



TC-EDC/Jan09/2

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**INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS**  
GENEVA

**ENLARGED EDITORIAL COMMITTEE**

**Geneva, January 8, 2009**

TGP DOCUMENTS

*prepared by the Office of the Union*

1. The purpose of this document to provide background information to certain aspects of the TGP documents according to discussions at the sessions of the Technical Working Party (TWP) and the Administrative and Legal Committee (CAJ) held in 2008.

*I. NEW TGP DOCUMENTS*

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

*Examination of characteristics using image analysis*

2. The Technical Working Party for Agricultural Crops (TWA) proposed to remove Section III: “Examination of characteristics using image analysis” from TGP/12 and include in document TGP/8, on the basis that it does not concern characteristics, but methods of examining characteristics. The TWC agreed with that proposal.

3. On the basis of the above considerations, Section III: “Examination of characteristics using image analysis” has been removed from document TGP/12 and incorporated in “Part II: Techniques Used in DUS Examination” of document TGP/8 “Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability”.

TGP/11 “Examination of Stability”

4. At its fifty-eighth session, held in Geneva on October 27 and 28, 2008, the CAJ considered document TGP/11/1 Draft 5 “Examining Stability”, in conjunction with document CAJ/58/2.

5. The CAJ agreed that document TGP/11 should consider only the examination of stability in the context of the DUS examination and that a separate document should be developed to provide guidance on matters concerning distinctness, uniformity, stability and novelty which are brought to the attention of an authority after the grant of a breeder’s right. On that basis, and given that there were no comments on the text of document TGP/11/1 Draft 5 by the TWP’s or CAJ, a new draft of document TGP/11 has not been prepared for the TC-EDC.

6. The TWF, TWO, TWV and TWA agreed that the Additional Standard Wording (ASW 9) in TGP/7/1 “Development of Test Guidelines” should be modified and noted that the change would need to be reflected in document TGP/11 (see document TGP/7/2 Draft 1).

TGP/12 “Special Characteristics”*(a) Disease resistance: nomenclature*

7. The Technical Working Party for Vegetables (TWV) received the following proposal from Mr. Kees van Ettehoven (Netherlands):

“In TGP/12, the principles on the use of disease resistance characteristics are given. Besides these principles there are other elements to consider when mentioning disease characteristics in UPOV guidelines:

“1. The nomenclature of the pathogens

“As in the plant kingdom, also in the field of pathogens the denomination of the subject is important in order to correctly identify the various diseases. As in the plant kingdom the names of pathogens sometimes change as a consequence of improved insight in the pathogen and its relation with other pathogens. The use of the proper name is therefore important. In principle, the UPOV Test Guidelines should follow the latest valid taxonomic views. This principle has two disadvantages: the UPOV Test Guidelines are not revised annually and in practice the users of the pathogen names may be familiar with the old name and not yet with the new name. In the ISF disease resistance coding working group, faced with the same problem, the following solution was introduced: a new denomination is given in brackets behind the old name with the prefix ‘new’ for a period of 5 years. After 5 years, the situation is reversed: the new name is given with behind it in brackets the old name with the prefix ‘old’ for a further period of 5 years. After the latter period of five years, only the new name is given. It is proposed to follow the same principles in the UPOV Test Guidelines in order to avoid confusion and have maximum clarity.

”

“2. The use of abbreviations

“In practice, the scientific binomial for the pathogens is often replaced by a code. In the ISF disease resistance coding working group a system of codes was introduced to ensure uniformity in the use of these codes. The codes are logically derived from the names of the pathogens and can also be found on the ISF website: [www.worldseed.org](http://www.worldseed.org). It is proposed to introduce the disease codes in the UPOV guidelines

“3. The nomenclature of races and strains

“As with the names and codes of the diseases, also the correct naming of the races and strains needs to be observed to avoid confusion. It is proposed to implement the race nomenclature developed by ISF in the UPOV Test Guidelines.”

