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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Fifth Session

Geneva, April 17 and 18, 1980

RECOMMENDATION ON FEES IN RELATION TO
COOPERATION IN EXAMINATIONDocument prepared by the Office of the Union

1. At its fourth session, the Administrative and Legal Committee agreed on a new draft for the Recommendation on Fees in Relation to Cooperation in Examination, reproduced in Annex III to document CAJ/IV/8, as a basis for further discussions at its fifth session. It also invited the member States to communicate their observations on the new draft to the Office of the Union in writing, in order to speed up discussions at the fifth session (see paragraph 21 of document CAJ/IV/8).
2. The Office of the Union has received observations from the Delegations of Canada and Denmark. They are summarized hereunder. Since discussions might extend to the case where the application for protection is withdrawn, earlier observations from the Delegation of France are also summarized hereunder.
3. It is the understanding of the Delegation of Canada that the amount of 1350 Swiss francs referred to in paragraph (3) of the draft Recommendation on Fees in Relation to Cooperation in Examination was to be an approximate upper limit for all species. The draft appears to that Delegation to be less flexible than what was agreed in the session.
4. The Delegation of Denmark has stated that it can agree in principle to the draft Recommendation on Fees in Relation to Cooperation in Examination. The adoption of a new and harmonized system of fees in the case of cooperation could, however, make it desirable to reconsider the case where applications for protection are withdrawn before or during the examination period and to seek a common understanding on this issue. Whereas it would not be necessary to have the Recommendation on Fees in Relation to Cooperation in Examination reflect such understanding, it would be useful to have it recorded in the report of a session.
5. Denmark applied the following system:
 - (i) For an examination carried out on behalf of another State, the consideration charged equalled the fee valid at the time the examination report was submitted.
 - (ii) In the case where the application for the protection of a variety already under test was withdrawn, a consideration was charged for that part of the examination that had been carried out or had been started. If several States had asked for the same examination report, normally the consideration was only charged to that State at the request of which the examination had been started.
 - (iii) If the examination had not been started, the withdrawal was accepted without costs for the requesting authority.

6. The Delegation of France had noted the following: "It may happen that an applicant in a State which does not itself perform the examination of the variety abandons his application before the State to which the examination has been entrusted communicates the examination results. Several cases may then arise:

(a) The examination is being or has been performed at the sole request of the State in which the application for protection has been withdrawn. In this case, it seems equitable that the State in question should pay the examining State the consideration charged by the latter for the performing of the examination, and recover it from the applicant: if the examination had been performed in the same State, the applicant would have had to pay the fee in advance.

(b) The examination has not started at the time of the withdrawal.

(c) At the time of the withdrawal, the examination is being or has been performed, but on behalf of one or more other States (including the examining State).

In the latter two cases, the results can in no way give rise to exploitation by the State in which there is no longer any application for protection. In addition, the examining State is assured of remuneration for its work. It thus seems that the State in which the application has been withdrawn may be exempted from any payment to the examining State, it being understood that the results will not be transmitted to it or, if they have already been transmitted, that they will be returned.

The question should be examined whether it would not be useful to introduce provisions in the draft Recommendation on Fees in Relation to Cooperation in Examination to regulate these various situations."

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