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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Eighth Session

Geneva, October 12 to 14, 1981

PROTECTION, IN THE CASE OF MAIZE, OF LINES AND COMMERCIAL HYBRIDS,
EXCLUDING PARENT HYBRIDS

Document prepared by the Office of the Union

At its seventh session, the Administrative and Legal Committee decided to enter on the agenda for its eighth session an item on the protection, in the case of maize, of lines and commercial hybrids, excluding parent hybrids (see paragraph 23 of document CAJ/VII/11). The annex to this document contains a note drawn up on this subject by the Delegation of France.

[Annex follows]

NOTE ON THE PROTECTION OF MAIZE CULTIVARS, DRAWN UP BY
THE COMMITTEE FOR THE PROTECTION OF NEW PLANT VARIETIES

Subject: Relinquishment of protection for parent hybrids

SUMMARY OF DATA

- Example cultivars

Parents

Line	A
Single cross hybrid	A x B
Complex hybrid	(A x B) B
Complex hybrid	(A x B) C

- Commercial Hybrids

Single cross hybrid	A x B
Three-way hybrid	(A x B) C
Double cross hybrid	(A x B) (C x D)
Complex hybrid	(C x D) (A x B) B

PROTECTED RIGHTS, EXTENT OF PROTECTION (Article 5(3) of the Revised Text of the UPOV Convention)

Authorization by the breeder is not required for the utilization of the variety as an initial source of variation for the purpose of creating new varieties or for the marketing of such varieties. Authorization is required, however, when the repeated use of the variety is necessary for the commercial production of another variety.

CURRENT SITUATION IN FRANCE

Protected material

Parents:	lines single cross hybrids
Commercial hybrids:	single cross hybrids three-way hybrids double cross hybrids

AMENDMENTS UNDER STUDY

Suppression of protection for parent hybrids

A parent hybrid is neither basic material (line) nor a final product, "a commercial agronomic variety." It constitutes an intermediate phase in the production of a commercial agronomic variety.

Protection of parent hybrids can encourage breeders to take possession, for their benefit and without significant breeding work, of combinations formed on the basis of freely usable lines.

Example using lines in the public domain:

line A:	public domain
line B:	public domain
A x B:	holder of certificate: Mr. X
line C:	public domain
line D:	public domain
C x D:	holder of certificate: Mr. Y

Marketing of the commercial double cross hybrid is subject to double authorization from Mr. X, holder of certificate A x B, and Mr. Y, holder of certificate C x D.

This example can be repeated for all lines in the public domain.

Applicable texts

International Convention for the Protection of New Varieties of Plants of December 2, 1961, revised text of 1978

Article 2(2): Each member State of the Union may limit the application of this Convention within a genus or species to varieties with a particular manner of reproduction or multiplication, or a certain end-use.

French implementing Decree fixing the list of plant species for which new plant variety certificates may be issued as well as the scope and duration of breeders' rights in the case of each plant species, No. 71.765 of September 9, 1971, amended by Decree No. 76.775 of August 9, 1976, and by Decree No. 78.245 of February 23, 1978.

Introduction of a limitation of protection in respect of parent lines and commercial hybrids.

Draft wording

1. The material concerned for the species "maize" is to be listed as follows:
 - inbred lines,
 - commercial hybrids
2. Protected commercial hybrids are not subject to breeders' rights when they are used as intermediate parents.

This presupposes the following interpretation of the wording of Article 5(3) of the 1978 Revised UPOV Convention.

"The authorization required when repeated use of the variety is necessary for the commercial production of another variety, as applied to parent lines already, does not have to be applied at the level of intermediate hybrids.

[End of document]