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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Thirtieth Session

Geneva, April 8 and 9, 1992

CONDITIONS FOR THE EXAMINATION OF A VARIETY
CARRIED OUT BY THE BREEDERDocument prepared by the Office of the Union

1. At its twenty-fifth ordinary session (October 24 and 25, 1991), the Council decided that the Administrative and Legal Committee should examine the conditions which should be satisfied when breeders or applicants carried out growing trials and prepared reports on the examination (see paragraph 23(i) of document C/25/12).

2. These conditions were defined as follows in a declaration (see the annex to document C/X/8) which the Council noted, with approval, at its tenth ordinary session in October 1976:

"(1) It is clear that it is the responsibility of the member States to ensure that the examination required by Article 7(1) of the UPOV Convention includes a growing test, and the authorities in the present UPOV member States normally conduct these tests themselves; however, it is considered that, if the competent authority were to require these tests to be conducted by the applicant, this is in keeping with the provisions of Article 7(1) provided that:

"(a) the growing tests are conducted according to guidelines established by the authority, and that they continue until a decision on the application has been given;

"(b) the applicant is required to deposit in a designated place, simultaneously with his application, a sample of the propagating material representing the variety;

"(c) the applicant is required to provide access to the growing tests mentioned under (a) by persons properly authorized by the competent authority.

"(2) A system of examination as described above is considered compatible with the UPOV Convention."

3. The decision referred to in paragraph 1 above is the result of debates which the Technical Committee held on this subject at its twenty-seventh session (October 16 to 18, 1991). Extracts from documents TC/27/3 and TC/27/9 are contained in the Annex to this document.

4. The Technical Committee agreed to recommend to the Council that the conditions should be reexamined in order to reaffirm their relevance for UPOV in the years ahead. The Council, in its turn, questioned whether it was desirable to require that a representative sample of the variety should be deposited at a designated location simultaneously with the filing of the application.

5. The requirement of a simultaneous deposit could be conveniently replaced by a requirement for a deposit within a predetermined period. Paragraph b) could be modified as follows:

"b) the applicant is required to deposit in a designated place, within a period fixed by the authority [simultaneously with his application], a sample of the propagating material representing the variety."

6. With this amendment, the Administrative and Legal Committee could, like the Technical Committee, recommend to the Council that the declaration of 1976 be reaffirmed.

7. The Administrative and Legal Committee is invited to express its view on the proposal contained in paragraph 5 above.

[Annex follows]

EXTRACTS FROM DOCUMENTS TC/27/3 AND TC/27/9**1. Extract from Document TC/27/3 (Matters Arising from the 1991 Sessions of the Technical Working Parties to be Dealt with by the Technical Committee)**

"90. Examination in the United States of America. The TWA noted document TWA/20/7, prepared by the experts from the United States of America, which explained the system applied in the United States of America, as well as explanations given by experts on the following subjects:

- (i) History of the Plant Variety Protection System;
- (ii) Procedures for Processing Plant Variety Applications;
- (iii) Data Collection and Storage;
- (iv) Information Resources of the Plant Variety Protection Office;
- (v) Examples of a Search for Novelty.

Summaries of these explanations will be annexed to document TWA/20/9.

"91. Examination of Maize Varieties in France. The TWA noted document TWA/20/6 prepared by the experts from France on the system with respect to maize. Under this system the applicant was asked to supply the results of one year's test and the Plant Variety Protection Office carried out another year's test, comparing its own data with those supplied by the applicant. Mr. Guiard (France) explained that the system's aim was to obtain from the breeder a predescription of the variety that allowed the Office to take a decision on the variety after only one year of official tests in two different locations. The decision on the variety would be based on the data from the official test alone. At the outcome of one year's experience, the system looked very promising. It was, however, restricted to maize lines only and extension to other species was not planned at present.

"92. Examination in New Zealand. The TWA noted a report from the expert from New Zealand on the change in his country from a government growing test system to a breeders' growing test system with respect to agricultural and vegetable species. The expert concluded that the change had not been an easy one as in the beginning breeders had not been able to describe varieties so that procedures, test guidelines and training courses had had to be prepared to make the system work but now, three years after the change, it was working satisfactorily. One other difficulty had been the non-existence of any descriptions of the varieties of common knowledge. For ryegrass, the Office had had to go back to official growing tests. Thus, in general, New Zealand had a mixed system comprising both official growing tests and breeders' growing tests.

"93. Examination in Canada. The TWA also noted a report from the expert from Canada on Canada's intention to build up a system of breeders' growing tests comparable to that already applicable in Australia, where the examiner would look at the plants at the premises of the breeder. As the system would be completely new in Canada, one difficulty would be the setting up of a test of varieties of common knowledge and the selection of similar varieties with which a candidate variety would have to be compared.

