

REVIEW OF THE PROVISION OF TRIPS ARTICLE 27.3(b)

Responses to Checklist of Questions

Addendum

LITHUANIA

The present document represents the information requested by the Council for Trade-Related Aspects of Intellectual Property Rights which the Secretariat has received from Lithuania, by means of a communication from its Permanent Mission, dated 15 June 2001¹.

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?*

Inventions concerning plants or animals (products or biological processes) are not patentable in Lithuania (Article 2 of Patent Law). However, under the same Law, the separate genes (microbiological processes) may be patentable, if they meet the conditions for patentability.

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?*

Patent Law does not provide any specific exclusion from patentability and reads (Article 2): "Patents shall be available for any inventions in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application". Law on the Protection of Plant Varieties provides the legal protection and use for varieties of plants. The Law shall apply to the varieties of plants genera and species, included in the list approved by the Minister of Agriculture. The exclusive rights have to be granted to the registered variety upon establishing that variety satisfies the criteria of novelty, distinctness, uniformity and stability and has been designated by a denomination.

¹ The questions to which answers are provided are those which can be found in document IP/C/W/122.

- (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))?*

However, according to the Article 2 of Patent Law "patents shall not be granted for inventions the commercial exploitation of which would be in contrary to public interests, principles of morality and humanity".

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).*

Patents, as it was mentioned in answer 1, are granted for microbiological processes for the production of plants or animals or the products thereof (under Article 2.3 of Patent Law).

The Law on the Protection of Plant Varieties covers provisions only concerning plant variety protection.

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 tax on whose plants express a trait covered by the claims of a patent.*

The mentioned provision of the Law that patents for plant or animal varieties or biological processes are not granted is not applying, as it was already mentioned above, to microbiological processes for the production of plants or animals or the products thereof. So, a patent claim is expressly limited, i.e. patents are not granted for a plant or animal varieties, however, the separate genes may be patentable.

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).*

Article 2 of the Patent Law provides that the following shall not be regarded as inventions:

- (1) discoveries, scientific theories and mathematical methods;
- (2) design of products;
- (3) schemes, rules and methods of games, intellectual or economic activities, as well as programs for computers; and
- (4) presentations of information.

Patents shall not be granted for:

- (1) methods for treatment of the human or animal body by surgery or therapy and diagnostic and prophylactic methods practiced on the human or animal body. This provision shall not apply if an object of invention is equipment or materials utilized for such methods;
- (2) plant or animal varieties or essentially biological processes for the production of plants or animals. This provision shall not apply to microbiological processes for the production of plants or animals or the products thereof;

- (3) inventions the commercial exploitation of which would be contrary to public interests, principles of morality and humanity. Decisions to refuse granting patents may not be adopted merely because the exploitation of such inventions is prohibited by laws or other legal acts.

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

If claim defines a product or composition, which already exists in nature, it is considered non-patentable under the Patent Law. According to the Law it is considered to be a discovery.

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

Patent Law provides that a specification must disclose the invention in such full and clear terms as to enable any person skilled in the art to which it pertains to use the invention. Where a patent application refers to a biologically reproducible material which cannot be disclosed in the application in such a way as to enable any person skilled in the art to use it, and such material is not available to the public, it shall be deposited for safe-keeping with a depository institution. The patent application filed with the State Patent Bureau shall be accompanied by a document about the deposition of such biological material.

Also we have to note that Lithuania is a member of the Budapest Treaty on the Deposit of Micro-organisms for the Purposes of Patent Procedure of 1997.

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?*

There is identical scope of patent protection provided under the Patent Law. Under Article 26 "the owner of the patent shall have the exclusive right to prevent third parties not having the owner's consent from the acts of making, using, offering for sale, selling, importing or exporting that product. Where the subject matter of a patent is a process, the owner of the patent shall have the exclusive right to prevent third parties not having the owner's consent from the act of using the process, and from the acts of using, offering for sale, selling, importing or exporting a product obtained directly by that process" (there are no specific provisions for various kinds of inventions).

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 are no specific exceptions to the patent owner rights provided in the Patent Law. The term of every patent shall be 20 years.

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

Article 39 of Patent Law provides exploitation of a patent with authorization of the Government. There is considered that the Government has right to permit a central or local government institution, natural or legal persons as well as an enterprise which does not have the rights of a legal person to market, without the agreement of the owner of a patent, a patented invention in the territory of the Republic of Lithuania, if:

- an invention protected by a patent is related to public needs, national security and public health protection, development of economically important sectors;
- the court determines that a method of the exploitation of an invention employed by the owner of a patent or licensee is anti-competitive.

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 Law on the Protection of Plant Varieties provides for the protection of plant varieties by plant breeder's rights. Plant patents, following the provisions of the Patent Law, for plant or animal varieties or biological processes, as it was mentioned above, are not granted. However, microbiological processes for the production of plants or animals may be patentable.

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.*

Lithuania is not yet a party to the International Convention for the Protection of New Varieties of Plants (UPOV), but it is foreseen to join it in the course of 2003.

(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 Law on the Protection of Plant Varieties conforms to the standards of the UPOV Convention, particularly the 1991 Act.

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).*

Some concurrent protection under the Law on the Protection of Plant Varieties and Patent Law is available. Under the Law on the Protection of Plant Varieties plant varieties are protected by plant breeder's rights. According to the Patent Law, the patents are not granted for plant or animal varieties, however separate genes may be patentable.

