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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

**FIFTH MEETING
WITH INTERNATIONAL ORGANIZATIONS**

Geneva, October 10 and 11, 1990

REVISION OF THE CONVENTION:

COMMENTS FROM IFAP

Document prepared by the Office of the Union

The annex to this document contains the comments from the International Federation of Agricultural Producers (IFAP) on the revision of the Convention. They were received by the Office of the Union on October 10, 1990.

[Annex follows]

International Federation of Agricultural Producers



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The International Federation of Agricultural Producers is the international organization of the world's farmers. It groups together nationally-representative general farmers' organizations from 50 countries, covering all the OECD member countries and an equal number of developing countries. All the member countries of the UPOV Convention are members of the Federation, with the exception of South Africa (which was a member from 1946 to 1987).

IFAP submitted its views on the proposed revisions to the UPOV Convention at the Fourth UPOV Meeting with International Organizations, Geneva 9th-10th October 1989.

Some of these views have been taken into account in the new draft.

To reiterate, the main concerns of farmers are as follows:

- i) maintaining the present ban on double protection,
- ii) ensuring free access to genetic material: avoiding monopolies as well as plagiarism,
- iii) allowing farmers to continue to save their own seed if they wish to do so to reduce production costs (farmers' privilege).

IFAP fully supports the need to adequately reward the creative efforts of plant breeders, so that farmers worldwide will continue to benefit from new and improved plant varieties. However a revised UPOV Convention must remain balanced with regards to the interests of farmers, consumers and breeders.

Proposed new Article 2

IFAP is opposed to the granting of both plant variety rights and patents for the same botanical genus or species (double protection). There should be one predominant system of property right in plant production, namely the plant variety right guaranteed under the UPOV Convention. Other intellectual property rights, such as patent rights, must not interfere with plant breeders rights.

If a plant breeder needed to use a patented gene or patented process in the development of a new plant variety, then he would naturally have to obtain the consent of the patent-holder. However, the farmer or grower would only pay one royalty on the new plant variety, to the breeder.

IFAP therefore favours the retention of Article 2 (1) of the present (1978) UPOV Convention.

Proposed new Article 7

In order to avoid plagiarism, a new variety should only be granted a plant variety right if it has improved economic characteristics (e.g. increased yields, resistance to disease...), as opposed to a trivial physical modification.

Under proposed new Article 7 (3), the following phrase should be inserted in the first sentence after the words "clearly distinguishable from : " and a commercial improvement over".

Proposed new Article 10

IFAP sees no justification for the proposed increase in the minimum period of protection for the breeder's right, from 15 years to 20 years, and for trees and vines from 18 years to 25 years. Most varieties of farm crops, such as grains and oilseeds cease to be commercially viable long before the expiry of the present protection period of 15 years.

Proposed new Article 12

In order to improve the clarity of proposed new Article 12, the following modifications are proposed:

Paragraph 1a

- i) Production or reproduction
- ii) (Delete - not necessary as covered in (i))
- iii) Offering for sale
- iv) (Delete - superfluous in light of (iii) and (iv)-(viii))
- v) Exporting
- vi) Importing
- vii) Stocking for any of the aforementioned purposes
- viii) (Delete - or it makes the other 7 points redundant)

Paragraph 1(b)

This is a new provision proposed in the Convention. IFAP is of the view that the plant variety right should be exercised only on the reproductive or vegetative propagating material for any domestic production in a UPOV member country. The necessity of payment of royalties on harvested material seems to only arise therefore on imports from non-UPOV member countries obtained from propagating material which is covered by a plant breeders right.

Paragraph 1 (b) should be redrafted to clearly relate it to this imported material, or be deleted.

Paragraph 1(c)

This too is a new provision proposed in the Convention. It is unworkable in practice to test imported food products to determine the variety of plant material they have been prepared from. It could also cause disruption to the operations of the agri-food chain. IFAP is opposed to its inclusion in the new Convention.

Paragraph 4

Countries which have given undertakings to farmers concerning farm-saved seed must continue to respect those undertakings. Inclusion of a paragraph in the UPOV Convention giving a clearer interpretation of the "farmers' privilege" is therefore essential.

IFAP supports the flexibility given in the proposed text that would allow national governments to determine the "reasonable limits" of the application of this exemption.

However, this exemption should be available to farmers in all countries. Thus the word "may" in the first sentence of paragraph 4 should be replaced by the word "shall". One of the benefits of international agreements is that they help create "a level playing field" for international competition.

The words "within reasonable limits" in the proposed draft of paragraph 4 make it superfluous to add the phrase "and provided that due consideration is given to the need for the breeder to obtain adequate remuneration", or the phrase in square brackets at the end of the paragraph 4. These phrases should therefore be deleted.

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