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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

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ADDENDUM TO DOCUMENT C/36/11

REPORTS BY REPRESENTATIVES OF STATES AND
INTERGOVERNMENTAL ORGANIZATIONS ON THE LEGISLATIVE,
ADMINISTRATIVE AND TECHNICAL FIELDS

Document prepared by the Office of the Union

The Annexes to this document contain the reports from Austria, Canada, Chile, Colombia, Hungary, Italy, Portugal, Food and Agriculture Organization of the United Nations (FAO), European Community/ Community Plant Variety Office (CPVO) and Organisation for Economic Co-operation and Development (OECD).

[Annex I follows]

ANNEX I

AUSTRIA

In the course of the current year Austria placed a proposal for accession to the 1991 Act of the UPOV Convention before its Council of Ministers, which cleared it for parliamentary consideration. There will be no more parliamentary debate this year, however, as in the meantime National Council elections have been set for November 24, 2002, and the formation of the new Government cannot be expected before the end of 2002. The new Government will have to decide on the filing of the application with UPOV.

[Annex II follows]

ANNEXII

CANADA

A ten-year report on the administration of the Canadian Plant Breeders' Rights Act was tabled in Parliament on June 12, 2002.

The Plant Breeders' Rights Act came into force on August 1, 1990. As a requirement of the Act, a report was to be prepared and submitted to Parliament with respect to its administration, as soon as practical after the first ten years. The report was required to indicate whether the operation of the Act has resulted in stimulation of investment in plant breeding in Canada, improvement of access to protected foreign varieties, protection of Canadian varieties abroad, improvement of plant varieties to the public benefit, and any other public advantage.

A consulting firm was hired to write the report.

The main overall findings are that there has been an increase in investment in plant breeding and an improvement in the access to foreign varieties in both the agricultural and horticultural sectors since the enactment of the Plant Breeders' Rights Act. The Plant Breeders' Rights Act appears to be one factor that has had a positive impact on the availability of improved varieties.

One concern raised by the users of the legislation was that amendments to the PBR Act, which would bring Canada's PBR Act in conformity with the 1991 Act of the UPOV Convention, have not been enacted.

The report is available on our Website (www.inspection.gc.ca)

[Annex III follows]

ANNEXIII

CHILE

1. Situation in the Legislative Field

1.1. Amendments to the Law and Regulations

Work started in 2001 on a Decree to complement the Regulations under Law No. 19.342 (on the Rights of Breeders of New Plant Varieties), and it has since been completed and presented to the President of the Republic for signature. The amendment makes provision for some definitions and deals with matters such as the “farmer’s privilege” and the punishment of infringers of breeders’ rights.

With regard to adaptation to the 1991 Act of the UPOV Convention, the amendment of Law 19.342 to bring it into line with the 1991 Act is at present at the preliminary draft stage; interest groups (creators of varieties, legal partnerships, associations of exporters, etc.) will be asked for their opinions on the preliminary draft in coming months, whereupon it will undergo legislative processing.

It is estimated that Chile will take three years to adapt its legislation to the 1991 Act.

1.2 -

1.3. Extension of Protection to Other Genera and Species

Chilean legislation provides that breeders’ rights may be exercised in relation to all botanical genera and species.

As of September 30, 2002, protection has been granted to varieties of 43 separate species (21 agricultural, 16 fruit and 6 ornamental).

2. Cooperation in Examination

No cooperation agreements have been entered into with other countries.

3. Situation in the Administrative Field

In the course of 2001 breeders’ rights were recognized in 52 new varieties. Of those varieties 15 (29%) were of agricultural species, 15 (29%) of fruit species and 22 (42%) of ornamental species (the latter including 86% for the species *Lilium*).

4. Situation in the Technical Field

No changes occurred in this area.

5. Activities for the Promotion of Plant Variety Protection

In December 2001 the Chilean Intellectual Property Association organized a seminar on intellectual property treaties in which speakers from UPOV and WIPO took part.

Various national seminars were participated in (FEDEFRUTA, Association of Export Intellectual Property Attorneys, etc.), the purpose being to publicize the procedures and prospects of plant variety protection.

