

# International Symposium on PVP

## PVP国际研讨会

### The EDV concept and introduction to cases and practical experiences of EDV

### 实质性派生品种（EDV）的概念、指导和实践经验

***Yolanda Huerta***

*(Legal Counsel and Director of Training and Assistance, UPOV)*

*UPOV法律顾问和培训援助主任*

***July 21, 2021***

*Geneva (via electronic means)*



International Union for the Protection of New Varieties of Plants

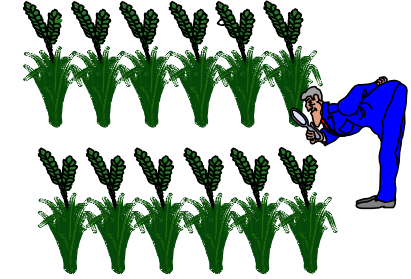
# PREVIEW（预览）

1. Varieties covered by the breeder's right  
受育种者权利保护的品种
2. Essentially Derived Varieties (EDV)  
实质性派生品种（EDV）
  - a) Purpose and concept 目的和概念
  - b) Protection of EDVs EDVs的保护
  - c) Protection of Initial Variety (IV) 原始品种保护(IV)
  - d) UPOV guidance UPOV指导

# VARIETIES COVERED (1991 Act)

涵盖的品种(1991年法案)

(ii) varieties which are **not clearly distinguishable** in accordance with Article 7 from the protected variety  
按照第七条规定与受保护品种无法明显区分的品种



(iii) varieties whose production requires the **repeated use of the protected variety**

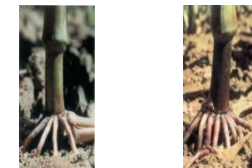
生产中需要重复使用受保护品种的品种

*e.g. hybrids produced using a protected variety*

例如，使用受保护品种生产的杂交种

(i) varieties which are **essentially derived** from the protected variety, **where the protected variety is not itself an essentially derived variety**

实质性派生于受保护品种，而受保护品种本身并不是实质性派生品种，的品种



# Essentially Derived Varieties

实质性派生品种

PURPOSE（目的）：

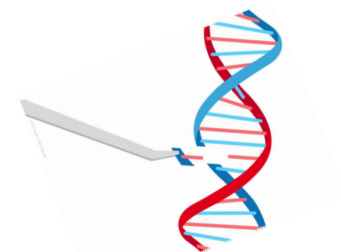
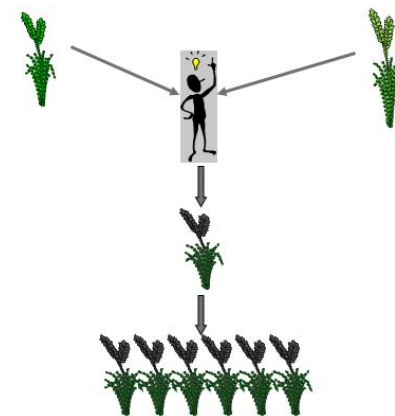
to ensure sustainable plant breeding development by:

确保植物育种的可持续发展:

