

**REVIEW OF THE APPLICATION OF ARTICLE 27.3(b)  
OF THE TRIPS AGREEMENT**

Information from Members

Addendum

MOROCCO

The present document represents the information requested by the Council for Trade-Related Aspects of Intellectual Property Rights which the Secretariat has received from Morocco, by means of a communication from its Permanent Mission, dated 12 March 1999.

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1. In Morocco, breeder's rights are protected under Law No. 9-94 on the protection of new varieties of plants, enacted by Dahir No. 1-96-255 of 21 January 1997.

2. The protection granted under the Moroccan law on the protection of new varieties of plants is not parallel to that established under the law on patents.

3. Pursuant to Law No. 9-94 on the protection of new varieties of plants, enacted by Dahir No. 1-96-255 of 21 January 1997, the following is the information concerning Morocco's *sui generis* system for the protection of plant varieties:

(a) Definition of a variety

A variety is defined as 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 features; and
- is considered as a unit with regard to its suitability for being propagated unchanged.

(b) The conditions required for protection

These are set out in Article 5 of Law No. 9-94, which states that subject to prior examination, the variety must be:

- New;
- distinct from any other variety of the same category;
- homogenous;
- stable; and
- must have an appropriate variety denomination.

(c) The notion of novelty of a plant variety

Article 6 of Law No. 9-94 prescribes that a variety is deemed to be new if, at the date of filing the application for the breeder's right, the reproductive material or propagating material or the harvested or processed material of the variety has not been sold or otherwise transferred to third parties by or with the consent of the breeder with a view to the commercial exploitation of the variety, for at least one year in Morocco or at least four years, or in the case of trees or vines, at least ten years abroad.

Besides, Article 76 provides that for a transition period of one year from the effective date of the Moroccan Law, an application may be filed for the protection of varieties that have been offered for sale, otherwise used commercially or disseminated in Morocco or abroad prior to the effective date of the present law. If that protection is granted, its duration is reduced by the number of full years that have elapsed between the date when the variety was first offered for sale, otherwise commercially used or disseminated and the filing date of the application.

The same rule applies, *mutatis mutandis*, to varieties of species added to the list of protected species after the entry into force of the present law (Article 76).

(d) Conditions for the grant of protection

Protection is granted based on novelty, distinctness, homogeneity, stability and denomination. In the case of derived varieties, the breeder must convince the Court that the variety in dispute was derived from his initial variety.

(e) Definition of breeder

The entitlement to rights is reserved for the breeder, who is defined as follows:

- The person who has created, discovered or developed a variety;
- the person who employs the aforementioned person or who commissioned his work, subject to any contractual provisions to the contrary;
- the successor in title of the first or the second above-mentioned person, as appropriate.

(f) The procedure for the acquisition of rights of protection

Applications are recorded with the national application register and subsequently published in the bulletin for the protection of new plant varieties. The department responsible for examining the applications then conducts experiments on the new varieties over two crop cycles. If the variety fulfils the prerequisites for protection, a certificate is issued to the breeder recognizing the new plant variety.

(g) The scope of the rights conferred

The breeder's right described in Article 16 of Law 9-94 covers:

- The protected variety;
- any variety that is not clearly distinguishable from the protected variety pursuant to Article 7 of the law;
- any variety derived essentially from the protected variety if the latter is itself not an essentially derived variety; and
- any variety the production of which requires the repeated use of the protected variety.

Subject to Articles 17 and 18 of the Law, the breeder's permission is required for the following acts in regard to the reproductive or propagating material of the protected variety or the varieties contemplated in the first paragraph above:

- Production or reproduction;
- preparation for the purposes of production or propagation;
- offer for sale;
- sale or any other form of commercial use;
- export;
- import;
- possession for one of the purposes mentioned in the preceding subparagraphs.

Subject to the provisions of Articles 17 and 18 below, if a breeder is unable to enforce his rights with regard to the reproductive or propagating material, he may enforce his rights in regard to the acts mentioned in the second paragraph above concerning the harvested or processed material.

A variety essentially derived from another variety (initial variety) is defined as:

- A variety derived mainly from an initial variety or from a variety itself also mainly derived from the initial variety, and which retains the expressions of the essential traits resulting from the genotype or the combination of the genotypes of the initial variety;
- a variety clearly distinguishable from any other variety; and

- except for the differences resulting from the derivation, a variety that is consistent with the initial variety in terms of the expression of essential traits resulting from the genotype or the combination of genotypes of the initial variety.

(h) Exceptions to the rights conferred

Article 17 of the Law states that the breeder's right does not cover:

- Acts performed privately for non-commercial purposes;
- acts done for experimental purposes;
- acts carried out to create new varieties as well as the acts contemplated in the second and third paragraphs of Article 16 above, performed with such varieties, provided that:
  - the protected variety is not used repeatedly in order to produce the new variety;
  - the new variety is not derived essentially from the protected variety if the latter is not itself essentially a derived variety;
  - the new variety is clearly distinguishable from the protected variety; and
  - acts performed by farmers for the purposes of reproduction or propagation on their own farms using the products of the harvest obtained by planting the protected variety, with the exception of tree crops and ornamental and floral plants (farmer's privilege).

Furthermore, Article 21 of the Law prescribes that upon expiry of a period of three years following the delivery of the certificate or four years from the filing date of their application, any legal person governed by public or private law may obtain a compulsory licence for this certificate if at the time of the application, barring any valid excuses, the holder of the certificate or his successor:

- Has not yet started to exploit or to make effective and serious preparations to exploit the new variety covered by the certificate on Moroccan territory; or
- has not sold the product covered by the certificate in quantities large enough to satisfy the needs of the national market; or
- if the exploitation or sale of the variety has been abandoned for more than three years in Morocco.

Articles 22, 23 and 24 define the conditions for the grant and the withdrawal of compulsory licences.

(i) The duration of protection

The duration of protection is 20 years for varieties used as field crops, 25 years for tree and vine varieties and 30 years for date palm.

(j) Cessation of rights

The rights attaching to an application for a certificate or to the certificate itself are fully or partly transferable; they may, in whole or in part, be subject to the grant of an exclusive or non-exclusive licence of use.

The rights conferred by the application for the certificate or the certificate itself may be invoked against a licence holder who infringes one of the limits of his licence established under the preceding paragraph (Article 20).

(k) Actions at law in the event of infringement of a statutory or treaty obligation

The Law on the protection of new plant varieties provides for actions at law in the event of infringement of a statutory or treaty obligation; in the event of bad faith at the time of delivery or acquisition of the certificate, counterfeit, or a deliberate attempt to infringe the right of the holder of a certificate covering a new plant variety.

4. The texts for the implementation of Law 9-94 on new plant varieties are now being adopted.

5. The Council of the International Convention for the Protection of New Varieties of Plants (UPOV) has examined and recognized that the Moroccan law on the protection of new plant varieties is consistent with the Acts of the UPOV Convention of 1978 and 1991.

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