



C/44/9

ORIGINAL: English

DATE: September 1, 2010

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

COUNCIL

Forty-Fourth Ordinary Session
Geneva, October 21, 2010

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

prepared by the Office of the Union

1. The Administrative and Legal Committee (CAJ) held its sixty-first session in Geneva, on March 25, 2010, under the chairmanship of Mrs. Carmen Gianni (Argentina). An oral report on the sixty-second session of the CAJ, to be held in Geneva on October 19, 2010, and the program for its sixty-third session will be made by the Chair of the CAJ at the forty-fourth ordinary session of the Council to be held in Geneva on October 21, 2010.

2. At its sixty-first session, the CAJ considered the following matters:

(a) Report on the Developments in the Technical Committee: the CAJ received an oral report by the Chair of the Technical Committee (TC) on the forty-sixth session of the TC, which had taken place in Geneva from March 22 to 24, 2010 and on the “Conclusions of the Chairman of the Technical Committee in conjunction with the Office of the Union” on the Seminar on DUS Testing, which was held in Geneva from March 18 to 20, 2010.

(b) TGP Documents:

(i) the CAJ endorsed the amendments made to document TGP/7/2 Draft 5 “Development of Test Guidelines (Revision)” agreed by the TC at its forty-sixth session and

agreed that document TGP/7/2 Draft 5, as amended, should be the basis for adoption of document TGP/7/2 by the Council at its forty-fourth ordinary session. It noted that the French, German and Spanish translations of the original English text would be checked by the relevant members of the Editorial Committee prior to submission of the draft of document TGP/7/2 to the Council;

(ii) the CAJ endorsed the amendments made to document TGP/8/1 Draft 15 “Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability” agreed by the TC at its forty-sixth session and agreed that document TGP/8/1 Draft 15, as amended, should be put forward for adoption by the Council at its forty-fourth ordinary session. It noted that the French, German and Spanish translations of the original English text would be checked by the relevant members of the Editorial Committee prior to submission of the draft of document TGP/8/1 to the Council;

(iii) the CAJ noted that the TC at its forty-sixth session agreed that no further modifications were required to document TGP/14/1 Draft 11 “Glossary of [Technical, Botanical and Statistical] Terms Used in UPOV Documents” and agreed that document TGP/14/1 should be put forward for adoption by the Council at its forty-fourth ordinary session, on the basis of document TGP/14/1 Draft 11. It noted that the French, German and Spanish translations of the original English text would be checked by the relevant members of the Editorial Committee prior to submission of the draft of document TGP/14/1 to the Council;

(iv) the CAJ agreed the proposed schedule for the development of document TGP/11 “Examination of Stability” and noted that document TGP/11 Draft 8 would be considered by the Technical Working Parties (TWPs) at their sessions in 2010 and by the CAJ at its sixty-second session to be held in Geneva on October 19, 2010;

(v) the CAJ noted the conclusions of the TC at its forty-sixth session on the need to consider a revision of Section 10/1 “Notification of Additional Characteristics” of document TGP/5 “Experience and Cooperation in DUS Testing”;

(vi) the CAJ noted the conclusions of the TC at its forty-sixth session on the need to consider a revision of document TGP/12 “Guidance on Certain Physiological Characteristics”;

(vii) the CAJ agreed to propose the adoption of document TGP/0/3 “List of TGP Documents and Latest Issue Dates” by the Council at its forty-fourth ordinary session, in conjunction with the adoption and revision of TGP documents, as appropriate; and

(viii) the CAJ agreed the program for the development of TGP documents, as set out in the Annex to document CAJ/61/2.

(c) Development of Information Materials Concerning the UPOV Convention:

(i) the CAJ endorsed the conclusion of the Administrative and Legal Committee Advisory Group (CAJ-AG), at its fourth session, that the terms of reference of the CAJ-AG as set out in documents CAJ/52/4 and CAJ/52/5, paragraphs 14 and 67, respectively (reproduced in paragraph 7 of document CAJ/61/3), provided an effective basis for the work of the CAJ-AG;

(ii) the CAJ considered the “Explanatory Notes on the Definition of Variety under the 1991 Act of the UPOV Convention” (document UPOV/EXN/VAR Draft 4) and agreed that document UPOV/EXN/VAR be proposed for adoption by the Council at its forty-fourth ordinary session, on the basis of document UPOV/EXN/VAR Draft 4;

(iii) the CAJ considered the “Explanatory Notes on Conditions and Limitations Concerning the Breeder’s Authorization in Respect of Propagating Material under the UPOV Convention” (document UPOV/EXN/CAL Draft 2) and agreed that document UPOV/EXN/CAL be proposed for adoption by the Council at its forty-fourth ordinary session, on the basis of UPOV/EXN/CAL Draft 2;