International forums on the 1991 Act of the UPOV Convention were attended with a view to giving a clearer picture of the implications of a change in Chilean legislation.

A delegation from Hungary, interested in knowing about the Chilean system for variety protection and fruit crop certification, paid a visit.

[Annex IV follows]

ANNEXIV

COLOMBIA

Situation in the Legislative Field

Some legislative work has been done on the protection of plant breeders' rights in Colombia with a view to having a full range of up-to-date legislation that conforms to the expectations of the national and international markets, and allowing our country to proceed along the path of growth and opportunity, which in turn will make our agricultural research more profitable as, in addition to giving encouragement to engage in national research, it gives the country access to new technology.

Among the most significant features of the revision of our legislation, we would mention the following:

1. A draft law has been written to make the violation of breeders' rights an offense, and a consequential amendment has been made to Article 306 of the Criminal Code to include the appropriation of plant breeders' rights. The amendment proposed is important in that it is closely connected with the agriculture and livestock sector, and specifically as far as the provisions protecting and safeguarding plant breeders' rights strictly under criminal law are concerned.

Inasmuch as our present penal regime (the Criminal Code) provides in its Article 306 that the appropriation of industrial property rights (trademarks, invention patents, business signs, etc.) is an offense, it could be argued that, by default, plant breeders' rights are not covered, and that ultimately their violation might not be a criminal offense. Therefore, in other words because the legislation does not state expressly that the violation of plant breeders' rights is an offense, such a practice could be described as atypical.

In the present Criminal Code, the articles that might cover the practice of violation of those intellectual property rights known as plant breeders' rights suffer from inaccuracies or omissions that complicate characterization, which is a very serious matter in the context of the special rules of criminal law.

In the light of the foregoing, and after an in-depth investigation of the subject, including specifically some of the many instances of such rights being violated with impunity, a draft law has been drawn up with a wording of the text of Article 306 of the Criminal Code which effectively gives protection under criminal law to plant breeders' rights, and that without the necessity of referring to other provisions by analogy or applying them extensively, which not only inhibits but actually prevents prosecution for plant variety piracy.

It is worth mentioning at this stage that, under the traditional bipartite division of intellectual property into copyright and industrial property, the Colombian Criminal Code has a positive law response available which consists in characterizing such practices as offenses, yet the modern tripartite division of intellectual property rights to include plant breeders' rights does not receive the same positive response in criminal

law terms. The reason is none other than the imperfect wording of the criminal concept or concepts applicable; it is both logical and obvious that, if the legislator saw fit to include the violation of intellectual property rights in the Criminal Code, there was no question of leaving aside those that had to do with plant varieties, inasmuch as where equivalent factual circumstances occur there should be equivalent legislative provision.

There could not be a situation in which Colombia interacts with international markets in the export of agricultural produce while at the same time disregards, when clear rules for protection under criminal law exist, the dictates of community and international legislation on the protection and safeguarding of plant breeders' rights.

Neither is it tolerable, in the context of healthy and fair competition, for certain unscrupulous operators to be able to move in to the market on more favorable terms, namely the prices that can be charged by one who reproduces and grows a plant variety without having taken out a license or paid a royalty to the owner of the rights, thereby gaining a competitive advantage on the market over a person who has legitimately taken out one of the licenses offered by the breeder.

For the moment the Colombian State is not planning any coercive machinery under criminal law to assure the breeder of due reward from his protected plant variety, and to provide him with the criminal remedies with which he can carry on the healthy and untroubled exploitation of his variety in a commercial environment of fair competition consistent with and supported by international and community provisions on plant variety protection. These are sufficiently compelling reasons for such a project to be submitted, and for action to be taken in conformity with the demands of the international market, and indeed with one of the main purposes of globalization, which is to engage in fair competition on prices and quality and optimum productivity without losing sight of the Colombian side of things, including national farmers and professional producers of plant material.