8. The TWV agreed that the proposal from Mr. van Ettehoven represented an appropriate means of managing the naming of disease resistances. It agreed that that approach should be incorporated in document TGP/12 “Special Characteristics” or TGP/7 “Development of Test Guidelines”, and agreed that a decision on which should be postponed until its forty-third session. In the meantime, the TWV agreed that this development should not delay the adoption of TGP/12, because TGP/12 could be revised at a future date if necessary. The TWV agreed that, for its forty-third session, Mr. van Ettehoven should prepare draft guidance for inclusion in document TGP/12 or TGP/7 on the basis of his proposal, set out above, subject to the following:

- (i) to include the names of the relevant pathogen naming organizations on which the names would be based;
- (ii) to include an explanation that the old and new name should be kept with the appropriate code, e.g. *Oidium lycopersicum* (Ol) (now *Oidium neolycopersici* (On)); and
- (iii) to explain that it would not be necessary to revise Test Guidelines in order to reflect changes in pathogen names.

9. On the basis of the conclusions of the TWV, the above proposal for naming disease resistance has not been included in document TGP/12/1 Draft 6 and would not be included in document TGP/12/1 Draft 7, to be considered by the Technical Committee at its forty-fifth session, to be held in Geneva from March 30 to April 1, 2009. The Technical Committee would be invited to consider whether the proposal for naming disease resistance should be incorporated in document TGP/12/1 “Special Characteristics”, a future revision of document TGP/12, or in the revision of document TGP/7 “Development of Test Guidelines”.

(b) *Examination of characteristics using image analysis*

- see paragraphs 2 and 3 of this document concerning TGP/8 “Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability”,

TGP/13 “Guidance for New Types and Species”*Section 2.4 “Testing distinctness”*

10. The TWF noted the explanation in paragraph 2.4.2 of document TGP/13/1 Draft 12 and discussed the need to consider practical issues of access to wild populations in order to determine if they might constitute varieties of common knowledge. It also discussed the issue of how to determine the boundary of populations. It was agreed that it could be helpful to encourage breeders to provide parent material or representative plants of the original population to assist in the DUS examination of new varieties. The TWF agreed that it would not be possible to provide detailed guidance on those matters in document TGP/13, but concluded that it would be of assistance to hear reports from experts on their particular experiences with new types and species. On that basis, the TWF agreed to add an item for such presentations at its fortieth session in 2009 and invited experts to prepare such reports. It also agreed that breeders might be invited to explain developments with regard to new types and species. The TWO agreed to add an item for reports from experts on their particular experiences with new types and species at its forty-second session in 2009 and invited experts to prepare such reports. It also agreed that breeders might be invited to explain developments with regard to new types and species.

11. With regard to document TGP/13/1 Draft 12, Section 2.4.2 (i) and (ii), the Technical Working Party for Agricultural Crops (TWA) proposed that the views of the TC and CAJ should be sought concerning those explanations and the implication that a single plant selected from a population could be developed into a variety and protected without further crossing.

12. The CAJ agreed that the explanations in Section 2.4.2 (i) and (ii) of document TGP/13/1 Draft 12 should be retained unchanged. In that respect, reference was made to the document “The Notion of Breeder and Common Knowledge in the Plant Variety Protection System based upon the UPOV Convention” ([http://www.upov.int/export/sites/upov/en/about/pdf/c\\_extr\\_19\\_2\\_rev.pdf](http://www.upov.int/export/sites/upov/en/about/pdf/c_extr_19_2_rev.pdf)), adopted by the Council of UPOV at its nineteenth extraordinary session on April 19, 2002, which includes the following explanation:

“The Text of the 1991 Act

“16. When the Convention was revised in 1991, notwithstanding the fact that the making of selections within pre-existing variation was regarded as a standard activity for plant breeders, it was thought to be useful to include a definition of breeder in order to emphasize the fact that the UPOV Convention also provided protection for varieties that had been ‘discovered.’ At the Diplomatic Conference, delegates were conscious that discoveries were an important source of variety improvement but they also recognized that, in practice, a discovery must be evaluated and propagated before it can be exploited. This is the reason why the 1991 Act retained, in Article 1(iv), the notion of breeder as including the person who bred, or discovered and developed, a variety. The reference to the ‘origin,’ artificial or natural of the initial variation from which the variety has resulted in Article 6(1)(a) of the 1978 Act no longer appears. In the 1991 Act, ‘discovery’ describes the activity of ‘selection within natural variation’ while ‘development’ describes the process of ‘propagation and evaluation.’

“17. It has been suggested that the criterion of ‘development’ is only satisfied if the discovered plant itself is subsequently changed in some way and that the propagation of the plant unchanged would not constitute ‘development.’ This approach would require

the discovered plant to be propagated sexually and for a selection to be made in the progeny in order to demonstrate development. It is suggested that this approach cannot be correct since selection in the progeny would constitute 'breeding.' This approach would also deny protection to most mutations, since the mutation is usually propagated unchanged.”

