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CAJ /XVI/ 4

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Sixteenth Session

Geneva, November 14 and 15, 1985

UPOV RECOMMENDATIONS ON THE HARMONIZATION
OF THE LISTS OF PROTECTED SPECIES.Document prepared by the Office of the Union

1. As decided by the Administrative and Legal Committee at its fifteenth session (see document CAJ/XV/8, paragraph 19), the draft UPOV recommendations on the harmonization of the lists of protected species (reproduced at Annex I to this document) were submitted to the second Meeting with International Organizations in order to obtain their comments.

2. The international organizations generally spoke strongly in favor of extending protection to the greatest possible number of botanical genera and species (including new species created by man). The following points were made:

(i) There was a need to give the breeder the possibility of innovating, which was equally profitable to agriculture and horticulture;

(ii) There was also a need to give protection to breeders working in isolation on a minor species;

(iii) Competition was distorted by the absence of protection in one member State and the inadequate scope of protection afforded by a further member State: in such cases there could be a trade flow from the first State to the second one in respect of the final product (particularly cut flowers) that got round the protection in the second State.

3. As regards the recommendations themselves, a representative of CIOPORA observed that they showed good will, but that in his view subparagraphs (a)(ii) and (iv) would have to be deleted. He held that it was not for the authorities to judge whether there existed a real or potential market within a member State for propagating material of the species concerned. He further considered that the Convention did not permit limitations to be set up as a function of legal hurdles and that the public statutes were in themselves sufficient. The Committee is invited to examine this proposal.

4. At the Meeting with the International Organizations, it was also suggested that the latter should state the species to which they wished each member State to extend its protection as a priority. This suggestion was further developed by a proposal that the organizations should give an order of priority - an example was quoted comprising three levels - for each species concerned. The Committee may wish to examine this proposal

[Annex follows]

CAJ/XVI/4

ANNEX

DRAFT
UPOV RECOMMENDATIONS
ON THE HARMONIZATION OF THE LISTS OF PROTECTED SPECIES

adopted by the Committee on March 28, 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 under Article 4(2) of the Convention 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 member 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 of the Union:

(a) to extend protection to every genus or species for which the following conditions are met:

(i) The genus or species is the subject of plant breeding work, or it is expected that the extension of protection will be an incentive for such work to be undertaken;

(ii) There is a real or potential market in the member State of the Union concerned for reproductive or vegetative propagating material of varieties from that genus or species;

(iii) Examination facilities are existing or will be set up for the genus or species, either in the member State of the Union concerned or in another member State which offers its services for examination pursuant to the provisions of Article 30(2) of the Convention;

(iv) There are no legal, climatic or other obstacles to such extension;

(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.

[End of document]