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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Sixty-First Session
March 25, 2010

**REPORT ON THE CONCLUSIONS OF THE TECHNICAL COMMITTEE AT ITS
FORTY-SIXTH SESSION ON MATTERS TO BE CONSIDERED BY THE
ADMINISTRATIVE AND LEGAL COMMITTEE**

Document prepared by the Office of the Union

1. The purpose of this document is to report on the conclusions of the Technical Committee (TC) at its forty-sixth session held in Geneva from March 22 to 24, 2010, in relation to matters to be considered by the Administrative and Legal Committee at its sixty-first session, to be held in Geneva on March 25, 2010, under agenda items 4, 6, 7, 8, 9 and 11 (document CAJ/61/1). The conclusions of the TC are reproduced in the Annex to this document.

[Annex follows]

ANNEX

AGENDA ITEM 4: TGP DOCUMENTS

1. The TC considered document TC/46/5.

TGP/7 Development of Test Guidelines

2. The TC agreed that document TGP/7/2 Draft 5 should be amended as indicated in the document, with the following further modifications:

Annex I, TQ 4.1	to delete new text and reinstate ASW 15 as contained in document TGP/7/1
Annex I, TQ 4 & TQ 7	to add text for footnote #

3. The TC agreed that the text of Annex I: TG Template, Chapter 4.1.4, and the final sentence of Annex 3: Guidance Notes (GN) for the TG Template, GN7 “Quantity of plant material required” should be retained as presented in document TGP/7/2 Draft 5, but agreed that Mrs. Beate Rücker (Germany) should prepare a document, concerning the number of plants to be considered for distinctness, for consideration by the TWPs at their session in 2010.

4. With regard to the possibility of the Technical Questionnaire providing an opportunity to indicate that an application concerned a parent line, the TC agreed that such a possibility existed within Section 4 “Information on the breeding scheme and propagation of the variety”, as far as that information was relevant for the DUS examination. The TC clarified that, in the particular case of parent lines submitted as a part of the examination of a candidate hybrid variety, document TGP/5: Section 11/1 “Examples of Policies and Contracts for Material Submitted by the Breeder” explained that living plant material should only be made available to other variety collectors in such a way that the legitimate interests of the breeder would be safeguarded.

5. The TC noted that the CAJ proposal concerning standard UPOV references for the UPOV Model Application Form and UPOV Model TQ, as set out in Annexes II and IV of document CAJ/60/5 (reproduced in document TC/46/13, Annexes II and IV), would be considered under agenda item 12 “Electronic Application Systems”.

6. The TC noted that the changes to the text of document TGP/7/2 Draft 5 as proposed above would be reported to the CAJ at its sixty-first session. The TC agreed that, subject to agreement by the CAJ, document TGP/7/2 Draft 5, as amended above, should be put forward for adoption by the Council at its forty-fourth ordinary session, to be held in Geneva on October 21, 2010. The TC noted that the French, German and Spanish translations of the original English text would be checked by the relevant members of the Editorial Committee prior to submission of the draft of document TGP/7/2 to the Council.

7. With regard to a future revision of TGP/7 (document TGP/7/3), the TC agreed that consideration be given to the items set out in document TC/46/5, paragraphs 43 to 54 (paragraph 45 of document CAJ/61/2), subject to the final sentence of paragraph 48 being amended to read “In particular, the TC-EDC noted that asterisked characteristics were very

important for international harmonization of variety descriptions.”. The TC agreed that the following items should also be considered:

- (a) to provide guidance on the indication of observation by Measurement (M) for characteristics such as dates (e.g. time of flowering), counts (e.g. number of leaf lobes) etc.;
- (b) document to be prepared by an expert from Germany (see paragraph 26), concerning the number of plants to be considered for distinctness, for consideration by the TWPs at their session in 2010.

