



# NOTES ON LEGAL ISSUES OF PVP IN VIETNAM

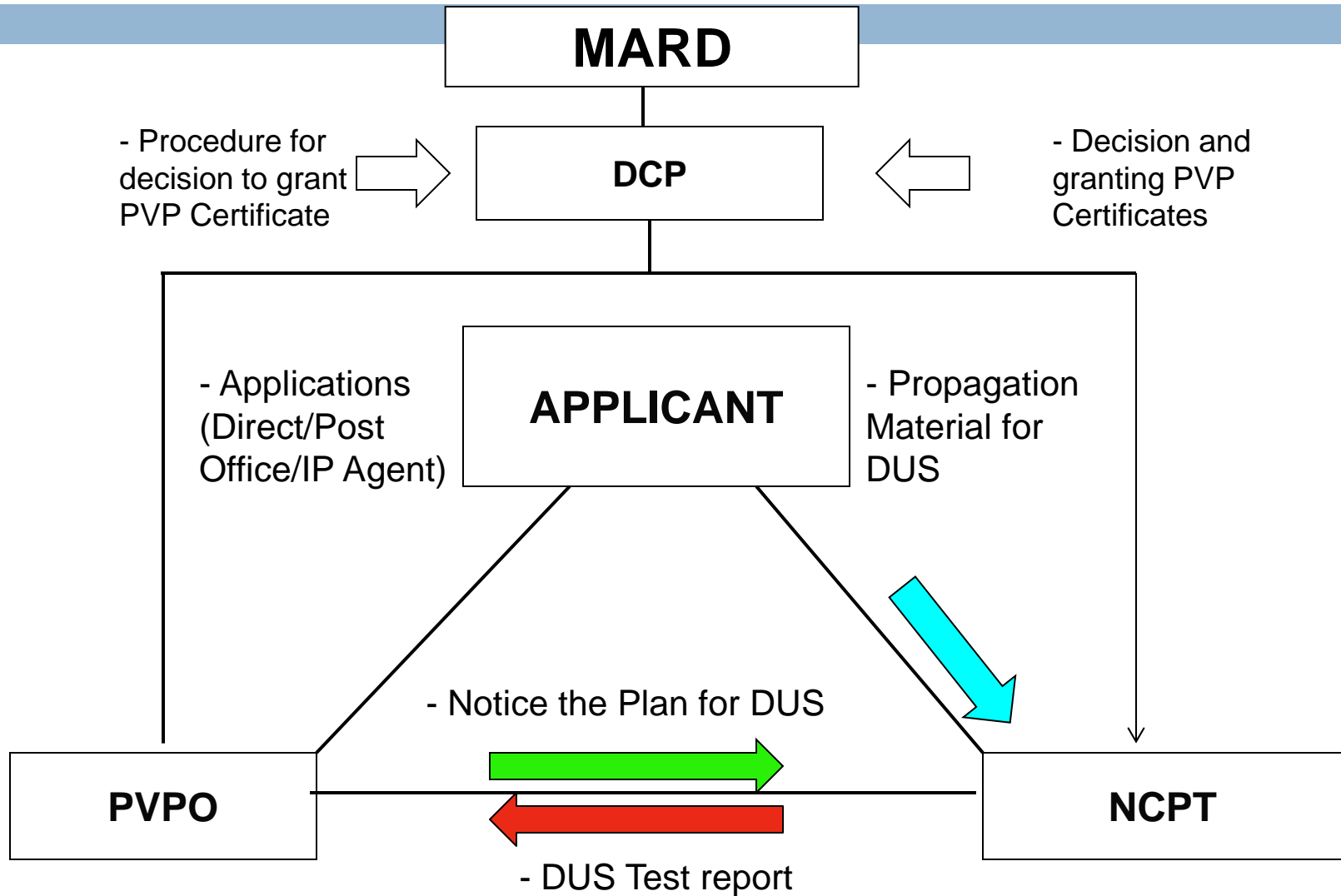
**CAM THI HANG, PVPO, DCP – MARD/VIETNAM**  
**Thai Nguyen, 11/2017**

