

WORLD TRADE ORGANIZATION

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**Council for Trade-Related Aspects
of Intellectual Property Rights**

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REVIEW OF THE PROVISIONS OF ARTICLE 27.3(b)

Information from the Republic of Bulgaria¹

The present document represents the information requested by the Council for Trade-Related Aspects of Intellectual Property Rights which the Secretariat has received from Bulgaria, by means of

8. *What rights are conferred upon owners of the patents referred to above? Are product and process patents subject to the same rules as other patents? Do they benefit from the same protection as stipulated in Article 28 of the TRIPS Agreement?*

Patents for the above-mentioned inventions confer upon patentees rights identical to those conferred by patents for other inventions, and they are subject to the same rules.

Where the subject matter of the patent is a product the owner of the patent has the right to

- can be distinguished from any other plant grouping by the expression of at least one of the specified characteristics;
- is considered as a unit with regard to its suitability for being propagated unchanged.

(c) *the conditions required for protection;*

According to Article 7 of the Law on the Protection of New Plant Varieties and Animal Breeds protection for plant variety shall be granted when the variety is new, distinct, homogeneous, stable and bearing a variety denomination related to its generic designation.

(d) *the extent to which subject-matter that is already known to the public or identical to what occurs in nature is protectable under your country's sui generis system for the protection of plant varieties;*

Commission finds out that the variety applied for complies with the requirements, it drafts a decision for recognition of the variety and within one month prepares a report to the Patent Office.

The Patent Office grants a certificate based on the decision for recognition of the variety provided that the applicant pays the fees for the grant and publication of the certificate within three months from the notification of the decision on the recognition (Article 40 of the Law on the Protection of New Plant Varieties and Animal Breeds).

(h) *the rights conferred;*

The certificate confers on its owner the exclusive right over any reproductive or vegetative propagating material of the protected variety. It covers the right to use, to dispose of the certificate, and the right of the owner to prevent third parties from using it without his consent. The breeder's right to use the variety includes production or reproduction, preparation for the purpose of propagation, offering for sale, selling, exporting, importing and stocking for any of those purposes (Article 18.1 of the Law on the Protection of New Plant Varieties and Animal Breeds).

(i) *exceptions to the rights conferred, such as:*

- *acts performed for research or experimental purposes;*
- *acts performed to develop new varieties of plants;*
- *acts performed to commercialize such newly developed varieties;*
- *any "farmer's privilege" (e.g. acts performed by a farmer on his own land in respect of seed saved from the previous harvest);*
- *acts done privately and for non-commercial purposes;*
- *compulsory licensing.*

Article 20 of the Law on the Protection of New Plant Varieties and Animal Breeds provides for the following exceptions to the plant breeder's rights:

- acts performed by farmers privately and for non-commercial purposes;
- acts performed for experimental purposes;
- acts performed to develop new varieties of plants.

In order to stimulate agricultural production, farmers are entitled to use for their own needs, for the purpose of reproduction in their own farms, products of a harvest they have obtained through planting in their own farms, propagating material of a variety other than the hybrid or the artificially obtained variety, protected by a certificate. This provision is applied only to plant species included in a list endorsed by the Ministry of Agriculture.

The Law on the Protection of New Plant Varieties and Animal Breeds also provides that, under certain conditions envisaged in Article 23, any interested person may request the grant of a compulsory licence for the use of a protected variety.

(j) *the duration of protection;*

The term of validity of a plant variety certificate as from its date of grant is as follows:

- 30 years for tree or vine varieties;
- 25 years for other varieties.

(k) *transfer of rights;*

All rights provided for in the Law on the Protection of New Plant Varieties and Animal Breeds are assignable. Assignment has to be registered in the Patent Office and published in the Official Bulletin of the Office.

(l) *enforcement of the rights.*

The owner of certificate is protected by the law from any case of use of the variety without