

ISSUES REVIEW

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**A Report for the
Cranberry Marketing
Committee**

Tariff Issues

European Union

On July 1, 2010, The European Commission suspended the 17.6% tariff applied to sweetened dried cranberries (HS 2008.99.49). SDCs can now enter the European Union duty-free. The suspension will last through December 31, 2014, when it will again be reviewed.

This tariff suspension is the result of efforts within the European Union and follows a similar suspension of the 16.8% cranberry concentrate tariff on January 1, 2010. Throughout the spring, cranberry industry officials cooperated with individuals within the European Union and the US Mission to the European Community in Brussels regarding the SDC tariff suspension. Although some initial objections were voiced in the EU during the evaluation of the application, those objections were overcome and the suspension advanced without incident.

The tariff suspension applies to all SDC product entering the EU and not just product from the US. However, the zero duty evens the playing field as other markets already had zero duties through free trade agreements with the EU.

In four years, the cranberry industry will need to again petition for an extension of these duty suspensions.

Tariff Efforts in Other Markets

At the request of the CMC, BCI investigated tariff reduction opportunities in other markets similar to those that exist in the European Union. Although tariffs are typically only reduced through trade agreement negotiations, the EU had a provision to allow tariff reductions for input products that were not produced domestically in the EU. The CMC wanted to know if similar paths existed in other markets.

BCI approached the US embassies in several cranberry export markets to determine if tariffs could be further reduced. Officials in Japan and China responded that no such tariff reduction option existed in those countries. Moreover, in several key export markets such as Hong Kong, Singapore, Mexico, Central America and Australia, due to either free trade agreements or simply low duties, no tariff was applied.

BCI was already aware of the annual Indian budget process, where Indian tariffs are set on an annual basis in March. For the past two years, at the request of the US cranberry industry, USDA has requested that India eliminate its cranberry tariffs through the budget process. To date, these efforts have not succeeded.

Through our research, BCI learned that Korea and Taiwan apparently have a process to unilaterally eliminate tariffs in their markets, although both are rarely used and recent efforts have not been successful.

Regarding Korea, the almond industry was successful in eliminating their Korean tariff 15 years ago. They used the Korean Food Industry Association

Tariff Reduction Efforts *(continued)*

to petition for the reduction and argued that almonds were inputs and not otherwise available. Similar subsequent requests from US walnuts and other commodity groups using a similar channel were not granted. BCI has approached the KFIA with the cranberry industry request and is awaiting their response. BCI is also speaking with officials from the US Embassy in Seoul on a potential effort.

The challenge a Korean effort will face is that Korea has already agreed to reduce cranberry tariffs through the US-Korea Free Trade Agreement, (KORUS) which has been signed but not implemented. In that agreement, Korea agreed to:

| Product | HS Code | Existing Korean Tariff | Korean Commitment in US-Korea FTA |
|---|--------------|------------------------|-----------------------------------|
| Fresh cranberries | 0810.40.0000 | 45% | 10-year phase out |
| Other (Frozen cranberries) | 0810.40.0000 | 30% | 7-year phase out |
| Jams, fruit jellies, and marmalade, Other (Cranberry puree) | 2007.99.9000 | 30% | 10-year phase out |
| Other (Dried cranberries) | 2008.99.9000 | 45% | 10-year phase out |
| Cranberry juice (Concentrate) | 2009.80.1090 | 50% | 5-year phase out |
| Other (Mixed concentrates) | 2009.90.9000 | 50% | 10-year phase out |
| Other (Juice drinks) | 2202.10.9000 | 8% | Immediate phase out |
| Other (Cranberry essence) | 3302.90.0000 | 8% | 3-year phase out |

Korean officials are likely to respond to an industry request for reduced cranberry tariffs by encouraging the passage of the KORUS FTA. In June, President Obama announced that advancing the KORUS FTA was an administration priority and should be completed by November 2010 when he travels to Seoul for the G-20 meeting.

BCI will continue to seek a response from KFIA and will work with the embassy and USTR as needed regarding KORUS in the hopes of seeing tariff reductions in Korea.

In Taiwan, the American Institute of Taiwan (AIT – our “embassy”) provided BCI a set of forms that could be filled out to petition the Taiwan Customs Department for tariff reductions. The forms require statements of what Taiwan products will benefit from the tariff reductions and must be submitted by a group or organization in Taiwan. The cranberry industry is determining who is best to submit the reduction application.