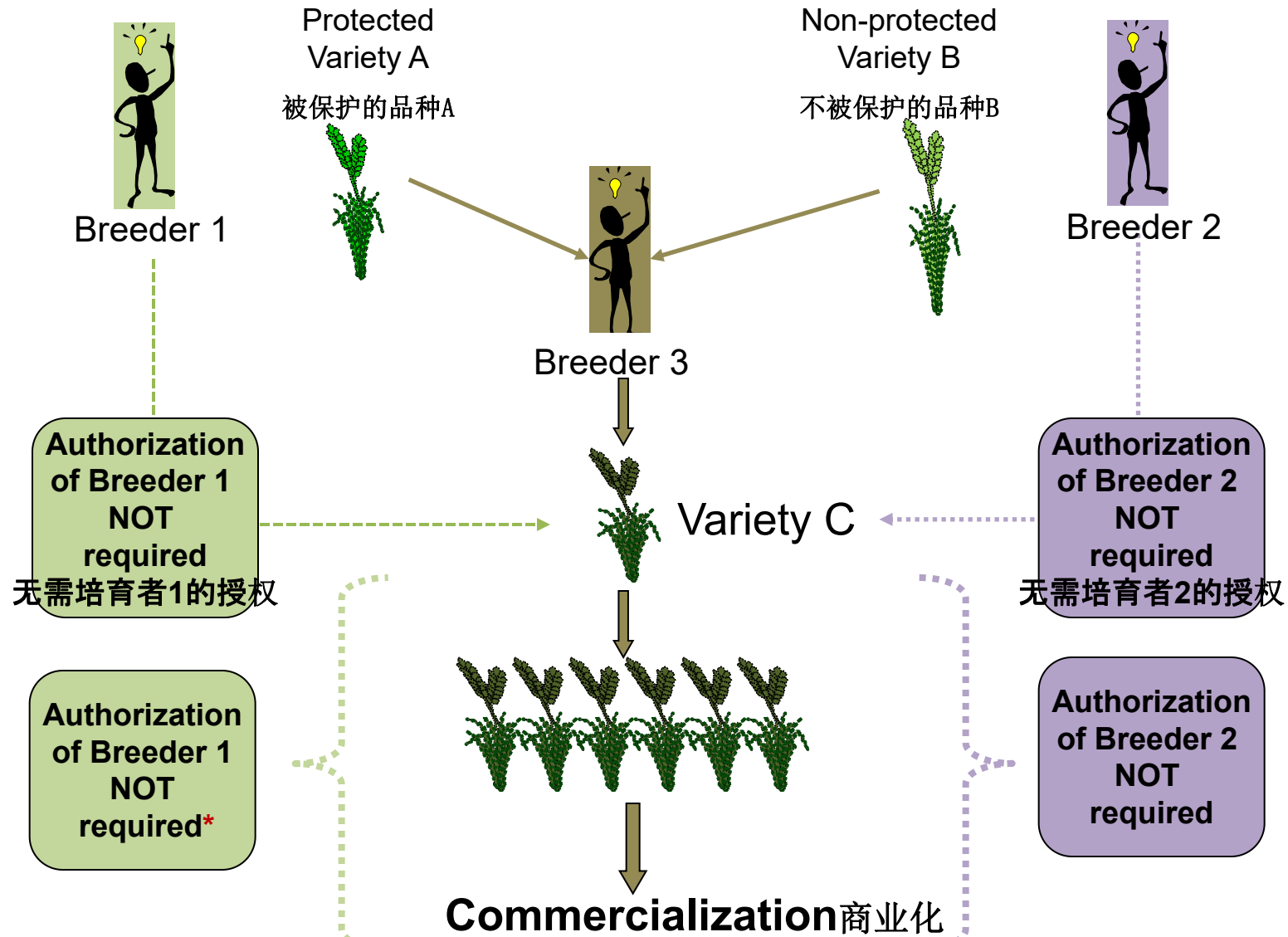
— providing effective protection for the breeder

And 为培育者提供有效的保护 和

— encouraging cooperation between breeders and developers of new technologies such as genetic modification 鼓励育种者和转基因等新技术的开发人员之间的合作



# Breeder's exemption 培育者的豁免权



\* Except for (除了):

- (i) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety, 实质性派生于受保护品种，而受保护品种本身并非实质性派生，的品种。
- (ii) varieties which are not clearly distinguishable in accordance with Article 7 from the protected variety and 按照本规定与保护品种区分不清的品种
- (iii) varieties whose production requires the repeated use of the protected variety. 生产中需要重复使用受保护品种的品种。

# Essentially Derived Varieties

实质性派生品种

## Article 14 第14条

### Scope of the Breeder's Right 育种者的权利范围

(5)[*Essentially derived and certain other varieties*] [实质派生和某些其他种类]

(a) [...]

(b) For the purposes of subparagraph (a)(i), a variety shall be deemed to be **essentially derived from another variety (“the initial variety”)** when

就(a)项第(i)项而言，在下列情况下，一种品种应被视为基本上源自另一种品种(“原始品种”)

(i) 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, 它主要来自最初的品种，或来自本身主要来自原始品种的品种，同时保留原始品种的基因型或基因型组合所产生的基本特征的表达，

(ii) it is **clearly distinguishable** from the initial variety and 它与原始品种和有明显的区别

(iii) **except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics** that result from the genotype or combination of genotypes of the initial variety. 它除因派生行为而产生的差异外，在原始品种的基因型或基因型组合所产生的本质特征的表达上与原始品种一致

# Essentially Derived Varieties

*May be obtained for example by:*

可以通过以下方法获得:

- **selection** of a natural or induced **mutant** 自然选择或诱导突变
- **selection** of a **somaclonal variant** 体细胞无性系变异体的选择
- **selection** of a **variant individual** from plants of the initial variety  
从原始品种的植物中选择变异个体
- **back-crossing** 回交
- transformation by **genetic engineering** 基因工程转化

# PREVIEW

1. Varieties covered by the breeder's right

## 2. Essentially Derived Varieties (EDV)

实质性派生品种 (EDV)

a) Purpose and concept

b) Protection of EDVs EDVs的保护

c) Protection of Initial Variety (IV)

