

TC/44/5

ORIGINAL: English
DATE: January 22, 2008

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS GENEVA

TECHNICAL COMMITTEE

Forty-Fourth Session Geneva, April 7 to 9, 2008

TGP DOCUMENTS

Document prepared by the Office of the Union

- 1. The purpose of this document is: to report on developments since the forty-third session of the Technical Committee (TC), concerning the consideration of the TGP documents; to provide background information to assist the TC in its consideration of the drafts of individual TGP documents; 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

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.
- 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	Approved (2005)
TGP/1	General Introduction with Explanations	-
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	under development

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).

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).

Document reference	Title	Stage of development
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) / under revision
TGP/8	Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability	under development
TGP/9	Examining Distinctness	under development
TGP/10	Examining Uniformity	under development
TGP/11	Examining Stability	under development
TGP/12	Special Characteristics	under development
TGP/13	Guidance for New Types and Species	under development
TGP/14	Glossary of Technical, Botanical and Statistical Terms Used in UPOV Documents	under development
TGP/15	New Types of Characteristics	-

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 TECHNICAL COMMITTEE

6. At its forty-third session, the TC approved a program for the development of TGP documents as set out in document TC/43/5, Annex IV (see document TC/43/12 "Report on the Conclusions", paragraph 30). According to that program, it was anticipated that documents TGP/4/1 and TGP/9/1 would be put forward for adoption by the Council in 2007 and that the TC would consider drafts of TGP/5 (Revision), TGP/8, TGP/10, TGP/11, TGP/12, TGP/13 and TGP/14 at its forty-fourth session. Whilst the TC has agreed that the revision of document TGP/7 should start at the Technical Working Party (TWP) sessions in 2008, this document also presents information on aspects of that document where revisions may be appropriate, according to comments made by the TWPs and the Enlarged Editorial Committee (TC-EDC). Part II of this document presents background information for each of the TGP documents to be considered by the TC at its forty-fourth session.

(a) TGP documents put forward for adoption in 2007 (TGP/4/1 and TGP/9/1)

7. At its seventy-fourth session, held in Geneva on October 24, 2007, the Consultative Committee made a preliminary examination of documents TGP/4/1 "Constitution and Maintenance of Variety Collections" and TGP/9/1 "Examining Distinctness", which were proposed for adoption by the Council. The Consultative Committee made the following recommendations:

"[...] reference to 'Examples of contracts / agreements between authorities and breeders' in section 3.1.2.2.2 of document TGP/4/1 Draft 10 should be replaced by 'Examples of policies and contracts for material submitted by the breeder' in accordance with the change of title to Section 11 in document TGP/5 'Experience and Cooperation in DUS Testing' agreed by the Administrative and Legal Committee (CAJ) at its fifty-sixth session on October 22 and 23, 2007;

"[…]

"In response to the comments made by some delegations concerning the need for editorial improvements, the Consultative Committee agreed that a circular be sent to the [Consultative] Committee, the Technical Committee (TC) and the CAJ providing an opportunity to comment within four weeks on documents TGP/4/1 Draft 10, [and] TGP/9/1 Draft 10 [...]. Based on the comments received, new drafts of those documents would be prepared for consideration by the Editorial Committee at its meeting on January 8, 2008. Relevant drafts incorporating the comments by the Editorial Committee would subsequently be presented to the TC, the CAJ, the [Consultative] Committee and the Council in April 2008."

8. In accordance with the recommendations of the Consultative Committee, Circular E-606 was issued, inviting comments on documents TGP/4/1 Draft 10 and TGP/9/1 Draft 10 to be sent to the Office of the Union.

TGP/4 "Constitution and Maintenance of Variety Collections"

- 9. The Office of the Union received comments from Ukraine on document TGP/4/1 Draft 10, in response to Circular E-606. The Office of the Union, in conjunction with the TC Chairman, Mr. Chris Barnaby (New Zealand), and the President of the Council, Mr. Doug Waterhouse (Australia), agreed that those comments could be considered by the TC-EDC without the preparation of a new draft of document TGP/4/1. The TC-EDC considered the comments received and agreed that those comments could be addressed by the TC at its forty-fourth session without the need for a new draft of document TGP/4/1. The recommendations made by the Consultative Committee and the comments by Ukraine, and the proposals of the TC-EDC in response to those comments, are provided in Annex I to this document. Those recommendations, comments and proposals will also be considered by the CAJ at its fifty-seventh session, to be held in Geneva on April 10, 2008. Subject to agreement by the TC and the CAJ, document TGP/4/1 will be put forward for adoption by the Council at its twenty-fifth extraordinary session, to be held in Geneva on April 11, 2008.
 - 10. The TC is invited to propose the adoption of document TGP/4/1 by the Council, on the basis of document TGP/4/1 Draft 10, as amended according to the proposals set out in Annex I to this document.

TGP/9 "Examining Distinctness"

11. The Office of the Union received no comments on document TGP/9/1 Draft 10 in response to Circular E-606 and, therefore, it has not been necessary to produce a new draft of that document for consideration by the TC. Document TGP/9/1 will be put forward for adoption by the Council at its twenty-fifth extraordinary session, to be held in Geneva on April 11, 2008.

