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India

Food and Agricultural Import Regulations and Standards

India's Food Safety Standards Act - Status and Outlook

2007

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Report Highlights:

On August 23, 2006, the President of India signed into law the Food Safety Standards Act 2006, which seeks to bring most existing food-related legislation under one umbrella, thus entailing the establishment of a Food Safety and Standards Authority of India. Earlier, after much deliberation and after referring it to the Parliamentary Standing Committee on Agriculture, both the Houses of the Parliament had passed this legislation that was introduced by the Ministry of Food Processing Industries. As recommended by an expert panel set up by the government, the administrative control of this Authority will be with the Ministry of Health and Family Welfare. The implementation of the Act is reportedly in progress although it is unclear exactly when it would come in to force.

Includes PSD Changes: No
Includes Trade Matrix: No
Unscheduled Report
New Delhi [IN1]
[IN]

Current Status

On August 24, 2006, the Indian government notified, in the official gazette, the Food Safety and Standards Act, 2006 [Food Act], after the President signed it into law following its passage by both the Houses of the Parliament. The main objective of the legislation is to bring about a single statute relating to food in place of the existing multiplicity of food laws and to establish a Food Safety and Standards Authority [Food Authority] with a view to: a) lay down food Standards, b) effectively regulate the manufacture, import, storage, distribution and sale of food to ensure consumer safety and promote global trade, c) pool infrastructure, manpower, testing facilities, and d) rationalize and strengthen the existing enforcement mechanism. The full text of the legislation is available at: <http://mofpi.nic.in/fsnstds.pdf>.

Although more than seven months have passed since the enactment of the legislation, the setting up of the Food Authority has not taken place. However, following the recommendations by an expert panel headed by Dr. R.A. Mashelkar (ex- Director-General of Council of Scientific and Industrial Research) set up by the government, the administrative control of the Food Act was recently given to MHFW. The reason given was that the MFPI, which is a promotional Ministry in so far as food products are concerned, should not be the regulatory Ministry as well. Moreover, the existing food laboratories are under the control of MHW, with extensive experience in testing food samples under the Prevention of Food Adulteration Act. The process of setting up the Food Authority is reportedly in progress and is expected to be completed in six months. Thereafter, rules and regulations under the new Act will be formulated and notified. Until then the rules and regulations framed under the existing acts, which would be repealed, will continue to be in force and operate.

Historical Background

Currently there are a multiplicity of food laws in India, which are implemented through various Ministries and Departments such as the Ministry of Health, Department of Consumer Affairs, Ministry of Food Processing Industries, Department of Animal Husbandry, Department of Agriculture and Cooperation. The diffusion of responsibility among various Ministries/Departments inevitably leads to substantial problems in terms of implementation. The interests of various departments and ministries sometimes contradict each other and even work against each other on occasion. The following table shows India's various Food Laws, their implementing agencies, and a brief description.

