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Council for Trade-Related Aspects of Intellectual Property Rights

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MAIN DEDICATED INTELLECTUAL PROPERTY LAWS AND REGULATIONS NOTIFIED UNDER ARTICLE 63.2 OF THE AGREEMENT

BRAZIL

The present document reproduces the text[1] of Decree 2.366, which regulates Law 9.456, establishing the rules related to the operation of the National Service for the Protection of Plant Varieties, as notified by Brazil under Article 63.2 of the Agreement (see document IP/N/1/BRA/2).

Conseil des aspects des droits de propriété intellectuelle qui touchent au commerce

PRINCIPALES LOIS ET RÉGLEMENTATIONS CONSACRÉES À LA PROPRIÉTÉ INTELLECTUELLE NOTIFIÉES AU TITRE DE L'ARTICLE 63:2 DE L'ACCORD

BRÉSIL

Le présent document contient le texte[1] du Décret 2.366, portant application de la Loi 9.456, qui établit les règles relatives au fonctionnement du Service national de protection des variétés végétales, notifié par le Brésil au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/BRA/2).

Consejo de los Aspectos de los Derechos de Propiedad Intelectual relacionados con el Comercio

PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA PROPIEDAD INTELECTUAL NOTIFICADOS EN VIRTUD DEL PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO

BRASIL

En el presente documento se reproduce el texto[1] del Decreto 2.366, por el que se regula la Ley 9.456. que establece las normas relativas al funcionamiento del Servicio Nacional de Protección de las Obtenciones Vegetales, notificada por el Brasil en virtud del párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/BRA/2).

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[1] In English only. The text in the original language is available for consultation by interested Delegations at the WTO Secretariat./En anglais seulement. Les délégations intéressées peuvent consulter le texte dans sa langue d'origine, au Secrétariat de l'OMC./En inglés solamente. Las delegaciones interesadas podrán consultar en la Secretaría de la OMC el texto en su idioma original.

DECREE No. 2,366 OF THE 5TH OF NOVEMBER 1997

Institutes regulations concerning Law No. 9,456, of April 25, 1997, which establishes Protection for Plant Varieties, rules on the National Plant Varieties Protection Service - SNPC, and provides other measures

THE PRESIDENT OF THE REPUBLIC, using his prerogatives as provided in Art. 84, Insert IV, of the Constitution, and with due regard to the provisions of Law No. 9,456 of April 25, 1997,

DECREES AS FOLLOWS:

Chapter I
GENERAL PROVISIONS
Section I
Preliminary Provisions

Art. 1st. The protection of plant varieties, as per the terms of Law No. 9,456 of April 25, 1997, shall be effected in accordance with the rules provided in this Decree.

Art. 2nd. The protection of intellectual property rights regarding plant varieties is performed through the granting of a Plant Variety Protection Certificate, which is considered a commodity for all legal purposes and the sole form of protection for plant varieties and legal form that may inhibit the free utilization of plants or of their reproduction or vegetative multiplication parts, in the Country.

Section II
The Plant Variety Protection Agency

Art. 3rd. The National Plant Varieties Protection Service – SNPC, created by Law No. 9,456, of 1997, within the scope of the Ministry of Agriculture and Supply, is the agency responsible for the protection of plant varieties in the Country, and are especially attributed to this agency:

I – the protection of novel plant varieties and of essentially derived plant varieties, granting the corresponding protection certificates thereto;

II – the progressive disclosure of the plant species and their respective minimum descriptors, as required to institute applications for protection, as well as the deadline, in the case provided in alinea "a" of § 1st. of Art. 6th. of this Decree, for the submission of the applications;

III – the preparation and submission to approval before the State Minister of Agriculture and Supply, of additional rules, within the scope of competence of the same, concerning the protection of novel plant varieties and of essentially derived plant varieties, as well as of protectable plant varieties under Art. 4th., § 1st., of Law No. 9,456 of 1997, of any plant kind or species, and establish the forms required for the proceedings concerning the application for protection;

IV – the reception, docketing, allowance and rejection of applications for protection, submitted in the form of a petition signed by the individual or business entity that obtained a plant variety, or by a duly empowered attorney of the same;

V – the reception, docketing, judgement, allowance and rejection of requests of impugnation submitted by third parties or by the applicant to the right of protection;

VI – the reception, docketing, instructing and forwarding to the State Minister of Agriculture and Supply the appeals as filed by third parties or by the applicant to the right of protection;

VII – the disclosure, by means of publication in the Official Gazette of the Union and in a specialized periodic publication, of the resumes of the applications for protection, the protection having been granted, the transfers of ownership, the declaration of compulsory license or of restricted public use, the transitory suspension, the extinction of the protection and the nullity or the cancellation of the certificates of protection and other actions, resolutions and administrative decisions arising from the protection of plant varieties;

VIII – the granting, upholding, transfer, cancellation and annulment of the Provisional Protection Certificate and of the Plant Variety Protection Certificate;

IX – the creation of a structure, or the award of a license, for banks with a view to the conservation of live species which shall integrate the germoplasm collection relative to protected plant varieties;

X – the provision for the realization of field tests and laboratory testing to differentiate the plant variety, when it so deems necessary;

XI – the supervision of compliance of the pertinent legal rules regarding protection and right to protection;

XII – the provision of certificates relative to the matters dealt in Law No. 9,456 of 1977;

XIII – the establishment of models for protection certificates;

XIV – the issuance of conclusive technical opinions in procedures of request of compulsory licenses regarding protected plant varieties, as well as the adoption of complementary measures, regarding notice to interested parties and supervision of the implementation of licenses upon the granting thereof;

XV – the issuance of conclusive technical opinions with a view to substantiating declarations of restricted public use of protected plant varieties;

XVI – the creation of workgroups comprising experts to render assistance in connection with specific matters;

XVII – the statement of opinions on the convenience of execution, ratification or denunciation of conventions, treaties, covenants and agreements regarding the protection of plant varieties;

XVIII – the recording, in the protected plant variety registry, of the decisions concerning proceedings of compulsory license and of declaration of restricted public use;

XIX – the indication of the participation of officials in technical meetings, committees and workgroups both of a domestic and of international nature concerning the protection of plant varieties;

XX – the establishment of relationships with domestic, international and foreign public and private institutions, with a view to maintaining a database concerning plant varieties designations and descriptors, as well as for technical and scientific exchange within the plant varieties protection field;

XXI – the implementation and updating of the National Registry of Plant Varieties - CNCP;

Sole paragraph. The technical services provided per Inserts IX and X of this Article may be performed through covenants or contracts, or by the credentials system, with public or private concerns.

Art. 4th. The SNPC, whenever necessary, shall consult with the National Industrial Property Institute – INPI, in order to determine whether the proposed designation for the plant variety is already on record as a product or a service mark in connection with the plant field or with that of application of the plant variety, the application thereof having been filed or being already registered in that Institute.

Sole paragraph. The SNPC shall seek coordination with the INPI with a view to exchanging information pertaining to plant varieties protection with the trademarks filed and registered in that Institute.

Section III
Plant Variety Protection in General

Art. 5th. There shall be considered, for the purposes of this Decree:

I – a breeder: the individual who obtains a plant variety and establishes descriptors that may distinguish the same from any others;

II – a descriptor: the morphological, physiological, biochemical or molecular characteristic which is genetically inherited and is utilized to identify the plant variety;

III – a minimum margin: the minimum set of descriptors, at the SNPC's discretion, deemed sufficient to distinguish a novel plant variety or an essentially derived plant variety from the remaining known plant varieties;

IV – a plant variety: the variety of any higher vegetable kind or species that is clearly distinct from other known plant varieties by a minimum margin of descriptors, by its own designation, being homogenous and stable as concerning the descriptors throughout successive generations and belonging to a species which is useful to the farming and forestry complex, being the object of description in an available specialized publication being accessible to the public, as well as the component strain of hybrids;

V – a novel plant variety: the plant variety not having been offered for sale in Brazil for over twelve months of the date of the application for protection and that, with due regard to the term for commercialization in Brazil, has not been offered for sale in other countries, authorized by the breeder, for over six years for tree and vine species and for over four years for the remaining species;

VI – a distinct plant variety: the plant variety that is clearly distinct from any other which existence is acknowledged at the date of the application for protection;

VII – an homogenous plant variety: the plant variety that, when utilized in planting, on a commercial scale, presents a minimum degree of variance as to the descriptors which identify the same, in accordance with criteria having been established by the SNPC;

VIII – a stable plant variety: the plant variety that, when reproduced on a commercial scale, conserves its homogeneity throughout successive generations;

