AMERICAN SEED TRADE ASSOCIATION

POSITION STATEMENT ON
INTELLECTUAL PROPERTY RIGHTS FOR THE SEED INDUSTRY

1. One of the most pressing issues of our time is the development of crops that will enable farmers to feed the increasing world population in a sustainable fashion while protecting the environment. In the past, significant investments in crop breeding and development were primarily funded by the public sector. These investments took place through national and international research systems. For various reasons funding for these systems has decreased. There is, therefore, increasing reliance throughout the world upon crop breeding research and product development that is funded by the private sector. Strong intellectual property protection will encourage the investment needed to maintain continued crop improvement required to feed the world and add value to agriculture and society through new products.

2. In recent decades private companies have invested heavily in plant breeding to develop improved cultivars including hybrids. The advent of biotechnology, the entry of additional private companies into the agricultural arena and the subsequent development of crops that are modified with specific traits have contributed even more to agricultural productivity and genetic diversity. However, the improvement of crop germplasm remains an essential activity of plant breeding.

3. One of the key drivers of innovation within any industry is the capital that is invested in research. Research investments are generally long-term and many require significant amounts of capital resources and entail large risks. The level of investment in the seed industry is directly related to the effectiveness of the intellectual property protection available. In order to attract the size and scope of investment necessary to develop improved products, either varietal, hybrid, or from biotechnology, investors must have the opportunity to earn competitive returns on their original investment. Markets or countries that provide weak protection are unlikely to attract substantial investments for research and development.

4. Currently there are several ways that intellectual property resulting from such investment and risk taking can be protected by an inventor. One avenue is to rely on trade secret protection coupled with either licenses or use agreements. Unlike other forms of protection, as long as trade secrets are maintained, the intellectual property never enters the public domain.

5. A second way to protect intellectual property is through utility patents. Utility patents, which in most countries are granted for a term of 20 years from application, provide a broad and strong form of protection that in many ways is preferential to license or use agreements. As a result, utility patents generally encourage investments in all facets of plant breeding including germplasm, specific traits or genes and technologies more than any other form of intellectual property available to investors. However, plant varieties are ineligible for patent protection in countries other than the United States, Japan and Australia. In some countries, such as Mexico, utility patents are available, but patent examination has not been implemented for plant varieties.

6. Another approach to protection, limited to plant varieties, is through Plant Variety Protection. The current UPOV system as enacted in 1991 provides exclusive marketing rights for varieties, their harvested material, and, optionally, for products made directly from them. These rights extend for a fixed period of not less than 20 years from the date of the grant of the right. In some circumstances PVP also provides exceptions for experimental use by third parties for the purpose of plant breeding and new variety development. An optional exception for farmers permits them to save seed for propagating use on their own holdings within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder.

7. Protection of intellectual property through utility patents and a UPOV-based Plant Breeders' Rights (PBR) system ultimately puts the protected invention in the public domain because the protection of the invention is of limited duration. And, in the case of a utility patent, a public deposit is made; an important difference from the

UPOV based PBR system, which puts the protected invention in the public domain for breeding use only if the protected invention is commercialized. Patent and PVP laws also provide a fair balance between the protection afforded and the disclosure to the public to stimulate further research in the field. However, open access to germplasm allowed under UPOV for breeding immediately upon commercialization has the effect of diminishing the developer's opportunity to earn a competitive return on research investments.

8. ASTA believes that, worldwide, affordable intellectual property protection systems, including patents and PVP and other methods of protection including trade secret and contracts, should be available to allow new inventions to be protected in the most appropriate manner as determined by the inventor. The ASTA encourages voluntary licensing of protected intellectual property. However, any licensing should be at the sole discretion of the intellectual property owner consistent with the form of intellectual property associated with the germplasm.

9. ASTA further believes that advancements in genetic technologies such as markers, as well as the need to remain consistent with global agricultural needs, mandate that intellectual property protection systems in the United States and in other countries must be updated and improved if intellectual property protection systems are to continue to serve the public interest by attracting the research investment in plant breeding and biotechnology needed worldwide.

10. ASTA will work with and encourage others to provide global leadership in the improvement of intellectual property systems for the benefit of agricultural productivity and resource conservation. ASTA, in collaboration with other industry associations, will:

a. Work to create affordable intellectual property systems including contracts, patents, trade secrets and PVP/PBR, for owners of intellectual property in all countries.

b. Emphasize the importance and legitimacy of legally enforceable contractual terms in the protection and use of trade secrets including plant germplasm held as a trade secret.

c. Maintain the effectiveness of the utility patent system.

d. Strengthen the UPOV/PVP system by

i. Providing compensation for and/or limits on saved seed in all countries.

ii. Making the EDV system more effective.

iii. Revising the breeders' exemption to include a period of "x" years (where x varies by crop) for which the breeders' exemption would not be available for PVP protected material.

iv. Moving all countries to the most current UPOV system and achieving consistency in administration and enforcement in all countries.

e. Encourage all TRIPs signatory countries to meet their TRIPs obligations including:

i. Protection of germplasm of plant varieties

ii. Patentability of other technologies

iii. Effective enforcement mechanisms

f. Provide for global benefit sharing consistent with the International Treaty on Plant Genetic Resources for Food and Agriculture.

g. Create a PCT like system to facilitate filing of PVP applications.

Approved by the Board of Directors on July 1, 2004