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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

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CONSULTATIVE COMMITTEE

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DEVELOPMENTS OF RELEVANCE TO UPOV IN OTHER INTERNATIONAL FORA

Document prepared by the Office of the Union

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1. This document reports on developments of relevance to UPOV in other international fora since the eighty-eighth session of the Consultative Committee, held in Geneva on October 15, 2014, as follows:

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I. ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)

Policy forum: Bridging the gap between seed policies and agricultural policies

2. The Technical Working Group Meeting of the OECD Seed Schemes, held on January 28 and 29, 2015, considered document TAD/CA/S/RD(2015)6 "Policy Forum: Bridging the Gap between Seed Policies and Agricultural Policies" and the proposal to organize a forum of technical experts from developed and developing Seed Scheme member countries with policy experts from the OECD Committee for Agriculture with the view to achieving the following goals (see document TAD/CA/S/RD(2015)6 "Policy Forum: Bridging the Gap between Seed Policies and Agricultural Policies", paragraph 4):

- Increase awareness of the complexity of seed policy;
- Improve the understanding of how seed policies & agricultural policies are designed and implemented;
- Identify effective mechanisms by which the flow of information between the technical committee and agricultural policy makers can be improved;
- Identifying new and emerging issues in plant breeding, seed production and trade of certified seed.
- Finding better ways to provide feedback from policy makers to the technical committee."

3. The proposed Policy Forum would be held as part of the 2015 Annual Meeting of the Seed Schemes, on June 5, 2015, at the OECD headquarters. All member countries of the OECD Committee for Agriculture would be invited to the Forum, as well as all member countries of the Seed Schemes, international organizations, industry and farmer representatives.

4. The Office of the Union indicated its willingness to participate in the Policy Forum in the event that plant variety protection was included as a topic.

II. DEVELOPMENTS UNDER THE AUSPICES OF THE FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO)

International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)

5. Matters concerning the ITPGRFA are reported under agenda item 14 "Interrelation with the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)" (see documents CC/89/9 and CC/89/9 Add.).

Commission on Genetic Resources for Food and Agriculture (CGRFA)

Fifteenth Regular Session of the Commission on Genetic Resources for Food and Agriculture

6. The Fifteenth Session of the Commission on Genetic Resources for Food and Agriculture (CGRFA) of the FAO, held in Rome from January 19 to 23, 2015, considered document CGRFA-15/15/Inf.25 "Draft Guide for National Seed Policy Formulation" (<http://www.fao.org/nr/cgrfa/cgrfa-meetings/cgrfa-comm/fifteenth-reg/en/>).

7. Document CGRFA-15/15/Inf.25 was based on document CGRFA/WG-PGR-7/14/Inf.2 "Draft Guide for National Seed Policy Formulation" and comments submitted by members and observers of CGRFA on that document.

8. Section D "Key Elements of National Seed Policy, Seed legislation" of the document CGRFA-15/15/Inf.25 "Draft Guide for National Seed Policy Formulation" contains references to intellectual property, including plant breeders' rights and UPOV. A copy of the relevant part of Section D as revised (see paragraph 7, above) is reproduced in the Annex I to this document. Annex II to this document presents the revisions made to Section D in relation to document CGRFA/WG-PGR-7/14/Inf.2, a copy of which was presented to the Consultative Committee, at its eighty-eighth session, held in Geneva, October 15, 2014 (see document CC/88/14 "Developments of Relevance to UPOV in other International Fora", Annex III (in English only)).

9. The CGRFA endorsed the document subject to a change of title to “Voluntary Guide for National Seed Policy Formulation” and agreed that nothing in the Voluntary Guide should be interpreted to aim at limiting any rights that farmers have to save, use, exchange and sell farm-saved seed/propagating material, subject to national laws and as appropriate.

III. WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

10. The Consultative Committee, at its eighty-eighth session, noted that the WIPO Standard Committee on the Law of Patents (SCP), at its twenty-first session to be held in Geneva, from November 3 to 7, 2014, would consider documents concerning exceptions and limitations to patent rights, including a breeder’s exemption. The Consultative Committee requested the Office of the Union to make a report on the discussion at the SCP on that matter at the eighty ninth session of the Consultative Committee in March 2015 (see document CC/88/16 “Report on the Conclusions”, paragraph 79).

11. At the twenty-first session of the SCP, the WIPO Secretariat presented document “Exceptions and Limitations to Patent Rights: Farmers’ and/or Breeders’ Use of Patented Inventions” (document SCP/21/6). The WIPO Secretariat reported that there were no particular interventions and/or conclusions concerning document SCP/21/6. Document SCP/21/6 and the Summary by the Chair of the SCP (document SCP/21/11 Rev.) are available at http://www.wipo.int/meetings/en/details.jsp?meeting_id=32102. It is expected that the Draft Report of the twenty-first session of the SCP (document SCP/21/12 Prov.2) will be posted in April at: http://www.wipo.int/meetings/en/details.jsp?meeting_id=32102.