IX – an essentially derived plant variety: that being derived from another plant variety provided that, cumulatively:

a) it is predominantly derived from the initial plant variety or from another essentially derived plant variety, without ceasing to exhibit the essential characteristics resulting from the genotype or of the combination of genotypes of the plant variety from which it is derived, except as concerning the differences resulting from the derivation;

b) it is clearly distinct from the plant variety from which it derived, by a minimum margin of descriptors, in accordance with criteria established by the SNPC;

c) it has not been offered for sale in Brazil for over twelve months of the date of application for protection and, with due regard to the term for commercialization in Brazil, it has not been offered for sale in other countries, with the authorization of the

breeder, for over six years for tree and vine species and for over four years for the remaining species;

X – strains: the homogenous genetic materials obtained through some continued autogamic process;

XI – a hybrid: the immediate product of the crossing between genetically different strains;

XII – a test of distinctness, homogeneity and stability (DHE): the technical procedure to verify that the new plant variety or the essentially derived plant variety are distinct of another one which descriptors are known, are homogenous as regards the characteristics thereof in each cycle of reproduction and are stable as to recurrence of the same characteristics throughout successive generations;

XIII – a live sample: that which is supplied by the applicant to the right of protection, and which, if utilized in the propagation of the plant variety, serves to confirm the descriptors presented;

XIV – a seed: every and any plant structure utilized for the propagation of a plant variety;

XV – propagation: the reproduction and the multiplication of a plant variety, or the concurrence of such actions;

XVI – propagation material: every and any part of the plant or of the plant structure utilized in the reproduction and multiplication thereof;

XVII –a whole plant: the plant with all the parts thereof capable of being utilized in the propagation of a plant variety;

XVIII –a farming and forestry complex: the group of those activities related to the cultivation of plant kinds and species aiming, among others, at human and animal nourishment, the production of fuels, oils, dyes, fibers and other implements for industrial, medical, forestry and ornamental purposes.

Art. 6th. A novel plant variety or an essentially derived plant variety, of any plant kind or species, are entitled to protection.

§ 1st. The plant varieties not fitting within the provisions of the **caput** and having already been offered for sale before the date of the application shall also be entitled to protection, provided that the following cumulative conditions are met:

a) that the application for protection be submitted within twelve months of compliance with the provisions of § 2nd. of this Article, for each species or plant variety;

b) that the first instance of commercialization of the plant variety has occurred, at most, ten years before the date of the application for protection;

c) the protection shall be effective only for purposes of utilization of the plant variety to obtain essentially derived plant varieties;

d) protection shall be granted for the remaining period of the terms provided in Article 11 of Law No. 9,456, considering, to such end, the date of the first instance of commercialization.

§ 2nd. The SNPC is due to disclose, progressively, the plant species and the respective minimum descriptors required to initiate applications for protection, as well as the respective deadlines for the purposes of alinea "a" of the preceding Paragraph.

§ 3rd. The disclosure referred in the preceding Paragraph shall follow a scale of species, observing the following schedule, being expressed in cumulative total protected species:

a) on the date of initial effectiveness of this Decree: at least five species;
b) after three years: at least ten species;
c) after six years: at least eighteen species;
d) after eight years: at least 24 species.

Art. 7th. The designation of the plant variety to be protected shall include at least one word, and at most, three, one alphanumeric combination, a combination of words and letters, or a combination of words and numerals.

§ 1st. The holder of the right to protection shall not be able to use, as a designation for the plant variety, a designation that:

a) does not enable identification of the plant variety;

b) may induce errors or be confusing as to the origin, the source, the characteristics, the value or the identity of the plant variety, or as concerning the identity of the breeder;

c) is identical or possible to be mistaken for another designation indicating a formerly existing plant variety of the same botanical species or of a similar species;

d) is identical or possible to be mistaken for another designation over which a third party holds a previously acquired right to protection;

e) be opposed to morals and proper social behaviour;

f) refers solely to common attributes of other plant varieties of the same species;

g) is included in a botanical name or a common name of a kind or species;

h) implies that the plant variety is derived of another plant variety or is associated thereto, when that fact does not correspond to reality;

i) includes terms such as: variety, plant variety, form, hybrid, crossing, or translations thereof;

j) due to distinct reasons, does not result in a generic designation of the plant variety;

l) reproduces, wholly or in part, a product mark or service mark pertinent to the field of plants, or of to the field of application of plant varieties, or a trademark having notoriety.

§ 2nd. When the plant variety is already protected or in course of acquiring protection in another country, the same designation must be conserved, except when the same is inadequate due to language reasons or to any of the reasons listed in the preceding Paragraph, the applicant being therefore expected to propose another designation, subject to shelving of the application for protection.

Art. 8th. The individual or business entity that produces, for commercial purposes, that sells, offers for sale, reproduces, imports, exports, as well as packs or stores for such purposes, the propagation material of a protected plant variety, shall be bound to utilize the designation having been approved at the time of protection thereof.

Sole paragraph. For the purposes of the **caput** of this Article, the designation of the protected plant variety shall be associated to an industry or trade mark or to a trade name or yet to a similar designation, provided that it may be easily recognized and is duly authorized by the holder of the rights to the cited plant variety.

Art. 9th. During the term of protection of the plant variety, the holder of the rights thereto must ensure that the protected plant variety remains in conformity with the description thereof, after successive reproductions or multiplication or, when the same has defined a particular cycle of reproductions and multiplication, at the end of each cycle.

Art. 10. The original document of transfer by an action **inter vivos** of the ownership of protection of the plant variety shall include the complete qualification of the assignor and of the assignee, as well as that of the witnesses and the precise indication of the protected plant variety.

Chapter II
SPECIFIC PROVISIONS

Section I
Plant Variety Protection Application

Art. 11. An application requesting protection for a novel plant variety or for an essentially derived plant variety shall only be allowed if the SNPC has effected prior disclosure of the plant species and of the respective minimum descriptors.

Sole paragraph. The provisions of the **caput** shall also apply to protectable plant varieties, as per Article 4th, § 1st. of Law No. 9,456 of 1997.

Art. 12. The application for protection of a plant variety shall be submitted in a proper form, to be established by the SNPC.

Sole paragraph. In the case of an application for protection of an essentially derived plant variety, the interested party shall, notwithstanding the requirements provided in Article 14 of Law No. 9,456 of 1977, indicate, in addition to the genetic origin provided in Insert III thereof, the essentially derived condition.

Art. 13. The application for plant variety protection shall be submitted to the SNPC, which will undertake the preliminary formal examination thereof as to the existence of synonyms, and where these are found not to exist, shall docket the same, provided it is properly instructed.

Art. 14. The docket data concerning the application for protection of a plant variety shall include the date and the hour of the registration, the filing number of the application, the full name and address of the interested party and of the attorney of the same, if any, such that the protection requested be able to prevail.

Art. 15. Upon docketing the application for plant variety protection, there shall ensue an analysis to verify the legal and technical prescriptions, namely concerning the descriptors indicative of the DHE characteristics, evidence of performance of tests and analyses regarding the plant variety, among others.

§ 1st. Should there be found to exist a similarity between two or more plant varieties of the same species, while the process is under examination, there shall prevail the right to priority of the application for protection in the form provided in the preceding Article.

§ 2nd. When the application for protection does not provide sufficient data for a complete procedural analysis, the SNPC shall require that the applicant submit, within a delay of sixty days counted from receipt of notice, a new technical specification, as well as other complementary information.

§ 3rd. Upon compliance with the requirement provided in the preceding paragraph and there still remaining doubt as to the differentiation of the plant

variety, the SNPC may perform the tests or comparative field experiments, the applicant bearing the burden thereof, if the same so agrees, or decide that the application be shelved.

§ 4th. In the case of a diligence, the term for publication of the application for plant variety protection, of up to sixty days, provided in Article 16 of Law No. 9,456 of 1977, shall therefore be counted from the date of full provision of the cited diligence.

§ 5th. Upon publication of the application, there shall ensue a term of ninety days for the submission of eventual impugnations.

§ 6th. Upon receipt of the impugnation, the SNPC shall serve notice, within thirty days, to the applicant for protection, forwarding to the same a copy of the entire contents of the impugnation, to submit a statement of reply within thirty days of the date of receipt of the notice.

§ 7th. Upon receipt of the applicant's defense relative to the impugnation, or upon expiry of the term of thirty days as provided in the preceding paragraph, and there not having been had a statement of reply thereto, the SNPC shall provide a decision as to the allowance or rejection of the application for protection.

§ 8th. The decision allowing or rejecting the application for protection may be appealed within sixty days of the date of publication thereof, as per the provisions of § 7th. of Article 18 of Law No. 9,456 of 1977.

