

LAW No. 9,456 OF APRIL 28, 1997

Establishing the **Plant Variety Protection Law** and enacting other measures

THE PRESIDENT OF THE REPUBLIC

Be it known that the National Congress has decreed and that I hereby sanction the following Law:

TITLE I

PRELIMINARY PROVISIONS

Article 1

The right of plant variety protection is established in accordance with the provisions of this enactment.

Article 2

The protection of the intellectual property rights in plant varieties is effected through the grant of a Plant Variety Protection Certificate, which shall be considered a commodity for all legal purposes and the sole form of protection in the Country for plant varieties and the rights therein that may be invoked against the free use of sexually or vegetatively propagated plants or parts thereof.

Article 3

For the purposes of this Law, it is considered that:

- (i) “breeder” means the individual who breeds a plant variety and establishes descriptors that differentiate it from any other;
- (ii) “descriptor” means the morphological, physiological, biochemical or molecular characteristic that is genetically inherited and used to identify the plant variety;
- (iii) “minimum margin” means the minimum set of descriptors, in the judgement of the competent agency, that is sufficient to distinguish a new plant variety or an essentially derived plant variety from other known plant varieties;
- (iv) “plant variety” means a variety of any plant genus or species that is clearly distinguishable from other known plant varieties by a minimum margin of descriptors and by its own denomination, is homogenous and stable in its descriptors throughout successive generations and belongs to a species useful in farming and forestry, being described in a publicly available and accessible specialized publication, including the component lines of hybrids;
- (v) “new plant variety” means a plant variety that has not been offered for sale in Brazil for more than 12 months prior to the date of the application for protection and, with due regard to

the period for commercialization in Brazil, has not been offered for sale in other countries, with the breeder's authorization, for more than six years for tree and vine species and for more than four years for other species;

(vi) "distinct plant variety" means a plant variety that is clearly distinct from any other the existence of which has been recognized on the date of the application for protection;

(vii) "homogenous plant variety" means a plant variety that, when used in planting on a commercial scale, shows a minimum degree of variance in the descriptors identifying it, according to criteria established by the competent agency;

(viii) "stable plant variety" means a plant variety that, when reproduced on a commercial scale, maintains its homogeneity throughout successive generations;

(ix) "essentially derived plant variety" means one essentially 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 loss of the ability to exhibit the-essential characteristics resulting from the genotype or combination of genotypes of the plant variety from which it derived, except for differences resulting from the derivation;

b) it is clearly distinct from the plant variety from which it derived, by a minimum margin, according to criteria established by the competent agency;

c) it has not been offered for sale in Brazil for more than 12 months from the date of application for protection and, with due regard to the period for commercialization in Brazil, has not been offered for sale in other countries, with the breeder's authorization, for more than six years for tree and vine species and for more than four years for other species;

(x) "lines" means homogenous genetic material obtained by some continuous process of self-fertilization;

(xi) "hybrid" means the direct product of the crossing of genetically different lines;

(xii) "testing of distinctness, homogeneity and stability (DHS)" means the technical procedure to verify that the new plant variety or the essentially derived plant variety differs from another whose descriptors are known, is homogenous in its characteristics in each reproductive cycle and is stable in terms of the recurrence of the same characteristics throughout successive generations;

(xiii) "live sample" means that which is supplied by the applicant for the right of protection and which, if used in the propagation of the plant variety, confirms the descriptors submitted;

(xiv) "seed" means every and any plant structure used in the propagation of a plant variety;

(xv) "propagation" means the reproduction and multiplication of a plant variety, or the concurrence of those actions;

(xvi) “propagating material” means every and any part of the plant or plant structure that is used in the reproduction and multiplication thereof;

(xvii) “whole plant” means the plant with all those of its parts capable of being used in the propagation of a plant variety

(xviii) “farming and forestry” means the set of activities that relate to the growing of genera and species for, among other things, human or animal nourishment and the production of fuels, oils, dyes, fibers and other material for industrial, medical, forestry and ornamental purposes.

TITLE II

INTELLECTUAL PROPERTY

CHAPTER I

PROTECTION

SECTION I

Plant Varieties Eligible for Protection

Article 4

A new plant variety or an essentially derived variety of any genus or species is eligible for protection.

