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# INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

## CONSULTATIVE COMMITTEE

### Eighty-Third Session Geneva, March 30, 2012

#### DEVELOPMENTS OF RELEVANCE TO UPOV IN OTHER INTERNATIONAL FORA

*Document prepared by the Office of the Union*

1. This document reports on developments of relevance to UPOV in other international fora since the eighty-second session of the Consultative Committee, held in Geneva on October 19 and on the morning of October 20, 2011.

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#### I. WORLD SEED PROJECT

2. The Second World Seed Conference, held in Rome from September 8 to 10, 2009, was jointly organized by UPOV, the Food and Agriculture Organization of the United Nations (FAO), the Organisation for Economic Co operation and Development (OECD), the International Seed Federation (ISF) and the International Seed Testing Association (ISTA). At its seventy eighth session, held in Geneva on October 21, 2009, the Consultative Committee noted that one of the suggestions at the Conference for a “follow-up” action had been for the five organizations to initiate a project in a group of model countries with a view to developing an enabling environment to encourage plant breeding and the production and distribution of high quality seed for the benefit of farmers. The Consultative Committee agreed that the Office of the Union should participate in discussions to pursue such a project (see document CC/78/15 “Report”, paragraph 18), which has the title “World Seed Project: Strengthening the Seed Sector in Developing Countries”.

3. At its eightieth session (see document CC/80/7 Corr., paragraphs 11 to 18), held in Geneva on October 20, 2010, the Consultative Committee was informed that the aim of the five organizations was to complete the project outline and then approach potential sponsors for financial support for the implementation of the project in the selected countries. Specific project proposals would then be developed according to the needs of the selected countries and the sponsors, within the framework established in the project outline. With regard to completing the project outline and approaching potential sponsors for financial support for the implementation of the project in selected countries, it was agreed by the five organizations that a "Concept document" should be produced as a basis for approaching project countries and sponsors. The draft Concept document was circulated and approved by the Consultative Committee by correspondence by means of Circular E-1459 of January 17, 2011.

4. A report on new developments concerning the World Seed Project will be made to the Consultative Committee by means of an addendum to this document, or by means of an oral report at its eighty-third session.

*5. The Consultative Committee is invited to note the developments concerning the World Seed Project.*

## II. EAST ASIA PLANT VARIETY PROTECTION FORUM

6. The website of the East Asia Plant Variety Protection Forum (EAPVP Forum) (<http://www.eapvp-forum.org/index.html>) states that:

"The East Asia Plant Variety Protection Forum is being held as a venue for the organizations in charge of protecting plant varieties in nations of East Asia (ASEAN +3 ) to exchange a wide range of ideas and information to facilitate the improvement of the implementation and the harmonization of the plant variety protection system in the Asian region through cooperative efforts and mutual understanding of each country's systems and conditions.

"It is expected through the activities of the Forum that the creation of new varieties of plants and international trade in these new varieties are facilitated, the utilization of the intellectual property rights to develop diversified businesses for producing seeds and seedlings are motivated, and the further development of the agriculture, forestry, fisheries, and food industries of East Asia."

7. The members of the EAPVP Forum and their status within UPOV are provided in Annex I to this document.

8. The Consultative Committee, at its eightieth session, held in Geneva on October 20, 2010, approved the approach of the Office of the Union in relation to the EAPVP Forum, as set out in paragraphs 24 to 26 of document CC/80/7 Corr. Paragraphs 24 to 26 of document CC/80/7 Corr. are reproduced in Annex II to this document.

9. In accordance with the above approach, the Office of the Union has participated in the following activities since the eighty-second session of the Consultative Committee.

10. At the Fourth session of the EAPVP Forum, held in Makassar, Indonesia, on May 24, 2011, a proposal was made by Malaysia to "set a consultation session to harmonize PVP legislation between UPOV's and ASEAN countries laws". In response to that proposal, the Office of the Union hosted a "Workshop on Plant Variety Protection Law" (Law Workshop) in association with the EAPVP Forum in Geneva, from December 5 to 9, 2011. The Law Workshop included an explanation of UPOV's guidance materials on the development of legislation based on the UPOV Convention, in parallel with consultation meetings on legislative matters with individual countries. The following countries participated in the Workshop: Brunei Darussalam, Cambodia, Malaysia, Philippines, Lao People's Democratic Republic, Thailand, and Viet Nam.

11. The Office of the Union plans to attend the fifth session of the EAPVP Forum in 2012.

*12. The Consultative Committee is invited to note the developments concerning the EAPVP Forum.*

### III. ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)

13. At the annual meeting of the Organisation for Economic Co-operation and Development (OECD) Seed Schemes, held in Christchurch, New Zealand, on March 25 and 26, 2010, document TAD/CA/S/RD(2009)14/REV2 "A synthesis of international regulatory aspects that affect the seed trade" was considered. The purpose of TAD/CA/S/RD (2009)14/REV2 was:

"to summarise different regulatory aspects related to seed trade and the role of international organisations in contributing to its harmonisation. Special attention is brought to the role of the OECD Seed Schemes and its link to the work of the other international organisations. It will be used as a reference document of the OECD Seed Schemes, to inform high level government officials and policy makers in Member countries of the Schemes and other countries interested to join the Schemes."

14. The OECD annual meeting of representatives of national designated authorities was held in Istanbul, Turkey, on May 12 and 13, 2011. The draft summary record of that meeting (document TAD/CA/S/M(2011)2) included the following record of discussions concerning the draft document TAD/CA/S/RD(2009)14/REV2 "A synthesis of international regulatory aspects that affect the seed trade":

"Questions were raised regarding the finalization this paper. The document will be of a value only if a little fine-tuning is needed for its finalisation. The Secretariat confirmed that the paper was put together by using the written inputs received from the international organisations and that no additional secretariat resources are needed for the finalisation of the present document.

