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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Twenty-ninth Session

Geneva, October 21 and 22, 1991

COVERAGE BY FEES OF THE COSTS OF THE
PLANT VARIETY PROTECTION OFFICESDocument prepared by the Office of the Union

1. At the twenty-fourth ordinary session of the Council, several delegations reported under the agenda item "situation in the legislative, administrative and technical fields" on amendments to the tariffs of fees that had been made or were envisaged in order to make the plant variety protection authority financially self-supporting. Following one such report, the Council decided to add an item on fees and cost recovery to the agenda for the forty-third session of the Consultative Committee, which was held on March 18, 1991 (see paragraph 94 of document C/24/18).

2. In view of the nature of the issue, it is submitted to the Administrative and Legal Committee for a preliminary discussion.

3. In conformity with the brief exchange of views which took place at the said Council session, the discussion should aim to establish whether it is possible, in the medium term, to draw up a common position on the financing of the authorities. The observation was made that it would be regrettable for UPOV to comprise two groups of States:

(i) one group whose authorities were obliged to be self-supporting;

(ii) another group which considered that self-financing was not justified for one reason or another (considerations of agricultural policy; recognition of the impact of protection on the development of agriculture and related activities, on the strengthening of the seed trade, etc.; recognition of the interests and the economic situation of breeders ...).

4. The Office of the Union suggests that the Committee should give preliminary consideration to the following questions in order to establish whether they deserve an in-depth study:

(i) Concerning any principles:

(a) Should a recommendation be made on the method of financing the authorities?

(b) In the case of partial self-financing, should a recommendation be made on the percentage of self-financing?

(ii) Concerning the implementation of any principles:

(a) Should any recommendations be made on the basis of calculations (for instance with regard to the inclusion of the costs of infrastructures, the distribution of any common costs between the protection system and any system of national lists of varieties licensed for sale)?

(b) Should recommendations be made on the distribution of the fees between the various heads of expenditure (in particular on the allocation of administrative fees and examination fees)?

(iii) Concerning international cooperation:

(a) Should the UPOV Model Administrative Agreement for International Cooperation in the Testing of Varieties* be revised to separate the payments under the cooperation system from the national examination fees?

(b) Should the Recommendation on Fees in Relation to Cooperation in Examination, the text of which is reproduced in the annex, be revised?

[Annex follows]

* Its Article 7(1) to (3) reads as follows:

"1. The requesting authority shall pay to the testing authority an amount equal to the full testing fee that would have been charged if an application in respect of the variety under test had been filed on the same date in the country of the testing authority.

"2. When paragraph 2 of Article 5 applies [where there is no longer a prior application and where the examination is continued at the request of one of the parties to the agreement], the amount payable shall be equal to the difference between the full testing fee and the testing fee which has been/is to be charged in respect of the prior application.

"3. However, if the full testing fee has been/is to be charged in respect of a prior application, an administrative fee corresponding to the recommendation of the Council of UPOV or agreed upon by correspondence between the competent authorities shall be charged instead."

ANNEX

RECOMMENDATION ON FEES IN RELATION TO COOPERATION IN EXAMINATION

adopted by the Council at its fourteenth ordinary session

The Council of the International Union for the Protection of New Varieties of Plants,

By virtue of Article 21(h) of the International Convention for the Protection of New Varieties of Plants (hereinafter referred to as "the Convention"),

Having regard to Article 30(2) of the Convention,

Having regard to the agreements on cooperation in examination already concluded between member States on the basis of the UPOV Model Agreement for International Cooperation in the Testing of Varieties,

Considering it of the utmost importance that cooperation in examination be based on a uniform and clearly defined system of fees and considerations,

Considering that the experience of cooperation in examination acquired on the basis of the aforesaid agreements makes it desirable to replace the Resolution on Fee Questions adopted during its seventh ordinary session, in October 1973 (document UPOV/C/VII/23), by the following,

Recommends to the member States of the Union that they establish or amend, as the case may be, their national plant variety protection legislation or practice, on the one hand, and the agreements on cooperation in examination, on the other hand, in accordance with the following principles.

1. Where the authority of one member State of the Union ("Authority B") takes over an examination report established by the authority of another member of the Union ("Authority A") for the purposes of its own procedure or of a procedure before a third authority:

(a) Authority B shall pay a fixed consideration equivalent to 350 Swiss francs to Authority A;

(b) in the State of Authority B, the applicant for the protection of the variety to which the examination report relates:

(i) shall be exempted from the examination fee, and

(ii) shall be charged an administrative fee which shall at least correspond to the consideration referred to in subparagraph (a) above.

2. Where Authority A conducts an examination at the request of Authority B:

(a) Authority B shall pay to Authority A a consideration equal to the appropriate examination fee payable in the State of Authority A;

(b) in the State of Authority B, the applicant for the protection of the variety to which the examination report relates shall be charged an amount which shall, as far as possible, correspond to the consideration referred to in subparagraph (a) above.

3. Member States of the Union shall, as a target fee at least for the economically most important genera and species, fix the fee for the normal examination period of two years or growing cycles at an amount corresponding to about 1350 Swiss francs unless special reasons justify the fixing of a different fee level.

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