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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

Full text of the proposals adopted for
distribution by the Council of UPOV

1. Annex I to document DC/3 of January 30, 1978, contains the draft revised text of the International Convention for the Protection of New Varieties of Plants as approved by the Council of UPOV for distribution in preparation for the Diplomatic Conference ("the new text"). A great number of the provisions of the new text had not been spelled out in full, but only an indication given as to whether and to what extent the new text differed from the present text.

2. To facilitate the preparation of the Diplomatic Conference and the discussions in the Conference, the Office of the Union has prepared, in English, French and German, the new text of the Convention in its full wording on the basis of document DC/3. The English version is attached to the present document. The French and the German versions of the new text are attached to the French and German versions of the present document, respectively. It should be noted that an alternative proposal for Article 13 of the new text is contained, already in its full wording, in the Annex to document DC/4.

3. In preparing the full wording of the new text, the Office of the Union has eliminated some minor inconsistencies in the drafting. Such changes have been made in the following provisions of the English version:

(i) The Articles following Article 23 have been renumbered.

(ii) In Article 1(2) quotation marks and a definite article have been added to the words "member States of the Union" (in view of the wording of Article 1(1)).

(iii) In Article 3(2), the word "headquarters" has been replaced by "registered office" (in view of the terminology now used in Articles 3(1), 3(3) and 5(4)).

(iv) The wording of Article 10(4) has been simplified (by deleting the repetition of the words "the right of the breeder").

(v) In Article 13(9)(b), the reference to paragraph (10) has been replaced by a reference to paragraph (11).

(vi) In Article 40(1) (Article 36A(1) in document DC/3), the word "or" has been replaced by "and" in the phrase "unless it intends to do so in respect of all genera or species."

vii) In Article 45(5) (Article 41(5) in document DC/3), the word "or" has been replaced by "and" before the words "of any declaration made under Article [36]," the references to Articles 32B, 34, 34A and 36A have been replaced--in view of the new numbering--by references to Articles 34, 36, 37 and 40 and, finally, the reference to Article 39 (in document DC/3, or Article 43 in this document) has been omitted (since that Article no longer provides for the possibility of making a declaration).

4. The annexed new text does not replace document DC/3, which continues to constitute the basic proposal for the Diplomatic Conference under Rule 30(1) of the Provisional Rules of Procedure (document DC/2).

[Annex follows]

INTERNATIONAL CONVENTION FOR THE PROTECTION
OF NEW VARIETIES OF PLANTS

of December 2, 1961,
as revised at Geneva on November 10, 1972, and
on October 23, 1978

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Article 1

Purpose of the Convention; Constitution
of a Union; Seat of the Union

- (1) The purpose of this Convention is to recognise and to ensure to the breeder of a new plant variety or to his successor in title (both hereinafter referred to as "the breeder") a right under the conditions hereinafter defined.
- (2) The States parties to this Convention, hereinafter referred to as "the member States of the Union," constitute a Union for the Protection of New Varieties of Plants.
- (3) The seat of the Union and its permanent organs shall be at Geneva.

Article 2

Forms of Protection; Varieties

- (1) Each member State of the Union may recognise the right of the breeder provided for in this Convention by the grant either of a special title of protection or of a patent. Nevertheless, a member State of the Union whose national law admits of protection under both these forms may provide only one of them for one and the same botanical genus or species.
- (2) For the purposes of this Convention, the word "variety" is applicable to any assemblage of plants which is capable of cultivation and which satisfies the requirements of subparagraphs (c) and (d) of paragraph (1) of Article 6.
- (3) 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.

