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NON-TARIFF BARRIERS FACED BY INDIAN AGRICULTURAL PRODUCTS

1. EUROPEAN COMMUNITIES

1.1 Lack of harmonization of egg products standards in EU member countries resulting into requirement of approval of production units by individual member countries

During the 3rd meeting of India-EU Joint Working Group on SPS/TBT issues held on July 9 – 10, 2008 at New Delhi, Indian side mentioned that although the egg standards have been harmonized within EU, the same is not true for approval of establishments processing and exporting egg products. India has currently only three approved establishments for the purpose. EC has already approved list of establishments for marine products. In case of eggs, these establishments are forced to approach each member state individually for approval. India mentioned that the problems are being faced for export to Germany in particular.

It was agreed that India would communicate problems faced in specific countries to the EC side.

(EIC to ensure that communication is sent to EC in next one month).

1.2 Different MRLs by the member countries for pesticides, drugs and other contaminants

During the 3rd meeting of India-EU Joint Working Group on SPS/TBT issues held on July 9 – 10, 2008 at New Delhi, India raised concerns that the default level of the MRLs for pesticides and drugs set by EU vide Commission Regulation (No. 149/2008 of 29th January 2008) are quite high. MRLs of pesticides are applied to both products of animal and plant origin. The regulation would be applicable with effect from 1st October 2008 for third countries supplying food to EC market. The regulation is silent about setting up of MRLs as well as harmonization of MRLs in case of drugs, antibiotics and other contaminants for products of animal origin. In absence of MRL, minimum required performance limit (MRPL) has to be followed. The default MRPL level is very high and does not have a risk assessment based scientific justification. These have been set up on the basis of the levels to which testing equipment can detect a particular contaminant/residue. EC

should set up MRLs rather than insisting on MRPLs. Further, EC should harmonise MRLs for all compounds. Member States like UK, Netherlands and Germany have set up MRLs for some compounds which are not harmonized by EC.

The EC side mentioned that they have notified the draft regulation to WTO but no comments were received from India. However, they are still open to comments from Indian side. They are also in process of harmonizing the MRLs in EC, including for pesticides. India may give its specific concerns in writing to the EC side.

(APEDA to send specific concerns in writing to EC in next one month and inform the same to DOC).

1.3 Definition of Whiskies – CN Code

India has been constantly requesting European Commission for recognition of Indian whisky as a “whisky” in the EU market to ensure a level playing field. The EC has so far not responded positively, as in their view, molasses based whisky cannot be treated as whisky. As per the CN Code, an alcoholic beverage can be called a whisky only if it produced exclusively from cereals by distillation and is matured for a period of three years. The EC authorities have informed that there is no scope for change of definition of whisky by them. They suggested that India should come up with some creative solution that could be considered but the use of term ‘whisky’ may not be possible. The EC has also suggested that in case we can give detailed clarification on technical aspects, their customs experts could consider the issue for tariff concessions.

The technical experts from the All India Distillers’ Association are of the view that the extra neutral alcohol (ENA) produced from molasses and used as a base for production of Indian whisky is as good as the ENA produced from cereals/grains. In the EU countries, whisky has been traditionally produced from cereals because they do not produce sugarcane. Even in USA, no one has ever challenged whisky produced from molasses.

It is also pertinent to mention here that EU countries are adopting double standards. They are reluctant to import Indian whisky as “whisky”, but at the same time they insist that their whisky should be allowed to be imported into India under the ‘national treatment clause’. It appears that Indian whisky is dissimilar to EU whisky when exported from India to the EU, but when EU whisky is to be imported into India, then it is similar to Indian whisky. This is not fair play.

During the Sub-Commission meeting, the EU side maintained that Indian whisky made from molasses could not be recognized as whisky. To this, the Indian delegation informed about the difficulties faced by the Indian spirit industry in getting their trade marks registered in the EU and indicated that the action taken by European Commission was not conducive to enhancement of trade.

1.4 Delay in clearance of flower consignments due to mandatory checks

Most farms exporting floricultural products in India have a very stringent pest control management system operational which adheres to International standards. Most farms have adopted Good Agricultural Practices (GAP). Some of them even have MPS-A certification. Many of them are at the certification stage.