TGP/8 Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability

8. The TC agreed that document TGP/8/1 Draft 15 should be amended as indicated in the document, with the following further modifications:

	<u>Part I</u>
1.3.2.5	to be deleted
3.2.1.4	to read “3.2.1.4 In the context of consistency and harmonization, it should be noted that different statistical methods may produce different results.”
3.3	to retain both the table and the flow chart
3.3	Flow chart: to replace text in box “No statistical methods” with “No statistical method provided in TGP/8”

9. The TC noted that the changes to the text of document TGP/8/1 Draft 15 as proposed above would be reported to the CAJ at its sixty-first session, to be held in Geneva on March 25, 2010. The TC agreed that, subject to agreement by the CAJ, document TGP/8/1 Draft 15, as amended above, should be put forward for adoption by the Council at its forty-fourth ordinary session, to be held in Geneva on October 21, 2010. The TC noted that the French, German and Spanish translations of the original English text would be checked by the relevant members of the Editorial Committee prior to submission of the draft of document TGP/8/1 to the Council.

10. The TC approved the approach for the revision of document TGP/8/1 (document TGP/8/2), as set out in document TC/46/5, paragraphs 13 and 14 (paragraphs 13 and 14 of document CAJ/61/2). The TC agreed that, in addition to those items included in document TC/46/5, the following matters should also be considered in the revision of TGP/8:

- (a) guidance on the development of variety descriptions with information from:
 - (i) more than one growing cycle in one location, and
 - (ii) more than one location;
- (b) review of the recommendation on the minimum number of degrees of freedom for COYD;

- (c) inclusion of a recommendation on the minimum number of degrees of freedom for the 2 x 1% Method; and
- (d) inclusion of a recommendation on the minimum number of comparable varieties to be included in the trial in the Relative Variance Method for the assessment of uniformity.

TGP/14 “Glossary of [Technical, Botanical and Statistical] Terms Used in UPOV Documents”

11. The TC agreed that document TGP/14/1 Draft 11 should be amended as indicated in the document, but agreed that no further modifications were required. In particular, the TC agreed not to combine synonymous terms within a single entry (e.g. Breeder’s Right, Plant Breeder’s Right and PBR).

12. The TC agreed that, subject to agreement by the CAJ, document TGP/14/1 Draft 11, should be put forward for adoption by the Council at its forty-fourth ordinary session, to be held in Geneva on October 21, 2010. The TC noted that the French, German and Spanish translations of the original English text would be checked by the relevant members of the Editorial Committee prior to submission of the draft of document TGP/14/1 to the Council.

13. The TC approved the consideration of the items set out in document TC/46/5, paragraphs 21 to 26 (paragraphs 21 and 27 of document CAJ/61/2), in the revision of document TGP/14/1 (document TGP/14/2) and agreed that the following items should also be considered:

- (a) the development of suitable wording for states of expression for ratio characteristics with a 1-9 note scale covering, for example, only elongated ratios;
- (b) further guidance concerning the duplication of characteristics, e.g. characteristics for ratio length/width, length, width and shape, on the basis of a document to be prepared by Mrs. Beate Rücker (Germany).

TGP/11 Examination of Stability

14. The TC agreed the procedure and schedule for the development of document TGP/11/1, as set out in document TC/46/5, paragraph 30 (paragraph 31 of document CAJ/61/2).

TGP/5 Experience and Cooperation in DUS Testing

Section 2 “UPOV Model Form for the Application for Plant Breeders' Rights”

15. The TC noted that the CAJ, at its sixty-first session, would be invited to consider a proposal for text to be added to document TGP/5: Section 2 “UPOV Model Form for the Application for Plant Breeders' Rights”, in order to explain the standard references in the UPOV Model Application Form. It further noted that the development of standard references for the UPOV Model TQ and for Test Guidelines, as set out in Annexes II and IV of document TC/46/13, would be considered under agenda item 12 “Electronic Application Systems”.

Section 10 “Notification of Additional Characteristics”

16. The TC noted that the proposal in document TGP/7/2 Draft 5 for the reporting of modifications to characteristics in the Test Guidelines by means of document TGP/5 (see document TC/46/5, paragraphs 61 to 63 (paragraphs 51 to 53 of document CAJ/61/2)) would require a corresponding revision of document TGP/5, Section 10/1. It further noted that the TC, in document TC/46/2, paragraphs 22 to 24, were invited to consider whether new characteristics and new states of expression notified by means of document TGP/5, Section 10 “Notification of Additional Characteristics”, should be presented for consideration at the session of the relevant TWP(s) and the TC before they are presented on the password-restricted area of the UPOV website.

