



C/45/13

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**INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS**  
GENEVA

**COUNCIL**

**Forty-Fifth Ordinary Session**  
**Geneva, October 20, 2011**

ADOPTION OF DOCUMENTS

*Document prepared by the Office of the Union*

1. The purpose of this document is to provide relevant information concerning the documents that the Council will be invited to adopt at its forty-fifth ordinary session, to be held in Geneva on October 20, 2011.
2. The Consultative Committee, at its eighty-first session, endorsed the following approach, if appropriate, for updating documents previously adopted by the Council (see document C(Extr.)/28/4, "Report", paragraph 11):

“(i) to present a Council document proposing specific amendments to the document being updated without presenting a complete revised draft document to the Council. The Council would be invited to adopt the revised version of the document on the basis of the specific amendments and the Office of the Union would prepare and publish the revised document on that basis;

(ii) to present to the Council for adoption, in conjunction with the Council document containing the specific amendments to the document being updated, an information document, similar to document “List of TGP Documents and Latest Issue Dates” (document TGP/0/3) containing the latest references and dates of information documents (for instance, INF and EXN series of documents).”

3. The Council will be invited to adopt at its forty-fifth ordinary session the following documents:

(a) TGP documents:

TGP/5 Section 10/2 Experience and Cooperation in DUS Testing: Notification of Additional Characteristics (Revision)  
(document TGP/5 Section 10/2 Draft 3)

TGP/7/3 Development of Test Guidelines (Revision)  
(document C/45/13, Annex I)

TGP/11/1 Examination of Stability  
(document TGP/11/1 Draft 11)

TGP/0/4 List of TGP Documents and Latest Issue Dates (Revision)  
(document TGP/0/4 Draft 1)

(b) Information documents:

UPOV/INF/6/2 Guidance for the Preparation of Laws Based on the 1991 Act of the UPOV Convention (Revision)  
(document C/45/13, Annex II)

UPOV/INF/16/2 Exchangeable Software (Revision)  
(document C/45/13, Annex III)

UPOV/INF-EXN/1 List of INF-EXN Documents and Latest Issue Dates  
(document UPOV/INF-EXN/1 Draft 1)

(c) BMT/DUS/1 Possible use of Biochemical and Molecular Markers in the Examination of Distinctness, Uniformity and Stability (DUS)  
(document BMT/DUS/1 Draft 6)

(a) TGP DOCUMENTS

TGP/5 Section 10/2: Experience and Cooperation in DUS Testing: Notification of Additional Characteristics (Revision) (document TGP/5 Section 10/2 Draft 3)

4. The Technical Committee (TC), at its forty-seventh session, and the Administrative and Legal Committee (CAJ), at its sixty-third session, agreed the changes to the text of document TGP/5 Section 10/2 Draft 2 and, on that basis, agreed that a draft of document TGP/5: Section 10/2 should be put forward for adoption by the Council at its forty-fifth ordinary session.

*5. The Council is invited to adopt document TGP/5 Section 10/2 "Experience and Cooperation in DUS Testing: Notification of Additional Characteristics" (Revision) on the basis of document TGP/5 Section 10/2 Draft 3.*

TGP/7/3: Development of Test Guidelines (Revision) (document C/45/13, Annex I)

6. The TC, at its forty-seventh session, agreed that the wording of document TGP/7/2, as adopted by the Council at its forty-fourth ordinary session, held in Geneva on October 21, 2010, with regard to Chapter 4.1.4 should not be followed in the Test Guidelines to be adopted at its forty-seventh session. It agreed that the wording in Chapter 4.1.4 of Test Guidelines in document TGP/7/2 should be amended according to the following models:

Alternative 1: “Unless otherwise indicated, for the purposes of distinctness, all observations on single plants should be made on { x } plants or parts taken from each of { x } plants and any other observations made on all plants in the test, disregarding any off-type plants.”

Alternative 2: “Unless otherwise indicated, for the purposes of distinctness, all observations on single plants should be made on { x } plants or parts taken from each of { x } plants and any other observations made on all plants in the test, disregarding any off-type plants. In the case of observations of parts taken from single plants, the number of parts to be taken from each of the plants should be { y }.”

