

SEMINAR ON THE ENFORCEMENT OF PLANT VARIETY RIGHTS 植物品种权执法研讨会

Overview of enforcement plant variety rights under the UPOV
Convention

依据《国际植物新品种保护公约》的植物品种权执法：概况

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Video Conference – UPOV, Geneva, Switzerland

视频会议 — UPOV, 瑞士日内瓦



OVERVIEW 概况

PBR enforcement under the UPOV Convention 依据《国际植物新品种保护公约》的育种者权利执法

1. Contextual need, exchange of information and experiences

背景需求、信息及经验交流

2. UPOV Council examination of laws of future members

国际植物新品种保护联盟 (UPOV) 理事会对申请成员进行法务审核

3. Explanatory Notes on PBR Enforcement adopted by the UPOV Council

UPOV理事会通过的育种者权利执法问题解释

4. Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular (BMT)

生化和分子生物 (DNA鉴定) 技术工作组 (BMT)

1. Contextual need, exchange of information and experiences

背景需求、信息及经验交流

WHAT ARE THE LESSONS LEARNT AND BEST PRACTICES FOR EFFECTIVE ENFORCEMENT?

关于有效执法，我们吸取的教训、总结的最佳做法是什么？





UPOV MISSION STATEMENT

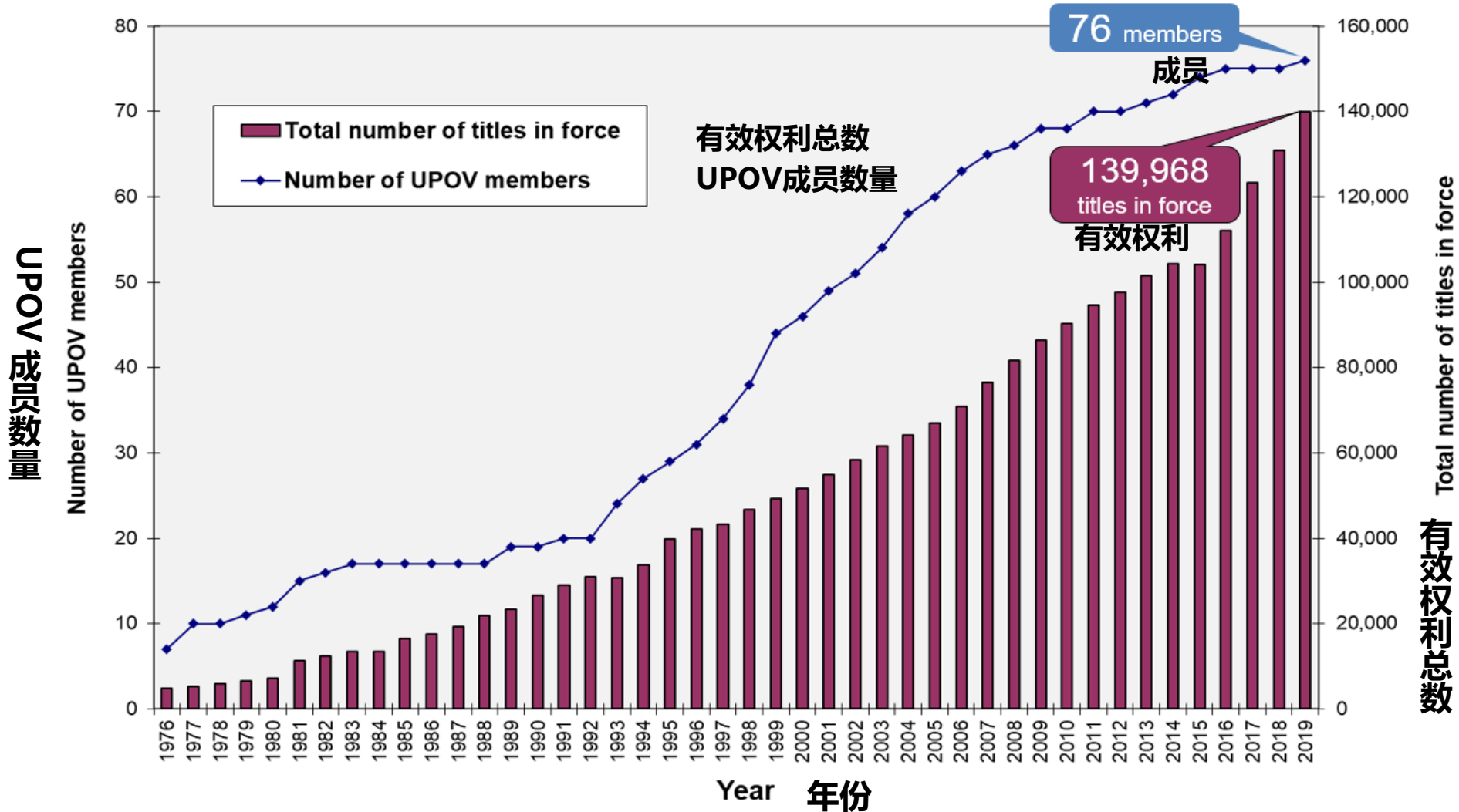
UPOV使命说明

“To provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society”

