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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

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/4

“MANAGEMENT OF VARIETY COLLECTIONS”

Section TGP/4.1: General Guidance for the Management of Variety Collections

Document prepared by an expert from France

to be considered by the

*Technical Working Party for Vegetables (TWV), at its thirty-sixth session to be held in
Tsukuba, Japan, from September 9 to 13, 2002*

*Technical Working Party for Agricultural Crops (TWA), at its thirty-first session to be held in
Rio de Janeiro, Brazil, from September 23 to 27, 2002*

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*Technical Working Party for Fruit Crops (TWF), at its thirty-third session to be held in
San Carlos de Bariloche, Argentina, from November 25 to 29, 2002*

SECTION 4.1

GENERAL GUIDANCE FOR THE MANAGEMENT OF VARIETY COLLECTIONS

1. **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), hereinafter referred to as “the General Introduction”, lists the main aspects which must be considered to establish the list of varieties of common knowledge for a given species (document TG/1/3, section 5.2.2).**

2. Although the interpretation in the General Introduction is not exhaustive, taking into account that these aspects have to be considered on a worldwide basis, it is clear that the list of varieties of common knowledge for a given species includes a very large number of entries.

3. In addition, even if each aspect seems to be clear enough, their interpretation by each member of the Union could be different depending on their national legislation, the interpretation of the term “commercialization” and the legal statement on genetic resources.

4. With regard to the varieties which are the subject of an application for protection or national listing (document TG/1/3, section 5.2.2.1(b)), the establishment of a list of such varieties at any given time is more or less impossible, due to the permanent evolution of this list and the difficulty in obtaining a clear identification of each candidate variety.

5. Besides the difficulties mentioned above, the introduction of such large lists of varieties in the technical examination for distinctness of new varieties would generate an unacceptable practical and financial burden for the examination authorities.

6. **Working within the definition of varieties of common knowledge as stated in the General Introduction, it is necessary to provide a practical basis on which the examination offices can establish variety collections for the conduct of the distinctness test.**

7. In other words, the aim is to define a set of criteria to be considered in a given country, or region of the world, to establish a list of varieties of common knowledge against which the examination authority should check for distinctness of the candidate varieties.

8. These criteria must be defined in a way which limits, as far as possible, the risk of declaring a variety to be distinct just because that variety, which is already of common knowledge, is missing from the collection.

9. **To establish a variety collection for a given species, the examination authority of a member State should consider:**

(a) **at the level of the member of the Union:**

(i) the list of protected varieties and the official register of varieties. The variety collection must include all the varieties in these lists and those which have been listed previously;

(ii) any commercial document in which varieties are offered for marketing in its territory as propagating or harvestable material, especially when there is no official registration system;

(iii) the list of varieties which are the subject of an application for protection or official registration;

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

In the case of a supra-national organization (e.g. European Union), the same criteria must be considered, but depending on the climatic conditions where the examination authority is located, the variety collection might be limited, by taking into account some physiological traits of the varieties (earliness, day length susceptibility, frost resistance, etc.).

(b) At the level of other countries

(i) as already underlined above, in the case of a supra-national organization a selection of varieties of common knowledge should be made in order to consider only varieties which would have normal growth in the member of the Union establishing the variety collection;

(ii) this selection must firstly consider the countries with which the member of the Union has a relationship for breeding activities, seed trade or any exchange of plant products and which have similar climatic and growing conditions. Depending on the species, the relevant geographic area concerned might be different; in the case of field crops, the similarity of outdoor growing conditions are more relevant than for vegetable or ornamental crops grown in greenhouses where the seed and plant product trade is more on a world-wide basis.

10. **A variety collection can never be established definitively.** It must be continuously updated taking into account the evolution of the lists of varieties, the development of new types of varieties and the introduction of new plant genetic material.

11. It is necessary to establish contacts with the competent services in different countries to obtain information and to be able to obtain descriptions and seeds samples.

