's Certificate has been issued has also been released pursuant to special provisions[2].
In such cases the owner shall be regarded as if he were an entrusted organisation pursuant to the said special provisions.

Article 30 A

(1) The author's share in the financial benefit from the commercial exploitation of varieties and breeds which have applied for legal protection prior to the effective date of this Law shall be determined according to the current applicable legal regulations.

(2) The author and the Slovak organisation shall agree in writing on the amount of the consideration, the terms of payment, and due dates of payments for varieties and breeds which shall be applied for a legal protection after the effective date of this Law, the creation of which commenced prior to the effective date of the same and no more than three months from the effective date of this Law. In the event that they fail to enter into such an agreement within the specified time period, the breeder shall have the right to receive a consideration at least in the amount applicable, pursuant to the current applicable legal regulations.

Article 31

Article 2 (1), second sentence, of Notice No. 62/1964 of Coll. of the Ministry of Agriculture, Forestry and Water Management and the Ministry of Justice, containing implementing regulations for the Law on the Development of Crop Protection, is hereby amended so as to substitute "are submitted by entrusted organisations (Article 1 (1))" for the words "are submitted".

Article 32

Abolishing provisions

The following are hereby abolished:

1. Article 4(2) and (4) of Law No. 61/1964 of Coll. on the Development of Crop Production,

2. Article I and Article 2, third sentence, of Notice No. 62/1964 of Coll. of the Ministry of Agriculture, Forestry and Water Management and the Ministry of Justice, containing implementing regulations, for the Law on the Development of Crop Production.

Article 33

Entry into force

Law No. 132/1989 Coll. shall enter into force on January 1, 1990.

Husak v.r.
Indra v.r.
Adamec v.r.

Law No. 22/1996 Coll. shall become effective on February 1, 1996.

Michal Kovac v.r.
Ivan Gasparovik v.r.
Vladimir Meciar v.r.

1e) Law of the Slovak National Council No. 110/1972 Coll. on the breeding of farm animals as amended by the subsequent Law of the Slovak National Council No. 256/1991 Coll. Law No. 102/1963 Coll. on fisheries as amended by Law No. 229/1991 Coll.

2) Law No. 61/1994 Coll. on the development of plant production as amended by the subsequent Law No. 132/1989 Coll. and Law of the Slovak National Council No. 184/1993 Coll. and Law of the Slovak National Council No. 285/1995 Coll.Law No. 110/1972 Coll.

4) Law No. 61/1964 of Coll.

SOUTH AFRICA

REGULATIONS RELATING TO PLANT BREEDERS' RIGHTS

No. R. 1186 12 September 1997

The Deputy Minister of Agriculture, acting under section 44 of the Plant Breeders' Rights Act, 1976 (Act No. 15 of 1976), on behalf of the Minister of Agriculture-

(a) has made the regulations in the Schedule; and

(b) has repealed the regulations published by Government Notices Nos. R. 2630 of 24 December 1980, R. 37 of 6 January 1984, R. 990, of 3 May 1985, R. 1588 of 1 August 1986, R. 2349 of 14 November 19o6, R. 2341 of 16 October 1987, R. 1519 of 14 July 1989, R. 1975 of 15 September 1989, R. 1640 of 13 July 1990, R.74 of 18 January 1991, R. 989 of 10 May 1991, R. 2415 of 4 October 1991, R. 1493 of 29 May 1992, R. 1561 of 20 August 1993, R. 2039 of 29 October 1993, R. 2534 of 31 December 1993, R. 368 of 25 February 1994, R. 492 of 18 March 1994, R. 1075 of 10 June 1994, R. 1452 of 26 August 1994, R. 831 of 9 June 1995, R. 997 of 7 July 1995, R. 1611 of 20 October 1995, R. 287 of 23 February 1996, R. 1203 of 26 July 1996, R. 95 of 24 January 1997 and R. 308 *of* 28 February 1997.

Definitions

1. Unless the context otherwise indicates, words and phrases in these regulations shall have the same meaning assigned thereto in the Act, and-

"Director-General" means the Director-General: Agriculture; and

"the Act" means the Plant Breeders' Rights Act, 1976 (Act No. 15 *of* 1976).

Kinds of plants in respect of which plant breeders' rights may be granted

2. A plant breeder's right, the contents and mode of exercise of which are as determined in the Act and these regulations, may be granted in respect of varieties of the kinds of plants specified in column 1 of Table 1*.

Submission of applications

3. (1) An application for the grant of a plant breeder's right shall be submitted to the registrar on a form which is obtainable from the offices *of* the registrar in Pretoria for this purpose.

(2) Such application shall be accompanied by-

(a) a description, on a technical questionnaire which is obtainable from the offices of the registrar in Pretoria for this purpose, of a typical plant of the variety concerned and of the procedure to be used for the maintenance and reproduction of the variety concerned;

(b) such coloured illustrations as are required by the registrar, of a typical plant of the variety concerned;

(c) such propagating material as is required by the registrar, of a typical plant of the variety concerned;

(d) written proof, where applicable, of the title or authority of the legal representative or agent submitting such application;

(e) written authorisation from the breeder or owner of the variety in respect of which an application for a plant breeder's right is submitted;

(f) the application fee specified in item I of Table 2; and

(g) the examination fees as specified in items 4 and 5 of Table 2.

Priority of applications

4. (1) If more than one application for the grant of a plant breeder's right in respect of the same variety is received by the registrar, the registrar shall subject to the provisions of section 8 (2) of the Act, give priority to the application first received.

(2) A claim to give priority in terms of section 8 (2) of.. the Act to an application for the grant of a plant breeder's right in respect of a variety which is preceded by an application by or on behalf of the same applicant for the protection of the rights in the same variety in a convention country or an agreement country, and which has been deposited in accordance with the laws in force in that country shall—

(a) be lodged with the registrar on a form which is obtainable from the offices of the registrar in Pretoria for this purpose;

(b) be lodged within 12 months from the date on which the application for the protection of the rights in the same variety was duly deposited in a convention country or an agreement country; and

* Table 1 (List of plant genera and species to which protection is available) and Table 2 (fees) are not reproduced in this issue.

(c) be accompanied by the fee specified in item 2 of Table 2.

(3) Such claim for priority shall within. six months from the date on which it was lodged to the registrar, be confirmed by submitting to the registrar a copy, certified as correct by the appropriate authority in the convention country or agreement country in question, of each document which constitutes the relevant preceding application.

(4) The period referred to in section 8 (4) of the Act, within which an application thus given priority shall be confirmed by supplementing it in any respect necessary in order to comply with the requirements of the Act shall be four years: Provided that if the preceding application in a convention country or an agreement country is withdrawn or rejected, the registrar may require that such supplementation be completed at an earlier date.

Denominations for varieties

5. (1) The denomination which is proposed for a variety in terms of regulation 3 (2i (c) shall-

(a) be suitable to identify the variety;

(b) not be such as to be liable to mislead or to lead to confusion concerning the characteristics, value or identity of the variety in question or the identity of the breeder thereof;

(c) be different from each denomination which distinguishes existing varieties of the same or a closely related kind of plant in a convention country or an agreement country;

(d) subject to the provisions of sub-regulation (3) not be identical with or similar to, or liable to lead to confusion with a mark which enjoys the protection accorded thereto by the Trade Marks Act, 1963 (Act No. 62 of 1963), and which applies to propagating material or the use in connection therewith or in connection with a product thereof;

(e) not be inimical to public order or contrary to, morality; and

(f) be the same in all convention countries or agreement countries.

