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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Sixty-Second Session
October 19, 2010

TGP DOCUMENTS

Document prepared by the Office of the Union

1. The purpose of this document is: to report on the status of TGP documents; to provide background information to assist the CAJ in its consideration of TGP/11 “Examining Stability”; and to present a tentative program for the development of TGP documents.
2. The following abbreviations are used in this document:

CAJ: Administrative and Legal Committee
TC: Technical Committee
TC-EDC: Enlarged Editorial Committee
TWA: Technical Working Party for Agricultural Crops
TWC: Technical Working Party on Automation and Computer Programs
TWF: Technical Working Party for Fruit Crops
TWO: Technical Working Party for Ornamental Plants and Forest Trees
TWV: Technical Working Party for Vegetables
TWPs: Technical Working Parties

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I. BACKGROUND

3. 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.

4. As noted by the Chair at the fifty-fourth session of the Administrative and Legal Committee (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.

II. STATUS OF TGP DOCUMENTS

5. 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	TGP/0/1 approved (2005) TGP/0/2 adopted by Council (2009) <i>TGP/0/3 proposed for adoption by Council in October 2010</i>
TGP/1	General Introduction with Explanations	-

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).

Document reference	Title	Stage of development
TGP/2	List of Test Guidelines Adopted by UPOV	Approved (2005)
TGP/3 ²	Varieties of Common Knowledge	-
TGP/4	Constitution and Maintenance of Variety Collections	Adopted by Council (2008)
TGP/5	Experience and Cooperation in DUS Testing	
	Introduction	Adopted (2005)
<i>Section 1</i>	Model Administrative Agreement for International Cooperation in the Testing of Varieties	Section 1/2 Adopted (2005)
<i>Section 2</i>	UPOV Model Form for the Application for Plant Breeders' Rights	Section 2/2 Adopted (2008) <i>Section 2/3 proposed for adoption by Council in October 2010</i>
<i>Section 3</i>	Technical Questionnaire to be Completed in Connection with an Application for Plant Breeders' Rights	Section 3/1 Adopted (2005)
<i>Section 4</i>	UPOV Model Form for the Designation of the Sample of the Variety	Section 4/2 Adopted (2008)
<i>Section 5</i>	UPOV Request for Examination Results and UPOV Answer to the Request for Examination Results	Section 5/2 Adopted (2008)
<i>Section 6</i>	UPOV Report on Technical Examination and UPOV Variety Description	Section 6/2 Adopted (2008)
<i>Section 7</i>	UPOV Interim Report on Technical Examination	Section 7/2 Adopted (2008)
<i>Section 8</i>	Cooperation in Examination	Section 8/1 Adopted (2005)
<i>Section 9</i>	List of Species in Which Practical Knowledge has Been Acquired or For Which National Test Guidelines Have Been Established	Section 9/1 Adopted (2005)
<i>Section 10</i>	Notification of Additional Characteristics	Section 10/1 Adopted (2005) (<i>Section 10/2 under development</i>)
<i>Section 11</i>	Examples of Policies and Contracts for Material Submitted by the Breeder	Section 11/1 Adopted (2005)
TGP/6	Arrangements for DUS Testing	Approved (2005)
TGP/7	Development of Test Guidelines	TGP/7/1 Approved (2004) <i>TGP/7/2 proposed for adoption by Council in October 2010</i> <i>(TGP/7/3 under development)</i>
TGP/8	Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability	<i>TGP/8/1 proposed for adoption by Council in October 2010</i> <i>(TGP/8/2 under development)</i>

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 47).

Document reference	Title	Stage of development
TGP/9	Examining Distinctness	Adopted by Council (2008)
TGP/10	Examining Uniformity	Adopted by Council (2008)
TGP/11	Examining Stability	<i>Under development</i>
TGP/12	Guidance on Certain Physiological Characteristics	Adopted by Council (2009)
TGP/13	Guidance for New Types and Species	Adopted by Council (2009)
TGP/14	Glossary of Terms Used in UPOV Documents	<i>TGP/14/1 proposed for adoption by Council in October 2010</i>
<i>TGP/15</i>	<i>New Types of Characteristics</i>	-

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.

