

Ref.: Issue of Reiteration of Total Pronouncement (final) on the draft titled *Agreement that sets forth the risk mitigation measures for the import of potato tubers to Mexico*

Mexico, D.F., March 6, 2014

MR. RICARDO AGUILAR CASTILLO

Under Secretary for Food and Competitiveness

Secretary of Agriculture, Livestock, Rural Development, Fisheries and Food,

I refer to the draft titled *Agreement that sets forth the risk mitigation measures for the import of potato tubers to Mexico*, and to its corresponding form of disclosure of regulatory impact (MIR), both documents sent by the Secretary of Agriculture, Livestock, Rural Development, Fisheries and Food (SAGARPA), and received by this Federal Commission for Regulatory Improvement (COFEMER), on March 4, 2014, through the MIR webpage.¹

In that regard, it is important to point out that on September 4, 2012, the above mentioned office sent a first version of said draft to COFEMER, to which this Commission, by means of official document COFEME/12/3254 dated October 22, 2012, issued the corresponding Total Pronouncement to be considered final.

This commission studied the draft received on March 4, 2014, identifying multiple modifications to the regulatory proposal pronounced in official document COFEME/12/3254², which are described in the present document. Under such considerations, and based on articles 69-E, 69-G, 69-H and 69-J of the Federal Act for Administrative Procedure (LFPA), this Commission issued the following:

TOTAL PRONOUNCEMENT

I.

General considerations / description of the regulatory improvement process

According to the Food and Agriculture Organization of United Nations (FAO), more than 320 million tons of potatoes are cultivated yearly around the world, in 20 million hectares of land, which places this product in the fourth position

¹ www.cofemermir.gob.mx

² Available for consultation at <http://207.248.177.30/regulaciones/scd> expediente 3.aspID=12/1308/040912

among the most important basic food cultivations, internationally.³

Potato tubers have a high nutritional value, containing significant amounts of proteins, vitamins, minerals, and lipids. In Mexico, the consumption of potato tubers is one of the most significant components in the Mexican population's diet. However, potato tubers are susceptible of being a vehicle for the dissemination of quarantine pests that may pose a risk to both the phytosanitary security of potato cultivations, and other products of great importance for the country's diet and economy, such as tomatoes (jitomate), chilies, eggplants, tobacco, and others. Therefore the need arises for implementing regulatory frameworks that will guarantee the phytosanitary security of the Mexican agricultural patrimony.

Considering the above, Official Mexican Standard (NOM) NOM-012-FITO-1996 was published in the Official Gazette on February 13, 1996. *This standard establishes the exterior quarantine in order to prevent the introduction of pests that affect potatoes*⁴, which established an absolute quarantine on the import of potato tubers from anywhere in the world, only allowing the introduction of products proceeding from the United States of America (USA) and Canada to the northern border fringe.

Under this premise, considering that new technologies have been developed lately which allow to maintain the highest level of phytosanitary security, according to which the international standard framework has been modified regarding the matter, SAGARPA has deemed it is pertinent to update the applicable regulations for the import of potato tubers.

On September 4, 2012, SAGARPA sent to this Commission a first version of the *Agreement that sets forth the risk mitigation measures for the import of potato tubers to Mexico*, which set the phytosanitary measures for the control and vigilance of potato tubers imports. This regulatory proposal set the phytosanitary measures that must be observed in the import of potato tubers proceeding from any country, differentiating the measures applicable to USA. However, secondary to the study made by COFEMER and the comments gathered through the public consultation process, that Secretary made significant modifications to the draft, and sent a second version of the regulatory proposal to COFEMER, on October 19, 2012.

In particular, the regulatory framework contained in that second version presented cross control and vigilance phytosanitary measures that should be applicable for any country depending on the risk of the pests that might potentially be detected in shipments proceeding from these. In this manner, potato tubers proceeding from countries in which high risk quarantine pests were detected would have to be subject to stricter mitigation measures than those shipments proceeding from countries where low risk pests had been detected, which would be subject to less expensive mitigation measures.

³ FAO and the Common Fund for Commodities; *Strengthening potato value chains Technical and Policy Options for Developing Countries*, Roma 2010. Available at <http://www.fao.org/docrep/11710e/11710e.pdf>

⁴ Modified on February 17, 2003.

