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International Community of Breeders of Asexually Reproduced Ornamental and Fruit Plants

EU Plant Variety Rights in the 21st Century

EU Intellectual Property Rights on Plants:
the point of view of breeders of ornamental and fruit
plants

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Secretary General of CIOPORA

Brussels, 11 October 2011

Agenda

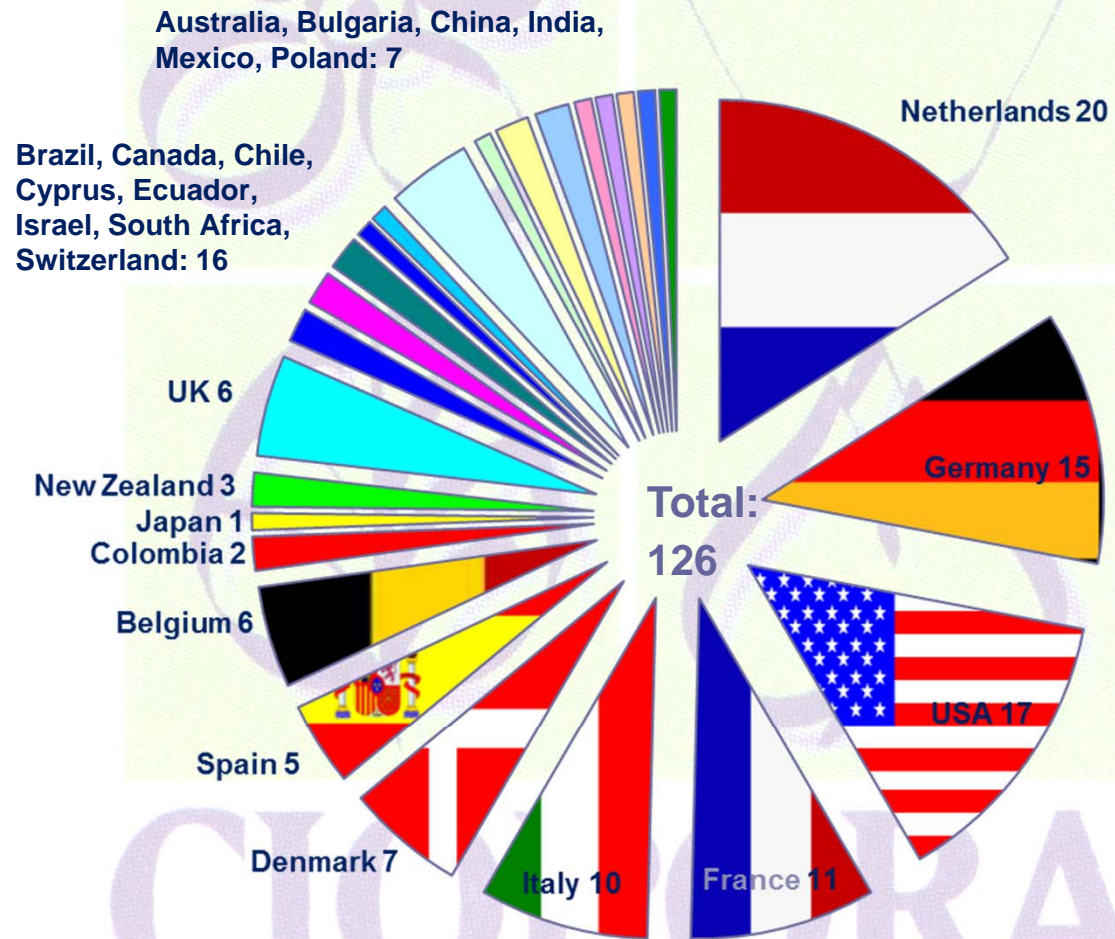
1. Introduction of CIOPORA
2. Fundamental requirements of an effective PBR regime and the situation in the CPVR *acquis*
3. Conclusions

