



**Forging Stronger Relations among
National Governments and the Private Sector
in the Region's Seed Industry**

Plant Variety Protection Session

PROCEEDINGS

**30-31 July 2007
Arnoma Hotel
Bangkok, Thailand**



Table of Contents

	Page
Welcome Remarks <i>Dr. Sampan Campiranon</i>	5
Plant Variety Protection System of National Governments and Private Sector's Concerns and Recommendations	
India Plant Variety Protection System in India <i>Dir. Harish Prasad</i>	6
Nepal National Plant Variety Protection (PVP) System in Nepal <i>Mr. Hari Bhandari</i>	9
Importance of the PVP System for the Development of the Seed Industry in Nepal <i>Gen. Sec. Durga P Adhikari</i>	11
Indonesia Plant Variety Protection System in Indonesia <i>Dir. Ir. Hidarwati</i>	12
Indonesian Plant Variety Development <i>Ms. Elda D. Adiningrat</i>	15
Sri Lanka Present Status of Plant Variety Protection System in Sri Lanka <i>Dr. G.M. Wasantha Chitral</i>	16
The PVP System in Sri Lanka: Private Sectors' Perspective <i>Chairman Leo Nanayakkara</i>	18
China Plant Variety Protection in China <i>Dr. Min Song.</i>	19
Some Aspects of PVP in China <i>Dr. Ruiqing Huang</i>	24
Korea Plant Variety protection of the Republic of Korea <i>Dir. Jae Ouk Lee</i>	27
Japan Overview of Plant Variety Protection System in Japan <i>Dep. Dir. Mr. Toru Semba</i>	30
Suggestions and Concerns about PVP System in Asia Pacific Region <i>President Kazuo Hatsuda</i>	33
Malaysia Plant Variety Protection System In Malaysia [PNPV Act 2004] <i>Dr. Mohammed Selamat Madom</i>	34

Philippines	
Plant Variety Protection in the Philippines	38
<i>Ms. Elvira Morales</i>	
PSIA's View on the Philippine PVP System	41
<i>Dr. Renato Mabesa</i>	
Vietnam	
Plant Variety Protection of Vietnam	42
<i>Mr. Dinh The Vu</i>	
Some Ideas on Plant Variety Protection from Vietnam Seed Trade Association	46
<i>Chairman. Ngo Van Giao</i>	
Thailand	
Plant Variety Protection in Thailand	47
<i>Dir. Wichar Thitiprasert</i>	
View of the Thai Seed Industry on PVP by Thai Seed Trade Association and Seed Association of Thailand	49
<i>Mr. Sakorn Tripetchpisal</i>	
Chinese Taipei	
Plant Breeder's Right Protection in Chinese Taipei	50
<i>Dr. Steve Yen</i>	
Australia	
The Constraints to Enforcement of Intellectual Property Rights on Plant Varieties in Australia	55
<i>Mr. Christopher Melham</i>	
New Zealand	
New Zealand Plant Protection	57
<i>Mr. David Melhuish</i>	
Standard Material Transfer Agreement (SMTA)	58
<i>Mr. Francois Baurgaud</i>	
Highlights of the Open Forum between PVP Officials and NSA Representatives	59
PVP Session Summary and Conclusion	65
<i>Mr. Damien Plan</i>	
APSA's Recommendations	66
<i>Government PVP Participants</i>	67
<i>National Seed Association Participants</i>	69
<i>APSA Participants</i>	71
<i>Guest Speakers</i>	72
<i>APSA Secretariat</i>	72

Session on Plant Variety Protection System of National Governments in Asia Pacific Region

Meeting declared open at 0830 with Dr. Sampan Campiranon as Chair of the PVP Session

Order of Presentations:

Each report from the representative of Plant Variety Protection (PVP) office was followed by the corresponding stand, comments, suggestions of the same country's representative from the National Seed Association (NSA). After the report of each set of countries, an open forum followed.

Session 1

India, Nepal, Indonesia, Sri Lanka

Session 2

China, Korea, Japan

Taiwan (NSA report only)

Session 3

Malaysia, Philippines, Vietnam, Thailand

Australia, New Zealand (NSAs report only)

Session 4

SMTA Report

Meeting adjourned at 1730

Welcome Remarks

Dr. Sampan Campiranon
APSA Director

On behalf of APSA President Mr. Zhang Mengyu, I would like to welcome you all to the second day of our workshop.

Yesterday, as I am sure for most of us, had been such a highly productive and informative day. The best thing about yesterday is that the government and private sector are now engaged in discussion of serious issues.

Today we will tackle another top priority issue in the seed industry, plant variety protection. The issue on intellectual property rights is one of the most pressing subject that needs to be discussed between the government and private sector and we are happy to present this opportunity so all of us can exchange our views in the establishment of better PVP policies and efforts in their effective implementation.

Let us again extend our gratitude to those who are supporting this APSA program. We again welcome Ms. Alexis Ellicott of the American Seed Trade Association and thanked her for the support of the United States Department of Agriculture. And for this workshop today, our appreciation goes to Mr. Francois Burgaud from GNIS for being among those who constantly support APSA activities in PVP.

Today we also have Co-chair of APSA Committee on Intellectual Property Rights, Mr. Damien Plan.

I am looking forward to a very active discussion today and with your inputs, APSA would be able to create more effective programs and put into action all the valuable recommendations we will have.

Thank you.

Plant Variety Protection System in India

Mr. Sh. Harish Prasad

Director

Seeds Division

Department of Agriculture and Cooperation

Ministry of Agriculture

Krishi Bhawan, New Delhi

Protection of Plant Varieties And Farmers' Rights Act – 2001

- In pursuance of Article 27.3 of TRIPS Agreement of WTO, which calls upon parties to provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof, India has enacted "The Protection of Plant Varieties & Farmers' Rights Act, 2001" on 30th October, 2001.
- The Act became partially operational from 11 Nov 2005 & fully operational from 19 Oct 2006.
- The Government of India established the Protection of Plant Varieties and Farmers' Rights Authority on 11th November, 2005 to implement the various provisions of PPV&FR Act, 2001.
- The Authority is a body corporate under Ministry of Agriculture, Government of India.

Objectives of PPV&FR Act, 2001

- To recognize and protect rights of farmers for their contribution in conserving, improving and making available plant genetic resources for development of new plant varieties.
- To accelerate agricultural development by protecting Plant Breeders' Rights (PBR), to stimulate investment in research and development (R&D) both in public and private sector for development of new varieties
- To facilitate growth of seed industry for ensuring availability of high quality seeds and plant material to farmers.

Varieties that shall be protected

- Novel varieties
- Extant varieties
- Farmers' varieties
- Essentially derived varieties (EDV)
- Transgenic variety

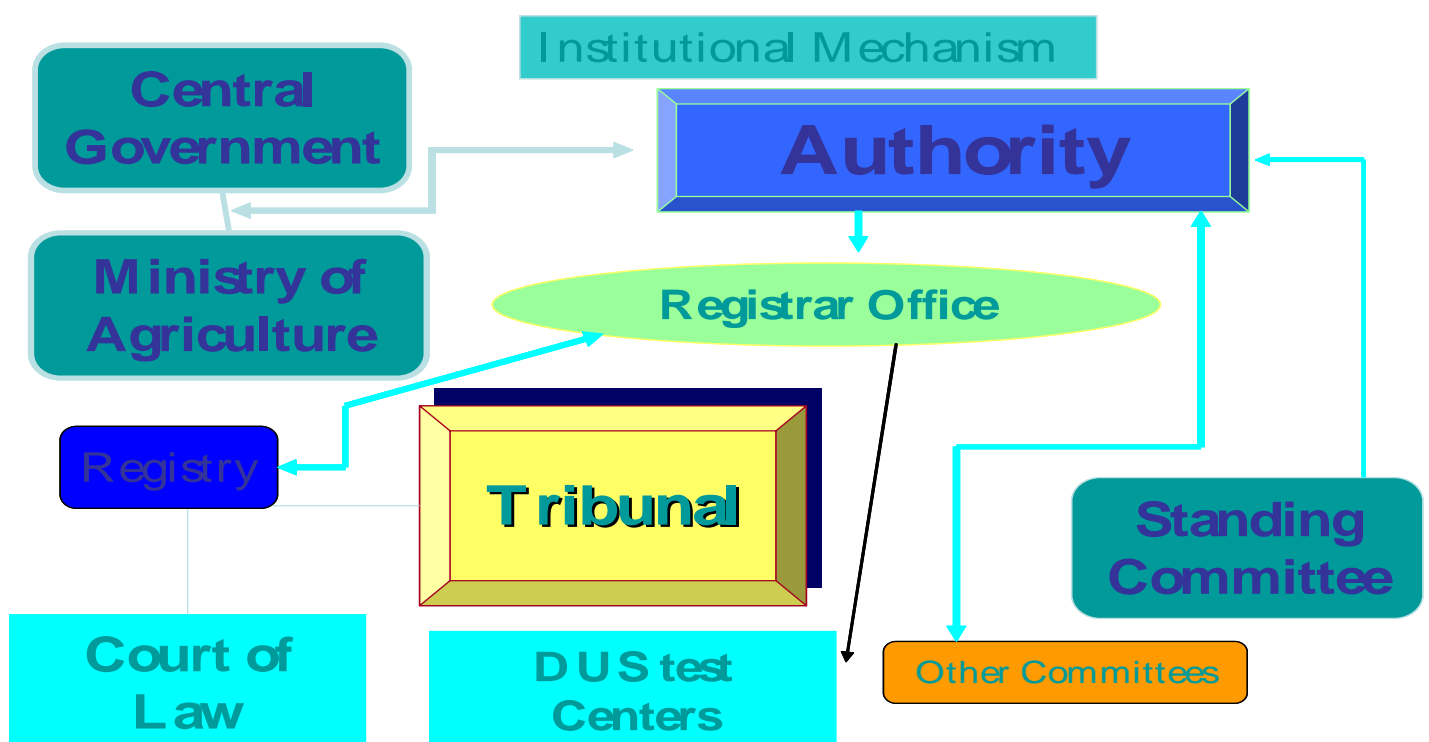
Varieties that shall not be protected

- The varieties whose commercial exploitation may affect protection of public order or public morality human, animal and plant life and health and may cause serious prejudice to the environment
- The varieties whose genus / species is not notified in the Official Gazette at the time of filing application (not applicable for extant and farmers' varieties)
- The varieties which involve any technology that is injurious to life and health of human beings, animals and plants includes GURT / terminator technology

Salient Features

- **Breeders' and Researchers' Rights**
 - Breeder of a registered variety shall have an exclusive right to produce, sell, market, distribute, import or export the variety.
 - Researchers' shall have right to use registered plant variety for experiments or research purposes or as an initial source of variation for the purpose of creating other new varieties, except the repeated use of a protected variety for commercial production of another variety.
- **Farmers' Rights**
 - Recognition & rewarding farmers for conservation of land races and development of farmers' varieties
 - Breeders shall disclose to farmers the expected performance of the variety under the given condition
 - Farmers have right to save, use, sow, re-sow, exchange, share or sell his farm produce including seeds of a variety protected under the act in the same manner as he was entitled before the coming in to force of this act. Provided that the farmers shall not be entitled to sell branded seed of a variety protected under this act
- **Rights of Communities**
 - Recognition of the role of traditional communities in conserving and preserving genetic resources of land races and wild relatives;
 - Compensation for contribution of village or local communities in evolution of a variety;
 - Compensation to be determined by PVP authority and deposited in gene fund.
- **Benefit Sharing**
 - On registration of the variety any person or group of person may submit claim of benefit sharing if his or their material has been used in development of that variety.
 - Authority shall take decision on the matter after considering following points:
 - *Extent and nature of use of the genetic material of the claimant in the development of the variety.*
 - *Commercial utility and demand in the market of the variety for which benefit sharing has been claimed.*

Protection of Plant Varieties and Farmers' Rights Authority



Strengths in Plant Variety Development Activities

- India has strong Agricultural Research (ICAR & more than 100 research stations, 39 SAUs, Research Centers of many private companies and MNCs) and Extension net work (28 State Deptt. of Agriculture).
- Seed industry is very vibrant - comprising of both public and private sectors.
- More than 100 varieties in different crops are developed and released annually by both public and private sector.
- PBR is important stimulant for Agricultural Research and Developments.

Programmes of Authority

- Authority has prioritized 35 crops for DUS testing, for which DUS testing centres have been identified.
- Authority has digitalized data of extant / reference varieties and 35 crops for registration.
- General and Specific Guidelines for conducting DUS test for 12 identified crops have been finalized, which will be registered in the first phase.
- Authority has finalized and notified regulations for registration of new varieties, Extant Varieties, Essentially Derived Variety and Transgenics.
- Designs and contents of Plant Variety Journal of India has been finalized, which shall be treated as a official gazette for publishing the list of the varieties applied and registered by the Authority.
- Authority has developed its website www.plantauthority.in
- Authority's Fund and National Gene Fund are established.
- Registration for 12 crops has been launched on 21.5.2007. So far, 125 applications have been received, which are under process.
- Authority plans to expand its infrastructure and activities in future.

Relationship with UPOV

- India has applied for UPOV membership under its 1978 Convention.
- Most of the provisions of UPOV guidelines are covered under India's PVP Act.
- Efforts are on to harmonize standards and procedures of PPV & FR Act 2001 with International organizations, including UPOV, for which there seems to be large scope.
- India is in continuous dialogue with UPOV.

National Plant Variety Protection (PVP) System in Nepal

Mr. Hari Bhandari
Chief Seed Development Officer
Seed Quality Control Centre



- Nepal is diverse in culture and topography
- Huge range of crops can be grown
- Subsistence level farming is the key feature of Nepalese agriculture
- Farming is fully dependent on nature...It is more hard in high hills

Status of PVP in Nepal

- Draft bill is already prepared
- The process of passing the bill from the parliament is under process
- The draft bill is similar with Indian model
- The draft bill consist of 8 Chapters and 30 headings

The major purpose of the act

- To provide an effective system for protection of plant varieties whilst recognizing the rights of farmers and plant breeders and to encourage the development of new varieties of plants.
- To provide legislation to complement the seed act and the biodiversity act which are already in existence.
- To help and facilitate the entry of Nepal to WTO by providing the means for protection of plant varieties in relation to the Trade Related Aspects of Intellectual Property Rights.

Features of proposed PVP Act

- Seed Quality Control Centre will be responsible organization for all PVP related matter
- Establishment of GMO lab

Protection

- Breeders right
- Farmers right

Fee Scheme

- The regulation will determine the fee amount

Organization of DUS Testing

- No provision of separate DUS Test Centre in the Act
- At the moment SQCC is doing DUS Test in collaboration with NARC
- Test is done on wheat and paddy only

Collaboration with other organizations

- Nepal became member of WTO in 2004
- Planned to be a member of UPOV in future
- UPOV guidelines are followed in varietal descriptor

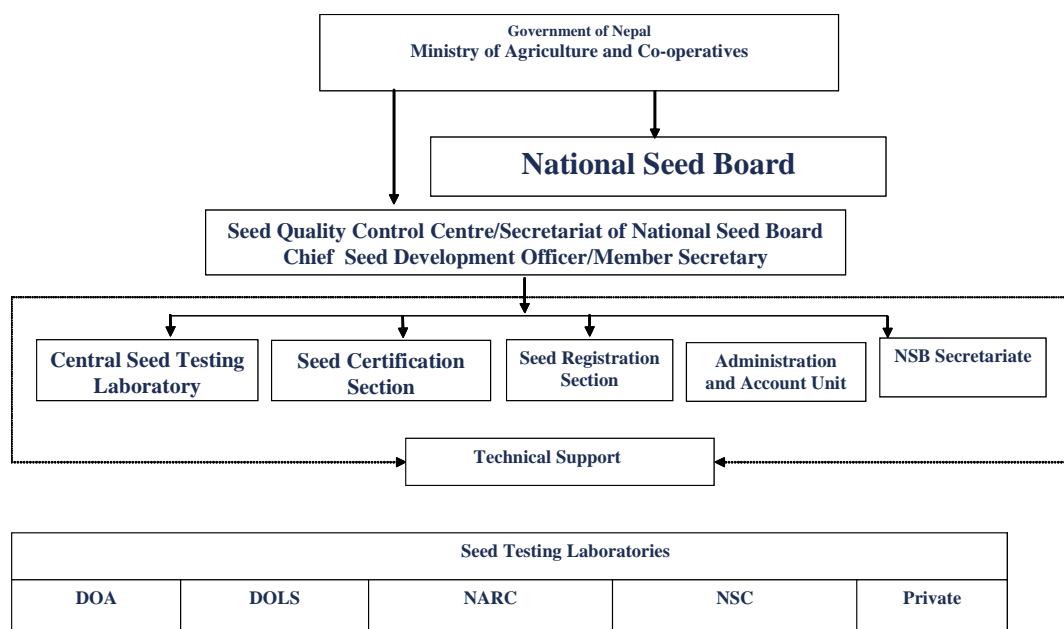
Other related Acts and regulation

- Seed Act 1988
- Seed Regulation 1997
- National Seed Policy 2000
- Seed Programme Execution Norm 1998
- Seed Act Amendment 2007 (proposed) and ready for approval
- Ratification of International Treaty on Plant Genetic Resources for Food and Agriculture on 26th Feb, 2007.