d) UPOV guidance



# Essentially Derived Varieties

**Can EDVs be protected in their own right?**

**EDV能否以其自身的权利得到保护**

- same criteria for protection 保护标准相同

**Can EDVs be commercially exploited?**

**EDV能否被商业化开发?**

**Requires the authorization of the PBR holder of the  
INITIAL VARIETY and the PBR holder of the EDV**

需要原始品种的PBR持有人和EDV的PBR持有人的授权



YES

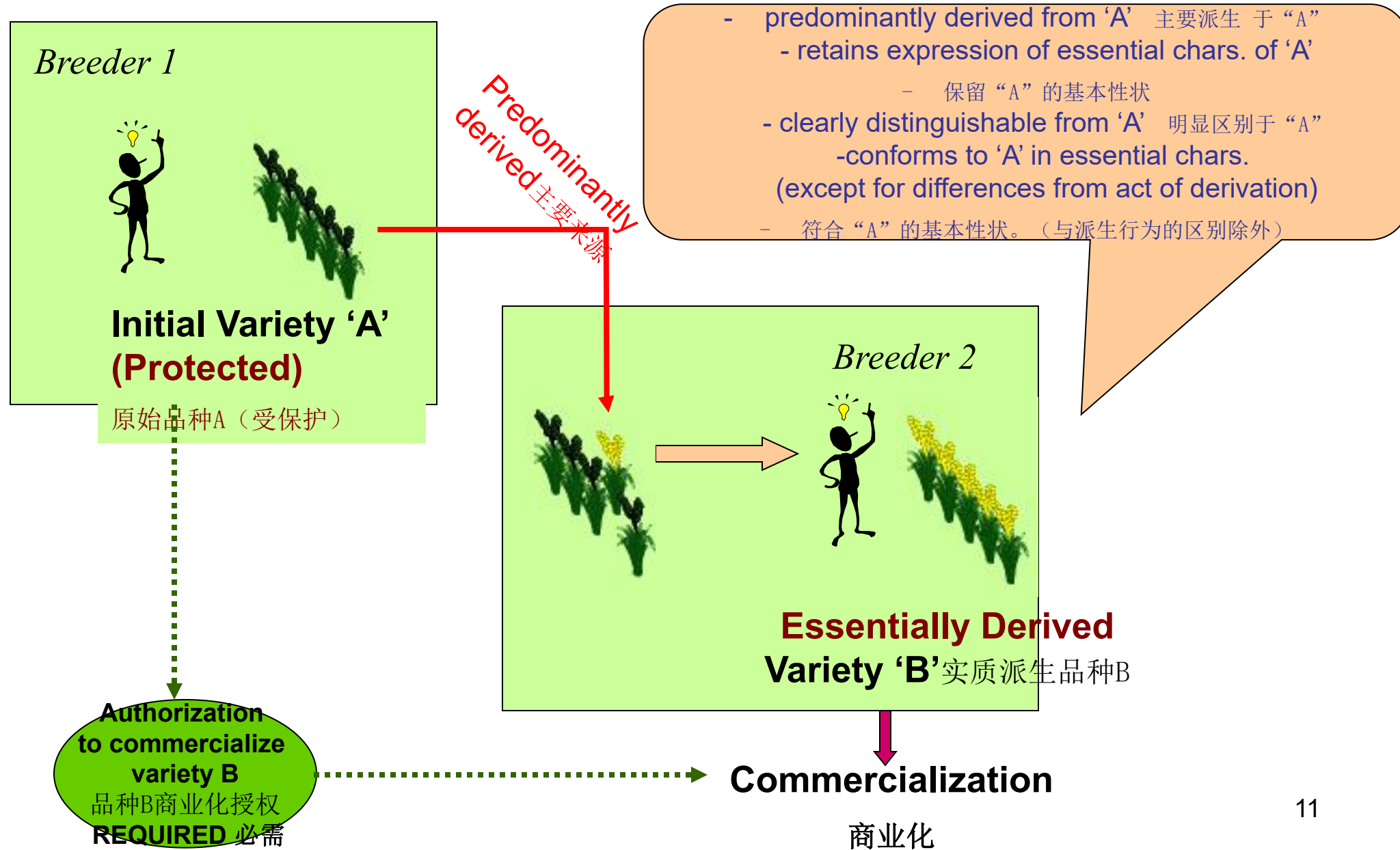


AUTHORIZATION  
NEEDED

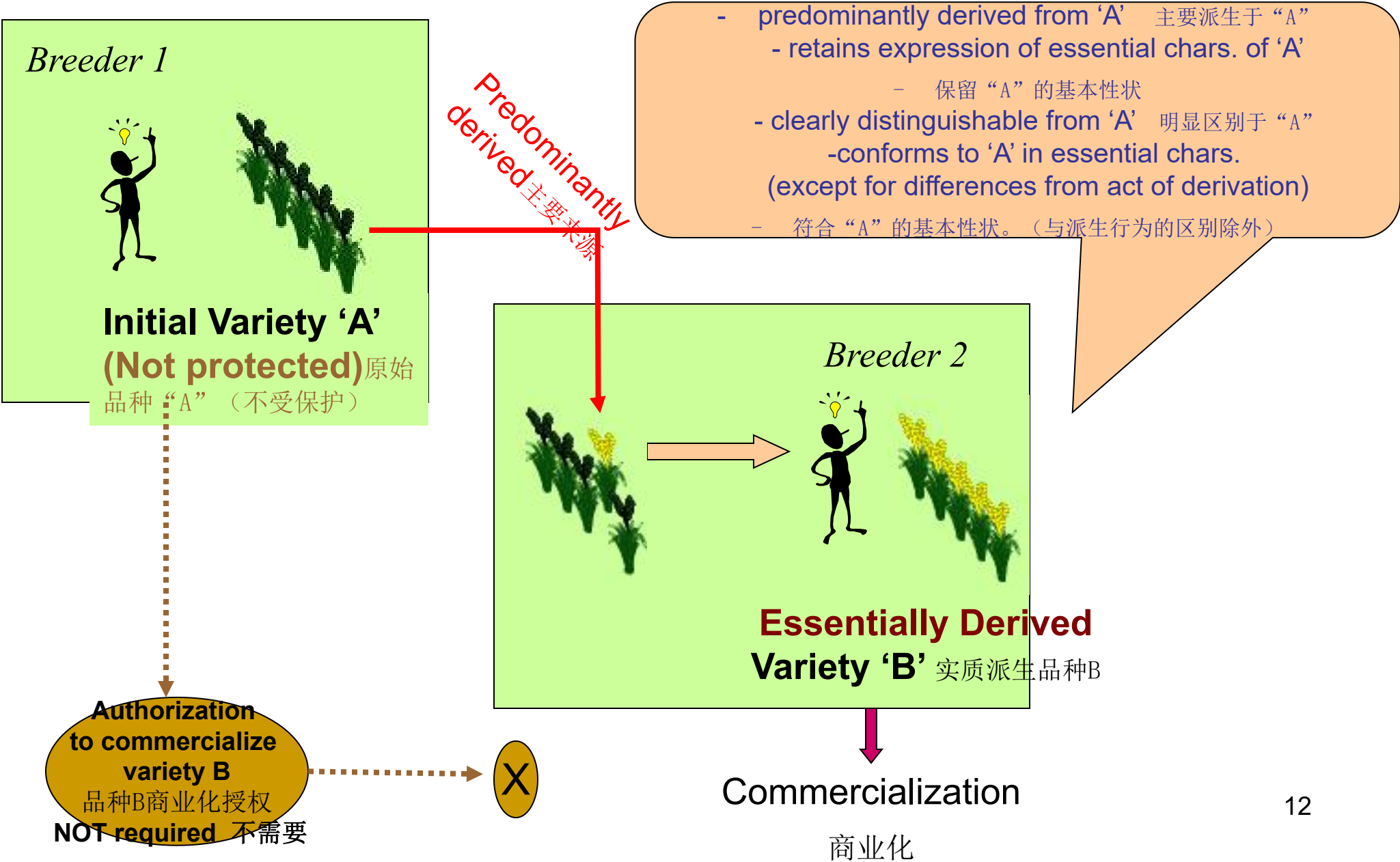
# PREVIEW

1. Varieties covered by the breeder's right
2. Essentially Derived Varieties (EDV)  
实质性派生品种 (EDV)
  - a) Purpose and concept
  - b) Protection of EDVs
  - c) Protection of Initial Variety (IV) 原始品种保护(IV)
  - d) UPOV guidance

# Essentially Derived Varieties



# Essentially Derived Varieties



# Scope of the Breeder's Right (1991 Act)

育种者权利范围(1991年法案)

## Article 14 第14条

### Scope of the Breeder's Right 育种者权利范围

(5)[*Essentially derived and certain other varieties*] [实质派生和某些其他种类]

(a) **The provisions of paragraphs (1) to (4)\*** shall also apply in relation to  
第(1)至(4)\*款的规定也应适用于

(i) varieties which are essentially derived from the protected variety,  
**where the protected variety is not itself an essentially derived variety,**  
本质来源于受保护品种的品种，而受保护品种本身并不是本质来源于受保护品种的品种，

