



CAJ/58/2

ORIGINAL: English

DATE: August 26, 2008

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Fifty-Eighth Session
Geneva, October 27 and 28, 2008

TGP DOCUMENTS

Document prepared by the Office of the Union

1. At its fifty-seventh session, held in Geneva on April 10, 2008, the Administrative and Legal Committee (CAJ) agreed the program for the development of TGP documents, as set out in document CAJ/57/2, Annex II (reproduced as the Annex to this document).
2. The program for the development of TGP documents, as set out in document CAJ/57/2, Annex II, indicated that the CAJ would be invited to consider drafts of TGP/10 "Examining Uniformity", TGP/11 "Examining Stability", TGP/12 "Special Characteristics" and TGP/13 "Guidance for New Types and Species". However, at its fifty-seventh session, the CAJ already proposed the adoption of document TGP/10/1 by the Council at its forty-second ordinary session, to be held in Geneva on October 30, 2008, on the basis of document TGP/10/1 Draft 9, amended in accordance with the proposal of the Technical Committee (TC), at its forty-fourth session, held in Geneva from April 7 to 9, 2008 (see document CAJ/57/7 "Report", paragraph 19).
3. The purpose of this document is to indicate the proposed program for the consideration of TGP documents by the CAJ and to provide background information to assist the CAJ in its consideration of the following documents:

- TGP/11: Examining Stability (document TGP/11/1 Draft 5)
- TGP/12: Special Characteristics (document TGP/12/1 Draft 5)
- TGP/13: Guidance for New Types and Species (document TGP/13/1 Draft 12)

4. In addition, this document provides the comments made on those documents by: the Technical Working Party for Fruit Crops (TWF), at its thirty-ninth session, held in Lisbon, Portugal, from June 2 to 6, 2008; the Technical Working Party for Ornamental Plants and Forest Trees (TWO), at its forty-first session, held in Wageningen, Netherlands, from June 9 to 13, 2008; the Technical Working Party for Vegetables (TWV), at its forty-second session, held in Cracow, Poland, from June 23 to 27, 2008; and the Technical Working Party for Agricultural Crops (TWA), at its thirty-seventh session, held in Nelspruit, South Africa, from July 14 to 18, 2008. An oral report on the comments made by the Technical Working Party on Automation and Computer Programs (TWC), at its twenty-sixth session, to be held in Jeju, Republic of Korea, from September 2 to 5, 2008, will be made at the fifty-eighth session of the CAJ. The CAJ is invited to note that the TC has not yet had an opportunity to consider the comments made by the Technical Working Parties (TWPs) at their sessions held in 2008.

TGP/11 “Examining Stability”

Background

5. During discussions on document TGP/11 “Examining Stability” at its forty-first session, held in Nairobi, Kenya, from June 11 to 15, 2007, the TWV agreed that, in addition to continuing the development of TGP/11, it would be of practical assistance to seek to develop a document on how to address problems concerning stability which were brought to the attention of an authority after the grant of a plant breeder’s right. It noted that such a document could also be extended to address problems concerning distinctness, uniformity and novelty which were brought to the attention of an authority after the grant of a plant breeder’s right and also to consider the status and use of the “official” variety description. The TWV noted that the development of such a document would be outside the framework of the DUS examination and, therefore, outside the scope of the General Introduction and TGP documents. It also noted the need for such a document to be endorsed by the TC and the CAJ and agreed to await the views of those committees before starting work on such a document.

6. The Enlarged Editorial Committee (TC-EDC) discussed document TGP/11 at its meeting on January 8, 2008, and agreed that practical assistance on how to address problems concerning stability which were brought to the attention of an authority after the grant of a breeder’s right should not be included in a document entitled “Examining Stability”. However, it noted that there would be practical advantages in dealing with all aspects of stability in a single document. On that basis, it proposed that the TC, in conjunction with the CAJ, might consider an amendment to the title of TGP/11, with the document being clearly separated into two parts:

Part I: Examining Stability (Article 12 “Examination of the Application”, of the 1991 Act of the UPOV Convention)

Part II: Stability after the grant of a breeder’s right (Article 22(1) “Cancellation of the Breeder’s Right”, of the 1991 Act of the UPOV Convention).

