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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Sixty-Third Session
April 7, 2011

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

Document prepared by the Office of the Union

The purpose of this document is to report on the conclusions of the Technical Committee (TC) at its forty-seventh session held in Geneva from April 4 to 6, 2011, in relation to matters to be considered by the Administrative and Legal Committee at its sixty-third session, to be held in Geneva on April 7, 2011, under items 4, 5, 6, 8 and 9 of the draft agenda (document CAJ/63/1). The conclusions of the TC are reproduced in the Annex to this document.

[Annex follows]

ANNEX

CONCLUSIONS OF THE TECHNICAL COMMITTEE IN RELATION TO MATTERS
TO BE CONSIDERED BY THE ADMINISTRATIVE AND LEGAL COMMITTEE
UNDER ITEMS 4, 5, 6, 8 AND 9

AGENDA ITEM 4: TGP DOCUMENTS

1. The TC considered the following documents in conjunction with document TC/47/5:

TGP/11 Examination of Stability

2. The TC agreed that document TGP/11/1 Draft 10 should be amended as indicated in that document, with the following further modifications:

Annex I	
1.3	<p>to replace the second paragraph to read as follows:</p> <p>“In addition to the five trees supplied for the examination of distinctness, a second set of test trees are required for the assessment of uniformity and stability. The minimum number of trees required is 25 trees on MM106, or 30 trees on M9. The trees can be located on a site selected by the breeder or agent and should be established at the same time as trees supplied for the examination of distinctness. These trees should be at least second propagation cycle trees and be of the same standard and quality as those used for the testing of distinctness.”</p>

3. The TC noted that the International Seed Federation (ISF) considered that there was no need to organize a seminar, but rather to continue discussions in the relevant TWPs, on the submission of parent lines for hybrid varieties of vegetables where the parent lines were not examined as part of the DUS examination of the hybrid.

4. The TC agreed that document TGP/11/1 Draft 10, as amended above and subject to agreement by the CAJ at its sixty-third session, to be held in Geneva on April 7, 2011, should be the basis for adoption of document TGP/11/1 by the Council at its forty-fifth ordinary session, to be held in Geneva on October 20, 2011.

TGP/5 Section 10/2 – Experience and Cooperation in DUS Testing: Notification of Additional Characteristics

5. The TC agreed that document TGP/5: Section 10/2 Draft 2 should be amended as indicated in that document, with the following further modifications:

4.2, 4.3	to replace the text to read as follows: “4.2 Proposals for additional characteristics and states of expression notified to the Office of the Union by means of document TGP/5 Section 10, will be presented to the relevant Technical Working Party(ies) (TWP(s)) at the earliest opportunity with information on the extent of use of the characteristic. The characteristics will then, as appropriate, be posted on the password-restricted area of the UPOV website (http://www.upov.int/restrict/en/index_drafters_kit.htm), on the basis of comments made by the relevant TWP(s), and/or the TWP(s) may initiate a revision or a partial revision of the Test Guidelines concerned.”
Annex	to put information about extent of use of the characteristics in the box for explanation/illustration

6. The TC agreed that document TGP/5: Section 10/2 Draft 2, as amended above and subject to agreement by the CAJ at its sixty-third session, to be held in Geneva on April 7, 2011, should be the basis for adoption of document TGP/5: Section 10/2 by the Council at its forty-fifth ordinary session, to be held in Geneva on October 20, 2011.

Program for the development of TGP documents

7. The TC agreed the program for the development of TGP documents, as set out in the Annex to document TC/47/5, subject to the revision of document TGP/7 “Development of Test Guidelines”, as set out in paragraphs 8 to 10 of this document.

Test Guidelines for adoption

8. The TC noted that the Council, at its forty-third ordinary session, held in Geneva on October 22, 2009, had endorsed the practice whereby Test Guidelines are adopted by the TC on behalf of the Council on the basis of the program of work approved by the Council, without the individual Test Guidelines being submitted to the Council for review (see document C/43/17 “Report”, paragraph 38). The TC noted that, at its forty-fourth ordinary session, held in Geneva on October 21, 2010, the Council had noted the work of the TC, the TWPs and the BMT, as provided in document C/44/10, and had approved the programs of work set out in document C/44/10 (see document C/44/16 “Report on the decisions”, paragraph 41).

9. The TC agreed that the wording of document TGP/7/2, as adopted by the Council at its forty-fourth ordinary session, held in Geneva on October 21, 2010, with regard to Chapter 4.1.4 should not be followed in the Test Guidelines to be adopted at its forty-seventh session. It agreed that the Test Guidelines to be adopted by the TC should incorporate the amended wording for Chapter 4.1.4, as follows:

Alternative 1: “Unless otherwise indicated, for the purposes of distinctness, all observations on single plants should be made on { x } plants or parts taken from each of { x } plants and any other observations made on all plants in the test, disregarding any off-type plants.”