The TC agreed that the Test Guidelines to be adopted by the TC should incorporate that amended wording for Chapter 4.1.4.

7. The TC, at its forty-seventh session, noted that the Council, at its forty-fifth ordinary session to be held on October 20, 2011, would need to adopt the revised text for document TGP/7 before the Test Guidelines could be adopted. Therefore, it agreed to adopt the Test Guidelines subject to the Council adopting the necessary revision to document TGP/7.

8. At its sixty-fourth session, to be held in Geneva on October 17, 2011, the CAJ will be invited to consider the TC proposal to amend document TGP/7, as presented in Annex I to this document (see paragraph 6 of this document). A report on the conclusions of the CAJ, at its sixty-fourth session, concerning the TC proposal to amend document TGP/7, will be made to the Council at its forty-fifth ordinary session.

*9. The Council is invited, subject to the endorsement of the CAJ, to adopt the revision of document TGP/7 “Development of Test Guidelines” (document TGP/7/3), on the basis of the proposed amendments to document TGP/7/2, as presented in Annex I to this document.*

TGP/11/1: Examination of Stability (document TGP/11/1 Draft 11)

10. The TC, at its forty-seventh session, and the CAJ, at its sixty-third session, agreed the changes to the text of document TGP/11/1 Draft 10 and, on that basis, agreed that a draft of document TGP/11/1 should be put forward for adoption by the Council at its forty-fifth ordinary session.

*11. The Council is invited to adopt document TGP/11/1 “Examination of Stability” on the basis of document TGP/11/1 Draft 11.*

TGP/0/4: List of TGP Documents and Latest Issue Dates (Revision)  
(document TGP/0/4 Draft 1)

12. In conjunction with the list of TGP documents that the Council will be invited to adopt at its forty-fifth ordinary session, it is proposed to adopt a revision of document TGP/0/3 on the basis of document TGP/0/4 Draft 1.

*13. The Council is invited to adopt document TGP/0/4 “List of TGP Documents and Latest Issue Dates” on the basis of document TGP/0/4 Draft 1.*

(b) INFORMATION DOCUMENTS

UPOV/INF/6/2: Guidance for the Preparation of Laws Based on the 1991 Act of the UPOV Convention (Revision) (document C/45/13, Annex II)

14. The Council, at its forty-third ordinary session, adopted document UPOV/INF/6/1 “Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention”. Part II of document UPOV/INF/6/1 contains notes based on information materials concerning certain Articles of the 1991 Act of the UPOV Convention and, in particular, explanatory notes. Since document UPOV/INF/6/1 was adopted by the Council, the “Explanatory Notes on Variety Denominations under the UPOV Convention” (document UPOV/INF/12/3) have been revised and 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/1) and “the “Explanatory Notes on the Definition of Variety under the 1991 Act of the UPOV Convention” (document UPOV/EXN/VAR/1) have been adopted by the Council.

15. The Consultative Committee, at its eighty-first session, held in Geneva on April 8, 2011, agreed to propose for consideration by the Council, at its forty-fifth ordinary session, the 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”, as set out in Annex II to this document.

*16. The Council is invited to adopt the revision of document UPOV/INF/6 “Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention” (document UPOV/INF/6/2), on the basis of the amendments to document UPOV/INF/6/1, as presented in Annex II to this document.*

UPOV/INF/16/2: Exchangeable Software (Revision) (document C/45/13, Annex III)

17. The TC, at its forty-seventh session, approved the revision of document UPOV/INF/16 “Exchangeable software” as presented in Annex III to this document. It noted that, subject to agreement by the CAJ at its sixty-fourth session, to be held in Geneva in October 2011, the revision of document UPOV/INF/16/1 (document UPOV/INF/16/2) would be put forward for adoption by the Council at its forty-fifth ordinary session. A report on the conclusions of

the CAJ, at its sixty-fourth session, concerning the TC proposal to amend document UPOV/INF/16, will be made to the Council at its forty-fifth ordinary session.