III. DOCUMENT TO BE CONSIDERED BY THE ADMINISTRATIVE AND LEGAL COMMITTEE

TGP/11 “Examination of Stability”

6. At its fifty-eighth session, held in Geneva on October 27 and 28, 2008, the CAJ considered document TGP/11/1 Draft 5 “Examining Stability”, in conjunction with document CAJ/58/2. The CAJ agreed that document TGP/11 should consider only the examination of stability in the context of the DUS examination and that a separate document should be developed 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 (see document CAJ/58/7 “Report”, paragraphs 11 to 22).

7. At its forty-fifth session, held in Geneva from March 30 to April 1, 2009, the Technical Committee (TC) considered document TGP/11/1 Draft 5 and agreed that the following aspects should be addressed in the subsequent draft:

(i) as agreed by the CAJ [see document CAJ/58/7 “Report”, paragraph 21], to consider only the examination of stability in the context of the DUS examination;

(ii) to explain the nature of stability and why it is connected to uniformity in such a way that the General Introduction states that “for many types of variety, when a variety has been shown to be uniform, it can also be considered to be stable” (General Introduction, Chapter 7.3.1.1);

(iii) to avoid text stating that “stability is not examined” (see Sections 2.1.2, 2.1.3, 2.1.5(a));

(iv) to avoid explanations of uniformity (e.g. Section 2.1.4 (a) and (b)) – if necessary to explain aspects of uniformity, to make a reference to TGP/10/1 “Examining Uniformity” or to quote text of TGP/10/1;

(v) to focus the document on providing practical guidance on situations concerning specifically stability (not uniformity), e.g. Section 2.1.4 (c);

(vi) in addition to guidance on the examination of stability through the examination of uniformity, to provide guidance on the direct examination of stability, with the assistance of experts from Australia; and

(vii) in relation to Section 2.2.3, to note that the TC-EDC has proposed that the standard wording for stability in Test Guidelines be amended as follows (see document TGP/7/2 Draft 2 ASW 9 (TG Template Chapter 4.3.2) – Stability assessment general):

“Where appropriate, or in cases of doubt, stability may be further examined ~~tested, either by growing a further generation, or~~ by testing a new [seed or plant] stock to ensure that it exhibits the same characteristics as those shown by the ~~previous~~ initial material supplied.”

8. The CAJ, at its sixty-first session, held in Geneva on March 25, 2010, agreed the proposed schedule for the development of document TGP/11, as set out in paragraph 31 of document CAJ/61/2, and noted that document TGP/11 Draft 8 would be considered by the TWPs at their sessions in 2010 and by the CAJ at its sixty-second session to be held in Geneva on October 18 and 19, 2010 (see document CAJ/61/11 “Report on the Conclusions”, paragraph 19).

9. To assist the CAJ in its consideration of document TGP/11 Draft 8, the comments made by the Technical Working Party for Agricultural Crops (TWA), at thirty-ninth session, held in Osijek, Croatia, from May 24 to 28, 2010, the Technical Working Party on Automation and Computer Programs (TWC), at its twenty-eighth session, held in Angers, France, from June 29 to July 2, 2010 and the Technical Working Party for Vegetables (TWV), at its forty-fourth session, held in Veliko Tarnovo, Bulgaria, from July 5 to 9, 2010, are provided below:

1.	(TWA, agreed by TWV) to replace the paragraph after the extract from the General Introduction with a text incorporating a reference to document TGP/10/1, Section 4.2.2.4, in order to explain that differences in the expression of a characteristic that occur on a part of the plant are considered with regard to uniformity.
2.1.1	(TWA, agreed by TWV) to add an explanation that the purpose of document TGP/11 is to provide guidance, in the form of illustrative examples, on the examination of stability where that is considered appropriate.
2.1.2	(TWA, agreed by TWV) to read “The stability of the candidate variety depends on the maintenance breeding effort in order to ensure that the variety will remain in conformity to the type and uniform. Samples resulting from repeated propagation of the candidate variety should be uniform and conform to the initial sample for all relevant characteristics.”