Article 3

National Treatment; Reciprocity

- (1) Without prejudice to the rights specially provided for in this Convention, natural and legal persons resident or having their registered office in one of the member States of the Union shall, in so far as the recognition and protection of the breeder's right are concerned, enjoy in the other member States of the Union the same treatment as is accorded or may hereafter be accorded by the respective laws of such States to their own nationals, provided that such persons comply with the conditions and formalities imposed on such nationals.
- (2) Nationals of member States of the Union not resident or having their registered office in one of those States shall likewise enjoy the same rights provided that they fulfil such obligations as may be imposed on them for the purpose of enabling the varieties which they have bred to be examined and the multiplication of such varieties to be controlled.
- (3) Notwithstanding paragraphs (1) and (2), any member State of the Union applying the Convention to a given genus or species shall be entitled to limit the benefit of the protection to the nationals of those member States of the Union which apply the Convention to the same genus or species and to natural and legal persons resident or having their registered office in any of those States.

Article 4

Botanical Genera and Species Which Must
or May Be Protected

- (1) This Convention may be applied to all botanical genera and species.
- (2) The member States of the Union undertake to adopt all measures necessary for the progressive application of the provisions of this Convention to the largest possible number of botanical genera and species.
- (3) (a) Each member State of the Union shall, on the entry into force of the Convention in its territory, apply the provisions of the Convention to at least five genera or species.

(b) Subsequently, each member State shall apply the said provisions to additional genera or species within the following periods from the date of the entry into force of the Convention in its territory:
 - (i) within three years, to at least ten genera or species in all;
 - (ii) within six years, to at least eighteen genera or species in all;
 - (iii) within eight years, to at least twenty-four genera or species in all.
(c) If a member State of the Union has limited the application of the Convention within a genus or species in accordance with the provisions of paragraph (3) of Article 2, such genus or species shall nevertheless, for the purposes of subparagraphs (a) and (b) of the present paragraph, be considered as one genus or species.
- (4) At the request of any State intending to ratify or accede to this Convention, the Council may, in order to take account of special economic or ecological conditions prevailing in that State, decide, for the purposes of that State, to reduce the minimum numbers referred to in paragraph (3), or to extend the periods referred to in that paragraph, or to do both.
- (5) At the request of any member State, the Council may, in order to take account of special difficulties encountered by such State in the fulfilment of the obligations under subparagraph (b) of paragraph (3) of this Article, decide, for the purposes of that State, to extend the periods referred to in that subparagraph.

Article 5

Rights Protected; Scope of Protection

- (1) The effect of the right granted to the breeder of a variety is that his prior authorisation shall be required for the production, for purposes of commercial marketing, of the reproductive or vegetative propagating material, as such, of the variety, and for the offering for sale or marketing of such material. Vegetative propagating material shall be deemed to include whole plants. The breeder's right shall extend to ornamental plants or parts thereof normally marketed for purposes other than propagation when they are used commercially as propagating material in the production of ornamental plants or cut flowers.
- (2) The authorisation given by the breeder may be made subject to such conditions as he may specify.
- (3) Authorisation by the breeder shall not be required either for the utilisation of the variety as initial source of variation for the purpose of creating other varieties or for the marketing of such varieties. Such authorisation shall be required, however, when the repeated use of the variety is necessary for the commercial production of another variety.

Article 5, continued

(4) Any member State of the Union may, either under its own law or by means of special agreements under Article 29, grant to breeders, in respect of certain botanical genera or species, a more extensive right than that set out in paragraph (1) of this Article, extending in particular to the marketed product. A member State of the Union which grants such a right may limit the benefit of it to the nationals of member States of the Union which grant an identical right and to natural and legal persons resident or having their registered office in any of those States.

Article 6

Conditions Required for Protection

(1) The breeder of a variety shall benefit from the protection provided for in this Convention when the following conditions are satisfied:

(a) Whatever may be the origin, artificial or natural, of the initial variation from which it has resulted, the variety must be clearly distinguishable by one or more important characteristics from any other variety whose existence is a matter of common knowledge at the time when protection is applied for. Common knowledge may be established by reference to various factors such as: cultivation or marketing already in progress, entry in an official register of varieties already made or in the course of being made, inclusion in a reference collection or a precise description in a publication. A variety may be defined and distinguished by morphological or physiological characteristics. In all cases, such characteristics must be capable of precise recognition and description.