*18. The Council is invited, subject to the endorsement of the CAJ, to adopt the revision of document UPOV/INF/16 “Exchangeable Software” (document UPOV/INF/16/2), on the basis of the proposed amendments to document UPOV/INF/16/1, as presented in Annex III to this document.*

UPOV/INF-EXN/1: List of INF-EXN Documents and Latest Issue Dates (document UPOV/INF-EXN/1 Draft 1)

19. In conjunction with the list of INF documents that the Council will be invited to adopt at its forty-fifth ordinary session, and in accordance with the approach for updating documents previously adopted by the Council (see paragraph 2, above), it is proposed to adopt document UPOV/INF-EXN/1 “List of UPOV/INF-EXN Documents and Latest Issue Dates” on the basis of document UPOV/INF-EXN/1 Draft 1.

*20. The Council is invited to adopt document UPOV/INF-EXN/1 “List of INF-EXN Documents and Latest Issue Dates” on the basis of document UPOV/INF-EXN/1 Draft 1.*

(c) POSSIBLE USE OF BIOCHEMICAL AND MOLECULAR MARKERS IN THE EXAMINATION OF DISTINCTNESS, UNIFORMITY AND STABILITY (DUS) (document BMT/DUS/1 Draft 6)

21. The TC, at its forty-seventh session, and the CAJ, at its sixty-third session, agreed the changes to the text of document BMT/DUS/1 Draft 5 and, on that basis, agreed that a draft of document BMT/DUS/1 should be put forward for adoption by the Council at its forty-fifth ordinary session. The French, German and Spanish translations of the original English text have been reviewed by the relevant members of the Editorial Committee prior to submission of document BMT/DUS/1 Draft 6 to the Council.

*22. The Council is invited to adopt document BMT/DUS/1 “Possible use of Biochemical and Molecular Markers in the Examination of Distinctness, Uniformity and Stability (DUS)” on the basis of document BMT/DUS/1 Draft 6.*

[Annexes follow]

ANNEX I

DOCUMENT TGP/7/3  
“DEVELOPMENT OF TEST GUIDELINES” (REVISION)

PROPOSED AMENDMENTS

TGP/7/2 – Annex 1: TG Template

“4.1.4 Number of Plants / Parts of Plants to be Examined

“Unless otherwise indicated, ~~all observations for the purposes of distinctness should be made on { x } plants or parts taken from each of { x } plants, disregarding any off-type plants~~ for the purposes of distinctness, all observations on single plants should be made on { x } plants or parts taken from each of { x } plants and any other observations made on all plants in the test, disregarding any off-type plants.

“{ **ASW 7(b)** (Chapter 4.1.4) – Number of Plants / Parts of Plants to be Examined }”

TGP/7/2 – Annex 2: Additional Standard Wording (ASW) for the TG Template

“ASW 7(b) (Chapter 4.1.4) – Number of plants / parts of plants to be examined

“The following sentence may be added where appropriate:

““In the case of observations of parts ~~of~~ taken from single plants, the number of parts to be taken from each of the plants should be { y }.””

[Annex II follows]

ANNEX II

DOCUMENT UPOV/INF/6/2  
“GUIDANCE FOR THE PREPARATION OF LAWS BASED ON  
THE 1991 ACT OF THE UPOV CONVENTION” (REVISION)

PROPOSED AMENDMENTS

“Notes on Article 1”: to add the following text from the “Explanatory Notes on the Definition of Variety under the 1991 Act of the UPOV Convention” adopted by the Council on October 21, 2010 (document UPOV/EXN/VAR/1):

“3. The following paragraphs explain certain aspects of the definition of variety.

*“(i) Plant grouping within a single botanical taxon of the lowest known rank*

“4. The definition of ‘variety’ under the 1991 Act of the UPOV Convention starts by stating that it is “a plant grouping within a single botanical taxon of the lowest known rank, ... ” thereby confirming that a variety may not, for example, consist of plants of more than one species.