Conclusion

- PVP act needs to be passed soon
- Establishment of DUS center
- Amendment of Seed Act
- Conservation of agro-biodiversity

Organizational Structure of SQCC:



Importance of the PVP System for the Development of the Seed Industry in Nepal

Mr. Durga P Adhikari

General Secretary

Seed Entrepreneurs' Association of Nepal (SEAN)

- Protection of plant varieties is essential for the development of the seed industry in the country
- The protection of new plant varieties provides incentives for plant breeders
- It is essential for the improvement of agricultural productivity in the country
- It also helps to improve production and trade of quality seeds & planting material
- In Nepal, a viable PVP system is not yet established however, a Draft Act is prepared (WTO obligation)
- Therefore, establishing and implementing a viable PVP system is very important to promote seed industry

PVP and Farmers' Right Act (Draft) of Nepal in relation with UPOV 1991 ACT

- It is critical to have active and sound plant breeding activity for the country to produce high quality seeds and planting materials
- Nepal is one of the most complex and widely diversified country in terms of its cultures, languages, economies, and ethnic groups
- Harmonization has been a challenge and involves significant time and effort
- However, SEAN recognizes that the 1991 Act of the UPOV Convention as it provides a uniform and well-balanced system, for plant variety protection that ensures benefits to breeders, farmers and consumers

Constraint in implementing PVP rules

- Nepal also has decided to initiate a national PVP system as an obligation to WTO
- However, establishment of a national PVP system and the legislation are very slow due to concession provided by WTO until 2013 and prevailing political instability in the country
- No DUS testing facilities are yet developed
- No enough trained man power available
- No private breeding companies/enterprises yet well established and developed

Some Critical Issues On PVP And Farmer's Right Act (Draft) Of Nepal

- Some special conditions that are not in compliance with the 1991 UPOV Act:
 - Profit sharing clauses as an essential requirement to obtain a PVP
 - “Farmer's privilege” (e.g. farmer can use, save, exchange and trade farm-saved seed)
- The latter case is a big threat to the seed industry because the definition of “farmer” is ambiguous

Role of SEAN in developing national PVP system

- Raise awareness about the importance of PVP system for sustainable plant breeding and sound development of national seed industry
- Continuous interactions with respective Ministry and National PVP Office (i.e. SQCC) in order to facilitate the introduction and implementation of an effective PVP system
- Formation a “Nepal Seed Policy Dialogue Forum” comprising of various stakeholders
- Seek further support of international organizations to help initiate and realize the importance of PVP system in the country

Suggestions/recommendations

- Dissemination of information and education on importance of PVP to all the stakeholders involved in the national seed program is an indispensable part for the development and promotion of seed industry
- National PVP system should be developed and implemented in line with UPOV 1991 Act

Plant Variety Protection System in Indonesia

Ms. Ir. Hidarwati M.Sc
Director
Center for Plant Variety Protection
Ministry of Agriculture, Indonesia

- The Government enacted the law in December 2000 with aims to enhance seed industry specifically and the agricultural development in general
- The content of the law is basically in line with the UPOV convention; but
- We include the provision for the use of local variety or land races for the development of EDV as a support for farmers' rights
- PVP Office under The Ministry of Agriculture is the authorized institutions to execute PVP.
- DUS Testing is done in collaboration with National R & D Institutions under Department of Agriculture.

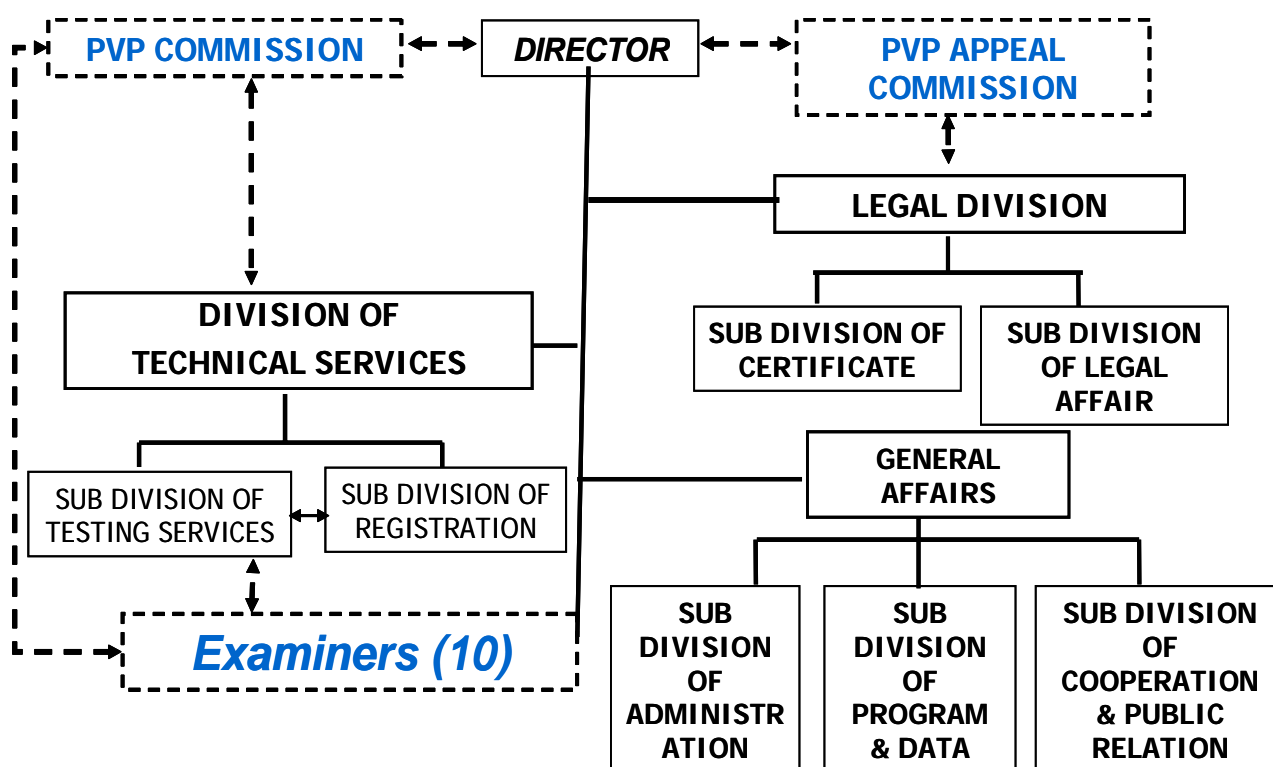
Coverage of Protection

- Based on Law 29 of 2000 on Plant Variety Protection
- All new varieties of plants
- The Period of Protection
 - 20 years for annual plant
 - 25 years for a perennial plant
- The rights to use such as:
 - producing the seeds (multiplication)
 - preparation for propagation purpose
 - advertising
 - offering for sale
 - selling or other marketing
 - exporting
 - importing
 - stocking for purpose as meant above.

Membership to UPOV

- In preparation to be member of UPOV based on 1991 Convention
 - Preparing the harmonization of the law with the UPOV Convention
 - Attend meetings, workshops and trainings conducted by UPOV and other countries which are the member of UPOV expected to be member of UPOV within 2 - 3 years along with the development of seed industry

Structure of Organization Center for Plant Variety Protection

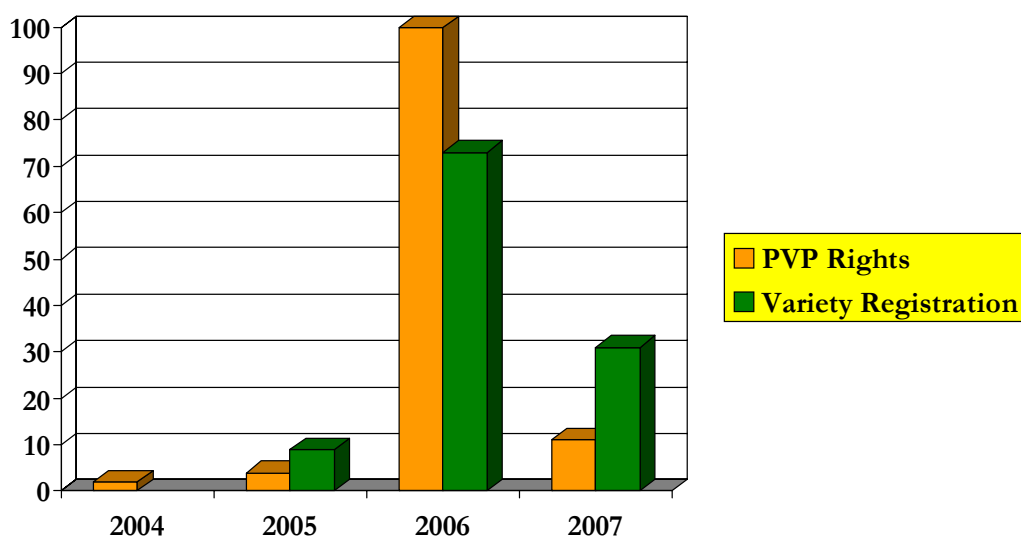


General Guidelines for DUS Testing and Procedure

- General Guidelines for the Conduct of Novelty, Distinctness, Uniformity and Stability
- Test Guidelines Procedure
- Guidelines for The Conduct of Test for Distinctness, Uniformity, and Stability (available for 34 commodities)

Fee Schemes

No	Fee Description	Amount	Fee (US \$)
1	Registration for application of PVP Rights	1 variety	17
2.	Documentation for referral of PVP Rights	1 variety	17
3.	Documentation of license agreement	License agreement	110
4.	Documentation of compulsory license agreement	Compulsory license agreement	110
5.	Annual Fee	1 variety/year	170
6.	General List PVP	Variety	6.5
7.	Certificate of PVP	Variety	6.5
8.	Documentation	Per page	0.7
9.	Application for verification letter of Priority rights	Variety	8
10.	Correction/Revision application PVP Rights	1 variety	11
11.	Appeal application	1 variety	330
12.	Registration for application of PVP Consultant	consultant	550



Enforcement of PVP

- Presidential decree on appointing National Body for handling PVP infringement
- We have appointed investigators for PVP infringement/cases
- We have established collaboration with legal attorneys and police officer in national and provincial levels

Efforts to enhance the PVP performance

- Cooperation with Nederland for strengthening PVP system through capacity building on DUS testing system
- PVP Socialization and proactive service
- PVP's website [<http://setjen.deptan.go.id/ppvt/>]
- A monthly radio program
- Documentary Movie
- Participate in Agricultural Exhibitions
- Conduct conference, meeting and workshop with stake holders

Indonesian Plant Variety Development

Ms. Elda D. Adiningrat
President
ASBENINDO

Released variety

- Food crop 500
- Horticulture >2000
- Estate crop 300

Protected variety

- Food crop 26
- Horticulture 84
- Estate crop 7
- Forest plant 1

Plant variety development demand

- High productivity
- Food diversification
- Disease tolerance
- Esthetical market demand

Present Status of Plant Variety Protection System in Sri Lanka

Dr. G.M. Wasantha Chitral

Deputy Director

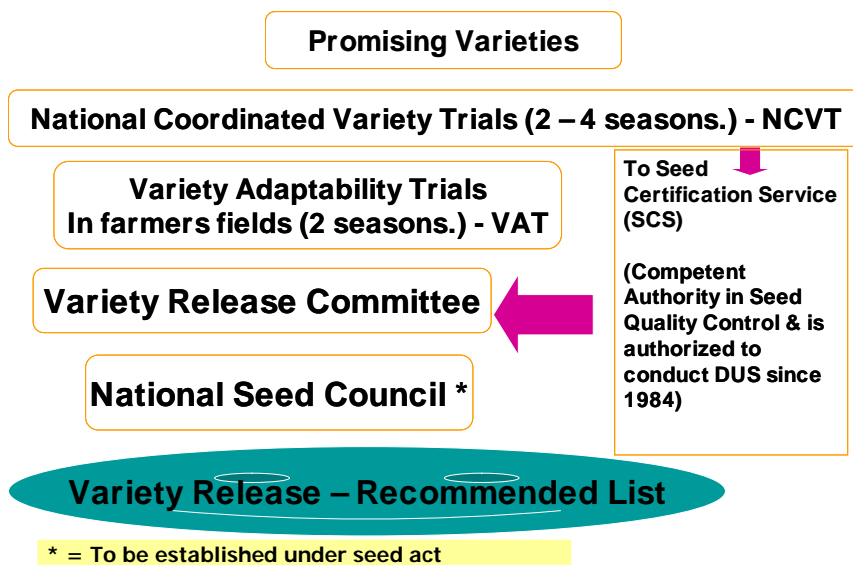
Seeds and Planting Material Development Centre

Department of Agriculture

Plant Varieties available in Sri Lanka

- Varieties developed by public sector.
 - Rice, Other Field Crops and horticultural crops - DOA
 - Tea, Rubber, Coconut, Export Agricultural Crops and Sugarcane – Respective Research Institute.
- Seed imported by Private sector.
 - Traditional varieties maintained by farmers.
 - Since, almost all plant breeding activities were carried out by the public sector until recently, it was –not an urgent issue to have a plant variety protection system in Sri Lanka.

Varietal Release Procedure - DOA



Why PVP is important?

- To fulfill an obligation under WTO/TRIPS agreement
 - (Para 27. 3(b) of the WTO/TRIPS agreement developing countries should have a law to protect new varieties of plants (PVP) by 1st January, 2000 - LDC were allowed until 2005).
- Encourage Private Sector to develop new plant varieties/ Return to investment.
- Encourage breeders.
- Increase availability of improved varieties.
- To improve Agriculture development

Development of PVP legislation in Sri Lanka

- 1st draft prepared by Intellectual Property Office (IPO), Colombo with the collaboration of Ministry of Agriculture and the DOA in 1997 (Mostly a copy of UPOV - 1991 model).
- Comments of Director General of Agriculture (DGA) on draft proposal were sent to Director- IPO in January 1998.
- Draft PVP law was sent by Secretary, Ministry of Environment to Secretary of Agriculture in Aug., 2000.
- DOA comments and questions raised by NGO's on the above Draft PVP act was sent to Director, IPO in Sep., 2001.

General weaknesses of the 1st draft

- Failed to address farmers' rights.
- Traditional cultivars/ PGR not covered.
- No benefit sharing system for public sector breeders.
- Examination authority for submitting varieties was not identified.
- Most of the required terms were not defined. (eg. plant, farmer, seed, plant variety, etc.).
- DUS authority not stated.

Present status of the 2nd draft law:

- 2nd Draft (Working paper - version 1, July 2006)
- Prepared by partially addressing the suggestion and comments made by various parties to IPO on July-2006.
- Suggested Name: Protection of New Varieties of Plants (Breeders right).
- Some more terms were defined.
- Farmers privileges were recognized.
- Farmers are allowed to use, sow, re sow, sell their seed of a protected variety/s, but **not as "Branded Seed"**.
- Breeder should disclose the use of any genetic material conserved by a farmer or a farmer group for developing a new variety.
- Entitled for PVP for varieties bred or developed by farmers.
- The farmer has right to claim compensation if the protected variety is not performing as described by the breeder.
- DUS examination authority identified.
- No system is suggested to protect traditional varieties.
- PGR not covered.

Authorities to be involved

- PVP authority: DG/IPO, Colombo.
- DUS examination authority: DG/IPO, Colombo
- Members: Not stated
- Chairperson: DG/IPO, Colombo

Alternative proposal for authorities:

- PVP authority: DOA or Independent authority with agricultural background.
- DUS examination authority – Institution under the Ministry of Agriculture or other institution as prescribed by the Minister under regulation.

Aim of the Draft PVP Legislation

- The draft bill is awaiting discussion by the parliament.
- Is to promote the development, conservation and sustainable use of plant varieties.
- Need to critically examine the proposed act to make sure that it will address the need of breeders and protect the farmers right while satisfying obligations under TRIPS agreement

The PVP System in Sri Lanka: Private Sector's Perspective

Mr. Leo Nanayakkara

Chairman, Seed Producers Association of Sri Lanka

- The Formal Private sector only multiplies and distributes what the State Sector produces within the open pollinated system .
- The PVP rights of imported varieties are with the exporters .
- The Imports are done totally by the private sector and the responsibility to protect these rights are with them
- Since of late the State sector has commenced work on producing some hybrid varieties which are still in a very infant stage .
- The multiplication and distribution network for these seed has been planned to be handed over to the private private sector.
- At the inception there were several problems mainly due to a lack of communication and understanding between the private sector and the state sector.
- However due to the cordial environment at the the national seed and planting material committee meetings all stake holders have an opportunity to iron out all misunderstandings.

Private sector issues

- The agriculture policy of the country has been changed frequently with the changes of political regimes .
- As a result the private sector is hesitant to make any sizeable investments
- The absence of a seeds act is also consolidating this difficult situation.

Capacity of the private sector

- The private sector does not have access to infrastructure
- All qualified and experienced breeders are with the state sector .
- Due to the unsteady environment private sector investment in this area is not forthcoming
- Hence Private sector breeding programmes are a few and are at a initial stages at the moment

The way forward

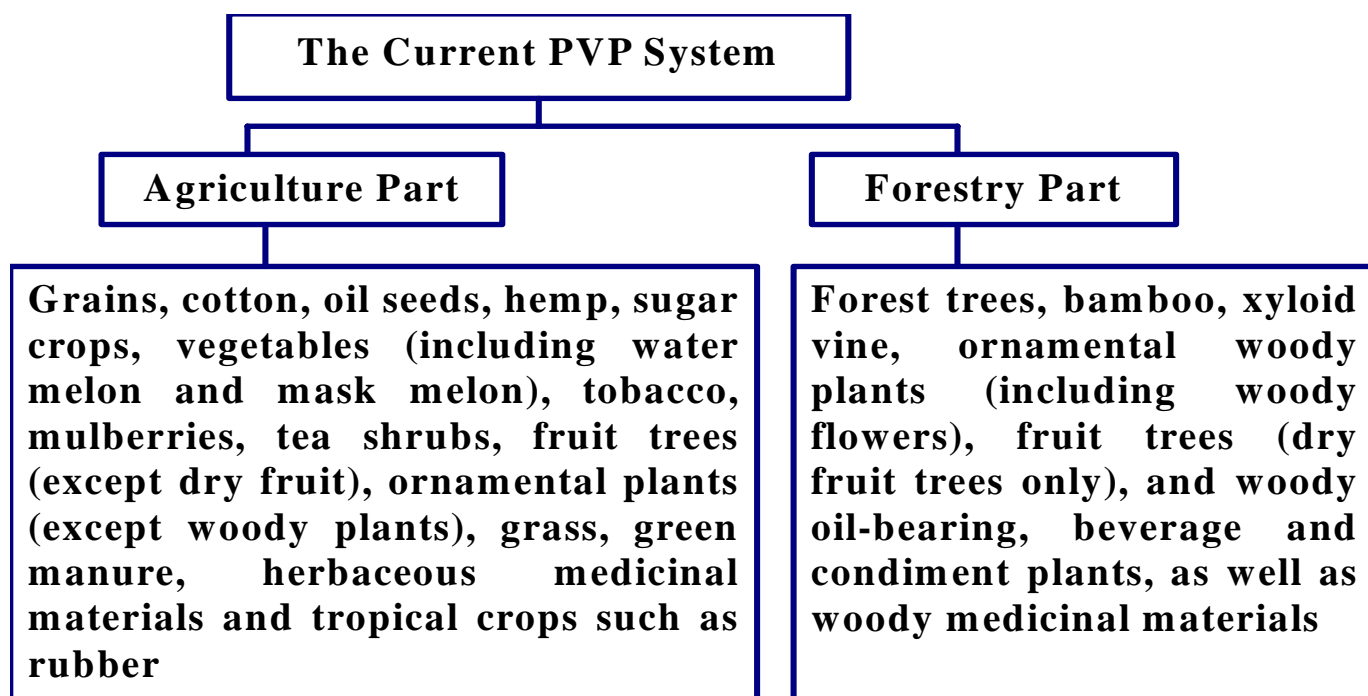
- Creating a conducive environment updating the necessary legislation in keeping with current trends and facilitating private investment
- Encouraging Public private partnership between the Department of agriculture , the universities and private enterprise .