§ 9th. Upon receipt and docketing of the appeal, the SNPC shall institute the proceedings in connection therewith, and submit the same to the State Minister of Agriculture and Supply, who shall provide a decision within a delay of sixty days, counted from that registration.

Art. 16. There falls upon the SNPC the issuance of official requirements, upon publication of the application for protection, as to changing the name of the plant variety, whenever:

I – there is ascertained the existence of some fact that may have inhibited the acceptance of the designation, provided it is identified at the time of examination of the application for protection;

II – it is requested by the holder of the right or by its legal representative, with due substantiation;

III – it is requested by a third party, should there be ascertained the existence of a prior right concerning the designation.

§ 1st. Upon allowance of the request of change of designation, as provided in Articles II and III of this Article, the SNPC shall require that the holder of the right indicate a new designation, within a delay of sixty days, counted from the date of receipt of the notification.

§ 2nd. Should the requirement fail to be complied with in the delay established in the preceding Paragraph, the application shall be shelved and the Provisional Protection Certificate, where issued, shall be canceled.

§ 3rd. Upon a new designation for a plant variety having been indicated, the application for protection shall be republished, there being thus reestablished the delay of ninety days for eventual impugnations, the applicant being thereby informed.

Art. 17. The holder of the right to protection of a plant variety shall provide to the SNPC all information and clarifications that may be requested thereon, including as to the inspection of the means adopted to conserve the living sample of the plant variety in the possession thereof.

§ 1st. The samples supplied in order to integrate the plant varieties germoplasm collection, to which refers Insert IX of Article 3rd. of this Decree, shall only be possible to utilize for purposes of evidence in questions concerning plant variety protection.

§ 2nd. The handling and examination of living samples referred in the sole paragraph of Article 22 of Law No. 9,456 of 1977, shall be restricted to evidencing the DHE test of the plant variety.

Art. 18. For the plant variety protection application, the term for offer for sale or commercialization to be observed, for the purposes provided in Article 6th. of this Decree, shall be that of the first commercial operation involving the plant variety under reference, as a basic seed, registered, certified or inspected.

Art. 19. There shall be considered valid, in order to instruct administrative proceedings regarding applications for protection of plant varieties, and to follow up the course of those proceedings, the certificates of the original documents of public powers of attorney, as issued by the competent agencies.

Section II
National Registry of Protected Plant Varieties – CNPC

Art. 20. The National Registry of Protected Plant Varieties – CNPC shall comprise, at least:

I – the number in the docket file of the application for protection;
II – the number of the Provisional Protection Certificate;
III – the number of the Plant Variety Protection Certificate:
IV – the name of the species (botanical name and common name);
V – the designation of the plant variety;
VI – the date of effectiveness of protection;
VII – the date of extinction of protection;
VIII – the name and address of the holder of the protection right;
IX – the name(s) of the breeder(s);

X – the name and address of the legal representative;
XI – the name and address of the technical person in charge;
XII – the indication of the country of origin of the plant variety;
XIII – the changes in the protection certificate;
XIV – the recorded annotations.

Section III
Compulsory License

Art. 21. The compulsory license is the instrument used by the Public Office to authorize, on request of a legitimately interested party, the exploitation of the protected plant variety, regardless of authorization of the holder of the right thereto, for a delay of three years, renewable for identical periods, devoid of exclusiveness, and against remuneration, as provided in the present Decree.

§ 1st. For the purposes of request of a compulsory license, a legitimately interested party is considered to be the producer of seeds as defined in the Law, provided that against the same there does not stand an action of infringement of the economic establishment, as provided in Law No. 8,884, of 11 July 1994.

§ 2nd. The remuneration referred in the **caput** shall be arbitrated by the SNPC in the absence of an agreement between the holder of the right to the protected plant variety and the requester of the compulsory license, based on freely negotiated percentages in accordance with the current market practice for that species.

Art. 22. The request of compulsory license shall be instructed with:

I – the qualification of the requester;
II – the qualification of the holder of the right to the plant variety;
III – the designation and a sufficient description of the plant variety;
IV – the reasons for the request, with due regard to the provisions of Article 28 of Law No. 9,456 of 1977;
V – evidence in writing to the effect that the requester exhausted all measures at his disposal, towards negotiating a proposal of voluntary license presented to the holder of the right to the plant variety or to the attorney of the same;
VI – evidence to the effect that the requester is financially and technically able to exploit the plant variety, embodied in:

a) an area of which he is the owner, or belonging in a cooperative;
b) a capacity for seed processing;
c) a storage capacity;
d) a technical person being responsible;
e) an own or third party laboratory for seed analysis;
f) a seed distribution network;
g) a client listing;
h) a descriptive listing of the plant varieties that he produces and commercializes, sorted by kind or species of plant;

i) an evidence of his registration as a seed producer, in the Ministry of Agriculture and Supply;

j) a capital being compatible with the production costs;

VII – other evidence demanded in a specific action from the Administrative Board of Economic Defense – CADE, with due regard, where applicable, to the provisions of Article 35 of this Decree.

§ 1st. The requester shall indicate, in addition, the existence of a compulsory license in connection with the plant variety, granted to third parties, and of any pending court proceedings, concerning the same subject, should he possess information thereon.

§ 2nd. The SNPC and the CADE are bound to hold in secrecy, as provided in the Law, the information provided by the applicant.

Art. 23. Upon receipt of the request of compulsory license, the Ministry of Agriculture and Supply, where deeming the requisites of the preceding Article satisfactorily complied with, shall order:

I – the assessment of the request together with the attachments thereto;

II – the preparation by the SNPC of a technical statement of opinion;

III – the service of notice to the holder of the plant variety and, when applicable, to the holder of the compulsory license, towards submitting a reply, should the same wish to do so, within a delay of ten days, counted from the date when the service of notice is received;

IV – the publication of the resume of the compulsory license request, for the knowledge and impugnation of interested third parties, within the delay of ten days.

§ 1st. Upon expiry of the ten-day delay allowed to the holder of the protected plant variety and to the holder of the voluntary license, if any, provided in Insert III of this Article, the process, with or without manifestation, shall be forwarded to the CADE, instructed with the technical statement of opinion, as provided in the following Article, within a maximum delay of fifteen days.

§ 2nd. Should the requirement form not be sufficiently instructed with the documents that evidence the requirements provided in the preceding Article, the Ministry of Agriculture and Supply shall demand that the requester submit complementary documentation to the specified documentation, within the delay of fifteen days, counted from the date of receipt of the notification, subject to shelving of the request.

Art. 24. The technical statement of opinion of the SNPC regarding the request of compulsory license shall include:

I – a report concerning the request, which, in addition to duly regard the provisions of Article 22 of this Decree, shall indicate the existence, where applicable, of prior requests of compulsory license;

II – an objective appraisal of the adverse consequences to trade that the license is intended to remedy;

III – a proposal of allowance or rejection of the compulsory license, with an objective indication of the reasons for the recommendation.

Sole paragraph. The SNPC, when so requested, shall provide the CADE with the additional information needed to instruct the compulsory license proceedings.

Art. 25. In the case where no complementary diligences are found necessary, the CADE shall examine the request of compulsory license within a maximum delay of thirty days.

Art. 26. Save for legitimate reasons, at the discretion of the CADE, based on the technical statement of opinion provided by the SNPC, the compulsory license shall expire, regardless of notice if, within a delay of six months of publication of the granting thereof, the requester has not undertaken the necessary measures for implementation thereof.

Sole paragraph. The delay for implementation of the provisions of this Article may be renewed once, on request of the interested party, provided that it is duly substantiated.

Art. 27. The provisions considered in Law No. 9,279, of 14 May 1996, shall be applied, where applicable, to the compulsory license.

Section IV
Restricted Public Use

Art. 28. The protected plant variety shall be declared as being of restricted public use, **ex officio**, by the State Minister of Agriculture and Supply, based upon a technical statement of opinion by the respective competent agencies, exclusively in the interest of the public, to meet the requirements of the agricultural policy, in cases of national emergency, abuse of economic power, or other circumstances of extreme urgency and in cases of non-commercial public use.

§ 1st. The protected plant variety shall be deemed to be of restricted public use if, by means of an act of the Ministry of Agriculture and Supply, it is exploited directly by the Federal Union or by third parties indicated thereby, not exclusively, without authorization of the holder thereof, for a period of three years, renewable for equal periods, provided that the holder is notified and remunerated in the form of this Decree.

