



CAJ/54/4

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Fifty-Fourth Session
Geneva, October 16 and 17, 2006

MOLECULAR TECHNIQUES

Document prepared by the Office of the Union

1. At its fortieth session, in March 2004 (see document TC/40/11, paragraph 164), with modification to the wording at its forty-first session (see document TC/41/12, paragraph 124), the Technical Committee (TC) agreed to propose to the Administrative and Legal Committee (CAJ) that the CAJ consider the possible use of molecular tools for variety identification in relation to the enforcement of plant breeders' rights, technical verification and the consideration of essential derivation. In that respect, the TC proposed that those might be matters relevant for consideration by the *Ad hoc* Subgroup of Technical and Legal Experts of Biochemical and Molecular Techniques (BMT Review Group). The composition of the BMT Review Group is presented in Annex I to this document.
2. At its fifty-first session, in April 2005 (see document CAJ/51/6, paragraphs 24 to 28), the CAJ considered the TC proposal and agreed to invite the BMT Review Group to examine the possible use of molecular tools for variety identification in relation to the enforcement of plant breeders' rights, technical verification and the consideration of essential derivation.
3. The BMT Review Group held a meeting in Geneva on April 6, 2006. A report of that meeting is presented in document BMT-RG/Apr06/2. At the meeting, it was agreed that document BMT-RG/Apr06/1 should form the basis for consideration of appropriate terms of reference/objectives for the BMT Review Group in relation to the possible use of molecular tools for variety identification in relation to the enforcement of plant breeders' rights, technical verification and the consideration of essential derivation.

4. Annex II of this document reproduces the clarification of the TC and CAJ proposal and the proposed terms of reference of the BMT Review Group, agreed by the BMT Review Group at its meeting on April 6, 2006. The BMT Review Group clarified that those proposals were subject to the outcome of the discussions in the Consultative Committee concerning the role of UPOV in matters concerning the enforcement of plant breeders' rights.

5. In proposing a role for the BMT in developing possible application models (see Annex II, Section 2.2(ii) 1.), the BMT Review Group concluded that it would be necessary for the terms of reference of the BMT to reflect that role in order for the BMT Review Group to progress further in this area. The current role of the BMT with regard to variety identification is as follows (see document TC/38/16, paragraph 204):

“The BMT is a group open to DUS experts, biochemical and molecular specialists and plant breeders, whose role is to:

[...]

“(viii) Provide a forum for discussion on the use of biochemical and molecular techniques in the consideration of essential derivation and variety identification.”

6. The CAJ is invited to comment on the proposals of the BMT Review Group concerning the possible use of molecular tools for variety identification, as set out in Annex II.

[Annexes follow]

ANNEX I

COMPOSITION OF BMT REVIEW GROUP

- Chairman: Mr. Rolf Jördens (Office of the Union)
- Members: President of the Council (Miss Enriqueta Molina (MX))
Chairman of the CAJ (Mr. Krieno Fikkert (NL))
Chairperson of the TC (Ms. Julia Borys (PL))
Chairman of the BMT (Mr. Henk Bonthuis (NL))
Mrs. Carmen Gianni (AR)
Mr. Doug Waterhouse (AU)
Mr. Michael Köller (DE)
Mr. Bart Kiewiet / Mr. José Elena (European Community)
Ms. Nicole Bustin (FR)
Mr. Joël Guiard (FR)
Mr. Michael Camlin (GB)
Mr. Andy Mitchell (GB)
Mr. Sotaro Ito (JP)
- Observers: International Community of Breeders of Asexually Reproduced
Ornamental and Fruit-Tree Varieties (CIOPORA)
International Seed Federation (ISF)
- Office of the Union: Mr. Peter Button
Mr. Raimundo Lavignolle
Mr. Makoto Tabata
Mrs. Yolanda Huerta

[Annex II follows]

ANNEX II

PROPOSALS OF THE BMT REVIEW GROUP CONCERNING THE
POSSIBLE USE OF MOLECULAR TOOLS FOR VARIETY IDENTIFICATION

The following proposals of the BMT Review Group in relation to the possible use of molecular tools for variety identification are subject to the outcome of the discussions in the Consultative Committee concerning the role of UPOV in matters concerning the enforcement of plant breeders' rights.

