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UPOV**CAJ/XX/4****ORIGINAL: English****DATE: May 21, 1987****INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS****GENEVA****ADMINISTRATIVE AND LEGAL COMMITTEE**

**Twentieth Session
Geneva, June 17 and 18, 1987**

PROPOSALS OF MEMBER STATES FOR REVISION OF THE CONVENTION

Compiled by the Office of the Union

For the nineteenth session of the Administrative and Legal Committee, a document was produced (document CAJ/XIX/4) which included the proposals for revision of the Convention that had been received from member States. In order to facilitate comparison of such proposals, the present document sets out, for each Article of the Convention for which proposals have been received, the proposals that have been made in relation to that Article.

Article 5

FRANCE

Paragraph (1), first subparagraph

It would perhaps be appropriate to delete the words "as such" in order to facilitate verification and the provision of evidence for breeders wishing to enforce their rights.

Paragraph (1), second subparagraph

In view of the ineffectiveness of Article 5(4), an amendment would be appropriate to extend to sexually reproduced plants the provisions currently applying to ornamental plants only: in the case of varieties for which only sexual reproduction is used at present, the progress made with in vitro multiplication in particular makes it necessary to extend the breeder's rights to whole plants and parts of plants for which efficient in vitro multiplication may become possible. The Committee proposes a wording such as the following: "The right of the breeder shall extend to whole plants or parts thereof normally marketed for purposes other than propagation when they are used commercially as propagating or production material."

Paragraph (3)

It would be desirable to explore the means of introducing dependence on the holder of rights in a variety which is used as the basis for a slavish modification. By "slavish" the Committee means both:

- resulting from mere observation in favorable circumstances;
- easily repeated in a routine fashion on varieties of one or more species, even where the process underlying the modification is undeniably original.

Article 4

FRANCE

Paragraph (1)

No change.

Paragraphs (2) to (5)

The French Committee has no objection to the deletion of the minima at present specified in the Convention.

It agrees to an increased rate of extension of protection to new genera and species through member States being required to protect on their territory any genus or species of agricultural significance to them as soon as three member States--of which at least two provide for an official examination of distinctness, homogeneity and stability of the plant--material have extended protection to that genus or species.

Article 6

FRANCE

Paragraph (1), subparagraph (b)

The novelty concept is based on the offer for sale or marketing of the very material for which protection is sought.

Should not novelty be linked to the scope of the rights granted? Then the following would cause loss of novelty:

- the offer for sale or marketing of the variety for which protection is sought, or of any other variety whose commercial production requires repeated use of the first-mentioned variety.

NETHERLANDS²Paragraph (1)

The protection given by Article 5(1) should be enlarged so as to also cover multiplication on one's own premises.

Paragraphs (1) to (4)

The question of giving protection against the import of marketed products should be studied.

Paragraph (3)

There should be consideration of the issue of what relationship there must be between the protected variety and the new variety which is developed from this variety (either by conventional breeding techniques or by biotechnological techniques).

² The proposals from the Netherlands were received from the Ministry of Agriculture and Fisheries.

Article 13

FRANCE

The Committee has no objection to the retention of Article 13. It also agrees that the provision could be sufficient on its own for implementation purposes.

[End of document]

Article 12

FRANCE

It would be desirable to introduce an arrangement whereby each member State making its own technical examination for a genus or species outside the cooperation framework may request either the breeder of a variety for which priority has been claimed or the official testing authorities of the country of the first, basic application to provide a sample of the variety that would be sufficient for the updating of its reference collection for the species concerned.

Article 2FRANCE¹Paragraph (1)

The French Committee agrees to the retention of the present wording, subject however to an adjustment to the provisions of Articles 4 and 5 of the Convention.

The Committee considers it inappropriate for cumulative protection of a new variety to be made possible by means of an amendment to the present wording.

¹ The proposals from France were received from the Committee for the Protection of New Plant Varieties.