

# THE FEDERAL TAX OMBUDSMAN ISLAMABAD

## COMPLAINT NO.5152/ISB/CUST/2022

Dated: 23.11.2022\* HQs Islamabad

**Ch. Muhammad Ashraf,**  
Chairman,  
Pakistan Poultry Association,  
Khalid Plaza, 1<sup>st</sup> Floor, Near D-Chowk,  
Blue Area, Islamabad.

...Complainant

*V e r s u s*

**The Secretary,**  
Revenue Division,  
Islamabad.

...Respondent

Dealing Officer : Dr. Arslan Subuctageen, Advisor  
Authorized Representatives : Complainant in person  
Mr. Muzammil Aftab, Secretary General, PPA  
Mr. Muhammad Ali, Manager (Imports & Exports)  
Mian Jan M. Javaid, Ex-Member  
Mr. Amir Ali Khan  
Departmental Representatives : Mr. Jahanzeb Abbasi, 2<sup>nd</sup> Secretary Judicial, FBR  
Mr. Afzaal Ahmad, Addl. Director I&I-Customs,  
Karachi  
Syed Waseem-ul-Hassan, Commissioner, M/o  
National Food Security  
Dr. Rizwan Irshad, DD (Bio), M/o Climate Change  
Syed Ali Raza Zaidi, DD (Law), M/o Climate Change

## FINDINGS/RECOMMENDATIONS

The above-mentioned complaint was filed against the Directorate of Intelligence & Investigation-Customs, Karachi, in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000, for release of a stuck-up consignments of imported Soyabean at Port M. Bin Qasim, Karachi.

2. Precisely, the Complainant stated in his complaint dated 23.11.2022, that:

"Pakistan Poultry Association (PPA) in continuation to its obligation of meeting corporate and social responsibilities, finds it essential to bring into your kind notice about the current situation of un-ability of the Poultry Feed Mills to continue their

\* Date of registration in FTO Secretariat

production because of non-availability of soybean and soybean meal which is the most essential feed ingredient.

Price of presently available limited stock of soybean meal is sky rocketing, also all the feed mills of Pakistan will run out of soybean meal stock in one week from now resulting in to manufacturing of feed without soybean meal and that feed will not support growth of broilers and production of eggs in layer birds resulting in to shortage of broiler meat and eggs in the country within two weeks from now. Which eventually would result as a threat to national food security.

PPA is submitting prior intimation for the threat to protein food security as subsequent to feed mills closure the poultry farms providing Chicken, eggs and inputs for other poultry processed products would resultantly have to close their farms because of non-availability of feed. The consequences of shut down of feed mills can be summarized as follows:

- (a) Due to nonavailability of feed, poultry framers will forced to shut down their operations.
- (b) Dire shortage of chicken, at present it is comparatively the cheapest source of protein.
- (c) Severe shortage of processed chicken items and eggs.
- (d) There will be no buyer of day-old chicks because of non-availability of feed which will lead to culling of breeder flocks and shutting down of hatcheries.

Concluding keeping forgone in view, it is submitted that as there being no alternative to soybean and soybean meal for poultry feed manufacturing so, in case no immediate measures are taken to clear the stuck-up soybean ships and no other measures to procure soybean and soybean meal by Ministry of Food Security and Research, then consequence will be grave and our people will be deprived of cheap source of protein in form of chicken and eggs in maximum two weeks. It is therefore, respectfully submitted to kindly intervene and issue directions to Ministry of National Food Security and Research to look into the matter of extreme food emergency of chicken and eggs and ensure provisioning of soybean by getting cleared stuck-up soybean ships through Customs and other relevant departments of GOP."

The Complainant has prayed that directions be issued to the Deptt for release of the consignments.