(1) Plant varieties not conforming to the above provisions that have 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:

(i) the application for protection must be submitted within 12 months following compliance with the provisions of paragraphs 2 of this Article, for each plant species or variety;

(ii) the first instance of commercialization of the plant variety must not have occurred more than ten years before the date of the application for protection;

(iii) the protection shall be effective only for the purpose of the use of the plant variety to obtain essentially derived varieties;

(iv) protection shall be granted for the remaining period of the terms provided for in Article 11, the reference date for the purposes being that of first commercialization.

(2) The agency responsible for the protection of plant varieties shall progressively disclose plant species and the relevant minimum descriptors required to initiate applications for protection, and also the time limits for the purposes of item (i) of the preceding paragraph.

(3) The disclosure referred to in the preceding paragraph shall take place according to a scale of species and the following schedule, expressed as cumulative totals of protected species:

- (i) on the date of entry into force of the regime introduced by this Law: at least five species;
- (ii) after three years: at least ten species;
- (iii) after six years: at least 18 species;
- (iv) after eight years: at least 24 species.

SECTION II

Breeders

Article 5

The natural or legal person who has bred a plant variety or an essentially derived plant variety in the country shall be entitled to protection of his property rights therein as provided in this Law.

- (1) Protection may be applied for by a natural or legal person who has bred a plant variety, by his heirs or successors or by assignees, if any, subject to submission of the proper authority.
- (2) When the breeding process has been conducted by two or more persons jointly, the protection may be applied for jointly or separately, each applicant being named and his qualification attested, for their individual rights to be guaranteed.
- (3) In the case of breeding arising from an employment contract, a service contract or other labor activity, the application for protection should state the names of all the breeders who, as employees or providers of services, have bred the new plant variety or the essentially derived plant variety.

Article 6

The provisions of this Law shall also apply to:

- (i) applications for plant variety protection originating abroad and filed within the country by a person whose protection is ensured by a treaty effective in Brazil.
- (ii) nationals or residents of a country that affords Brazilians or residents of Brazil reciprocity in the form of equal or equivalent rights.

Article 7

The provisions of treaties effective in Brazil shall be applicable on equal terms to natural or legal persons who are nationals of or resident in the Country.

SECTION III

Right to Protection

Article 8

The protection of a plant variety shall benefit the reproductive or vegetative propagating material of the whole plant.

Article 9

The protection shall afford its holder the right to commercial reproduction on the territory of Brazil, third parties being prohibited during the term of protection from producing for commercial purposes, offering for sale or marketing propagating material of the plant variety without his authorization.

Article 10

The breeder's right in the plant variety shall not be deemed infringed by a person who:

- (i) stores and plants seeds for his own use on his premises or on the premises of third parties of which he has possession;
 - (ii) uses or sells as food or raw material the product of his planting, except for the purposes of reproduction;
 - (iii) uses the plant variety as a source of variation in genetic improvement or in scientific research;
 - (iv) being a small rural producer, multiplies seed, for donation or exchange in dealings exclusively with other small rural producers, under programs of financing or support for small rural producers conducted by public bodies or non-governmental agencies, authorized by the Government.
- (1) The provisions of the first paragraph specifically do not apply to the cultivation of sugar cane, for which the following additional provisions on the right of ownership of the plant variety shall apply:
- (i) to multiply vegetative propagating material, even for his own use, the producer is obliged to secure authorization from the owner of the right to the plant variety;