(b) At the date on which the application for protection in a member State of the Union is filed, the variety

(i) must not--or, where the law of that State so provides, must not for longer than one year--have been offered for sale or marketed, with the agreement of the breeder, in the territory of that State, and

(ii) must not have been offered for sale or marketed, with the agreement of the breeder, in the territory of any other State for longer than six years in the case of vines, forest trees, fruit trees and ornamental trees, including their rootstocks, or for longer than four years in the case of all other plants.

Trials of the variety not involving offering for sale or marketing shall not affect the right to protection. The fact that the variety has become a matter of common knowledge in ways other than through offering for sale or marketing shall also not affect the right of the breeder to protection.

(c) The variety must be sufficiently homogeneous, having regard to the particular features of its sexual reproduction or vegetative propagation.

(d) The variety must be stable in its essential characteristics, that is to say, it must remain true to its description after repeated reproduction or propagation or, where the breeder has defined a particular cycle of reproduction or multiplication, at the end of each cycle.

(e) The variety shall be given a denomination in accordance with the provisions of Article 13.

(2) Provided that the breeder shall have complied with the formalities provided for by the national law of the State in which the application for protection was filed, including the payment of fees, the grant of protection may not be made subject to conditions other than those set forth above.

Article 7

Official Examination of Varieties;
Provisional Protection

(1) Protection shall be granted only after examination of the variety in the light of the criteria defined in Article 6. Such examination shall be adapted to each botanical genus or species having regard to its normal manner of reproduction or multiplication.

(2) For the purposes of such examination, the competent authorities of each country may require the breeder to furnish all the necessary information, documents, propagating material or seeds.

(3) During the period between the filing of the application for protection and the decision thereon, any member State of the Union may take measures to protect the breeder against wrongful acts by third parties.

Article 8

Period of Protection

The right conferred on the breeder shall be granted for a limited period. This period may not be less than fifteen years, computed from the date of issue of the title of protection. For vines, forest trees, fruit trees and ornamental trees, including their rootstocks, the minimum period shall be not less than eighteen years computed from the said date.

Article 9

Restrictions in the Exercise
of Rights Protected

(1) The free exercise of the exclusive right accorded to the breeder may not be restricted otherwise than for reasons of public interest.

(2) When any such restriction is made in order to ensure the widespread distribution of the variety, the member State of the Union concerned shall take all measures necessary to ensure that the breeder receives equitable remuneration.

Article 10

Nullity and Forfeiture
of the Rights Protected

(1) The right of the breeder shall be declared null and void, in accordance with the provisions of the national law of each member State of the Union, if it is established that the conditions laid down in subparagraphs (a) and (b) of paragraph (1) of Article 6 were not effectively complied with at the time when the title of protection was issued.

(2) The breeder shall forfeit his right when he is no longer in a position to provide the competent authority with reproductive or propagating material capable of producing the variety with its morphological and physiological characteristics as defined when the right was granted.

(3) The right of the breeder may become forfeit if:

(a) after being requested to do so and within a prescribed period, he does not provide the competent authority with the reproductive or propagating material, the documents and the information deemed necessary for checking the variety, or he does not allow inspection of the measures which have been taken for the maintenance of the variety; or

Article 10, continued

(b) he has failed to pay within the prescribed period such fees as may be payable to keep his rights in force.

(4) The right of the breeder may not be annulled or become forfeit except on the grounds set out in this Article.

Article 11

Free Choice of the Member State in Which the
First Application is Filed; Application in
Other Member States; Independence of
Protection in Different Member States

(1) The breeder may choose the member State of the Union in which he wishes to make his first application for protection.

(2) The breeder may apply to other member States of the Union for protection of his right without waiting for the issue to him of a title of protection by the member State of the Union in which he made his first application.

(3) The protection applied for in different member States of the Union by natural or legal persons entitled to benefit under this Convention shall be independent of the protection obtained for the same variety in other States whether or not such States are members of the Union.

