

Intellectual Property - Mexico

Plant Varieties Law Amendments Would Affect Breeders' Rights

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In September 2009 the Democratic Revolutionary Party introduced proposals to amend the Plant Varieties Law. The bill is now under review in the Senate. Its main aim is to amend the law to include the term 'phytogenetic resource', which is defined to include any genetic material that can be used directly or indirectly for the improvement of a plant variety and that requires specific protection to ensure its conservation and sustainable exploitation.

In addition, the bill proposes to:

- limit the exploitation of phytogenetic resources when there are risks to human or animal health or the environment;
- establish quality controls and regulations to ensure compliance with legal and statutory requirements for the exploitation of such resources; and
- create a phytogenetic resources centre devoted to their conservation and sustainable use.

Although these proposed measures are significant, it could be argued that in view of Mexico's biodiversity, provisions on phytogenetic resources should be included in a law other than the Plant Varieties Law - the issue calls for specific legislation devoted to the exploitation of certain plants, rather than additions to a law that is intended to govern plant breeders' rights.

The bill includes genetic manipulation as a technique for the development of plant varieties, but it takes no account of the fact that a plant can be genetically modified and still not meet the requirements for protection as a plant variety: novelty (except for the inserted gene), distinctiveness, uniformity and stability.

The proposal would also reduce the protection period for plant varieties from 18 years to 15 years for forest trees, fruit trees, vines and ornamental trees (including their rootstocks), and from 15 years to 10 years for other species. This change in breeders' rights is contrary to Article 8 of the 1978 Act on the International Convention for the Protection of New Varieties of Plants and its inclusion in statute would breach the act.

Moreover, the bill seeks to establish that phytogenetic resources are in the public domain, and that no one can claim rights over them and thereby restrict access for agriculture, research or use as a foodstuff. This clearly breaches Article 27(3)(b) of the Agreement on Trade-Related Aspects of Intellectual Property Rights, which establishes that plant varieties must be protected.

On the grounds that phytogenetic resources must be protected in Mexico, the bill would limit breeders' rights and reduce the protection period for plant varieties. However, whether the bill is passed into law, and in what form, will depend on the activities of interested parties and on Mexico's economical and political climate.

For further information on this topic please contact [Elisa Morales](#) at Becerril, Coca & Becerril SC by telephone (+52 55 5263 8730), fax (+52 55 5263 8731) or email (emorales@bcb.com.mx).

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