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UPOV

IOM/5/ 4
ORIGINAL : English
DATE : October 1, 1990

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 GIFAP

Document prepared by the Office of the Union

The annex to this document contains the comments from the International Group of National Associations of Manufacturers of Agrochemical Products (GIFAP) on the revision of the Convention. They were received by the Office of the Union on September 11, 1990.

[Annex follows]

IOM/5/4

ANNEX

COMMENTS FROM GIFAP
ON THE REVISION OF THE CONVENTION

GENERAL REMARKS

1. We have noted with satisfaction the open approach of UPOV in this further discussion about the revision of the UPOV Convention by also inviting such non-governmental organisations as EFPIA, GIFAP and UNICE to the next meetings in Geneva in October 1990.

   We would therefore like to take the opportunity offered in the invitation of UPOV dated July 25, 1990 to present in advance our views on a few points of the proposed new text of the Convention.

2. First of all we would like to congratulate the Office of the Union to this first liberal and pluralistic approach, wherein for the first time the so-called double protection bar has been eliminated. With the deletion of this provision the Office has removed an unusual and unjustified inhibition from the Convention.

3. By making this deletion, the Office also recognizes that both systems, the Plant Breeders' Rights and the Patent Law, have their justification, merits and benefits, and that both systems can coexist without the need for one system to exclude the other from certain areas of protection of intellectual property.

SPECIFIC COMMENTS ON THE PROPOSED NEW TEXT

Article 1 (iv) :

Although the definition of "variety" has been very much improved in comparison to earlier drafts, we are still of the opinion that there is no need for such a definition. The "Paris Convention for the Protection of Industry Property", the national Patent Laws and the European Patent Convention do not contain the definition of an invention either and this never has caused any problems. We believe that varieties have to fulfil the requirements of proposed Article 7 and therefore should be defined according to this Article.

If, however, the general opinion is that such a definition is indispensable then the proposed definition in Article 1 (iv) should be amended to read (additions emphasized, deletions in brackets) :

- (vi) "Variety" means a group of plants **within the same species**, which group [irrespective of whether] **meets** the conditions for the grant of a breeder's right [are fully met],

  can be defined by the characteristics that are the

result of a given genotype or combinations of genotypes,

and

- can be distinguished from other groups of plants from the same [botanical taxon] species by at least one of said characteristics.

[A variety may be represented by several plants, a single plant or by one or several parts of a plant, provided that such part or parts can be used for the production of entire plants of the variety.] -

The initial expression "Variety" means a group of plants" is correct, but in contradiction to the last sentence, which reads "A variety may be represented by several plants, a single plant or by one or several parts of a plant, provided that such part or parts..."

A variety must be a group of plants, otherwise the definition makes no sense. A part of a plant can never represent a variety.

The term variety does not exist in biology. It stems from the plant breeder's right, so that a variety can be only a group of plants that actually meets the conditions of the plant breeder's right. If not, then each group of plants could fall under the term variety. The proposed term "...irrespective of whether the conditions of a plant breeder's right are fully met..." makes the definition ambiguous.

The term botanical taxon is indefinite because it embraces the kingdom, the order, the suborder, the family, the subfamily, the species, etc. there are clearly defined differences e.g. between an order and a family. In the above context the only proper expression is the species.

If the proposed definition is retained then each genetically modified plant would automatically fall under the term variety and owing to the exclusion of Article 53b of the European Patent Convention, could only be protected by a plant breeder's right.

Such a broadening of this exclusion is neither desirable nor justified.

Article 2

In view of the deletion of the so-called double protection bar we no longer see any need for proposed Article 2(1) and Article 36. They no longer make any sense and it would be inconsistent to keep them in the present text.

Article 4

The transitional period of 10 years for new members of the Union appears very long and, in order to have unified laws sooner, we suggest that this period of 10 years should be reduced to 3 years as proposed for existing members of the Union.

Article 5

We support the deletion of the obsolete reciprocal treatment of non-national applicants. The national treatment strengthens the UPOV Convention considerably.

Article 7(2)(b)

The provisions of this paragraph make novelty a very vague requirement and non-uniform from one Contracting State to the other. We therefore suggest the deletion of Article 7(2)(b), as we see no justification for the provisions therein.

Article 12(2)

The introduction of the provisions relating to "essentially derived" varieties will considerably improve the protection under this Convention. However, we consider the definition in Article 12(2)(b)(i) unbalanced and suggest inserting in line 5 of paragraph (i) the wording "without adding essential new characteristics".

It is possible to introduce a new gene into a plant, thereby preserving the essential characteristics of the original variety but also adding new valuable characteristics which increase the market value of the new variety considerably and it no longer can be considered as "essentially derived".

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