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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

COUNCIL**Forty-Sixth Ordinary Session
Geneva, November 1, 2012**

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-fifth session in Geneva, on March 29, 2012, under the chairmanship of Mr. Lü Bo (China). An oral report on the sixty-sixth session of the CAJ, to be held in Geneva on October 29, 2012, and the program for its sixty-seventh session, will be made by the Chair of the CAJ at the forty-sixth ordinary session of the Council, to be held in Geneva on November 1, 2012.

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

(a) Opening of the session and adoption of the agenda:

(i) the CAJ agreed to the inclusion of photographs in the list of participants of the report of the session, subject to agreement by each participant;

(ii) it noted that an interactive version of the pdf version of the agenda had been made available on the website; and

(iii) the CAJ agreed that, where appropriate, documents under consideration at its sixty-fifth session would be displayed on screen in the language of the original document (see document CAJ/65/12 "Report on the Conclusions", paragraphs 7 to 9).

(b) Report on Developments in the Technical Committee: The CAJ noted the report made by Mr. Joël Guiard (France), Chair of the Technical Committee (TC), on developments in the TC, at its forty-eighth session, held in Geneva from March 26 to 28, 2012. The CAJ noted that the conclusions of the TC in relation to matters to be considered by the CAJ were reported in document CAJ/65/11. It further noted that the report on all the conclusions of the TC was available in document TC/48/22 "Report on the Conclusions" (see document CAJ/65/12 "Report on the Conclusions", paragraph 10).

(c) 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 sixth session, held in Geneva on October 18, 2011, as provided in document CAJ-AG/11/6/7 "Report" and summarized in document CAJ/65/2, "Development of information materials concerning the UPOV Convention", paragraphs 5 to 19 (see document CAJ/65/12 "Report on the Conclusions", paragraph 13).

(ii) The CAJ endorsed the recommendation of the CAJ-AG that, in recognition of the complexity of the legislation and jurisprudence concerning the exhaustion of intellectual property rights, the CAJ should not seek to develop guidance on exhaustion of the breeder's right under the 1991 Act of the UPOV Convention beyond the guidance provided in document UPOV/INF/6 "Guidance for the preparation of

laws based on the 1991 Act of the UPOV Convention” (see document CAJ/65/2, paragraph 16, document CAJ-AG/11/6/7 “Report”, paragraph 24, and document CAJ/65/12 “Report on the Conclusions”, paragraph 14).

(iii) The CAJ agreed the following amendment to document UPOV/INF/ADS Draft 1 “Alternative Dispute Settlement Mechanisms”:

Preamble, paragraph 2	first sentence to read as follows: “The purpose of this document is to provide information on <u>certain</u> alternative dispute settlement mechanisms for breeders’ rights.”
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The CAJ agreed that, on the basis of the above amendment, the Office of the Union should prepare a revised version of document UPOV/INF/ADS Draft 1, to be considered for adoption by the Council at its forty-sixth ordinary session, to be held in Geneva on November 1, 2012 (see document CAJ/65/12 “Report on the Conclusions”, paragraphs 17 and 18).

(iv) The CAJ agreed the program for the updating of document UPOV/INF/5 “UPOV Model Plant Breeders’ Rights Gazette” (document UPOV/INF/5), as set out in document CAJ/65/2, paragraph 29, and noted that a document providing background information on the proposed changes and a first draft of the revision of document UPOV/INF/5 would be presented to the CAJ at its sixty-seventh session, to be held in March 2013 (see document CAJ/65/12 “Report on the Conclusions”, paragraph 19).

(v) The CAJ agreed to prepare a proposal to revise document UPOV/INF/15 “Guidance for Members of UPOV on Ongoing Obligations and Related Notifications” in order to include guidance on the provision of data for the UPOV Plant Variety Database. The CAJ agreed that the Office of the Union should prepare a proposed revision for document UPOV/INF/15 for consideration by the CAJ at its sixty-sixth session, to be held in October 2012 (see document CAJ/65/12 “Report on the Conclusions”, paragraph 20).

(vi) The CAJ approved the work program for the seventh session of the CAJ-AG, to be held in October 2012 as set out in document CAJ/65/12 “Report on the Conclusions”, paragraph 21, as follows:

1. Opening of the session
2. Adoption of the agenda
3. Explanatory Notes
 - (a) UPOV/EXN/BRD: Explanatory Notes on the Definition of Breeder under the 1991 Act of the UPOV Convention
 - (b) UPOV/EXN/HRV: Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention
4. Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention (revision)
5. Matters arising after the grant of a breeder’s right
6. Explanatory Notes on Propagation and Propagating Material
7. Date and program for the seventh session

(vii) The CAJ noted the suggestion of the Association for Plant Breeding for the Benefit of Society (APBEBES) to include a limited number of permanent places for observers representing various stakeholder groups such as farmers, breeders and certain other observer non-governmental organizations (NGOs) (e.g. two per stakeholder group) in the CAJ-AG and to allow the stakeholder groups to coordinate on the persons to occupy those places at each session of the CAJ-AG, according to the matters under consideration. It also noted the APBEBES suggestion that those permanent places could be supplemented on an *ad hoc* basis, as considered appropriate by the CAJ-AG. The CAJ agreed with the suggestion of the Vice Secretary-General to invite the CAJ-AG to consider that approach at its seventh session, in October 2012 (see document CAJ/65/12 “Report on the Conclusions”, paragraph 23).