3. A preliminary hearing was held on 30.11.2022, wherein, the ARs, Mr. Muzammil Aftab, Secretary General and Mr. Muhammad Ali, Senior Manager (Imports/Exports), PPA, appeared and reiterated the written arguments submitted in their complaint, provided copies of letters issued by the Directorate of Intelligence & Investigation-Customs, Karachi and the Deptt of Plant Protection, dated 20.10.2022 and 27.10.2022 respectively and stated that due to departure from established practice, unreasonable, unjust, biased, discriminatory and without jurisdiction intervention of the



Directorate of I&I Customs, Karachi, the Deptt of Plant Protection is not issuing the required NOCs for clearance of their legally imported 09 consignments of soyabean, stuck up at Port M. Bin Qasim, Karachi, which tantamount to maladministration and needs intervention of the FTO Office in the matter. The AR further stated that the Member of the Complainant Association and their importing Associates, applied for license under Section 15 for grant of license under Rule 11 as required under the Pakistan Biosafety Rules, 2005, notified vide SRO 336(I)/2005 dated 21.04.2005, which are still pending. According to the AR, the Directorate of I&I-Customs, Karachi, vide letter dated 20.10.2022, advised the Director General, DPP, Karachi, that “a credible information has been received that living modified or genetically modified soyabean and canola are being imported in Pakistan by mis-declaring as non-genetically modified soyabean and canola. A vessel, namely, MV YASA FORTUNE bearing IGM No.PQIB-0815-18102020 carrying LMO or GMO Soyabean has been berthed at Port Qasim, Karachi and release order from DPP is awaited. Attention is invited to Rule 11 of Pakistan Biosafety Rules, 2005, read with Pakistan Environment Act, 1997. According to the said Rules the importer of living modified product or genetically modified product is prohibited without license from Federal Environmental Agency because LMO or GMO poses severe threat to environment and public health without assessment of their risks and measures. The Directorate has an apprehension that subject consignment might be cleared without adequate verification of the requisite biosafety standards. You are, therefore, advised that release order may not be issued without carrying out proper testing in relation to the above mentioned aspects and under intimation to this Deptt.”

4. In response, the Department of Plant Production (DPP), Karachi, vide letter dated 27.10.2022, informed the Directorate of I&I-Customs that “Plant Quarantine Station, seaport office, DPP has pended the process of issuance of biosecurity clearance and release order of MV YASA FORTUNE bearing

IGM No.PQIB-0815-18102020 carrying soyabean from USA for consumption berthed at Port Qasim, Karachi and called for inspection on Pakistan Single Window (PSW) and is asking the representatives/agents of the importers daily as well to arrange sampling for required testing of soyabean cargo whereas, the importers have not arranged sampling and testing of their said soyabean cargo so far for the reason best known to them. Moreover, DPP only issues import permit for the import of non-GMO or non-LMO soyabean from USA and another country to Pakistan because importation of GMO or LMO regulated goods requires valid license from Pakistan Environmental Protection Agency under M/o Climate Change and thus is regulated separately under Rule 16(4)(5) of Pakistan Plant Quarantine Rules, 2019, read with Pakistan Plant Quarantine Act, 1976 and read with Rule 11 and other provisions of Pakistan Biosafety Rules, 2005, read with Pakistan Environmental Act, 1997. It is further added that Customs authorities are also empowered under Section 04 of Pakistan Plant Quarantine Act, 1976, to have same power to act as authorized officer in respect of goods, articles of plant origin or pests as they have under Section 16 of the Customs Act, 1969 (IV of 1969) being in respect of any article the importation of which is prohibited or restricted under the said Act, and all the provisions of that Act shall have effect accordingly. As GMO or LMO is restricted goods to import in Pakistan, so the Customs authorities if have any doubt about soyabean cargo may also take cognizance of this cargo and investigate the goods and accordingly convey their findings to DPP to decide biosecurity clearance and release order of the said soyabean consignment". As a result, thereof, clearance of 09 imported consignments of soyabean seed got stuck-up at Port M. Bin Qasim, Karachi, w.e.f. October, 2022, onwards. This situation of non-clearance of these consignments and their pilling up at Port M. Bin Qasim gradually started adversely impacting the poultry manufacturers and growers as the poultry feed which is made out from the residue of the soyabean seeds after



extraction of soyabean oil. This scenario started gaining a snowball effect on the prices of poultry within the Country. This led to Pakistan Poultry Association's serious apprehension of ultimate closure of poultry industry in Pakistan. In view of this emerging national crises of food insecurity, shortage of poultry products and their price escalation in the country, this office took cognizance of the matter under the relevant provisions of FTO Ordinance, 2000 and the Federal Ombudsmen Institutional Reforms Act (FOIRA), 2013.

