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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

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TGP DOCUMENTS

Document prepared by the Office of the Union

1. The purpose of this document is to provide background information on the development of TGP documents and to provide information to assist the Administrative and Legal Committee (CAJ) in its consideration of documents TGP/4 “Constitution and Maintenance of Variety Collections”, TGP/5 “Experience and Cooperation in DUS Testing” and TGP/10 “Examining Uniformity”.

I. BACKGROUND

2. The purpose of document TG/1/3 “General Introduction to the Examination of Distinctness, Uniformity and Stability and the Development of Harmonized Descriptions of New Varieties of Plants” (General Introduction), and the associated series of documents specifying Test Guidelines’ Procedures (TGP documents), is to set out the principles which are used in the examination of DUS. The only binding obligations for members of the Union are those contained in the UPOV Convention itself. However, on the basis of practical experience, the General Introduction and the TGP documents seek to provide general guidance for the examination of all species in accordance with the UPOV Convention. In addition, UPOV has developed “Guidelines for the Conduct of Tests for Distinctness, Uniformity and Stability” (Test Guidelines), for many individual species or other variety groupings. The purpose of those Test Guidelines is to elaborate certain of the principles contained in the General Introduction and the associated TGP documents, into detailed practical guidance for the harmonized examination of DUS and, in particular, to identify

appropriate characteristics for the examination of DUS and production of harmonized variety descriptions.

3. As noted by the Chair at the fifty-fourth session of the CAJ, held in Geneva on October 16 and 17, 2006, the development of TGP documents in relation to the DUS examination may be seen as another element in the preparation of information materials concerning the UPOV Convention¹ and, in addition to being published in their own right, the TGP documents can be used in support of various UPOV activities. In particular, the General Introduction and the TGP documents will form the basis of an advanced module on “Examination of Applications for Plant Breeders’ Rights” for inclusion in the Distance Learning program, which the Consultative Committee has entrusted the Office of the Union to develop.

4. The situation with regard to the development of TGP documents can be summarized as follows:

Document reference	Title	Stage of development
TGP/0	List of TGP Documents and Latest Issue Dates	Approved (2005)
<i>TGP/1</i>	<i>General Introduction with Explanations</i>	-
TGP/2	List of Test Guidelines Adopted by UPOV	Approved (2005)
<i>TGP/3²</i>	<i>Varieties of Common Knowledge</i>	-
<i>TGP/4</i>	<i>Constitution and Maintenance of Variety Collections</i>	<i>under development</i>
TGP/5	Experience and Cooperation in DUS Testing	Approved (2005) / <i>under revision</i>
TGP/6	Arrangements for DUS Testing	Approved (2005)
TGP/7	Development of Test Guidelines	Approved (2004) / <i>under revision</i>
<i>TGP/8</i>	<i>Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability</i>	<i>under development</i>
<i>TGP/9</i>	<i>Examining Distinctness</i>	<i>under development</i>
<i>TGP/10</i>	<i>Examining Uniformity</i>	<i>under development</i>
<i>TGP/11</i>	<i>Examining Stability</i>	<i>under development</i>

¹ The CAJ, at its fifty-second session, held in Geneva on October 24, 2005, agreed an approach for the preparation of information materials concerning the UPOV Convention, as explained in paragraphs 8 to 10 of document CAJ/52/4. It also agreed the establishment of an advisory group to the CAJ (“CAJ-AG”) to assist in the preparation of documents concerning such materials, as proposed in paragraphs 11 to 14 of document CAJ/52/4 (see paragraph 67 of document CAJ/52/5, Report).

² At its fifty-fifth session, held in Geneva on March 29, 2007, “[t]he CAJ endorsed the conclusion of the CAJ-AG that the General Introduction already provided guidance with respect to the term ‘common knowledge’ and that it would not be appropriate, for the time being, to pursue the development of document TGP/3 ‘Varieties of Common Knowledge’.” (see document CAJ/55/7, paragraph 46).

