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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Thirty-first Session

Geneva, October 26 and 27, 1992

CONDITIONS FOR THE EXAMINATION OF A VARIETY
BY THE BREEDERDocument prepared by the Office of the Union

1. At its thirtieth session, the Administrative and Legal Committee (hereinafter referred to as "the Committee") considered the declaration on the conditions for the examination of a variety carried out by the breeder which the Council noted with approval at its tenth ordinary session, in October 1976. It decided to recommend that one of its paragraphs be amended:

(i) to take account of the fact that it is not always possible or necessary to require the deposit of a sample of propagating material representing the variety; and

(ii) to replace the requirement that the sample be deposited simultaneously with the filing of the application by a deposit within a period fixed by the authority.

Reference is made in this respect to document CAJ/30/3, which sets out the history of this issue, and to paragraphs 33 and 34 of document CAJ/30/6, which give an account of the discussions of the Committee.

2. The declaration has been drawn up originally in the context of work on the revision of the 1961 Act of the Convention which led to the 1978 Act. It was based on Article 7(1) of the 1961 Act and on the circumstances obtaining at that time, when all member States were taking decisions on the basis of official growing trials and when laboratory tests were limited in number.

3. If the Council is to reaffirm the relevance of this declaration, it is advisable that it should do so taking into account the 1991 Act and the present circumstances; this requires a certain amount of redrafting. In particular, it is no longer true that "the authorities in the present UPOV member States normally conduct [the] tests themselves." As to substance, it also seems advisable to alleviate the rule that the growing tests should continue until a decision on the application has been given.

4. The text proposed by the Office of the Union is given at annex.

5. The Committee is invited to:

(i) adopt the text appearing at annex;

(ii) request the Council to adopt the declaration at issue.

[Annex follows]

ANNEX

DRAFT

Declaration on the conditions for the examination
of a variety carried out by the breeder

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

Pursuant to Article 21(h) of the 1978 Act of the International Convention for the Protection of New Varieties of Plants;

Considering Article 7(1) of the 1978 Act of the Convention, under which: "Protection shall be granted after examination of the variety in the light of the criteria defined in Article 6. Such examination shall be appropriate to each botanical genus or species;"

Considering Article 12 of the 1991 Act of the Convention, under which: "Any decision to grant a breeder's right shall require an examination for compliance with the conditions under Articles 5 to 9. In the course of the examination, the authority may grow the variety or carry out other necessary tests, cause the growing of the variety or the carrying out of other necessary tests, or take into account the results of growing tests or other trials which have already been carried out. For the purposes of examination, the authority may require the breeder to furnish all the necessary information, documents or material";

Declares that a system for the examination of applications based upon growing tests and other necessary tests carried out by the applicant and on the information submitted by him on the basis of those tests will be considered in keeping with the provisions of the Convention if:

1. The growing tests and other necessary tests are conducted according to guidelines established by the authority;
2. The testing arrangement is maintained--in order to permit the checking of data or the collecting of further data--until a decision has been made on the application or until the authority has informed the applicant that the arrangement is no longer necessary;
3. The applicant provides access to the growing tests by persons properly authorized by the authority;
4. The applicant, if requested to do so, deposits in a designated place, and within a time limit set by the authority, a sample of propagating material representing the variety.

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