Plant Variety Protection in China

Dr. Min SONG Ph.D.

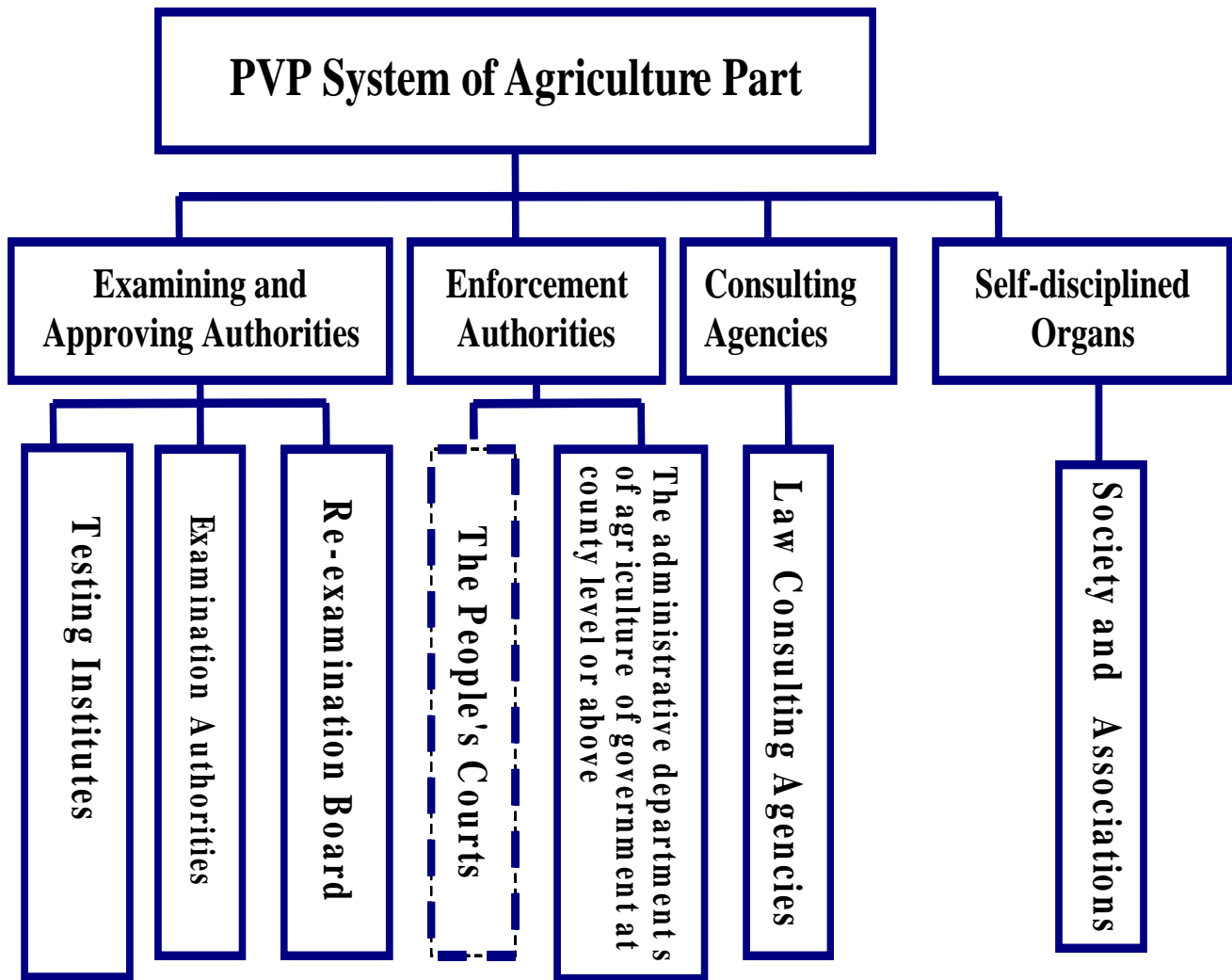
Senior Researcher of PVP Office, MOA of China

The Current PVP System

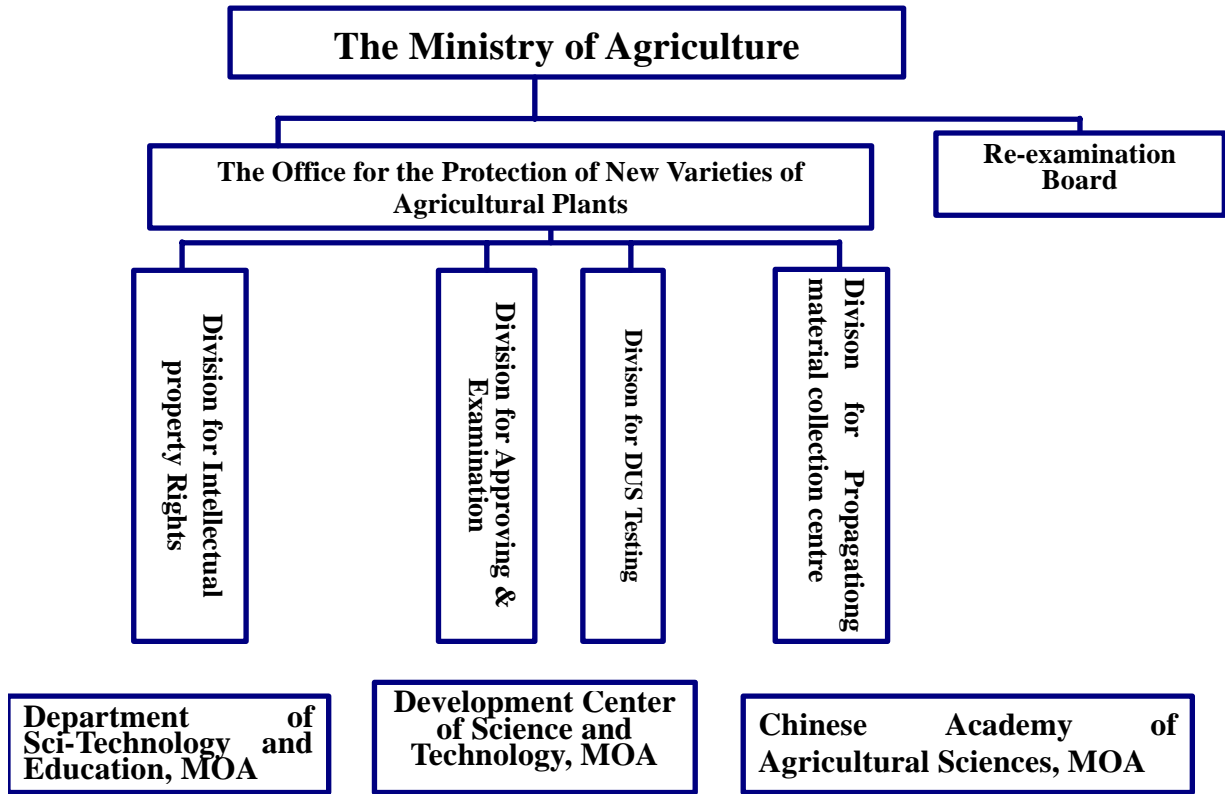


Regulations & rules on PVP

- The regulation on the protection of new plant varieties (RPNVP), legislated by the State Council in March 1997
- The rules for the implementation of RPNVP (Agriculture Part), issued by MOA in 1999
- The rules for the implementation of RPNVP (Forestry Part), issued by SFA in 1999
- Judicial explanation and rules for handling cases of PBR lawsuit, issued by The Supreme People's Court of China in 2001
- Judicial explanation on relevant issues concerning the laws applicable for hearing the dispute cases concerning the property infringements of new plant variety, issued by The Supreme People's Court of China in 2007

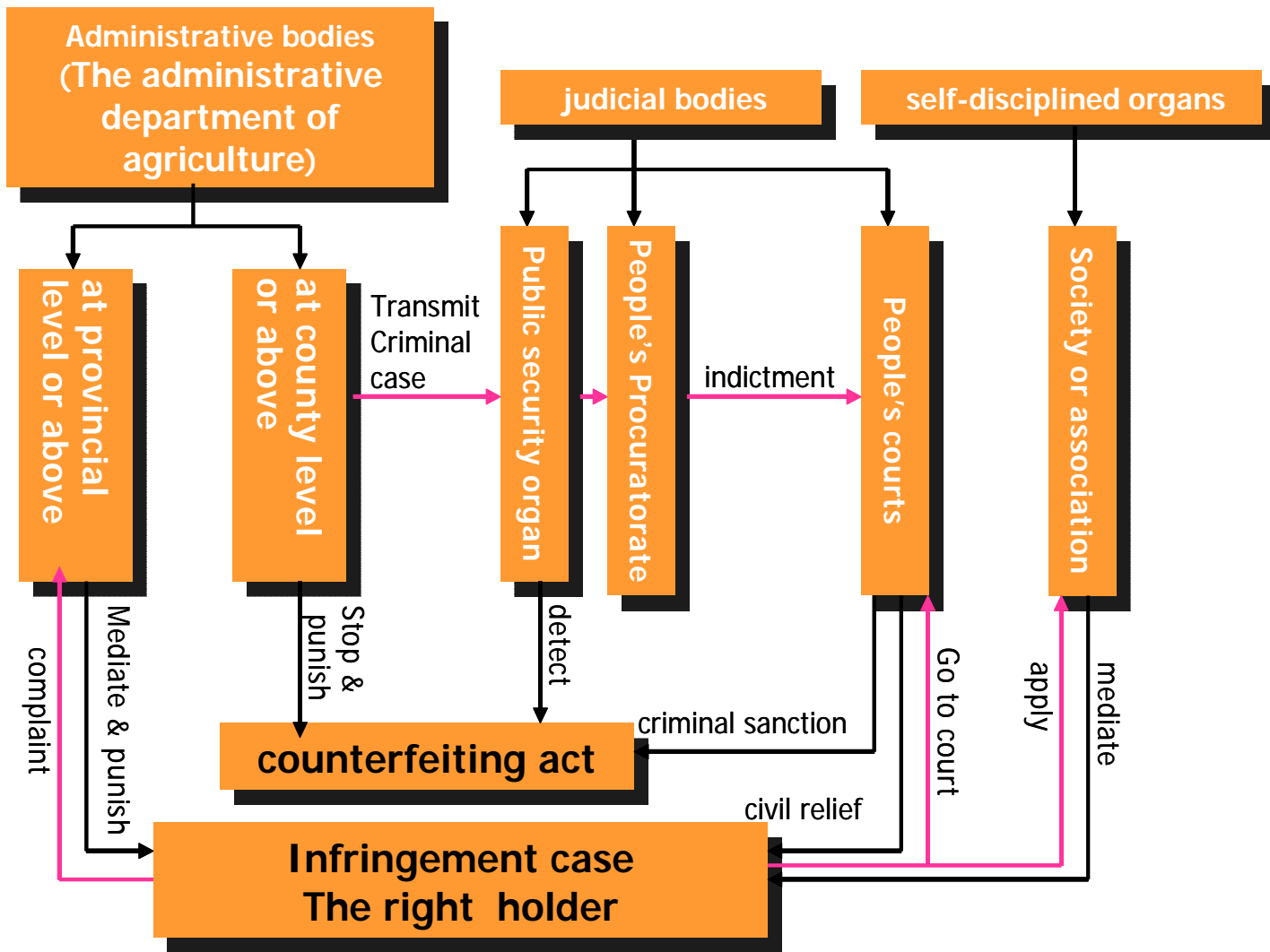


Structure of PVP Offices in MOA



Organization of DUS Testing

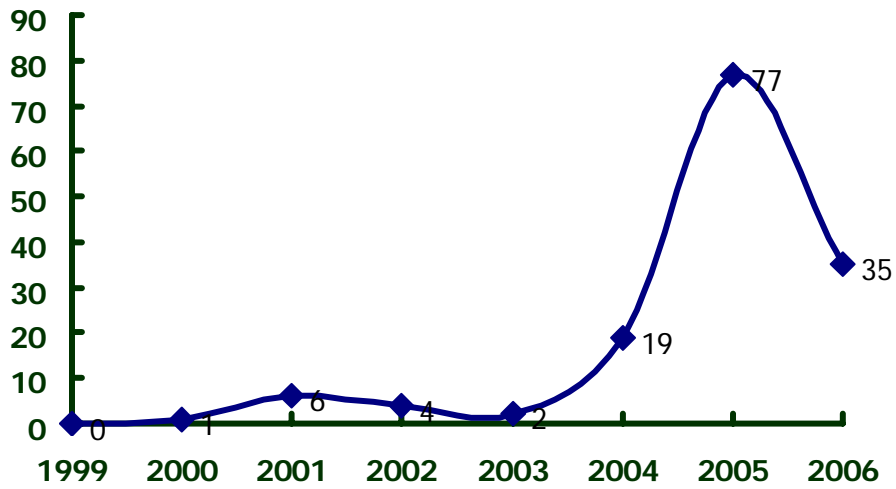




Case Handling

- The case acceptance guideline by China’s judicial, executive enforcement branches is hierarchical management and regional jurisdiction.
- Options for approach
 - Executive enforcement branches : the Administrative department of agriculture
 - Judicial branches: the People’s Court & the People’s Procuratorate
- Information necessary for investigation
 - Transferred one another among law enforcement departments.
 - Transferred to the court and the procuratorate by executive or law enforcement branches

Application filed by non-residents



Application from different country

Country	By the end of 2006	Country	By the end of 2006
Netherlands	51	Australia	4
Korea	29	New Zealand	3
USA	27	Spain	3
Japan	21	South Africa	1
Israel	4	Germany	1

Some Aspects of PVP in China

Dr. Ruiqing Huang

Vice President

Haidian Seed Chamber for Commerce

Advantages of plant variety protection in China

- Consciousness of PVP keeps increasing, more applications of PVP year by year.
- PVP Regulation has been developed vertically and its influences keep increasing.
- Since 2001, the proportion of government input in total new variety breeding funds decreased gradually, while that of private input grew year by year.
- In 2004, private input had accounted for 49.8% of total breeding funds, slightly exceeded government input which accounted for 43% only.
- Meanwhile, breeding institutions gained substantial developing funds from the market through transferring and authorizing operation rights of seed varieties, which also promoted the private input to new variety breeding.
- The execution of PVP Regulation promoted the marketing approach in China.
- The execution of PVP Regulation promoted import and export business.

Summary forms for variety right applications from 1999 to 2007 in China: Released by New Variety Protection Office of Ministry of Agriculture on June 30, 2007.

Classified according to plant types

Plant Type	Accumulated Quantities		2006	2007
	Applications	Granted Rights	Applications during the same period	Applications till June
Field crops	3798	1099	359	288
Vegetables	171	46	12	7
Flowers	122	21	5	21
fruits	103	30	5	2
Herbage seeds	3	0	1	0
Total	4197	1196	382	318

Classified according to countries

Country	Accumulated Quantities		2006	2007
	Applications	Granted Rights	Applications during the same period	Applications till June
China	4036	1178	372	301
The Netherlands	65	5	5	14
Korea	29	3	0	0
USA	29	0	1	2
Japan	21	10	1	0
Israel	4	0	0	0
Australia	4	0	3	0
New Zealand	3	0	0	0
Spanish	3	0	0	0
South Africa	1	0	0	0
German	1	0	0	0
U.K.	1	0	0	1

Classified according to sectors

Sectors	Accumulated Quantities		2006	2007
	Applications	Granted Rights	Applications during the same period	Applications till June
Domestic Scientific & Research Institutions	2105	683	169	162
Domestic Enterprises	1402	345	154	94
Domestic Universities & Colleges	318	112	26	23
Domestic Persons	211	38	23	22
Foreign Enterprises	146	18	9	15
Foreign Persons	6	0	0	0
Foreign Universities & Colleges	7	0	0	1
Foreign Scientific & Research Institutions	2	0	1	1

Constraints of plant variety protection in China

- Current PVP Regulation needs to be modified and improved to meet the requirements of practical development.
- Still some enterprises or persons neglect PVP Regulation and infringe on the breeders' rights and interests which seriously frustrate the enthusiasm of breeders.
- As the approval authority of variety rights, the new variety protection office of Ministry of Agriculture needs to strengthen its self-construction.
- Released protected varieties are still limited, many varieties can't be protected by the law.
- Technical systems of new variety protection such as DUS-testing guidelines still need to be improved. The goal is to develop a guideline with more than 500 plant varieties, now there is still a big gap.
- The procedure of applying new variety examination and approval need to be simplified and shortened.