"Delegates noted that they are supporting the finalisation of this paper. Since it is a fact sheet, the document should not be too long. The description of the role and responsibilities of each organisation would not take more than 1 page. The website link of each organisation would be added for more information. Furthermore, the Coordinating Centre would help the Secretariat in developing a flowchart for the OECD varietal certification. Clearance may be sought from the other international organisations regarding their chapter once the paper is finalised.

"Action: Delegates agreed to move forward with the document. This project will be added to the Summary Action Sheet. The revised paper will be discussed at the EAG meeting, with the aim of approving the finalised document at the 2012 Annual Meeting."

15. At its eighty-second session, held in Geneva on October 19 and on the morning of October 20, 2011, the Consultative Committee noted the plans for the Office of the Union to provide the Organisation for Economic Co-operation and Development (OECD) with a one-page description of the role and responsibilities of UPOV for inclusion in the OECD document "Different Regulatory Aspects affecting World Seed Trade" (see CC/82/14 "Report on the Conclusions", paragraph 83). The Office of the Union attended the OECD Extended Advisory Group Meeting, held in Paris on January 26 and 27, 2012 and provided initial comments in relation to draft document TAD/CA/S/RD(2009)14/REV4 "A synthesis of international regulatory aspects that affect the seed trade". The Office of Union will also provide the OECD Secretariat with a one-page description of the role and responsibilities of UPOV for inclusion in the OECD document "Different Regulatory Aspects affecting World Seed Trade" by March 1, 2012.

*16. The Consultative Committee is invited to note the developments concerning OECD.*

### IV. DEVELOPMENTS UNDER THE AUSPICES OF THE CONVENTION ON BIOLOGICAL DIVERSITY (CBD)

Nagoya Protocol on access to genetic resources and the fair and equitable sharing of benefits arising from their utilization to the Convention on Biological Diversity (Nagoya Protocol)

17. The Second Meeting of the Open-Ended *Ad Hoc* Intergovernmental Committee for the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization will be held in New Delhi, India, from July 2 to 6, 2012. The Office of the Union plans to attend this meeting.

*18. The Consultative Committee is invited to note the developments concerning the CBD.*

V. DEVELOPMENTS UNDER THE AUSPICES OF THE FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO)

International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)

19. At its eighty-second session, held in Geneva on October 19 and on the morning of October 20, 2011, the Consultative Committee was informed that the Office of the Union had been contacted by Mr. Shakeel Bhatti, Secretary of the ITPGRFA with regard to an ITPGRFA research project on the economics of the Multilateral System of the ITPGRFA (Project). The cooperation of UPOV has been sought with regard to the data in the Plant Variety Database.

20. The draft project goals, outputs and timeline are described as follows:

“PROJECT GOALS

“This project will assist Treaty stakeholders in understanding the economic dimensions of the Multilateral System and its benefits, in the course of the implementation of the Treaty and the operation of the Multilateral System.

“The goal of this proposal is to lay the methodological foundations and develop a capacity for ongoing analysis of the volume of, and trends in, the exchange and use of PGRFA under an Standard Material Transfer Agreement (SMTA), with the specific purposes of being able to estimate and project forward monetary benefit-sharing contributions to the Treaty’s Benefit-sharing Fund. As part of this research, the project will assess the adequacy for this purpose of current data sources, and identify potential data sources that could be utilized or modified for these purposes.

“The proposal aims to demonstrate the value of such analysis and facilitate ongoing assessments of the exchange of PGRFA.

“OUTPUTS

“The outputs of this project will be:

1. A synoptic paper of 30 to 40 pages, addressed to policy makers:
  - a. reviewing the importance and potential of such research for Contracting Parties and other stakeholders in the operation of the Multilateral System;
  - b. assessing the adequacy of current information, identifying actual and potential sources of information, and proposing ways of improving the relevant information base;
  - c. exploring methodologies for assessing likely income, projected over time, for the Benefit-sharing Fund, from PGRFA assessed under SMTAs, by crop, use, and type of product;
  - d. providing any data regarding such likely income that the project has generated; and
  - e. proposing further research priorities.
2. A set of background technical studies undertaken by the project.

“TIMELINE

“These materials will be completed by 31 March 2012. They will then be diffused through the ITPGRFA website, and will be made available to the Fifth Session of the Governing Body.”

21. At its eighty-second session, held in Geneva on October 19 and on the morning of October 20, 2011, the Consultative Committee approved the assistance of the Office of the Union to the International Treaty on Genetic Resources for Food and Agriculture (ITPGRFA) in explaining the content and search options in the Plant Variety Database in the context of the ITPGRFA research project (see CC/82/14 “Report on the Conclusions”, paragraph 84).

22. By means of a letter of December 29, 2011, Dr. Pierluigi Bozzi, Associated Researcher, Development Studies Research Centre (SPES), Sapienza University of Rome, explained that the project was being carried out by a consortium of partner institutes and international organizations, including the Secretariat of the Treaty, Bioversity International, Lancaster University, Reading University and Sapienza University of Rome. In his letter, Dr. Pierluigi Bozzi invited Mr. Peter Button, Vice Secretary-General, to participate in the peer review of the 40-page Synoptic Report that would be prepared by the project (see Project Outline in Annex III, in English only). Mr. Button expressed his appreciation for the invitation, whilst explaining that it might not be considered appropriate for the Vice Secretary-General of UPOV to undertake a peer review of an ITPGRFA project. In the context of mutual supportiveness between UPOV and ITPGRFA, the

Vice Secretary-General agreed to provide comments on matters of direct relevance to UPOV, particularly with regard to Module 4, concerning data in the Plant Variety Database (PLUTO), and Module 5, concerning plant variety protection statistics.

