

December 13, 2003 - **Law No. 28126 Sanctioning Infringements of Plant Variety Rights**
(December 16, 2003)

LAW N° 28126

THE PRESIDENT OF THE REPUBLIC

WHEREBY:

The Congress of the Republic

has passed the following Law:

THE CONGRESS OF THE REPUBLIC:

Has passed the following Law:

LAW SANCTIONING INFRINGEMENTS OF PLANT VARIETY RIGHTS

Article 1.- Purpose of the Law

The purpose of the present Law is to regulate the application of sanctions in the procedures for infringement of the rights of holders of protected plant variety certificates accredited by INDECOPI within the framework of Decision 345 of the Commission of the Cartagena Agreement and other relevant provisions.

Article 2.- Sanctions

Infringements of breeders' rights, to which Article 1 of the present Law refers, shall give rise to the imposition of a reprimand or fine, without prejudice to the measures applied for prohibiting the continuation of the acts of infringement or to avoid such acts occurring.

The Office of Inventions and New Technologies of INDECOPI may impose a fine of a maximum of one hundred (100) tax units (UIT), on infringers of the rights of protected plant variety breeders' rights. The Office shall determine the imposition and severity of the fine. A repeat offence shall be considered an aggravating circumstance, for which reason the applicable sanction shall not be less than the previous one.

In the event the principal does not comply with the order of the decision to put an end to the proceedings, he shall be liable to a sanction of a maximum allowed fine and forced recovery shall be ordered. In the event the principal persists with non-compliance, the Office of Inventions and New Technologies may impose a fine of a maximum of three hundred (300) UIT, without prejudice to denouncing the person responsible to the Public Prosecutor's Office in order to initiate the appropriate criminal proceedings.

Article 3.- Prescription of the infringement

Infringement actions shall run for two (2) years, starting from the date on which the holder became aware of the infringement or, in all cases, for five (5) years starting from the last time the infringement occurred.

Article 4.- Failure to comply with a precautionary measure

In the event the principal fails to comply with a precautionary measure issued by the Office of Inventions and New Technologies of INDECOPI, a sanction of a maximum of the allowed fine shall be applied. This fine shall be paid within five (5) days of the notified decision, after which forced recovery

shall be ordered. In the event of further failure by the principal to comply, the Office may levy a fine of a maximum of 400 UIT, without prejudice to denouncing the person responsible to the Public Prosecutor's Office in order to initiate the appropriate criminal proceedings. The fines levied do not prevent the Office of Inventions and New Technologies of INDECOPi from imposing a different fine or sanction at the end of the proceedings.

Article 5.- Amounts of fines

The amounts of fines imposed by the Office of Inventions and New Technologies of INDECOPi shall be calculated on the basis of the tax unit (UIT) applicable on the day of voluntary payment, or on the date on which forced recovery occurs.

Article 6.- Conciliation hearing

At any stage in the proceedings, until such time as the complaint is officially received, the Office of Inventions and New Technologies of INDECOPi may issue the summons to attend a conciliation hearing, which will take place before the Head of the Office or before a person appointed by him. The agreement which both parties arrive at shall have the same effect as an out-of-court settlement. The Office may in any event continue with the proceedings *ex officio* if it considers, on analyzing the circumstances reported, that third-party interests might still be affected.

The President of the Republic is hereby informed of its promulgation.

Lima, the twenty-first day of November, two thousand and three.

HENRY PEASE GARCÍA
President of the Congress of the Republic

MARCIANO RENGIFO RUIZ
First Vice-President of the Congress of the Republic

TO THE CONSTITUTIONAL PRESIDENT OF THE REPUBLIC

WHEREFORE

I order that it be published and observed.

Done at Government House, Lima, on the thirteenth day of December, two thousand and three.

ALEJANDRO TOLEDO
Constitutional President of the Republic

FERNANDO ROSPIGLIOSO C.
Interior Minister, Chargé d'Affaires of the President of the Council of Ministers