WORLD TRADE ORGANIZATION

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NEED FOR MEASURES ON DETECTION OF PESTICIDE RESIDUES NOT REGISTERED IN THE COUNTRY OF IMPORT FOR UNIMPEDED FLOW OF TRADE

COMMUNICATION FROM INDIA

The following communication, received on 26 March 2015, is being circulated at the request of the Delegation of India.

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1 BACKGROUND AND OBJECTIVES

1.1. The main purpose of this paper is to put in context the persistent problem faced by exporters from developing countries with application of limits of detection (LoD) in importing countries. It has been observed by India that LoD is being resorted to frequently in respect of substances where international standards as established by the Codex in fact exist.

1.2. It is important here to reiterate the basic disciplines of the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement) in respect of risk assessment, and in respect of aspects for which international standards exist.

1.1 SPS Disciplines

1.3. Under Article 2 Members have the right to adopt SPS measures to achieve their self-determined health protection level. This level, called the appropriate level of protection or the acceptable level of risk, represents a key feature of the SPS Agreement. The right to adopt SPS measures to achieve a given appropriate level of protection is accompanied by basic obligations. Essentially, countries may adopt SPS measures provided the measures:

- are applied only to the extent necessary to protect life or health;
- are based on scientific principles and not maintained without sufficient scientific evidence; and
- do not unjustifiably discriminate between national and foreign, or among foreign sources of supply.

1.4. Members have two options to show that their measures are based on science. They may either:

- base their measures on international standards (Article 3); or
- base their measures on scientific risk assessment (Article 5).

1.5. Factors that should be taken into account in the assessment of the risk involved are clearly laid out in Article 5. Measures to ensure food safety and to protect the health of animals and plants should be based as far as possible on the analysis and assessment of objective and accurate scientific data. In the assessment of risks, Article 5.2 makes specific reference to the need for considering issues such as prevalence of specific diseases and pests, relevant ecological and environmental conditions, and quarantine or other treatment.

1.6. As per Article 5.7, in cases where relevant scientific evidence is insufficient a Member may *provisionally adopt* SPS measures on the basis of available pertinent information, including that

from the relevant international organizations as well as from SPS measures applied by other Members. In such circumstances, Article 5.7 also places a clear burden on Members to obtain additional information necessary for a more objective assessment of risk and review the SPS measure accordingly within a reasonable period of time.

2 LOD DETERMINATION AND ITS IMPACT ON TRADE

2.1. It is a well-known fact that due to differences in agro climatic conditions, there is a significant variance in prevalence of pests and diseases in the eco-systems of various trade partners. Depending on the needs and requirements, producers of plant and animal based food products resort to use of pesticides, chemicals and drugs that are most suitable for their specific situation for management of pest and diseases encountered at various stages of cultivation of crops, storage and processing of products. If such substances are not required due to the ecological conditions of the importing country, they may not be registered or regulated under the laws of the importing country. There could therefore be situations when residues of a particular pesticide are detected in imported products, which are in most instances at the levels which are not hazardous and pose no threat to the life, health and hygiene of the consumers in the country of import. However, often MRLs for such substances are set at the LoD in the importing country, instead of being based on actual scientific risk assessment, taking into account relevant factors as specified under the SPS Agreement, which as explained above, include aspects such as prevalence of specific diseases and pests, and relevant ecological and environmental conditions.

2.2. This practice of having the MRL at LoD level in respect of pesticides not registered/not in use in the importing country, is increasing among Members and is highly disruptive to international trade. Here are few examples which explain this practice in a better way:

a. In 2009, presence of Chlormequat Chloride (CCC) was detected in Indian Grapes in the European Union. CCC is a plant growth regulator used to contain the vegetative growth for better fruit formation. In India MRL for CCC on grapes is 1 mg/kg. The MRLs for CCC in other countries are (a) 1 mg/kg in Japan (as in the case of India); (b) 0.75 mg/kg in Australia; and (c) 0.1 mg/kg in New Zealand. However, the MRL in the European Union is set at LoD 0.05 mg/kg. Detection of residues at more than 0.05 mg/kg in the EU market resulted in issues of legal compliance with the LoD.

   The Government of India raised this issue with EU authorities which in turn sought the opinion of the European Food Safety Authority (EFSA). The EFSA concluded that no consumer risk is expected if table grapes with a mean concentration of 1.06 mg/kg of CCC are consumed. Based on this, the United Kingdom, Ireland and Norway allowed clearance of Indian grapes into their markets.

   However, this did not dilute the initial adverse impact on exporters from India due to the negative publicity both within and outside of the European Union when Indian imports were detained at the EU borders.