#### Article 14\*

##### Scope of the Breeder's Right

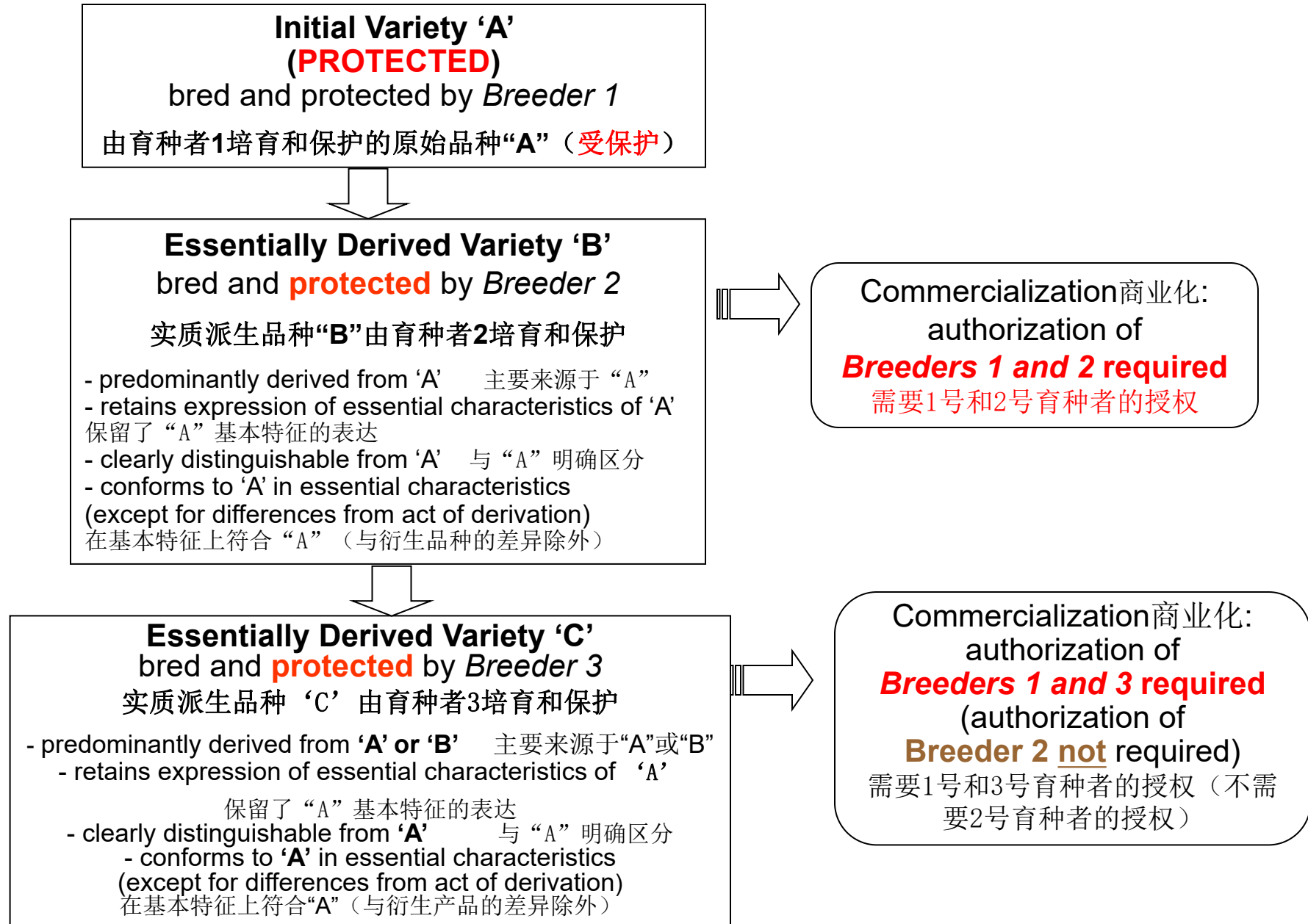
(1)[*Acts in respect of the propagating material*] [关于繁殖材料的行为]

(2)[*Acts in respect of the harvested material*] [关于收获材料的行为]