- (ii) when payment is required for the grant of authorization, that must not impair the economic and financial balance of the producer's farm;
 - (iii) the provisions of item (i) shall only apply to farms operated by producers having possession or ownership of rural properties with an area corresponding to at least four fiscal modules, calculated in accordance with the provisions of Law No. 4,504 of November 30, 1964, when the farm is dedicated to production for the purposes of industrial processing;
 - (iv) the provisions of this paragraph shall not apply to producers able to provide proof of having initiated, before the date of enactment of this Law, a process of multiplication for his own use of a plant variety that may be protected.
- (2) For the purposes of item (iii) of the first paragraph above, whenever:
- (i) it is indispensable to use the protected plant variety repeatedly for commercial production of another plant variety or hybrid, the holder of the latter shall be obliged to secure authorization from the holder of the right to protection of the former;
 - (ii) a plant variety is characterized as being essentially derived from a protected plant variety, the commercial exploitation thereof shall be subject to authorization by the holder of protection of the said protected plant variety.
- (3) For the purposes of the provisions of item (ii) of the first paragraph above, a small rural producer is one who simultaneously meets the following requirements:
- (i) he exploits a parcel of land as owner, titleholder, leaseholder or partner;
 - (ii) he employs up to two permanent staff, the enlistment where necessary of eventual third-party assistance being admissible when dictated by the seasonal nature of agriculture and livestock breeding;
 - (iii) he does not hold, under any title, an area exceeding four fiscal modules calculated in accordance with the legislation in force;
 - (iv) he has at least 80 per cent of his annual gross income derived from agriculture and livestock breeding or exploitation; and
 - (v) he resides on the property or in a nearby urban or rural community.

SECTION IV

Term of Protection

Article 11

The protection of the plant variety shall be effective for a period of fifteen years from the date of grant of the Provisional Certificate of Protection, except for vines and fruit, forest and ornamental trees, including in each case the rootstock thereof, for which the term shall be eighteen years.

Article 12

When the term of validity of the right to protection expires, the plant variety shall pass into the public domain and no other right may prevent free use thereof.

SECTION V

Application for Protection

Article 13

The application for protection shall be formalized in a request signed by the natural or legal person who has bred the plant variety or his agent and endorsed by the competent agency.

Sole Paragraph. The protection on the national territory of a plant variety bred by a natural or legal person domiciled abroad, as provided in items (i) and (ii) of Article 6, should be applied for directly by that person's agent domiciled in Brazil in accordance with the provisions of Article 50 of this Law.

Article 14

In addition to the request for protection, the application, which may only refer to a single plant variety, shall include:

- (i) the botanical species;
- (ii) the name of the plant variety;
- (iii) the genetic origin;
- (iv) a descriptive specification including all the required descriptors;
- (v) a statement attesting the existence of a live sample at the disposal of the competent agency and the location thereof for examination if required;
- (vi) the names and addresses of the applicant and breeders;
- (vii) evidence of the DHS characteristics in the case of national and foreign plant varieties;
- (viii) an account of other descriptors indicative of the variety's distinctness, homogeneity and stability, or evidence of the applicant having performed tests on it together with either specific checks or checks required by the competent agency;
- (ix) proof of payment of the fee for the application for protection;
- (x) a statement attesting the commercialization of the plant variety within the Country or abroad;

(xi) a statement attesting the existence in another country of protection, or an application for protection, or any request for the right of priority, concerning a plant variety for which protection is sought;

(xii) an abstract serving to identify the subject matter of the application.

(1) The application and the completion thereof with the descriptors specified and the new descriptors shall meet the conditions laid down by the competent agency.

(2) The documents referred in this Article shall be submitted in Portuguese.

Article 15

Every plant variety shall have a denomination that identifies it, serves as its generic designation and conforms to the following criteria for the purposes of protection:

(i) it must be unique, and not expressed in the form of numerals only;

(ii) it must consist of a designation that is different from that of a pre-existing plant variety;

(iii) it must not mislead as to the essential characteristics or origin of the variety.

Article 16

The application for protection, in the form of an abstract allowing identification of the subject matter of the application, shall be published within 60 calendar days of the filing thereof.

Sole Paragraph. On publication of the application for protection, there shall begin a period of 90 days for the submission of any appeals, the applicant being informed thereof.

Article 17

The specification and the descriptors evidencing distinctness, homogeneity and stability may not be amended by the applicant, except:

(i) in order to correct printing or typing errors;

(ii) where amendment is indispensable to clarify or specify the application, and then only up to the date of publication thereof;

(iii) if it is the subject of official action owing to non-compliance with the provisions of paragraph (2) of Article 18.

Article 18

In the processing of the application for protection, a preliminary formal examination for the existence of synonyms shall be made, and if none are found to exist, the application shall be recorded, provided that it is in order.