(viii) The CAJ noted the arrangements concerning the posting of CAJ-AG documents and comments, and the *ad hoc* invitations to observer organizations, as set out in document CAJ/65/2, paragraphs 33 to 36 and in document CAJ/65/12 “Report on the Conclusions”, paragraph 24.

(d) TGP Documents:

(i) The CAJ agreed with the conclusion of the TC that document TGP/15/1 Draft 2 "Guidance on the Use of Biochemical and Molecular Markers in the Examination of Distinctness, Uniformity and Stability (DUS)" be redrafted (restructured) as provided in document CAJ/65/12 "Report on the Conclusions", paragraph 26.

(ii) The CAJ noted the developments concerning the revision of document TGP/7 "Development of Test Guidelines", in accordance with the TC conclusions contained in the Annex to document CAJ/65/11, paragraphs 6 to 18 (see document CAJ/65/12 "Report on the Conclusions", paragraph 29).

(iii) The CAJ agreed to submit document TGP/12/2 Draft 2 "Guidance on Certain Physiological Characteristics" amended in accordance with TC and CAJ proposal in document CAJ/65/12 "Report on Conclusions", paragraph 31, as the basis for adoption of TGP/12 by the Council, at its forty-sixth ordinary session, to be held on November 1, 2012 (see document CAJ/65/12 "Report on the Conclusions", paragraph 32).

(iv) The CAJ approved the program for the development of TGP documents, as set out in the Annex to document CAJ/65/3, subject to:

- adoption of document TGP/0/5 in 2012 and document TGP/0/6 in 2013;
- corrections to the numbering of sessions in 2013; and
- deletion of "(Color Subsection & revisions)" from TWPs in 2013 and addition to CAJ/67 in 2013 (see document CAJ/65/12 "Report on the Conclusions", paragraph 33).

(e) UPOV Information Databases:

(i) In relation to the Genie Database, the CAJ noted the plans of the Office of the Union to introduce a user guide for the GENIE database in 2012, following the revisions to the UPOV Code System, as set out in document CAJ/65/12 "Report on the Conclusions", paragraphs 36 to 43.

(ii) The CAJ noted that the name of the Plant Variety Database had been changed to "PLUTO" (see document CAJ/65/12 "Report on the Conclusions", paragraph 45).

(iii) The CAJ noted the developments concerning the program for improvements to the Plant Variety Database as reported in document CAJ/65/6, and further noted that the new features that would be introduced to PLUTO in 2012 as set out in document CAJ/65/12 "Report on the Conclusions", paragraph 46.

(f) Exchangeable Software: The CAJ considered the recommendation of the Technical Working Party on Automation and Computer Programs (TWC), at its twenty-ninth session, concerning the inclusion of "Bionumerics Software for Databasing and Data Analysis" in document UPOV/INF/16, in conjunction with the comments of the TC. The CAJ noted that different views on whether commercial software should be considered in document UPOV/INF/16 had been expressed at the TC session and that the TC had suggested that it would be appropriate to review the title of document UPOV/INF/16 "Exchangeable Software" and Section "1. Requirements for exchangeable software", before taking a view on the inclusion of the "Bionumerics Software for Databasing and Data Analysis" software (see the Annex to document CAJ/65/11, paragraph 61). The CAJ agreed that a review of document UPOV/INF/16 should be included in the agenda for its October session in 2013 (see document CAJ/65/12 "Report on the Conclusions", paragraph 59).

(g) Electronic Application Systems:

(i) The CAJ noted that the Office of the Union would issue a survey on the extent to which members of the Union use the standard references of the UPOV Model Application Form in their application forms and would present the results of that survey to the CAJ at its sixty-sixth session in October 2012.

(ii) The CAJ noted the developments concerning meetings between experts of UPOV, WIPO, CPVO and ISF, in order to develop proposals for consideration by the CAJ.

(iii) The CAJ discussed issues concerning the creation of a unique variety identifier (see paragraph 24 of document CAJ/65/5). It agreed that the Office of the Union should prepare a document to

explain the issues, for consideration at its sixty-sixth session in October 2012 (see document CAJ/65/12 "Report on the Conclusions", paragraphs 61 to 63).