(iv) the CAJ agreed to request the CAJ-AG, at its fifth session, to consider the objectives of the possible development of a document on the Exhaustion of the Breeder’s Right under the 1991 Act of the UPOV Convention;

(v) the CAJ agreed to request the CAJ-AG, at its fifth session, to consider the objectives of the possible development of a document on the notion of “own holdings” under Article 15(2) of the 1991 Act of the UPOV Convention;

(vi) the CAJ approved the procedure for the consideration of document UPOV/INF/15/1 Draft 1 “Guidance for Members of UPOV on Ongoing Obligations and Related Notifications” by correspondence, as the basis for adoption of document UPOV/INF/15/1 by the Council at its forty-fourth ordinary session; and

(vii) the CAJ approved the work program for the fifth session of the CAJ-AG, to be held in Geneva on October 18, 2010.

(d) Variety Denominations:

(i) the CAJ proposed the adoption of document UPOV/INF/12/2 Annex I, Part I “Classes within a genus”, Class 4, amended in accordance with the proposals of the TC, at its forty-sixth session, contained in paragraphs 23 and 24 of document CAJ/61/10. The CAJ noted that there might be advantages in retaining Tomato rootstock species in the same variety denomination class as Tomato, but agreed with the TC conclusion that the Technical Working Party for Vegetables (TWV) in its session of 2010 should be invited to consider that matter, on the basis of two alternatives for an amendment to document UPOV/INF/12/2 Annex I, Part I “Classes within a genus”, Class 4, reproduced in paragraph 23 of document CAJ/61/10. The CAJ agreed that the alternative endorsed by the TWV would be put forward as a revision of document UPOV/INF/12/2 for adoption by the Council at its forty-fourth ordinary session;

(ii) the CAJ took note that the TC had agreed to the amendment of the UPOV codes for the relevant taxa, simultaneously with any revision of the “Explanatory Notes on Variety Denominations under the UPOV Convention”, document UPOV/INF/12/2, in accordance with the proposals made by the TC, at its forty-sixth session, as contained in paragraph 25 of document CAJ/61/10; and

(iii) the CAJ agreed that document UPOV/INF/12/2 Annex I, Part II “Classes encompassing more than one genus”, as amended to include a new class (Class 212) for *Verbena L.* and *Glandularia J. F. Gmel.*, be put forward for adoption by the Council at its forty-fourth ordinary session.

(e) Electronic Application Systems:

(i) the CAJ agreed to the revision of document TGP/5, Section 2/2 “Experience and Cooperation in DUS Testing: UPOV Model Form for the Application for Plant Breeders’ Rights” and agreed that document TGP/5 Section 2/3 Draft 1 be put forward for adoption by the Council at its forty-fourth ordinary session;

(ii) the CAJ noted that the standard references and “linear blank forms” (in “Word” format) as set out in Annexes I and II of document CAJ/60/5, would be presented for adoption by the Council at its forty fourth ordinary session;

(iii) the CAJ agreed with the conclusion of the TC at its forty-sixth session that inclusion of an explanation of the standard references for the UPOV Model TQ and for Test Guidelines, as set out in Annexes III and IV of document TC/46/13 (document CAJ/60/5), would benefit from discussion in the TWPs and TC and should not be included in document TGP/7/2, but should be considered for a future revision of document TGP/7 (document TGP/7/3); and

(iv) the CAJ noted the responses to Circular E-1141 concerning Proposal 2 “Use of information provided in an electronic version of the UPOV Model Application Form and UPOV Model TQ”, and the intervention made by the Delegation of the European Union. It agreed that, in relation to Proposal 2 “Use of information provided in an electronic version of the UPOV Model Application Form and UPOV Model TQ”, it would be beneficial to await developments concerning the possibility of the Community Plant Variety Office of the European Union (CPVO) online application system being made available to members of the Union, as explained by the Delegation of the European Union, and decided to continue deliberations on electronic application systems, as considered appropriate by the CAJ.

(f) UPOV-ROM Plant Variety Database:

(i) the CAJ noted that the GENIE database had been launched on the freely available area of the UPOV website on March 15, 2010;

(ii) the CAJ noted the developments concerning the UPOV-WIPO arrangement, as set out in paragraph 9 of document CAJ/61/5. The CAJ heard that, in accordance with the UPOV-WIPO arrangement, a software developer had been recruited by WIPO to work 100% of her time on the program of improvements concerning the UPOV-ROM and would take up her duties on May 1, 2010. The CAJ noted that, in accordance with the UPOV-WIPO arrangement, Mr. José Appave, Senior Data Administration Clerk, WIPO, had taken up responsibility for collating data for the UPOV-ROM Plant Variety Database (UPOV-ROM) (see circular E-1190). The CAJ further noted the clarification that the current arrangements for providing data for the UPOV-ROM, as set out in the UPOV-CPVO MoU (see document CAJ/57/6, paragraph 6), would not be affected by that development. The CAJ noted the conclusions of the TC at its forty-sixth session, concerning the proposal for the

Technical Working Party on Automation and Computer Programs (TWC) to conduct the analysis of the inclusion of data in fields in the UPOV ROM Plant Variety Database, and agreed that the Office of the Union should consider that offer in conjunction with the work under the UPOV-WIPO arrangement; and

(iii) the CAJ noted the situation concerning the development of common search platforms.