“创建并推广有效的植物品种保护体系，鼓励开发植物新品种，造福社会”

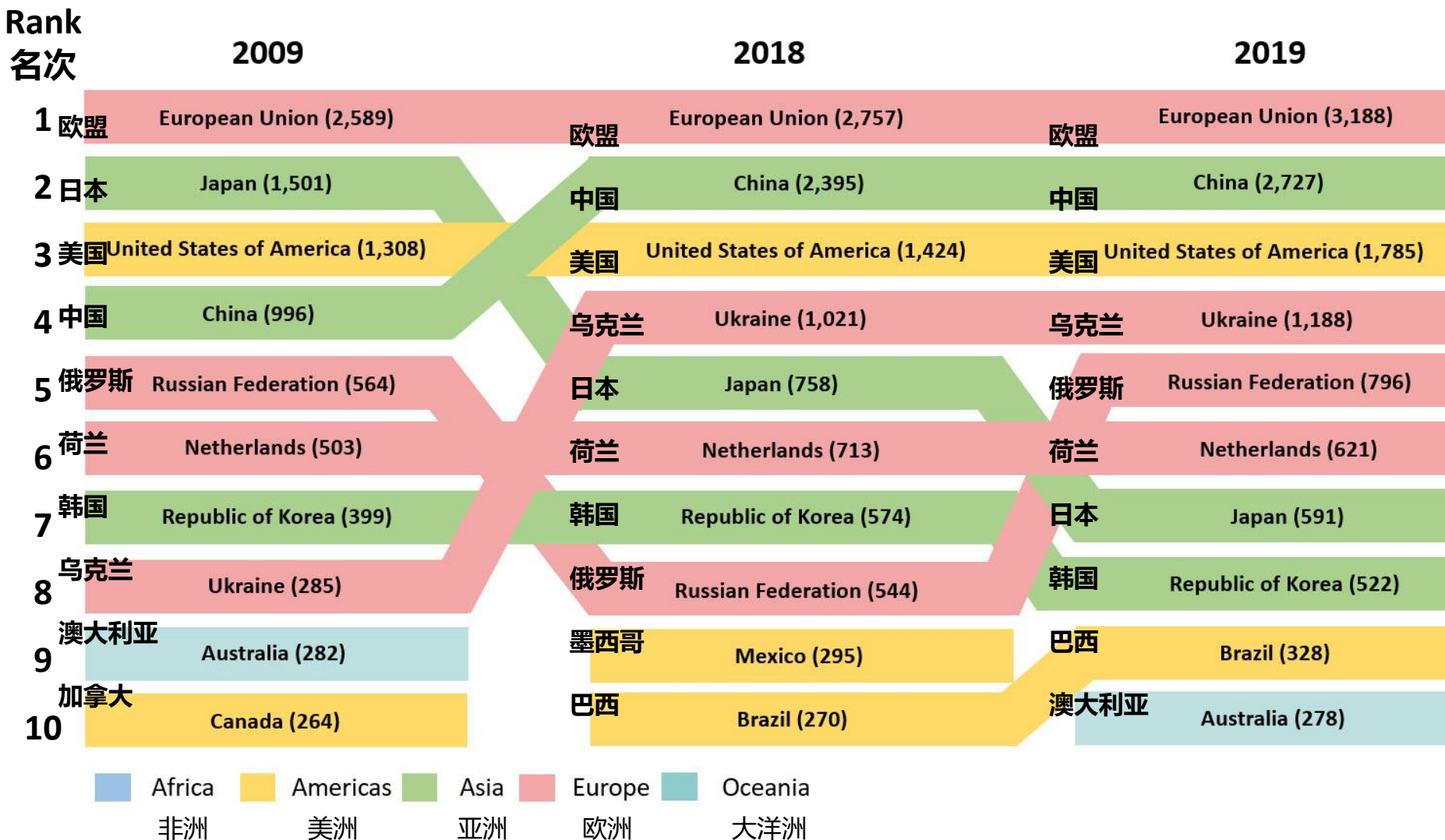
有效权利/UPOV成员数量

Titles in force / Number of UPOV members



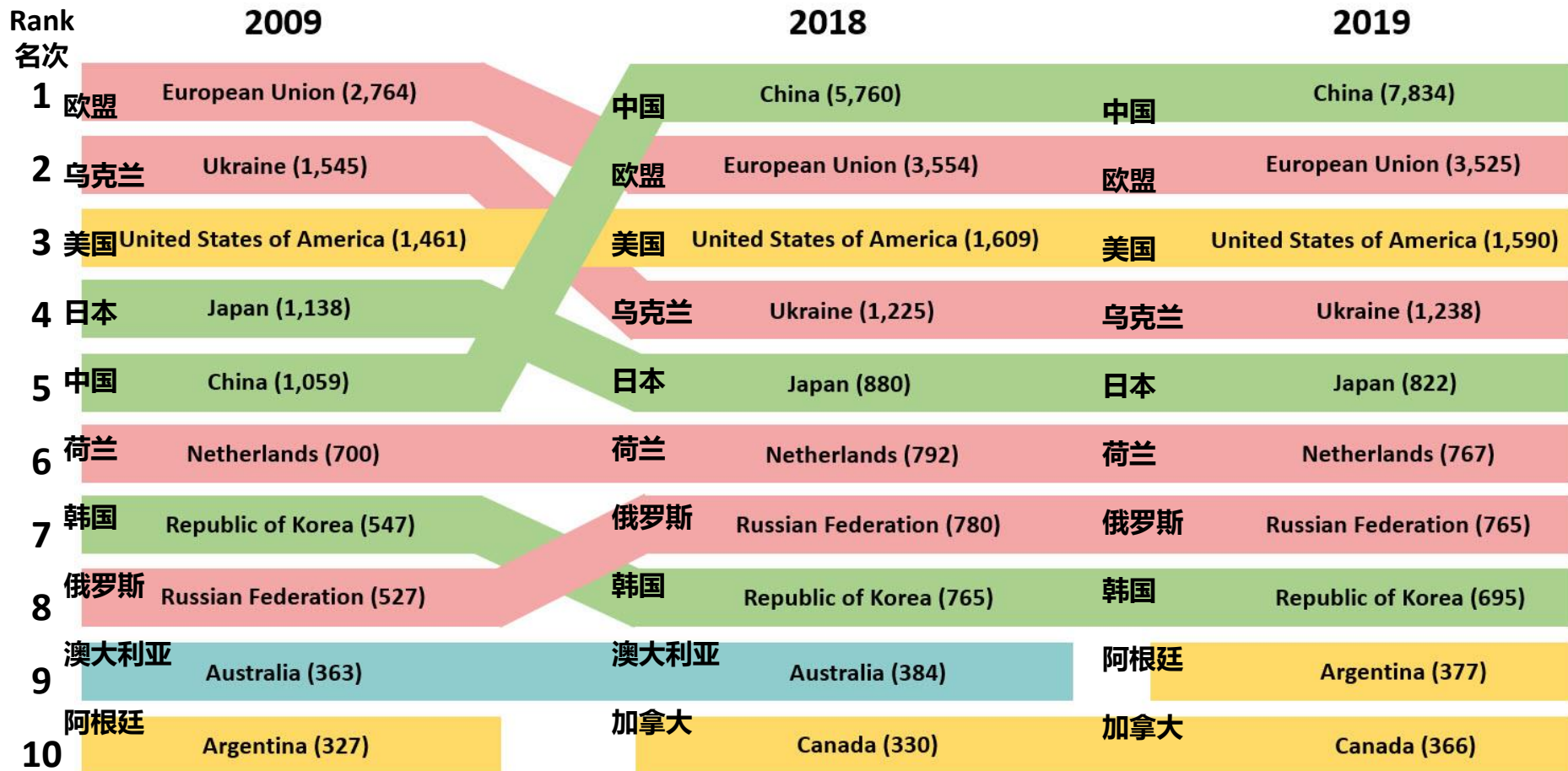
Top 10: UPOV members by number of plant variety protection titles issued

前10名：UPOV成员获批植物品种保护权数量排名



Top 10: UPOV members by number of plant variety protection applications received

前10名：UPOV成员植物品种保护权申请受理数量排名



■ Africa 非洲
 ■ Americas 美洲
 ■ Asia 亚洲
 ■ Europe 欧洲
 ■ Oceania 大洋洲

Top 20: Country of residence of applicants (2019)

