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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

COUNCIL

Forty-Fifth Ordinary Session
Geneva, October 20, 2011

**PROGRESS REPORT OF THE WORK OF THE
ADMINISTRATIVE AND LEGAL COMMITTEE**

Document prepared by the Office of the Union

1. The Administrative and Legal Committee (CAJ) held its sixty-third session in Geneva, on April 7, 2011, under the chairmanship of Mr. Lü Bo (China). An oral report on the sixty-fourth session of the CAJ, to be held in Geneva on October 17, 2011, and the program for its sixty-fifth session, will be made by the Chair of the CAJ at the forty-fifth ordinary session of the Council, to be held in Geneva on October 20, 2011.
2. At its sixty-third session, the CAJ considered the following matters:
 - (a) Report on developments in the Technical Committee: the CAJ noted the oral report made by Mr. Joël Guiard (France), Chair of the Technical Committee (TC), on the forty-seventh session of the TC, which was held in Geneva from April 4 to 6, 2011.
 - (b) TGP Documents:
 - (i) the CAJ proposed the adoption of document TGP/11/1, "Examining stability", by the Council on the basis of document TGP/11/1 Draft 10, amended in accordance with the TC proposal contained in paragraph 2 of document CAJ/63/8. It agreed that document TGP/11/1 Draft 10, as amended, should be the basis for adoption of document TGP/11/1 by the Council at its forty-fifth ordinary session, to be held in Geneva on October 20, 2011;

(ii) the CAJ proposed the adoption of document TGP/5 Section 10/2, “Experience and Cooperation in DUS Testing”, by the Council on the basis of document TGP/5 Section 10/2 Draft 2, amended in accordance with the TC proposals contained in paragraph 5 of document CAJ/63/8. It agreed that document TGP/5: Section 10/2 Draft 2, as amended, should be the basis for adoption of document TGP/5: Section 10/2 by the Council at its forty-fifth ordinary session, to be held in Geneva on October 20, 2011;

(iii) the CAJ agreed the program for the development of TGP documents, as set out in the Annex to document CAJ/63/2, subject to the inclusion in the program of the revision of document TGP/7 “Development of Test Guidelines”, as set out in paragraphs 8 to 10 of document CAJ/63/8;

(c) UPOV Information Databases: the CAJ received a presentation of the prototype of the web-based version of the Plant Variety Database, made by Mrs. Lili Chen, Software Developer, World Intellectual Property Organization (WIPO). It noted the developments concerning the GENIE database and the program for improvements to the Plant Variety Database. The CAJ agreed with the proposal that a web-based version of the Plant Variety Database, based on the existing content of the UPOV-ROM Plant Variety Database, be launched on the UPOV website during the course of 2011. The CAJ noted that the database would contain the same data as provided for the UPOV-ROM, according to existing data submission procedures, and would include similar search functions. It noted that, in addition, provisions would be made for the results of the searches to be downloaded in the form of an Excel spreadsheet or an html report, thereby enabling full access to the data in the Plant Variety Database. With regard to the web-based version of the Plant Variety Database, the CAJ expressed its preference for a policy of “free access to all users”;

(d) Molecular techniques:

(i) the CAJ noted the adoption of document UPOV/INF/17/1 “UPOV Guidelines for DNA-profiling: molecular marker selection and database construction (BMT Guidelines)”;

(ii) the CAJ proposed the adoption of document BMT/DUS, “Possible use of molecular markers in the examination of Distinctness, Uniformity and Stability (DUS)”, by the Council on the basis of document BMT/DUS Draft 5, amended in accordance with the TC proposals. The CAJ agreed that document BMT/DUS Draft 5, as amended, should be the basis for adoption of document BMT/DUS by the Council at its forty-fifth ordinary session, to be held in Geneva on October 20, 2011;

(iii) the CAJ agreed that document TGP/15 should be developed separately, but in parallel, to document BMT/DUS on the basis that document BMT/DUS would provide a report on the development and consideration of all models within UPOV and that document TGP/15 would provide guidance for the use of those models that had received a positive assessment and for which accepted examples could be provided, i.e. Models “Characteristic-specific molecular markers” (Section 3.1.1) and “Combining phenotypic [characteristics] and molecular distances in the management of variety collections” (Section 3.1.2) for the time being. It agreed that the purpose of both documents should be clarified within the documents and noted that both documents would need to be adopted by the Council. The CAJ also agreed that consideration should be given to how to maintain both documents in an efficient way;

(iv) the CAJ noted the report on developments in the Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular (BMT) and the

program for the thirteenth session of the BMT, to be held in Brasilia, Brazil, from November 22 to 24, 2011, with the preparatory workshop to be held on November 21, 2011. It noted that, in order to encourage the presentation of information in relation to the use of molecular techniques in examining essential derivation and in variety identification, it would be appropriate to dedicate a specific day to those items at the thirteenth session of the BMT. The CAJ noted that breeders and other experts would be offered the possibility to attend for that specific day, which would be on November 22, 2011;

(e) Development of information materials concerning the UPOV Convention:

(i) the CAJ noted the report on the work of the Administrative and Legal Committee Advisory Group (CAJ-AG) at its fifth session, as provided in document CAJ-AG/10/5/7 “Report”;