Suggestions of plant variety protection in China

- Regulations and documents on PVP need to be further revised and improved to solve all the problems in practice and increase the variety rights management and approval efficiency.
- Rules of variety naming are too generalized and lack of operational flexibility.
- Type and content of applying documents as well as applying procedures should be simplified.
- Strengthening the propaganda and training of PVP officers.
- Reinforce the law enforcement to create a honest, orderly operation market environment.
- Strengthen PVP law system and technique system, continuously improve variety rights examine and testing system.

Plant Variety protection of the Republic of Korea

Mr. Jae Ouk Lee

Director

PVP Division

National Seed Management Office

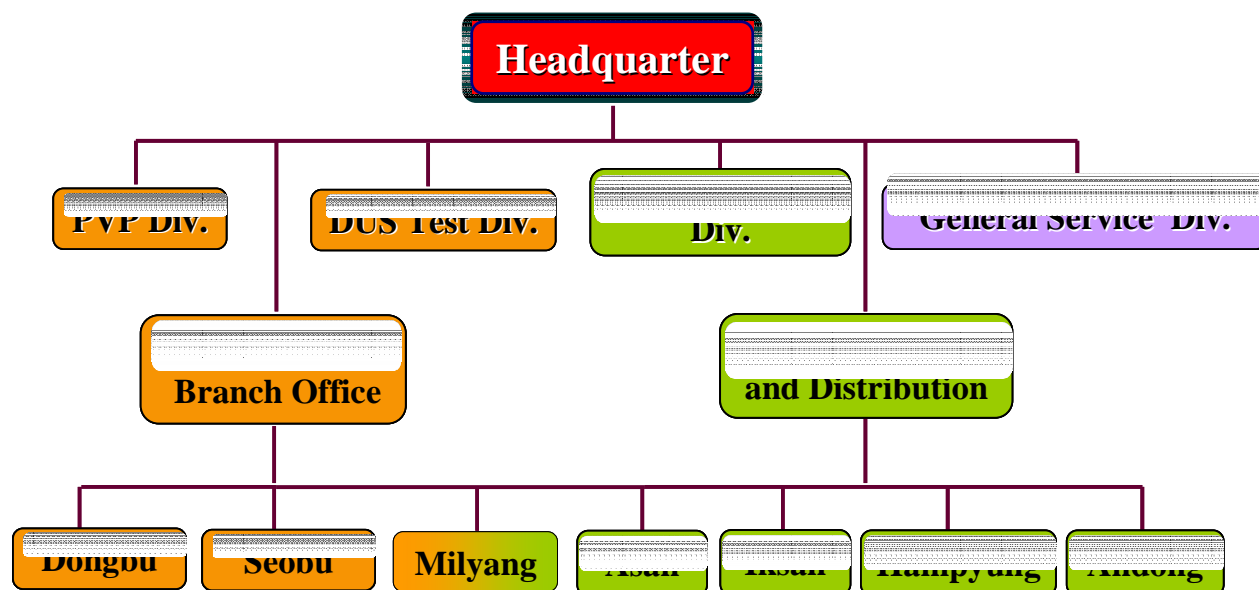
History

- 1997.12 : Enacted the Seed Industry Law
- 1997.12 : Introduced the Plant Variety
- Protection Scheme
 - 2002. 1 : Joined as the 50th UPOV member
 - 2007. : 189 plant genera and species are entitled to PVP

Organization of PVP in Korea



Organization Map of NSMO

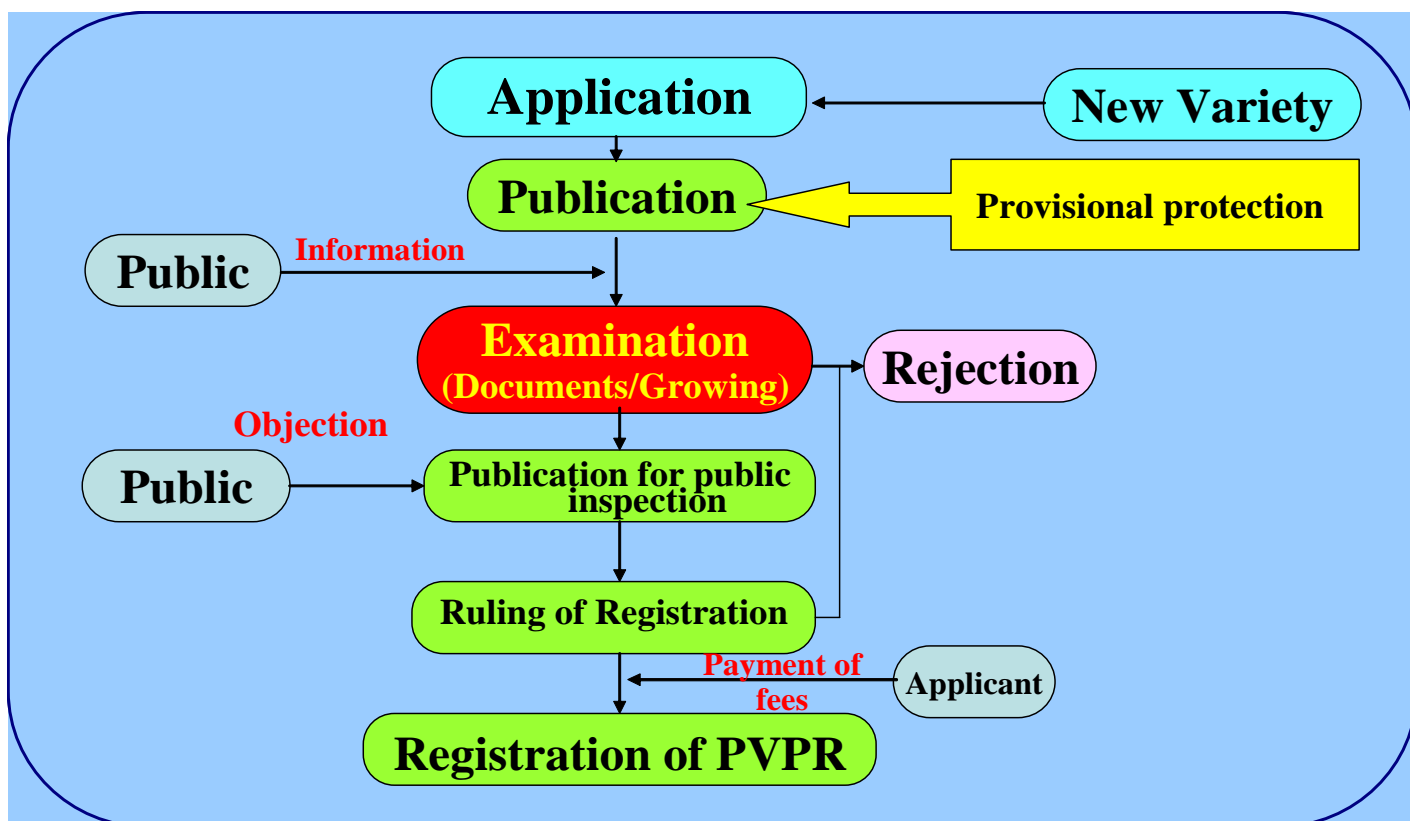


➔ 178 persons (Persons related to examination : 63)

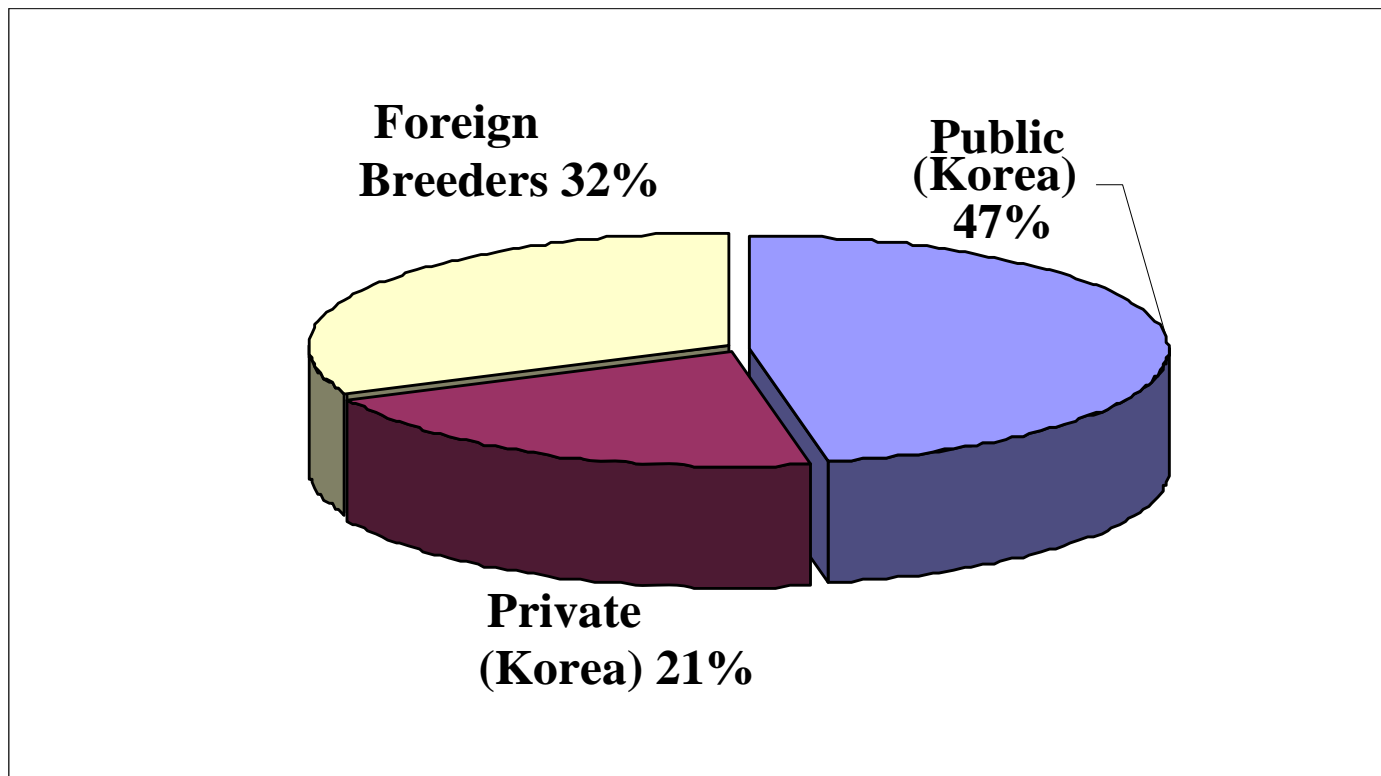
Designation of Species Entitled for PVP



Way of Examination for PVP



(As of 2006)



Future Plans

- Extension of Species for PVP
- All Genera and Species by 2009
- Establishment of the Test Guidelines

Cooperation of Examination

- With Member countries of UPOV
- Neighboring countries

Development of DUS System

- Construct the efficient system in DUS test
- Research and Development of DUS test

Invite other countries

- Sharing Experience of PVP & DUS
- Encourage to Introduce PVP and
- Join the UPOV

Overview of Plant Variety Protection System in Japan

Mr. Toru Semba
Deputy Director
Plant Variety Protection and seed Division
Ministry of Agriculture, Forestry and Fisheries

History of PVP System in Japan

<u>Japan</u>	<u>UPOV</u>
1947 Agricultural Seeds and Seedlings Law	
1972	1961/1972 Act
1978 Seeds and Seedlings Law	1978 Act
1982 Join UPOV 1978 Act	
1991	1991 Act
1998 Amendment of the Law Join UPOV 1991 Act	

Organization for PVP

- **MAFF**
 - PVP and Seeds Division
 - Effective Use of PBR
 - Variety Registration
 - Production, Distribution and Marketing of Seeds
 - Supervision of NCSS
- **PVP Office**
 - Establishment of Test Guidelines
 - Examination•
- **National Center for Seeds and Seedlings (NCSS)**
 - DUS Test
 - Inspection of Seeds and Seedlings
 - Production of Foundation Seeds and Seedlings
 - Conservation of Genetic Resources
 - Research Activities

Duration of PBRs

- 25 years from the date of variety registration
- 30 years for Wood Plants
- Application Fee: Yen 47, 200

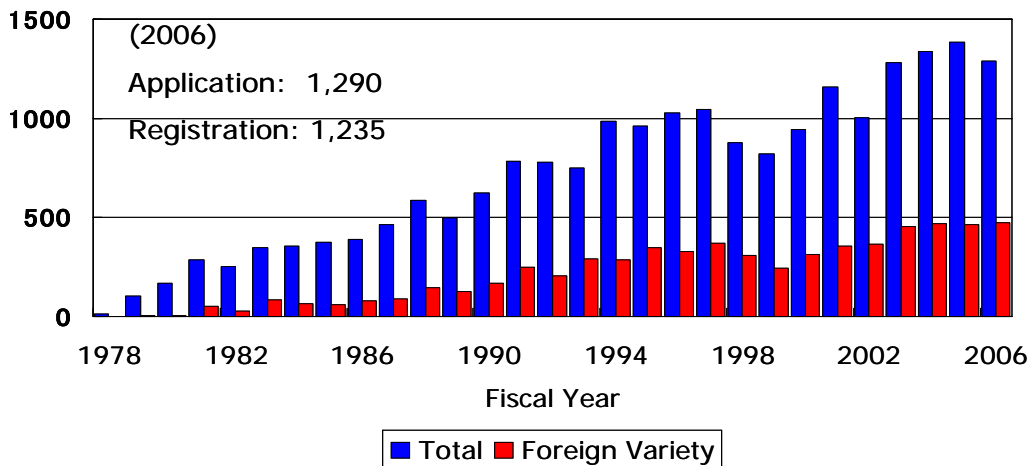
THE LOCATIONS OF NCSS



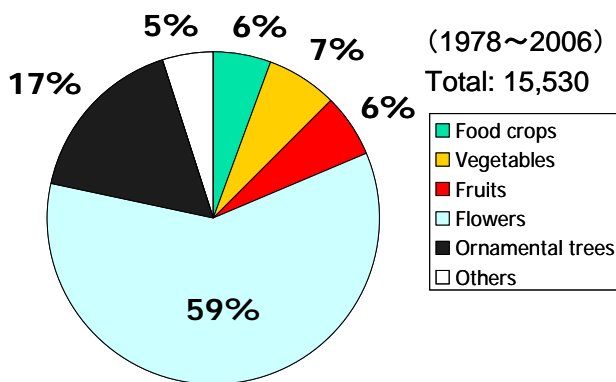
Registration fee

Years from Registration	Registration Fee
1 - 3 years	\6,000 per year
4 - 6 years	\9,000 per year
7 - 9 years	\18,000 per year
10-25 years	\36,000 per year

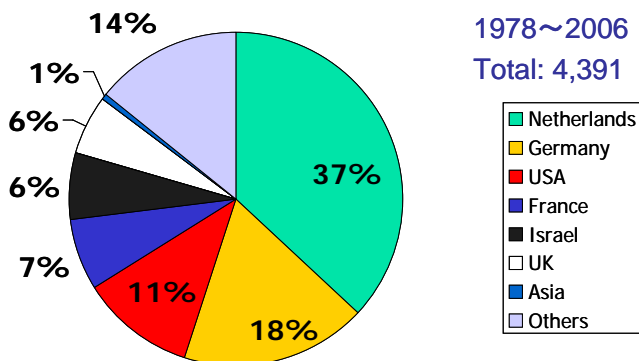
Increase of Applications in Japan



Registration by crops



Registration of foreign bred varieties



Recent Development

- Amendment of the Law (May, 2007)
 - Endeavor to label the verification of the registration hence prevent infringements
 - Enhancement of criminal penalties, eg. imprisonment: 3 to 10 years or fine: 3 (100) to 10 (300) million yen
- Smooth procedure of civil suit for easier counter measures against infringements

Suggestion and Concern about PVP system in Asia Pacific Region

Mr. Kazuo Hatsuda
Japan Seed Trade Association

Concern about PVP

- Very good system experimented in Japan but farmers exemptions still exist. (Propagation by the farmers prohibited 81 genus only, all others can be propagated)
- Difficult to police infringement (Especially in foreign countries)
- Protection of parental lines of F1 hybrid
- Breeders exemption and EDV (no clear guideline yet established)
- Usage of DNA marker to detect and prevent illegal multiplication (Currently 3 years DUS test is needed to prove infringement)

Suggestions for PVP system

- Very good system experimented in Japan but farmers exemptions still exist. (Propagation by the farmers prohibited 81 genus only, all others can be propagated)
- Difficult to police infringement (Especially in foreign countries)
- Protection of parental lines of F1 hybrid
- Breeders exemption and EDV (no clear guideline yet established)
- Usage of DNA marker to detect and prevent illegal multiplication (Currently 3 years DUS test is needed to prove infringement)
- Very good system experimented in Japan but farmers exemptions still exist. (Propagation by the farmers prohibited 81 genus only, all others can be propagated)
- Difficult to police infringement (Especially in foreign countries)
- Protection of parental lines of F1 hybrid
- Breeders exemption and EDV (no clear guideline yet established)
- Usage of DNA marker to detect and prevent illegal multiplication (Currently 3 years DUS test is needed to prove infringement)

Plant Variety Protection System In Malaysia [PNPV Act 2004]

Dr. Mohammed Selamat Madom* and Cheah Lee Shen**

*Head of UBB Unit MARDI

**Deputy Director DOA

- Article 27.3(b) TRIPS Agreement
- Patent Act 1983 (Amended 1986) exclude plants and animals from patenting
- *Protection of New Plant Varieties Act 2004* (Act 634)
- Independent *sui generis*
- Basis
 - UPOV Model Law
 - Provisions of CBD
 - IPR systems of other countries

Objectives of the ACT

- Grant of Breeder Rights
- Recognition and protection of contribution made by farmers, local communities and indigenous people towards creation of new varieties
- Encourage investment and development of the breeding of new varieties, in both public and private sectors