Alternative 2: “Unless otherwise indicated, for the purposes of distinctness, all observations on single plants should be made on { x } plants or parts taken from each of

{ x } plants and any other observations made on all plants in the test, disregarding any off-type plants. In the case of observations of parts taken from single plants, the number of parts to be taken from each of the plants should be { y }.”

10. The TC noted that the Council, at its forty-fifth ordinary session to be held on October 20, 2011, would need to adopt the revised text for document TGP/7 before the Test Guidelines could be adopted. Therefore, it agreed to adopt the Test Guidelines subject to the Council adopting the necessary revision to document TGP/7.

AGENDA ITEM 5: UPOV INFORMATION DATABASES

11. The TC considered document TC/47/6 and the presentation of the prototype of the web-based version of the Plant Variety Database, made by Mrs. Lili Chen, Software Developer, World Intellectual Property Organization (WIPO).

Timetable for introduction of web-based version of Plant Variety Database

12. The TC agreed with the proposal that a web-based version of the Plant Variety Database, based on the existing content of the UPOV-ROM Plant Variety Database, be launched on the UPOV website during the course of 2011. The TC noted that the database would contain the same data as provided for the UPOV-ROM, according to existing data submission procedures, and would include similar search functions. It noted that, in addition, provisions would be made for the results of the searches to be downloaded in the form of an Excel spreadsheet or an html report, thereby enabling full access to the data in the Plant Variety Database.

13. The TC noted that the prototype of a web-based version of the Plant Variety Database would also be presented at the sixty-third session of the CAJ, to be held on April 7, 2011, and the eighty-first session of the Consultative Committee, to be held in Geneva on April 8, 2011. It noted that the comments of the TC and the CAJ would be reported to the Consultative Committee, at its eighty-first session, in conjunction with the invitation for the Consultative Committee to approve the proposals concerning the launching of the web-based version of the Plant Variety Database, as set out in document TC/47/6.

Policy for access to Plant Variety Database

14. With regard to the web-based version of the Plant Variety Database, the TC noted that the Consultative Committee, at its eighty-first session, to be held in Geneva on April 8, 2011, would be invited to consider the following policy options for access:

(a) free access to all users;

(b) free access to all members of the Union, contributors to the Plant Variety Database and other parties agreed by the members of the Union. Other subscribers to be charged on the basis of:

(i) an annual fee, similar to that charged for the UPOV-ROM; or

(ii) a fee according to use, e.g. number of searches.

15. The TC noted the support by some delegations for free access to all users.

Title of the Plant Variety Database

16. The TC agreed with the proposal to rename the Plant Variety Database as “VENUS” and the development of a suitable visual icon.

AGENDA ITEM 6: MOLECULAR TECHNIQUES

17. The TC considered document TC/47/7.

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

18. The TC agreed that document BMT/DUS Draft 5 should be amended as indicated in that document, with the following further modifications:

General	Editorial Committee to check the French, German and Spanish translations before the document is prepared for adoption by the Council.
2.4	to delete “System for”
Annex 4 - Title	to delete “System for”

19. The TC agreed that document BMT/DUS Draft 5, as amended above and subject to agreement by the CAJ at its sixty-third session, to be held in Geneva on April 7, 2011, should be the basis for adoption of document BMT/DUS by the Council at its forty-fifth ordinary session, to be held in Geneva on October 20, 2011.

Possible development of document TGP/15

20. The TC agreed that document TGP/15 should be developed separately, but in parallel, to document BMT/DUS on the basis that document BMT/DUS would provide a report on the development and consideration of all models within UPOV and that document TGP/15 would provide guidance for the use of those models that had received a positive assessment and for which accepted examples could be provided, i.e. Models “Characteristic-specific molecular markers” (Section 3.1.1) and “Combining phenotypic [characteristics] and molecular distances in the management of variety collections” (Section 3.1.2) for the time being. It agreed that the purpose of both documents should be clarified within the documents and noted that both documents would need to be adopted by the Council. The TC also agreed that consideration should be given to how to maintain both documents in an efficient way.

Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular (BMT)

21. The TC noted the report on developments in the BMT, as set out in paragraphs 41 to 43 of document TC/47/7. The TC approved the program for the thirteenth session of the BMT, to be held in Brasilia, Brazil, from November 22 to 24, 2011, with the preparatory workshop

to be held on November 21, 2011, as set out in paragraphs 44 and 45 of that document. The TC agreed that, in order to encourage the presentation of information in relation to the use of molecular techniques in examining essential derivation and in variety identification, it would be appropriate to dedicate a specific day to those items at the thirteenth session of the BMT. The TC noted that breeders and other experts would be offered the possibility to attend for that specific day, which would be on November 22, 2011.

