

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 a communication from its Permanent Mission, dated 29 January 1999. Responses from other Members will be circulated in addenda to the present document.

A. PATENT PROTECTION OF PLANT AND ANIMAL INVENTIONS

1. *To what extent are inventions concerning plants or animals, whether products or processes, patentable under your country's law, if they meet the conditions for patentability stipulated in Article 27.1 of the TRIPS Agreement?*

Under Article 6.1 of the Patent Law (published in State Gazette No. 27/1993, amended, State Gazette No. 83/1996; unofficial translation contained in WTO document IP/N/1/BGR/P/1), plant and animal inventions, whether products or processes, are patentable if they are new, involve an inventive step and are capable of industrial application as stipulated in Article 27.1 of the TRIPS Agreement.

2. *Where any such inventions are not patentable, even if they meet these conditions:*

(i) *To what extent is this due to per se exclusions from patentability?*

(ii) *To what extent is this based on other grounds (for example because conditions for patentability other than those stipulated in Article 27.1 are not met or in order to protect ordre public or morality (see Article 27.2 of the Agreement))?*

Article 7.1 of the Patent Law provides for exclusion from patentability of plant or animal inventions, the prevention of publication and exploitation of which is necessary to protect *ordre public* or morality in compliance with the provisions of Article 27.2 of the TRIPS Agreement.

¹ An Illustrative list of questions prepared by the Secretariat in response to a request from the Council is available in document IP/C/W/122.

3. *Please describe any specific provisions, guidelines, final judicial decisions and administrative rulings of general application concerning the application of the conditions for patentability stipulated in Article 27.1 to subject-matter addressed by Article 27.3(b).*

The Bulgarian laws and regulations contain no specific provisions concerning the conditions for patentability and examination of plant and animal inventions.

There are no final judicial decisions concerning the patentability of plant and animal inventions.

4. *Where plant varieties are not as such patentable subject-matter under your country's law, please indicate the extent to which the scope of protection under patents for inventions concerning plants can nevertheless embrace plant varieties or a botanical taxon whose plants express a trait covered by the claims of a patent.*

The scope of protection under patents for inventions concerning plants could be restricted to the cell ancestor of a new plant, proceeding from a new patentable plant genetic material and passing over to the tissue plant culture obtained from that cell. The latter may further become the ancestor of a new plant variety or even of a higher taxon unit, but such as they are, they are subject to protection only under the Law on the Protection of New Plant Varieties and Animal Breeds.

5. *Please provide any definitions used under your country's law with regard to subject-matter specifically excluded from patentability or specifically patentable (e.g. micro-organisms, microbiological processes, non-biological processes, plant varieties).*

According to Article 7.3 of the Patent Law, plant varieties and animal breeds, as well as essentially biological processes for their production, are specifically excluded from patentability.

The Patent Law specifically provides that patent protection shall be conferred on microbiological processes and products thereof.

6. *To what extent is subject-matter that is identical to what occurs in nature patentable under your country's law?*

According to the established practice, processes and products that are identical with what exists in nature are not patentable, for they do not meet the inventive step requirement. In such cases, processes for the isolation of products existing in nature, or methods for the use of processes or products existing in nature as they are, are considered patentable.

7. *Explain the requirements under your country's law for ensuring adequate disclosure of the patentable inventions referred to above.*

Article 37.1 of the Patent Law contains general provisions for ensuring adequate disclosure of the subject matter of an invention. In cases where the patent application refers to a biological object which cannot be disclosed in such a way as to enable a person skilled in the art to carry out the invention, and the said object is not generally available, the description required upon filing of the application shall contain indication of the fact of deposition with a specifically authorized international institution. The deposition shall be made no later than the priority date (Article 37.2 of the Patent Law).

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 prevent third parties not having his consent from the acts of making, using, offering for sale, selling, importing or storing that product for these purposes (Article 19.4 of the Patent Law).

Where the subject matter of the patent is a process the owner of the patent has the right to prevent third parties not having his consent from the acts of using that process, as well as offering for sale, using, selling, importing or storing for these purposes of the product directly obtained by using that process (Article 19.5 of the Patent Law).

The patent owners also have the right to transfer the patent by succession and to conclude licensing contracts (Article 4 and Article 31 of the Patent Law).

The Patent Law provides the same protection for the owners of patents as stipulated in Article 28 of the TRIPS Agreement.

9. *Are there any specific exceptions to these rights (affecting the scope or duration of the patents referred to above)? To what extent are exceptions, available in respect of plant variety rights (e.g. those referred to under question B.4(i) below), available in respect of rights conferred upon patent owners?*

There is a specific exception to the rights conferred upon patent owners referring to the term of validity of the patents. According to paragraph 4 (4) of the Transitional and Final Provisions of the Patent Law for patents granted or applications filed abroad prior to the entry into force of the Patent Law, concerning products obtained by chemical or microbiological processes, as well as medicinal, cosmetic, food or flavour substances, obtained by chemical or other processes, including genetic engineering products, the patent issued in the Republic of Bulgaria shall become effective from:

- the date of filing of the application, when there is a patent granted abroad;
- the date of receiving a notification on the grant of a patent for the application filed abroad.

The term of validity of the patents granted under the conditions specified above shall be terminated upon expiry of the term of validity of the patent granted in the respective country, or as from its invalidation date (paragraph 4 (5) of the Transitional and Final Provisions of the Patent Law).