(2) If the registrar considers a denomination proposed for a variety as unsuitable, the applicant concerned shall submit a translation thereof or some other denomination acceptable to the registrar, within two months from the date on which he or she was directed in writing to do so.

(3) Notwithstanding anything to the contrary contained in these regulations-

(a) a mark referred to in sub-regulation (1) (d) may only be approved as a denomination for a variety if the applicant concerned submits documentary proof that the holder of the mark concerned renounces his or her right to such mark as from the date on which a plant breeder's right to the variety is granted; and

(b) the denomination approved by the registrar for a variety in respect of which protection has been granted by, or an application for protection has been lodged with the appropriate authority in a convention country or an agreement country in accordance with the laws in force in that country shall be the same as the denomination thus protected or thus applied for in such country, on condition however that the provision of subparagraph (a) are complied with and that a priority claim on such denomination is not proved by another person.

(4) When a variety is advertised, offered for sale or marketed, it shall be permitted to associate a trademark, trade name or other similar indication with a registered variety denomination.

(5) A trademark, trade name or other similar indication referred to in section (4) shall not be used alone without the variety denomination which must at all times be easily recognisable.

Publication of applications

6. (1) The particulars specified in item 1 of Table 3 shall be published in terms of section 13 (1) of the Act in respect of an application for the grant of a plant breeder's right which has not been rejected by the registrar in terms of section 11 of the Act.

(2) The particulars specified in item 2 of Table 3 shall be published in terms of section 13 (2) of the Act in respect of an application for the grant of a plant breeder's right which has been withdrawn before a plant breeder's right has been granted in respect of the variety concerned.

Grant of provisional protection

7. An application for a protective direction in terms of section 14 of the Act with a view to the provisional protection of the plant breeder's right which may be granted in respect of a variety shall be submitted on a form which is obtainable from the offices of the registrar in Pretoria for this purpose.

Objections against applications for the grant of plant breeders' rights

8. (1) An objection against an application for the grant of a plant breeder's right shall—

(a) be lodged with the registrar in writing within six months from the date on which the particulars relating to the application concerned were published in terms of section 13 (1) of the Act;

(b) state the name and address of the person objecting;

(c) indicate the published particulars of the application concerned;

(d) subject to the provisions of section 17 (2) of the Act, state the grounds on which it is based; and

(e) be accompanied by the fee specified in item 3 of Table 2.

(2) The registrar may direct that such objection be substantiated by such proof as may be deemed necessary.

(3) A person thus objecting shall serve a copy of any document and other proof lodged in terms of sub-regulations (1) and (2) on the person who submitted the application concerned and shall furnish the registrar with proof of such service.

(4) A counter-statement against such objection by the person who has submitted the application concerned shall—

(a) be lodged with the registrar in writing within 60 days, or such further period as the registrar may allow, from the date on which such person has received the relevant objection and other proof referred to in sub-regulation (2);

(b) indicate the published particulars of the application concerned; and

(c) set out the particulars of each ground upon which any allegation of the person objecting, is contested.

(5) The person lodging such counter-statement shall serve a copy thereof on the person objecting and shall furnish the registrar with proof of such service.

(6) The registrar shall notify the person who objected against the application for the grant of a plant breeder's right, the person who applied for the plant breeder's right and the person or persons appointed to assist him or her in hearing the objection in writing of the date and time on which and the place at which the objection will be heard.

(7) At the hearing of an objection against an application for the grant of a plant breeder's right—

(a) any person referred to in sub-regulation (6) will be allowed to call witnesses during the hearing and to cross-examine other witnesses;

(b) the onus rests with each person to notify his or her witnesses of the date, place and time of the hearing and to ensure their presence at the hearing;

(c) the person who lodged the objection against an application for the grant of a plant breeder's right shall be allowed to present his or her case first and to call witnesses; and

(d) the person who applied for the plant breeder's right shall then be allowed to present his or her case and to call witnesses.

(8) After hearing all the evidence, the registrar shall reach a decision and thereafter in writing advise the person objecting and the person who applied for the grant of the plant breeder's fight concerned, of his or her decision and of the grounds on which it is based.

(9) The registrar shall publish the particulars specified in item 3 of Table 3 in respect of an application for the grant of a plant breeder's right when such application has lapsed because an objection against it has been upheld.

Consideration and examination of applications

9. (1) When the registrar undertakes tests and trials in terms of section 19 (2) of the Act in order to determine whether a variety of a kind of plant specified in column 1 of Table 1, is a variety which qualifies for the grant of a plant breeder's right under section 2 of the Act, the examination fees specified in items 4 and 5 of Table 2 shall be payable to the registrar by the applicant concerned.

(2) The amount payable in respect of the cost of results which are obtained from the appropriate authority in a convention country or an agreement country in terms of section 19 (4) and (6) of the Act shall be the fee determined by the appropriate country and shall be calculated at the rate of exchange between the monetary units of the Republic and the country concerned as on the date of payment of such costs to the appropriate authority concerned.

(3) The amount specified in item 6 of Table 2 shall be payable when the registrar provides the results of tests and trials undertaken by him or her to the appropriate authority in a convention country or an agreement country.

(4) The particulars specified in items 4 and 5 of Table 3 shall respectively be published in respect of—

(a) a plant breeder's right which has been granted; and

(b) the refusal to grant a plant breeder's right.

Payment of annual fee

10. (1) The annual fee which is, in terms of section 22 of the Act, payable to the registrar during the currency of a plant breeder's right in respect of a variety of a kind of plant specified in column 1 of Table 1 by the holder of such right shall be the amount specified in item 7 of Table 2.

(2) If the annual fee for a particular year has not been .!aid prior to or on 31 January of that year, an additional amount of 10 per cent of the appropriate fee referred to in sub-regulation (1) shall be payable in terms of section 22 (2) of the Act for each month or portion of a month of late payment.

Period of plant breeders' rights

11. The period for which a plant breeder's right in respect of a variety of a kind of plant specified in column 1 of Table 1 is granted shall be as specified in column 3 of the said Table opposite the name of the kind of plant concerned.

Period of sole rights

11 (a). The holder of a plant breeder's right in respect of a variety of a kind of plant specified in column 1 of Table 1 shall during the period specified in column 4 of the said Table opposite the name of the kind of plant in question, have the sole right referred to in section 23 of the Act.

Notice of licences

12. (1) The holder of a plant breeder's right shall notify the registrar on a form which is obtainable from the offices of the registrar in Pretoria for this purpose, of each licence which was issued by him or her in terms of section 25 of the Act.

(2) Such notice shall be submitted to the registrar within 30 days from the date of issue of the licence concerned.

Application for compulsory licences

13. (1) An application for the issue of a compulsory licence in respect of a plant breeder's right shall—

(a) be submitted in writing to the registrar;

(b) indicate the published particulars of the application concerned;

(c) set out the reasons why the applicant concerned considers the refusal by the holder of the plant breeder's right concerned to issue a license, or the conditions imposed to be unreasonable; and

(d) be accompanied by the fee specified in item 8 of Table 2.