"94. In the discussions that followed the above-mentioned reports, the TWA noted that the member States at present applying solely a government growing test system would also have to consider partial acceptance of a breeders' growing test system, especially in view of the planned opening of the protection system to the whole plant kingdom. The higher cost of testing and the covering of cost increasingly demanded by governments would also lead to greater involvement of the breeder in the testing. Among the different examples noted, there was, however, a large range of different possibilities for breeders' growing tests, ranging from cases where the breeder received detailed instructions on how to execute the tests and establish the test report and the variety description to very liberal cases leaving details of how to execute tests and establish the description entirely to the responsibility of the breeder.

"95. Having noted the results of the discussion on cooperation with breeders in the testing of varieties held within the Technical Committee and other Technical Working Parties, the TWF discussed the possibilities for the species in its field of competence. It finally concluded that it was important for offices not to align themselves with specific breeders in order to remain independent. The possibilities of cooperation depended on the species. For many species it was dangerous to leave testing to the breeders, and only official growing tests would be acceptable. For certain other species, the breeder or applicant could be contacted for details or additional knowledge on the species concerned or for the indication of comparable varieties. In its field of competence, the TWF did not expect many applications for varieties of new species as a result of the extension of protection to the whole plant kingdom. Growing tests done by breeders would not necessarily be cheaper for breeders.

"96. The TWO noted paragraph 47 of document TC/26/5 on the last session of the Technical Committee and a short report on the discussions held in the Technical Working Party for Agricultural Crops on cooperation with breeders in the testing of varieties practiced in the United States of America, New Zealand and France and the plans in this respect in Canada. The experts then shortly reported on cooperation with breeders in their respective countries. In Japan national breeding institutes accepted test data of two years of published data for the decision of distinctness; in other cases, an on-site inspection was made once a year, with the rest of the data being supplied by the applicant, in yet other cases, tests were laid out in governmental stations. In all other States represented during the TWO session, growing tests were mainly done in government trials and only exceptionally on the premises of the breeder/applicant or in other collections of varieties. The observations of the plants were in almost all cases made by government offices, however.

"97. The TWO considered that at present there was no need for involving the applicant/breeder in the observations. Most breeders/applicants would be unable to perform the observations and the reliability and the high standards of the test results would suffer. Breeders tests, compared to the present situation, would in all likelihood lead to higher costs for the total testing. In the case of a further increase in the workload, a centralization of the testing should be aimed at before involving the applicant/breeder. Only if that were not enough, should the possibility of involving applicants/breeders be considered species by species and with extreme caution.

"98. The TWV noted document TWA/20/6, which explained a system at present under study in France, whereby for maize inbred lines the applicant and the national office did one year of DUS testing each. If the results of both series of tests agreed, the decision to grant variety protection could be made on the basis of the official test results of one year in two locations. The breeder thus saved one year. The Working Party agreed to follow that study.

"(see TWA/20/9 Prov., paragraphs 16 to 20, TWF/22/4 Prov., paragraph 12, TWO/24/12 Prov., paragraphs 32 to 34, TWV/24/10 Prov., paragraph 14)"

2. Extract from Document TC/27/9 (Report)

"53. The Committee noted paragraphs 90 to 98 of document TC/27/3, commenting on the possible ways of involving breeders or applicants in the testing of their varieties. It noted that, in the majority of cases, the Technical Working Parties had emphasized the need to maintain the existing reliability of the test results based upon observations by the national offices, even where plants are grown on the premises of the applicant or breeder. However, it agreed that growing tests carried out by the breeder are equally acceptable, if properly done, and noted that an increasing number of UPOV member States used breeder testing as part of their examination procedure. In this context, it recalled in particular that, at its tenth session, the Council had noted with approval (see document C/X/12, paragraph 7) that tests conducted by the applicant were in keeping with the provisions of the Convention, provided that:

"(a) the growing tests are conducted according to guidelines established by the authority, and that they continue until a decision on the application has been given;

"(b) the applicant is required to deposit in a designated place, simultaneously with his application, a sample of the propagating material representing the variety;

"(c) the applicant is required to provide access to the growing tests mentioned under (a) by persons properly authorized by the competent authority."

"Since reference to those conditions had been made during the 1978 Diplomatic Conference (see No. 394 of the records), the Committee recommended that States using or planning to use applicants/breeders' tests, should adopt all three of the above-mentioned conditions. The Committee agreed to recommend to the Council that these conditions be reviewed with a view to reaffirming their appropriateness for UPOV in the years ahead."

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