5. Hearing notices for 08.12.2022, issued to Complainant and the Secretaries, Revenue Division, Ministry of National Food Security & Research and Ministry of Climate Change, under Sections 10(4), (5) and 23 of the FTO Ordinance, 2000, and Under Section 9(1) and (2) of the FOIRA, 2013. During hearing, Complainant, ARs and the DRs from the Directorate of I&I-Customs, Karachi, FBR, Ministry of Food Security & Research and Ministry of Climate Change, attended and submitted their written and verbal replies to the allegations in the subject complaint. The DR from Directorate of Intelligence & Investigation-Customs, Karachi, submitted reply, wherein, it was stated that on receipt of credible and specific information, it was immediately passed on to the concerned Deptt and neither any blocking in WeBOC system was done by Customs Intelligence, Karachi, nor any manual hold was applied and even the subsequent discharge of goods from the vessel was not interfered with. The confidential correspondence, in which information was passed onto the DPP, was made on 20.10.2022. The DPP, vide letter dated 27.10.2022, highlighted that it was authorized to issue release order in respect of only non-GMO products and informed that the importers had not arranged sampling and testing of the subject soyabean cargo therefore, it had not yet been ascertained whether the soyabean was GMO or non-GMO. Upon receipt of clarification from DPP on 27.10.2022, the information was passed on to the concerned Collector, Collectorate of Customs, Port Qasim, where the vessel had arrived on the first working day of the following week, vide letter dated 31.10.2022, for further necessary

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action as deemed appropriate. Hence, it was ensured that no delay whatsoever, may occur because of Directorate of I&I-Customs, Karachi. As informed by the DPP, vide letter 27.10.2022, Customs authorities are empowered under Section 04 of Pakistan Plant Quarantine Act, 1976, to have same power to act as authorized officer in respect of goods, articles of plant origin or pests as they have under Section 16 of the Customs Act, 1969. Further read with para 7 of Import Policy Order, 2022 and Rules 16(4)(5) of Pakistan Plant Quarantine Rules, 2019 and Rule 11 and other provisions of Pakistan Biosafety Rules, 2005, the Customs authorities are empowered to take cognizance in this regard. However, neither any blocking in WeBOC system was done by Customs Intelligence, Karachi, nor any manual hold was applied and even the ongoing discharge of goods from the Vesel was not interfered with. The issue is between the importers and the DPP and prayed that the complaint be dismissed.

2 6. DR from M/o Food Security stated that a cabinet committee on the said issue has been constituted by the Govt. and two meetings have already been held by the said Cabinet Committee and another one by the sub-committee constituted by the Committee. Today, i.e. 08.12.2022, the cabinet committee on the issue, has to submit their recommendations to resolve the issue within a day. The Complainant has never disclosed that the consignment is comprising of Genetically Modified Organism (GMO) soyabean at any stage. As per procedure, the consignments are required to be properly checked at clearance stage to ensure that the intended import is according to the import permit or otherwise. The releasing orders issued after testing of the consignment confirming that the import is according to import permit. As per procedure in vogue, an application is required to be submitted to the DPP, from the importer, for obtaining releasing orders, however, in the subject case, neither the importer has submitted any application, nor any sample has been collected/provided to test/examine the consignment regarding its GMO status or otherwise so far. For issuance of



release order, the test is mandatory. The DR further stated that in minutes of meeting with APHIS, US and DPP, M/o National Food Security & Research, Pakistan, dated 18.07.2019, the conditions are not relevant to GMO consignments of soyabean, as the GMO stock is not allowed to be imported in Pakistan without a valid license. Regarding the international treaty governing the movement of LMO's viz Cartagena Protocol on Biosafety to the convention on Biological Diversity United Nation, 2000, to whom Pakistan is signatory since 2001 and also ratified it in 2009, relevant paras of Artical 7 of the protocol read:

"1. Subject to Articles 5 and 6, the advance informed agreement procedure in Articles 8 to 10 and 12 shall apply prior to the first intentional transboundary movement of living modified organisms for intentional introduction into the environment of the party of import.

2. 'Intentional introduction, into the environment' in paragraph 1 above, does not refer to living modified organisms intended for direct use as food or feed, or for processing."

