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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

COUNCIL

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EXAMINATION OF THE CONFORMITY OF THE LEGISLATION
OF ECUADOR WITH THE UPOV CONVENTION

Document prepared by the Office of the Union

Introduction

1. By letter dated October 1, 1995 (which was received by the Office of the Union under cover of a Note dated October 19, 1995, from the Permanent Mission of Ecuador to the Office of the United Nations and Other International Organizations in Geneva), the Minister for Foreign Affairs of Ecuador requested the advice of the Council of UPOV, pursuant to Article 32(3) of the 1978 Act of the UPOV Convention (hereinafter referred to as "the 1978 Act"), on the conformity of the laws of Ecuador concerning the protection of new varieties of plants with the 1978 Act. The Note is reproduced in Annex I to this document.
2. Ecuador did not sign the 1978 Act. Under Article 32(1)(b) of that Act it must accordingly deposit an instrument of accession in order to become a member State of UPOV on the basis of that Act. Under Article 32(3), an instrument of that kind can only be deposited by Ecuador if it has requested the advice of the Council on the conformity of its laws with the provisions of the 1978 Act and if the decision of the Council embodying the advice is positive.

Legal Basis for the Protection of New Varieties in Ecuador

3. Ecuador is a party to the Agreement for Subregional Integration (hereinafter called “the Cartagena Agreement”) which was concluded on May 26, 1969. The parties to the Agreement (hereinafter referred to as “the Member Countries”) are Bolivia, Colombia, Ecuador, Peru and Venezuela. Details on the functioning of the Agreement were given in document C(Extr.)/11/5, in relation to the request for advice made by Colombia and examined by the Council at its eleventh extraordinary session, on April 22, 1994.

4. The legal basis for the protection of new plant varieties in Ecuador is Decision 345 (of October 21, 1993) of the Commission of the Cartagena Agreement on the Common Regime for the Protection of the Rights of Breeders of New Plant Varieties (Annex II to this document). Decision 345 is directly applicable (self-executing) in the Member Countries.

5. Article 5 of Decision 345 requires the Member Countries to appoint a competent national authority, and to establish the national procedure for the implementation of the Decision. Decree No. 1914 (of July 12, 1994) of the President of the Republic (published in the *Registro oficial* of July 20, 1994) forms the implementing regulations to Decision 345; it is reproduced in Annex III to this document.

6. The protection of new plant varieties in Ecuador is thus governed by Decision 345 and Decree No. 1914. An analysis of the legal situation resulting from these legal instruments follows in the order of the substantive law provisions of the 1978 Act. The following might be noted at the outset:

(a) The Council has already examined the conformity of Decision 345 with the UPOV Convention in the context of the requests made by Colombia (see documents C(Extr.)/11/5 and C(Extr.)/11/6, paragraphs 20 to 23) and Bolivia (see documents C/29/12 and C/29/14, paragraph 6);

(b) Decree No. 1914 is a true implementing regulation, i.e., it does not restate the provisions of Decision 345 but merely supplements it in the areas in which further provisions are necessary.

The analysis has been submitted to the Ecuadorian authorities in advance of the session, and they have approved it.

7. A new Decree (Annex IV to this document) has been drafted and submitted to the President of the Republic for signature. It changes the administrative structure and clarifies a number of provisions. It is taken into account in the following analysis.

Article 1(1) of the 1978 Act: Purpose of the Convention

8. Article 1(1) of the 1978 Act provides that “the purpose of this Convention is to recognize and to ensure to the breeder of a new plant variety or to his successor in title ... a right.” Article 1(a) of Decision 345 states that “the purpose of the Decision is [...] to recognize and ensure the protection of the rights of breeders of new plant varieties by the grant

of breeders' certificates." The purpose of Decision 345 thus accords with the purpose of the Convention.

Article 2 of the 1978 Act: Forms of Protection

9. Decision 345 requires the granting of "breeders' certificates" fulfilling the requirements of the Decision, which conditions are based upon the UPOV Convention. Decree No. 1914 uses the same expression. Such certificates constitute a "special title of protection" for the purposes of Article 2 of the 1978 Act.

10. Decision 344 of the Commission of the Cartagena Agreement (which establishes a common regime for the grant of industrial property protection), Decision 345 and Decree No. 1914 are silent concerning the granting of industrial patents for varieties.

Article 3 of the 1978 Act: National Treatment; Reciprocity

11. There are no provisions in Decision 345 or Decree No. 1914 concerning the nationality, or place of residence or registered office, of the applicant or breeder. The legislation of Ecuador thus conforms with Article 3 of the 1978 Act, and also Article 4 of the 1991 Act.

Article 4 of the 1978 Act: Botanical Genera and Species Which Must or May be Protected

12. Article 2 of Decision 345 provides that "the scope of this Decision shall encompass all botanical genera and species insofar as the growing, possession or use thereof are not prohibited for reasons of human, animal or plant health." Decree No. 1914 does not contain any provision on this subject. Article 1 of the new Decree excludes from protection the wild species which have not been cultivated or improved by man. This provision does not limit the field of application of the legislation since there can only be (protectable) varieties within cultivated species.

13. The legislation of Ecuador thus conforms with Article 4 of the 1978 Act, and also Article 3 of the 1991 Act.

Article 5 of the 1978 Act: Rights Protected; Scope of Protection

Decision 345

14. Article 24, first paragraph, expresses the scope of protection in relation to propagating material under a breeder's certificate in terms which reproduce the substance of Article 14(1) of the 1991 Act. However, the list of acts for which the owner's consent is required is extended by the "commercial use of ornamental plants or parts of plants as multiplication material for the production of ornamental and fruit plants, or parts thereof or cut flowers." That addition is based upon the third sentence of Article 5(1) of the 1978 Act.

15. Under Article 24, first paragraph, item (i), the authorization of the owner is also required for the performance of the listed acts in relation to harvested material which has been obtained by the unauthorized use of propagating material of the variety, thus reproducing the substance of Article 14(2) of the 1991 Act. The scope of protection under a breeder's certificate thus far exceeds the minimum required by Article 5(1) of the 1978 Act.

16. Article 25 provides that the breeder's certificate does not entitle the owner to prevent third parties from using the protected variety for the breeding and exploitation of a new variety, as required by the first sentence of Article 5(3) of the 1978 Act. Article 24, second paragraph, extends the right of the breeder to varieties whose production calls for repeated use of the protected variety, as required by the second sentence of Article 5(3) of the 1978 Act.