IV. WORLD TRADE ORGANIZATION (WTO)

Council for TRIPS (Trade-Related Aspects of Intellectual Property Rights)

12. The background to this item is provided in documents CC/84/9 Rev. and CC/85/9 both entitled “Developments of relevance to UPOV in other international fora”, paragraphs 58 to 60 and paragraphs 30 and 31, respectively.

Meeting of the Council for TRIPS of February 24 and 25, 2015

13. The Council for the Agreement on Trade-Related Aspects of Intellectual Property Rights (the “Council for TRIPS”) met on February 24 and 25, 2015.

14. The meeting was opened by Ambassador H.E. Mr. Mothusi B. Palai (Botswana), Chair of the Council for TRIPS. The minutes of the meeting are contained in document IP/C/M/78 of March 4, 2015. The statements made during the meeting will be circulated in an addendum to document IP/C/M/78, which will become available on the WTO website at: <http://docsonline.wto.org/?language=1>.

15. The Council for TRIPS dealt with the agenda items “Review of the Provisions of Article 27.3(b)”, “Relationship between the TRIPS Agreement and the Convention on Biological Diversity” and “Protection of Traditional Knowledge and Folklore” simultaneously. The Council for TRIPS did not receive any new submissions in relation to these agenda items.

16. The Chair of the Council for TRIPS recalled that, at the last meeting, he had encouraged delegations to continue direct talks among themselves on two pending suggestions supported by a number of WTO Members, i.e. (i) that the Secretariat be requested to update the three factual notes that summarized the points delegations had made in the TRIPS Council’s past discussions under these agenda items, and (ii) that the CBD Secretariat be invited to brief the Council for TRIPS on the Nagoya Protocol that had been adopted at the tenth meeting of the Conference of the Parties to the CBD held in Nagoya, Japan in October 2010. He had been in touch with interested delegations, but they had not reported on any new developments with respect to the above suggestions.

17. The Chair of the Council for TRIPS encouraged the interested WTO Members to continue direct talks among themselves on the two pending suggestions.

18. The Council for TRIPS took note of the statements made and agreed to revert to them at its next meeting.

Future meetings

19. The next meetings of the Council for TRIPS, which the Office of the Union plans to attend, are scheduled to take place on June 9 and 10, 2015, and October 15 and 16, 2015.

20. *The Consultative Committee is invited to note the developments of relevance to UPOV in other international fora reported in this document.*

[Annexes follows]

ANNEX I / ANNEXE I / ANLAGE I / ANEXO I

*[In English only / En anglais seulement /
Nur auf Englisch / En Inglés solamente]*

EXTRACT OF "DRAFT GUIDE FOR NATIONAL SEED POLICY FORMULATION,
SECTION D 'KEY ELEMENTS OF NATIONAL SEED POLICY, SEED LEGISLATION'"

90. Intellectual property: Intellectual property rights (IPRs) are legal rights granted by governmental authorities to control certain products of human intellectual effort and ingenuity (FAO, 2004a).

91. The two major treaty systems that regulate rights issues are those established under the auspices of the Union for the Protection of New Varieties of Plants (UPOV), and the WTO's TRIPS Agreement. The TRIPS Agreement article 27.3(b) requires WTO members to protect plant varieties using patent law, an effective sui generis system or a combination of elements from both systems. Least developed countries (LDCs) are given an extended transition period to protect intellectual property under the TRIPS Agreement until 1 July 2021. The mission of UPOV is to provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society.

Patents are granted normally on inventions that have fulfilled the three cumulative eligibility requirements for patentability (novelty, inventive step and industrial application). Plant Breeders' Rights are granted normally for plant varieties that are novel, distinct, uniform and stable. There are significant differences in approach between different types of plant breeders' rights systems, and between plant breeders' rights and patents. The main difference is the so called "breeding exemption" in Plant Breeders' Rights legislation. It means that access for research and breeding to the new protected variety is totally free for other breeders which is not always the case with patents. Another major difference is the level of recognition of Farmers' Rights. Some national laws combine the protection of Plant Breeders' Rights and Farmers' Rights in one single law. Other patent and Plant Breeders' Rights laws make exemptions to the right of the title holder so that farmers can, to different degrees, save, use, exchange and sell farm-saved seeds of protected varieties.¹

[Annex II follows
L'annexe II suit
Anlage II folgt
Sigue el Anexo II]