§ 2nd. The notice provided in the preceding paragraph shall be immediately issued upon the publication of the declaration of restricted public use and shall contain at least:

a) reasons of the declaration;
b) listing of the individuals and business entities authorized to exploit the plant variety, bearing the name, the address and the registration number in the CPF – Brazilian Individual Taxpayers Registry or the CGC – Brazilian Corporate Taxpayers Registry before the Ministry of Finance;
c) pertinent remuneration;
d) annual minimum volume of reproduction or vegetative multiplication of the plant variety, necessary for the exploitation thereof.

§ 3rd. The remuneration to be provided concerning the protected plant variety, having been declared as being of restricted public use, shall be calculated having as a basis the market prices for the species, as practiced at the date of the declaration, taking into consideration the factors that determined the same.

Section V
Public Services

Art. 29. The services provided per Article 53 of Law No. 9,456 of 1977, subject to remuneration by the regime of specific public service prices, comprise:

I – application for protection;
II – annuity;
III – transfer of ownership:
IV – other amendments to the protection certificate;
V – laboratory tests;
VI – comparative field experiments concerning the DHE of the plant variety;
VII – status certificates.

Art. 30. The Ministry of Agriculture and Supply is bound to establish, collect and apply the values obtained from the rendering of services provided in the preceding Article, as well as to update the same.

Sole paragraph. The product of collection, as referred in the **caput**, shall be applied in the training of personnel and in the implementation, provision of means, improvement and performance of the services provided in this Decree.

Section VI
National Plant Varieties Protection Committee – CNPC

Art. 31. There is hereby established, within the Ministry of Agriculture and Supply, in a consulting nature and to provide support to the SNPC, the National Plant Varieties Protection Board, under the presidency of the SNPC Top Official, comprised of a representative of each agency and entity described hereinafter:

I – Farming and Livestock Defense Secretary Office, in the Ministry of Agriculture and Supply;
II – Ministry of Foreign Affairs;
III – Ministry of Industry, Trade and Tourism;
IV – Ministry of Science and Technology;
V – Ministry of the Environment, Hydric Resources and Legal Amazon;
VI – a national entity uniting the Plant Breeders;
VII – Brazilian Association of Seed Producers;
VIII – Brazilian Cooperatives Organization;
IX – National Agriculture Confederation;
X – National Confederation of Agriculture Workers;
XI – Federal Board of Engineering, Architecture and Agronomy.

§ 1st. The members of the CNPC shall be appointed by the State Minister of Agriculture and Supply for a two-year term in office, which renewal shall be permitted.

§ 2nd. Within a delay of thirty days, upon the publication of this Decree, the agencies and entities listed in the **caput** of this Article shall designate their representatives, with the respective substitutes, to form the CNPC.

§ 3rd. The board shall meet with the presence of the simple majority of the members thereof.

§ 4th. The decisions of the board shall be taken by the simple majority of the members in attendance, the President providing the quality vote.

§ 5th. The members of the SNPC shall not receive remuneration, the services rendered by the same being considered, for all purposes, as relevant in the cause of the Country's development.

§ 6th. The costs relative to travel and lodging arising from the participation of the members in the CNPC meetings shall be borne by their respective agencies and entities being represented.

§ 7th. The SNPC shall provide administrative and operational support to the CNPC.

§ 8th. The CNPC shall have a delay of sixty days, counted from the establishment thereof, to prepare its internal regulation, which shall be approved by means of an administrative ruling of the State Minister of Agriculture and Supply.

Art. 32. The CNPC is bound to:

I – issue statements concerning matters submitted to its appraisal by the SNPC;

II – suggest rules and regulations regarding plant varieties protection;

III – provide support to the SNPC concerning matters related to plant variety protection, and particularly, about domestic and international covenants and agreements.

CHAPTER III
FINAL PROVISIONS

Art. 33. For the purposes of indemnities provided in Article 37 of Law No. 9,456 of 1977, the remuneration of the holder shall be calculated based upon the market prices for the species, practiced at the time of ascertainment of the infringement, notwithstanding the applicable legal additions.

Art. 34. For the purposes of opening the proceedings for plant variety protection, the following plant species are hereby disclosed: cotton, rice, potato, beans, corn, soy, sorghum and wheat, which minimum descriptors are defined in the form of Attachments I through VIII of this Decree.

Sole paragraph. The disclosure of the remaining plant species, their minimum descriptors and alterations, if necessary, shall be made by the SNPC.

Art. 35. The State Ministers of Agriculture and Supply and of Justice, within the scope of their respective prerogatives, shall provide complementary rules on the procedures and the conditions for appraisal and granting of the compulsory license, with due regard to the procedural requirements inherent to ample defense and protection of the right to property established by Law No. 9,456 of 1977.

Art. 36. The structure of the SNPC shall be defined in the body of regulations of the Ministry of Agriculture and Supply.

Sole paragraph. The State Minister of Agriculture and Supply, within a delay of sixty days of publication of this Decree, shall approve the internal regulations of the SNPC, as well as provide the reorganization of the departments in charge of activities related to seeds and seedlings, including those inherent to the laboratories of seed analysis, in order to render the same compatible with the SNPC structure.

Art. 37. The State Minister of Agriculture and Supply is hereby authorized, with due regard, where applicable, to the provisions of Article 35, to establish complementary rules as necessary for the practice of this Decree.

Art. 38. This Decree shall be effective from the date of publication thereof.

Brasilia, of 1997; 176th year since Independence and 109th year of the Republic

ATTACHMENT I – MINIMUM DESCRIPTORS FOR COTTON (*Gossypium* L.)

Proposed name for the plant variety: _____

I – MORPHOLOGICAL DESCRIPTORS

Characteristic	Description of the characteristic	Code for each description	Code that best describes the plant variety
1. Plant: Shape (UP-BR)	Cylindrical	1	
	Conic	2	
	Rounded	3	
	Not defined	4	
2. Plant: Foliage density (UP)	Sparse	3	
	Medium	5	
	Dense	7	
3. Plant: Height (UP)	Very low	1	
	Low	3	
	Medium	5	
	Tall	7	
	Very tall	9	
4. Plant: Stem coloration (BR)	Green	1	
	Purplish	2	
	Purple	3	
5. Plant: Pilosity (BR)	Glabrous	1	
	Few hairs	3	
	Hairy	5	
	Very hairy	7	
6. Plant: Growth habit (BR)	Undetermined	1	
	Determined	2	

7. Plant: Glandulation (*) (UP-BR)	Absent Normal Intense	1 5 9
8. Plant: Length of first fruit-bearing branch (UP)	Very short Short Medium Long Very long	1 3 5 7 9
9. Leaf: Shape (*) (UP)	Palmed Digited Lanceolated	1 2 3
10. Leaf: Size (UP)	Small Medium Large	3 5 7
11. Leaf: Number of lobes (BR)	Three Five Seven	1 2 3
12. Leaf: Depth of outline (BR)	Normal Mediately Outlined Okra Super okra Laciniated	1 2 3 4 5
13. Leaf: Color (BR)	Light green Normal green Dark green	1 3 5
14. Leaf: Nectaries (*) (UP-BR)	Present in central nervure Present in central and side nervures Absent	1 2 3

15. Flower: Number of teeth in the bracts (BR)	Less than 7	1
	7 to 12	2
	More than 12	3
16. Flower: Nectaries of the base of the bracts (BR)	Absent	1
	Incipient	2
	Present	3
17. Flower: Color of the corolla (*) (UP-BR)	Cream	1
	Yellow	2
	Sulphur-yellow	3
18. Flower: Blemishing of petals (BR)	Absent	1
	Present	2
19. Flower: Imbrication of petals (BR)	Not very imbricated	1
	Imbricated	3
	Very imbricated	5
20. Flower: Position of stigma (BR)	At the opening of the anthers	1
	Above the anthers	3
	High above the anthers	5
21. Flower: Length of fillets (BR)	Short	3
	Medium	5
	Long	7
22. Flower: Color of the pollen (BR)	Cream	3
	Yellow	5
	Sulphur-yellow	7
23. Apple: Shape (in longitudinal section) (*) (UP)	Round	1
	Elliptic	2
	Oval	3
24. Apple: (*) Length of peduncle (UP)	Short	3
	Medium	5
	Long	7

25. Apple: Shape of fruit (BR)	Conic Oval Rounded Elongated Elliptic	1 2 3 4 5
26. Apple: Number of lodgings in fruit (BR)	Three Four Five	1 2 3
27. Capsule: Retention of plume by the capsule (BR)	Weak Normal Strong	3 5 7
28. Cupule: Color of linters (BR)	White Shade of cream Shade of green Shade of maroon	1 3 5 7
29. Cupule: Color of the fiber (BR)	White Cream Maroon	1 3 5
30. Cupule (*) Length of fibers (UP)	Very short Short Medium Long Very long	1 3 5 7 9
31. Cupule: (*) Strenght of fibers against traction (UP)	Weak Medium Strong	3 5 7

32. Cupule:	Very thin	1
Thickness of the fibers	Thin	3
(UP)	Medium	5
	Thick	7
	Very thick	9
33. Cupule:	Very low	1
Content of linters	Low	3
(UP)	Medium	5
	High	7
	Very high	9
34. Seed:	Small	3
Size	Medium	5
(UP)	Large	7
35. Seed:	Bare seed	1
Presence of linters upon processing	Almost bare seed	3
	Sparse linters	5
(BR)	Medium linters	7
	Dense linters	9

(*) All the characteristics identified with an asterisk, are part of the UPOV minimum requirements. At the discretion of the member countries, there may be added descriptors according to specific needs. However, the object consists in avoiding substantial differences between descriptors from the various countries, in order to facilitate the exchange of genetic material to be protected.