17. Article 24, third paragraph, empowers the competent national authorities of the Member Countries to extend the rights of the owner of a breeder's certificate to varieties which are essentially derived from the protected variety, except where the protected variety is itself an essentially derived variety, thus offering the possibility of implementing Article 14(5)(i) of the 1991 Act.

18. Article 26 provides for a "farmer's privilege" that is not applicable to fruit, ornamental and forest species, as permitted by Article 15(2) of the 1991 Act. Article 27 sets out the principle of exhaustion of the right in line with Article 16 of the 1991 Act.

Decree No. 1914 and New Decree

19. Decree No. 1914 does not contain any provision on the scope of protection.

20. The new Decree reproduces *verbatim* Article 24 of Decision 345 in its Article 12. It has been suggested in recent discussions with the Ecuadorian authorities that they could implement the provisions on essentially derived varieties by stating on each breeder's certificate that it confers a right over such varieties in accordance with the applicable provisions.

21. It is envisaged to reproduce Articles 25 and 26 of Decision 345 in a law on seeds and plant variety protection that is currently under preparation.

Conclusion

22. Decision 345 creates a scope of protection which satisfies the minimum scope of protection of both the 1978 Act and the 1991 Act. That scope is provided in full on the Ecuadorian territory.

Article 6 of the 1978 Act: Conditions Required for Protection

Decision 345

23. Article 4 provides that Member Countries must grant breeders' certificates to persons who have created plant varieties, insofar as the varieties are new, uniform, distinct and stable, and if the varieties have been given a denomination that constitutes their generic designation. The substance of this Article is repeated in Article 7 in the context of the requirements for entry in a National Register of Protected Plant Varieties, while Articles 8 to 12 provide in detail for the conditions of novelty, distinctness, homogeneity and stability in terms which substantially follow the text of the corresponding provisions in the 1991 Act.

24. Under Article 8, a novelty destroying event in one Member Country destroys novelty in all of them. This aspect of the novelty provision is in conformity with Article 6(3) of the 1991 Act. Article 9 specifies that certain transactions in propagating or harvested material of the variety which involve sales or disposal to others by or with the consent of the breeder, should not be regarded as being for the purposes of the exploitation of the variety so as to destroy its novelty.

25. The first Transitional Provision establishes a transitional limitation of the requirement of novelty, as permitted by Article 38 of the 1978 Act and Article 6(2) of the 1991 Act. Any variety that has been entered in a register of cultivars in any Member Country or in a register of protected varieties in any State which has special legislation on the protection of plant varieties and which grants reciprocal treatment to the Member Country in which the application is filed, may be protected, provided the application is filed within one year from the opening of the relevant register of protected varieties.

Decree No. 1914 and New Decree

26. Decree No. 1914 (and the new decree) merely specifies, in Article 5, the formal requirements for the application.

Conclusion

27. The legislation conforms with the 1991 Act.

Article 7 of the 1978 Act: Official Examination of Varieties; Provisional Protection

28. Article 19 of Decision 345 requires the competent national authority of each Member Country to issue a technical report on novelty, distinctness, uniformity and stability, and Article 20 makes the granting of protection subject to the issue of a favorable technical report.

29. Article 7 of Decree No. 1914 specifies the practical options available to the Ministry of Agriculture and Livestock for the examination. The Ministry can seek the assistance of

experts, or delegate the conduct of field and laboratory tests and trials, or again use test results already available, including those submitted by the applicant.

30. The legislation of Ecuador thus conforms with Article 7(1) and (2) of the 1978 Act, and also Article 12 of the 1991 Act.

31. Article 17 of Decision 345 requires that the breeder be granted provisional protection during the period between the filing of the application and the grant of the certificate and gives details on the actions for damages. There is no provision on this subject in Decree No. 1914. Article 7(3) of the 1978 Act is thus implemented, in fact in a way which goes beyond the minimum required by the 1991 Act.

Article 8 of the 1978 Act: Period of Protection

32. Article 21 of Decision 345 specifies that the period of protection shall be between 20 and 25 years in the case of vines, forest trees and fruit trees, including their rootstocks, and from 15 to 20 years in the case of other species, calculated from the date of grant. Article 12 of Decree No. 1914 fixes the period to 25 and 20 years, respectively. These periods conform with Article 8 of the 1978 Act, and also Article 19 of the 1991 Act.

Article 9 of the 1978 Act: Restrictions in the Exercise of Rights Protected

33. Articles 30 to 32 of Decision 345 contain provisions on the granting of compulsory licenses in exceptional circumstances affecting national security or the public interest. There is no provision on this subject in Decree No. 1914. The legislation of Ecuador conforms with the requirements of Article 9 of the 1978 Act, and also Article 17 of the 1991 Act.

Article 10 of the 1978 Act: Nullity and Forfeiture of the Rights Protected

34. Article 33 of Decision 345 requires competent national authorities, either *ex officio* or at the request of a party, to declare a breeder's certificate null and void if either of the three conditions for nullity specified in Article 21(1) of the 1991 Act are fulfilled. It should be noted, however, that the competent national authority is required to also declare the breeder's certificate null and void when it is established that the variety was not uniform or stable at the date of grant. This differs from Article 21(1)(ii) of the 1991 Act, which limits such declaration to those cases where the grant was based on information and documents furnished by the breeder.

35. Under Article 35 of Decision 345, the competent national authorities are required to declare breeders' certificates canceled if any of the conditions specified (which correspond with those in Article 22(1)(b) of the 1991 Act) are fulfilled.

36. Article 11 of Decree No. 1914 specifies the authority that is competent for the implementation of the afore-mentioned provisions (the Industrial Property Directorate, alone

or on the basis of a report from the Ministry of Agriculture and Livestock) and the applicable procedure. Article 13 of the new Decree does the same.

37. The provisions of the legislation of Ecuador substantially conform to Articles 21 and 22 of the 1991 Act and should be considered as meeting the requirements of Article 10 of the 1978 Act.

Article 11 of the 1978 Act: Free Choice of the Member State in Which the First Application is Filed; Applications in Other Member States; Independence of Protection in Different Member States

38. There are no provisions in Decision 345 or Decree No. 1914 which would prevent a breeder from choosing the member State of the Union in which he wishes to file his first application, or from applying for protection in other member States until a Breeder's Certificate is issued in Ecuador. There are no provisions that would make protection in Ecuador dependent upon the protection granted (or not granted) in another country. The legislation of Ecuador accordingly conforms with Article 11 of the 1978 Act, and also Article 10 of the 1991 Act.

