



Gujarat National Law University

14TH GNLU INTERNATIONAL MOOT
COURT COMPETITION, 2023

*Nagori – Measures concerning the importation of certain
agricultural products*

15 – 19 FEBRUARY, 2023

-I-

1. The People's Republic of Nagori ('Nagori'), is a populous and thriving democracy. More than 40% of landmass lying on the western side of Nagori comprises of the Sukha Desert which is sparsely populated while the eastern part of Nagori has a coastline as well as tracts of arable land. The eastern part supports 85% of Nagori's population.
2. In the 2017 national elections, the Nagoris voted the Pro Liberal Party ('PLP') into power, making its President Dr. Faqir Chelam the Prime Minister of Nagori. A doctor by profession, Chelam had centred his electoral campaign around pressing issues like education reforms, food safety, and improving the quality of public healthcare.
3. In the run up to the 2017 national elections, Nagori has seen an uptick in food borne diseases where entire local populations were severely affected by contaminated food, sometimes even resulting in deaths. Instances of food adulteration, lack of sanitary controls on fresh produce, fish, meat and poultry products had resulted in much public discontent against the government and had also heavily depleted the exchequer due to increased spending on healthcare. It had also been a key reason for an anti-incumbency vote swing in favour of PLP after 15 years.
4. The Kingdom of Jumbree ('Jumbree') is a tropical country with more than 1,600 kms of coastline and multiple glacial rivers which flow down from the Jumba Mountains situated in the north. The rivers carry with them rich alluvial soil and create large arable tracts of river plains. During the monsoons the river plains are prone to floods. However, in recent

years due to concerted efforts and environmental planning, the risk of flooding has been considerably reduced.

5. Under the peaceful reign of its benevolent ruler His Highness Raja Rajkumar, who is widely revered among his people, Jumbree has seen 29 years of economic stability despite remaining a largely agrarian economy. Although highly literate, agriculture, fishing and animal husbandry is the mainstay of the people of Jumbree.
6. Jumbree is a major exporter of food grains, poultry and marine products – and mostly export these products without further processing for lack of mechanization. This is also Jumbree’s main source for earning foreign exchange.
7. Both Nagori and Jumbree are founding members of the World Trade Organization (‘WTO’).

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8. In 2018, Jumbree celebrated the silver jubilee of Raja’s accession to the throne. To mark the nationwide celebrations a mega project titled ‘Project Asalsukh’ was launched. The project is aimed at boosting the average income of the citizens of Jumbree.
9. As a part of Project Asalsukh, the Ministry of Animal Husbandry, Dairying and Fisheries launched many programmes to boost the dairy sector, meat and poultry production, and commercial fishing. Most of these programs were aimed at modernizing the infrastructure

and equipment used in animal husbandry, poultry farming and marine fishing – which were until then, largely traditional.

10. The success of Project Asalsukh led to an oversupply of poultry and marine fishes in the domestic market. To control the falling prices due to oversupply and to harness its full export potential, Jumbree has been exploring export opportunities. To this end the concerned authorities are looking at both traditional export hubs as well as forging new relationships in previously unexplored markets.
11. Nagori is one of the largest trade partners of Jumbree. The trade between these two countries has been on Most-Favoured Nation (MFN) basis under the WTO Agreement.

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12. Back in 2015, Nagori had fully suspended the imports of poultry and poultry products from Jumbree due to various sanitary reasons [Annex - A]. In 2017 the PLP Government undertook an economic feasibility analysis for implementing corrective measures that would cure the deficiencies which led to the import ban by Nagori. After a series of stakeholder consultations Jumbree rectified the deficiencies highlighted by the import ban. Further, an effort was made to streamline the domestic poultry regulations in line with international best practices.
13. Thereafter, in mid-2018, Jumbree in addition to requesting for the resumption of trade in poultry products on an MFN basis, additionally requested the grant of equivalence for its poultry regulation [Annex - B]. The granting of equivalence would remove most of the

trade barriers permitting Jumbree to fully realise its export potential and provide a cost advantage vis-à-vis poultry exports from other countries.

