



WG-VD/3/4

English only

DATE: April 3, 2003

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

AD HOC WORKING GROUP ON VARIETY DENOMINATIONS

Third Meeting
Geneva, October 21, 2002

SUMMARY REPORT

prepared by the Office of the Union

Opening

1. The Vice Secretary-General welcomed the participants and informed them that a communication transmitted by the representative of the International Association of Breeders of Ornamental and Fruit Plants (CIOPORA) of October 16, 2002, had been circulated to the members and observers of the Working Group. The list of members and observers who participated in the session appears in Annex I to this document.

Draft Explanatory Notes of Article 20 of the 1991 Act of the UPOV Convention Concerning Variety Denominations

2. Discussions were based on document WG-VD/3/2, and the Vice Secretary-General introduced the document and invited comments on the proposed Draft Explanatory Notes contained therein. The Senior Legal Officer replied to questions concerning those Draft Explanatory Notes.

3. In relation to Draft Explanatory Note 2.3, different delegations shared their views and experience on their practices in registering denominations consisting of a code “solely of figures” and, in particular, how they applied the term “established practice.” One delegation indicated that they have experience in registering denominations “solely of figures” and, if the

denomination is proposed by the breeder and is suitable, then they do not require further proof on established practice.

4. As regards Draft Explanatory Note 2.7, a delegation considered it important to insert “a character” in the first sentence to read as follows: “As a general recommendation a difference of one letter, a character or number may not be considered different enough.” This change has been introduced in order to deal with cases in the Chinese language.

5. A representative of an observer organization indicated that, if a denomination is composed of a combination of figures and letters, the difference of one figure or one letter would normally be enough for considering the denomination different.

6. In relation to Draft Explanatory Note 2.9, discussions took place on the possibility to use a denomination for a variety that is no longer protected and/or no longer commercially exploited. Two delegations indicated that they had experience in the re-use of a denomination and, in relation to a particular recommendation of a waiting period after registration or commercialization of the denomination before re-using the same denomination, they indicated that they would use different criteria depending on the circumstances and on the variety. For example, one delegation proposed a longer waiting period for a tree variety and another delegation indicated that a longer waiting period should also be respected for a well-known potato variety.

7. In relation to Draft Explanatory Note 2.10, reference was made to the future work of the Working Group, in particular, on the questionnaire to be sent to members and observers of the Union in order to identify if there was a need to revise the existing Recommendation 9 and the corresponding List of Classes for purposes of identifying what is considered to be “closely related species” in relation to Article 20(2), fourth sentence, of the 1991 Act.

8. Several members also referred to the usefulness of the UPOV-ROM as an efficient tool to check whether a proposed denomination was different from other denominations of existing varieties of the same species or of a closely related species.

9. As regards Draft Explanatory Note 3.3, one delegation proposed to add the word “relevant” before the word “objections” in relation to the objections and observations that should be communicated to the applicant.

10. A discussion also took place in relation to the last sentence in Draft Explanatory Note 3.3. The Working Group decided to eliminate that sentence as it would be quite unlikely that this situation would arise in practice.

11. In relation to Draft Explanatory Note 4.1, the opinion of different delegations was that it was the responsibility of the title holder of the prior right to assert his or her rights. Therefore, in those cases where objections were received in relation to prior rights, the authority would communicate the information to the applicant. In cases providing for possible different interpretations concerning the likelihood of confusion, then the Working Group was of the opinion that those matters should be dealt with on a case-by-case basis and, if appropriate, before the courts.

12. In relation to Draft Explanatory Note 5.1, the Working Group identified the need to provide guidance on what to consider unsuitable and to harmonize approaches. It was also mentioned that, in certain cases, different denominations would be necessary and that would

entail the creation of synonyms. These matters should be further developed at the next session of the Working Group.

13. The Working Group took note of the need to reflect in the Draft Explanatory Notes the problems for members with a different alphabet, in particular, considering the difficulties in transliterating roman-script-based variety denominations into other scripts.

14. Discussion also took place in relation to Draft Explanatory Note 7.1. In relation to situations that could arise after expiration of the breeder's right, it was decided to redraft the last two sentences of the Draft Explanatory Note 7.1 in order to reflect the experience of authorities.

15. As regards Draft Explanatory Note 8, and the need to clearly show the status of variety denominations when they appear with other designations, such as a generic name, a trademark or a commercial name, a representative of an observer organization mentioned that the situation is further complicated when, in the composition of the variety denomination, the name or the acronym or the abbreviation of a company is already sometimes fully or partially incorporated. In those cases, it is even more important to clearly indicate which designation applies to the variety denomination.

16. The Working Group decided that a revised version, based on the above comments, of the Draft Explanatory Notes on Article 20 would be presented at the fourth meeting of the Working Group.

Report on the Questionnaire Seeking Information on how the Effectiveness of the UPOV-ROM Might be Improved

17. The Technical Director introduced document WG-VD/3/3 and informed the Working Group that a PowerPoint presentation would be made to the Administrative and Legal Committee (CAJ) in order to illustrate the summary of the responses to the questionnaire.

18. Of particular relevance to the Working Group, as it was discussed during the Draft Explanatory Notes above, was the consideration of the introduction of a unique variety identifier that could offer a solution in those cases where it was necessary to have different variety denominations in different territories for the same variety. A field for this unique identifier might, for example, then be included in the UPOV-ROM, UPOV Model Application Forms, etc.

19. The other matter that may be considered by the Working Group is the examination of the possibility of the UPOV-ROM becoming one means by which authorities could comply with the requirement under Article 20(6) of the 1991 Act to inform other members of the Union of matters concerning variety denominations.

20. Matters in paragraphs 18 and 19, above, will be further considered by the Working Group in its fourth meeting in April 2003.

Other Matters

21. The Working Group decided to meet again during the UPOV meetings in April 2003, in order to discuss a new draft of the Explanatory Notes, to examine the results of the questionnaire concerning the need or not to revise Recommendation 9 and the related List of Classes and finally, to further reflect on matters of interest for variety denomination purposes within the program to improve the UPOV-ROM.

[Annex follows]

ANNEX

| MEMBERS | NAME |
|-------------------|---------------------------|
| Belgium | Mrs. Camille Vanslebrouck |
| Canada | Mrs. Valerie Sisson |
| Chile | Mr. Enzo Cerda |
| China | Mr. Lü Bo |
| China | Mrs. Li Yanmei |
| Colombia | Mrs. Ana Luisa Díaz |
| Croatia | Mrs. Ruzica Ore |
| France | Ms. Nicole Bustin |
| France | Mr. Joël Guiard |
| Japan | Mr. Jun Koide |
| Republic of Korea | Mr. Keun Jin Choi |
| Spain | Mr. Luis Salaices |

| OBSERVERS | |
|-------------------------------------|-----------------------|
| European Community (CPVO) | Mr. Bart Kiewiet |
| International Seed Federation (ISF) | Mr. Bernard Le Buanec |
| CIOPORA | Mr. René Royon |
| CIOPORA | Mr. Martin Leune |

Office of the Union:

Mr. Rolf Jördens
 Mr. Peter Button
 Mr. Raimundo Lavignolle
 Mrs. Yolanda Huerta
 Ms. Ariane Besse

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