Article 12

Right of Priority

(1) Any breeder who has duly filed an application for protection in one of the member States of the Union shall, for the purpose of filing in the other member States of the Union, enjoy a right of priority for a period of twelve months. This period shall be computed from the date of filing of the first application. The day of filing shall not be included in such period.

(2) To benefit from the provisions of the preceding paragraph, the further filing must include an application for protection, a claim in respect of the priority of the first application and, within a period of three months, a copy of the documents which constitute the application, certified to be a true copy by the authority which received it.

(3) The breeder shall be allowed a period of four years after the expiration of the period of priority in which to furnish, to the member State of the Union with which he has filed an application for protection in accordance with the terms of paragraph (2), the additional documents and material required by the laws and regulations of that State. Nevertheless, that State may require the additional documents and material to be furnished, within an adequate period, in the case where the application whose priority is claimed is rejected or withdrawn.

(4) Such matters as the filing of another application or the publication or use of the subject of the application, occurring within the period provided for in paragraph (1), shall not constitute grounds for objection to an application filed in accordance with the foregoing conditions. Such matters may not give rise to any right in favour of a third party or to any right of personal possession.

Article 13

Denomination of Varieties of Plants

(1) A variety shall be given a denomination.

Article 13, continued

(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 or a closely related botanical 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) If the breeder submits as the denomination of the variety either a designation in respect of which he enjoys the protection accorded to trade marks, and which applies to products which are identical or similar within the meaning of trade mark law, or a designation liable to cause confusion with such a mark, he may not, as from the time when it is registered, continue to assert his right to the trade mark, in respect of the above-mentioned products, in any member State of the Union applying the provisions of the Convention to the genus or species to which the variety belongs.

(5) A variety must be submitted in member States of the Union under the same denomination. The competent authority 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) When the denomination of a variety is submitted to the competent authority of a member State of the Union, the latter shall communicate it to the Office of the Union referred to in Article 15, which shall notify it to the competent authorities of the other member States of the Union. Any member State of the Union may address its objections, if any, through the said Office, to the State which communicated the denomination.

(7) The competent authority of each member State of the Union shall notify each registration of the denomination of a variety and each refusal of registration to the Office of the Union, which shall inform the competent authorities of the other member States of the Union.

(8) Any person in a member State of the Union who offers for sale or markets reproductive or vegetative propagating material of a variety 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 (11), prior rights do not prevent such use.

(9) 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 or a closely related botanical species;

(b) the denomination of the variety shall be regarded as the generic name for that variety. Consequently, subject to the provisions of paragraph (11), no person may, in any member State of the Union, apply for the registration of, or obtain protection as a trade mark for, a denomination identical to or liable to cause confusion with such denomination, in respect of identical or similar products within the meaning of trade mark law.

(10) It shall be permitted, in respect of the same product, to add a trade mark to the denomination of the variety.

Article 13, continued

(11) Prior rights of third parties in respect of signs used to distinguish their products or enterprises 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 (8), is obliged to use it, the competent authority shall require the breeder to submit another denomination for the variety.

Article 14

Protection Independent of Measures Regulating
Production, Certification and Marketing

(1) The right accorded to the breeder in pursuance of the provisions of this Convention shall be independent of the measures taken by each member State of the Union to regulate the production, certification and marketing of seeds and propagating material.

(2) However, such measures shall, as far as possible, avoid hindering the application of the provisions of this Convention.

Article 15

Organs of the Union

The permanent organs of the Union shall be:

- (a) the Council, and
- (b) the Secretariat General, entitled the Office of the International Union for the Protection of New Varieties of Plants.

Article 16

Composition of the Council; Votes

(1) The Council shall consist of the representatives of the member States of the Union. Each member State of the Union shall appoint one representative to the Council and an alternate.

- (2) Representatives or alternates may be accompanied by assistants or advisers.
- (3) Each member State of the Union shall have one vote in the Council.

Article 17

Observers in Meetings of the Council

- (1) States not members of the Union which have signed but not yet ratified this Act shall be invited as observers to meetings of the Council.
- (2) Other observers or experts may also be invited to such meetings.