14. Pursuant to Jumbree’s request, the competent authority in Nagori analysed Jumbree’s poultry regulations and conducted an in-country audit to evaluate the implementation these regulations. The risk assessment based on the results from the audit and other relevant scientific evidence recommended the granting of equivalence, subject to the implementation of four guarantees. These recommendations were approved and formally adopted by Nagori’s designated authority. The decision along with the risk assessment was officially shared with Jumbree through appropriate channels [Annex - C].
15. The fourth guarantee required the implementation of a national testing plan for *green pox*¹ which entailed the testing of this disease at various stages of poultry production. This guarantee was determined by Jumbree’s Department of Agriculture as an excessive measure to achieve Nagori’s appropriate level of protection. Moreover, as officials in Jumbree had learnt, Nagori itself did not have a domestic implementation of this guarantee. This was conveyed to Nagori in the same official communication. [Annex - D]
16. Nagori thereafter communicated its inability to grant equivalence without the implementation of the fourth guarantee. [Annex – E]

¹*Green pox* is a highly contagious and easily transmissible viral disease affecting poultry, whose mortality rate can reach 100%. It is a danger only to poultry, and not human health. The virus is highly resistant in the environment, meaning that it can survive on clothes, shoes, and other materials. It can also survive in various poultry products. There is currently no vaccine for this disease and the World Organisation for Animal Health (‘WOAH’) recommends the culling of poultry affected by *green pox* to contain the outbreaks.

17. According to the risk assessment, the poultry farming districts in Jumbree are prone to flooding. Floods, according to a minority scientific opinion which was cited in the risk assessment, generally increases the risk of outbreaks and spread of *green pox* in poultry from medium-low to high risk.²

18. Although *green pox* has been identified in Nagori, the outbreaks have been very limited without the need for implementation of any control mechanisms by the government. Certain studies indicate that any increased exposure to *green pox* has the potential to cause massive losses to Nagori's poultry sector.

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19. Nagori is also a big consumer market for fresh Ilish³ and Ilish preparations. The people of Nagori treat Ilish as a delicacy to be savoured on special occasions. Ilish also is considered pious, and an offering of a pair of Ilish to the Gods – a sacred duty during holy rituals like marriages, initiations, etc.

20. A large share of the domestic demand for Ilish is met by the fisher folk of Nagori, who use mostly traditional implements, which results in low volumes of catch.

21. To protect the local fisher folk whose livelihoods are dependent on Ilish fishing, Nagori has a tariff-rate quota ('TRQ') on the imports of fresh and raw Ilish, while only tariffs are imposed on Ilish preparations.

² The levels of risk in risk assessments are low, medium-low, medium-high and high.

³ Ilish is a sea fish (herring) that is present in most oceans.

EXCERPTS | NAGORI'S CUSTOMS TARIFF SCHEDULE⁴

Description of Products	Country/ MFN	Allocated Quota	Tariff
Fresh and Raw Ilish – [Chilled or Frozen, with heads off, gilled and gutted]	Kingdom of Jumbree	10,000 MT	0% (in-quota)
Fresh and Raw Ilish – [Chilled or Frozen, with heads off, gilled and gutted]	MFN	Not applicable	30%
Ilish Preparations – [Preparations made from Ilish with edible additives, or through further processing like smoking, steaming, etc.]	MFN	Not applicable	10%

22. Jumbree has been a traditional exporter of fresh Ilish to Nagori. Since the past three years Jumbree's fishing industry has been facing an issue of oversupply of Ilish leading to falling prices in the domestic market. This oversupply is on account of a push by the government for the adoption of mechanised fishing as part of Project Asalsukh.