- (1) The recorded data concerning the application for plant variety protection shall include the hour, day, month, year and the number of the filing of the application, the full name and address of the person concerned and of his agent, if any.
- (2) The examination, which shall not be subject to any appeals that may be filed, shall determine whether the application for protection conforms to the legal requirements and is technically in order, and ensure that there is no anticipation, even if under a different denomination.
- (3) The application shall be rejected if the plant variety does not conform to the provisions of Article 4.
- (4) If necessary, any additional requirements judged appropriate shall be imposed, including the filing of a new specification or of additions thereto and the provision of other information deemed relevant for the completion of the examination of the application.
- (5) Failure to comply with or respond to an official requirement within 60 days following receipt of notice thereof shall cause the application to be shelved, and the administrative stage to be thereby concluded.
- (6) The application shall likewise be shelved if the response to the official requirement is considered unfounded.
- (7) Except as provided in paragraph (5) of this Article, the decision rejecting or allowing the application for protection may be appealed within 60 days of the date of publication thereof.
- (8) On the filing of an appeal, the competent agency shall have up to 60 days within which to rule thereon.

Article 19

On publication of the application for protection, a Provisional Certificate of Protection shall be conditionally granted under which the holder has the right to exploit the plant variety commercially in accordance with this Law.

SECTION VI

Grant of the Plant Variety Protection Certificate

Article 20

The plant variety protection certificate shall be issued immediately after the time limit for appeal or, where an appeal has been filed, on the official publication of the ruling thereon.

- (1) Where the application has been allowed and no appeal has been filed in due time under paragraph (7) of Article 18, publication shall take place within a period not exceeding fifteen days.

(2) The plant variety protection certificate shall give the relevant number, the name and nationality of the holder or his heir, successor or assignee, if any, and the term of protection.

(3) In addition to the data referred to in the preceding paragraph, the plant variety protection certificate shall give the name of the breeder and, where applicable, the fact that the new variety resulted from an employment or service contract or from another labor activity, which fact should be clearly stated in the relevant application for protection.

Article 21

The protection granted shall be made known by official publication within a period not exceeding 15 days following the date of grant.

Article 22

Having obtained the provisional certificate of protection or the plant variety protection certificate, the holder is obliged, throughout the term of protection, to keep a live sample of the protected plant variety at the disposal of the competent agency, on pain of cancellation of the relevant certificate if, on being called upon to do so, he fails to submit it with a period of 60 days.

Sole Paragraph. Notwithstanding the provisions of the first paragraph of this Article, on obtaining the provisional certificate of protection or the plant variety protection certificate, the holder is bound to convey to the competent agency two live samples of the protected plant variety, one for handling and examination, the other for inclusion in the germ plasm collection.

SECTION VII

Alterations in the Plant Variety Protection Certificate

Article 23

The ownership of plant variety protection may be transferred by inter vivos transaction or by legal or testamentary succession.

Article 24

The transfer by inter vivos transaction or legal or testamentary succession of a plant variety protection certificate, a change in the name, domicile or head office of the holder thereof, the terms of a compulsory license or a license for restricted public use, or temporary suspension or cancellation of protection, on having been noted in the relevant process, shall be recorded in the protection certificate.

- (1) Notwithstanding other applicable requirements, the original transfer document shall include the full credentials of the assignor and assignee and also those of the witnesses, with precise details of the protected plant variety.
- (2) Acts relating, among other things, to the declaration of a compulsory license or a license for public use, temporary suspension, lapse of the protection or cancellation of the certificate, by order of an administrative or judicial authority.
- (3) Recording shall have no effect on the remuneration payable by third parties to the holder for the exploitation of a protected plant variety when it relates to a plant variety the right to protection of which has lapsed or is in the process of being invalidated or cancelled.
- (4) The transfer shall be binding on third parties only on publication of the decision to allow it.
- (5) A refusal to note or to record may be appealed against within a period of 60 days following notice of the relevant decision.

Article 25

At the request of any person having a legitimate interest who may have entered a judicial action claiming the ineffectiveness of acts relating to an application for protection or of a transfer of ownership or alteration of the name, address or headquarters of the holder, the judge may order the process of protection, noting or recording to be suspended until a final decision is reached.

Article 26

The payment of the annual fees for protection of the plant variety, which are to be specified by regulation, shall be made as from the period following that of the date of grant of the protection certificate.

