

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 3 | Issue 2

2020

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The Legal Phytosanitary Perspective of the Indian Onion Crisis of 2019

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ABSTRACT

Agriculture has been, and perhaps will remain one of the key issues in the world trading forum, and even more so in the Indian context. To understand these sensitivities fully, including India's emphasis on self-sufficiency, it is important to keep in mind India's past trends of extreme shortage of food that the country faced in the mid 1900s. It was only the success of the 'Green Revolution' that helped India overcome its dependence on food aid. India once again stands in the horizon of shortage of one such precious staple: the onion. This article critically analysis the current crisis in terms of causes and effects of scarcity of this particular resource. The information used includes both laws of International caliber and Indian legislatures along with their inter-relation to stop the crisis. The study further examines how the Indian government corroborated these laws in order to effectively put an end to the onion crisis of 2019.

I. THE CRISIS EXPLAINED

Normally people shed tears while cutting onions, but now people are shedding tears even before cutting them open. The Minister of Consumer Affairs, Food and Public Distribution of India, Ram Vilas Paswan said that the onion prices in India have increased by over 400 per cent. As of December 2019, the average retail price of a kilogram of onions is approximately Rs. 100 a compared to Rs. 15 per kilogram in the month of March in the same year. These numbers are still on a steep rise as of December 2019. It has reached to such an all-time high that it has become a matter of national importance at the capital in New Delhi. Onions might just become a commodity that one can invest for a long term. What is the reason for such a spike in the prices?

The onion (*Allium cepa*) is a seasonal crop. Its harvesting is during the periods of March to June (rabi crop), October to December (kharif crop) and January to March (late-kharif crop). The supply till the month of October was due to the stock up of the rabi harvest. Post October the crisis is due to the delay in sowing of the kharif onions. This is amounted because of the

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late arrival of the monsoon during the year 2019-20. Paradoxically, prolonged and excess rains along with flooding in the major onions producing states of Maharashtra and Karnataka damaged the onion kharif crops which also contributed to the decline of the domestic crop.² The delay and excess in rainfall can all be seen as effects of climate change and weather aberrations. In fact, this is not the first time India is in such a crisis. This is the fifth time India is in such a crisis.

II. FOREIGN SCENARIO

In any country if the domestic market is compromised, the country looks outside for aid. Netherlands is the top exporter of onions in the world followed by China and Mexico. India ranks fourth but the current crisis says otherwise. Trans-border transportation also plays a huge role in determination of prices of imports. Therefore the nearest countries which could be potential imports for India are China, Turkey, Egypt and Afghanistan. Due to political reasons India does not side with China. This leaves us with the remaining three countries. In anticipation of the onion crisis multiple government agency and shipping companies in India have imported onions into the country at the rate of almost Rs. 27 per kilogram. In the last week of November, the Indian government through its owned Metals and Minerals Trading Corporation (MMTC) has signed for the importation of 11,000 tonnes of onions from Turkey. Since this did not control the crisis, MMTC imported an additional 12,500 tonnes which will arrive only mid-January 2020.³ The main question here is how all of a sudden so many imports were allowed into India?

III. PHYTOSANITARY MEASURE

A phytosanitary measure stems from the Agreement on the Application of Sanitary and Phytosanitary Measures (hereinafter the “SPS agreement”)⁴. It is fundamental to know the nuances of this World Trade Organization (hereinafter the “WTO”) agreement before getting to the intricacies of what a phytosanitary measure is. The SPS agreement entered into force with the establishment of the WTO on 1 January 1995. It is mainly concerned with the application of food safety and animal and plant health regulations. Since it is related to plants as well, it is closely linked with the WTO Agreement on Agriculture. The SPS agreement *prima facie* is an agreement based on article XX (b) of the General Agreement on Tariffs and Trade,

² Parliament of India, Lok Sabha, Synopsis of Debates, (5 December 2019), 9.

³ IANS, 11,100 tonnes of onions to reach India from Turkey, The Economic Times, (December 19, 2019), <<https://economictimes.indiatimes.com/news/economy/foreign-trade/11000-tonnes-of-onions-to-reach-india-from-turkey/articleshow/72321392.cms?from=mdr>,> accessed on 20 December 2019.

⁴ World Trade Organization, Agreement on the Application of Sanitary and Phytosanitary Measures, [1995], 1867 UNTS 410.

1994 (hereinafter the “GATT 1994”)⁵. Any member state cannot erect any measure in such a manner that it would be arbitrarily or unjustifiably discriminatory in nature between other member states. This is the basic principle of non-discrimination in the World Trading Forum. Yet article XX allows certain instances where countries can bypass this principle.