It is necessary to emphasize that, in order to comply with the provisions of article 7 and in Exhibit B of the *Agreement on the application of Sanitary and Phytosanitary Measures of the World Trade Organization*⁵, as well as article 718 of the *North American Free Trade Agreement*⁶, on November 20, 2012 SAGARPA published in the Official Gazette the second version referred to in the above paragraph, in order that it might be consulted and to receive comments during 60 days.

Later, and for the sole purpose of public consultation, on October 14, 2013, the third version of the draft was published in the Official Gazette. This third version once again modified the regulatory framework to be applied to the import of potato tubers. In particular, that third version presented a scheme for comprehensive systems of mitigation measures that must be met by any importer of potatoes, regardless of the origin of the commodities. Under said scheme, importers would have to guarantee that the imported products were obtained from imported seeds, and had undergone procedures of washing, treating, packing, sealing, labeling and transport that will guarantee an optimal phytosanitary condition.

According to the information provided by SAGARPA, the measures included in that third version guarantee the phytosanitary security of the susceptible cultivations of the country, in accordance with the highest standards of quality set forth by the international regulatory frameworks, such as the International Standard of Phytosanitary Measures *NIMF No. 33 Pest free potato (Solanum spp.) Micropropagative material and minitubers for international trade*, the *Agreement on Sanitary and Phytosanitary Measures of the World Trade Organization*, and other international standards for phytosanitary measures issued by the International Plant Protection Convention and from the North American Plant Protection Organization (NAPPO), taking in consideration the technological tools available currently.

In the present case, in reply to the request made by this Commission by official notice COFEME/12/3254 dated October 22, 2012, SAGARPA has sent to this Commission the above mentioned draft, in order for this Agency to be able to issue the corresponding pronouncement, in

⁵“Article 7. Transparency. Members shall notify the modifications of their sanitary or phytosanitary measures and provide information on their sanitary or phytosanitary measures in accordance with the provisions of Exhibit B.

(..)

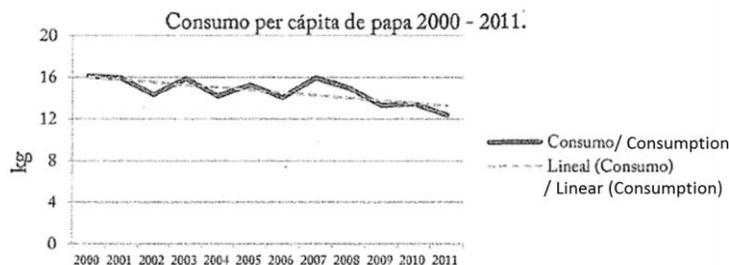
Exhibit B. Transparency of the Sanitary and Phytosanitary Measures. Publication of regulations

1. Members will make certain that all the sanitary and phytosanitary regulations⁵ that have been adopted are promptly published in order that the interested Members may learn their contents.
2. With the exception of urgent circumstances, Members will set a prudential time between the publication of a sanitary or phytosanitary regulation and its coming into effect, with the purpose of allowing producers of the exporter Members, especially those from developing country Members, to adapt their products and ways of production to the requirements of the importer Member.’

⁶“Article 718: Notifying, publishing, and supplying information

- I. In accordance with the provisions of Articles 1802, “Publication”, and 1803, “Notifying and supplying information”, when proposing the adoption or the modification of a sanitary or phytosanitary measure of general application at the federal level, each one of the Parties shall:
 - a) at least 60 days prior, publish a notice and notify in writing the other Parties, about their intention of adopting or modifying such measure, that will not be an act, and will supply the other Parties the complete text of the proposed measure, in order to allow interested persons to learn about the proposal.”.