Conditions For Grant Of Breeder Rights

- SECTION 14(1) : *If a plant variety is NEW, DISTINCT, UNIFORM and STABLE*
- SECTION 14(2): *If a traditional plant variety bred or discovered and developed by a farmer / local community / indigenous people is NEW, DISTINCT and IDENTIFIABLE*

Definitions

- NEW
 - 1 year within Malaysia
 - 4 years outside Malaysia (and < 6 years for trees and vines)
- DISTINCT
 - If it is clearly distinguishable from any other plant variety, the existence of which is a matter of common knowledge
- UNIFORM
 - Subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics
- STABLE
 - If its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each cycle
- IDENTIFIABLE
 - If it can be distinguished from any other plant grouping by the expression of one characteristic and that characteristic is identifiable within individual plants or within and across a group of plants
 - Such characteristic can be identified by any other person *skilled in the relevant art*

Scope Of Breeder Rights

- Producing or reproducing;
- Conditioning for the purpose of propagation;
- Offering for sale;
- Marketing, inclusive of selling;
- Exporting;
- Importing;
- Stocking the material for purposes mentioned above

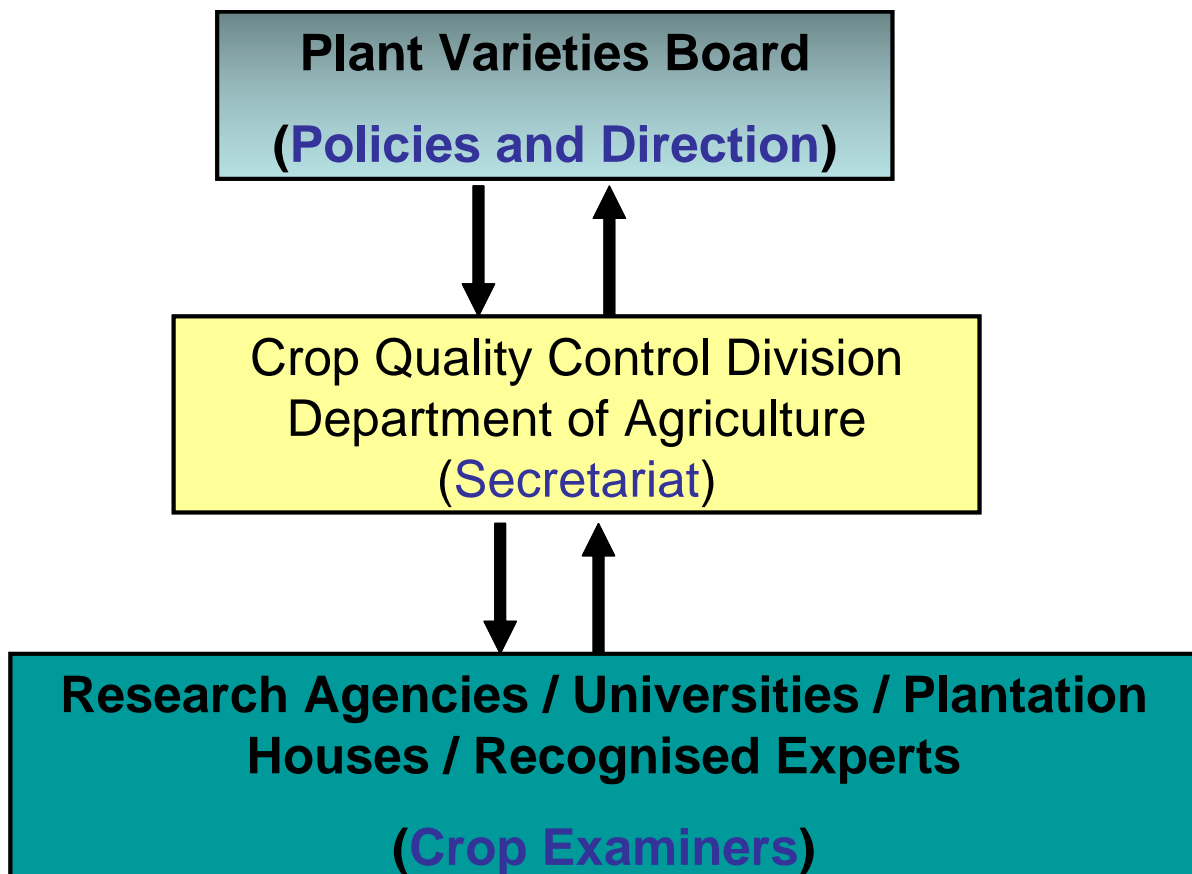
Limitations Of Breeder Rights

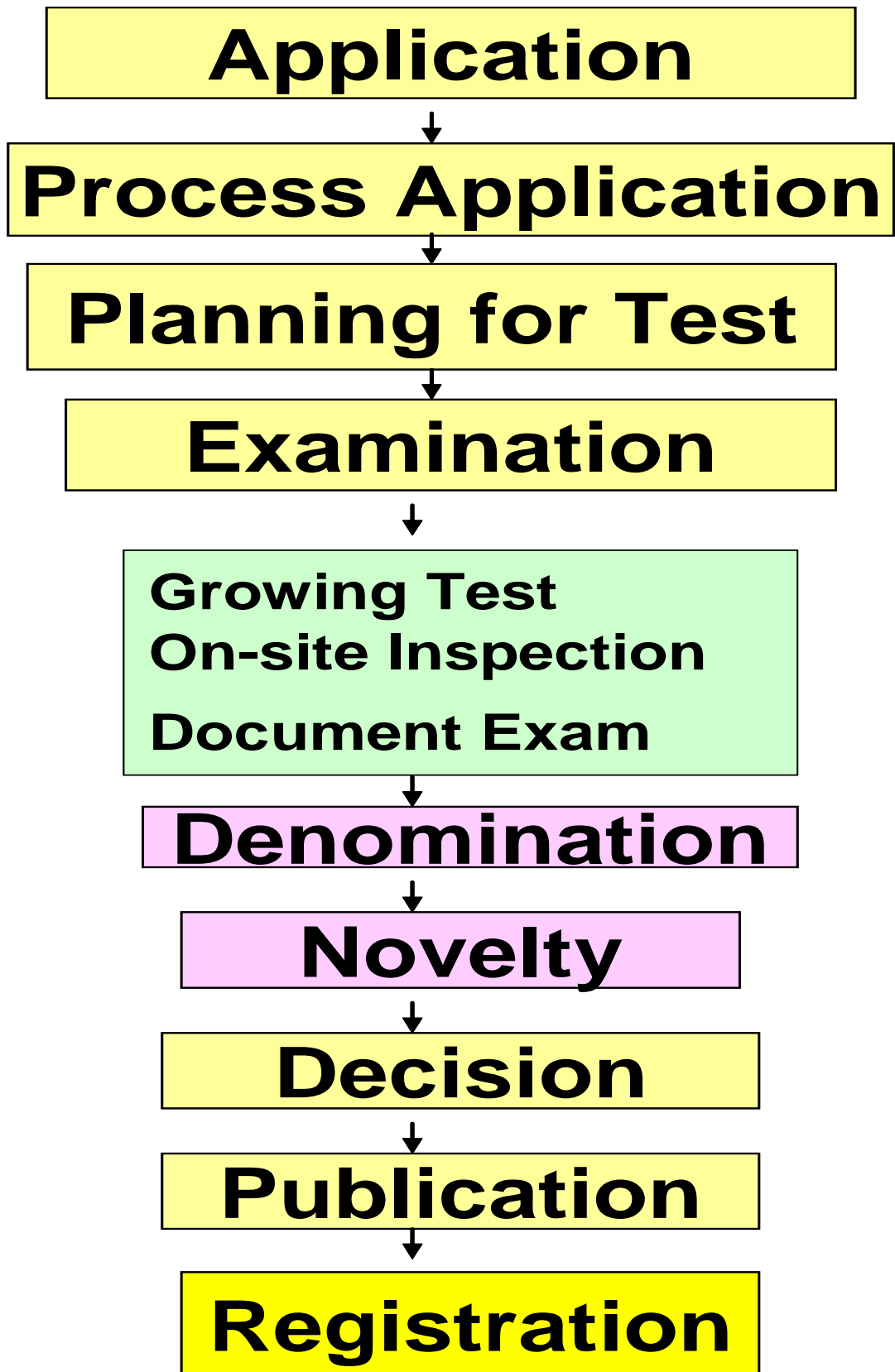
- Non-commercial basis
- Experimental purposes;
- For purpose of breeding other plant varieties;
- Propagation by small farmers and planting on own holdings;
- Exchange of reasonable amounts or propagating materials among small farmers;
- Sale of farm-saved seeds in situations where non-usage is beyond the control of the farmer provided the amount sold is not more than what is required in his own holding

Duration Of Protection

- SECTION 14(1)
 - 20 years where a plant variety is new, distinct, uniform and stable
 - (25 years for trees and vines)
- SECTION 14(2)
 - 15 years where a traditional plant variety is new, distinct and identifiable

Registration Flow Chart





Progress

- The Board has 2X sitting in 2007 (March and July)
- Regulation has been approved by the board and require endorsement from the MOA, then AG Chambers before Gazette.
- Target: Dec 2007, approved by AG Chambers
- The Fee structure has not been decided

Proposed Protection List

- Ornamentals
 - Chrysanthemum
 - Dendrobium Orchid
 - Mokara Orchid
 - Vanda Orchid
 - Aranda Orchid
- Fruits
 - Papaya
 - Guava
 - Mango

 - Pineapple
- Industrial Crops
 - Oil Palm
 - Cacao
 - Pepper
 - Rubber
- Cereal Crops
 - Paddy

Current Status

- New Plant Variety Protection Regulation 2006 (Legal Examination)
- Ministerial approval to gazette date of enforcement of *Protection of New Plant Varieties Act 2004*
- Identification of Crop Examiners and hands-on DUS training (November 2006)
- Implementation : End 2007
- Received enquiries from interested applicants

Salient Points On Protection Of New Plant Varieties Act 2004

- Fulfill TRIPS Article 27.3(b);
- Sui generis (UPOV +);
- National treatment for all applicants (foreign and local);
- Protection of rights-civil redress;
- Breeder-friendly ***
- Attractive fees ***

Plant Variety Protection in the Philippines

Ms. Elvira Morales
Plant Variety Protection Office
Philippines

REPUBLIC ACT NO. 9168

- An Act to Provide Protection to New Varieties, Establishing a National Plant Variety Protection Board and for Other Purposes (otherwise known as the “Philippine Plant Variety Protection Act of 2002”)
- Department of Agriculture’s Administrative Order No.7 Series of 2003, Implementing Rules and Regulations of the “Philippine Plant Variety Protection Act of 2002.

The Plant Variety Protection Board

- The Secretary of the Department of Agriculture, as chairman;
- The Secretary of the Department of Science and Technology, as co-chairman;
- The Director-General of the Intellectual Property Office, as vice chairman;
- The Director of the Bureau of Plant Industry;
- The Director of the Institute of Plant Breeding of the University of the Philippines Los Baños;
- The President of the Philippine Seed Industry Association;
- A representative from a federation of small farmers’ organizations to be nominated by the Secretary of Agriculture;
- A representative from the scientific community to be nominated by the National Academy of Science and Technology; and
- The Registrar (*ex officio*).

The Plant Variety Protection Office

- The Plant Variety Protection Office
 - There shall be established a Plant Variety Protection Office under the Department of Agriculture, which shall be headed by the Registrar.
- Functions of the PVP Office
 - The PVP Office shall receive and conduct examination of applications for plant variety protection; receive petitions for compulsory license for transmittal to the Board; and maintain a systematic record of all Certificates of Plant Variety Protection, a database of existing plant varieties collected from both local and foreign sources, and samples of the propagating materials of the protected variety.

Who Can Apply for a Certificate of PVP?

- The “breeder” can apply for a Certificate of PVP. The law defines “breeder” as:
 - The person who bred, or discovered and developed, a new plant variety; or
 - The person who is the employer of the aforementioned person or who has commissioned the work; or
 - The successors-in-interest of the foregoing persons; or The holder of protection for the same variety in other countries

Manner of Conducting DUS Test

- The PVP Board issues crop-specific test guidelines for testing distinctness, uniformity and stability (DUS).
- Substantive Examination of Application
 - Examinations of applications include a review of all available documents, publications, or other materials relating to varieties of the species involved in the application.
- Grow-out Test
 - The Board designates appropriate state colleges and universities, bona fide research institutions, or appropriate non-governmental research centers as testing centers.

Issuance Of The Certificate

- When the Board through the PVP Office has tested and examined the variety, and/or considered the supporting materials and literature pertinent thereto, it shall issue a Certificate of Plant variety Protection.

Term Of Protection

- For trees and vines, the period of protection shall be twenty-five (25) years from the date of the grant or the Certificate of Plant variety Protection and twenty (20) years from the said date for all other types of plants.

Fees and other related charges

• Fees	Amount (P)
Filing of the applicationGene bank fee	1,2005,100
Publication of the application	5,700
Substantive examinationIssuance of Certificate per copy	17,200200
Publication of a Certificate	5,700
Grow-out testing	Actual grow-out cost
Revive an abandoned application	3,700
Reproduction of records, drawings, certificates, exhibits or printed material (copy per page of material	2 for BW and 50 for colored
Authentication (each page)	2
Amendment of the Certificate unless the mistake be on the part of the PVPO	1,200
Re-issuance of a Certificate	180
Appeal to Board	6,700
Additional fee for a reconsideration	12,700
Additional fee for a late payment	1% of fee for the first five days + one half of 1% of fee per day thereafter
Field inspection by a representative of the PVPO made at the request of the applicant shall be reimbursable in full (including travel, per diem or subsistence) in accordance with existing government rules and regulations	Actual cost
Filing for extensions to comply with PVP board requirements	1,000
Annual fees	3,200

Applications received and protected

Common Name	Latin Name	No. of applications	Granted protection
Rice	<i>Oryza sativa</i>	14	5
Corn	<i>Zea mays</i>	32	24
Eggplant	<i>Solanum melongena</i>	1	ForBoardApproval
Tomato	<i>Lycopersicon esculentum</i>	1	ForBoardApproval
Hot pepper	<i>Capsicum frutescens</i>	1	ForBoardApproval
Sweet pepper	<i>Capsicum annum</i>	2	ForBoardApproval
Yardlong bean	<i>Vigna unguiculata</i>	2	ForBoardApproval
Shallot	<i>Allium cepa</i>	1	ForBoardApproval
Watermelon	<i>Citrullus lanatus</i>	1	On goingDUS Test
Bitter gourd	<i>Momordica charantia</i>	1	On goingDUS Test
Bottle gourd	<i>Lagenaria siceraria</i>	1	On goingDUS Test
Coconut	<i>Cocus nucifera</i>	2	On goingDUS Test
Pineapple	<i>Ananas comosus</i>	5	On goingDUS Test
Sugarcane	<i>Saccharum spp.</i>	2	On goingDUS Test
Total	66		

PSIA's View on the Philippine PVP System

Dr. Renato C. Mabesa
Executive Director, PSIA
Philippines Seed Association , Inc

Republic Act 9168

- Philippine Plant Variety Protection Act of 2002 – An Act to provide protection to new varieties, establishing a national plant variety protection board and for other purposes.
- PSIA is a member of the National Plant Variety Protection Board, representing the private sector.

Comments:

- PSIA welcomes the Plant Variety Protection Act for it recognizes the indispensable role of the private sector, encourages the participation of the private entrepreneurs and provides incentives to the needed investments in the development of the new plant varieties.
- PSIA which is mostly composed of seed traders are not really the aware of the advantages of the PVP, so a DUS testing maybe meaningless at present.
- Traditional or indigenous farmer varieties can be registered hence can be claimed by a seed company.
- Asexually propagated plant material must not be considered as an infringement.

Advantages

- Stimulate investment in the local seed industry due to protection given to plant varieties developed
- Due recognition is given to the seed company that develops the variety

Recommendations

- Conduct an info dissemination campaign regarding the PVP to all stakeholders
- Provide regularly, copies of the Plant Variety Gazette and other publication to PSIA.