12. The TC is invited to note that the Council will be invited to adopt document TGP/9/1 on the basis of document TGP/9/1 Draft 10.

(b) TGP documents to which the TC has given highest priority (TGP/10)³

TGP/10 "Examining Uniformity"

- 13. Document TGP/10/1 Draft 6 was considered by the TC at its forty-third session. Changes to the text agreed by the TC at its forty-third session were incorporated into subsequent drafts of those documents which were considered by the CAJ, the TWPs and the TC-EDC. Changes to the text agreed by the TC at its forty-third session, as a result of the considerations by the TWPs and the TC-EDC, have been highlighted in document TGP/10/1 Draft 9, to be considered by the TC at its forty-fourth session. The background information concerning those changes has been summarized in the form of endnotes. Those endnotes will be deleted from the adopted version of the document. By contrast, the footnotes which appear in the document are intended to remain in the adopted version of the document.
- 14. Document TGP/10/1 Draft 9 is to be considered by the TC at its forty-fourth session and by the CAJ at its fifty-seventh session, to be held in Geneva on April 10, 2008. The schedule for the development of TGP documents agreed by the TC at its forty-third session, indicates that document TGP/10/1 may be approved by the TC and by the CAJ at their sessions in 2008.
- 15. Any changes to the text of document TGP/10/1 Draft 9 proposed by the TC at its forty-fourth session will be reported to the CAJ for consideration at its fifty-seventh session. Subject to agreement of a common text by the TC and the CAJ, document TGP/10/1 will be put forward for adoption by the Council at its forty-second ordinary session, to be held in Geneva on October 30, 2008.

16. The TC is invited to consider document TGP/10/1 Draft 9 as the basis for adoption of document TGP/10/1 by the Council, as set out in paragraph 15.

(c) Revision of TGP documents

TGP/5 "Experience and Cooperation in DUS Testing"

17. At its forty-first session, the 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 previously and would benefit from updating. However, it recognized that those texts

At its thirty-ninth session (see document TC/39/16 "Report", paragraph 102), the TC confirmed that documents TGP/4, TGP/9 and TGP/10 should continue to receive the highest priority after the approval of document TGP/7.

represented the adopted UPOV position 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 Council, as appropriate.

- 18. Drafts of revised Sections 1, 2, 4, 5, 6 and 7 of document TGP/5 were considered by the TC at its forty-third session. Changes to the text agreed by the TC at its forty-third session were incorporated into subsequent drafts of those documents which were considered by the TWPs, the CAJ and the TC-EDC. Changes to the adopted text of Sections 1, 2, 4, 5, 6 and 7 of document TGP/5 have been highlighted in the draft documents to be considered by the TC at its forty-fourth session. Drafts of the proposed new Section "Introduction" and Section 11 "Examples of Policies and Contracts for Material Submitted by the Breeder" are to be considered by the TC at its forty-fourth session. Amendments proposed by the TC-EDC to the text of Section "Introduction" and Section 11, agreed by the CAJ, have been highlighted.
- 19. The following draft sections of document TGP/5 are to be considered by the TC at its forty-fourth session and by the CAJ at its fifty-seventh session, to be held in Geneva on April 10, 2008:

Introduction Draft 2: Introduction;

Section 1/2 Draft 5: Model Administrative Agreement for International

Cooperation in the Testing of Varieties;

Section 2/2 Draft 5: UPOV Model Form for the Application for

Plant Breeders' Rights;

Section 4/2 Draft 5: UPOV Model Form for the Designation of the Sample

of the Variety;

Section 5/2 Draft 5: UPOV Request for Examination Results and UPOV

Answer to the Request for Examination Results;

Section 6/2 Draft 5: UPOV Report on Technical Examination and UPOV

Variety Description;

Section 7/2 Draft 5: UPOV Interim Report on Technical Examination; and

Section 11/1 Draft 3: Examples of Policies and Contracts for Material

Submitted by the Breeder.

- 20. The schedule for the development of TGP documents agreed by the TC at its forty-third session indicates that those new and revised sections of document TGP/5 may be approved by the TC and by the CAJ at those sessions.
- 21. Any changes to the relevant sections of document TGP/5 proposed by the TC at its forty-fourth session will be reported to the CAJ for consideration at its fifty-seventh session. Subject to agreement of common texts by the TC and the CAJ, those new and revised sections of document TGP/5 will be put forward for adoption by the Council at its forty-second ordinary session, to be held in Geneva on October 30, 2008.

22. The TC is invited to consider the documents set out in paragraph 19, as the basis for adoption of the respective sections of document TGP/5, by the Council, as set out in paragraph 21.