“5. The definition that a variety means a ‘plant grouping’ clarifies that the following, for example, do not correspond to the definition of a variety:

- a single plant; (however, an existing variety may be represented by a single plant or part(s) of a plant, provided that such a plant or part(s) of the plant could be used to propagate the variety)
- a trait (e.g. disease resistance, flower color)
- a chemical or other substance (e.g. oil, DNA)
- a plant breeding technology (e.g. tissue culture).

*“(ii) Irrespective of whether the conditions for the grant of a breeder’s right are fully met*

“6. The definition of ‘variety’ in Article 1(vi) of the 1991 Act of the UPOV Convention specifies that a plant grouping within a single botanical taxon of the lowest known rank can be a variety, ‘irrespective of whether the conditions for the grant of a breeder’s right are fully met’. Thus, the definition of a ‘variety’ is wider than ‘protectable variety’.

“7. The definition of ‘variety’ plays an important role in the context of the examination of distinctness. Article 7 of the 1991 Act of the UPOV Convention provides that ‘[t]he variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application.’ The words ‘irrespective of whether the conditions for the grant of a breeder’s right are fully met’ make it clear that varieties of common knowledge which are not protected may, nevertheless, still be varieties which correspond to the definition of variety in Article 1(vi), from which a ‘candidate variety’ (a ‘variety’ for which an application for a breeder’s right has been filed) must be clearly distinguishable. Guidance on varieties of common knowledge is provided in documents TG/1/3 ‘General Introduction to the Examination of Distinctness, Uniformity and Stability and the Development of Harmonized Descriptions of New Varieties of Plants’ and TGP/4/1 ‘Constitution and Maintenance of Variety Collections’.

“8. In general, the authorities do not examine whether a ‘candidate variety’ corresponds to the definition of a variety according to Article 1(vi) of the 1991 Act of the UPOV Convention. Authorities are required to examine whether the application for a

breeder's right meets the requirements for the grant of a breeder's right including, in particular, whether the candidate variety is distinct, uniform and stable (DUS). A variety which fulfills the DUS criteria will meet the definition of variety. In general, in the case of a rejected application, the authorities will not indicate whether they consider that the candidate variety corresponds to the definition of a 'variety' or not.

*“(iii) Defined by the expression of characteristics resulting from a given genotype or combination of genotypes*

“9. The notion of ‘combination of genotypes’ covers, for example, synthetic varieties and hybrids.

*“(iv) Considered as a unit with regard to its suitability for being propagated unchanged*

“10. The UPOV Convention does not limit the means by which a variety can be propagated unchanged. In the case of some varieties, such as vegetatively propagated, self-pollinated and some cross-pollinated varieties, a variety may be propagated unchanged from the plants of the variety itself. In the case of some other varieties, for example hybrids and synthetic varieties, the variety may be propagated unchanged by a cycle of propagation that may involve plants other than those of the variety. Such a cycle of propagation may involve a simple cross of two parent lines (e.g. simple hybrid), or may involve a more complex cycle of propagation (e.g. three-way hybrids, synthetic varieties etc.). Some examples of methods of propagating varieties can be found in document TGP/7 'Development of Test Guidelines', Annex 3 'Guidance Notes', GN 31 'Information on method of propagating the variety' and GN 32 'Information on method of propagation of hybrid varieties' [cross ref.]”

“Notes on Article 4”, “Notes on Article 11” and “Notes on Article 12”: to amend the text to correspond to items 1, 7 and 8 of the “UPOV Model Form for the Application for Plant Breeders' Rights” adopted by the Council on October 21, 2010 (document TGP/5: Section 2/3), as follows:

1.(a) Applicant(s) <sup>1</sup>
Name(s) _____ <i>UPOV-AI: 1(a)(i)<sup>#</sup></i>
Address(es) _____ <i>UPOV-AI: 1(a)(ii)</i>
_____
_____
Telephone No.(s) _____ <i>UPOV-AI: 1(a)(iii)</i>
Fax No.(s) _____ <i>UPOV-AI: 1(a)(iv)</i>
E-mail address(es) _____ <i>UPOV-AI: 1(a)(v)</i>
(b) nationality(ies): _____ <i>UPOV-AI: 1(b)</i>
(c) residence (State): _____ <i>UPOV-AI: 1(c)</i>
(d) registered offices for legal entities (State): _____ <i>UPOV-AI: 1(d)</i>
(e) A procedural representative/agent/proxy will be used
Yes <input type="checkbox"/> No <input type="checkbox"/>
<i>UPOV-AI: 1(e)(i) UPOV-AI: 1(e)(ii)</i>



