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UPOV

0243
IRC/v/9

ORIGINAL: English

DATE: March 2, 1977

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

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

Fifth Session

Geneva, March 8 - 10, 1977

COMMENTS OF PARTICIPANTS

Proposals of AIPH

The International Association of Horticultural Producers (AIPH), in its letter of February 28, 1977, annexed to this document, has commented on the items to be discussed during the fifth session of the Committee of Experts on the Interpretation and Revision of the Convention.

[Annex follows]

Letter of Mr. Luitse, Secretary-General of the International Association of Horticultural Producers (AIPH), to the Secretary-General of UPOV, dated February 28, 1977.

Our Committee for Novelty Protection has studied today your paper on the proposals for the revision of the Convention (Document IRC/V/2).

We base the following comments on this Document, on my letter to you of the 24th January 1976* and - in an effort to coordinate the views of the professional organisations - on the proposals made by ASSINSEL (Document IRC/V/8).

PART I. PROVISION OF TWO FORMS OF PROTECTION

Article 2(1): Our committee recognized advantages in the revision of this article along the lines suggested in both paragraphs 9 and 10 of Document IRC/V/2, but the majority view preferred a system under which all member States of the Union, whether new or not, may recognize the right of the breeder provided for in this Convention by the grant of a special title of protection or of a patent or of both.

PART II. DEFINITION OF A VARIETY

Article 2(2): The committee accepted UPOV's second proposal.

PART III. ANNEX TO THE CONVENTION; APPLICATION OF THE CONVENTION TO A MINIMUM NUMBER OF GENERA OR SPECIES; NATIONAL TREATMENT AND RECIPROCITY

Article 4(3) to (5) and Annex: The committee accepted the proposed rewording of article 4 clauses 1-5 inclusive, although it recognized that this would make it possible for new members to protect only economically unimportant genera or species. We are not in favour of the re-introduction of a list of specific crops, but we recommend that this aspect is discussed at the Diplomatic Conference scheduled for October 1978.

With regard to the proposed clauses (6) and (7) we maintain the position adopted in my letter to you of the 24th January 1976. We are therefore in favour of the "national treatment principle" rather than an extension of the "principle of reciprocity". We do not support, on the other hand, the extension of the benefit of protection to those countries which are member States of the Paris Union for the Protection of Industrial Property alone.

PART IV. SCOPE OF PROTECTION

Article 5

a. Farmers' Privilege: We are opposed to the concept that transactions between farmers or growers are outside the scope of protection provided under the Convention.

b. Protection of the marketed product: We are opposed to the extension of the scope of protection to the final product as a general principle but we accept that national legislation should allow such extension where it can be proved that breeders will not receive an adequate return without it.

c. Sale of plantlets: For similar reasons we support UPOV in its view that the Convention should at this time not be amended to refer explicitly to the production and sale of plantlets.

d. Commercial multiplication: We support ASSINSEL's approval of the position reflected in paragraph 35 of Document IRC/V/2.

* see document IRC/III/7.

PART V. CONDITIONS REQUIRED FOR PROTECTION

Article 6

- a. World novelty principle:
- b. Expression "important characteristics": We adhere to the viewpoint on these issues expressed in my letter of 24th January 1976.
- c. Sale of propagating material for purposes of experimentation:
- d. Period of grace: We take the view that it is acceptable and desirable to allow the breeder to test a new variety for both physiological and commercial purposes and it seems reasonable to allow a "period of grace" of one year in which he may do this without affecting his rights.
- e. Commercialization in States other than the filing State: We confirm that, in view of the slow growth of certain ornamental genera, it is necessary to increase the period referred to in Article 6(1)(b) to 8 years.

PART VI. EXAMINATION OF NEW VARIETIES

Article 7(1) and 7(2): We agree with the position adopted by UPOV on this issue as reflected in the statement appearing as Annex II of Document IRC/V/2.

PART VII. PROTECTION PERIOD

Articles 8(1) and 8(2): We support ASSINSEL's position in its effort to clarify this aspect and to introduce a uniform period of protection.

PART VIII. NULLITY AND FORFEITURE OF THE RIGHTS PROTECTED

Article 10: We confirm our earlier opinion and also UPOV's view that member States must be entitled to annul a breeder's right in circumstances arising from the fraudulent sales of propagating material.

PART IX. VALIDITY OF PRIORITY CLAIM

Articles 12(1) and 12(3): We agree with ASSINSEL's position on this issue and accept UPOV's suggested addition to Article 12(3).

PART X. VARIETY DENOMINATIONS

Article 13: Our committee did not take up a position on this question but recognized that denominations consisting solely of figures could give rise to confusion and were therefore undesirable.

[End of Annex and of document]