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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Thirty-second Session

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TECHNICAL COMMITTEE

Twenty-ninth Session

Geneva, April 21, 1993

DECLARATION ON THE CONDITIONS FOR THE EXAMINATION OF A VARIETY BASED UPON TESTS CARRIED OUT BY THE BREEDER

Document prepared by the Office of the Union

1. At its twenty-sixth ordinary session held on October 29, 1992, the Council noted that the Declaration on the Conditions for the Examination of a Variety Based Upon Tests Carried out by the Breeder--which Declaration had been submitted to it by the Administrative and Legal Committee--dealt essentially with one form of testing whilst other forms existed or were envisaged. The Council adopted the Declaration on the understanding that the Administrative and Legal Committee and the Technical Committee would jointly study the possible consequences of these other forms of testing. (See paragraph 24 of document C/26/15 Prov.)

2. The field of application of the Declaration is set out in the introductory phrase of the substantive provisions in language based partly upon that of Article 12 of the 1991 Act of the Convention. As the discussions in the Council showed, that field can be interpreted restrictively although the conditions set out in the Declaration are of general application, provided they are relevant for the case in question (for example where the data is gathered by an examiner from the competent authority and where the breeder is only responsible for the growing out the varieties included in the test, the first condition is necessarily limited to the establishment of the trial).

3. The Office of the Union suggests that the Declaration could usefully be amplified in order to specify that it is applicable by analogy to other forms of examination of the application in which the breeder is called upon to play an active role, but without entering into the details in order to preserve the maximum flexibility for the Declaration. The proposed text is set out in the Annex.

[Annex follows]

ANNEX

DRAFT

**DECLARATION ON THE CONDITIONS FOR THE EXAMINATION
OF A VARIETY BASED UPON TRIALS CARRIED OUT BY THE BREEDER**

The Council of the International Union for the Protection of New Varieties
of Plants,

Pursuant to Article 21(h) of the 1978 Act of the International Convention for the Protection of New Varieties of Plants;

Considering Article 7(1) of the 1978 Act of the Convention, under which: "Protection shall be granted after examination of the variety in the light of the criteria defined in Article 6. Such examination shall be appropriate to each botanical genus or species";

Considering Article 12 of the 1991 Act of the Convention, under which: "Any decision to grant a breeder's right shall require an examination for compliance with the conditions under Articles 5 to 9. In the course of the examination, the authority may grow the variety or carry out other necessary tests, cause the growing of the variety or the carrying out of other necessary tests, or take into account the results of growing tests or other trials which have already been carried out. For the purposes of examination, the authority may require the breeder to furnish all the necessary information, documents or material";

Declares that a system for the examination of applications based upon growing tests and other necessary tests carried out by the breeder and on the information submitted by him on the basis of those tests will be considered in keeping with the provisions of the Convention if:

1. The growing tests and other necessary tests are conducted according to guidelines established or accepted by the authority;
2. The testing arrangement is maintained--in order to permit the checking of data or the collecting of further data--until a decision has been made on the application or until the authority has informed the breeder that the arrangement is no longer necessary;
3. The breeder provides access to the growing tests by persons properly authorized by the authority;
4. The breeder, when requested to do so, deposits in a designated place, and within a time limit set by the authority, a sample of propagating material representing the variety.

PROPOSED ADDITION:

This Declaration is applicable by analogy to other systems for the examination of applications in which the breeder plays an active role in relation to the growing tests and other necessary tests.