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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL**Thirty-Seventh Ordinary Session****Geneva, October 23, 2003****PROGRESS REPORT OF THE WORK OF THE
ADMINISTRATIVE AND LEGAL COMMITTEE***Document prepared by the Office of the Union*

1. Since the thirty-sixth session of the Council, the Administrative and Legal Committee (hereinafter referred to as the "CAJ") held its forty-seventh session in Geneva on April 10, 2003.

2. The CAJ examined the following matters:

(a) Memorandum prepared by the Office of UPOV on the genetic use restriction technologies: Discussions were based on document CAJ/47/7 which informed the CAJ that the Conference of the Parties (COP) to the Convention on Biological Diversity (CBD), in its Decision VI/5, had invited UPOV to examine, in the context of its work, the specific intellectual property implications of the genetic use restriction technologies (GURTs), particularly in respect of indigenous and local communities, and to further study their potential impacts on small farmers, indigenous and local communities and on farmers' rights. UPOV was also invited to study the applicability of existing, or the need to develop new, legal mechanisms to address the application of GURTs. In response to this request, the Office of the Union had communicated a Memorandum on this matter. The CAJ used the Memorandum as the basis for the development of a paper which was submitted to, and further elaborated by, the Consultative Committee and, subsequently, adopted by the Council, on April 11, 2003, as the "Position of the International Union for the Protection of New Varieties

of Plants (UPOV) Concerning Decision VI/5 of the Conference of the Parties to the Convention on Biological Diversity (CBD).”

(b) The Notion of “Essentially Derived Variety” in the Breeding of Ornamental Varieties: Discussions were based on document CAJ/46/7, which was a response to a request from the Technical Committee to consider the possibility that the breeder who develops a “changed form” of his own protected variety would, under the provisions of the 1991 Act of the UPOV Convention, have protection for his “changed form,” if it was considered to be an essentially derived variety. The CAJ agreed that the question raised in the document did not refer exclusively to ornamentals, but were applicable to all varieties. Subject to minor drafting changes, the CAJ approved the substance of document CAJ/46/7, which indicated that the application of the provisions on essentially derived varieties of the 1991 Act of the UPOV Convention provided, under specific conditions, for the protection of the “changed form.”

(c) Specific Issues Concerning the Interface Between Patents and Breeders’ Rights: Discussions were based on document CAJ/47/2 dealing with the recommendation concerning the adoption by the Council of UPOV of a position paper on “Specific Issues Concerning the Interface Between Patents and Breeders’ Rights,” based on document CAJ/46/2, as modified and approved by the CAJ, at its forty-sixth session on October 24, 2002, which appeared in the Annex to document CAJ/47/2. The Chair concluded that a decision on this matter could not be reached during the forty-seventh session of the CAJ due to time constraints and further discussion on this item would take place at the forty-eighth session of the CAJ in October 2003.

3. The forty-eighth session of the CAJ will be held on October 20 and 21, 2003. In addition to the item (c) Specific issues concerning the interface between patents and breeders’ rights, of the preceding paragraph, the CAJ will also deal with the publication of variety descriptions; the transfer of material for the purposes of examination of distinctness, uniformity and stability; proposed model agreements; the recommendations to ensure the independence of those DUS examination centers which have, or have links to, breeding activities; the acts done privately and for non-commercial purposes and the farmer’s privilege under the 1991 Act of the UPOV Convention; the review of the UPOV-ROM Plant Variety Database; the UPOV information databases; variety denominations and, finally, the access to genetic resources and benefit-sharing.

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

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