Potato consumption per capita 2000 – 2011



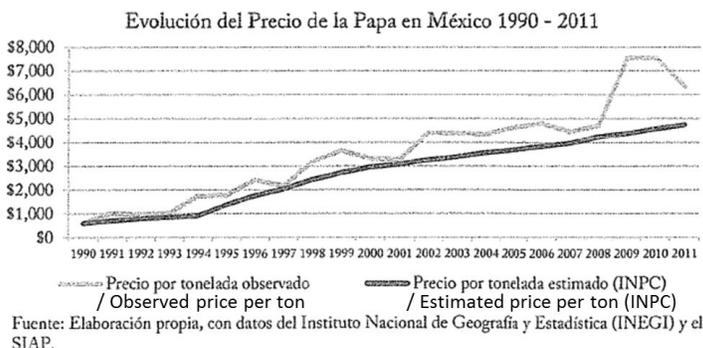
Fuente: Elaboración propia, con información del CONAPO y el SIAP.

Source: Own reporting, with information from CONAPO and SIAP

This is in contrast with the equivalent international indicators; for example in Europe and North America the per capita consumption varied between 159.0 and 803.8 kg per year⁷. In addition, according to studies on the matter⁸, in Mexico the 80.6% of the production is destined to human consumption; 5.4% goes to manufacturing; 10.9% is reused in farming, as seed, and the rest, 3.21%, is wasted in the marketing of the product. In this regard, 14% of potatoes are not consumed by the population, but are wasted or destined to cultivation, which reduces consumption per capita even more (Santiago y García, 2001).

Furthermore, it is also noted that the price of potatoes has increased above what was expected, according to the Mexican Index of Consumer Prices (INPC), and this situation has worsened in the last years. In particular, from 1990 to 2012 wholesale potatoes have been marketed at prices that vary between 6.7% and 73.1% above the price of 1990, adjusted per INPC⁹. This can be seen in the following table:

Progression of the Price of Potatoes in Mexico 1990 – 2011



Fuente: Elaboración propia, con datos del Instituto Nacional de Geografía y Estadística (INEGI) y el SIAP.

Source: Own reporting, with information from the Mexican Institute of Geography and Statistics (INEGI) and SIAP

⁷Calderon, Chávez, Mariza, García, Mata, Roberto, López, Díaz, Sergio, Mora, Flores, José Saturnino, García, Salazar, José Alberto. *Effect of the international price on the potato market in Mexico, 1990-2000*; Magazine Fitotecnia Mexicana 2004, 27 (October-December): Available at: <http://www.redalyc.org/Articulo.oa?id=61027410>.

⁸Santiago CM J y García S J A (2001) Economía de la agro industrialización de la papa en México. Revista Latinoamericana de la Papa. Volumen Especial: 21-43.

⁹Eliminando los valores extremos (Min: 6.41%; Max: 91.17%).

On the other hand, human consumption of potatoes happens in multiple forms. In particular, this vegetable is “consumed as mashed potatoes, fried potatoes, French fries, but mainly it is used as an ingredient in multiple dishes that are regular in Mexicans diet”. In this regard, it has been observed that potatoes have a complementary relationship, not substitutive, with respect to other goods for consumption (beef, chicken, pork, eggs, rice, beans, etc.). In addition, Calderon et al state that the rate of elasticity (0.32) of the amount of potatoes in demand with respect to the budget for consumption per person, classifies this food as a necessary good, therefore showing the need to establish mechanisms to assure its supply and the stability of its price.

II. Considerations about the modifications and the effects of issuing the regulation

Regarding the present issue, through official notice COFEME/12/3254, as a result of the analysis of the draft, and based on the information timely supplied by SAGARPA, this Commission stated that by means of implementing the draft, it will be possible to have a regulatory framework that may be updated and improved in a timely and expedite manner within the national and international context and standards in force, and taking advantage of available technology, such as the *Module of Phytosanitary Requirements for Imports* (Module), and the techniques for the control and eradication of pests¹⁰ that have been developed in recent years. This will allow for timely intervention at changes of status of regulated pests that are associated to potato tubers, optimizing the authorities’ resources in order to exercise phytosanitary control and vigilance.

In addition, it was stated that the purpose of the draft is to guarantee, based on the phytosanitary conditions of the country of origin, and to make certain that there is no risk in the import of potato tubers for the potato producing areas in Mexico, or that quarantine pests of this vegetable could be introduced or disseminated in Mexico, safeguarding the health of potato cultivations, through the use of new tools that have not been contemplated in NOM-012-FITO-1996, which allow to meet said objective, without affecting the trade relationships of Mexico with other countries, going from a precautionary approach to a regulatory approach based on risks that is supported by the Pest Risk Analysis, which presents the necessary technical and scientific arguments within the terms of international regulations.

