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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 document TGP/5 "Experience and Cooperation in DUS Testing".

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 Convention 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 Office of the Union (Office) anticipates that 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.

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/3*</i>	<i>Varieties of Common Knowledge</i>	<i>responsibility of CAJ</i>
<i>TGP/4</i>	<i>Constitution and Maintenance of Variety Collections</i>	<i>proposed for adoption by Council in October 2007</i>
TGP/5	Experience and Cooperation in DUS Testing	Approved (2005) (under revision)
TGP/6	Arrangements for DUS Testing	Approved (2005)
TGP/7	Development of Test Guidelines	Approved (2004)
<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>proposed for adoption by Council in October 2007</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>
<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>	-

* 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).

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. DOCUMENTS TO BE CONSIDERED BY THE CAJ

6. At its forty-first session, the Technical Committee (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 ago and would benefit from updating. However, it recognized that those texts were adopted by UPOV 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 the Council, as appropriate.

7. Given the need for the CAJ to be involved in any revision of Sections 1 to 7, the CAJ was notified of developments in the TC in the oral report made by Ms. Julia Borys, Chair of the TC, at the fifty-first session of the CAJ, held in Geneva on April 7, 2005. The CAJ agreed that the review of document TGP/5/1 fell within the work of the Administrative and Legal Committee Advisory Group (CAJ-AG) on the development of information materials in relation to Articles 7, 8 and 9 of the 1991 Act of the UPOV Convention. At its first session on October 20, 2006, the CAJ-AG agreed that the proposed revised Sections 1 to 7 of document TGP/5/1 should be submitted directly to the CAJ, without consideration by the CAJ-AG (see paragraph 13 of document CAJ-AG/06/1/3).

8. The following drafts of TGP/5 are to be considered by the CAJ:

TGP/5: Experience and Cooperation in DUS Testing

Section 1/2 Draft 3:	Model Administrative Agreement for International Cooperation in the Testing of Varieties
Section 2/2 Draft 3:	UPOV Model Form for the Application for Plant Breeders’ Rights
Section 4/2 Draft 3:	UPOV Model Form for the Designation of the Sample of the Variety
Section 5/2 Draft 3:	UPOV Request for Examination Results and UPOV Answer to the Request for Examination Results
Section 6/2 Draft 3:	UPOV Report on Technical Examination and UPOV Variety Description
Section 7/2 Draft 3:	UPOV Interim Report on Technical Examination
Section 11/1 Draft 1:	Examples of contracts/agreements between authorities and breeders

9. In the case of Sections 1, 2, 4, 5, 6 and 7, the program for the development of TGP documents as agreed by the TC at its forty-third session, as set out in document TC/43/5, Annex IV (see document TC/43/12 “Report on the Conclusions”, paragraph 30), indicated that the CAJ would be invited to consider the same drafts of those sections as those considered by the Technical Working Parties (TWPs) at their sessions in 2007 (i.e. Section 1/2 Draft 2, etc.). However, the TWPs made a number of important proposals for improving the earlier drafts, which the Office, in consultation with the Chair of the CAJ, agreed that it would be appropriate to incorporate in new drafts in order to facilitate the work of the CAJ (i.e. Section 1/2 Draft 3, etc.). The detailed comments and proposals made by the TC and the TWPs can be found in documents TC/43/12 “ Report on the Conclusions”, paragraph 17, and TWC/25/3 “TGP Documents”, respectively. Any further comments or proposals made by the Technical Working Party on Automation and Computer Programs (TWC) at its twenty-fifth session, to be held in Sibiu, Romania, from September 3 to 6, 2007, will be included in an oral report at the CAJ session.

10. The changes proposed to the current sections of TGP/5 by the TC at its forty-third session and the TWPs at their sessions in 2007 are highlighted in the documents to be considered by the CAJ, with deletions shown in strikethrough and additions shown by underlining. The background information concerning changes of a substantial nature are summarized as follows:

General

11. The Office has, where necessary, proposed changes for compatibility with all Acts of the UPOV Convention.

12. At its forty-first session, the TC proposed that suitable provisions should be made for genetically modified varieties in relevant sections. In that respect, it is recalled that the model Technical Questionnaire in document TGP/7/1: Annex 1: TG Template: Chapter 10 (see TGP/5 Section 3/1) contains a specific Technical Questionnaire for varieties covered by the relevant Test Guidelines. That model Technical Questionnaire, in Section 8, contains a request for information on whether prior authorization for release under legislation concerning the protection of the environment, human and animal health is required. No amendments were proposed in the other sections of TGP/5.

13. At its forty-third session, the TC agreed to review the use of the term “official register” to reflect the fact that some authorities consider that the term “official” also covers registries for plant breeders’ rights.

14. At its forty-third session, the TC agreed to add a new item for indication of the UPOV code in Sections 5 and 6 of TGP/5.

15. Subsequent to the forty-third session of the TC, the Office noted that it was necessary to clarify the use of the terms “breeder” and “applicant” within TGP/5 and proposals have been made in the relevant sections.

Section 1: Model Administrative Agreement for International Cooperation in the Testing of Varieties

16. The following comments were made at the forty-first session of the TC:

(a) to review Article 6 with regard to the possibility to include the maintenance of reference collections in the main agreement rather than as a matter to be settled between the authorities by correspondence; and

(b) to review Article 7 with regard to the amount of 350 Swiss francs.

17. Article 6 was amended in document TGP/5: Section 1/2 Draft 2 and Draft 3, to provide the possibility of including the maintenance of reference collections in the main agreement.