(2) The registrar may direct that such application be substantiated by such proof as he or she may deem necessary.

(3) A person thus applying shall serve a copy of any document and proof submitted in terms of sub-regulations (1) and (2) on the holder of the plant breeder's right concerned and shall furnish the registrar with proof of service thereof.

(4) The holder of such plant breeder's right may within 60 days from the date of receipt of the document and proof referred to in sub-regulation (3), or within such further time as the registrar may allow, lodge a counterstatement with the registrar in which the particulars of any ground upon which he or she contests the application concerned are set out.

Transfer of plant breeders' rights

14. (1) The holder of a plant breeder's right shall notify the registrar on a form which is obtainable from the offices of the registrar in Pretoria for this purpose, of the fact that such a right or any part thereof has been transferred to another person.

(2) Such notice shall—

(a) be submitted within 30 days from the date on which the plant breeder's right concerned or a portion thereof was transferred; and

(b) be accompanied by the fee specified in item 9 of Table 2.

(3) When the registrar has been notified of the transfer of a plant breeder's right as contemplated in sub-regulation (1), the particulars specified in item 6 of Table 3, in respect of such transfer shall be published.

Alteration of denominations

15. (1) An application for the alteration or supplementation of the denomination approved for a variety in respect of which a plant breeder's right has been granted shall—

(a) be submitted to the registrar by the holder of the plant breeder's right concerned on the form which is obtainable from the offices of the registrar in Pretoria for this purpose; and

(b) be accompanied by the fee specified in item 10 of Table 2.

(2) If the registrar intends to approve the alteration or supplementation of the denomination of a variety, the particulars specified in item 7 of Table 3 in respect thereof shall be published.

(3) An objection. against the intended approval of an alteration or supplementation shall—

(a) be lodged with the registrar in writing within three months from the date on which the particulars thereof were published in terms of section 32 (4) of the Act;

(b) state the name and address of the person objecting;

(c) indicate the published particulars of the application concerned;

(d) state the grounds on which it is based; and

(e) be accompanied by the fee specified in item 11 of Table 2.

(4) The registrar may direct that such objection be substantiated by such proof as he or she may be deemed necessary.

(5) The registrar shall publish the particulars specified in item 8 of Table 3 in respect of the denomination of a variety after he or she has approved an alteration or supplementation thereof.

Termination of plant breeders' rights

16. (1) An objection against the intended termination of a plant breeder's right of which the holder thereof or the holder of a licence therein has been notified as contemplated in section 33 (2) of the Act shall—

(a) be lodged in writing by the holder of the plant breeder's right concerned or the holder of a licence therein;

(b) be lodged with the registrar within 60 days from the date on which a person referred to in paragraph (a) has been notified thereof;

(c) state the name and address of the person objecting;

(d) indicate the published particulars of the plant breeder's right concerned;

(e) state the grounds on which the objection is based; and

(f) be accompanied by the fee specified in item 12 of Table 2.

(2) The registrar shall publish the particulars specified in item 9 of Table 3 in respect of the termination of a plant breeder's right.

(3) The holder of a plant breeder's right shall return the certificate of registration issued in respect thereof to the registrar within 30 days from the date of the publication referred to in sub-regulation (2).

Voluntary surrender of plant breeders' rights

17. (1) A notice by the holder of a plant breeder's right that he or she is surrendering such a right, shall—

(a) be submitted to the registrar on a form which is obtainable from the offices of the registrar in Pretoria for this purpose; and

(b) be accompanied by—

(i) the fee specified in item 13 of Table 2; and

(ii) the certificate of registration issued in respect of the plant breeder's right concerned.

(2) The registrar shall publish the particulars specified in item 10 of Table 3 in respect of the voluntary surrender of a plant breeder's right.

Recognition of agents

18. (1) The registrar may recognise a person as an agent it he or she is satisfied that such person—

(a) is of good standing; and

(b) has suitable qualifications and adequate experience;

and is therefore able to represent a person applying for the grant of a plant breeder's right or the holder of such right and to further the interests of such person or holder.

(2) A notice in connection with the designation or substitution of an agent shall—

(a) be furnished by a person who has applied for the grant of a plant breeder's right or by the holder of such right;

(b) be submitted to the registrar on a form which is obtainable from the offices of the registrar in Pretoria for this purpose; and

(c) be submitted within 30 days from the date on which such designation or substitution has come into effect.

Notice of change of address

19. Any change of the address which, for purposes of correspondence is specified in an application for the grant of a plant breeder's right, or of an address entered in the register, shall—

(1) as the case may be, be furnished by-

(a) the person who has applied for the grant of the plant breeder's right concerned;

(b) the holder of the plant breeder's right concerned;

(c) the legal representative or agent of such applicant or holder; or

(d) the person to whom a licence or compulsory licence has been issued in respect of the plant breeder's right concerned;

(2) be submitted to the registrar on a form which is obtainable from the offices of the registrar in Pretoria for this purpose; and

(3) be submitted within 30 days from the date on which such change of address has come into effect.

Register of plant breeders' rights

20. (1) In the register of plant breeders' rights referred to in section 4 of the Act shall be entered—

(a) the kind of plant to which each variety belongs;

(b) the denomination of each variety and any approved alteration thereof;

(c) the principal characteristics of each variety and, where varieties are produced by a cross between certain hereditary components, the principal characteristics of such components;

(d) the full name and address of the original breeder of each variety;

(e) the name and address of the holder of the plant breeder's right in each variety and the name and address of each person to whom such right has been transferred;

(f) the name and address of the person who has been appointed as the agent of any person referred to in paragraph (e);

(g) the date of inception of the plant breeder's right in each variety;

(h) the date on which a plant breeder's right ceases to exist and the reason therefor;

(i) the name and address of each person to whom a licence or a compulsory licence has been issued in terms of the Act for the use of a plant breeder's right; and

j) such other particulars as the registrar may, subject to the provisions of the Act, deem necessary.

(2) The fee specified in item 14 of Table 2 shall be payable by a person requesting inspection of the register of plant breeders' rights.

Inspection in and copies of documents

21. (1) Any person—

(a) desiring to inspect a document submitted to the registrar in connection with an application for the grant of a plant breeder's right;

(b) requiring a copy of any particulars in the register, or of a document referred to in paragraph (a), or

(c) requiring a certificate by the registrar in connection with particulars or a document referred to in paragraph (b); shall apply therefor on a form which is obtainable from the offices of the registrar in Pretoria for this purpose.

(2) Such application shall be accompanied by the appropriate application fees specified in items 15, 16 and 17 of Table2.

Appeal to the minister

22. (1) An appeal in terms of section 42 of the Act, shall—

(a) be lodged with the Director-General in writing within 60 days from the date on which the registrar has given the appellant written notice of the decision or action concerned;

(b) state the reference number and the date of the document by means of which such appellant was notified of that decision or action;

(c) state the grounds on which the appeal is based; and

(d) be accompanied by the fee specified in item 18 of Table 2.

