



COSTA RICA APROVES CONVENTION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Despite the strong opposition expressed by certain political sectors, last April 15, 2008, the Costa Rican Congress approved the Convention for the Protection of New Varieties of Plants (UPOV Convention), which to this date has 65 member countries. The effective accession to this convention will be obtained once the domestic legislation required to enforce UPOV obligations issues. Said legislation is already under Congress discussion and it is expected to obtain approval within the next weeks. Likewise, this legislation has been submitted for approval before UPOV's Council, in order for this authority to verify its compliance with the Convention's provisions, so once approved by the Costa Rican Congress, the country can deposit the accession instruments before UPOV's Secretariat.

The approval of this Convention is part of the group of obligations assumed by Costa Rica in the framework of the FTA with the United States of America. Notwithstanding the foregoing, this is not a new obligation. As member of the TRIPS Agreement, and given that the national legislation excludes the patentability of plants, Costa Rica was delayed in providing protection for plant breeders rights according to article 27.3 of said Agreement.

Plant Variety Protection has been traditionally linked with the misappropriation of biodiversity, lesser food security and as an obstacle for

sustainable agricultural development. However, far from this typically misinformed conclusions regarding the scope of the obligations within the UPOV Convention, its approval by Costa Rica implies the adoption of adequate international protection standards that favor research and development and international investment while at the same time fairly reward the breeder's considerable effort, required for improving productivity, quality and commercialization capacity of farmers and growers by allowing them the use of new and improved plant varieties.

Particularly, by means of the protection provided by the Convention, the breeder of a variety, that complies with the requirements established therein, obtains a sui generis right, that during a period of time and subject to exhaustion conditions and exceptions (which work as system flexibilities), confers the possibility of excluding third parties from the exploitation of the plant variety and allows him controlling its reproduction. This position is based in the social recognition of the plant breeders activity as essential instrument for improving agricultural production in terms of quantity, quality and diversity, and it is granted in exchange of the disclosure of the new varieties as available material for further and continued improving.

In this regard, UPOV's Report No. 67 on the impact of plant variety protection,



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published in 2006, arrives to the conclusion that “the system is an effective incentive for plant breeding and results in the development of new, improved varieties of benefit to farmers, growers and consumers”. Likewise, it states that “the benefits of new plant varieties are many and varied, and include, economic benefits, for example, through varieties with improved yield leading to reductions in the price of end-products for consumers, or improved quality, leading to higher value products with increased marketability; health benefits, for example through varieties with improved disease resistance or stress tolerance; and even pure pleasure, for example with ornamental plants. An effective plant variety protection system can also provide important benefits in an international context by removing barriers to trade in varieties, thereby increasing domestic and international market scope. Breeders are unlikely to release valuable varieties into a country without adequate protection such as that provided under the UPOV system. With access to such valuable foreign-bred varieties, domestic growers and producers have more scope to improve their production and to export their products. Moreover, as a consequence of the breeders exemption (whereby acts done for the purpose of breeding other varieties are not subject to any restriction) in the UPOV Convention, domestic breeders also gain access to valuable varieties for use in their breeding programs”. Finally, the report establishes that this international aspect “is an important means of technology

transfer and effective use of genetic resources”.

In view of the foregoing, and given the favorable experiences expressed by other member countries to the UPOV Convention, Costa Rica’s accession to this Convention, should be well received and with a favorable expectation of better times for the agricultural, industrial and commercial sectors of the country