(g) Molecular Techniques:

(i) the CAJ noted that no proposals for modification to the “Guidelines for DNA-Profiling: Molecular Marker Selection and Database Construction (‘BMT Guidelines’) (document BMT Guidelines (Proj.16)) had been made by the TC at its forty-sixth session and agreed that document BMT Guidelines should be put forward for adoption by the Council at its forty-fourth ordinary session, to be held in Geneva on October 21, 2010, on the basis of document BMT Guidelines (Proj.16). It noted that the French, German and Spanish translations of the original English text would be checked by the relevant members of the Editorial Committee prior to submission of the draft of document BMT Guidelines to the Council; and

(ii) the CAJ noted that the TC, at its forty-sixth session, had endorsed the recommendations of the *Ad hoc* Subgroup of Technical and Legal Experts of Biochemical and Molecular Techniques (BMT Review Group) made at its meeting of April 1, 2009;

(iii) with regard to the revision of Documents TC/38/14-CAJ/45/5 “*Ad Hoc* Subgroup of Technical and Legal Experts on Biochemical and Molecular Techniques (‘The BMT Review Group’)” and TC/38/14 Add.-CAJ/45/5 Add “Recommendations of the BMT Review Group and Opinion of the Technical Committee and the Administrative and Legal Committee Concerning Molecular Techniques”, as presented in document BMT/DUS Draft 2 “Possible use of Biochemical and Molecular Markers in the Examination of Distinctness, Uniformity and Stability (DUS)”, the CAJ noted the conclusions of the TC at its forty-sixth session on document BMT/DUS Draft 2 (see paragraph 51 of document CAJ/61/10). The CAJ noted that the TC had agreed that a new draft of the document BMT/DUS should be prepared by the Office of the Union, in conjunction with the TC Chairman and the BMT Chairman, for consideration by the Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular (BMT) and the TWPs at their sessions in 2010 and that a further draft be prepared on the basis of the comments of the BMT and TWPs for consideration by the TC at its forty-seventh session.

(h) Matters arising after the grant of a breeder’s right: the CAJ noted the contributions contained in documents CAJ/61/8 and CAJ/61/8 Add. and requested the Office of the Union to prepare a document for consideration by the CAJ -AG, at its fifth session, on possible ways to proceed with matters raised in those contributions.

(i) Exchangeable software:

(i) the CAJ noted that the TC, at its forty-sixth session, had agreed to the adoption of document UPOV/INF/Software Draft 3 “Exchangeable Software” by the Council and agreed that a draft of that document, renamed as document UPOV/INF/18/1 Draft 1, should be put forward for adoption by the Council at its forty-fourth ordinary session. The CAJ noted that the French, German and Spanish translations of the original English text would be checked by the relevant members of the Editorial Committee prior to submission of document UPOV/INF/18/1 Draft 1 to the Council; and

(ii) the CAJ noted that, at its twenty-eighth session, which was to be held in Angers, France, from June 29 to July 2, 2010, the TWC would receive a presentation by an expert from the European Union on software for assessing similarity of denominations, developed by the CPVO. The Delegation of the European Union explained that it would also like to offer access to its complete variety denomination database, including the variety denomination similarity tool, to members of the Union. The log-in and password would be provided on request to the CPVO by e-mail (cpvo@cpvo.europa.eu). The CAJ approved the translation into English of the user guide for the SIRIUS system for data capture. The CAJ noted the software that would be discussed by the TWC for possible inclusion in a future revision of document UPOV/INF/18/1 “Exchangeable Software”.

Program for the sixty-second session of the CAJ

3. At its sixty-second session, the CAJ planned to discuss the following items: TGP documents (TGP/11 “Examination of Stability”); Development of information materials concerning the UPOV Convention (UPOV/EXN/HRV “Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention”(subject to the approval by the CAJ-AG)); Variety denominations; Electronic application systems; UPOV-ROM Plant Variety Database; Molecular techniques; and the program for its sixty-third 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-third session of the CAJ, as presented in the oral report of the Chair of the CAJ.

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