17. The TC agreed that the TWPs should be invited to consider those proposals at their sessions in 2010, on the basis of a draft text to be prepared by the Office of the Union, with a view to a revision of document TGP/5, Section 10/1 being considered by the TC and CAJ in 2011, for proposal to the Council in October 2011.

TGP/12 Guidance on Certain Physiological Characteristics

18. The TC agreed that the TWV should develop a proposal for a revision of document TGP/12/1 in order to provide guidance on the nomenclature and use of disease resistance characteristics, as set out in document TC/46/5, paragraphs 65 and 66 (paragraphs 55 and 56 of document CAJ/61/2).

TGP/0 List of TGP Documents and Latest Issue Dates

19. The TC agreed to propose the adoption of document TGP/0/3 in conjunction with the adoption and revision of TGP documents, as appropriate.

Program for the development of TGP documents

20. The TC agreed the program for the development of TGP documents, as set out in the Annex to document TC/46/5 (Annex to document CAJ/61/2).

AGENDA ITEM 6: VARIETY DENOMINATIONS

21. The TC considered document TC/46/8.

Adoption of document UPOV/INF/12/2 “Explanatory Notes on Variety Denominations under the UPOV Convention” (Revision)

22. The TC noted the adoption of document UPOV/INF/12/2 “Explanatory Notes on Variety Denominations under the UPOV Convention” (revision) and noted that the UPOV code and botanical name for “*Lentinula edodes*” would be considered under agenda item 9 “UPOV information databases”.

Document UPOV/INF/12, Annex I, Part I:

Class 4.1 *Solanum tuberosum* L. / Class 4.2 *Solanum* other than Class 4.1

23. The TC noted that there might be advantages in retaining Tomato rootstock species in the same variety denomination class as Tomato, but agreed that the TWV should be invited to consider that matter. Therefore, the TC agreed to request the TWV, at its forty-fourth session, to be held in Veliko Tarnovo, Bulgaria, from July 5 to 9, 2010, to consider the following two alternatives for an amendment to document UPOV/INF/12/2 Annex I, Part I “Classes within a genus”, Class 4:

Alternative 1

	<u>Botanical names</u>	<u>UPOV codes</u>
Class 4.1	<i>Solanum tuberosum</i> L.	SOLAN_TUB
Class 4.2	<i>Solanum lycopersicum</i> var. <i>lycopersicum</i>	SOLAN_LYC_LYC
Class 4.3	<i>Solanum melongena</i> L.	SOLAN_MEL
Class 4.4	<i>Solanum</i> other than classes 4.1, 4.2 and 4.3	other than classes 4.1, 4.2 and 4.3

Alternative 2

	<u>Botanical names</u>	<u>UPOV codes</u>
Class 4.1	<i>Solanum tuberosum</i> L.	SOLAN_TUB
Class 4.2	<i>Solanum melongena</i> L.	SOLAN_MEL
Class 4.3	<i>Solanum</i> other than classes 4.1 and 4.2	other than classes 4.1 and 4.2

24. The TC agreed to invite the CAJ at its sixty-first session to consider those alternatives and, if appropriate, agree that the alternative endorsed by the TWV be put forward as a revision of document UPOV/INF/12/2 for adoption by the Council at its forty-fourth ordinary session, to be held in Geneva on October 21, 2010.

25. The TC further agreed to amend the UPOV codes for the following taxa, simultaneously with any revision of the “Explanatory Notes on Variety Denominations under the UPOV Convention”, document UPOV/INF/12/2 (paragraphs 8 to 10 of document CAJ/61/4):

<u>GENIE database</u>	<u>Current UPOV code</u>	<u>GRIN database</u>
<u>Lycopersicon</u>		
<i>Lycopersicon esculentum</i> Mill.	LYCOP_ESC	<i>Solanum lycopersicum</i> var. <i>lycopersicum</i>
<i>Lycopersicon esculentum</i> Mill. var. <i>esculentum</i>	LYCOP_ESC_ESC	
<i>Lycopersicon esculentum</i> Mill. var. <i>cerasiforme</i> (Dunal) A. Gray	LYCOP_ESC_CER	<i>Solanum lycopersicum</i> var. <i>cerasiforme</i> (Alef.) Fosberg