Article 12 of the 1978 Act: Right of Priority

39. Article 18 of Decision 345 provides for a right of priority in terms which satisfy Article 12 of the 1978 Act, and also Article 11 of the 1991 Act. The right is referred to in Article 4 of Decree No. 1914, which provides that the claim of priority must be accompanied by the certified copy of the original application, and does not, thus, provide the possibility of a later submission; the discrepancy with Article 12(2) of the 1978 Act (Article 11(2) of the 1991 Act) can certainly be remedied by a flexible implementation of the provision concerned, in line with the second paragraph of Article 18 of Decision 345, which must be given precedence over the terms of the Decree.

40. There is no provision, either in Decision 345 or in Decree No. 1914, concerning the period of time which the applicant must be allowed in order to provide additional documents and material required by the legislation of Ecuador. There is no provision, however, that would prevent the competent authority from allowing the period of time; the authority has indicated that it will apply the corresponding provisions of the Convention in due course.

Article 13 of the 1978 Act: Variety Denomination

41. Provisions relating to variety denominations are to be found in Articles 4, 7 and 13 of Decision 345. These provisions reproduce the substance of Article 13 of the 1978 Act (Article 20 of the 1991 Act). However, the obligation to use the variety denomination is not specifically spelled out.

Article 14 of the 1978 Act: Protection Independent of Measures Regulating Production, Certification and Marketing

42. Article 28 of Decision 345--in line with Article 14 of the 1978 Act and Article 18 of the 1991 Act--provides that Member Countries may adopt measures for the regulation or control, on their territory, of the production or marketing, importation or exportation of propagating material of a variety, provided that such measures do not imply disregard for the breeders' rights recognized by the Decision or hamper the exercise thereof. Decree No. 1914 does not contain any provision contrary to the stated principle.

Article 30 of the 1978 Act: Implementation of the Convention on the Domestic Level

43. Article 23 of Decision 345 requires that the owner of a breeder's certificate be given the right to bring administrative or judicial actions under his national legislation with a view to preventing or restraining any acts that constitute infringement or violation of his right, and securing the appropriate forms of compensation or indemnification. Article 13 of Decree No. 1914 (Article 15 of the new Decree) implements this provision, whereas Article 14 (Article 16 of the new Decree) provides for the possibility of penal sanctions being inflicted at the request of the injured owner or licensee, or the successor in title of the owner or licensee.

44. Article 11, third paragraph, of Decree No. 1914 (concerning nullity and cancellation of the Breeder's Certificate) provides that decisions of the Ministry of Industry, Commerce, Integration and Fisheries may be the subject of appeals before the Tribunal of Administrative Litigation. The corresponding provision of the new Decree (Article 13) clarifies that such appeals are also possible in the case of other decisions.

45. The Ministry of Industry, Commerce, Integration and Fisheries, through the National Industrial Property Directorate, has been appointed under Article 1, first and second paragraphs of Decree No. 1914, as competent national authority, the Ministry of Agriculture and Livestock being competent for the technical tests and reports. Under Article 2 of the new Decree, the Ministry of Agriculture and Livestock is appointed as competent national authority for all purposes.

46. Article 6, fifth paragraph, of Decree No. 1914 contemplates the publication of the application in the Industrial Property Gazette. Article 6, second paragraph, of the new Decree provides for the publication of a Gazette on Protected Plant Varieties.

General Conclusion

47. In the opinion of the Office of the Union, the legislation of Ecuador conforms with the 1978 Act in all its main features. It also conforms with the provisions of the 1991 Act.

48. On the basis of the foregoing, and of precedents, the Office of the Union would suggest that the Council may wish:

(a) to take a positive decision on the conformity of the legislation of Ecuador with the provisions of the 1978 Act, and to note that the legislation also conforms with the provisions of the 1991 Act;

(b) to authorize the Secretary-General to inform the Government of Ecuador of the above decision and to invite the Government of Ecuador to deposit an instrument of accession to the 1991 Act also, if it so wishes.

49. The Council is invited to take note of the information given above and to take decisions on the basis of the proposal set out in the preceding paragraph.

[Four Annexes follow]

ANNEX I

NOTE, DATED OCTOBER 19, 1995, FROM THE PERMANENT MISSION
OF ECUADOR AT GENEVA, TO THE SECRETARY-GENERAL

The Permanent Mission of Ecuador to the European Office of the United Nations and Other International Organizations at Geneva presents its compliments to Dr. Arpad Bogsch, Secretary-General of UPOV, and has the honor to inform him that the Government of Ecuador has decided to accede to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised on November 10, 1972, and October 23, 1978.

The Permanent Mission of Ecuador has pleasure in attaching a copy of Note 20553-1 SE/DGNEI/DTNEB, in which the Undersecretary for Economy of the Ministry of Foreign Affairs of Ecuador formally requests such accession. A copy of Decision 345, "Common Provisions on the Protection of the Rights of Breeders of New Plant Varieties," of the Commission of the Cartagena Agreement and a copy of the Official Register No. 487, which contains the National Regulations to the Andean Decision, are also attached.

The Permanent Mission of Ecuador avails itself of this opportunity to reiterate to Dr. Arpad Bogsch the expression of its most high and distinguished consideration.

[Appendix follows]

APPENDIX TO THE NOTE FROM THE PERMANENT MISSION

Letter, dated October 1, 1995, from Mr. Patrizio Izurieta Mora-Bowen,
Undersecretary for Economy of the Ministry of Foreign Affairs
of Ecuador, on Behalf of the Minister, to the Secretary-General

I have the honor to inform you that, on October 21, 1993, the Commission of the Cartagena Agreement approved Decision 345, on the Common Provisions on the Protection of the Rights of Breeders of New Plant Varieties; the Decision entered into force as national law in Ecuador on the date of its publication in the Official Register No. 327, of November 20, 1993. Pursuant to the provisions of the said Decision, the Government of Ecuador appointed the National Directorate of Industrial Property of the Ministry of Industry, Trade, Integration and Fishery as the competent national authority, through Executive Decree No. 1914 of July 12, 1994, published in the Official Register No. 487 of the 20th of the same month and year. The said regulation establishes the national procedure for the implementation of Decision 345.

In relation to this important matter, Ecuador expresses its commitment to acceding to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised in Geneva on November 10, 1972, and October 23, 1978. This being so, I have the honor to request the Council of the International Union for the Protection of New Varieties of Plants, pursuant to Article 32(3) of the 1978 Act, to pronounce on the conformity of the above-mentioned Ecuadorian legislation with the provisions of the 1978 Act.