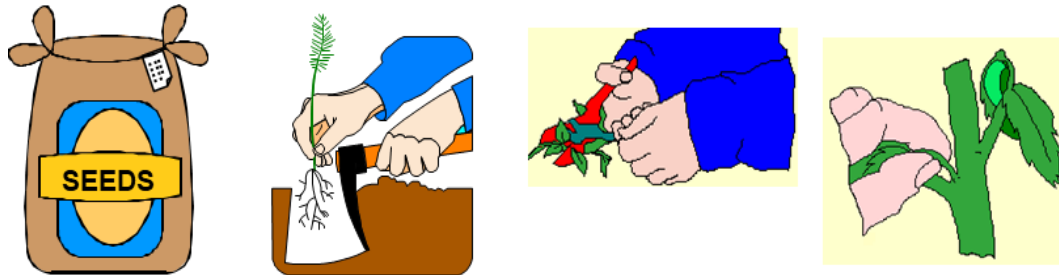
前20名：申请人所在国家（2019年）

名次 Rank	育种者所在国家 Country of residence of breeder		Applications filed as: 申请人身份:					
			居民 Resident			非居民 Non-resident		
			居民 Resident	CPVO (EU member States)	居民 Resident	总数 Total	非居民 Non-resident	总数 Total
1	China	中国	7,323	欧盟植物品种局 (成员国)	-	7,323	40	7,363
2	Netherlands	荷兰	618		1,215	1,833	1,374	3,207
3	United States of America	美国	901		-	901	1,413	2,314
4	France	法国	101		476	577	458	1,035
5	Germany	德国	49		507	556	430	986
6	Japan	日本	559		-	559	182	741
7	Republic of Korea	韩国	590		-	590	22	612
8	Russian Federation	俄罗斯	578		-	578	4	582
9	Ukraine	乌克兰	471		-	471	3	474
10	Switzerland	瑞士	7		-	7	396	403
11	Spain	西班牙	50		129	179	163	342
12	Australia	澳大利亚	146		-	146	179	325
13	Argentina	阿根廷	184		-	184	51	235
14	United Kingdom	英国	28		86	114	118	232
15	Italy	意大利	7		110	117	114	231
16	Israel	以色列	95		-	95	123	218
17	Brazil	巴西	151		-	151	51	202
18	Denmark	丹麦	5		120	125	51	176
19	Turkey	土耳其	145		-	145	11	156
20	Belgium	比利时	2		111	113	28	141
Sum of top 20		前20名合计	12,010		2,754	14,764	5,211	19,975
Others		其他	788		99	887	403	1,290
Total		总计	12,798		2,853	15,651	5,614	21,265
% of Top 20		前20名%	94%		97%	94%	93%	94%

- Plant breeding is long and expensive
- 植物育种耗时耗资

BUT 但是

- Plant varieties can be easily and quickly reproduced
- 植物品种的复制简单快速



- Breeders need effective protection and enforcement measures to recover investment
- 育种者需要有效的保护与执法措施来收回投资



Source: “Mountain Blue Successfully Enforces its PBR”

November 27, 2019 | CIOPORA website

资料来源: “Mountain Blue品牌成功执行植物育种者权利”

2019年11月27日 | 国际无性繁殖园艺植物育种家协会网站

good example on the role of molecular markers for effective enforcement
分子标记物助力有效执法的典型示例

International Seminar on the Enforcement of Plant Breeders' Rights under the UPOV Convention, Hanoi, Viet Nam, 2016

依据UPOV公约开展植物育种者权利执法国际研讨会
越南河内，2016年

Key findings 主要结论

- To obtain the full benefit of the UPOV PVP system it is necessary to have effective enforcement measures
- 要实现从UPOV植物品种保护体系中全面获益，有必要采取有效执法措施
- It is primarily the responsibility of breeders to enforce their rights
- 主要由育种者负责执行育种者权利
- UPOV members are required to provide for appropriate legal remedies for effective enforcement
- UPOV成员必须为有效执法提供适当的法律救济

Cont. Key findings 主要结论 (续)

- **Impact of lack of, or insufficient, effective enforcement**
- **有效执法缺失或不足的影响**
 - Agricultural productivity endangered
 - 农业生产受到危害
 - Livelihood of farmers and rural economies put at risk
 - 农户的生计和农村经济遭遇风险
 - Introduction of improved varieties and genetics delayed
 - 改良品种与遗传资源的引入发生延误
 - Investment in breeding reduced
 - 育种投资减少
 - Disease problems increased
 - 疾病问题增加
 - Reduced tax income
 - 税收降低

challenges and opportunities 挑战与机遇

Some examples of PBR infringements identified

已发现的植物育种者权利侵权示例

- Propagation beyond authorized quantities
- 繁殖量超出授权量
- Unauthorized exports/imports
- 未经授权进/出口
- Packaging of harvested crop (e.g. grain, ware potatoes) for sale as propagating material (e.g. brown/white bagging)
- 将收获作物（例如，谷物、食用马铃薯）打包作为繁殖材料（如棕/白袋）销售
- Use of farm-saved seed in a way that does not comply with relevant legislation
- 农场留种的使用方法不符合相关法律要求
- Sale of a protected variety under another name
- 更名销售受保护品种

Cont. challenges and opportunities 挑战与机遇 (续)

