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ADDENDUM

DRAFT EXPLANATORY NOTES ON VARIETY DENOMINATIONS
UNDER THE UPOV CONVENTION

*Document prepared by the Office of the Union
on the basis of comments received from the Delegation of Australia*

1. The Office of the Union has received comments from the Delegation of Australia on March 14, 2006, concerning the “Draft Explanatory Notes on Variety Denominations under the UPOV Convention”, reproduced in Annex II to document CAJ/53/2. The comments of the Delegation of Australia and possible drafting changes to address those comments are presented in the following paragraphs.

2. In relation to Explanatory Note 2.2.2(b), the Delegation proposed to add “and particular species” and to include an appropriate example “Medicago, Helianthus”.

“(b) accepted market practices for particular variety types (e.g. hybrids) and particular species (e.g. Medicago, Helianthus).”

3. In relation to Explanatory Note 2.3.1 “Characteristics of the variety”, the Delegation referred to Recommendation 19(D) of the International Code of Nomenclature for Cultivated Plants (ICNCP):

“A cultivar name should not be published if its epithet consists solely of a word or words that may be descriptive (adjectival) and that could refer to some attribute or attributes common or likely to become common in a group of related cultivars.

“Ex. 51. Names with the cultivar epithets ‘Blanche’ (a given name for a woman or French for “white”), ‘Large’, ‘Large White’, ‘Double Red’, ‘Ogon’ (Japanese for “gold” or “golden”), and ‘Variegated’ should be avoided.”

4. The Delegation proposed to amend Explanatory Note 2.3.1(b), to correspond to Recommendation 19(D) of the ICNCP, as follows:

“[The denomination should not] refer to specific characteristics of the variety in such a way that the impression is created that only the variety possesses them, whereas in fact other varieties of the species in question also have or may have the same characteristics; for example where the denomination consists solely of descriptive words that describe attributes of the variety that other varieties in the species may also possess.”

Example: ‘Large white’ for a variety of chrysanthemum”

5. In relation to Example (i) under Explanatory Note 2.3.3.(a)(i), the Delegation proposed the deletion of the text “‘Anne’ and ‘Anna’ could cause confusion” because the ‘e’ in Anne is not pronounced in English. The Delegation noted that the ICNCP accepts both “Suzanne” and “Suzanna” (see ICNCP 19.25, Example 41). Therefore, it is proposed that Example (i) should read as follows:

“*Example (i):* in the English language, ‘Harry’ and ‘Larry’ would not cause confusion; However, ~~“Anne” and “Anna” could cause confusion~~ ‘Bough’ and ‘Bow’ might also cause confusion (in phonetic terms);”

6. In relation to Explanatory Note 2.3.3(c), the Delegation agreed that the re-use of a denomination should be discouraged and only accepted in limited cases. It further suggested to add additional examples to the ones provided in Explanatory Note 2.3.3(c), according to the guidance in Article 27.2 of the ICNCP:

“An International Cultivar Registration Authority may only accept re-use of a cultivar or Group name if that authority is satisfied that the original cultivar or Group (a) is no longer in cultivation, and (b) has ceased to exist as breeding material, and (c) may not be found in a gene or seed bank, and (d) is not a known component in the pedigree of other cultivars or Groups, and (e) the name has rarely been used in publications, and (f) re-use is unlikely to cause confusion”.

7. Explanatory Note 2.3.3(c) is reproduced for ease of reference:

“In order to provide clarity and certainty in relation to variety denominations, the re-use of denominations is, in general, discouraged, since the re-use of a denomination, even where that relates to a variety which no longer exists (see section 2.4.2) may, nevertheless, cause confusion. In some limited cases an exception may be acceptable, for example a variety which was never commercialized, or was only commercialized in a limited way for a very short time. In those cases, a suitable period of time after discontinued commercialization of the variety would be required before the re-use of the denomination in order to avoid causing confusion in relation to the identity and/or the characteristics of the variety.”

