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Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce

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PRINCIPALES LOIS ET RÉGLEMENTATIONS CONSACRÉES À LA PROPRIÉTÉ INTELLECTUELLE NOTIFIÉES AU TITRE DE L'ARTICLE 63:2 DE L'ACCORD

PAYS-BAS

Par une communication datée du 19 janvier 2001, la délégation des Pays-Bas a complété ses notifications antérieures au titre de l'article 63:2 de l'Accord, comme il est indiqué ci-après.

Conformément aux dispositions de l'article 63:2 de l'Accord sur les ADPIC, vous voudrez bien trouver ci-joint le texte en néerlandais et une traduction en anglais de la loi des Pays-Bas relative aux droits des obtenteurs, la Loi sur les semences et le matériel de plantation (en néerlandais: Zaaizaad- en Plantgoedwet), ainsi que le texte de sa révision (en néerlandais) qui est incorporé dans les versions fournies en anglais et en néerlandais. Cette loi prévoit les droits des obtenteurs et régleme nte le commerce des semences et du matériel de plantation aux Pays-Bas. Le texte de sa version consolidée est reproduit ci-après.¹

Concernant les droits des obtenteurs, la Loi est fondée sur l'Acte de 1999 de la Convention UPOV. Conformément à la Loi sur les semences et le matériel de plantation, l'obteneur d'une variété végétale a la possibilité d'obtenir un droit d'obteneur si les conditions requises (nouveau té, distinction, homogénéité et stabilité) sont satisfaites. Une fois qu'un droit d'obteneur a été accordé, il faut avoir l'autorisation de l'obteneur pour mener des activités en rapport avec la variété protégée telles que la production, la vente et l'exportation.

¹ En anglais seulement.

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History:

This Act was amended by the Acts of 8 May 1969, Stb. 191, 7 September 1972, Stb. 461, 4 February 1981, Stb. 35, 25 January 1984, Stb. 19, 2 May 1984, Stb. 238, 14 November 1984, Stb. 573, 26 June 1986, Stb. 388, 3 December 1987, Stb. 591, 25 October 1989, Stb. 491 jo 11 December 1991, Stb. 608, 18 April 1991, Stb. 233, 4 June 1992, Stb. 422, 24 June 1992, Stb. 409, 8 October 1992, Stb. 593, 16 December 1993, Stb. 650, 23 December 1993, Stb. 690, 26 April 1995, Stb. 250, 10 July 1995, Stb. 355, 26 June 1996, Stb. 398, 11 December 1996, Stb. 1997, 4, 6 February 1997, Stb. 63, 6 November 1997, Stb. 510, 17 December 1997, Stb. 660, 25 June 1998, Stb. 446, 28 January 1999, Stb. 30

Staatsblad

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Act of 6 October 1966 containing new regulations governing plant breeders' right and the trade in the propagating material of agricultural and horticultural species

We, JULIANA, by the Grace of God, Queen of the Netherlands, Princess of Orange Nassau, etc., etc., etc.

To all and singular to whom these presents shall come, Greeting! We give notice that:

Whereas We have considered that it is desirable to establish new regulations governing plant breeders' right and the trade in the propagating material of agricultural and horticultural species;

We, therefore, having heard the Council of State, and in consultation with the States General, have approved and decreed as We hereby approve and decree: -

Chapter I. Definitions

Section 1

For the purposes of this Act:

'Our Minister' shall mean Our Minister of Agriculture and Fisheries;

'The Board' shall mean the Board for Plant Breeders' Rights, referred to in Section 5;

'Union' shall mean the Union for the Protection of New Varieties of Plants, constituted by the States that are party to the International Convention for the Protection of New Varieties of Plants, signed at Paris on December 2, 1961;

'Member State of the Union' shall mean a State that is a member of the Union.

Section 2

For the purposes of this Act:

'Variety' shall mean any group of plants within a single botanical taxon of the lowest known rank, which group, irrespective of whether the conditions for the grant of a plant breeder's right laid down in this Act are fully met, can be

- defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;

- distinguished from any other group of plants by the expression of at least one of the said characteristics and

- considered as a unit with regard to its suitability for being propagated unchanged.

'Propagating material' shall mean plants or parts thereof that are intended for cultivation by planting or sowing or by any other means;

'Commercialisation' shall mean offering for sale, selling and supplying;

'Putting on the market' shall mean the first act of commercialisation.

Section 3

1. When 'agricultural species' are referred to in this Act, they shall include:
 - a. poppy (Papaver somniferum L.), white mustard (Sinapis alba L.), caraway (Carum carvi L.) and white clover (Trifolium repens L.);
 - b. those varieties of pea (Pisum sativum L.), maize (Zea mays L.), turnip (Brasica campestris L. Var. rapa (L.) Hartm.), black radish (Raphanus sativus L. Var. Niger (Mill.) Pers.), dwarf French bean (Phaseolus vulgaris L.) and carrot (Daucus carota L.) that are not included under 'horticultural species' under paragraph (2).
2. When 'horticultural species' are referred to in this Act, they shall include:
 - a. in the case of pea, those varieties that are suitable for cultivation solely or mainly for harvesting at the green stage for human consumption;
 - b. in the case of maize, the varieties of pop corn and sweet corn;
 - c. in the case of turnip and black radish, those varieties that are suitable for cultivation solely or mainly for human consumption;
 - d. in the case of dwarf French bean, those varieties that are suitable for cultivation solely or mainly for harvesting at the green stage;
 - e. in the case of carrot, the varieties of red carrot.
3. Horticultural species shall likewise include:
 - a. those varieties of agricultural species that are suitable for cultivation solely or mainly for ornamental purposes;
 - b. sylvicultural species.
4. It may be provided by general administrative order that, for the purposes of this Act, cultivated species, varieties or groups of varieties other than those mentioned in the preceding paragraphs shall be regarded as either agricultural or horticultural species.

Chapter II. The Netherlands Register of Varieties and the Board for Plant Breeders' Rights

Section 4

1. There shall be a register for the purpose of entering therein groups of plants for which it has been established that they constitute varieties. The register shall be public and shall be called Netherlands Register of Varieties.
2. The arrangement of the Netherlands Register of Varieties shall be laid down by or by virtue of a general administrative order.

Section 5

1. There shall be a Board for Plant Breeders' Rights comprising:
 - a. a Central Department;
 - b. an Agricultural Species Department;
 - c. a Horticultural Species Department;
 - d. an Appeals Department.
2. The departments may be subdivided into sections by general administrative order.

Section 6

1. The Board shall have:
 - a. a President;
 - b. three Vice-Presidents;
 - c. a minimum of three and a maximum of seven members for each department or section.
2. A Secretary and one or more Assistant Secretaries shall be attached to the Board.

Section 7

1. We shall appoint the President, the Vice-Presidents and other members of the Board. The appointment shall be for a period of five years.

2. The persons referred to in the preceding paragraph shall be eligible for reappointment. They may be discharged by Us at their request.
3. The President shall be sworn in by Our Minister, and the Vice-Presidents and other members shall be sworn in by the President, before they enter upon their duties.
4. The President, Vice-Presidents and other members shall be discharged as from the first day of the month following the month in which they reach the age of seventy.

Section 8

1. Spouses or registered partners, blood relatives and relatives by marriage up to and including the third degree of relationship may not be members of the same department unless it is subdivided into sections; in that event they may not be members of the same section.
2. If the marriage or the registered partnership has been contracted or the relationship by marriage has come into being after the appointment, the last-appointed member may no longer be a member of the department or section in question, unless our Minister has given his permission.
3. The relationship by marriage or registered partnership shall cease to exist upon the dissolution of the marriage or the registered partnership that established it.
4. Members who have dealt with a case in the first instance shall not take part in the proceedings in the Appeals Department relating to that case.

