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UPOV

CAJ/XIX/2

ORIGINAL: French

DATE: March 13, 1987

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Nineteenth Session
Geneva, March 31 and April 1, 1987

LIST OF PRIORITIES IN RELATION TO EXTENSION OF PROTECTION

Document prepared by the Office of the Union

1. At its sixteenth session, the Administrative and Legal Committee accepted the proposal that breeders' organizations be requested to indicate the species to which they wished each member State to extend protection as a priority, using three levels of priority (A, B and C) over and above absence of indication for species for which there was no or only minor interest. It further decided that the answers would be compiled and presented to the Committee at its eighteenth session. (See paragraph 44 of document CAJ/XVI/8.)
2. The Office of the Union submitted to the eighteenth session of the Committee a compilation of the replies by ASSINSEL, CIOPORA and COMASSO (see document CAJ/XVIII/2).
3. At the said session, the Committee decided to postpone detailed consideration of lists of priorities until its subsequent (present) session. It further decided that representatives of member States would then be asked to report on the possibilities of satisfying the organizations and making offers for cooperation. (See paragraph 24 of document CAJ/XVIII/7 Prov.)

4. By letter dated March 6, 1987, AIPH forwarded to the Office of the Union the contributions of five national associations:

i) the Dutch Association of Producers/Breeders of Horticultural Seeds (NTZ) has submitted a list of priorities that is almost identical with that submitted by ASSINSEL for horticultural crops. Subject to the following, document CAJ/XVIII/2 accurately reflects the priorities of NTZ:

a) For Calendula officinalis L., the NTZ priorities are the same as those of COMASSO;

b) For Colchicum L., NTZ has not indicated any priorities.

ii) the Dutch Cooperative Mushroom Growers Association has given the following list of priorities:

	<u>Priority</u>
Agaricus L	A
Agaricus bisporus (Lange.) Ing.	A
Auricularia auricula-judae (Fr.) Quel.	B
Auricularia polytricha (Mont.) Sacc.	B
Flammulina velutipes (Er.) Sing.	B
Lentinus edodes (Berk.) Sing.	A
Pleurotus cornucopiae (Pers.) Rolland.	B
Pleurotus ostreatus (Fr.) Quel.	A

iii) The Royal General Association for Flower Bulb Culture of the Netherlands has given a list of priorities applicable to the Netherlands only. Taking into account what is now protected in that country, the list is as follows (the level of priority is "A" in all cases):

Agapanthus L'Hér.	Colchicum L.
Anemone L.	Crocus L.
Anemone hupehensis Lemoine	Hemerocallis L.
Begonia L.	Ranunculus asiaticus L.
Begonia X tuberhybrida Voss	Schizostylis Backh. et Harv.
Canna L.	Scilla L.

iv) The Danish Association of Horticultural Producers has written the letter reproduced in the annex to this document.

v) The Polski Związek Ogroniczy has given a list of priorities applicable to Poland. This list is not reproduced here. It has been communicated to the Polish authorities.

[Annex follows]

ANNEX



Dansk Erhvervsgartnerforening

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Mr. A. Groot
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2509 LP Den Haag
(NL) Holland

13th February, 1987

Dear Mr. Groot,

Re: List of priorities for the extension of protection to botanical genera and species - UPOV-letter dated January 7, 1986.

We refer to the discussion at the meeting in Berlin of the above subject (item 5), and send you hereby the Danish viewpoints on the matter.

As far as we are informed the purpose of the UPOV-request is to harmonize the lists of genera and species open to PBR-protection in the various UPOV member-countries and thereby to reduce the distortion of competition caused by the present lack of harmonization. We understand that the efforts of UPOV will be based on a voluntary harmonization through an extension of the lists in the various countries.

The Danish Association of Horticultural Producers certainly appreciates the efforts of UPOV to solve this serious problem. However, we feel very strongly, that at least within the field of ornamentals we are now beyond the point where the problems can be solved effectively on a voluntary national basis, and we fear, that a simultaneous extension of the lists could in fact enlarge the problems and cause serious damage to the production in a number of UPOV-countries.