# CONTENT

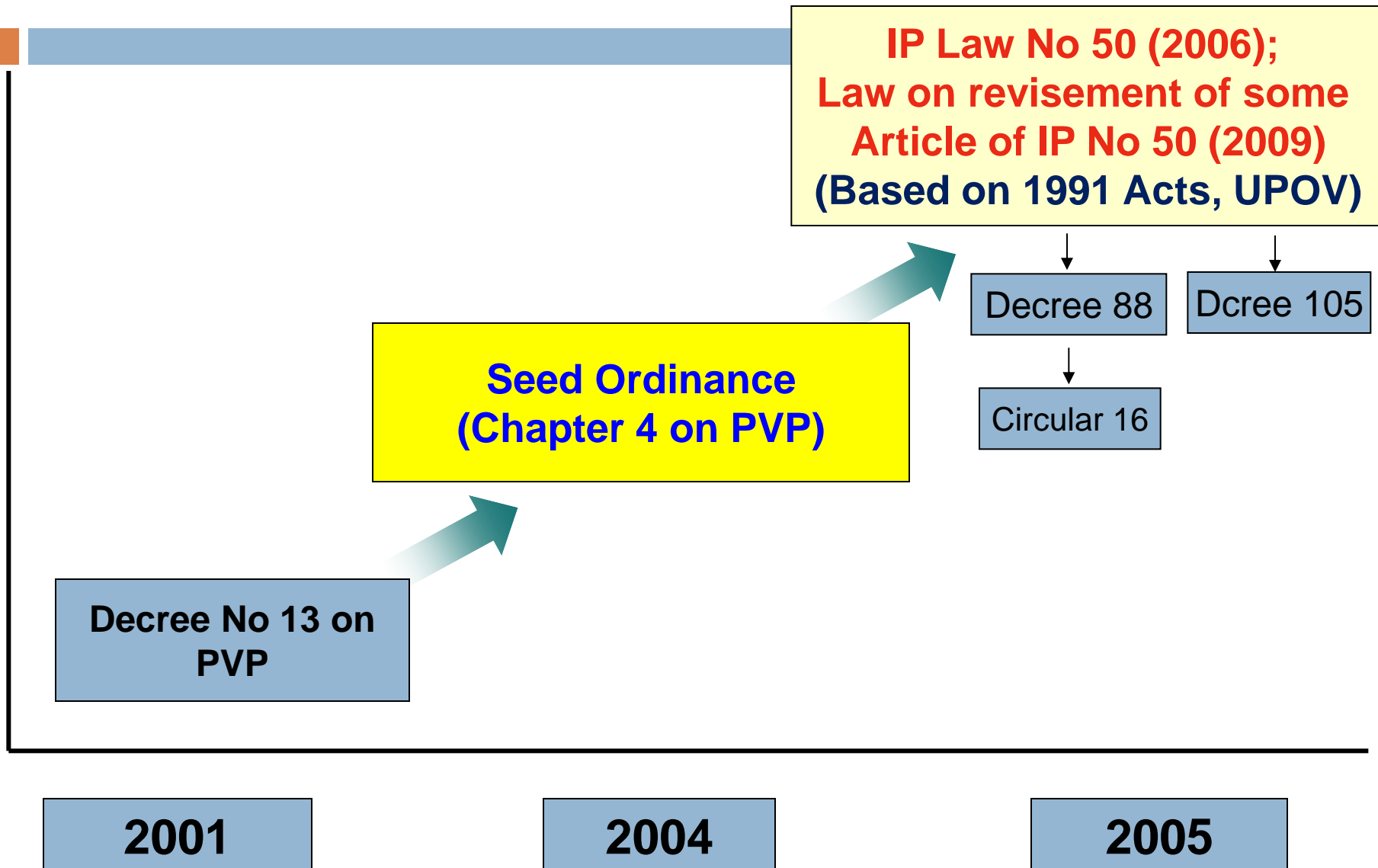
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- ORGANIZATION SYSTEM
- NOTES ON LEGAL ISSUES
- SITUATION OF PVP IN VIETNAM