Section 9

1. The Secretary and Assistant Secretaries shall be appointed by Our Minister.
2. They shall have obtained the degree of doctor of law, or have qualified as lawyers, at a State University or at some other Netherlands University of equivalent status, provided the degree or qualification was awarded on the strength of an examination in Netherlands civil law and commercial law, constitutional law and criminal law.

Section 10

1. Without prejudice to what is stated elsewhere, the President, Vice-Presidents and other members shall be discharged by Us:
 - a. if age, permanent physical disability or mental illness has rendered them unfit to perform their duties;
 - b. if they have been placed under guardianship.
2. Without prejudice to what is stated elsewhere, the persons referred to in the preceding paragraph may be discharged by Us:
 - a. if they have contravened the provisions of Sections 11 and 12;
 - b. if they have been declared bankrupt, the personal debt restructuring scheme applies to them or they have been granted suspension of payment or are in prison for debt.
3. Before the person concerned is discharged by virtue of the preceding paragraph, he shall be heard, or at least be duly summoned.
4. In the event of any of the circumstances referred to in paragraph (2) arising, Our Minister shall have the power to immediately suspend the person concerned; suspension shall be for a period not exceeding three months.

The General Expiry of Periods Act shall not apply to this period.

Section 11

The President, Vice-Presidents, members, Secretary and Assistant Secretaries shall be pledged to secrecy in respect of what comes to their knowledge in the course of their duties and in respect of any opinions expressed when a case is being dealt with.

Section 12

The persons referred to in the preceding Section shall not take part in proceedings involving cases in which they have any vested interest whatsoever.

Section 13

Our Minister shall lay down rules for the reimbursement of travel and accommodation expenses and for the payment of an attendance fee to the President, Vice-Presidents, and members. Our Minister may grant an annual fixed sum to the President and the Vice-Presidents in lieu of an attendance fee.

Section 14

1. The Board shall have the power to hear witnesses and experts.
2. Any person called as a witness shall obey the summons.
3. Sections 191 and 203, paragraphs (2) and (3), of the Code of Civil Procedure shall apply mutatis mutandis to witnesses.
4. The Board may order witnesses who, though duly summoned, failed to appear, to be brought before it by the public authorities.
5. The provisions of Sections 197-199, 203 and 205 of the Code of Civil Procedure shall apply mutatis mutandis to the hearing of witnesses.
6. The experts shall be impartial and make their reports in good faith. The Board may impose on them the obligation that they will maintain secrecy.

Section 15

1. Further provisions regarding the composition of and the procedure to be adopted by the Board and the swearing in of members shall be made by or by virtue of a general administrative order.
2. The following shall be regulated, among other things, in the general administrative order:
 - a. the composition of the departments and sections to carry out the tasks entrusted to the Board;
 - b. the calling up of applicants, petitioners and other interested parties, and of witnesses and experts;
 - c. the compensations to be paid to witnesses and experts.

Section 16

1. Our Minister shall fix a tariff of fees payable for work done by the Board when making entries or notes in, and issuing copies of or extracts from, the Netherlands Register of Varieties and for the advice as referred to in Section 41 (4).
2. The Board shall not deal with documents nor furnish applicants with copies of or extracts from, the Netherlands Register of Varieties until the amount due under the preceding paragraph is paid.

Section 17

All documents addressed to or emanating from the Board shall be exempt from stamp duty and from the formality of registration.

Chapter III. The Entry of Varieties in the Netherlands Register of Varieties

Section 18

- 1 The following varieties shall be entered in the Netherlands Register of Varieties:
 - a. varieties for which plant breeders' rights have been granted;
 - b. varieties of agricultural species designated by or on behalf of Our Minister and of horticultural species designated by general administrative order and meeting the requirements of sub-paragraphs (a), (b) and (c) of paragraph (1) of Section 29, but for which plant breeders' rights cannot be granted.
2. Subject to rules to be laid down by general administrative order, varieties other than those referred to in sub-paragraph (b) of paragraph (1) for which a plant breeder's right cannot be granted and which belong to agricultural species designated by general administrative order shall be entered in the Netherlands Register of Varieties at the breeder's request. The rules may impose upon the breeder the obligation to pay an annual fee specified therein.
3. The Board shall enter the variety in the Register by recording the description characterising the variety, determined by the Board, and its denomination.
4. The denomination entered in the Register shall be taken as the generic name of the variety.

Section 19

1. The denomination must enable the variety which it designates to be identified. It may not consist solely of figures, except where this is an established practice for designating varieties. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in any Member State of the Union, an existing variety of the same or a closely related cultivated species.
2. The denomination must not be contrary to public order or offensive.
3. The denomination shall be the same as that already registered for the variety in any Member State of the Union, provided it is suitable for use in this country.
4. No denomination shall be adopted in respect of which the Board finds that it so closely resembles a trade name or trademark that it would be liable to cause confusion regarding the nature or origin of products.

Section 20

1. Before adopting a denomination, the Board shall publish it in a manner to be determined by Our Minister.
2. Interested parties may lodge objections to a denomination with the Board within eight weeks of the date of its publication on the ground that it resembles a trade name or trademark so closely that it would be liable to cause confusion regarding the nature or origin of products.
3. The Board shall not adopt a denomination until it has until it has decided on the objectives referred to in paragraph (2).
4. The Industrial Property Office, shall, on request, furnish the Board with information concerning the trademarks registered with it.

Section 21

1. The applicant shall propose a denomination for the variety when applying for a plant breeder's right or when making the application referred to in paragraph (2) of Section 18.
2. The applicant may also use a provisional designation. If he does, he shall propose a denomination at a time to be fixed by the Board.
3. The proposed denomination shall be accompanied by a deed stating that the applicant will renounce any right accruing to him in any Member State of the Union with respect to that denomination for identical or similar products in the event of the proposed denomination being registered. The Board shall send a copy of the deed to the Industrial Property Office and to the Office of the Union when the denomination has been registered.
4. The Board shall adopt the proposed denomination or the denomination referred to in paragraph (3) of Section 19, unless it is of the opinion that doing so would be contrary to the provisions of Section 19. In that event it shall call upon the applicant to propose another denomination.

Section 22

1. The Board may also establish and register a provisional description characterising the variety.
2. The Board may supplement the description and shall register the additional information:
 - a. at the request of the interested party;
 - b. *ex officio*, if such is required in view of the description of some other variety, in which case the interested party shall be heard; or for other reasons, but then only with the interested party's consent.
3. the term 'interested party' used in paragraph (2) shall be understood to mean the holder of a plant breeder's right, or the breeder of a variety of the kind referred to in paragraph (2) of Section 18.

Section 23

1. If the use of a registered denomination for propagating material of the variety for which it was registered is prohibited by the decision of a Court on the ground of a right accruing to another person with respect to that denomination, the President of the Board shall delete the registered denomination at the request of the first party to take action and shall enter a provisional designation to serve as the

denomination, if possible in consultation with the holder of the plant breeder's right, or with the breeder of a variety of the kind referred to in paragraph (2) of Section 18.

2. The Board shall adopt a new denomination after having given to the holder of the plant breeder's right, or the breeder of a variety of the kind referred to in paragraph (2) of Section 18, the opportunity to suggest another denomination within a certain time limit and shall register the new denomination.

3. If it is established that a variety cannot be recorded under the registered denomination in the Register of Varieties established by the European Community for the species to which the variety belongs, the President of the Board may,

at the request of the holder of the plant breeder's right to that effect, delete a registered denomination and enter a provisional designation to serve as the denomination. The second paragraph shall apply mutatis mutandis.

Section 24

1. The applications and requests referred to in this Chapter, and the withdrawal and refusal of such applications and requests, shall be recorded in the Netherlands Register of Varieties.

