

# WORLD TRADE ORGANIZATION

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

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TECHNICAL COOPERATION ACTIVITIES: INFORMATION FROM OTHER  
INTERGOVERNMENTAL ORGANIZATIONS

Addendum

Food and Agriculture Organization

At its meeting of 24 May 1995, the Council for TRIPS agreed to request certain intergovernmental organizations to provide information on their technical and financial cooperation programmes in the area of intellectual property relevant to the implementation of the TRIPS Agreement (IP/C/M/2, paragraph 53).

This addendum reproduces the information which has been received in response to this request from the Food and Agriculture Organization of the United Nations.

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## FAO'S ASSISTANCE TO DEVELOPING COUNTRIES IN FIELDS RELATED TO TRIPS

### FAO's areas of expertise and TRIPS

FAO provides technical advice and assistance to its member countries, particularly developing countries, on a wide range of food and agricultural topics. These include advice and assistance on food quality and safety, plant protection and quarantine activities and general advice on agricultural production and trade, including information on agricultural policy and incentives for production and trade. The agreements adopted in the context of the Uruguay Round require technical assistance to be provided to developing countries in many areas which fall within FAO's expertise, and in which the Organization has extensive experience. FAO's main interest and technical expertise on TRIPS relate to intellectual property rights over plant varieties, animal breeds and related technologies and germplasm.

### Plant Breeders' Rights, Farmers' Rights, in the context of the FAO Commission on Plant Genetic Resources and the TRIPS Agreement

FAO's Commission on Plant Genetic Resources (CPGR) is the only permanent United Nations intergovernmental forum dealing specifically with matters related to the conservation and utilization of plant genetic resources for food and agriculture, and related technologies. The Commission monitors the implementation of the International Undertaking on Plant Genetic Resources, a non-binding international agreement adopted by an FAO Conference Resolution. Currently, 137 countries and the European Community are members of the CPGR. Through the CPGR, FAO members have been involved in negotiations concerning plant genetic resources for food and agriculture, and related technologies, particularly in the context of the refinement of the International Undertaking on Plant Genetic Resources, through a series of agreed interpretations, and complementary resolutions. In particular, three FAO Conference Resolutions, unanimously adopted in 1981 and 1983, simultaneously and in parallel, recognized "plant breeders' rights", as provided for under UPOV (International Union for the Protection of New Varieties of Plants) and "farmers' rights".<sup>1</sup>

UNCED's Agenda 21, under Chapter 14, subsequently requested the realization of Farmers' Rights. Intergovernmental negotiations are currently under way, in the CPGR, for the revision of the International Undertaking on Plant Genetic Resources (Conference Resolution 7/93) covering, *inter alia*, access to plant genetic resources for food and agriculture, and related technologies, and the realization of "farmers' rights".

During these negotiations, countries are discussing possible systems of intellectual property rights, including patenting and "effective *sui generis* systems", that would be in line with, and fully compatible with, the provisions of the TRIPS Agreement and with the Convention on Biological Diversity. In addition, the CPGR is also negotiating a Code of Conduct on Biotechnology, including a component on intellectual property rights.

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<sup>1</sup>"Farmers' rights mean rights arising from the past, present and future contributions of farmers in conserving, improving and making available plant genetic resources, particularly those in the centres of diversity/origin".

These intergovernmental negotiations are very timely, in the light of Article 27.3(b) of the TRIPS Agreement, which requires that all Members "shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof".

In this context, during the round of negotiations at the sixth session of the CPGR in June 1995, many countries' proposals for the realization of "farmers' rights" included provisions on the development of *sui generis* systems that would provide for informal innovators, such as farmers and communities (and their countries) supplying plant genetic resources, to have a right to a share of the benefits derived from their utilization. Many delegations recognized the connections with the provisions of the TRIPS Agreement.

### **Technical assistance to FAO members for legislation on seed production and related matters**

FAO advises its members in relation to their plant breeding, and seed and planting material production legislation, regulations and systems.

FAO's Seed and Plant Genetic Resources Service (AGPS, part of FAO's Plant Protection and Production Division) assists FAO members in the definition of criteria for the formulation and implementation of regional and national seed policies and programmes, including cooperation between developed and developing countries. It covers variety maintenance and replacement, and both technical and legal aspects of seed testing, certification and variety protection, in relation to "plant breeders' rights". In this work, assistance to developing countries is delivered in cooperation with FAO's Development Law Service (LEGN, part of the FAO Legal Office), which provides developing countries with a broad range of legal advice on agriculture and renewable natural resources management, including the drafting of necessary legislation.

