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UPOV

CAJ /XV/2

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Fifteenth Session

Geneva, March 27 and 28, 1985

UPOV RECOMMENDATION ON THE HARMONIZATION OF THE LISTS OF PROTECTED SPECIES

Document prepared by the Office of the Union

1. At its fourteenth session, the Administrative and Legal Committee discussed on the basis of a study made by the Office of the Union (document CAJ/XIV/3) how the lists of the species protected in the various member States could be standardized. The discussion is recorded in paragraphs 23 to 26 of document CAJ/XIV/6.

2. The outcome of the discussions in the Committee was that harmonization of these lists constituted a permanent task for the Committee and should therefore be dealt with under a special item on the agenda of each future session. From a practical point of view, it was pointed out "that the plant kingdom was currently being explored for new ornamental species that could be brought on to the market and it would be advisable to provide for protection of those species as soon as possible in order to encourage variety breeding and to enable its results to be protected." This meant that the member States should inform each other as soon as possible of prospective breeding work and also of any intended extensions to their lists. The Committee further considered it opportune for the Council to adopt a recommendation to the member States that they give favorable attention to requests for extension of protection to species on which considerable variety creation work was being carried out.

3. A recommendation of that kind certainly constitutes a step in the right direction. An appropriate draft should therefore be incorporated in the progress report that the Administrative and Legal Committee is to submit to the Council on its work and be adopted by the Council, together with the report, at its nineteenth ordinary session. However, the Office of the Union suggests it be considered whether the recommendation should not also include those species of which the varieties may be used for propagation in a member State since in such a case there also exists a need to extend protection.

4. Even with this latter extension, the proposed recommendation would only have a very limited significance. Its objectives would correspond more or less to the recommendation adopted at the 1978 Diplomatic Conference, according to which the member States were to use their best endeavors to extend protection to at least those genera and species that were of major economic importance for the State concerned (Records of the Geneva Diplomatic Conference on the Revision of the International Convention for the Protection of New Varieties of Plants, 1978, UPOV Publication No. 337(E), p. 273). The commitment

entered into by the member States in Article 4(2) of the Convention goes beyond this minimum, however. It is also pointed out that the Council already adopted a resolution that went further, reproduced (without its outdated annex) at Annex I to this document. Finally, it should also be mentioned that the member States have gained practical experience in recent years in cooperation in examination that would serve as a basis for a further extension of protection in order to harmonize the national lists of species. Indeed, the following proposal for a more extensive resolution was made in the above mentioned document CAJ/XIV/3 as a result of suggestions from the professional organizations in respect of such cooperation:

"[The Council] could for instance recommend to member States that they make the following efforts:

(a) to extend protection to every species already protected by another member State where that State offers its services for examination within the framework of an agreement on cooperation, provided that such cooperation is not unreasonable for geographic, climatic or other reasons;

(b) to offer their testing facilities, in cases where they protect a given species, to other member State in which that species is not yet eligible for protection;

(c) to supplement these recommendations by a further recommendation that States intending to extend protection to a given species should inform the other member States of that intention as soon as possible and in sufficient detail in order to allow them to take the necessary legislative measures required by their law for such an extension."

Discussions on the proposal were not completed at the fourteenth session of the Committee. Should the Committee wish to take up this matter, Annex II to this document contains a proposed wording by the Office of the Union, to facilitate discussions, which also contains in the final paragraph the recommendation decided on at the last session, together with the extension suggested above for the case of propagation. Should the Committee see any grounds for not (yet) supporting such a proposal, it would be advisable to record those grounds in the report on the forthcoming session since it is to be expected that similar proposals will be put forward again by various professional organizations and it would therefore be of advantage if reference could then be made to a clear stance taken by the Committee.

