

NOTE & COMMENT

Border Enforcement of Plant Variety Rights: A Comparison between Japan and Taiwan

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Article 24 of the Plant Variety and Plant Seed Act of Taiwan stipulates that right-holders have exclusive rights to import/export propagating materials, harvested materials and products made directly from the harvested materials of protected plant varieties. However, detailed provisions of border measures and enacting rules have not yet been written both in the Act and the associated enforcement rules. Although Taiwan and China have built a close relationship in agriculture and trade, tightening export suspension measures may serve as an effective means of preventing the agricultural counterfeit issue from worsening, and reduce the possibilities of illegal re-importation. China is the principal country to which plant materials from Taiwan and Japan are smuggled for further propagation and then shipped back to their original markets. Japan's effective border measures for addressing plant variety right infringement and their PVP G-Men system could be a useful paradigm for Taiwan.

Keywords

Plant Variety Right, Border Measures, G-Men, Import Suspension, Ex Officio, Suspension of Release

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1. Introduction

With the increasing number of intellectual property right infringements in international trade, effective measures of safeguarding rights have become a crucial issue in implementing intellectual property protection. Although there are measures such as infringement investigation and prosecution in place, controlling the likely distribution of suspected goods from the source has become the preferred strategy. It is particularly important in agriculture as breeding new plant varieties requires significant time and investment, but to propagate new plant varieties can be achieved with minimal effort and resources. This is why plant breeders are driven to apply for plant variety protection to ensure their monopoly rights in a prospective market. Taiwan and Japan are small countries in terms of arable land. However, both suffer from the consequences of new plant variety seedlings being smuggled into mainland China for mass-propagation with the harvested materials, such as flowers, fruits or seeds being then shipped back impacting the domestic markets.¹

Preliminary research conducted in both countries have suggested that setting up effective border measures is the first vital step in ‘goal keeping’ against such outlawed trade.² Japan first adopted the Agricultural Seeds and Seedlings Law in 1947. This law has gone through several amendments in the legal text in subsequent years, and has become a leading model for other Asian countries. It has also helped stop protected plant material from being imported onto Japanese soil. Taiwan lags behind Japan by more than forty years in setting up a plant variety rights protection (“PVP”) system; it is still trying to strike a balance between agricultural policy subsidy and royalty claims from the growers. As a result, the PVP system in Taiwan is only being enacted in a muddled way.

This paper attempts to draw a parallel between Japan and Taiwan in plant variety right border control, and to provide some insights into how these differences originated. This paper is composed of six five parts including Introduction and Conclusion. Part II will compare Plant Variety Right Protection Border Measures between Japan and Taiwan. Part III will examine the relevant regulations of Taiwan’s Foreign Trade Act. Part IV will make suggestions for the Taiwanese government.

¹ Li-Hua Chung, *COA Reports: Many of Taiwan’s Plant Varieties Have Been Taken to China*, THE LIBERTY TIMES, available at <http://www.libertytimes.com.tw/2011/new/may/21/today-fo2.htm> (available only in Chinese) (last visited on Mar. 17, 2012). For Japanese situation, see Takahashi Nobuyoshi, *Reinforcement of Plant Breeder’s Right-Amendment of Plant Variety Protection and Seed Act*, MINISTRY OF AGRICULTURE, FORESTRY AND FICHERIES (“MAFF”), available at <http://www.maff.go.jp/kyusyu/seiryuu/hana/hana01.pdf> (available only in Japanese) (last visited on Mar. 17, 2012).

² *Id.*