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Information about CIOPORA

- International Community of Breeders of Asexually Reproduced Ornamental and Fruit Plants
- Founded in 1961 (like UPOV)
- Highly specialized in the IP-protection of ornamental and fruit plant innovations by Plant Breeders' Rights, Plant Patents, Patents and Trademarks

CIOPORA membership*



*May 2011

Advising governments on IP- laws

- CIOPORA is advising governments all over the world on IP for plant innovations, such as
 - The minimum content of PBR laws for effective protection for asexually reproduced ornamental and fruit varieties
 - The minimum requirements of laws for the effective enforcement of Plant Breeders' Rights and Plant Patents
 - The interaction between PBR and Trademarks
 - The co-existence of PBR and Patents

CIOPORA's contribution to the CPVR evaluation

- Filling in the survey
- 3 hour personal interview
- 8 pages of detailed comments to the CPVR
- 2 extra pages on harvested material
- 2 extra pages on variety denominations of EDV
- 4 extra pages on the duration of protection
- CIOPORA position paper on EDV

Fundamental requirements of an effective PBR regime

Effective protection of plant varieties requires

- a sufficiently broad scope of the right
- clear wording and clear terms
- effective enforcement tools
- reasonable costs
 - for the grant and maintenance of the title and for the enforcement of the right

Sufficiently broad scope of the right



Sufficiently broad scope of the right

- The CPVR must cover the main products of the variety
- The CPVR covers „**variety constituents**“, i.e. *entire plants or parts of plants as far as such parts are capable of producing entire plants*



- The evaluation report speaks about „propagating material“, a term which does not exist in the scope of the CPVR. A clarification is necessary.

Sufficiently broad scope of the right

- The CPVR must cover the main products of the variety



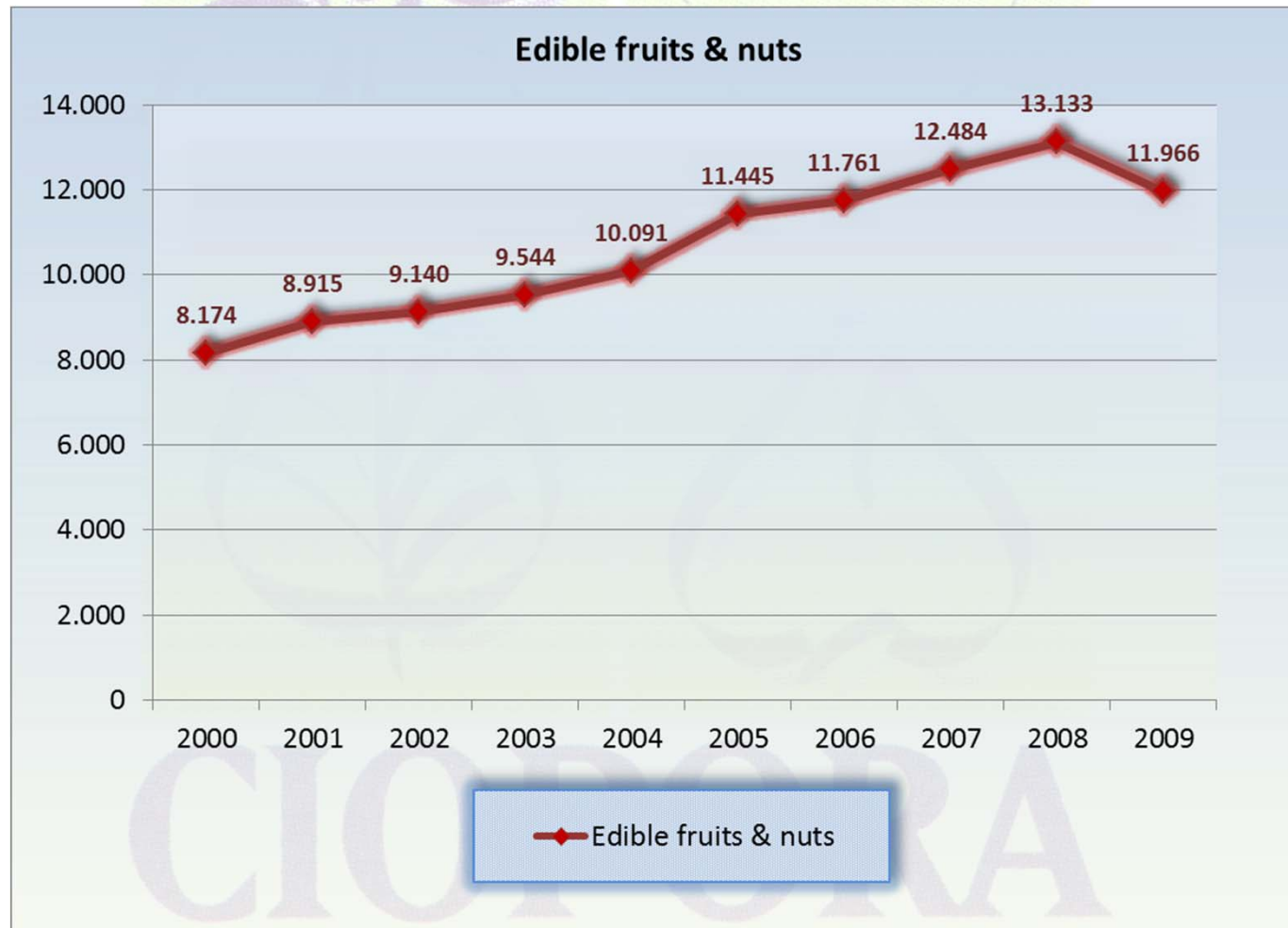
- CIOPORA appreciates the proposal of the evaluator to provide **unqualified protection for harvested material**