(2) An appeal shall—

(a) when forwarded by post, be addressed to –
The Director-General: Agriculture
Private Bag X250
PRETORIA
0001; or

(b) when delivered by hand, be delivered to -
The Director-General: Agriculture
Dirk Uys Building
Hamilton Street
PRETORIA

Remuneration of chairperson and members of appeal boards

23. A person who is appointed in terms of section 42 (2) (a) of the Act, as a member of an appeal board, and who is not an officer, shall be remunerated according to Category C of the Manual for the Application of the System for the Administration of the Service Benefit Packages for Office bearers of Certain Statutory and other Institutions.

Payment of fees

24. (1) Postage on and delivery costs of any application or document submitted in terms of these regulations, as well as on or of anything else pertaining thereto, shall be prepaid.

(2) Any fee payable in terms of these regulations, shall be paid by means of a cheque, postal order or money order made out in favour of the Director-General: Agriculture: Provided that if such fee is delivered by hand, it may be paid in cash.

(3) Subject to the provisions of section 42 (8) of the Act, fees which are paid in terms of these regulations shall not be repayable.

Address for the submission of documents

25. Any application, notice, objection or other document which is to be submitted to the registrar in terms of these regulations shall—

(a) when forwarded by post, be addressed to-
The Registrar of Plant Breeders' Rights
Private Bag X258
PRETORIA
0001; or

(b) when delivered by hand, be addressed to or delivered to
The Registrar of Plant Breeders' Rights
Directorate: Plant and Quality Control
Block V-Agriculture Build.
Hamilton Street
PRETORIA.

UNITED KINGDOM

THE PLANT BREEDERS' RIGHTS (INFORMATION NOTICES) (EXTENSION TO EUROPEAN COMMUNITY PLANT VARIETY RIGHTS) REGULATIONS 1998

STATUTORY INSTRUMENT No. 1023 of 1998

Made	8th April 1998
Laid before Parliament	9th April 1998
Coming into force	8th May 1998

The Minister of Agriculture, Fisheries and Food, and the Secretary of State, being Ministers designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to Community plant variety rights, acting jointly, in exercise of the powers conferred on them by the said section 2(2) hereby make the following Regulations:

Title and commencement

1. These Regulations may be cited as the Plant Breeders' Rights (Information Notices) (Extension to European Community Plant Variety Rights) Regulations 1998 and shall come into force on 8th May 1998.

Extension of Regulations to Community plant variety rights

2.(1) The Plant Breeders' Rights (Infon-nation Notices) Regulations 1998(c) ("the Regulations") shall apply to plant breeders' rights granted under Council Regulation (EQ No. 2100/94 on Community plant variety rights(d) as they apply to plant breeders' rights granted under the Plant Varieties Act 1997(e), subject to the modifications in paragraph (2) below.

(2) In their application to Community plant variety rights, the Regulations shall be modified as follows-

(a) in regulation 3(2)(d), for the words "confirmation that the rights were granted under the Act;" there shall be substituted the words "confirmation that the rights were granted under Council Regulation (EQ No. 2100/94 on Community plant variety rights;"; and

(b) in paragraph 4 of Part I of the Schedule, for the words "confirmation that the plant breeders' rights were granted under the Plant Varieties Act 1997" there shall be substituted the words "confirmation that the plant breeders' rights were granted under Council Regulation (EQ No. 2100/94 on Community plant variety rights.".

(a) S.I. 1995n5l.
(b) 1972 c.68.
(c) S.I. 1998/1024.
(d) OJ No. L.227, 1.9.94, p.l.
(e) 1997 c.66.

THE PLANT BREEDERS' RIGHTS (INFORMATION NOTICES) REGULATIONS 1998

STATUTORY INSTRUMENT No. 1024 of 1998

Made	8th April 1998
Laid before Parliament	9th April 1998
Coming into force	8th May 1998

The Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland, the Secretary of State for Wales and the Secretary of State for Northern Ireland, acting jointly, in exercise of the powers conferred on them by sections 14 and 48(1) of the Plant Varieties Act 1997(a), after consultation with such organisations as appear to them to be representative of persons likely to be substantially affected, hereby make the following Regulations:

Title and commencement

1. These Regulations may be cited as the Plant Breeders' Rights (Information Notices) Regulations 1998 and shall come into force on 8th May 1998.

Interpretation

2.-(1) In these Regulations "the Act" means the Plant Varieties Act 1997; and "the holder of rights" in relation to a variety means the holder of plant breeders' rights in that variety.

(2) Unless the context otherwise requires, any reference in these Regulations in a regulation to a numbered paragraph is to the paragraph in that regulation bearing that number.

Information notice as to harvested material

3.-(1) An information notice for the purposes of section 14(4) of the Act (harvested material)-

(a) shall be in the form set out in the Schedule to these Regulations;

(b) shall contain the particulars set out in paragraph (2); and

(c) shall contain a request for the information set out in paragraph (3).

(2) The particulars referred to in paragraph (1)(b) are-

(a) the registered name of the variety;

(b) the species of the variety;

(c) the date on which plant breeders' rights were granted in the variety;

(d) confirmation that the rights were granted under the Act;

(e) the name and address of the holder of rights;

(f) the name and address of the agent of the holder of rights, if one has been appointed; and

(g) the date on which the information notice was served.

(3) The information referred to in paragraph (1)(c) is-

(a) the name and address of the recipient of the information notice;

(b) the name and address of the person from whom the recipient of the information notice acquired possession of the material specified in the information notice;

(c) the date on which the recipient of the information notice acquired possession of the material specified in the information notice; and

(d) the size of the consignment of which the material specified in the information notice formed part.

Prescribed time

4. The prescribed time for the purposes of section 14(2)(b) of the Act (presumptions in proceedings relating to harvested material) is 21 days.

SCHEDULE

Regulation 3

INFORMATION NOTICE - HARVESTED MATERIAL

When Parts I and 2 of this notice are completed, it constitutes an information notice for the purposes of section 14(2) of the Plant Varieties Act 1997.

Failure to supply the information specified in Part 3 within 21 days of service of this notice will have the consequences set out in section 14 of the Plant Varieties Act 1997.

(a) 1997 c.66; see section 49(1) for the definition of "the Ministers".

PART 1

PRESCRIBED PARTICULARS

1. Registered name of the variety.

2. Species of the variety.

3. Date on which plant breeders' rights were granted in the variety.

4. Confirmation that the plant breeders' rights were granted under thE Plant Varieties Act 1997.

5. Name and address of holder of rights in the variety.

6. Name and address of agent of holder of rights in the variety, if one has been appointed.

7. Date on which this notice was served.

PART 2

SPECIFIED MATERIAL

Specify in this Part of the notice the material to which the information notice relates:

PART 3

PRESCRIBED INFORMATION

1. Your name and address.

2. Name and address of person from whom you acquired ownership of the material specified in Part 2 of this Notice.

3. Date on which you acquired possession of the material specified in Part 2 of this Notice.

4. Size of the consignment of which the material specified in Part 2 of this Notice formed part.

(a) 1997 c.66; *see* section 49(l) for the definition of "the Ministers".