A copy of Decision 345 and a copy of the above-mentioned Executive Decree are attached.

[Annex II follows]

ANNEX II

SUBREGIONAL INTEGRATION AGREEMENT

Decision 345

Common Provisions on the Protection of the Rights of Breeders of New Plant Varieties
(of October 21, 1993)

CHAPTER I

SUBJECT MATTER AND SCOPE

Article 1

The purpose of this Decision is:

- (a) to recognize and ensure the protection of the rights of breeders of new plant varieties by the grant of breeders' certificates;
- (b) to promote research activities in the Andean area;
- (c) to promote technology transfer activities within and outside the subregion.

Article 2

The scope of this Decision shall encompass all botanical genera and species insofar as the growing, possession or use thereof are not prohibited for reasons of human, animal or plant health.

CHAPTER II

DEFINITIONS

Article 3

For the purposes of this Decision, the following definitions are adopted:

Competent national authority: Body appointed by each Member Country to apply the provisions on plant variety protection.

<u>Live sample:</u>	A sample of the variety supplied by the applicant for a breeder's certificate, which sample shall be used for the testing of novelty, distinctness, uniformity and stability.
<u>Variety:</u>	Set of cultivated botanical individuals that are distinguished by specific morphological, physiological, cytological and chemical characteristics and can be perpetuated by reproduction, multiplication or propagation.
<u>Essentially derived variety:</u>	A variety shall be deemed to be essentially derived from an initial variety when it originated therefrom or from a variety itself essentially derived from the initial variety and retains the expression of the essential characteristics that result from the genotype or combination of genotypes of the original variety, and which although distinguishable from the initial variety, nevertheless conforms to it in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety, except with respect to differences resulting from the derivation process.
<u>Material:</u>	Reproductive or vegetative multiplication material in any form; harvested material, including whole plants and parts of plants; any product made directly from harvested material.

CHAPTER III

RECOGNITION OF BREEDERS' RIGHTS

Article 4

The Member Countries shall grant breeders' certificates to persons who have created plant varieties, insofar as the varieties are new, uniform, distinct and stable, and if they have been given a denomination that constitutes their generic designation.

For the purposes of this Decision, "created" shall be understood to denote the production of a new variety by the application of scientific skills to the genetic improvement of plants.

Article 5

Without prejudice to the provisions of Article 37, the Government of each Member Country shall appoint its competent national authority and shall establish the functions thereof, and shall also establish the national procedure for the implementation of this Decision.

Article 6

There shall be established in each Member Country a National Register of Protected Plant Varieties, in which all varieties conforming to the conditions laid down in this Decision shall be registered. The Board shall be responsible for keeping a subregional register of protected plant varieties.

Article 7

To be entered in the Register referred to in the foregoing Article, varieties shall fulfill the conditions of novelty, distinctness, uniformity and stability and in addition shall have an appropriate generic denomination.

Article 8

A variety shall be deemed to be new if reproductive or multiplication material or harvested material thereof has not been lawfully sold or disposed of to others in another manner by or with the consent of the breeder or his successor in title for purposes of commercial exploitation of the variety.

Novelty shall be lost where:

(a) exploitation has begun more than one year prior to the filing date of the application for the grant of a breeder's certificate or the date of any priority claimed, if sale or disposal to others has taken place within the territory of any Member Country;

(b) exploitation has begun more than four years or, in the case of trees and grapevines, more than six years prior to the filing date of the application for the grant of a breeder's certificate or the date of any priority claimed, if the sale or disposal to others has taken place in a territory other than that of any Member Country.

Article 9

Novelty shall not be lost through sale or disposal of the variety to others, *inter alia*, when those acts:

(a) are the result of an abuse to the detriment of the breeder or his successor in title;

(b) form part of an agreement to transfer the rights in the variety, provided that the variety has not been physically disposed of to a third party;

(c) form part of an agreement under which a third party has, on behalf of the breeder, increased supplies of reproductive or multiplication material;

- (d) form part of an agreement under which a third party has carried out field or laboratory tests or small-scale processing tests with a view to the evaluation of the variety;
- (e) involve harvested material that has been obtained as a by-product or surplus product of the variety or from the activities mentioned in this Article under (c) and (d);
- (f) are performed in any unlawful manner.

Article 10

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 on the filing date of the application or the date of any priority claimed.

The filing in any country of an application for the grant of a breeder's certificate or for the entry of the variety in an official register of cultivars shall make the said variety a matter of common knowledge as from that date, insofar as the act concerned leads to the grant of the certificate or the entry of the variety, as the case may be.

Article 11

A variety shall be deemed to be uniform if it is sufficiently uniform in its essential characteristics, due account being taken of the variations that may be expected from the manner of its reproduction, multiplication or propagation.

Article 12

A variety shall be deemed to be stable if its essential characteristics remain unchanged from generation to generation and at the end of each particular cycle of reproduction, multiplication or propagation.

Article 13

Each Member Country shall ensure that no rights in the designation registered as the denomination of the variety hamper the free use thereof, even after the breeder's certificate has expired.

The designation adopted may not be registered as a mark and shall be sufficiently distinctive in relation to other denominations registered previously.

Where one variety is the subject of applications for the grant of breeders' certificates in two or more Member Countries, the same denomination shall be used in all cases.

Article 14

The owners of breeders' certificates may be natural persons or legal entities. The certificate shall belong to the breeder of the variety or the party to whom it has been lawfully transferred.

The breeder may claim his rights before the competent national authority if the certificate has been granted to a person not entitled thereto.

Article 15

The State employer, whatever its form and nature, may transfer part of the profits from plant breeding to its breeder employees in order to stimulate research activity.

CHAPTER IV

REGISTRATION

Article 16

The application for the grant of a breeder's certificate for a new variety shall comply with the conditions set forth in Article 7 and shall be accompanied by a detailed description of the relevant breeding process. In addition, should the competent national authority consider this necessary, the application shall likewise be accompanied by a live sample of the variety or the document evidencing the deposit thereof with the competent national authority of another Member Country.

The Member Countries shall regulate the manner in which samples are to be deposited, including, among other matters, the necessity and desirability of effecting such a deposit, the duration thereof and the replacement or supply of samples.

Article 17

The breeder shall enjoy provisional protection during the period between the filing of the application and the grant of the certificate.

No action for damages may be brought until the breeder's certificate has been granted, but such an action may cover damages caused by the defendant as from the publication of the application.