II – ADDITIONAL INFORMATION

1. Agronomic characteristics

There shall be detailed in accordance with the following schedule:

a) Productivity: quantity of cotton in grain produced, set forth in kg/ha, there should be presented regarding the set of tests the general average and the amplitude of variation.

b) Cycle until blossoming: Average number of days from emergence of the plantules until the opening of the first flower.

c) Height of the plants: average distance, in centimeters, from ground level to the end sprout of the stem at the time of the first crop (approximately 2/3 of fruits open), determined in 10 plants by parcel.

d) Cycle until the crop: number of days since emergence for the opening of at least 90% of the fruit.

e) Precocity of maturation: average number of days from the first flowers until dehiscence of 2/3 of the formed fruit.

Characteristic	Description of the characteristic	Code for each description	Code that best describes the plant variety
36. Productivity	Measured in kg/ha	1(.....kg/ha)	
37. Cycle until blossoming	Measured in days	1 (.....days)	
38. Height of the plants	Measured in centimeters	1 (.....cm)	
39. Cycle until the crop	Precocious (less than 130 days)	1	
	Medium (between 130 and 150 days)	2	
	Delayed (more than 150 days)	3	
40. Precocity of maturation	Measured in days	1 (.....days)	

2. Production Components and technological Characteristics of the Fiber:

a) Weight of the cupule: average weight, in grams, of cotton in grain contained in a cupule.

b) Weight of 100 seeds: average weight, in grams, of one hundred seeds, upon processing.

c) Percentage of fibers: the ratio between the weights of the fibers and of the cotton in grain, expressed as a percentage.

d) Fiber index: weight of fiber contained in 100 seeds IF=% of fiber x weight of 100 seeds (1 – % of fiber).

Characteristic	Description of the characteristic	Code for each description	Code that best describes the plant variety
41. Weight of the cupule	Measured in grams	1 (.....ha)	
42. Weight of 100 seeds	Measured in grams	1 (.....ha)	

43. Percentage of fiber	Measured in %	1 (.....%)
44. Fiber index		1 (.....)

Note: Maturity of the fiber; length of the fiber; uniformity of length of fiber; fiber fineness and fiber strength; cite the methods of determination and the units adopted in the analysis.

3. Reaction to adverse factors

This information is very important to serve as:

(i) Element of judgement upon divergences of identity between plant varieties before the recordal of the same in the plant variety protection system; and

(ii) Descriptor in the case of the national Registry of plant varieties for Commercialization.

Identify appropriately the reaction of the plant variety to:

Ramulosis angular (bacteriosis)

FusariosisBlemish) Viroses

Verticillium Wilt Reddish wilt

Nematoids

Characteristic	Description of the characteristic	Code for each description	Code that best describes the plant variety
45. Reaction to Ramulosis *(Colletotichium gossypii)*	Susceptible	1	
	Resistant	2	
46. Reaction to Fusariosis *(Fusarium* sp*)*	Susceptible	1	
	Resistant	2	
47. Reaction to *Verticillium* Wilt	Susceptible	1	
	Resistant	2	
48. Reaction to nematoids	Susceptible	1	
	Resistant	2	

49. Reaction to angular Blemish *(Xanthomonas malvacearum)*	Susceptible	1
	Resistant	2
50. Reaction to Viroses	Susceptible	1
	Resistant	2
51. Reaction to "Reddish Wilt"	Susceptible	1
	Resistant	2

III. – CLARIFICATIONS FOR THE APPRAISAL OF SOME CHARACTERISTICS (MORPHOLOGICAL CHARACTERIZATION IN FIELD CONDITIONS)

Note: Inform the samplings effected, the regions and the environmental conditions, wherein the evaluations were conducted.

a) Characteristics of the plant:

item 1 Shape: Global aspect of the plant at the time of opening of the fruit in normal experimental spacing (approximately 1.00 x 0.20 m for annual plants and 1.00 x 0.50 m for perennial plants).

- Cylindrical: with no vegetative branch or few and short.
- Conical: with two to three vegetative branches of average development, forming acute angles with the stalk.

Rounded: with three or more vegetative branches well developed, forming relatively open angles with the stalk.

Undefined: none of the prior configurations.

item 4. Coloration of the Stem: Predominant color of the stems, at the beginning of the blossoming.

item 5. Pilosity: Predominant condition of the plants as to the presence of hairs on the stems and leaves, observed at the beginning of blossoming.

item 6. Growth Habit

Undetermined: when the cycle has ended and the environment conditions are favorable, the plants resume vegetative growth.

Determined: when, even under favorable environment conditions, the majority does not resume normal vegetative growth, instead showing a tendency to wither and die.

item 7. Glandulation: Intensity and size of endocrinous glands at the leaves and stalk.

Absent:

Normal: glands of average size, and in a quantity comparable to those of the species *G. hirsutum.*

Intense: large glands, and, in quantity, comparable to those of the species *G. barbadense* L.

b) Characteristics of the leaf: Observed on the first month of blossoming:

item 11. Number of lobes: Predominant number in the majority of the plants.

item 14. Nectaries: Presence of nectaries at the base of the central nervure and the side nervures and on the dorsal (abaxial) face of the leaf:

c) Characteristics of the reproduction organs (observed during the 30–40 days of beginning of blossoming):

Item 15. Number of teeth in the bracts: Average number of teeth in the bracts at the time of opening of the flower:

Item 16: Shape of the bracts: Relationship between the width and the length of the bracts by means of visual appraisal at the time of opening of the flower.

Narrow

Medium: normal for the species *G. hirsutum* L.

Wide: common for the species *G. barbadense* L.

"Frego" (very narrow and twisted)

Item 17. Internal nectaries between the bracts. Presence of nectaries at the points of insertion of the bracts in the floral peduncle.

Item 18: Color of the corolla: tint on the day of opening of the flower.

Item 19. Blemishing of the petals: Existence of internal red blemish, at the base of the petals, on the day of opening of the flower.

Item 20. Imbrication of the petals: State of superposition of the petals over the open corolla.

Item 21. Position of the stigma: Prominence of the stigma relative to the anther, for the majority of the plants, on the day of opening of the flower.

Item 22. Length of the fillets: Size of the fillets on the day of opening of the flower.

- Short: similar to *G. barbadense* L.
- Medium: similar to *G. hirsutum* L.

Long: similar to *G. hirsutum* L. r. *marie galante* ("Mocó" type).

Item 23. Color of the pollen: Relative to the majority of plants, on the day of opening of the flower.

Item 26. Shape of the fruit: Predominant shape of the fruit (apple) when already formed, before the beginning of dehiscence.

Item 27. Number of lodgings in the fruit: predominant number of lodgings in the fruits from the first crop.

Item 36. Coating of the seeds: Presence and density of the linters, upon the processing.

IV. – GENERAL ADVICES FOR THE CONDUCTION OF DISTINCTIVENESS, HOMOGENEITY AND STABILITY TESTS (DHE)

A – Material required for the description of plant varieties

1. To comply with the provisions of Article 22 and the sole paragraph thereof in Law No. 9,456/97, the applicant for the protection application shall be due to submit two samples of the plant variety that is the object of the protection, to wit:

- manipulation sample : 1 kg
- sample for the germoplasm bank: 1 kg

2. Those seeds must attend all the minimum requisites established as concerning germination, purity and moisture content for commercial seeds. The applicant is due to inform the present germinative capacity of the material, which shall be the largest possible and must be indicated on the package.

3. The seeds should not have been subjected to any type of treatment able to produce eventual effects on the subsequent growth of the plants, unless the official authority requests or requires such treatment. If the same have been treated, full information must be provided in connection therewith.