Document reference	Title	Stage of development
<i>TGP/12</i>	<i>Special Characteristics</i>	<i>under development</i>
<i>TGP/13</i>	<i>Guidance for New Types and Species</i>	<i>under development</i>
<i>TGP/14</i>	<i>Glossary of Technical, Botanical and Statistical Terms Used in UPOV Documents</i>	<i>under development</i>
<i>TGP/15</i>	<i>New Types of Characteristics</i>	-

5. The General Introduction, approved TGP documents and adopted Test Guidelines are published on the UPOV website at http://www.upov.int/en/publications/list_publications.htm.

II. TGP DOCUMENTS PUT FORWARD FOR ADOPTION BY THE COUNCIL IN 2007 (TGP/4/1 AND TGP/9/1)

6. The text in documents TGP/4/1 Draft 10 and TGP/9/1 Draft 10 was agreed by the Technical Committee (TC) at its forty-third session, held in Geneva, from March 26 to 28, 2007, and by the CAJ, at its fifty-fifth session, held in Geneva on March 29, 2007. Documents TGP/4/1 Draft 10 and TGP/9/1 Draft 10 were scheduled to be considered by the Council at its forty-first ordinary session, held in Geneva on October 25, 2007. However, at its seventy-fourth session, held in Geneva on October 24, 2007, the Consultative Committee made a preliminary examination of documents TGP/4/1 Draft 10 and TGP/9/1 Draft 10 and made the following recommendations:

“[...] reference to ‘Examples of contracts / agreements between authorities and breeders’ in section 3.1.2.2.2 of document TGP/4/1 Draft 10 should be replaced by ‘Examples of policies and contracts for material submitted by the breeder’ in accordance with the change of title to Section 11 in document TGP/5 ‘Experience and Cooperation in DUS Testing’ agreed by the Administrative and Legal Committee (CAJ) at its fifty-sixth session on October 22 and 23, 2007;

“[...]

“In response to the comments made by some delegations concerning the need for editorial improvements, the Consultative Committee agreed that a circular be sent to the [Consultative] Committee, the Technical Committee (TC) and the CAJ providing an opportunity to comment within four weeks on documents TGP/4/1 Draft 10, [and] TGP/9/1 Draft 10 [...]. Based on the comments received, new drafts of those documents would be prepared for consideration by the Editorial Committee at its meeting on January 8, 2008. Relevant drafts incorporating the comments by the Editorial Committee would subsequently be presented to the TC, the CAJ, the [Consultative] Committee and the Council in April 2008.”

7. In accordance with the recommendations of the Consultative Committee, Circular E-606 was issued, inviting comments on documents TGP/4/1 Draft 10 and TGP/9/1 Draft 10 to be sent to the Office of the Union.

TGP/4 “Constitution and Maintenance of Variety Collections”

8. The Office of the Union received comments from Ukraine on document TGP/4/1 Draft 10, in response to Circular E-606. The Office of the Union, in conjunction with the Chairman of the TC, Mr. Chris Barnaby (New Zealand), and the President of the Council, Mr. Doug Waterhouse (Australia), agreed that those comments could be considered by the TC-EDC without the preparation of a new draft of document TGP/4/1. The TC-EDC considered the comments received and agreed that those comments could be addressed by the TC at its forty-fourth session without the need for a new draft of document TGP/4/1. The recommendations made by the Consultative Committee and the comments by Ukraine, and the proposals of the TC-EDC in response to those comments, are provided in Annex I to this document and also in Annex I to document TC/44/5, to be considered by the TC at its forty-fourth session to be held in Geneva, from April 7 to 9, 2008. The proposals of the TC at its forty-fourth session will be reported to the CAJ in the form of an addendum to this document. Subject to agreement by the TC and the CAJ, document TGP/4/1 will be put forward for adoption by the Council at its twenty-fifth extraordinary session, to be held in Geneva on April 11, 2008.

