

ANNEX VI

LAW OF THE REPUBLIC OF TAJIKISTAN on the Quarantine of Plants

In compliance with the Constitution of The Republic of Tajikistan, and universally recognized norms of international law, this Law defines the foundations of the legal regulations that ensure the quarantine of plants in the territory of The Republic of Tajikistan, which are aimed at protecting the rights and legal interests of physical and legal persons.

CHAPTER 1.GENERAL

Article 1. The Objective of This Law

The objective of this Law is to ensure the protection of plants and their products from quarantined objects in the territory of The Republic of Tajikistan.

Article 2. Main Definitions

This Law uses the following main definitions:

‘quarantine’ (derived from *Guaranta giorni* in Italian and meaning forty days) is a complex of measures to prevent the spread of infectious diseases from human beings, animals, plants, and agricultural pests;

‘plants’ are plants and parts of plants, including the seeds and the genetic material of plants;

‘the quarantine of plants’ is a legal regime envisaging a system of measures for the protection of plants and their products from quarantined objects in the territory of The Republic of Tajikistan;

‘products of plant origin’ are non-processed materials of plant origin and products of plant origin, which by their nature and/or how they are processed, may create a risk of infection and/or spread of harmful organisms in the territory of The Republic of Tajikistan.

‘products under quarantine’ (materials under quarantine and goods under quarantine) are plants, products of plant origin, tare[??], packaging, soil or other organisms, an object or material, which may become bearers of harmful organisms or facilitate the spread of harmful organisms;

‘fumigation’ is a method which uses a poisonous smoke, gas, or spray against pests and carriers of plant diseases;

‘degassing’ is the extraction of poisonous substances;

‘a shipment of products under quarantine’ consists of a quantity of homogenous products under quarantine located in one place, and designated for transport by a specific means of transportation to one destination for a single physical or legal person.

‘phytosanitary quarantine measures’ are measures preventing infections or the spread of harmful organisms in the territory of The Republic of Tajikistan;

‘a harmful organism’ is a plant, of any biological species, varieties and types, or pests and pathogenic organisms of various biological species, varieties, and origin, that are capable of doing harm to plants or products of plant origin;

‘quarantined objects’ are harmful organisms absent and/or of limited presence in the territory of The Republic of Tajikistan;

‘objects under quarantine’ can consist of land used for any purpose, buildings, premises, reservoirs, storage places, equipment, means of transport, containers, products under

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quarantine and other objects capable of being sources of infection or the spread of quarantined objects in the territory of The Republic of Tajikistan;

‘a phytosanitary quarantined zone’ is a zone where a phytosanitary quarantine regime is imposed due to its exposure to quarantined objects;

‘a phytosanitary quarantine regime’ consists of phytosanitary quarantine measures imposed on a phytosanitary quarantined zone;

‘a phytosanitary certificate’ is a document confirming compliance of quarantined objects with the rules and standards to ensure the quarantine of plants;

‘State phytosanitary quarantine supervisory measures’ deal with the exposure of quarantined objects, define the State phytosanitary quarantine status of objects under quarantine, and impose State phytosanitary quarantine supervision, in observance of the legislation of The Republic of Tajikistan regarding the imposition of quarantine on plants, and the rules and standards to ensure the quarantine of plants;

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A specially authorized State Agency to guarantee the quarantine of plants shall exert State supervision over the quarantine of plants.

The Government of The Republic of Tajikistan hereby establishes the specially authorized State Quarantine Agency to guarantee the quarantine of plants in The Republic of Tajikistan (hereinafter the 'State Quarantine Agency'), and specifies its powers.

The State Quarantine Agency shall guarantee the quarantine of plants in the interests of The Republic of Tajikistan, and shall impose State phytosanitary quarantine supervision in the territory of The Republic of Tajikistan.

The State Quarantine Agency shall approve the list of quarantine objects.

The State Quarantine Agency shall conduct phytosanitary certification and shall issue quarantine permits for the importation of products under quarantine into The Republic of Tajikistan.

CHAPTER II. ENSURING THE QUARANTINE OF PLANTS

Article 6. The Imposition and Cancellation of a Phytosanitary Quarantine Zone, the Imposition and Lifting of Quarantine

When an infection (or contamination) of objects under quarantine by quarantined objects is verified, The State Quarantine Agency shall define a phytosanitary quarantined zone and a phytosanitary quarantine regime, and shall empower an executive body to impose the quarantine.

