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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COMMITTEE OF EXPERTS ON
INTERNATIONAL COOPERATION IN EXAMINATION

FOURTH SESSION

Geneva, November 4 and 5, 1975

DRAFT REPORT

prepared by the Office of the UnionOpening of the Session

1. The fourth session of the Committee of Experts on International Cooperation in Examination (hereinafter referred to as "the Committee") was held in Geneva at the headquarters of UPOV on November 4 and 5, 1975. The six member States of UPOV were represented. Of the non-member States invited, Belgium, Finland, South Africa, Spain and Switzerland were represented by observers. The list of participants is attached to the present report (Annex I). The session was opened by Mr. Butler, Chairman of the Committee.

Adoption of the Agenda

2. The Committee adopted the agenda as appearing in document ICE/IV/1.

Adoption of the Report on the Third Session

3. The Committee unanimously adopted the report on its third session as appearing in document ICE/III/8.

Report on the Discussion of the Ninth Ordinary Session of the Council

4. The Chairman briefly reported on the discussions of the ninth session of the Council. He pointed out that, after a study of each Article during which some slight changes had been agreed upon, the UPOV Model Agreement for International Cooperation in the Testing of Varieties was adopted as appearing in Annex II of document C/IX/12. He further recalled that, in order to achieve economies, it had been decided that no interpretation would be provided for the Committee's sessions next year.

Report of the Representatives of Member States on Cooperation in the Examination of New Varieties of Plants

5. The representatives of the member States reported that no bilateral agreements on cooperation had been formally concluded yet. However, in the following cases cooperation was already practiced or envisaged:

(i) Denmark was already undertaking the tests for Poinsettia and Euphorbia fulgens on behalf of both Germany (Federal Republic of) and the Netherlands, for thuja and juniperus on behalf of Germany (Federal Republic of) and for cherry rootstocks on behalf of the Netherlands.

(ii) France was already undertaking the tests for pear and cherry on behalf of Germany (Federal Republic of), and had entered into contact with the United Kingdom for testing maize on the latter's behalf.

(iii) The Netherlands was already undertaking tests for carnation and freesia on behalf of Germany (Federal Republic of) and grasses on behalf of Belgium in anticipation of the latter's accession to the UPOV Convention.

(iv) The United Kingdom was already undertaking tests for chrysanthemum and apple on behalf of Germany (Federal Republic of) and had entered into contact with France for testing the same species on the latter's behalf.

6. The representatives of Denmark also indicated that the Danish list of species eligible for protection provided for protection of certain species on the condition that they were tested abroad. The representative of France said that his country intended to enlarge the list of species eligible for protection on the basis of bilateral agreements and that France had waited until the UPOV Model Agreement for International Cooperation in the Testing of Varieties was approved by the Council before concluding bilateral agreements for the purposes of protecting plant varieties and entering them in the catalogue. Finally, the Committee emphasized that, as had been recommended by the Council during its ninth session, offices should ask for the test results from those offices which had established them and not from the applicants or intermediate recipients. Special mention was made of the fact that intermediate recipients could not provide the services of experts, as provided under Article 10 of the UPOV Model Agreement, and that the test reports contained less information than the files of the office which had carried out the tests.

Harmonization of Application Forms

7. The discussions were based on the draft harmonized application form prepared by the Office of the Union (document ICE/III/10) and a draft prepared on the basis of the Office's proposal by the Federal Republic of Germany. The latter draft is attached as Annex II to the present draft report.

8. The Committee agreed that the aim should be to concentrate all questions in the application form on one page. This would greatly facilitate the use of computers by national offices. The reverse side of the form could be used for adding Explanatory Notes on each question.

9. As to the details concerning the application form and its layout, the following main decisions were taken:

(i) The name of the applicant should be stated under the first question; the address to which correspondence has to be mailed should be the subject of the second question.

(ii) The applicant should be asked to state his nationality since, in five of the six member States, it could be of importance with regard to the applicant's right to file an application. States like the United Kingdom in which information on the nationality of the applicant was not needed should be free to delete this question in their national forms.

(iii) Under the part corresponding to item 4 of the German proposal, only one box should be provided for the proxy and the agent.

(iv) The delegates agreed that, as far as prior applications and registrations are concerned, as much information as possible should be asked for.