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

13. The TWC invited further comments on document TGP/14/1 Draft 6: Section 3: Statistical Terms, to be sent to the Office of the Union by October 31, 2008. It was agreed that a new draft of that section, based on the changes agreed at the meeting and comments received by October 31, 2008, would be circulated for comment by the end of November 2008, with an invitation for comments to be received by December 31, 2008. However, no comments were received by October 31, 2008. Therefore, a new draft of Section 3 has been incorporated in document TGP/14/1 Draft 7 on the basis of the changes agreed at the TWC session. The TWC has been invited to comment on that new draft and their comments will be presented at the meeting of the TC-EDC.

*II. REVISION OF TGP DOCUMENTS*

TGP/7 “Development of Test Guidelines”

14. The revisions proposed to document TGP/7/1, on the basis of the comments made by the TWPs and the CAJ at their sessions in 2008, are incorporated in document TGP/7/2 Draft 1. The comments made by the TWPs and CAJ are presented in the form of endnotes.

15. On the basis of the comments made by the TWPs and CAJ, the following matters, which the TC had previously agreed should be considered in the revision of document TGP/7/1, have not been pursued:

GN 20	<p><i>(to consider whether the revision of Test Guidelines might not fully follow the guidance on the presentation of characteristics in document TGP/7 if that would involve substantial revision of databases of variety descriptions, which would not otherwise be necessary.)</i></p> <p>The TWF, TWO, TWV and TWA agreed that the need for a substantial revision of databases of variety descriptions should not be an automatic reason not to follow the guidance in document TGP/7 and agreed that the situation needed to be considered on a case-by-case basis.</p>
GN 29	<p><i>(to consider the possibility of introducing a table of trade names associated with the denominations of the example varieties)</i></p> <p>The TWF agreed in principle, but emphasized the need to explain the risks and the need to distinguish between trade names and trademarks.</p> <p>The TWO noted that trade names might not be registered (e.g. might or might not be trademarks) and noted, in particular, that trade names are not exclusively linked to a single variety. On that basis, it agreed that it would not be appropriate to seek to develop table of trade names in Test Guidelines.</p>

16. The following comments concern document TGP/7, Annex 4 “Collection of Approved Characteristics”. The “Collection of Approved Characteristics” is provided on the website (see [http://www.upov.int/restrict/en/index\\_drafters\\_kit.htm](http://www.upov.int/restrict/en/index_drafters_kit.htm)) and a reference to that website is made in document TGP/7.

17. The following aspects concerning the “Collection of Approved Characteristics” will be addressed in parallel with the revision of document TGP/7/1. Where considered appropriate, an amendment would be made to document TGP/7/1, Annex 4, paragraphs 1 and 2.

<i>Annex 4: Collection of Approved Characteristics</i>	
Introduction	<p><i>(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))</i></p> <p>The TWF and TWO agreed. The TWV observed that that approach was not the most elegant means of addressing problematic characteristics</p> <p><i>(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)</i></p> <p><i>(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 )</i></p> <p>The TWF, TWO and TWV agreed.</p>
Collection	<p><i>(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.))</i></p> <p><i>(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)</i></p> <p>The TWV agreed that experience had demonstrated that such an approach would not be appropriate.</p> <p><i>(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))</i></p> <p><i>(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)</i></p>

	The TWF, TWO and TWV (except where indicated) agreed with the proposals above.
	The TWA noted that the Office of the Union planned to develop an improved TG Template and to integrate the Collection of Approved Characteristics into that template in a user-friendly package for drafters of Test Guidelines.

18. The following matters, which arose from discussions on the revision of document TGP/7/1, were also raised by the TWPs and/or CAJ:

(i) *Revision of TGP/5 “Experience and Cooperation in DUS Testing”:  
Section 10 Notification of Additional Characteristics*

19. The TWO proposed to include guidance on modifying the states of expression of characteristics in the Table of Characteristics, including asterisked characteristics. It is proposed that such changes might be notified to UPOV by means of document TGP/5 “Experience and Cooperation in DUS Testing”: Section 10 Notification of Additional Characteristics. Such an approach would require a corresponding revision of document TGP/5: Section 10/1.

(ii) *Disease resistance: nomenclature*

see comments on TGP/12 “Special Characteristics”, (a) *Disease resistance: nomenclature*

*[End of document]*