AGENDA ITEM 8: VARIETY DENOMINATIONS

22. The TC considered document TC/47/8.

Eupatorium and Eutrochium

23. The TC noted the botanical synonymies that existed for species of *Eupatorium* L. and invited the TWO to consider the following possible solutions to that situation at its forty-fourth session to be held from November 7 to 11, in Fukuyama City, Hiroshima Prefecture, Japan:

(a) Continue to consider all species currently included within the genus “Eupatorium” in the UPOV-ROM as “Eupatorium” (i.e. *Eupatorium purpureum* L., *Eupatorium dubium*, *Eupatorium ligustrinum*). The TC noted that this approach would not follow the “Guide to the UPOV Code System” and would not guarantee to avoid problems with other species of “Eupatorium” that might occur in the UPOV-ROM in future: GRIN lists 91 species / subspecies that are sometimes included within “Eupatorium”, of which only 17 are considered by GRIN to fall within *Eupatorium* L.. The TC noted that this approach would have the effect of creating a denomination class for “Eupatorium”, without explicitly establishing the coverage of the class;

(b) Create a new denomination class in document UPOV/INF/12/3 “Explanatory notes on variety denominations under the UPOV Convention”, Annex I: Part II. “Classes encompassing more than one genus” to cover relevant genera, e.g. *Eupatorium* L., *Eutrochium* Raf., *Ageratina* Spach, etc.; or

(c) Apply the GRIN botanical classification of species and continue to follow the General Rule (one genus / one class). For example, the varieties in the UPOV-ROM indicated as *Eupatorium purpureum* L. would be considered as *Eutrochium purpureum* (L.) E. E. Lamont var. *purpureum* and would be allocated a UPOV code for the genus *Eutrochium* Raf.. The TC noted that such an approach would require that the appropriate species could be correctly identified for the 12 varieties, and any other such entries in future, indicated as *Eupatorium* L. in the UPOV-ROM. The TC noted that this it would also be necessary to amend the UPOV codes for the species concerned.

24. The TC invited the TWO to consider the above at its session in 2011.

Information concerning the registration of variety denominations as trademarks

25. The TC noted the information concerning the registration of variety denominations as trademarks, as set out in document TC/47/8, paragraphs 15 to 19.

AGENDA ITEM 9: ELECTRONIC APPLICATION SYSTEMS

26. The TC considered document TC/47/13.

Standard references for the UPOV Model Application Form and Linear Blank Form

27. The TC agreed that the Office of the Union should seek information on the extent to which members of the Union use the standard references to the UPOV Model Application Form in their application forms.

Linear Blank Form corresponding to Section 2: “UPOV Model Form for the Application for Plant Breeders’ Rights” (Linear Blank Form for PBR Applications)

28. The TC noted that it was planned that the Linear Blank Form for PBR Applications be developed with the following features:

(a) users* could select the language in which the items in the Linear Blank Form for PBR Applications would be presented (Input Template language);

(b) users could select (a) language(s) in which the completed Linear Form for PBR Applications could be downloaded (Output Template language);

(c) users could choose the format in which to download the completed Linear Form for PBR Applications: Word, Excel, XML and/or PDF;

(d) users could choose to store the input data in an associated database (hosted by UPOV), in order, for example, to allow further downloading in different languages and/or formats. The data would be password protected and the password would only be issued to the user concerned; and

(e) a disclaimer that the use of the information associated with the Linear Blank Form for the filing of an application for a breeder’s right with the authority of a member of the Union would be the responsibility of the user.

29. The TC noted that the languages in which the Linear Blank Form for PBR Applications would be developed would be prioritized on the basis of discussions with the international breeders’ organizations and according to available resources. In the case of languages other than English, French, German and Spanish, interested members of the Union would be consulted before the relevant language versions were made available on the UPOV website. In addition, there would be an explanation that the translations had not been adopted by the Council.

* The term “user” is used instead of “applicant” or “breeder”, in order to avoid any implication that the use of the Linear Blank Form for PBR Applications might indicate that an application is being filed for a plant breeder’s right.

30. The TC noted that ISF would be willing to contribute financial resources to the development of the Linear Blank Form for PBR Applications on the basis of the concept set out above.

31. The TC noted that the European Union was working with two of its member States on the use of the CPVO electronic application system. The Delegation of the European Union offered to provide information on its experiences on that project. The TC agreed the report on developments should be made at its forty-eighth session.

Standard references in the Technical Questionnaire

32. The TC considered document TC/47/18.

33. The TC agreed to delay consideration of the approach for providing standard references for the UPOV Model Technical Questionnaire and for the characteristics in the Test Guidelines, as set out in Annexes I and II to document TC/47/18, with a view to a future revision of document TGP/7, pending the outcome of work on the Linear Blank Form for PBR Applications.

[End of Annex and of document]