# ORGANIZATION SYSTEM



# Legislation on PVP



# Applicants (Art. 157 and 164)

- Vietnamese Organizations, Individual; Foreigners who are citizen or resident in a country which have agreement on PVP with Vietnam or foreigners which register a permanent residence in Vietnam:
  - Bred or discovered and develop a new variety;
  - Invested to the breeding or discovered and develop a new variety;
  - Has lawful right of PVP
- Pay the fees.

# A variety can be protected in Vietnam (158)



- New
- Distinctness; Uniformity; Stability (DUS)
- Suitable denomination

# Novelty (159)

- The variety shall be deemed to be new if, at the filing date of the application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety:
  - ✓ In Viet Nam before filing date 1 year
  - ✓ In out side of Viet Nam before filing date 6 years for woody and vine and 4 year for the other species.

# Distinctness (160)

- The variety shall be deemed to be distinctness if it is clearly distinguishable in one or more major characteristics from any other variety whose existence is **common knowledge** at filing date or on the priority date (in case of priority application)

Ex: Rice (Leaf): anthoxian của gói lá



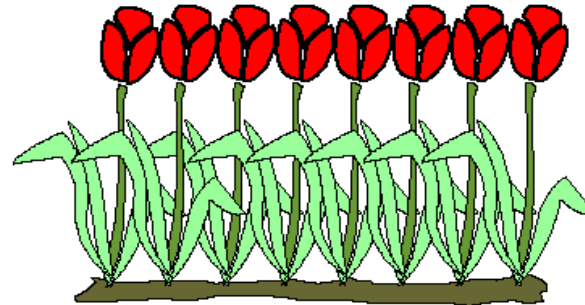


# Common knowledge varieties (160)

- In the Official List
- Filing application for any official list – not be refused
- The varieties which propagating/harvested material is widely using at filing date
- Others need to be considered:
  - ✓ Detailed description table
  - ✓ Existing in botanical/collection gardens

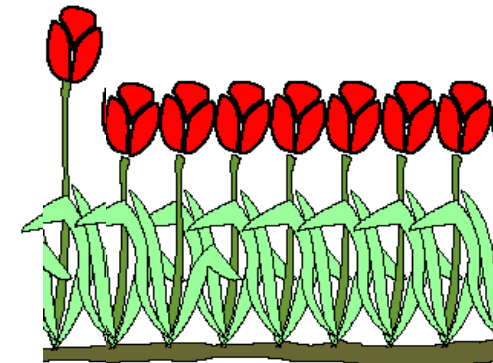
# Uniformity (161)

The variety shall be deemed to be uniformity if there is the same expression of the relevant characteristics unless the variation is permitted for certain characteristics in its propagation circle.