2. The registrations referred to in this Chapter and the entries pertaining to the applications referred to in paragraph (2) of Section 18, and the withdrawal and refusal of such applications, shall be published in the Nederlandse Staatscourant.

Section 25

The decisions of the Board made pursuant to the provisions of this Chapter shall be communicated to the interested party referred to in Section 20, the applicant referred to in Section 21 or the holder of the plant breeder's right referred to in Sections 22 and 23 or the breeder of a variety of the kind referred to in paragraph (2) of Section 18.

Section 26

1. An appeal against the decisions referred to in Section 25, with the exception of the decisions made pursuant to Section 20 or paragraph (2) of Section 23, may be lodged with the Appeals Department.

2. An appeal against the final decisions made by the Board pursuant to Section 20 or paragraph (2) of Section 23, may be lodged with the Court of Justice at The Hague, which shall sit in chambers. The Clerk of the Court shall inform the Board of the appeal and of the Court's decision within three days.

3. The appeal may be lodged by the person who is to be informed of the decision pursuant to Section 25.

4. The appeal referred to in paragraph (2) shall be made by substantiated petition within six weeks of the date of communication of the decision.

Section 27

Further provisions shall be made by or by virtue of a general administrative order with respect to:

- a. the applications and requests referred to in this Chapter;
- b. the fixing of the date on which the applications and requests referred to under (a) shall be deemed to have been submitted to the Board;
- c. the hearing of interested parties.

Section 28

The registrations and entries referred to in this Chapter and based on decisions against which an appeal may be lodged shall be made when a decision has been taken on the appeal or if the time limit for an appeal has expired without the appeal having been lodged, or if the appeal has been withdrawn by means of a written notification to that effect addressed to the Board.

Chapter IV. The Plant Breeder's Right

Part I. The Entitlement to the Plant Breeder's Right

Section 29

1. A plant breeder's right may be granted in respect of a new variety of a plant genus or species. The plant breeder's right shall be granted if:
 - a. at the moment of making the application for a plant breeder's right, the variety is clearly distinguishable from any other variety whose existence is a matter of common knowledge at that time;
 - b. the variety is sufficiently homogeneous, having regard to the particular features of its propagation;
 - c. the variety is stable in such a manner that it remains true to its description, in its essential characteristics, after repeated propagation or, where the breeder has defined a particular cycle of propagation, at the end of each cycle.
2. For the purposes of sub-paragraph (a) of paragraph (1) a variety's existence shall be deemed a matter of common knowledge if, in any country, an application was filed for a plant breeder's right or for the entering of this variety in an official register of varieties, from the date of the application provided that the application leads to the granting of a plant breeder's right or to the entering of the said variety in the official register of varieties, as the case may be.
3. A variety shall not be regarded as new if, at the time of the application for a plant breeder's right, propagating or harvested material of the variety has been sold or otherwise disposed of to others with the consent of the person or his predecessor in title who bred, or discovered and developed the new variety by his own efforts, for purposes of exploitation:
 - a. in the Netherlands earlier than one year before the date of application;
 - b. outside the Netherlands in the case of trees or vines earlier than six years before the date of application;
 - c. outside the Netherlands, in the case of varieties other than those referred to under sub-paragraph (b), earlier than four years before the date of application.
4. The fact that material of a variety has been given to others to test, or has been submitted for registration or registered in an official register, may not be held against the breeder of the variety or his successor in title.

Section 30

1. The entitlement to a plant breeder's right shall accrue to the person or his predecessor in title who bred, or discovered and developed the new variety by his own efforts.
2. If the variety has been bred, or discovered and developed outside the Netherlands by the efforts of a natural person without the Dutch nationality or a legal entity without a registered office in the Netherlands there shall only be an entitlement to a plant breeder's right in so far as the Netherlands is obliged to grant the plant breeder's right under an international agreement.
3. If a variety has been bred, or discovered and developed outside the Netherlands and there is no obligation as that described in paragraph (2), a plant breeder's right may be granted in respect of the variety if Our Minister is of the opinion that granting that right will benefit agriculture or horticulture in the Netherlands. Our Minister may make the granting of the right subject to certain conditions and he may limit the scope of the rights accruing to the breeder under this Act.

Section 31

1. If the person referred to in paragraph (1) of Section 30 has bred, or discovered and developed a variety in the context of his employment or in the context of an agreement with a client to work for payment other than wages and the nature of the work involves plant breeding activities with respect to the cultivated species to which the variety belongs, the entitlement to the plant breeder's right shall accrue to the employer, the client or the predecessors in title of the said employer or client.
2. In the event referred to in paragraph (1) the person who has done the breeding work shall be entitled to a fair remuneration, unless such remuneration may be deemed to be included in the wages received by him or the benefits enjoyed by him.
3. Any stipulation in derogation from the provisions of paragraph (2) shall be null and void.

Section 32

If two or more persons associated otherwise than in the manner described in Section 31 have together bred, or discovered and developed a new variety, they shall be jointly entitled to the plant breeder's right.

Section 33

If, pursuant to Section 30, two or more persons can lay claim independently of each other to the grant of a plant breeder's right in respect of the same variety, the entitlement to the plant breeder's right shall accrue to the person who applied for it first.

Section 34

1. Any person who, in another Member State of the Union, has filed an application for a plant breeder's right in accordance with the provisions in force in that State shall enjoy a right of priority in respect of the granting of a plant breeder's right in the Netherlands for the same variety, provided that:
 - a. within twelve months of the date of filing of the application in the Member State of the Union, excluding the day on which the application was made, he files a provisional application in the Netherlands and thereby claims the priority in writing, and
 - b. within three months of the date of filing of the provisional application he submits copies of the documents submitted by him in the State of the first application, certified by the competent authority of that State, and
 - c. within two years of the expiry of the period mentioned under (a) he submits a regular application as described in Section 35.
2. Priority has the effect that, notwithstanding the provisions of Sections 29 and 33, such matters as the filing of an application by another person or the commercialisation of propagating material of the variety, occurring in the period between the filing of the application in the other country and the filing of the provisional application in the Netherlands, shall not affect the application made in this country by the person entitled to priority.

Part II. The Granting of the Plant Breeder's Right

Section 35

1. An application for a plant breeder's right shall be addressed to the Board and the right shall be granted by the Board.
2. In addition to the requirements of Section 21 with regard to the denomination, the application shall contain a clear description of the variety and an accurate account of the characteristics distinguishing it from other varieties of the same cultivated species.
3. For the purposes of examination the Board may require the breeder to furnish it with all the necessary material in accordance with its requirements.
4. If the applicant does not reside in the territory of the European Community he shall elect domicile in the Netherlands through a person authorised to that effect, and the election of the domicile shall, for the purpose of this Act, be deemed to remain valid until the Board is informed in writing of a change of domicile.

Section 36

The application and the withdrawal or refusal of the application, shall be recorded in the Netherlands Register of Varieties.

Section 36a

1. The holder of a plant breeder's right shall be entitled to a fair remuneration from any person who, during the period between the filing of the application for the grant of a plant breeder's right and the grant of that right pursuant to Section 37, has been engaged in activities as referred to in Section 40, with respect to the variety for which an application for a plant breeder's right has been filed.

2. The remuneration is only due for the activities engaged in after thirty days from the date the person concerned was notified by means of a summons of the holder's entitlement to the claim by virtue of this Section.
3. The summons shall be accompanied by copies certified by the Board of the documents presented to the Board in respect of the application, or passages thereof, in so far as they exclusively relate to the description of the variety for which the application was filed and the characteristics distinguishing it from other varieties. This does not include a description of the actual breeding process and the genealogical components of the variety.
4. The provisions of paragraph (1) do not apply to the person authorised to carry out the activities under an agreement with the person who pursuant to Section 30 or 31 is entitled to the grant of the plant breeder's right.