23. Due to the TRQ, Jumbree have been unable to export much of its excess fresh Ilish to Nagori. Any export above the allocated quota attracts a high tariff of 30%, making the export costlier and uneconomical. To overcome this barrier Jumbree's industry started

⁴ Only those products fitting the descriptions will qualify for the respective tariff treatment.

adding salt and pepper to the fresh Ilish to make it qualify as an ‘Ilish preparation’ under Nagori’s tariff schedule. Nagori’s Customs and Border Force (‘CBF’) has never raised any concerns with regards to the classification and continues to treat the salted and peppered Ilish as ‘Ilish preparation’.

24. Nagori’s food safety law imposes a *chimera*⁵ [pronounced ‘kai-merah’] testing requirement on domestic and imported Ilish and Ilish preparations.
25. In 2019, Nagori and a few other WTO Members imposed enhanced checks on salt and pepper from Jumbree for the presence of *chimera* in excess levels. It is the same salt and pepper that is being used in salted and peppered Ilish from Jumbree.
26. Under Nagori’s Food Safety regime, fresh Ilish is checked for two serotypes of *chimera*, while Ilish preparations are tested for all serotypes of *chimera*. The cost of testing fresh Ilish is US\$ 100/ MT and the enhanced checks on Ilish preparations cost an additional US\$ 400/ MT. Each consignment usually weighs about 100 MT.

⁵ *Chimera* is a bacteria that can cause illness in humans. This is a zoonotic disease, which means it can be transmitted directly or indirectly between animals and humans. Additionally, it can also be transmitted from other food sources including fruits, vegetables, and condiments. Symptoms of *chimera* include fever, diarrhoea and abdominal cramps. In the event that it infects the bloodstream, it can be life-threatening as well.

EXCERPTS | DEFINITIONS: NAGORI'S FOOD SAFETY LAW

Product	Description
Fresh and Raw Ilish	Chilled or Frozen, with heads off, gilled and gutted
Ilish preparations	Preparations made from Ilish with edible additives, or through further processing like smoking, steaming, etc.

EXCERPTS | TESTING CRITERIA FOR CHIMERA: NAGORI'S FOOD SAFETY LAW

Category	Testing Criteria	Sample size
Fresh and Raw Ilish	<i>Chimera</i> : two serotypes	15% of the consignment
Ilish preparations	<i>Chimera</i> : all serotypes	35% of the consignment

27. The *chimera* testing requirement is based on a risk assessment prepared by Nagori's Food Safety Authority ('FSA') which is the central body administering Nagori's Food Safety Laws. According to this risk assessment, Ilish has a high risk of containing *chimera*. The risk

of infection in humans from consuming Ilish is reduced if the product is cooked before consumption. The risk assessment also notes that the risk is higher for Ilish Preparations as they are generally consumed undercooked, or directly consumed without cooking. The testing criteria and the sample size in the food safety law are as recommended by the risk assessment. Nagori's Appropriate Level of Protection (ALOP) for *chimera* in Ilish is medium-high.⁶

28. The salted and peppered Ilish being a Ilish preparation, Nagori's food safety law requires enhanced testing to be conducted on each consignment. Compared to the testing on fresh Ilish, the enhanced testing is much costlier (per consignment) and therefore affect the returns per consignment making it uneconomical for the exporters from Jumbree.
29. Jumbree on multiple occasions has raised Nagori's food safety laws with regards to Ilish as a specific trade concern at the SPS Committee of the WTO. Jumbree views this measure as a measure without a scientific basis and trade-restrictive. According to Jumbree, salted and peppered Ilish should be treated similar to fresh Ilish, as both have to be cooked before consumption.
30. Nagori has also recently has come up with a requirement that all Fresh Ilish sold in the domestic retail market has to compulsorily bear the label –

⁶ The levels of risk in risk assessments are low, medium-low, medium-high and high.

!!ATTENTION: HEALTH HAZARD!!
MAY CONTAIN DISEASE CAUSING CHIMERA.
NOT TO BE CONSUMED RAW.