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;*

Law on the Protection of Plant Varieties of 22 November 2001 (notification has been submitted in June 2002). This Law replaced the Law on the Protection of Plant Varieties and Seed Cultivation of 17 September 1996, as amended on 10 June 1997 which was notified to WTO (IP/N/1/LTU/1 of 24 September 2001).

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

Under the Law on the Protection of Plant Varieties "plant variety" means a plant within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the

conditions for the grant of a breeder's right are fully met, can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, can be distinguished from any other plant grouping by the expression of at least one of the said characteristics, and can be considered as a unit with regard to its suitability for being propagated unchanged".

(c) *the conditions required for protection;*

Legal protection to a plant variety shall be granted upon establishing that the variety satisfies the criteria of novelty, distinctness, uniformity and stability and has been designated by a denomination. It must be different from every denomination which designates, in the territory of the Republic of Lithuania or any other state, an existing variety of the same plant species or of a closely related species.

(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;*

Under the plant variety protection system in Lithuania to be protectable a variety shall be new.

The variety shall be deemed to be new if, at the date of filing of the application, the propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by the initiative or with the consent of the breeder:

- (1) in the Republic of Lithuania earlier than one year before the above-mentioned date;
 - (2) in the territory of another state earlier than four years or, in the case of trees, vines or of berry shrubs earlier than six years before the said date.
- (e) *the extent to which protection can be based on characteristics of germplasm, as opposed to characteristics of plant varieties derived from such germplasm;*

Plant variety protection is predicated on identification of expressed characteristics of plant varieties.

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

To be entitled to rights under Lithuania's legislation to plant protection, one has to be the person who bred, or discovered and developed the variety, or his successor in title.

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

The breeder or the person authorized by him who wishes to receive the protection for the variety bred or discovered or developed by him shall file an application to the administrator of the List of Protected Varieties approved by the Ministry of Agriculture for granting legal protection to a plant variety.

The administrator of the List of Protected Varieties shall carry out preliminary examination of the application within one month from the date of filing of the application. In the course of the examination priority of the application shall be determined, fullness of the set of documents filed and their compliance with the requirements set by the administrator of the List of Protected Varieties shall be assessed.

After the preliminary and substantive examinations of the application have been carried out, a technical examination of the variety shall be performed. In the course of the examination tests may be carried in order to establish whether the variety complies with the requirements of distinctness, uniformity and stability.

If the results of the technical examination of the variety comply with the requirements of distinctness, uniformity and stability, set by the Law on the Protection of Plant Varieties, and the applicant has paid the fee for the technical examination of the variety, the administrator of the List of Protected Varieties shall produce the official description of the variety and take a reference sample of the propagating material of the variety for safekeeping and shall take a decision to enter the variety in the List of Protected Varieties under the proposed denomination and shall inform the applicant thereof in writing.

(h) *the rights conferred;*

The plant variety protection shall be granted on the same day as the denomination of the variety is entered in the List of Protected Varieties.

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

- *acts performed for research or experimental purposes;*

A variety may be used without the breeder's authorization if the acts are done for scientific purposes;

- *acts performed to develop new varieties of plants;*

A variety may be used without the breeders authorization if the acts are done for the purposes of breeding other varieties;

- *acts performed to commercialize such newly developed varieties;*

[No response received]

- *any "farmer's privilege" (e.g. acts performed by a farmer on his own land in respect of seed saved from the previous harvest);*

Farmers and other land users may use the protected variety without the breeder's authorization when:

(1) they use the propagating material from the harvest of a protected variety, raised on their farm or on holdings used by them for their farm needs;

(2) the farmers and other land users may be exempt form the payment of the remuneration when the area of their own holdings or plot of the land used is not larger than the area prescribed by the Minister of Agriculture.

- *acts done privately and for non-commercial purposes;*

A variety may be use without the breeders authorization if the acts are done privately and for non-commercial purposes;

- *Compulsory licensing*

A compulsory licence contract may be concluded where there is a lack in the state of the

protected variety of significance for the national economy or if the breeder has not been propagating the variety for a three-year period after the entry thereof in the List of Protected Varieties.

(j) *the duration of protection;*

The legal protection to a plant variety shall be granted for a period of 25 years, whereas for potatoes, trees, berry shrubs and vines the said period shall be 30 years from the date of entry thereof in the List of Protected Varieties.

(k) *transfer of rights;*

Natural and legal persons, who have acquired the property right to a variety, must submit to the administrator of the List of Protected Varieties documents confirming this fact. The administrator of the List of Protected Varieties shall examine the received documents and register the new breeder within one month from the receipt of the application.

(l) *the enforcement of the rights;*

- (1) Upon establishing that a plant variety satisfies the conditions for legal protection, the administrator of the List of Protected Varieties shall take a decision to enter the variety in the List of Protected Varieties under the proposed denomination and shall inform the applicant thereof in writing. The denomination of the variety, the breeder thereof, the variety description, duration of the plant variety protection shall be specified in the decision.
 - (2) Having entered the variety in the List of Protected Varieties, the breeder shall be issued a certificate of the plant variety protection. The administrator of the List of Protected Varieties shall determine the form of the certificate.
 - (3) The plant variety protection shall be granted on the same day as the denomination of the variety is entered in the List of Protected Varieties.
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