Clause (b) of article XX allows a member state in exceptional cases to erect such measure ‘*necessary to protect human, animal or plant life or health*’. The relationship from this clause and the SPS agreement can be interpreted using the General Rule of Interpretation in article 31 (2) of the Vienna Convention on the Law of Treaties⁶. Therefore it is evident from the perambulatory clauses and annexes that the purpose of the SPS agreement is enshrined under article XX (b) of GATT, 1994.

Under the SPS agreement all countries should maintain measures to ensure that food is safe for consumers, and to prevent the spread of pests or diseases among animals and plants. These sanitary (human and animal health) and phytosanitary (plant health) measures can take many forms, such as requiring products to come from a disease-free area, inspection of products, setting of maximum allowable level of pesticide residue or permitted use of only certain additives in food.⁷ These sanitary and phytosanitary measures apply to domestically produced food or local animal and plants, as well as products coming from other countries.

Measures in a similar fashion have been imposed in India over the past few years as well. With respect to onions, the phytosanitary measure for the same is mentioned in Plant Quarantine (Regulation of Import into India) Order, 2003⁸ (hereinafter the “Order”). The Order regulates import and prohibition of import of plants and plant products into India. Schedule VI of the Order lists out plants/plant materials permitted to be imported with additional declarations and special conditions. With regards to onions, which belong to the *Allium* species, onions bulbs coming from any country has special conditions that have to be followed for importing these bulbs into India. Section 10 of the Order mandatory requires that an original phytosanitary certificate is to be issued by the authorised officer at the country of origin. According to section 2 (xix) a phytosanitary certificate is a certificate issued in the model format prescribed under the International Plant Protection Convention of the Food & Agricultural Organization and issued by an authorized officer at the country of origin of consignment or re-export. It incorporates all the details of the exporting species, the disinfection treatment against the

⁵ General Agreement on Tariffs and Trade, [1994], 55 UNTS 194.

⁶ United Nations, Vienna Convention on the Law of Treaties, [1980], 1155 UNTS 331.

⁷ WTO in the New Millennium, (Arun Goyal, 4th edn, 2000), 221.

⁸ Ministry of Agriculture and Farmers Welfare, Plant quarantine (Regulation of Import into India) Order, 2003, S.O. 1322 (E).

species and authorization for the same. The additional declaration required to be incorporated other than the phytosanitary certificate is that the bulbs for consumption must be free from the following:

- (a) Smut (*Urocystis cepulae*)
- (b) Dry rot (*Embellisia allii*)
- (c) Stem and bulbs nematode (*Ditylenchus dipsaci*)
- (d) Onion maggot (*Hylemia antiqua*)

Smut and Dry Rot are fungal diseases. Stem and bulb nematode are basically roundworms that infect the stem and bulbs of onion. Onion maggots are tiny insects that infect the bulb. In Order to screen onion bulbs from such infestations, it is the responsibility of the authorised institution to treat the onions in the following manner:

“Fumigation with Methyl bromide at 16 g/m³ for 12 hrs. at 21 C and above or equivalent or any other treatment approved by the Plant Protection Adviser to the Government of India and the treatment should be endorsed on Phytosanitary Certificate issued at the Country of Origin/re-export. ”

Fumigation is essentially a method to eliminate pests wherein the subject is completely in a closed area filled with gaseous pesticides so as to suffocate and poison the pests out of the subject. In this case the above mentioned pests to onions will be fumigated with the gas methyl bromide for a time period of 12 hours. Methyl bromide is used as the gaseous element in this process due to its high acute toxic nature. Methyl bromide is most often used as a gas fumigant against insects, termites, rodents, weeds, nematodes, and soil-borne diseases. It has often been used to fumigate agricultural commodities, grain elevators, mills, ships, clothes, furniture and greenhouses. Hence its application for the removal of pests from onions is vital. After the species is treated in accordance to the phytosanitary requirements, an Import Permit is given to the exporter authorizing importation of the same. Therefore this has been the phytosanitary measure in place for the import of onions into India.

IV. RELAXATION OF MEASURE

In lieu of the onion crisis, the department of Agriculture, Cooperation & Farmers Welfare under the guidance of the Ministry of Agriculture and Farmers Welfare rolled notified a previous Office Memorandum they have used in the past to tackle the same problem. This is the Office Memorandum No. 8-131/2016-PP.II (hereinafter the “OM”) with subject ‘*Relaxation of*

fumigation regulations for import of agricultural commodities' dated 1st July 2019.⁹ Section 14 of the Order allows relaxation conditions of Import Permit and Phytosanitary Certificate in certain cases.