Plant Variety Protection of Vietnam

Mr. Dinh The Vu
Examinor of PVP Office,
Vietnam

Establishment and development for PVP of Vietnam

- Plant variety protection of Vietnam has been starting in 1995
- Vietnam started to develop legislation in the field of plant variety protection in 2001
- DUS testing organization designated by decision of Ministry of Agriculture and Rural Development in 2003
- New Plant Variety Protection Office was established on first April, 2004
- VN became 63th UPOV member on December 12, 2006
- Technical assistance through workshops and consultancy to develop legislation (by UPOV)
- Training body in DUS testing, equipment and facilities, finance attending UPOV meetings and workshops (by DANIDA -Denmark)
- Train manpower every year from 2000 to 2005, to dispatch expert to Vietnam to consult on technical and administrative procedures for PVP (Jica – Japan)

Development of legislation documents for implementing PVP

- Decree No. 13/2001/ND-CP on PVP
- Seed Ordinance No. 15/2004/PL-UBTVQH11 with major PVP chapter
- Inter-ministerial Circular No. 92/2002/TT-BTC on the collection and use fees related to PVP
- Law No. 50/2005/QH11 on Intellectual property and it shall enter force first July, 2006
- Decree No. 104/2006/ND-CP on detailed regulations to implement some article in the Intellectual property law, part four on plant variety rights
- Decree No. 105/2006/ND-CP on detailed regulations for implementation of some article of the Law on Intellectual property regarding protection of Intellectual Property Rights and State management of Intellectual property.
- Conformed with 1991 UPOV Act.
- DUS test guideline of 22 plant species were developed
- Decision of Minister to assign the organizations in charge of DUS testing for designated species

Conditions for new plant varieties to be protected

- Being on the List of protected plant species promulgated by Ministry of Agriculture and Rural Development
- Distinctness, Uniformity and Stability
- Novelty
- Suitable Denomination
- Protection period is 20 or 25 years

Species Designated as PVP in Vietnam

Year	2002	2004	2007	Total
No. of Species	5	12	10	27

Protected plant species

Group	Plant species
Staple food	Rice, Maize
Short industrial plants	Soybean, Groundnut, Cotton, Sugar-cane
Vegetable	Tomato, Potato, Water melon, Carrot, Cucumber, Kohlrabi, Cabbage, Sweet pepper, hot pepper, Pumpkin, Strawberry
Ornamental plant and flower	Rose, Chrysanthemum, Gerbera, Gladiolus, Lily, Carnation
Fruit	Grape, Oranges, Mango
Long industrial crops and perennial plants	Tea
Other plants	Ginger

DUS Test Agencies

- Tuliem Station
 - Maize
 - Soybean
 - Groundnut
 - Tomato
 - Chrysanthemum

- Vanlam Station
 - Rice
 - Rose
 - Cucumber
 - Kohlrabi
 - Cabbage

- Northern Mountain Agriculture and Forestry Science Institute
 - Tea

- Research Center for Potato, Vegetable and Flower
 - Potato

- Quang Ngai Station
 - Watermelon

- Institute for Research and Development of Cotton
 - Cotton
 - Grape

Number of applications for PVP in Vietnam: 23 July 2007

Crops	Application				Total
	2004	2005	2006	2007	
Staple food	7	7	9	11	34
Vegetable					
Fruits					
Ornamental					
Industrial crops and perennial plants				1	1
Other plants					
Total				12	35

Number of applications

- Total application: 35
- Domestic application: 16
- Foreign application: 19
- Rejected: 01
- Certification granted: 05

Fees for plant variety protection (Circular No: 92/2002/TT-BTC)

- Filing application and examination: 1,000,000 VND
- DUS test for short duration crops: 8,000,000 VND
- DUS test for long duration crops: 11,000,000 VND
- Re-examination:
 - filing application: 250.000 VND/application
 - DUS test:
 - Short duration crops: 4,000,000 VND
 - Long duration crops: 5,500,000 VND
- Maintainable fees for certificates: 250,000 VND/year

Difficulties for PVP of Vietnam

- Plant species is diversity so it needs a lot of money for:
 - Developing DUS test systems (Equipment, facility, manpower)
 - Developing DUS test guidelines
- Lack of experience in the field of PVP
- Lack of finance to disseminate the knowledge which related to PVP to everybody.
- Lack of finance to collect and describe the common knowledge varieties and developing example varieties.

Some Ideas on Plant Variety Protection from Vietnam Seed Trade Association

Mr. Ngo Van Giao

Chairman

Vietnam Seed Trade Association

Problems

- Act on intellectual property was just issued in November 2005. After that, Decree guiding fulfillment of Law on Intellectual property in terms of plant variety protection was issued on September 2006. Hence detail regulations under this law are not fully available and systemic.
- Number of plant species being protected was small, hence seeds of copy varieties (water melon, bitter gourd...) have been produced and distributed and appeared to be wide spread.
- New variety released by public research institutes, supported with state budget, have been their own property, instead of being common property for domestic seed companies

Suggestion

- Issue more detail and systemic guiding regulations under Act on Intellectual property to enhance fulfillment of this law
- Add more species to the list of plant species which plant variety to be protected, particularly plants of high economic value (vegetable crops)
- Strengthen ability of offices for plant variety protection to help them to meet demand of seed companies
- Strongly stop violating activities to plant variety regulation. Prohibit production and distribution of seeds of copy varieties.
- New varieties released by public research institutes must be common property, sharing widely and equally to domestic seed companies.

Plant Variety Protection in Thailand

Mr. Wichar Thitiprasert
Director
Office of Agricultural Regulations
Department of Agriculture,
Thailand

- The way the PVP has developed in Thailand.
- To comply with the TRIPs Agreement.
- Thailand has chosen the *sui generis* for protection of plant varieties.
- PVP law has been drafted since 1995 with the concept of CBD and UPOV.
- In 1999, PVP Act B.E. 2542 entered into force.
- to encourage breeders to cultivate and breed new plant varieties.
- to promote for the enforcement of the rights of the local communities & breeders.
- to maintain genetic diversity.
- The act has three implementation scenarios.
- protection of new plant varieties,
- general domestic plant varieties and wild plant varieties ,and
- local domestic plant varieties

Responsible Organizations

- Plant Varieties Protection Division, Department of Agriculture, Ministry of Agriculture and Cooperatives .
- Draft test guidelines have been formulated by PVP Division
- There are working groups for consideration of the draft test guidelines.

Coverage of Protection

- Mango
- Rice
- Dendrobium
- Sugarcane
- Bird, sweet or bell pepper
- Bitter gourd
- Chinese kale
- Crown of thorns
- Crested euphorbia
- Cucumber
- Corn
- Mung bean
- Pak choi
- Soy bean
- Tomato
- Vetiver grass
- Watermelon
- Water convolvulus
- Yard long bean
- *Curcuma spp.*
- Durian
- Litchi
- Longan
- Papaya
- Pomelo
- Tapioca
- Lime
- Lotus & water lily
- Rambutan
- Sugar apple
- Tangerine
- Tamarind
- Vanda
- Eucalyptus
- *Anthurium spp.*

Conditions for Protection

- Novelty
- Distinctness
- Uniformity
- Stability

Exemption to the Right

- The act without an intention to use propagating material for commercial purpose.
- Education, study, experiment, research for breeding, developing of plant varieties.
- Farm save seeds.

Duration of Protection

- 12 years: annual plant species
- 17 years: perennial plant species
- 27 years: woody trees

Fee Schemes

- Application fee: 2.7 US\$
- Publication fee: 13 US\$
- DUS testing fee: (It depends on places & plant varieties.)
- Annual fee: 27 US\$

Number of Application

Plant variety	2003	2004	2005	2006
Bitter gourd	-	-	6	-
Corn	3	3	5	1
Cucumber	-	-	3	21
Dendrobium	10	16	4	9
Lime	-	-	-	1
Mango	2	-	1	2
Papaya	-	1	-	-
Rice	1	-	3	2
Sugarcane	-	1	6	-
Watermelon	-	2	-	10
Soy bean	-	-	1	-
Tomato	-	-	3	7
Water lily	-	-	3	-
Yard long bean	-	-	-	2
Total	16	23	35	55

Conclusion

- PVP of Thailand consists of two systems
 - protection of new varieties
 - conservation of the existing varieties
- The systems are not complicated as everyone has thought especially the ABS regime, because the applicants have a chance to negotiate for their benefit.

View on PVP by Thai Seed Trade Association and Seed Association of Thailand

Mr. Sakorn Tripetchpisal
Thai Seed Trade Association

- More than 10 seed companies have breeding program (both vegetable & field crop)
- THAILAND is the supplier of quality hybrid seeds in the region : S.E. Asia.
- A lot of seed Piracy, counterfeit seed without effective means of CONTROL.

Issues

- Plant Varieties Protection Act., B.E. 2542 (1999) already implemented BUT many seed companies are reluctant to register.
- Two in one or mix law :
 - National Reserve + INNOVATION
 - Domestic & wild plant varieties + New plant variety
 - Benefit sharing Fee? ? ?

Comments

- THASTA and SAT fully support PVP Law using the international standard (UPOV)
- NEED to separate domestic and wild plant varieties from New Plant Variety protection
- Take away benefit sharing fee or find other alternatives to raise fund
- NEED to protect breeder's/investor's right

Plant Breeder's Right Protection in Chinese Taipei

Dr. Steven S. Hsu

PBR expert to Agriculture & Food Agency, COA

Presented by:

Dr. Steve Yen

Secretary General

Taiwan Seed Trade Association

Objectives of Protecting Plant Variety

- Pursuant UPOV 1991
- To protect rights in plant varieties;
- To facilitate improvements in plant varieties
- And to implement a plant seed administration system in order to promote farmers' interests and benefit agricultural development. (*Article 1*)

History of PBR Protection in Chinese Taipei

- **1988 Plant Seed Act (amended in 2000, 2002)**
 - **Vegetables**
 - **Fruits**
 - **Ornamentals**
- **2004 Plant Variety and Seed Act**
 - **Cereals**
 - **Total Botanical taxons : 104 (annex I)**
 - **To be extended to all plant genera and species**

Competent Authority

- Competent authority:
 - Council of Agriculture, Executive Yuan
- Term of protection: (from the date of approval)
 - tree or perennial vine plant: 25 years;
 - other plant species : 20 years

Prerequisites

- Denomination
- Novelty
- Distinctness
- Uniformity
- Stability

Scope of PBR Protection

- The holder of a plant variety right shall have the exclusive right to preclude others from engaging the following acts:
 - production or propagation,
 - conditioning for the purpose of propagation,
 - offering for sale,
 - selling or otherwise marketing,
 - importing or exporting, or
 - holding for any of the purposes in the preceding five subparagraphs.

- When the PBR holder has no reasonable opportunity to exercise his/her rights listed above, he/she can claim rights over:
 - the harvested material obtained through use of plant seeds of such plant variety.
 - products obtained directly through use of the harvested material under the preceding Paragraph, provided that this provision shall apply only to plant species published by the competent authority.

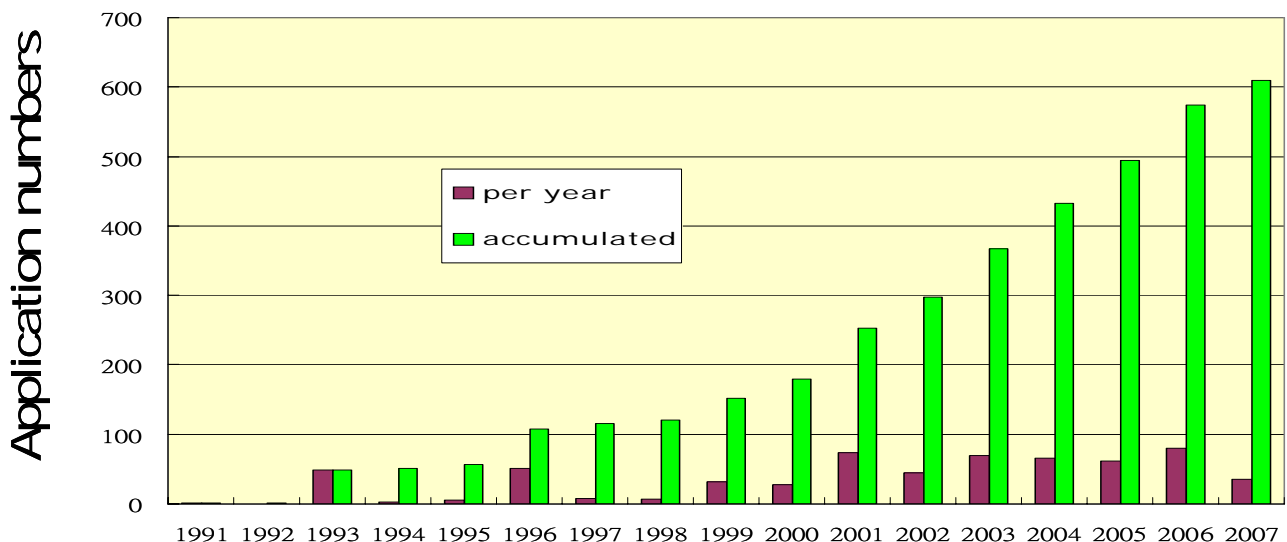
Exceptions to PBR

- Exhaustion of PBR: ■ In principle, once a variety is under legal acquisition, the PBR exhausts; but not including acts of further propagation whatsoever.

- Research Exemption:
 - acts by an individual for non-profit purposes,
 - acts for experimental or research purposes,
 - acts for the purpose of breeding other varieties.

- Farmer's Privilege
 - farmers *per se* keeping, for own use, plant seeds of a variety protected by a plant variety right or of the harvested material obtained from plant seeds of dependent varieties.
 - Acts, at a farmer's request and for the purpose of providing the farmer with propagating material, of engaging in the conditioning and nursing of harvested material obtained from the propagating material of a variety protected by a plant variety right, or of its dependent variety.

Application numbers of PBR



Application numbers of PBR

Valid	212	Withdrawed	23
Pending	133	Rejected	12
Expired	230	Total	610

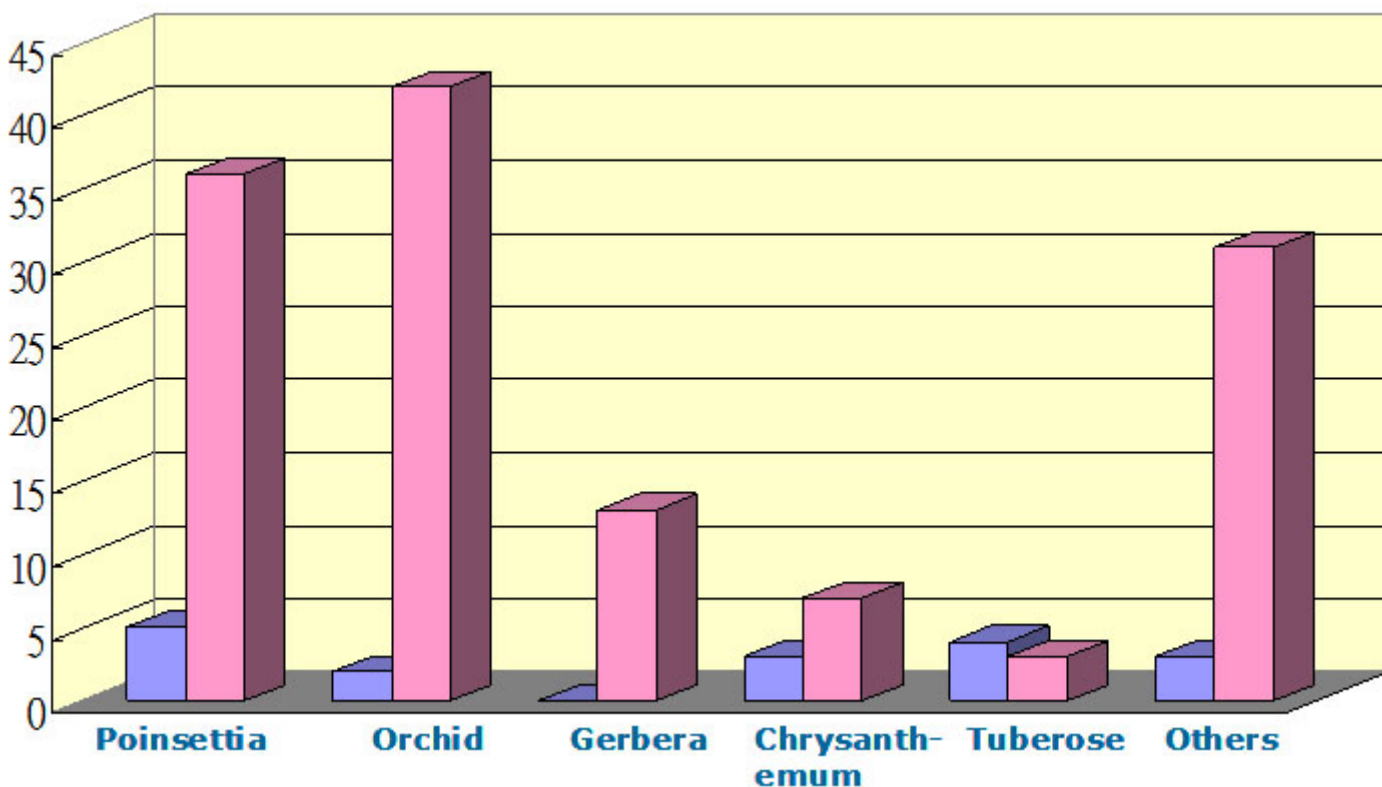
Other PBR applications

	Fruit/Tea	Ornamental	Vegetable	Total
Expired	5	15	210	230
Pending	3	122	8	133
With-drawed	0	23	0	23
Rejected	2	10	0	12

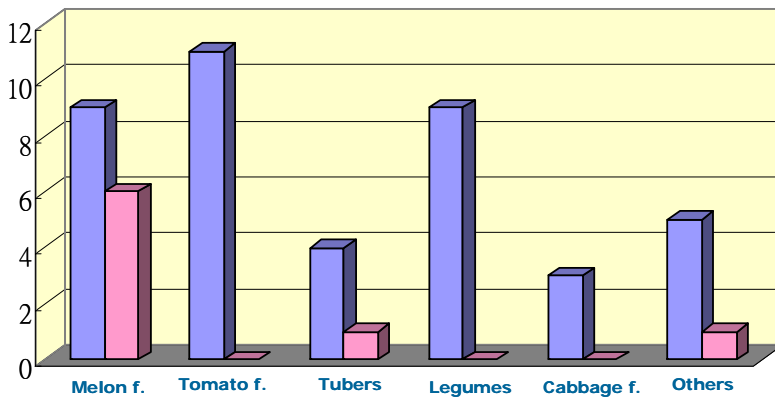
Year: 2006→2007 Valid no.: 177→212

Fruit/Tea		Ornamental		Vegetable	
Pear	4→4	Poinsettia	41→41	Melon f.	15→15
Tea	2→2	Orchid	31→44	Tomato f.	10→11
Papaya	1→1	Gerbera	13→13	Tubers	5→5
Peach	1→1	Chrysanthemum	8→10	Legumes	4→9
Litchi	1→3	Tuberose	7→7	Cabbage f.	3→3
others	1→3	others	27→34	others	3→6
10→14		127→149		40→49	

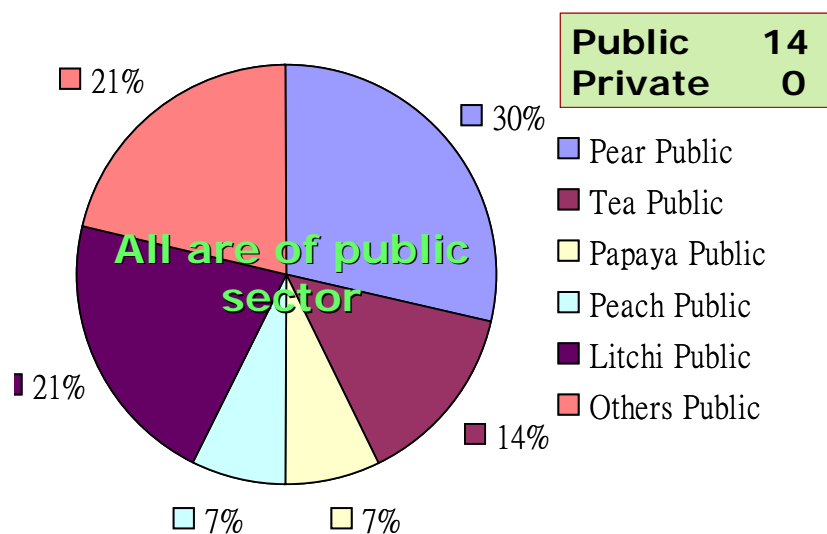
Valid PBR of *Ornamentals*



Valid PBR of Vegetables



Valid PBR of Fruit & Tea



Prospect

- Chinese Taipei hopes to part-take in UPOV 91 family.
- Chinese Taipei wishes give substantial support in examination of some specialised plant genera, in order to win multilateral recognition of DUS test reports in the world-wide PBR protection system.
- In this global village, your little help is essential for all the villagers.