7. At its forty-fourth session, the TC noted the TWV proposal for the possible development of a document to provide guidance on matters concerning distinctness, uniformity, stability and novelty which are brought to the attention of an authority after the

grant of a breeder's right and the status and use of the "official" variety description (see document TC/44/3, paragraph 17). The TC also noted the comments of the TC-EDC that there would be practical advantages in dealing with all aspects of stability in a single document and the proposal of the TC-EDC that the TC, in conjunction with the CAJ, might consider an amendment to the title of TGP/11, with the document being clearly separated into two parts:

Part I: Examining Stability (Article 12 "Examination of the Application", of the 1991 Act of the UPOV Convention)

Part II: Stability after the grant of a breeder's right (Article 22(1) "Cancellation of the Breeder's Right", of the 1991 Act of the UPOV Convention)

8. The TC agreed that the view of the CAJ should be sought with regard to whether it would be appropriate to pursue those proposals.

Comments made by the Technical Working Parties

9. The TWF and TWO noted that it would be necessary to receive the advice of the CAJ before TGP/11 could be developed further.

10. The TWV confirmed its support for its original proposal which was to seek to develop a document on how to address problems concerning stability which were brought to the attention of an authority after the grant of a plant breeder's right, with the possibility for such a document to be extended to address problems concerning distinctness, uniformity and novelty which were brought to the attention of an authority after the grant of a plant breeder's right and to consider the status and use of the "official" variety description.

11. The TWA noted that a previous draft of document TGP/11/1 contained a section on technical verification, which could be used for any document which was developed to consider matters of stability after the grant of a plant breeder's right. The TWA agreed that document TGP/11 should not consider matters other than stability, i.e. should not include novelty and distinctness.

TGP/12 "Special Characteristics"

Background

12. The TC considered document TGP12/1 Draft 4 at its forty-fourth session, and agreed the following:

1.2.2	to invite the TWPs, in particular the TWV, to review the sentence "In general, for DUS purposes, 'tolerance' is not a suitable characteristic in relation to biotic factors." and to modify the sentence to read "In many instances, for DUS purposes, tolerance may not be a suitable characteristic.". As a part of the review, to consider the definition of "tolerance" for biotic factors and to consider whether it would be appropriate to explain why, in most instances, it is not used as DUS characteristic.
-------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

2.2.6 (iii)	- to amend heading to read “technical requirements”; and - to amend the first sentence to read “The technical requirements of disease tests can, for some DUS testing authorities, be an obstacle for the use of such characteristics.”
-------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

13. The program for the development of TGP documents, agreed by the TC (see the Annex to this document) anticipates that the TC will approve document TGP/12 at its forty-fifth session, to be held in 2009.

Comments made by the Technical Working Parties

14. The TWF made no proposals concerning document TGP/12/1 Draft 5. The TWO, TWV and TWA made the following comments on document TGP/12/1 Draft 5:

Title	to be amended to remove reference to “special” characteristics, e.g. to rename as “Characteristics based on a response to an external factor and characteristics for chemical constituents: protein electrophoresis”	TWA
	<u>Section I</u>	
1.1.3	to write living organism in full throughout	TWA
2.2.6 (iii)	to read “[...] In such cases, cooperation in DUS examination is a means to overcome the problem (see the “Introduction” to document TGP/5 “Experience and Cooperation in DUS Testing”).	TWA
2.3.2.2	to be amended to also refer to cross-pollinated varieties	TWA
2.3.2.3	to read “In some cross-pollinated species (e.g. Lucerne) disease resistance (e.g. resistance to <i>Colletotrichum trifolii</i>) is assessed as percentage of resistant plants within the population. In those cases a continuous range of variation could be observed across varieties. This can be treated as a true quantitative characteristic (1-9 scale) and appropriate statistical methods can be applied in the analysis of data.”	TWA
3.1	to be deleted	TWA
3.3	to read “Example of resistance to <i>Therioaphis maculate</i> in Lucerne (UPOV Test Guidelines: TG/6/5). In some cross-pollinated species (eg. Lucerne) insect resistance (eg. <i>Therioaphis maculata</i>) is assessed as percentage of resistant plants within the population. In those cases a continuous range of variation could be observed across varieties. This can be treated as a true quantitative characteristic.	TWA
5.	the TWO heard that a characteristic for frost tolerance had been investigated by the European Community but had not resulted in distinctness. The TWO agreed that the section on frost tolerance should be deleted from TGP/12. The TWV agreed with the TWO conclusion that the section on frost tolerance should be deleted from TGP/12.	TWO/V