(ii) the CAJ noted the adoption of document UPOV/INF/15/1 “Guidance for Members of UPOV on Ongoing Obligations and Related Notifications”, by the Council, at its forty-fourth ordinary session, held in Geneva on October 21, 2010;

(iii) the CAJ noted the request made by the International Community of Breeders of Asexually Reproduced Ornamental and Fruit Varieties (CIOPORA) and agreed to request the Office of the Union to prepare a document, on the basis of contributions received, on “propagation and propagating material” for consideration by the Administrative and Legal Committee Advisory Group (CAJ-AG) at its sixth session in October 2011;

(iv) the CAJ noted the proposal made by the Delegation of the Republic of Korea for the development of information materials on alternative dispute settlement mechanisms for breeders’ rights, such as arbitration and mediation and the intervention by the representative of the International Seed Federation (ISF) on the existing ISF arbitration and mediation rules; the CAJ agreed that the Office of the Union should consult with the Republic of Korea and ISF with a view to preparing a document for consideration by the CAJ at its sixty-fourth session in October 2011, if appropriate;

(v) the CAJ approved the work program for the sixth session of the CAJ-AG, to be held in October 2011. In reply to a question on the participation of observer organizations in the work of the CAJ-AG, the Vice Secretary-General recalled the terms of reference of the CAJ-AG that provide that “[o]bserver organizations, in particular those representing the interests of breeders, might be invited by the CAJ-AG to present their views on a particular provision of the 1991 Act to assist in [its] work” (see document CAJ/52/4, paragraph 14, and document CAJ/52/5 “Report”, paragraph 67); and

(vi) the CAJ noted that the specific amendments for the updating of document UPOV/INF/6/1 “Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention”, would be presented for consideration by the Council, at its forty-fifth ordinary session, to be held on October 20, 2011.

(f) Variety denominations:

(i) the CAJ noted the report on the adoption of document UPOV/INF/12/3 “Explanatory Notes on Variety Denominations under the UPOV Convention”, the publication of that document and the updating of the GENIE database with the amended UPOV codes for the relevant taxa;

(ii) the CAJ noted the botanical synonymies that existed for species of *Eupatorium* L. and that the TC, at its forty-seventh session, had invited the Technical Working Party for Ornamental Plants and Forest Trees TWO, at its forty-fourth session, to be held from November 7 to 11, 2011, in Fukuyama City, Hiroshima Prefecture, Japan, to consider possible solutions;

(iii) the CAJ noted the information concerning the registration of variety denominations as trademarks.

(g) Electronic applications systems:

(i) the CAJ agreed that the Office of the Union should seek information on the extent to which members of the Union use the standard references to the UPOV Model Application Form in their application forms. The CAJ expressed its support to develop a Linear Blank Form for PBR Applications with the following features:

- users* could select the language in which the items in the Linear Blank Form for PBR Applications would be presented (Input Template language);
- users could select (a) language(s) in which the completed Linear Form for PBR Applications could be downloaded (Output Template language);
- users could choose the format in which to download the completed Linear Form for PBR Applications: Word, Excel, XML and/or PDF;
- users could choose to store the input data in an associated database (hosted by UPOV), in order, for example, to allow further downloading in different languages and/or formats. The data would be password protected and the password would only be issued to the user concerned; and
- a disclaimer that the use of the information associated with the Linear Blank Form for the filing of an application for a breeder's right with the authority of a member of the Union would be the responsibility of the user.

The CAJ noted that the languages in which the Linear Blank Form for PBR Applications would be developed would be prioritized on the basis of discussions with the international breeders' organizations and according to available resources. In the case of languages other than English, French, German and Spanish, interested members of the Union would be consulted before the relevant language versions were made available on the UPOV website. In addition, there would be an explanation that the translations had not been adopted by the Council. The CAJ noted that ISF would be willing to contribute financial resources to the development of the Linear Blank Form for PBR Applications on the basis of the concept set out above;

* The term "user" is used instead of "applicant" or "breeder", in order to avoid any implication that the use of the Linear Blank Form for PBR Applications might indicate that an application is being filed for a plant breeder's right.

(ii) the CAJ noted that the TC, at its forty-seventh session, had agreed to delay consideration of the approach for providing standard references for the UPOV Model Technical Questionnaire;

(iii) the CAJ recalled the latest situation concerning Proposal 2 “Use of information provided in an electronic version of the UPOV Model Application Form and UPOV Model TQ”.

Program for the sixty-fourth session

3. The CAJ anticipated that one day would be sufficient for the program of its sixty-fourth session and, therefore, it agreed to hold the sixth session of the CAJ-AG on October 18, 2011, instead of on October 22, 2011. At its sixty-fourth session, to be held in Geneva on October 17, 2011, the CAJ planned to discuss the following items: Development of information materials concerning the UPOV Convention; TGP documents; Molecular techniques; Variety denominations; Information and databases; DUS examination of seed-propagated varieties of Papaya; and the program for its sixty-fifth session.

4. *The Council is invited to:*

(a) note the work of the CAJ, as reported in this document and in the oral report to be made by the Chair of the CAJ; and

(b) approve the work program for the sixty-fifth session of the CAJ, as presented in the oral report of the Chair of the CAJ.

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