



European Union



**PROBLEMS IN THE AREA OF PRODUCTION,
PROCESSING AND SALE OF AGRICULTURAL PRODUCE,
AND RECOMMENDATIONS FOR THEIR ELIMINATION**

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Project: Integrated approach to promoting Central Asian small and medium enterprises processing nuts, dried fruit and honey.

The project is being carried out in close cooperation with local and international partners, who have contributed greatly to the development of the fruit and vegetable production and processing sector in the region.



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LIST OF ABBREVIATIONS

CCRT	Civil code of the Republic of Tajikistan
FLM	Fuel and lubrication materials
TC RT	Tax Code of the Republic of Tajikistan
DFH	Dekhkan (farming) household
MTS	Machine and tractor station
HSC	Health and Safety Certificate
RT	Republic of Tajikistan

INTRODUCTION

Agriculture is one of the key sectors of the economy. It produces food for the people, inputs for processing industry and caters for other needs of the society. Therefore, increasing the efficiency of this sector is an important issue at the moment. The sector currently faces numerous problems hampering its development. Underdevelopment of agriculture is conditioned by many issues, including those in the area of legislative regulation.

Unfortunately, legal reform in agricultural sector is progressing very slowly, which further aggravates the existing problems in the sector.

This work takes a look at the existing problems in the area of legislative regulation of the production, processing and sale of agricultural produce and gives recommendations on its improvement.

CHAPTER 1. LEGAL ISSUES IN THE AREA OF LAND USAGE

One important area of agricultural reform is establishing a legal mechanism for regulating the activity of agricultural organizations and effective protection of their economic interests. Legislative regulation of market relations in agriculture is performed while taking into consideration the specifics of agricultural sector, particularly those related to *land usage*.

Meanwhile, the current legislation on land usage is not fully adapted to modern market relations.

It should be noted that absence of a clear **reform concept** was hampering the adoption of laws and regulatory acts required for launching the market mechanism in the agricultural sector of the economy and conducting land reform, even though the organizational structures intended to conduct these reforms were, for most part, already established. For this reason, the main goal of the reform – establishing a full-fledged market for land relations – has not yet been achieved.

In the early 1990s, the legal grounds for establishing market relations in agriculture have been laid out. The law “On land reform” was passed, establishing the basic framework for reforms in this area. The law set key directions and phases of conducting the land reform.

On November 9, 1995, the Program of economic transformation in the agricultural sector of the Republic of Tajikistan was approved by the Government of the Republic of Tajikistan (Decree #673). The program determined that the main areas of transformation will be aimed at laying out the foundations of the free market economy: land reform, forming mixed economy and developing market infrastructure in the agricultural sector, promoting free entrepreneurship and active foreign economic relations. The Program also states that stabilization and further development of agriculture are not possible without land reform. Conducting land reform requires preparing the grounds for its implementation, which includes:

- Taking a physical inventory of farmlands;
- Determining types and categories of land, levels of land usage;
- Conducting land survey works;
- Land monitoring;
- Establishing and completing the state land cadaster;
- Creating a full package of documents on land legislation and mechanisms for ensuring control over its observance;
- Conducting economic (monetary) valuation of land, its comprehensive assessment for improving taxation, lending and insurance systems.

However, none of the objectives contemplated in the Program have not been performed in full.

The biggest challenge of establishing market relations in the agricultural sector comes from the fact that land, as the main means of production in the sector, remains in the state ownership, in accordance with the Constitution of the Republic of Tajikistan.

Therefore, land legislation is highly restrictive in terms of using the state-owned land, prohibiting the transfer, purchasing and selling the rights for renting and using land.

Nevertheless, by passing a number of regulatory acts, Tajikistan has created pre-requisites for formation of a land market by expanding the land usage rights.

Based on these regulatory documents, state ownership remains as the main form of land ownership. However, further development of market mechanisms for land usage depends *on creating legal conditions for buying and selling the right to use land* as a business facility.

On January 5, 2008, changes and amendments were made to the Land Code of the Republic of Tajikistan, which created legal grounds for alienating the right to use the land lot. In accordance with the new changes, articles 19 and 27 (1) of the Code granted original land users *the right to transfer land usage rights to another person* and the right to pledge land usage rights *as a collateral*.

The same year, the Law “On mortgage” was passed, which also established the norms related to pledging land usage rights.

However, in practice, the norms established by these laws could not be implemented, as the Land code did not contain legal norms regulating the transfer, purchase and sale of land usage rights. There was no clear mechanism for implementing these rights. The Code had to be amended with the norms creating legal conditions for alienating the right of using land as a business facility.

For this purpose, the Agricultural Policy Concept, approved by the Decree of the Government of the Republic of Tajikistan #658 of December 31, 2008, described the need to continue the work to establish land market and ensure its efficient functioning, which will facilitate further progress of land and agricultural reforms related to the implementation and development of private market and rent relations, mortgage financing, where land would act as the main collateral property.

The mechanism for implementing these measures, according to the Concept, would be to:

- Make changes to the Civil Code of the Republic of Tajikistan;
- Make changes to the Law “On Dekhkan (farming) households”;
- Make changes to the Law “On land valuation”;
- Make changes to the Land Code.

A workgroup was established that was responsible for completing the reforms. However, the workgroup delayed the design and promotion of these draft laws, for unexplained reasons, even though the prerequisites for passing them had been created long ago, as we mentioned earlier. Most likely, this delay was related to weak skills and lack of proper management of the workgroup.

Currently the work on drafting the law on making changes and amendments to the Land Code has been completed. The law has been presented by the Government of the Republic of Tajikistan for consideration to the Parliament. The positive moment in this law, we believe, is the inclusion of the norm that “the land usage right is a special facility in civil-law relations, which can be the subject of agreements related to purchase, sale, gift, exchange, rent, pledge and other transactions, and can also be

transferred to another person by virtue of inheritance or universal legal succession”. This norm effectively creates the basis for accelerating development of market relations in the area of land usage.

It is also noteworthy that the Law includes norms on easement (limited land usage right for other persons).

However, it should also be noted that the draft Law creates certain difficulties for further implementation of its norms. The draft does not stipulate amending the Land Code, including the basic provisions for implementing the new norms, i.e., establishing key requirements for free or paid allocation of land lots to users with subsequent right to dispose of the land usage right by the user. The draft law in this case provides for approval by the Government the procedure for paid or free land allocation to users, the size of land lots subject to free or paid allocation, etc. This can delay the implementation of the Law norms by a few more years.

CHAPTER 2. MAIN AGRICULTURAL PRODUCERS – DEKHKAN (FARMING) HOUSEHOLDS AND LEGAL ISSUES RELATED TO THEIR ESTABLISHMENT AND ACTIVITY

Dekhkan (farming) households play the key role in the production structure of the main types of agricultural produce as the main agricultural producers. The legislation of the Republic of Tajikistan does not allow legal entities of other organizational and legal forms to operate efficiently in the area of agricultural production. For example, agricultural producers today cannot perform entrepreneurial activity in agriculture in the form of business corporations and companies, mainly due to gaps in the current legislation of the Republic of Tajikistan related to dekhkan (farming) households.

Agricultural production is also performed by a small number of production cooperatives; however, their share in the production sector is insignificant (problems related to the development of cooperative movement in RT will be examined later).

The activity of dekhkan (farming) households is regulated by the Law “On dekhkan (farming) households” passed in the latest revision on May 19, 2009. This law also invalidated the Law of the Republic of Tajikistan “On dekhkan (farming) households” of May 10, 2002. However, the new Law failed to eliminate the drawbacks of the older one and its contradictions with other legislative norms, namely the Civil Code of the Republic of Tajikistan. As a result, applying this law creates numerous issues in practices and significantly obstructs the development of agricultural sector.

These problems are mainly related to the establishment of organizational and legal forms of dekhkan households, as stipulated by this law in conflict with the Civil Code. Uncertainty of the dekhkan (farming) household’s status, in its turn, complicates the regulation of property relations within these entities, management procedures, distribution of profit and losses, rights and responsibilities of the dekhkan household members, etc.

Besides, it is also difficult to apply the entire system of commercial legislation to this category of entities. This legislation is based on the Civil Code and thus can only be applied to those organizational forms that are listed in the Civil Code. In other words, laws regulating the activity of commercial organizations, based on the Civil Code of the Republic of Tajikistan, only apply to individual entrepreneurs and legal entities, but do not – and cannot – apply to the form of dekhkan households, as these are not stipulated by the CC.

Let’s consider several problems related to the operation of dekhkan households:

1. The Law “On dekhkan (farming) households” establishes a special legal form of dekhkan household. Based on the norms of this Law, a dekhkan household is an independent, special organizational and legal form of entrepreneurship in agriculture without forming a legal entity, which differs from both commercial legal entities and individual entrepreneurs and does not have similar structures in the current legislation.

Article 7 of the law stipulates that a dekhkan household operates without forming a legal entity. In accordance with Article 5, a dekhkan household can be established in the form of an *individual dekhkan household* (whose activity is performed by a single person), a *family-based dekhkan household* (which operates on the basis of a family entrepreneurship), *joint property-based dekhkan household* and *partnership-based dekhkan household* – based on *participatory share ownership*.

Now let's check these norms for compliance with the norms of the Civil Code and the legal consequences of contradiction between these two legal documents.

- The Civil Code of the Republic of Tajikistan stipulates the following subjects of law: an individual (engaged in entrepreneurial activities as an individual entrepreneur) and a legal entity. A dekhkan household is not included in the Civil Code as an independent subject of law. The only norm of the Law that is compliant with the CC is the norm of Article 5 related to establishing an *individual dekhkan household*. Such organizational forms as *family-based dekhkan household* or *partnership-based dekhkan household* are not stipulated by the Civil Code. Therefore, a dekhkan household created in one of these forms is not legally capable and cannot be a subject of civil law relations, as it does not have all the rights and cannot bear responsibilities. How does this affect the operation of a dekhkan household in practice?

The problems begin right at the stage of state registration. Since dekhkan households are not stipulated by the Civil Code as a subject of civil law relations, they are not subject to state registration. In practice, the head of dekhkan household is registered as an individual entrepreneur on behalf of the dekhkan household, since the law “On state registration of legal entities and individual entrepreneurs” allows registering only those subjects of law that are stipulated by the Civil Code. Thus, only the head of household will be the subject of law in accordance with the civil legislation of RT, and he/she will bear the full responsibility. The courts, if they follow the law “to the letter”, will only be able to press charges against the head of the dekhkan household, who is registered as an individual entrepreneur. It should also be noted that if some property is in the participatory share ownership of the dekhkan household, then the head of the household, as an entrepreneur, by law is only responsible according to his/her share.

The Law “On dekhkan (farming) household” itself does not contain a separate article describing the responsibility of a dekhkan household. There are no norms on how the farm would be responsible for violating its contractual obligations, lending, payment and tax liabilities, requirements to product quality, and other violations of the responsibilities related to economic activity.

