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UPOV

IOM/I/ 7
ORIGINAL: German
DATE: September 21, 1983

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

MEETING WITH INTERNATIONAL ORGANIZATIONS

Geneva, November 9 and 10, 1983

COMMENTS FROM INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS

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COMASSO

Document prepared by the Office of the Union

Introduction

1. In accordance with the consultation procedure adopted by the Consultative Committee at its twenty-seventh session, the Office of the Union requested the international non-governmental organizations that had been invited to participate in the current meeting to communicate any preliminary comments they had on the items entered on the agenda.

2. The Office of the Union has received comments from the Association of Plant Breeders of the European Economic Community (COMASSO) by letter of September 2, 1983, from the Secretary General of COMASSO addressed to the Vice Secretary-General of UPOV. Those comments are reproduced in the Annex to this document.

[Annex follows]

ANNEX

COMMENTS FROM COMASSO

UPOV Recommendations on Variety Denominations (UPOV Document IOM/I/5)

The comments of the European plant breeders on the UPOV document "Recommendations on Variety Denominations" cover three areas.

- It is appreciated that the non-binding nature of the recommendations is now clearly expressed in the title of the document.

- It is regretted that the restrictive attitude concerning variety denominations consisting of combinations of letters and figures--see Recommendation 2(2)(v)--is maintained. The UPOV Convention, in its revised version of 1978, simply provides in the second sentence of Article 13(2) that variety denominations may not consist solely of figures, unless this is an established practice. This rule has, for no compelling reason, been extended to combinations of letters and figures.

- Attention is drawn to the fact that no account appears to have been taken of the situation whereby, because of differences in pronunciation in other languages, a variety denomination may aquire distorted meanings.

Minimum Distances Between Varieties (UPOV Document IOM/I/3)

The plant breeders of the European Economic Community united in COMASSO welcome the possibility to make observations on the subject "Minimum Distances."

- It has to be stated that plant breeders are obliged to introduce new varieties to the market more and more quickly in order to satisfy the needs of the consumer, to recover their investments and thus to be in a position to do breeding work in the future.

- This obligation, when combined with the reasons and developments mentioned under item 1 of document IOM/I/3, may indeed cause problems.

- However, additional considerations should be taken into account, such as, for instance, the value and importance of the problem in relation to the different species; for example, the absolute importance of the subject "Minimum Distances" in the case of ornamental plants, including its practical effects in infringement proceedings, and its relative lack of importance in the case of cereals and fodder plants.

- The effects of different legal systems within UPOV also have to be taken into consideration. In this context, reference has to be made to the provisions of the public law of the European Economic Community with regard to some species.

  A special category to be mentioned in this respect is that of the agricultural species, which have to comply with the requirement of agricultural value in accordance with the seeds marketing directives. In practice, this requirement itself certainly has a restrictive effect should there be too great a number of varieties which are too closely related to each other.

COMASSO is of the opinion that the legal regulations on variety protection/patent protection for plants must, on the one hand, make possible a just remuneration for breeding achievements by envisaging conditions for protection which are as narrowly drafted as possible, and must, on the other hand, prevent any possible misuse.

In particular, it must be noted:

- that "important characteristics" must be important for distinguishing purposes and not practical purposes;

- that additional characteristics must be able to be taken into consideration without interference by way of administrative procedures, in which connection it is noted with satisfaction that the requirement for the morphological and physiological nature of the characteristic has been deleted from Article 6(1)(a) of the UPOV Convention;

- that the requirement for clear distinction by an important characteristic excludes a decision from being taken exclusively on the basis of characteristics for distinctness which can only be noted with the help of sophisticated examination methods; a difference must be made between a "method for identification" and a method for determining "distinctness", in which connection consideration as to the species concerned may lead to different judgements;

- that, in view of all these aspects, changes in the system should not be sought just because of occasional difficulties since, by adopting additional characteristics by mutual agreement and in a prudent manner, sound possibilities can be found for establishing distinctness.

[End of Annex and of document]