

INTERNATIONAL HARMONIZATION IS ESSENTIAL FOR EFFECTIVE
PLANT VARIETY PROTECTION, TRADE AND TRANSFER OF TECHNOLOGY

UPOV Position
based on an intervention in the
Council for TRIPS, on September 19, 2002

1. The International Union for the Protection of New Varieties of Plants (UPOV) seeks to provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society.
2. UPOV now has 51 members, almost one third of whom are developing countries. They have experienced the beneficial effects with regard to productivity, competitiveness and overall economic development. The plant variety protection system established on the UPOV Convention meets the requirements of Article 27.3(b) of the TRIPS Agreement.
3. The UPOV Convention provides an effective *sui generis* system of plant variety protection at national level and, through international harmonization, at the international level. Under the UPOV Convention, all breeders in all members of UPOV enjoy the same level of protection. Enhancing international harmonization is an indispensable tool for the protection of new plant varieties, for international trade and for the transfer of technology. Should a country introduce a system not compatible with the internationally harmonized system based on the UPOV Convention, this might result in barriers to trade and the transfer of technology. Breeders of UPOV members would be hesitant to release their varieties in such a country. This means that farmers in that country would lose the possibility of benefiting from the use of the best varieties. International harmonization in the protection of new varieties of plants is essential. The introduction of a system which differs significantly from the harmonized approach based on the UPOV Convention will raise questions with regard to the implementation of the TRIPS Agreement.
4. The UPOV Convention requires the use of a given variety denomination whenever seed of protected varieties is traded for reasons of market transparency. The importance of this requirement is such that it extends beyond the period of protection of the variety. Reducing the level of protection, by allowing selling of seeds without using a/the commercial denomination would create confusion and breeders would lose the possibility of recovering their investment in sustainable breeding programs.
5. It should be emphasized that the practices of farmers, in relation to the existing varieties and landraces which are not protected, will not be affected in any way by the introduction of the UPOV system of plant variety protection. The UPOV system is designed to encourage the development of new varieties of plants for the benefit of society – which can only be achieved by providing benefits for both breeders and farmers. Thus, the UPOV system includes certain exemptions for the benefit of farmers. Farmers are allowed to use protected varieties for private and non-commercial purposes, including subsistence farming. Protected varieties can be used for experimental purposes and for breeding other varieties. In addition, farmers may be permitted to use “farm-saved seed” of protected varieties (the use of the product of the harvest, which they have obtained by planting propagating material of protected varieties on their own farms, for propagating purposes). Such permission would, however, be within certain constraints designed to ensure that the incentive for breeder to develop new varieties

is not undermined. Almost all UPOV members have developed adequate solutions. It should also be remembered that, under the UPOV system, farmers can develop and protect their own new varieties.

6. It should be noted that under the UPOV system, a breeder, for example a public breeding station, decides the conditions under which he authorizes the exploitation of his protected variety. He may, for instance, allow the farmer to exchange or sell seeds to neighbors. In many developing countries, public research institutes play a very important role in the breeding of staple food crops. These institutes would be free to authorize their protected varieties to be distributed from farmer to farmer, but, equally, not to all propagation of their varieties by commercial enterprises.

7. The lack of adequate protection for new plant varieties in developing countries will result in a failure to provide a key incentive for potential investment and undertakings to develop agriculture. Consequently, developing countries would lose an opportunity to develop their national agriculture and enhance their overall economic development in agriculture, horticulture and forestry.

8. Concerning the relationship between the Convention on Biological Diversity and the TRIPS Agreement, UPOV submitted its position to the Council for TRIPS at its session in June 2002, as document IP/C/W/347 add.3 dated June 11, 2002. In that document UPOV expressed the view that the Convention on Biological Diversity and relevant international instruments dealing with intellectual property rights, including the UPOV Convention, should be mutually supportive in respect of access to genetic resources and benefit sharing.

9. As for the disclosure of origin of genetic resources, UPOV is not opposed to the disclosure, per se, of countries of origin or geographical origin of genetic resources in any way that will facilitate the examination of whether a variety qualifies for protection. It should be recalled, however, that under the UPOV Convention, protection shall be granted where the variety is new, distinct, uniform and stable. Further or different conditions for protection are excluded. Therefore, disclosure of origin of genetic resources should not be regarded as an additional condition of protection.

10. UPOV recognizes the importance of capacity building and UPOV's capacity building activities cover more than 90 countries in Africa, Asia, the Pacific, in Latin America/Caribbean and in countries in transition to a market economy.