TGP/7 "Development of Test Guidelines"

23. The following terms are used in relation to TGP/7 "Development of Test Guidelines" (see document TGP/7/1: Chapter 1.3):

ASW: Additional Standard Wording (ASW) for the TG Template

GN: Guidance Notes (GN) for the TG Template

- 24. At its forty-second session, the TC agreed that the revision of document TGP/7 should start in 2008, after document TGP/9/1 had been approved by the TC and in anticipation of document TGP/14 attaining a good level of agreement (see document TC/42/12 "Report", paragraph 105). The specific proposals which have already been made to the TC with regard to the revision of the text of TGP/7/1 are reproduced in Annex II to this document.
- 25. At its forty-third session, the TC agreed that it would be necessary, at its forty-fourth session, to consider the possible inclusion of the matters covered in Section 6 "Combining observations for all characteristics" of document TGP/10 in the revision of document TGP/7/1 (see document TC/43/12 "Report on the Conclusions", paragraph 25).
- 26. Since the forty-third session of the TC, the following new proposals have been put forward by the TWPs and the TC-EDC for consideration in the revision of document TGP/7:
 - (a) the Technical Working Party for Agricultural Crops (TWA), at its thirty-sixth session, held in Budapest, Hungary, from May 28 to June 1, 2007, agreed that it would be appropriate to have a general discussion regarding the inclusion of example varieties in Test Guidelines, in conjunction with the revision of document TGP/7/1 (see document TWA/36/10 "Report", paragraph 50);
 - (b) the Technical Working Party for Vegetables (TWV), at its forty-first session, held in Nairobi, Kenya, from June 11 to 15, 2007, agreed that it would be useful to consider developing a more detailed section within TGP/7 for guidance on the development of an authority's own guidelines in the absence of UPOV Test Guidelines and, in particular, to include the possibility of providing a list of experts willing to provide guidance in the development of such guidelines (see document TWV/41/13 "Report", paragraph 80). That proposal was supported by the Technical Working Party for Ornamental Plants and Forest Trees (TWO), at its fortieth session, held in Kunming, China, from July 2 to 6, 2007 (see document TWO/40/10 "Report", paragraph 81) and by the Technical Working Party for Fruit Crops (TWF), at its thirty-eighth session, held in Jeju, Republic of Korea, from July 9 to 13, 2007 (see document TWF/38/9 "Report", paragraph 39). The TC is invited to note that this matter will also be considered under agenda item 5 "Matters arising from the Technical Working Parties" (see document TC/44/3);
 - (c) at the fortieth session of the TWO, the Test Guidelines subgroup for Lily invited the TWO to consider the possibility of introducing a table of trade names associated

with the denominations of the example varieties, in conjunction with the revision of TGP/7/1 (see document TWO/40/10 "Report", paragraph 58);

(d) at its meeting on January 8, 2008, the TC-EDC proposed that the TC review the wording of ASW 9 (TG Template: Chapter 4.3.2) – Stability assessment: general):

"Where appropriate, or in cases of doubt, stability may be 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 material supplied.",

in particular, with a view to the possible deletion of ", either by growing a further generation, or". In that respect, the TC-EDC noted that the wording in ASW 9 was reproduced from the General Introduction, Chapter 7.3.1.2;

(e) at its meeting on January 8, 2008, the TC-EDC considered ASW 4(1.):

"ASW 4 (TG Template: Chapter 3.3) – Conditions for conducting the examination

"1. Fruit species

"In the case of Test Guidelines covering fruit species, the following sentence may be added after the first sentence of section 3.3:

"'In particular, it is essential that the [trees] / [plants] produce a satisfactory crop of fruit in each of the two growing cycles."

The TC-EDC proposed that ASW 4(1.) "Fruit species", and similar such explanations concerning satisfactory growing cycles, should be included in Chapter 3.1 of the Test Guidelines "Number of Growing Cycles". It noted that a consequential change would also need to be made to GN 9; and

(f) the TC may also wish to consider whether it would be useful to make reference in document TGP/7 to the "drafters kit", including the "Practical Guide for Drafters (Leading Experts) of UPOV Test Guidelines", posted on the first-restricted area of the UPOV website. The TC is invited to note that this matter will also be considered under agenda item 5 "Matters arising from the Technical Working Parties" (see document TC/44/3);

27. The TC is invited to:

- (a) note the proposals made with regard to the revision of document TGP/7/1, as set out in Annex II to this document; and
- (b) consider whether the proposals made in paragraphs 25 and 26 should be included for discussion in relation to the revision of document TGP/7/1.

(d) Other TGP documents

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

- 28. At its forty-third session, the TC considered document TGP/8/1 Draft 6. The TC did not discuss that document in detail, but agreed with the proposed structure and content of document TGP/8, as set out in document TC/43/5, Annex II, and agreed to the addition of a new section for multiple range tests in Part II: "Techniques used in DUS Examination", subject to models and assumptions being provided to the TWC for consideration.
- 29. Document TGP/8/1 Draft 7 was considered by the TWPs at their sessions in 2007 and document TGP/8/1 Draft 8 was considered by the TC-EDC at its meeting on January 8, 2008. The TC-EDC considered the note in document TGP/8/1 Draft 8, page 3, which explained that the Technical Working Party for Automation and Computer Programs (TWC) had agreed to invite the TWC Chairperson and the Office of the Union to edit the text in Part I in order to improve the structure and flow of the document, and noted that the structural editing would be made for document TGP/8/1 Draft 9, to be considered by the TC. On that basis, the TC-EDC concluded that it would not be useful to review document TGP/8/1 Draft 8 and, furthermore, given the volume of the document, agreed that it would not be an appropriate use of UPOV's resources to translate a draft of document TGP/8/1 into all UPOV languages until the document had been fully considered by the TWPs after the structural editing. However, it agreed that it would be useful for the proposed structure of document TGP/8 to be translated in order to facilitate consideration by the TC. That proposed structure is provided on the UPOV website in conjunction with document TGP/8/1 Draft 9.