12. It is also important to complete the variety collection on a case by case basis considering the information provided by the applicant, particularly concerning the breeding scheme of the candidate variety.

13. Having defined the general basis on how to establish a variety collection, it is important to consider some practical points:

(a) A variety collection to conduct an examination of distinctness should include:

(i) a description of each variety;

(ii) a representative sample of plant material of the variety.

(b) The following types of variety descriptions might be available:

(i) a short description produced by the member of the Union where the variety is registered. In general, this type of description is not very helpful, except for grouping of similar varieties in the distinctness trial where the description is based on characteristics whose expression are not too susceptible to the influence of the environment;

(ii) a full description according to the UPOV Test Guidelines produced by the member of the Union where the variety is registered. This might be a satisfactory basis on which to establish distinctness without making a direct comparison, if the differences are clear enough. In the case of similar varieties, the environmental effect on the expression of characteristics is such that, in general, this is not a satisfactory basis. However, in some cases, this method of comparison is the only possibility because no living plant material is available and, in the absence of expertise from persons with a good knowledge of the species (the "walking reference collection"), no other solution exists;

(iii) a full description produced by the member of the Union establishing the variety collection in accordance with the UPOV Test Guidelines. This is the most effective solution, but rather expensive. Where used, it provides the possibility to detect the most similar varieties on the basis of the data held in a database. However, in the case of very similar varieties, it is still necessary to have a direct side-by-side comparison of the varieties.

(c) The following situations may exist in the case of a representative sample of plant material:

(i) a collection of seed samples held in a cold chamber with monitoring of the seed quality and renewal of seed as necessary: it is the best situation, but not always achievable because of the workload and the difficulties in obtaining representative seed samples. Wherever possible, this approach should be taken, even if it is only for a part of the variety collection;

(ii) a request to the owner or maintainer of the variety, where necessary to conduct a specific comparison: this solution is often used for vegetatively propagated varieties because the cost of maintaining a living plant collection is too high. It is sometimes difficult to obtain plant material due to phytosanitary regulations or other reasons (different hemispheres, quality of plant material, no maintenance of the variety, etc.). For some species, or where very similar varieties have to be compared, it is necessary to use plant material, of the different varieties concerned, produced under the same conditions;

(iii) a collection of digitalized images of specific parts of plants to represent each variety: this solution is presently being considered within UPOV. It is an interesting way to obtain information for the grouping of varieties. This interest is limited when a comparison between similar varieties has to be done because of the difficulty in illustrating each characteristic and establishing a harmonized procedure for recording the image;

(iv) no collection of plant material: in this situation, distinctness can only be based on data comparison, with the limits already mentioned about the descriptions.

(v) a reference collection in the case of hybrid varieties: the basic criteria are the same as for any other type of variety. However, where distinctness is based on the components and the formula of the hybrid, the effort to establish a reference collection must

be mainly focused on the varieties used as components (generally inbred lines). The two main reasons are that (a) in many cases, plant variety protection is initially requested for the components, and (b) when the components are available, it is generally possible to reproduce the hybrid variety if a direct comparison between similar hybrids is necessary.

14. In conclusion, it is important to underline that, whatever the situation adopted to establish a variety collection, it is impossible and also unnecessary to have a full collection of all the varieties of common knowledge, but it is important to have a “working” variety collection with all varieties which should be included on the basis of the criteria set out in this document.

15. This inevitably means that each time a variety is declared distinct, according to the UPOV Convention, there is some risk of making a wrong decision because of the absence of a variety of common knowledge.

16. The risk of making such a wrong decision should be as low as possible and the criteria described above are intended to help each examination office to limit this risk, in recognition that it will never be zero.

17. Article 21 of the 1991 Act of the UPOV Convention, establishes the possibility to declare the nullity of a right if it has been incorrectly granted on the basis of distinctness or novelty of a candidate variety but, to maintain a good quality of the protection, such cases should remain the exceptions.

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