(v) With regard to prior commercialization, it was mentioned that the form had to contain a formal statement by the applicant to the effect that no commercialization had been undertaken in the State of application and that it had not been undertaken for longer than four years in another State. The same could be achieved by asking for the date of any possible commercialization and including,

as in the draft prepared by the Office of the Union, a final statement signed by the applicant, to the effect that the information is complete and has been given to the best of his knowledge.

(vi) A special form should be elaborated for the question of denominations and trademarks. This question--as well as the question of priority--should be further examined by the Delegations of the member States before the next session.

(vii) With regard to heading 11 of the draft prepared by the Office of the Union, it was agreed to include subitem 11.2 under question 5, deal with subitem 11.4 in the Explanatory Notes and delete the other subitems.

(viii) It was agreed to ask the international organizations in the field of plant breeding and the seed trade if subitem 12.1 (authorization given by the breeder for the exchange of information and material) was necessary. The delegates of the United Kingdom proposed the following wording:

"The authorization is hereby given to the Plant Breeders' Rights Office to exchange with the competent authorities of any State, party or not to the UPOV Convention, any useful information and material related to the variety, subject to the rights of the applicant being safeguarded when the formula of hybrid varieties has been given as confidential information."

10. It was finally agreed that the Office of the Union should prepare a new draft of the application form on the basis of the outcome of the discussions, circulate it to the Committee members and send the draft or, if necessary, a new draft to the international organizations in the field of plant breeding and the seed trade for written comments, especially on the item mentioned under 9(viii).

Harmonization of Fees

11. The discussions were based on document ICE/IV/2. The delegates of the member States first reported as follows on the situation in their countries and on their plans for the future.

(i) In Denmark, the fees for the protection of new plant varieties had not been changed since 1962 and a separate system of fees had been introduced for the national list in 1970. Consequently, when protection and entry in the national list were applied for, two testing fees were levied for the same test, one for the protection of the variety and another one for its entry in the national list. Denmark was presently considering a new regulation of fees which would merge the two systems.

(ii) For France, it was reported that it was very difficult to assess the costs of protecting new plant varieties because the examination was undertaken for the Comité de la protection des obtentions végétales (CPOV), under an arrangement for cooperation, by the Groupe d'études et de contrôle des variétés et des semences (GEVES), which also used the results for the entry of the varieties in the Catalogue. Only one testing fee, which had recently increased from 600 to 650 French francs per year of testing, was levied, irrespective of the purpose for which the examination was undertaken. It could, however, be estimated that up to 22% of the costs of examining a variety on distinctness, homogeneity and stability were covered by fees. As to future changes in the fee structure, France planned to take greater account of the financial possibilities of the breeders. It had been noticed that the costs of protection were too high for those ornamental varieties which were usually replaced by other varieties within 3 or 4 years, for example roses for cultivation in gardens, pot chrysanthemums, Gerbera, etc. At present, in the case of roses, it was mostly large breeding firms that were applying for protection, and, in general, only for varieties for the production of cut flowers. France was therefore studying the possibility of introducing, for certain species, a new system under which a single fee ranging from the equivalent of 600 to 900 Swiss francs would have to be paid at the beginning of the procedure, as under the two systems of the United States of America. Under this system, the variety would also be protected for a period of 20 years. The interest to the breeder, however, was not that he would receive royalties or sell the variety during a period of 20 years, but that, after having replaced the variety in his sales program by an improved variety a few years later, he could prevent the sale of the first variety by others.

(iii) In Germany (Federal Republic of), the amount of the fees was laid down in a law which dated back to 1968. An amendment was being prepared and would be submitted to Parliament before the end of this year. It was intended that the increase in administrative and testing fees would be more than that of the annual fees, in order to avoid the premature filing of applications for varieties which were not yet "ready". It was also mentioned that one-third of the costs of the Federal Plant Varieties Office had to be covered by fees. At present only 22% of the costs were covered by fees but, after deducting the cost of the Office's activities which did not concern plant variety protection and the national list, the percentage of the coverage by fees was near the required 33%.

(iv) In the Netherlands, the amount of the fees had not changed since 1974, and an increase to about 25%--as in the Federal Republic of Germany and for the same purpose--was under discussion. It was also mentioned that no possibility existed of charging a fee for the value tests performed in the procedure for national listing under the law and that, if a fee was to be introduced, the law had to be amended.