B – Conditions for the conduction of the tests for description of the plant varieties

1. The minimum duration of the evaluations shall normally correspond to two periods of cultivation.

2. The field evaluations shall be conducted under conditions that may ensure the normal growth of the plants. The size of the parcels shall be such that the plants, or parts thereof, may be withdrawn for measurement and counting, without hindering the observations which should be effected at the end of the period of growth. As a minimum, each evaluation should include a total number of 40 plants which may be divided in two or more repetitions. The utilization of separate parcels for observation and measurement shall only be possible if the same were subjected to similar environmental conditions.

V – COMPARISON BETWEEN DESCRIPTORS OF A PLANT VARIETY SUBMITTED FOR PROTECTION, WITH THE DESCRIPTORS OF ANOTHER PLANT VARIETY ALREADY DESCRIBED, BEING MORE RESEMBLING

A. CHARACTERISTIC	PLANT VARIETY SUBMITTED	MOST RESEMBLING PLANT VARIETY
Days of emergence until the beginning of the blossoming		
Days of emergence until the opening of the first cupules		
Cycle of the crop (days)		
Height of the plant (cm)		
Average weight of the cupule (g)		
Color of the corolla of the flower		
Length of the fiber		
Shape of the leaf (palmed, digitated or lanceolated		
Shape of the apple (round, elliptic or oval)		

Name of the most resembling plant variety:.....

VI – INSTRUCTIONS FOR FILLING OF FORMS

1. In order to facilitate the evaluation of the various characteristics, there has been prepared a coding scheme with values that may range between 1 and 9, positioned next to the description for each parameter. The interpretation of such codification is as follows:

a) When the coding alternatives are sequential, i.e., there are no spaces between the different values, the choice to describe the characteristic should be only one of the listed values. Example: “Growth habit has in the codification the value of 1 for “undetermined” and the value of 2 for “determined”. Only those two alternatives shall be acceptable for filling the form.

b) When the coding alternatives are not sequential, i.e., there existing spaces, one or more, between the proposed values, the choice to describe the characteristic may be, in addition to those provided, intermediate variations considered by the evaluator. Example: “Color of the leaves” has a coding value of 1 for “light green”; 3 for “normal

green" and the value of 5 for "dark green". In this case, there may be chosen the value of 2 for a plant variety with leaves a shade lighter than the normal color, or the value of 4 for leaves between normal and dark. The interval in this case is between 1 and 5, and it is not possible to use values such as 6, 7, 8 or 9 (when the scale begins with a value 1, it indicates that the values of the beginning and of the end are the extremes). When the alternatives, for example, are 3 – 5 –7, there may be used any value between 1 and 9, since both extremes of the scale show that there may exist values below and above those indicated.

2. When a certain characteristic will not be evaluated, for any technical reason being pertinent, the same should be attributed the value of 0 (zero).

3. Some quantitative characteristics, which description is numeric (mm, cm, g, kg/ha, etc.), should be recorded with the effective measure in the space provided in the questionnaire, which may be preceded by the code 1 (one). If that measurement was not effected, the value to be informed should be 0 (zero).

4. Next to each of the characteristics and merely to guide the evaluator, there are indicated some of the following abbreviations:

BR: indicates a characteristic pertaining solely to Brazil;

UP: indicates a UPOV or international standard, including Brazil;

UP–BR: is compliant with an international requirement, with modifications for Brazil.

5. The proper filling of this questionnaire shall be submitted together with the specific form of the Ministry of Agriculture and Supply, in order to request protection for the plant variety in question.

ATTACHMENT II – MINIMUM DESCRIPTORS FOR RICE (*Oryza sativa* L.)

Proposed name for the plant variety: _____

I – MORPHOLOGICAL DESCRIPTORS

Characteristic (*)	Description of the characteristic	Code for each description	Code that best describes the plant variety
1. Leaf. Color UP-BR EPL:**: 50	Light green	1	
	Green	2	
	Dark green	3	⌊⌋
	Purple on tip	4	
	Purple at margin	5	
	Purple	6	
	Purple (sheath)	7	
2. Leaf. Pubescence of the limbus (*) UP–BR EPL: 40 to 50	Absent	1	
	Scarce	3	
	Medium	5	
	Strong	7	
3. Leaf. Color of the auricle (*) UP–BR EPL: 40 to 69	Light green	1	
	Purple	2	
4. Leaf. Color of the ligula BR EPL: 40 to 69	Colorless to green	1	
	Purple	2	
5. Leaf. Angle of the flag leaf BR EPL: 68 to 70	Upright	1	
	Intermediate	3	
	Horizontal	5	
	Descending	7	

6. Culm. Length (*) (excluding the panicle) UP–BR EPL: 70 to 92	Short Medium Long	3 5 7 (____ cm)
7. Culm. Thickness UP–BR EPL: 65	Fine Medium Thick	3 5 7 (____ mm)
8. Culm. Angle of the sprouts BR EPL: 80 to 89	Upright Intermediate Open	1 3 5
9. Culm. Color of the internode BR EPL: 50	Light green Light golden Purple stripes Purple	1 2 3 4
10. Culm. Anthocyanin coloration at the crowns UP EPL: 70 to 77	Absent/very faint Faint Medium Strong Very strong	1 3 5 7 9
11. Panicle. Length UP–BR EPL: 78 to 93	Short Medium Long	3 5 7 (____ cm)
12. Panicle. Type BR EPL: 80 to 90	Compact Intermediate Open	1 3 5
13. Panicle. Exsertion BR EPL: 80 to 90	Complete Medium Tight	1 3 5

14. Panicle. Degraining BR EPL: 93	Easy Intermediate Difficult	1 3 5
15. Panicle. Distribution of the aristae UP EPL: 70 to 93	Only at the tip ¼ superior ½ superior 2/3 superior Whole extension	1 2 3 4 5
16. Panicle. Length of the aristae UP–BR EPL: 70 to 93	Absent/very short Short Medium Long Very long	1 3 5 7 9
17. Spikelet. Color of the stigma UP EPL: 65	White Light green Yellow Light purple Purple	1 2 3 4 5
18. Spikelet. Pubescence of the glumes UP EPL: 90 to 93	Absent/very faint Faint Medium Strong Very strong	1 3 5 7 9
19. Spikelet. Color of the apiculus (Blossoming phase) BR EPL: 60 to 69	White Green Yellow Maroon Red Purple Black	1 2 3 4 5 6 7

20. Spikelet. Color of the apiculus (Ripening phase) UP EPL: 90 to 93	White	1
	Yellow	2
	Maroon	3
	Red	4
	Purple	5
	Black	6
21. Spikelet. Color of the glumes BR EPL: 90 to 93	Straw/golden	1
	Maroon blemishes	2
	Maroon stripes	3
	Maroon	4
	Reddish	5
	Purple blemishes	6
	Purple stripes	7
	Purple	8
	Black	9
22. Spikelet. Color of the sterile glumes BR EPL: 90 to 93	Straw	1
	Golden	2
	Red	3
	Purple	4
23. Cultural cycle (period from the seeding until the complete maturation). UP	Very short	1
	Short	3
	Medium	5
	Long	7
	Very long	9
24. Grains. Weight of 1000 grains UP–BR EPL: 95 to 97	< 22,5	1
	22,6 – 24,0	2
	24,1 – 25,5	3
	25,6 – 27,0	4
	27,1 – 28,5	5
	28,6 – 30,0	6
	30,1 – 31,5	7
	31,6 – 33,0	8
	> 33,0	9

25. Grains. Length (*) (caryopsis) UP–BR EPL: 95 to 97	Short Medium Long	3 5 7 (____ mm)
26. Grains. (caryopsis) Shape UP–BR EPL: 95 to 97	Rounded Semi-rounded Half-elongated Elongated Very elongated	1 3 5 7 9
27. Grains. (caryopsis) Color UP–BR EPL: 95 to 97	White Light brown Brown Red Purple	1 2 3 4 5

(*) All the characteristics identified with an asterisk, are part of the UPOV minimum requirements. At the discretion of the member countries, there may be added descriptors according to specific needs. However, the object consists in avoiding substantial differences between descriptors from the various countries, in order to facilitate the exchange of genetic material intended to be protected.

(**) EPL: Stage for reading See item IV, growth stages of cereals.