In the phytosanitary quarantined zone, action to control the quarantined objects, to ensure their restriction, and the eradication of their origins, shall be conducted together with the imposition of a ban on the use of certain products under quarantine, or a ban on the removal of certain products under quarantine, from the area of a phytosanitary quarantined zone, as well as the introduction of any other bans and restrictions deemed necessary.

When the eradication of the origin of quarantined objects has been achieved, The State Quarantine Agency shall cancel the phytosanitary quarantined zone and the phytosanitary quarantine regime, and the relevant executive body shall lift the quarantine.

Article 7. The Phytosanitary Quarantine Certification of Products under Quarantine

The import into the territory of The Republic of Tajikistan and zones free of quarantined objects, the export from phytosanitary quarantined zones of The Republic of Tajikistan, and the transportation of products under quarantine, are only allowed as stipulated by the rules and standards to ensure the quarantine of plants and where a phytosanitary certificate confirms compliance of products under quarantine with the rules and standards ensuring the quarantine of plants.

A phytosanitary certificate, and an import quarantine permit, shall accompany each shipment of products under quarantine imported into, or exported from, the territory of The Republic of Tajikistan.

A phytosanitary certificate and an import quarantine permit shall accompany each shipment of products under quarantine imported into the territory of The Republic of Tajikistan, or

transported within the territory of The Republic of Tajikistan, and each shipment of products under quarantine taken out of a

Products under quarantine imported into the territory of The Republic of Tajikistan, which are infected by objects under quarantine, are subject to decontamination at the entry points on the State border of The Republic of Tajikistan, or at their destination, unless otherwise determined by the rules and standards ensuring the quarantine of plants.

Products under quarantine imported into the territory of The Republic of Tajikistan from countries with objects under quarantine, are subject to preventive decontamination as determined by the rules and standards ensuring the quarantine of plants.

The means of transport used for the transportation of products under quarantine are subject to compulsory treatment or, if required, to decontamination, according to the rules and standards ensuring the quarantine of plants.

The decontamination of objects under quarantine by the use of a gassing method, and the extraction of poisonous substances (by degassing), shall be carried out by The State Quarantine Agency.

The degassing, treatment, and extraction of poisonous substances shall be carried out according to the rules and standards ensuring the quarantine of plants.

Article 10. The Responsibilities of Organizations, Entrepreneurs, and Individuals to Ensure the Quarantine of Plants

Organizations, individual entrepreneurs, and citizens involved in the production, procurement, import into the territory of The Republic of Tajikistan, or the export from the territory of The Republic of Tajikistan, the transportation, storage, processing, use, and marketing of objects under quarantine are required:

to observe the rules and standards to ensure the quarantine of plants when producing, procuring, importing into the territory of The Republic of Tajikistan, exporting from the territory of The Republic of Tajikistan, transporting, storing, processing, using, and marketing of products under quarantineplants. mar0 -1.1wrticle

to fulfil other requirements, in conformity with the legislation of The Republic of Tajikistan, to ensure the quarantine of plants, and the requirements of rules and standards ensuring the quarantine of plants.

Any action taken due to the exposure of quarantined objects and to combat the effects of such exposure, the restriction and eradication of its origin, shall be implemented at the expense of the owners and users of the objects under quarantine.

The decontamination, extraction of poisonous substances (degassing), detention, destruction, and return of products under quarantine shall be implemented at the expense of their owners, users, consignees, or dispatching entities.

Article 11. Exposure of Quarantined Objects and Prevention of Their Spread

For the timely identification of quarantined objects and their country of origin, objects under quarantine are subject to systematic phytosanitary quarantine examinations.

Upon identification of the origin of the relevant territories of quarantined objects, a phytosanitary quarantine regime shall be imposed, under the procedure specified by Article 6 of the present Law.

Grain and processed grain products imported into the territory of The Republic of Tajikistan are subject to the treatment by a technology that will ensure the removal of reproductive capability, as stipulated by the rules and standards ensuring the quarantine of plants.

