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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**

COMMENTS ON ARTICLE 5

submitted by the representative of AIPH

The attitude adopted by AIPH towards Article 5 in document DC/7 Annex I was later clarified in document DC/10. Both these papers were particularly concerned with the possibility of an extension of a breeder's right to the marketed or final product and were amplified by the AIPH delegate in his opening statement to the Conference.

To this extent it is unnecessary to restate what has already been written or said. However, discussion in plenary session has revealed more than one issue requiring further attention and the Working Group now established to consider this article will no doubt decide to separate them.

In the first place, a proposal has been made in document DC/50 to amend the first sentence of Article 5(1), replacing the words "production for purposes of commercial marketing" with "production for commercial purposes" and deleting the phrase "as such." AIPH made a similar proposal in February 1976 to the Committee of Experts and now supports the present amendment; in its present form the Convention fails to serve the breeder adequately and allows unfair competition to develop between growers using protected varieties. On a strict interpretation of the text advocated in document DC/3, a grower may buy a plant (or a limited number of plants) of a protected variety and then propagate it himself, not for sale ("commercial marketing") but in order to produce and sell more of the final product derived from it. This practice is manifestly unfair and in conflict with the objectives of the Convention. Already, in certain member States, the practice has discouraged breeders in particular fields and placed responsible growers at a serious financial disadvantage.

With regard to the second issue which arises from a reappraisal of the article, that of extension of protection to the final product, the position of AIPH remains as before; it is opposed to any amendment of the Convention making such extension mandatory while at the same time recognizing that the present Article 5(4) allows member States to provide it where circumstances make this desirable. AIPH is well aware, as a growers' organization, of the commercial problems for both breeders and growers which result from the present article but is firmly of the opinion that their solution lies in an extension of the membership of UPOV rather than of protection itself. Any change in the approach now adopted in Article 5(4) will inevitably make it more difficult for new members to join UPOV and this consideration has been accepted by AIPH as being of primary importance.

AIPH has also made its position clear, in document DC/7 Annex I, on the subject of royalty collection where rights are extended and on the question of labelling or otherwise marking the final product. However, these are now aspects which are properly the concern of member States rather than of the Convention.

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