STATEMENT ON INTELLECTUAL PROPERTY RIGHTS

Approved by the Board of Directors on December, 2010

SAA recognizes that the protection of intellectual property rights is essential for the sound development of the seed industry in the Americas. 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.

SAA members therefore are unanimously in favor of a strong intellectual property protection system, which will ensure an acceptable return on research investment and encourage further research efforts in plant breeding.

The World Trade Organization (WTO) Agreement on Trade Related Aspects of Intellectual Property Rights of 1994 (TRIPS) provides certain criteria concerning the availability, scope and use of Intellectual Property Rights and requires Members to set up a legal framework complying with such criteria. For the protection of plant varieties, Art 27.3b of the TRIPS Agreement provides the choice between patents, an effective sui generis protection system or a combination thereof.

For plant varieties, the type of protection that is currently available varies according to the technical, legal and socio-economic status of the various countries. Three kinds of protection are available:

- Plant varieties protected according to the UPOV-based Plant Breeders' Rights (PBR).
- Plant varieties protected by Patent.
- Plant varieties protected by Plant Breeder's Right and containing Patented Traits or Technology (PTT)

SAA recognizes that all systems are legitimate and that every country has an option to choose either of them or a combination thereof as a protection for plant varieties.

In all the countries, where plant varieties are protectable, a UPOV or UPOV-like system is available. If a country envisages the adoption of a *sui generis* system to protect plant varieties SAA recommends that this *sui generis* system, as a minimum, conform to the requirements of the 1991 Act of the UPOV Convention, as it provides a uniform and well-balanced system for plant variety protection, ensuring benefits to breeders, farmers and consumers provided that it is fully implemented.

For biotechnological and non-biotechnological inventions in general, SAA considers that the most appropriate protection is through Patents, provided, that the patentability criteria, namely novelty, industrial application and non-obviousness, are fulfilled. Protection by patent of a biotechnological and/or non-biotechnological invention should not be exhausted when that invention, inserted in a plant variety is used by others.