7. Priority is claimed in respect of the application filed in (State / Intergovernmental Organization ) (first application)  
\_\_\_\_\_ on (date) \_\_\_\_\_ under the denomination \_\_\_\_\_  
[UPOV-AI: 7(i)] [UPOV-AI: 7(ii)] [UPOV-AI: 7(iii)]  
An official copy of the first application, including the date of filing, is requested as a certification<sup>4</sup> of priority.  
[UPOV-AI: 7(iv)]

8. The variety has been  
[sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety]<sup>5</sup>  
/ [offered for sale or marketed, with the agreement of the breeder]<sup>6</sup> (Authority to delete as appropriate)  
in [territory of application]: \_\_\_\_\_  
[UPOV-AI: 8(91)(a)] / [UPOV-AI: 8(78)(a)]  
 not yet  for the first time (date) \_\_\_\_\_  
[UPOV-AI: 8(91)(b)] / [UPOV-AI: 8(91)(c)(i)] / [UPOV-AI: 8(91)(c)(ii)] /  
[UPOV-AI: 8(78)(b)] [UPOV-AI: 8(78)(c)(i)] [UPOV-AI: 8(78)(c)(ii)]  
under the denomination \_\_\_\_\_  
[UPOV-AI: 8(91)(c)(iii)] / [UPOV-AI: 8(78)(c)(iii)]  
and in [other territories]: \_\_\_\_\_  
[UPOV-AI: 8(91)(d)(i)] / [UPOV-AI: 8(78)(d)(i)]  
 not yet  for the first time (territory and date) \_\_\_\_\_  
[UPOV-AI: 8(91)(d)(ii)] / [UPOV-AI: 8(91)(d)(iii)] / [UPOV-AI: 8(91)(d)(iv)] / [UPOV-AI: 8(91)(d)(v)] /  
[UPOV-AI: 8(78)(d)(ii)] [UPOV-AI: 8(78)(d)(iii)] [UPOV-AI: 8(78)(d)(iv)] [UPOV-AI: 8(78)(d)(v)]  
under the denomination \_\_\_\_\_  
[UPOV-AI: 8(91)(d)(vi)] / [UPOV-AI: 8(78)(d)(vi)]

“Notes on Article 9”: to add a reference to document TGP/11 “Examining Stability”, subject to its adoption by the Council at its forty-fifth ordinary session, as follows:

“Guidance on the examination of stability can be found in the ‘General Introduction to the Examination of Distinctness, Uniformity and Stability and the Development of Harmonized Descriptions of New Varieties of Plants’ (document [TG/1/3](#) ‘General Introduction’) and in document TGP/11 ‘Examining Stability’.”

“Notes on Article 14”: to add the following text from the “Explanatory Notes on Conditions and Limitations Concerning the Breeder’s Authorization in respect of Propagating Material under the UPOV Convention”, adopted by the Council on October 21, 2010 (document [UPOV/EXN/CAL/1](#)):

“2. The UPOV Convention establishes the right of the breeder to make his authorization, for acts in respect of propagating material, subject to conditions and limitations (~~see Article 14(1) of the 1991 Act and Article 5(4) of the 1978 Act~~)<sup>1</sup>. The conditions and limitations according to which a breeder may authorize the acts in respect of the propagating material are a matter for the breeder to decide.

“3. For illustrative purposes, examples of conditions and limitations which a breeder might include are:

(i) remuneration – level of remuneration (e.g. linked to quantity of propagating material, area sown with the propagating material, amount or value of material produced from the propagating material etc.), timing and method of payment, etc.;

(ii) period of authorization;

<sup>1</sup> Text will be deleted, since document UPOV/INF/6 only refers to the 1991 Act of the UPOV Convention.

