ARGENTINA

Contribution received in reply to UPOV Circular E-24/047 of April 22, 2024

In Argentina, Art. 27 of Law N° 20247, seeds law, establishes that the right to property over a cultivar is not infringed by anyone who delivers seed of the same variety through authorization from the owner, or who **reserves and sows seed for his or her own use**, or uses or sells as raw material or food the product obtained from the cultivation of such phytogenetic creation.

In the second option we are not only talking about the possibility of own use but also that the acts that fall within the framework of the private use of that seed, that in fact do not require authorization from the breeder.

Also the regulatory Decree N° 2183/91 establishes that “Art. 8 - For the purposes of interpreting article 9 of Law 20,247, it is considered that:

a) Seed "exposed to the public" means all seed available for delivery under any title on which advertising, exhibition of samples, commercialization, offer, exhibition, transaction, exchange or any other form of placing on the market is carried out. whether they are found on property, warehouses, fields, etc., whether they are presented in bulk or on any continents.

Contrary to what was established above, if the seed is not contemplated in this definition as **“exposed to the public**”, it is considered to be in a private environment and is not presumed to be commercialized, and presumes acts done privately and for non commercial purposes.

Administrative doctrine

Opinion 217/97

ID

PUBLIC EXPOSURE

SEED TRADER

SHED USED FOR ITS COMMERCIAL ACTIVITY

CUSTOMS AND HABITS

If the accused is a merchant, his actions are not presumed gratuitous; if it is registered in the National Registry of Commerce and Seed Control in categories that enable it to market seeds, that is, it is dedicated to the sale of seeds; If, in addition, the inspected shed is the one that the company uses for its commercial activity, then the placing on the market must be presumed, that is, the commercial destination of the seed deposited there, since it is usual practice that throughout the marketing process, the seed is not displayed in sales premises, but rather is deposited and is not moved from the warehouses until the moment when, once sold, it is removed by the buyer, the elements required by article 8 of the decree are met. 2183/91 lists to consider that the seed is exposed to the public.

ARGENTINA

Contribution received in reply to UPOV Circular E-24/047 of April 22, 2024

Opinion 192/96

AUTHORIZATION OF THE OWNER OF THE CULTIVAR

PRESUMPTION OF MARKETING

In accordance with article 27 of Law No. 20,247, the property rights of the breeder are not infringed by anyone who reserves and sows seed for his or her own use.

In order to prove such extremes, it is necessary to prove that the seed was acquired legally, sown and harvested, reserved and sown again on one's own farm.

If the seed was exposed to the public in the premises of a company that sells seed and in which it was also found that seed that is usually purchased from third parties is stored, it must be presumed that the seed found there was put on the market for its commercialization, there being no evidence to prove the extremes indicated to consider that it was seed for own use.

ON THE OTHER SENSE, WHEN A SEED IS FOUND IN A PRIVATE WAREHOUSE, IN A NON-COMMERCIAL LOCATION, IT IS PRESUMED THAT THE MATERIAL IS NON-COMMERCIAL AND IS BEING USED FOR PRIVATE PURPOSES.

All these guidelines derive from specific cases that have become interpretations on private or public use of the varieties.

We have the challenge of having an even clearer understanding of the variety market through better controls that allow us to discover seeds in violation of the breeder's right, varieties that are reported for private use and are being distributed in commerce.

For this we are using molecular markers and optical markers in trade control and the information is provided to the breeder.