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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Twelfth Session

Geneva, November 7 and 8, 1983

LEGAL ASPECTS OF THE
PROBLEM OF MINIMUM DISTANCES BETWEEN VARIETIES

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OFFER FOR SALE AND MARKETING
IN RELATION WITH THE NOVELTY CONCEPT

Document prepared by the Office of the Union

The Annex hereto contains the replies from the Delegation of Belgium to the questions asked by the Office of the Union for the purpose of preparing a study of the concept of offering for sale and marketing and of the interpretation of that concept in the various member States for the purposes of novelty within the meaning of Article 6(1)(b) of the Convention. (The questions are reproduced in paragraph 2 of document CAJ/XII/3.)

[Annex follows]

ANNEX

REPLIES OF THE DELEGATION OF BELGIUM

Extract from the letter dated June 28, 1983,
from Mr. J. Rigot, Chief Engineer/Director in the Belgian
Ministry of Agriculture, to the Vice Secretary-General

1. According to the Law of May 20, 1975, on the Protection of New Plant Varieties, the notion of "commercialization," mentioned in its Article 4 (on novelty), is translated by the following terms: "offer for sale, place on sale, stock for sale or delivery, exchange, sold, supply gratuitously or for a consideration, import or export" (Article 2).

The notion "commercialization" has been defined by the same terms in the Law of July 11, 1969, concerning pesticides and raw materials for the agriculture, horticulture, forestry and the animal husbandry which in particular forms the basis of the national variety catalogues.

2. The conclusion of a multiplication contract including a transfer of possession, for example having as its subject matter the maintaining of inbred lines with the return of all the seeds so produced to the breeder, cannot, in my view be considered an act of "commercialization."

3. In the specific case of hybrids, for instance of maize, the contract for multiplication and sale of the seed of the hybrid derived from parent lines which are put at the disposal of the multiplier without actually being assigned to him seems to be a case of "commercialization" within the meaning of Article 6(1)(b) of the Convention.

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