



October 31, 2012

Docket Number USTR-2012-0028

U.S.-EU Regulatory Compatability

The Almond Board of California (ABC) is pleased to provide the following comments to USTR regarding regulatory compatability between the U.S. and the EU.

Established in 1950, ABC administers a grower-enacted Federal Marketing Order under United States Department of Agriculture (USDA) supervision, and operates through a committee structure similar to a non-profit industry association. ABC represents approximately 6,400 almond growers and 100 almond handlers (processors), most of whom operate small to medium size family farms and businesses, producing almonds throughout California's Central Valley. ABC's mission is to create a rewarding environment for the production, processing and marketing of California Almonds; funding is used to support research, promotion and quality/technical services.

ABC supports the goal of reducing excessive regulatory costs and unnecessary red tape, as identified by the High Level Working Group of the U.S. Government and European Commission. Promoting this goal will certainly encourage greater growth and economic well-being in both markets.

The 27 member states of the EU represent approximately one third of California's almond exports. The combined value of almond exports to the EU are listed in the table below¹:

Calendar Year	Shelled Almonds (HS 080211) Tariff: 3.5% (In Quota: 2%)	Inshell Almonds (HS 080212) Tariff: 5.6% (In Quota: 2%)	Prepared or Preserved Almonds (HS 200819) Tariff: 9-11.2%	Total Value
2011	\$933,133,669	\$19,529,869	\$8,661,660	\$961,325,198
2010	\$789,981,869	\$31,292,768	\$6,170,092	\$827,444,729
2009	\$646,298,628	\$47,428,469	\$7,718,908	\$701,446,005
2008	\$827,608,139	\$39,737,797	\$26,743,878	\$894,089,814
2007	\$873,982,873	\$25,762,991	\$41,483,240	\$941,229,104

¹ USITC Dataweb

The EU maintains a tariff rate quota (TRQ) for inshell and shelled almonds of 90,000 tons. The TRQ has not been expanded since 1987 despite the addition of new member states whose populations account for over 19% of the EU's current population². The quota has been filled by June every year for the last 5 years. Both California Almond exporters and importers in Europe have expressed the view that the existing TRQ creates an administrative burden. The existence of the TRQ also creates a trade distortion, as customers in Europe need to take into consideration differences in economic input costs of their production depending on whether or not almonds are entered before or after the quota is filled. The remaining out-of-quota tariff rates also present an unwarranted economic burden given the volume of almonds which are imported – the U.S. Department of Agriculture has estimated that the EU 27 represents about 8% of the global production of almonds³.

ABC also believes that transatlantic regulatory compatibility would be enhanced with greater consistency and transparency in the review and establishment of Maximum Residue Limits (MRLs). The EU's procedures for reviewing and setting MRLs for pesticides can lead to trade interruptions and distortions. Of the 161 compounds registered for use on almonds in the U.S., 43 compounds have a more restrictive MRL in the EU and 30 compounds have no established MRL. Many established MRLs are set at the limit of detection – which given advancements in detection methods essentially means “no limit.” Those 73 compounds represent 45% of the chemical tools available to almond growers for protecting their almond trees.

Better understanding of how and when to engage with the European Food Safety Authority (EFSA) is needed, as it is unclear at what point in the process that ag or chemical industries should provide vital information. The publication of reasoned opinions from EFSA marks the first point at which an EU proposed MRL is made publicly available. The EFSA reasoned opinion is then sent to the EU's standing committee for review and decision. At this point (after the MRL has been reviewed by the standing committee), the EU notifies the MRL to the WTO. Thus, by the time an EU MRL is notified to the WTO, the MRL recommended by EFSA has already been reviewed by the EU standing committee. U.S. industries seeking to comment on EU proposed MRLs do not have an opportunity to do so until after a decision has been made – when comments are no longer impactful.

The lack of transparency in the regulatory process also complicates matters in relation to retaining existing MRLs. For example, when a pesticide is removed from use in the EU market, the European Commission will typically revoke the existing MRLs associated with the pesticide due to a lack of use in the EU. Given the lack of use in the domestic market, the Commission may not have data with which to support an existing MRL for a pesticide that is being revoked. Even if the almond industry has access to this data and can provide it to the Commission, there is no formal mechanism for doing so. Furthermore, MRL revocations are notified to the WTO only after the opportunity to include data in the MRL evaluation has closed. As the European

² http://europa.eu/about-eu/countries/index_en.htm

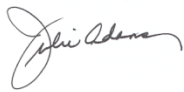
³ USDA/FAS Tree Nuts: World Market and Trade Report, October 2012

and U.S. regulatory systems have different requirements for pesticide registration and renewal, the EU may issue MRL revocations for pesticides that are still registered for use in the U.S. Where there is no specified MRL, the EU applies a default MRL of 0.01 ppm. This default MRL is often more restrictive than the established U.S. MRL.

Addressing this structural aspect would mitigate the lack of transparency that can seriously inhibit trade for California Almond growers and European importers.

The Almond Board of California thanks USTR for its engagement in Promoting U.S.-EU Regulatory Compatibility, and for the invitation to provide comments regarding how greater compatibility could be achieved. We look forward to providing additional input on this in the coming months. Please do not hesitate to contact me with any questions regarding this submission.

Sincerely,



Julie Adams

Vice President