2.2	<p>(TWA) to read “Where considered appropriate, the testing of stability should be conducted by either: (i) testing a new seed or plant stock, or (ii) testing a seed or plant stock obtained from propagation of the initial sample. In the case of (i), the examination authority should request the applicant to provide the sample of plant material to be tested for stability. In the case of (ii), the propagation cycle can be undertaken by the examination authority as long as it can ensure the safety and reliability of the propagation procedure.”</p> <p><i>Comments on TWA proposal</i></p> <p><i>(TWV) with regard to the TWA proposal, it should be clarified that approach (ii) should be an exceptional situation</i></p>
2.3	<p>(TWA) to read as follows:</p> <p>“2.3.1 The following examples illustrate possible approaches of how individual authorities address examination of stability.</p> <p>2.3.2 <i>Examination based on samples submitted by the breeder</i></p> <p>2.3.2.1 <i>Phaseolus vulgaris</i> in Australia: Two seed samples of the candidate variety, from different cycles of propagation, are requested from the breeder and sown in the DUS trial side by side. For testing stability, the second sample of the candidate variety is compared to the first sample to establish that there is no difference between them in their relevant characteristics. The variety is considered to be stable if the 2 samples conform with each other.</p> <p>2.3.2.2 A similar approach as under 2.3.2.1 is used for hybrid varieties where the stability is tested on the hybrid itself. The breeder is requested to submit samples from different cycles of propagation, which are compared side-by-side in the field.</p> <p>2.3.3 <i>Examination based on a sample harvested by the authority from the initial sample</i></p> <p>2.3.3.1 <i>Zea mays</i> parental lines in France: seed from the initial sample of the candidate variety is to be sown alongside the subsequent generation of seed of the candidate variety.</p> <p>(a) When the technical examination is carried out as a two-year DUS test by the examination authority, a part of the submitted seed sample is sown in a specific trial to produce selfings. In the second year the seeds harvested on six selfings are sown in ear-rows besides a two-row plot sown with seeds of the submitted sample. All the characteristics are checked on the ear-rows in comparison with the plot. The candidate parent line variety is declared stable if at least 5 ear-rows conform to the plot (1 different ear-row is accepted to take into account the risk of a mistake by the authority when producing selfings).</p>

	<p>(b) When the technical examination is carried out partly using the applicant's results (one year of testing for distinctness and uniformity carried out by the applicant) the applicant is asked to provide to the examination authority seeds of the candidate variety in the year "n-1" (the year in which the applicant carries out half of the test for distinctness and uniformity) and 6 non-threshed ears of the candidate variety are sent to the examination authority in year "n". The ears are threshed by the examination authority and sown in ear-rows close by a plot sown with seeds of the submitted seed sample. All the characteristics are checked on the ear-rows in comparison with the plot. The candidate parent line variety is declared stable if at least 5 ear-rows conform to the plot (1 different ear-row is accepted to take into account the risk of mistake done by the authority when producing selfings).</p> <p>The only objective is to look at the conformity of the 2 generations in their relevant characteristics.</p> <p>2.3.3.2 In the case of hybrids, stability is based on the stability of the parental lines, as described in 2.3.3.1, and the verification of the formula on the basis of the initial sample of the hybrid."</p> <p><i>Comments on TWA proposal:</i></p> <p><i>(TWC, agreed by TWV) with regard to the TWA proposal, the last sentence of 2.3.3.1 (a) and (b) to read "The candidate parent line variety is declared stable if at least 5 ear-rows conform to the plot (1 different ear row is accepted to take into account the risk of mistake done by the authority when producing selfings)." </i></p> <p><i>(TWC) to consider adding examples for vegetable, fruit and/or ornamental crops to TWA proposal.</i></p> <p><i>(TWV)</i></p> <p><i>(a) the illustrative examples in Section 2.3 should be presented as Annexes;</i></p> <p><i>(b) example 2.3.3 (Zea mays) should clarify that, in France, the DUS examination on hybrids involves the examination of the hybrid by examination of the parent lines and the parent formula; and</i></p> <p><i>(c) with regard to the TWC proposal to add examples for vegetable crops, Phaseolus vulgaris is a vegetable crop</i></p>
2.3.4	(TWA, agreed by TWV) to be deleted.
2.4	(TWA, agreed by TWV) to be deleted.

