



TGP/5: Section 1/2 Draft 5

ORIGINAL: English

DATE: January 10, 2008

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

DRAFT

Associated Document
to the
General Introduction to the Examination
of Distinctness, Uniformity and Stability and the
Development of Harmonized Descriptions of New Varieties of Plants (document TG/1/3)

DOCUMENT TGP/5

“EXPERIENCE AND COOPERATION IN DUS TESTING”

Section 1:

Model Administrative Agreement

for International Cooperation in the Testing of Varieties

~~as adopted by the Council on October 29, 1993
reproduced from document C/27/15, Annex III~~

Document prepared by the Office of the Union

to be considered by the

*Technical Committee at its forty-fourth session,
to be held in Geneva, from April 7 to 9, 2008*

*Administrative and Legal Committee at its fifty-seventh session,
to be held in Geneva, on April 10, 2008*

Note for Draft version

Strikethrough indicates deletion from the currently adopted text, proposed by the Administrative and Legal Committee (CAJ) on the basis of all comments made by the Technical Committee (TC), Technical Working Parties (TWPs) and CAJ in 2007

Underlining indicates insertion to the currently adopted version, proposed by the CAJ on the basis of all comments made by the TC, TWPs and CAJ in 2007

~~C/27/5~~

~~ANNEX III~~

MODEL ADMINISTRATIVE AGREEMENT FOR INTERNATIONAL
COOPERATION IN THE TESTING OF VARIETIES

- CONSCIOUS of the importance attaching to cooperation between the members of the International Union for the Protection of New Varieties of Plants (UPOV) in the examination of the distinctness, uniformity and stability ~~(DUS)~~ of the varieties that are the subject of an application for a breeder's right, as a means of optimizing the functioning of their plant variety protection systems,

~~CONSIDERING that cooperation may take various forms depending on the special biological, technical and economic features of each botanical taxon,~~

~~CONVINCED that the centralization of the examination and the standardization of the technical procedures brought about by other forms of cooperation have a beneficial effect on international trade in the field of plant varieties and seeds,~~

~~CONSIDERING that, where the centralization of the examination has not been achieved, it may be desirable that the examination of the distinctness, uniformity and stability of a variety being the subject of an application in more than one State be undertaken once only,~~

- CONSIDERING that this Agreement must be conceived in such a way that it may also serve as the basis for cooperation in areas related to the protection of new plant varieties, in particular in the administration of the lists of varieties admitted to trade,
- CONSIDERING that the parties are also desirous to conclude comparable agreements with other members of the Union, and that it is therefore necessary to base ~~this Agreement on the~~ those agreements on this Model Administrative Agreement for International Cooperation in the Testing of Varieties ~~(Model Administrative Agreement) drawn up by UPOV and adopted by its Council at the twenty-seventh ordinary session, on October 29, 1993,~~
- CONSIDERING that any agreement in this field must necessarily be reviewed, evaluated and adjusted periodically,

Party A

and

Party B

have agreed as follows:

Article 1

(1) Authority A shall provide the following services to Authority B at the latter's request, in respect of the varieties which are the subject of an application for a breeder's right filed with Authority B in accordance with the International Convention for the Protection of New Varieties of Plants [1], or for entry in ~~the national list of varieties admitted to trade [.....]~~ (to be completed by the Authority as appropriate)¹]:

(i) for the genera and species whose list is given in Annex A.1, it shall undertake the examination for distinctness, uniformity and stability of the variety concerned;

(ii) for the genera and species whose list is given in Annex A.2 [or A.2/B.2], it shall undertake the part of the examination specified in the said Annex;

(iii) for the genera and species whose list is given in Annex A.3, it shall supervise the examination of the variety, where such examination is undertaken on its territory by the applicant², or by a third party on his behalf, and evaluate the results thereof.

(iv) for the genera and species whose list is given in Annex A.4 [or A.4/B.4], it shall supply the results of the examination or supervision which it has undertaken or agreed to undertake on the basis of a prior application;

(2) Authority B shall, under the same conditions, provide the aforementioned services to Authority A, for the genera and species whose list is given in Annexes B.1, B.2 [or A.2/B.2], B.3 and B.4 [or A.4/B.4], respectively.

(3) The authorities may agree, on an *ad hoc* basis, to apply this Agreement to a variety from a genus or species not listed in the relevant Annex.

(4) For the purposes of this Agreement:

(i) "Executing Authority" means the Authority which provides one of the services specified in subparagraphs (i) to (iv) of paragraph (1) or the corresponding services in paragraph 2, above;

(ii) "Receiving Authority" means the Authority to which one of the aforementioned services is provided.

¹ If appropriate, to insert the relevant term to cover an official register, for example, of varieties admitted to trade (e.g. National List, Official Catalogue etc.).

