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ADMINISTRATIVE AND LEGAL COMMITTEE

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VARIETY DENOMINATIONS

Document prepared by the Office of the Union

1. The purpose of this document is to consider a proposal for a future revision of document UPOV/INF/12/3 Annex I, Part II "Classes encompassing more than one genus" (reproduced in the Annex to this document), with regard to the creation of a new class for *Eupatorium* and *Eutrochium*.

BACKGROUND

2. A number of species included within the GENIE database and the UPOV-ROM Plant Variety Database (UPOV-ROM) as species of *Eupatorium* L. have been found to be indicated as belonging to other genera within GRIN¹:

<u>GENIE database</u>	<u>UPOV code</u>	<u>UPOV-ROM entries</u>	<u>GRIN database</u>
<i>Eupatorium</i> L.	EUPAT	12*	<i>Eupatorium</i> L.
<i>Eupatorium adenophorum</i> Spreng. (<i>Ageratina adenophora</i> (Spreng.) R. M. King & H. Rob.)	EUPAT_ADE	0	<i>Ageratina adenophora</i> (Spreng.) R. M. King & H. Rob.
<i>Eupatorium buniifolium</i> Hook. & Arn. (<i>Acanthostyles buniifolius</i> (Hook. & Arn.) R. M. King & H. Rob.)	EUPAT_BUN	0	<i>Acanthostyles buniifolius</i> (Hook. & Arn.) R. M. King & H. Rob.
<i>Eupatorium cannabinum</i> L.	EUPAT_CAN	0	<i>Eupatorium cannabinum</i> L.
<i>Eupatorium odoratum</i> L. (<i>Chromolaena odorata</i> (L.) R. M. King & H. Rob.)	EUPAT_ODO	0	<i>Chromolaena odorata</i> (L.) R. M. King & H. Rob.
<i>Eupatorium purpureum</i> L.	EUPAT_PUR	2 (same denomination)	<i>Eutrochium purpureum</i> (L.) E. E. Lamont var. <i>purpureum</i>

* One variety has same denomination as the variety *Eupatorium ligustrinum* *Ageratina ligustrina* (DC.) R. M. King & H. Rob. (see below); two varieties have the same denomination as the variety of *Eupatorium purpureum* L. (*Eutrochium purpureum* (L.) E. E. Lamont var. *purpureum*)

¹ USDA, ARS, National Genetic Resources Program. *Germplasm Resources Information Network - (GRIN)* [Online Database]. National Germplasm Resources Laboratory, Beltsville, Maryland. URL: http://www.ars-grin.gov/cgi-bin/npgs/html/tax_search.pl

Not in GENIE:

<u>GENIE database</u>	<u>UPOV code</u>	<u>UPOV-ROM entries</u>	<u>GRIN database</u>
<i>Eupatorium dubium</i>	-	1	<i>Eutrochium dubium</i> (Willd. ex Poir.) E. E. Lamont
<i>Eupatorium ligustrinum</i>	-	1	<i>Ageratina ligustrina</i> (DC.) R. M. King & H. Rob.

3. In such cases, problems can occur with the allocation of a variety to the appropriate UPOV denomination class. Document UPOV/INF/12/3 “Explanatory notes on variety denominations under the UPOV Convention”, Section 2.5.2 states:

“2.5.2 The variety denomination classes are as follows:

“(a) General Rule (one genus / one class): for genera and species not covered by the List of Classes in Annex I, a genus is considered to be a class; [...]”

4. With regard to UPOV codes, the “Guide to the UPOV Code System” states:

“3.3 Introduction of New UPOV Codes / Amendments to UPOV Codes

“[...]”

“(d) In general, amendments to UPOV codes will not be made as a result of taxonomic developments unless these result in a change to the genus classification of a species. The “Explanatory notes on variety denominations under the UPOV Convention” (document UPOV/INF/12/1) contain UPOV variety denomination classes; for genera and species not covered by the List of Classes in Annex I to document UPOV/INF/12/1, the general rule (“one genus / one class”) is that a genus is considered to be a class (see document UPOV/INF/12/1, Section 2.5.2 and its Annex I). Therefore, it is important that the first element of the UPOV code can be used to sort species into the correct genus. The UPOV codes will also be amended if there are consequences for the content of a variety denomination class where the list of classes applies. Amendments to UPOV codes will be handled by the same procedure as the introduction of new UPOV codes as in paragraphs (a) and (b), above. However, in addition, all members of the Union and contributors of data to the Plant Variety Database will be informed of any amendments.”