<i>Lycopersicon hirsutum</i> Dunal	LYCOP_HIR	<i>Solanum habrochaites</i> S. Knapp & D. M. Spooner
<i>Lycopersicon lycopersicum</i> (L.) Karst. ex. Farw. x <i>Lycopersicon hirsutum</i> L.	LYCOP_EHI	no hybrid binomial
<u>Cyphomandra</u>		
Cyphomandra	CYPHO	all species removed
<i>Cyphomandra betacea</i> (Cav.) Sendtn. (synonym <i>Solanum betaceum</i> Cav.)	CYPHO_BET	<i>Solanum betaceum</i> Cav.
<u>Hybrid genus</u>		
<i>Lycopersicon</i> x <i>Cyphomandra</i>	LYCYP	<i>Solanum</i> L.
<i>Lycopersicon lycopersicum</i> x <i>Cyphomandra betacea</i>	LYCYP_EBE	to be investigated

Document UPOV/INF/12, Annex I, Part II “Classes encompassing more than one genus”: new class for *Verbena* and *Glandularia*

26. The TC agreed to propose to amend document UPOV/INF/12/2 Annex I, Part II “Classes encompassing more than one genus” in order to include a new class (Class 212) for *Verbena* L. and *Glandularia* J. F. Gmel. (paragraph 23 of document CAJ/61/4).

27. The TC further agreed, subject to approval by the CAJ and the TWPs at their sessions in 2010, to propose to the Council to amend document UPOV/INF/12/2 Annex I, Part II “Classes encompassing more than one genus” accordingly.

AGENDA ITEM 7: ELECTRONIC APPLICATION SYSTEMS

28. The TC considered document TC/46/13.

29. The TC recalled that, as reported under agenda item 6 “TGP Documents”, the CAJ, at its sixty-first session, would be invited to consider a proposal for text to be added to document TGP/5: Section 2 “UPOV Model Form for the Application for Plant Breeders’ Rights”, in order to explain the standard references in the UPOV Model Application Form (paragraphs 47 to 49 of document CAJ/61/2).

30. The TC agreed to propose to the CAJ that inclusion of an explanation of the standard references for the UPOV Model TQ and for Test Guidelines, as set out in Annexes II and IV of document TC/46/13, would benefit from discussion in the TWPs and TC and should not be included in document TGP/7/2, but should be considered for a future revision of document TGP/7 (document TGP/7/3).

31. The Delegation of the European Union recalled that, in principle, it had supported the Proposal 2 approach, but explained that it had already developed an electronic application system that would preclude such an approach without starting a new system from the beginning. It was explained that the CPVO had launched an online application system and

was encouraging the individual member States of the European Union to adopt that system for plant breeder's right and national list purposes. The CPVO had developed its own software and use of the system was not restricted by other parties. It planned to make that system available in French, German and Dutch. In response to a question from the Vice Secretary-General, the Delegation of the European Union explained that the system would be made available to the member States of the European Union in the first instance, but as a second step, consideration could be given to making that system available to members of the Union.

AGENDA ITEM 8: UPOV-ROM PLANT VARIETY DATABASE

32. The TC considered document TC/46/6.

GENIE database

33. The TC noted that the GENIE database had been launched on the freely available area of the UPOV website on March 15, 2010.

UPOV code system

34. The TC noted that 148 new UPOV codes had been created in 2009 and amendments were made to 17 UPOV codes, bringing the total number of UPOV codes in the GENIE database at the end of 2009 to 6,582.