Section 37

1. The description characterising the variety and its denomination shall be laid down in the decision granting the plant breeder's right: Sections 19, 20, 21 and 22, paragraph (1), shall apply mutatis mutandis.
2. The fact that a plant breeder's right has been granted shall also be recorded when the variety is entered in the Netherlands Register of Varieties.
3. The effective date of the plant breeder's right shall be the date following the day on which the entry and record referred to in the preceding paragraph were made.

Section 38

It may be provided by general administrative order that, for varieties belonging to specified groups of cultivated species and for which plant breeders' rights have been granted, the holder of the right shall be required to pay an annual fee to be fixed by that general administrative order.

Section 39

Further provisions shall be made by or by virtue of a general administrative order with respect to:

- a. applications for plant breeders' rights;
- b. the fixing of the date on which applications for plant breeders' rights shall be deemed to have been filed with the Board;
- c. the hearing of interested parties.

Part III. Rights and Obligations of the Holder of a Plant Breeder's Right

Section 40

1. The holder of the plant breeder's right shall have the exclusive right to produce, reproduce or condition for propagating purposes, propagating material of the variety to commercialise it, to offer it for sale, to export it, import it, to stock it for any of these purposes and to have any or all of these activities performed.
2. Persons other than the holder of the plant breeder's right shall not engage in the activities described in paragraph (1). The ban shall not apply if and in so far as authorisation to engage in them has been granted by or by virtue of this Act or by the holder of the plant breeder's right.
3. the ban shall not apply where
 - a. the activities are carried out for private, non-commercial purposes;
 - b. the activities are carried out solely for scientific research purposes;
 - c. the activities are carried out for developing new varieties.
4. The exclusive right shall also apply to activities with respect to harvested material of the variety, including entire plants and parts of plants, obtained through the unauthorised use of propagating material of the protected variety, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material.
5. It may be provided by general administrative order that, for one or more specified species or varieties the exclusive right shall also apply to activities with respect to the products made directly

from the unauthorised use of the said harvested material, unless the breeder has had reasonable opportunity to exercise his right in relation to the said harvested material.

Section 41

1. The exclusive right referred to in paragraph (1) of Section 40 shall also apply to the activities referred to in the said paragraph with regard to the material of:
 - a. varieties essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;
 - b. varieties which are not clearly distinguishable in accordance with Section 29 from the protected variety and
 - c. varieties whose reproduction requires the repeated use of the protected variety.
2. For the purposes of sub-paragraph (a) of paragraph (1) a variety shall be deemed to be essentially derived from another variety when it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.
3. Sub-paragraph (a) of paragraph (1) shall not apply to varieties whose existence is a matter of common knowledge at the time this Section takes effect. Section 29, paragraph (2), shall apply mutatis mutandis.
4. On request the Board can provide advice with regard to the question whether or not a variety for which a breeder's right was granted by the Board was derived from another variety for which a breeder's right was granted by the Board or whether another variety specified by the person making the request is derived from the variety for which the breeder's right was granted. The Board shall give a substantiated advice.

Section 41a

1. It may be provided by general administrative order that the exclusive right, referred to in Section 40, shall not extend to the use of a breeder's harvested material of a variety, belonging to a species specified by the said general administrative order, or a variety referred to in Section 41, paragraph 1, (a) or (b), for breeding purposes in a breeder's own nursery.
2. The use of harvested material for breeding purposes in a breeder's own nursery may be subject to conditions and limitations by or by virtue of a general administrative order. These may relate to the maximum quantity of harvested material to be used for breeding purposes and the remuneration the holder of the plant breeder's right is entitled to.

Section 41b

1. The exclusive right, referred to in paragraph (1) of Section 40, shall not extend to the activities concerning any material or derived material of the protected variety, or of a variety covered by Section 41, paragraph 1, which has been sold or otherwise marketed by the breeder or with his consent in the Netherlands or in one of the Member States of the European Union or in another State which is party to the Agreement on the European Economic Area, unless such activities:
 - a. involve further propagation of the variety in question;
 - b. involve an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, in a manner comparable to that provided for in this Act.

Section 42

1. The holder of a plant breeder's right shall grant such licenses as are necessary to the public interest
2. The obligation referred to in the preceding paragraph shall include the obligation of the holder of a plant breeder's right to furnish the licensee at a reasonable price with the propagating material he needs if he is to make proper use of the licence.

Section 43

1. If the holder of a plant breeder's right does not fulfil the obligation referred to in Section 42, the license shall be granted by the Board if interested parties so request. Section 36 shall apply mutatis mutandis with respect to the request.
2. Before taking a decision the Board shall give the parties an opportunity to reach agreement within a period determined by the Board.
3. If agreement cannot be reached the Board shall decide after having heard the parties. The scope of the license, the remuneration to be paid to the holder of the plant breeder's right, and the quantity of propagating material to be furnished and the remuneration to be paid for it shall be fixed in the decision. When taking a decision the Board may require the person who has obtained the license to furnish security within a certain period.
4. When the Board has granted the licence and the obligation to provide security, if imposed, has been complied with, the license shall be entered in the Netherlands Register of Varieties. The license shall not operate until the date of its entry. From that date it shall also operate as regards persons who acquired rights on the plant breeder's right after the date of the publication referred to in paragraph (1).

Section 44

1. The holder of a plant breeder's right may make a public offer of licence. The offer shall be published in the Nederlandse Staatscourant through the intermediary of the Board and at the expense of the holder of the plant breeder's right, if the Board agrees to the terms on which the licence is to be granted, having regard to the public interest referred to in Section 42, paragraph (1).
2. Any person wishing to avail himself of the offer shall obtain a licence by informing the Board by registered letter that he accepts the offer.
3. The licence shall be entered in the Netherlands Register of Varieties. The license shall not operate until the date of its entry. From that date it shall also operate as regards persons who acquired rights on the plant breeder's right after the date of the publication referred to in paragraph (1).
4. A public offer shall be irrevocable, subject to the provisions of the following paragraphs.
5. Subject to the Board's approval, the holder of a plant breeder's right may modify the terms on which the licence is granted, but not until one year has elapsed since its entry in the Netherlands Register of Varieties.
6. If the Board is of the opinion that the terms should be modified, it shall inform the holder of the plant breeder's right accordingly. In that event the holder of the plant breeder's right shall propose a modification within a period to be fixed by the Board, which period shall not be less than two months; if he fails to do so, the Board shall modify the terms ex officio.
7. The modification shall be published in the Nederlandse Staatscourant through the intermediary of the Board.

Section 45

1. If Our Minister is of the opinion that the public interest so requires he shall communicate this to the holder of the plant breeder's right in writing, stating the reasons for his opinion, and shall give him the opportunity to make a public offer under Section 44 within a period of one month and on such conditions as are approved by Our Minister.
2. If an offer is not made pursuant to paragraph (1), the Board shall make the offer with due observance of the instructions given by Our Minister and shall publish it in the Nederlandse Staatscourant at the expense of the holder of the plant breeder's right.
3. Paragraphs (2) to (7) of Section 44 shall apply mutatis mutandis, it being understood that the Board shall follow the instructions of Our Minister in the exercise of the powers defined in those paragraphs.

Section 46

1. A licence shall authorise the licensee to engage in the activities described therein, which activities may not be engaged in, pursuant to paragraph (1) of Section 40, by persons other than the holder of the plant breeder's right.

2. In the absence of provisions to the contrary a licence shall apply for the entire period of validity of the plant breeder's right and shall extend to all the activities for which the authorisation of the holder of the plant breeder's right are required under this Act.