Sufficiently broad scope of the right

- Particularly in fruit species the harvested material forms the most important part of the variety.
- The current provision 13 (3) CPVR causes confusion and uncertainties and includes significant loopholes, especially for the trade from outside the EU.

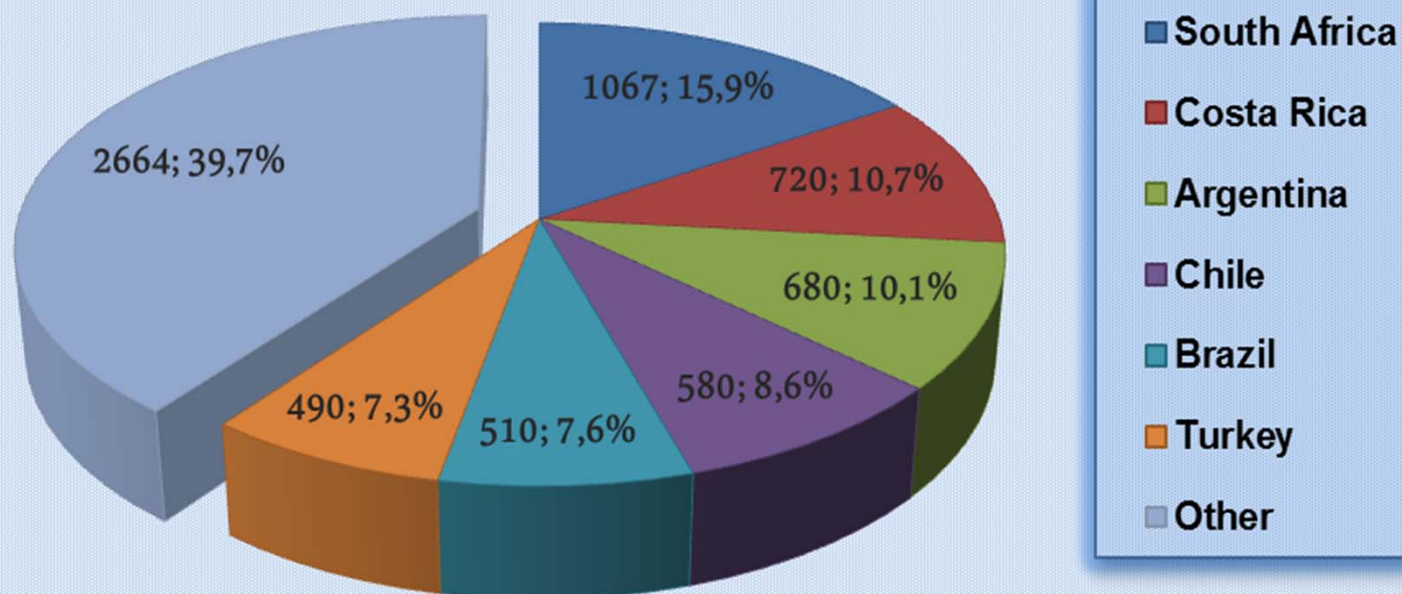
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EU-27 Import Value of Edible Fruits & Nuts- 2000-2009 in Mio €