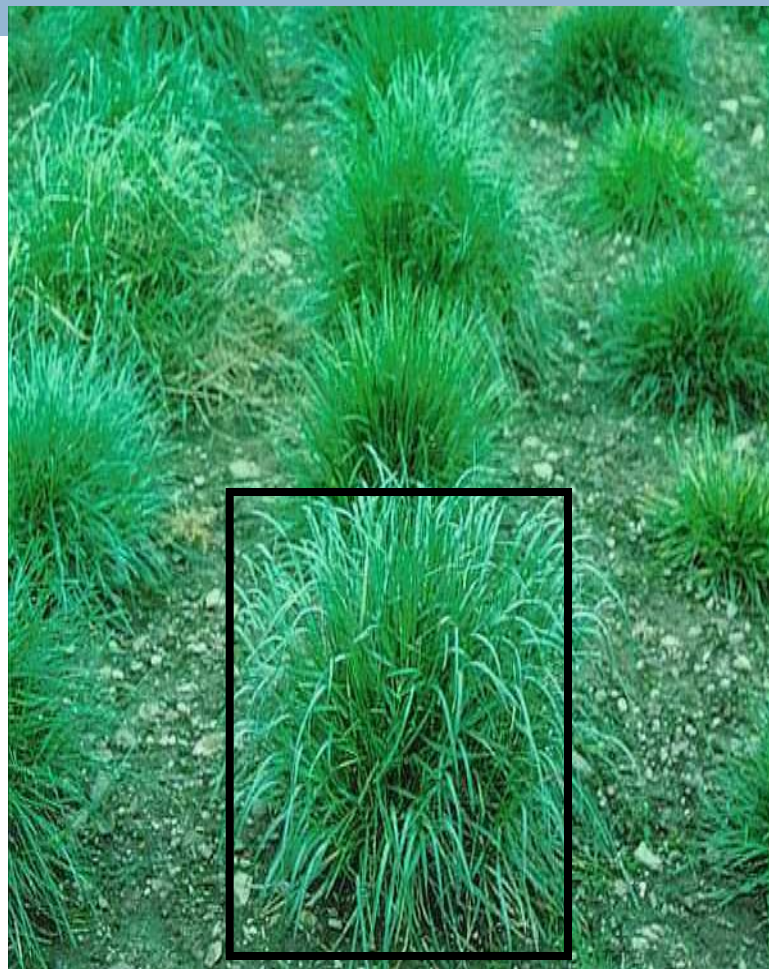
A uniform variety

Not uniform



# Stability (162)

- The variety shall be deemed to be stable if the relevant characteristics of the variety retain the same expression as originally description and remain unchanged after each propagation or propagation circle (in case propagate by propagation circle).



# Denomination (163)

- Denomination of variety considered as suitable:
  - ✓ Distinguishable from all other varieties of common knowledge varieties in the same/close species.
  - ✓ Not only numerals except where such numerals relate to the establishment of such variety.
  - ✓ Easy to misunderstand of Breeder's identification or violating social morality
- Using of the name of the variety
  - ✓ One name in every territory
  - ✓ Name of the variety in Certificate must be used forever even when finish of the effective of the certificate

# Fees for PVP (TT207)

Filing (Million VND)	For DUS - 1 Var./1Appli (Million VND)	Maintaining of Certificate (Million VND)
2	<ul style="list-style-type: none"> <li>✓ Rice: 24</li> <li>✓ Corn: 15</li> <li>✓ Others: depend on negotiation</li> </ul>	<ul style="list-style-type: none"> <li>✓ The years from 1 – 3: 3</li> <li>✓ The years from 4 – 6: 5</li> <li>✓ The years from 7 – 9: 7</li> <li>✓ The years from 10 – 15: 10</li> <li>✓ From 16<sup>th</sup> to finish: 20</li> </ul>

**\* *Way of payment:***

- ✓ First year: when receive Certificate
- ✓ From second year: First month of the year for effective of Certi.

# DUS Growing Test

- An experiment include the candidate variety and common knowledge varieties for testing D, U and S of the candidate variety (DUS Testing). Test Guidelines as a basis for DUS Testing
- DUS Growing Test may conducted by (Art. 12):
  - ✓ Breeder
  - ✓ Authority Offices (Centralized Center, Public Institutes...)
  - ✓ Purchase from other country

# Types of DUS Test



In the field



In Greenhouse



In the Pots

# Rights of applicant

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- Priority right (167)
- Temporary Right (189)
- Revise, adding of dossier (179)
- Withdrawn (180)



# Priority Right (167)

## ➤ Conditions

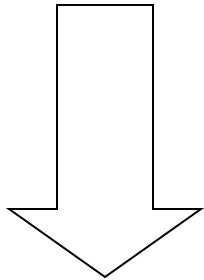
- ✓ Has been filled (First application) of territory of any Member within 12 month
- ✓ Requirement for priority
- ✓ Providing the relevant information
- ✓ Fee

