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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

COUNCIL

Thirty-Second Ordinary Session
Geneva, October 28, 1998

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

Document prepared by the Office of the Union

1. Since the thirty-first session of the Council, the Administrative and Legal Committee (hereinafter referred to as the "Committee") has held one session, its thirty-eighth, on April 2, 1998.
2. A Working Group met on February 12, 1998, to establish a basis for discussion for examining the issue of characteristics used in distinctness testing. It was composed of Messrs. John V. Carvill (Ireland), Georg Fuchs (Germany), Huib Ghijsen (Netherlands), Joël Guiard (France), Yasuhiro Hamura (Japan), Raimundo Lavignolle (Argentina), Johan Pieter Pluim Mentz (Netherlands), Richard J. Staward (United Kingdom) and Katsumi Yamaguchi (Japan).
3. The Committee examined the following matters:
 - (a) Review, in 1999, of Article 27.3(b) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).— The Committee had before it a document prepared by the Office of the Union and held a short exchange of views. It was emphasized that the representatives of the member States within UPOV should enter into close relations with their counterparts within WTO.

(b) Characteristics used in distinctness testing.— The discussions revealed differences of opinion which, however, concerned in any event an evolving situation which meant that no firm and final stance could be adopted. The Chairman drew the following conclusions:

(i) One should not reject the use of molecular tools out of hand in the examination of distinctness.

(ii) It was not possible, at the present stage at least, to allow information obtained using a molecular tool to serve alone as the basis for a conclusion on the clear distinctness of two varieties.

(iii) The use of molecular tools could only be contemplated if there was a guarantee that the minimum distances between varieties would not be made smaller.

(iv) The risk of “minisystems of protection” evolving from different examination practices, mentioned at the previous session of the Committee, could not be ruled out, but everything should be done to avoid them.

(v) To that end, it was particularly appropriate that the Working Group on Biochemical and Molecular Techniques, and DNA Profiling in Particular, should continue its work.

(c) Variety denominations.— With regard to the use of variety denominations, it was remarked that more emphasis should be given to the variety denomination in the general framework of the protection system, as in German or Community law for instance, which entitled the breeder to bring an action against any person who failed to use the variety denomination in trade.

(d) The concept of tree and vine in the provisions on novelty and duration of protection.— The Committee considered that it would be more appropriate to consider that matter within a working group.

4. The thirty-ninth session will be held in Spring 1999. Its agenda will be decided on the basis of the information available when the session is convened.

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

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