[Font: Tahoma | Font Size: 16 + and Bold | Colour: Red | Case: All Caps]

31. It is a well-known fact that Nagori's domestic catch of fresh Ilish is sold in its flourishing wet markets without any packaging. This comprises more than 50% of Ilish sales in Nagori. Jumbree is concerned that even though the labelling requirement is same for both domestically caught as well as imported fresh Ilish, there is no effective enforcement of the same domestically.

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32. To resolve the pressing market access issues, Jumbree requested consultations with the Nagori. After 60 days of unsuccessful consultations, Jumbree submitted a request for the establishment of a panel to the Dispute Settlement Body under Articles 4.7 & 6 of the DSU, and Article 11.1 of the SPS Agreement. In its request for the establishment of a panel Jumbree requested for the following findings:

POULTRY

- i. The denial of equivalence for the refusal to implement the fourth guarantee is a ‘measure’ within the scope of the Dispute Settlement Understanding, and a ‘SPS measure’ as understood under the SPS Agreement.
- ii. The denial of equivalence for the refusal to implement the fourth guarantee is discriminatory as it ‘arbitrarily or unjustifiably discriminates between Members where identical or similar conditions prevail’.

ILISH⁷

- iii. The enhanced testing requirements are not ‘based on’ a risk assessment as understood under the SPS agreement.
- iv. The enhanced testing requirements are more trade-restrictive than required to achieve the appropriate level of sanitary protection, taking into account technical and economic feasibility.
- v. The enhanced testing requirements are not based on scientific principles; are in excess to what is required to protect human, animal or plant life or health; and are being maintained without sufficient scientific evidence.

⁷ The participants should consider the additional testing requirement and the labelling requirement as ‘measures’ within the scope of the Dispute Settlement Understanding, and as ‘SPS measures’ under the SPS Agreement.

- vi. There is a *de facto* discrimination in applying the cautionary labelling requirement as domestic Ilish is regularly sold without the cautionary label in Nagori's local wet markets.

NOTE FROM THE AUTHORS

- a. *Participants are expected to adhere to the issues identified in this request for establishment of Panel. The authors do not expect any arguments to be taken under Article 3 of the SPS Agreement, the GATT or the TBT Agreement.*
- b. *Further, no additional scientific evidence/ facts which are alien to the moot proposition may be adduced in the oral/ written arguments*