II – COMPLEMENTARY INFORMATION

Characteristic	Description of the characteristic	Code for each description	Code that best describes the plant variety
28. Disease/pest:	Susceptible Resistant	1 2	
29. Disease/pest:	Susceptible Resistant	 2	
30. Disease:	Susceptible Resistant	1 2	
31. Productivity of grains	Measured in kg/ha	1 (__ kg/ha)	

– Reaction to environmental stresses
– Characteristics associated with grain quality

III – GENERAL ADVICES FOR CONDUCTING THE DISTINCTIVENESS, HOMOGENEITY AND STABILITY TESTS (DHE)

A – Material required for the description of the plant varieties

1. In order to comply with the provisions of Article 22 and the sole paragraph thereof in Law no. 9,456/97, the applicant of the request for protection shall be required to submit two samples of seeds of the plant variety that is the object of protection, to wit:

sample for manipulation: 1 kg
sample for germoplasm bank: 1 kg

2. The seed samples must attend all the minimum requisites established as concerning germination, purity and moisture content for commercial seeds. The applicant is due to inform the present germination percentage, which should be the highest possible. The seed samples should not have been subjected to any type of treatment able to produce effects on the subsequent growth of the plants, unless the official authority allows or requires a certain treatment. If they have been treated, detailed information must be provided on the treatment.

B – Conditions for conducting the tests for description of the plant varieties

1. The minimum duration of the evaluations should, normally, correspond to two periods of cultivation.

2. The evaluations should be conducted at a set location. If any important characteristic of the plant variety may not be observed at a certain location, the plant variety may be observed at alternative locations.

3. The field evaluations should be conducted under conditions that may ensure the normal growth of the plants. The size of the parcels shall be such that the plants, or parts thereof, may be withdrawn for measurement and counting, without hindering the observations which should be effected at the end of the period of development. Each evaluation should include an average number of 1000 plants, in a normal seeding density as recommended for the region, which should be divided into two or more repetitions.

4. The utilization of separate parcels for observation and measurement shall only be possible if the same are subject to the same environmental conditions.

IV – GROWTH STAGES OF THE CEREALS

CODE	GENERAL DESCRIPTION
	GERMINATION
00	Dry seed
01	Start of soaking
02	–
03	Complete soaking
04	Radicle emerged from the caryopsis
05	–
06	–
07	Coleoptile emerged from the caryopsis
08	–
09	Leaf atop the coleoptile
	GROWTH OF THE PLANTULES
10	First leaf across the coleoptile (profilo)
11	First leaf to open (unrolled)
12	2 leaves
13	3 leaves
14	4 leaves
15	5 leaves
16	6 leaves
17	7 leaves
18	8 leaves
19	9 or more leaves open
	SPROUTING
20	Only the main culm
21	Main culm and 1 sprout
22	Main culm and 2 sprouts
23	Main culm and 3 sprouts
24	Main culm and 4 sprouts
25	Main culm and 5 sprouts
26	Main culm and 6 sprouts
27	Main culm and 7 sprouts
28	Main culm and 8 sprouts
29	Main culm and 9 or more sprouts
	ELONGATION OF THE CULM
30	Elongation of the pseudo-culm
31	First node detected
32	Second node detected
33	Third node detected
34	Fourth node detected
35	Fifth node detected

36	Sixth node detected
37	Flag leaf visible
38	–
39	Ligule/collar visible from the flag leaf
	RUBBERIZATION
40	–
41	Length of the sheath of the flag leaf
42	–
43	Beginning of the rubberization
44	–
45	Full rubberization
46	–
47	Opening of the flag leaf
48	–
49	First aristae visible (for aristate forms only)
	EMISSION OF THE PANICLE
50–51	First spikelet visible
52–53	¼ of the panicle emerged
54–55	½ of the panicle emerged
56–57	¾ of the panicle emerged
58–58	Full emergence
	ANTHESIS
60–61	Beginning of the anthesis
62	–
63	–
64–65	Half of the anthesis
66	–
67	–
68–69	Full anthesis
	MILKY STAGE
70	–
71	Aqueous stage of the caryopsis
72	–
73	Initial milky
74	–
75	Medium milky
76	–
77	Late milky
78	–
79	–

	SLURRY STAGE (FARINACEOUS)
80–82	–
83	Initial slurry
84	–
85	Soft slurry
86	–
87	Hard slurry
88–89	–
	RIPENING
90	–
91	Hard caryopsis (difficult to divide with tip of nail)
92	Hard caryopsis (cannot be broken with tip of nail)
93	Loosening of the caryopsis during the day
94	Post-maturation, dead and falling straws
95	Dormant seed
96	Viable seed with 50% germination
97	Non-dormant seed
98	Secondary dormancy induced
99	Secondary dormancy lost

V – INTERPRETATION AND STAGE OF THE DESCRIPTORS (CHARACTERISTICS OF THE PLANT)

A. Leaf

1. Color – The coloration of the limbus and sheath should be observed at the beginning of the appearance of the panicles (stage 50).

2. Pubescence of the limbus – Observe between rubberization and emission of the panicle (stage 40 to 50).

3. Color of the auricle: Observe at the second-to-last leaf, between rubberization and anthesis (stage 40 to 69).

4. Color of the ligula – Observe at the second-to-last leaf, between rubberization and anthesis (stage 40 to 69).

5. Angle of the flag leaf – Observe the angle formed relative to the culm, at the anthesis (stage 68–70): upright – < 30°, intermediate – between 31 and 60°, horizontal – between 61 and 90°, descending – > 90°.

B. Culm

6. Length – Take the measure in cm of the main culm from ground level to the cilia node of the panicle, in a sample of 20 plants, from the filling of the grains (stage 70 to 92).

7. Thickness – Take the measure in mm of the diameter of the middle part of the main culm, in a sample of 20 plants during the anthesis (stage 65).

8. Angle of the sprouts – Observe during filling of the grains (stage 80 to 89). Classify in: upright – < 30°; intermediate – 30 to 60°; open > 60°.

9. Color of the internode – Observe at the beginning of the blossoming (stage 50).

10. Coloration of anthocyanin (purple color) at the nodes – Observe between the beginning of the filling and the end of the milky phase of the grains (stage 70–77).

C. Panicle

11. Length – Take the distance, in cm from the cilia node to the last spikelet of the panicle, from the filling of the grains (stage 78 to 93).

12. Type – The panicles are classified according to the angle of the primary ramifications during the ripening (stage 90 to 93).

13. Exsertion – Evaluation of the distance between the collar of the flag leaf and the cilia node, effected during the filling of the grains (stage 80 to 90);
Complete – Cilia node at a distance of 5 cm or more from the collar of the flag leaf;
Medium – Cilia node between 1 and 5 cm from the collar of the flag leaf;
Tight – Cilia node located at the same level as the collar of the flag leaf.

14. Degraining – Determine the percentage of threshed grains upon pressing slightly on the panicle using the hand. The degraining shall be considered difficult when less than 25% of the grains of the panicle are removed; intermediate with 25 to 50% of grains removed; easy when more than 50% of the grains are removed (stage 93).

15. Presence and distribution of the aristae – The presence of aristae should be observed upon the filling of the grains (stage 70 to 93).

16. Length of the aristae – Characteristic observed upon the filling of the grains (stage 70 to 93).

D. Spikelet

17. Color of the stigma – observed at the anthesis (stage 65).

18. Pubescence of the glumes – Observe during ripening (stage 90 to 93).

19. Color of the apiculus at the blossoming: observe during the anthesis (stage 60 to 69).

20. Color of the apiculum at ripening: Observe during maturation of the grains (stage 90 to 93).

21. Color of the glumes – Observe at the end of ripening (stage 90 to 93).

22. Color of the sterile glumes – Observe at the end of ripening (stage 90 to 93).

E. Cycle

23. Culture cycle – Period between the seeding and the complete ripening. Compare with local witnesses.

F. Grains

24. Weight of 100 grains – Weigh 10 samples of 100 grains being fully developed to 13% moisture. Express in grams with two decimals.

25. Length of grain – Determine in 200 entire hulled grains, unpolished, taken at random. Express in mm with two decimals.

26. Shape of hulled grain – Classify based on the ratio between length/width of the hulled, unpolished grains, in: rounded (L/W under 1.50); semi-rounded (L/W between 1.50 and 2.00); semi-elongate (L/W between 2.01 and 2.75); elongate (L/W between 2.76 and 3.50); very elongate (L/W over 3.50).