35. In accordance with the reclassification of *Panicum* in GRIN, and the revision of Class 202 in document UPOV/INF/12/1, Annex I, Part II "Classes encompassing more than one genus", to cover *Megathyrus*, *Panicum*, *Setaria* and *Steinchisma*, the TC agreed that the UPOV codes for the following species be amended as indicated:

Current classification in GENIE database		Proposed new classification in accordance with GRIN	
<u>Botanical name</u>	<u>UPOV code</u>	<u>Botanical name</u>	<u>UPOV code</u>
<i>Panicum laxum</i> Sw.	PANIC_LAX	<i>Steinchisma laxa</i> (Sw.) Zuloaga (synonym: <i>Panicum laxum</i> Sw.)	STEIN_LAX
<i>Panicum maximum</i> Jacq.	PANIC_MAX	<i>Megathyrus maximus</i> (Jacq.) B. K. Simon & S. W. L. Jacobs (synonym: <i>Panicum maximum</i> Jacq.)	MEGAT_MAX

36. The TC requested the TWV to consider whether the principal botanical name for the UPOV code "LENTI_ELO" should be amended to *Lentinula edodes* (Berk.) Sing., with the botanical names *Lentinus edodes* (Berk.) Sing. and *Lentinus elodes* (Berk.) Sing. being added as other botanical names, and the UPOV code amended to "LENTI_EDO" (paragraph 3 of document CAJ/61/4).

37. The TC noted that matters concerning the botanical reclassification of *Lycopersicon*, *Solanum* and *Cyphomandra*, including matters concerning UPOV codes, were considered under agenda item 8 "Variety Denominations".

38. In accordance with the procedure set out in Section 3.3 of the Guide to the UPOV Code System (see http://www.upov.int/genie/en/upov_code.html), the TC agreed that the Office of the Union should prepare tables of UPOV code additions and amendments, for checking by the relevant authorities, for each of the TWP sessions in 2010.

39. With regard to the proposal of the TWO that the Office of the Union should invite members of the Union to indicate practical experience when requesting a new UPOV code, the TC agreed that such an invitation would not be appropriate and agreed that information on genera and species for which new applications had been received could be obtained from the UPOV-ROM Plant Variety Database.

Plant Variety Database

40. The TC noted that, in accordance with the UPOV-WIPO arrangement, Mr. José Appave, Senior Data Administration Clerk, WIPO, had taken up responsibility for collating data for the UPOV-ROM Plant Variety Database (UPOV-ROM) (see circular E-1190). The TC further noted the clarification that the current arrangements for providing data for the UPOV-ROM, as set out in the UPOV-CPVO MoU (see documents CAJ/57/6, paragraph 6 and TC/44/6, paragraph 15), would not be affected by that development.

41. The TC heard that, also in accordance with the UPOV-WIPO arrangement, a software developer had been recruited by WIPO to work on the program of improvements concerning the UPOV-ROM and would take up her duties in May 2010.

42. The TC noted the proposal for the TWC to conduct the analysis of the inclusion of data in fields in the UPOV-ROM Plant Variety Database, as set out in paragraphs 31 to 33 of document TC/46/6 (paragraphs 10 to 12 of document CAJ/61/6), and agreed that the Office of the Union should consider that offer in conjunction with the work under the UPOV-WIPO arrangement.

43. The TC noted the report on matters concerning the development of common search platforms, as set out in document TC/46/6, paragraphs 36 to 39 (paragraphs 15 to 18 of document CAJ/61/6).

44. The Delegation of the European Union informed the TC that a new functionality would be added to the Community Plant Variety Office of the European Union (CPVO) database on applications and titles granted, which was available to the public through its official webpage. The aim of that new development was to provide direct access to some of the documents included in the CPVO register. Access to public inspection constituted a legal obligation in the EC Regulation 2100/94, also the EC Regulation 1049/2001 stated, at a certain stage, that institutions shall as far as possible make documents directly accessible to the public in electronic form. Presently the CPVO was providing access to documents upon request. From 2010 onwards the public would be able to read and download the following documents through the CPVO website:

- Application forms (information related to parent lines excluded)
- Technical Questionnaires (information on parent lines and breeding schemes excluded)
- Proposals for variety denomination
- Official variety descriptions

- Photos taken by the Examination Office
- Decisions to grant and refuse applications
- Decisions to cancel and declare a protected variety null and void

45. The Delegation explained that, to avoid the issues on improper use of official variety descriptions and technical information and photos provided by applicants, the CPVO would publish a disclaimer which provided information on the status of such documents, as well as its appropriate use (Official variety descriptions published on the CPVO website are property of the CPVO or of a national authority and shall not be used for official registration purposes (national list and/or plant breeders' rights), unless the CPVO had given its consent in writing.