ANNEX – A

Extraordinary Gazette of Nagori

Part IV, Section I

Government of Nagori

Ministry of Commerce

Notification No. 3867/2015

Date: 12/04/2015

Suspension of Imports of Poultry and Poultry Products from Kingdom of Jumbree

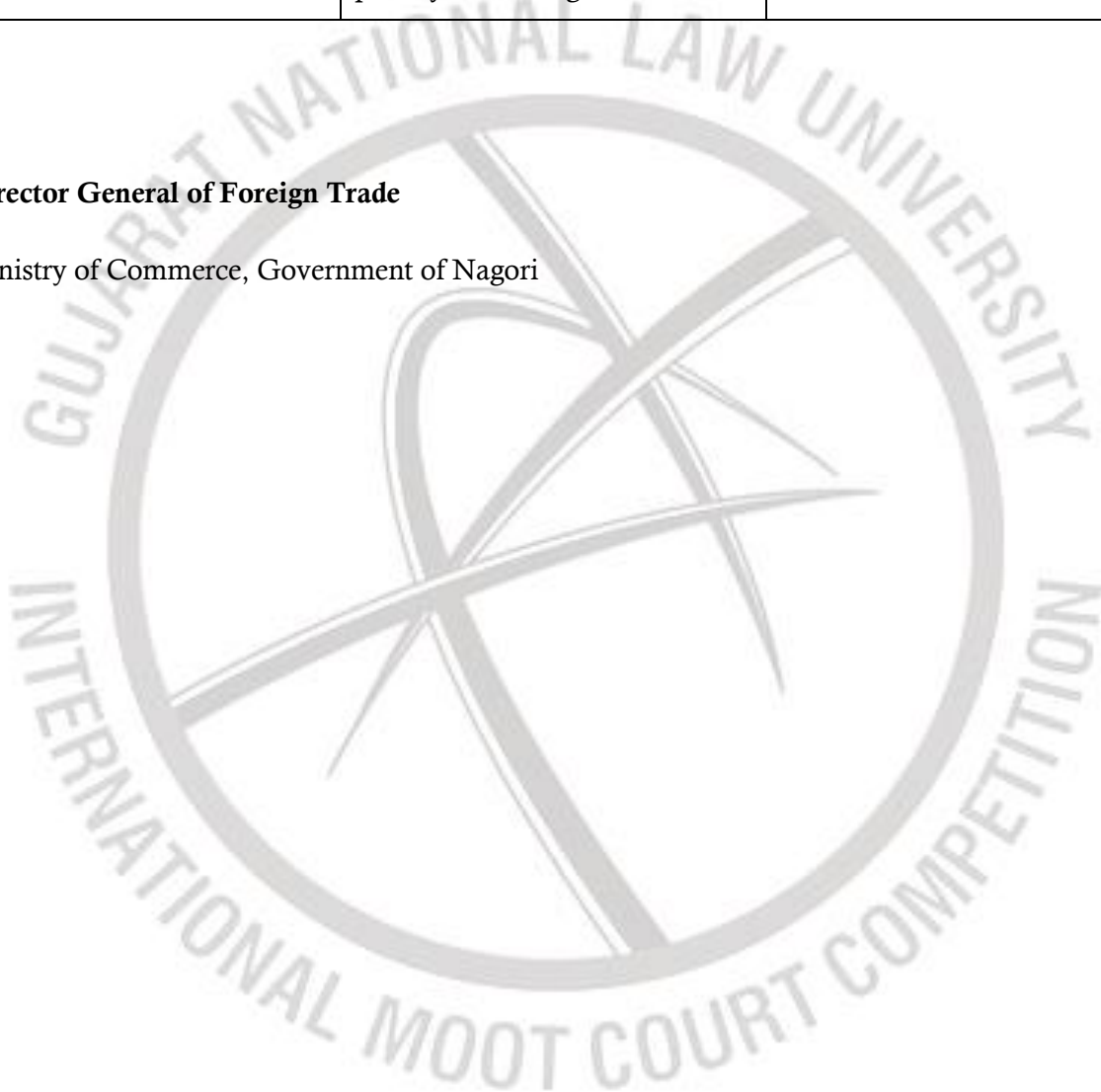
The data from sanitary and phytosanitary checks at the Border Check Posts and from the Food Safety Authority indicate the presence of certain microbiological contamination beyond accepted levels in poultry and poultry products from Kingdom of Jumbree. The competent authority of Kingdom of Jumbree was informed of the microbiological contamination on multiple occasions, but the data indicates continued non-compliant imports. Due to the risks to animal health and non-compliance of relevant regulations, under Section 10 of the Trade Act, the entry into Nagori is suspended for the following commodities:

HS Code	Product Description	Origin
02.07	Meat and edible offal, of the poultry, fresh, chilled or frozen	Kingdom of Jumbree
16.01	Sausages and similar products, of meat, meat offal or blood;	Kingdom of Jumbree

	food preparations based on these products of poultry of heading 02.07	
16.02	Other prepared or preserved meat, meat offal or blood of poultry of heading 02.07	Kingdom of Jumbree

Director General of Foreign Trade

Ministry of Commerce, Government of Nagori



ANNEX – B

SPS OM No. 12/2018

August 7, 2018

Dear Colleague,

Request for Resumption of Trade in Poultry Products and Recognition of Equivalence of Kingdom of Jumbree's Poultry Regulations

The Kingdom of Jumbree is a major producer of poultry and poultry products. We have historically exported these products to the People's Republic of Nagori. In 2015 our poultry exports to Nagori ceased due to an import ban that was imposed on account of quality issues. We have taken steps to rectify the sanitary deficiencies in our domestic regulations which led to these perceived quality issues. Therefore, you are requested to revoke the import ban and resume trade of poultry products on a Most-Favoured Nation basis, at the earliest.