2. By establishing such form as *family-based dekhkan household*, the Law does not specify who can become a member of such entity. Article 4 states that “*parents, spouses, children and other capable persons engaged in joint labor in the household can be members of the dekhkan household*”. The terms “parents, spouses, children” and particularly “other capable persons” are

rather vague and do not give a clear answer as to who can qualify as family members when establishing a family-based dekhkan household.

Such entity can also be established by an indeterminate groups of persons. Since according to the Law, the property of a family-based dekhkan household is in the *joint ownership of the household members*, while this form is not provisioned in the CC, this leads to serious problems when implementing the norms of the Law.

To avoid uncertainty, it would be advisable to clarify the list of relatives (e.g., brothers, sisters, daughter-in-law, grandchildren).

Uncertain status of dekhkan (farming) households is the main reason behind the collision of other norms of the Law, its clash with the legislation of the Republic of Tajikistan in general and uncertainty of the rights of these forms of dekhkan households. Let's consider some of the issues, which are related, one way or another, to the uncertain status of dekhkan households:

- One of the biggest arguable issues, and the main reason for inefficient development of the existing forms of dekhkan (farming) households is the issue of preserving the institution of land share. The idea of "land share" emerged during reorganization of former kolkhoz (collective farms), sovkhoz (state farms) and other agricultural enterprises, during which their land was transferred into farm members' collective share ownership. Effectively, kolkhoz and sovkhoz members and employees were granted the right to acquire a land share (as a rule, for collective share ownership) during reorganization. When conducting this reform, its authors believed that collective share ownership of land, as a transitional form of land ownership, would address the issue of developing both collective and private forms of business ownership. The law guaranteed free departure of employees from collective and state farms with their land and property shares, which, along with conducting targeted economic policy, would ensure gradual transformation to private land ownership. It was expected that former kolkhoz members would eventually privatize their land and organize their own farms. Since many former Socialist countries eventually allowed private ownership of land, the reform was successfully completed with the purchase of land shares by the former kolkhoz/sovkhoz members. The situation is different in Tajikistan, where the land is still in state ownership, and it is impossible to conduct further civil law transactions with the land share. The legislation of the Republic of Tajikistan on dekhkan (farming) households tried a completely different approach to this issue. The laws on dekhkan farms (both the 2002 and 2009 versions) established such norm as the establishment of dekhkan (farming) households by a *group of persons* in the form of *partnership-based dekhkan households*. Effectively, kolkhoz and sovkhoz farms with **numerous members** were converted into *partnership-based dekhkan households*, a legal form without forming a legal entity, which is not stipulated in the Civil Code, with uncertain form of management, uncertain property relations and unclear responsibility, as well as uncertain rights and responsibilities of their members. Each member of such farm keeps their share of land in the total property of a dekhkan farm, but the legislation effectively limits the right to use this land share by the farm members.

How exactly does the Law limit the use of land share by the farm members? According to Article 15 of the Law, the land is allocated for a dekhkan household as a *single lot*, and only when a member decides to leave the farm, his/her share is separated in the field from the wholeland lot (or from its lower part in case of irrigated land). Even though the members have a land share in the farm, the specific borders of the land shares belonging to the members of dekhkan household, are not defined. ***The right for land share*** and ***the right for apportionment of land share*** are completely different rights from the legal viewpoint. The right for land share cannot be qualified as the right to use a land lot until this share has been allocated in the field, and therefore the right for land share only means the right to have a certain land lot apportioned. Therefore, the land share cannot be considered an *object of the right of use*. Any transactions related to land share would happen in the absence of a specific ***object of the right of land use***— an actual land lot belonging to a person. In this case, it is impossible to exercise the right to use one's land. Given the uncertainty of the subject of law, it is not possible to actually possess the land lot, or use it, for that sake. The owner of a land share cannot pledge this right, lease it or otherwise use the right.

Thus, even though Article 19 of the Land Code of the Republic of Tajikistan does describe the original land users' rights to pledge or lease their land usage rights, Article 25 of the Law of the Republic of Tajikistan "On dekhkan (farming) households", regulating the rights of dekhkan household members, does not allow such operations by a dekhkan farm member.

- In accordance with Article 23, the right to use a land lot is confirmed by a land usage certificate, and the size of every dekhkan household member's land share is confirmed by a Land Share Certificate. The requirement for two documents is another clear indication that the farm members have limited rights as land users.

The land usage certificate is issued to a dekhkan (farming) household (and since the head of the household is registered as an individual entrepreneur, due to the uncertain legal status of a dekhkan household, it is in fact issued to the head of the dekhkan household). Therefore, the right to use the land lot, with all the consequences that come with it, belongs only to the head of the household (or the household itself, if it is registered), and the Certificate cannot serve as a document confirming the land usage rights of the dekhkan household members. Instead, they receive a Land Share Certificate, which confirms their entitlement to a land lot ***of a certain size, without giving specific borders***. Therefore, such document does not allow the dekhkan household members to exercise their land usage rights.

It should be noted that if the Land Code is amended so as to grant land users the right to exercise their right to use the land lots, the "land share" institution as it exists today would undergo significant changes. The land users would be allowed to exercise their land usage rights fully (perform all kinds of civil law operations regarding their land usage rights). Naturally, heads of dekhkan farms will take every effort to exercise their rights. In this case, the land share institution will definitely become a thing of the past.

- The law does not give a clear procedure for distributing profits and losses in a dekhkan (farming) household. Its provisions only describe mandatory personal labor involvement of the members of a dekhkan household in the activity of dekhkan household (Articles 1, 28, 29), however it remains uncertain whether the profits are distributed depending on the members' contribution of labor involvement.
- Article 5 stipulates that *economic activity* of a partnership-based dekhkan farm is determined by an agreement on joint activities. The law recommends operating on the basis of such an agreement, but does not make it mandatory. Article 6 establishes the norms related to signing this agreement.

Let's check these norms for compliance with the Civil Code of the Republic of Tajikistan:

- ✓ We must mention at once that the term "economic activity" used in Article 5 part 3 is not appropriate. This agreement, in accordance with the Civil Code, regulates "joint activities", not "economic activity", which are two completely different terms.
- ✓ According to Article 1058 of the Criminal Code, under an agreement *on joint activities (simple partnership)*, two or more persons agree to join their equity contributions and act together without forming a legal entity to receive profit or achieve other goals not prohibited by law. The parties to the agreement can be *individual entrepreneurs and/or commercial organizations*. In this case, the parties are not independent subjects of law (individual entrepreneurs and/or commercial organizations) but *dekhkan household members*, who are not registered as such. Thus, this agreement does not meet the requirements to an agreement on joint activities (simple partnership) as stipulated by CC.
- ✓ The parties to an agreement on joint activities (simple partnership) must have equal rights. However, in our case the head of dekhkan household has certain authority superior to that of other members of the dekhkan household. He does not only represent the dekhkan household as stipulated by the CC norms on representation, but also manages the activity of the dekhkan household (Article 13 of the Law of the Republic of Tajikistan "On dekhkan (farming) households").
- The uncertain status of dekhkan (farming) households creates problems not only in managing these entities and their property relations, but also leads to uncertainty of the rights and lack of protection for the members of dekhkan households, who do not have effective property rights and thus have equal status in practice with hired workers. To ensure social protection of the dekhkan household members and regulate the tax liabilities of the members of dekhkan households, particularly social tax, Article 6 parts 4 and 5 stipulates that the farm is responsible for providing a copy of the agreement for joint activities to the tax authorities and social protection authorities. It should be noted that civil legislation does not require providing copies of agreement to the government authorities, and dealing with social issues in this manner not

only contradicts the civil legislation and the essence of the agreement, but is also a very weak and inefficient way of protecting the social rights of dekhkan (farming) household members. Apparently for the same purpose, Article 4 stipulates that membership in the dekhkan household is determined by a record in the employment record book and an agreement on joint activities between the members of dekhkan (farming) households. It should be noted that registration in the employment record book cannot be legal grounds for determining the membership. In accordance with Article 56 of the Labor Code of the Republic of Tajikistan, employment record book is only a document *confirming employment history*, and records in this book must be made on the basis of a hiring order and signing an employment contract. Agreement on joint activities also cannot be considered a document confirming the membership in a dekhkan household.

The decision to establish a dekhkan household, in fact, must be made at a meeting of the dekhkan household members (founders), which should be supported by minutes of the meeting and signed by the founders (members). This document would be proper legal grounds for determining the founders or members of the dekhkan household. However, the Law does not require such document to be executed.

- Article 11 of the Law states that a management of dekhkan household members can exclude a person from the membership in the dekhkan household, if said person has not been taking part in the economic activity for more than a year without a good reason, or not using his/her land share. The member's land share can be distributed among other members of the farm, or another member can join the dekhkan household as an equity holder. This norm once again confirms the limited rights of the dekhkan household members and uncertainty of their rights and responsibilities. It should be noted that that the dekhkan household members' land share, according to the Land Code, represents the land usage rights of the dekhkan household members. According to Article 37 of the Land Code, the land users' rights can only be terminated after not using the land for agricultural purposes for two years. According to Article 39, the decision on terminating land usage rights for the reason above can only be made by court.

Thus, the norm in Article 11 of the Law "On dekhkan (farming) households" in this case contradicts the norms of the Land Code. Besides, it should be noted that decisions on land allocation are made by the respective local authorities, and only the body that made this decision is entitled to determine the land user. It is, therefore, unclear why the meeting of the dekhkan household members is given this power. The dekhkan farm members' meeting does not only exclude members and deprives them of their land usage rights, but can also determine who will become the new land user.

This contradiction in the Law "On dekhkan (farming) households" concerning the authority of the meeting of dekhkan household members must be eliminated and the document must be made fully compliant with the Land Code of the Republic of Tajikistan.

3. One more serious problem in the new Law is the effective prohibition of establishing dekhkan households in the form of legal entities. Article 14 stipulates that *members of an individual dekhkan household and members of a family-based dekhkan household* can establish legal

entities in the form of business partnerships (full partnerships and limited partnerships) and production cooperatives. Based on this norm, we can make the following conclusions:

- Members of a dekhkan household in the form of a *partnership-based dekhkan household* cannot create legal entities listed in this article.
- Only members of individual dekhkan farms and family-based dekhkan farms can establish legal entities; however, they cannot create them in the form of *business entities* (limited liability companies, double liability companies, joint-stock companies).
- Since Article 7 establishes that a dekhkan household is created without forming a legal entity, and Article 14 states that legal entities are established by “members of dekhkan households”, it turns out that individuals cannot form a dekhkan household in the form of a legal entities, unless they are members of a dekhkan household.
- Inclusion of such restrictions in the Law is unjustified and unreasonable.

