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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

VARIETY DENOMINATIONS

Document prepared by the Office of the Union

The Office of the Union has received the attached observations on the subject of variety denominations from the Delegations of Denmark and Italy.

[Two Annexes follow]

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ANNEX I

OBSERVATIONS FROM THE DELEGATION OF DENMARK

(Extract from the letter, dated April 8, 1980, from
Mr. Flemming Espenhain to the Vice Secretary-General)

1. Use of prefixes in variety denominations.

During the discussion all delegations commenting on this item expressed the view that the present situation was not satisfactory. However it was also expressed that the use of prefixes (particularly in ornamentals) had become more or less a tradition, which was difficult if not impossible to change.

With this situation and the increasing numbers of denomination proposals with prefixes in mind we have to face the problem that it will be more and more difficult to distinguish variety denominations starting with the same syllable from each other. If it is still the opinion that the text in 'Guidelines for Variety Denominations' (doc. UPOV/C/VII/22, dated October 12, 1973) shall be followed, it will be necessary that all member states provide for a certain distance to other variety denominations by the approval of a new name, especially within a group of denominations with the same prefix.

Even if it is obvious that it is difficult, if not impossible, to know whether a distance is sufficient or not in pronunciation between two or more denominations in another language, this will probably be the case, if there also is a certain difference in the spelling.

2. Utilization of a publication of a denomination proposal first made by
another member state.

Because of the questions raised in connection to this proposal I shall here emphasize under which circumstances, the said procedure can be followed:

- 1) The denomination proposal must be approved in that country, in which gazette it has been published as proposal.

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If the 3 above mentioned conditions are fulfilled, I personally can see no reason, why such a variety should be given another denomination than that approved in the first country, or how another country could object to a denomination, which already has been approved.

However I admit special cases can arise, e.g. in connection with trade marks, but normally this does only mean that a synonym is given in the country in question, and the denomination first approved remain unchanged in the other member states.

- 2) The denomination must be published as approved, or the variety must be published as granted under the given name in the same gazette as above.
- 3) The denomination must be approved by the national denomination committee, i.e. no national reservations.

[Annex II follows]

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ANNEX II

OBSERVATIONS FROM THE DELEGATION OF ITALY

(Annex to the letter, dated April 4, 1980, from
Mr. Lodo Lodi to the Vice Secretary-General)

Observations on "Prefixes" in variety denominations

- 1) It has been generally recognized that denominations characterized by "recurring prefixes" do not possess the requirements specified in UPOV regulations, at least with regards to their ease of enunciation and memorization, and ultimately in practice, for what concerns their systematic subordination to the word marks which normally accompany them.
- 2) As a matter of fact, while said denominations are worded in an unpronounceable way, and are graphically represented in small characters and always overshadowed by particularly attractive word marks, although formally complying with the principles of the Convention (Art. 13), actually in commercial practice a full reversal of functions takes place. More precisely: while the variety denomination structured with recurring prefixes is generally a "sign" which, not only identifies a variety but also acts as an indication relating the variety up to its breeder, on the other hand the word mark winds up being the authentic and prevailing distinguishing sign which is used commercially for variety identification instead of being an indication of the link between the variety and its breeder.
- 3) In Italy a Supreme Court decision (No. 4296 and 4297 dated December 16th 1974) states that:

"... those denominations comprising the "prefix" formed by the breeder's characteristic initials (cases: Stark & Rimson) are not generic and may constitute a valid mark when registration is applied for by the breeder".

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