THE PLANT BREEDERS' RIGHTS (FARM SAVED SEED) (SPECIFICATIONS OF SPECIES AND GROUPS) ORDER 1998

STATUTORY INSTRUMENT No. 1025 of 1998

Made	8th April 1998
Laid before Parliament	9th April 1998
Coming into force	8th May 1998

The Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland, the Secretary of State for Wales and the Secretary of State for Northern Ireland, acting jointly, in exercise of the powers conferred on them by sections 9(2) and 48(l) of the Plant Varieties Act 1997(a), after consultation with such organisations as appear to them to be representative of persons likely to be substantially affected, hereby make the following Order:-

Title and commencement

1. This Order may be cited as the Plant Breeders' Rights (Farm Saved Seed). (Specification of Species and Groups) Order 1998 and shall come into force on 8th May 1998.

Specification of species and groups

2. The species and groups listed in the Schedule to this Order are specified for the purposes of section 9(2) of the Plant Varieties Act 1997.

(a) 1997 c.66; see section *49(l)* for a definition of "the Ministers".

SCHEDULE (article 2)

FARM SAVED SEED-SPECIES AND GROUPS

Name	Common Name
Fodder plants	
Cicer arietinum L.	Chickpea milkvetch
Lupinus luteus L.	Yellow lupin
Medicago sativa L.	Lucerne
Pisum sativum L. (partim)	Field pea
Trifolium alexandrinum L.	Berseem/Egyptian clover
Trifolium resupinatum L.	Persian clover
Vicia faba	Field bean
Vicia sativa L.	Common vetch
Cereals	
Avena sativa	Oats
Hordeum vulgare L.	Barley
Oryza sativa L.	Rice
Phalaris canariensis L.	Canary grass
Secale cereale L.	Rye
X *Triticosecale* Wittm.	Triticale
Triticum aestivum L. emend. Fiori et Paol.	Wheat
Triticum durum Desf	Durum wheat
Triticum spelta L.	Spell wheat
Potatoes	
Solanum tuberosum	Potatoes
Oil and fibre plants	
Brassica napus L. (partim)	Swede rape
Brassica rapa L. (partim)	Turnip rape
Linum usitatissimum	Linseed with the exclusion of flax

THE PLANT BREEDERS' RIGHTS (FARM SAVED SEED) (SPECIFIED INFORMATION) REGULATIONS 1998

STATUTORY INSTRUMENT No. 1026 of 1998

Made	8th April 1998
Laid before Parliament	9th April 1998
Coming into force	8th May 1998

The Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland, the Secretary of State for Wales and the Secretary of State for Northern Ireland, acting jointly, in exercise of the powers conferred on them by sections 9(7) and (8) and 48(l) of the Plant Varieties Act 1997(a), after consultation with such organisations as appear to them to be representative of persons likely to be substantially affected, hereby make the following Regulations:

Title and commencement

1. These Regulations may be cited as the Plant Breeders' Rights (Farm Saved Seed) (Specified Information) Regulations 1998 and shall come into force on 8th May 1998.

Interpretation

2.-(l) In these Regulations-

"the Act" means the Plant Varieties Act 1997;

"farm saved seed" means the product of the harvest obtained in the circumstances described in section 9(l) of the Act;

"relevant activity" means the use of farm saved seed in the circumstances described in section 9(l) of the Act;

"relevant rights holder" means a person who holds plant breeders' rights in a relevant variety;

"relevant variety" means a variety of a specified species or group;

"seed" includes seed potatoes;

"seed year" means the period from I st July in one year to 30th June in the following year, both dates inclusive; and

"specified species or group" means a species or group specified for the purposes of section 9(2) of the Act by order made by the Ministers.

(2) Unless the context otherwise requires, any reference in these Regulations-

(a) to a numbered section shall be construed as a reference to the section bearing that number in the Act;

(b) to a numbered regulation shall be construed as a reference to the regulation bearing that number in these Regulations;

(c) in a regulation to a numbered paragraph is to the paragraph in that regulation bearing that number.

Information to be supplied by farmer

3.-(1) On the request of a relevant rights holder, a farmer shall supply the following information-

(a) the name and address of the farmer;

(b) whether the farmer has performed a relevant activity -in respect of seed of the variety in which the relevant rights holder has plant breeders' rights; and

(c) the address of the holding on which the farmer has performed such a relevant activity.

(2) If the fanner has performed such a relevant activity, he shall also supply the following information with the information referred to in paragraph (l)-

(a) whether section 9(3) (liability to pay equitable remuneration) does not apply to him by virtue of section 9(4) (small farmer exemption), or

(b) whether section 9(3) does not apply to him by virtue of section 9(5) (prior use exemption), or

(c) whether section 9(3) does apply to him.

(3) If section 9(3) does not apply to the farmer by virtue of section 9(5) he shall also supply the following information with the information referred to in paragraph (l)-

(a) the date on which he first performed the relevant activity; and

(a) 1997 c.66; see section 49(1) for teh definition of "the Ministers".

(b) the information referred to in paragraph (5).

(4) If section 9(3) does apply to the farmer he shall also supply the information referred to in paragraph (5) with the information referred to in paragraph (1).

(5) The information for the purposes of paragraph (3)(b) and (4) is-

(a) the amount of farm saved seed used;

(b) whether the farm saved seed has been processed for planting; and

(c) if the farm saved seed has been processed for planting, the name and address of the person who carried out the processing.

(6) If the farmer has informed the relevant rights holder that section 9(3) does not apply to him by virtue of section 9(5) or that section 9(3) does apply to him, the fanner shall supply the following information on the request of the relevant rights holder-

(a) whether the farmer used any seed of the same variety with the authority of the relevant rights holder within the same seed year; and

(b) if the farmer used seed of the same variety with the authority of the relevant rights holder within the same seed year-

(i) the amount used; and

(ii) the name and address of the person who supplied it.

Information to be supplied by seed processor

4.-(1) On the request of a relevant rights holder, a seed processor shall supply the following information-

(a) the name and address of the seed processor;

(b) the address of the seed processor's principal place of business; and

(c) whether the seed processor has processed seed of a specified species or group.

(2) If the seed processor has processed seed of a specified species or group he shall also supply the following information with the information referred to in paragraph (I)-

(a) the name and address of the person for whom the processing was carried out;

(b) the amount of seed resulting from the processing;

(c) the date processing commenced;

(d) the date processing was completed;

(e) the place where processing was carried out; and

(f) whether the seed was seed of the variety in which the relevant rights holder has

plant breeders' rights, if the person for whom the processing was carried out informed the seed processor of the variety of the seed.

Information to be supplied by the relevant rights holder

5. On the request of a farmer or a seed processor a relevant rights holder shall supply the following information-

(a) the name and address of the relevant rights holder; and

(b) the amount of royalty charged for certified seed of the lowest certification category for that variety.

Period in respect of which inquiry may be made

6. A request may be made under regulations 3, 4 and 5 in respect of the current seed year and the three preceding seed years.

Restriction on movement for processing from the holding

7. No person shall remove or cause to be removed farm saved seed from the holding on which it was obtained to process it unless-

(a) he has the permission of the relevant rights holder in respect of that variety, or

(b) he has taken measures to ensure that the same seed is returned from processing as is sent for processing and the processor has undertaken to him that the processor has taken measures to ensure that the same seed is returned from processing as is sent for processing, or

(c) he has the seed processed by a seed processor on the list of processors referred to in the gazette as being permitted to process seed away from a holding.