Some examples of PBR infringements identified

已发现的植物育种者权利侵权示例

- Other companies selling propagating material of protected varieties as their own
- 其他公司将受保护品种的繁殖材料作为自有产品出售
- Unprotected inbred lines used to produce protected hybrids
- 使用未受保护的近交系生产受保护的杂交系
- Protected inbred lines used to produce protected hybrids or hybrids that are not granted protection in their own right
- 使用受保护近交系生产受保护杂交系或权利未获批的杂交系
- Unauthorized vegetative propagation of hybrid varieties
- 未经授权对杂交品种进行营养繁殖
- Unauthorized propagation from “stubs” (i.e. plants with tops removed)
- 未经授权使用“残株”繁殖（即切尖）

Cont. challenges and opportunities 挑战与机遇 (续)

- **Challenges breeders are facing 育种者面临的挑战**
 - very easy to reproduce a variety. Cost of reproduction is low
 - 复制品种容易；复制成本低
 - hard to differentiate between illegitimate and legitimate propagating material and very difficult to obtain evidence of infringing material
 - 难以区分非法与合法繁殖材料，获取侵权材料证据难度大

Cont. challenges and opportunities 挑战与机遇 (续)

- **Initiatives endorsed by breeders 育种者赞成的行动**
 - work with end users
 - 与终端用户合作
 - work with relevant authorities (including certification agencies, phytosanitary services, customs, police, tax authorities, anti-fraud agencies, etc.)
 - 与相关部门合作 (包括认证机构、植物检疫部门、海关、警方、税务机关、反欺诈机构等)
 - invest in gaining understanding by farmers
 - 投入资源, 获取农户理解
 - organizations acting on behalf of breeders
 - 组织代表育种者开展行动
 - Investigate possibilities for markers to be included in protected varieties
 - 探索将标记物纳入受保护品种范围的可能性

Experiences of UPOV members demonstrated

UPOV成员的经验

- Benefits of including breeders' rights in other measures for intellectual property enforcement
- 将育种者权利纳入其他知识产权执法措施可产生积极影响
- Role of relevant bodies and authorities in the provision of information to the breeder regarding propagating material of varieties
- 相关机构组织可协助向育种者提供品种繁殖材料信息
- DNA-Profiling has an important role to play (e.g. *prima facie* evidence, suspicion of possible infringement)
- DNA鉴定有重要作用（例如，用于初步证据、侵权嫌疑确认）

2. UPOV Council examination of laws of future members UPOV理事会申请成员进行法务审核

Article 30(1)(i) Implementation of the Convention 第30(1)(i)条 公约的实施

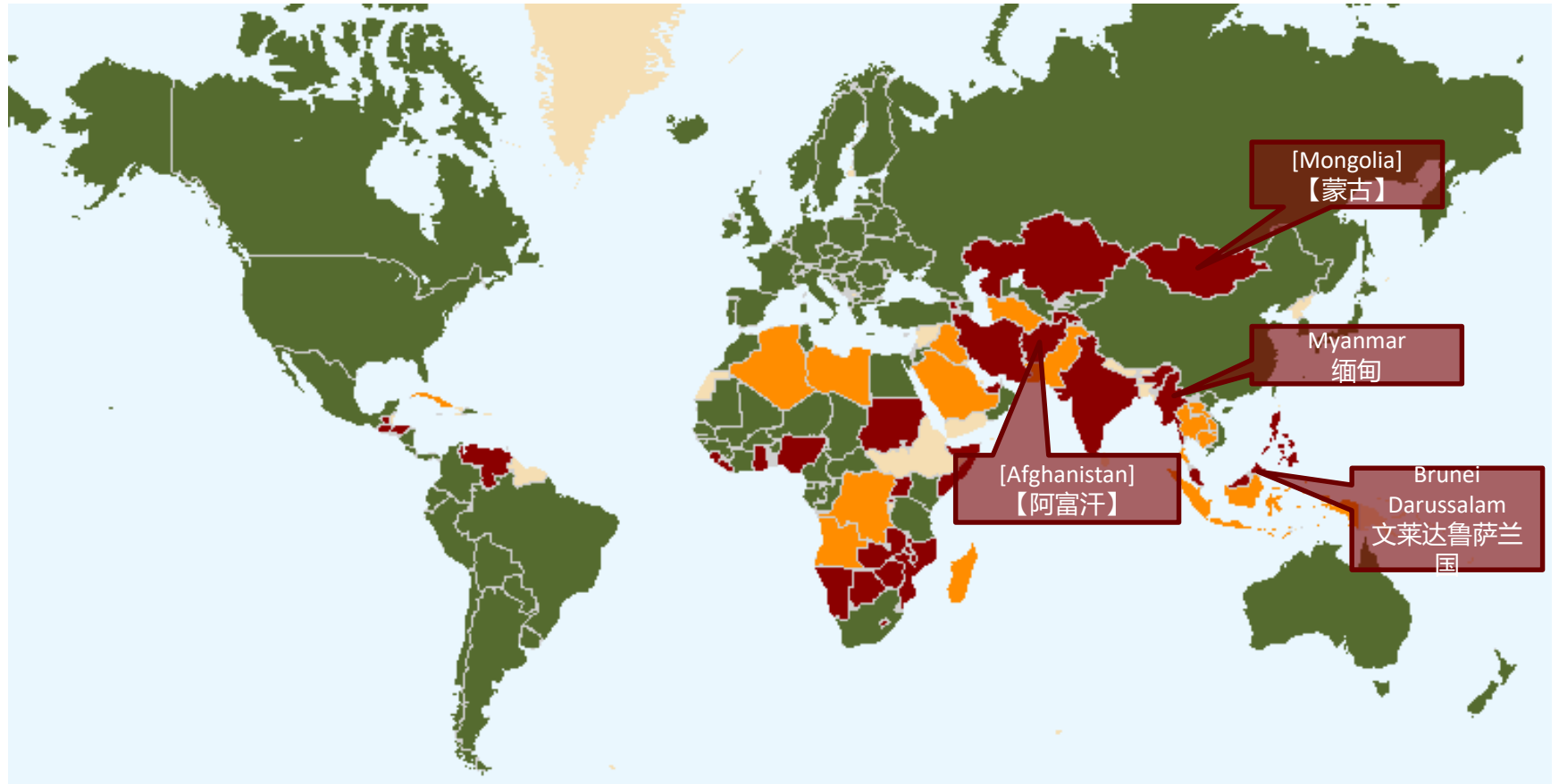
(1) [*Measures of implementation*] 【实施措施】