- (iii) method by which the authorized acts may be undertaken (e.g. method of production or reproduction, export routes etc.);
  - (iv) quality and quantity of material to be produced;
  - (v) territory(ies) covered by the authorization for export;
  - (vi) conditions under which the person authorized may license/sub-license other parties to conduct the authorized acts on their behalf;
- etc.”

“Notes on Article 20”: to amend Class 4 and to add Class 212 from the “Explanatory Notes on Variety Denominations under the UPOV Convention”, adopted by the Council on October 21, 2010 (document UPOV/INF/12/3):

Class 4.1	Solanum tuberosum L.	SOLAN_TUB
Class 4.2	Tomato & Tomato rootstocks	
	Solanum lycopersicum L. (synonym: Lycopersicon esculentum Mill.)	SOLAN_LYC
	Solanum cheesmaniae (L. Ridley) Fosberg (Lycopersicon cheesmaniae L. Riley)	SOLAN_CHE
	Solanum chilense (Dunal) Reiche (Lycopersicon chilense Dunal)	SOLAN_CHI
	Solanum chmielewskii (C.M. Rick et al.) D.M. Spooner et al. (Lycopersicon chmielewskii C. M. Rick et al.)	SOLAN_CHM
	Solanum galapagense S.C. Darwin & Peralta (Lycopersicon cheesmaniae f. minor (Hook. f.) C. H. Müll.) (Lycopersicon cheesmaniae var. minor (Hook. f.) D. M. Porter)	SOLAN_GAL
	Solanum habrochaites S. Knapp & D.M. Spooner (Lycopersicon agrimoniifolium Dunal) (Lycopersicon hirsutum Dunal) (Lycopersicon hirsutum f. glabratum C. H. Müll.)	SOLAN_HAB
	Solanum pennellii Correll (Lycopersicon pennellii (Correll) D'Arcy)	SOLAN_PEN
	Solanum peruvianum L. (Lycopersicon dentatum Dunal) (Lycopersicon peruvianum (L.) Mill.)	SOLAN_PER
	Solanum pimpinellifolium L. (Lycopersicon pimpinellifolium (L.) Mill.) (Lycopersicon racemigerum Lange)	SOLAN_PIM
	and hybrids between those species	
Class 4.3	Solanum melongena L.	SOLAN_MEL
Class 4.4	Solanum other than classes 4.1, 4.2 and 4.3	other than classes 4.1, 4.2 and 4.3
Class 212	Verbena L. and Glandularia J. F. Gmel.	VERBE; GLAND

General: to add or amend, as appropriate, links to documents UPOV/EXN/VAR/1, UPOV/EXN/CAL/1, UPOV/INF/12/3, TGP/11/1, UPOV/INF/5, TGP/5: Section 2/3 and TGP/5: Section 10/2.

[Annex III follows]

## ANNEX III

DOCUMENT UPOV/INF/16/2  
“EXCHANGEABLE SOFTWARE” (REVISION)

PROPOSED AMENDMENTS ARE HIGHLIGHTED

- “(a) Administration of applications  
 (b) On-line application systems  
 (c) Variety denomination checking  
 (d) DUS trial design and data analysis

Date added	Program name	Programming language	Function (brief summary)	Source & contact details	Condition for supply	Member(s) of the Union using the software	Application by user(s)
	DUSTNT	FORTRAN 90	General program for analysis of data from DUS trials. Includes facilities for COY analysis and a wide range of multivariate analysis techniques	United Kingdom: Dr. Sally Watson Email: sally.watson@afbini.gov.uk		GB	Herbage, Pea (Field & Veg), Parsnip, Swede, Onion, Brussels Sprout, Winter Oilseed Rape, Sugar Beet, Faba Beans, Spring Oilseed Rape, Kale, Linseed
	GAIA	Windev	Computes comparisons of varieties for management of reference collections	France: Email: christophe.chevalier@geves.fr		FR	Sorghum, Sugar Beet, Maize, Wheat, Barley, Oat, Rape, Sunflower, Triticale, Pea
						HR	Barley, Maize, Wheat”

[End of Annex III and of document]