3. A licence granted otherwise than under Sections 43, 44 and 44 shall be entered in the Netherlands Register of Varieties at the request of the licensee. It shall be valid in respect of third parties after it has been registered.

4. A licence shall not be transferable, unless otherwise provided for.

Section 47

Further provisions shall be made by or by virtue of a general administrative order with respect to:

- a. the requests to the Board referred to in this part;
- b. the fixing of the date when the requests referred to in (a) shall be deemed to have been submitted to the Board;
- c. the hearing of interested parties.

Part IV. The Plant Breeder's Right as Part of the Breeder's Property

Section 48

1. A plant breeder's right and the entitlement to the grant of a plant breeder's right are transferable and inheritable.

2. Transfer of a plant breeder's right and the right resulting from an application for a plant breeder's right shall take place by deed.

3. Any reservation regarding the transfer shall be stated in the deed; in the absence of any such statement the transfer shall be unrestricted.

4. The transfer shall not operate in respect of third parties until the deed has been entered in the Netherlands Register of Varieties.

5. Either party shall be entitled to request the Board to make the entry.

Section 49

1. If a plant breeder's right accrues to more than one person collectively, the position of such persons with respect to each other and their position with respect to third parties shall be governed by what they have settled by agreement; their position with respect to third parties shall be so governed only in so far as it is evident from the Netherlands Register of Varieties.

2. If there is no such agreement or if the agreement does not provide otherwise, any person co-entitled to a plant breeder's right shall be competent to exercise the right and to take action against any infringement of that right.

3. Every any person co-entitled to a plant breeder's right shall offer his rights to his co-participants at a reasonable price before alienating them to a third party.

Section 49a

1. The pledge of a plant breeder's right shall take place by deed and shall not operate in respect of third parties until the deed has been entered in the Netherlands Register of Varieties.

2. The pledgee shall be required to elect domicile in The Hague and inform the Board in writing of the election of this domicile. If he has failed to do so the residence of the Board shall be deemed the domicile of his election.

3. Any stipulation in the said deed with regard to the grant of licences shall not take effect until the date of the deed's entry in the Netherlands Register of Varieties. From that date it shall also operate with respect to third parties. Stipulations relating to fees for licences granted before the date of entry shall be valid from the date the person concerned was notified by means of a summons.

4. On termination of the seizure the deed on which the termination is based shall be entered in the Netherlands Register of Varieties.

Section 50

1.If a plant breeder's right is seized, the report of the seizure shall be entered in the Netherlands Register of Varieties and the relevant provisions in the Code of Civil Procedure pertaining to the forced sale or garnishment of immovable property shall apply mutatis mutandis it being understood that in the report of the seizure instead of the nature and location of the property reference shall be made to the plant breeder's right.

2. After the entry of the report the holder of a plant breeder's right whose right has been seized shall not alienate or encumber it, or place it under supervision and shall grant no licences.

3. Any licence fees not paid before the entry was made shall be included in the seizure ipso jure after a writ to that effect has been served upon the licensee.

The licence fees shall be paid over to the seisor to serve as payment along with the proceeds from the plant breeder's right referred to under Section 50a, paragraph (2) on the basis of the priorities of the various claims, provided the licensee has expressly been informed. Sections 475c, 476 and 478 of the Code of Civil Procedure shall apply mutatis mutandis.

3. On termination of the seizure the title on which the termination is based shall be entered in the Netherlands Register of Varieties.

4. The entry of the report of the seizure can be deleted from the Netherlands Register of Varieties:

a) by virtue of a writ presented for entry stating that the seizure shall be terminated or declared null and void at the request of the seisor;

b) by virtue of a written judicial decision presented for entry stating that the seizure shall be terminated.

5. Sections 504a, 538-541, 726, paragraph (2) and 727 of the Code of Civil Procedure shall apply mutatis mutandis to the seizure of a plant breeder's right.

Section 50a

1.The sale of a plant breeder's right that has been seized by a pledgee or a seisor to serve as payment shall be public and shall take place in the presence of a solicitor. Sections 508, 509, 513, paragraph (1), 514, paragraphs (2) and (3), 515-519 and 521-529 of the Code of Civil Procedure shall apply mutatis mutandis, it being understood that what is said with reference to mortgages or mortgage holders shall apply to the pledges and pledgees attached to the plant breeder's right.

2. Sections 551 and 552 of the Code of Civil Procedure shall apply mutatis mutandis to the distribution of the proceeds.

Part V. Duration and Claiming of the Plant Breeder's Right

Section 51

The duration of the a plant breeder's right shall be at least twenty years from the date of registration of the plant breeder's right. The duration shall be established by general administrative order for the various species.

Section 52

1. The holder of a plant breeder's right may renounce it.

2. The renunciation of a plant breeder's right shall be by deed only; the deed shall be entered in the Netherlands Register of Varieties.

3. The deed shall not be entered if there are any persons who, according to documents entered in the Register, have obtained rights on the plant breeder's right or licences, or have instituted legal proceedings relating to the right, and if those persons have not agreed to the renunciation.

4. A plant breeder's right shall lapse as from the date on which the deed is entered in the Netherlands Register of Varieties.

Section 53

1. A plant breeder's right shall lapse ipso jure if the annual fee referred to in Section 38 remains unpaid six months after it became due. The fact that the right has lapsed shall be recorded in the Netherlands Register of Varieties.
2. If the fee is not paid within fourteen days of the date on which the right lapsed, the Board shall remind by registered letter the person recorded in the Netherlands Register of Varieties.
3. If payment is not made within one month after the date on which the right lapsed, all the persons who, according to the documents entered in the Netherlands Register of Varieties, have obtained rights on the plant breeder's right or licences, or have instituted legal proceedings relating to the right, shall be informed of this in writing within fourteen days.
4. Any claim by interested parties that they never received the letters referred to in the preceding paragraph shall not be receivable.

Section 54

1. A plant breeder's right shall be declared null and void when it is established:
 - that the variety was not new at the time of the grant of the plant breeder's right;
 - that the condition laid down in subparagraph (a) of paragraph (1) of Section 29 was not complied with at the time of the grant of the plant breeder's right;
 - that, where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the conditions laid down in subparagraphs (b) and (c) of paragraph (1) of Section 29, were not complied with at the time of the grant of the plant breeder's right;
 - that the breeder's right has been granted to a person who is not entitled to it by or by virtue of this Act unless it is transferred to the person who is so entitled.
2. Any interested party, Our Minister or any person or persons acting on his behalf may at any time submit to the Board a substantiated petition that a plant breeder's right be declared null and void.
3. Annulment of a plant breeder's right deprives the plant breeder's right and any rights derived from it of any further legal implications.

Section 55

1. A plant breeder's right can be claimed in its entirety or partly if it was granted to a person who was not entitled to it or was not alone entitled to it pursuant to Sections 30, 31 or 32.
2. The right to claim a plant breeder's right shall accrue to the person who, pursuant to the said sections, has a full or partial entitlement to the pursuant to the plant breeder's right.
3. The said right shall lapse five years from the date on which the plant breeder's right was registered.
4. The claim shall be made by submitting a substantiated petition to the Board.
5. Licences obtained in good faith before the entry referred to in paragraph (1) of Section 56 was made, shall remain valid in respect of the new holder of the plant breeder's right, who shall be entitled to the fees payable for the licences.

Section 56

1. A request that a plant breeder's right be declared null and void and a request for the award of a claim, and any refusal or withdrawal of such requests, shall be entered in the Netherlands Register of Varieties.
2. As regards the adjudging of the costs, Sections 56 and 57 of the Code of Civil Procedure shall apply mutatis mutandis as far as possible.
3. The decision of the Board to declare a plant breeder's right null and void or to award a claim shall be entered in the Netherlands Register of Varieties.
4. The declaration that a plant breeder's right is null and void and the award of a claim shall have retroactive effect as from the date of the entry in the Netherlands Register of Varieties referred to in paragraph (1).