Main Importers of Fruits into EU-27 - 2009 in Mio. T & %

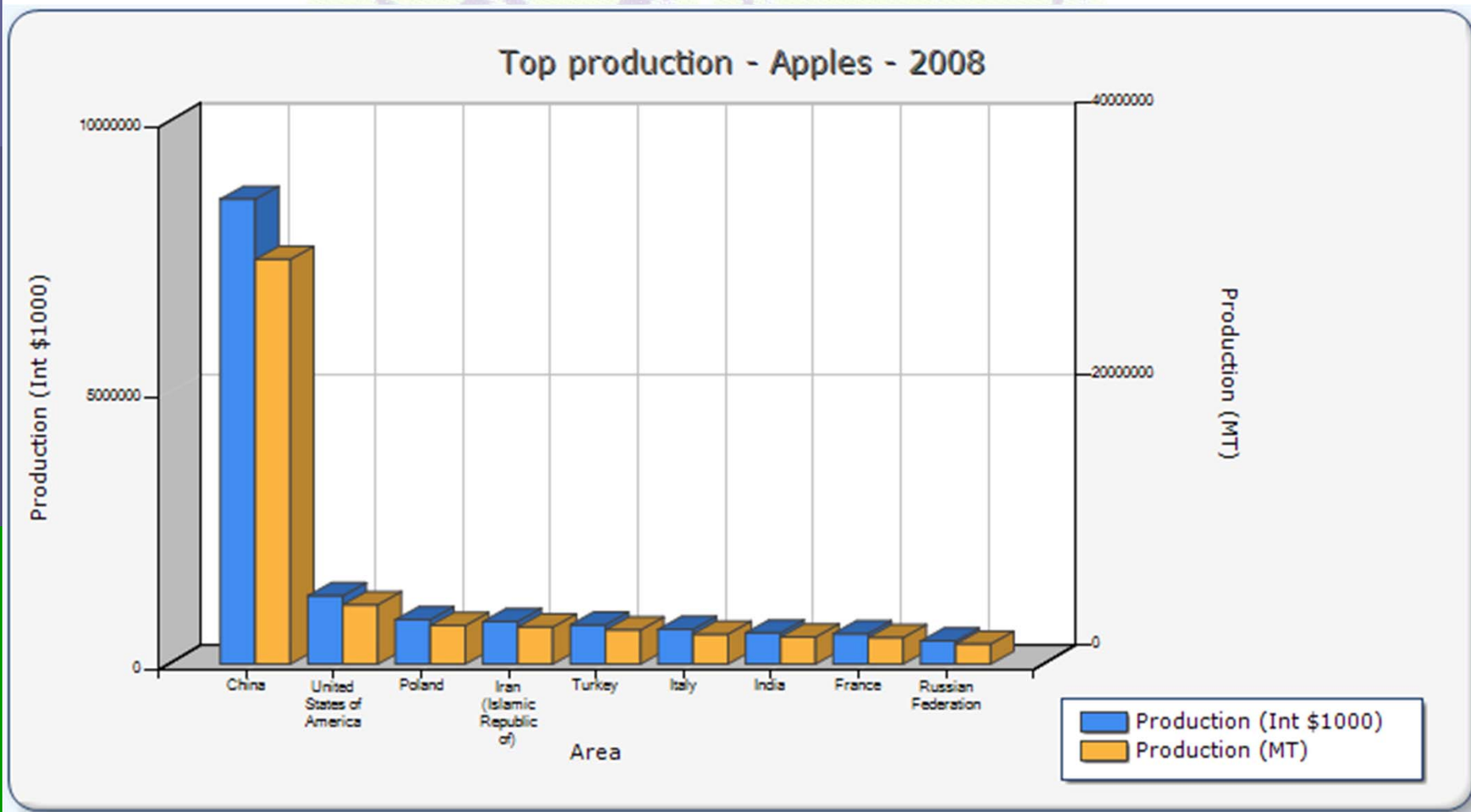
**Fruits: Main Importers into EU-27, 2009
(in 1000 T.; %)**