30. The TC is invited to consider document TGP/8/1 Draft 9.

TGP/11 "Examining Stability"

- 31. The TC has not previously considered a draft of document TGP/11 "Examining Stability".
- 32. Document TGP/11/1 Draft 1 was considered by the TWV, at its fortieth session, in 2006. Document TGP/11/1 Draft 2 was considered by all the TWPs at their respective sessions in 2007. The comments made by the TWPs were incorporated into document TGP/11/1 Draft 3, which was considered by the TC-EDC at its meeting on January 8, 2008. The TC-EDC did not discuss the document in detail, but discussed the structure and content of the document on the basis of the comments made by the TWPs.
- 33. The TC-EDC discussed the following proposal made by the TWV (document TWV/41/13 "Report", paragraph 33):
 - "[...] The TWV further 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 Technical Committee and the Administrative and Legal Committee and agreed to await the views of those committees before starting work on such a document."

- 34. The TC-EDC 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 plant 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)
- 35. The TC is invited to note that this matter will also be considered under agenda item 5 "Matters arising from the Technical Working Parties" (see document TC/44/3).
- 36. With respect to examining stability, the TC-EDC discussed a request for consideration of the terms "growing a further generation" (General Introduction, Chapter 7.3.1.2; TGP/11/1 Draft 3, paragraph 2.2.2) and "repeated propagation" in Article 9 of the 1991 Act of the UPOV Convention. The TC-EDC expressed the view that, as a minimum, "repeated" propagation could be considered to be fulfilled by two propagations, i.e. by a single further propagation. Thus, the examination of stability did not necessarily require many propagations.
- 37. The TC is invited to note that the matter of "growing a further generation" in relation to the examination of stability is also proposed to be considered in the revision of document TGP/7/1 (see paragraph 26(d) of this document).
 - 38. The TC is invited to consider the title and content of TGP/11, as set out in paragraphs 34 and 36, and to comment on document TGP/11/1 Draft 4.

TGP/12 "Special Characteristics"

- 39. At its forty-first session, the TC considered TGP/12 Section 2/1 Draft 2 "Chemical Constituents: Protein Electrophoresis", but agreed that that section should not be approved at that time and should be brought forward for adoption in conjunction with the other sections of TGP/12.
- 40. At its forty-third session, the TC considered document TGP/12/1 Draft 1. The TC did not discuss that document in detail, but agreed to add a new subsection within Section I, 2 "Disease Resistance", corresponding to the explanation in Section I, 3 "Insect Resistance" (see Section 3.2.1 "Methods") explaining that UPOV had also considered the possibility of using gene specific molecular markers as a predictor of traditional characteristics.

41. Changes to document TGP/12/1 Draft 1, as a result of the considerations by the TWPs and the TC-EDC, have been highlighted in document TGP/12/1 Draft 4, to be considered by the TC at its forty-fourth session. The background information concerning those changes has been summarized in the form of endnotes. Those endnotes will be deleted from the adopted version of the document. By contrast, the footnotes which appear in the document are intended to remain in the adopted version of the document.

42. The TC is invited to consider document TGP12/1 Draft 4.

TGP/13 "Guidance for New Types and Species"

- 43. At its forty-third session, the TC considered document TGP/13/1 Draft 8. The TC did not consider that document in detail and made no proposals concerning the text.
- 44. Changes to document TGP/13/1 Draft 8, as a result of consideration by the TWPs and the TC-EDC, have been highlighted in document TGP/13/1 Draft 11, to be considered by the TC at its forty-fourth session. The background information concerning those changes has been summarized in the form of endnotes. Those endnotes will be deleted from the adopted version of the document. By contrast, the footnotes which appear in the document are intended to remain in the adopted version of the document.

45. The TC is invited to consider document TGP13/1 Draft 11.

TGP/14 "Glossary of Technical, Botanical and Statistical Terms Used in UPOV Documents"

- 46. At its forty-third session, the TC considered document TGP/14/1 Draft 2. The TC did not discuss that document in detail, but agreed with the proposed structure and content of document TGP/14, as set out in document TC/43/5, Annex III, and agreed to review the title of Section 1 if the content extended beyond technical terms, which was the case for the terms included in document TGP/14/1 Draft 2.
- 47. Changes to document TGP/14/1 Draft 2, as a result of the considerations by the TWPs and the TC-EDC, have been highlighted in document TGP/14/1 Draft 5, to be considered by the TC at its forty-fourth session. The background information concerning those changes has been summarized in the form of endnotes. Those endnotes will be deleted from the adopted versions of those documents. By contrast, the footnotes which appear in the documents are intended to remain in the adopted versions of those documents. In Section 1 "Technical Terms", all terms which have not been copied from previously agreed UPOV documents have been highlighted.
- 48. At its forty-first session, the TWV concluded that the results of the exercise on shape (see document TWV/41/10 Rev.) demonstrated that the observation of the individual components of shape (e.g. position of broadest part, length/width ratio, lateral outline) provided information which was more precise and consistent and which was more powerful for discriminating between varieties. However, the TWV noted that such components of shape might not be easily understood, particularly by applicants for characteristics included in the Technical Questionnaire, and agreed that it would be helpful to develop meaningful states: for example, "very elongated", rather than "very high" for length/width ratio. The TWV confirmed its view expressed at its fortieth session, that a characteristic describing the overall