10. Comments made by the Technical Working Party for Ornamental Plants and Forest Trees (TWO), at its forty-third session, to be held in Cuernavaca, Morelos State, Mexico, from September 20 to 24, 2010, and the Technical Working Party for Fruit Crops (TWF), at its forty-first session, to be held in Cuernavaca, Morelos State, Mexico, from September 27 to October 1, 2010, will be reported to the CAJ at its sixty-second session.

11. In response to the ongoing concerns of the International Seed Federation (ISF), with regard to the submission of parent lines for hybrid varieties of vegetables where the parent lines were not examined as a part of the DUS examination of the hybrid, the TWV, at its forty-fourth session, agreed to propose to the TC that it consider organizing a seminar to discuss that issue.

12. The CAJ is invited to:

(a) consider document TGP/11/1 Draft 8, in conjunction with the comments of the TWA, TWC and TWV, as set out in paragraph 9, and the comments of the TWO and TWF to be reported at the sixty-second session of the CAJ; and

(b) note that the TC will be invited to consider the possibility of organizing a seminar to consider the issues related to the submission of parent lines for hybrid varieties of vegetables where the parent lines are not examined as a part of the DUS examination of the hybrid (see paragraph 11).

IV. PROGRAM FOR THE DEVELOPMENT OF TGP DOCUMENTS

13. The Annex 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-sixth session.

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

[Annex follows]

CAJ/62/2
ANNEX

Ref.	Title of document	Current approved documents	Drafter (TWP)	Drafter (Name)	2009				2010				2011							
					TC-EDC	CAJ/59	TWPs	CAJ/60	CAJ/61	TC-EDC	TC/46	CAJ/61	TWPs	CAJ/62	C/44	TC-EDC	TC/47	CAJ/63	TWPs	CAJ/64
TGP0	List of TGP Documents and Latest Issue Dates	TGP/02/ADO PTD																		
TGP1	General Introduction with Explanations	-	Office																	
TGP2	List of Test Guidelines Adopted by UPOV	TGP/2/1 ADOPTED																		
TGP3	Varieties of Common Knowledge	C(Extr)/19/2 Rev.	CAJ																	
TGP4	Constitution and Maintenance of Variety Collections	TGP/4/1 ADOPTED																		
TGP5	Experience and Cooperation in DUS Testing	ADOPTED																		
	Section 2: UPOV Model Form for the Application for Plant Breeders' Rights	Section 2/2 Adopted																		
	Section 10: Notification of Additional Characteristics	Section 10/1 Adopted																		
TGP6	Arrangements for DUS Testing	TGP/6/1 ADOPTED																		
TGP7	Development of Test Guidelines	TGP/7/1 ADOPTED																		
TGP8	Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability (Coordinator: Office /TWC Chairperson)																			
TGP9	Examining Distinctness	TGP/9/1 ADOPTED																		
TGP10	Examining Uniformity	TGP/10/1 ADOPTED																		
TGP11	Examining Stability (Coordinator: Office)		TWV	Mr. Semon (OZ)																
TGP12	(Special Characteristics) / (Guidance on Certain Physiological Characteristics)	TGP/12/1 ADOPTED																		
TGP13	Guidance for New Types and Species	TGP/13/1 ADOPTED																		
TGP14	Glossary of [Exhaustive, Botanical and Statistical] Terms Used in UPOV Documents (Coordinator: Office)																			
TGP15	New Types of Characteristics (Coordinator: Office)																			