² The "applicant" should be the "breeder" according to the definition of "breeder" in Article 1(iv) of the 1991 Act of the UPOV Convention which is:

"- the person who bred, or discovered and developed, a variety,
- the person who is the employer of the aforementioned person or who has commissioned the latter's work, where the laws of the relevant Contracting Party so provide, or
- the successor in title of the first or second aforementioned person, as the case may be".

Article 2

Where the Council of UPOV has adopted ~~Guidelines for the conduct of the testing of a species subject to~~ Guidelines for the Conduct of Tests for Distinctness, Uniformity and Stability (“Test Guidelines”) for a genus or species covered by this Agreement, the examination shall be conducted according to those Test Guidelines. In the absence of such Test Guidelines the Authorities shall adopt the testing methods by mutual consent before this Agreement is applied to the genus or species in question.

Article 3

(1) For each variety the Executing Authority shall submit to the Receiving Authority, as the case may be:

- (i) the reports relating to each testing period and a final examination report;
- (ii) the reports relating to the part of the examination entrusted to it;
- (iii) the reports relating to the supervision of the examination undertaken by the applicant, or by a third party on his behalf, and to the evaluation of the results thereof, and a final examination report.

(2) The final examination report shall detail the results of the examination concerning the characteristics of the variety and shall state the opinion of the Executing Authority on the distinctness, uniformity and stability of the variety. When those requirements are considered to be fulfilled or when the Receiving Authority asks for it, a description of the variety shall be added to the report.

(3) Reports and descriptions shall be written in [.....] (language).

(4) Any emerging problems shall be notified immediately to the Receiving Authority.

(5) With respect to the distinctness, uniformity and stability criteria, the Receiving Authority shall decide on the application, in principle, on the basis of the final examination report, or with due regard being given to the partial reports of the Executing Authority. Where exceptional circumstances require it, the Receiving Authority may carry out supplementary tests and trials. If it chooses to do so, it shall inform the Executing Authority thereof.

Article 4

(1) The Authorities shall take all necessary steps to safeguard the rights of the applicant.

(2) Except with the specific authorization of the Receiving Authority and the applicant, the Executing Authority shall refrain from passing on to a third person any material of the varieties for which testing has been requested.

- (3) Access to the documents and the test plots shall be given only to:
- (i) the Receiving Authority, the applicant and any duly authorized person;
 - (ii) the necessary staff of the institution that carries out the testing and special experts called in who are bound to secrecy in public service. Those special experts shall have access to the formulae of hybrid varieties only if it is strictly necessary and if the applicant does not object.

This paragraph does not exclude general access to test plots by visitors, provided due regard is had to paragraph (1) above.

- (4) If another authority is a Receiving Authority under a similar agreement, access may be granted in accordance with the rules applicable under that agreement.

Article 5

Where, in the case of a service specified in Article 1(1)(iv) above, the prior application is rejected or withdrawn, the Authorities may agree on the continuation of the examination or supervision on behalf of the Receiving Authority.

Article 6

Practical details arising out of this Agreement--regarding in particular the provisions relating to the considerations, application forms, technical questionnaires and requirements as to propagating material, testing methods, exchange of reference samples, maintenance of reference collections and the presentation of the results--shall be specified in this Agreement or settled between the Authorities by correspondence.

Article 7

- (1) The Receiving Authority shall pay to the Executing Authority the consideration agreed upon under Article 6.

(2) (i) In the case of a service specified in Article 1(1)(iv) above, an administrative consideration equivalent to 350 Swiss Francs or of an amount agreed upon by correspondence between the Authorities shall be charged.

(ii) Where the prior application has been rejected or withdrawn and where, pursuant to Article 5 above, the Authorities have agreed on the continuation of the examination or supervision on behalf of the Receiving Authority, the amount payable shall be equal to the additional cost resulting from the continuation of the examination or supervision.

- (3) Payments shall be effected within three months of receipt of an invoice specifying their amount.

Article 8

Each Authority shall make available any information, facilities or services of experts that the other Authority may need additionally, on condition that the latter undertakes to pay the costs involved.

Article 9

(1) This Agreement shall enter into force on [.....] (date) [and shall replace the Agreement of [.....] (date) on cooperation in the examination of plant varieties].

(2) This Agreement and its Annexes may be amended by mutual agreement.

(3) Any party wishing to revoke this Agreement in whole or in part shall give the other party notice to that effect.

(4) Unless the parties agree otherwise, any such revocation shall take effect only after observance of two years' notice, completion of pending tests and transmittal of the relevant reports.

Article 10

If an Authority receives an application for a plant breeder's right for which another Authority will be requested to examine the variety, the applicant should be informed in advance.

[End of Section 1]