Despite high quality procedures prevalent on the exporting farms and very stringent phytosanitary inspection procedures, Indian floricultural produce is being subject to 50 % checks at entry points in the Netherlands. This is a time consuming process and results in unwanted delays in clearances, processing and delivery of the consignments to the end clients. Such delays cause loss of quality and reputation. During the past five years it has been observed that the rejection has been virtually nil. One shipment each during 2004, 2005 & 2006 has been destroyed at Amsterdam. India has been requesting EU for quite sometime that the frequency of inspection be reduced.

The EC side indicated that they are having reduced check on import of Indian roses with percentage check at 50% as compared to 100% for some other countries. It is right of Member States to decide on checks. During the 3rd meeting of India-EU Joint Working Group on SPS/TBT issues held on July 9 – 10, 2008 at New Delhi, it was decided that India will give data on rejection to EC in next quarter. Through the Market Facilitation Centre in the Netherlands data will be collected on inspection and rejection of flower consignments both in the case of auctions and direct sales.

1.5 Market Access for Mushrooms

Under the Agreement on Agriculture, the EU is expected to provide market access to a certain extent every year. It is observed that they have increased market access in case of preserved mushrooms, but only in the case of those countries who do not have the capacity to fulfil even half of their quota. The policy followed by the EC under their mushroom quota regime is a clear example of camouflaging market access. Under the Agreement on Agriculture, WTO members are obliged to administer TRQs in such a way that the quota gets fully utilised. The

members are bound to maintain entire TRQ even if re-allocation becomes necessary. This has been held by the appellate body in the banana dispute against the EC. It is felt that the same logic will have to be applied in the case of mushrooms.

The issue of quota for mushrooms is a long standing demand from India. In the early nineties, when India made a request for a separate quota for mushrooms, the EU side had stated that India should first fulfill “others” category and then if there is an additional demand, then a separate quota could be offered. When India filled up the “others” category quota and requested for additional access, this was denied stating that the country specific quotas could not be opened up. India then requested for increasing the quota in the “others” category on the same lines as they had done for the country specific quotas. But, this request has always remained pending.

The issue of mushrooms was raised by India during the last JWG meeting reiterating its long pending request for an increase in the quota for the “others” category that has remained static (it has been partially increased for the year 2007) while the same had been increased for other countries that did not fulfill even half of their allotted quota. It was added that the licensing policy in the EU was discriminatory against the new exporters, which resulted in an underutilization of the quota in the “others” category. Now, the EU side has again been advising India to first utilize quota in the “others” category.

On February 6, 2008 a new Regulation has been issued by EC regarding administration of tariff quotas for preserved mushrooms imported from third countries. 99 % of preserved mushrooms imported into EU come from China. At present, China has a quota of 28950 MT per year under GSP and is utilizing the same fully. The exports from India have gone down in last three years from 310 to 116 MT. The importers in EU would generally not be interested in seeking import licenses for small quantities. India has good quality production of preserved mushrooms and exports to USA. Therefore, if a separate quota is allotted to India, it may be possible to develop the market over the years with consistent supply of sizeable quantities.

1.6 Complex Procedures for Sampling/Product Testing

The EU requirements for the sampling and product testing in the export of HPS groundnuts are very cumbersome. Over the past few years various Directives have been issued by the EU stipulating quality requirements which are getting more stringent without any justification. The present legislation clearly stipulates the sampling and testing procedures which need to be adhered to by the exporter prior to export.

During the 3rd meeting of India-EU Joint Working Group on SPS/TBT issues held on July 9 – 10, 2008 at New Delhi, EC suggested that Indian authorities could introduce a request to receive pre export control approval on groundnut exports to EU. EC side added that they have provision of providing financial aid for helping training of lab technicians for aflatoxin testing in peanuts and that EC was willing to train Indian lab technicians.

(APEDA to consult IOPEA and make a specific proposal to EC in regard to pre export control approval and training of Indian lab technicians in next one month)

1.7 Equivalence Agreement on Organic Products

Vide Regulation No.956/2006 dated 28.06.2006, the EU notified equivalence of Indian organic standards with those of the European Union and India was included in the list of third countries eligible to export organic products certified by accredited certification bodies in India. In para 3(2) of the Annexure to the Regulation it is stated under the heading 'Origin' that 'products of category 1(a) and organically grown ingredients in products of category 1(b) that have been grown in India' can be certified by the Indian certification bodies.