9. The CAJ is invited to propose the adoption of document TGP/4/1 by the Council, on the basis of document TGP/4/1 Draft 10, as amended according to the procedure set out in paragraph 8.

TGP/9 “Examining Distinctness”

10. The Office of the Union received no comments on document TGP/9/1 Draft 10 in response to Circular E-606 and, therefore, it has not been necessary to produce a new draft of that document for consideration by the CAJ. Document TGP/9/1 will be put forward for adoption by the Council at its twenty-fifth extraordinary session, to be held in Geneva on April 11, 2008.

11. The CAJ is invited to note that the Council will be invited to adopt document TGP/9/1 on the basis of document TGP/9/1 Draft 10.

III. TGP DOCUMENTS TO BE CONSIDERED BY THE CAJ*TGP/5 “Experience and Cooperation in DUS Testing”*

12. At its forty-first session, the TC approved document TGP/5/1 “Experience and Cooperation in DUS Testing”. The TC noted that sections 1 to 7 of document TGP/5 represented texts which were contained in the UPOV publication 644(E) “Important Texts and Documents”. It observed that some of those texts had been adopted several years previously and would benefit from updating. However, it recognized that those texts represented the adopted UPOV position and also noted that UPOV publication 644(E) was no longer available and that many new members of the Union did not have easy access to those texts. Therefore, it approved Sections 1 to 7 but, in addition, agreed to develop a program for

updating those sections, based on priority, in conjunction with the CAJ and Council, as appropriate.

13. Drafts of revised Sections 1, 2, 4, 5, 6 and 7, and new Section 11 “Examples of Policies and Contracts for Material Submitted by the Breeder” of document TGP/5 were considered by the CAJ, at its fifty-sixth session, held in Geneva on October 22 and 23, 2007. At that session, the CAJ also agreed on a text to be inserted as an introduction to document TGP/5. Changes to the text agreed by the CAJ at its fifty-sixth session were incorporated into subsequent drafts of those documents which were considered by the TC-EDC at its meeting on January 8, 2008. Changes to the adopted text of Sections 1, 2, 4, 5, 6 and 7 of document TGP/5 have been highlighted in the draft documents to be considered by the TC at its forty-fourth session and the CAJ at its fifty-seventh session. Amendments proposed by the TC-EDC to the text of Section “Introduction”, agreed by the CAJ, have been highlighted.

14. The following draft sections of document TGP/5 are to be considered by the TC at its forty-fourth session and by the CAJ at its fifty-seventh session:

Introduction Draft 2:	Introduction;
Section 1/2 Draft 5:	Model Administrative Agreement for International Cooperation in the Testing of Varieties;
Section 2/2 Draft 5:	UPOV Model Form for the Application for Plant Breeders’ Rights;
Section 4/2 Draft 5:	UPOV Model Form for the Designation of the Sample of the Variety;
Section 5/2 Draft 5:	UPOV Request for Examination Results and UPOV Answer to the Request for Examination Results;
Section 6/2 Draft 5:	UPOV Report on Technical Examination and UPOV Variety Description;
Section 7/2 Draft 5:	UPOV Interim Report on Technical Examination; and
Section 11/1 Draft 3:	Examples of Policies and Contracts for Material Submitted by the Breeder.

15. The schedule for the development of TGP documents agreed by the TC at its forty-third session indicates that those new and revised sections of document TGP/5 may be approved by the TC and by the CAJ at those sessions.

16. Any changes to the relevant sections of document TGP/5 proposed by the TC at its forty-fourth session will be reported to the CAJ for consideration at its fifty-seventh session. Subject to agreement of common texts by the TC and the CAJ, those new and revised sections of document TGP/5 will be put forward for adoption by the Council at its forty-second ordinary session, to be held in Geneva on October 30, 2008.