2. In order to achieve complete conformity with the 1991 Act of the UPOV Convention, a draft decree has been written to amend Article 7 of Decree 533 of 1994, extending the protection terms in Colombia to 25 years for vines, forest trees and fruit trees, including their rootstocks, and 20 years for other species.
3. Owing to the momentum of progress in the technology and marketing of agriculture, it has been found necessary to revise the procedures established by legislation, and to that end a proposal has been drawn up for the amendment of Resolution IC 1893 of June 29, 1995, ordering the opening of the National Register of Protected Plant Varieties, establishing the procedure for obtaining breeders' certificates and enacting other provisions.

Cooperation in Examination

The sending of results as well as the conduct of technical examination continued with the support of UPOV member countries and the Community Plant Variety Office of the European Union.

Situation in the Administrative Field

Thirty-nine applications for protection were filed in 2001, 15 per cent of them for varieties resulting from national research, and 51 breeders' certificates were granted in the course of the same year.

At present our database holds 652 applications received and 393 breeders' certificates granted. In terms of applications, one of the most heavily represented countries is the Netherlands. Analysis of this information by species shows Rose still leading with 61.8%, followed by Carnation (13%) and Chrysanthemum (6.7%).

The sixth edition of the Protected Plant Varieties Gazette was published in September of the current year.

Guidelines were laid down for test protocols for the species Garlic and Passionflower, these being based on the UPOV Guidelines. In 2001, 13 distinctness, uniformity and stability tests were introduced in which the characteristics of varieties of the species Cotton, Rice, Sugar Cane, Garlic and Soy were recorded, analyzed and evaluated.

Situation in the Technical Field

Work continued on the standardization of laboratory protocols for the characterization and differentiation of protected varieties of the species Rice and Rose, while it started on the multiplication and regeneration of live samples of protected varieties of Cotton and Tobacco, and on the constitution of a reference collection for those species.

Activities for the Promotion of Plant Variety Protection

Public events are being organized in the form of seminars, meetings and conferences to heighten awareness of the scope of plant variety protection.

[Annex V follows]

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ANNEXV

HUNGARY

The Delegation of Hungary reported that the Hungarian Parliament had adopted a decision, in its session of September 11, 2002, on the adherence of Hungary to the 1991 Act of the UPOV Convention.

[Annex VI follows]

ANNEXVI

ITALY

The Ministerial Decree of March 15, 2002, which deals with the composition of offices in the Ministry of Agriculture and Forestry, was published in the official bulletin of the Ministry No. 4 April 4, 2002, Part I, with a few amendments, in particular, the General Directorate for Quality of Agricultural Products and Consumer Health now has twelve offices with the additional phytosanitary sector and food education and security.

[Annex VII follows]

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ANNEXVII

PORTUGAL

At present, plant breeders' rights can be granted in Portugal to varieties of 97 species.

Portugal is following the evolutions concerning the revision of Article 27.3(b) in the framework of the TRIPS Council meetings and the relationship between the a greement on TRIPS and biodiversity -connected matters.

[Annex VIII follows]

ANNEXVIII

FOOD AND AGRICULTURE ORGANIZATION OF
THE UNITED NATIONS (FAO)

On November 3, 2001, the thirty-first session of the Conference of the Food and Agriculture Organization of the United Nations adopted, by consensus and as a binding international agreement, the International Treaty on Plant Genetic Resources for Food and Agriculture (PGRFA). The Treaty, which is in harmony with the Convention on Biological Diversity (CBD), establishes a Multilateral System of Access to plant genetic resources and Benefit-sharing that applies to a list of crops that cover about 80% of the world's food calories intake from plants. It also makes provision for Farmer's Rights, for the first time in a binding international agreement, in recognition of the collective innovation on which agriculture is based. As at October 23, 2002, the Treaty has been signed by 62 countries and the European Community and ratified by eight.