8. The Delegation proposed the following text for Explanatory Note 2.3.3(c):

“In order to provide clarity and certainty in relation to variety denominations, the re-use of denominations is, in general, discouraged, since the re-use of a denomination, even where that relates to a variety which no longer exists (see section 2.4.2) may, nevertheless, cause confusion. In some limited cases an exception may be acceptable, for example a variety: (i) is no longer in cultivation, and (ii) has ceased to exist as breeding material, and (iii) may not be found in a gene or seed bank, and (iv) is not a known component in the pedigree of other cultivars or Groups, and (v) the denomination has rarely been used in publications; and was never commercialized, or was only commercialized in a limited way for a very short time. In those cases, a suitable period of time after discontinued commercialization of the variety would be required before the re-use of the denomination in order to avoid causing confusion in relation to the identity and/or the characteristics of the variety.”

9. The Delegation of Australia considered the example in Explanatory Note 2.3.4 to be unnecessarily restrictive in situations where a variety denomination is proposed in order to honor another breeder. The Delegation suggested that the necessary flexibility might be achieved with the following text:

“*Example:* a variety denomination incorporating the name of a breeder, if he is not the breeder of the variety, unless the breeder or his successor has authorized such an incorporation.”

10. The Delegation suggested a simplification of Explanatory Note 2.4.2 in order to avoid repetition of certain elements of Explanatory Note 2.3.3(c). The following changes are proposed to simplify the text:

“The following explanation is for the purposes of variety denominations and without prejudice to the meaning of a “variety whose existence is a matter of common knowledge” in Article 7 of the 1991 Act and in Article 6(1)(a) of the 1978 Act and the 1961 Convention. In general, the re-use of denominations is discouraged but, under exceptional circumstances (see section 2.3.3(c)), if a variety (the “old” variety) has ceased to exist and the re-use of the denomination for a new variety is not liable to mislead or to cause confusion concerning the identity and/or the characteristics of the new variety, the denomination of an old variety could, in principle, be registered for a new variety.”

11. In relation to Explanatory Note 2.5.3, the Delegation recommended the addition of a disclaimer covering the use of the UPOV-ROM for variety denomination checking purposes. The Office of the Union draws the attention of the CAJ to the following updated disclaimer which is included in the UPOV-ROM:

“GENERAL NOTICE AND DISCLAIMER

“Please note that the information concerning plant breeders’ rights provided in the UPOV-ROM Plant Variety Database (UPOV-ROM) does not constitute the official publication of the authorities concerned. To consult the official publication, or to obtain details on the status and completeness of the information in the UPOV-ROM, please contact the relevant authority, contact details for which are provided on the UPOV website at http://www.upov.int/en/about/members/pvp_offices.htm or on the CD-ROM in [D:\UPOVPDF\address.pdf](#) (if D: is the CD-ROM drive).

“All contributors to the UPOV-ROM are responsible for the correctness and completeness of the data they supply. Users are particularly requested to note that it is not obligatory for members of the Union to supply data for the UPOV-ROM and, for those members of the Union who supply data, it is not obligatory to supply data for all items.”

12. The CAJ may wish to consider adding the following reference to the “General Notice and Disclaimer” of the UPOV-ROM in Explanatory Note 2.5.3.:

“2.5.3. It is recommended that the UPOV Plant Variety Database (“UPOV-ROM”) is used in the process to check if, in the territory of any member of the Union, the proposed denomination is different from denominations of existing varieties of the same genus or, if appropriate, variety denomination class (see Appendix III). Attention is drawn to the “General Notice and Disclaimer” of the UPOV-ROM to ensure that the information contained in the UPOV-ROM is considered in an appropriate way.”

13. The Delegation requested the incorporation of the rationale for the establishment of Classes 203 and 204 in Appendix III to Annex II of document CAJ/53/2. The Office of the Union has drafted the following text for consideration as a footnote:

“Classes 203 and 204 are not solely established on the basis of closely related species.”

14. The CAJ is invited to consider the comments made in this document by the Delegation of Australia and suggested drafting changes to address those comments in relation to “Draft Explanatory Notes on Variety Denominations under the UPOV Convention”, reproduced in Annex II of document CAJ/53/2.

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