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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

Twenty-sixth Ordinary Session

Geneva, October 29, 1992

**REPORT BY REPRESENTATIVES OF MEMBER STATES
ON THE SITUATION IN THE LEGISLATIVE,
ADMINISTRATIVE AND TECHNICAL FIELDS**

Document prepared by the Office of the Union

1. At its twenty-ninth session, held in October 1991, the Administrative and Legal Committee, to which the issue had been referred to by the Consultative Committee, recommended that the reports of the representatives of States (member States and observer States) and intergovernmental organizations on the situation in the legislative, administrative and technical fields of plant variety protection and related areas be submitted in writing, in advance, to increase the ability of the Council to effectively carry out its tasks.
2. Written reports have been requested by the Office of the Union in the invitation circulars relating to this session. The reports submitted by the following member States are reproduced in annexes I to VI: Germany, Belgium, Denmark, Japan, New Zealand, Sweden.

[Annexes follow]

GERMANY**1. Situation in the Legislative Field**

The first law amending the plant variety protection law entered into force on April 8, 1992. It provides that breeders' rights may henceforth be granted for varieties of all species from the plant kingdom. In the case of vegetatively propagated species such as fruit crops, ornamental plants and trees --except grapevine and potato--, the effects of the title of protection have been extended considerably since the authorization of the holder of the rights is henceforth required for any propagation, including for the own needs of the propagator, and for the importation of plants or plant parts. The provision, made under the Treaty on German unity, under which the production of farm-saved seeds of cereals, oilseed rape, field bean, French bean, lupin, pea or potato is subject to authorization in the new Länder has been repealed. A uniform rule has thereby been established again in Germany.

Work has started with a view to incorporate the substantive provisions of the 1991 Act into German law.

2. Cooperation in Examination

The bilateral agreement on technical cooperation in variety testing concluded with Sweden has been extended. The agreement now covers 37 species in total.

3. Activities for the Promotion of Plant Variety Protection

Twenty-five experts from seven countries from Eastern and Southern Europe have been trained in variety testing at the Federal Office of Plant Varieties. Six further countries from that region have expressed an interest for such a training.

4. Miscellaneous

During the period covered by this report, 1088 applications for protection were received; 571 titles were issued.

[Annex II follows]

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

1.1. Amendment of the Law and the Implementing Regulations--Adaptation to the 1991 Act of the Convention

An intensive activity was deployed at the end of 1991 and the first months of 1992 with regard to the preparation of a new plant variety protection law. The text is quite advanced. However, the finalization of a first official draft is currently suspended:

(a) in view of a fundamental reform of the financial mechanisms governing plant variety protection and related areas (plant protection, national lists of varieties, seed certification and control);

(b) in expectation of the final definition of the main provisions of the Community Regulation on plant variety protection.

First contacts have been made by the Dutch colleagues with a view to establishing the official translation of the revised text of the Convention in the Dutch language.

1.2. Extension of Protection to Further Genera and Species

Further to the extension of protection to some 120 new taxa under the Royal Decree of March 12, 1991, which entered into force on June 22 of the same year, a new notice to interested circles was published in the Belgian Bulletin No. 3, of June 30, 1992. By August 31, more than 20 requests had been received by the Service.

2. Cooperation in Examination

Since the extension of protection in June 1991, all agreements on bilateral cooperation have been reviewed. New agreements have been concluded with Israel, the United Kingdom (March 2, 1992), Sweden (April 30, 1992) and the Netherlands (June 22, 1992). Furthermore, three agreements--with Denmark, France and Germany--are awaiting confirmation.

3. Situation in the Administrative and Technical Fields

Amount of Activities--Status on August 31, 1992

From the entry into force of the system for the protection of new plant varieties to August 31, 1992, 1441 applications for protection had been filed and 853 certificates issued, of which 436 were still in force. In 1991, 108 titles of protection were issued, which is a--perhaps modest--record since the introduction of plant variety protection in Belgium.

The certificates were issued in respect of 57 genera and species, out of 290 in total.

The situation has become stable in the field of protection.

Since the extension of the list of protected taxa which took place in 1985, a certain enthusiasm for the protection of ornamental varieties has been noted. Ornamental varieties represent 50% of the total number of the varieties currently protected, and rose varieties 21%.