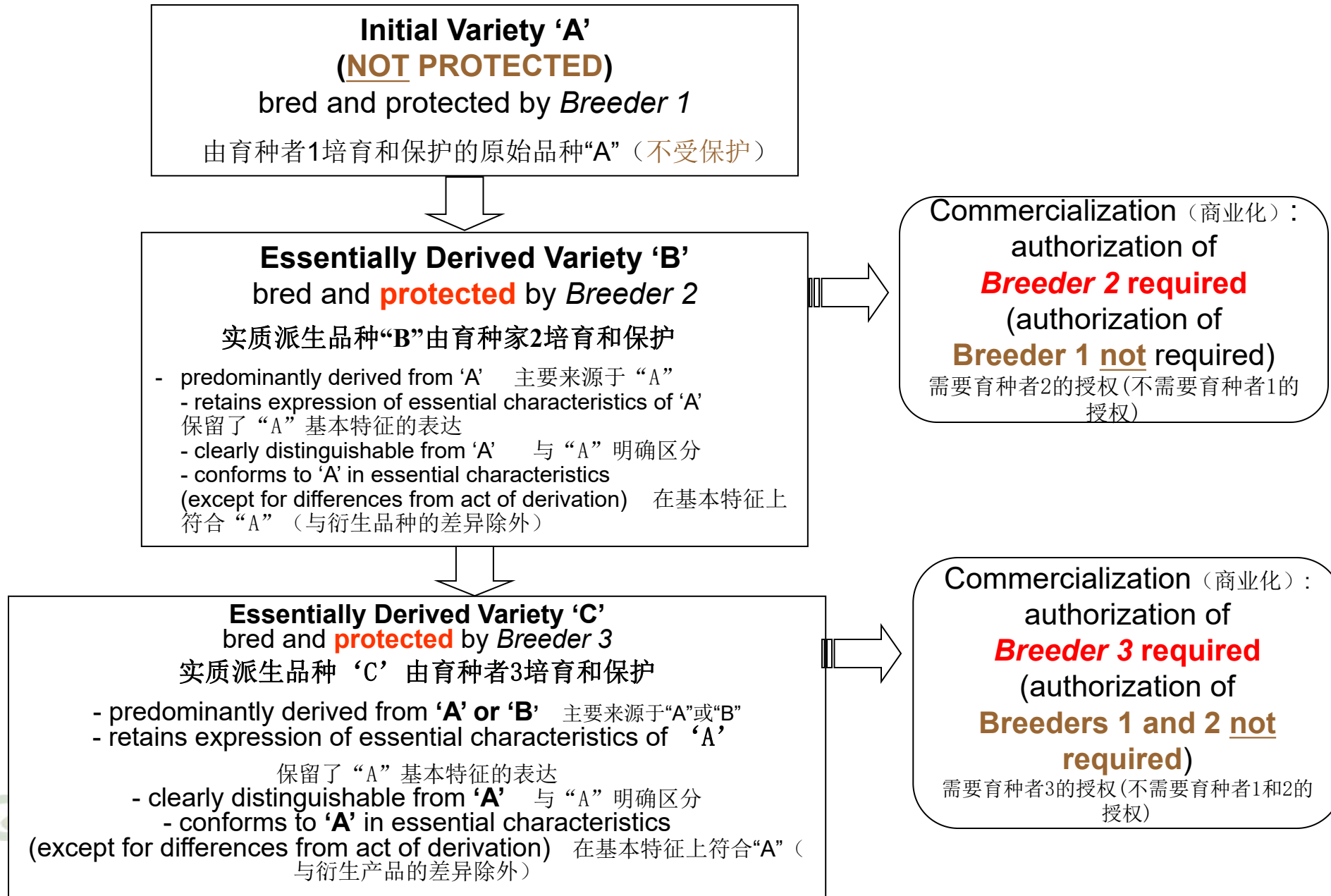
(3)[*Acts in respect of certain products*] [针对某些产品的行为]

(4)[*Possible additional acts*] [可能的额外行为]

# Essentially Derived Varieties



# Essentially Derived Varieties



# PREVIEW 概览

Varieties covered by the breeder's right

育种权涵盖的品种

**Essentially Derived Varieties (EDV)** 实质派生品种 (EDV)

a) Purpose and concept 目的和概念

b) Protection of EDVs EDV保护

c) Protection of Initial Variety (IV) 原始品种保护 (IV)