Each Contracting Party shall adopt all measures necessary for the implementation of this Convention; in particular, it shall: **各缔约方**需采取所有必要措施实施本公约; 特别地, 缔约方应当:

(i) **provide for appropriate legal remedies for the effective enforcement of breeders' rights; [...]** **为育种者权利有效执法提供适当法律救济;**

UPOV STATUS 公约状态

Asian region: Examination of [draft] Laws (2017-2020) future UPOV members (all positive)
亚洲：审查未来UPOV成员进行法务审核【草案】（2017-2020）（均赞同）



The boundaries shown on this map do not imply the expression of any opinion whatsoever on the part of UPOV concerning the legal status of any country or territory
地图所示国界不表明UPOV对任何国家或领土的法律状态发表任何意见

- Members of UPOV (76) (covering 95 States) UPOV成员【76家】（涵盖95个国家）
- Initiating States (20) and Organization (1) 发起国家（20个）和组织（1个）
- States (23) and Organization (1) in contact with the UPOV Office 与UPOV办公室有联系的国家（23个）和组织（1个）

3. Explanatory Notes on PBR Enforcement adopted by the UPOV Council UPOV理事会通过的育种者权利执法问题解释

UPOV/EXN/ENF List of enforcement measures:
UPOV/EXN/ENF 执法措施清单:

- (a) Civil measures 民事措施
- (b) Customs measures 海关措施
- (c) Administrative measures 行政措施
- (d) Criminal measures 刑事措施
- (e) Measures resulting from alternative dispute settlement mechanisms 依据替代性争端解决机制形成的措施
- (f) Specialized courts 专门法院

3. Explanatory notes on PBR Enforcement 育种者权利执法问题解释

- UPOV Convention requires **members** of the Union **to provide for appropriate legal remedies** for the effective enforcement of breeders' rights
- UPOV公约要求成员为育种者权利有效执法**提供适当法律救济**
- It is a matter for **breeders to enforce their rights**
- 关键在于**育种者需要对自有权利加以执行**
- Non exhaustive **list of enforcement measures**
- 执法**措施**的非穷尽式**清单**

3. Explanatory notes on PBR Enforcement 育种者权利执法问题解释

(a) Civil measures 民事措施

- (i) provisional measures (e.g. collect samples of infringing material from greenhouses) 临时措施 (例如, 从温室收集侵权材料样品)
- (ii) measures to allow a civil action 启动民事诉讼的措施
- (iii) measures to provide damages 提供赔偿金的措施

3. Explanatory notes on PBR Enforcement 育种者权利执法问题解释

(a) Cont. Civil measures 民事措施 (续)

[...]