5. In the case of entries in the UPOV-ROM indicated by species, the problem is avoided by the allocation of the UPOV code. However, for entries indicated only by the genus, e.g. *Eupatorium* L., *Eutrochium* Raf., the same species and variety could be included in different denomination classes by different members of the Union.

CONSIDERATION BY THE TECHNICAL COMMITTEE IN 2011

6. The Technical Committee (TC), at its forty-seventh session held in Geneva from April 4 to 6, 2011, noted the botanical synonymies that existed for species of *Eupatorium* L. and invited the Technical Working Party for Ornamental Plants and Forest Trees (TWO) to consider the following possible solutions to that situation at its forty-fourth session to be held from November 7 to 11, in Fukuyama City, Hiroshima Prefecture, Japan (see document TC/47/26 “Report on Conclusions”, paragraphs 22 and 23).

(a) Continue to consider all species currently included within the genus “*Eupatorium*” in the UPOV-ROM as “*Eupatorium*” (i.e. *Eupatorium purpureum* L., *Eupatorium dubium*, *Eupatorium ligustrinum*). The TC noted that this approach would not follow the “Guide to the UPOV Code System” and would not guarantee to avoid problems with other species of “*Eupatorium*” that might occur in the UPOV-ROM in future: GRIN lists 91 species / subspecies that are sometimes included within “*Eupatorium*”, of which only 17 are considered by GRIN to fall within *Eupatorium* L.. The TC noted that this approach would have the effect of creating a denomination class for “*Eupatorium*”, without explicitly establishing the coverage of the class;

(b) Create a new denomination class in document UPOV/INF/12/3 “Explanatory notes on variety denominations under the UPOV Convention”, Annex I: Part II. “Classes encompassing more than one genus” to cover relevant genera, e.g. *Eupatorium* L., *Eutrochium* Raf., *Ageratina* Spach, etc.; or

(c) Apply the GRIN botanical classification of species and continue to follow the General Rule (one genus / one class). For example, the varieties in the UPOV-ROM indicated as *Eupatorium purpureum* L. would be considered as *Eutrochium purpureum* (L.) E. E. Lamont var. *purpureum* and would be allocated a UPOV code for the genus *Eutrochium* Raf.. The TC noted that such an approach would require that the appropriate species could be correctly identified for the 12 varieties, and any other such entries in future, indicated as *Eupatorium* L. in the UPOV-ROM. The TC noted that this it would also be necessary to amend the UPOV codes for the species concerned.

7. The TC, at its forty-seventh session held in Geneva from April 4 to 7, 2011, noted the information concerning the registration of variety denominations as trademarks, as set out in document TC/47/8 "Variety Denominations", paragraphs 15 to 19.

CONSIDERATION BY THE ADMINISTRATIVE AND LEGAL COMMITTEE IN 2011

8. The Administrative and Legal Committee (CAJ), at its sixty-third session held in Geneva on April 7, 2011, noted the botanical synonymies that existed for species of *Eupatorium* L. and that the TC, at its forty-seventh session, had invited the TWO to consider the above possible solutions to that situation at its forty-fourth session to be held from November 7 to 11, 2011, in Fukuyama City, Hiroshima Prefecture, Japan.(see document CAJ/63/10 "Report", paragraph 57).

9. The CAJ, at its sixty-third session, noted the information concerning the registration of variety denominations as trademarks, as set out in document CAJ/63/4 "Variety Denominations", paragraphs 15 to 19 (see document CAJ/63/10 "Report", paragraph 58).

10. At its sixty-fourth session held in Geneva on October 17, 2011, the CAJ considered document CAJ/64/6 "Variety Denominations" (see document CAJ/64/11 "Report on the Conclusions", paragraphs 20 to 23).

