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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

COUNCIL

Thirty-Sixth Ordinary Session
Geneva, October 24, 2002

**PROGRESS REPORT OF THE WORK OF THE
ADMINISTRATIVE AND LEGAL COMMITTEE**

Document prepared by the Office of the Union

1. Since the thirty-fifth session of the Council, the Administrative and Legal Committee (hereinafter referred to as the "Committee") held its forty-fifth session in Geneva on April 18, 2002.

2. The Committee examined the following matters:

(a) Report of the thirty-eighth session of the Technical Committee: The Technical Director reported on the thirty-eighth session of the Technical Committee, held in Geneva from April 15 to 17, 2002 (seed documents TC/38/15 and C/36/10).

(b) Revised General Introduction to the Examination of Distinctness, Uniformity and Stability and the Development of Harmonized Descriptions of New Varieties of Plants (document CAJ/45/2): The Committee agreed to propose, jointly with the Technical Committee, documents CAJ/45/2 and CAJ/45/2 Add. for adoption by the Council, at its nineteenth extraordinary session held on April 19, 2002, as document TG/1/3 the "General Introduction to the Examination of Distinctness, Uniformity and Stability and the Development of Harmonized Descriptions of New Varieties of Plants."

(c) Specific Issues Concerning the Interface Between Patents and Breeders' Rights (document CAJ/45/3): The Committee discussed document CAJ/45/3, which considered the

extent to which important elements of the 1991 Act of the UPOV Convention and, in particular, the breeder's exemption, are affected by the patenting of biotechnological inventions. A revised version of document CAJ/46/2, modified on the basis of the comments made by the Committee, will be discussed at its forty-sixth session (document CAJ/46/2). The Vice Secretary-General informed the Committee about the WIPO-UPOV Symposium on the Co-existence of Patents and Plant Breeders' Rights in the Promotion of Biotechnological Developments, that will be held in Geneva on October 25, 2002, and which had the aim of raising awareness on the benefits of plant breeders' rights in those circles dealing with the patents system.

(d) Publication of Variety Descriptions (document CAJ/45/4) : The Committee approved the schedule of activities for the project as proposed under Section 6 of the Annex to document CAJ/45/4. The project focused on two main aspects: firstly, the need for a model study to investigate and develop solutions to the technical issues concerning the possible development and publication of variety descriptions, at the international level, in an effective way; and secondly, that there were important legal, administrative and financial issues which would need to be resolved, by the Committee, before considering the possible introduction of an international system for the publication of variety descriptions. A questionnaire concerning the legal, administrative and financial issues will be presented to the Committee at its forty-sixth session.

(e) Adhoc Subgroup of Technical and Legal Experts on Biochemical and Molecular Techniques (the BMT Review Group (document CAJ/45/5)) : The Committee agreed with the conclusions of the BMT Review Group as reported by the Vice Secretary-General, that Proposal 1 relating to Option 1(a) for a gene-specific marker of a phenotypic characteristic and Proposals 2, 3 and 4 relating to Option 2, calibration of threshold levels for molecular characteristics against the minimum distance in traditional characteristics for Oilseed Rape, Maize and Rose, respectively, could be pursued on the basis of assumptions. It recognized the need for further work to examine these assumptions and, in the case of Option 2, to improve the relationship between morphological and molecular distances. It also noted the divergence of views which had been expressed regarding Proposal 5 (Option 3 for Rose) and Proposal 6 (Option 3 for Wheat). The Committee, in conjunction with the decision taken at the Technical Committee, also agreed to the schedule for reporting the outcome of the BMT Review Group meeting and for future meetings of the Crop Subgroups : The Office of the Union will produce a document, containing the recommendations of the BMT Review Group and the considerations of the Technical Committee and the Committee, for circulation to the Technical Working Parties and for them to consider this document and the reports of the work of Crop Subgroups.

(f) Review of UPOV Information Databases and Services (document TC/38/6-CAJ/45/6) : The Committee endorsed the proposal of the Technical Committee that, in order to construct a single database, it would be necessary to use a "unique identifier" which would be the code developed in document TC/35/16 "Revised Working Paper for a UPOV Taxon Code for Use in the UPOV-ROM Plant Variety Database." It was further clarified that this code could be changed to meet the demands for the work on publication of variety descriptions and variety denominations. The Committee noted the proposal to present a copy of the consolidated database of taxa to the Technical Committee in April 2003 and noted that the Technical Committee had agreed that the Office of the Union should proceed on this basis and maintain the database and code until the requirements of a UPOV code for the publication of variety descriptions and/or variety denominations becomes clear.

(g) Issues Concerning the Use of Material Submitted for Examination of Distinctness, Uniformity and Stability (document CAJ/45/7): The Committee, while discussing paragraphs 1 to 12 concluded that there were different interpretations of Article 12 of the 1991 Act of the UPOV Convention and that the authority could require the breeder to submit, for examination purposes, material of reference varieties, but if that material was not submitted the application could not be rejected. The Committee agreed to continue the discussion on the rest of the document during its forty-sixth session in October 2002 and requested the Office of the Union to prepare a revised version of the document.

(h) Variety Denominations: The Vice Secretary-General reported on the meeting of the *Ad hoc* Working Group on Variety Denominations, held in Geneva on April 18, 2002. The Committee noted the following conclusions concerning the work plan for the Working Group: to prepare an updated version of document UPOV/INF/12 Rev., in the form of “explanatory notes” clearly linked to the Convention; to draft a questionnaire seeking information on how the effectiveness of the UPOV-ROM (or similar web-based database) might be improved; and finally, to draft a questionnaire seeking advice on whether there is a need for a review of the classes of closely related species contained in Annex I of document UPOV/INF/12 Rev.

3. The forty-sixth session of the Committee will be held on October 21 and 22, 2002. In addition to the matters described above in items (c) Specific issues concerning the interface between patents and breeders’ rights, (d) Publication of Variety Descriptions, (g) Issues concerning the use of material submitted for examination of distinctness, uniformity and stability and (h) Variety Denominations, of the preceding paragraph, the Committee will deal also with the protection of hybrid varieties through protection of parent lines and the notion of “essentially derived variety” in the breeding of ornamental varieties.

4. *The Council is invited to note and approve this report.*

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