Article 7, para 1 pertains to soyabean seed while para 2 of Article 7 pertains to the soyabean meal. The release of the consignment without testing, can cause spreading of multiple diseases in the Country. The AR stated that the imported soyabean consignment is not imported for sowing purposes but only for crushing and for use as high protein meal for poultry. The soyabean is not for sowing and the exporting country export it after ensuring de-germination and fumigation, thus being de-germinated, it cannot be cultivated. The DR of DPP stated that on import of consignments of similar natures, according to procedure, the fumigation with methyl bromide is required and the consignment is stopped for 72 hours, however, this fumigation with methyl bromide cannot change its GMO status. The exporting country, after whiting and de-germinating the seeds, allow the export of soyabean seeds, as they do not allow germination of these seeds. The AR stated that the national biosafety committee has not issued any biosafety guidelines required under Rule 11(2) of Biosafety Rules, 2005. The DR from M/o Climate Change stated that the guidelines are available online and the Complainant can download it directly

from the Ministries website. The ARs stated that they had applied for license to import GMO soyabean on 09.11.2018, the minutes of meetings have also been issued by the Deptt, but still issuance of license is pending. The DR from M/o Climate Change stated that the application for obtaining license, is required to be submit before the Environment Protection Agency (EPA) and the Deptt has not received any application from the Complainant, however, if the Complainant can provide any copy of the application, it will be followed up. The DR from Ministry of Food Security & Research stated that the amendment in law would be required for one time clearance of these consignments without the license, otherwise license is mandatory. If the Govt. allows the import of GMO in future, the license on GMO can be issued accordingly. At this stage, issuance of license for GMO, is against the Cartagena Protocol. He also added that 344 million tons of soyabean is cultivated all over the world and only 15-20% of it is non-GMO. Countries like America and India are using non-GMO and lot of other countries are starting non-GMO use. The ARs stated that in presence of Rules 5(b), 20(2), 21 and 27, of the Pakistan Biosafety Rules, 2005, fresh amendment in law is not required. The Technical Advisory Committee under the National Biosafety Committee can examine and recommend to the Biosafety Committee to consider application of importer. The Complainant, Ch. Muhammad Ashraf, Chairman, PPA, stated that due to non-release of these consignments, the poultry sector will be destroyed, as the poultry sector is using the crushed soyabean residue as meal for the poultry birds. The alternates of soyabean are much expensive which would adversely impact the prices of eggs and poultry. The egg and poultry industry has engaged approximately more than 01 million Pakistani Nationals who are directly or indirectly earning their livelihood from this sector and due to serious adverse impact, they too would be affected leading to increase an unemployment in Pakistan.

7. During investigation, it was observed that according to Office Memorandum dated 11.11.2022, issued by the Ministry of National Food



Security & Research, the genetically modified or living modified organisms are regulated under guidelines of 'the Cartagena Protocol on Biosafety to the Convention on Biological Diversity'. It is an international treaty governing the movements of living modified organisms (LMOs) resulting from modern biotechnology from one country to another. Pakistan has signed it on 04.06.2001 and ratified it on 02.03.2009. Paragraph 2 of Article 7 of the Cartagena Protocol on Biosafety to the Convention of Biological Diversity reads as under:

"2. 'Intentional introduction into the environment' in paragraph 1 above, does not refer to living modified organisms intended for direct use as food or feed, or for processing."

8. The subject soyabean seeds consignment after crushing would be subsequently, used as food or feed for the poultry birds in shape of soyabean meal as against the condition of the Ministry for National Food Security & Research, wherein para 1 of Article 7 *ibid* has been referred for applicability.

9. It has also been observed that according to the provisions of para 4 of the 'Agreed Minutes of the Meeting on Interim Import Requirements for US Soyabeans and Pulses between the Animal and Plant Health Inspection Service (APHIS) US Department of Agriculture and the Department of Plant Protection (DPP) Ministry of National Food Security & Research, Pakistan, dated 18.07.2019, wherein the DPP will provide no less than 90 days notification before more permanent requirements are implemented to allow adequate time for industry participants to fully comply and consider providing an end date for the validity of these interim import requirements, the DPP, Karachi, has, however, overstepped the same by not providing 90 days notification to the US Deptt of APHIS regarding import of soyabeans seeds whether GMO or non-GMO, as per the agreed interim agreement.