17. The CAJ is invited to consider the documents set out in paragraph 14, as the basis for adoption of the respective sections of document TGP/5, by the Council, as set out in paragraph 16.

TGP/10 “Examining Uniformity”

18. Document TGP/10/1 Draft 4 was considered by the CAJ at its fifty-fourth session, held in Geneva on October 16 and 17, 2006. Document TGP/10/1 Draft 6 was considered by the TC at its forty-third session. Changes to the text agreed by the TC at its forty-third session were incorporated into subsequent drafts of those documents, which were considered by the Technical Working Parties (TWPs) at their sessions in 2007 and the TC-EDC at its meeting on January 8, 2008. Changes to the text agreed by the TC at its forty-third session, as a result of the considerations by the TWPs and the TC-EDC, have been highlighted in document TGP/10/1 Draft 9, to be considered by the TC at its forty-fourth session and the CAJ at its fifty-seventh session. The background information concerning those changes has been summarized in the form of endnotes. Those endnotes will be deleted from the adopted version of the document. By contrast, the footnotes which appear in the document are intended to remain in the adopted version of the document.

19. The schedule for the development of TGP documents agreed by the TC at its forty-third session, indicates that document TGP/10/1 may be approved by the TC and by the CAJ at their sessions in 2008.

20. Any changes to the text of document TGP/10/1 Draft 9 proposed by the TC at its forty-fourth session will be reported to the CAJ for consideration at its fifty-seventh session. Subject to agreement of a common text by the TC and the CAJ, document TGP/10/1 will be put forward for adoption by the Council at its forty-second ordinary session, to be held in Geneva on October 30, 2008.

21. The CAJ is invited to consider document TGP/10/1 Draft 9 as the basis for adoption of document TGP/10/1 by the Council, as set out in paragraph 20.

IV. PROGRAM FOR THE DEVELOPMENT OF TGP DOCUMENTS

22. Annex II to this document proposes a program for the development of TGP documents on the basis of the program agreed by the TC at its forty-third session and the discussions at the Consultative Committee, CAJ and TWP sessions in 2007. The TC will also consider that proposed program at its forty-fourth session, to be held in Geneva, from April 7 to 9, 2008.

23. The CAJ is invited to consider the program for the development of TGP documents, as set out in Annex II to this document.

[Annexes follow]

COMMENTS ON
TGP/4 “CONSTITUTION AND MAINTENANCE OF VARIETY COLLECTIONS”

2.1.2.2 In some cases, the variety collector may collect and maintain living plant material of varieties in the variety collection. However, in other cases, for example, the variety collector may only obtain living plant material of varieties as and when those varieties need to be included in growing trials or other tests.

Comment (Ukraine): to add to “in some cases the collector can collect and maintain living plant material, but in other cases...may only obtain living plant material when required” that the collector can collect and maintain living plant material of self-pollinated and vegetatively propagated species.

TC-EDC proposal: to add the following sentence (copied from Section 3.1.2.1) at the end of Section 1.4 of the Introduction:

“For the purposes of this document, maintenance of living plant material refers to the way the living plant material is maintained in storage (e.g. seed) or under cultivation (e.g. vegetatively propagated varieties).”

2.2.1.5 In the case of hybrid varieties, the examination of distinctness may include examination of the components and the formula of the hybrid (see document TGP/9/1). If it is decided to use this approach in the examination of hybrids, the variety collection should include all varieties used as components (generally inbred lines) of all the hybrid varieties included in the variety collection, as well as varieties of common knowledge in the variety collection in their own right.

Comment (Ukraine): to make more detailed where it is set up that for the hybrid varieties “the examination of distinctness may include the examination of its components and formula of hybrid”, and to indicate the specific conditions under which the examination of distinctness for hybrid varieties does not include the examination of the components and the formula of the hybrid, or we should change the word “may” with the word “must”.