Private Sector Concerns

- Smaller company is usually harder to compete with the larger ones to get the new variety.
- Who can help the plant breeder of a small or family owned seed company to get the protection outside his/her territory.
- The enforcement of PVP still has some room needed to be improved, so some breeders withhold their varieties for a better protection environment.

The Constraints to Enforcement of Intellectual Property Rights on Plant Varieties in Australia

Mr. Christopher Melham
Chief Executive Officer
Australian Seed Federation (ASF)

Plant breeders' rights act enforcement review

- *“To report on issues relating to the enforcement of plant breeders' rights in Australia and to consider possible strategies to assist plant breeders' rights holders to effectively enforce valid rights”*

Issues under review

- Matters pertaining to the PBR ACT (1991 UPOV)
 - International Treaties
 - Farmer Saved Seed
 - Essentially Derived Varieties
- Process and mechanism for protecting PBR
 - Federal Magistrates Service
 - Burden of Proof
 - Evidence Collection
 - Insufficient Resources
 - Exemplary Damages
 - Criminal v Civil Sanctions
 - Alternative Dispute Resolution
 - Education and Awareness

International Treaties

- Australia is a ratifying party to 1991 UPOV
 - Article 30(1)(i) requires Contracting parties “provide for appropriate legal remedies for the effective enforcement of breeder's rights”, and
 - FSS as an option subject to the safe-guarding of the legitimate interests of the breeder
- WTO agreement on TRIPS of IP
 - Article 41(1) requires implementation of effective enforcement strategies; expeditious; remedies to prevent infringement and effective deterrents

Famer saved seed

- 1991 UPOV FSS under Article 15(2) are optional and if adopted by countries strict limits should be introduced to safeguard the breeders interest;
- The majority of all OP varieties in Australia are sown from farmer saved and traded without authorisation from the PBR owner
- **ASF recommends the removal of FSS provisions, or alternatively; keep it in with**
- **Introduction of measures to protect the breeders interest as is the case in some EU member States! i.e FSS royalty payments.**

Federal Magistrates Service

- ASF supports the introduction of an enforcement mechanism that is cost effective and timely with the knowledge that decisions on PBR rights can be upheld
- It needs to provide for a quicker, less expensive option for litigants

Burden of proof

- The burden of proof required from the PBR is of such a high degree that it is almost impossible to collect enough evidence to go to court
- ASF is seeking a reversal of the burden of proof once the PBR owner has presented a 'reasonable amount of evidence'

Evidence collection

- Evidence to support prosecutions is often difficult to obtain for a number of reasons
 - Witnesses in small communities will not testify as legal proceedings may harm their business
 - Mechanisms that allow entry onto private property to gain evidence are too onerous
 - Legal advice received indicates that evidence presented to support a case usually broke down at some point before there is a reasonable basis to proceed

EU Saisie-contrefaçon

- Provides for a third party to enter a premises of the suspected infringer to collect evidence
- Approval is required from a court of competent jurisdiction (e.g Federal Magistrates Court)
- To be successful in obtaining a saisie-contrefaçon there is a presumption of infringement

Insufficient resources

- The resources (staff & financial) required to investigate the matter are often well beyond what most breeders can afford, especially when the benefits of the action are difficult to quantify and subject to uncertainty.

Exemplary damages

- The ASF supports incorporating 'exemplary damage' provisions in the PBR Act. Their purpose is to punish defendants for reprehensible conduct and deter them from engaging in such conduct in the future.

Criminal vs civil sanctions

- Seed piracy is no different to piracy of movies, music, and pharmaceuticals goods
- One option is the introduction of a new criminal law to address "Seed Piracy"

•	<u>Positives</u>		<u>Negatives</u>
	Incarceration	v	Delay
	Deterrence	v	Forfeiture of financial proceeds

Education and awareness

- A concerted education/awareness campaign to be driven by the Plant Breeders Rights Office with assistance from appropriately qualified legal, business and technical people to ensure a truly 'apolitical campaign' and to provide much needed skills in the area of commercialisation of PBR rights to IP owners.

Conclusion

- A resolution to break the 'enforcement deadlock' is needed as a matter of urgency to ensure the value of PBR is not diminished and PBR owners and the national economy are able to capture the benefit of their IP.

New Zealand Plant Protection

Mr. David Melhuish

President

New Zealand Grain and Seed Trade

- New Zealand is a member of UPOV
- New Zealand is a party to UPOV 78
- NZ Plant Variety Rights Act 1987
- New Zealand is not a party to UPOV 91
- The introduction of PVR gave New Zealand companies the confidence to invest in breeding.
- PVR worked well initially and was used widely for new forage and cereal seed varieties.
- However, dissatisfaction with the PVRA led to the use of trademarks and patents.
- UPOV 1991 has been a catalyst for much discussion and desired changes to the NZ PVR Act. As this would confer more extensive rights on plant breeders.
- Consultation has taken place since 2002.
- NZ Plant breeders and arable farmers have agreed on a number of possible changes to the PVRA. A submission has been made to the NZ government.
- A full review of the PVRA along with recommendations was made in October 2005.
- The NZ government has the amendment process on hold.

Advantages

- Encourages investment in plant breeding.
- Gives plant breeders more rights

Constraints:

- Rights conferred by the act are relatively limited. Plant breeders may be constrained in their ability to derive revenue. This may discourage investment in plant breeding.
- Farm saved seed is too extensive under PVRA.
- The PVRA currently is difficult to enforce.

Suggested Improvements:

- Establish a body to approve farm saved seed licencing schemes.
- Model this along the lines of the Copyright Act.
- Use DNA fingerprinting
- Ratify the adoption of UPOV 91

Standard Material Transfer Agreement (SMTA)

Mr. Francois Burgaud
International Manager
GNIS

SMTA Preamble

- 29/12/1993 : CBD came into force
- Conservation, sustainable use, equitable sharing of benefits
- FAO IT in 2004 created a multilateral system
- Genetic resources for food and agriculture
- SMTA

SMTA definition

- Available without restriction
- PGRFA under development
- Product
- Sales
- To commercialize
- Governing body

SMTA

- No intellectual property on the material in the form received
- All exchanges under the SMTA
- MTA must be applied for a product under development
- Dispute
 - Admissible dispute settlement
 - Mediation
 - Arbitration

SMTA Payment

- If a Recipient, its affiliates, contractors, licensees, and lessees, commercializes a Product or Products, then the Recipient shall pay one point-one percent (1.1%) of the Sales of the Product or Products less thirty percent (30%); except that no payment shall be due on any Product or Products that :
 - are available without restriction to others for further research and breeding in accordance with article 2 of this Agreement;
 - have been purchased or otherwise obtained from another person or entity who either has already made payment on the Product or Products or is exempt from the obligation to make payment pursuant to subparagraph (a) above;
- are sold or traded as a commodity.

Highlights of the Open Forum between PVP Officials and NSA Representatives

Chair: Dr. Sampan Campiranon, *APSA Director*

Following are among the most important exchanges at the Open Forum after the presentations of Plant Variety Protection (PVP) Officials and National Seed Association (NSA) representatives of each country.

Japan NSA Rep to India PVP Rep: How many registrations of new varieties do you have now? Is there any case when they ask for royalties? How many of such cases do you have?

India PVP Rep: As I clarify, the registration process of 12 crop varieties has started only on the 21st of May. So it is only a matter of time before we know all about these aspects. So this issue has not yet come up?

You must be aware that we have very transparent, with open discussions. It took many years before these legislations were finalized and the concerns of every stakeholder were taken into consideration. We are aware that there are certain considerations but this is rightly mentioned. It is a matter of how the authority interprets the rules or how it applies in his mind while taking legislations in the future. I would also want to say from the government's side that the government is open to all kinds of suggestions and even amendments if required in the future, but first let us start the process and whatever difficulties given by each parties will be considered by the government and if we can go as far in doing amendments to the act, everything will be done.

GNIS Rep to India PVP: My question is about breeders' exemption. If you want to use any genetic resource, any variety of France in your breeding activities you have nothing to pay to anybody in France. Not to a farm, not to a community, not to a breeder. My question is, is it the same if I would like to use variety or genetic resource of India to introduce in my breeding program? What I explained about France is what we call breeder's exemption. BE is one main point of the UPOV convention. Do I have the same possibility in India like that in my country?

India PVP Rep: You are free to use any genetic material for the development of any new variety, but everything has an SMTA. There are various provisions and fees. I think it will be better if we don't go into that. What you are saying about breeder's exemption, I think there is another term used in our Act called researcher's right. If you mean that, then a researcher is free to use any genetic material for research purpose. He doesn't have to pay any fee. In fact section 30 of the act says that "nothing in this act will prevent use of any variety registered under the act by any person using such variety for conducting experiment and research. The variety may be used by any person as initial source of variety for the purpose of creating other varieties." Now this provision is there.

The only problem is that implementation has not started. As the things progress, then we can have a clear understanding of these things.

India NSA Rep Additional Comment: Regarding the previous question, for the breeders or researchers, but if they are using any landrace they are free to use and if the certain variety is EDV (Essentially Derived Varieties) then I think they may even start selling commercially. The breeder or researcher has the freedom to use any genetic material for research. But when it comes to commercial aspect, like this variety has been developed by breaking this hybrid or from this landrace and when it comes to commercialization, then the plant variety authority or the farmers' authority will again depend on how it's interpreted. If it's EDV, then you have to pay the benefit sharing and royalty and all those things will be taken care of.

Regarding the open pollen varieties developed by private sectors in wheat and rice, practically speaking, is not more than 5% because private sectors are focusing only on hybrids. Even rice and all other the researches are being done by the government sector in this case.

China PVP Rep to India PVP Rep: For India, you mentioned you have community rights. You accept the farmer's rights. How do you identify communities and how to give the right to communities?

India PVP Rep: There is an elaborate procedure for that in India. In fact, I can tell you with this plant variety act, when the restriction was launched in 2007, certain communities all over India are already awarded for their role in traditionally conserving and protecting various genetic material. In India, we have a system of involvement of various NGOs and organizations who are working with such people and also certain research institutions and it was based on the recommendation of these institutions or people who are known for such works. So these communities were identified and were awarded. So this kind of system is already in place and I think there are no difficulties. There is already a Tribal Community, for example in Nudesa. There is a special kind of rice that they have been protecting for thousands of years now. Those varieties which are landraces are very useful genetic resources and with changing times and evolution of varieties these kind of genetic resources are very important in plant breeding purposes. So there are many groups, many hotspots of genetic biodiversity in India and there are a lot of people working with them and government bodies in close context so there is no problem in identifying these groups.

Vietnam PVP to India NSA Rep: My question is about Indonesia, India and Sri Lanka. In your presentation, you are saying about the rights of breeders and farmer's rights. How can you recognize which is which? In your country, do you have a bank of genetic resources?

India NSA Rep: The first question that you asked, my understanding is that you are asking about farmers. How the government can identify farmers multiplying a protective variety? That protection role has become that of the one who produced the variety. He has to be very vigilant in protecting his variety, I make all the investigations but even if he catches the farmers and then the farmer brings out and say its for his own use and his not branding... that depends on authorities to interpret. It is the duty of the one who registered the variety to be more vigilant in protecting it.

About the gene bank, yes we have a very elaborate gene bank, the plant resources gene bank and it's freely available for any breeders. GMO in India, it is a rule that when you import any seeds it has to be free from GMO and PQ authorities are doing their jobs on this.

GNIS Rep to Philippine PVP Rep: Philippine law is presented to UPOV and some parts of the law do not conform to UPOV. Is it possible to know which part of your law created problems to conform to UPOV?

Philippine PVP Rep: In our communication with representatives from UPOV convention, it the provision in our law for the small farmers. The rights of the small farmers do not conform to UPOV Act of 1991.

Philippine NSA Rep to New Zealand NSA Rep: Actually, its just an inquiry because the Philippines is a developing country and farm saved seeds is a big concern of the country, I heard from David Melhuish fo New Zealand that they are giving license or copyright farm saved seeds. Could explain more on this?

New Zealand NSA Rep: That is a suggestion and we've had discussions with farmers, a political group. Probably, to cite an example, we have some seed varieties that when we save, the user is not going to get the best advantage out of the seed and the opposite scenario to that is that a seed is harvested and produced under a correct and proper management system, the consumer will get the best possible seed quality. We've had discussions with farmer groups and they agree based on most of those principles. I also agree that where we will allow farm saved seeds, the farmers have to pay a royalty to the breeder, and that is clear under UPOV 91 to my understanding. So you can have the best of both worlds. You can have farm saved seeds for those varieties that the seed industry of the country agrees is in the best interest and pay breeders royalties. To pay the breeder and encourage the breeder to have further investment—that is really the principle that we would work on.

APSA ITQ Committee Rep to Thailand: How did you come up with 12 years protection for your varieties? It is known that depending on the types, it could take anywhere between 5 to 10 years to develop a variety. And it might take 5 years to introduce it and that does not give anybody time to benefit from the research.

Thailand PVP Rep: We used the crop cycles as a basis. We give the duration of 12 years for a plant which is capable of giving fruit in the period of not over 2 years so the cycle is quick compared to woody trees. So that's the idea behind.

Indonesia NPPO Rep to China PVP Rep: For China, in case of dispute, it will be brought to the court or to the association. I'd like to know which case is brought to the court and which is brought to the association. What are the levels?

China PVP Rep: In the case of infringement of the Act, the breeder has a choice to file a complaint to the Ministry of Agriculture and the worst case is he files a case to the court. It is a choice of the breeder when he files a complaint, whether in court or to the association.

India NSA Rep to Vietnam PVP Rep: Under the PVP law, you mentioned five vegetables—watermelon, cucumber, cabbage, kohlrabi and tomato. How do you go for cabbage and kohlrabi. I suppose these varieties are not bred in Vietnam. So how do you do it for these products as these vegetables are mostly imported?

Vietnam PVP Rep: There are many companies breeding them in Vietnam now. Companies come directly, not the importer.

Japan NSA Rep to China PVP Rep: I have a question about infringement. The breeder has to collect the evidence or the authorities can collect that for, say, foreigner breeder?

China PVP Rep: The collection of evidence should be done by the breeder who has the rights.

GNIS Rep to Vietnam PVP Rep: If you are not a resident of Vietnam, you may fill up an application if you are a resident of a country which is recognized as a contracting party in business rights by Vietnam or there is no problem if you are a resident of a country that is a member of UPOV. I don't know if this is exactly the same with India, as India is not a member of UPOV and I don't know if there is a bilateral agreement between India and Vietnam. For example, for France, Japan or Australia, there is no problem to fill up an application form because these countries are recognized as a contracting party in the decree of Vietnam.

On another note, I'd like to react on the comment of Dr. Mabesa (Philippine NSA Rep) on New Zealand, about farm saved seeds. For me, as a seed association in Europe, what is very strange is that in all the day's presentation about PVP, you don't talk about royalties. It seems that Plant Variety Protection is something totally abstract. I have no idea in your presentation like how much royalties a seed producer is paying on rice seeds produced, and PVP is to collect royalties. It's not just to have legislation.

The second is the fact that I have the impression you are not in the spirit of using PVP for public breeding institutes or the main purpose is to encourage breeding but not only for the private sector. It's to encourage giving some funds to the public institutes that are breeding in most of your countries, especially for immediate crops. It's why I asked to India this morning how many varieties you have of wheat and which are registered. I know the answer. It's zero.

The second thing is how to get the public institutes in India to breed more varieties of wheat and rice. Just to give you a comparison the number of varieties which were indicated this morning, 100 new varieties released each year is very poor. If you go to India or France. India is 20 times bigger than France. So it is considered that India should release 20 times as much new varieties than France. France releases 400 new varieties per year. So it means to be at the same level of France has to release 8000 new varieties per year and not 100. So this is the challenge of PVP. How to have the money for that and here you go to farm saved seeds provision. The problem of farm saved seeds provision is exactly what you said it is, to allow farmers to save some seeds without disallowing the breeders to do some breeding.

The problem is only how to organize to get the money for breeding activities if you have allowed farm saved seeds, you have to find a system to let the farmers pay for that because we know that states pay less and less for breeding activities and if it's not the states, or farmers, who will pay for this important activity? It is important to understand that.

It's impossible to separate breeders and farmers. We have 71 breeding companies. On the 70 private companies, 70% are farmer's companies. How can you say the difference between farmers and breeders when the majority of the breeders are farmers and so when you oppose farmers and breeders rights, actually you have a problem how you allow your farmers to become breeders freely? Take for example in India, I am a farmer and I want to start breeding activities. And India will say each time you start your breeding activities you have to pay something. How will I start to be a breeder as a farmer if I have to pay all the farmers of India for using the genetic resources to do activities in breeding? Start any development for any national breeding company in some of your countries. It is not a problem for us. We already have our breeding companies. But I think it's important to understand the mistakes to avoid in the development of national breeding activities.