We have additionally revamped our regulations in line with global best practices in order to provide the best quality exports to your market. Our poultry regulations now match your appropriate level of protection and are eligible for a recognition of equivalence under Article 4 of the Agreement on the Application of Sanitary and Phytosanitary Measures ('SPS Agreement'). We therefore would also like to request for the grant of equivalence of our poultry regulations under the SPS Agreement.

We look forward to receiving a positive response.

Kind regards

Antony D'Souza

Equivalence Lead, International Trade Team

Department of Animal Husbandry

Government of Jumbree

ANNEX – C

DIP-COM/SPS/22/2345

September 18, 2019

Dear Colleague,

Decision on your Request for the Recognition of Equivalence of Poultry Regulations

We have the pleasure to inform you that we have completed the evaluation of your poultry regulations and the onsite audit of the implementation of the regulations. The risk assessment we prepared on the basis of the evaluation has been formally adopted by the competent authority. The competent authority has recommended the provision of four guarantees for the grant of equivalence. We look forward to hearing from you on the implementation of these guarantees.

Guarantees requested for the grant of equivalence:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]

4. **A nation-wide green pox control plan**

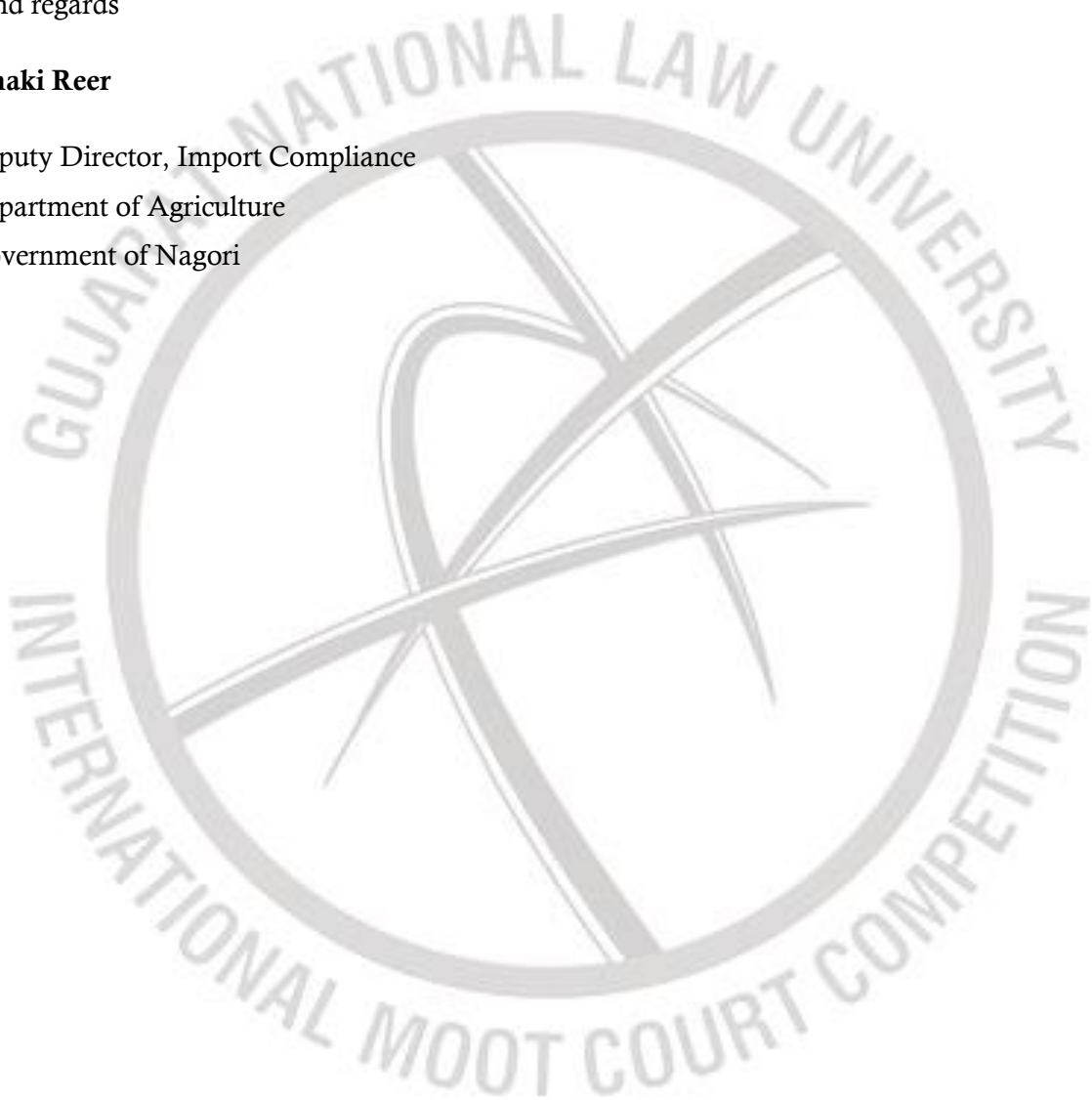
This plan should test for the presence of *green pox* in live flocks of poultry and again before packing the fresh poultry. If the fresh poultry is undergoing further preparations, then another round of testing of *green pox* is required on the final product. A total of two rounds of testing is required for fresh poultry and three rounds for poultry preparation. All six genotypes of *green pox* should be tested at all stages of testing.

