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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Nineteenth Session
Geneva, March 31 and April 1, 1987

REVISION OF THE CONVENTION

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COMMENTS
FROM THE BRITISH SOCIETY OF PLANT BREEDERS LTD.

Document prepared by the Office of the Union

By letter of March 17, 1987, the British Society of Plant Breeders Ltd. submitted comments on the proposals for the revision of the UPOV Convention submitted by COMASSO (see document CAJ/XIX/4, Annex V). These comments are reproduced in the annex hereto.

[Annex follows]

ANNEX

The British Society of Plant Breeders Ltd.

WOOLPACK CHAMBERS · MARKET STREET · ELY · CAMBRIDGE · CB7 4ND
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Dr W Gfeller
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GEN/139/GB

17 March 1987

Dear Dr Gfeller

Possible Amendments To The UPOV Convention

We have just received a copy of COMASSO comments to you on this subject. Inevitably, in trying to co ordinate several countries views into a concise report, some of the explanatory detail has been left out.

We thought it might be helpful to you therefore to have a copy of our detailed points made to COMASSO as these give a little more background to our thinking.

Articles 1,2 & 5 Forms Of Protection

This article limits protection to patents or PVR but not both. We have breeder members who would wish to see this extended to patents and PVR or patents alone and others who are opposed to patents altogether for plant varieties. The compromise position could be that those species which are not afforded adequate protection under PVR should have PVR protection strengthened. It is also clear that the discovery and future use of individual genes or groups of genes will not be adequately rewarded under PVR without considerable strengthening of those rights.

Article 2.1

PVR and patents should be allowed to co exist. It should be possible to patent a variety given adequate deposit system and compliance with normal patent criteria.

Article 5.1

Because of possibility of micropropagation from finished varieties of crop plants (eg cauliflower) the extension of the rights of the breeder referred to for ornamental plants in article 5.1 last paragraph should also include crop plants.

Article 5.3

This should recognise that the presence of patented genes in a variety does not prevent use for experimental (as distinct from commercial) purposes.

Article 6

With the introduction of molecular biology and the real expectation of genetic fingerprinting 6.1.a and its interpretation need careful consideration. Whole question of distinctness and minimum distances needs re evaluation (established procedures based on old fashioned technology).

Article 6b

There should be a widening of tests required to prove distinctness Article 6b currently states that a variety must be defined by morphological or physiological characters capable of precise description. It is permitted to define a variety as distinct on the grounds of a particular disease reaction which is the result of the genetic make up of the plant. We should press for other genetic traits (when large enough to show significant and repeatable differences) to be allowed. Yield is a prime example. Perhaps this test should be used as a second tier test, when simple morphological tests show no difference. (Article 6 covers this item). Consideration and acceptance should be given to 'new' tests. DNA probes, electrophoresis, pyloric spectrophotometry, etc.

Article 8 Period Of Protection

This period for most species is now 20 years which should become the new minimum, rather than 15 years.

Article 11

States that PBR applications in one member State shall be independent of protection obtained in other member States. Perhaps we should suggest this is amended to read "...may at the discretion of the applicant be independent..." and a further clause included which (again at applicant discretion) automatically allows PBR in all member States on the basis of a grant in one member State (the applicant to provide any proof required).

Article 13.2

Conflicts with established practice of maize and vegetable breeders.

General

UPOV should promote more vigorously the benefits of PBR as an element in a proven low cost method of improving productivity. UPOV should also encourage agriculturally advanced countries to adopt the Convention without weakening the principles of plant breeders' rights.

Yours sincerely



D G McNeil
Chief Executive

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