(h) Molecular Techniques:

(i) The CAJ noted the presentation made by the Office of the Union on matters considered by the BMT, at its thirteenth session, with particular regard to the use of molecular techniques in the consideration of essential derivation and in variety identification, as set out in document CAJ/65/7, paragraphs 16 and 17.

(ii) The CAJ noted that the TC had included an item in the agenda for its forty-ninth session, to be held in March 2013, for a discussion on molecular techniques. Under that agenda item, the TC planned to consider application of models for the use of molecular techniques in the examination of DUS by members of the Union and would receive presentations of the situation with regard to molecular techniques in other international organizations. The TC had agreed that the discussions under that agenda item should be organized for Monday afternoon and Tuesday morning or afternoon (see document CAJ/65/12 "Report on the Conclusions", paragraphs 68 and 69).

(i) Variety Denominations:

(i) The CAJ agreed with the conclusion of the TC to propose the creation of a new denomination class in document UPOV/INF/12/3 "Explanatory notes on variety denominations under the UPOV Convention", Annex I: Part II "Classes encompassing more than one genus", as set out in document CAJ/65/4, paragraphs 15 and 16, and in the Annex to document CAJ/65/11, paragraph 33 as follows:

	<u>Botanical names</u>	<u>UPOV codes</u>
Class 213	Eupatorium L. Acanthostyles R. M. King & H. Rob. Ageratina Spach Asplundianthus R. M. King & H. Rob. Bartlettina R. M. King & H. Rob. Campuloclinium DC. Chromolaena DC. Conoclinium DC. Cronquistianthus R. M. King & H. Rob. Eutrochium Raf. Fleischmannia Sch. Bip. Praxelis Cass. Viereckia R. M. King & H. Rob.	EUPAT - AGERT - - - - - - - EUTRO - - -

(ii) The CAJ noted the report made at the TC by the Delegation of Japan that the International Commission for the Nomenclature of Cultivated Plants of the International Union for Biological Sciences (IUBS) (ICNCP) was in the process of revising the Code of Nomenclature for Cultivated Plants and would make proposals to the IUBS Commission for the Nomenclature of Cultivated Plants in 2013 (see the Annex to document CAJ/65/11, paragraph 34). It agreed with the TC that the Office of the Union should contact ICNCP in order to explain the guidance provided by UPOV in document UPOV/INF/12 "Explanatory notes on variety denominations under the UPOV Convention" (see document CAJ/65/12 "Report on the Conclusions", paragraphs 71 and 72).

(j) DUS Examination of Seed-Propagated Varieties of Papaya:

(i) The CAJ noted the progress in the development of the draft of the Test Guidelines for Papaya, in order to cover seed-propagated varieties. It noted that the TC had concluded that it would be difficult to assess the proportion of male plants, hermaphrodite plants and female plants (Chars. 17-19) on the basis of the proposed sample sizes: 5 plants and 20 plants. The CAJ noted that, therefore, the TC had agreed that the draft Test Guidelines for Papaya be referred back to the Technical Working Party for Fruit Crops (TWF) for further consideration in that regard.

(ii) The CAJ noted that the TC had agreed with the general approach taken in the Test Guidelines in order to cover seed-propagated varieties of Papaya. In particular, it noted that the use of characteristics such as "Plant: proportion of hermaphrodite plants", "Plant: proportion of female plants" and

“Plant: proportion of male plants” was an approach that had already been used for other adopted Test Guidelines (see document CAJ/65/12 “Report on the Conclusions”, paragraphs 74 and 75).

(k) Webcasting of UPOV Sessions: The CAJ noted that webcast meetings would be freely accessible on the internet. However, it noted that it was possible to restrict access to meeting communications by Webinar and WebEx. The Vice Secretary-General clarified that questions concerning policy on access would be considered by the Consultative Committee (see document CAJ/65/12 “Report on the Conclusions”, paragraph 77).

Program for the sixty-sixth session

3. The CAJ endorsed the proposal made by the CAJ-AG, at its sixth session on October 18, 2011, to hold the sixty-sixth session of the CAJ on the morning of October 29, 2012, and the seventh session of the CAJ-AG on the afternoon of October 29 and on October 30, 2012 (see document CAJ/65/2 “Development of information materials concerning the UPOV Convention”, paragraph 32). At its sixty-sixth session, to be held in Geneva on October 29, 2012, the CAJ planned to discuss the following items: Opening of the session, Adoption of the agenda, Development of information materials concerning the UPOV Convention, Variety denominations, Information and databases, UPOV information databases, Electronic application systems, Webcasting of UPOV sessions, Issues concerning a unique variety identifier, Program for the sixty-seventh session, Adoption of the report on the conclusions (if time permits), and the Closing of the session (see document CAJ/65/12 “Report on the Conclusions”, paragraphs 79 and 80).

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-seventh session of the CAJ, as presented in the oral report of the Chair of the CAJ.*

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