(v) For Sweden, it was recalled that, according to a general principle prevailing in that country, the protection scheme had to be self-supporting.

(vi) In the United Kingdom, the amount of the fees had been reviewed most recently in 1972. A new scheme was therefore under consideration which would allow the inflation rate since 1972 to be compensated. As in the Federal Republic of Germany and the Netherlands, the administrative and testing fees would increase more than the annual fees. It was also mentioned that 62% of the costs of plant variety protection were covered by fees, whereas the coverage by fees for national listing was only 16%. The deficit for the listing procedure was reported to be about 12 times as high as the deficit for the plant variety protection scheme.

12. As regards the possibility mentioned by the delegate of France (paragraph 11(ii) above) of introducing a single fee for some species, great concern was expressed as this would make any harmonization difficult, if not impossible. In this connection, the Secretary-General remarked that instead of harmonizing fees it was conceivable that agreement could be reached on amounts which would have to be paid by one authority to another authority for the testing of a variety.

13. During the ensuing discussion, the principle adopted by the Council and laid down in the Resolution on Fee Questions (see document UPOV/C/VII/23) whereby the authorities receiving the test reports should pay the testing fees charged to applicants by the country from which they had been obtained was confirmed. After a comparison of the testing fees in the table prepared by the Office of the Union (Annex I of document ICE/IV/2), it was decided to report to the Council that the delegates of five of the six member States had agreed that a fee of 1000 to 1200 Swiss francs for two years of testing of wheat varieties was reasonable and could be recommended as an indicative figure.

List of Species for which Centralized Testing is Envisaged

14. The Chairman reported on the outcome of the informal meeting of the technical heads of the offices of the member States which had taken place on November 3, 1975, and in which the possible offers for performing test work for other offices were discussed. The results obtained in that meeting were presented to the Committee in document ICE/IV/3. The Chairman underlined that a new approach had been adopted during that meeting according to which it had been agreed that making an "offer" meant that the offering authority invited other authorities to enter into negotiations for the conclusion of bilateral agreements for the testing of the species in question. It would not mean a promise by the offering authority to conclude such an agreement with the authority of any other member State since the possibilities of the offering authority might be limited. According to the provisional decisions taken in the preceding session of the Committee an "offer" had meant an undertaking to test a given species on behalf of all present member States. As to non-member States, it was confirmed that the new approach did not change the situation as it had been pointed out during the last session that the list of offers had to be revised each time a new State acceded to the UPOV Convention. It was stressed, however, that, even if there was no offer in the list with respect to a certain species, it was always possible for an authority of a State to contact the authority of a member State and to find out whether a bilateral agreement for the testing of that species could be concluded. By way of an example, the delegate of France said that a bilateral agreement for the testing of wheat varieties by France on behalf of Switzerland could be envisaged if

the expected number of varieties to be tested for Switzerland under such an agreement was not too high.

15. The Committee decided that the List of Offers for International Cooperation in the Testing of Varieties should be published by the Office of the Union in an issue of the UPOV Newsletter together with the UPOV Model Agreement.

16. It was further agreed that member States would inform the Office of the Union of any amendments to the said List of Offers which they considered necessary. Proposals for amendments should reach the Office of the Union at the latest during the session of Committee of Experts on the Interpretation and Revision of the Convention to be held from December 2 to 5, 1975. The Office of the Union should in particular be informed of any wish to change the common names of genera and species listed in that document. The draft of the introductory page of the relevant issue of the Newsletter would be prepared by the Office of the Union and sent to the Chairman of the Committee for approval.

Possibility of Introducing a Multilateral System for Cooperation in the Examination of New Varieties of Plants

17. The discussions were based on document ICE/III/7. The Secretary General said that that document had been prepared on the request of the Committee. The expected advantages of a multilateral system were described in the said document, but it was naturally for the Committee to decide whether it was desirable to continue to explore the question of the advisability of setting up a multilateral system.

18. The Committee, after a thorough discussion, decided to recommend the Consultative Committee not to continue, for the time being, the study of a multilateral system. The main reasons for such a decision were: that it was faster and simpler to put into effect a system based on bilateral agreements; that bilateral agreements provided better protection to national Offices against the dangers of excessively high numbers of requests for examination from other national Offices; that the possibility of concluding bilateral agreements gave at least the same degree of expectation of finding examining possibilities abroad as would the multilateral system.