*23. The Consultative Committee is invited to note the developments concerning the ITPGRFA.*

## VI. WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

### WIPO Framework for Designing National Intellectual Property Strategies for Development

24. WIPO has invited the Office of the Union to participate in a new WIPO project: “The WIPO Framework for Designing National Intellectual Property Strategies for Development” (WIPO IP Strategies Framework), which is being managed by the WIPO Development Sector and the WIPO Chief Economist’s Office, as part of WIPO’s commitment to provide development related technical assistance to WIPO’s member States. A copy of the concept paper is attached as Annex IV, in English only, to this document.

25. The invitation from WIPO is to participate in thematic module 2 “Agriculture, Rural Development and IP” of the IP Strategies Framework. Subject to approval by the Consultative Committee, the Office of the Union will participate as requested and report on developments to the Consultative Committee.

*26. The Consultative Committee is invited to approve the participation of the Office of the Union in the WIPO IP Strategies Framework.*

### WIPO Questionnaire “A tool to assess the current status of the national intellectual property system, strategic objectives and needs in line with national development priorities”

27. WIPO is currently developing a tool to assess the current status of the national intellectual property system, strategic objectives and needs in line with national development priorities. In that context, WIPO has invited the Office of the Union to provide an input into a fact-finding questionnaire entitled “A tool to assess the current status of the national intellectual property system, strategic objectives and needs in line with national development priorities” (WIPO Questionnaire). The purpose of the WIPO Questionnaire is to assist officials involved in the development of national intellectual property strategies in collecting information on their countries’ current status, needs and objectives. The input of the Office of the Union would be focused on “Cluster 6: Agricultural Sector”, and would be restricted to information concerning the countries’ current status, needs and objectives with regard to plant variety protection. It is anticipated that the WIPO Questionnaire and the WIPO IP Strategies Framework (see paragraph 24, above) would become part of a tool kit for intellectual property policy makers. Subject to approval by the Consultative Committee, the Office of the Union will contribute as requested and report on developments to the Consultative Committee.

*28. The Consultative Committee is invited to approve the contribution of the Office of the Union in the WIPO Questionnaire “A tool to assess the current status of the national intellectual property system, strategic objectives and needs in line with national development priorities”.*

### WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)

29. The nineteenth session of the WIPO IGC was held in Geneva from July 18 to 22, 2011, under the chairmanship of Ambassador Philip Richard Owade (Kenya). The decisions of the nineteenth session of the IGC were published on the WIPO website, and the decisions taken on genetic resources are reproduced below:

“GENETIC RESOURCES

“The Committee requested that document WIPO/GRTKF/IC/19/6 (“Draft Objectives and Principles Relating to Intellectual Property and Genetic Resources”) be transmitted as a working document to the next session of the Committee, as amended by the text presented to the Committee by the facilitators on genetic resources, Mr. Ian Goss (Australia) and Mr. Hem Pande (India) and incorporating the amendments thereto made by the Committee in plenary. The Committee also requested that document WIPO/GRTKF/IC/19/6, as so amended, be included as part of the Committee’s report to the WIPO General Assembly taking place from September 26, 2011 to October 5, 2011.

“With reference to document WIPO/GRTKF/IC/19/7 (“Options for Future Work on Intellectual Property and Genetic Resources”), the Committee requested the Secretariat to finalize, and update regularly as required, the activities referred to in Cluster C (“Options on Mutually-Agreed Terms for Fair and Equitable Benefit-Sharing”) and to provide information thereon to the Committee at each session. The Secretariat was requested to re-issue document WIPO/GRTKF/IC/19/7, including Clusters A (“Options on defensive protection of genetic resources”) and B (“Options on disclosure requirement”), as a working document for the next session of the Committee.

“The Committee also requested that document WIPO/GRTKF/IC/19/11 (“Like-Minded Countries Contribution to the Objectives and Principles on the Protection of Genetic Resources and Preliminary Draft Articles on the Protection of Genetic Resources”), be transmitted as a working document to the next session of the Committee.”

30. The decision concerning the work of the IGC on genetic resources (GRs) by the WIPO General Assembly, at the Forty Ninth Series of Meetings of the Assemblies and other Bodies of the Member States of WIPO, held from September 26 to October 5, 2011, is reproduced below (document WO/GA/40/19 “Report”, paragraph 181):

“The WIPO General Assembly took note of the information contained in document WO/GA/40/7, and decided to renew the mandate of the IGC for the 2012-2013 biennium on the terms set out in paragraph 16 of the said document.”

31. Document WO/GA/40/7, paragraph 16, provides as follows:

“At its 19<sup>th</sup> session, the IGC agreed to recommend to the WIPO General Assembly the renewal of its mandate for the 2012-2013 biennium. In this regard, the IGC agreed to recommend the following decision to the General Assembly:

“Bearing in mind the Development Agenda recommendations, the WIPO General Assembly agrees that the mandate of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore be renewed as follows:

(a) The Committee will, during the next budgetary biennium (2012/2013), and without prejudice to the work pursued in other fora, expedite its work on text-based negotiations with the objective of reaching agreement on a text(s) of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs.

(b) The Committee will follow, as set out in the [table below], a clearly defined work program, based on sound working methods, for the 2012/2013 biennium. This work program will make provision initially for four sessions of the IGC, three of which will be thematic, as detailed in the future work program of the IGC, taking into account sub paragraph (d) with regard to the possible consideration by the General Assembly in 2012 of the need for additional meetings.

(c) The focus of the Committee’s work in the 2012/2013 biennium will build on the existing work carried out by the Committee and use all WIPO working documents, including WIPO/GRTKF/IC/19/4, WIPO/GRTKF/IC/19/5, WIPO/GRTKF/IC/19/6 and WIPO/GRTKF/IC/19/7, which are to constitute the basis of the Committee’s work on text-based negotiations, as well as any other textual contributions by Members.

(d) The Committee is requested to submit to the 2012 General Assembly the text(s) of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs. The General Assembly in 2012 will take stock of and consider the text(s), progress made and decide on convening a Diplomatic Conference, and will consider the need for additional meetings, taking account of the budgetary process.