shape, in addition to the individual components of shape, could be useful for variety description purposes and agreed that, in order to make such an overall shape characteristic as useful as possible, it would be worthwhile considering the inclusion of charts such as those in TGP/14/1 Draft 3, Section 2.2, Examples 4 and 5, in the explanation for such characteristics in Chapter 8 of the Test Guidelines. The TWV agreed that it might be helpful for other TWPs to see the results of the shape exercise, as presented in TWV/41/10 Rev., for their discussions on document TGP/14 and suggested that the Office of the Union might present those results to other interested TWPs. The TWV agreed that Section 2.2 of document TGP/14/1 Draft 3 should be reviewed accordingly. The TWO, at its fortieth session, and the TWF at its thirty-eighth session, agreed that the approach of the TWV represented a good balance between the need for precise and consistent observations and the need for shape to be presented in a practical way for the purposes of description. They agreed that that approach for shape should be used for drafting Test Guidelines for their 2008 sessions. The TC is invited to note that this matter is also reported under agenda item 5 "Matters arising from the Technical Working Parties" (see document TC/44/3).

- 49. The TWO noted that the discussions on draft Test Guidelines at its fortieth session had identified the following issues which needed to be resolved with regard to the development of document TGP/14/1 Draft 3: Section 2, Subsection 3(1) "Color characteristics":
 - (a) characteristics for "number of colors";
 - (b) strategies for sets of characteristics to describe color patterns;
 - (c) describing color patterns where those are in addition to the variegation in variegated varieties;
 - (d) the consideration of whether pigments, such as anthocyanin, should be considered as a color; and
 - (e) explanation of conspicuousness (e.g. whether it relates to color per se, color contrast, etc. and excludes the area covered by the color).
- 50. The TWO agreed that it would be difficult to make progress on those matters within the TWO session in a timely and effective way and agreed to propose to hold a separate meeting to discuss the development of TGP/14/1 Section 2, Subsection 3 "Color" on the Friday afternoon and Saturday morning immediately prior to the TWF or TWO session in 2008, whichever was the earliest. It suggested that an invitation to that meeting could be sent to all TC and TWP experts. In order to ensure that the meeting was as productive as possible, it was agreed that a new draft of TGP/14/1, seeking to address as far as possible the issues raised above, should be produced before that meeting and that, in addition, a comprehensive set of examples and photographs should be prepared for discussion in the meeting. The TWF, at its thirty-eighth session, supported the TWO proposal to hold a separate meeting to discuss the development of TGP/14/1 Section 2, Subsection 3 "Color".
- 51. At its thirty-sixth session, the TWA proposed to await the adoption of document TGP/8 before finalizing TGP/14, Section 3 "Statistical Terms", in order to ensure that all terms are covered. The TWO proposed that the adoption of TGP/14 should not be delayed by awaiting the adoption of TGP/8.
- 52. At its meeting on January 8, 2008, the TC-EDC observed that the content of TGP/14 would require further substantial discussion by the TWPs at their sessions in 2008. On that basis, and given the volume of the document, the TC-EDC agreed that it would not be an appropriate use of UPOV's resources to translate document TGP/14/1 Draft 5 into all UPOV languages. However, it agreed that it would be useful for the proposed structure of document

TGP/14 to be translated in order to facilitate consideration by the TC. That proposed structure is provided on the UPOV website in conjunction with document TGP/14/1 Draft 5.

53. The TC is invited to:

- (a) recommend to the TWPs, at their sessions in 2008, to consider the results of the shape exercise, as presented in TWV/41/10 Rev., in conjunction with their discussions on document TGP/14;
- (b) agree to the organization of a meeting to discuss the development of TGP/14/1 Section 2, Subsection 3 "Color" on May 30 and 31, 2008;
- (c) consider whether to await the adoption of document TGP/8 before finalizing TGP/14; and
 - (d) consider document TGP/14/1 Draft 5.

III. PROGRAM FOR THE DEVELOPMENT OF TGP DOCUMENTS

- 54. Annex III 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-third session and the discussions at the Consultative Committee, CAJ and TWP sessions in 2007.
 - 55. The TC is invited to consider the program for the development of TGP documents, as set out in Annex III to this document.

[Annexes follow]

ANNEX I

COMMENTS ON TGP/4 "CONSTITUTION AND MAINTENANCE OF VARIETY COLLECTIONS"

2.1.2.2 In some cases, the variety collector may collect and maintain living plant material of varieties in the variety collection. However, in other cases, for example, the variety collector may only obtain living plant material of varieties as and when those varieties need to be included in growing trials or other tests.

Comment (Ukraine): to add to "in some cases the collector can collect and maintain living plant material, but in other cases...may only obtain living plant material when required" that the collector can collect and maintain living plant material of self-pollinated and vegetatively propagated species.