A close examination of section 14 requires that the relaxation must be done in light of public interest and must be a one time exception. Public interest means general welfare of public that warrants protection. In this particular instance a 400 per cent increase in the price of onions has left not only farmers but households also in a dilemma. Many interviews and articles have shown how Indians are suffering as onions are a basic ingredient in everyday Indian cuisine.¹⁰ Therefore, this act will come within the purview of public interest. The second condition is that it is a one time exception. The OM clearly mentions the limitation period for the same is only extended till 31st December, 2019 and hence satisfies section 14.

The OM lays down few conditions on the relaxation of fumigation regulations. Firstly, the date of the Bill of Lading must be on or before 31st December 2019. This means that the bulb onions that are to be exported from the exporter country must come within the charge of the carrier or shipper. This carrier or shipper will further bring the goods into India. The date as to when the goods enter India is irrelevant. Hence a shipment was scheduled to arrive by Mid-January 2020, thereby not violating the MO. Secondly, bulb onions will be allowed into the mainland without Methyl Bromide fumigation from those countries which certify the discontinuance of this same chemical for Phytosanitary measure. The reason India has imported large metric tons of onions from Turkey is because Turkey has fully phased out Methyl Bromide which abides to the condition in the OM.¹¹ This was part of Turkey's obligation under the Montreal Protocol.¹² Since Egypt is also moving towards the same status as the country is trying to substitute it with Phosphine. Therefore, the next largest importer of onions into India during the crisis is Egypt. It is majorly due to this clause that enables onion bulbs in such large quantities to be imported into India.

Thirdly, according to section 14 (2) the consignment shall be released into India only after charging the import permit fees and fees for plant quarantine inspection. The section stipulates that the plant quarantine inspection fee is to be five times that of the normal rates. The rationale behind this is that India being a country who itself exports a lot of onions. Now by allowing

⁹ Ministry of Agriculture and Farmers' Welfare, Office Memorandum No. 8-131/2016-PP.II.

¹⁰ Jeffrey Gettleman et al, India Isn't Letting a Single Onion Leave the Country, The New York Times, (Oct 1 2019), <<https://www.nytimes.com/2019/10/01/world/asia/india-modi-onion-prices.html>>, accessed on 27 December 2019.

¹¹ Phasing out Methyl Bromide in Developing Countries: A success story and its challenges, United Nations Environment Programme, (2014), 14.

¹² United Nations, Montreal Protocol on Substances that Deplete the Ozone Layer, [1987], 9522 UNTS 3.

another country to import, utmost profit maximization occurs for the exporting country. Even by incurring such a high rate in the fees, the exporting country is still making a huge profit. Fourthly, the normal conditions as mentioned in the Office Memorandum No. 8-65/2012-PP.II dated 30th October, 2014 remains unchanged.

Lastly, non-compliance reported during the import of onion consignments will be dealt in accordance with the Order. Section 3 (16) of the Order in the event on non-compliance with the restrictions or conditions, the Plant Protection Advisor may accord quarantine clearance for the entry of the onion bulbs or order deportation or destruction of the consignment. This relaxation under the same conditions has previously taken effect a total of times in the past. Once in the year 2014, thrice in 2017 and once in the year 2018. Thus, in accordance to all of these conditions mentioned in the OM, India can import large quantities of onion bulbs to neutralize the onion crisis of 2019 and in the future.

V. CONCLUSION

The onion crisis of 2019 is in good hands of the Government of India. The quote “*People learn from their mistakes*” is exactly how India tackles its onion crisis. The same need of the hour has occurred at least six times in the past and by reading the weather patterns they might just in the future. The SPS agreement and the WTO have played an instrumental part in handling the crisis. By adopting a different level of protection and yet leading to Harmonization of International Standards, India has managed to compensate for the failure of its domestic market. Yet the dangers arising due to this relaxation might cost India in the near future. By removing the pesticide Methyl Bromide and substituting it with other alternatives, the quality of the onion bulbs cannot be assured the same. At the same time we have to applaud the Indian Government for passing such an ordinance for the relaxation of the Phytosanitary measure in such a timely manner. The SPS agreement is also vital for a developing country like India as the agreement recognizes the problems for developing countries. Thereafter it lays down that developing country members may have difficulty in complying with the SPS measures. This was the case for India as if it did comply with the standards then import of onions would be nearly impossible. Hence, keeping in my mind such special cases, the SPS agreement also provides assistance for the same. As in the current case where it was the Phytosanitary measure that saved 1.37 billion people of the Indian subcontinent.