(e) The General Assembly requests the International Bureau to continue to assist the Committee by providing Member States with necessary expertise and funding, in the most efficient manner, of the participation of experts from developing countries and LDCs, taking into account the usual formula.

(f) With a view to enhancing the positive contribution of observers, the General Assembly invites the Committee to review its procedures in this regard. To facilitate this review, the General Assembly requests the secretariat to prepare a study outlining current practices and potential options.

Date	Activity
February 2012	IGC 20 (GRs). Undertake text based negotiations with a focus on considering options for a draft legal text as detailed in WIPO/GRTKF/IC/19/7. In developing this text, the IGC should also carefully consider texts already submitted by Members. Duration 8 days, including Saturday.
April/May 2012	IGC 21 (TK). Focus on 4 key Articles viz Subject Matter of Protection, Beneficiaries, Scope of Protection and Limitations and Exceptions.
July 2012	IGC 22 (TCEs). Focus on 4 key Articles viz Subject Matter of Protection, Beneficiaries, Scope of Protection and Limitations and Exceptions
September 2012	WIPO General Assembly
2013	IGC 23. Consider decision of General Assembly and take stock of further work required to finalize the text/s."

32. The twentieth session of the WIPO IGC will be held in Geneva from February 14 to 22, 2012. Documents for that session are available at [http://www.wipo.int/meetings/en/details.jsp?meeting\\_id=25008](http://www.wipo.int/meetings/en/details.jsp?meeting_id=25008).

33. *The Consultative Committee is invited to note the developments in relation to WIPO IGC.*

## VII. WORLD TRADE ORGANIZATION (WTO)

34. In accordance with paragraph 19 of the Ministerial Declaration, adopted by the Fourth World Trade Organization (WTO) Ministerial Conference, held in Doha, Qatar, from November 9 to 14, 2001, the agenda of meetings of the Council for TRIPS (Trade-Related Aspects of Intellectual Property Rights) includes three items which are relevant to UPOV, namely: review of Article 27.3(b) of the TRIPS Agreement, the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD) and the protection of traditional knowledge and folklore.

35. The Ministerial Declaration, adopted by the Sixth WTO Ministerial Conference held in Hong Kong, Special Administrative Region (SAR) of China, from December 13 to 18, 2005, states in its paragraph 44 that the Ministers "note the work undertaken by the Council for TRIPS pursuant to paragraph 19 of the Doha Ministerial Declaration and agree that this work shall continue on the basis of paragraph 19 of the Doha Ministerial Declaration and the progress made in the Council for TRIPS [...]". It stated also in its paragraph 39 that the Ministers "request the Director General [of WTO] [...] to intensify his consultative process on all outstanding implementation issues [...] [including, inter alia, the relationship between the TRIPS Agreement and the Convention on Biological Diversity]. "The Director-General shall report to each regular meeting of the TNC [Trade Negotiation Committee] and the General Council [of WTO]. [...]"

36. Background information relevant to the review of Article 27.3(b) of the TRIPS Agreement, the relationship between the TRIPS Agreement and the CBD, and the protection of traditional knowledge and folklore, is given on the WTO website as follows:

[http://www.wto.org/english/tratop\\_e/trips\\_e/art27\\_3b\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/art27_3b_e.htm) (English)

[http://www.wto.org/french/tratop\\_f/trips\\_f/art27\\_3b\\_f.htm](http://www.wto.org/french/tratop_f/trips_f/art27_3b_f.htm) (French)

[http://www.wto.org/spanish/tratop\\_s/trips\\_s/art27\\_3b\\_s.htm](http://www.wto.org/spanish/tratop_s/trips_s/art27_3b_s.htm) (Spanish)

### Meeting of the Council for TRIPS on October 24 and 25, 2011

37. The Council for the Agreement on Trade-Related Aspects of Intellectual Property Rights (the "Council for TRIPS") met on October 24 and 25, 2011.

38. The meeting was opened by Ambassador Federico A. González (Paraguay), Chairperson of the Council for TRIPS. The minutes of the meeting are contained in document IP/C/M/67, which is expected to

become available by the end of March 2012, at the following address of the WTO website:  
<http://docsonline.wto.org/?language=1>.

39. The Council for TRIPS dealt with the agenda items “Review of the Provisions of Article 27.3(b)”, “Relationship between the TRIPS Agreement and the Convention on Biological Diversity” and “Protection of Traditional Knowledge and Folklore” simultaneously. The Council for TRIPS did not receive any new submissions in relation to these agenda items. The Council for TRIPS took note of the statements made by the delegations and agreed to continue discussions at its next meeting.

40. The Council for TRIPS will meet again on February 28 and 29, 2012.

*41. The Consultative Committee is invited to note the developments in relation to WTO.*

[Annexes follow]

**MEMBERS OF THE EAST ASIA PLANT VARIETY PROTECTION FORUM  
AND THEIR STATUS WITHIN UPOV**

**I. Members of UPOV**

China
Japan
Republic of Korea
Singapore
Viet Nam

**II. States Which Have Initiated With the Council of UPOV the Procedure for Becoming Members of the Union**

	Observer Status Within UPOV			
	Council	CAJ	TC	TWP
Malaysia	✓	✓		✓
Philippines	✓			

**III. States Which Have Been in Contact with the Office of the Union for Assistance in the Development of Legislation on Plant Variety Protection**

	Observer Status Within UPOV			
	Council	CAJ	TC	TWP
Cambodia	✓			
Indonesia	✓			
Lao People's Democratic Republic				
Thailand	✓	✓		

**IV. Other**

Brunei Darussalam
Myanmar

[Annex II follows]

Extract from  
document CC/80/7 Corr. "Developments of relevance to UPOV in other international fora"

"24. In deciding on participation in specific activities of the EAPVP Forum, the Office of the Union is guided by the prioritization set out in the Program and Budget for the 2010-2011 Biennium, as agreed by the Council (see document C/43/4 Rev.), which states that:

'14. Following the guidance from the Council, activities will be carried out in accordance with the following approach:

- services to existing members of the Union with a view to improving the effectiveness and efficiency of the plant breeders' rights system;
- prioritization and concentration of information, advice and training activities on new members of the Union and potential new members, according to their commitment to accede to the UPOV Convention;
- coordination of activities;
- prioritization of external relations' activities; and
- use of communication technologies (e.g. distance learning, video-conferencing).'