	<u>Section III</u>	
General:	to remove Section III: “Examination of characteristics using image analysis” from TGP/12 and include in document TGP/8, on the basis that it does not concern characteristics, but methods of examining characteristics	TWA
3.	for existing characteristics: to explain the need to compare the results of the characteristics examined by old method and by image analysis; for new characteristics: to provide guidance on the need to meet the requirements for a characteristic to be used for DUS, as set out in the General Introduction, and the need to check for independence from other characteristics	TWA

15. The TWV received the following proposal from Mr. Kees van Ettehoven (Netherlands):

“In TGP/12, the principles on the use of disease resistance characteristics are given. Besides these principles there are other elements to consider when mentioning disease characteristics in UPOV guidelines:

“1. The nomenclature of the pathogens

“As in the plant kingdom, also in the field of pathogens the denomination of the subject is important in order to correctly identify the various diseases. As in the plant kingdom the names of pathogens sometimes change as a consequence of improved insight in the pathogen and its relation with other pathogens. The use of the proper name is therefore important. In principle, the UPOV Test Guidelines should follow the latest valid taxonomic views. This principle has two disadvantages: the UPOV Test Guidelines are not revised annually and in practice the users of the pathogen names may be familiar with the old name and not yet with the new name. In the ISF disease resistance coding working group, faced with the same problem, the following solution was introduced: a new denomination is given in brackets behind the old name with the prefix ‘new’ for a period of 5 years. After 5 years, the situation is reversed: the new name is given with behind it in brackets the old name with the prefix ‘old’ for a further period of 5 years. After the latter period of five years, only the new name is given. It is proposed to follow the same principles in the UPOV Test Guidelines in order to avoid confusion and have maximum clarity.

“2. The use of abbreviations

“In practice, the scientific binomial for the pathogens is often replace by a code. In the ISF disease resistance coding working group a system of codes was introduced to ensure uniformity in the use of these codes. The codes are logically derived from the names of the pathogens and can also be found on the ISF website: *www.worldseed.org*. It is proposed to introduce the disease codes in the UPOV guidelines

“3. The nomenclature of races and strains

“As with the names and codes of the diseases, also the correct naming of the races and strains needs to be observed to avoid confusion. It is proposed to implement the race nomenclature developed by ISF in the UPOV Test Guidelines.”

16. The TWV agreed that the proposal from Mr. van Ettehoven represented an appropriate means of managing the naming of disease resistances. It agreed that that approach should be incorporated in document TGP/12 or TGP/7, and agreed that a decision on which should be postponed until its forty-third session. In the meantime, the TWV agreed that this development should not delay the adoption of TGP/12, because TGP/12 could be revised at a future date if necessary. The TWV agreed that, for its forty-third session, Mr. van Ettehoven should prepare draft guidance for inclusion in document TGP/12 or TGP/7 on the basis of his proposal, set out above, subject to the following:

- (a) to include the names of the relevant pathogen naming organizations on which the names would be based;
- (b) to include an explanation that the old and new name should be kept with the appropriate code, e.g. *Oidium lycopersicum* (Ol) (now *Oidium neolycopersici* (On)); and
- (c) to explain that it would not be necessary to revise Test Guidelines in order to reflect changes in pathogen names.

TGP/13 “Guidance for New Types and Species”

Background

17. The TC considered document TGP/13/1 Draft 11 at its forty-fourth session, and agreed the following:

2.4.2 (i)	to read “a variety obtained by propagation from a plant originating from a population in the wild, of a species not in cultivation. [...]”
2.4.2 (ii)	to read “a variety obtained by propagation from a plant in a population of a species which is in commercial production. [...]”
2.7.3	to include a recommendation to consider the range of variation within the plant species

18. The program for the development of TGP documents, agreed by the TC (see the Annex to this document) anticipates that the TC will approve document TGP/13 at its forty-fifth session, to be held in 2009.

Comments made by the Technical Working Parties

19. The TWF made no proposals concerning document TGP/13/1 Draft 12. The TWO, TWV and TWA made the following comments on document TGP/13/1 Draft 12:

2.4.2 (i), (ii)	to seek the views of the TC and CAJ concerning the explanation and the implication that a single plant selected from a population could be developed into a variety and protected without further crossing	TWA
2.7.4	to be amended to read “When sufficient varieties of common knowledge, or other plant material, can be collected [...]”	TWO
4.4.3	to delete “If possible”	TWO
4.4.3	The TWV noted that the reference to “minimum distance” was not consistent with document TGP/9/1 and agreed that the paragraph should be replaced with a reference to TGP/9.	TWV

20. The TWF noted the amendments to the text of paragraph 2.4.2 of document TGP/13/1 Draft 12 and discussed the need to consider practical issues of access to wild populations in order to determine if they might constitute varieties of common knowledge. It also discussed the issue of how to determine the boundary of populations. It was agreed that it could be helpful to encourage breeders to provide parent material or representative plants of original population to assist in the DUS examination of new varieties.