Additionally, the competent authority has expressed its satisfaction of the rectifications to your sanitary measures which led to the import ban and steps have been initiated to allow imports of poultry products from Jumbree.

Kind regards

Janaki Reer

Deputy Director, Import Compliance
Department of Agriculture
Government of Nagori



ANNEX – D

SPS OM No. 12/2018

November 07, 2019

Dear Colleague,

Request for Recognition of Equivalence of Kingdom of Jumbree' Poultry Regulations

Thank you for your cooperation and for the evaluation of our poultry regulations. Jumbree will be implementing first three of the four guarantees required at your end.

However, we are apprehensive regarding your ask for the fourth guarantee (nation-wide *green pox* control plan) which entails the testing of *green-pox* at various stages of poultry production. The Department of Animal Husbandry has been consulted and we are of the opinion that this ask is excessive and much higher than what is required to achieve your appropriate level of protection.

Moreover, we understand that Nagori itself does not implement this control plan domestically. Accordingly, you are requested to reassess your position on the fourth guarantee and grant equivalence at your earliest convenience, on the basis of implementation of the first three guarantees

We look forward to receiving a positive response.

Kind regards

Antony D'Souza

Equivalence Lead, International Trade Team

Department of Animal Husbandry

Government of Jumbree

ANNEX – E

DIP-COM/SPS/54/2356

July 12, 2020

Dear Colleague,

Provision of Guarantees for the Recognition of Equivalence of Poultry Regulations

We appreciate that you have implemented three of the four guarantees recommended by our competent authority. The competent authority has however conveyed its inability to grant the equivalence without implementation of a nation-wide *green pox* control plan (fourth guarantee). Kindly inform us on the implementation of all the recommended guarantees to initiate the final steps in the recognition of equivalence.

Kind regards

Janaki Reer

Deputy Director, Import Compliance

Department of Agriculture

Government of Nagori