Article 12. Withdrawal, Destruction, and Return of Products Under Quarantine

In compliance with the legislation of The Republic of Tajikistan to prevent the infection or spread of quarantined objects in the territory of The Republic of Tajikistan, products under quarantine may be removed, destroyed, or returned on the orders of officials of The State Quarantine Agency.

Article 13. Laboratory Testing and Examination of Products Under Quarantine

The phytosanitary quarantine status of products under quarantine, which shall be subject to State phytosanitary quarantine supervision, shall be determined by an inspection, a laboratory test, or other examination as required.

To define the phytosanitary quarantine status of products under quarantine, The State Quarantine Agency shall carry out a laboratory test and examination of the products.

CHAPTER III. THE STATE SERVICE FOR THE QUARANTINE OF PLANTS IN THE REPUBLIC OF TAJIKISTAN

Article 14. The Major Principles of Organisation and Activities of the State Quarantine Service of Plants in The Republic of Tajikistan

The State Service of Quarantine of Plants in The Republic of Tajikistan is a single centralised network, including the following State bodies:

- a) the State Inspection of Quarantine of Plants in The Republic of Tajikistan;
- b) the Republic Laboratory for the quarantine of plants;

- c) the Fumigation Group of the State Inspection of Quarantine of Plants in The Republic of Tajikistan;
- d) the State Inspection of Quarantine of Plants in the Gorno Badakhshan

Article 16. The Emblem and the Identification Mark of the State Service of Quarantine of Plants in The Republic of Tajikistan

The State Service of Quarantine of Plants in The Republic of Tajikistan shall have an emblem and mark of identification.

The Government of The Republic of Tajikistan shall approve the Regulation on the Flag and Identification Mark of the State Service of Quarantine of Plants in The Republic of Tajikistan.

Article 17. Sources of Funding for the State Service of Quarantine of Plants in The Republic of Tajikistan

The sources of funding of the State Service of Quarantine of Plants in The Republic of Tajikistan are the:

funds from the State Budget;

funds arising from work undertaken and services provided to ensure the quarantine of plants for bodies of the State Service of Quarantine of Plants in The Republic of Tajikistan;

funds arising from organisations, individual entrepreneurs

Disputes relating to ensuring the quarantine of plants are heard upon an application of one of the parties, with all the required documents attached, including a statement of The State Quarantine Agency, and the owners of products under quarantine, and based on the results of an inspection, laboratory tests, and an examination of the products under quarantine.

The State Quarantine Agency shall execute the decisions on disputes relating to ensuring the quarantine of plants.

Article 22. Settlement of Property Disputes Linked with the Ensuring of Quarantine of Plants

The courts shall settle property disputes related to ensuring the quarantine of plants.

CHAPTER V. RESPONSIBILITY FOR BREACH OF LEGISLATION ON THE QUARANTINE OF PLANTS

Article 23. Indemnification of Damages Incurred Due to Breach of the Legislation of The Republic of Tajikistan on the Quarantine of Plants

Physical and legal persons shall indemnify the damages incurred due to any breach of the legislation on the quarantine of

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Article 4. Terms of Protection Ability of a Selection Achievement

A patent shall be granted where the selection achievement, meets the criteria of protection ability and relates to botanical genera a list of which shall be determined by the State Commission.

The said criteria of a selection achievement shall be the following:

a) Novelty:

not known before the date of application for a grant of a patent for the seeds and vegetative material;

A selection achievement shall be deemed to be new if, at the date of filing of the application for the grant of a patent, the given selection achievement has not been sold or otherwise disposed of to others, by or with the consent of the breeder or his successor in title, for purposes of exploitation of the selection achievement in the territory of the Republic of Tajikistan a year before submission of an application;

a selection achievement not having been sold or transferred by any other way by a selectionist or his successor in title or with the consent of the breeder by other individuals for production use in the territory of the Republic of Tajikistan six months before submission of an application in the case of grapevines and ornamental wood, fruit and forest trees, and four years before if it relates to any other plants;

b) distinction:

a selection achievement shall be clearly distinct from any other commonly known selection achievement existing at the time of the filing of the application;

a well-known selection achievement may be those which have been entered in an official register of selection achievement, or reference files, or of which a precise description has been published;

Submission of an application for the grant of a patent or an authorization to use the selection achievement shall likewise render that selection achievement a matter of common knowledge from the date of the application, provided that the application leads to the grant of the patent or the authorization.