DEVELOPMENTS IN RELATED FIELDS OF ACTIVITIES OF INTEREST TO UPOV

National Lists of Varieties

The fees for the examination of the value for cultivation and use (VCU) of the varieties whose entry in one of the national lists of varieties has been applied for, have been increased by at least 100% (Royal Ordinance of February 3, 1992, amending the Royal Ordinance of September 24, 1982, Fixing the Fees to be Paid in Relation to Entry of Varieties in the National Lists of Varieties).

Seed Certification

The fees under that system have also been substantially increased (Royal Ordinance of October 25, 1991 (Moniteur belge of January 9, 1992) Fixing the Considerations to be Paid in Respect of the Certification of Seeds and Plants of Agricultural and Horticultural Crops and the Considerations Connected with the Exercise of Certain Professions in Agriculture, Horticulture and Sylviculture).

Rules and Regulations in the Field of Genetic Engineering--Release of Genetically Modified Organisms--EEC Dir 90/220 of April 23, 1990

In addition to the Ministry of Public Health and Environment--and the Regions--the Ministry of Agriculture is concerned with the conversion of this directive into Belgian law. A draft Royal Decree is almost completed and will be submitted shortly to the Conseil d'Etat before publication in the Moniteur belge (on the basis of a law of July 20, 1991, empowering the King to regulate the release of genetically modified organisms into the environment).

[Annex III follows]

ANNEX III

DENMARK

PLANT VARIETY PROTECTION

1. Extension of Protection to Further Genera and Species

On August 27, 1992, the following species was included under the plant variety protection Act:

Hibiscus rosa-sinensis and hybrids thereof (pot plant types).

The species has been included under the designation "Malvaceae p.p.", under which the genus Abutilon is included at present.

The inclusion of 23 additional ornamental species and one agricultural species is under preparation. A Ministerial Order will be issued as soon as possible.

2. Cooperation in Examination

New bilateral agreements with Belgium and Israel are under preparation.

3. Situation in the Administrative Field

In 1991, 242 applications for plant breeders' rights were received, as follows:

Agricultural crops	96
Fruit	1
Vegetables	1
Ornamentals	144

In 1991, the number of titles of protection issued was 250:

Agricultural crops	81
Fruit	3
Vegetables	6
Ornamentals	160

In the period from January 1, 1992, to August 20, 1992, 196 applications for protection were received and 131 titles of protection were issued.

4. Situation in the Technical FieldTesting of Ornamental Species

On the basis of the experience gained from the pilot project concerning the testing of ornamental varieties at the breeders' premises, it has been decided to use this possibility in future for species for which no official testing facilities are available domestically or abroad.

The Plant Novelty Board will decide on a case-by-case basis, considering also whether one or more breeders are involved and whether the place of residence of the breeders is in Denmark only or also in other countries.

Requests for breeder's testing of varieties of four species have been submitted recently and are at present under consideration.

DEVELOPMENTS IN RELATED FIELDS OF ACTIVITIES OF INTEREST TO UPOV

Testing of Agricultural Crops for Variety Listing

The testing for value for cultivation and use (VCU) of agricultural crops is at present under discussion with the purpose of improving the testing to the benefit of both the breeders and the farming industry. At the same time, the goal is to achieve self-financing within the various groups of crops.

The study is not yet finalized, but to ensure the best possible testing and at the same time economize the use of resources, it seems most likely that part of the testing will be carried out in future on the breeders' premises. However, the supervision of the trials will remain with the authorities.

[Annex IV follows]

ANNEX IV

JAPAN

1. The amendment of the law and the implementing regulations with a view to adapting them to the 1991 Act is under way.
2. The conclusion of agreements on cooperation in examination with Australia, Germany, the Netherlands, New Zealand and the United Kingdom is planned.
3. The Japanese authorities will actively contribute to the UPOV Seminar on the Nature of and Rationale for the Protection of Plant Varieties under the UPOV Convention to be held in Suweon (Republic of Korea) on November 17 and 18, 1992.