The legal problems listed above result in the fact that in practice heads of dekhkan households effectively decide on the entire economic activity of their farms single-handedly, executing all transactions on behalf of the dekhkan households and managing their property and profits. Members of dekhkan households are only used as hired workers, being paid fixed wages at the discretion of heads of dekhkan households. The practice shows that the agreement on joint activities between the dekhkan household members, recommended by the Law, is not signed and the dekhkan household members rarely know about their rights.

CHAPTER 3. LEGAL ISSUES RELATED TO THE DEVELOPMENT OF COOPERATIVE MOVEMENT

The regulatory acts passed by the Government of the Republic of Tajikistan list development of cooperative relations as one of the highest priority areas of agricultural reform, including support to production, processing, agricultural service, lending, insurance and other types of cooperatives to be established by agricultural producers.

In many countries of the world, cooperatives occupy an important place in the agricultural and small industrial production, in the area of sales, supplies, lending and various service provision. The top five countries in terms of development of cooperation in vegetable production sector are Netherlands, Belgium, Germany, France and Spain. The cooperatives perform control over the quality of vegetable products. They are joined into unions, thus controlling all of wholesale trading and ensuring the connection between science and production.

The regulatory acts that have been passed emphasize the importance of developing cooperative movement in Tajikistan and reforming the legislation regulating the cooperative activities.

One of these documents that deserves a special mention is the Concept of Agricultural Policy of the Republic of Tajikistan, approved by the Decree of the Government of the Republic of Tajikistan #658 of December 31, 2008. The Concept emphasizes that dekhkan (farming) households being established limited in number and not efficient as a business structure; the majority of newly established dekhkan (farming) households face serious problems in running their agricultural business alone. When dealing with this issue, it is important to establish various forms of cooperatives and other associations. Small dekhkan farms cannot use high technology production, due to their small size, small revenue and absence of high-quality agricultural machinery.

However, Tajikistan still does not have proper legislation for developing cooperative movement.

The activity of cooperatives in the country is regulated by the Civil Code and the laws “On consumer cooperation” and “On production cooperatives”. The Civil Code stipulates establishment of two types of cooperatives: production cooperative and consumer cooperative, each having the right for processing, selling, trading, providing consumer services and other types of activity not prohibited by law. However, the respective norms in the Code, as well as in the laws “On consumer cooperation” and “On production cooperatives”, do not allow establishing lending and insurance cooperatives, whose establishment and operation are still not within the legal space of Tajikistan.

The Code grants production and consumer cooperatives the types and principles of organization and operation that are not usual for them and not common in the global practice. According to the Civil Code, production cooperatives are classified as commercial legal entities, while consumer cooperatives are classified as non-commercial ones. However, looking at the norms of the Civil Code pertaining to cooperatives, we can conclude that both categories have the signs of both commercial and non-commercial legal entities.

The main difference between these two types of legal entities lies in the nature of their operation (having profit generation as the main goal or not), as well as non-distribution of the profit generated among the participants. However, this difference is not exactly relevant towards cooperatives. The main goal of a production cooperative's operation is not to maximize profit, but to serve the economic interests of commodity producers, achieving certain benefits for its members (including improving farm profitability), which is achieved by generating profit. This factor differentiates production cooperatives from all other legal entities, whose main goal is generating profit. Thus, based on the goal of operation, a production cooperative cannot be fully classified as a legal entity.

As for a consumer cooperative, which the Code treats as a non-commercial organization, it should be noted that according to Article 128 (part 5) of the Civil Code, *revenue* generated by a consumer cooperative from entrepreneurial activities performed by the entity in accordance with its charter and the law, is distributed among its members. This brings consumer cooperative closer to commercial legal entities. Even though Articles 50 and 128 of the Civil Code use two different notions – *revenue* and *profit* – it should be noted that the Code does not stipulate the difference between revenue and profit, and therefore including a norm on distribution of revenue among members violates one of the key principles of a non-commercial legal entity – *non-distribution of profits among its participants*.

Besides, according to the Civil Code, a *consumer cooperative*, like commercial organizations, can be considered bankrupt and be liquidated as per the procedure stipulated for liquidation of commercial legal entities.

Thus, in fact, cooperatives represent a special category of legal entities, which have the features of both commercial and non-commercial organizations. In our opinion, the dividing line should be drawn not between production and consumer cooperatives (by categorizing the former as commercial and the latter as non-commercial entities), but between cooperatives (regardless of their type) and business entities and partnerships, whose main goal is profit generation.

The Law of the Republic of Tajikistan “On Consumer Cooperation”

The Law “On consumer cooperation” was passed in 1992. In 2000, the Civil Code was enacted, which required all laws to be brought into compliance with the Code. Even though the Law “On consumer cooperation” had been modified since, it was still not brought into compliance with the Civil Code and has a lot of inaccuracies and controversies, both within itself and with other legislation of Tajikistan. In fact, it has kept the signs of socialist regulation of the consumer cooperation system.

The Law does not regulate the establishment and activity of a consumer cooperative as an independent legal entity, but rather regulates the issues of establishing a *consumer cooperation system*, which includes *consumer societies and their unions* in villages, districts, cities, Gorno-Badakhshan Autonomous Region, other regions and the country.

It should be noted that the terms “society” and “union” in this Law contradict the norms on “associations” and “unions” established by the Civil Code. According to the latter, associations are non-

commercial organizations established by commercial entities with the aim of coordinating their entrepreneurial activities and representing and protecting common property interests. In the Law, the aforementioned organizational form is called “cooperatives”.

Article 9 of the Law considers “consumer societies and their unions” as *public associations*.

The Law does not describe the main principles of establishing cooperatives, the procedure for establishing a consumer cooperative, norms related to preparing the cooperative charter, rights and responsibilities of the cooperative members, membership and termination of membership, management bodies and the authorities of each body in a cooperative, profit distribution, responsibility of the cooperative and its members, reorganization and liquidation of a cooperative, etc.

At the same time, the Law regulates the authority of the management bodies of the *cooperation system*, forming and using the property of this system. The lower level organization in this system cannot independently manage the property of the system without the upper-level organization’s permission. Great attention is paid to the authority of the national union of consumer societies – Tajikmatlubot union, which is granted the authority to perform the policy (along with the government bodies), control over financial and economic activities of the cooperation system, which is not compliant with the requirements of the Civil Code on cooperatives, unions and associations, the goals of their establishment and principles of operation. The established norms on the relations between the state and consumer cooperation remind those that existed in the Soviet period. For example, Article 7 states that the government authorities have the right “if necessary, to apply to the management of the upper level organization *about imposing disciplinary sanctions on the heads of the boards and other elected officials of consumer societies and unions*”.

Based on this Law, it is impossible to establish an independent consumer cooperative, whose principles and activities will meet world standards. As mentioned earlier, the law stipulates the establishment of *consumer societies and their unions* in villages, districts, towns, Gorno-Badakhshan Autonomous Region, regions and country-wide, which are part of a single consumer cooperation system.

Currently, with the aim of eliminating the existing problems and establishing a legal basis for the development of cooperatives in line with the global principles, a workgroup has been established by the Ministry of Justice, to draft a new Law on cooperatives. The workgroup has come to unanimous agreement that Tajikistan needs a general law on cooperatives. It should be noted that if the legislation on cooperatives proceeds the sectoral way, the cooperative legislation system will turn out too complicated. The laws passed for various sectors will have different approaches to the organization and operation of cooperatives of the same type. Developing and passing a single, generalized law is very important. This law would establish common principles of cooperative legislation and universal norms of organizing and operating the cooperatives.

Simply passing a new Law on cooperatives is not enough for successful development of cooperative movement – the cooperatives must receive support and help from the state. They need tax preferences, particularly exemption from taxes on internal circulation of money within the cooperative, which exists in the USA and EU countries.

CHAPTER 4. BRIEF DESCRIPTION OF SOME OTHER issues

In addition to the issues listed above, agricultural producers are facing other serious challenges in their day-to-day operation. These problems include:

- Deterioration of material and technical facilities (outdated machinery);
- Price increase on energy resources and fuel;
- Deterioration of melioration systems;
- Underdeveloped social infrastructure in the rural areas;
- Lack of plant protection chemicals, mineral fertilizers and high-quality seeds;
- Complex procedure of obtaining loans.

We will consider some of these problems briefly, while giving recommendations on how these can be eliminated, using the experience of neighboring countries.

1. Lack of plant protection chemicals

Using chemicals for plant protection is one of the most important and necessary measures to increase yield of agricultural produce. The problem with lack of chemicals and the need to deal with this problem have been the subject of a lengthy discussion among all stakeholders, as well as at the level of the Government of Tajikistan. A number of regulatory documents have been passed to deal with this issue; however, it remains open to date and all the measures remain ineffective.

On June 4, 2006, the Government approved (Decree #290) the “Program for Protection of Gardens and Vineyards Against Diseases and Pests in the Republic of Tajikistan”, which became a key legal basis for taking action against plant diseases and pests.

The program emphasized that failure to perform agronomical activities against pests and diseases, particularly chemical treatment of gardens and vineyards has become the main reason for low yield at gardens and vineyards in the recent years. Damage caused by pests and diseases causes loss of half of the harvest for fruit and grapes. Results of research and analysis of the condition of gardens and vineyards have shown that various parts of the country, depending on climatic conditions and the types of fruit trees, are plagued by more than 20 types of disease and 55 species of pests, which cause great damage to the development of garden plants.

The following main reasons were named for not using plant protection chemicals:

1. Lack of funding;
2. High cost of pesticides, fuel, special machinery;
3. Low knowledge level;
4. Inadequate organization capacity of fruit and vine growers.

Small dekhkan (farming) households do not have the capacity to purchase and store various types of machinery and large amounts of pesticides. Treating large gardens and vineyards with pesticides requires using large tractors and spraying machines, as well as tank trucks to deliver water to drylands. Dekhkan (farming) households and local population require small machinery and handheld sprayers for their gardens, vineyards and kitchen-gardens.

To protect gardens and vineyards against diseases and pests, the Program stipulated performing such activities as:

1. Establishing biological labs in Rasht, Faizabad Muminabad and Khuroson districts of Khatlon Region, Istaravshan and Penjikent (Sughd Region), and Khorog (GBAO);
2. Gradual provision of machinery, equipment and technology to the farms;
3. Organizing lease facilities for purchasing machinery and technology.

Unfortunately, these measures proved not very effective, as they were established without a detailed analysis of the situation and without adequate financial backing for these activities. Therefore, none of the goals set by the Program was not achieved correctly.

Thus, gradual provision of machinery, equipment and technology was not completed due to lack of funding.

The proposal for organizing lease facilities to purchase machinery and technology was made without offering specific economic and legal conditions for developing the lease itself, i.e. without suggestion to introduce tax preferences for lease operations. The proposal to establish district-level technical service stations (MTS) was made without consideration of the changes taking place in the agricultural sector. In the Soviet times, MTS were large state-owned agricultural enterprises providing agricultural machinery (tractors, combines, etc.) to collective farms on a contractual basis. Currently the situation with the development and activity of such enterprises has changed drastically. In the current conditions, it would be better to suggest establishment of service cooperatives.