Article 18

The owner of an application for the grant of a breeder's certificate filed in a country that accords reciprocal treatment to the Member Country in which registration of the variety is being sought shall enjoy a right of priority for a period of 12 months for the purpose of seeking protection for the same variety in any of the other Member Countries. This period shall be calculated from the filing date of the first application.

In order to benefit from the right of priority, the breeder shall, in the subsequent application, claim the priority of the first application. The competent national authority of the Member Country in which the subsequent application has been filed may require the applicant to supply, within a period of not less than three months from the date of the said filing, a copy of the documents which constitute the first application, which copy shall be certified true by the authority with which that application was filed, and samples or other evidence that the variety which is the subject matter of both applications is the same.

Article 19

The competent national authority of each Member Country shall issue a technical report on novelty, distinctness, uniformity and stability.

Article 20

On the issue of a favorable technical report and after compliance with the prescribed procedure, the competent national authority shall grant the breeder's certificate.

The grant of the certificate shall be notified to the Board of the Cartagena Agreement, which in turn shall bring it to the notice of the other Member Countries for the purposes of the recognition thereof.

Article 21

The term of the breeder's certificate shall be from 20 to 25 years in the case of vines, forest trees and fruit trees, including their rootstocks, and from 15 to 20 years for other species, calculated in both cases from the date of grant, as determined by the competent national authority.

CHAPTER V

OBLIGATIONS AND RIGHTS OF THE BREEDER

Article 22

The owner of a variety entered in the Register of Protected Plant Varieties shall be under the obligation to maintain it and reconstitute it as necessary throughout the term of the breeder's certificate.

Article 23

A breeder's certificate shall give the owner thereof the right to bring administrative or judicial actions under his national legislation with a view to preventing or restraining any acts that constitute infringement or violation of his right, and securing the appropriate forms of compensation or indemnification.

Article 24

The grant of a breeder's certificate shall confer on the owner thereof the right to prevent third parties from engaging without his consent in the following acts in respect of reproductive, propagating or multiplication material of the protected variety:

- (a) production, reproduction, multiplication or propagation;
- (b) preparation for the purposes of reproduction, multiplication or propagation;
- (c) offering for sale;
- (d) sale or any other act that entails placing reproductive, propagating or multiplication material on the market for commercial purposes;
- (e) exportation;
- (f) importation;
- (g) possession for any of the purposes mentioned in the foregoing subparagraphs;
- (h) commercial use of ornamental plants or parts of plants as multiplication material for the production of ornamental and fruit plants, or parts thereof or cut flowers;
- (i) the performance of the acts mentioned in the foregoing subparagraphs in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of reproductive or multiplication material of the protected variety, unless the owner has had reasonable opportunity to exercise his exclusive right in relation to the said reproductive or multiplication material.

The breeder's certificate shall likewise entitle the owner thereof to exercise the rights specified in the foregoing subparagraphs in respect of varieties that are not clearly distinguishable from the protected variety, within the meaning of Article 10 of this Decision, and in respect of varieties whose production calls for repeated use of the protected variety.

The competent national authority may confer on the owner the right to prevent third parties from engaging, without his consent, in the acts specified in the foregoing subparagraphs in respect of varieties essentially derived from the protected variety, except where the latter variety is itself an essentially derived variety.

Article 25

The breeder's certificate shall not confer on the owner thereof the right to prevent third parties from using the protected variety where such use is made:

- (a) in a private circle, for non-commercial purposes;
- (b) for experimental purposes;
- (c) for the breeding and exploitation of a new variety, except in the case of a variety essentially derived from a protected variety. The said new variety may be registered in the name of the breeder thereof.

Article 26

Anyone who stores and sows for his own use, or sells as a raw material or food, the product of his cultivation of the protected variety shall not be thereby infringing the breeder's right. This Article shall not apply to the commercial use of multiplication, reproductive or propagating material, including whole plants and parts of plants of fruit, ornamental and forest species.

Article 27

Breeders' rights may not be invoked against the acts mentioned in Article 24 of this Decision where the material of the protected variety has been sold or otherwise marketed by the owner of the said right, or with his consent, except where those acts involve:

- (a) further reproduction, multiplication or propagation of the protected variety, subject to the limitation specified in Article 30 of this Decision;
- (b) exportation of the material of the protected variety, such as would permit reproduction thereof, to a country that does not grant protection to the varieties of the plant species to which the exported variety belongs, except where the said material is for human, animal or industrial consumption purposes.

Article 28

Where necessary, the Member Countries may adopt measures for the regulation or control, on their territory, of the production or marketing, importation or exportation of reproductive or multiplication material of a variety, provided that such measures do not imply disregard for the breeders' rights recognized by this Decision, or hamper the exercise thereof.

CHAPTER VI

LICENSING

Article 29

The owner of a breeder's certificate may grant licenses for the exploitation of the variety.

Article 30

With a view to ensuring adequate exploitation of the protected variety, in exceptional circumstances affecting national security or the public interest, national governments may declare the said variety freely available subject to equitable compensation of the breeder.

The competent national authority shall decide on the amount of compensation, after having heard the parties and taken expert advice, on the basis of the scale of exploitation of the variety so licensed.

Article 31

During the period of validity of the declaration of free availability, the competent national authority shall allow exploitation of the variety by interested persons who offer sufficient technical guarantees and apply to it to that end.

Article 32

The declaration of free availability shall remain in force for as long as the circumstances that brought it about continue to obtain and up to a maximum of two years, which period may be renewed once for the same amount of time, provided that the circumstances under which the declaration was made have not disappeared with the lapse of the first such period.

CHAPTER VII

NULLITY AND CANCELLATION

Article 33

The competent national authority shall, either *ex officio* or at the request of a party, declare the breeder's certificate null and void when it is established that:

- (a) the variety did not fulfill the requirements of novelty and distinctness when the certificate was granted;
- (b) the variety did not fulfill the conditions laid down in Articles 11 and 12 of this Decision when the certificate was granted;
- (c) the certificate has been granted to a person who has no right to it.

Article 34

In order to keep the breeder's certificate in force, the appropriate fees shall be paid in accordance with the provisions laid down in the domestic legislation of the Member Countries.

The owner shall be allowed a period of grace of six months following the expiration of the prescribed period within which to effect payment of the fee due, together with the appropriate surcharge. The breeder's certificate shall remain fully valid throughout the period of grace.