(iv) destruction or disposal of infringing material 销毁或
处置侵权材料

(v) payment by the infringer of the expenses (e.g.
attorney's fees); 侵权人承担费用 (例如, 律师费)

(vi) information on persons producing and distributing
infringing material 侵权材料生产人与分销人的信息

3. Explanatory notes on PBR Enforcement 育种者权利执法问题解释

(b) Customs measures 海关措施

Importation 进口

(i) suspension of the release into free circulation, forfeiture, seizure or destruction of infringing material 暂停放行至自由流通区；没收、扣押或销毁侵权材料

Exportation 出口

(ii) suspension of the release of the infringing material destined for exportation 暂停放行待出口的侵权材料

3. Explanatory notes on PBR Enforcement 育种者权利执法问题解释

(c) Administrative measures 行政措施

- (i) provisional measures 临时措施
- (ii) measures to prohibit the committing, or continuation of the committing, of an infringement 禁止侵权或继续侵权
- (iii) destruction or disposal of infringing material 销毁或处置侵权材料
- (iv) information on persons producing and distributing infringing material 侵权材料生产人与分销人的信息

3. Explanatory notes on PBR Enforcement 育种者权利执法问题解释

(c) Cont. Administrative measures 行政措施 (续)

- (v) forfeiture, seizure of infringing material 没收、扣押侵权材料
- (vi) testing and certification authorities to provide information to the breeder regarding propagating material of his varieties 检测与认证机构向育种者提供与其品种繁殖材料相关的信息
- (vii) sanctions or fines for non-compliance with provisions on, or misuse of, variety denominations 对不遵守品种名称规定的行为或滥用品种名称的行为实施制裁或罚款

3. Explanatory notes on PBR Enforcement 育种者权利执法问题解释

(d) Criminal measures 刑事措施

cases of [willful] violation of the breeder's right
[on a commercial scale]

【以商业规模】 【故意】 侵犯育种者权利的案例

3. Explanatory notes on PBR Enforcement 育种者权利执法问题解释

(e) Measures resulting from alternative
dispute settlement mechanisms 依据替代性
争端解决机制形成的措施

arbitration, mediation, etc...
仲裁、调解等

Explanatory notes on PBR Enforcement 育种者权利执法问题解释

(f) Specialized courts 专门法院

for matters concerning breeders' rights
处理涉及育种者权利的问题

- 4. UPOV Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular (BMT)
- 生化与分子学技术（特别是DNA鉴定）工作组

-use of biochemical and molecular techniques for: 将生化和分子生物学技术应用于:

- i. PBR enforcement 植物育种者权利执法
- ii. assessment of Essentially Derived Varieties 评估实质性衍生品种
- iii. variety identification 品种识别

USE OF MOLECULAR MARKER TECHNIQUES IN ENFORCEMENT OF BREEDERS' RIGHTS IN THE REPUBLIC OF KOREA

韩国将分子标记物技术用于育种者权利执法活动

Presentation at the BMT, 2018, Uruguay (BMT/17/14 Rev.)

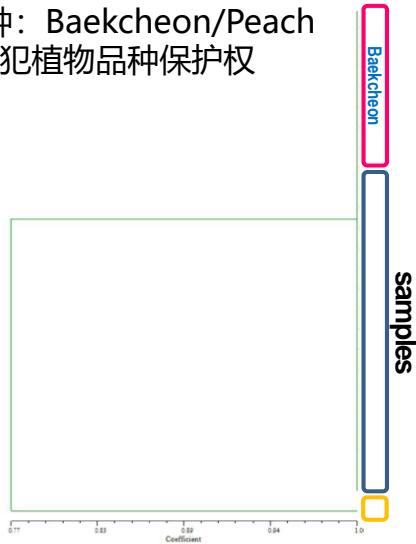
在2018年乌拉圭BMT会议上的讲座 (BMT/17/15/Rev.)

● Infringement of PVP

植物品种保护权侵权

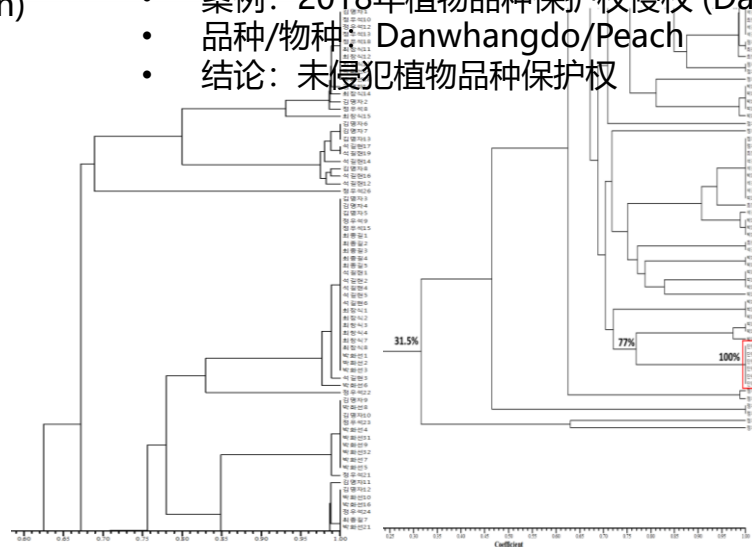
- Case: 2017 Infringement for PVP (Baekcheon)
- Variety / Species: Baekcheon / Peach
- Result: Violation of Plant Variety Protection Right