On December 3, 2010 the Government of the Republic of Tajikistan (Decree #625) approved the new Program for Protection of Gardens and Vineyards Against Diseases and Pests in the Republic of Tajikistan for 2011-2015. The List of Activities for implementing this Program includes conducting such activities as:

- Organizing district and region-level motorized units to fight pests and diseases of fruit trees and vineyards;
- Opening specialized shops selling pesticides and agricultural machinery in rural areas;
- Organizing the import of microbiological products and pheromone traps to fight garden and vine parasites.

These activities are to be financed through bank loans, grants and internal sources.

However, just like the activities stipulated in the first Program, these actions cannot establish proper conditions for agricultural producers to fight pests, and cannot be considered a solution to existing problems in the sector.

It should be noted that in the USSR, pest and disease control was performed very efficiently using aviation. Application of pesticides from airplanes was a very quick and efficient way to spray large areas in a short time. Chemical spraying (using Antonov-2 planes) has been discontinued in the Tajik agricultural sector many years ago.

So, as we mentioned above, the main reason for the ***lack of plant protection chemicals*** is the lack of funds among agricultural producers for purchasing equipment and technology.

2. Lack of mineral fertilizers and high-quality seeds

Lack of ***mineral and organic fertilizers*** remains the most urgent problem in the development of the sector. ***High cost of mineral fertilizers***, due to high taxes and customs duties on imported mineral fertilizers, ***does not allow*** many farming households to purchase the necessary high-quality mineral fertilizers. In many parts of the country the situation results in farms having to purchase fertilizers in the black market. Besides, customs and tax preferences in neighboring countries create grounds for unhealthy competition and prejudices bona fide entrepreneurs.

Tajikistan does not have the capacity to create specialized industry producing mineral fertilizers and plant protection chemicals, as the raw materials for their production are not available. Therefore, the country must take other measures to make these chemicals available to dekhkan (farming) households. One of these measures, that can prove quite effective, would be to offer VAT exemption on imports of mineral fertilizers, plant protection chemicals and ***high-quality seeds***. ***Detailed analysis of the current situation was conducted*** by the Association of Agricultural Business of Tajikistan, the topic of which was formulated as “Measures to improve economic efficiency of the agricultural sector en route to food security of the Republic of Tajikistan”. This proposal was accepted for consideration by the secretariat of the Consultative Council under the President of the Republic of Tajikistan.

The analysis showed that neighboring countries have different rates and conditions for import and export of mineral fertilizers and plant protection chemicals, compared to Tajikistan. In Kyrgyzstan, the VAT rate for import of mineral fertilizers is 0%; in Afghanistan the VAT rate on import of mineral fertilizers is 2%; Turkmenistan is in the process of amending its legislation with regards to imports of mineral fertilizers and plant protection chemicals. VAT and customs duties for mineral fertilizers and plant protection chemicals in Tajikistan are among the highest in CIS and worldwide.

This situation results in unscrupulous entrepreneurs illegally importing mineral fertilizers and chemicals to Tajikistan, bypassing customs and border authorities.

The analysis proves these conclusions with the customs and agricultural statistics on import and usage of mineral fertilizers and chemicals in Tajikistan. The amounts of fertilizers and chemicals used in the field (obtained from statistics data) shows that the majority of these were imported bypassing the customs. For example, customs statistics show that in 2008-2010, a total of 120,000 tons of mineral fertilizers were imported, with the total value of 28.9 million USD, on which 7.4 million USD worth of customs duties were paid to the state budget. At the same time, the Statistics Agency shows that about 438,000 tons were used in the field, which in comparable prices means 106 million dollars, on which customs

duty and VAT could have been paid in the amount of 26.8 million (almost four times as much as was actually paid).

Specialists conducting this analysis came to a conclusion that if the circulation of agricultural chemical products is legally exempted from VAT and customs duty, budget revenue will be higher than with the current situation.

3. Complex procedure of obtaining loans

Access to financial resources is one of the biggest problems for agricultural producers. The problem facing agricultural producers is that of finding reliable sources of money to borrow, including the opportunity to get loans at commercial banks. Commercial bank loans occupy the largest share in the borrowing by enterprises in agricultural sector. Availability of resources for agriculture requires high probability of borrowing funds within a certain period of time.

The first and foremost problem with getting the loans is high interest rate on bank lending. According to the National Bank of the Republic of Tajikistan, the average interest rate on loans disbursed in 2011 was 22.66%. However, the complexity of obtaining loans is explained not only by high interest and a lot of paperwork required.

Other factors affecting the availability of loans are:

- Finance status of the producer;
- Lending conditions (loan duration, interest rate);
- Availability of a collateral;
- Availability of a source for repayment;
- Uncertainty of the organizational status of dekhkan (farming) households

Practice shows that today obtaining bank loans is particularly difficult for dekhkan (farming) households, as these entities do not meet the criteria established by commercial banks. Banks are unwilling to lend to dekhkan (farming) households and prefer to work with larger companies, e.g., production cooperatives.

One reason for this attitude is the uncertainty of the organizational status of dekhkan households, which, as we mentioned above, leads to uncertainty of property relations in dekhkan farms and uncertainty with regards to their liabilities, including loan repayment liabilities (for more detail, please see Chapter 2 of this work).

Besides, dekhkan (farming) households also have a problem with providing collateral. Most of these farms do not have enough property to pledge as collateral. As we mentioned before, the Land Code and the Law “On mortgage” establish the norms for pledging the land usage rights as collateral; however, since the Land Code itself does not stipulate alienation of the land usage right and using it in civil-law transactions, these norms remain inactive. Once the Land Code is amended, the farms will be allowed to use this right, thus improving access to lending funds.

Considering underdevelopment of the agricultural lending system, the state also needs to become actively involved in providing loan facilities to producers in the agricultural sector of the country's economy. This would improve financial sustainability of agriculture and provide access to preferential loans. However, today the state does not have the capacity to properly subsidize agriculture, including providing conditions for preferential lending.

In this case, the best possible solution to this problem would be to establish lending cooperatives. The presence of lending cooperatives can solve one of the biggest and most complicated issues in the area of lending for small entrepreneurship in rural areas, filling the niche in the lending market.

Lending cooperatives have a number of advantages that make them attractive for agricultural producers' access to lending. This system is open, transparent, controllable and manageable for the interest holders.

Agricultural lending cooperation has a number of advantages compared to banks:

- Lower interest rate on loans to cooperatives;
- More affordable collateral requirements, as the lending cooperative unites people who know each other well;
- Shorter periods for considering loan applications.

As we mentioned in Chapter 3 of this work, existing regulatory norms pertaining to cooperatives, particularly the Law of the Republic of Tajikistan "On consumer cooperation", do not allow establishing lending cooperatives. Workgroup responsible for drafting the new law "On cooperatives" has come to a conclusion that this draft must be applicable also to lending cooperatives, giving the peculiarities of this form of cooperation, which will be prescribed in special norms of this draft law. At the same time, the draft suggests that banking operations performed by lending cooperatives be governed by the banking legislation.

However, in this case, with the aim of speeding up the development of cooperative movement and given the specifics of lending cooperatives, it is necessary to ease up the requirements regulating the activity of lending cooperatives by the National Bank of the Republic of Tajikistan.

CHAPTER 5. ISSUES IN THE AREA OF PROCESSING AGRICULTURAL PRODUCE

One of the main regulatory acts stipulating activities for developing the processing sector is the State Program for improving export potential of the fruit and vegetable processing sector for 2010-2012, approved by the Decree of the Government of the Republic of Tajikistan #624 of December 3, 2010.

The Program highlights the following key issues hampering the development of this sector:

- Constant shortage of inputs;
- High purchase prices on raw materials and inputs;
- Substantial transportation costs for delivering agricultural produce for industrial processing;
- Lack of operating capital.

Achieving the main goal of the Program is related to implementation of the following objectives for spg enterprise exporting processed products of the fruit and vegetable sector:

- Financial support of exporters by developing financial and lending mechanisms;
- Information and consultation support to exporters and manufacturers of products and services for export;
- Streamlining export and import procedures;
- Developing industrial financial groups in the sector and introducing other modern management methods within the value chain;
- Developing a system for supplying inputs to processing industry;
- Improving the marketing system for local fruit and vegetable products.

The following points deserve special mention in the Action Plan:

1. Preparing proposals for ***changing the import customs duties on technological equipment and spare parts***;
2. Analysis of the existing legislative documents considering international requirements (HACCP, ISO, etc.);
3. Stimulating the development of lending system, ***designing preferential lending mechanisms and providing state subsidies to processing industry***.

Indeed, processing enterprises face the problems listed in the Program on a daily basis. Moreover, these problems are complicated by constant shortage of electricity and natural gas and high dependency of the enterprises on the energy prices. One of the obstacles to development of this sector is the seasonal nature of its operation. Lack of storage facilities and intermediate products is the main reason of its seasonal nature. Many new processing enterprises, which were opened in the recent years, were designed and built without storage facilities. As for the old ones, their equipment is obsolete and for most part out of order. Processing enterprises do not have the funds to purchase new equipment.

The Program pays special attention to establishing *industrial financial groups in the area of producing, processing and export of agricultural produce*.

The trends of agricultural development show that in the foreseeable future dekhkan farms cannot become an alternative to large collective agricultural enterprises. This is conditioned by a number of factors. First, weak technical capacity of agriculture. Second, the need for large government investment and radical change of production services.

Further development of small and medium enterprises must be based on cooperation and other forms of market integration, as well as by establishing new large economic systems, which have the highest sustainability and capacity for self-development in today's market conditions.

However, it must be kept in mind that in some cases the agricultural unions, financial groups and other forms of integration, while uniting the manufacturers of certain goods, create monopolistic position in the market, which gives them an opportunity to dictate their prices for both inputs and finished products. Therefore, the biggest challenge in the development of cooperation and integration of production is to maintain the balance between the partners' interests.

The biggest element of the chain of problems is the lack of technological resources, equipment, shortage of funds for purchasing the equipment and importing it to Tajikistan, due to high customs duties, as well as complexity of export and import procedures in case of selling the products of processing enterprises.

As we mentioned earlier, since the government today does not have adequate resources for developing the preferential lending mechanism and providing subsidies, the best method of stimulating this sector would be to establish favorable customs and tax regime.

CHAPTER 6. ISSUES RELATED TO LEASE OPERATIONS

Leasing has an efficient multilateral effect on the economy, as it activates private capital investment into production, improves financial status of producers and increases competitiveness of small and medium-sized businesses. Lease operations can be very efficient not only in specific sectors of activity, but for the national economy in general. However, in order for lease mechanism to become commonplace, the country must establish the relevant preconditions in legislation and in the practical area. One of the main economic mechanisms allowing lease to become an attractive type of business are tax and depreciation preferences. The most important is the value of tax policy. Foreign practice shows that the more preferences are provided the faster lease developed.