¹ Farmers' Rights are basically about enabling farmers to continue their work as stewards and innovators of agricultural biodiversity, and about recognizing and rewarding them for their contribution to the global pool of genetic resources. Thus, Farmers' Rights are critical to ensuring the conservation and sustainable use of genetic resources for food and agriculture and consequently for food security – today and in the future. Farmers' Rights are also a central means in the fight against rural poverty in developing countries. More information: <http://www.farmersrights.org/>

ANNEX II / ANNEXE II / ANLAGE II / ANEXO II

*[In English only / En anglais seulement /
Nur auf Englisch / En Inglés solamente]*

EXTRACT OF "DRAFT GUIDE FOR NATIONAL SEED POLICY FORMULATION, SECTION D
"KEY ELEMENTS OF NATIONAL SEED POLICY, SEED LEGISLATION"
WITH AMENDMENTS BY COMMENTS SUBMITTED
FROM MEMBERS AND OBSERVERS OF CGRFA

(note)

Highlights: added texts

Highlights with strikethrough: deleted texts

90. Intellectual property: Intellectual property rights (IPRs) are legal rights granted by governmental authorities to control certain products of human intellectual effort and ingenuity (FAO, 2004a). ~~To protect new plant varieties, countries may apply general IPR protection. They may also approve specific legislation to protect Plant Breeders Rights (PBRs), which protect new varieties of plants that are distinct, uniform and stable. The breeders' right means that, during the period of protection, the authorization of the breeder is required to propagate the variety for commercial purposes. The breeder may make his authorization subject to conditions and limitations, which can include the payment of a royalty. Sound legal frameworks protecting breeder's rights can promote plant breeding as well as progress in agriculture.~~

~~100. The mission of the Union for the Protection of New Varieties of Plants (UPOV) is to provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society. The UPOV Convention provides the basis for UPOV members to encourage plant breeding by granting breeders of new plant varieties an intellectual property right: the breeders' right.~~

91. The two major treaty systems that regulate rights issues are those established under the auspices of the Union for the Protection of New Varieties of Plants (UPOV), and the WTO's TRIPS Agreement. ~~The UPOV treaties adopt a sui generis system of protection especially tailored to the needs of plant breeders. The TRIPs Agreement article 27.3(b) requires WTO members to protect plant varieties using patent law, an effective sui generis system or a combination of elements from both systems. These major treaty systems need to be taken into consideration in the national seed legislation framework.~~ Least developed countries (LDCs) are given an extended transition period to protect intellectual property under the TRIPS Agreement until 1 July 2021. The mission of UPOV is to provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society.

~~The sui generis system that is more widely used is the UPOV system.~~ Patents are granted normally on inventions that have fulfilled the three cumulative eligibility requirements for patentability (novelty, inventive step and industrial application). Plant Breeders' Rights are granted normally for plant varieties that are novel, distinct, uniform and stable. There are significant differences in approach between different types of plant breeders' rights systems, and between plant breeders' rights and patents. The main difference is the so called "breeding exemption" in Plant Breeders' Rights legislation. It means that access for research and breeding to the new protected variety is totally free for other breeders ~~and farmer-breeders~~ which is not always the case with patents. Another major difference is the level of recognition of Farmers' Rights. Some national laws combine the protection of Plant Breeders' Rights and Farmers' Rights in one single law. Other patent and Plant Breeders' Rights laws make exemptions to the right of the title holder so that farmers can, to different degrees, save, use, exchange and sell farm-saved seeds of protected varieties.²

~~104. The legislation governing patents and plant breeders' rights have different subject matter of protection, conditions for protection, scope and exceptions.~~

²

Farmers' Rights are basically about enabling farmers to continue their work as stewards and innovators of agricultural biodiversity, and about recognizing and rewarding them for their contribution to the global pool of genetic resources. Thus, Farmers' Rights are critical to ensuring the conservation and sustainable use of genetic resources for food and agriculture and consequently for food security – today and in the future. Farmers' Rights are also a central means in the fight against rural poverty in developing countries. More information: <http://www.farmersrights.org/>

~~105. Most countries and intergovernmental organizations which have introduced a plant variety protection system have chosen to base their system on the UPOV Convention in order to provide an effective, internationally recognized system.~~

~~106. Under TRIPS Article 27.3(b), countries that are not signatory members of the UPOV Convention may choose to approve a different sui generis system or to apply general patent law or a combination thereof. Countries under regular patent systems may also recognize a farmers' exemption through specific provisions~~

[End of Annex II and of document/
Fin de l'annexe II et du document/
Ende der Anlage II und des Dokuments/
Fin del Anexo II y del documento]