11. In relation to the possible solutions presented in paragraph 6 of the document CAJ/64/6, (see paragraph 6 of this document), the Delegation of the European Union expressed a preference for the creation of a new denomination class in document UPOV/INF/12/3 "Explanatory notes on variety denominations under the UPOV Convention" to cover relevant genera, e.g. *Eupatorium* L., *Eutrochium* Raf., *Ageratina* Spach, etc.:".

12. The CAJ noted that the intervention made by the Delegation of the European Union would be transmitted to the TWO at its forty-fourth session to be held from November 7 to 11, 2011, in Fukuyama City, Hiroshima Prefecture, Japan.

13. The CAJ noted the possible solutions, presented in paragraph 6 of this document, that would be considered by the TWO, at its forty-fourth session, and that the matter would be considered by the TC at its forty-eighth session and by the CAJ at its sixty-fifth session in March 2012.

CONSIDERATION BY THE TECHNICAL WORKING PARTY FOR ORNAMENTAL PLANTS AND FOREST TREES

14. The TWO, at its forty-fourth session, held from November 7 to 11, 2011, in Fukuyama City, Hiroshima Prefecture, Japan, noted the report on developments provided in document TWO/44/4 "Variety Denominations".

15. The TWO agreed to propose the creation of a new denomination class in document UPOV/INF/12/3 "Explanatory notes on variety denominations under the UPOV Convention", Annex I: Part II. "Classes encompassing more than one genus" to cover relevant genera, e.g. *Eupatorium* L., *Eutrochium* Raf., *Ageratina* Spach, etc., as explained in document TWO/44/4, paragraphs 7 to 12 and presented in paragraphs 3 to 7 of this document.

PROPOSAL

16. On the basis of the conclusion of the TWO, it is proposed to create a new denomination class as follows:

	<u>Botanical names</u>	<u>UPOV codes</u>
Class 213	Eupatorium L. Acanthostyles R. M. King & H. Rob. Ageratina Spach Asplundianthus R. M. King & H. Rob. Bartlettina R. M. King & H. Rob. Campuloclinium DC. Chromolaena DC. Conoclinium DC. Cronquistianthus R. M. King & H. Rob. Eutrochium Raf. Fleischmannia Sch. Bip. Praxelis Cass. Vioreckia R. M. King & H. Rob.	EUPAT - AGERT - - - - - - - EUTRO - - -

17. *The CAJ is invited to consider the creation of a new denomination class in document UPOV/INF/12/3 "Explanatory notes on variety denominations under the UPOV Convention", Annex I: Part II. "Classes encompassing more than one genus", as set out in paragraphs 15 and 16 of this document.*

[Annex follows]

UPOV Variety Denomination Classes:
A Variety Denomination Should not be Used More than Once in the Same Class

For the purposes of providing guidance on the third and fourth sentences of paragraph 2 of Article 20 of the 1991 Act and of Article 13 of the 1978 Act and the 1961 Convention, variety denomination classes have been developed. A variety denomination should not be used more than once in the same class. The classes have been developed such that the botanical taxa within the same class are considered to be closely related and/or liable to mislead or to cause confusion concerning the identity of the variety.

The variety denomination classes are as follows:

(a) General Rule (one genus / one class): for genera and species not covered by the List of Classes in this Annex, a genus is considered to be a class;

(b) Exceptions to the General Rule (list of classes):

- (i) classes within a genus: List of classes in this Annex: Part I;
- (ii) classes encompassing more than one genus: List of classes in this Annex: Part II.