Many Programs approved by the Government of the Republic of Tajikistan in the area of developing agricultural sector, indicate the need to use lease transactions for purchasing equipment, machinery and technology. However, no mention is made about the need to establish favorable conditions for developing leasing sector.

Currently, according to Article 211 of the Tax Code of the Republic of Tajikistan, providing financial services (with regards to financial lease) is exempted from VAT. However, VAT exemption applies only to interest, not to the amounts paid by the lessee to the lessor while repaying the lease amount (principal).

Article 192 of the Tax Code stipulates the following depreciation preferences for lease deals:

If the lessor owns the tangible asset before the lease begins, the transaction is considered as the sale of property by the lessor and its purchase by the lessee.

Tangible asset being depreciated, which is leased under financial lease agreement, is to be included in the lessee's balance sheet for the entire period the financial lease agreement is effective; this gives the lessee the right to make the respective deductions relate to the subject of lease (particularly, depreciation and repair costs).

However, the current tax legislation of the Republic of Tajikistan stipulates full VAT payment when lease companies import equipment and transfer it to entrepreneurs, which substantially hampers the development of lease operations. This kind of taxation makes lease operation useless.

Practice shows that in the last two years the number of enterprises engaged in lease operations was reduced from ten to six.

To address this problem, the laws have been drafted, stipulating changes and amendments to the Tax Code and the Customs Code of the Republic of Tajikistan. These drafts are being considered by the Government of the Republic of Tajikistan, and if passed by the government, they are expected to play a major role in developing lease operations. These changes will allow foreign lease companies and banks to perform lease operations in the Republic of Tajikistan while enjoying tax and customs preferences, which will greatly increase flow of investment to Tajikistan.

Besides, the new draft of the Tax Code currently being considered by various ministries and agencies states that “providing financial services, including transfer of tangible assets being depreciated under financial lease operations (including airplanes), except real estate, cars and furniture”, is exempted from VAT. The draft excludes the currently operating requirement that “exemption is provided only on interest and does not apply to the amounts paid by the lessee to the lessor while repaying the lease amount (principal).

CHAPTER 7. EXPORT AND IMPORT PROCEDURES WHEN SELLING AGRICULTURAL PRODUCE AND ISSUES FOUND IN THIS AREA

Many researchers by now have conducted analysis of export and import operations related to agricultural produce. This problem is particularly deeply analyzed in a study conducted by the Professional Consultants' Union of Tajikistan at the initiative of USAID project to liberalize trade and customs reform "Monitoring of time taken and documents required for export/import".

To avoid duplication in this area, we include the results of this earlier research in our work.

Table 1

Export of goods, using dried fruit (FEACN 0813), a batch of 10 tons, based on the legislation of the Republic of Tajikistan

#	Permission document	Documents required to obtain the permission document	Timing of issuance	Cost	Regulatory act
1	Certificate of origin for the goods	<ol style="list-style-type: none"> 1. Application 2. Agreement or contract 3. Seller's invoice 4. Depending on the goods being exported, one of the following documents confirming the origin of the goods: <ul style="list-style-type: none"> ▪ Producer's certificate of quality ▪ Certificate of compliance ▪ Certificate from jamoat (local executive authority) or certificate from the market, in case the goods were purchased in the market) 	Not regulated legally. In practice, Chamber of Commerce issues Certificate of Origin within 1 day .	<p>212.40 Somoni</p> <p>In case an expert conclusion is required, the cost is 30 Somoni per hour of the expert's work time. In practice, the average expert conclusion is charged at four hours, or 120 Somoni.</p> <p>Subtotal – 332.40 Somoni</p>	<ol style="list-style-type: none"> 1. Customs Code of the Republic of Tajikistan of December 3, 2004. 2. Decree of the Government of the Republic of Tajikistan #487 of October 1, 2008 "On approving the Plan of Activities to simplify administrative barriers when exporting and importing goods". 3. Instructions on the procedure of preparing, confirming and issuing certificates of origin and other documents related to performing foreign economic relations #205 of December 30, 2008. 4. Manual for determining the cost of services when conducting expert conclusion on goods and determining the country of origin of goods in the Republic of Tajikistan #15 of March 3, 2010. 5. Decree of the Chairman of the Chamber of Commerce of the Republic of Tajikistan on the cost of services provided to identify the origin of goods #204 of December 30, 2008.
2.	Phytosanitary certificate	<p>List of documents required is not legally regulated. In practice, the Service requires the following documents:</p> <ol style="list-style-type: none"> 1. Application 2. For individuals – copy of the passport, indicating TIN, or certificate of state 	Not regulated legally. In practice, the Service issues the certificate: <ul style="list-style-type: none"> - Without lab inspection – 3 days; - With lab inspection – 10 days 	<p>The cost depends on quality, weight and type of the quarantine material and type of transportation. When exporting 10 tons of dried fruit in a single container:</p> <ul style="list-style-type: none"> - phytosanitary control certificate (one piece) – 	<ol style="list-style-type: none"> 1. Tax Code of the Republic of Tajikistan of December 3, 2004. 2. Price list of works for quarantined plants, performed by the State Phytosanitary and Plant Quarantine service, approved by the Decree of the Ministry of Agriculture and Environment of December 11, 2008, agreed by the Ministry

#	Permission document	Documents required to obtain the permission document	Timing of issuance	Cost	Regulatory act
		<p>registration as an individual entrepreneur; for legal entities – copy of the tax registration certificate for legal entity (TIN for legal entities).</p> <p>3. Import permission, issued by the respective authority of the destination country.</p>	<p><i>SUBTOTAL: 3 to 10 days</i></p>	<p>2.10 Somoni; - phytosanitary export certificate (for shipments over 1 ton – one for each unit of transportation) – 7.50 Somoni; - inspecting dried fruit – 0.70 Somoni per ton. In our case (10 tons) – 7 Somoni. - Vehicle/container inspection (one unit) – 5.19 Somoni; - Phytosanitary control to identify quarantined pests (entomological expertise for quarantined produce – visual analysis of a median sample) – 1 sample – 2.47 Somoni Fumigation cost: 17.52 Somoni x 10 tons = 175.20 Somoni <i>Note: When exporting dried fruit, fumigation is mandatory in most cases.</i> <i>SUBTOTAL: 199.46 Somoni</i></p>	<p>of Economic Development and Trade and the Ministry of Finance</p>

#	Permission document	Documents required to obtain the permission document	Timing of issuance	Cost	Regulatory act
3.	Certificate of compliance for the goods	<ol style="list-style-type: none"> 1. Application 2. Waybill or other documents stating the amount of produce shipped. 3. Invoice confirming the cost of the produce. 	<p>The certificate is issued within 3 days</p> <p><i>SUBTOTAL: 3 days</i></p>	<p>The cost depends on the total value and nature of the goods. For goods valued at \$20,000 the cost is 497 Somoni.</p> <p><i>SUBTOTAL: 497 Somoni</i></p>	<ol style="list-style-type: none"> 1. Customs Code of the Republic of Tajikistan of December 3, 2004. 2. Decree of the Government of the Republic of Tajikistan #487 of October 1, 2008 “On approving the Plan of Activities to simplify administrative barriers when exporting and importing goods”. 3. Norms of labor use and payment procedure for verification and calibration of measurement facilities, testing, standardization and certification of produce, services and accreditation of testing units. Guidelines document RT50-02-2002. 4. Procedure for performing works for certification of domestic and imported products by the Certification Agency of Tajikstandart, approved by Tajikstandart Director (dated February 15, 2007).
4.	Sanitary and epidemiological conclusion	<ol style="list-style-type: none"> 1. Application for sanitary and epidemiological conclusion, indicating: <ul style="list-style-type: none"> - name and organizational form, legal address of the legal entity - name and address of the individual entrepreneur or physical person (individual); - goal and explanation of economic or other activity 2. Confirmation of paying the application fee. 3. Phytosanitary certificate. 4. Certificate of compliance 	<p>In accordance with regulatory norms – up to 30 days.</p> <p>For perishable goods – up to 3 days.</p> <p><i>SUBTOTAL: Up to 30 days</i></p>	<p>157.85 Somoni</p> <p><i>SUBTOTAL: 157.85 Somoni</i></p>	<ol style="list-style-type: none"> 1. Procedure for preparing, registering and issuing SEC approved by the Decree of the Government of the Republic of Tajikistan #139 of March 31, 2004. 2. List of documents and information required for customs processing, approved by the Decree of the Head of the Customs Service under the Government of the Republic of Tajikistan #85-F of May 21, 2009.

#	Permission document	Documents required to obtain the permission document	Timing of issuance	Cost	Regulatory act
5.	Customs Declaration	<p>1. Cargo Customs Declaration (CCD)</p> <p>2. Documents confirming (in accordance with the legislation of the Republic of Tajikistan) the legal capacity of the persons whose information is presented in the customs declaration, to perform activities in the Republic of Tajikistan (these documents can include):</p> <p>For a legal entity:</p> <ul style="list-style-type: none"> - Foundation documents; - Certificate of state registration of a legal entity <p>For an individual:</p> <ul style="list-style-type: none"> - Certificate of state registration of a physical person as an individual entrepreneur; - copy of the passport. <p>3. Documents confirming (in accordance with the legislation) the tax registration of the entities indicated in the customs declaration.</p> <p>4. Commercial documents (one of the below):</p> <ul style="list-style-type: none"> - Commercial invoice; - Proforma invoice to the agreement; - Other commercial and payment documents, including 	<p>According to the legislation – within two working days.</p> <p><i>SUBTOTAL: 2 days</i></p>	<p>- Customs fee for exporting goods valued at \$20,000 is \$70 US dollars.</p> <p>- Customs fee for customs escort of the goods in one or several vehicles in one convoy – \$2 for 10 km.</p> <p><i>SUBTOTAL: 70 US dollars</i></p>	<p>1. Customs Code of the Republic of Tajikistan</p> <p>2. List of documents and information required for customs processing, approved by the Decree of the Head of the Customs Service under the Government of the Republic of Tajikistan #85-F of May 21, 2009.</p> <p>3. Decree of the Government of the Republic of Tajikistan “On approving the fees for customs services provided” #472 of December 2, 2005</p>

#	Permission document	Documents required to obtain the permission document	Timing of issuance	Cost	Regulatory act
		<p>receipts confirming purchase of the goods in retail stores, documents confirming payment using securities – depending on the settlement terms, or others confirming cost of the goods.</p> <p>5. Contract (including appendices or amendments related to the goods being declared) or extracts from the contract, provided they contain information required for customs processing of the goods, if they are moved across the customs border of the Republic of Tajikistan or customs regime is changed based on the contract, and in case of conducting single-party foreign economic transactions – documents expressing the content of such transactions; other documents confirming the title to the goods;</p> <p>6. Certificate of origin for the goods;</p> <p>7. Documents confirming compliance of the goods with the mandatory requirements (phytosanitary certificate, certificate of compliance for goods subject to mandatory</p>			