1. Clarification of the TC / CAJ Proposal

In relation to the proposal made by the TC and CAJ, it is suggested to clarify that the proposal is intended to mean that the BMT Review Group should consider the possible use of molecular tools for variety identification in relation to the enforcement of plant breeders' rights, technical verification and the consideration of essential derivation by the assessment of possible application models proposed by the TC, on the basis of the work of the BMT and crop subgroups.

2. Terms of Reference

2.1 The existing terms of reference for the BMT Review Group (see document TC/38/14-CAJ/45/5) were specifically established for the BMT Review Group to assess possible application models proposed by the TC, on the basis of the work of the BMT and crop subgroups, for the utilization of biochemical and molecular techniques in the examination of distinctness, uniformity and stability. Therefore, it is considered necessary to revise the terms of reference for the BMT Review Group to accommodate its consideration of the possible use of molecular tools for variety identification in relation to the enforcement of plant breeders' rights, technical verification and the consideration of essential derivation.

2.2 The BMT Review Group proposes to the CAJ and TC the following as revised terms of reference:

(i) in relation to the assessment of possible application models for the utilization of biochemical and molecular techniques in the examination of Distinctness, Uniformity and Stability:

1. The BMT Review Group should assess possible application models proposed by the Technical Committee, on the basis of the work of the BMT and crop subgroups, for the utilization of biochemical and molecular techniques in the examination of distinctness, uniformity and stability in relation to the following:

(a) conformity with the UPOV Convention, and

(b) potential impact on the strength of protection compared to that provided by current examination methods and advise if this could undermine the effectiveness of protection offered under the UPOV system.

2. In conducting its assessment, the BMT Review Group may refer specific aspects to the CAJ or the TC for clarification or further information as considered appropriate.

3. The BMT Review Group will report its assessment, as set out in paragraph 1, above, to the CAJ, but this assessment will not be binding for the position of the CAJ.

(ii) in relation to consideration of the possible use of molecular tools for variety identification in relation to the enforcement of plant breeders' rights, technical verification and the consideration of essential derivation:

1. The BMT Review Group should assess possible application models proposed by the TC, on the basis of the work of the BMT and crop subgroups, for consideration by the CAJ and the TC.

2. In its assessment, the BMT Review Group may refer specific aspects to the CAJ or the TC for clarification or further information as considered appropriate.

3. The BMT Review Group will report its assessment, as set out in paragraph 1, above, to the CAJ and the TC, but this assessment will not be binding for the position of the CAJ or the TC.

(iii) the composition of the BMT Review Group is as set out in Annex I. Changes to the composition of the BMT Review Group would be considered by the CAJ and TC at the proposal of a member of the Union, the CAJ, the TC or the BMT Review Group itself;

(iv) any member of the Union may attend meetings of the BMT Review Group, subject to reasonable notice concerning practical arrangements for the meeting;

(v) the BMT Review Group may invite particular experts to attend meetings, where considered appropriate, to provide the necessary experience or expertise concerning a matter to be discussed;

(vi) the BMT Review Group will meet at a frequency it considers appropriate to meet its objectives in a timely manner, or as required by the TC or CAJ;

(vii) documents to be considered by the BMT Review Group will be made available to the CAJ and TC via the UPOV website, and the CAJ and TC members and observers may send comments directly to the BMT Review Group;

(viii) a summary report of the discussions in the BMT Review Group will be produced after each meeting and made available to the CAJ and the TC;

(ix) reports of the work of the BMT Review Group will be made to the CAJ and TC at each CAJ and TC session following a meeting, unless otherwise agreed by the CAJ or TC, as appropriate.

[End of Annex II and of document]