TC-EDC proposal: no change to existing text, on the basis that it is a matter for each authority to decide whether to include examination of the components and the formula of the hybrid.

2.2.2.1 The following should, in particular, be taken into account with regard to making an inventory of varieties of common knowledge for inclusion in the variety collection:

[...]

(iv) any list including varieties which are publicly available within plant collections (genetic resources, collection of old varieties, etc.);

[...].

Comment (Ukraine): to exclude “genetic resources” from subsection (iv), as this term is too broad in its meaning and includes categories that can not be considered to be category of variety (breeding form).

TC-EDC proposal: to amend 2.2.2.1 (iv) to read:

(iv) any list including varieties which are publicly available within plant collections (varieties included in genetic resource collections, collection of old varieties, etc.);

3.1.2.2 *Sources of living plant material*

3.1.2.2.1 Some important potential sources of living plant material are as follows:

- (i) **Breeder / Maintainer / Applicant;**
- (ii) **Variety collectors in other territories;**
- (iii) **Authorities responsible for an official register (e.g. National List);**
- (iv) **Market**
- (v) **Plant collections**

[...]

3.1.2.2.3 Variety collectors are important sources of verified living plant material. However, in some circumstances there may be limitations in respect to the amount of material available from such sources. In these situations, small quantities of material can, nevertheless, enable the requesting authority to verify material from other sources: e.g. to verify the identity of material obtained on the market, before its incorporation in the variety collection.

Comment (Ukraine): Regarding the Section 3.1.2.1 that indicates the sources of plant material for the establishment of variety collections, such source as market is mentioned. We consider that market may be used by the authority to establish the variety collection only in extremis. When using marketed varieties for the purposes of examination of distinctness, it is necessary to have proofs (documents, samples) of the identity of the trademark and the official sample that filed simultaneously with application and correspond to the variety.

TC-EDC proposal: no change to Section 3.1.2.2.1, on the basis that Section 3.1.2.3.1 states that “When new living plant material is introduced into the collection, it should, as appropriate, be verified that it conforms to the variety.”. With respect to Section 3.1.2.2.3, the TC-EDC proposed the deletion of “: e.g. to verify the identity of material obtained on the market.”.

3.1.2.2.2 [...] Examples of contracts / agreements between authorities and breeders are provided in document TGP/5 “Experience and Cooperation in DUS Testing” (document TGP/5).

Consultative Committee: reference to “Examples of contracts / agreements between authorities and breeders” should be replaced by “Examples of policies and contracts for material submitted by the breeder” in accordance with the change of title to Section 11 in document TGP/5 “Experience and Cooperation in DUS Testing” agreed by the Administrative and Legal Committee (CAJ) at its fifty-sixth session on October 22 and 23, 2007.

The TC-EDC noted that, at the time of its adoption, document TGP/4/1, Section 3.1.2.2.2, would be updated according to the title of document TGP/5, Section 11.

3.1.2.3 Verification

3.1.2.3.1 When new living plant material is introduced into the collection, it should, as appropriate, be verified that it conforms to the variety. Inadequate verification of the material of the varieties in the variety collection may lead to an incorrect conclusion on distinctness of candidate varieties, with negative consequences for the plant breeder’s rights granted.

Comment (Ukraine): while assessing the identity of varieties, during the verification in case of repeated replanting of the varieties’ reproductions, it should be taken into account that each further reproduction may somehow be distinct from the original variety (sample), due to the nature of hybridization, gene flow and morbid (virus) affections. Thus, not only new varieties, which are entering to the variety collection, should be assessed for the identity, but also variety material maintained in the variety collection for a long time.

TC-EDC proposal: no change to Section 3.1.2.3.1, on the basis that Section 3.1.2.5.3 states that “A routine procedure for verifying material before its introduction in the collection, whether of new varieties of common knowledge or renewal of material of varieties already included in the variety collection, should be established (see Section 3.1.2.3).”

[Annex II follows]