TC-EDC proposal: to add the following sentence (copied from Section 3.1.2.1) at the end of Section 1.4 of the Introduction:

"For the purposes of this document, maintenance of living plant material refers to the way the living plant material is maintained in storage (e.g. seed) or under cultivation (e.g. vegetatively propagated varieties)."

2.2.1.5 In the case of hybrid varieties, the examination of distinctness may include examination of the components and the formula of the hybrid (see document TGP/9/1). If it is decided to use this approach in the examination of hybrids, the variety collection should include all varieties used as components (generally inbred lines) of all the hybrid varieties included in the variety collection, as well as varieties of common knowledge in the variety collection in their own right.

Comment (Ukraine): to make more detailed where it is set up that for the hybrid varieties "the examination of distinctness may include the examination of its components and formula of hybrid", and to indicate the specific conditions under which the examination of distinctness for hybrid varieties does not include the examination of the components and the formula of the hybrid, or we should change the word "may" with the word "must".

TC-EDC proposal: no change to existing text, on the basis that it is a matter for each authority to decide whether to include examination of the components and the formula of the hybrid.

2.2.2.1 The following should, in particular, be taken into account with regard to making an inventory of varieties of common knowledge for inclusion in the variety collection:

[...]

(iv) any list including varieties which are publicly available within plant collections (genetic resources, collection of old varieties, etc.);

[...].

Comment (Ukraine): to exclude "genetic resources" from subsection (iv), as this term is too broad in its meaning and includes categories that can not be considered to be category of variety (breeding form).

TC-EDC proposal: to amend 2.2.2.1 (iv) to read:

- (iv) any list including varieties which are publicly available within plant collections (varieties included in genetic resource collections, collection of old varieties, etc.);
- 3.1.2.2 Sources of living plant material
- 3.1.2.2.1 Some important potential sources of living plant material are as follows:
 - (i) Breeder / Maintainer / Applicant;
 - (ii) Variety collectors in other territories;
 - (iii) Authorities responsible for an official register (e.g. National List);
 - (iv) Market
 - (v) Plant collections

[...]

3.1.2.2.3 Variety collectors are important sources of verified living plant material. However, in some circumstances there may be limitations in respect to the amount of material available from such sources. In these situations, small quantities of material can, nevertheless, enable the requesting authority to verify material from other sources: e.g. to verify the identity of material obtained on the market, before its incorporation in the variety collection.

Comment (Ukraine): Regarding the Section 3.1.2.1 that indicates the sources of plant material for the establishment of variety collections, such source as market is mentioned. We consider that market may be used by the authority to establish the variety collection only in extremis. When using marketed varieties for the purposes of examination of distinctness, it is necessary to have proofs (documents, samples) of the identity of the trademark and the official sample that filed simultaneously with application and correspond to the variety.

TC-EDC proposal: no change to Section 3.1.2.2.1, on the basis that Section 3.1.2.3.1 states that "When new living plant material is introduced into the collection, it should, as appropriate, be verified that it conforms to the variety.". With respect to Section 3.1.2.2.3, the TC-EDC proposed the deletion of ": e.g. to verify the identity of material obtained on the market,".

3.1.2.2.2 [...] Examples of contracts / agreements between authorities and breeders are provided in document TGP/5 "Experience and Cooperation in DUS Testing" (document TGP/5).

Consultative Committee: reference to "Examples of contracts / agreements between authorities and breeders" should be replaced by "Examples of policies and contracts for material submitted by the breeder" in accordance with the change of title to Section 11 in document TGP/5 "Experience and Cooperation in DUS Testing" agreed by the Administrative and Legal Committee (CAJ) at its fifty-sixth session on October 22 and 23, 2007.

The TC-EDC noted that, at the time of its adoption, document TGP/4/1, Section 3.1.2.2.2, would be updated according to the title of document TGP/5, Section 11.

3.1.2.3 Verification

3.1.2.3.1 When new living plant material is introduced into the collection, it should, as appropriate, be verified that it conforms to the variety. Inadequate verification of the material of the varieties in the variety collection may lead to an incorrect conclusion on distinctness of candidate varieties, with negative consequences for the plant breeder's rights granted.

Comment (Ukraine): while assessing the identity of varieties, during the verification in case of repeated replanting of the varieties' reproductions, it should be taken into account that each further reproduction may somehow be distinct from the original variety (sample), due to the nature of hybridization, gene flow and morbid (virus) affections. Thus, not only new varieties, which are entering to the variety collection, should be assessed for the identity, but also variety material maintained in the variety collection for a long time.

TC-EDC proposal: no change to Section 3.1.2.3.1, on the basis that Section 3.1.2.5.3 states that "A routine procedure for verifying material before its introduction in the collection, whether of new varieties of common knowledge or renewal of material of varieties already included in the variety collection, should be established (see Section 3.1.2.3)."