In this regard, said Secretary assures that the regulatory framework of the draft will maintain the phytosanitary protection, both to the cultivation of potato tubers and to other solanaceae cultivations which are important at the national level, such as: tomato, chili, tobacco, eggplant, and skin tomato; therefore guaranteeing the health of the Mexican farming patrimony.

In addition to the above, in accordance with the information provided by SAGARPA, it is anticipated that the phytosanitary measures that have been established in the draft will benefit consumers, as they “will have a larger supply of potato tubers, with the potential increase of the entry of this product from different sources, which could impact in a higher consumption per capita”. In this regard, that Agency assures that the consumers will have the option of choosing different varieties and

¹⁰ Implemented with the Agreement that establishes the module of phytosanitary requirements for the import of commodities ruled by SAGARPA, published in the Official Gazette on February 7, 2012; which states that the phytosanitary requirements to introduce the said commodities to Mexico will be disclosed through the Module, and must be complied with at the point of entry, at the Offices of Inspection on Agro Health, with a prior verification by personnel of the National Service for Health, Innocuity, and Agro-food Quality (SENASICA).

qualities of potato tubers, covering their needs and meeting their preference, maintaining above all an appropriate level of phytosanitary protection.

In the same manner, it was stated that the draft complies with the principle of harmonization set forth in the Agreement for Sanitary and Phytosanitary Measures of the World Trade Organization, and with the International Standards for Phytosanitary Measures issued by the International Convention for Phytosanitary Protection and the North American Organization for Plant Protection.

Besides, it was stated that the Agreement for Sanitary and Phytosanitary Measures of the World Trade Organization (WTO)¹¹ specifies that Member States “*may set up or maintain sanitary or phytosanitary measures that represent a higher level of sanitary or phytosanitary protection than that would be achieved through measures based on pertinent international standards, guidelines, or recommendations, if there exists a scientific justification or if it is a consequence of the level of sanitary or phytosanitary protection that the subject Member deems adequate*”, and that “*Members will make certain that their sanitary or phytosanitary measures are based on an evaluation that is appropriate to the circumstances, of the existing risks for the life and health of persons and animals, or for the preservation of the vegetables, considering the techniques for risk evaluation prepared by the competent international organizations*”, bearing in mind the “*existing scientific testimonials, the pertinent production processes and methods, the pertinent methods for inspection, sampling, and testing, the prevalence of tangible diseases or pests, the existence of areas that are free from pests or diseases, the pertinent ecologic and environmental conditions, and the quarantine regimes, among others*”; as is the case of the draft under review, since the Pest Risk Analysis conducted by SAGARPA was subject to the provisions contained in NIMF n° 2 *Framework for the Pest Risk Analysis*¹², NIMF n° 8 *Determination of the situation of one pest in one area*¹³, and NIMF n° 11, *Analysis of the pest risk for quarantine pests, including the analysis of environmental risks and modified live bodies*¹⁴, as well as to the terms specified in NIMF n° 5, *Glossary of phytosanitary terms*¹⁵.

On the other hand, it is worth mentioning that, according to multiple analysis that have been made on the price elasticity of potato supply, it has been found that “*the amount of potatoes supplied reacts in an inelastic manner*”¹⁶ to the changes in the price received by the producer¹⁷; which could indicate that the introduction of potato tubers proceeding from other countries to the Mexican market would marginally affect the national production. More specifically, the study conducted by Calderon et al indicates that the international price has no considerable effects on the potato market; specifically, it was demonstrated

¹¹ Available for consultation at http://www.wto.org/spanish/docss/legal_s/15-sps.pdf

¹² Available for consultation at https://www.ippc.int/file_uploaded/1181056526487_NIM_F02_2007_S.pdf

¹³ Available for consultation at https://www.ippc.int/file_uploaded/1146658172534_N1MF8.pdf.

¹⁴ Available for consultation at <http://www.fao.org/docrep/008/y5874sly3874s00.htm>.

¹⁵ Available for consultation at https://www.ippc.int/file_uploaded/1345210416_ISPM_05_Es_2012-08-17_BaseclOn20_1.pdf.