Confidentiality

8.-(1)A person who obtains information pursuant to these Regulations shall owe an obligation of confidence in respect of the information to the person who supplied it.

(2) Paragraph (1) shall not have effect to restrict disclosure of information-

(a) for the purposes of, or in connection with, establishing the amount to be paid to the holder of rights pursuant to section 9(3) of the Act and obtaining payment of that amount, or

(b) for the purposes of, or in connection with, establishing whether plant breeders' rights have been infringed, or

(c) for the purposes of, or in connection with, any proceedings for the infringement of plant breeders' rights.

Formalities

9.-(1) All requests for information pursuant to these Regulations shall be in writing.

(2) All information supplied pursuant to these Regulations shall be in writing.

(3) The time period within which information must be supplied in response to a request made pursuant to these Regulations shall be whichever is the longer of-

(a) 28 days; or

(b) the time period set out in the request.

Offences and penalties

IO.-(1) No person shall, in response to a request made pursuant to these Regulations-

(a) intentionally fail to provide information;

(b) refuse to provide information; or

(c) knowingly or recklessly provide false information.

(2) A person shall be guilty of an offence who, without reasonable excuse, contravenes, or fails to comply with regulation 7 or regulation 10(1).

(3) A person guilty of an offence under paragraph (2) shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

THE PLANT BREEDERS' RIGHTS REGULATIONS 1998

STATUTORY INSTRUMENT No. 1027 of 1998

Made	8th April 1998
Laid before Parliament	9th April 1998
Coming into force	8th May 1998

The Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland, the Secretary of State for Wales and the Secretary of State for Northern Ireland, acting jointly, in exercise of the powers conferred on them by sections 17(8), 18(l)(a) and (c), 18(2), 22(2), 24, 26(2)(a), 28(l) and (2), 44 and 48(l) of the Plant Varieties Act 1997(a), after consultation with such organisations as appear to them to be representative of persons likely to be substantially affected and with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992(b), hereby makes the following Regulations:

Title and commencement

1. These Regulations may be cited as the Plant Breeders' Rights Regulations 1998 and shall come into force on 8th May 1998.

Interpretation

2.-(l) In these Regulations

"the Act" means the Plant Varieties Act 1997;

"holder of rights" means, in relation to a variety, the holder of plant breeders' rights in that variety;

"the Office" means the Plant Variety Rights Office;

"plant breeders' certificate" means a document issued by the Controller as evidence of a grant of plant breeders' rights;

"plant breeders' rights" means rights which may be granted in accordance with Part I of the Act;

"plant breeders' rights licensee" means, in relation to a variety, a person authorised under section 6(2);

"plant varieties records" means the records kept by the Controller pursuant to regulation 12(2);

"persons concerned" has the meaning given to it in regulation 7(2);

"the register" means the register kept by the Controller pursuant to regulation 12(l); and

"relevant legislation" means

(a) the Act;

(b) these Regulations; and

(c) regulation 18 of the Plant Breeders' Rights Regulations 1978(c).

(2) Any reference in these Regulations-

(a) to a numbered regulation or Schedule shall be construed as a reference to the regulation or Schedule bearing that number in these Regulations;

(b) in a regulation to a numbered paragraph is to the paragraph in that regulation bearing that number; and

(c) to a numbered section shall be construed as a reference to that section in the Act.

Applications

3. Every application made under the relevant legislation shall be made in writing, signed by the applicant and delivered to the Controller.

Repeated applications

4.-(1)If an application made under the relevant legislation appears to the Controller to be a repeated application made without reasonable cause, the Controller may refuse to entertain such application.

(2) For the purposes of this regulation, a "repeated application" means an application in similar circumstances on the same subject made within 12 months of the making of a previous application upon which the Controller has taken a decision.

Publication

5.-(1)The Controller shall publish in the gazette notice of the matter set out in the first column of Part A of Schedule 1, the matters set out in the second column of Part B of that Schedule and the matters set out in the second column of Part C of that Schedule.

(a) 1997 c.66; see section 49(1) for the definition of "the Ministers".
(b) 1992 c.53. Schedule 1 is amended by section 51(5) of the Plant Varieties Act 1997.
(c) Regulation 18 of the Plant Breeders' Rights Regulations 1978 (S.I. 1978/294) is amended by regulation 21(4) of these Regulations.

(2) The Controller shall publish in the gazette notice of the expiry of the period of a grant of plant breeders' rights at least one month before the end of the period.

(3) Notices published pursuant to this regulation shall contain such details of the matters referred to in paragraphs (1) and (2) as the Controller considers appropriate,

Matters on which written representations may be made

6.-(1) The persons mentioned in the second column of Part A of Schedule I shall be entitled to make written representations to the Controller in relation to the matter specified in the first column of that Part.

(2) When the Controller publishes notice of the matter referred to in Part A of Schedule 1, he shall also publish in the gazette-

(a) the manner in which representations may be made to him;

(b) the time within which representations must be made;

(c) the arrangements for circulating representations; and

(d) the time within which further representations may be made on representations circulated pursuant to paragraph (2)(c).

(3) The Controller shall inform the applicant and those persons who have made representations pursuant to paragraph (2) of his decision and the reasons for his decision.

Matters on which written and oral representations may be made

7.-(1) The persons mentioned in the third column of Part B of Schedule I shall be entitled to make written representations to the Controller and be heard by him in relation to the respective matters specified in the second column of that Part.

(2) For the purposes of these Regulations a "person concerned" means-

(a) those persons who make representations pursuant to paragraph (1); and

(b) those persons referred to in paragraph (3).

(3) For the purposes of paragraph (2)(b), the following persons are referred to in relation to the respective matters set out in the second column of Part B of Schedule I as follows-

(a) in respect of the matter numbered 1, the person referred to in sub-paragraph (a);

(b) in respect of the matter numbered 2, the person referred to in sub-paragraph (a);

(c) in respect of the matter numbered 3, the persons referred to in sub-paragraphs (a) and (b);

(d) in respect of the matter numbered 4, the persons referred to in sub-paragraphs (a), (b) and (c);

(e) in respect of the matter numbered 5, the persons referred to in sub-paragraphs (a), (b) and (c);

(f) in respect of the matter numbered 6, the person referred to in sub-paragraph (a);

(g) in respect of the matter numbered 7, the person referred to in sub-paragraph (a); and

(h) in respect of the matter numbered 8, the person referred to in sub-paragraph (a).

(4) When the Controller publishes notice of the matters referred to in the second column of Part B of Schedule 1 he shall also publish in the gazette-

(a) the manner in which representations may be made to him;

(b) the time within which representations must be made;

(c) the arrangements for circulating representations;

(d) the time within which further representations may be made on the representations circulated pursuant to paragraph (4)(c);

(e) the manner in which an application for a hearing must be made;

(f) the time within which an application for a hearing must be made; and

(g) the time within which any representations and supporting documents must be made available before the hearing.

Hearings of oral representations

8.-(1) If any person applies to be heard in accordance with regulation 7(4)(e) and (f), the Controller shall appoint a time and place in the United Kingdom at which that person and all of the other persons concerned may be heard by him.