Section 57

Further provisions shall be made by or by virtue of a general administrative order with respect to:

- a. the requests and petitions addressed to the Board referred to in this Part;
- b. the fixing of the date on which the requests and petitions referred to under (a) shall be deemed to have been submitted to the Board;
- c. the hearing of interested parties.

Part VI. Decisions of the Board, Appeals to the Board and Appeals to the Court of Justice at the Hague

Section 58

(repealed)

Section 59

1. An appeal against the decisions of the Board made pursuant to the provisions of this Chapter, with the exception of the decisions made pursuant to Sections 54 and 55, may be lodged with the Appeals Department.
2. The appeal may be lodged by the person informed of the decision or his predecessor in title, or if the decision was made at the request of a person other than those referred to, also by the person who made the request.

Section 60

1. An appeal against the final decisions made by the Board pursuant to Sections 54 and 55 may be lodged with to the Court of Justice at the Hague.
2. The appeals to the Court of Justice shall be made by writ of summons within three months of the date of dispatch of the decision of the Board for Plant Breeders' Rights.
3. The writ of summons shall be entered in the Netherlands Register of Varieties within eight days from the date it bears. In the event of the writ of summons not being entered within that period, the appellant shall make good the damage suffered by those who, after that period and before the entry was made, obtained in good faith rights affected by the declaration that the plant breeder's right is null and void or the award of a claim.
4. When a decision on an action for a declaration that the plant breeder's right is null and void or for the award of a claim becomes final, or when the action has been discontinued, a note to that effect shall be entered in the Netherlands Register of Varieties at the request of the first party to make the request.

Section 61

1. When holding its deliberations and passing judgement the Court of Justice shall be composed of three judges and two specialists who are not members of the Judiciary. One of the judges shall preside. Judgements passed when the Court is composed of any other number of persons shall be invalid.
2. We shall appoint the persons being referred to in the preceding paragraph who are not members of the Judiciary. We shall also appoint as many deputies as We may think fit. They shall be referred to as 'advisers' and 'deputy advisers' in the Court of Justice at The Hague.
3. Persons shall not be eligible for appointment as advisers in the Court of Justice at The Hague until they have reached the age of thirty.
4. The advisers and deputy advisers shall be appointed for a period of five years. They shall be eligible for re-appointment. They may be discharged by Us at their request.
5. The advisers and deputy advisers shall be sworn in before they enter upon their duties.
6. The advisers and deputy advisers shall be discharged by Us as from the first day of the month following the month in which they reach the age of seventy.

Section 62
(repealed)

Section 63

1. The provisions of Sections 11, 12, 13, paragraphs (1) to (4), 13a, 13b, paragraph (1), and 14a to 14e of the Act on the Organisation of the Judiciary shall be applicable mutatis mutandis to the advisers and deputy advisers in the Court of Justice at The Hague on the understanding that the High Court shall give to the President of the Court of Justice the opportunity to give oral or written information and to express his opinion on a pending complaint under Section 14a of the said Act, in the case where the complaint is directed against an adviser or deputy adviser.

Section 64
(repealed)

Section 65
(repealed)

Section 66

The President of the Court of Justice at The Hague shall have the power to admonish, either ex officio or at the request of the Public Prosecutor's Office, advisers and deputy advisers in the Court of Justice who act in a manner detrimental to the dignity of their office, neglect their official duties or commit a breach of the obligations imposed on them under Section 67, after having given them an opportunity to be heard.

Section 67

1. The advisers and deputy advisers in the Court of Justice at The Hague shall not, either directly or indirectly, engage in any special interview or conversation, or establish contact with the parties, their Counsels, attorneys or proxies, on any matter which they are dealing with or which they know or have reason to believe will be dealt with by them, nor accept any special instructions, memoranda or other writings regarding that matter.
2. The advisers and deputy advisers shall not do any consulting on or take up the defence of cases which they are dealing with or which they know or have reason to believe will be dealt with by them.
3. The advisers and deputy advisers shall be pledged to secrecy as to opinions expressed in chambers.
4. The advisers and deputy advisers shall not do any consulting on or take up the defence of cases which they are dealing with or which they know or have reason to believe will be dealt with by them.

Section 68

1. Regulations governing the implementation of the provisions of this Part shall be laid down by general administrative order.
2. The travel and accommodation expenses incurred by advisers and deputy advisers in the Court of Justice at The Hague shall be reimbursed and they shall be entitled to further compensation in accordance with rules to be laid down by general administrative order.

Section 69

1. An appeal against the decisions of the Court of Justice may be lodged with the Supreme Court of the Netherlands.
2. Paragraphs (2), (3) and (4) of Section 60 shall be applied mutatis mutandis.

Section 70

Copies of every judicial ruling on plant breeder's rights shall be sent within one month of the date of the ruling and free of charge to the Board by the Clerk of the tribunal which gave the ruling.

Part VII. Making and Publishing the Registrations and Entries in the Netherlands Register of Varieties
Section 71

The registrations referred to in this Chapter and the entries based on decisions against which an appeal may be lodged, shall be made when a decision has been taken on the appeal or if the time limit for an appeal has expired without the appeal having been lodged, or if the appeal has been withdrawn by means of a written notification to that effect addressed to the Board.

Section 72

Notice on the following shall be published in the Nederlandse Staatscourant:

- a. the registrations referred to in this Chapter, except the registrations made pursuant to paragraph (4) of Section 43, paragraph (3) of Section 44 and paragraph (3) of Section 46;
- b. the entries made pursuant to Sections 36, 37, paragraph (1) of Section 53, paragraphs (1) and (3) of Section 56 and paragraph (4) of Section 60.

Chapter V. Lists of Varieties

Section 73

A List of Varieties shall be kept for the cultivated species or groups of cultivated species to be designated by Us, in which shall be entered the varieties and other groups of plants which belong to those cultivated species and whose growing in the Netherlands is deemed important by a committee to be set up by Us or by an institution to be designated by Us.

Section 74

The characteristics and other particulars which in the committee's or institution's view should be made generally available shall be entered when the varieties and the other groups of plants are put on the List of Varieties.

Section 75

1. Entry on the List of Varieties, classification in the List, modification of the classification and removal from the List shall be carried out by the committee or the institution ex officio, subject to the provisions of Section 76.
2. Before making any entry, classifying, modifying any classification or removing any entry from the List of Varieties, the committee or the institution shall carry out an expert's examination or have such an examination carried out.
3. The committee or institution shall not make any entry on the List of Varieties, transfer any entry to the 'for export only' class or remove any entry from the List before it has heard, or at least duly summoned, the holder of the plant breeder's right, the authorised maintainer or the breeder of a variety registered by virtue of paragraph (2) of Section 18.

Section 76

1. The holder of the plant breeder's right in respect of a variety and the breeder of a variety registered by virtue of paragraph (2) of Section 18, may submit a substantiated request to the committee or institution that his variety be put on the List of Varieties.
2. If a variety of an agricultural species has been put in the 'for export only' class, the holder of the plant breeder's right, the authorised maintainer or the breeder of a variety registered by virtue of paragraph (2) of Section 18 may, within three months of the date of publication of the edition of the List of Varieties concerned, submit to the committee a substantiated request that the classification of the variety be modified.
3. Before deciding on a request as referred to in paragraphs (1) and (2) the committee or institution shall carry out an expert's examination or have such an examination carried out.
4. The committee or institution shall not refuse a request before it has heard the petitioner, or at least duly summoned him.

Section 77
(repealed)

Section 78

1. Any person who has received a communication as referred to in Section 75, paragraph (1) and 76, paragraphs (1) and (2) may address a substantiated petition to our Minister.
2. Our Minister shall decide whether any modifications and, if so, what modifications shall be made to the List of Varieties in the light of the petition addressed to him.
3. Our Minister can have modifications made to the List of Varieties ex officio.