India's Multiplicity of Food Laws

| | Food Law | Implementing Agency | Description |
|----|--|---|---|
| 1 | Prevention of Food Adulteration Act 1954 and Rules | Department of Health Ministry of Health and Family Welfare | http://mofpi.nic.in/ficci_data/Indian%20Food%20Laws/pfa.pdf |
| 2 | Standards of Weights and Measures Act and Packaged Commodity Rules | Department of Consumer Affairs Ministry of Consumer Affairs, Food, and Public Distribution | http://mofpi.nic.in/ficci_data/Indian%20Food%20Laws/swma.pdf |
| 3 | Fruit Products Order | Ministry of Food Processing Industries | http://mofpi.nic.in/ficci_data/Indian%20Food%20Laws/fpo.pdf |
| 4 | Milk and Milk Products Order | Department of Animal Husbandry Ministry of Agriculture | http://mofpi.nic.in/ficci_data/Indian%20Food%20Laws/mmpo.pdf |
| 5 | Meat Products Order | Ministry of Food Processing Industries | http://mofpi.nic.in/ficci_data/Indian%20Food%20Laws/mfpo.pdf |
| 6 | Agricultural Produce (Grading & Marketing) Act | Department of Agriculture and Cooperation Ministry of Agriculture | http://agmarknet.nic.in/apgm1937.htm |
| 7 | The Vegetable Oil Products (Control) Order | Department of Consumer Affairs Ministry of Consumer Affairs, Food, and Public Distribution | http://www.fcamin.nic.in/dfpd/EventDetails.asp?EventId=564&Section=Edible%20Oil&ParentID=0&Parent=1&check=0 |
| 8 | The Edible Oils Packaging (Regulation) Order | Department of Consumer Affairs Ministry of Consumer Affairs, Food, and Public Distribution | http://www.fcamin.nic.in/dfpd/EventDetails.asp?EventId=564&Section=Edible%20Oil&ParentID=0&Parent=1&check=0 |
| 9 | The Solvent Extracted Oil, De-oiled Meal, and Edible Flour (Control) Order | Department of Consumer Affairs Ministry of Consumer Affairs, Food, and Public Distribution | http://www.fcamin.nic.in/dfpd/EventDetails.asp?EventId=564&Section=Edible%20Oil&ParentID=0&Parent=1&check=0 |
| 10 | Export (Quality Control & Inspection) Act | Department of Commerce Ministry of Commerce & Industry | http://www.eicindia.org/eic/act-main.htm |

Following pressure from the industry and stakeholders, in 2002 the then Prime Minister Vajpayee constituted a Task Force under the Chairmanship of industrialist Nusli N. Wadia to review India's Food and Agro Industries Management Policy. The Task Force report is available at: www.nic.in/pmcouncils/reports/food/.

The Task Force made wide-ranging recommendations. One of the major recommendations was the consolidation of various food laws under one umbrella so that a single authority can

supervise the effective implementation of various food laws. It proposed setting up a Food Regulatory Authority (FRA) somewhat akin to U.S. Food and Drug Administration (FDA), which would formulate and update the food standards for all products - domestic and imported, and also would promote and monitor the enforcement of these standards. The Task Force also suggested that there is an urgent need to align Indian food standards to international standards, and that the government and industry should work together to ensure that India is well represented and fully heard in international forums like CODEX. The Task Force was of the view that the existing Central Committee on Food Standards (CCFS), which operates under the Ministry of Health, does not have an established objective system to evaluate new innovations or ingredients in the food industry based on the international scientific bodies, nor does it rely on the scientific opinion of food research labs and institutions in India. It also noted that CCFS is heavily bureaucratic with very little industry representation. The Task Force therefore recommended that the composition of the CCFS should be reviewed and rationalized in order to make it manageable and proactive. It also suggested that whatever food standards are adopted by international organizations such as CODEX should be considered on a special basis and approved with immediate effect. In the long run, the governing body of FRA should replace CCFS.

The MFPI took a keen interest and initiative in the implementation of the Task Force recommendations and drafted a new Food Bill in 2002. The aim was to integrate the existing laws so as to bring about a single statute relating to food and to provide for the production, manufacture, processing and sale of safe and suitable food. Additional objectives are to create an enabling environment for innovation and value addition, ensuring a high degree of objectivity and transparency, and to provide for the establishment of a Food Development Regulatory Authority of India.

The government constituted a group of Ministers to formalize the legislation. However, formulating a single legislation replacing the existing multiple legislations was rather difficult and slow, considering the number of stakeholders involved and the nature of India's food processing industry, which is dominated by small-scale units. The major opposition to the new legislation was from the MHFW, which oversees the Prevention of Food Adulteration Act and rules, the dominant food law in the country. After extensive discussions and consultations, the Food Safety Standards Bill 2005 was drafted and posted on the Ministry of Food Processing Industries website on January 15, 2005, for public comments (See IN5003), for which the Food Products Association of the United States had submitted its comments. The government notified the proposed legislation to the WTO on June 27, 2005 (G/SPS/IND/21).