   In this regard, India would also like to emphasize that in circumstances where there is lack of information of a specific substance, or its use in specific eco-systems and for specific purposes, it becomes incumbent on the importing country to seek information from those WTO Members that have in fact put in place standards for those substances. This is a fundamental principle enshrined in Article 5.7 of the SPS Agreement which allows Members the right to deviate from the rigours of scientific assessment and provisionally adopt SPS measures on the basis of available pertinent information.

b. In April 2010, presence of Isoprothiolane (IPT), a fungicide, was detected by a private EU laboratory in Indian Basmati rice, where this chemical is not registered and has an LoD MRL at 0.01 mg/kg. The issue of test reports by this laboratory created negative publicity and as a result, Indian exporters suffered significant losses. Many exporters were asked to recall the product by the importers/retailers. Subsequently, the Public Health Agency in the United Kingdom issued a statement to the effect that the levels at which residues of IPT were detected did not pose any threat to consumer health and safety. A manufacturer of IPT in Japan submitted data to EU authorities, pursuant to

which the European Food Safety Authority (EFSA) undertook a study and recommended an import tolerance at 5 mg/kg in 2012.

This was therefore another instance when actual scientific risk assessment resulted in revision of the MRL at levels which are significantly different from the LoD. But the imposition of the LoD had already resulted in significant adverse trade impact over a period of two years.

c. In another instance, the US FDA issued an import alert in August 2011, due to the presence of Tricyclazole (TCA) in Indian Basmati rice. TCA is a fungicide registered in India for use on rice but not in the United States. Since the levels at which residues of TCA were detected did not pose any threat to consumers' health and safety, Indian exporters applied to US FDA for "Enforcement Discretion". However, US FDA declined the request and continued to reject consignments showing presence of residues in excess of 0.01 mg/kg which was used as the LoD.

Subsequently, on submission of data by the manufacturers of the TCA, the US Environment Protection Agency (EPA) set the MRL at 3 mg/kg in June 2014. However, this could not undo the significant trade disruption which had occurred for three years between 2011 and 2014.

d. Another recent example is where Japan fixed an MRL at a default limit of 0.001 ppm for Ethoxyquin in shrimps in 2012. The fixing of this default MRL for Ethoxyquin in shrimps by Japan resulted in significant trade loss to India during 2012-13, to the tune of around 37.2 million USD, which is irreparable. Japan subsequently revised to 0.2 ppm, after India raised issue in SPS committee as well as bilaterally. The adverse impact on trade over a period of two years however cannot be undone.

e. The EU authorities made a notification in July 2014 where they have proposed a default level of 0.01 ppm for pesticide Propargite for use in tea. Propargite is used in various countries and the residue levels imposed for use in tea are higher than the European Union proposed levels. For instance, the United States of America, Mexico and Viet Nam have prescribed a level at 10 ppm for use in tea. Other countries like Brazil; Cameroon; Chile; Colombia; Cuba; Denmark; Ecuador; Egypt; Hong Kong, China; Japan; Korea, Republic of; Malaysia; New Zealand; Gulf countries; Thailand and Sri Lanka have prescribed a residue levels at 5 ppm.

f. Another example is the MRL levels for 12 pesticides present in various food and feed products, which were determined at LoD of 0.01 ppm by the Food Standards Australia New Zealand (FSANZ). Australia issued SPS notifications in 2012 in respect of these levels. In respect of some substances, the Australian LoD exceeds the Codex standards; for example, the Codex prescribed levels for Chlorantraniliprole in Edible Offal is 2 mg/kg.

g. Recently, Chinese Taipei notified MRLs to the SPS Committee for several pesticides in respect of spices, at levels which are lower than limits for similar substances which have been set in the European Union. In some instances, these are also lower than the Codex standards. India's significant spice exports to Chinese Taipei are likely to be adversely impacted by such limits. For instance, the Codex level for Bifenthrin in dried chillies is 5 mg/kg; whereas the limit proposed by Chinese Taipei is 0.5 ppm.

3 LOD ISSUES: WAY FORWARD

3.1. India would therefore recommend that the systemic issues for imports arising from use of LoD needs further consideration within the SPS Committee. It needs to be considered whether certain guidelines can be recommended before importing countries resort to any default LoD levels, with a view to minimizing the adverse impact on trade.

3.2. India would like to initiate deliberation in this regard on the following aspects:

a. Whenever an importing country faces a situation of detection of residue levels of any substance which is not registered within its jurisdiction, it shall make an assessment based on:

   i. Relevant information from the exporting country relating to use of the substance;
   ii. Practices followed by other countries in relation to the substance;
   iii. Consideration of any international standards, where available.

   Each of the above elements are derived from the principles set forth in Article 5.7 of the SPS Agreement. To the extent practicable, importing countries shall base their default levels based on this assessment, and not resort to LoD levels which as a default are set at extremely low levels.

b. No LoD level will be determined without actual risk assessment. Pending such risk assessment, imports shall not be suspended or impeded.

c. In the event suspension or detention of products is unavoidable, pending risk assessment, this shall not be given any negative publicity, such as any claim that the detention has resulted from a failure to adhere to certain standards.

d. LoD should be used only in the rarest of rare circumstances when no information from the exporting country within a specified time frame is available to enable appropriate risk assessment.

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