Section 79

Our Minister may make further provisions governing the arrangement, composition, classification and publication of a list of varieties, in respect of the particulars referred to in Section 74, and governing the submission of requests as referred to in Sections 76 and 77 and petitions as referred to in Section 78, the examinations and the publication of the results of examinations.

Chapter VI. Trade in Propagating Material and Testing Institutions

Part I. Trade in Propagating Material

Section 80

1. Without prejudice to the right to use a trade name or trademark, propagating material of a variety entered in the Netherlands Register of Varieties shall not be out on the market, further commercialised, and, subject to the provisions of paragraphs (2) and (3), exported otherwise than under the denomination entered in the Register.
2. If, in any other country, a name different from the one registered in this country is prescribed for a variety, propagating material of that variety may only be exported to that country under the denomination prescribed there.
3. Unless paragraph (2) of this Section is applicable, propagating material of a registered variety may be exported to States other than Member States of the Union under the denomination customarily used in the country of importation, provided the denomination registered in this country is also stated.
4. The registered denomination or a similar term shall not be used for other propagating material from the same or a related cultivated species.

Section 81

1. In the case of agricultural species, only propagating material of registered varieties shall be put on the market, further commercialised and exported.
2. It may be provided by general administrative order that the preceding paragraph shall not apply to certain agricultural species.
3. It may be provided by general administrative order that, in the case of horticultural species, only propagating material of registered varieties shall be put on the market, further commercialised and exported.

Section 82

Our Minister may, after having heard the committee or institution referred to in Section 73, decree that notwithstanding the provisions of, or made by virtue of, Section 81, propagating material of groups of plants to be specified by him that are not registered, may also be put on the market, further commercialised and exported.

Section 83

1. It may be provided by general administrative order that in the case of an agricultural species to which paragraph (1) of Section 81 applies, only propagating material of varieties or other groups of plants put on the List of Varieties shall be put on the market, further commercialised and exported.

2. Our Minister shall make further provisions governing the putting on the market and further commercialisation of the propagating material of varieties or other groups of plants entered in the 'for export only' class.

Section 84

1. It shall be specified by or by virtue of a general administrative order what categories of propagating material of varieties belonging to an agricultural species designated by virtue of Section 87 may be put on the market, further commercialised and exported.

2. For technical, plant breeding reasons it may be provided by general administrative order that, in the case of species specified in that order and of the kind referred to in paragraph (1), some categories of propagating material of varieties belonging to those species and specified in that order shall be produced and put on the market exclusively by the holder of the plant breeder's right in respect of the variety concerned or, if there is no plant breeder's right in respect of that variety, by the maintainers designated for the variety.

3. The maintainers shall be designated by the Board. The Board shall designate a single maintainer if this is necessary for technical, plant breeding reasons. The latter shall be obliged to make foundation stock suitable for the production of propagating material available to any person who has expressed a wish to receive it, on terms and conditions to be specified by the Board.

Section 85

Propagating material of a variety registered by virtue of paragraph (2) of Section 18 shall be put on the market, further commercialised and exported only by the breeder of the variety and by any person who has obtained from the breeder foundation stock suitable for the production of propagating material..

Section 86

Propagating material of a group of plants that may not be put on the market pursuant to the provisions of the preceding Sections may nevertheless be put on the market and exported for purposes of testing by or on behalf of the person who, by his own efforts, has developed the group of plants to which the propagating material belongs, provided that the testing institution designated by virtue of Section 87 has given permission.

Part II. Testing Institutions

Section 87

1. It may be provided by general administrative order, with respect to a cultivated species, that only the persons who are members of a testing institution designated for that cultivated species in the general administrative order shall be authorised to engage in the production, storage and processing of propagating material for business purposes other than use on those persons' own premises, and in the putting on the market, further commercialisation, importation, exportation and offering for export of that material, or to have these activities performed for business purposes.

2. It may be provided by the general administrative order referred to in the preceding paragraph that for the purposes of that order seed not intended to be sown for the production of a crop shall also be regarded as propagating material.

3. Our Minister shall have the power to grant dispensation or exemption from the provisions of paragraph (1) in such cases or groups of cases as he may determine.

Section 88

The following shall be required of an institution to be taken into consideration for designation as a testing institution pursuant to the preceding Section:

1. the institution shall, according to its statute:

- a) have been set up to promote by means of tests the putting on the market, further commercialisation and exportation of reliable propagating material;
 - b) be non-profit-making;
 - c) have a board on which the interested parties or the groups of interested parties are adequately represented;
2. the statute of the institution shall provide that:
- a) the statute and the generally applicable rules, and any amendments to them and the repeal thereof, shall require Our Minister's approval before becoming operative;
 - b) the chairman of the Board shall be appointed by Our Minister, after having heard the views of the Board of the testing institution;
 - c) any person shall be admitted as a member upon application;
 - d) if a member does not comply with any of the obligations imposed by the statute or the generally applicable rules referred to under (a), one or more of the following disciplinary measures may be imposed: a reprimand, a fine not exceeding ten thousand guilders, the placing of the member under more stringent supervision for a period not exceeding two years at his own expense, the disciplinary order being published; if, during the five years immediately preceding the non-compliance with any of the obligations referred to above, a member was either put under more stringent supervision at his own expense or was fined twice, he may be suspended from membership for a period not exceeding three years;
 - e) members shall have the right to appeal to an Appeals Tribunal against any decisions other than those referred to in (g), taken by any of the organs of the testing institution within one month of the announcement of the decision; the composition of and the procedure followed by the Appeals Tribunal shall be laid down in regulations governing appeals; generally applicable rules shall not be regarded as decisions;
 - f) Our Minister shall appoint the Chairman, the members and the Secretary of the Appeals Tribunal;
 - g) the members shall have the right to appeal to an Appeals Commission on Testing Matters against decisions taken in connection with testing;
 - h) the testing institution shall submit to Government supervision carried out on behalf of Our Minister in accordance with rules to be laid down by him, and shall undertake to furnish all relevant information and co-operate in every possible manner to ensure that such supervision be effective;
 - i) the Government officers who have to carry out the supervision shall have the right to attend the meetings of the Board and of the Executive Committee, and shall always receive invitations to those meetings together with all the relevant documents.

Section 89

1. The testing institution shall be supervised on behalf of our Minister in accordance with rules to be laid down by him. It shall be obliged to furnish all relevant information and to co-operate in every possible manner to ensure that such supervision be effective.
2. The testing institution shall supply annually the holder of a plant breeder's right in respect of a variety of an agricultural species, at his request, with a list of members who have produced propagating material of his variety, stating the quantities concerned, and shall, if so requested, assist him in collecting the licence fees.

Section 90

1. The Appeals Tribunal referred to in subparagraph (e) of paragraph 2 of Section 88 shall have absolute discretion when judging the decisions referred to in that Section taken by any of the organs of the testing institution.
2. Judgements of the Appeals Tribunal shall have the force of binding recommendations.