Features defining distinctive qualities of a selection achievement shall be identifiable and precisely described.

c) Uniformity:

A plant variety shall be sufficiently uniform in its relevant characteristics, subject to the variation that may be expected from the particular features of its propagation or reproduction;

d) stability:

Notwithstanding the provisions of Article 12, Item 1, protection may be granted to varieties which, at the date of entry of the corresponding genus in the list of protected selection achievements, have been registered in the State Register of Selection Achievements Authorized for Use for Production Purposes. The priority of the selection

in relation to such selection achievement by the period starting from the year in which the authorization to use has been granted and ending in the year in which a patent has been granted. No provisional protection provided for in Article 15 shall apply for such selection achievements.

Article 5. Application for the Patent Issue

The right to file an application for the grant of a patent shall belong to the breeder or his successor in title. The application shall be filed with the State Commission one year before a variety is presented for a state test.

If a selection achievement meets the conditions of protection ability, the State Commission takes a decision to grant the patent.

If the conditions specified in Item 2 and 3 of this Article are met, the applicant has the right to provide additional documentation and the material required for a test within three years from the date of submission of the first application.

III. ASSESSMENT OF PROTECTION ABILITY

Article 7. Preliminary Examination of an Application

A preliminary examination shall be carried out within a period of one month in order to determine the priority date and to verify the presence of the required documents and their compliance with the prescribed conditions.

The State Commission may request the applicant to furnish, within the prescribed time limit, missing or corrected documents relating to the application. During the preliminary examination the applicant may, on his own initiative, supplement, clarify or correct any part of the application.

If the applicant fails, within the prescribed time limit, to furnish

in writing,

- c) offering for sale;
- d) selling or other marketing;
- e) storing.

The right of the patent owner shall also extend to plant material produced from the protected

Article 15. Provisional Protection

During the period between the date of receipt of the application by the State Commission and the date of the grant of the patent the applicant shall enjoy provisional legal protection of his selection achievement.

After the patent has been granted the patent owner shall be entitled to compensation from any person who, during the period of the provisional legal protection, has performed without the authorization of the owner of the patent acts specified in Article 13 of this law.

During the period of provisional legal protection of the selection achievement, the applicant shall be authorized to sell or otherwise furnish seeds of the variety for scientific purposes or where such acts are performed in connection with the assignment of rights in a selection achievement, or where the production of seeds is commissioned by the applicant for the purpose of creation of stocks.

V. USE OF THE SELECTION ACHIEVEMENT

Article 16. The License Contract

Under a license contract (exclusive or non-exclusive license) the owner of a patent (licensor) grants, against the payments specified in the contract or gratis, the right to use the selection achievement to another person (the licensee).

The license contract shall be concluded in writing.

An exclusive license contract affords the licensee the exclusive right to use the selection achievement within the limits specified in the contract beyond which the licensor retains the said right.

A non-exclusive license contract allows the licensor to retain all rights deriving from the patent on the selection achievement including the right

Article 21. Right of the Licensee to Claim

Where the rights of the patent owner are infringed, the licensee has the right to start legal proceedings in the prescribed manner.

Article 22. The certificate of the Author

The certificate of authorship shall attest the authorship of a selection achievement and the entitlement of the author to remuneration to be paid by the patent owner for the use of the selection achievement.

The State Commission shall issue a certificate of authorship to each author who is not a patent owner.

Any disputes arising from the authorship shall be referred to the court.

Article 23. Remuneration to be paid to the Author of a Selection Achievement Who is Not the Patent Owner

The author of the selection achievement shall, for the life of the patent, be entitled to remuneration be paid by the patent owner for the use of the selection achievement, developed or discovered by him. The amount of remuneration and the terms of the payment shall be stipulated in a contract between the patent owner and the author. The amount of remuneration shall not be less than 2 per cent of the annual proceeds derived by the patent owner from the use of the protected selection achievement, including the earnings derived from the sales of licenses.

Where a variety is developed by two or more authors, their shares of remuneration shall be determined by agreement between them.

The remuneration shall be paid to the author within three months after the end of each year in which the selection achievement is used.

