



TC/45/11

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

TECHNICAL COMMITTEE

Forty-Fifth Session
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COMBINATIONS OF LINES OR VARIETIES

Document prepared by the Office of the Union

1. At its forty-third session, held in Geneva, from March 26 to 28, 2007, the Technical Committee (TC) considered document TC/43/11 "Applications Covering a Number of Lines". The TC agreed that examples of specific cases concerning a single application for a plant breeder's right for a combination of different lines should be raised with the relevant Technical Working Party (TWP), where appropriate in relation to the relevant Test Guidelines. Given the importance of the matter, which related to the definition of variety in the 1991 Act of the UPOV Convention, the TC agreed that it should be clarified that the TWPs should investigate the specific cases from a technical perspective in order to facilitate consideration of the principles by the TC and the Administrative and Legal Committee (CAJ).
2. In accordance with the request of the TC, the Office of the Union (Office) issued a circular to the TC and Technical Working Parties (TWPs) (Circular E-473, April 12, 2007), inviting examples of specific cases concerning a single application for a plant breeder's right for a combination of different lines. Whilst it had been agreed that the specific cases should be discussed by the relevant TWP, it was agreed by the Chairpersons of the TC and TWPs, that all the cases should be circulated to all the TWPs and the conclusions of the relevant TWPs reported to other TWPs for information.
3. The examples of specific cases considered by the TWPs at their sessions in 2007 were presented in the annex to document TC/44/11, which was considered by the TC at its forty-fourth session, held in Geneva from April 7 to 9, 2008. Document TC/44/11 explained that the conclusions of the TWPs were reflected in the proposals concerning

document TGP/10/1 Draft 9, Section 1.2 (Introduction) and Section 2.4 “Segregating characteristics”.

4. At its forty-fourth session, the TC considered document TC/44/11 in conjunction with document TGP/10/1 Draft 9 (see document TC/44/13 “Report”, paragraphs 126 to 131).

5. In conclusion, with regard to applications covering a combination of lines, as considered in document TC/44/11, the TC noted the discussions in the TWPs and noted that the conclusions of the TWPs were reflected in the proposals concerning document TGP/10/1 Draft 9, Section 1.2 (Introduction) and Section 2.4 “Segregating characteristics”. It agreed that further specific examples might be put forward for consideration by the TWPs at their sessions in 2008, and subsequently by the TC at its forty-fifth session. However, it agreed that the title of any future agenda item and document should be “Combination of lines or varieties”.

6. At its thirty-seventh session, held in Nelspruit, South Africa, from July 14 to 18, 2008, the Technical Working Party for Agricultural Crops (TWA) considered documents TWA/37/7 and TWA/37/7 Add., concerning “Castillo coffee variety” and received a presentation by Mr. Rodolfo Caicedo (Colombia), based on document TWA/37/7 Add. A copy of document TWA/37/7 Add. is posted on the TC/45 webpage for information.

7. With regard to document TWA/37/7 Add., the TWA noted that, if the 35 lines of which Castillo was composed were phenotypically identical except for disease resistance, and if disease resistance was not a routine DUS characteristic for the authority concerned, it would be a matter for the authority to decide whether disease resistance should be considered to be a relevant characteristic. In particular, it was noted that TGP/10 Draft 9, paragraph 1.2 stated that “[...] it is a matter for the authority to decide, in addition to those characteristics included in the UPOV Test Guidelines or national guidelines, which other characteristics it may include in its consideration of distinctness, which must also be considered for uniformity and stability.”. It was further noted that, unless the breeder notified the authority of differences in disease resistance for the lines, the authority might not be aware of those differences and would not examine that characteristic for DUS.

8. However, it was noted that if the 35 lines of which Castillo was composed had differences for the characteristics routinely examined for DUS by the authority concerned, then Castillo would not be considered to be uniform. A number of experts questioned whether it was likely that the 35 lines would be morphologically identical according to the breeding scheme presented in document TWA/37/7 Add. It was noted that, in such a case, protection for Castillo could be obtained by protection of individual lines. Mr. Caicedo explained that the cost of obtaining protection of the individual lines was a reason why the breeder was seeking a single title of protection for Castillo. The TWA agreed that such a plant grouping might not satisfy the definition of variety in the 1991 Act of the UPOV Convention. It also noted that “Castillo” was protected by a trademark.

9. The TC is invited to note the discussions that took place in the TWA, as set out in paragraphs 6 to 8.

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