LIST OF CLASSES

Part I

Classes within a genus

	<u>Botanical names</u>	<u>UPOV codes</u>
Class 1.1	Brassica oleracea	BRASS_OLE
Class 1.2	Brassica other than Brassica oleracea	other than BRASS_OLE
Class 2.1	Beta vulgaris L. var. alba DC., Beta vulgaris L. var. altissima	BETAA_VUL_GVA; BETAA_VUL_GVS
Class 2.2	Beta vulgaris ssp. vulgaris var. conditiva Alef. (syn.: B. vulgaris L. var. rubra L.), B. vulgaris L. var. cicla L., B. vulgaris L. ssp. vulgaris var. vulgaris	BETAA_VUL_GVC; BETAA_VUL_GVF
Class 2.3	Beta other than classes 2.1 and 2.2.	other than classes 2.1 and 2.2
Class 3.1	Cucumis sativus	CUCUM_SAT
Class 3.2	Cucumis melo	CUCUM_MEL
Class 3.3	Cucumis other than classes 3.1 and 3.2	other than classes 3.1 and 3.2
Class 4.1	Solanum tuberosum L.	SOLAN_TUB
Class 4.2	Tomato & Tomato rootstocks	
	Solanum lycopersicum L. (synonym: Lycopersicon esculentum Mill.)	SOLAN_LYC
	Solanum cheesmaniae (L. Ridley) Fosberg (Lycopersicon cheesmaniae L. Riley)	SOLAN_CHE
	Solanum chilense (Dunal) Reiche (Lycopersicon chilense Dunal)	SOLAN_CHI
	Solanum chmielewskii (C.M. Rick et al.) D.M. Spooner et al. (Lycopersicon chmielewskii C. M. Rick et al.)	SOLAN_CHM

	<u>Botanical names</u>	<u>UPOV codes</u>
	Solanum galapagense S.C. Darwin & Peralta (Lycopersicon cheesmaniae f. minor (Hook. f.) C. H. Müll.) (Lycopersicon cheesmaniae var. minor (Hook. f.) D. M. Porter)	SOLAN_GAL
	Solanum habrochaites S. Knapp & D.M. Spooner (Lycopersicon agrimoniifolium Dunal) (Lycopersicon hirsutum Dunal) (Lycopersicon hirsutum f. glabratum C. H. Müll.)	SOLAN_HAB
	Solanum pennellii Correll (Lycopersicon pennellii (Correll) D'Arcy)	SOLAN_PEN
	Solanum peruvianum L. (Lycopersicon dentatum Dunal) (Lycopersicon peruvianum (L.) Mill.)	SOLAN_PER
	Solanum pimpinellifolium L. (Lycopersicon pimpinellifolium (L.) Mill.) (Lycopersicon racemigerum Lange)	SOLAN_PIM
	and hybrids between those species	
Class 4.3	Solanum melongena L.	SOLAN_MEL
Class 4.4	Solanum other than classes 4.1, 4.2 and 4.3	other than classes 4.1, 4.2 and 4.3

LIST OF CLASSES (Continuation)

Part II

Classes encompassing more than one genus

	<u>Botanical names</u>	<u>UPOV codes</u>
Class 201	Secale, Triticale, Triticum	SECAL; TRITL; TRITI
Class 202	Megathyrus, Panicum, Setaria, Steinchisma	MEGAT; PANIC; SETAR; STEIN
Class 203*	Agrostis, Dactylis, Festuca, Festulolium, Lolium, Phalaris, Phleum and Poa	AGROS; DCTL; FESTU; FESTL; LOLIU; PHALR; PHLEU; POAAA
Class 204*	Lotus, Medicago, Ornithopus, Onobrychis, Trifolium	LOTUS; MEDIC; ORNTP; ONOBR; TRFOL
Class 205	Cichorium, Lactuca	CICHO; LACTU
Class 206	Petunia and Calibrachoa	PETUN; CALIB
Class 207	Chrysanthemum and Ajanía	CHRY; AJANI
Class 208	(Statice) Goniolimon, Limonium, Psylliostachys	GONIO; LIMON; PSYLL
Class 209	(Waxflower) Chamelaucium, Verticordia	CHMLC; VERTI; VECHM
Class 210	Jamesbrittania and Sutera	JAMES; SUTER
Class 211	(Mushrooms) Agaricus Agrocybe Auricularia Dictyophora Flammulina Ganoderma Grifola Hericiu Hypsizigus Lentinula Lepista Lyophyllum Meripilus Mycoleptodonoides Naematoloma Panellus Pholiota Pleurotus Polyporus Sparassis Tricholoma	AGARI AGROC AURIC DICTP FLAMM GANOD GRIFO HERIC HYPSI LENTI LEPIS LYOPH MERIP MYCOL NAEMA PANEL PHLIO PLEUR POLYO SPARA MACRO
Class 212	Verbena L. and Glandularia J. F. Gmel.	VERBE; GLAND

[End of Annex and of document]

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