In the field of seeds, and in particular the development and release of new improved food crop varieties, many responsibilities which used to be vested in various government institutions and agencies are now increasingly moving into the hands of the private sector. In many cases, relevant national economic policy decisions have not yet been backed by the adoption of new and pertinent legal frameworks. Furthermore, as a consequence of their membership to the World Trade Organization, countries will need to formulate legislation to protect plant varieties in line with Article 27.3(b) of the TRIPS Agreement.

The focus of FAO's work in this regard is to assist national authorities to analyse their needs and identify appropriate policy options; to formulate or revise the relevant national legislation; and to advise on the structure and functions of the institutions involved. FAO's experience over many years has shown that justice cannot be done to the particular needs and circumstances of individual countries by theoretical studies or model laws.

FAO's approach to technical assistance in legal advice and legislative drafting normally includes the following steps, involving the relevant technical divisions of FAO (and their technical consultants in the field), and in close collaboration with the national authorities:

- review and analysis of the statutory instruments in force (or draft bills already prepared by the government) and of the institutional framework governing intellectual property protection (with specific reference to seeds), and seed production (including quality control, marketing, and export and import);
- identification of the specific objectives, with regard to seed production, to be attained by means of the proposed legislation, in the light of the government's priorities;

- elaboration of a draft act and regulations, or amendments to the existing legislation; and
- submission of recommendations, and their discussion with the relevant national authorities.

In the following **table**, relevant examples are given of projects under which FAO is providing technical assistance to developing countries.

*Table 1*

**Examples of FAO Technical Assistance Projects<sup>2</sup>**

*China*

In 1994, the FAO/World Bank Cooperative Programme prepared a project for World Bank Funding, based on the commercialization of a number of provincial seed companies, and the introduction of a supporting policy environment, including the establishment of a system of plant breeders' rights that conforms to the requirements of the GATT Uruguay Round. The proposed project, which is currently being appraised by the World Bank, includes a technical assistance component for advising on variety protection systems.

*Lithuania*

Under FAO's Technical Cooperation Programme, project TCP/LIT/4553, an FAO mission assisted the authorities to prepare a seed master plan. A draft seed law and legislation prepared by the Government is now being reviewed by FAO under the project.

*Malaysia*

At the request of the Economic Planning Unit of Malaysia, FAO has approved project TCP/MAL/4553, under its Technical Cooperation Programme. The aim of the project is to strengthen seed and planting material production, and to develop a certification and marketing programme. The project will advise the Government on appropriate programme and policy measures for upgrading the national capability in variety registration, release and protection, and quality control and seed and planting material certification, by defining the respective rôle of various official agencies and the private sector. In addition, the project will prepare a study analysing the implications of TRIPS Article 27.3(b), as well as the various options before the Government to give effect to this clause. The study will consider the implications for specific relevant legislation.

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<sup>2</sup>Crops are the largest sector in FAO's overall technical assistance programme, funded by UN donor agencies, Trust Funds with cooperating governments, or FAO's own Technical Cooperation Programme. In 1993, for example, crops accounted for 24 per cent (US\$498,793,000) of the total value of ongoing projects (US\$2,150,000,000). These figures present the total budget of ongoing projects, over their whole life, not annual expenditure; in 1993 alone, expenditure on all projects was US\$306,000,000). A good proportion of such projects involves genetic resources, and breeding, under one aspect or another.

*Mauritania*

Under the FAO/UNDP project, MAU/92/007, "Appui à la vulgarisation de semences traditionnelles de qualité", a seed law was prepared, which is currently awaiting submission to Parliament.

*Pakistan*

In May 1995, FAO approved project TCP/PAK/4557, under its technical cooperation programme, with the aim of preparing a seed sector development programme. The seed industry's current institutional framework was established in 1976; aware of the need to increase the involvement of the private sector, the Government intends to formulate a new comprehensive programme, including the adoption of specific legislation recognizing "plant breeders' rights".

*Tanzania*

Tanzania was assisted by the FAO/UNDP project, URT/93/003, through the enhancement of the capacity to coordinate the national seed programme. The project assisted in the preparation of suitable draft legislation for a plant breeders' rights system.

*Vietnam*

The recently completed FAO/UNDP project, VIE/87/005, "Development of Agricultural Genetics for Vietnam", is an example of a project dealing almost exclusively with the utilization of plant genetic resources, through biotechnology and advanced breeding. The project built up a strong national genetic resources capacity to support research on plant breeding. There was also a legal component, which strengthened the institutional capacity to deal with intellectual property and patent rights, plant breeders' rights and international agreements.

*Zaire*

Under a previous phase of the FAO/UNDP project, ZAI/92/002, "Assistance à la production semencière", a seed law was drafted, which is currently being considered by the Government.