Finally, in February 2010, the CMC became aware of an opportunity to reduce tariffs in the Philippines as a Philippine tariff commission was seeking information regarding which tariffs to reduce. The CMC drafted a letter to the commission seeking the elimination of the 10% juice and SDC tariffs. The letter stressed the health and economic benefits of such a reduction and the fact there was no competitive domestic industry. The CMC is awaiting results of the tariff commission’s findings.

New Cranberry Tariff Lines (New Cranberry Tariff Lines Progress)

In April 2010, the US International Trade Commission (ITC) published a list of proposed changes to the US harmonized tariff schedule. Included in the list were proposed specific tariff lines for cranberry concentrate and sweetened dried cranberries. The proposed changes were the result of the cranberry industry’s work with the ITC through the World Customs Organization to establish specific tariff lines for these products.

In response to the request for comments, the CMC wrote to the ITC expressing the cranberry industry’s support for these changes in the 2012 tariff schedule used by the US. Having these tariff lines will assist with better understanding of export numbers and in future trade agreement negotiations.

International MRL Issues

MRL Priority Subcommittee Established

Just after the February CMC meeting, a MRL Subcommittee was formed to review the international MRL situation for crop protection products used on cranberries. This committee will provide guidance to BCI regarding markets and active ingredient international MRL priorities for the cranberry industry. The committee has growers, handlers, researchers, and other industry representatives participating. The committee has had four calls since February to further define roles and responsibilities. BCI will continue to cooperate with the committee to follow the directives provided for the establishment of international cranberry MRLs.

European Union (Update on Import Tolerance Applications)

BCI's efforts on MRLs in the European Union are focused on assessing the feasibility of pursuing and applying for import tolerances. Import tolerances are MRLs that are granted for use of pesticides approved in countries outside of the EU. This is the case with the industry's top three priorities: **acephate (Orthene)**, **carbaryl (Sevin)**, and **quinclorac (QuinStar)**, as these pesticides are not used on crops in Europe.

In December 2009 and again in May 2010, BCI traveled to Europe on behalf of the CMC and met with European officials regarding import tolerances for needed MRLs in the EU. The December meeting was with UK government's Chemicals Regulation Directorate (CRD), regarding how to compile, submit, and establish import tolerances in the EU through the UK. The June meeting in Brussels was with the European Commission and US Mission to the EU regarding how the EU reviews applications once they are submitted.

In the immediate term, BCI is working to conduct an assessment of the feasibility of applying for import tolerances for these compounds. As these pesticides have all been withdrawn from the European market, this creates additional challenges. Additionally, MRL application requirements differ between the US and the EU. The first import tolerance application that BCI will pursue on behalf of the industry will be for carbaryl. In order to anticipate any potential impediments to the import tolerance, BCI is currently discussing its application with British regulators. Once key pre-submission questions are answered, the industry BCI will move forward with finalizing and submitting the application on behalf of the industry. Once British regulators have completed their initial review, this will provide the industry with a better sense of how the rest of the application is likely to fare through the complex and lengthy European review process, which is expected to require 12 to 18 months from the time of submission until the actual MRL is established.

BCI is also in the process of evaluating the feasibility of applying for import tolerances for acephate and quinclorac. Due to toxicological and data sufficiency issues, it is anticipated that pursuing import tolerances for acephate and quinclorac will be more difficult than for carbaryl. BCI will work to determine the feasibility of these import tolerance efforts in the weeks ahead.

Australia

Through BCI's contacts with the Australian government, two new cranberry MRLs were proposed in Australia in April, **azoxystrobin (Abound)** and **propiconazole (Topaz)**. Importantly, Australia also agreed to review several of the industry's highest priorities for MRLs, including **acephate (Orthene)**, **carbaryl (Sevin)**, **chlorpyrifos (Lorsban)**, **methoxyfenozide (Intrepid)**, and **tebufenozide (Confirm)**.

The key to all of these reviews was that cranberry MRLs for these products had already been established at Codex. Given there were Codex MRLs, the Australian government agreed to conduct expedited reviews on the compounds with the goal of establishing additional MRLs.