10. *Are there any specific provisions under your country's law for compulsory licensing in respect of the patents referred to above?*

The Patent Law contains no specific provisions for compulsory licensing in respect of the patents referred to above.

B. PROTECTION OF PLANT VARIETIES

1. *Does your country's law provide for the protection of plant varieties by plant breeder's rights, plant patents or any other sui generis system for the protection of plant varieties?*

The Bulgarian Law on the Protection of New Plant Varieties and Animal Breeds (published in State Gazette No. 84/1996, amended, State Gazette No. 27/1998) provides for the protection of new plant varieties by plant breeder's rights certificates.

2. (a) *If your country is a party to the International Convention for the Protection of New Varieties of Plants (UPOV), please indicate which Act or Acts of the UPOV Convention your country has signed; which it has ratified; to which it has acceded; and to the standards of which its law conforms but to which it has not (yet) adhered.*
- (b) *If your country is not a party to the UPOV Convention, does the protection offered to plant varieties under your country's law conform to the standards of any of the Acts of the UPOV Convention and, if so, which?*

The Republic of Bulgaria is a party to the International Convention for the Protection of New Varieties of Plants (the UPOV Convention) as from 24 April 1998 (the law on ratification of the Convention is published in State Gazette No. 21/1998). Bulgaria has acceded to the Act of the UPOV Convention, signed on 2 December 1961 in Paris, and revised on 10 November 1972, 23 October 1978 and 19 March 1991 in Geneva.

The Bulgarian Law on the Protection of New Plant Varieties and Animal Breeds complies with the UPOV Convention in its last version of 1991.

3. *Please indicate whether concurrent protection under your country's plant variety protection law and its patent law is available (see also question A.4 above).*

Concurrent protection is not available under Bulgarian law.

4. *Please provide the following details of your country's sui generis system for the protection of plant varieties:*

- (a) *the relevant laws and regulations and, if they have been notified to the Council for TRIPS, a reference to the relevant WTO documents;*

The relevant law governing the protection of plant varieties in the territory of Bulgaria is the Law on the Protection of New Plant Varieties and Animal Breeds in force from 4 January 1997. Unofficial translation is contained in WTO document IP/N/1/BGR/P/2.

- (b) *the definition of "plant variety";*

According to paragraph 1.1 of the Transitional and Final Provisions of the Law on the Protection of New Plant Varieties and Animal Breeds, "plant variety" is a plant grouping within a single botanical taxon of the lowest known rank, which grouping, regardless of whether the conditions for the grant of a breeder's right are fully met:

- can be defined by the expression of the features, characterizing a given genotype or a certain combination of genotypes;

- 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;*

Plant variety is deemed to be new if, at the date of filing the application for a certificate, the variety or propagating material of the variety or harvest thereof has not been offered for sale, sold, or otherwise used commercially, or has been offered with the consent of the breeder in the territory of the Republic of Bulgaria for not more than one year, or in the territory of any other country for not more than 6 years concerning trees and vines or 4 years concerning any other plant species (Article 8.1 of the Law on the Protection of New Plant Varieties and Animal Breeds).

(e) *the extent to which protection can be based on characteristics of germplasm, as opposed to characteristics of plant varieties derived from such germplasm;*

Germplasm characteristics can be protected by a patent for invention, where the patentability requirements are met. Characteristics of a plant variety derived from such germplasm are protected by a plant breeder's rights certificate.

(f) *who is entitled to the rights;*

The right to a certificate belongs to the person entitled to apply for it - the plant breeder or his assignee (Article 15 of the Law on the Protection of New Plant Varieties and Animal Breeds). In case of service variety or variety made on a contract basis, the right to apply for a certificate belongs to the employer, the assignor of the task respectively.

(g) *the procedure for the acquisition of rights, including the authority in charge of administering the rights;*

The procedure for acquisition of rights begins by filing an application for a variety certificate with the Patent Office. The application is then recorded in a register and receives a filing date provided that it contains all the documents required as specified in Article 32.2 of the Law on the Protection of New Plant Varieties and Animal Breeds (description of the variety, proposal for a denomination of the variety, paid fees for filing and publication of the application). The application registered in the Patent Office is subject to preliminary examination within one month from its filing date in order to check its formal regularity and the content of the documents enclosed. Within one month from the completion of preliminary examination, the Patent Office submits the application to the State Variety Commission for examination as to substance.

The State Variety Commission undertakes an examination within a period of two to four years in order to establish whether the plant variety complies with requirements for novelty, distinctness, homogeneity and stability. When as a result of the examination as to substance the

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 his consent and covered by the scope of protection by the certificate.

According to Article 29 of the Law on the Protection of New Plant Varieties and Animal Breeds the certificate owner disposes of the following claims against infringements of his rights:

- claim for establishing the fact of the infringement;
- claim for compensation of injuries suffered and benefits lost;
- claim for prevention of the infringer from infringing actions.

In case of acceptance of the above mentioned claims by the court, the court may also order reprocessing or destruction of the object of the infringement, as well as of the tools of the infringement when the infringement is intentional.

According to Article 52 of the Law on the Protection of New Plant Varieties and Animal Breeds, the owner of a certificate may request protection of his rights under administrative procedures. The fact of the infringement shall be established by an official person, appointed by the Minister of Agriculture, through issuing a statement of infringement. The sanction is imposition of a penalty in the amount of leva 100.000 to leva 1 000.000. In case of repeated infringement the penalty is from leva 1 000.000 to leva 10 000.000. The administrative penalty does not exclude criminal liability under the Bulgarian legislation.