Article 35

The competent national authority shall declare the certificate canceled in the following cases:

- (a) where it is established that the protected variety has ceased to meet the conditions of uniformity and stability;

(b) where the breeder does not provide the information, documents or material necessary for testing the maintenance or reconstitution of the variety;

(c) where the breeder does not, after the denomination of the variety has been rejected, propose another suitable denomination within the prescribed period;

(d) where payment of the fee has not taken place by the expiration of the period of grace.

Article 36

Any nullity, lapse, cancellation, cessation or loss of breeders' rights shall be notified to the Board, by the competent national authority, within 24 hours of the making of the corresponding pronouncement, which shall in addition be duly published in the Member Country, whereupon the variety shall become public property.

CHAPTER VIII

COMPLEMENTARY PROVISIONS

Article 37

The Subregional Committee for the Protection of Plant Varieties, composed of two representatives of each of the Member Countries, is hereby created. The Board shall provide the Technical Secretariat of the Committee.

Article 38

The Committee referred to in the foregoing Article shall have the following functions:

(a) to consider the compilation of an up-to-date inventory of the present biodiversity of the Andean subregion and, in particular, of the plant varieties susceptible of registration;

(b) to draw up guidelines for the standardization of procedures, examinations, laboratory tests and the deposit or growing of such samples as may be necessary for the registration of the variety;

(c) to devise technical criteria for distinctness in relation to the state of the art, with a view to determining the minimum number of characteristics that have to vary for one variety to be considered different from another;

(d) to analyze matters relating to the scope of protection of essentially derived varieties, and to propose common provisions thereon.

Article 39

The recommendations of the Committee shall be submitted through the Board for consideration by the Commission.

TRANSITIONAL PROVISIONS

ONE.- A variety that is not new on the date on which a Member Country's Register is opened for the filing of applications may be registered, notwithstanding the provisions of Article 4 of this Decision, if the following conditions are met:

(a) the application is filed within the year following the opening date of the Register for the genus or species to which the variety belongs;

(b) the variety has been entered in a register of cultivars in any of the Member Countries, or in a register of protected varieties in any country having special legislation on the protection of plant varieties which grants reciprocal treatment to the Member Country in which the application is filed.

The term of the breeder's certificate granted under this provision shall be proportional to the period already elapsed since the date of entry or registration in the country referred to in subparagraph (b) above. Where the variety has been entered in two or more countries, the relevant entry or registration shall be the one with the earliest date.

TWO.- The competent national authority in each Member Country shall implement this Decision within 90 days following the date of the publication thereof in the Official Gazette of the Cartagena Agreement.

THREE.- The Member Countries shall, before December 31, 1994, approve common provisions governing access to biogenetic resources and guaranteeing the biosecurity of the subregion, pursuant to the provisions of the Convention on Biodiversity adopted in Rio de Janeiro on June 5, 1992.

[Annex III follows]

ANNEX III

DECREE No. 1914 ESTABLISHING THE REGULATIONS TO DECISION 345
OF THE COMMISSION OF THE CARTAGENA AGREEMENT

CHAPTER I

COMPETENT NATIONAL AUTHORITY

Article 1

The Competent National Authority for the purposes of Decision 345 of the Commission of the Cartagena Agreement shall be the Ministry of Industry, Trade, Integration and Fishery (*Ministerio de Industrias, Comercio, Integración y Pesca - MICIP*), through the National Directorate of Industrial Property, which shall be responsible for receiving applications which comply with the requirements of these Regulations, and issuing breeders' certificates.

The Ministry of Agriculture and Livestock (*Ministerio de Agricultura y Ganadería - MAG*) shall be the organization that is competent for the technical analysis and report referred to in Article 19 of Decision 345, directly through the National Directorate of Agriculture.

It shall also set up and maintain a database on registered varieties and a repository for live samples, which shall be kept for the duration of validity of the corresponding registration.

CHAPTER II

NATIONAL REGISTER OF BREEDERS OF PROTECTED PLANT VARIETIES

Article 2

A National Register of Breeders of Protected Plant Varieties of Ecuador shall be created with the Ministry of Industry, Trade, Integration and Fishery (MICIP) - National Directorate of Industrial Property.

Article 3

The National Register of Breeders of Protected Plant Varieties shall be organized in sections corresponding to species, botanical varieties and other forms as may be deemed fit for its functioning, with the technical assistance of the Ministry of Agriculture and Livestock.

Article 4

Where priority is claimed, the claim shall be accompanied by a legalized copy of the first application filed in a member country or in any other country which provides reciprocity.

Article 5

The application for entry in the National Register of Breeders of Protected Varieties shall take the form of a signed declaration and shall be submitted in five (5) copies to MICIP; it shall contain:

- name and address of the breeder, who may be a natural or legal person;
- common and scientific names of the species;
- original name of the variety;
- name proposed for the variety;
- place where the variety was bred;
- proof of payment of the required fees;
- power of attorney, where necessary;
- description of the bred variety, with the following:
 - (a) genealogy, specifying the genetic origin and the breeding method,
 - (b) morphological, physiological, phytosanitary, phenological, physico-chemical, industrial and/or agronomic characteristics which enable the variety to be identified from among the similar varieties,
 - (c) drawings, photographs or any other accepted technical device to illustrate the morphological aspects,
 - (d) document attesting to the deposit of the live or herbalized samples with MAG,
 - (e) basis for the requirements of novelty, homogeneity, distinctness and stability,
 - (f) origin, the national or foreign origin being adequately proven,
 - (g) mode of reproduction or propagation.

Article 6

Where the application has been submitted, MICIP shall examine it as to the formal requirements within a period of fifteen (15) days. Where the application is incomplete, it shall notify this fact to the applicant so that he may supplement it within a period of thirty (30) days. Where the application is supplemented, it shall be processed. Where it is not supplemented, the application shall be declared abandoned.

Where the application does not give rise to observations from MICIP or where such observations have been solved, two copies of the application shall be transmitted to MAG within a period of five (5) days so that the latter may issue the technical report within a period of thirty (30) days. Where the report is not issued within the said period or where the report is favorable, MICIP shall grant registration.

Where the report is unfavorable, the applicant shall be notified of this fact so that he may respond within a period of thirty (30) days. In the absence of reply the application shall be archived.

In the case of reply, MAG shall take a final decision within a period of thirty (30) days, unless the practical details of the tests require a suspension of the said period.

Upon receipt of the technical report from MAG, MICIP shall publish the application in the Industrial Property Gazette so that third parties may make observations.