The Bill was introduced in the *Lok Sabha* (lower House of the Parliament) on August 25, 2005, but was referred to the Parliamentary Standing Committee on Agriculture for further review and scrutiny, which presented its Report before the Parliament on February 21, 2006. (See <http://164.100.24.208/ls/committeeR/Agriculture/17threp.pdf>). The *Lok Sabha* passed the Bill after incorporating the Committee recommendations on July 26, 2006, and by the *Rajya Sabha* (upper House) on August 2, 2006. The President signed the Bill on August 23, 2006, and the final gazette notification issued on August 24, 2006. Once the new Food Safety Act comes into effect, Food Laws 1, 3, 4, 5, 7, 8, and 9 listed in the above tables and Orders issued under them would remain repealed.

Main Features of the New Act

The Central government, by notification, would establish the **Food Safety and Standards Authority of India**, headed by a Chairperson, with twenty-two members, of which seven members would be from the Ministries or Departments of the Central Government dealing with Agriculture, Commerce, Consumer Affairs, Food Processing, Health, Legislative Affairs,

and Small Scale Industries, who will be *ex officio* members. The other members would include two from the industry, two from consumer organizations, three eminent food technologists, five members to represent states, two from farmers' organizations, and one from a retailers' organization. The Administrative control of the Authority will be vested with a Chief Executive Officer, who would also be the Commissioner of Food Safety. (See Appendix I for a Flow Chart of the Food Safety and Standards Authority of India and its constituents).

The responsibility of the Food Authority would include among other things, to establish:

- Standards and guidelines for food and an appropriate system for enforcing various standards notified under the Act.
- Limits for use of additives, pesticide residues, contaminants, residues of veterinary drug, mycotoxins, irradiation of food, etc.
- The procedure and enforcement of quality control of imported food.
- Food labeling standards, including claims on health, nutrition, special dietary uses, etc.
- Procedures and guidelines for accreditation of laboratories, and the method of sampling and analysis for enforcement authorities
- Risk analysis, risk assessment, risk communication, and risk management procedures

While framing regulations or specifying standards under this Act, the Food Authority will take into account the prevalent practices and conditions in the country including agricultural practices and handling, storage, and transport conditions, and international standards and practices, where international standards or practices exist or are in the process of being developed. The food standards would be developed on the basis of risk analysis. The risk assessment would be based on available scientific evidence in an independent, objective, and transparent manner.

The Act discusses in detail the General Principles of Food Safety to be followed by implementing the Act, general provisions as to an article of food (food additives or processing aid, pesticide residues, genetically modified foods, packaging and labeling of food), provisions relating to the import of food, special responsibilities as to food safety, enforcement of the Act, analysis of food, and offences and penalties. Other provisions include:

- The Food Authority and state Food Safety Authorities will be responsible for the implementation of the Act.
- The Act requires licensing and registration of the food business, although small manufacturers, retailers, hawkers, etc. would be exempted from the licensing requirement.
- The Act would establish recall procedures if a food business operator considers or has reason to believe the food he has processed, manufactured, or distributed is not in compliance with the Act.
- The provisions of the Act will not apply to farmers, fishermen and products or crops produced by a farmer at farm level or fisherman in his operations.
- The penalty for various offences under this Act is monetary and not imprisonment as in the case of Prevention of Food Adulteration Act.

- The Act provides an opportunity to the offender to rectify his mistake.

Comment:

The Act is expected to give an impetus to the food-processing sector by providing a single window for all regulatory matters, which would result in increased domestic and foreign investment in the sector. It is considered to be more industry friendly, transparent, science-based, and trade facilitating than the food laws that it would repeal, such as the Prevention of Food Adulteration Act. It is expected to help create a broader market for Indian food products at home and abroad. However, the Food Authority's ability to enforce its regulations at the state level will be the key to its success as a food safety regulator.