**d) UPOV guidance UPOV指导**



International Union for the Protection of New Varieties of Plants

国际植物新品种保护联盟

**UPOV/EXN/EDV/2**

**Original:** English

**Date:** April 6, 2017

---

**EXPLANATORY NOTES ON ESSENTIALLY DERIVED VARIETIES  
UNDER THE 1991 ACT OF THE UPOV CONVENTION**

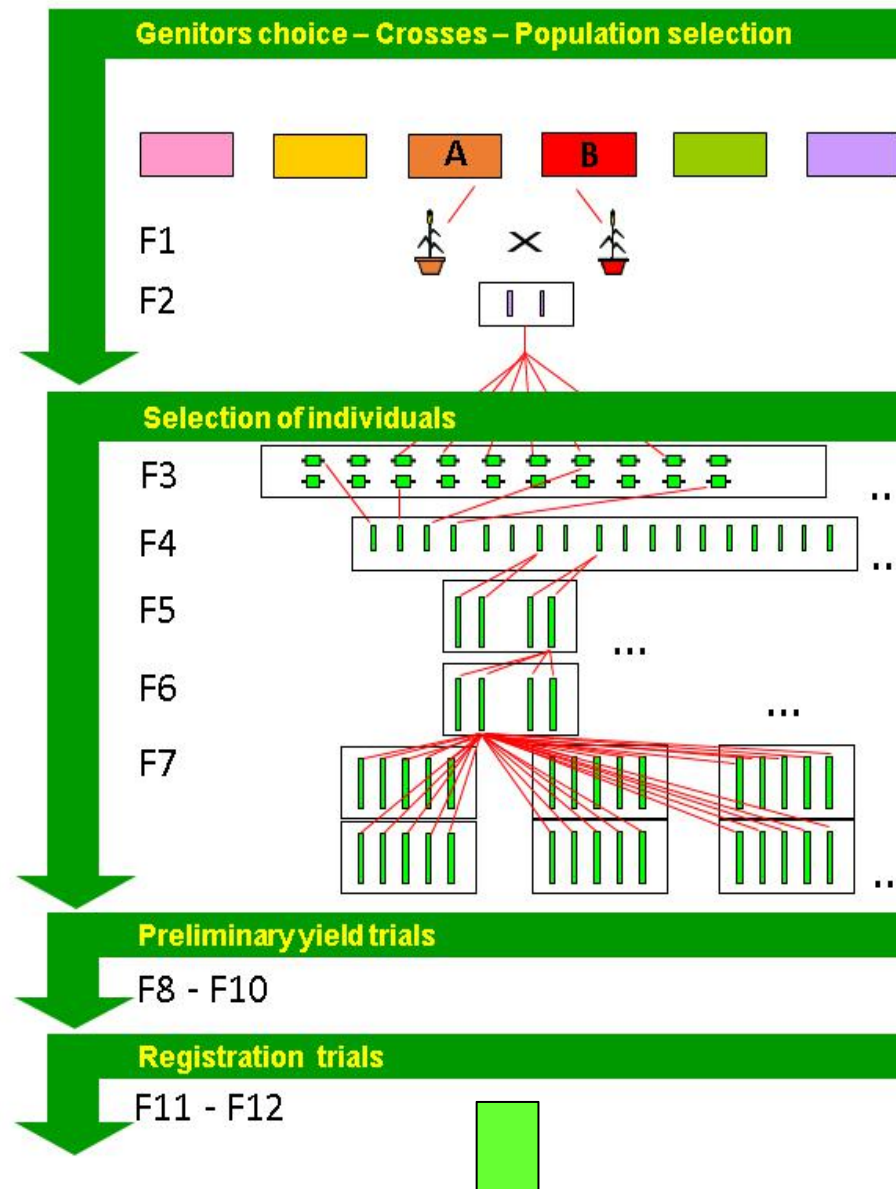
《1991年upov公约法》下实质派生品种的解释性说明

Document adopted by the Council  
at its thirty-fourth extraordinary session  
on April 6, 2017

# Seminar on the Impact of Policy on Essentially Derived Varieties (EDVs) on Breeding Strategy

## 实质派生品种政策对育种策略的影响研讨会



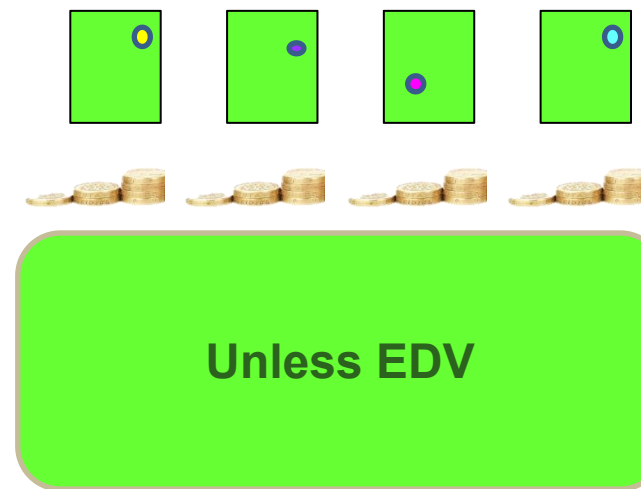
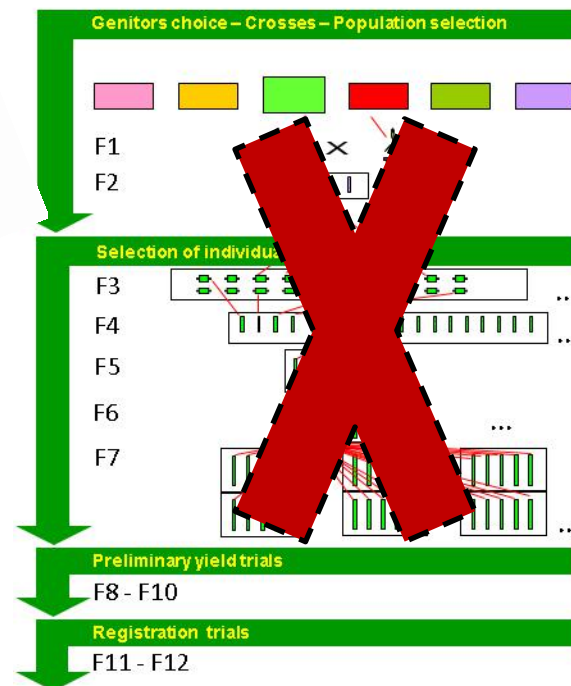
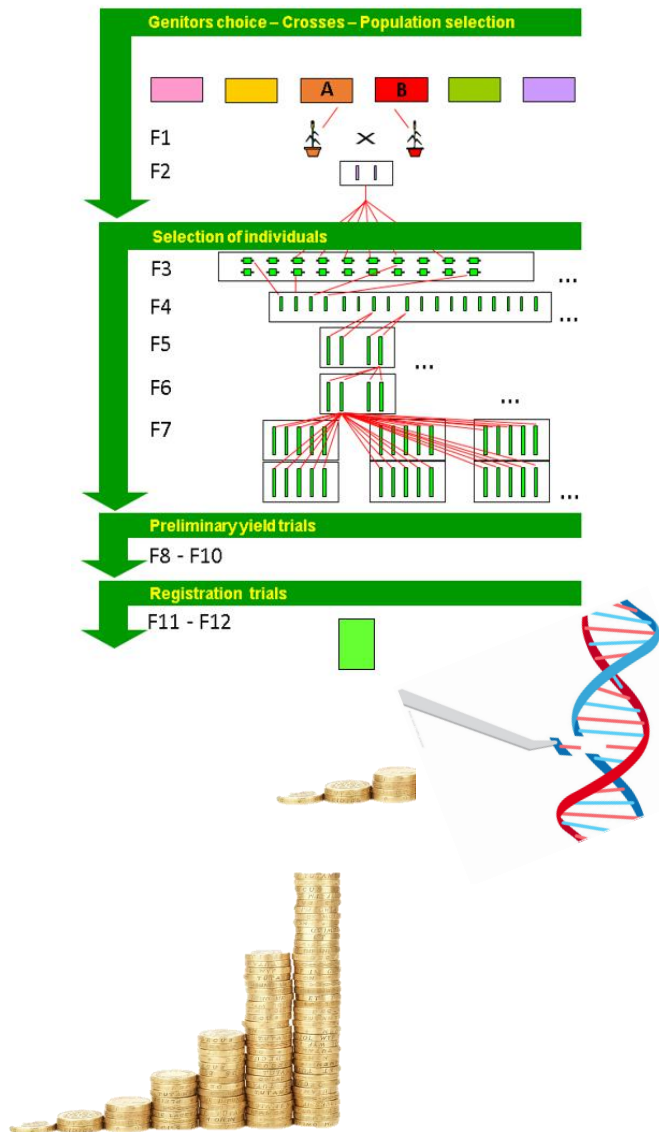


