

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

REVIEW OF THE PROVISIONS OF ARTICLE 27.3(b)

ILLUSTRATIVE LIST OF QUESTIONS

Prepared by the Secretariat

1. At its meeting of 1-2 December 1998, the Council agreed to initiate the review due under Article 27.3(b) of the provisions of that subparagraph through an information-gathering exercise. In this connection, the Council invited Members that were already under an obligation to apply Article 27.3(b) to provide information on how the matters addressed in this provision were presently treated in their national law. Other Members were invited to provide such information on a best endeavours basis. While it would be left to each Member to provide information as it would see fit, having regard to the specific provisions of Article 27.3(b), the Council requested the Secretariat to provide an illustrative list of questions relevant in this regard, in order to assist Members to prepare their contributions.
2. In response to this request, the illustrative list annexed to the present document has been prepared by the Secretariat.
3. The Council set 1 February 1999 as the target date for Members to provide the requested information.

ILLUSTRATIVE LIST OF QUESTIONS ON ARTICLE 27.3(b)

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?
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))?
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).
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.
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).
6. To what extent is subject-matter that is identical to what occurs in nature patentable under your country's law?
7. Explain the requirements under your country's law for ensuring adequate disclosure of the patentable inventions referred to above.
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?
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?
10. Are there any specific provisions under your country's law for compulsory licensing in respect of the patents referred to above?

N.B. Please ensure that your responses to the questions above cover each category of subject-matter specified in Article 27.3(b), namely micro-organisms, essentially biological processes for the production of plants or animals, microbiological processes, non-biological processes, plant varieties and other inventions concerning plants or animals.

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?

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?

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).

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;

(b) the definition of "plant variety";

(c) the conditions required for protection;

(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;

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

(f) who is entitled to the rights;

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

(h) the rights conferred;

(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.

(j) the duration of protection;

(k) transfer of rights;

(l) enforcement of the rights.