10. It has also been observed that the Directorate of I&I-Customs, Karachi, after passing on the information, unnecessarily issued directions to

the DG DPP, not to issue release order etc., thereby imposing an indirect hold through DPP.

11. During investigation, Rule 20(2) and Rule 27 of the Pakistan Biosafety Rules, 2005, were especially focused upon. Rules 20(2) and Rule 27 of the *ibid* respectively reads as under:

“20(2). National Biosafety Committee on the recommendations of the Technical Advisory Committee may in special cases give approval of deliberate release.”

“27. The Federal Government may give any written direction which shall be binding on the National Biosafety Committee or the Technical Advisory Committee or the Institutional Biosafety Committees to comply with.”

### **FINDINGS:**

12. In view of *supra*, it is quite evident that 09 imported consignments of soyabean seeds, have got stuck-up at Port M. Bin Qasim, Karachi, due to sudden intervention of the Directorate of I&I-Customs, Karachi, on the apprehensions that the imported consignments may be of GMO nature and in such an eventuality, the importers are required to obtain a license under Rule 11 of the National Biosafety Rules, 2005, from the EPA, M/o Climate Change, while the DPP is empowered to issue release certificate to the imported soyabean seeds consignments even if these are GMO provided importer has a valid license. In the subject matter the DPP, Karachi, has been issuing import authorization to all such import consignments of soyabean seeds since 2015 and the importers accordingly opened LCs and affected the import of soyabean seeds for crushing and for use of its residue for making poultry meals. The DPP ignoring the agreed minutes between APHIS, USA and DPP, Pakistan and in negation of the Cartagena Protocol. Article 7, para 2, did not issue the required release order for these consignments, thus leading to an imminent issue of food insecurity and price hike of eggs and poultry products. This will also deprive the poor people of Pakistan from the cheapest source of protein due to non-availability of soyabean meal for the poultry industry of Pakistan. This situation needs to be immediately resolved *inter alia* to save the much precious foreign exchange paid by Pakistani importers to the tune of millions of US\$ as 110



million has already been remitted while the remainder US\$ 335 million is committed through established letters of credit (LCs), in addition to the cost of cargo, the delay is costing the importers around US\$ 40,000 per day vessel, which totals to amount US\$ 360,000 per day in vessel demurrage, to avoid poultry products shortage and to avoid an apparent immense escalation of eggs and poultry products prices which are used by the people of Pakistan as an economical but good quality protein source in their diet.

### **RECOMMENDATIONS:**

13. Secretary, Revenue Division/Chairman FBR, to communicate the following recommendations to the Govt. of Pakistan, Secretaries, Ministry of Climate Change and Ministry of National Food Security & Research for immediate action:

- (i) The Federal Govt. to give immediate written directions to the Secretary, M/o Climate Change under Rule 27 of the Biosafety Rules, 2005, to issue approval of deliberate release on one time basis as a special case under the provisions of Rules 20(2) of ibid on provision of assurance and undertakings from the importers/Complainant and relevant stakeholders;
- (ii) On issuance of one time deliberate release order from the M/o Climate Change, under Rule 20(2) of the Biosafety Rules, 2005, the DG DPP, Karachi, to issue release orders of the 09 stuck up consignments of soyabean seeds at Port M. Qasim, Karachi;
- (iii) Collector, Collectorate of Customs, Port M. Bin Qasim, Karachi, on receipt of Release Order from DPP, Karachi, immediately process the GDs of the stuck-up consignments of soyabean and issue out of charge orders on one time basis, securing the stuck up Revenue, as per law;
- (iv) The EPA and National Biosafety Committee to process the pending applications of the GMO soyabean importers for grant of license, as per law, under Rule 11 of National Biosafety Rules, 2005; and
- (v) Report compliance within 07 days.

**(Dr. Asif Mahmood Jah)**  
(Hilal-i-Imtiaz) (Sitara-i-Imtiaz)  
Federal Tax Ombudsman

Dated: 09.12.2022

*Approved for reporting*