[Annex II follows]

ANNEX II

PROPOSED REVISIONS TO TGP/7/1

Section 2: Procedure for the Introduction and Revision of UPOV Test Guidelines

2.2.4	consideration to be given to introducing deadlines for the submission of non-final draft Test Guidelines to the Technical Working Parties.
	(TWA: document TWA/34/14, paragraph 36)

New Section: Development of Individual Authority Test Guidelines from UPOV Test Guidelines

new section to be developed (see document TC/43/12 "Report on the Conclusions", paragraph 22)

Annex 1: TG Template

3.5 /	3.5 Number of Plants / Parts of Plants to be Examined
ASW 7	Paragraph 3.5 to be moved within Section 4.1 "Distinctness", to clarify that this section recommends the number of plants / parts of plants to be examined for distinctness. In addition, ASW 7 to be amended to the following:
	"ASW 7 (Chapter 3.5) – Number of plants / parts of plants to be examined
	Alternative 1:
	Unless otherwise indicated, all observations should be made on $\{x\}$ plants or parts taken from each of $\{x\}$ plants.
	Alternative 2:
	Unless otherwise indicated, all observations should be made on $\{x\}$ plants or parts taken from each of $\{x\}$ plants. In the case of observations of parts of plants, the number of parts to be taken from each of the plants should be $\{y\}$."
	(Mrs. Beate Rücker (Germany))

5.2,	to elaborate on the two uses of the grouping characteristics, i.e.
5.3	"(a) to select, either individually or in combination with other such characteristics, varieties of common knowledge that can be excluded from the growing trial used for examination of distinctness"; and "(b) to organize the growing trial so that similar varieties are grouped together". [underlining added for emphasis];
	and to consider indicating in Chapter 5.3 of the Test Guidelines for which of those purposes the grouping characteristics were intended;
	(see document TC/43/12 "Report on the Conclusions", paragraph 24(a))
6.3	Quantitative characteristics
	the Test Guidelines should explain the use of the 3, 5, 7 abbreviated notes in the 1-9 scale for quantitative characteristics.
	(TWV: document TWV/38/9, paragraph 57)

 $Annex\ 2:\ Additional\ Standard\ Wording\ (ASW)\ for\ the\ TG\ Template$

ASW 4: 2(b)	(TG Template: Chapter 3.3) – Conditions for conducting the examination: Information for conducting the examination of particular characteristics: Type of observation
	TGP/7 to be amended according to the wording agreed for TGP/9.
	(see document TC/43/12 "Report on the Conclusions", paragraph 24(c))
ASW 4: 2(d)	(TG Template: Chapter 3.3) – Conditions for conducting the examination: Observation of color by eye
	to add that the color chart and the version of the color chart used should be specified with the variety description (TWF: document TWF/35/11, paragraph 54)
ASW 8:	(TG Template: Chapter 4.2) – Uniformity assessment
(GN 11)	In relation to Section 6 "Combining observations for all characteristics" in document TGP/10, the TC agreed that it would be necessary to consider the possible inclusion of that matter in the revision of document TGP/7/1 at its next session, when the development of that section of document TGP/10 would be more advanced.
	(see document TC/43/12 "Report on the Conclusions", paragraph 25)
ASW 9	to be modified because it would not be appropriate to test stability by growing a further generation for cross-pollinated varieties. Also proposed that the text " to ensure that it exhibits the same characteristics as those shown by the previous material supplied." should be amended to read " to ensure that it exhibits the same characteristics as those shown by the initial material supplied." (see document TC/42/12 "Report", paragraph 103)

ASW 16	(TG Template: Chapter 10: TQ 7.3) – Where a photograph of the variety is to be provided
	to add text indicating that guidance would be provided by the authority to enhance the usefulness of the photograph (e.g. to include a metric scale in the picture, to define what parts of the plant should be included; light conditions, background color, etc)
	(see document TGP/9/1 "Examining Distinctness" Draft 6, Section 2.4.2)
New 1.	Chapter 1 of the Test Guidelines: Subject of these Test Guidelines
	to seek to develop Additional Standard Wording (ASW) for the following situations:
	(i) where there are separate Test Guidelines for different types of variety within the same genus/species (TWF: document TWF/35/11, paragraph 55);
	(ii) for Test Guidelines for rootstock varieties which do not include flower or fruit characteristics (TWA: document TWA/33/16, paragraph 31);
	(iii) for Test Guidelines covering hybrids with species / genera which are covered by other Test Guidelines (TWF: document TWF/35/11, paragraph 40).
New 2.	Chapter 3.1
	to provide a new Additional Standard Wording (ASW) for crops where the two independent growing cycles are recommended to be in the form of two separate plantings, e.g. "The two independent growing cycles should be in the form of two separate plantings".
	(TWA: see proposals concerning Test Guidelines for Ryegrass TG/4/8(proj.3))
New 3.	Chapter 8
	to provide a standard definition of time of eating maturity .
	(TWF: document TWF/35/11, paragraph 54).
New 4.	Chapter 8
	to consider the development of a simple, generalized growth stage key for use in Test Guidelines covering crops and species for which a suitable growth stage key had not been published
	(see document TC/43/12 "Report on the Conclusions", paragraph 24(b))

Annex 3: Guidance Notes (GN) for the TG Template

GN 11	see ASW 8 comments
GN 19 (3)	Numbers requirement for numbers lower than 10 to be written and higher numbers to be indicated numerically to be deleted (Office)