(2) In appointing the time and place of the hearing, the Controller shall have regard to the convenience of the persons concerned and of witnesses, the situation of any land or premises to be viewed in connection with the application and to the other circumstances of the case, including the wishes of and expense to the persons concerned.

(3) The Controller may appoint a person for the purposes of conducting the hearing referred to in paragraph (1) and all references to the Controller in these Regulations in relation to the conducting of a hearing shall be deemed to refer to a person appointed pursuant to this paragraph.

(4) The Controller shall give to each of the persons concerned at least 14 days' notice of the time and place of the hearing.

(5) Any person concerned may be represented at the hearing by a person chosen by him.

(6) Any person concerned or his representative who attends the hearing may speak and he or his representative may call witnesses and, subject to paragraph (7), may produce documents and shall be given an opportunity of putting questions directly to any witness called at the hearing.

(7) Except with the leave of the Controller, no document shall be produced to the hearing, save in accordance with the requirements of regulation 7(4)(g).

(8) Subject to paragraph (9), the hearing shall be in public unless the Controller, after consultation with the persons concerned attending the hearing or their representatives, otherwise directs.

(9) A member of the Council on Tribunals or of its Scottish Committee may, in his capacity as such, attend a hearing.

(10) Subject to paragraph (11), the decision of the Controller shall take effect at such time as he shall direct after the expiration of the time limit for the bringing of an appeal.

(11) Where the Controller decides to grant an application in a case where no person concerned has made any representations to him in writing or has been heard by him in opposition to the granting of an application, the decision shall take effect at such time as he shall direct.

(12) The Controller shall inform the persons concerned of his decision, together with the reasons for it, and of the time within which and the manner in which an appeal may be brought.

(13) The Controller shall publish in the gazette details of the decision and details of the time within which and manner in which an appeal may be brought.

Appeal to the Tribunal

9.-(1) The hearing of an appeal by the Tribunal under the provisions of Part 11 of the Act or of these Regulations shall take place in such part of the United Kingdom as shall be determined by the Chairman of the Tribunal who shall have regard to the matters referred to in regulation 8(2) as well as to the convenience of the members of the Tribunal and, if he proposes to appear at the hearing of the appeal, of the Controller.

(2) The persons concerned or persons appointed by them for the purpose of the proceedings in respect of which the decision was given shall be entitled to appear and be heard as a party to any appeal against the decision of the Controller.

(3) Where an appeal is brought against a decision given in accordance with the relevant legislation the operation of such decision shall be suspended pending the final determination of the appeal.

(4) The Controller shall publish in the gazette a notice of the appeal, of any suspension of the operation of his decision in accordance with the previous paragraph and of any withdrawal of the appeal.

(5) The Controller shall take such steps as may be necessary to give effect to any decision given on the final determination of an appeal and such other steps as he would be required by these Regulations to take if such decision were his own.

Compulsory licences-coming into effect

10. The period for the purposes of section 17(8)(a) (which provides that regulations may specify the period which must elapse between the grant of plant breeders' rights and the coming into force of a compulsory licence) shall be 2 years as respects all varieties.

Rights of appeal in other cases

11. In addition to the appeals to the Tribunal set out in section 26(l), an appeal shall lie to the Tribunal against a decision of the Controller to refuse an application under section 25(3)(a) (organisation or person applying to the Controller for an opportunity of making representations to which section 25 applies).

Register of plant variety names and records of plant varieties

12.—(1) The Controller shall keep a register of the names of plant varieties in respect of which plant breeders' rights have been granted.

(2) The Controller shall keep records of plant varieties which shall contain-

(a) in respect of varieties for which applications for grants of plant breeders' rights are under consideration, the information set out in paragraph (3); and

(b) in respect of varieties for which plant breeders' rights have been granted, the information set out in paragraph (4).

(3) The information referred to in paragraph (2)(a) is-

(a) the date on which the application was received;

(b) the dte on which details fo the application were published in the gazette;

(c) the name and address of the applicant;

(d) the description of the characteristics of the plant variety provided by the applicant;

(e) the reference number allocated to the plant variety by the Controller when the application was published in the gazette;

(f) the names of the plant variety as published from time to time in the gazette; and

(g) such other particulars as shall appear to the Controller to be desirable.

(4) The information referred to in paragraph (2)(b) is-

(a) the name and address of the holder of rights;

(b) a description of the characteristics of the plant variety;

(c) the names of the plant variety as published from time to time in the gazette;

(d) the date upon which and the period (including any extended period) for which plant breeders' rights in the plant variety were granted, and the date upon which such rights expired or were otherwise terminated or were declared null and void, as the case may be;

(e) the information recorded against the variety pursuant to paragraph (2)(a) prior to the grant of rights; and

(f) such other particulars as shall appear to the Controller to be desirable.

(5) Any person who has become a holder of rights in succession to another person may apply to the Controller to be entered in the plant varieties records and upon being satisfied that such person is so entitled the Controller shall amend the plant varieties records accordingly.

(6) Any person whose name and address are entered on the plant varieties records and who has changed his name or address shall apply to the Controller for amendment of the plant varieties records accordingly.

(7) The Controller may, without prejudice to any other powers vested in him, either upon the application of any person or without such an application, rectify any error or omission in the register or the plant varieties records.

(8) Before rectifying the register or the plant varieties records the Controller shall (unless he considers that the correction is so trifling that it is not necessary for him to do so) give notice of his proposal to do so to the holder of rights in the plant variety in respect of which the register or plant varieties records are proposed to be corrected and shall advertise his proposal in the gazette, and shall invite written observations to be made within a specified period in regard to the proposal, and he shall not make the correction until he has considered any observations so made to him.

(9) Subject to regulation 13(2), the register and the plant varieties records shall be available for inspection by any member of the public at the Office.

Reports of tests and trials

13.-(1) Subject to paragraph (2), any report received by the Controller of the result of any tests or trials which have been carried out in respect of a plant variety which is the subject of an application for a grant of plant breeders' rights and which may be relevant to his decision shall be available for inspection by any member of the public at the Office.

(2) The details of the heriditary sources of a hybrid shall not be available for inspection unless the holder of rights has consented.

Documents not in English

14. Where any document submitted to the Controller in connection with the relevant legislation is in a language other than the English language it shall, unless the Controller otherwise directs, be accompanied by a complete and adequate translation thereof into the English language.

Loss or destruction of plant breeders' certificate

15. Where the Controller is satisfied that a plant breeders' certificate has been lost or destroyed or cannot for some other good reason be produced he may cause a duplicate thereof to be delivered to the person entitled to the grant.

Service of documents

16.-(1) Every applicant for the grant of plant breeders' rights and holder of rights and any of the other persons concerned in any proceedings under the relevant legislation shall give to the Controller an address within the European Community (hereinafter referred to as his "address for service") which shall be the address at which any notices or other documents under or in accordance with the relevant legislation may be delivered to, served upon, or given to him for the purpose of the relevant legislation.

(2) Any person may give to the Controller in substitution for his address for service another address within the European Community which shall thereafter be his address for service.

(3) Subject to paragraph (4), any document or thing required or authorised by or in pursuance of the relevant legislation to be delivered to, served on or given to the Controller may be delivered, served or given by being left at the Office or at such other place as the Controller may have required in writing or sent to the Controller at the Office or at such place by post in a properly addressed prepaid letter or parcel.