SECTION VIII

Right of Priority

Article 27

Natural or legal persons who have filed an application for protection in a country that has an agreement with Brazil, or in an international organization of which Brazil is a member, the latter application having the effect of a domestic filing, shall have a right of priority for a period of up to 12 months.

- (1) Events occurring within the period provided for in the foregoing paragraph, such as the filing of another application for protection, or publication or use of the plant variety to which

the first application related, do not constitute grounds for rejection of the later application and shall not generate rights in favor of third parties.

(2) The period provided for in the first paragraph above shall be counted from the filing date of the first application, excluding the day of filing.

(3) To be able to benefit from the provisions of the first paragraph above, the applicant shall:

(i) mention, explicitly, in the later application for protection, the claim of the priority of the first application;

(ii) submit, within a period not exceeding three months, copies of the documents that supported the first application, duly certified by the agency or authority with which they were filed, and also sufficient evidence that the plant variety to which the two applications relate is the same.

(4) The natural or legal persons mentioned in the first paragraph of this Article shall have a period not exceeding two years after the expiry of the priority period within which to submit information, additional documents or a live sample, should they be so required.

CHAPTER II

COMPULSORY LICENSE

Article 28

The plant variety protected under this Law may be the subject of a compulsory license, which will ensure:

(i) the availability of the plant variety on the market, at reasonable prices, when the maintenance of a regular supply is being unduly hindered by the holder of the protection rights in the plant variety;

(ii) the regular distribution of the plant variety and the maintenance of its quality;

(iii) reasonable remuneration of the holder of the protection rights in the plant variety.

Sole Paragraph. When assessing undue restriction of competition, the authority shall comply with such of the provisions of Art. 21 of Law No. 8,884 of July 11, 1994, as are applicable.

Article 29

A compulsory license shall be understood to mean the act of the competent authority whereby, at the request of a party having a legitimate interest, the exploitation of the plant variety is authorized, independently of any authorization by its holder, for a period of three

years, renewable for equal periods, without exclusive rights and against remuneration as provided by regulation.

Article 30

The request for a compulsory license shall contain, in particular:

- (i) the qualifications of the applicant;
- (ii) the qualifications of the holder of the right to protection of the plant variety;
- (iii) a sufficient description of the plant variety;
- (iv) the reasons underlying the request, due regard being had to the provisions of Article 28 of this Law;
- (v) evidence that the requester has attempted, unsuccessfully, to obtain a voluntary license from the holder of the plant variety;
- (vi) evidence that the requester is financially and technically capable of exploiting the plant variety.

Article 31

The request for a license shall be submitted to the Ministry of Agriculture and Supply and ruled upon by the Administrative Board for Economic Defense (CADE) created by Law No. 8,884 of July 11, 1994.

- (1) On receiving the request, the Ministry shall call upon the holder of the protection right to submit a statement, if he so desires, within a period of ten days.
- (2) With or without the statement referred to in the preceding paragraph, the Ministry shall convey the file to the CADE, together with the technical opinion of the competent agency, within a period not exceeding 15 days, advising the grant or refusal of the compulsory license.
- (3) Where there is no need for further action, the CADE shall consider the request within a period not exceeding 30 days.

Article 32

The Ministry of Agriculture and Supply and the Ministry of Justice, each within the limits of its competence, shall issue additional rulings on the procedure and the conditions for the consideration of the request and the grant of the compulsory license, due regard being had to the procedural requirements inherent in the broad defense and protection of the property rights instituted by this Law.

Article 33

The decision of the CADE to grant the license requested shall not be appealable within the Administration, nor may it be attacked in a first-instance judicial proceeding, except, in the latter case, where due legal process has not been observed.

Article 34

The provisions of Law No. 9,279, of May 14, 1995, shall apply as appropriate to compulsory licenses.

Article 35

A compulsory license may only be requested after three years have elapsed since the grant of the provisional certificate of protection, except in the case of abuse of economic power.

CHAPTER III

RESTRICTED PUBLIC USE

Article 36

The protected plant variety shall be declared subject to restricted public use ex officio by the Ministry of Agriculture and Supply, on the basis of a technical opinion issued by the relevant competent agencies, such use being exclusively in the public interest to meet the needs of 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.