21. The TWF agreed that it would not be possible to provide detailed guidance on those matters in document TGP/13, but concluded that it would be of assistance to hear reports from experts on their particular experiences with new types and species. On that basis, the TWF agreed to add an item for such presentations at its fortieth session and invited experts to prepare such reports. It also agreed that breeders might be invited to explain developments with regard to new types and species.

22. The TWO agreed to add an item for reports from experts on their particular experiences with new types and species at its forty-second session and invited experts to prepare such reports. It also agreed that breeders might be invited to explain developments with regard to new types and species.

23. *The CAJ is invited to consider:*

(a) *document TGP/11/1 Draft 5 “Examining Stability”, in conjunction with the proposals presented in paragraphs 5 to 11 of this document;*

(b) *document TGP/12/1 Draft 5 “Special Characteristics”;*

(c) *document TGP/13/1 Draft 12 “Guidance for New Types and Species”;* and

(d) *the proposed program for the development of TGP documents, as set out in the Annex to this document.*

[Annex follows]

Ref.	Title of document	Current approved documents	Drafter (TWP)	Drafter (Name)	2007				2008				2009						
					TC-EDC	TC	TWPs	CAJ	TC-EDC	TC/44	CAJ/57	Council (Extr./25)	TWPs	CAJ/58	Council/42	TC-EDC	TC	CAJ	TWPs
TGP/0	List of TGP Documents and Latest Issue Dates	TGP/0/1 ADOPTED																	
TGP/1	General Introduction with Explanations		Office																
TGP/2	List of Test Guidelines Adopted by UPOV	TGP/2/1 ADOPTED																	
TGP/3	Varieties of Common Knowledge	CE/Ext. 1/19/2 Rev.	CAJ																
TGP/4	Constitution and Maintenance of Variety Collections																		
TGP/5	Experience and Cooperation in DUS Testing																		
TGP/6	Section 1: Introduction	Section 1/1 Adopted																	
TGP/7	Section 2: UPOV Model Form for the Application for Plant Breeders' Rights	Section 2/1 Adopted																	
TGP/8	Section 3: Technical Questionnaire to be Completed in Connection with an Application for Plant Breeders' Rights	Section 3/1 Adopted																	
TGP/9	Section 4: UPOV Model Form for the Designation of the Sample of the Variety	Section 4/1 Adopted																	
TGP/10	Section 5: UPOV Request for Examination Results and UPOV Answer to the Request for Examination Results	Section 5/1 Adopted																	
TGP/11	Section 6: UPOV Report on Technical Examination and UPOV Variety Description	Section 6/1 Adopted																	
TGP/12	Section 7: UPOV Interim Report on Technical Examination	Section 7/1 Adopted																	
TGP/13	Section 8: Cooperation in Examination	Section 8/1 Adopted																	
TGP/14	Section 9: List of Species in Which Practical Knowledge has Been Acquired or For Which National Test Guidelines Have Been Established	Section 9/1 Adopted																	
TGP/15	Section 10: Notification of Additional Characteristics	Section 10/1 Adopted																	
TGP/16	Section 11: Examples of Policies and Contracts for Material Submitted by the Breeder																		
TGP/17	Arrangements for DUS Testing	TGP/6/1 ADOPTED																	
TGP/18	Development of Test Guidelines	TGP/7/1 ADOPTED																	
TGP/19	Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability (Coordinator: Office / TWC Chairpersons)																		
TGP/20	Examining Distinctness (Coordinator: Office)																		
TGP/21	Examining Uniformity (Coordinator: Office)																		
TGP/22	Examining Stability (Coordinator: Office)																		
TGP/23	Special Characteristics (Coordinator: Office)																		
TGP/24	Guidance for New Types and Species (Coordinator: Mr. Kwakkenbos (OZ))																		
TGP/25	Glossary of Technical, Botanical and Statistical Terms Used in UPOV Documents (Coordinator: Office)																		
TGP/26	New Types of Characteristics (Coordinator: Office)																		