GN 20 (1)	Presentation of characteristics: States of expression according to type of expression of a characteristic									
	to clarify that adjectives such as moderately, medium, etc. (e.g. much smaller (1), moderately smaller (3), etc. / light green (1), medium green (2), etc.) should be used for pseudo-qualitative characteristics and for quantitative characteristics where there are one or more fixed states (Office in communication with Mrs. Elise Buitendag (South Africa), Coordinator of document TGP/7)									
GN 20	Quantitative characteristics: Explanation									
(3)	to explain that the notes for quantitative characteristics should be meaningful in relation to the range of variation of the characteristic and for the assessment of distinctness									
	(see TGP/9 "Examining Distinctness")									
GN 20	Quantitative characteristics									
(3)	to provide guidance on the use of a scale with more than 9 notes									
	(TWA: document TWA/33/16, paragraph 67).									
GN 20	3.5 "Condensed" range									
(3)	to consider accepting a 3-state range where there is no fixed point, e.g. weak/medium/strong, on the basis that the second state should read "intermediate"									
	(TC-EDC: January 2006)									
New	TG Template: Chapter 10: TQ 7 – TQ / Non-asterisked characteristics									
	With regard to Technical Questionnaire characteristics (e.g. some disease resistance characteristics) which do not have an asterisk in the Table of Characteristics (see document TC/43/5, paragraph 35) the TC agreed that where information on such characteristics was to be requested in the Technical Questionnaire, that information should be requested in Section 7 of the Technical Questionnaire (Additional information which may help in the examination of the variety), rather than in Section 5 (Characteristics of the variety to be indicated). In that respect, it noted that the information in Section 7 was provided at the discretion of the breeder/applicant.									
	(see document TC/43/12 "Report on the Conclusions", paragraph 23)									

Annex 4: Collection of Approved Characteristics

Introduction	to be clarified that characteristics contained in adopted UPOV Test Guidelines may be omitted from the "Collection of approved characteristics" (document TGP/7, Annex 4) where considered appropriate by the TC, on the basis of recommendations by the Enlarged Editorial Committee (TC-EDC)
	(TWA: document TWA/34/14, paragraph 15)
	to explain that the indication of the characteristic number, the method of observation, type of characteristic and the indications of (+) and (*) had been retained from the Table of Characteristics from which the characteristic had originated, but to clarify that that information might not be appropriate for other Test Guidelines
	(TWA: document TWA/34/14, paragraph 16)
	to explain to drafters of Test Guidelines that, for characteristics where any element of the characteristic is changed after copying from the collection, the translations into French, German and Spanish should be deleted
	(TWV: document TWV/38/9, paragraph 40)
Collection	examples of color characteristics developed in conjunction with TGP/14 Section 2.3: "Glossary of Technical, Botanical and Statistical Terms Used in UPOV Documents: Botanical Terms: Color" to be incorporated into TGP/7: Annex 4 "Collection of Approved Characteristics". (It was noted that that might require the organization of the TGP/7 to be modified to some extent.)
	(TWF: document TWA/36/8, paragraph 35)
	to consider incorporating characteristics which are used in most Test Guidelines (e.g. Leaf: length) into the electronic template. To consider developing electronic templates for variety types (e.g. seed-propagated vegetables) which would incorporate more standard characteristics for the varieties concerned
	(TWV: document TWV/38/9, paragraph 40)
	to consider including a collection of approved illustrations and to consider making that collection available to breeders to assist in their applications for PBR. (see also TGP/14 Section 2.1: Plant shapes)
	(TWO: document TWO/38/12, paragraph 60)
	to consider the development of tools such as CD-ROMs containing photographs to enhance the understanding of the characteristics used in the Test Guidelines and thereby reduce observer error
	(TWA: document TWA/34/14, paragraph 54)

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New Types of Characteristics (Coordinator: Office)	Glossary of Technical, Botanical and Statistical Terms Used in UPOV Documents (Coordinator: Office)	Guidance for New Types and Species (Coordinator: Mr. Kwakkenbos (QZ))	Special Characteristics (Coordinator: Office)	Examining Stability (Coordinator: Office)	Examining Uniformity (Coordinator: Office)	Examining Distinctness (Coordinator: Office)	Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability (Coordinator: Office / TWC Chairperson)	Development of Test Guidelines	Arrangements for DUS Testing	by the Breeder	Section 10: Notification of Additional Characteristics	Section 9: List of Species in Which Practical Knowledge has Been Section 9 Acquired or For Which National Test Guidelines Have Been EstablishedAdopted	Section 8: Cooperation in Examination	Section 7: UPOV Interim Report on Technical Examination	Section 6: UPOV Report on Technical Examination and UPOV Variety Description			Section 3: Technical Questionnaire to be Completed in Connection with an Application for Plant Breeders' Rights	Section 2: UPOV Model Form for the Application for Plant Breeders Rights	Section 1: Model Administrative Agreement for Internationa Cooperation in the Testing of Varietie:	Experience and Cooperation in DUS Testing	Constitution and Maintenance of Variety Collections	Varieties of Common Knowledge	List of Test Guidelines Adopted by UPOV	General Introduction with Explanations	List of TGP Documents and Latest Issue Dates	Tide of document	
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