Article 18

Officers of the Council

- (1) The Council shall elect a President and a first Vice-President from among its members. It may elect other Vice-Presidents. The first Vice-President shall take the place of the President if the latter is unable to officiate.
- (2) The President shall hold office for three years.

Article 19

Meetings of the Council

- (1) Meetings of the Council shall be convened by its President.
- (2) A regular session of the Council shall be held annually. In addition, the President may convene the Council at his discretion; he shall convene it, within a period of three months, if a third of the member States of the Union so request.

Article 20

Rules of Procedure of the Council;
Administrative and Financial Regulations of the Union

The Council shall establish its rules of procedure and the administrative and financial regulations of the Union.

Article 21

Tasks of the Council

The tasks of the Council shall be to:

- (a) study appropriate measures to safeguard the interests and to encourage the development of the Union;
- (b) examine the annual report on the activities of the Union and lay down the programme for its future work;
- (c) give to the Secretary-General, whose functions are set out in Article 23, all necessary directions, including those concerning relations with national authorities;
- (d) examine and approve the budget of the Union and fix the contribution of each member State in accordance with the provisions of Article 26;
- (e) examine and approve the accounts presented by the Secretary-General;
- (f) fix, in accordance with the provisions of Article 27, the date and place of the conferences referred to in that Article and take the measures necessary for their preparation;
- (g) appoint the Secretary-General; if it finds it necessary, appoint a Vice Secretary-General, after consultation with and the agreement of the Secretary-General; determine the terms of appointment of each.
- (h) in general, take all necessary decisions to ensure the efficient functioning of the Union.

Article 22

Majorities Required for Decisions
of the Council

Any decision of the Council shall require a simple majority of the votes of the members present and voting, provided that any decision of the Council under Articles 4(4), 20, 21(d), 26(5), 27(1), 28(3) and 32(3) shall require three-fourths of the votes of the members present and voting. Abstentions shall not be considered as votes.

Article 23

Tasks of the Office of the Union; Responsibilities
of the Secretary-General; Appointment of Staff

(1) The Office of the Union shall have the task of carrying out all the duties and tasks entrusted to it by the Council. It shall be under the direction of the Secretary-General.

(2) The Secretary-General shall be responsible for carrying out the decisions of the Council.

He shall submit the budget for the approval of the Council and shall be responsible for its implementation.

He shall make an annual report to the Council on his administration and a report on the activities and financial position of the Union.

(3) Subject to the provisions of Article 21(g), the conditions of appointment and employment of the staff necessary for the efficient performance of the tasks of the Office of the Union shall be fixed in the administrative and financial regulations referred to in Article 20.

Article 24 [23A in document DC/3]

Legal Status

(1) The Union shall have legal personality.

(2) The Union shall enjoy on the territory of each member State of the Union, in conformity with the laws of that State, such legal capacity as may be necessary for the fulfilment of the Union's objectives and for the exercise of its functions.

Article 25 [24 in document DC/3]

Auditing of the Accounts

The auditing of the accounts of the Union shall be effected by a member State of the Union as provided in the administrative and financial regulations referred to in Article 20. Such State shall be designated, with its agreement, by the Council.

Article 26

Finances

(1) The expenses of the Union shall be met from:

- (a) annual contributions of member States of the Union;
- (b) payments received for services rendered; and
- (c) miscellaneous receipts.

(2) (a) For the purposes of determining the amount of their annual contributions, the member States of the Union shall be divided into the following classes:

Class A	15	units
Class B	12.5	units
Class C	10	units
Class D	7.5	units
Class I	5	units
Class I <u>bis</u>	4.5	units
Class II	4	units
Class II <u>bis</u>	3.5	units
Class III	3	units
Class III <u>bis</u>	2.5	units
Class IV	2	units
Class IV <u>bis</u>	1.5	units
Class V	1	unit
Class V <u>bis</u>	0.6	unit
Class V <u>ter</u>	0.2	unit

(b) Each member State of the Union shall contribute in proportion to the number of units of the class to which it belongs.