"25. In the case of EAPVP Forum activities, the Office of the Union will pursue the objectives set out document C/43/4 Rev., Sub-program UV.2 "Improved Services to Members of the Union / Ensuring an Effective System of Plant Variety Protection concerning", for members of the Union, and Sub-program UV.3 "Extending the Coverage of Protection of New Varieties of Plants", for States that are not yet members of the Union. The objectives in Sub-program UV.3 are set out in document C/43/4 Rev., as follows:

"Sub-program UV.3  
Extending the Coverage of Protection of New Varieties of Plants

Objectives:

- To assist States and certain organizations, particularly governments of developing countries and countries in transition to a market economy, in the development of legislation conforming with the 1991 Act of the UPOV Convention.
- To assist States and certain organizations in the accession to the 1991 Act of the UPOV Convention.
- To assist States and certain organizations in implementing an effective plant variety rights system in line with the 1991 Act of the UPOV Convention."

"26. In the context of "the harmonization of the plant variety protection system in the Asian region through cooperative efforts", the EAPVP Forum organizes a number of activities in relation to the harmonization of test guidelines and DUS testing and has sought the support of Office of the Union and members of the Union in those activities. In order to ensure that such harmonization is based on UPOV principles and that the activities of the Office of the Union follow UPOV's policies and priorities, the Office of the Union seeks to base its activities in the EAPVP Forum on facilitating the involvement of members of the Union and observer States to UPOV in the work of the Technical Committee and the Technical Working Parties. In that regard, it is recognized that the resources provided by the EAPVP Forum could provide substantial support for participation in the work of the Technical Committee and the Technical Working Parties. On that basis, the following approach was discussed at the "3<sup>rd</sup> Workshop for Cooperation in Harmonization of Test Guidelines and DUS Test":

"(a) Experts from members of the Union (and from observer States to UPOV (currently Cambodia, Indonesia, Malaysia, Philippines and Thailand) to participate in UPOV Technical Working Parties (TWPs), as appropriate, in order to contribute to UPOV Test Guidelines under development by the TWPs, such that those UPOV Test Guidelines cover the Asian region;

“(b) EAPVP Forum test guidelines to make cross-reference to the corresponding characteristic number in the UPOV Test Guidelines (see document TGP/7/2 Draft 6, section 4.1.4 under Section 4 “Development of Individual Authorities’ Test Guidelines”);

“(c) The Office of the Union to support a EAPVP Forum workshop in 2011, in order to:

- “(i) prepare experts to participate in the UPOV TWPs;
- “(ii) provide guidance on the selection of characteristics, the drafting of characteristics and the process for developing UPOV Test Guidelines;
- “(iii) provide guidance on the development of EAPVP Forum test guidelines from UPOV Test Guidelines;
- “(iv) provide guidance on the development of EAPVP Forum test guidelines in the absence of UPOV Test Guidelines; and

“(d) UPOV to provide an annual report on technical developments in UPOV (including adoption and revision of TGP documents and program for development and revision of UPOV Test Guidelines), at an appropriate EAPVP Forum activity.”

[Annex III follows]

**Identifying and Quantifying the Potential Monetary and Non-monetary Benefits Arising from the Utilization of Plant Genetic Resources under the Multilateral System of the International Treaty on Plant Genetic Resources for Food and Agriculture**

**PROJECT OUTLINE**

**December 2011**

The International Treaty on Plant Genetic Resources for Food and Agriculture (PGRFA), hereinafter the Treaty, establishes a multilateral system which facilitates access to and exchange of the plant genetic resources of a range of food crops by means of Standard Material Transfer Agreements (SMTAs). Those who commercialize products that incorporate plant genetic resources received under an SMTA must pay a percentage of their profits into a fund to be administered by the Treaty's Governing Body, under certain conditions. This Benefit-Sharing Fund is to be used to promote conservation and sustainable use of plant genetic resources, particularly by farmers and indigenous communities, whose rights and contributions to genetic diversity the Treaty expressly recognizes.

The present project aims to develop a methodology for the identification and quantification of the benefits arising from the utilization of PGRFA under the multilateral system in order to estimate the build-up of funds in the Benefit-Sharing Fund of the Treaty. The project will achieve its objective through five in-depth technical studies (project modules), which will form the basis for preparation of a synoptic study as key output of the project.

The first module provides the conceptual framework with which a quantification of benefits can be approached. It identifies and classifies the variety of economic value which are generated through the access to and exchange of PGRFA under SMTAs by reviewing existing literature and drawing in particular on the framework of Total Economic Value. Monetary and non-monetary benefits will be discussed.

Module 2 constitutes the heart of the project as it develops an algorithm (a mathematical model) in order to predict the volume of monetary benefits that are likely to flow to the Benefit-Sharing Fund from products incorporating materials accessed under the terms and conditions of the SMTA. This innovative model will make it possible to consider a number of possible scenarios, extrapolating future benefit flows based on different starting assumptions. Since very little information currently exists to allow for a projection of monetary benefits resulting from the exchange of PGRFA under SMTAs, this module has to be understood as a first step toward such projection.

In recognition of the difficulties of generating the necessary empirical data for the quantification of monetary benefits, i.e. for the population of the algorithm, the project adopts a multi-pronged approach reflected in the remaining three modules: direct inquiry (module 3), large-scale computational analysis (module 4), and econometric analysis (module 5). Due to the novelty of this research, the limited time frame and unavailability of much of the needed data, the studies of the project restrict themselves to analysing in detail the three main crops of wheat, maize and rice, which are thought to constitute about 50% of the value of the world seed market.