The provision that products of Indian origin only are allowed to be certified by the accredited certification bodies is trade restrictive as they are not able to expand their business outside the shores of India. organic certification is a process certification and products certified under the NPOP (which is equivalent to the EC standards and procedures) should be allowed to be certified, if such products are otherwise allowed to be exported from such countries to the EU. There may be situations where nearby countries may wish to get their products certified by India certification bodies for exports to the European Union on account of lower cost involved in sourcing the services from India. However, in light of the restriction imposed by the said regulation, the Indian certification bodies are deprived of this opportunity and the grower/exporters are denied the choice to source less expensive services for organic certification.

The restriction imposed by para 3(2) of the EU Regulation needs to be removed to facilitate trade. This issue was raised during the India-EU Working Group Meeting and the EU side informed that they would convey this request to the concerned experts in the European Commission.

Another issue that needs to be raised is that the EU equivalence has been agreed upon by the EC only for horticulture products and does not cover honey, whereas, the India organic standards include honey and when the EU team came to India for evaluation, they also covered honey. It is, therefore, not clear as to why the EC has not included honey in the equivalence notification.

2. RUSSIAN FEDERATION

2.1 Export of Bovine Meat in Compliance with the Animal Health Requirements as per OIE Code

The issue of export of Indian bovine meat to the Russian Federation was discussed in the 13th Session of the Indo Russian working Group on Trade and Economic Cooperation held at Moscow from August 30 – 31, 2007. It was agreed to renew the discussions on import of boneless bovine meat from India in compliance with the animal health requirements as per OIE Terrestrial Animal Health Code. It was agreed that Indian side would invite a delegation of Russian Veterinarians for consideration of the issue of bovine meat export from India. APEDA had extended invitation to the Russian veterinarians to visit India in the month of September 2007. This was followed by reminders in January 2008 and February 2008. The response of Russian side is still awaited.

2.2 Market Access for Egg Products

It was agreed that Indian side would prepare a programme for visit of Russian veterinarians to India for consideration of the issue of egg products export from India. APEDA had extended invitation to the Russian veterinarians to visit India in the month of September 2007. This was followed by reminders in January 2008 and February 2008. The response of Russian side is still awaited.

2.3 Ban on Plant Products Imports from India

In December, 2006, Russia imposed a temporary restriction on import of rice from India on the ground that rice from India contained inadmissible dimethoate . In conjunction with Ministry of Commerce & Industry and Embassy of India, Moscow, efforts were initiated for withdrawal of this restriction. Delegation from Federal Service for Veterinary and Phyto Sanitary Surveillance (FSVPS) visited India February 2007 followed by visit of Indian delegation in July 2007 when a protocol was signed and Russian side lifted the restriction effective July 20 2007 subject to all rice shipments being accompanied by a certificate of quality from Shri Ram Institute for Industrial Research.

The rice protocol was linked with groundnuts and sesame seeds due to detection of grain pests, aflatoxin B1 and metallomagnetic admixture in some shipments of these products received in Russia. Further in January 2008 Russia imposed temporary restriction on import of all plant products from India and also the imports from third countries for which phytosanitary certificate was issued from India. The trade in India believed that the situation didn't warrant restriction on all plant products. The ban on Tea, Coffee and some other products (not having significant trade) was lifted in February

2008.

In May 2008 delegation from FSVPS visited India and during this visit format of certificate of quality was finalised which was signed as part of the protocol. The protocol includes an option for India to take action as deemed necessary in case of violation of phytosanitary norms observed in consignments from Russia. The Russian side was requested to approve eight laboratories for issuance of this Certificate of Quality for export of plant products from India to the Russian federation. They were further requested to investigate with regard to quarantine pests revealed in consignment of plant products exported from Russian federation to India and intimate the findings to Indian NPPO. The final protocol containing English and Russian versions signed by Russian side is awaited.