(3) For each budgetary period, the value of the unit of contribution shall be obtained by dividing the total expenditure to be met from the contributions of member States of the Union by the total number of units.

(4) (a) Each State shall indicate, on joining the Union, the class in which it wishes to be placed. Any member State of the Union may, however, subsequently declare that it wishes to be placed in another class.

(b) Such declaration must be addressed to the Secretary-General of the Union at least six months before the end of the financial year preceding that in which the change of class is to take effect.

(5) A member State of the Union which is in arrears in the payment of its contributions may not exercise its right to vote in the Council if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years, but it shall not be relieved of its obligations under this Convention, nor shall it be deprived of any other rights thereunder. However, the Council may allow such a State to continue to exercise its right to vote if, and as long as, the Council is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

Article 27

Revision of the Convention

(1) This Convention may be revised by a conference of the member States of the Union. The convocation of such conference shall be decided by the Council.

(2) The proceedings of a conference shall be effective only if at least half of the member States of the Union are represented at it. A majority of five-sixths of the member States of the Union represented at the conference shall be required for the adoption of a revised text of the Convention.

Article 28

Languages To Be Used by the Office
and in the Council

- (1) The English, French and German languages shall be used by the Office of the Union in carrying out its duties.
- (2) Meetings of the Council and of revision conferences shall be held in the three languages.
- (3) If the need arises, the Council may decide that further languages shall be used.

Article 29

Special Agreements for the Protection
of New Varieties of Plants

Member States of the Union reserve the right to conclude among themselves special agreements for the protection of new varieties of plants, in so far as such agreements do not contravene the provisions of this Convention.

Article 30

Implementation of the Convention on the Domestic
Level; Contracts on the Joint Utilisation of
Examination Services

- (1) Each member State of the Union shall undertake to adopt all measures necessary for the application of this Convention. In particular, each member State shall undertake to:
 - (a) ensure to nationals of the other member States of the Union appropriate legal remedies for the effective defence of the rights provided for in this Convention;
 - (b) set up a special authority for the protection of new varieties of plants or to entrust their protection to an existing authority; and
 - (c) ensure that the public is informed of matters concerning such protection, including as a minimum the periodical publication of the list of titles of protection issued.
- (2) Contracts may be concluded between the competent authorities of the member States of the Union, with a view to the joint utilisation of the services of the authorities entrusted with the examination of varieties in accordance with the provisions of Article 7 and with assembling the necessary reference collections and documents.
- (3) It shall be understood that, on depositing its instrument of ratification or accession, each State must be in a position, under its own domestic law, to give effect to the provisions of this Convention.

Article 31

Signature

This Act shall be open for signature by any member State of the Union and any other State which was represented in the Diplomatic Conference adopting this Act. It shall remain open for signature until October 31, 1979.

Article 37 [34A in document DC/3]

Exceptional Rules for Protection Under Two Forms

(1) Notwithstanding the provisions of paragraph (1) of Article 2, any State which, at the date of opening for signature of this Act, provides for protection under different forms for sexually reproduced and for vegetatively propagated varieties of one and the same genus or species may continue to do so if, at the time of signing this Act or of depositing its instrument of ratification of or accession to this Act, it notifies the Secretary-General of the Union of that fact.

(2) Where, in a member State of the Union to which the preceding paragraph applies, protection is sought under patent legislation, the said State may apply the novelty criteria and the period of protection of the patent legislation to the varieties protected thereunder, notwithstanding the provisions of Articles 6 and 8.

(3) The said State may, at any time, notify the Secretary-General of the withdrawal of the notification it has given under paragraph (1). Such withdrawal shall take effect on the date which the State shall indicate in its notification of withdrawal.

Article 38 [35 in document DC/3]

Transitional Limitation of the Requirement of Novelty

Notwithstanding the provisions of Article 6, any member State of the Union may, without thereby creating an obligation for other member States of the Union, limit the requirement of novelty laid down in that Article, with regard to varieties of recent creation existing at the date on which such State applies the provisions of this Convention for the first time to the genus or species to which such varieties belong.