(see <http://www.fao.org/legal/treaties/033s-e.htm>)

From October 9 to 11, 2002, FAO convened the first meeting of the Commission of Genetic Resources for Food and Agriculture acting as Interim Committee for the International Treaty on Plant Genetic Resources for Food and Agriculture. Among these several tasks of the Interim Committee for the Treaty, it was decided to establish an open-ended Expert Working Group to address draft Rules of Procedure for the Governing Body of the treaty; draft financial rules for the Governing Body; and procedures to promote compliance with the Treaty; all for consideration by the Governing Body at its first meeting. The Interim Committee also established the terms of reference and composition of the Expert Group on the Terms of the Standard Material Transfer Agreement. The Expert group will comprise of 24 experts nominated by governments with regional balance, with an equal number of advisers to the members. The Expert Group will also include a representative of the CGIAR to participate in his/her technical capacity, and the World Intellectual Property Organization (WIPO) and the International Union for the Protection of New Varieties of Plants (UPOV) will be invited to send one representative each to provide technical assistance, at the request of the Expert Group.

Under both its Regular and Field Programmes, the Organization provides technical assistance to Governments as well as at regional and/or sub-regional level, in the formulation of policies, strategies and legislation in the field of plant genetic resources for food and agriculture and related matters. In this respect, FAO assisted the Government of Syria in drafting new legislation to strengthen Plant Genetic Resources conservation and sustainable use. This legal instrument regulates access and benefit-sharing and recognizes and gives force to farmer's rights and to rights of local communities. It is the first legislation to be drafted, under a project operated by the Organization, in line with the principles and requirements established by the International Treaty on Plant Genetic Resources for Food and Agriculture. FAO is also providing legal and technical assistance to Jordan in this same area.

A draft legislation was also prepared for Oman in order to update the legislative and regulatory regime governing citrus plant material. Under the Technical Cooperation Programme of FAO, a specific project is being executed in the Democratic People's Republic of Korea with the objective of establishing a modern seed inspections system.

In 2002, several studies on plant genetic resources have been prepared: “ *A Global Instrument on Agro -Biodiversity: The International Treaty on Plant Genetic Resources* ” was published as a FAO Legal Paper online on the FAO website. A recent legal study on “ *Intellectual Property Rights in Plant Varieties: an overview with options for national governments* ” reviews and assesses existing international legal regimes relating to intellectual property rights in plant genetic resources, with a specific focus on plant varieties.

Last June 2002, FAO organized in cooperation with the University of Tor Vergata an expert consultation on “Public agricultural research: the impact of IPRs on biotechnology in developing countries.” The report of the meeting is available on the FAO website. (see <http://www.fao.org/biotech/docs/torvergatareport.htm>)

[AnnexIX follows]

ANNEXIX

ORGANISATION FOR ECONOMIC CO-OPERATION
AND DEVELOPMENT (OECD)

The last annual and other meetings were held in Santa Cruz, Bolivia.

To date, the countries participating in the OECD Seed Schemes number 52. Mexico, Latvia, the Russian Federation and Yugoslavia were admitted by the OECD Council at the end of 2001. The admission of Colombia, The former Yugoslav Republic of Macedonia and Ukraine are still in progress.

Several technical issues are still being discussed or ready for submission to the OECD Committee for Agriculture and the Council, as follows:

- Cotton hybrids: standards and requirements for inter- and intraspecific *Gossypium barbadense* and *G. hirsutum* — final discussion);
- Oilseed rape hybrids (varietal associations): eligibility and parental / hybrid purity standards — ongoing discussion;
- Maize blends: eligibility of synthetic inbreds as parental components — ongoing discussion;
- Herbage seed mixtures: distinction between amenity purpose (eligibility for certification ready for agreement) and agricultural purpose (eligibility denied but kept on the agenda for further discussion);
- Varieties under examination: OECD listing and provisional certification prior to registration are ready for submission;
- Varietal identity checking procedures in the case of multiplication abroad: issue of a limited multilateral database to be further discussed;
- Maximum lot size for cereals and grass seed: to be raised to 30 and 25 tons, respectively: call for additional evidence and ongoing experiment;
- Subtropical and tropical species: investigation of certification opportunities to enhance trade;
- Genetically modified seed issues: Identification of varieties and assessment of adventitious impurities still under discussion;
- Organic seed certification: general discussion on relevance to OECD Schemes and contacts with IFOAM in view of emerging international trade.