Sufficiently broad scope of the right

- The import of fruits and nuts into the EU increased from 8 billion EURO in 2000 to more than 13 billion EURO in 2008, i.e. by more than 60%.
- Six countries from outside the EU represent 60% of all fruit imports into the EU (in tons), and 4 of them are bound by the UPOV 1978 Act only.

Productions of Apples 2008



Production of Apples 2008

Rank	Area		Production (MT)				
1	China	1978	29.851.163		50,16%		
2	USA	1991	4.358.710				
3	Poland	EU	2.830.870			4,76%	
4	Iran	Not UPOV	2.718.775		4,57%		
5	Turkey	1991	2.504.490				4,20%
6	Italy	EU	2.208.227			3,71%	
7	India	Not UPOV	1.985.000		3,34%		
8	France	EU	1.940.200			3,26%	
9	Russia	1991	1.467.000				2,40%
10	Chile	1978	1.370.000		2,30%		
11	Argentina	1978	1.300.000		2,18%		
12	Brazil	1978	1.124.155		1,89%		
13	Germany	EU	1.046.995			1,76%	
14	Japan	1991	840.100				
15	South Africa	1978	770.741		1,30%		
16	Spain	EU	687.500			1,16%	
17	Ukraine	1991	719.300				1,21%
18	South Korea	1991	635.000				
19	Pakistan	Not UPOV	582.512		0,98%		
20	Hungary	EU	568.600			0,96%	
	TOTAL		59.509.338	100,00%	66,72%	15,60%	7,81

Source: FAOSTAT

Sufficiently broad scope of the right

- 67% of all apples produced in the world originate from UPOV 1978 countries or Non-UPOV countries.
- Chile is exporting 56% of its apple production, South Africa 46%, Argentina 18%.
- China, e.g., is leading in exporting apples (in quantity, 2008), although the export is less than 4% of the apple production .

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Apples: Financial calculation per hectare, low level:

- One time 666 EUR royalties for the trees (1,666 trees by 0.40 EUR)
- Growers' income from apples:
 - Per year: 13,500 EUR (50 tons, 0.27 EUR/kg)
 - Per life time of the apple trees: 202,500 EUR (15 years)
- Endconsumer-price of the apples:
 - per year: 100,000 EUR (50 tons, 1.99 EUR/kg)
 - per lifetime of the trees: 1,500,000 EUR
- Money earned in the trade-chain: 1,300,000 EUR
- **Portion of royalty at growers income: 0.33%**

Apples: Financial calculation per hectare, high level:

- One time 6,600 EUR royalties for the trees (3,300 trees by 2.00 EUR)
- Growers' income from apples:
 - Per year: 36,000 EUR (80 tons, 0,45 EUR/kg)
 - Per lifetime of the apple trees: 432,000 EUR (12 years)
- Value of the apples:
 - per year: 240,000 EUR (80 tons, 2.99 EUR/kg)
 - per lifetime of the trees: 2,880,000 EUR
- Money earned in the trade-chain: 2,448,000 EUR
- **Portion of royalty at growers income: 1.5%**

Sufficiently broad scope of the right

- Unlimited Protection of Harvested Material is urgently required.
- The notion of exhaustion prevents the title holder from exerting his right on the level of harvested material when such harvested material is grown legally.
- Extension of the unlimited protection to harvested material mainly facilitates enforcement of infringing products, so that honest growers will not be impacted by such extension.

