

WORLD TRADE ORGANIZATION

RESTRICTED

IP/C/W/125/Add.8/Suppl.1
18 September 2001

(01-4412)

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

Original: English

REVIEW OF THE PROVISIONS OF ARTICLE 27.3(b)

Information from Members

Supplement

CZECH REPUBLIC

By means of a communication, dated 11 September 2001, the delegation of the Czech Republic has supplemented its answers to the illustrative list of questions as reflected by the Secretariat in the synoptic tables annexed to document IP/C/W/273, in which the Secretariat's illustrative list of questions was re-issued as requested by the Council. The communication of the Czech Republic indicates that the supplementary information concerns amendments and adjustments to the information it had provided earlier (document IP/C/W/125/Add.8) and mirrors recent changes in the legislation of the Czech Republic.

SYNOPTIC TABLE II OF IP/C/W/273: PLANT VARIETY PROTECTION SYSTEMS²

	CZE
1. Do the laws applicable to your territory provide for a <i>sui generis</i> form of protection for a new plant variety?	Yes
2. If the answer to question 1 is "yes", does that protection conform to the standards defined in one of the Acts of the International Convention for the Protection of New Varieties of Plants (UPOV)?	Yes
3. If the answer to question 2 is "yes", please specify the Act of the UPOV Convention upon which your legislation is based (i.e. the 1991 Act, the 1978 Act or the 1961/1972 Act).	1991*
4. If <i>sui generis</i> protection for plant varieties is provided in your territory, would any of the following acts require the prior authorization of the right holder: (a) acts performed for research or experimental purposes, or to develop new varieties of plants? (b) acts performed to commercially exploit a variety distinct from the protected variety but sharing its essential characteristics? (c) acts performed by a farmer of harvesting seed from his planting of a protected variety legitimately obtained, storage of that seed, and replanting of that seed on the farmer's land? If prior authorization is not required for any of the above examples of activities, is there any requirement that the party undertaking the specified actions provide the right holder with remuneration in any form?	No Yes No* Yes*
5. Would acts done privately and for non-commercial purposes require the authorization from the right holder?	*
6. Does your legislation provide for other exceptions to the rights conferred?	*
7. Can protection be obtained for a plant variety that was known to the public, or was publicly available, prior to the application for <i>sui generis</i> protection for that plant variety, and, if so, under what conditions (i.e. what are the time-limits during which public disclosure or availability will not preclude the grant of protection)?	Yes*
8. To be entitled to rights under <i>sui generis</i> plant variety protection does one have to be the person who bred, or discovered and developed the variety, or his successor in title?	*
9. Can protection be predicated on identification of an unexpressed gene, on an unexpressed set of genes present in the genome of the plant variety, or on the characteristics of germplasm, rather than the expressed characteristics of plant varieties derived from such genes or germplasm?	No
10. What are the conditions that your law require for protection? ¹	n,d,u,s pd
11. What is the duration of protection?	25/30*

* See Annex 2 for further information.

¹ d=distinctness; u=uniformity; s=stability; n=novelty; pd=proper denomination.

² As it relates to the Czech Republic.

ANNEX 1*

1. *In your territory, is there any basis for denying a patent on an invention consisting of an entire plant or animal that is novel, capable of industrial application, involves an inventive step and has been adequately disclosed?*

Yes.

According to Section 4, paragraph (b) of the Czech Patent Law No. 527/1990 Coll. as amended by the Law Amending some Laws on the Protection of the Industrial Property No. 116/2000 Coll., patents are not granted on plant and animal varieties and essentially biological processes for the production and improvement of plants and animals. This provision is based on the Article 53(b) of the European Patent Convention. The inventions concerning plants and animals as such provided that they meet basic requirements of patentability do not fall under the exclusion mentioned above. The application of patent practice in the Czech Republic does not dispose of any precedent of a patent claim which would explicitly cover a plant or an animal.

2. *If the answer to question 1 is yes, please respond to the following questions:*

(a) *Does your patent system exclude entire plants or animals as inventions?*

No.

According to Section 4, paragraph (b) of the Czech Patent Law No. 527/1990 Coll. as amended by the Law Amending some Laws on the Protection of the Industrial Property No. 116/2000 Coll., patents are not granted on plant and animal varieties and essentially biological processes for the production and improvement of plants and animals. This provision is based on the Article 53(b) of the European Patent Convention. The inventions concerning plants and animals as such provided that they meet basic requirements of patentability do not fall under exclusion mentioned above. The application of patent practice in the Czech Republic does not dispose of any precedent of patent claim which would cover a plant or an animal.

(c) *Is there any other basis in your law that precludes the grant of a patent on any categories of plant or animal inventions that otherwise are novel, involve an inventive step, are capable of industrial application and have been adequately disclosed?*

Yes.

According to Section 4, paragraph (a) of the Czech Patent Law, patents are not granted in respect of inventions the exploitation of which would be contrary to "*ordre public*" or morality.

3. *Other than with respect to subject-matter you defined as being ineligible to be patented under question (2), is it possible in your territory to obtain a patent claim defined in any of the following ways?*

(a) *A patent claim that is not limited to a specific plant or animal variety.*

There has not been such a case in implementing practice up to now.