18. At its forty-third session, the TC agreed to add an indication in the preamble that the use of the Model Administrative Agreement was not a prerequisite for international cooperation and that, for example, it was possible to purchase DUS reports without such an agreement. The Technical Working Party for Agricultural Crops (TWA) and the Technical Working Party for Vegetables (TWV) suggested to consider whether it was relevant to include the new paragraph in the Model Administrative Agreement and to consider whether that matter might be provided in a separate explanation. The Technical Working Party for Ornamental Plants and Forest Trees (TWO) and the Technical Working Party for Fruit Crops (TWF) suggested to retain the proposed new paragraph in the Model Administrative Agreement unless it could be moved to another document where it would be brought to the attention of members of the Union considering the need for establishing an agreement for cooperation.

*Section 2: UPOV Model Form for the Application for Plant Breeders' Rights; and
Section 3: Technical Questionnaire to be Completed in Connection with an Application for Plant Breeders' Rights*

19. The TWO and TWF proposed to consider whether applicants would only be required to complete either 1.(b) (by individuals) or 1.(d) (by companies).

20. The TWA, TWO and TWF noted the importance of the information in 6. “[Further] / [Other] applications” being provided by breeders.

21. In addition to considering the revision of the text of TGP/5: Section 2/1 “UPOV Model Form for the Application for Plant Breeders' Rights”, the CAJ is invited to recall that there is an item on the CAJ agenda for “Presentations by members of the Union and the International Seed Federation (ISF) on experiences and initiatives for the development of electronic application forms and technical questionnaires”.

Section 4: UPOV Model Form for the Designation of the Sample of the Variety

22. At its forty-third session, the TC agreed to clarify that the form was not intended for official registration (national list) purposes and proposed to review the use of the term “official registration” (see general comment concerning TGP/5 above).

Section 5: UPOV Request for Examination Results and UPOV Answer to the Request for Examination Results

23. At its forty-first session, the TC proposed that, in TGP/5: Section 5, consideration should be given to amending the wording in the “UPOV Answer to the Request for Examination Results”, paragraphs 5 and 6, to reflect the possibility for invoicing to be made directly to breeders.

24. UPOV Request for Examination Results: at its forty-third session, the TC agreed to add a new item for indication of the UPOV code, to include an option for “applicant” in item 9 and to add a new item to indicate to where the invoice should be sent.

25. UPOV Answer to the Request for Examination Results: at its forty-third session, the TC agreed to provide an option in item 5 for the invoice to be sent to a relevant party other than the applicant.

26. The TWO and TWF proposed that the TC and the CAJ might consider whether to include a request for the requesting authority to inform the reporting authority on the outcome of the use of the examination results.

Section 6: UPOV Report on Technical Examination and UPOV Variety Description

27. UPOV Report on Technical examination: at its forty-third session, the TC agreed to add a new item to indicate the UPOV code.

28. UPOV Variety Description: at its forty-third session, the TC agreed to add a new item to indicate the UPOV code, to include an option for photographs to be provided and to consider whether to add a section specifying the varieties included in the DUS test. With respect to a section specifying the varieties included in the DUS test, some TWP experts noted the potential value of receiving information on all the varieties included in the growing trial used for the examination of distinctness. However, it was noted that, as explained in documents TGP/4 and TGP/9, not all the varieties considered in the process of examining distinctness would be included in the DUS growing trial. In that respect, it was noted that information on similar varieties was requested in item 16. It was also observed that requirements concerning information on the reference collections used in the examination of distinctness were included as an element within the Model Administrative Agreement (document TGP/5: Section 1/1).

Section 7: UPOV Interim Report on Technical Examination

29. At its forty-third session, the TC agreed to include the possibility to attach an annex to report on problems.

Section 11 (new): Examples of Contracts / Agreements between Authorities and Breeders

30. During its consideration of document TGP/4/1 Draft 7, the TWA discussed the text which proposed that “in the particular case of parent lines submitted as a part of the examination of a candidate hybrid variety, 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.” In that respect, it proposed that UPOV might develop a model contract / agreement between authorities and breeders for inclusion in document TGP/5 as a part of the revision of that document (see document TWA/35/12 “Report”, paragraph 26).

31. At its fifty-fourth session, held in Geneva on October 16 and 17, 2006, the CAJ considered the TWA proposal for UPOV to develop a model contract / agreement between authorities and breeders. It agreed that it would be more appropriate to seek to provide examples of contracts / agreements between authorities and breeders in document TGP/5. The indication that UPOV would seek to provide, in document TGP/5, examples of contracts / agreements between authorities and breeders was reflected in document TGP/4/1 Draft 9, Section 3.1.2.2.2.

32. At its forty-third session, the TC noted the invitation for members of the Union to provide examples of contracts / agreements between authorities and breeders for inclusion in a new section of TGP/5. The Delegation of the European Community indicated that it had agreements on the transfer of material between authorities, which it would be willing to provide, if those agreements were considered to be relevant. A representative of ISF offered to provide examples of contracts / agreements between breeders and authorities if that information could be included in TGP/5. The Office observed that such examples should have the consent of the relevant authorities. ISF acknowledged that requirement and noted that the consent of the breeders would also be required in the case of an example agreement concerning a particular breeder.

33. The Office issued an invitation to members of the Union (circular E-475, sent to representatives of the Council and copied to the members of the CAJ and TC) and to international breeders’ organizations (circular E-476, sent to non-governmental organizations with observer status in the CAJ and TC) for contributions of examples of contracts / agreements between authorities and breeders for inclusion in a new section of TGP/5.

34. The CAJ is invited to consider the contents of this document in relation to its consideration of document TGP/5 “Experience and Cooperation in DUS Testing”.

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