If the remuneration is not paid on time, the patent owner shall pay the author, for each day's delay, a monetary penalty at the rate of 0.04 percent of the sum due.

Article 24. Preservation of the Selection Achievement

The patent owner shall, throughout the life of the patent, maintain the variety in such a way that all characteristics defined in the description of the variety at the date of registration thereof in the State Register of Protected Selection Achievements are maintained.

At the request of the State Commission the patent owner shall furnish seeds of the variety for the purposes of testing and provide the opportunity to in situ inspection.

Article 25. Revocation of Patent

Any natural person or legal entity may request the State Commission to revoke the granted patent.

The State Commission shall bring a copy of the request to the attention of the patent owner. The patent owner may, within three months from the date of receipt of the said copy, furnish his reply

Article 28. Liability for Infringement of Other Rights of the Patent Owner and the Selectionist

A legal person or an individual is considered guilty of infringement of other rights of the patent owner and the selectionist if the legal person or the individual:

- a) discloses data, which are a commercial secret, on the selection achievement regarding which an application has been submitted if these data are obtained by the juridical person or the individual when taking actions relating to this Law, except for cases, when the data are disclosed to the Minister of Agriculture of the Republic of Tajikistan and to a person taking actions aimed at protection of the breeder rights in compliance with this Law;
- b) uses for the produced and/or sole seeds the denomination of a registered selection achievement where the said seed is not that of the registered selection achievement;
- c) uses for the produced and/or sold seeds a denomination which is so similar to the denomination of a registered selection achievement that it is misleading;
- d) makes a false entry in the State Register of Protected Selection Achievements or in reports or causes it to be made therein;
- e) forges or prepares the forgery of documents to fulfill the conditions required under the provisions of this Law, or instigates such forgery or its preparation;
- f) furnishes documents containing false information on the selection achievement;
- g) presents documents containing fictitious data.

Persons committing the acts referred to in Part 1 of this Article shall be responsible under the legislation in force.

Article 29. The State Commission

The State Commission ensures execution of the functions stipulated by the present Law.

The State Commission has the right to conclude agreements with any entity capable to accomplish works relating to tests on protection ability of a plant variety.

The staff of the State Commission and its subdivisions in the Gorno Badakshan Autonomous Region, regions, towns, and districts have no right to apply for a patent within the whole work period as well as within three years after their dismissal or termination of their services.

Article 30. Use of the Selection Achievement in Production

Only the variety of plants included in variety zoning of agricultural crops and silkworm kinds allowed for the production use shall be cultivated in the territory of the Gorno Badakshan Autonomous Region, regions, towns, and districts.

Certificates certifying their variety and sowing qualities should accompany the marketed seeds.

For reproduction of seeds with the purpose to bring them outside of the relevant region, the inclusion of the varieties allowed for the use in the territory of this region is not required.

For selection achievements included in the State Register, the certificate is issued to the patent owner, licensees, and users of the open license only.

The State Commission includes new varieties of plants allowed for production use and conducts variety zoning based on the outcomes of their public tests.

For specific kinds and species determined by the State Commission, the inclusion of varieties in variety zoning allowed for production use is done based on experts' assessments or the applicant's data.

VI. INTERNATIONAL COOPERATION

Article 31. The Right for Submission of the Application in Other States

The breeder or his successor in title shall have the right to file an application for the grant of a selection achievement patent with a competent authority of any foreign State. The cost of obtaining a protection of right for a selection achievement shall be borne by the applicant.

Article 31. The Rights of Foreign Natural Persons and Legal Entities

Foreign natural persons and legal entities shall on the basis of international treaties to which the Republic of Tajikistan is party, or on the basis of reciprocity, enjoy the rights provided for in this Law and regulatory acts of the Republic of Tajikistan in the field of protection of selection achievements on the same footing as natural persons and legal entities of the Republic of Tajikistan.

Provisions of Articles 22 and 23 of this Law are not valid for foreign citizens and individuals without citizenship.

Article 33. Validity of International Treaties

Where an international treaty to which the Republic of Tajikistan is party contains provisions different from those specified in this law, the former shall prevail.

President of the Republic of Tajikistan

E. Rahmonov

Dushanbe, November 4, 1995