## ➤ Rights:

- ✓ Ngày nộp đơn được tính từ ngày nộp đơn đầu tiên

# Temporary Right (189)

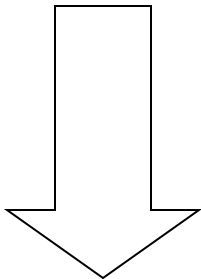
Public date  
Of Appli. validity



Time of temporary  
right

- Notice to the person who are exploiting with document
- Ask to stop of pay royalty when receive PBR

Granting date



Request of the right

- Evidence
- Requesting

# Effectiveness of Certificate (169)

- In whole Vietnam territory
- Take effect from the granting date:
  - ✓ 25 years for woody and grapevine
  - ✓ 20 years for other crops
- Can be cancellation (170)
- Or Nullity (171)

# PVP Certificates in VN



## BẢNG BẢO HỘ GIỐNG CÂY TRỒNG

TÊN GIỐNG CÂY TRỒNG: .....

THUỘC LOẠI: .....

CHỦ SỞ HỮU: .....

TÁC GIẢ GIỐNG CÂY TRỒNG: .....

.....

THỜI HẠN BẢO HỘ: .....

*Hà Nội, ngày.....tháng.....năm.....*

# Rights of the owner (186)

- Permit or not permit other persons to use propagating or harvested material for:
  - ✓ Production or multiplication
  - ✓ Processing for the purpose of propagation
  - ✓ Selling or other marketing
  - ✓ Exporting and importing
  - ✓ Stocking for the activities mentioned above
- To inherit, transfer or sell of the Right to others

# Limitation to the rights (190)

- Activities are not considered as infringements:
  - ✓ For individual purpose
  - ✓ Using the protected var. for scientific purpose
  - ✓ Creating a new varieties distinctive from the protected variety.
  - ✓ Households use harvested material of the protected variety for cultivation on next season in their field.
  - ✓ Material of protected variety on the markets except:
    - ❖ Continuous propagation of such plant variety
    - ❖ Export to a country which not protect that species.

# Extension of the PBR (187)

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Right of PVP Holder shall be extended to the following varieties:

- Originate from protected variety (EDV)
- Are not clear different from Protected Variety
- The varieties when produced need to repeated use of protected variety.

# Obligation of Owner and Breeder of (191)

## ➤ Owner:

- ✓ To maintain of variety/Material
- ✓ Providing the propagated material/information when requested
- ✓ Payment of royalty to breeder according to the agreement/or follow the stipulation in the Law
- ✓ Pay the fee for maintaining of the effective of PBR

## ➤ Breeder

- ✓ Maintaining of propagating material/named in the certificate



# Procedures for PVP Certificate

## Filing Application: Direct/Post Office/Representative



- Dossier (Application and TQ - Vietnamese, Photos, fee receipt)
- Filing fee receipt (2.000.000VNĐ)
- Others (If possible)

## Publicity (Validity)

- Technical Examination (DUS Test)
- Fee for DUS Test (8,3/11/24 Million)
- Examining of DUS Test report

## Decision for granting

- Public the decision (30 days)
- Treatment of third opinion (if possible)