3. CHINA

3.1 Delay in finalisation of protocol on phyto sanitary measures and certification procedures

Following receipt of the regulations concerning State Administration for Entry - Exit Inspection Quarantine of China in February 2000, detailed proposals were prepared by APEDA in association with Ministry of Agriculture, Government of India in respect of 17 fruits and vegetables as given below:

Fruits:

Mango, Guava, Grapes, Watermelons, Musk/Hami melon, Papayas, other fruits (pomegranate, sapota, custard apple, etc.)

Vegetables:

Cucumber, Gherkins, Beans and other leguminous vegetables, Aubergines, Capsicum, Other vegetable (Okra, Bitter gourd, Cabbage, etc.)

India's formal request in accordance with International Plant Protection Convention (IPPC) on pest risk analysis was submitted by our mission to the Chinese authorities in September, 2000. It is observed that a very long drawn process needs to be gone through before getting market access for a particular fruit or vegetable. After going through a rigorous process we have succeeded in getting market access for Indian mangoes in June 2003 and for grapes and bitter gourd in April 2005.

With respect to the remaining 14 items, the Chinese quarantine authorities informed through our mission in China that it would be impossible for them to access the pest risk analysis (PRA) work for tall

the listed fruits and vegetables at one time. Further, AQSIQ suggested that a priority order of the limited products may be provided to them for immediate PRA for opening up the market. Accordingly, the priority order for 5 fruits and vegetables was forwarded to AQSIQ through MoA for Pomegranate, Papaya, Sapota (chikoo), Pineapple and Okra.

No progress on the above has taken place.

3.2 Approval of Processing Units for Meat

This matter was discussed by the Indian delegation led by Chairman APEDA to China in the month of July 2007. The Chinese side agreed that the Indian side had satisfactorily answered their quarantine concerns and that they could consider approving the processing units for export to China subject to a visit by the quarantine experts to those establishments. The Indian side pointed out that an invitation to the Chinese experts was issued as early as July 2006 and that the response from the Chinese side was still awaited. It was however agreed that a fresh invitation would be issued for a Chinese team to visit India to evaluate and approve processing units for export of meat and meat products from those units. APEDA has already extended another invitation to the Chinese authorities in October 2007 to visit India through our Mission in Beijing. This was followed by reminder dated 19.12.2007. Response is however still awaited from the Chinese side. It may also be mentioned that the Department of Animal Husbandry, Dairying and Fisheries, Ministry of Agriculture, Government of India had also sent a detailed note to the Chinese authorities in September 2007 through our Mission indicating the control measures taken by the Government of India for Foot and Mouth Disease (FMD), export of meat from India, inspection and strict control of operations of the approved abattoirs. The Chinese authorities are delaying and denying market access for Indian meat.

3.3 Basmati Rice

With the objective of obtaining market access for Basmati Rice in China, the matter was taken up by APEDA with the General Administration of quality Supervision, Inspection and Quarantine (AQSIQ), China through Embassy of India in Beijing. AQSIQ had sought detailed information on growing areas, pest risk analysis and quarantine measures adopted in India for rice. After considerable follow-up and discussions, the Chinese team visited India in November 2006 to finalize a protocol, which was subsequently signed between the two countries.

In accordance with Article 8 (regarding confirmation of Phyto Sanitary Measures) and Article 13 (invitation to AQSIQ Inspectors for field visit)

of the protocol, the Ministry of Agriculture had sent the desired information to AQSIQ on 1st August 2007. AQSIQ had subsequently sought some clarifications on sweltering aspects. The information has since been sent by the MoA.

4. JAPAN

4.1 Stringent plant quarantine procedures including zero tolerance for the insects and pests which already exist in Japan

There are peculiar kinds of non tariff barriers in Japan with regard to market access on flowers. Impractical plant quarantine procedures including zero tolerance for the insects and pests which already exist in Japan. Consignments are fumigated even when the fumigation has been done by the exporters and phyto sanitary certificate accompany the consignment.

4.2 Unfair trade practice in terms of placing imported flowers in the auctions after domestic supply is auctioned

Indian roses are brought to auction platforms towards the end of the auction process after all domestic supply is auctioned leading to low price realisation for Indian flowers.