Once the application has been published, any person having legitimate interest may submit observations to MICIP. The observations shall be communicated to the applicant so that he may reply within a period of thirty (30) days, at the end of which MICIP shall decide within a period of thirty (30) days. Where the observations are left unreplied, the application shall be deemed to be abandoned.

Article 7

The issuance of the breeder's certificate for a plant variety shall be subject to an examination for compliance with the conditions set out in Article 19 of the Decision. In this respect, MAG may:

- (a) request the assistance of experts or delegate to public or private entities authorized by the Subregional Technical Committee the conduct of growing tests or laboratory trials in the country, in another member country of the Cartagena Agreement or in a third country with which there is reciprocity;
- (b) use the results of tests and trials made in the country, in another member country of the Cartagena Agreement or in a third country with which there is reciprocity;
- (c) use the results submitted by the applicant.

ISSUANCE OF THE TITLE OF OWNERSHIP

Article 8

Where the breeder's certificate has been granted, it shall be entered in the National Register of Protected Plant Varieties, which shall contain the description of the variety, its denomination, the identification of the breeder and his representative, and also any legal act which affects the rights of the breeder.

Article 9

MICIP shall communicate the breeder's certificate, upon its issuance, to the Board of the Cartagena Agreement, JUNAC, within a period of fifteen (15) days so that the latter may give effect to Article 20 of the Decision.

CHAPTER IV

OBLIGATIONS AND RIGHTS OF THE BREEDER

Article 10

The breeder shall be subject to supervision from MAG for the purposes of the implementation of Article 22 of the Decision.

CHAPTER V

ACTIONS FOR NULLITY AND CANCELLATION

Article 11

The action for nullity, *ex officio* or at the request of a party, shall be processed by the Directorate of Industrial Property on the basis of the same procedure as for observations, in conformity with the provisions of Article 33 the Decision.

The action for cancellation referred to in Article 35 of the Decision shall be processed by the Directorate on the basis of the same procedure as for observations.

The final decisions of MICIP and those which cause the processing to be discontinued create a legal status, and an appeal shall thus lie to the Tribunal of Administrative Litigation therefrom.

For the implementation of items (a) and (b) of Article 33 of the Decision, a prior report from MAG shall be required.

CHAPTER VI

LAPSE

Article 12

The breeder's certificate over a variety shall lapse where the breeder renounces his rights, in which case the variety shall become public property, and also where twenty-five (25) years in the case of vines, forest trees and fruit trees, or twenty (20) years in the case of other species, computed from the date of issuance of the certificate, have elapsed.

CHAPTER VII

INFRINGEMENTS AND SANCTIONS

Article 13

For the purposes of Articles 23 and 24 of Decision 345, infringers shall incur civil liability, and shall be answerable for any damages caused through infringement of the rights of the breeder, without prejudice to the administrative sanctions provided in the Law on Plant Health and the Seed Law.

Article 14

Any intentional infringement of the exclusive right granted by the Register of Plant Breeding to its holder shall be sanctioned in accordance with the provisions of the Penal Code. The infringement shall be prosecuted only on the request of the affected holder or licensee, or their successors in title.

CHAPTER VIII

GENERAL PROVISION

Article 15

The representatives on the Subregional Technical Committee, in accordance with Article 37 of the Decision, shall be the Director of Industrial Property and the National Director of Agriculture, or their alternates.

FINAL ARTICLE

These Regulations shall be in force on the whole national territory as from the date of their publication in the Official Register, and the Ministers for Agriculture and Livestock, and for Industry, Trade, Integration and Fishery shall be responsible for their implementation.

[Annex IV follows]

ANNEX IV

DRAFT NEW DECREE ESTABLISHING THE REGULATIONS TO DECISION 345
OF THE COMMISSION OF THE CARTAGENA AGREEMENT

CHAPTER I

SCOPE OF APPLICATION AND COMPETENT NATIONAL AUTHORITY

Article 1

These Regulations exclude from protection the wild species which have not been planted or improved by man.

Article 2

The Competent National Authority for the implementation of Decision 345 of the Commission of the Cartagena Agreement shall be the Ministry of Agriculture and Livestock (*Ministerio de Agricultura y Ganadería - MAG*), through the National Directorate of Agriculture, which shall be responsible for receiving applications which comply with the requirements of these Regulations, and issuing breeders' certificates. It shall also set up and maintain a database on registered varieties and a repository for live samples.

The Repository of live samples may be organized and maintained by MAG, or the latter may recognize the validity of the samples kept by a duly authorized public or private institution, including breeders or their representatives. For that purpose MAG shall accredit legal and natural persons in a technical capacity or as infrastructure for keeping deposits of live samples for the duration of validity of the registration. In the case of individual breeders or private companies, the deposits shall be open to inspection by competent officials. The costs of the service shall be borne by the breeder.

CHAPTER II

NATIONAL REGISTER OF PROTECTED PLANT VARIETIES

Article 3

The National Register of Protected Varieties shall be created with the National Directorate of Agriculture of the Ministry of Agriculture and Livestock.

Article 4

Where priority is claimed, the claim shall be accompanied by a legalized copy of the first application filed in a member country or in any other country which provides reciprocity.

Article 5

The application for entry in the National Register of Breeders of Protected Varieties shall take the form of a signed declaration and shall be submitted, together with its annexes, in three (3) copies in Spanish, or in a foreign language with a translation. Judicially-made translations shall be accepted, as well as those made extra-judicially when the signature or signatures of the interpreters have been authenticated by a notary or by the Consul of Ecuador in the country of origin of the document. The application shall contain:

- name and address of the breeder, who may be a natural or legal person;
- common and scientific names of the species;
- original name of the variety;
- name proposed for the variety, which must be distinct from other denominations registered earlier and must enable the variety to be clearly identified;
- place where the variety was bred, with sufficient proof thereof;
- proof of payment of the required fees;
- power of attorney, given by the breeder, where necessary;
- description of the bred variety, with the following:
 - (a) genealogy, specifying the genetic origin and the breeding method,
 - (b) morphological, physiological, phytosanitary, phenological, physico-chemical, industrial and/or agronomic characteristics which enable the variety to be identified from among the similar varieties,
 - (c) drawings, photographs or any other accepted technical device to illustrate the morphological aspects,
 - (d) document attesting to the deposit of the live sample with MAG or the duly authorized institution,
 - (e) basis for the requirements of novelty, homogeneity, distinctness and stability,
 - (f) geographic origin of the genetic material which formed the basis for the breeding of the variety to be protected, and

- (g) mode of reproduction or propagation.

