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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

**FOURTH MEETING
WITH INTERNATIONAL ORGANIZATIONS**

Geneva, October 9 and 10, 1989

COMMENTS FROM ICC

Document prepared by the Office of the Union

The annex to this document contains the comments from the International Chamber of Commerce (ICC) on the revision of the Convention. They were transmitted to the Office of the Union by telefax on October 9, 1989.

[Annex follows]

ANNEX

COMMENTS FROM ICC
ON THE REVISION OF THE CONVENTION

ICC generally welcomes the progress made by UPOV in the latest draft of the Convention, and applauds the steps now proposed to strengthen breeders' rights. Clearly much thought has gone into the latest document, and full attention has been paid to the views of interested circles. The brief comments that follow are inevitably critical in tone, but should not be seen as ignoring the very considerable progress that has been made.

The main point of criticism relates to the treatment of other industrial property rights. To strengthen plant variety rights it is not necessary to weaken patents. A balance between the two systems will enable the advantages of both to be realised.

ARTICLE 1.

ICC hopes that it will be possible to omit the phrase in brackets. As stated in earlier papers, ICC sees no valid objection to overlapping protection. For this reason ICC is glad to note the omission of former Article 2.

ARTICLE 5

Generally - except for Article 5(5) - this Article is welcome for the increased protection it gives to the breeder. There may however be room to strengthen the rights of the breeder still further, so as to give protection fully on a par with that enjoyed by patent holders.

ARTICLE 5(1)

Redefines the rights of the breeder, extending them beyond reproductive material to "material of the variety" generally. This will do much to prevent abuses that have arisen, for example where produce such as fruit or cut flowers derived from a protected variety has been imported into a country where rights have been granted.

ARTICLE 5(3)

Deals with the situation where a new variety is derived essentially from a [single] protected variety. Till now the owner of the old variety has had no rights in this situation, although the merits of the new variety may have been entirely derived from the old variety, and the difference trivial. The article would give the owner of the old variety some redress. Of the alternatives are set out, ICC supports 1., giving the right to prohibit exploitation of the new variety. Without this, owners of varieties will not be secure from plagiarism.

ARTICLE 5(4)

Allows member states to exempt other acts from the scope of the right granted

to breeders. The objective is to allow flexible application of the traditional "farmer's privilege", the right of the farmer to grow and save any seed for his own use. The political problems in regulating this question are understandable, but it is still wrong to deal with them in this way. This difficult question is one on which UPOV should give a lead.

ARTICLE 5(5)

Would exempt granted plant variety rights from the scope of patents (it is not clear what other rights are included within the scope of "industrial property" - trademarks?). This would be a totally unjustified derogation from the rights of the patentee. Moreover it would be a major discouragement to invention and investment in plant biotechnology. It would slow down or stop much commercial development in this important area, and lead directly to the loss of many vital innovations (including many new plant varieties with outstanding novel properties) that are urgently required in food production. In short, it would be a disaster.

It is now generally recognised that both plant variety rights and patents have a place in promoting plant biotechnological advance. What is needed is a system in which they can co-exist. Article 5(5) does not provide one. If it ever came into force, it would promote litigation rather than avoiding it. Biotechnological patentees would feel forced to sue breeders and government testing agencies to prevent the grant of rights on disputed varieties. No-one wants this.

ARTICLE 13

The new article attempts to solve some of the problems that have arisen with variety denominations; but a better approach would be the more radical one of ceasing to regulate variety denominations at all.

In summary, the latest revision offers much progress and is generally supported by ICC. The major exception is Article 5(5), which is unacceptable and must be deleted.

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