¹⁶ Referring to: Sergio Lopez Diaz, 1994. Current Situation and Perspectives of the Production of Potatoes facing Trade Opening Up Masters Thesis Institute of Socio-Economy, Statistics, and Information Technology, Post Graduate School. Montecillo, Estado de Mexico. 114 p; Susana Prado Tash. 1993. Study of the Potato Market (Solanum tuberosum) in Mexico, 1960-1990. Thesis for Bachelor's Degree Department of Economy. Universidad Autónoma Chapingo. Chapingo, Estado de México. 91 p, y Juan Manuel Miurroquin Perez. 1991. An Econometric Model of the Potato Market in Mexico 1960-1989. Master Thesis. Institute of Socio-economy, Statistics and Information Technology. Post Graduate School. Montecillo, Estado de Mexico. 85 p.

¹⁷ Calderon, et al, *Effect of the international price on the potato market in Mexico, 1990-2000*; Magazine Fitotecnia Mexicana 2004, 27 (October-December). Available at: <http://www.redalyc.org/articulo.oa?id=61027-410>.

that the elasticity of transmission of the international price on the wholesale price for the average of the period 1990-200 is very reduced, estimating that a reduction of 10.3% in the international price of potatoes, would cause a reduction of 1.24% in the internal wholesale price, which would cause a marginal reduction of the prices that the Mexican producers receive, and those that potato consumers pay. As has been shown, the changes in the international price are sterilized, and are not transferred to wholesale prices¹⁸. In this regard, it is important to mention that during the decade of the 90s *“the Mexican production of potatoes presented a growth of 19.4%; [however], such increase was insufficient to cover internal consumption, which experienced a growth of 21% in the same period”*¹⁹, which means that issuing the subject draft might help mitigate this type of events without significantly affecting Mexican producers.

In addition to the above considerations, it is worth mentioning that Garcia-Salazar, Skaggs and Crawford (2012), developed a model of spatial and inter temporal equilibrium in order to determine the possible effects that the elimination of the trade restriction imposed on potato imports could have; which determined that *“supposing that the production of Mexican national potatoes is not affected by quarantine pests that are present in other countries, the changes in consumption, production, and imports, as a consequence of the elimination of the phytosanitary barrier, would increase social wellbeing by 1,2% with respect to the value of the base year”*²⁰.

Notwithstanding the above, as was previously mentioned, the reference draft presents multiple modifications with respect to the version that was pronounced by this Commission through official notice COFEME/12/3254, which are included below, together with the rationale that SAGARPA provided for each case, through document 31410.177.59.1.*Comments MIR Potato Agreement (February 28).doc*, attached to the MIR received on March 4, 2014:

1. Article 1 of the draft sets the mechanisms to guarantee that the risk mitigation measures are reviewed and updated constantly, in order to be able to take advantage of the technological progress on the matter that are developed at the national and international levels in order to find areas of opportunity and improvement on the procedures included in the subject draft.

Regarding the above, SAGARPA also highlighted the convenience that *“risk mitigation measures are updated periodically, in order to assure the level of phytosanitary protection in Mexico”*.

2. Article 3 of the draft is modified in order to determine that only that Secretary may order the return or destruction of the potato tuber imports, when these do not comply with the phytosanitary measures for risk mitigation set forth in the regulatory proposal or in the bi-national working plan that has been signed with the exporter country.

¹⁸ *Ibidem.*

¹⁹ *Ibidem.*

²⁰ Garcia-Salazar, J., Skaggs, Rhonda, Crawford, Terry; *The Mexican Potato Market: A Case Study- of the Effects of a Phytosanitary Trade Barrier*; American Journal of Potato Research; October 2012, Vol. 89; Number 5 pages: 411-421.

In this regard, it is noticed that through the proposed modification more legal certainty is provided to importers of potato tubers, regarding the applicable procedures to non-compliance with the regulation. In addition, the mentioned Agency stated that, in order to strengthen the transparency of the regulatory framework “*the bi-national working plans signed under the terms of the Federal Act for Plant Health (LFSV), anticipate the establishment of phytosanitary measures*”, stating that “*said instruments are exhibited for users consultation in the institutional webpage of the National Service for Health, Innocuity, and Agro-food Quality (SENASICA), in order to offer a higher legal certainty to individuals*”.