We would like to point out, that when a harmonization and an extension of the lists is considered, it is absolutely necessary to consider all

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consequences of such a step, i.e. also the consequences to production and marketing. In our opinion there is a considerable risk that such a step would result in production of ornamentals being moved from UPOV member-countries. This situation will neither be in the interest of the producers nor in the interest of the breeders. What is even worse, it will inevitably create some very harsh feelings against the PBR-system and the UPOV-convention. This whole problem should therefore be considered also in the light of the present far too limited international accession to the UPOV-convention.

It should be remembered that the horticultural trade to-day is very international. If a novelty is brought on the market in one country, it will within a very short time be available also on other markets. With the methods of propagation available in the production of ornamentals, this means that growers in all countries can produce this novelty.

In the international trade with horticultural products the cost of transportation is normally an important factor and gives a certain protection to local producers. The competition in the trade is also very fierce, which means, that the profit on export markets is often marginal.

The license on protected varieties of ornamentals is normally between 5 and 10% of the producerprice, and often higher. There has been a clear tendency towards an increase in the licences when the production of protected varieties represent a larger part of the total production of the particular specie.

The license-payment itself is generally accepted by growers. Problems arise, however, when produce, on which license has been paid, has to compete with produce on which no license has been paid. However, the effect of this problem varies from country to country.

In countries, where the production is sold on the homemarket, the problem normally is not very serious due to the higher cost of transportation on imported products.

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In countries, where the production is primarily sold on export markets, the problem is very serious. License payment can in these cases make competition impossible. The result of a PBR-protection can then be, that the supply of those markets is taken over by non UPOV member-countries or other countries, where no license has to be paid.

We want to point out, that our organization is not opposed to PBR, nor do we feel that a license payment of 5 - 10%, or even higher is an unreasonable payment for the use of the result of the breeders' work. We merely want to point out, that the present system is very incomplete and leads to a distortion of competition for producers in the various countries. In fact, the countries most loyal to the UPOV-system reduce their own possibilities of production and export of horticultural products.

It should also be remembered that the present distortion of competition is not just a consequence of the lack of harmonization of the lists in the various UPOV-countries and the limited accession to the UPOV-convention. It is also a result of the high costs involved in obtaining and maintaining PBR in the various countries. This means that the breeders select only a limited number of countries in which they apply for protection. This practice has been pointed out several times by the CIOPORA, and creates a problem for the producers.

Summing up we do not feel that the problems can be solved through extension and harmonization of the national lists of botanical genera and species open to protection on a voluntary basis, as the economic interests are too big. Further, such a solution is in itself insufficient, as it does not solve the problem of the breeders' selection of countries when applying for protection, nor does it solve the problems of the limited international accession to the UPOV-convention.

We do fear that if UPOV should nevertheless go on as planned, this will harm production in the exporting UPOV-countries, and make production move to non-UPOV-countries. This will inevitably result in a negative attitude to PBR and UPOV among the growers in those countries.

An efficient solution must be based on a comprehensive analysis of the problem.

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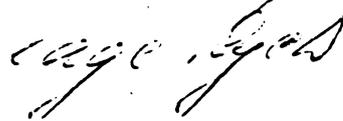
In our opinion an efficient solution to the problem can only be found in connection with the revision of the convention already planned.

Based on the views expressed in this letter, we do not find it appropriate to fill in the lists contained in UPOV-document C/XIX/6. Our position to that document would be to indicate an "A" for all other countries on all species open to protection in Denmark. At the same time, however, being an exporting country, we would also state, that we will be opposed to any extension of the Danish list until an efficient solution to the above problems is found.

We ask you kindly to include the Danish viewpoints in the AIPH-reply to the letter of UPOV dated January 7th, 1986.

Yours faithfully,

The Danish Association of Horticultural Producers



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