Prior to the cranberry industry's efforts on these issues, no commodity group had determined how to establish additional MRLs in Australia, as the Australian import tolerance system is not clearly defined. By determining that a Codex MRL would help expedite the reviews of compounds in Australia, the cranberry industry stands to have several critical MRLs established in Australia in the coming year.

Taiwan

In May 2010, USDA requested from US commodity groups their Taiwan MRL priorities for the next two years. These priorities would be shared with Taiwan and hopefully form a work plan for additional MRLs. The CMC provided priorities in 2008 and had some success with results. Since January 1, 2009, Taiwan has established eight cranberry MRLs, including two from CMC's priority list. Two other priorities either have a provisional MRL in Taiwan (**acephate (Orthene)**), or is in the process of being established (**indoxacarb (Avant)**). One compound, **chlorantraniliprole (Altacor/Coragen)** has a cranberry MRL proposed prior to it being registered in the US, which is a first.

On May 24, the CMC responded to USDA's Taiwan priority request by seeking 12 additional cranberry MRLs in Taiwan as quickly as possible. Included in the list of 12 were **quinclorac (QuinStar)** and the two priorities not already granted from 2008. A full list of recently established cranberry MRLs in Taiwan and the 12 cranberry industry priorities are available from BCI.

This submission marked a window of opportunity for establishing new MRLs in Taiwan, and not all commodity groups made a submission. Having the industry's 12 priorities submitted will help to ensure trade is not restricted when exporting to this market. Taiwan is once again testing imported product for residues and major US commodities have been affected. Establishing additional MRLs in Taiwan is the best way to avoid potential disruptions.

Japan

The Office of the US Trade Representative (USTR) and USDA reengaged the Japanese Ministry of Health Labor and Welfare (MHLW) in May regarding Japan's actions when a residue violation occurs in the market. Despite last year's Memorandum of Understanding on the issue, Japan continues to punish entire industries when residue violations occur. USTR and USDA are seeking common ground with Japan regarding this issue.

One way of avoiding problems is to seek additional MRLs in Japan. Unlike Taiwan, from 2004-2006 Japan undertook a major overhaul of its MRL system and sought as many MRLs as possible. The CMC was actively engaged in this review and as a result, the list of needed MRLs in the market is significantly smaller than that of Taiwan. In a July 7, 2010 submission to USDA, **quinclorac (QuinStar)** was identified as the highest priority for cranberry MRLs in Japan. An additional six priorities were also included: **buprofezin (Applaud)**, **novaluron (Rimon)** **spinetoram (Delegate)** **spiromesifen (Oberon)**, **fluoxastrobin (name TBD)** and **chlorimuron-ethyl (Cloak)**.

On behalf of the US cranberry industry, BCI continues to play a leading role with the US government regarding Japanese MRLs and Japan's sanctions policies. BCI will remain engaged on these issues, along with monitoring any MRL changes that might occur in Japan that could affect cranberry industry exports to the market.

Canada

Since the beginning of the year, Health Canada has proposed to establish an MRL of 0.5 ppm for **fenbuconazole (Indar)** on cranberries. This is harmonized with the US and Codex MRLs of 0.5 ppm. On June 30, 2010, Canada published a list of proposed MRLs for products that had MRLs at or below 0.1 ppm. This list was part of Canada's efforts to move away from its 0.1 ppm general (default) tolerance. Within the list, Canada proposed cranberry MRLs for dichlobenil (**Casoron**) and **napropamide (Devrinol)** at 0.1 ppm, the same as the US MRL.

BCI was also successful in encouraging Bayer Crop Science to adjust its data application for the product **spiromesifen (Oberon)** from a strawberry petition to a "berry and small fruit" crop group petition, which would allow for the MRL to cover cranberries. This product is a pipeline product for the industry and is expected to be registered in the near future.

BCI continues to seek additional cranberry MRLs in Canada to avoid trade barriers. The 0.1 ppm default tolerance is expected to remain in place for the next several years.