In addition to traditional collaboration with international seed-related organizations, co-operation with FAO on the Global Information System and CBD on the Cartagena Protocol should be mentioned, with a view to making the OECD List and trade documentation available for external purposes should OECD-participating countries allow it and wish for it.

[Annex X follows]

ANNEX

EUROPEAN COMMUNITY/
COMMUNITY PLANT VARIETY OFFICE (CPVO)

Situation in the Legislative Field

- Rules for variety denominations

The rules governing variety denominations throughout the European Union, both for listing and for the community plant variety rights system, have been in force since mid 2000. The CPVO gained experience from using this detailed set of rules during two years. A Working Group on Variety Denominations, including national and CPVO experts, has been set up. The UPOV Office and the European Commission have always been invited. The terms of reference covered ways:

- to reduce the scope for different interpretations;
- to streamline and shorten the procedures;
- to look at ways of simplification and further harmonizing the rules;
- to assess the merits of centralisation (within the EU) of the collection and maintenance of databases relating to variety denominations.

The Working Group has recently completed its work. The CPVO will present a report to its Administrative Council including proposals for an update of the guidelines for variety denominations presently used.

- Revision of the fee scale

As a final result of the cost calculation project developed by the CPVO in close co-operation with its Examination Offices, a revision of the fees scale has been proposed and is now pending for final approval. According to the proposed new approach, the examination fees will be increased for some crop groups. The annual fee, of a reduced amount, will be a flat rate for all crops. The application fee will remain unchanged.

Situation in the Technical and Administrative Fields

- For the performance of the required DUS tests, the Community Office benefits from the co-operation of a network of more than 20 examination offices within the European Union. The CPVO has also contracts with the national Offices of Australia, Israel and New Zealand.
- For the preparation and examination of proposals for variety denominations, the assistance of 5 European national offices is now currently in progress.
- To improve the efficiency of the technical network, the Office organises several technical meetings:

- *Annual meeting with the EU Examination Offices* .December 2001: experts from 11 candidate countries for EU accession, Norway, the UPOV Office and the European Commission participated in that meeting.
 - *Experts meetings for ornamentals, agricultural crops, vegetables and fruit* have dealt with their specific problems.
- DUS Technical protocols : To fulfill the requirements of our Community Basic Regulation, the DUS test must be performed following technical protocols adopted by the Administrative Council. The CPVO has prepared and implemented a plan aiming to produce Technical Protocols for the genera and species covered by the Community system. Priority lists for the different groups of crops have been drawn up. The adopted UPOV test guidelines are used as a basis for the work. Until now 26 Technical Protocols have been adopted and 43 are in preparation.

Aiming to reach a full harmonisation of the DUS work and procedures for national listing within the European Union with those of the Community plant variety protection system, the European Commission adopted in 2002 a new directive. According to the new rules, the DUS technical protocols of the CPVO must also be used for the national listing and the Common Catalogue.

Information Concerning the Functioning of the Community Plant Variety Protection

- From October 2001 to October 2002, the CPVO received 2,127 applications. So far the year 2002 shows a slight decrease of 1,6% compared with the same period last year. Recently the CPVO has granted title number 10,000. Last year, 1,826 CPVRs have been granted.
- Since 1995, 15,581 applications have been received: 15,6% from countries outside the European Union and 84,4% from Member States of the EU.
- The CPVO received applications for varieties belonging to more than 700 different genera/species.

The breakdown by group and species is as follows:

- 68,36% Ornamentals
 - 17,63% Agricultural crops
 - 8,19% Vegetables
 - 5,78% Fruit
 - 0,04% Miscellaneous.
- In addition to the periodical publication (bimonthly) of its Official Gazette, the CPVO maintains a website (www.cpvo.eu.int) for general and technical information. Updated (every two weeks) lists of applications and grants are also included. Since the year 2000, a special issue of the Gazette has been published mid-year encompassing all varieties under community protection.

ActivitiesforthePromotionofPlantVarietyProtection

- TheCPVOcontinuestoco -operateinthepromotionoftheUPOVtypePVRprotection, providing speakers for seminars and specialised meetings organised by the UPOV OfficeandtheEUMemberStates.

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