4.3 Ban on the import of fresh grapes from India on the basis of report of the incidence of oriental fruit fly on grapes in Pakistan

Japan has also banned import of grapes from India due to fruit fly called *Bactrocera dorsalis*. The Japanese authorities are quoting one reference of 1960 stating that grapes in Pakistan are infested with oriental fruit fly. How does that concern India ? In any case, there is not a single report stating that grapes are the host of fruit flies. Therefore, that report should be treated as an unconfirmed report.

However, at the request of Japanese authorities, copy of a letter dt. 9th March, which was sent by Ministry of Agriculture, Govt. of India to the International Institute of Entomology, CABI, London requesting them to amend the pest distribution map to show the absence of *Bactrocera dorsalis* in India was forwarded to the Japanese side in March, 2000. Simultaneously, survey conducted by our premier research institutes, namely, National Research Centre for Grapes, Pune and Indian Institute of Horticulture Research, Bangalore on presence of fruit flies in Indian grapes produced in Western and Southern regions. The survey data for

the last three years has revealed that there is no infestation of *Bactrocera dorsalis* fruit fly in our grapes.

5. USA

5.1 Mangoes – High Cost of Certification

The compliance certificate of APHIS and their irradiation department received on 26th April, 2007 for processing of fresh mangoes through irradiation process at BARC irradiation facilities located at Lasalgaon, Maharashtra. Accordingly, first shipment of mangoes was sent 27th April, 2007 after irradiation treatment in the BARC facility to the US. So far around 180 MTs of mangoes have been exported to the US.

While the entire process of market access has been quite complex including a number of agreements and protocols, a major issue has been the cost of certification. According to the requirements, the entire cost of travel and stay of the USDA inspector in India at the irradiation facility as well as the officials of USDA located at different places and involved in the process, will have to be borne by India. For this purpose, an amount of approximately USD 82,000/- was contributed by APEDA towards the trust fund for meeting this expenditure. This summer (2008), the number of irradiation facilities will increase and the number of USDA inspectors required to be positioned in India would also increase. Thus, this amount would grow in multiple proportions. In this manner, the entire commercial viability of mango exports to the US would be jeopardized. It is felt that a mutually acceptable solution needs to be found for bringing down the transaction cost. This is turning out to be a major NTB. Recognition of India's conformity assessment procedure can be a good solution. In this regard, it may be pointed out that India does not recover inspection costs from the US for meeting similar requirements. Consequently, recognition of conformity assessment would be a feasible proposition to facilitate bilateral trade. The US has recognized APEDA's conformity assessment procedure in the case of organic products.

5.2 LITCHI

The US has allowed market access for Indian litchis with cold treatment process as a quarantine measure. The following cold treatments for import of litchis are prescribed:-

- Cold treatment at a temperature of 33.8°F (0.99°C) or below for 17 days ; and

- Cold treatment at a temperature of 34.5°F (1.38°C) or below for 20 days.

Ministry of Agriculture, in association with APEDA, has worked out a training programme for India's quarantine officials to be provided by the APHIS team on cold treatment to fulfill the US quarantine requirement. In May 2007, APEDA also remitted an amount of USD for this training. However, the training could not be undertaken during the season, mainly, because the US side informed during the discussion that they do not allow SO₂ fumigation as post harvest treatment. We requested them to provide an alternative treatment method, but the information has not yet been received. Our exporters are of the view that unless SO₂ fumigation is permitted as a post harvest treatment, shelf-life of litchi cannot be extended for the desired period.

Further, as in the case of mangoes, there is a requirement of creating a trust fund for litchis also to allow the US inspectors supervise the cold treatment. We would like to express concern over this increase in the transaction cost, which, in effect, is a NTB. A suitable solution would need to be found to overcome this unnecessary requirement.

5.3 POMEGRANATE

The market access for Indian pomegranate is yet to be granted by the US. Presently, pomegranate cannot be exported to US without clearance by their quarantine authorities (APHIS). India's quarantine department (Ministry of Agriculture) has sent a request to APHIS to initiate the Pest Risk Analysis (PRA). In response, the USDA has asked India to provide technical information to initiate the process and the same has been provided. Subsequently, APHIS asked India to develop a draft PRA to expedite the process of analysis by them. This document has also been provided to them in September 2007. The India side has already forwarded detail comments on the queries raised by APHIS. The decision of APHIS is awaited.