Program for the Forthcoming Session of the Committee

19. The Committee agreed that items 4, 5, 6 and 7 of the agenda of the present session should also be put on the draft agenda of its fifth session. Furthermore the elaboration of a list of species for which test results from other States would be accepted should form an item on the agenda of its fifth session. Because it was considered that one day would be sufficient for the discussion of those items, the Committee decided that the fifth session would be held on May 5, 1976, only, and that no informal meeting of the heads of the technical offices of member States would take place on the preceding day.

[Annexes follow]

LIST OF PARTICIPANTS/LISTE DE PARTICIPANTS/TEILNEHMERLISTE

I. MEMBER STATES/ETATS MEMBRES/VERBANDSSTAATEN

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Mr. W.R.J. VAN DEN HENDE, Jurist, Ministerie van Landbouw en Visserij,
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Mr. A.F. KELLY, Deputy Director, National Institute of Agricultural Botany,
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II. OBSERVERS/OBSERVATEURS/BEOBACHTERBELGIUM/BELGIQUE/BEGIEN

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- M. R. D'HOOGH, Ingénieur agronome principal - Chef de service, Ministère de l'Agriculture, Service Agriculture, 36, rue de Stassart, 1050 Bruxelles

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- M. R. GFELLER, Abteilung für Landwirtschaft/EVD, 3003 Bern
- M. R. GUY, Station fédérale de recherches agronomiques de Changins, 1260 Nyon

III. CHAIRMAN/PRESIDENT/VORSITZENDER

Mr. J.I.C. BUTLER

IV. OFFICE OF UPOV/BUREAU DE L'UPOV/BÜRO DER UPCV

- Dr. A. BOGSCH, Secretary-General
- Dr. H. MAST, Vice Secretary-General
- Dr. M.-H. THIELE-WITTIG, Administrative and Technical Officer
- Mr. A. HEITZ, Administrative and Technical Officer

[Annexe II follows/l'annexe II suit:
Anlage II folgt]

State of application

Registration Number (Date/File number)

Examining State and station(s) and other parties concerned

Note: This part not to be filled in by the applicant

Application for the granting of plant breeders' rights

① Address to which correspondence has to be mailed

② Botanical (Latin) name
Common name

③ Breeders' reference:
Proposed denomination:

④ Annexed address is that of
 the/one of the applicant(s)
 the proxy
 the agent
 Power of attorney attached

⑤ Applicant(s) (if not announced above)

⑥ Nationality of the applicant(s)

⑦ The original breeder(s) or discoverer(s) ist/are
 the applicant
 following persons:
 The applicant(s) hereby declare(s) that, to his (their) knowledge, no person(s) other than the above - mentioned participated in the breeding or discovery of the variety.
 The variety has been transferred to the applicant(s) by
 contract succession (other)

⑧ Prior application and registration	in (state) (possibly abbrev.)	on (date)	under reg./ file number	under breeders' reference or denomination - underline approved denomination -
a) Grant of rights				
b) Application for grant of rights				
c) Registration in an official variety list				
d) Application for registration in an official variety list				

⑨ Priority is claimed in respect of an application or applications from the (date) in (state) (only possible within a period of twelve months preceding the date of this application).
 A copy of the documents which constitute that application, certified to be a true copy by the authority which received it (and a translation if necessary)
 is attached will be mailed within a period of three months from the date of deposit of this application
 The technical examination of the variety can start in (month/year)

⑩ The variety
 has not yet been offered for sale or marketed
 has already offered for sale or marketed in (state(s)) since under denomination

⑪ I/we hereby apply for the grant of plant breeders' rights
 Place, date (signature(s))

C.C.			Year		
1	2	3	4	5	
Code					
6	7	8	9	10	
Reg.No.					
11	12	13	14		
Date					
15	16	17	18	19	20
Address					
21	22	23	24	25	
P			L		
		29		30	
Nat.					
31	32	33	34	35	36
Nat.					
		37	38	39	

Nat.					
41	42	43	44	45	46
47	48	49			

Date					
61	62	63	64	65	66