Granting

Maintain fee for effective

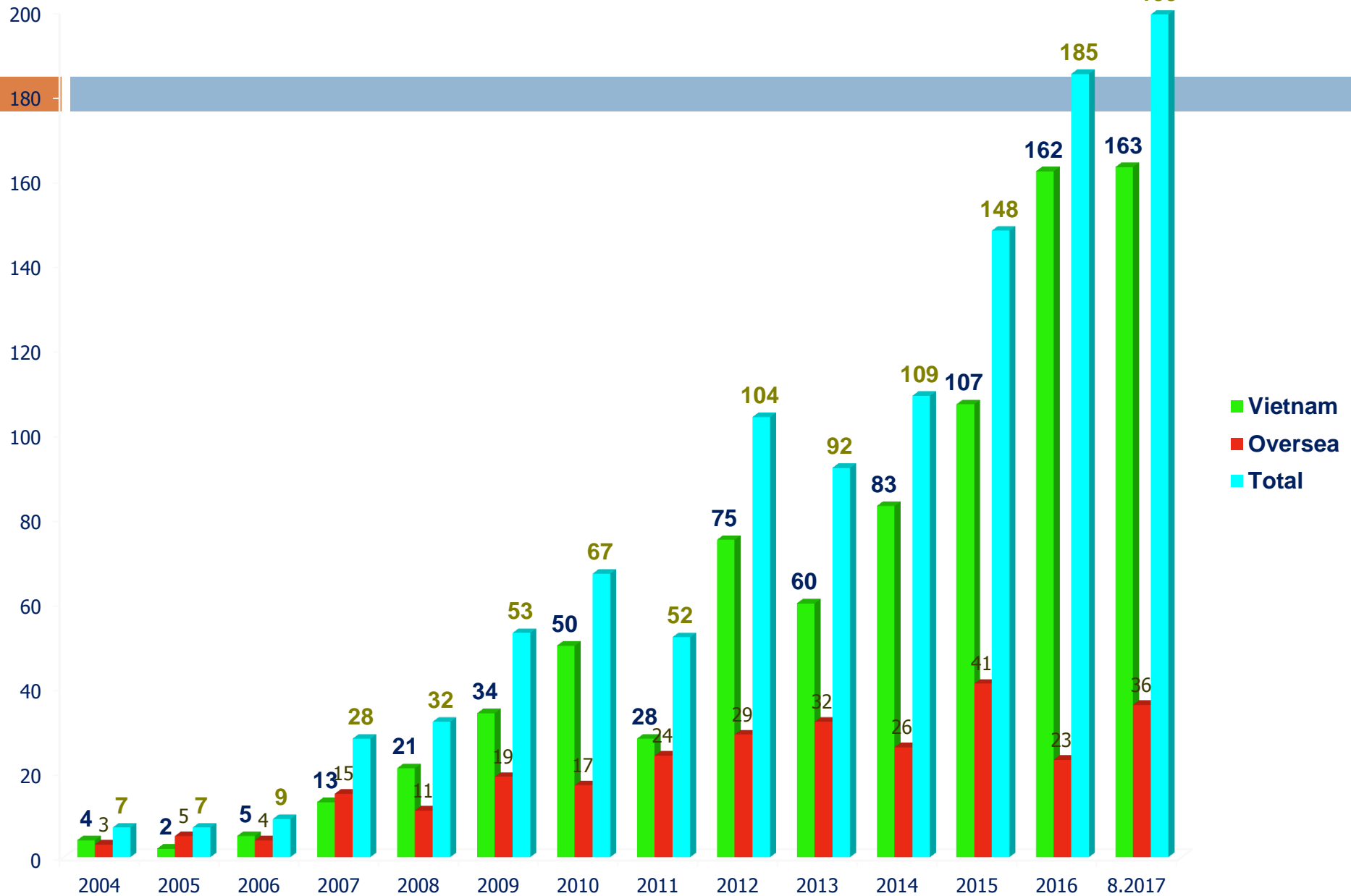
Exploit of the PBR



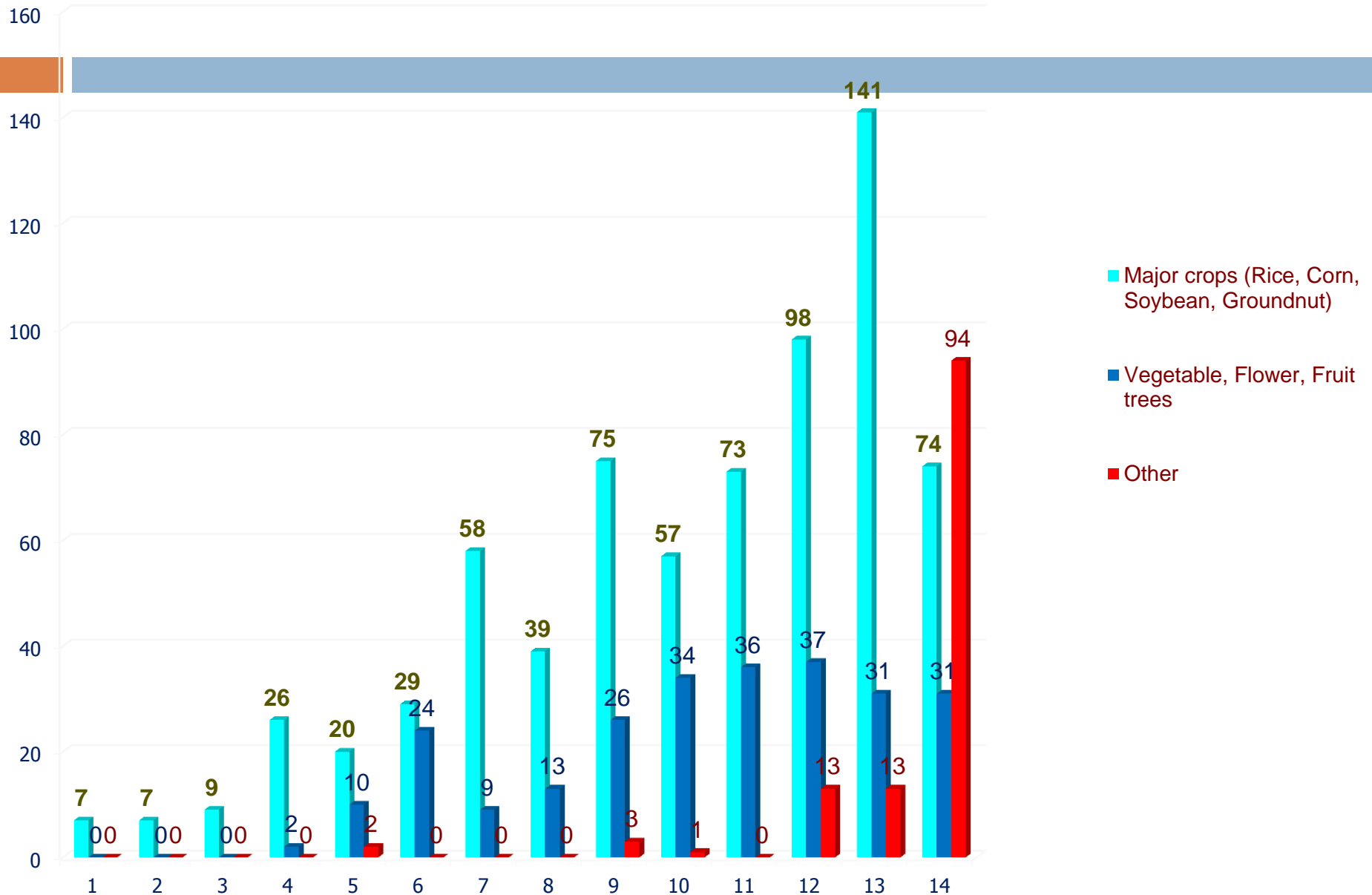


# **SITUATION OF PVP IN VIETNAM**

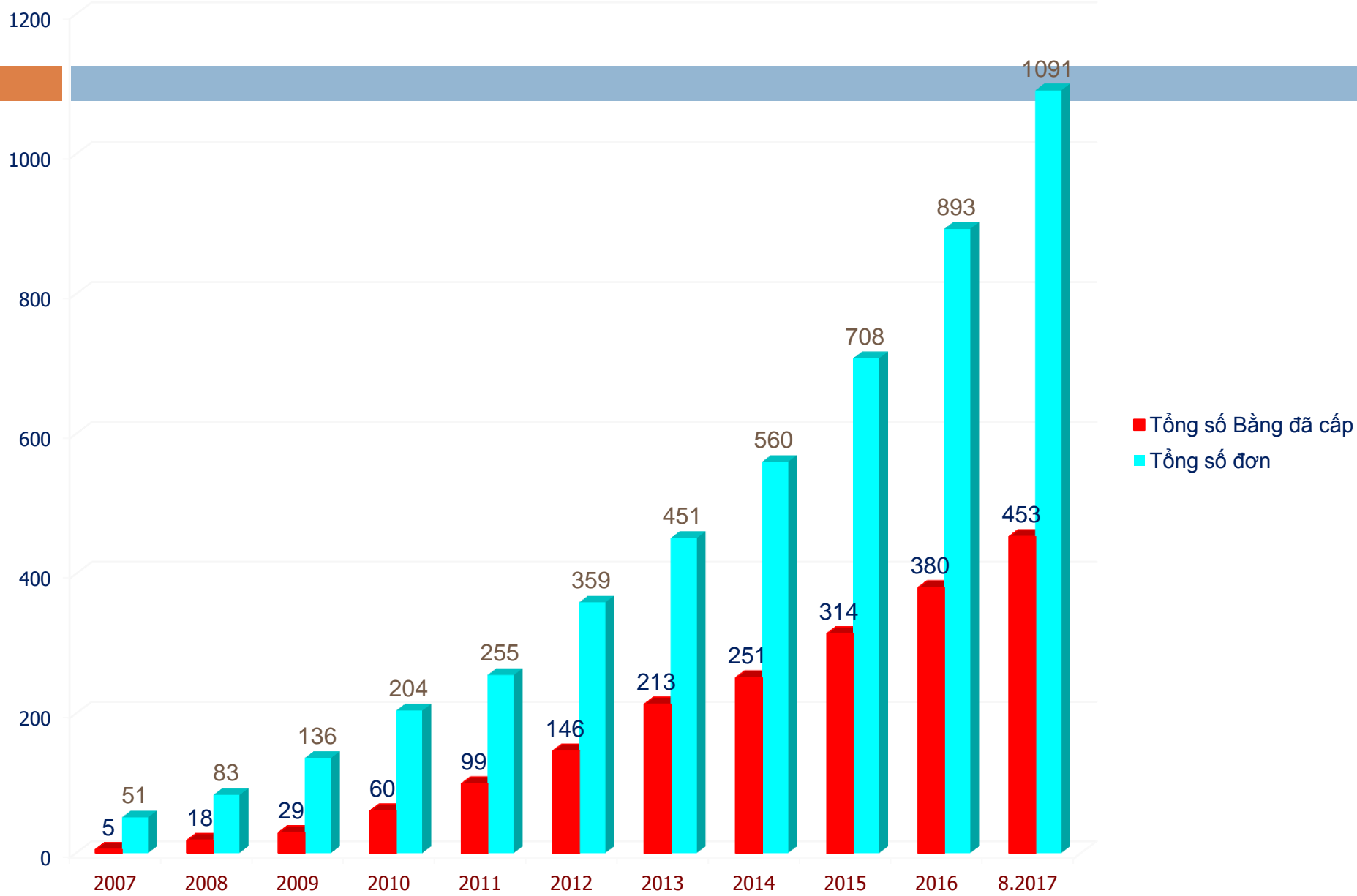
# No of Applications from 2004 to 8/2017



# Applications by group of plant (2004-T8/2017)



# No of PVP Certificates/applications (2007-T8/2017)



# Thank you for your attention

## ➤ Detail Information:

### ➤ PVP Office

✓ Room No 105, A6 Build.

No 2 Ngocha Badinh, HANOI

✓ Tel: (844)8435182;

✓ Fax: 7342844

Website: <http://pvpo.mard.gov.vn>