(4) Plant material to be delivered to the Controller pursuant to the relevant legislation may, instead of being sent by post, be sent by other convenient means.

(5) Any document or thing required or authorised by the relevant legislation to be delivered to, served on or given to any person other than the Controller may be delivered, served or given by being delivered to him personally, left for him at his address for service or at his last known address or sent to him there by post in a properly addressed prepaid letter.

Agency

17. The Controller shall be entitled to require any holder of rights or applicant for the grant of plant breeders' rights resident outside the European Community to appoint an agent within the European Community with authority to act for him in relation to matters which are the subject of the relevant legislation.

Times for compliance and extensions thereof

18.-(1) If the time for the delivery to or service on the Controller of any document or thing pursuant to the relevant legislation expires on a day when the Office is not open to the public for the transaction of business, such time shall be deemed to be extended so as to expire with the next succeeding day on which the Office is open.

(2) Where any document or thing is to be delivered, served or given or any act is to be done within a time prescribed or required by or under the relevant legislation such time may, upon application made to the Controller by the person required to deliver, serve or give the document or thing or do the act, be extended by the Controller for such period and upon such terms, if any, as he thinks fit.

Business after office hours

19. Any business done, and any document delivered, at the Office under the relevant legislation on any day after the end of the period fixed for the opening of the Office to the public for the transaction of business on that day or on any day which the Office is not open to the public for the transaction of business shall be deemed to have been done or delivered on the next succeeding day when the Office is open to the public for the transaction of business.

Rectification of errors and irregularities

20. Any document delivered to, served on or given to the Controller in connection with the relevant legislation may, with the consent of the Controller after application made to him by the person by or on whose behalf the said document has been delivered, served or given, be amended and any irregularity in procedure may be excused or rectified, in either case upon such terms, if any, as the Controller shall direct and thereupon no proceeding shall be invalidated in consequence of any error, omission or irregularity so excused or rectified.

Revocation, savings and supplemental provision about names

21.-(l) Subject to paragraph (3), the Regulations mentioned in Schedule 2 are hereby revoked to the extent specified in the third column of that Schedule.

(2) Subject to paragraph (3), the Schemes(a) made under section I of the Plant Varieties and Seeds Act 1964(b) are hereby revoked save insofar as they prescribe classes of plant variety for the purpose of section 5(7) of that Act (which enables classes of plant varieties to be prescribed in connection with the use of names likely to deceive or cause confusion).

(3) The Regulations mentioned in Schedule 2 and the Schemes made under section 1 of the Plant Varieties and Seeds Act 1964 are saved in their application to the Isle of Man.

(4) Regulation 18 of the Plant Breeders' Rights Regulations 1978(c) is saved subject to the following amendments-

(a) in paragraph (1), after the word "propose" there shall be substituted the words "in writing";

(b) paragraph (4) shall be omitted; and

(c) paragraph (7) shall be omitted.

(5) Regulation 3 of the Plant Breeders' Rights Regulations 1978 is saved in its application to regulation 18 of those Regulations.

(6) In sections 19 and 20, references to names registered under section 18 shall include names registered pursuant to regulation 18 of the Plant Breeders' Rights Regulations 1978 as saved by paragraphs (4) and (5).

Transitional provisions

22.-(1) Subject to paragraph (3), all applications which have been made under the legislation referred to in paragraph (4) and which have not been concluded at the date these Regulations come into force shall be treated from then on as having been made under the relevant legislation.

(2) All proceedings which have been commenced under the legislation referred to in paragraph (4) and which have not been concluded at the date these Regulations come into force shall be treated from then on as having been commenced under the relevant legislation.

(3) Where, before the date on which section 5 (rights in relation to application period) comes into force, an application has been made for plant breeders' rights which is granted after that date, that section shall entitle the holder to compensation only for things done after that date.

(4) The legislation referred to in paragraphs (1) and (2) is-

(a) those provisions of the Plant Varieties and Seeds Act 1964 which are repealed by section 52 of the Act; and

(b) the legislation which is revoked by regulation 21(l) and (2).

SCHEDULE 1 Regulations Article 5, 6 and 7

MATTERS TO BE PUBLISHED IN THE GAZETTE BY THE CONTROLLER AND PERSONS ENTITLED TO MAKE PRESENTATIONS

PART A

(1)	(2)
Receipt of an application for the grant of plant breeders' rights	(a) the applicant; (b) any person who has a substantial interest in the decision to grant or refuse the grant of plant breeders' rights; and (c) any person who is able to provide evidence which is material in the decision to grant or refuse the grant of plant breeders' rights

PART B

(1)	(2)	(3)
1.	Proposed decision preliminary to the determination of an application for the grant of plant breeders' rights as to the conditions laid down in section 4	(a) the applicant; (b) any person who has a substantial interest in the decision to grant or refuse the grant of plant breeders' rights; and (c) any person who is able to provide evidence which is material in the decision to grant or refuse the grant of plant breeders' rights.
2.	Proposed decision to allow or refuse an application for the grant of plant breeders' rights	(a) the applicant; (b) any person who has a substantial interest in the decision to grant or refuse the grant of plant breeders' rights; (c) any person who is able to provide evidence which is material in the decision to grant or refuse the grant of plant breeders' rights.

3.	Receipt of an application under section 17(l) (grant of a compulsory licence) or section 17(9) (extension, limitation or variation of a compulsory licence)	(a) the applicant; (b) the holder of rights; (c) any plant breeders' rights licensee*; and (d) any person whose financial interests are likely to be affected by the decision.
4.	Proposed decision to refuse an application under section 25(3)(a) (organisation or person applying to the Controller for an opportunity of making representations concerning an application for the grant of compulsory licence)	(a) the applicant under section 25(3); (b) the holder of rights; and (c) the applicant for the grant of the compulsory licence.

**See* also section 25(3) which allows certain organisations and persons to make representations and be heard.

(1)	(2)	(3)
5.	Proposed decision to allow or refuse an application under section 23(l) (suspension of plant breeders' rights) or section 23(2) (tennination of suspension of plant breeders' rights)	(a) the holder of rights; (b) the holder of the compulsory licence who applied to the Controller under section 23(l); and (c) any person who was a person concerned in relation to the application for the grant of the compulsory licence referred to in the preceding sub-paragraph.
6.	Proposed decision under section 21(l) (to declare the grant of plant breeders' rights null and void)	(a) the holder of rights; (b) any plant breeders' rights licensee; and (c) any person whose financial interests are likely to be affected by the decision.
7.	Proposed decision under section 22(l)(a), (b) or (c) (to terminate other than on application to surrender by the holder of rights)	(a) the holder of rights; (b) any plant breeders' rights licensee; and (c) any person whose financial interests are likely to be affected by the decision.

8.	Proposed decision to refuse an application under section 22(1)(d) (to terminate on application to surrender by the holder of rights)	(a) the holder of rights; (b) any plant breeders' rights licensee; and (c) any person whose financial interests are likely to be affected by the decision.

PART C

(1)	(2)
1.	Withdrawal of application for the grant of plant breeders' rights.
2.	Decisions of the Tribunal
3.	Termination of plant breeders' rights following an application to surrender