[Annexes follow]

CAJ/XV/2

ANNEX I

HARMONIZATION OF NATIONAL LISTS OF SPECIES
ELIGIBLE FOR PROTECTION IN MEMBER STATESResolution adopted by the Council at its fifth ordinary session
(October 13-15, 1971)*

The Council, at its fifth meeting held on October 13 to 15, 1971,

Noting with satisfaction

(i) that all member States have already included in their national protection systems a considerable number of those genera and species which are listed in the Annex to the Convention (hereinafter referred to as "obligatory species"), and

(ii) that all member States have introduced protection for a considerable number of important genera and species not mentioned in the said Annex (hereinafter referred to as "non-obligatory species");

Noting that with regard to the non-obligatory species member States have afforded protection for the same genera and species only as an exceptional measure;

Considering that it is desirable to obtain the highest possible degree of uniformity of the national lists of genera and species eligible for protection in member States, among other reasons because of the principle of specific reciprocity set forth in Article 4(4) of the Convention and adopted by a majority of member States, according to which a foreign breeder, being a national of another member State cannot obtain protection with regard to a new variety of a non-obligatory species unless the species to which the variety belongs is included in the protection system of that other member State;

Considering that under Article 4(2) the member States have agreed to take all measures necessary for the progressive application of the Convention to the largest possible number of botanical genera and species;

Considering Article 30(2) of the Convention, according to which the preliminary examination prescribed in Article 7 of the Convention may be carried out by the examination centers of other member States, and that agreements to that effect may enable member States to protect genera and species for which they themselves have no examination facilities;

Invites member States to study the possibility of including in their national protection systems those non-obligatory species which are important and commonly grown in their respective areas, and which at present are eligible for protection in at least three other member States;

Decides to request the Delegations to future Council meetings to report annually on the progress achieved with regard to the invitation contained in this Resolution.

* Document C/V/32

[Annex II follows]

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UPOV RECOMMENDATION ON THE HARMONIZATION OF THE LISTS OF PROTECTED SPECIES

adopted by the Council of the International Union for the Protection of
New Varieties of Plants (UPOV) at its nineteenth ordinary session
(October 17 and 18, 1985)

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

Considering that Article 4(1) of the International Convention for the Protection of New Varieties of Plants provides that the Convention may be applied to all botanical genera and species;

Considering that the member States have undertaken to adopt all measures necessary for the progressive application of the provisions of the Convention to the largest possible number of botanical genera and species;

Considering further that Article 7(1) of the Convention requires that protection be granted after examination of the variety in the light of the criteria defined in Article 6 and that such examination is to be appropriate to each botanical genus or species;

Referring to the statement noted with approval by the Council at its tenth ordinary session in 1976 that "it is clear that it is the responsibility of the member State to ensure that the examination required by Article 7(1) of the UPOV Convention includes a growing test and the authorities in the present UPOV States (in 1976) normally conduct these tests themselves";

Taking into account the fact that the main obstacle to the application of the Convention in the member States to the largest possible number of botanical genera and species is the limitation on the economic and technical and on the scientific possibilities of carrying out variety examination;

Referring to the fact that Article 30(2) of the Convention specifically sets out the possibility of the competent authorities of the member States concluding special contracts with a view to the joint utilization of the services of the authorities entrusted with the examination of varieties in accordance with the provisions of Article 7 and with assembling the necessary reference collections and documents;

Noting with satisfaction that the member States have already made extensive use of that possibility, both in order to keep the cost of protection for new plant varieties at the lowest possible level and also to extend their lists of protected species;

Convinced that further progress can be achieved in this field and that such progress is also called for to maintain or even improve the effectiveness of new plant variety protection as a tool in the development of agriculture and the safeguarding of breeders' interests;

Recommends the member States:

(a) to extend protection to every genus or species already protected in a member State if that State offers its services for examination within the framework of a special contract within the meaning of Article 30(2) of the Convention and there are no grounds, particularly from the point of view of agricultural economy, that oppose cooperation in examination;

(b) to offer their services to the other member States for the examination of varieties, particularly in those cases in which the other States participating in the cooperation system do not yet protect the genus or species concerned, by means of concerted action to concentrate examination of the varieties at an optimum number of the authorities concerned;

(c) to inform the other member States as early as possible of their intentions to extend protection to a given genus or species, giving sufficient details, and to offer the services of their authorities for the examination of varieties of such genus or species to enable the other States, as appropriate, to put in hand the procedures required by their legislation for an extension of the same kind;

(d) to give favorable attention to any request for extension of protection to a genus or species on which considerable variety creation work is being carried out or of which varieties are propagated in the State concerned.

[End of document]