(1) A plant variety shall be deemed subject to restricted public use if, by order of the Ministry of Agriculture and Supply, it may be exploited directly by the Federal Union or by third parties designed by the latter without exclusive rights, but without authorization by its holder, for a period of three years, renewable for equal periods, on condition that the said holder is notified and remunerated as provided by regulation.

CHAPTER IV

PENALTIES

Article 37

Any person who sells, offers for sale, reproduces, imports or exports, or who packs or holds in storage for such purposes, or for any purpose supplies the propagating material of a protected plant variety, under the correct designation or any other, without being authorized to do so by the holder thereof, shall be bound to indemnify the said holder, in amounts to be specified by regulation, in addition to having the material seized, shall also pay a fine in an amount

equivalent to 20 per cent of the commercial value of the seized material, and shall be deemed guilty of the crime of infringement of the rights of the breeder, without prejudice to whatever other legal penalties may be applicable.

(1) In the event of recidivism involving the same or other material, the percentage of the fine shall be twice that applied to the last penalty, without prejudice to whatever additional penalties may be applicable.

(2) The competent agency shall turn the seized material over at no cost - provided that it is of adequate quality - for distribution, as seed for planting, to farmers engaged in agrarian reform programs or established in areas where public programs of support for family agriculture may be in progress, the marketing of such seed being prohibited.

(3) The provisions of the first paragraph and paragraph (1) of this Article shall not apply to the cases provided for in Article 10.

CHAPTER V

VARIETIES BRED DURING THE CURRENCY OF AN EMPLOYMENT OR SERVICE CONTRACT OR IN THE COURSE OF ANOTHER LABOR ACTIVITY

Article 38

The rights in new plant varieties and in essentially derived plant varieties developed or bred by an employee or service provider during the period of validity of the employment or service contract or in the course of another labor activity, being the result of the performance of duties or fulfillment of a contract relating to research work in Brazil, shall belong exclusively to the employer or client, but it shall be mandatory to include the application and in the protection certificate.

(1) Except where expressly provided otherwise in the contract, the consideration payable to the employee or the provider of the service or other labor activity in the case provided for in this Article shall be limited to the salary or the agreed remuneration.

(2) Unless otherwise agreed, the new plant variety or essentially derived plant variety in respect of which a protection certificate is applied for by the employee or service provider within 36 months following the lapse of the relevant contract shall be deemed bred during the currency of the employment or service contract or in the course of other labor activity.

Article 39

Unless expressly provided otherwise, the new plant varieties and also essentially derived plant varieties bred by the employee or provider of services or other labor activity that are not covered by the provisions of Article 38, but are the result of a personal contribution and the

use of resources, data, means, materials, installations or equipment belonging to the employer or client, shall belong to both parties.

(1) For the purposes of this Article, the employer or the party contracting for the service or other labor activity is invested with the exclusive right to exploit the new plant variety or essentially derived plant variety, and the employee or provider of the service or other labor activity is assured of the remuneration agreed between the parties, without prejudice to the payment of his salary or contractual remuneration.

(2) Where there are two or more employees or providers of the service or other labor activity, the share accruing to them shall be equally divided between them, unless otherwise agreed.

CHAPTER VI

EXTINCTION OF THE RIGHT TO PROTECTION

Article 40

The protection of the plant variety shall lapse:

- (i) on expiry of the term of protection specified in this Law;
- (ii) on renunciation by the holder or his successors;
- (iii) on cancellation of the protection certificate under Article 42.

Sole Paragraph. Renunciation of protection shall only be allowed if it does not prejudice third-party rights.

Article 41

On the lapse of protection, the subject matter thereof shall pass into the public domain.

Article 42

The protection certificate shall be administratively cancelled ex officio, or at the request of any person having a legitimate interest, in any of the following cases:

- (i) loss of homogeneity or stability;
- (ii) failure to effect payment of the annual fee;
- (iii) failure to comply with the requirements of Article 49;
- (iv) failure to submit a live sample as provided in Article 22;

(v) evidence that the plant variety has had an adverse effect, after commercialization, on the environment or human health.

(1) The holder shall be notified of the institution of cancellation proceedings and shall be allowed a period of 60 days with which to respond, counted from the date of notification.

(2) The decision allowing or refusing cancellation may be appealed within a period of 60 days following the publication thereof.

