

Dear Reader:

In this issue of our Report we would first like to draw your attention to the very current discussion about the Genetically Modified Organisms, now on its final weeks before new legislation is enacted by the Brazilian Federal Government. We are very grateful to AnB Trading Consultants Ltd. for its contribution to our readers in this matter and shall keep you posted about the upcoming developments.

We are also proud to inform you about the appointment of our partner Renato **PACHECO NETO** has been appointed coordinator of the Arbitration Committee established by the Brazilian-Swedish Chamber of Commerce in São Paulo. This development is particularly noteworthy as arbitration in Brazil is rapidly catching up as a very effective alternative for dispute resolution, and our firm has been keen in offering this service also in Brazil to our foreign clients who are already familiar with the proceedings in their home countries.

Our final note also refers to the participation of the firm in an exhibit: the São Paulo office has its own stand at the Eurochambers Exhibit held at Transamérica Expo Center Comercial on the 19<sup>th</sup> and 20<sup>th</sup> of November 2003. During those days we were able to showcase our professionals and also hold several informational meetings with clients, attendees and exhibitors alike.

FRAGA, BEKIERMAN E PACHECO NETO - Advogados

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## Summary

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- **The revised Criminal Law and the protection of intellectual property rights**  
by Mathias Michael **OEFELEIN** < [moefelein@fblaw.com.br](mailto:moefelein@fblaw.com.br) >
- **Genetically Modified Organisms - the new form of agriculture?**  
Collaboration of AnB Trading Consultants Ltd.  
by Dirk **BOYE** < [Dirk.Boye@anb-trading.com](mailto:Dirk.Boye@anb-trading.com) > and  
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### News

Organised by: Karina **VIESTI** < [kviesti@fblaw.com.br](mailto:kviesti@fblaw.com.br) > and

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## Articles

### THE REVISED CRIMINAL LAW AND THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

#### ***Mathias Michael OEFLEIN***

Intellectual property rights and their protection are issues often discussed internationally. Regarding the subject, it is important to remember the dispute between the United States of America and the Republic of China, involving even the American President and his Chinese counterpart.

As stated by Valor Econômico, specialists estimate that the trade of pirated copies amounts to approximately 350 billion U.S. dollars annually.

In Brazil, the relevance of this problem was recognized, so, the Legislative amended the criminal code and the code of criminal procedures through law number 10.695 of July 1<sup>st</sup>..

According to the new regulations, the infringement of intellectual property rights can attract punishment of up to four years imprisonment. The above mentioned legislation mentions as infringement situations those such as when the violator breaks the copyrights reproducing the issue, or when the person distributes the original or a copy from it, sells, rents, acquires or hides it, offers its purchase or introduces it into the country. A clarification of the unclear legal situation up to now had been gained, establishing that the intent to benefit directly as well as to benefit indirectly shall be punished.

In addition, the criminal regulations have been adapted to the new technical possibilities. So, the mentioned regulations are also applicable, if the violator infringes the intellectual property rights using the means of satellites, cables, fiberglass cables, or others systems. In the mentioned occasions, the police shall confiscate the unauthorized products, as well as the equipment and the materials used.

On the other hand, Criminal Law is not applicable, neither when one single copy is produced for someone's private use nor when the copy was made without the intent to provide direct or indirect benefits.

## Genetically Modified Organisms - the new form of agriculture?

**Dirk BOYE and Romed ASPMAIR - AnB Trading Consultants Ltd.**

Genetically Modified Organisms (GMOs) were introduced into agricultural business in the 1990's. The genetic modification in plants was initiated for two main reasons, first to simplify the breeding or production of a crop and second to change aspects of the plant to suit the requirements of the consumers better.

The first plant authorized for human consumption was a tomato of the FlavrSavr type introduced in 1994, whose genetic modification enabled the deactivation of an enzymatic process which led to a longer durability of the tomato. Unlike this example, in a lot of cases the consumer does not get into contact with the genetically modified plant itself, since these are only used as a base for industrial food production.

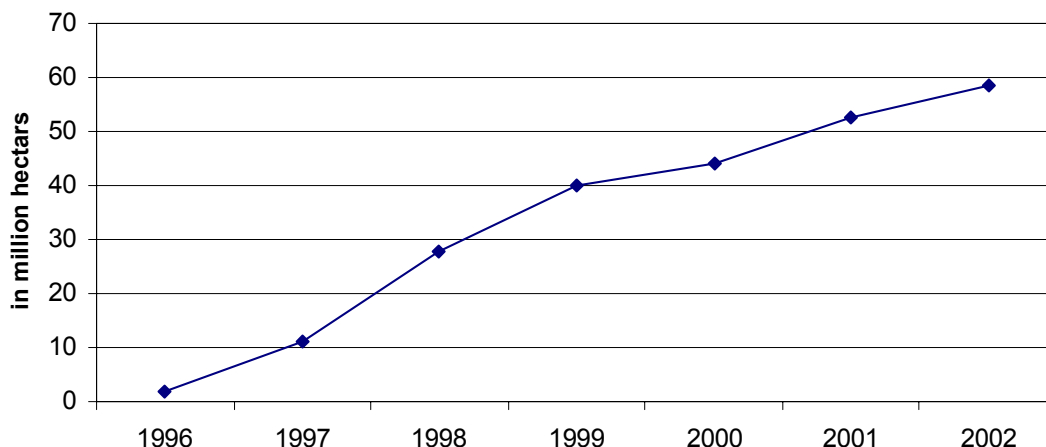
In other cases the genetic modification was applied since it enabled a reduced and/or more precise treatment with chemical products.

While critics stress the unknown risks that might arise from the production, as well as the consumption of GM foods, their counterparts emphasize the advantages they provide for producers and consumers.