#	Permission document	Documents required to obtain the permission document	Timing of issuance	Cost	Regulatory act
		<p>certification; sanitary and epidemiological conclusion);</p> <p>8. Documents confirming payment or guarantee of payment of the customs duties, taxes (depending on the customs regime and preferences for tax/customs payments) – payment order with the bank’s stamp confirming wire transfer, or cash receipt of the customs body or bank in case of cash payment.</p> <p>9. Transportation (shipment) documents, provided depending on the means of transportation: In case of international shipment by road:</p> <ul style="list-style-type: none"> • International consignment note (CMR); • TIR Carnet – used when moving goods in accordance with the Convention on International Transport of Goods Under Cover of TIR Carnets (TIR Convention of 1975) • Material load list (MLL) – sometimes used when moving the goods within the CIS instead of CMR <p>In case of international shipment</p>			

#	Permission document	Documents required to obtain the permission document	Timing of issuance	Cost	Regulatory act
		<p>by railroad:</p> <ul style="list-style-type: none"> • Railroad waybill or international railroad waybill (Agreement on International Goods Transport by Rail) <p><i>SUBTOTAL:</i></p> <ul style="list-style-type: none"> - <i>11 documents when transporting goods by railroad;</i> - <i>13 documents when transporting goods by road.</i> 			
<p>TOTAL:</p> <p>Documents required to register export operation – 12 when transporting goods by road.</p> <p>The cost of preparing all permission documents including customs registration – 1,186.71 Somoni + 70 US dollars (+2 US dollars for each 10 km of customs escort of the vehicle(s), if necessary)</p> <p>Time spent on preparing permission documents for export – up to 46 days.</p> <p>The number of government bodies and other organizations involved – 5 organizations</p>					

ISSUES IDENTIFIED

In the area of issuing sanitary and epidemiological conclusion

Compared to other types of permission documents, regulatory acts related to issuing sanitary and epidemiological conclusion are more advanced. Nevertheless, not all necessary documents in this area, the passing of which is stipulated by the legislation, have been approved yet, which in turn can cause serious problems in practice. Thus, according to Paragraph 6 of the Procedure for preparing, registering and issuing SEC (decree of the Government of the Republic of Tajikistan #139 of March 31, 2004), import and export of produce to/from the Republic of Tajikistan by individuals and legal entities is performed in accordance with a list determined by the Government of the Republic of Tajikistan. As of today, this List still awaits approval. The procedure of preparing, registering and issuing SEC regulates the issues related to issuing sanitary certificates; however, it does not prescribe the procedure of organizing and conducting sanitary and epidemiological expert evaluation, examination, studies, tests and toxicological, hygienic and other types of assessments.

In the area of issuing phytosanitary certificates

The procedure of issuing phytosanitary certificate and import quarantine permission is not regulated by any legal documents. The list of documents required for obtaining this document, as well as its timing, are regulated in practice.

The cost of this document is regulated by the Price list of works for ensuring plant quarantine, performed by the State Phytosanitary and Plant Quarantine Service, approved by the Decree of the Ministry of Agriculture and Environment of December 11, 2008, agreed by the Ministry of Economic Development and Trade and the Ministry of Finance of the Republic of Tajikistan.

Besides, Decree of the Government of the Republic of Tajikistan #510 of October 2, 2010 approves the List of Quarantined Materials, in accordance with which 123 items of produce are subject to phytosanitary control.

Lack of regulation for issuing this document can form grounds for abuse and unreasonable requirements by the government agencies. The procedure of conducting laboratory examination is also not regulated.

For example, one requirement when issuing phytosanitary certificates is to present a document confirming tax registration of legal entities. Therefore, the list of documents required in practice includes a copy of the Certificate of tax registration/TIN for legal entities. However, after passing the Law “On state registration of legal entities and individual entrepreneurs”, the document confirming state registration of a legal entity is the Certificate of State Registration of a Legal Entity, which confirms registration with all relevant authorities, including the tax authorities. During such registration the legal entity receives a Single Identification Number, not Taxpayer Identification Number. Yet the biggest issue is the payment for phytosanitary permission documents. The current prices vary depending on the type and volume of produce and vehicle type, which substantially complicates calculations of the cost and forms fertile soil for corruption.

It should be noted that the list of quarantined materials approved by the Government contains a wide list of goods subject to controlled quarantine. It would be advisable to analyze the practice and check how often **quarantined pests are identified** in materials under quarantine from the list.

Even though the cost of issuing phytosanitary documents is regulated by an approved regulatory act, and this document is posted on the official Web site of the respective authority, the calculations in the document are complex, which creates a specific problem and gives grounds for abuse by the controlling authority.

In the area of issuing Certificates of compliance

Issuance of Certificates of compliance is regulated by several acts signed by the President and the Government of the Republic of Tajikistan. However, there isn't a single document regulating the list of document, timing for consideration and issuance, cost and other requirements when issuing the certificate. The law "On Certification of products and services" does not explain how the Procedure for issuing certificate of compliance must be approved. The list of documents necessary to obtain the Certificate was approved by Decree of the Government of the Republic of Tajikistan #487 of October 1, 2008 "On approving the Action Plan to Simplify Administrative Barriers for exporting and importing goods". However, this act does not regulate other issues related to consideration of the applications and issuing the certificates. Internal documents of the Agency for Standardization, Metrology, Certification and Trade Inspection under the Government of the Republic of Tajikistan pertaining to this issue, are not registered in the Ministry of Justice and not available to entrepreneurs.

The rules for certification of goods approved by internal documents of the Agency for Standardization, are also not registered in the Ministry of Justice and not available to entrepreneurs.

The most complicated issue is calculating the cost of the certificate of compliance. The current prices are very complex and confusing.

Also, this certificate is the most expensive of all permission documents (cost from 497 to 1500 Somoni).

Unlike the prices of phytosanitary services, posted on the official Web site of the respective agency, the Guidelines document RT 50-02-2002 "Norms of labor use and payment procedure for verification and calibration of measurement facilities, testing, standardization and certification of produce, services and accreditation of testing units", approved by an internal document of the Agency, is not officially published or registered anywhere.

The list of goods subject to mandatory certification is approved by the decree of the Government of the Republic of Tajikistan #486 of October 1, 2008 "On the list of goods (works, services) subject to mandatory certification". The list includes almost all types of goods in FEACN group, excluding some insignificant items, such as wild animals, live trees, chemicals, etc.

In the area of issuing Certificate of origin

By passing the decree #487 of October 1, 2008 “On approving the Action Plan to Simplify Administrative Barriers for Exporting and Importing Goods”, the Government of the Republic of Tajikistan significantly streamlined the procedures for preparing import and export documents. However, the Action Plan is inaccurate with regards to the sequence of obtaining the permission documents. Paragraph 1 of the Plan states that Certificate of compliance is necessary to obtain the Certificate of origin-, while Paragraph 8 lists the Certificate of origin as one of the documents required to get the Certificate of compliance. In practice, Chamber of Commerce does not ask for Certificate of compliance, as this document is not necessary to establish the country of origin of the goods.

Besides, the Commercial Invoice must be excluded from the list of necessary documents, as it is also not needed to identify the country of origin.

Certificate from the market, listed as one of the documents necessary to obtain the Certificate of compliance, also cannot be proof of the country of origin of the goods, as the product purchased in the market can be produced locally, or imported from another country.

In the area of customs processing of the goods

Decree of the Government of the Republic of Tajikistan #450 of October 25, 2003 “On customs tariffs of the Republic of Tajikistan” stipulates, in addition to the duties for customs processing of the goods, also a fee for customs escort of the goods, in the amount of two US dollars for each 10 kilometers, for one or several vehicles in one convoy. Customs escort is an extra cost for the business. Most goods pass customs clearance in Dushanbe, not at the customs terminals at the border. For example, goods imported from China through Kulma border checkpoint, usually are delivered, with customs escort, to the terminals in Dushanbe, where it is cleared through customs and then shipped back to Khorog. The distance from Kulma border checkpoint to the terminal in Dushanbe is more than 700 km. This means high fees for customs escort, plus more for delivery back to Khorog in case where the goods are intended for that city. The situation is the same in all other border checkpoints of Tajikistan.

The terminals located near the border must be modified to provide quick and high-quality clearance and eliminate customs escort service as one of the most burdening procedures of customs processing.

The list of documents required for customs processing of the goods needs to be revised. Article 131 part 10 of the Customs Code stipulates providing a certificate of registration with tax authorities of the Republic of Tajikistan. As we mentioned before, since the passing of the Law “On state registration of legal entities and individual entrepreneurs”, legal entities and individual entrepreneurs being registered are issued the Certificate of State Registration with a Single Identification Number, which is unique for all legal entities. Therefore, all laws, including the Customs Code, must be brought in compliance with this Law.

Besides, it should be noted that the Decree of the Head of the Customs Service under the Government of the Republic of Tajikistan #85-F of May 21, 2009 “On approving the list of documents and information

required for customs processing” has further increased the list of documents required for customs processing of goods. According to item “c” of this List the following documents must be provided:

- Documents confirming (in accordance with the legislation of the Republic of Tajikistan) the legal capacity of the persons whose information is presented in the customs declaration, to perform activities in the Republic of Tajikistan. These documents can include: ***foundation documents, certificate of accreditation of a branch/office of a foreign legal entity***, passport, certificate of state registration of a legal entity or certificate of state registration of a physical person as an individual entrepreneur.

CHAPTER 8. TAXATION ISSUES. KYRGYZSTAN'S EXPERIENCE OF TAX PREFERENCES TO AGRICULTURAL PRODUCERS AND PROCESSORS

Agricultural sector in developed countries is traditionally offered certain tax preferences, as well as special tax regime, which is related to specifics of production: seasonal nature, dependence on climatic factor, prevalence of small family-based producers.

Taxes can be used to stimulate, or on the contrary, suppress certain types of activity. Taxes in agriculture in the economically developed countries (Germany, France, Italy, USA, Canada, etc.) usually do not have fiscal nature, as they are intended to stimulate production growth, attract investment into the sector and promote entrepreneurial initiative. Taxation system is built so as to support small individual producers by providing them substantial tax benefits.

Flexible taxation rate system is used as an instrument to stimulate the development of the sector, attract investment from other sectors, and stimulate the development of cooperative forms of production. In all countries, taxation system evolves towards simplification, reduction of the number of taxes, lowering taxation rates and expanding taxation base.

Unfortunately, Tajikistan's tax system is mainly performing fiscal function. The goals to stimulate production, attract investment, develop the sector and provide social fairness remain a second priority.