Sufficiently broad scope of the right

- Granting unlimited protection of harvested material has also a major positive wider impact.
- It significantly contributes to the objective of the CPVR as expressed in recital 14 of the CPVR-Regulation that the scope of protection shall be extended in order to take account of trade from countries outside the Community without protection.

Sufficiently broad scope of the right

The granting of unlimited protection for harvested material must be classified as primary issue.

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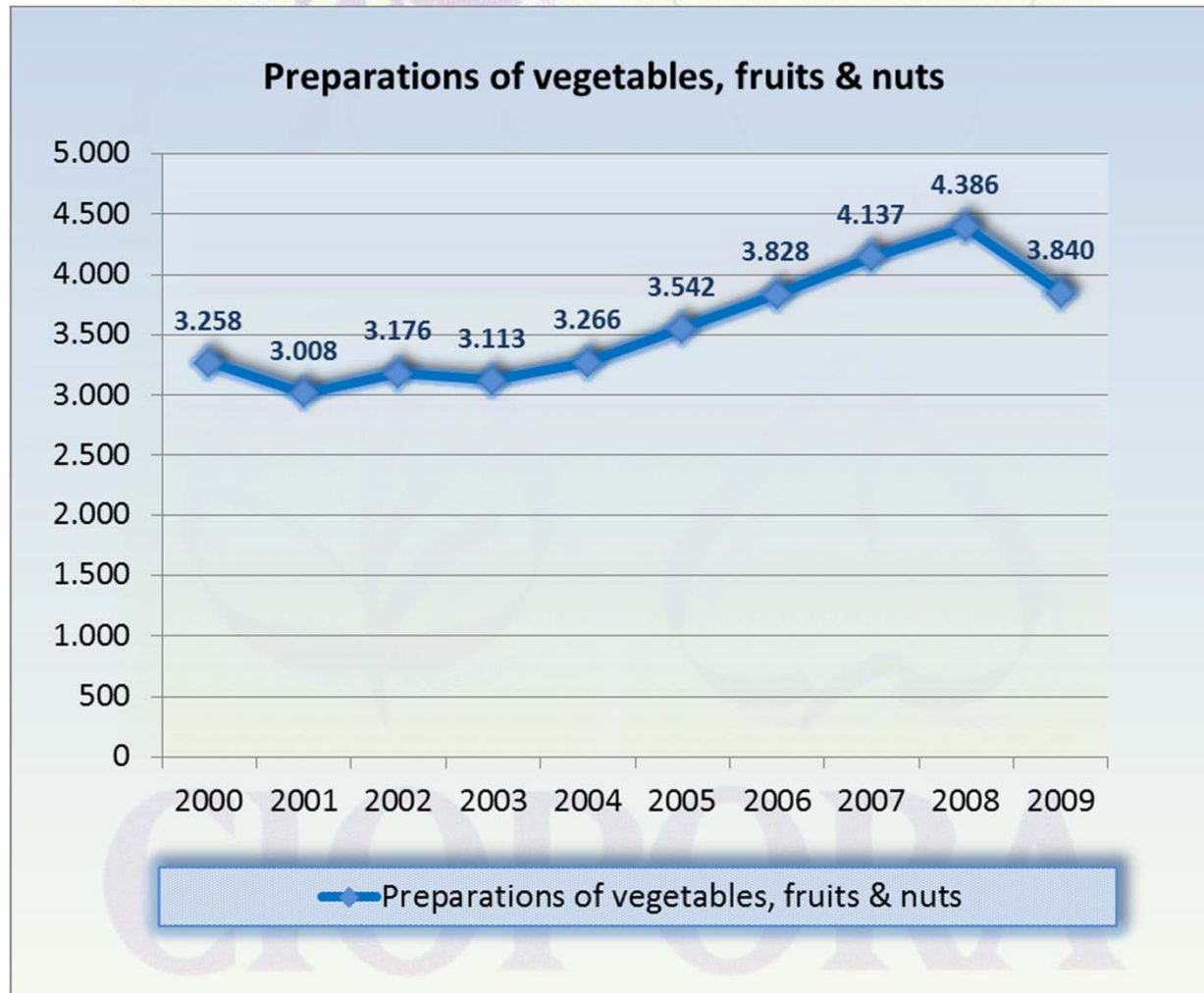
Sufficiently broad scope of the right