Although a controversial discussion on the issue has been going on over the last decade, the global production has been growing constantly.

**Global Area of Transgenic Crops, 1996 to 2002**

Source: ISAAA 2003



Since the use of GMOs is not undisputed, many countries do not allow their production or restrict it. Therefore the world-wide production of genetically modified foods was accomplished by only 6 million farmers in 16 countries in 2002. The major part of the GMO food production has always been in the US, although, recently, countries such as Argentina have increased its share of transgenic crops.

The four principal crops in which transgenetic technology is used are soybean, cotton, canola and corn. According to the International Service for the Acquisition of Agri-biotech Applications (ISAAA) soybeans are by far the most popular plant for this new technology, counting on a world-wide share of 51% produced by genetically modified plants in 2002.

The global debates about GMOs restricted the market for this type of agricultural products, since a lot of European, African and Latin American Countries restricted its consumption. Within the European Union (EU) the use of transgenetic plants has been discussed so controversially for several years that no new breedings were licensed since 1998, leading to an import prohibition of genetically modified foods.

The European Parliament has decided at the beginning of July this year to allow GMO food for consumption if products containing more than 0,9 % of transgenetic crops or products made of it carry a special declaration. According to the EU Ministers' decision products of all production stages will have to be marked, signaling consumer what they are buying. The new regulation is supposed to become effective at the end of 2003 and will most probably effect more than only the European market for transgenetic corps. In this case politics is giving the decision about GMO foods out of its hands, offering consumers the opportunity to choose whether they accept these new products or not.

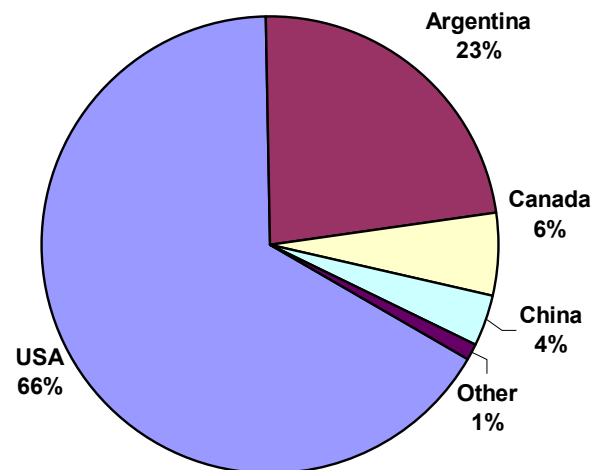
For many countries the decision on whether transgenetic crops will be allowed is under some circumstances that still have to be taken. This is also the case in Brazil where no GMOs have been licensed yet for the use in agricultural production, although some are already in circulation.

At the moment Brazil is the only major producer of soybeans not allowing the use of transgenetic crops (the current laws forbid the plantation of transgenetic seeds but allowed the sale of the 2002 and 2003 transgenetic crops that were planted, mainly in the southern state of Rio Grande do Sul). It is debatable whether this is an advantage or a disadvantage, for the time being Brazil can benefit from its reputation as producer of non gene soy. Since the government is maintaining a research program on transgenetic plants it seems likely that Brazil will also enter the market of GMO foods sooner or later. Being a major player on the European soybean market the new regulations might have an impact on the government's activities.

Looking at the growth rates of transgenetic crops over the last decade it seems this new technology is establishing itself at least for certain crops such as soybeans and cotton. Although limited to few countries at the moment, the global insertion of the GMOs in the market will only be a matter of time. The task for the governments involved will be to create an efficient legislation to regulate the handling of transgenetic crops, and assure their separate processing.

**Global Production of GM Crops in 2002**

Source: ISAAA 2003



## News

### **Brazilian natural gas reserves to triple at 600 billion cubic meters, Pacific pipeline project may get a boost**

Petrobras announced on September 4 that new tests on discoveries in the Santos offshore basin demonstrated that the natural gas finds reported in April may be of approximately 419 billion cubic meters instead of 70 billion cubic meters. This news comes amidst a new round of negotiations with Bolivia, which currently sells most of its gas to Brazil under a controversial "take-or-pay" agreement. Brazil may now seek to engage in new discussions with Bolivia to revamp the huge Pacific pipeline project that would provide both countries with crucial access to U.S. markets and beyond.

### **Interest Down in Brazil**

The Brazilian central bank decided to lower the benchmark Selic interest rate from 26 percent to 24.5 percent and subsequently to 22 percent. In a statement, the central bank's monetary committee said its unanimous decision to lower the rate was made because there is evidence showing inflation is easing. Finance Minister Antonio Palocci said the Selic will probably fall to under 20 percent by the end of this year..

### **Lula Seeks Ties with Poor Countries to Push Free Trade**

Luiz Inacio Lula da Silva plans to have closer ties with developing countries such as India and South Africa. Lula's foreign policy is focused on increasing Brazil's influence in South America in order to give the government more leverage in negotiating trade accords with the U.S. and Europe. Lula met leaders of China, India, Mexico, Russia and South Africa at a Group of Eight industrial countries summit in Evian, France in June and proposed the developing world should join to lobby rich countries to reduce trade barriers.

Lula said that it is necessary boosting trade within Mercosur to stimulate trade and coordinate policies toward other regions and trade blocks.

### **Brazil intends to reduce import tax for rice**

The Finance Ministry proposes the reduction of the import tax for unpeeled rice (11.5%) and peeled rice (11,5%) to 2%. The goal is to make the product cheaper, since Brazil doesn't produce enough rice for its internal market. For the time being, the subject is being discussed in the scope of the Ministry of Agriculture and then it will be taken to the Mercosur Commission Trade meeting, which is predicted for the beginning of August, in Uruguay. That is because Brazil has an agreement of common external tax with its partners from the block and should warn them about the possible changes.