As we mentioned above, currently the state cannot subsidize the development of agricultural sector due to limited resources, or create conditions for preferential lending to agricultural producers. In this case, preferential taxation remains as the best instrument to stimulate the development of the sector.

However, the tax legislation in Tajikistan currently does not provide any substantial preferences to either agricultural producers or processors. Even though Tajikistan is an agricultural country and developing this sector must be the biggest priority for the government, this issue still does not receive due attention. Even though much work is being done in the area of legislative reform, including land usage and development of cooperative movement, such issues as simplifying taxation, reducing tax rates and offering tax preferences remain open. A lot of research has been put into these issues, a number of organizations gave their recommendations on simplifying taxation procedures and offering tax preferences to both producers and processors of agricultural produce. But none of them were taken into consideration by the government.

The Tax Code offers the following preferences that can be used by the producers and processors of agricultural products:

In accordance with article 211 of the Tax Code, VAT exemption is provided on:

- Import of agricultural machinery according to the list approved by the Government of the Republic of Tajikistan;
- Import of production and technological equipment and components (forming a matched set, i.e., the operation of the technological equipment is not possible without these components) for

forming or increasing the charter capital of an enterprise, or technical re-equipment of the current production, provided this property is used directly for production of goods, performing works and providing services in accordance with the foundation documents of the enterprise and is not subject to excise tax.

In accordance with article 271 of the Tax Code, exemption from land tax is provided on:

- Lands allocated for use in accordance with the conclusion of the State Committee for Land Utilization of the Republic of Tajikistan, with approval from the relevant local authorities – disturbed lands (requiring re-cultivation) and lands in the agricultural development phase at the year of allocation (for development only) and within five years immediately following the year of allocation (beginning of development) of such lands;
- Lands used directly for scientific and educational purposes, as well as for testing varieties of agricultural crops, decorative and fruit trees by scientific organizations, experimental farms, scientific research institutions and educational institutions of agricultural and forestry profile, within the land borders and according to the list of land users approved by the Government of the Republic of Tajikistan.

Certain preferences are also offered by the Code to newly established enterprises engaged in end-to-end processing of cotton fiber into finished products (from cotton yarn to cotton apparel).

As we can see, these preferences are minor and cannot create favorable environment for the development of the country's agricultural sector and ensuring its competitiveness compared to other countries.

We would like to draw your attention to the experience of preferential taxation demonstrated by Kyrgyzstan.

Republic of Kyrgyzstan has created stimulating conditions and preferences for agricultural producers and agricultural goods and services cooperatives, compared to other Central Asian countries.

Below we list several articles of the Tax Code of Kyrgyzstan describing tax preferences for agricultural producers and processors of agricultural products:

1. Delivery of agricultural produce and products of industrial processing of berries, fruit and vegetables

In accordance with Article 239 of the Tax Code of the Republic of Kyrgyzstan:

Delivery by an agricultural producer of *agricultural commodities of its own production, as well as processed products of the same*, is exempted from VAT.

Delivery by an entity of *products of industrial processing of berries, fruit and vegetables from its own inputs, which were processed by the same entity*, is exempted from VAT.

Delivery of agricultural *produce and processed products by an agricultural goods and service cooperative, obtained from agricultural producers that are members of the said cooperative*, is

exempted from VAT.

Delivery of goods, works and services by an agricultural goods and services cooperative to the members of this cooperative is exempted from VAT.

Delivery of goods, works and services by food and processing industry enterprises (except those goods that are subject to excise tax), *processing domestically produced agricultural inputs* is exempted from VAT for three years, according to a list approved by the Government of the Republic of Kyrgyzstan.

2. Processing goods placed under customs regime “Processing of goods at the customs territory” and “Processing of goods under customs control”

In accordance with Article 249 of the Tax Code of the Republic of Kyrgyzstan, the services for *processing goods* imported to the customs territory of the Republic of Kyrgyzstan and placed under *customs regimes “Processing of goods at the customs territory” and “Processing of goods under customs control”* are exempted from VAT.

3. Delivery of mineral fertilizers and plant protection chemicals, vaccines and medicines for animals

In accordance with Article 255 of the Tax Code of the Republic of Kyrgyzstan, delivery of *mineral fertilizers, plant protection chemicals, vaccines and medicines for animals*, according to a list approved by the Government of the Republic of Kyrgyzstan, is exempted from VAT.

4. VAT exemption for imported breeding-stock agricultural animals and seed materials, mineral fertilizers and plant protection chemicals

In accordance with Article 258.1, *breeding-stock agricultural animals and seed materials, mineral fertilizers and plant protection chemicals, as well as vaccines and medicines for animals* imported to the Republic of Kyrgyzstan are exempted from VAT.

Import of goods indicated in this article is exempted from VAT payment according to a list approved by the Government of the Republic of Kyrgyzstan in accordance with the FEACN codes.

5. VAT exemption for fixed assets imported to the customs territory of Kyrgyzstan

In accordance with Article 259 of the Tax Code of the Republic of Kyrgyzstan, fixed assets classified under FEACN codes 8401-8406, 840710, 8410-8414, 8416-8447, 8449-8465, 8471, 8474, 8475, 8477-8480, 8504, 8505, 8514, 8515, 8525, 8526, 8529, 8530, 8601-8606, 8608, 8609, 8701, 8702 (excluding minibuses), 8704, 8705, 8709, 8716, 8802, 9018, 9022, 9027, *used by agricultural producers and agricultural goods and services cooperative directly for their own production needs and for the members of the goods and services cooperative* and/or by an economic agent under financial lease agreement, are exempted from VAT, regardless of whether this economic agent is registered as a VAT payer.

6. Delivery of agricultural machinery produced at the enterprises in Kyrgyzstan

In accordance with Article 255.1, *delivery of agricultural machinery produced at enterprises in Kyrgyzstan to a domestic agricultural producer*, according to a list approved by the Government of the Republic of Kyrgyzstan, is exempted from VAT.

7. Exemption from sales tax

In accordance with Article 315.1, sale of the following goods, performance of works and provision of services are exempted from sales tax:

- 1) by an agricultural producer;
- 2) by an agricultural goods and services cooperative.

8. Exemption from tax on profit

In accordance with Article 212.1, this tax is not charged on the following profits:

- 3) by agricultural producers;
- 5) by agricultural goods and services cooperatives;
- 6) generated from selling the products of industrial processing of berries, fruit and vegetables made of own inputs, which were processed directly at the production facilities owned by the taxpayer, in part directed towards purchase, reconstruction, upgrade of the key means of production;
- 8) enterprises in food and processing industry performing industrial processing of agricultural produce (except the goods subject to excise tax), for a term of three years. The list of enterprises and criteria for inclusion in this list are approved by the Government of the Republic of Kyrgyzstan.

Tajikistan has recently established a workgroup to amend the Tax Code. Currently the workgroup has completed drafting the changes to the Tax Code and presented them for consideration by ministries and agencies. However, the new draft also does not stipulate provision of substantial tax preferences to agricultural producers and processors. On the positive side, it establishes the norms concerning simplified taxation system for agricultural producers. According to the draft, simplified taxation system applies to small enterprise agents producing agricultural produce without subsequent processing. The current Code stipulates that the Simple tax for agricultural producers applies only to those who are engaged in production *and delivery of agricultural produce (agricultural activities)*. The draft excludes the words “delivery of agricultural produce”. Moreover, the draft Tax Code establishes limits for the application of simplified tax, which are not present in the current Code. In accordance with the draft, simplified tax applies to dekhkan (farming) households and other producers whose gross revenue for the past calendar year, excluding value added tax and sales tax (for cotton fiber and primary aluminum) does not exceed *800,000 Somoni*.

As per the current Code, the Simple tax rates are established in the Code itself but can be adjusted by the Government of the Republic of Tajikistan for agricultural producers in various districts by recommendation of the authorized body in charge of land management, geodesics and ground mapping.

In the draft Code, the tax rates are differentiated by cadaster zones, including mountainous regions per hectare per calendar year, and are revised every 5 years by the Government of the Republic of Tajikistan, with recommendations from the authorized agency in charge of land management, by agreement with the respective body of the government. Single tax rates for other types of land equal those for the lands subject to land tax.

The amounts and timing of tax payments have been revised. The draft also stipulates tax preferences to single tax payers. Exemption from single tax is offered to:

- For the first five years after allocation – on disturbed lands (requiring re-cultivation) and lands in the agricultural development phase, the disturbed status having been confirmed by an expert conclusion issued by a government body in charge of land management, subject to approval by the relevant government authority;
- Lands from free government reserves, if these lands are not used for entrepreneurial activities;
- For the first five years after allocation – pasture lands, hayfields, forests and other lands previously not used for agricultural production, where gardens, vineyards, etc. have been planted.

However, even these changes do not solve the whole set of issues mentioned above. Therefore, to ensure successful development of the agricultural sector in the Republic of Tajikistan it is recommended to once again consider the experience of Kyrgyzstan for providing tax preferences and implement it in Tajikistan.

CHAPTER 9. RECOMMENDATIONS FOR ELIMINATING THE ABOVE-MENTIONED ISSUES

1. Recommendations to the Law “On dekhkan (farming) households”

1. The Civil Code contains a list of all possible organizational and legal enterprise forms. The organizational form of dekhkan (farming) households must correspond to one of those forms listed in the Civil Code, to avoid all legal collisions and problems dekhkan farms are facing today.

As for such organizational form used by dekhkan (farming) households as “*partnership-based dekhkan household*”, as stipulated by the Law “On dekhkan (farming) households”, it should be noted that this is not an organizational form, but a *form of implementing an agreement on joint activities (simple partnership)*, stipulated by Chapter 52 of the Civil Code of the Republic of Tajikistan. It needs to be excluded from the list of possible organizational forms in the Law on dekhkan (farming) households. At the same time, a norm can be included on the possibility to sign an agreement *on joint activities (simple partnership)* between the individual dekhkan households, in accordance with Chapter 52 of the Civil Code. In the simple partnership agreement, physical entities – participants of the agreement are *independent subjects of entrepreneurial activity*, as they must be registered as entrepreneurs. Thus, a dekhkan household can be established by *properly registered physical entities* on the basis of an agreement on joint activities. In this case, the partners in dekhkan household will have a guarantee that the dekhkan household will meet its obligations, and the dekhkan household will operate on legal grounds.