- 案例：2017年植物品种保护权侵权 (Baekcheon)
- 品种/物种：Baekcheon/Peach
- 结论：侵犯植物品种保护权



- Case: 2018 Infringement for PVP (Danwhangdo)
- Variety / Species: Danwhangdo / Peach
- Content: No Violation of Plant Variety Protection Right

- 案例：2018年植物品种保护权侵权 (Danwhangdo)
- 品种/物种：Danwhangdo/Peach
- 结论：未侵犯植物品种保护权



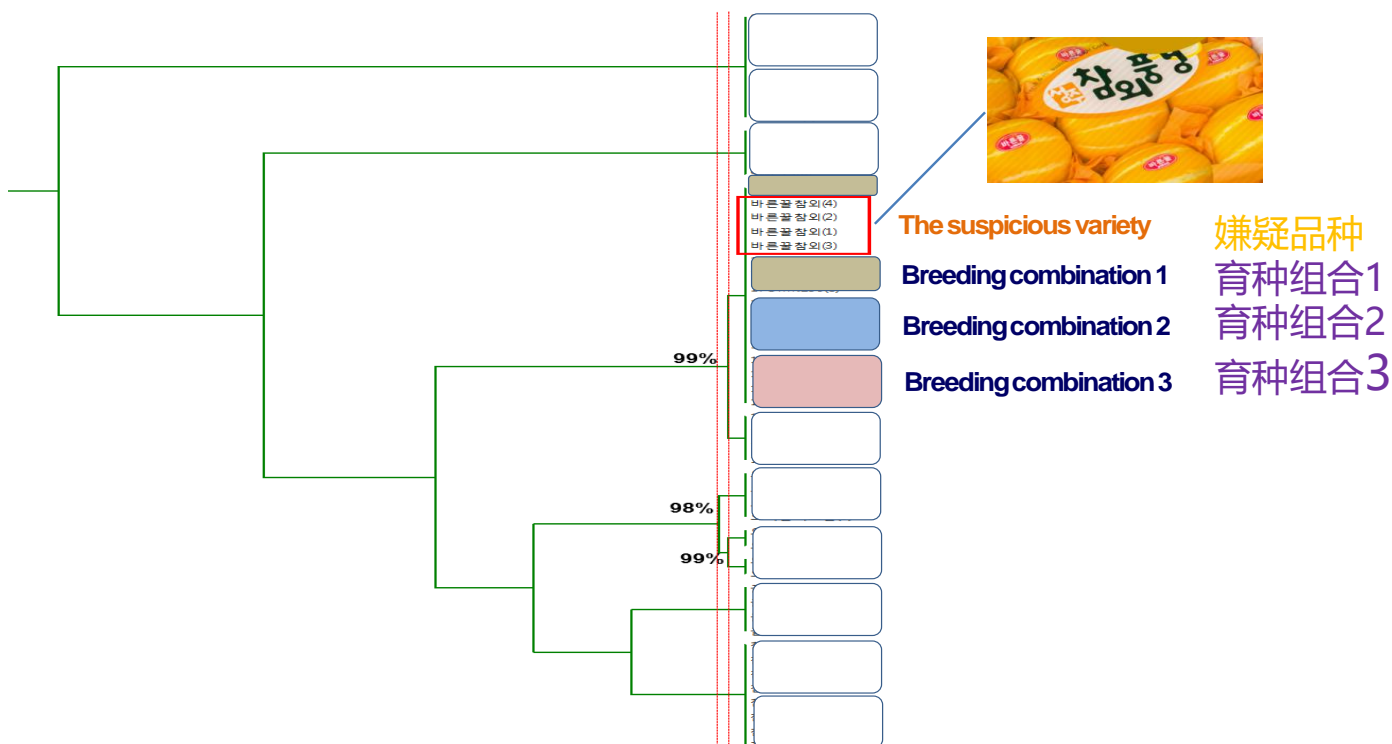
Presentation by the Republic of Korea at the BMT, 2018, Uruguay (BMT/17/14 Rev.)

韩国代表在2018年乌拉圭BMT会议上的讲座 (BMT/17/14/Rev.)

● Infringement of PVP 植物品种保护权侵权

- 2018. 8. Case of technology leakages in breeding of a oriental melon

• 2018年8月, 甜瓜育种技术泄露案



What is coming up in UPOV
on PBR enforcement?

UPOV在植物育种者权利执法领域的下一步动作？

The Administrative and Legal Committee of
UPOV agreed in October to organize a **seminar in the first half of
2021**, to exchange information on matters concerning **harvested
material and unauthorized use of propagating material**

今年10月，UPOV行政与法务委员会同意于**2021年上半年组
织研讨会**，对**收获材料以及未经授权使用繁殖材料**相关事务
开展交流探讨

Questions? 问题?

Thank you for your attention **谢谢**

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