27. Color of hulled grain – Observe upon the hulling of the grains and before polishing.

VI. COMPARISON BETWEEN THE DESCRIPTORS OF A PLANT VARIETY PRESENTED FOR PROTECTION, WITH THE DESCRIPTORS OF ANOTHER ALREADY DESCRIBED PLANT VARIETY, THAT MOST RESEMBLES THE FORMER

B. CHARACTERISTIC	PLANT VARIETY SUBMITTED	MOST RESEMBLING PLANT VARIETY
LEAF		
Pubescence of the limbus		
Angle of the flag leaf		
Color of the leaf		
CULM		
Length		
NUMBER OF DAYS FOR EMISSION OF THE PANICLE		
Days of seeding until 50% of panicles emerged		
PANICLE		
Presence and distribution of aristae		
SPIKELET		
Pubescence of the glumes		
Color of the apiculus at ripening		
Color of the glumes		
GRAINS		
Length of hulled grain		
Shape of hulled grain		

Name of the most resembling plant variety: _____

VII – INSTRUCTIONS FOR FILLING OF FORMS

1. In order to facilitate the evaluation of the various characteristics, there has been prepared a coding scheme with values that may range between 1 and 9, positioned next to the description for each parameter. The interpretation of such codification is as follows:

a) When the coding alternatives are sequential, i.e., there are no spaces between the different values, the choice to describe the characteristic should be made in respect of only one of the listed values. Example: “Color of the auricle” has in the codification the value of 1 for “light green” and the value of 2 for “purple”. Only those two alternatives shall be acceptable for filling the form.

b) When the coding alternatives are not sequential, i.e., there existing spaces, one or more, between the proposed values, the choice to describe the characteristic may be, in addition to those provided, intermediate variations considered by the evaluator. Example: “Angle of the sprouts” has a coded value of 1 for “upright”; 3 for “intermediate” and the value of 5 for “open”. In this case, there may be chosen the value of 2 for a plant variety with sprouts that are almost upright, or the value of 4 for sprouts between intermediate and open. The interval in this case is between 1 and 5, and it is not possible to use values such as 6, 7, 8 or 9 (when the scale begins with a value 1, it indicates that the values of the beginning and of the end are the extremes). When the alternatives are 3 – 5 –7, there may be used any value between 1 and 9, since both extremes of the scale show that there may exist values below and above those indicated.

2. When a certain characteristic will not be evaluated, for any technical reason being pertinent, the same should be attributed the value of 0 (zero).

3. Some quantitative characteristics, which description is numeric (mm, cm, g, kg/ha, etc.), should be recorded with the effective measure in the space provided in the questionnaire, which may be preceded by the code 1 (one). If that measurement was not effected, the value to be informed should be 0 (zero).

4. Next to each of the characteristics and merely as a guide to the evaluator, there are indicated some of the following abbreviations:

BR: indicates a characteristic pertaining solely to Brazil;

UP: indicates a UPOV or international standard, including Brazil;

UP–BR: is compliant with an international requirement, with modifications for Brazil.

5. The proper filling of this questionnaire shall be submitted together with the specific form of the Ministry of Agriculture and Supply, in order to request protection for the plant variety in question.

ATTACHMENT III – MINIMUM DESCRIPTORS FOR POTATO (*Solanum tuberosum* L.)

Proposed name for the plant variety: _____

I – MORPHOLOGICAL DESCRIPTORS

Characteristic	Description of the characteristic	Code for each description	Code that best describes the plant variety
1. Shoot (see figure 2) (*) Shape UP	Spherical	1	
	Oval	2	
	Conical	3	⌊⌋
	Wide cylindrical	4	
	Narrow cylindrical	5	
2. Shoot (*) Coloration of the base UP–BR	Green	1	
	Red-Purple	2	
	Blue-purple	3	
3. Shoot (*) Intensity of coloration at the base UP	Weak	3	
	Medium	5	
	Strong	7	
4. Shoot (*) Pubescence of the base BR	Slight	3	
	Medium	5	
	Intense	7	
5. Shoot (see figure 3) Aspect of the apex UP	Closed	3	
	Medium	5	
	Open	7	
6. Shoot Intensity of the radicular origins BR	Low	3	
	Medium	5	
	High	7	

7. Shoot (see figure 4) Length of lateral shooting UP	Short Medium Long	3 5 7
8. Plant Type of plant relative to the foliation UP–BR	Open Intermediate Closed	1 2 3
9. Plant (see figure 5) Growth habit UP	Upright Semi-upright Collapsed	3 5 7
10. Plant (*) Pigmentation of the stem UP	Absent Faint Intermediate Strong Very strong	1 3 5 7 9
11. Plant Wings BR	Absent Straight Wavy Dentate	1 2 3 4
12. Leaves Insertion BR	Acute (angle of insertion < 45°) Obtuse (angle of insertion > 45°)	1 2
13. Leaves (see figure 6) Closure UP	Closed Medium Open	3 5 7
14. Leaves Pigmentation of the main nervure UP–BR	Absent Present	1 2

15. Leaflets (*) Size UP	Small Medium Large	3 5 7
16. Leaflets (see figure 7) Width UP	Narrow Medium Wide	3 5 7
17. Leaflets (see figure 8) Coalescence UP–BR	Absent/rare Frequent	1 2
18. Leaflets (*) Undulation of the edges UP	Absent/very rare Faint Medium Strong Very strong	1 3 5 7 9
19. Leaflets Frequency of secondary leaflets UP	Null/very low Low Medium High Very high	1 3 5 7 9
20. Inflorescence Frequency of flowers UP–BR	Absent Present	1 2
21. Inflorescence Length of floral peduncle BR	Short Medium Long	3 5 7

22. Inflorescence Pigmentation of floral peduncle UP–BR	Absent Present	1 2
23. Inflorescence (*) Coloration of the inner part of the corolla UP	White Red-purple Blue-purple	1 2 3
24. Inflorescence (*) Intensity of pigmentation at the inner part of the corolla, in colored flowers UP	Weak Medium Strong	3 5 7
25. Inflorescence (*) Pigmentation at the outer part of the corolla, in white flowers UP	Absent Present	1 2
26. Fruits Frequency of fruits UP–BR	Null Low Medium High Very high	1 3 5 7 9
27. Vegetative cycle UP–BR	Precocious (< 90 days) Medium (90–110 days) Long (> 110 days)	1 2 3

28. Tubercles (*) Shape (100 x length/width). Average UP–BR	1. 2. 3. 4.	Round (< 110) Oval (110–150) Oval-elongate (151–170) Long (> 170)	1 2 3 4
29. Tubercles Depth of eyes UP–BR	5. 6. 7.	Shallow Medium Deep	1 3 5
30. Tubercles Asperity of the membrane UP–BR	8. 9. 10.	Smooth Rough Reticulated	1 3 5
31. Tubercles (*) Color of the membrane UP–BR	11. 12.	Yellow Red	1 2
32. Tubercles (*) Color of the pulp UP–BR	13. 14. 15. 16.	White Cream Light yellow Deep Yellow	1 2 3 4
33. Tubercles Greenage of the tubercles UP	17. 18. 19. 20. 21.	Absent/very slight Slight Medium Strong Very strong	1 3 5 7 9

(*) All the characteristics identified with an asterisk, are part of the UPOV minimum requirements. At the discretion of the member countries, there may be added descriptors according to specific needs. However, the object consists in avoiding substantial differences between descriptors from the various countries, in order to facilitate the exchange of genetic material intended to be protected.

II. – GENERAL ADVICES FOR THE CONDUCTION OF DISTINCTIVENESS, HOMOGENEITY AND STABILITY TESTS (DHE)

A – Material required for the description of plant varieties

1. To comply with the provisions of Article 22 and the sole paragraph thereof in Law No. 9,456/97, the applicant for the protection application shall be due to submit two samples of tubercles of the plant variety that is the object of the protection, to wit:

- manipulation sample : 300 tubercles
- sample for the germoplasm bank: 150 tubercles

2. The diameter of the tubercles submitted should be of 35 to 50 mm, visible healthy, not lacking in vigor or being affected by pests or important diseases.

B – Conditions for the conduction of the tests for description of the plant varieties

1. Shoot characteristics: for an adequate development of the shoots, the tubercles should be kept from the crop until the evaluation in ambient temperature, under diffuse lighting. The shoots developed in those conditions should be evaluated between 90 and 120 days after the crop of the tubercles, depending on the velocity of development of the shoot.

2. Characteristics of plants, of leaves, of leaflets, of blossoming, frequency of fruits, vegetative cycle and characteristics of tubercles: should be evaluated for at least two plantings, in different years, on the same epoch, in the same location. The characteristics of the plant, of leaves and of leaflets should be evaluated between 45 and 50 days after planting. The characteristics of blossoming should be evaluated during the blossoming peak. The frequency of fruits should be determined upon the catching and before the ripening thereof. The vegetative cycle should be determined in days, beginning at the planting and ending when 80% of the plants show complete senescence. The characteristicas of the tubercle should be determined until, at most, fifteen days after the crop.

3. Additional tests may be performed for specific purposes.

C – Methods and observations

1. For the description of the characteristics of the shoots a minimum quantity of 20 tubercles should be used.

2. For the description of the characteristics of the plant, of the leaves and of the fruits a minimum quantity of 60 plants should be used, divided in two or more repetitions.

3. For the description of the characteristics of the tubercles a minimum quantity of 30 tubercles should be used, divided in two or more repetitions.