AGENDA ITEM 9: MOLECULAR TECHNIQUES

46. The TC considered documents TC/46/7, BMT Guidelines (proj.16) and BMT/DUS Draft 2.

UPOV Guidelines for DNA-profiling: molecular marker selection and database construction (BMT Guidelines)

47. The TC agreed that document BMT Guidelines (proj.16) should be amended as indicated in the document, but agreed that no further modifications were required.

48. The TC agreed that, subject to agreement by the CAJ, document BMT Guidelines (proj.16) should be put forward for adoption by the Council at its forty-fourth ordinary session. The TC noted that the French, German and Spanish translations of the original English text would be checked by the relevant members of the Editorial Committee prior to submission of the draft of document BMT Guidelines to the Council.

Proposals for the utilization of biochemical and molecular techniques in the examination of DUS to be considered by the BMT Review Group

49. The TC noted that the CAJ, at its sixtieth session, held in Geneva on October 19, 2009, had endorsed the recommendations of the BMT Review Group, as set out in document TC/46/7, paragraph 14 (paragraph 16 of document CAJ/61/7).

50. The TC endorsed the recommendations of the BMT Review Group, as set out in document TC/46/7, paragraph 14 (paragraph 16 of document CAJ/61/7).

Revision of documents TC/38/14-CAJ/45/5 and TC/38/14 Add.-CAJ/45/5 Add.

51. The TC agreed the following amendments to document BMT/DUS Draft 2:

Title	to read "Possible Use of Molecular Markers in the Examination of Distinctness, Uniformity and Stability ("DUS")"
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Structure	to differentiate the models into those which received a positive endorsement by the BMT Review Group, CAJ and TC and those where there was no consensus on their acceptability. Within the models which received a positive endorsement by the BMT Review Group, CAJ and TC, to consider a further separation of the models for which further work was required.
Title of models	to seek to develop a short title for each model

52. The TC noted that the CAJ, at its sixtieth session, had agreed that a document could be presented for adoption by the Council in October 2010, in conjunction with the document BMT Guidelines. However, the TC agreed that a new draft of the document BMT/DUS should be prepared by the Office of the Union, in conjunction with the TC Chairman and the BMT Chairman, for consideration by the BMT and the TWPs at their sessions in 2010 and a further draft prepared on the basis of the comments of the BMT, TWPs and CAJ for consideration by the TC at its forty-seventh session.

53. The TC agreed that the possibility of document BMT/DUS Draft 2 becoming document TGP/15, with an appropriate change of title for TGP/15, should be considered at a later stage.

Working group on biochemical and molecular techniques, and DNA-profiling in particular (BMT)

54. The TC noted that, at the twelfth session of the BMT, to be held in Ottawa, Canada, from May 11 to 13, 2010, the specific day for the agenda items “The use of molecular techniques in the consideration of essential derivation” and “The use of molecular techniques in variety identification” (the “Breeders’ Day”) would be May 11, 2010.

AGENDA ITEM 11: EXCHANGEABLE SOFTWARE

55. The TC considered documents TC/46/12 and UPOV/INF/Software Draft 3.

56. The TC agreed that, subject to agreement by the CAJ, document UPOV/INF/Software Draft 3 should be put forward for adoption by the Council at its forty-fourth ordinary session, to be held in Geneva on October 21, 2010. The TC noted that the French, German and Spanish translations of the original English text would be checked by the relevant members of the Editorial Committee prior to submission of the draft of document UPOV/INF/Software to the Council.

57. The TC approved the translation into English of the user guide for the SIRIUS system for data capture by the Office of the Union, on the basis that the experts from France would check, and also be responsible for, the English version.

58. The TC noted that, at its twenty-eighth session, to be held in Angers, France, from June 29 to July 2, 2010, the TWC would receive a presentation by an expert from the European Union on software for assessing similarity of denominations, developed by the CPVO. The Delegation of the European Union explained that it would also like to offer access to its complete variety denomination database, including the variety denomination

similarity tool, to members of the Union. The log-in and password would be provided on request to the CPVO by e-mail (cpvo@cpvo.europa.eu).

[End of Annex and of document]