* As it relates to the responses from the Czech Republic reflected in synoptic table I above.

(b) *A patent claim that is expressly limited to a plant or animal variety.*

There has not been such a case in our implementing practice up to now.

(c) *A patent claim that is expressly limited to a group of plants or animals, where the group is defined through reference to a shared characteristic such as incorporation of a particular gene.*

See the replies above.

5. *Is it possible to obtain a patent in your territory on an essentially biological process for the production of a plant or animal (i.e. a process limited to those acts that are necessary for sexual or asexual reproduction of a plant or animal)? If not, please identify the legal basis under which these inventions are deemed ineligible to be patented.*

No.

According to Section 4, paragraph (b) of the Czech Patent Law No. 527/1990 Coll. as amended by the Law Amending some Laws on the Protection of the Industrial Property No. 116/2000 Coll., patents are not granted on plant and animal varieties and essentially biological processes for the production and improvement of plants and animals.

6. *Is it possible to obtain a patent in your territory covering subject-matter that is identical to that found in nature (e.g. a plant or animal in its natural state)?*

No.

According to the Czech Patent Law No. 527/1990 Coll., patents are granted to inventions which are new, which involve an inventive step and are susceptible of industrial application. Discoveries are not patentable. (See Section (3), paragraphs 1) and 2) of the Czech Patent Law.)

Section 2(a) of the Law on the Protection of Biotechnological Inventions No. 206/2000 Coll. reads: "Biotechnological inventions are patentable, if they concern biological material, which is isolated from its natural environment or produced by means of a technical process, even if it previously occurred in nature".

Following Section 1(a) of the Law on the Protection of Biotechnological Inventions No. 206/2000 Coll., "biological material means any material containing genetic information and capable of reproducing itself or being reproduced in a biological system".

7. *Does your patent system include any special provisions to ensure adequate disclosure regarding inventions covered by Article 27.3(b) (for example, micro-organisms)?*

Yes.

The Czech Republic is a member of the Budapest Treaty on the Deposit of Microorganisms of 1977. Special provisions are included in the Law on the Protection of Biotechnological Inventions No. 206/2000 Coll.

ANNEX 2*

3. *If the answer to question 2 is "yes", please specify the Act of the UPOV Convention upon which your legislation is based (i.e. the 1991 Act, the 1978 Act or the 1961/1972 Act).*

Law No. 408/2000 Coll., on the protection of plant variety rights is based upon the 1991 Act of the UPOV, but the accession procedure has not yet finished.

4. *If sui generis protection for plant varieties is provided in your territory, would any of the following acts require the prior authorization of the right holder:*

- (c) *acts performed by a farmer of harvesting seed from his planting of a protected variety legitimately obtained, storage of that seed, and replanting of that seed on the farmer's land.*

No.

The answer applies to certain agricultural crop plants.

If prior authorization is not required for any of the above examples of activities, is there any requirement that the party undertaking the specified actions provide the right holder with remuneration in any form?

Yes.

In the case of question 4(c) above, the answer applies to farmers other than "small farmers".

5. *Would acts done privately and for non-commercial purposes require the authorization from the right holder?*

According to Section 19, paragraph (9)(c) of the Law No. 408/2000 Coll., the exploitation of the propagation material performed for own use of a natural person shall not constitute a breach to the protective rights.

6. *Does your legislation provide for other exceptions to the rights conferred?*

Section 21 of the Law No. 408/2000 Coll. provides for a compulsory licence.

7. *Can protection be obtained for a plant variety that was known to the public, or was publicly available, prior to the application for sui generis protection for that plant variety, and, if so, under what conditions (i.e. what are the time-limits during which public disclosure or availability will not preclude the grant of protection)?*

Yes.

According to Section 4, paragraph (1)(a) and (b) of the Law No. 408/2000 Coll., "the variety shall be deemed to satisfy the condition of novelty if, at the day of filing of the application for grant of protective rights the propagating material or material from the variety harvest has not been sold or otherwise disposed of to others by or with the consent of the breeder, for purposes of exploitation of the variety:

* As it relates to the responses from the Czech Republic reflected in synoptic table II above.

- (a) in the territory of the Czech Republic earlier than one year before the application has been filed, or
- (b) outside the Czech territory earlier than four years before the application has been filed or, in the case of trees or of vines, earlier than six years before the application has been filed".

8. *To be entitled to rights under sui generis plant variety protection does one have to be the person who bred, or discovered and developed the variety, or his successor in title?*

According to Section 2(b) of the Law No. 408/2000 Coll., "holder means the breeder who has been granted protective rights to the variety, or his successor in title".

According to Section 2(c) of the Law No. 408/2000 Coll., "breeder means the natural or legal person, who bred, or discovered and improved a variety or the person for whom someone else created a variety as part of fulfilment of tasks in relation to an employment contract or another similar relationship, unless a written agreement stipulates otherwise; legal successor of the breeder shall also be considered as breeder".

11. *What is the duration of protection?*

According to Section 23, paragraph (1) of the Law No. 408/2000 Coll., generally the duration of protection is 25 years; 30 years for protected varieties of trees, hops, vines and potatoes.