Module 3 consists of a questionnaire survey of plant breeding experts in private industry, industry associations, and a selection of national and international institutions. A small number of crucial CC/83/6 ANNEX III questions directly related to determining the parameters of the mathematical model is being discussed with the experts and their estimates for relevant figures sought. Answers are not seen to provide rigorous data, but rather to help corroborate figures gathered elsewhere as well as to allow for the running of scenarios based on the best informed estimates available where other figures cannot be found.

Module 4 draws on the computational power of Lancaster University's Sociomics Core Facility for the mining of large patent and plant variety protection (PVP) databases (US Patent Office, European Patent Office, Patent Cooperation Treaty, UPOV's PLUTO), the generation of statistics on relevant patents and PVP, as well as analysis of pedigree information of protected plant varieties with the help of the International Crop Information System (ICIS). Lancaster has available an index of patent applications making mention of any of 6 million species' names from the Global Biodiversity Information System and Encyclopaedia of Life, which facilitates the generation of statistics relating to the crops under the multilateral system of the Treaty

(Annex 1 crops). This module aims to provide figures for the population of the algorithm and the analysis of module 5, as well as demonstrate the potential of this computational methodology for the evaluation of the monetary benefits resulting from exchange of PGRFA.

Module 5 consists of an analysis of the world seed trade, in particular the global sales values of seed and planting materials. It provides an overview of world seed production and trade, including an assessment of the share of Annex 1 crops in this production and trade and a discussion of the difficulty in obtaining the necessary data for such an assessment. Moreover, this module analyses the innovative activity in Annex 1 crops (measured in terms of patent and PVP applications as well as variety releases in developing countries), and traces the pedigree of a cross section of varieties in order to assess the proportion of varieties that are likely to include in their ancestry materials which are now available under the multilateral system. It also provides an assessment of the benefit flows to be expected from mandatory payments on the one hand, and voluntary payments on the other.

There are five main outputs of the project:

1. A study of the economic values, appropriable and non-appropriable, of plant genetic resources for food and agriculture (Module 1).
2. An analysis of the world seed trade (Module 5).
3. An a mathematical model to predict the volume of monetary benefits that are likely to flow to the BSF of the Treaty from products incorporating materials accessed under the terms and conditions of the SMTA. The model will be developed in Excel, with a user interface that allows initial values to be entered and varied dynamically (by sliders), in order to demonstrate in real time the effects of differing assumptions (Module 2).
4. A methodological paper on the potential of large-scale data analysis in mapping the innovative activity resulting from exchange of PGRFA (Module 4).
5. A synoptic report, summarising the findings of the project modules and pointing towards future research opportunities.

[Annex IV follows]

## CONCEPT PAPER

### WIPO FRAMEWORK FOR DESIGNING NATIONAL INTELLECTUAL PROPERTY STRATEGIES FOR DEVELOPMENT

#### Objective

The aim of the project is to develop a conceptual framework to assist countries to produce national intellectual property (IP) strategies for development which directly reference and support their development needs and priorities.

#### Introduction to project

The World Intellectual Property Organization (WIPO) is a specialized agency of the United Nations, mandated with promoting the protection of IP for economic, cultural, and social development of its 184 Member States. In 2007, the Member States of WIPO agreed upon a Development Agenda, which aims to ensure that development considerations form an integral part of WIPO's work.

As part of the focus on development and IP, an increasing number of countries are endeavoring to develop national IP strategies, and it is important for every country to develop a strategy to approach IP and to use IP for its specific economic circumstances and aspirations. To this end, WIPO (jointly the Development Agenda Coordination Division and the Office of the Chief Economist) has initiated a project to create a Framework for Designing National IP Strategies for Development ('IP Strategies Framework') to assist all countries in developing national IP strategies which directly reference and support their development needs and priorities.

The resulting IP Strategies Framework will be made available to WIPO's Member States, and WIPO will provide its services upon demand to assist countries to develop national IP strategies using the Framework. The IP Strategies Framework will be flexible, to be useful to countries with different development needs and priorities, and provide guidance to countries in developing their IP strategies without being prescriptive. The Framework is designed to help link IP decision-making at the national level to a broader, development-oriented public policy framework with a results-based approach.

The IP Strategies Framework will provide national policy-makers with a means to identify the IP policy options that are relevant and useful to address the development goals outlined in their national development plans. These development goals may be articulated in priorities, targets, timeframes and indicators of achievement tailored to each country's conditions, and often rely on economic data as a point of departure. While development goals and priorities vary significantly from country to country, the key development issues are of a similar nature, and tend to be grouped in common sectors or issues, such as health, culture and education, industry development, rural development, and environment.

The IP Strategies Framework will enable countries to identify the specific areas of IP policy that a country may use to address their national development goals. The IP options that are available to each country will depend in part upon their international commitments in the field of IP, and to the IP infrastructure in place, such as existing IP laws, policies, institutions and cooperation, informed of the WIPO Development Agenda considerations.

The IP Strategies Framework will also provide guidance on how to use the economic, social and technological data identified in the development of a national IP and innovation strategy. As such, it will identify the key indicators that should be consulted in the development of a national IP strategy. Economic, social and technological data may provide an insight into the priority sectors for national development, and priority issues to be addressed in a national IP strategy.

### Linkages to related WIPO work

The IP Strategies Framework project is closely related to two separate WIPO Development Agenda projects, whose outcome will be integrated to provide comprehensive support to Member States in developing and implementing national IP strategies:

I. The WIPO Development Agenda project on Improvement of National, Sub-regional and Regional Institutional User Capacity (DA\_10\_05), contained in document [CDIP/3/INF/2](#), aims to strengthen national IP institutional capacities through the development of a methodological and integrated approach to IP policy, strategy, institutional reform and modernization.