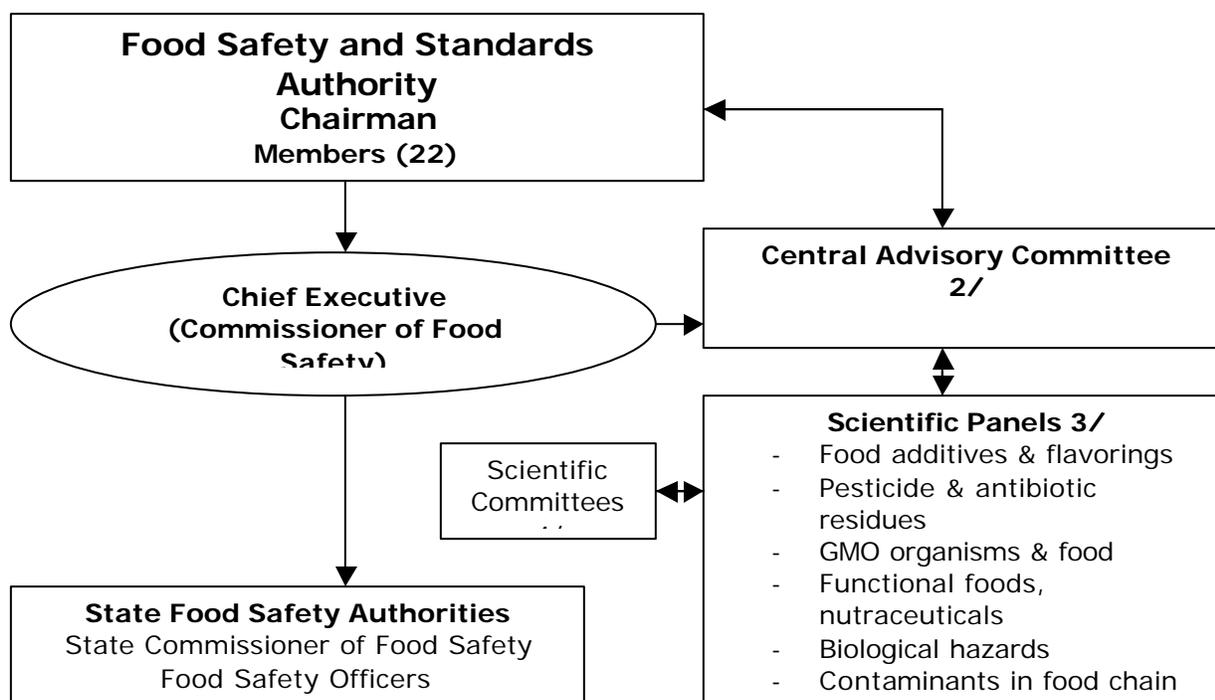
As the provisions of the Act will not apply to farmers, fishermen and products or crops produced by a farmer at farm level, any harmful input (such as pesticides in vegetables or antibiotics in animal feed) that could affect the safety standards of food products is not effectively covered. Therefore, the onus for ensuring that pesticide residue from these sources, if any, stays within acceptable levels lies with every manufacturer and/or vendor.

The Act does not require any specific standards for potable water (which is usually supplied by the local authorities). It is the responsibility of the person preparing or manufacturing food to ensure that he uses water of adequate quality even when tap water does not meet the required safety standards. This factor could substantially add to the cost of business as each vendor or manufacturer may be compelled to invest in water purification systems.

This Act does not repeal all food-related legislations, such as the Standards of Weights and Measures Act and Packaged Commodity Rules, as expected earlier.

Appendix I

**The Food Safety and Standards Authority of India
Structure & Committees**



1/ The members include seven GOI officials (the rank of Joint Secretaries or above in the Ministry/Departments of Agriculture, Commerce, Consumer Affairs, Food Processing, Health, Legislative Affairs, and Small Scale Industries (who will be *ex officio* members), representatives from the food industry (2), consumer organizations (2), eminent food technologists/scientists (3), state government (5), farmers' organization (2), and retailers' organization (1).

2/ The Chief Executive Officer will be the *ex officio* Chairman. Will consist of two members each to represent the interest of food industry, agriculture, consumers, and relevant research bodies/laboratories. All state level Commissioners of Food Safety, and the Chairperson of the Scientific Committees will be *ex officio* members. Will meet regularly at the invitation of the Chairperson, not less than three times a year.

3/ Will consist of independent scientific experts and would invite relevant industry and consumer representatives in its deliberations.

4/ Would constitute the Chairperson of the respective Scientific Panels and six independent scientific experts not belonging or affiliated to any of the Scientific Panels.