CHAPTER III

PROCESSING OF THE APPLICATION

Article 6

Where the application has been submitted, MAG shall examine it as to the formal requirements within a period of fifteen (15) days. Where the application is incomplete, it shall notify this fact to the applicant so that he may supplement it within a period of thirty (30) days. Where it is not supplemented, the application shall be declared abandoned.

Where the application is complete, MAG shall publish it, once only, in the Gazette of Protected Plant Varieties, so that any person having legitimate interest may make observations within thirty (30) days from the date of publication. Where observations are made and accepted for processing, they shall be notified to the applicant so that he may submit his rebuttal within thirty (30) days; the latter shall be transmitted to the other party, who shall have a period of the same length to reply. Where no reply is given to the observation, the application shall be deemed abandoned.

At the end of the above-mentioned periods, MAG shall issue a technical report within a period of thirty (30) days, which period may be extended where the practical details of the technical tests so require.

The above-mentioned report shall be transmitted to the parties, who shall have thirty (30) days to submit observations; where the report is unfavorable and there is no reply, the application shall be archived; in the case of reply, the matter shall be resolved through a final report issued within a period of thirty (30) days, unless the practical details of the tests require a suspension of the said period.

Where the report is positive and the prescribed procedure has been followed, MAG shall issue the breeder's certificate.

Article 7

The issuance of the breeder's certificate for a plant variety shall be subject to an examination for compliance with the conditions set out in Article 19 of the Decision. In this respect, MAG may:

- (a) request the assistance of experts or delegate to public or private entities authorized by the Subregional Technical Committee the conduct of growing tests or laboratory trials in the country, in another member country of the Cartagena Agreement or in a third country with which there is reciprocity;

- (b) use the results of tests and trials made in the country, in another member country of the Cartagena Agreement or in a third country with which there is reciprocity;
- (c) use the results submitted by the parties.

The use of the results referred to in paragraphs (b) and (c) shall be subject to certification by the competent national authority of the country concerned.

Article 8

MAG shall decide on the conditions provided in Article 7 of Decision 345 within a period of not more than three (3) years for short-cycled varieties and ten (10) years for medium and long-cycled varieties.

The said periods shall be computed from the date of reception of the application.

CHAPTER IV

THE BREEDER'S CERTIFICATE

Article 9

Where the breeder's certificate has been granted, it shall be entered in the National Register of Protected Plant Varieties, which shall contain the description of the variety, its denomination, the identification of the breeder and his representative, and also any legal act which affects the rights of the breeder.

Article 10

MAG shall, upon its issuance, publish the breeder's certificate in the Gazette of Protected Plant Varieties and communicate it to the Board of the Cartagena Agreement, JUNAC, within a period of five (5) days so that the latter may give effect to Article 20 of the Decision.

CHAPTER V

OBLIGATIONS AND RIGHTS OF THE BREEDER

Article 11

The breeder shall be subject to supervision from MAG for the purposes of the implementation of Article 22 of the Decision.

Article 12

The grant of a breeder's certificate shall confer on the owner thereof the right to prevent third parties from engaging without his consent in the following acts in respect of reproductive, propagating or multiplication material of the protected variety:

- (a) production, reproduction, multiplication or propagation;
- (b) preparation for the purposes of reproduction, multiplication or propagation;
- (c) offering for sale;
- (d) sale or any other act that entails placing reproductive, propagating or multiplication material on the market for commercial purposes;
- (e) exportation;
- (f) importation;
- (g) possession for any of the purposes mentioned in the foregoing subparagraphs;
- (h) commercial use of ornamental plants or parts of plants as multiplication material for the production of ornamental and fruit plants, or parts thereof or cut flowers;
- (i) the performance of the acts mentioned in the foregoing subparagraphs in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of reproductive or multiplication material of the protected variety, unless the owner has had reasonable opportunity to exercise his exclusive right in relation to the said reproductive or multiplication material.

The breeder's certificate shall likewise entitle the owner thereof to exercise the rights specified in the foregoing subparagraphs in respect of varieties that are not clearly distinguishable from the protected variety, within the meaning of Article 10 of Decision 345, and in respect of varieties whose production calls for repeated use of the protected variety.

The competent national authority may confer on the owner the right to prevent third parties from engaging, without his consent, in the acts specified in the foregoing

subparagraphs in respect of varieties essentially derived from the protected variety, except where the latter variety is itself an essentially derived variety.

CHAPTER VI

ACTIONS FOR NULLITY AND CANCELLATION

Article 13

The action for nullity, *ex officio* or at the request of a party, shall be processed by the National Directorate of Agriculture on the basis of the same procedure as for observations, in conformity with the provisions of Article 33 the Decision.

The action for cancellation referred to in Article 35 of the Decision shall be processed by the National Directorate of Agriculture on the basis of the same procedure as for observations.

The final decisions of MAG and those which cause the processing to be discontinued create a legal status, and an appeal shall thus lie to the Tribunal of Administrative Litigation therefrom.

CHAPTER VII

LAPSE

Article 14

The breeder's certificate over a variety shall lapse where the breeder renounces his rights, in which case the variety shall become public property, and also where twenty-five (25) years in the case of vines, forest trees and fruit trees, or twenty (20) years in the case of other species, computed from the date of issuance of the certificate, have elapsed.

CHAPTER VIII

INFRINGEMENTS AND SANCTIONS

Article 15

For the purposes of Articles 23 and 24 of Decision 345, infringers shall incur civil liability, and shall be answerable for any damages caused through infringement of the rights of the breeder, without prejudice to the administrative sanctions provided in the Law on Plant Health and the Seed Law.

Article 16

Any intentional infringement of the exclusive right granted by the Register of Plant Breeding to its holder shall be sanctioned in accordance with the provisions of the Penal Code. The infringement shall be prosecuted only on the request of the affected holder or licensee, or their successors in title.

CHAPTER IX

GENERAL PROVISION

Article 17

The representative on the Subregional Technical Committee, in accordance with Article 37 of the Decision, shall be the National Director of Agriculture, or his alternate.

TRANSITIONAL PROVISIONS

ONE.- The applications filed during the period when Decree No. 1914 was in force shall be processed in accordance with the provisions of that Decree.

TWO.- MAG shall be authorized to hire technical staff for the setting-up of the system of registration of new plant varieties.

FINAL PROVISION

Executive Decree No. 1914 published in the Official Register No. 487 of July 20, 1994, shall be repealed.

These Regulations shall enter into force on the date of their publication in the Official Register, and the Minister for Agriculture and Livestock shall be responsible for their implementation.

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