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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

TECHNICAL COMMITTEE

Eighteenth Session
Geneva, November 18 and 19, 1982QUESTIONS PRESENTED TO THE TECHNICAL COMMITTEE
BY THE TECHNICAL WORKING PARTIES
(Item 10 of the Draft Agenda)prepared by the Office of the Union

1. During its sessions held in 1982, on several questions the Technical Working Parties asked for the advice of the Technical Committee, or at least requested it to take note of certain events or decisions taken. The items presented to the Technical Committee are as follows:

Applicability of Characteristics Throughout the World

2. In connection with the discussions of characteristic 2 of the draft Test Guidelines for Soya Bean ("Plant: growth type" with the states "determinate, semi-determinate, indeterminate") the experts of the Technical Working Party for Agricultural Crops were not certain whether the characteristic was applicable throughout the world or only at certain locations. The same was true of a few other characteristics in the same document, e.g. characteristic 16, "Plant: time of maturity" with states from "very early" to "very late." The comments from the experts of the United States of America specified that "early" and "late" had meaning only in terms of a specified latitude and climate. The Technical Working Party for Agricultural Crops therefore asked the experts of the United States of America to give further details. The discussion led the Technical Working Party for Agricultural Crops to restate the necessity of comparing only test results taken at the same place and under the same environmental conditions, and to point to the danger of comparing test results obtained from different places with different environmental conditions (see document TWA/XI/14, paragraphs 12 and 14).

Electrophoresis

3. In connection with the discussions on the working paper on revised Test Guidelines for Potato, the Technical Working Party for Agricultural Crops discussed once again the problems connected with the use of electrophoresis for the testing of distinctness. During the discussions it was mentioned that the following questions would have to be solved for all species before characteristics obtained by this method could be used for distinctness purposes, namely

- (i) whether the characteristics obtained by the use of electrophoresis would be considered important characteristics and whether varieties that could be identified by characteristics obtained by electrophoresis would have a sufficient minimum distance from each other to justify the grant of plant variety protection,
- (ii) whether varieties would be homogeneous in characteristics obtained by electrophoresis,
- (iii) whether harmonized and standardized methods existed for the use of electrophoresis to obtain these characteristics, and
- (iv) whether there was a need to use new or additional characteristics.

The Working Party agreed that the situation regarding potatoes was different from that regarding cereals, discussed during its last session, as potatoes were vegetatively reproduced and therefore presented fewer or no problems in terms of homogeneity. Moreover, standardized methods had been established for the testing of potatoes. It remained therefore mainly to solve the other two questions, namely whether there was a need for additional characteristics and the question of importance and minimum distances. Some experts therefore proposed to take potatoes as a starting point for the introduction of electrophoresis in the testing of distinctness. Others warned against the risk involved in the introduction of characteristics obtained by means of electrophoresis. Even if it were possible and justifiable to use characteristics obtained by those methods to distinguish potato varieties, there was the risk of a precedent being set which in the end would force the introduction of characteristics obtained by that method for other species also, for which their application was less justified or not at all. The question of the use of characteristics obtained by means of electrophoresis would therefore have to be solved for all species together. So far it had not been possible to establish a direct correlation between morphological characteristics and characteristics obtained by electrophoresis with respect to potatoes. Moreover, it appeared that it had not been possible to distinguish by electrophoresis three potato varieties that had been distinguished by traditional characteristics. The reverse situation, namely where inside a given variety with a broad distribution in several countries different band patterns could be detected with the application of electrophoresis, was still under study. As the question of electrophoresis was in any case under discussion in the Technical Committee, the Working Party asked for the details of its discussion to be brought to the attention of the Technical Committee during its coming session. It was further pointed out that, with respect to potatoes, there was no urgent need for further characteristics, as there was already an abundance of them. Different countries would however place emphasis on different types of characteristics, such as the Netherlands on light sprout characteristics and the United Kingdom on field characteristics, while the Federal Republic of Germany, for identification of seed lots in the trade, would place emphasis on characteristics obtained by means of electrophoresis (see document TWA/XI/14, paragraphs 37 to 40).