(3) The decision to cancel shall produce effects from the date of the request or of publication of the ex officio institution of proceedings.

CHAPTER VII

NULLITY OF PROTECTION

Article 43

Protection shall be null and void when:

(i) the conditions of novelty and distinctness of the plant variety within the meaning of items (v) and (vi) Article 3 of this Law have not been met;

(ii) it has been granted in defiance of third-party rights;

(iii) the title does not correspond to its true subject matter;

(iv) one or more of the measures laid down in this Law as being necessary for the examination of the application and the issue of the protection certificate have been omitted.

Sole Paragraph. The nullity of the certificate shall be effective as from the date of the application.

Article 44

Nullity proceedings may be instituted ex officio or at the request of any person having a legitimate interest.

TITLE III

NATIONAL PLANT VARIETIES PROTECTION SERVICE

CHAPTER I

ESTABLISHMENT

Article 44

The National Plant Varieties Protection Service (SNPC), which shall be in charge of the protection of plant varieties, is hereby established under the authority of the Ministry of Agriculture and Supply.

- (1) The structure, prerogatives and purposes of the SNPC shall be specified by regulation.
- (2) The SNPC shall administer the National Registry of Protected Plant Varieties.

TITLE IV

GENERAL PROVISIONS

CHAPTER I

ACTIONS, ORDERS AND TERMS

Article 46

Acts, rulings and decisions concerning administrative procedures in connection with the protection of plant varieties shall be effective only on publication in the Official Gazette of the Union, with the exception of:

- (i) interlocutory rulings that need not be made known to the parties;
- (ii) expert opinions, which shall however be accessible to the parties for examination if they so require;
- (iii) others as specified in the Implementing Decree.

Article 47

The SNPC shall publish a specialized periodical for the National Registry of Protected Plant Varieties provided for in paragraph (2) of Article 45 and in the first paragraph and items (i), (ii) and (iii) of Article 46.

Article 48

The periods referred to in this Law shall be counted from the date of their publication.

CHAPTER II

CERTIFICATES

Article 49

Certificates relating to matters provided for in this Law shall be issued within a period of 30 days from the date of receipt of the request, provided that they have been properly requested and payment of the appropriate fees is proved.

CHAPTER III

POWER OF ATTORNEY FOR PERSONS DOMICILED ABROAD

Article 50

A natural or legal person domiciled abroad shall appoint and maintain an agent duly qualified and domiciled in Brazil, invested with the power to represent him and receive administrative notices and legal writs relating to matters provided for in this Law as from the date of application for protection and throughout its term, on pain of invalidation of the right to protection.

- (1) The power of attorney shall qualify the agent to apply for protection and maintain it in dealings with the SNPC, and shall be specific to each case.
- (2) When the application for protection is not filed by the applicant in person, it shall be accompanied by a power of attorney conferring the necessary powers, which shall have been duly translated by a sworn public translator if executed abroad.

CHAPTER IV

FINAL PROVISIONS

Article 51

The application for protection of a plant variety essentially derived from a plant variety eligible for protection under paragraph (1) of Article 4 shall be examined, and if applicable the relevant certificates shall be granted, only after the period provided in item (i) of the said paragraph, due regard being had to the chronological order of filing of the applications.

Sole Paragraph. The SNPC may waive observance of the period mentioned in the first paragraph when, regarding the plant variety eligible for protection under paragraph (1) of Article 4:

- (i) a protection certificate has been granted; or
- (ii) there is express authorization from the breeder thereof.

Article 52

Plant varieties already marketed in Brazil for which a duly examined application for protection has not been recorded within the period provided for in item (i) of paragraph (1) of Article 4 shall be automatically treated as being in the public domain.

Article 53

The services provided for in this Law shall be remunerated according to the tariff for specific public services, the Ministry of Agriculture and Supply being responsible for setting the individual amounts and the manner of their collection.

Article 54

The Executive shall enact regulations under this Law within a period of 90 days following its publication.

Article 55

This Law shall enter into force on the date of its publication.

Article 56

Provisions to the contrary are hereby repealed.

Brasilia, April 25, 1997, 176th year of Independence and 109th Year of the Republic.

FERNANDO HENRIQUE CARDOSO
Ailton Barcelos Fernandes