Section 91

1. Without prejudice to the powers of the production and industrial boards as referred to in paragraph (4) of Section 66 of the Industrial Organisation Act the testing institution shall have the authority to lay down rules with respect to the cultivated species for which it has been designated governing:
 - a) the health, purity and quality of the propagating material;
 - b) the grading, classification, treatment, packing, shipping and description of the propagating material in so far as those factors affect any of the aspects mentioned in (a);
 - c) the use of the documents and distinguishing marks relating to the propagating material which are required for one or more of the activities referred to in paragraph (1) of Section 87;
 - d) the technical set-up and the management of the business, and also the technical aspects of conducting it;
 - e) the checking of the observance of the rules concerning the matters referred to in (a), (b), (c) and (d) and the testing of the propagating material;
2. In so far as the rules concerning the matters referred to in (a), (b), (c) and (d) relate to exports, Our Minister may decree that the checking of their observance shall be entrusted to an authority to be designated by him.
3. Our Minister may quash the rules laid down by the testing institution concerning the matters referred to in (a), (b), (c).
4. If no testing institution has been designated or if an institution cannot provide the rules of the kind described in paragraph (1) or cannot provide all of them, such rules may be provided by or by virtue of a general administrative order.
5. A general administrative order issued in the circumstance referred to in paragraph (4) shall be repealed in so far as the testing institution designated by virtue of Section 87 has made the necessary rules and these rules have been approved by Our Minister.
6. The decree referred to in paragraph (2) shall be published in the Nederlandse Staatscourant.

Section 92

1. The testing institution shall forbid a member to commercialise propagating material and shall prohibit trade in that material if it finds that the material does not belong to the group of plants the member claimed it belonged to when he offered it, or that it does not comply with the rules made by virtue of Section 91.
2. In such special cases or groups of cases as he may specify Our Minister may grant dispensation or exemption from the rules made by virtue of Section 91, either on conditions to be specified by him, or not.
3. If it is evident from a member's method and the results it produces that the production, storage and processing of the propagating material are not being carried out with sufficient adequacy, the testing institution may defer the testing of that member's propagating material for a period not exceeding three years, as often as is necessary.

Section 93

Our Minister shall determine the distinguishing marks, signs, pieces of evidence and seals to be prescribed under this Act.

Chapter VII.

Section 94

(repealed)

Chapter VIII. Penal Provisions

Section 95

1. If the findings in a civil or criminal case depend on the determination of the variety to which a group of plants must be deemed to belong, the Board shall be heard. The Board's advice shall give the grounds on which it is made.
2. The Board shall give absolute priority to the matter referred to in paragraph (1).

Section 96

1. Any person intentionally acting in contravention of the provisions made by or by virtue of Sections 40, 41, paragraph (1), 41a, 41b, 80, 81, 83-85, 87 and 91, paragraph (4), Article 13, paragraph (2), Article 17, paragraphs (1) and (2) and Article 18, paragraph (3) of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ No L 227) shall be guilty of a criminal offence.
2. Any person acting in contravention of the provisions made by or by virtue of Sections 40, 41, paragraph (1), 41a, 41b, 80, 81, 83-85, 87 and 91, paragraph (4), Article 13, paragraph (2), Article 17, paragraphs (1) and (2) and Article 18, paragraph (3) of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ No L 227) shall be guilty of an offence.

Section 97

Amended in other regulations.

Section 98

In the event of non-compliance with an obligation as referred to in subparagraph (d) of paragraph (2) of Section 88 resulting in an economic offence as well, the Public Prosecutor shall, after having consulted the testing institution, decide whether or not disciplinary action shall be taken by the testing institution in respect of the offence.

Chapter IX. Transitional and Final Provisions

Section 99

1. The contents of the Central Register of Varieties referred to in Section 2 of the Plant Breeder's Ordinance, 1941, at the time of the entry into force of this Act, shall as from that date be absorbed ex officio by the Netherlands Register of Varieties. Plant breeders' rights obtained by entry in the Central Register of Varieties and any plant breeders' rights valid at the time of the entry into force of this Act, shall remain effective, on the understanding that, notwithstanding the provisions of paragraph (3) of Section 37, those plant breeders' rights shall be dated as from the date of entry of the variety in the Central Register of Varieties and that, notwithstanding the provisions Section 51, the validity of these rights shall be twenty-five years, and for roses seventeen years.
2. The provisions of Section 7, paragraph (2), item 2^e, 40 to 44 and 46 of the Plant Breeder's Ordinance, 1941, shall remain applicable to varieties to which the provisions of Section 7, paragraph (2), item 2^e, or Section 46 of that Decree were applicable at the time of the entry into force of this Act, notwithstanding the provisions made by or by virtue of this Act, until July 1st of the year following the year in which this Act enters into force or until such later date as shall be specified by general administrative order. Our Minister shall ensure that at the time when the aforementioned Sections of the Plant Breeder's Ordinance, 1941, cease to be applicable to any variety of potato which had been recorded in the Central Register of Varieties for five years or more at the time of the entry into force of this Act, licenses shall become operative for that variety, by virtue of a public offer made in the manner described in Section 45, for the remainder of the validity of the plant breeder's right.
3. The lists of varieties drawn up by virtue of Section 31 of the Plant Breeder's Ordinance, 1941, at the time of the entry into force of this Act, shall as from that date be deemed to be lists of varieties within the meaning of Section 73.

4. The applications and requests pending at the time of the entry into force of this Act before the Board for Plant Breeder's Rights referred to in Section 6 of the Plant Breeder's Ordinance, 1941, shall, as from that date, be ipso jure before the Board in the state in which they are at the time, provided that:

- a. an application for registration in the Central Register of Varieties shall be deemed to be an application for a plant breeder's right, and
- b. an application relating to a variety as referred to in paragraph (2) of Section 18 shall be deemed to be an application for registration of the variety in the Netherlands Register of Varieties, and
- c. a request for the transfer of a registration in the Netherlands Register of Varieties shall be deemed to be tantamount to a claim to a plant breeder's right within the meaning of Section 55.

The Board shall ensure that the necessary entries are made in the Netherlands Register of Varieties.

5. The cases pending at the time of entry into force of this Act before the Plant Breeders' Rights Appeals Tribunal referred to in Section 23 of the Plant Breeder's Ordinance, 1941, shall be ipso jure before the Appeals Department in the state in which they are at the time. The Board shall ensure that the necessary entries are made in the Netherlands Register of Varieties.

6. The cases pending at the time of entry into force of this Act before the Appeals Tribunal, the Court of Justice at The Hague or the Supreme Court pursuant to Sections 23, 24 or 28 of the Plant Breeder's Ordinance, 1941, shall be dealt with and decided on in accordance with the provisions of the Plant Breeder's Ordinance, 1941.

7. The provisions of paragraph (1) of Section 81 shall not apply to varieties appearing on a list of varieties at the time of the entry into force of this Act:

- a. if, at that time, an application as referred to in subparagraph (a) or subparagraph (b) of paragraph (4) is pending with respect to the variety, until such time as the Board has decided on the application;
- b. until one month after the entry into force of this Act, or if within that month an application has been received for a plant breeder's right or for registration in the Netherlands Register of Varieties under paragraph (2) of Section 18, until such time as the Board has decided on the application.

Section 100

Amended in other regulations.

Section 101

1. The following regulations made by the German occupation authorities shall be cancelled:

- a. The Plant Breeders Ordinance, 1941, Verordeningenblad 1942, 8;
- b. the order of the Secretary-General of the Agriculture and Fisheries Department of June 24, 1942, concerning the entry into force of the Plant Breeders Ordinance, 1941, Staatscourant 1942, 120.

2. The following Acts shall be repealed:

- a. The Horticultural Seeds and Planting Material Testing Act;
- b. the Act of December 31, 1920, Stb. 957.

Section 102

1. This Act may be cited as the Seeds and Planting Materials Act.
2. It shall enter into force on a date to be specified by Us.

We direct and ordain that these presents be published in the Staatsblad and that all Ministerial Departments, Authorities, Bodies and Officials whom they may concern diligently implement them.

Given at the Palace of Soestdijk, 6 October 1966.

JULIANA.

The Minister of Agriculture and Fisheries,

B.W. BIESHEUVEL.

The Minister of Justice,

SAMKALDEN.

Published 10 November 1966.

The Minister of Justice,

SAMKALDEN.