- The CPVR must cover the main products of the variety.
- Particularly in fruit species the processed products forms an important part of the variety.



- The current complete lack of protection of processed material in the CPVR does not utilize the full potential of the UPOV 1991 Convention.

EU-27 Import Value- Preparations of vegetables, fruits & nuts - 2000-2009 in Mio €



Sufficiently broad scope of the right

- The import of processed material from vegetable, fruits and nuts increased from 3 billion EURO in 2001 to 4.4 billion EURO in 2008, i.e. by more than 45%.
- The matter is of importance for the breeders of vegetatively reproduced ornamental and fruit varieties.
- Extension of protection for processed material would not necessarily extend to all sectors – its a decision of the legislator.

Sufficiently broad scope of the right

Products that are obtained directly from material of the protected variety

- processed products -

must be protected directly and per se

- at least for vegetatively reproduced ornamental and fruit species.

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Essentially Derived Varieties

- Purpose of EDV:
 - Control over mutations
 - Avoiding of plagiarism
 - Balancing rights of breeders and biotech-inventors
- Current provision on EDV:
 - Unclear wording
 - Provokes disputes and court cases
- Changes are possible in line with UPOV

Provisional Protection

- *Provisional Protection* is the protection between the publication of the application and the grant of the title (Article 95)
- Currently everybody can utilize a new variety until it is protected
- The title-holder only can require reasonable compensation from the user of the variety.
- Different to inventions many varieties are released to the public prior to the grant of the IP-title.

Provisional Protection

- Purpose of the Provisional Protection:
 - Create incentive for breeders to start the exploitation of brand-new varieties at an early stage
 - Allow growers and public to benefit from brand-new varieties
- Current status of the Provisional Protection:
 - Too weak, because “infringers” cannot be stopped
 - No incentive for breeders, particularly in fruit species, where the DUS examination often takes up to 5 years
- Improvement of the Provisional Protection is a primary issue!

Exhaustion of the CPVR

- Exhaustion of the CPVR is too broad and too general.
- Exhaustion must be limited only to the specific field of use which the title holder has licensed.
- Exhaustion must be valid only for the specific territory where the license is effective.

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Effective enforcement tools

- Without effective enforcement tools the Plant Breeders' Right only has a theoretical value.
- The enforcement provisions in the (older) CPVR-Regulation 2100/94 should be brought into line with the (younger) enforcement directive 2004/48.
- CIOPORA appreciates the respective suggestions in the evaluation report.

Effective enforcement tools

- Enforcement of Plant Breeders' Rights is currently too expensive and not affordable for small and medium enterprises.
- Costs of securing evidence, comparative trials, specialized lawyers, court fees, etc. are too high and are not completely compensated by the infringer.
- High costs and long procedures currently prevent most of the breeders from enforcing their rights by way of court proceedings.

Cost of protection

- CPVR must be affordable for all kind of varieties
- Cost of DUS examination for fruit-tree varieties is too high, because of extensive reference collections and long duration of the examination
- Cost of the entire application procedure is too high for varieties with a short commercial life (such as many bedding plant varieties), so breeders abstain from applying for CPVR

Conclusion

- CPVR must protect directly and per se
 - Any material, which is capable of producing entire new plants (“variety constituents”)
 - Harvested material
 - Processed material
- CPVR must contain clear provision on EDV
- CPVR must provide for effective provisional protection
- CPVR must provide for effective enforcement tools
- CPVR and its enforcement must be affordable for all varieties



**We need to use the moment
now**

Thank you

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