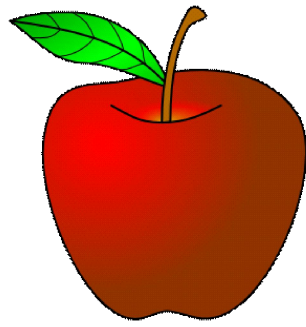
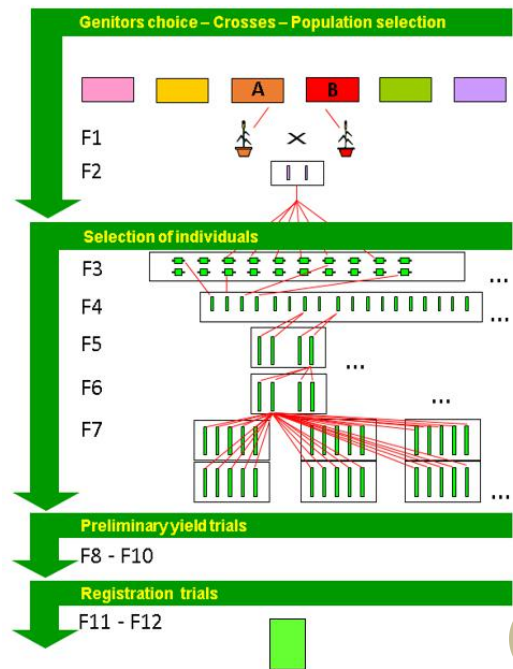
亲本选择-交叉-种群选择

个体选择

初步的田野实验

登记实验







# UPOV EDV Seminar - Summary

## UPOV EDV研讨会-总结



- Evidence that the current UPOV guidance does not reflect the practice amongst breeders in the understanding of essentially derived varieties (EDV).
- 有证据表明，现行的UPOV指南并未反映出育种者在理解实质派生品种（EDV）方面的做法。

- ***Evolution of breeding techniques has created new opportunities/incentives for predominately deriving varieties from initial varieties, more rapidly and at a lower cost.***

育种技术的发展创造了新的机会/激励因素，以更快、更低的成本从原始品种中获得主要的品种。

- Clear indication from presentations and discussions that the understanding and implementation of the EDV concept influences breeding strategy – therefore, it is ***important that UPOV guidance is tuned to maximize benefits to society in terms of maximizing progress in breeding.*** 对EDV概念的理解和实施会影响育种策略 – 因此，调整UPOV指南以最大限度地提高育种进展方面的社会效益是非常重要的。

# Essentially Derived Varieties

- Seminar on the Impact of Policy on Essentially Derived Varieties (EDVs) on Breeding Strategy

- 实质派生品种政策对育种策略影响研讨会



October 2019

UPOV

**Working Group on Essentially Derived Varieties (WG-EDV)**

to draft a **revision** of the

**Explanatory Notes on Essentially Derived Varieties**

for consideration by the

**Administrative and Legal Committee (CAJ)**

[https://www.upov.int/meetings/en/topic.jsp?group\\_id=343](https://www.upov.int/meetings/en/topic.jsp?group_id=343)

实质派生品种（WG-EDV）工作组拟修订《实质性派生品种解释性说明》供委员会审议  
行政和法律委员会（CAJ）

**...plus EDV information session...加上EDV信息会议**