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ADMINISTRATIVE AND LEGAL COMMITTEE ADVISORY GROUP

Ninth Session
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POSSIBLE ALTERNATIVE DISPUTE SETTLEMENT MECHANISMS FOR ESSENTIALLY DERIVED VARIETIES

Document prepared by the Office of the Union

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1. The purpose of this document is to report on developments on alternative dispute settlement mechanisms at the International Community of Breeders of Asexually Reproduced Ornamental and Fruit Varieties (CIOPORA), the International Seed Federation (ISF) and the World Intellectual Property Organization (WIPO) and to consider the possible role of UPOV in alternative dispute settlement mechanisms.

BACKGROUND

2. The Administrative and Legal Committee Advisory Group (CAJ-AG), at its eighth session, held in Geneva on October 21 and 25, 2013, noted the closing remarks of the President of the Council of Session III of the Seminar on Essentially Derived Varieties (EDV Seminar) “Possible role of future UPOV guidance on essentially derived varieties” in relation to the following topics:

- (i) experiences on the role of “soft law”/guidance in different jurisdictions and in relation to other subject matters; and
- (ii) the potential of alternative dispute settlement mechanisms as a tool for building guidance resulting from award/expert determination EDV cases.

(see document CAJ-AG/13/8/10 “Report”, paragraph 48 and Proceedings of the EDV Seminar, Publication 358, page 101 http://www.upov.int/meetings/en/details.jsp?meeting_id=29782)

3. The CAJ-AG, at its eighth session, agreed to consider the inclusion of information on alternative dispute settlement mechanisms for EDV matters in document UPOV/EXN/EDV/2, including a reference to document UPOV/INF/21 “Alternative Dispute Settlement Mechanisms”. As a first step, the CAJ-AG agreed that the Office of the Union should prepare an information document for the CAJ-AG on developments on alternative dispute settlement mechanisms at CIOPORA, ISF and WIPO. In that regard, the CAJ-AG noted that one aspect for consideration would be the possible role of UPOV in the provision of experts on EDV matters (see document CAJ-AG/13/8/10 “Report”, paragraph 48).

4. In relation to the possible role of alternative dispute settlement mechanisms for matters concerning essentially derived varieties, Mr. Erik Wilbers, Director, Arbitration and Mediation Center of WIPO, explained the following at Session III of the EDV Seminar (see Publication 358, page 94 http://www.upov.int/meetings/en/details.jsp?meeting_id=29782):

"Parties involved in disputes in the area of EDVs could benefit from availability of such tailored ADR procedure. In the interest of time and cost efficiency, such voluntary mechanism could take the form of an expedited arbitration procedure, preceded by, if parties so wish, settlement attempts through mediation. A specific procedural timeframe could be developed, together with a schedule of fixed case-appropriate fees. The procedure could be developed to specifically address a range of particularities related to EDV-related disputes, such as their often international character, and resulting need to establish jurisdiction and achieve enforceability of the arbitral award; and the need for specialized expertise in the procedure which could be supported through the availability of a WIPO list of EDV-specialized neutrals and experts. In terms of substance, cases might benefit from the availability of general UPOV guidance. Also, it could be worth considering encouraging party agreement that would permit publishing anonymized summaries of the award on issues of substance."

DEVELOPMENTS IN CIOPORA, ISF AND WIPO

5. On the basis of enquiries by the Office of the Union, there have been no significant developments in CIOPORA, ISF and WIPO on alternative dispute settlement mechanisms for matters concerning essentially derived varieties.

POSSIBLE NEXT STEPS

6. As a next step, the CAJ-AG may wish to consider requesting the Office of the Union:

- (i) to organize a meeting to exchange information with CIOPORA, ISF and WIPO in order to explore the possible role of UPOV in alternative dispute settlement mechanisms for matters concerning essentially derived varieties, including the provision of experts on EDV matters; and
- (ii) to provide a report for the CAJ-AG, at its tenth session in October 2015.

7. *The CAJ-AG may wish to invite the Office of the Union to:*

- (a) *organize a meeting to exchange information with CIOPORA, ISF and WIPO in order to explore the possible role of UPOV in alternative dispute settlement mechanisms for matters concerning essentially derived varieties, including the provision of experts on EDV matters; and*
- (b) *provide a report for the CAJ-AG, at its tenth session in October 2015.*

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