The Project DA\_10\_05 methodology is being validated through a piloting process in six countries, based on the use of practical tools, aimed at assisting officials involved in the development of national IP strategies in (a) assessing the current status of the country's IP system, (b) defining strategic IP targets and priority areas and identifying how these can contribute to national development objectives; and (c) assessing specific IP needs with a view to formulating a national IP strategy in line with national development priorities and objectives.

The output of this Development Agenda project will complement the macro-level conceptual approach provided by the IP Strategies Framework, by informing the project with the applied methodology and empirical research gained from the pilot projects. The case studies and reports of the Development Agenda project will be published on the WIPO portal on National IP Strategies.

II. The WIPO Development Agenda project on Enhancement of WIPO's Results-Based Management (RBM) Framework to Support the Monitoring and Evaluation of the Impact of the Organization's Activities on Development (Recommendations 33, 38 and 41), contained in document CDIP/4/8, has, as one of its objectives, to develop a framework for the objective assessment of the development impact of WIPO's activities, including through country level assessment frameworks and, where possible as an integrated part of national IP Strategies. These will be integrated with the IP Strategies Framework as a second part of the project report, designed to assist countries to adopt a results-based approach and include a mechanism in their national IP strategies to enable ongoing monitoring and evaluation of development-effectiveness.

### Methodology

The IP Strategies Framework will be developed by a cluster of six expert working groups including eminent development economists and IP experts hired under Special Service Agreement (SSA) , together with advisors from UN organizations, in key fields of economic, cultural and scientific development.

The IP Strategies Framework will consist primarily of a report, composed of an introduction and executive summary, and six thematic modules:

1. Public Health and IP
2. Agriculture, Rural Development and IP
3. Culture and IP
4. Education, Science and IP
5. Environment, Energy and IP
6. Industry Development, Trade and IP

The IP Strategies Framework report will also address a number of cross-cutting issues, which are relevant to each of the abovementioned modules and will be addressed throughout. These cross-cutting issues include; IP administration and infrastructure, IP policy formulation and coordination, IP enforcement, science and technology, traditional knowledge and gender.

In order to identify the IP policy mechanisms to address national development goals and priorities, and to find possible solutions to common challenges, the IP Strategies Framework will address the following matrix:

	National Development Goals	Key Indicators / Qualitative Analysis	Interface with IP System	IP Policy Levers	Key Elements of an Enabling Environment
Public Health and IP					
Agriculture, Rural Development and IP					
Culture and IP					
Education and IP					
Environment, Energy and IP					
Industry Development, Trade and IP					

Each expert working group will validate, improve and populate the above matrix, to describe how the different elements of the IP and innovation system can be used to address different development goals. At the same time, each group will identify the most suitable economic indicators that may help to identify priority issues to be addressed in the national IP strategy. The groups will also identify priorities, and make prioritized recommendations for designing a national IP system, depending upon the implementation capacity of each country.

A report will be issued by each expert working group, which will be consolidated as modules in the IP Strategies Framework report, which will be published as a WIPO document and made freely available in all official UN languages. The working language of the expert working groups will be English.

A National IP Strategies portal will be established on the WIPO website, which will integrate the IP Strategies Framework project with WIPO's other work in this area, including a separate framework report to facilitate the monitoring and assessment of development results at the national level. The portal will make available the reports resulting from the Development Agenda project on Improvement of National, Sub-regional and Regional Institutional User Capacity. The portal will also provide a regularly updated source of resource material, including case studies, interviews, follow-up research and information on national IP strategies and experiences in their development and implementation on a country-by-country basis.

#### I. Expert Working Groups

Each module of the IP Strategies Framework will be developed and drafted by an expert group comprised of:

- (a) group leader
- (b) three development economists and IP experts
- (c) rapporteur (economist or IP expert)
- (d) IGO advisor(s), and
- (e) WIPO Secretariat.

Terms of reference and guidelines will be developed for each participant role. In particular:

- (a) group leaders will be responsible for leading the process, chairing the meetings, coordinating the online collaboration, and timely delivery of the group's report;

- (b) development economists and IP experts will engage in preparatory work, contribute to discussions in meetings and the online forum, and deliver work tasks allocated by group leaders. Group leaders and experts will have the authority to interview or consult externally to the project, as part of the research and peer review process;
- (c) rapporteurs will be responsible for documenting the meeting discussions and allocation of work, contributing to the discussions, and assisting group leaders with drafting the report. Rapporteurs should have strong drafting skills and an ability to present information in a structured manner;
- (d) IGO advisors will contribute to policy discussions, make available background research and report on consistency with related work in the UN system; and
- (e) the WIPO Secretariat will provide logistic support for the meeting and participants, provide background research as requested and assist with drafting and editing the group reports, to ensure consistency throughout the IP Strategies Framework. Consultants and interns may also be engaged through the process as required to provide support to the Secretariat from Geneva.

Each expert working group will have representatives from diverse regions to the greatest extent possible, including both developed and developing countries and economies in transition, and represent a range of experience and perspectives on the role of IP in development. A number of experts will be appointed with expertise in cross-cutting issues such as IP administration and infrastructure, traditional knowledge, science and technology and IP enforcement, and these experts will be asked to review the output of other groups, to ensure that such issues are appropriately considered throughout the IP Strategies Framework.

Experts involved in the WIPO Development Agenda project on Improvement of National, Sub-regional and Regional Institutional User Capacity, mentioned above, will also be invited to participate in the expert working group meetings, along with WIPO colleagues involved in relevant development-related projects and activities, so as to inform and complement the discussions of the expert working groups. The expert working groups will also be briefed and assisted by WIPO colleagues involved in the WIPO Development Agenda project on Enhancement of WIPO's Results-Based Management (RBM) Framework to Support the Monitoring and Evaluation of the Impact of the Organization's Activities on Development, with a view to adopting a results-based approach to the project, in line with WIPO's results-based management system.