5.4 GRAPES

India is one of the major exporters of fresh table grapes to European market and has well established protocols for sea shipment of fresh grapes. Shelf life of fresh grapes can be maintained up to 90 days with the present post harvest treatment technology. However, while exporting fresh grapes by sea, Indian exporters are using the sulphur pads in the package boxes. This should not be a matter of concern for

the US authorities (FDA) since the US producers of grapes are also understood to be using these. In order for APHIS to conduct PRA technical information has been submitted by India in April 2008. Further response is awaited.

5.5 ORGANIC PRODUCTS

5.5.1 Issue relating to the Scope of Certification of Organic Products Originating from other Countries.

The USDA has recognized India's conformity assessment procedures in February 2006, as a result of which, India's certification bodies accredited under the NPOP are authorized to certify organic products as per USDA's NOP standards. Presently, there are 11 Indian accredited certification bodies that are authorized to certify.

However, the scope of certification is limited to certify organic products originating from India. Since the accreditation and certification procedures of India are acceptable to the US, there should be no objection to accepting certification by these certification bodies in other countries as long as they certify as per the USDA's NOP standards and products originating from such countries are, otherwise, allowed to enter the US. India is of the view that USDA should extend the scope of certification for Indian accredited certification bodies to certify organic products originating in other countries.

5.5.2 Equivalence of NPOP with NOP Standards:

In 2002, India submitted a proposal to USDA seeking equivalence of NPOP standards (India) with the NOP standards (USA). The proposal was followed up on a regular basis by forwarding amendments in the NPOP as and when these were introduced (April 2004, January 2005 and May 2005)

During our recent discussions, the US side requested APEDA to prepare a comparative statement of the NPOP (India) and the NOP (USDA) standards and procedures. APEDA is in the process of preparing this statement and it is proposed to send this shortly.

5.5.3 Group certification

The US does not accept group certification stating that it involves inspection of the grower groups on a sample basis. It insists that even where there is an established Internal Control System (ICS) in a grower group, each farmer should be inspected. This approach is not feasible as

in most cases, particularly in developing countries, the area of farms ranges between 0.5 – 2 Ha and in some cases the number of farmers in a group may exceed 1000. In case, each farmer in a group is to be inspected, it would increase the number of man-days of inspection adding to the cost of certification.

On this issue, there was a worldwide representation by International Federation for Organic Movement (IFOAM). As a result, presently, USDA have suspended the requirement and notified that group certification norms should be followed as per the old standards procedures drawn up by the National Organic Standard Board (NOSB) for certification of grower groups till a final decision is taken. The US is expected to take a final decision by April 2008.

Group certification is an internationally accepted norm as it expedites the process of certification, particularly, where the farm holdings are small and the number of farmers to be certified is large. This reduces the cost of certification, thereby, facilitating export by the developing countries. In light of this, the US should consider the needs group certification through sample inspections.

6 & 7 AUSTRALIA AND NEW ZEALAND

Ban on import of Indian mangoes and other fruits due to presence of 14 fruit flies and weevil

Australia has imposed a ban on import of Indian mangoes and other fruits due to presence of fruit flies & stone weevil. It is understood from the Ministry of Agriculture, Govt. of India that matter is being perused with the Australian Authorities for developing a protocol for these pests through irradiation treatment. It may be taken up in the bilateral negotiations that the protocol is finalized soon.

8. MEXICO

Market access in Mexico for Indian basmati rice is not available due to presence of Khapra Beetle which is a storage pest and is of quarantine concern to Mexico. Market access request has been pending for more eight years and it understood that Mexican authorities are in the process of carrying PRA. During the visit of Director, APEDA to Mexico in May 2008 Director General de sanidad Vegetal informed that Mexico was dealing with more than 150 countries and there was a need to conduct detailed PRA for various market access requests, which takes a lot of time. He, however, added that PRA for basmati rice was at the third and final stage of review and that there was a possibility to define the status and further arrangements in the near future.