Philippine PVP Invited Guest (Author of Philippine PVP Law): I just want to thank Mr. Hernandez for the invitation. It was on my 2nd term that I authored the Philippine PVP Act which incidentally was one of the landmark agricultural laws signed at that time and it was controversial primarily because of concepts our colleague from France (GNIS Rep) have pointed out.

The controversy is centered, really largely on issues of rights. Simply put, private or breeders' rights vis-à-vis the state or public institutions' rights as well in the development of horticultural varieties all together should benefit larger sectors, such in the case of the Philippines farmers. The rights, in terms of the IP of the breeders vis-à-vis the access of a wider agricultural sector, the right of the development of the seeds as time progresses, that should take the question of who benefits. That's why when we were dealing with the PVP debates in the Philippines a few years ago, my first concern was coming from the scientific or breeders rights to develop and protect a largely unprotected scientific sector in the Philippines but towards the latter part of the debates, which took about two years, many other sectors, primarily those from farmers groups raised many objections which I gathered is a stumbling block of the UPOV.

Philippine PVP Rep: We have traditional rights of small farmers to save, use, exchange or share, or sell the farm produce of a variety protected under this act except when a sale is for the purpose of reproduction under a commercial marketing agreement. The board shall determine the condition in which this exemption shall apply taking into consideration the nature of the plant cultivated, grown or sown. This provision shall also extend to the exchange and sale of seeds among and between small seed farmers provided that small farmers may exchange or sell seeds for reproduction or replanting in their own land.

Philippine PVP Invited Guest: The UPOV is actually saying that this does not fit their requirement because of the whole concept of selling or reselling.

GNIS Rep: In the UPOV provision, the governments may authorize to save the seeds for their own purpose and according to UPOV the farmers have to pay something to the breeders but for their own use, not to sell in any part.

Philippine NSA Rep: I think there is no conflict between the Philippine PVP Act and the UPOV because in the provision of the convention, it's prohibited to use farm saved seeds for commercial purposes and it's what's indicated here that is not permitted in the government or by the PVP law so I don't think there is any conflict in regards to this provision of UPOV.

GNIS Rep: The UPOV doesn't want to be flexible on that because there is a big temptation of some seed companies and some countries today to sell. If UPOV is too weak, we will patent the varieties and your countries are totally against the patentability of varieties but the only way, on an international level, to keep this position is to really have breeders rights enforced and to avoid a lot of loopholes. But we really think that most multinationals today are really in favor of breeders rights.

Thailand PVP Rep to GNIS Rep: You said if the product is protected under the PVP in France, you don't need to pay, but if it is protected under the patent system, you have to pay. So what is the difference between the payments?

GNIS Rep: The difference is the breeder's exemption and the fact that if I have a patent of my variety, you have no right to use it at all for breeding activities of your own. If I have just breeder's rights, you may use it and you may obtain the new variety which you may protect. So in a way the fact that I protect only the breeder's rights and not the patent, it's sharing the benefits to you because you have access the variety.

Thailand PVP Rep to GNIS Rep: You mention about the material if the farmer receives, for example from IRRI or CYMMIT, if I receive it in DNA form, can I protect it under the hybrid form in crops and not in the form when I received from the institute for example. Is my understanding correct?

GNIS Rep: If you receive in the form of seeds, it means you can't protect the seed variety but you have the right extract some function of the seed and protect it. Of course, if you receive in the form of DNA, you have no possibility to protect anything. So if you want to directly receive a trait from an institute, I have no possibility to protect the trait. If I receive a variety and I find a trait, I have the right to protect the trait. It's not an interpretation because there were years of debates on that, so it's clearly the interpretation of the standard material agreement treaty.

Session Chair: As far as the sMTA is concerned, in the future, the accession of germplasm or seeds or hybrids from any organization particularly under those CGIAR centres will require the use of the new sMTA. Right now, the issue has been more complicated that's why we will follow up on this matter on November during the APSA Congress. I hope this will be useful to our members because if we need to get something from CYMMIT and IRRI in the future, we will need this new SMTA.

Philippine PVP Invited Guest to GNIS Rep: Please clarify the breeder's rights as opposed to a patent in terms of a set of limitations or parameters. For instance after a number of years, a breeder's rights will in a sense expire and the resource becomes publicly owned. How clear are those parameters already in what you've discussed or is that still a grey area as far as some countries are concerned?

FRANCE: You are right after the breeders' expires, which is the same as the expiration of the patent, the material or the variety in that case will become public. Countries are in charge to decide which genetic resources will be in the ITPGR system. So we all imagine that mainly genetic resources in the public domain will be in the ITPGR system but it's not forbidden if a country for some reason doesn't want to put all their genetic resources in the system, it's OK. Why? Because it's also important to understand that when you put a genetic resource in that system, you have responsibilities. It means, as a country, you need to conserve this genetic resource to describe and to be sure when you give it to somebody that you don't have a disease or an adventitious presence of GMO and it's clear in the system that there is no cost except the cost for you but it facilitates access. You have the responsibility of facilitation if you put a genetic resource in the system. Actually we have to say that till now, very few countries started to put genetic resources in the system.

If I may I add something which is interesting, as a company it is possible to put in the ITPGR system a variety which is still protected because as I said if you put a variety under the system, everybody has facilitated access to this variety. But you have no right to protect in the form received so there is no problem with interaction with breeder's rights. So you can imagine that to other countries which are far, access would be more difficult. For example breeders from Germany will have easy access to private protected varieties of France but for somebody in India or Australia, it's not so easy. They have the possibility to access these varieties and database of all genetic resources of France which are in the ITPGR system and which are available in facilitated access, it will be good.

Comment from Vietnam PVP Rep: First of all, I would like to express my sincere thanks to the organizer led by Dr. Sampan and to sponsors, Ms. Alexis and Mr. Burgaud, for inviting me to take part in the workshop. Second, I have something to express to all of you. Today, we listen to presentations of our participants and I see some differences in the law of every country. In quarantine, we have to require information on fees and I think this is important for us participants.

The information is not enough for the farmers and the breeders and APSA may ask every country to have information campaigns about PVP.

I highly appreciate the innovation of APSA to invite us here to exchange information and learn from country participants. After this workshop and when we go back to our countries, we can submit to our minister to justify our policy and so that it can facilitate seed movement. Thank you.

PVP Session Summary and Conclusion

Mr. Damien Plan

APSA - IPR Committee Co-Chair

PVP: source of innovation, growth and progress

- **More breeding → More and Better Varieties:** Plant Variety Protection provides an effective incentive for plant breeding resulting in the development of new, improved varieties of benefit for farmers, growers and consumers.
- **Multiple benefits of new improved varieties:** economic (improved yield), environmental (disease resistance, stress tolerance), health (improved nutritional content) → improved income for farmers
- **Protection of new plant varieties is essential to achieve the mission of APSA**, which is “to improve production and trade of quality seed planting material of agricultural and horticultural crops”
- **APSA objective : a uniform and reliable PVP system in Asia-Pacific**
- **APSA position : support to the 1991 UPOV convention - “the model” for Asia-Pacific**

PVP status in Asia-Pacific

- Asia-Pacific is far away from a uniform PVP system based on UPOV-91
- **In some countries, no PVP legislation adopted**
- **In some countries, PVP legislation adopted but not implemented**
- **In some countries, PVP legislation in place but not consistent with UPOV**
 - Farmers’ privilege: farmers rights much broader than defined in UPOV91 and ambiguous definition of farmers (farmers/traders)
 - Benefit sharing: blend of PVP/CBD in same legislation

In some countries, PVP legislation in place and consistent with UPOV

Recommendations

GOVERNMENTS:

- **ADOPTION** of PVP legislation (based on UPOV-91)
 - Ideally, all Asian countries should adopt and implement PVP legislation based on UPOV 91: the way to a uniform PVP system in Asia-Pacific

IMPLEMENTATION/ENFORCEMENT of PVP legislation (based on UPOV-91)

- To fulfill its potential benefits, any adopted PVP legislation must be actually implemented

NSAs

- Regular discussions/actions on PVP (establishment of national IPR committee)

APSA

- Further cooperation with NSAs and international organisations (UPOV, ISF...)

GOVERNMENTS + NSAs + APSA

- Further dialogue and interaction to achieve a common goal - a uniform PVP system in Asia-Pacific

Today's workshop was one step in the right direction ... but not the last one

APSA's Recommendations:

- Each government office involved in PQ and PVP issues may please designate a specific office, person and contact details to be the **DIRECT LINK** to APSA
- APSA is willing to have its website and its print and electronic publications to be the tools to effectively disseminate or share the information with others. We request for regular contact with each of your offices.
- For NSAs, we would like to request that each of you create your own committee on international trade and quarantine, and a committee on IPR or PVP committee.
- We also request our NSAs to keep APSA involved in issues particularly those concerning quarantine and PVP issues.
- As always, NSAs and government offices/ agencies can use APSA as its communication tool.

Government PVP Official Participants

1. CHINA

Dr. SONG Min
Senior researcher
Plant Variety Protection Office, Ministry of Agriculture
No. 11, Nongzhanguan Nanli, Beijing 100026, P.R. China
Tel: +86-10-64193069
Fax: +86-10-64193069
Email: cq@agri.gov.cn

2. INDIA

Sh. Harish Prasad
Director
Seeds Division
Department of Agriculture and Cooperation
Ministry of Agriculture
Krishi Bhawan, New Delhi
India
Tel: 23382226
Email: dirrfs@krishi.nic.in, directorseeds@gmail.com

3. INDONESIA

Ir. Hidarwati M.Sc
Director
Center for Plant Variety Protection
Ministry of Agriculture
Building E 3rd Floor
Jl. Harsono Rm. NO. #
Ragunan-Pasar Minggu,
Jakarta Selatan 12550
Tel. +62-217816386
Fax: +62-2178840389
Email: hindarwati@deptan.go.id

4. JAPAN

Mr. Toru Semba
Deputy Director
Plant Variety Protection and seed Division
Ministry of Agriculture, Forestry and Fisheries
Japan
Tel: +81-267442118
Fax: +81-3-35025301
Email: tooru_semba@nm.maff.go.jp

5. KOREA

Mr. Jae Ouk Lee

Director

PVP Division

National Seed Management Office

328 Jungangno, Mann-gu

Anyang City

Kyungigdo 430 016

Republic of Korea

Tel: +82-314670150

Fax: +82-314670161

Email: jolee@seed.go.kr

6. MALAYSIA

Dr. Mohammed Selamat bin Madom

Head

Planting Materials, Seeds and Livestock Breed Production Unit

MARDI Headquarters

P.O.Box 12301, GPO

50774 Kuala Lumpur

Malaysia

Tel: +603-89437464

Fax: +603-89437378

Email: msmadom@mardi.my

7. NEPAL

Mr. Hari Bhandari

Chief Seed Development Officer

Seed Quality Control Centre

Ministry of Agriculture and Cooperatives

Hariharbhawan

Nalitpur, Nepal

Tel: +977-1-5534258/ 5521359

Fax: +977-1-5521359

Email: seed@sdqc.wlink.com.np

8. PHILIPPINES

Ms. Elvira Morales

Plant Variety Protection Office

NSQCS Bldg., Bureau of Plant Industry

Visayas Avenue, Quezon City

Philippines

Tel: +63-29292543

Fax: +63-29292543

Email: elviemorales@yahoo.com

9. SRI LANKA

Dr. G.M. Wasantha Chitral
Deputy Director
Seeds and Planting Material Development Centre
Department of Agriculture
Peradeniya, Sri Lanka
Tel: +94-812388608, 812388122
Fax: +94-2388608
Email: Kudagamage@slt.net.lk

10. THAILAND

Mr. Wichar Thitiprasert
Director
Office of Agricultural Regulations
Department of Agriculture,
Bangkok, Thailand
Tel:+66-25798576
Fax:. +66-25795084
Email: wichar_doa@hotmail.com and wichar_t@yahoo.co.th

11. Vietnam

Mr. DINH THE VU,
Examinor of PVP office,
New Plant Variety Office,
Department of Crop production No 2 Ngoc Ha, Ba Dinh, Hanoi
Tel: 84 48435182
Fax:84 47342844
E-mail: Vu_pvp@yahoo.com

NSA Participants

1. AUSTRALIA

Christopher Melham
Chief Executive Officer
Australian Seed Federation
PO Box 3572 Manuka ACT 2603 Australia
E-mail: ceo@asf.asn.au

2. BANGLADESH

ATAUS SOPAN MALIK
Advisor
Bangladesh Seed Merchants Association
C/o A.R. Malik &Company (Pvt) Ltd.
House # 408/8 (2nd Floor) , Road #7, West DOHS, Baridhara , Dhaka -1206, Bangladesh
Tel- 880-2-9883530, 880-2-9863223, E-mail : armalik@dhaka.agni.com

3. CHINA

Dr. Ruiqing Huang
Vice President
Haidian Seed Chamber for Commerce
1 Nankou, Qinghe Sijie, Haidian District, Beijing 100085 China
Tel: +86-10-6292-5215 ; Fax: +86-10-6219-4588 ; E-mail: ruiqinghuang@yahoo.com

4. INDIA

Dr. Jai Singh
National Seed Association of India
C/o Tokita Seed India (P) Ltd.
E-mail: jai@tokitaindia.com

5. INDONESIA

Ms. Elda D. Adiningrat
President
ASBENINDO
E-mail: asbenind@centrin.net.id, eadiningrat@cbn.net.id

6. JAPAN

Mr. Kazuo Hatsuda
Japan Seed Trade Association
C/o Executive Director, Takii & Company, Ltd.
Address : 180 Umekoji, Inokuma, Shimogyo-ku, Kyoto 600-8686, Japan
Tel : +81-75-365-0123; Fax : +81-75-365-0110; Mail : hatsuda@takii.co.jp

7. NEW ZEALAND

Mr. David Melhuish
President
New Zealand Grain and Seed Trade
c/o PGGWrightson Seeds Ltd,
P.O. Box 939 Christchurch, New Zealand.
Tel. 64 3 3720800 DDI. 64 3 3720807 Fax. 64 3 3720836 Mobile. 64 275 963917
Email: dmelhuish@pggwrightsonseeds.co.nz

8. NEPAL

Mr. Durga P Adhikari
General Secretary
Seed Entrepreneurs' Association of Nepal (SEAN)
Post Box No. 13874
Phone: +977-1-4252314 Mobile: +977-1- 98510-66946 Fax: +977-1-4313805
E-mail: seanseed@ntc.net.np

9. PHILIPPINES

Dr. Renato C. Mabesa
Executive Director, PSIA
Philippines Seed Association , Inc.
C/o Professor, University of the Philippines Los Baños
College, Laguna Philippines, 4031
Tel.: 063-49-536-2598 Cel.: 0639193595994 Telefax :063-49-536-2478, 063-49-536-2598
E-mail Add: buddy@laguna.net, rcmmbg@yahoo.com.ph

10. SRI LANKA

Mr. Reginold Sumitha Mario De Alwis,
Chairman
National Agri Business Council of Sri Lanka,
C/O MA' S Tropical Food Processing (Pvt) Ltd,
30, Gothami Road, Colombo 4, Sri Lanka.
Tel. 94 11 4613304, Mobile : 0094 777 368026 Fax. 94 11 2677989
E mail : Mario@masfoods.lk

11. SRI LANKA

Mr. Leo Nanayakkara

Chairman, Seed Producers Association of Sri Lanka

378 / 5, Singha Place, Kalapaluwawa, Rajagiriya, Sri Lanka

Tel. 94 1 2792857, 94 1 2793857; Fax: 94 1 2793858; E-mail :- bestseed@sltnet.lk

12. VIETNAM

Mr. Ngo Van Giao

Chairman

Vietnam Seed Trade Association

No. 282 Le Van Sy Street, Ward 1, Tan Binh District, Ho Chi Minh City, Vietnam.

E-mail: giaossc@hcm.fpt.vn

13. THAILAND

Mr. Sakorn Tripechpisal

Thailand Seed Trade Association

E-mail: admin@thasta.com; Sakorn.Tripetchpisal@Pioneer.com

14. TAIWAN

Dr. Steve Yen

Secretary General

Taiwan Seed Trade Association

Email: yenst03@yahoo.com.tw

APSA Participants

1. JAPAN

Mr. Madoka Koshibe

APSA 1st Vice President

Mikado Kyowa Seed

Email: m-koshibe@mikadokyowa.com

2. SINGAPORE

Mr. Damien Plan

APSA - IPR Committee Co-Chair

Bayer (South East Asia) Pte. Ltd.

E-mail: damien.plan@bayercropscience.com

3. USA

Mr. J. Gilbert Hernandez

APSA-ITQ Chairman

E-mail : jgilberth@yahoo.com

4. USA

Ms. Alexis Ellicott

APSA-ITQ Member / Sponsor Representative

E-mail: aellicott@amseed.org

5. Philippines

Dr. Nereus Acosta

Author of the Philippine PVP Law

noacosta@gmail.com

Guest Speakers

MR. KEVIN NALDER

Consultant

IPPC

Level 6

85 the Terrace, Wellington

PO Box 10-302, The Terrace, Wellington

Cel : 021-480660

Tel :64-44726047

Fax :64-44726037

Email : nzfpia@xtra.co.nz

MR. FRANCOIS BURGAUD

International Manager

GNIS (Workshop Sponsor)

44 Rue du Louvre Paris Paris 75001 France

Tel :+33 (1) 42337694

Fax : +33(104233-2774

Email :francois.burgaud@gnis.fr

APSA Secretariat:

Dr. Sampan Campiranon

Director

Email: sampanc@apsaseed.org

Ms. Beth Erlano

Publications and Programs Coordinator

Email: beth@apsaseed.org

Ms. Thitiporn Gesarapong

Finance and Administrative Officer

Email: thitiporn@apsaseed.org

Ms. Lovely Merlicel Quipot

Information and Research Officer

Email:lovely@apsaseed.org

Mr. Rapeepun Namchim

Junior Accountant

Email: rapeepun@apsaseed.org

Ms. Navalux Sombooncharoen

Membership and Marketing Officer

Email: navalux@apsaseed.org