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UPOV

IRC/ III/7

ORIGINAL: English**DATE:** January 28, 1976**INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS**

GENEVA

**COMMITTEE OF EXPERTS ON
THE INTERPRETATION AND REVISION OF THE CONVENTION**

Third Session

Geneva, February 17 to 20, 1976

COMMENTS BY PARTICIPANTS

Comments of AIPH

The Association of Horticultural Producers (AIPH), in its letter of January 24, 1976, annexed to this document, has commented on the items to be discussed during the third session of the Committee of Experts on the Interpretation and Revision of the Convention.

[Annex follows]

LETTER OF THE SECRETARY-GENERAL OF THE INTERNATIONAL ASSOCIATION OF HORTICULTURAL PRODUCERS (AIPH) TO THE SECRETARY-GENERAL OF THE INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS (UPOV) OF JANUARY 24, 1976

Our Committee for Novelty Protection studied at its meeting in Berlin on January 23, 1976, the Summary of the Main Items to be dealt with at the third session of the Committee of Experts on the Interpretation and Revision of the UPOV Convention, prepared by the Office of the Union (document IRC/III/2), and made the following recommendations.

Ad 1 Our Committee accepts the idea that controlled hybrids can be excluded from the scheme of protection. On the basis of Article 5(3), second sentence, is it possible to give protection to such hybrids because in Article 2(2), both hybrid and line are included in the definition of the word "variety".

Ad 2 Our Committee supports in general the idea of making the UPOV system less rigid. Therefore, we can support a proposal allowing new member States to apply different systems of protection, for instance a patent and a specific title for one and the same genus or species.

Ad 3 If UPOV is now to include States outside Europe, it cannot maintain the list originally annexed to the Convention. Our Committee recommends a regulation directed to the member States that a minimum number of genera or species should be protected.

Ad 4 As a consequence of the removal of the Annex to the Convention, our Committee accepts that the principle of reciprocity, as stated in Article 4(4), will be abandoned. This means that all restrictions of the principle of national treatment, as laid down in Article 3, may be deleted.

Ad 5 Our Committee fears that it would positively discourage the extension of UPOV memberships if the benefits of its protection were available to nationals of States which are only members of the Paris Union for the Protection of Industrial Property.

Ad 6 Our Committee agrees to the deletion of the words "for purposes of commercial marketing" in Article 5(1), first sentence. The position of the breeder will be clarified thereby and abuses will be prevented.

Ad 7 The proposal laid down in point 7 seems, to our Committee, to be practical, because the breeder can then test his variety in commercial situations.

Ad 8 Our Committee recommends the maintenance of the world novelty standard, otherwise a different national treatment of the same variety can be expected.

Ad 9 It seems to the Committee impossible to clarify the meaning of the words "important characteristics". We think it wise to leave this matter to the authorities examining a variety.

Ad 10 Our Committee is in favour of an extension of the four-year-period in Article 6(1)(b) to eight years, because some of the genera and species concerned mature only slowly; it may therefore take longer for their qualities to be assessed. Our Committee prefers to maintain the four-year-period in Ar-

title 12(3), because it gives an opportunity to the applicant in one country to temporise the applications for the same variety in other member States. Our Committee is of the opinion that the period of priority in Article 12(1) is sufficient for decisions to be taken by the applicant.

Ad 11 Our Committee does not oppose this idea. In principle, it allows the same opportunities to a breeder as point 7. Our Committee suggests to replace the wording "experimentation" by "test marketing".

Ad 12 Our Committee thinks that the text of Article 7(1) does not prescribe that preliminary tests should be done in a specific way. AIPH recognizes the advantage to both parties of the United States of America becoming a member of UPOV and has adopted a flexible attitude throughout the discussions. However, it regards "growing tests" as a fundamental ingredient of the present system of novelty protection applied in member States and is, therefore, unable to accept the elimination of such tests and their replacement by other forms of evaluation. In this instance an assurance is sought from the US authorities that they will study UPOV's experience and indeed move towards the introduction of growing tests into their own procedures. AIPH is aware that the wording of Article 7 of the Convention is not specific in demanding growing tests although it fears that such an interpretation is justified. It has taken into account the initiative of UPOV in introducing international cooperation in the testing of new varieties and the suggestion that this could lead to a system of central filing of applications and granting of rights.

Ad 13 Our Committee cannot accept a reduction of the minimum period of protection. This would weaken the effectiveness of breeders rights. It seems to our Committee unnecessary to calculate the period of protection for each variety from the same date in each member State, as this could lead to a reduction of the period of protection. It does not seem to our Committee that specifying the period of protection is an advantage. A minimum period allows a member State to give a larger protection if this is felt to be appropriate.

Ad 14 Our Committee is of the opinion that member States must be entitled to annul a breeder's right in the case of a breeder selling propagating material which does not show the characteristics of the variety as defined when the right was granted. It cannot be justified for a breeder to exploit a certain denomination without reference to the character of the plant material concerned.

Ad 15 Our Committee cannot give an advice on these aspects as it does not know of any grounds for annulment which have been suggested other than those already considered in paragraph 14 above.

Ad 16 Our Committee believes that every means of extending breeders' rights on an international basis is an advantage for their effective implementation. Our Committee is prepared to discuss this point at a later date when more specific points are identified by your Committee of Experts.

[End of annex and of document]