#### Expert working group tasks

The main tasks of each expert working group are as follows:

- (a) populate the matrix/template by identifying the different types of IP levers that may impact on countries' development objectives in each specific field of public policy, and that would need to be addressed in a national IP strategy for development. These policy levers could include references to IP infrastructure, institutions, and policy issues that cut across government sectors;
- (b) identify relevant data that will be required in order to guide the formulation of the strategy in each sector in a given country;
- (c) indicate the types of targets or indicators that may be relevant for inclusion in a national IP strategy for development;
- (d) consider source documents, including development plans and national development strategies;
- (e) take note of flanking strategies, and complementary work that has been or is being undertaken in other international organizations, non-governmental organizations and private entities; and
- (f) deliver a report on the conclusions of the expert working group using the agreed matrix/template. Each report should be approximately 30-50 pages in length.

The expert working group reports will be consolidated, and given an introduction and executive summary. The report will be edited by WIPO and published as the WIPO Framework for Designing National IP Strategies for Development, in electronic and hard copy on the WIPO portal on National IP Strategies.

## Group meetings and timetable

The IP Strategies Framework process will commence with a meeting of expert group leaders. The purpose of this meeting is to discuss and reach a common understanding among different groups on the scope of the project; to ensure a common understanding of the matrix, the methodology and the desired outcome; and, to finalize the terms of reference of each respective group so as to avoid duplication of work and ensure that all essential issues are covered in the project.

The next step will be the establishment of the first two expert working groups: Public Health and IP, and Agriculture, Rural Development and IP. The remaining groups will be launched at intervals over the course of 2012-2013. The project is expected to conclude with publication of the IP Strategies Framework document, and will be launched with a WIPO event in 2013.

Each expert working group will have 5-6 months to produce its final sector report, from the date each group is established:

- Month 1: Appointment of group leader and team members
  - preparatory materials circulated
  - group leader assigns preparatory tasks
  
- Month 2: First meeting
  - draft report circulated, discussion and review among group members/observers via online forum
  - group leader assigns follow-up tasks
  
- Month 4: Second meeting
  - revised draft circulated, discussion and review among group members/observers via online forum
  - peer review by other project participants via online forum
  
- Month 5: Delivery of final draft report
  - editing of report by WIPO Secretariat in consultation with group leader

## II. Deliverable

Following submission of the final expert working group report, two months will be required for the Secretariat to compile and edit the group reports into the WIPO Framework for Designing National IP Strategies for Development, in consultation with group leaders and relevant WIPO colleagues working in related fields.

## III. Meeting venues

Each expert working group will meet twice, at two-month intervals, at venues identified by WIPO and in coordination with the appropriate national authorities.

## IV. Online forum

In addition, WIPO will host an online forum to provide support and enable an exchange of views and peer-review for the expert working groups. The online forum will be restricted to project participants, accessible by password, and will enable the Secretariat to provide updates on progress, provide biographical and contact details for expert group members, and enable group leaders to coordinate drafting of the report with input from group members and other involved experts. The online forum will be developed together with WIPO's ICT Department.

At an appropriate stage of the project, the project documents and process will be made public on the WIPO website. A portal on National IP Strategies will be created, in order to provide ongoing information and resources to Member States and other stakeholders, on issue related to development and implementation of national IP strategies. The portal will host the IP Strategies Framework report, and resources such as case studies, anecdotal reports of experiences of use of IP policies in different industries and countries, interviews with IP policy makers, follow-up research and information on national IP strategies and their implementation on a country-by-country basis. This portal will integrate the different projects at WIPO on national IP

strategies, including the two related Development Agenda projects, and relevant WIPO technical assistance and activities in Cooperation for Development.

#### V. Resources and budget

The project is financed from the regular WIPO budget, as previously approved. Each expert will be engaged as a consultant under an SSA contract with terms of reference, and will be paid remuneration plus travel costs. The budget will include costs associated with organizing the meetings, plus travel for necessary WIPO officials. Where possible, national hosts will be requested to provide venues.

#### VI. Communication strategy

As described above, a web page will be established on the WIPO website at the appropriate stage of the process to provide information on the project and to publish the IP Strategies Framework report and related WIPO material. WIPO's Media Relations section will be involved to provide appropriate publicity for the project.

The IP Strategies Framework will be published on a dedicated WIPO web page; a portal for National IP Strategies. The portal will host case studies and experiences among Member States in using or implementing the IP Strategies Framework at the national level, and thereby provide information resources to Member States and the wider public.

#### VII. Development Agenda linkages

The WIPO Framework for Designing National IP Strategies for Development has direct linkages with various recommendations of the WIPO Development Agenda, as follows:

Recommendation No.	
1	Technical assistance shall take into account the priorities and special needs of developing countries. - National IP strategies will assist countries to ascertain their priorities and needs, and to work with WIPO to tailor assistance.
4	Assist Member States in setting up appropriate national strategies in the field of IP, with respect to SMEs and scientific research institutions and cultural industries.
10	Assist Member States to develop and improve national IP institutional capacity through further development of infrastructure and other facilities with a view to making national IP institutions more efficient and promote fair balance between IP protection and the public interest.
11	Assist Member States to strengthen national capacity for protection of domestic creations, innovations and inventions.
24	To explore IP related policies and initiatives necessary to promote the transfer and dissemination of technology.
37	Upon request and as directed by Member States, WIPO may conduct studies on the protection of intellectual property, to identify the possible links and impacts between intellectual property and development.

40	To request WIPO to intensify its cooperation on IP related issues with United Nations agencies, according to Member States' orientation, in particular UNCTAD, UNEP, WHO, UNIDO, UNESCO and other relevant international organizations, especially the WTO in order to strengthen the coordination for maximum efficiency in undertaking development programs.
45	To approach IP enforcement in the context of broader societal interests and especially development-oriented concerns, with a view that "the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations", in accordance with Article 7 of the TRIPS Agreement.

[End of Annex IV and of document]