2. The norm on “family-based dekhkan households” must be excluded from the Law or included in the Civil Code. The peculiarity of a family-based dekhkan household is that it performs entrepreneurial activities using a land lot. If the members of a family want to create a dekhkan household by joining their land shares, while avoiding the need to get several certificates (one for each household member), the Law may include the norm on allocating a single land area to establish such farm, with just a single certificate to obtain, and stipulating the right of family members to drop out of such farm, taking their share with them. However, this will create collision between the Law and the norms of the Civil Code, which can be eliminated via one of the following options:
 - Give this entity a status equal to that of an individual entrepreneur, as stipulated by the Civil Code. However, this will not eliminate all problems and collisions we described above;
 - Include this organizational norm in the Civil Code, describing all property relations and other relations within this form of dekhkan household.
3. All individuals and legal entities must be granted the right to establish dekhkan (farming) households in all organizational forms of a legal entity, stipulated by the Civil Code.
4. Establish a single document confirming the registration of land usage right for all its owners.
5. Changing the DFH status will solve all other legal collisions mentioned in this document.

2. Recommendations on the issues of developing cooperative movement

1. Speed up the drafting and passing of the Law “On cooperatives”.
2. Consider the issue of granting tax preferences to cooperatives, including exemption from taxes on the circulation of goods and services inside the cooperative;
3. Once the Law is passed, plan further activities to explain its norms and their implementation.

3. Recommendations on the issues in the area of lack of plant protection chemicals

1. Establish cooperatives offering agrochemical services, supply agricultural producers with agricultural chemicals, pesticides and organic fertilizers;
2. VAT exemption not just for imports of agricultural machinery, but also for plant protection chemicals;
3. Consider using aviation for pest control;
4. Use new energy- and resource-efficient, relatively simple and productive technology based on using cheap and easy-to-operate technical facilities;
5. Create conditions for developing lease deals by providing tax and depreciation preferences.

4. Recommendations for eliminating the shortage of mineral fertilizers and high-quality seeds

1. VAT exemption on the imports of mineral fertilizers and high-quality seeds.

5. Recommendations in the area of lending availability

1. Amend the Law “On dekhkan (farming) households” in order to clarify their organizational forms, which will lead to a more clear understanding of the property relations within the dekhkan households and responsibility for their liabilities, including those related to repaying loans;
2. Establish a specific mechanism for pledging the land usage right as a collateral. This objective must be resolved in parallel with making changes to the Law “On dekhkan (farming) households”, passing by-laws, implementing the changes and amendments to the Land code of the Republic of Tajikistan as stipulated in the draft, making changes to the Law “On mortgage”;
3. Speeding up the passing of the Law “On cooperatives”;
4. Establishing simplified order of passing reporting and other procedures for regulating the activities of lending cooperatives by the National Bank of the Republic of Tajikistan.

6. Recommendations in the area of processing agricultural produce

1. The soonest possible implementation of events stipulated by the State Program for Improving Export Capacity of the Fruit and Vegetable Processing Sector for 2010-2012, approved by decree of the Government of the Republic of Tajikistan #624 of December 3, 2010. As the first priority, the fastest possible consideration of Item 6 in the Action Plan of that decree to prepare proposals for ***changing the rates of customs duties on import of technological equipment and spare parts***. For improving the country’s export capacity in the fruit and vegetable processing sector, we recommend full exemption from import duties and VAT for technological equipment and spare parts; full exemption from import duties and VAT for other machinery required for

processing enterprises (industrial refrigerators, air conditioners, etc.), provided it is imported by the entrepreneurs engaged in processing domestic inputs.

2. VAT exemption for three years on delivery of goods, works and services by food and processing enterprises working with domestic agricultural produce, and exemption from tax on profit for the same category of enterprises for three years;
3. Considering the problems listed above:
 - High interest rates on loans, their short term and complex procedures for obtaining loans;
 - Lack of electric energy for round-the-year production;
 - Technological equipment idle time in autumn and winter periods (due to lack of electricity, particularly in the provinces);
 - High cost of inputs and expensive transportation to processing enterprise;

We believe it is advisable to establish micro- and small enterprises and facilities processing fruit, placed in areas with sufficient supply of inputs. What will it enable, and how possible is it, given the current conditions?

First, it should be noted that micro- and small enterprises do not require large investment or loans;

Second, micro- and small enterprises do not use energy-intensive technology, which deals with the energy issue;

Third, micro- and small enterprises do not lose as much money from downtime, and can be compensated by the government through tax regulation mechanisms;

Fourth, in many mountainous areas of the country (particularly in hard-to-reach places) much of the crop gets spoiled due to the complexity and high cost of transportation; this could be used as cheap inputs for processing by micro- and small enterprises instead.

The experience of industrialized and developing countries points at the efficiency of building micro- and small enterprises in the areas with sufficient amounts of inputs, which do not require spending a lot on transportation. This is another important component in reducing the cost of goods sold.

We should also remember that micro- and small enterprises of the same nature located close to each other can be united in a cluster, and cluster approach has proven efficient in both industrialized and developing countries (including CIS countries). Forming agricultural clusters requires conducting comprehensive analysis of the agricultural sector in Tajikistan, which will help identify strengths and weaknesses, opportunities and threats to its competitiveness, find key positions for using its competitive advantages when forming highly competitive clusters. Studying the modern cluster theory and practical experience of cluster operation in Kazakhstan and Kyrgyzstan shows that its application in Tajikistan will open new opportunities for increasing the competitiveness of local fruit and vegetable produce. It will also promote development of new principles of interaction between economic agents and government bodies, ensure strategic development of this specific production sector, as well as the region and the country in general.

7. Recommendations in the area of simplifying export and import procedures

In the area of issuing sanitary and epidemiological conclusions

1. Approve the list of products which require mandatory sanitary and epidemiological conclusion for import and export. When preparing the list, it is necessary to eliminate duplication of activities between the standardization and certification authorities and sanitary officials, when conducting laboratory examination;
2. Approve the Procedure of organizing and conducting sanitary and epidemiological examinations, inspections, studies, trials, toxicological, hygienic and other types of evaluation.

In the area of issuing phytosanitary certificates

1. Approve the Procedure of issuing Phytosanitary permission documents, indicating a specific list of documents and time required for considering the application;
2. Approve the procedure of conducting laboratory examination;
3. Set fixed prices for issuing the phytosanitary permission documents, conducting laboratory examination and providing services by phytosanitary and plant quarantine service;
4. Revise the List of quarantined materials approved by the decree of the Government of the Republic of Tajikistan #510 of October 2, 2010. Consider excluding quarantined materials of industrial origin, not frequently contaminated by quarantined pests.

In the area of issuing Certificates of compliance

1. Approve by a Government Decree the rules regulating the procedure of issuing certificate of compliance for goods, requirements for obtaining this document, specific list of documents required and timing for issuing the Certificate of compliance;
2. By the same Decree, approve the price of the Certificate of compliance, after analyzing the actual costs associated with the certification, compared to other permission documents, and reduce the price to an acceptable minimum;
3. Register in the Ministry of Justice the Rules for conducting mandatory certification by standardization and certification authorities, the Rules for conducting laboratory examination;
4. Stipulate measures for availability of regulatory acts in the area of standardization and certification for entrepreneurs, including posting them at the official Web site of the agency;
5. Revise the list of goods subject to mandatory certification, exclude those goods that do not pose major risk to health and life of the people, or national security. Consider the implementation of other methods to regulate the quality of goods, e.g., declaration.

In the area of issuing Certificates of origin

1. Avoid the contradictions between Paragraph 1 and Paragraph 8 of the Action Plan to simplify administrative barriers for export and import of goods, approved by the Decree of the Government of the Republic of Tajikistan #487 of October 1, 2008 –exclude the certificate of compliance from the list of documents required to obtain the certificate of origin;

2. Exclude the seller's invoice and certificate from the market from the list of documents required.

In the area of customs handling of the goods

1. Consider eliminating the requirement for customs escort of vehicles;
2. Simplify the list of documents provided for customs handling of the goods. Eliminate the requirement to provide such documents as foundation agreement, certificate of accreditation of a branch or representative office of a foreign legal entity;
3. Implement the "Single window" principle as soon as possible for performing export-import and transit procedures.

LIST OF SOURCES USED

Regulatory documents

1. The Land Code of the Republic of Tajikistan of December 13, 1996;
2. The Labor Code of RT;
3. The Tax Code of the Republic of Tajikistan of 2004;
4. Customs Code of RT of December 3, 2004;
5. Civil Code, Part One, of June 30, 1999 and Part Two, of December 11, 1999;
6. The Law “On consumer cooperation” of March 13, 1992
7. The Law “On production cooperatives” of December 2, 2002
8. The Law “On mortgage” of March 20, 2008
9. The Law “On dekhkan (farming) households” of May 19, 2009
10. The Law “On state registration of legal entities and individual entrepreneurs” of May 19, 2009
11. The Program of economic transformation of agricultural sector in the Republic of Tajikistan, approved by the Decree of the Government of the Republic of Tajikistan #673 of November 9, 1995
12. The Procedure of preparing, registering and issuing Sanitary and Epidemiological conclusions, approved by the Decree of the Government of the Republic of Tajikistan #139 of March 31, 2004.
13. Decree of the Government of the Republic of Tajikistan “On approving the rates of customs duties for customs services provided” #472 of December 2, 2005
14. The Program for protection of gardens and vineyards from disease and pests in the Republic of Tajikistan, approved by the Decree of the Government of the Republic of Tajikistan #290 of June 4, 2006
15. Decree of the Government of the Republic of Tajikistan #487 of October 1, 2008 “On approving the Action Plan to simplify administrative barriers to export and import of goods”
16. Concept of Agrarian policy, approved by the Decree of the Government of the Republic of Tajikistan #658 of December 31, 2008
17. List of quarantined materials approved by the Decree of the Government of the Republic of Tajikistan #510 of October 2, 2010
18. State Program for strengthening export capacity of the fruit and vegetable processing sector for 2010-2012, approved by the Decree of the Government of the Republic of Tajikistan #624 of December 3, 2010
19. Program for fighting garden and vineyard disease and pests in the Republic of Tajikistan for 2011-2015, approved by the Decree of the Government of the Republic of Tajikistan #625 of December 3, 2010
20. The procedure for performing certification works for domestic and imported products by Tajikstandart product certification department, approved by Tajikstandart director, of February 15, 2007
21. Price list of works for ensuring plant quarantine, performed by the State Phytosanitary Inspection Service, approved by the Decree of the Ministry of Agriculture and Environment of the Republic

- of Tajikistan on December 11, 2008, by agreement with the Ministry of Economic Development and Trade and Ministry of Finance.
22. Instruction on the procedure of preparing, registering and issuing certificates of origin of the goods, and other documents related to performing foreign economic activities #205 of December 30, 2008
 23. Decree of the Chairman of the Chamber of Commerce of the Republic of Tajikistan on the cost of services provided to identify the origin of goods #204 of December 30, 2008
 24. List of documents and information required for customs processing of the goods, approved by the Decree of the Head of the Customs Service under the Government of the Republic of Tajikistan #85-F of May 21, 2009
 25. Manual for identifying the cost of services for conducting expert examination of goods and identifying the country of origin in the Republic of Tajikistan #15 of March 3, 2010
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