3. Article 6 of the draft is adjusted in order to include potato tuber seeds among the potato products and byproducts that will be regulated by the subject draft. According to SAGARPA, the above is because “*this product had remained excluded from the Agreement and it is necessary to state that the import of potato tuber seeds must also be subject to a Risk Analysis*”, in order to eliminate any phytosanitary threat that might be contained in the imported shipments of tuber seeds.

In this regard, that Agency emphasized the convenience of including this precision in the draft, since tuber seeds “*is a product that represents a high risk since it is destined to the reproduction of plants; which, in case of being infected would be disseminating regulated pests*”.

In this regard, it is noted that the present version of the draft strengthens phytosanitary security in Mexico, by supervising over the introduction of any potato product or byproduct, privileging over all the sanitary condition of the country.

Added to the above case, an additional paragraph is included in article 6, which indicates that “*the Secretary may set up specific working plans with the national organizations for phytosanitary protection of the subject country.*” In that regard, based on the information provided by SAGARPA, it is noted that the working plans with the National Organizations for Phytosanitary Protection (ONPF) require to be established on a case basis, due to the variability of the risk, and in order to consider every possible phytosanitary conditions of the source of the referred commodities.

Regarding the above, that Agency stated that the working plan “*is a mechanism in which the exporter and the importer country set forth the specifications for each case to mitigate the risk, as well as the control and vigilance, as may be free areas; application of quarantine treatments and maintaining sanitary status that will guarantee the appropriate level of phytosanitary protection*”.

4. The phytosanitary plan set forth in article 8 of the draft (application of phytosanitary measures according to the risk of pests detected in the place of origin of the commodities), is modified, setting a system of comprehensive measures that must be met by any importer, regardless of the origin of the potato tubers. In this manner, sufficient general and specific requirements are set in order to ensure the phytosanitary quality of the commodities.

In that regard, that Agency states that the total effects of the measures are considered sufficient, according to the comments received from ONPFs during the processes of public consultation to which the different versions of the proposed regulation have been submitted.

It is necessary to state that the new regulatory framework sets phytosanitary measures that must be observed in order to ensure an optimal sanitary condition in imported potato tubers. In particular, it is noted that the draft binds importers to:

- i) Use certified seeds in the production of potatoes.
- ii) Subject the commodities to washing processes.
- iii) Apply treatments with sprout inhibitors.
- iv) Being subject to phytosanitary inspections.
- v) Obtaining the corresponding phytosanitary certification.
- vi) Guarantee the trackability of the products.
- vii) Packing the products in packages of 9.09 kg (20 pounds) or less.
- viii) Labeling the packages with the caption: "This product must not be used for sowing".
- ix) Sealing the packages at the points of inspection.

Regarding the above, SAGARPA states that *"the use of certified seeds helps to keep out potatoes that might be infected with a quarantine pest"*. In addition, that Agency stated that the *"washing processes help with the elimination of soil, as this is a medium for the dissemination of phytopathogenic nematodes"*. In the same manner, said authority argued that *"the application of inhibitors [must be mandatory] in order to prevent potatoes from having sprouts and dissuade producers from using potatoes for consumption for sowing purposes"*. In addition to the above, that Agency assures that *"the measures for packing, labeling, sealing, and transportation (included in the draft) help the plan of traceability of the product in order to check compliance with the mitigation measures"*.

On the other hand, that Secretary stated that *"inspection and certification measures help to verify or confirm the compliance with the risk mitigation measures"*, specifying that *"traceability plan allows for the fast identification of the source of the product that might represent a phytosanitary risk, in order to take actions that will guarantee risk mitigation"* at the moment of detection and afterwards.

Finally, SAGARPA pointed out that the risk mitigation measures referred to in the above paragraphs *"are applied based on the criteria of equivalence and reciprocity in the framework of international sanitary and phytosanitary measures"*.

5. In article 8 of the regulatory proposal, a simplified mechanism is added for the import of fresh potatoes that are destined to manufacturing processing. In particular, said products are exempt from the compliance of the obligations referred to in points ii), iii), and vii) above.