Codex

At the April Codex Committee on Pesticide Residue (CCPR) in China, Codex agreed to advance new cranberry MRLs on **indoxacarb (Avaunt)** and re-establish the existing cranberry MRL for **methoxyfenozide (Intrepid)**. These mark the ninth and tenth MRLs established at Codex since July 2007. These MRLs were officially adopted in July 2010. Next year, Codex will be reviewing the new compounds **thiamethoxam (Actara)**, **clothianidin (Clutch)**, and **fluopyram (Luna)**, and re-reviewing the existing MRL for **chlorothalonil (Orbit)**. BCI will work to ensure cranberry MRLs are included for both products.

Unfortunately, the review of **fenbuconazole (Indar)**, was delayed a year due to general toxicological issues raised by the Australian delegation. This had nothing to do with the proposed cranberry MRL associated with the product, but as a result, no MRLs were established this year. The Codex technical committee (JMPR) will further review the product this fall and come back to next year's CCPR with a recommendation on the compound. Also discussed at this year's meeting was a pilot project that would allow the JMPR to recommend MRLs prior to national regulators establishing their own MRL. The purpose of this pilot project is to facilitate international harmonization of Codex MRLs, as the current Codex system requires that a national registration be in place prior to the JMPR conducting its review and recommending a Codex MRL. While national regulators will not be obligated to adopt the MRLs recommended under this pilot program, it could provide the basis for more extensive harmonization of US and foreign cranberry MRLs, as well as a means of minimizing the time lag between domestic cranberry MRLs and foreign cranberry MRLs being established.

BCI's Bill Bryant and Sven-Erik Nielsen are active participants in the US Codex delegation and do a significant amount of pre-meeting preparation to ensure proposed MRLs are advanced through the Codex system. As demonstrated throughout this update, Codex MRLs form the basis of many of CMC's MRL efforts in other markets.

Other Markets

BCI continues to monitor MRLs around the world on behalf of the US cranberry industry. As a result, the CMC frequently comments on proposed changes to MRLs that might hinder US cranberry exports. For example, Korea was considering adjusting the MRL deferral path it used when it did not have a national MRL outside of Codex MRLs. The CMC opposed this adjustment and the Codex MRLs cover many compounds. Likewise, in July Taiwan proposed lowering its **chlorothalonil (Bravo)** MRL from 2 ppm to 0.7 ppm. The US MRL is 5 ppm. The CMC provided comments to USDA and Taiwan opposing this reduction.

European Health Claims

Recent Developments on EU Health Claims

Beginning in at the February 2009 CMC meeting, BCI was asked to assist the CMC in understanding and evaluating the state of cranberry health claims in the EU. Similar to MRLs, the EU is seeking to consolidate all member state health claims into a unified EU list of health claims that applies throughout the community. However, the EU's effort to consolidate these claims has proven to be complex and difficult to navigate, with many industry groups in Europe expressing deep concerns over the handling of the transition to a single list of health claims. The US cranberry industry is interested in having the French health claim regarding urinary tract health approved throughout Europe.

In April 2009, the CMC's marketing director, Toby Stapleton traveled with BCI to Paris, France and Brussels, Belgium to speak with European officials regarding the state of the industry's French health claim. The basis of this trip was to better understand the complex health claim review system, as well as interview consultants that could assist in compiling a technical dossier should the existing French health claim be rejected by EFSA.

In June 2010, BCI participated on behalf of the CMC in a health claim stakeholders conference held by the European Food Safety Authority (EFSA). This was a landmark conference, as EFSA had previously not conducted outreach efforts with industries affected by its review of member state health claims, which includes the French cranberry health claim. The CMC was one of only a handful of US organizations represented at this conference. The CMC's presence at the meeting was key to better understanding EFSA's approach to reviewing health claims, as well as when a cranberry health claim is likely to be reviewed by EFSA. To date, EFSA has conducted extremely limited stakeholder outreach activities.

Recent Developments on EU Health Claims *(continued)*

At this conference, the CMC learned that EFSA's review of existing health claims would be extended until the end of 2011 (EFSA originally planned to complete its reviews by the end of 2010), and that the earliest a specific opinion on the CMC's health claim would be issued was September 2010.

For the remainder of 2010 and in 2011, BCI will continue to monitor the status of EFSA's review of the French cranberry health claim, as well as the overall state of play of the effort to overhaul the EU's health claims system. BCI will also continue to work with the CMC to develop a strategy to ensure that the CMC is able to quickly react should EFSA issue a negative opinion.