Article 39 [36 in document DC/3]

Transitional Rules Concerning the Relationship Between
Variety Denominations and Trade Marks

(1) If, at the date of entry into force of this Convention in respect of a member State of the Union, the breeder of a variety protected in that State enjoys in that State the protection of the denomination of that variety as a trade mark for identical or similar products within the meaning of trade mark law, he may either renounce the protection in respect of the trade mark or submit a new denomination. If a new denomination has not been submitted within a period of six months, the breeder may not continue to assert his right to the trade mark for the above-mentioned products.

(2) If a new denomination is registered for the variety, the breeder may not prohibit the use of the previous denomination by persons obliged to use it before the entry into force of this Convention, until a period of one year has expired from the publication of the registration of the new denomination.

Article 40 [36A in document DC/3]

Exceptional Rules for the Use of
Denominations Consisting Solely of Figures

(1) Notwithstanding the provisions of paragraph (2) of Article 13, any State which, at the date of opening for signature of this Act, has the established practice of admitting variety denominations consisting solely of figures may continue such practice in respect of all or certain genera and species if, at the time of signing this Act or of depositing its instrument of ratification or accession to this Act, it notifies the Secretary-General of the Union of its intention to do so and, unless it intends to do so in respect of all genera and species, of the genera and species in respect of which it intends to continue the said practice.

(2) The said State may, at any time, notify the Secretary-General of the withdrawal of the notification it has made under paragraph (1). Such withdrawal shall take effect on the date which the State shall indicate in its notification of withdrawal.

Article 41 [37 in document DC/3]

Preservation of Existing Rights

This Convention shall not affect existing rights under the national laws of member States of the Union or under agreements concluded between such States.

Article 42 [38 in document DC/3]

Settlement of Disputes

(1) Any dispute between two or more member States of the Union concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of the States concerned, be submitted to the Council, which shall endeavour to bring about agreement between the member States concerned.

(2) If such agreement is not reached within six months from the date when the dispute was submitted to the Council, the dispute shall be referred to an arbitration tribunal at the request of all the parties concerned.

Article 43 [39 in document DC/3]

Reservations

Signature and ratification of and accession to this Convention shall not be subject to any reservation.

Article 44 [40 in document DC/3]

Duration and Denunciation of the Convention

(1) This Convention shall be of unlimited duration.

(2) Any member State of the Union may denounce this Convention by notification addressed to the Secretary-General. The Secretary-General shall promptly notify all member States of the Union of the receipt of the notification of denunciation.

Article 44 , continued

(3) The denunciation shall take effect at the end of the calendar year following the year in which the notification was received by the Secretary-General.

(4) The denunciation shall not affect any rights acquired in a variety by reason of this Convention prior to the date on which the denunciation becomes effective.

Article 45 [41 in document DC/3]

Copies; Languages; Notifications

(1) This Act shall be signed in a single original in the French, English and German languages, the French text prevailing in case of any discrepancy among the various texts. The original shall be deposited with the Secretary-General.

(2) The Secretary-General shall transmit two certified copies of this Act to the Governments of all States which have been represented in the Diplomatic Conference that has adopted it and, on request, to the Government of any other State.

(3) The Secretary-General shall, after consultation with the Governments of the interested States which have been represented in the said Conference, establish official texts in the Dutch, Italian and Spanish languages and such other languages as the Council may designate.

(4) The Secretary-General shall register this Act with the Secretariat of the United Nations.

(5) The Secretary-General shall notify the Governments of the member States of the Union and of the States which, without being members of the Union, have been represented in the Diplomatic Conference that has adopted it of the signature of this Act, the deposit of instruments of ratification and accession and any denunciation, as well as of any notification received under Articles 34, 36, 37 or 40* and of any declaration made under Article 36**.

[End of document]

* 32B, 34, 34A or 36A in document DC/3.

** 34 in document DC/3.