Regarding the above, that Secretary states that, since this type of products will be subject to manufacturing processes, with which phytosanitary risks are eliminated, it was deemed

convenient to exempt the importer from compliance of some of the specific requirements, and it emphasized that said simplification “*does not place the plant health of Mexico at risk*”.

In addition, they pointed out that the plan established for fresh potatoes for processing is also “*applied based on the criteria of equivalence and reciprocity in the framework of international sanitary and phytosanitary measures*”.

6. Phytosanitary measures are added in order to be applied in the case of detection of any regulated pest in potato tubers that are imported in Mexico. Specifically, the phytosanitary authority may reject the shipments and carry out the actions that are conducive to tracking the source of the commodity, in order for the appropriate measures to be taken in the country of origin, based on the procedures and criteria prepared by the corresponding Harmonization Group for the Risk.

In this regard, it is worth noting that in cases in which it is not possible to identify the producers of the infected commodities, or if these are not able to identify the corresponding area of production, the authority may suspend the producer from the export program for the rest of the season.

Regarding the above, said Agency states that “*the applicable measures allow for the immediate identification of the source of the regulated pest, and force the exporter country to take the risk mitigation measures that are proportional to the risk level*”, adding that “*as long as these measures are not complied with, the mobilization of these commodities will be restricted under the terms set in the Working Plan signed with the exporter countries*”.

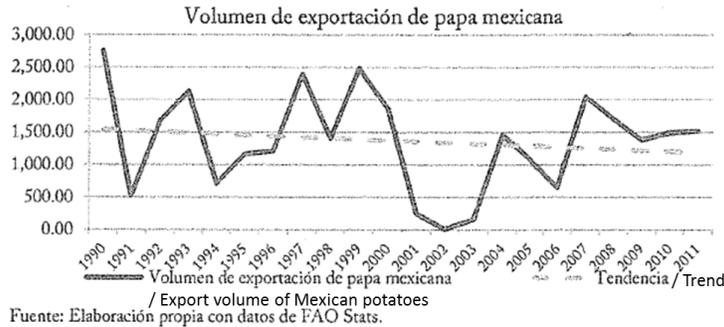
Regarding the above, it is worth adding that, according to information supplied by SAGARPA, the modification of the regulatory framework (application of phytosanitary measures in accordance with the risk of the pests detected in the place of origin of the products through a system of comprehensive measures that must be met by any importer, regardless of the origin of the potato tubers) is due to the fact that the mechanism set forth in the draft received on October 19, 2012, would require setting specific phytosanitary measures for each one of the quarantine pests of potato tubers, a situation that would be extremely complex and expensive. In this regard, the plan contained in the last version of the draft guarantees the phytosanitary security of the Mexican farming patrimony and provides the necessary flexibility to meticulously verify the quality and sanitary condition of the products to be imported.

In addition to the above, it is important to note that in the opinion of COFEMER, the modifications mentioned above serve to strengthen the phytosanitary security that will be applicable to potato tubers imports. Furthermore, new provisions are incorporated, designed from an approach based on risks, as is the case of the measures applicable to the import of fresh potatoes for processing (numeral 5), oriented to facilitating compliance with the regulation for low risk products. Finally, new provisions are included which require the periodical review of the phytosanitary measures included in the draft, in order for these to be constantly updated in accordance with the technology that develops and with technical and scientific evidence available.

On the other hand, it is noted that the regulation includes in a general manner the legal framework for the establishing of Bi National Plans between Mexico and other countries in order to facilitate the trade of potatoes. In this regard, it is expected that the issue of the regulatory proposal will serve as a trigger in order to encourage the export of Mexican potatoes to other countries. The above becomes especially relevant if we consider that

during the period from 1990 to 2011 Mexico exported an annual average of 1,368.36 tons, which represent only 0.1% of the average national annual production²¹. Furthermore, it is worth noting that the volume of exports of Mexican potatoes has observed an erratic behavior, showing a negative growth trend, as shown in the following table:

Export Volume of Mexican Potatoes



In this regard, it is estimated that opening the Mexican potato market to international trade will make it possible to create a market niche from which Mexican potato producers will be able to take advantage, creating export opportunities to expand the market for Mexican potatoes.

