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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

**DIPLOMATIC CONFERENCE
ON THE REVISION OF THE INTERNATIONAL CONVENTION
FOR THE PROTECTION OF NEW VARIETIES OF PLANTS****Geneva, October 9 to 23, 1978****DRAFT REVISED CONVENTION**Alternative Proposal for Article 13 Submitted by the
Administrative and Legal Committee

1. Pursuant to the decision taken by the Council at its eleventh ordinary session in December 1977 (see document C/XI/21, paragraph 14(ii)), the Administrative and Legal Committee reexamined, at its first session, held from April 17 to 19, 1978, the question of Article 13. It agreed that the text appearing in the Annex to this document be submitted to the Diplomatic Conference as an alternative proposal for the new text of Article 13 as published in document DC/3.

2. It is recalled that governments and organizations invited to the Diplomatic Conference are given the opportunity to comment on the documents which are submitted to them and to present alternative proposals for amendment of any Article of the Convention.

3. The Administrative and Legal Committee desires to emphasize the following points:

(i) Compared with the present text of Article 13, paragraphs (3) and (4) have been interchanged in order to avoid the competent authorities being bound by the Convention to check the proposed variety denominations against other rights of the breeder and of third parties which might prevent the free use of the said denominations. This inversion does not prevent, however, any authority from undertaking such check.

(ii) The addition of the words "When a variety is offered for sale or marketed" in paragraph (9) aims at ensuring that additional indications, in particular trademarks and trade names, are excluded from the designation of varieties in official documents issued by a government agency.

(iii) The second sentence of paragraph (9) aims at ensuring that the additional indication does not overshadow the variety denomination and that the denomination remains capable of fulfilling the functions assigned to it.

[Annex follows]

NEW TEXT OF ARTICLE 13 PROPOSED
BY THE ADMINISTRATIVE AND LEGAL COMMITTEE

Article 13

Variety Denomination

- (1) A variety shall be designated by a denomination.
- (2) Such denomination must enable the variety to be identified; in particular, it may not consist solely of figures. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in any member State of the Union, an existing variety of the same botanical species or of a closely related species.
- (3) The denomination of the variety shall be submitted by the breeder to the authority referred to in Article 30. If it is found that such denomination does not satisfy the requirements of the preceding paragraph, the authority shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period. The denomination shall be registered at the same time as the title of protection is issued in accordance with the provisions of Article 7.
- (4) (a) If the breeder submits in a member State of the Union as the denomination of a variety a designation in respect of which he enjoys a right which could hamper the free use of the variety denomination, he may not, as from the time when the variety denomination is registered, continue to assert his right in order to hamper the free use of the variety denomination [Alternative 1: in any member State of the Union applying the provisions of the Convention to the genus or species to which the variety belongs] [Alternative 2: in that State] [Alternative 3: in any member State of the Union].
(b) Prior rights of third parties shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph (7), is obliged to use it, the competent authority shall require the breeder to submit another denomination for the variety.
- (5) A variety must be submitted in member States of the Union under the same denomination. The authority competent for the issue of the title of protection in each member State of the Union shall register the denomination so submitted, unless it considers that denomination unsuitable in that State. In this case, it may require the breeder to submit a translation of the original denomination or another suitable denomination.
- (6) The competent authority of each member State of the Union shall ensure that the competent authorities of the other member States of the Union are informed of matters concerning variety denominations, including in particular the submission, registration and cancellation of such denominations. Any authority may address its objections, if any, to the registration of a denomination to the authority which communicated that denomination.*
- (7) Any person who, in a member State of the Union, offers for sale or markets reproductive or vegetative propagating material of a variety protected in that State shall be obliged to use the denomination of that variety, even after the expiration of the protection of that variety, in so far as, in accordance with the provisions of paragraph (4) (b), prior rights do not prevent such use.

* This provision could be supplemented by adding to Article 21 an additional subparagraph according to which the duties of the Council would include the task of adopting procedures for the mutual information of authorities of member States on variety denominations.

(8) From the date of issue of a title of protection to a breeder in a member State of the Union:

(a) the denomination of the variety may not be used, in any member State of the Union, as the denomination of another variety of the same botanical species or of a closely related species;

(b) the denomination of the variety shall, [Alternative 1: in any member State of the Union applying the provisions of the Convention to the genus or species to which the variety belongs] [Alternative 2: in that State] [Alternative 3: in any member State of the Union], be regarded as the generic name for that variety. Subject to the provisions of paragraph (4) (b), no person may, [Alternative 1: in any member State of the Union applying the provisions of the Convention to the genus or species to which the variety belongs] [Alternative 2: in that State] [Alternative 3: in any member State of the Union], apply for, or obtain, a right which could hamper the free use of the denomination.

(9) [When a variety is offered for sale or marketed],* it shall be permitted, in respect of the same product, to add a trademark or a trade name to the denomination of the variety. [If such an indication is added, the denomination must be easily recognizable.]*

* Some delegations prefer the omission of the words in square brackets.

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