Impact of Patents on Varieties, Plant Breeding and Plant Breeders' Rights

4. Mr. Duyvendak (Netherlands) reported that a patent application was currently pending at the European Patent Office which claimed the use of tissue culture for the maintenance of parent plants which consequently did not need to be homozygous but produced homogeneous offspring. He asked the experts to bring the case to the attention of their Offices and of the Technical Committee, as the grant of the patent applied for could have an important effect on the future of the plant variety protection system. With a patent of the above type, a kind of protection could be obtained that would make it unnecessary to apply for plant variety protection (see document TWA/XI/14, paragraph 41).

Place in the Test Guidelines for the Presentation of Additional Information

5. In connection with the Test Guidelines for Soya Bean the Technical Working Party for Agricultural Crops asked the Technical Committee to issue a general ruling on the place in the Test Guidelines in which additional information on a given characteristic or group of characteristics (e.g. on the date

of observation, or on how to observe a certain characteristic or group of characteristics) should be given, namely whether in the Technical Notes, in the Table of Characteristics or in the Explanations and Methods. It considered the explanation given by the Office of UPOV on present practice insufficient. So far general information, especially on the time of observation and the selection of the organs applying to more than one characteristic, would be included in the Technical Notes, information applicable to one characteristic only and quite short in the Table of Characteristics, and more detailed information, especially drawings or methods relating to a single characteristic or group of characteristics, in the Explanations and Methods. The Technical Working Party for Agricultural Crops felt that, if possible, more information should be given in the Table of Characteristics, immediately after each characteristic, as the fear was expressed that the Table of Characteristics might frequently be detached from the Technical Notes, whereupon the information in the Technical Notes would not be read by the person using the Table of Characteristics or indeed available to him (see document TWA/XI/14, paragraph 15).

Characteristics to be Observed on Seed Sent in by the Breeder

6. The Technical Working Party for Agricultural Crops decided to include in the Technical Notes of the Test Guidelines for Sunflower a new paragraph reading: "All seed characteristics should be observed on seed sent in by the breeder." The Technical Working Party stated that technical reasons had led it to include the paragraph in the Technical Notes. It was however well aware of the fact that its inclusion would result in a situation where characteristics of the submitted seed alone led to the grant of plant variety protection for a variety that otherwise was not distinguishable; that in turn might result in reciprocal crosses being considered new varieties, which was a different decision from the one taken with respect to maize (see paragraph 11 of the Technical Notes of document TG/2/4). It therefore asked the Technical Committee to note and approve the proposal (see document TWA/XI/14, paragraph 16).

Testing at One Place Only and from One Single Seed Sample

7. The Technical Working Party for Agricultural Crops had a lengthy discussion on whether tests would have to be conducted at one or several stations and also on whether stability had to be tested in the second year using seed delivered by the applicant from another growing or generation. There was disagreement on both questions in the Technical Working Party, and it was therefore decided that the Technical Committee would be asked to clarify whether testing at one station alone was considered sufficient to establish distinctness, and whether testing on the basis of a single sample supplied by the applicant and one testing year was considered sufficient to establish stability before plant breeders' rights were granted. If both questions were answered in the affirmative, the sentences in the Technical Notes of all Test Guidelines that corresponded to paragraph 3 of the Technical Notes of document TG/81/1(proj.) should be deleted. (The paragraph in question reads as follows: "3. If the tests are conducted at one station only, there should be at least two plots, but it is preferable to conduct the tests at two ecologically different stations with two replications at each. For the assessment of stability, seed delivered by the applicant in different years should be compared." (see document TWA/XI/14, paragraph 18)).

Technological Characteristics

8. The Technical Working Party for Agricultural Crops could not agree on whether to use technological characteristics of the fibre as: percentage, length, uniformity index, tenacity, elongation, thickness, maturity and fineness or yarn tenacity for the distinguishing of cotton varieties. It therefore requested the Technical Committee to give its advice on the use of technological characteristics for distinguishing purposes (see document TWA/XI/14, paragraph 23).

9. The Technical Committee is invited to

(i) note the information given in paragraphs 2 to 4,

(ii) take a decision on the questions mentioned in paragraphs 5 to 8.

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