[Annex V follows]

NEW ZEALANDSituation in the Legislative Field

While there have been no actual changes to the PVR law or regulations since the last Council meeting, discussion has continued on adapting the law to the 1991 UPOV Convention. Further progress depends upon obtaining Government approval for including an amendment bill in the legislative programme. Such Government approval was sought but refused in 1991 and also in 1992 - approval will be sought again in 1993.

Because of the delay in progress in amending the Act renewed attention has been given to a proposal made by the PVR Office in 1989 for a possible regulatory change that would limit farmers' rights in respect of farm-saved seed. When the proposal was first made, farmers expressed strong opposition to it. However the national farmers' organisation now appears to be moving to the view that existing farmers' rights to farm-saved seed must be limited if the Plant Variety Rights Act is to provide an adequate incentive for investment in farm crop breeding, especially breeding of cereals and pulses.

Co-operation in Examination

A co-operative testing agreement with the United Kingdom was signed in March 1992 under which New Zealand agreed to test varieties from an extensive list of New Zealand indigenous plant taxa. This is the first such agreement into which New Zealand has entered.

Situation in the Technical Field

A further change has been made to the system for testing ryegrass varieties. Prior to 1990, ryegrass varieties were tested according to the applicant testing system that applied, and still applies, to other agricultural varieties. Under this system each ryegrass applicant had the responsibility for such testing as was necessary to establish that his new variety was distinct, uniform and stable. Then in 1990 a new scheme was put into effect under which ryegrass breeders organised on a co-operative basis the testing of their varieties. Each candidate variety was tested at two sites in New Zealand in the one season. Now early this year a further change has occurred involving extending the scheme to include Australia. Testing is now organised co-operatively by Australian and New Zealand ryegrass breeders according to a protocol approved by the Australian and New Zealand PVR Offices. Each variety is tested in one season at two sites, one in Australia and one in New Zealand. Each of the PVR Offices is prepared to accept test results from the other country.

ANNEX VI

SWEDEN**PLANT VARIETY PROTECTION****1. Situation in the Legislative Field**

Sweden has not yet adapted its law to the 1991 Act of the Convention. Preparations are being made for legislation on the exhaustion of plant breeders' rights following the Agreement on the European Economic Area.

The National Plant Variety Board has suggested an extension of the list of protected taxa as follows:

Acer spp.	Maple
Begonia spp.	Begonia
Betula spp.	Birch
Caragana spp.	Pee Shrub
Cornus spp.	Cornel
Euonymus spp.	Spindle Tree
Potentilla spp.	Cinquefoil
Rhododendron spp.	Rhododendron, Azalea
Spiraea spp.	Spirea
Syringa spp.	Lilac
Viburnum spp.	Snowball Tree

Furthermore, it is proposed to extend protection to varieties of hybrids between genera or species included in the list of protected taxa.

2. Cooperation in Examination

A new agreement has been concluded with Belgium and covers:

Begonia x tuberhybrida Voss	Tuberous Begonia	(Belgium)
Anethum graveolens L.	Dill	(Sweden)
Allium schoenoprasum L.	Chives	(Sweden)

The existing agreements on testing in Germany and the Netherlands have been extended as follows:

Germany

Aronia spp.	Chokeberry
Beta vulgaris ssp. vulgaris var. conditiva Alef.	Garden beet
Hippophaë spp.	Sea Buckthorn
Populus spp.	Poplar
Raphanus sativus L. var. radricula Pers.	Radish
Secale cereale L.	Rye
Vaccinium vitis-idaea L.	Lingonberry

Netherlands

Allium L.	Ornamental Allium
Allium cepa L.	Onion
Allium ascalonicum L.	Shallot

Amendments to the existing agreements with France, the Netherlands and the United Kingdom are under discussion.

3. Activities for the Promotion of Plant Variety Protection

Discussions have taken place with Finland and Norway concerning their planned plant breeders' rights legislation. Possible activities might be extended to the Baltic States.

DEVELOPMENTS IN RELATED FIELDS OF ACTIVITIES OF INTEREST TO UPOV

Legislative work is under way concerning the adjustment of the Swedish seed certification law to the EEA-Agreement.

A Government Commission report on gene technology is to be submitted to the Government shortly. The report contains proposals concerning guidelines and legislation in the field of genetics that would apply to both plants and animals.

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