Regarding the above, it is important to mention that Ayala Garay, Schwentesius Rindermann and Carrera Chavez state that “according to the rate of the competitive advantage revealed additive²², Mexico has had a competitiveness with ups and downs”; however, “the Mexican vegetable farming sector has always shown a positive competitiveness”, which affords it a development potential that is higher than other countries, such as USA, which present a competitive advantage additive revealed negative²³.

²¹Calculated from statistics from FAO and SIAP.

²² The methodology of the competitive advantage revealed additive (VCRA) was used in order to know the competitiveness in the international context, (Hoen and Oosterhaven 2006: 677-691). The period of the analysis was from 1971 to 2010. This competitive advantage was estimated for Mexico in comparison with the world, in order to identify the current situation of the market share. By calculating the rates the behavior of competitiveness is shown, and a series of considerations around its predictable trend in the coming years are made. The formula was:

$$VCRA_a^i = \left(\frac{X_a^i}{X_n^i} \right) - \left(\frac{X_a^r}{X_n^r} \right)$$

Where:

X= Value of agro-food exports;

a= any product in particular;

i= country of origin;

r= rest of the world.

The VCRA rate is more stable than others previously proposed, and may adopt values ranging between -1 and +1 and zero median. It considers that positive values are competitive, and a value of 1 implies a specialization of the country in the product under analysis (Hoen and Oosterhaven, 2006: 677-691).

²³ Ayala Garay Alma Vella, Schwentesius Rindermann Rita and Carrera Chavez Benjamin; *Hortalizas en Mexico: competitividad frente a EE.UU. y oportunidades de desarrollo*; Globalization, Competitiveness & Governability journal; Georgetown University; 2012.

Under this perspective, the issuing of the draft might also represent an opportunity for potato producers in Mexico to place their products in other international markets, taking advantage of the competitive advantage found in this sector.

In addition to the above, it is advisable to note that in December 2009, Richards, Molina and Hussein conducted an analysis on the possible effects the elimination of the trade barrier to the import of potatoes in Mexico would have; concluding that the introduction of potatoes from other countries to the urban areas that are below the northern border fringe might create an increase of the Mexican superavit of approximately 4 thousand million pesos annually for consumers, specifying that “*even in a conservative scenario about the elasticity of supply and demand, consumers would obtain benefits of 3.5 thousand million pesos per year*”²⁴

On the other hand, deriving from the analysis of the international regulations on the matter, this Commission finds there is no specific code at global level that establishes in a specific manner the phytosanitary requirements contained in the draft. However, it is noted that the Technical Agreement for Trade Barriers issued by the WTO countries establishes that the requirements for import that are set by member countries must not inhibit competition in the subject market but, on the contrary, equivalent measures must be found between the countries.

In this regard, it is important to mention that SAGARPA pointed out that the risk mitigation measures that apply to the import of potatoes, which are included in the regulation “*are based on the criteria of equivalence and reciprocity in the international sphere in the framework of sanitary and phytosanitary measures*”. In this regard, COFEMER observes that other countries require equivalent measures to those in the draft, in order to allow the import of potatoes; the situation may be better viewed in the following table:

Risk mitigation measures applied in the international sphere.

Measures contained in the draft received on March 4, 2014	Countries that apply it
i) The imported potato tubers must have been produced directly starting from certified potato seeds.	<ul style="list-style-type: none"> ✓ Canada ✓ USA ✓ European Union (Only in non-member countries) ✓ Dominican Republic ✓ Venezuela ✓ New Zealand
ii) The potatoes must be washed and be free of soil.	<ul style="list-style-type: none"> ✓ Peru ✓ Thailand ✓ Venezuela ✓ Peru
iii) The potatoes must be free from soil.	<ul style="list-style-type: none"> ✓ USA ✓ European Union (Only in non-member countries) ✓ Dominican Republic ✓ Nicaragua

²⁴ Timothy.J. Richards, Ignacio Molina, y Osman Hussein; *Welfare Impacts of the Mexico Potato Quarantine*; Journal of Agricultural and Applied Economics, 41,3(December 2009); pgs. 761-776.

iv)	The potatoes must receive, at least, a treatment in order to inhibit sprouting:	
v)	1% of the packages from each shipment must be inspected by personnel from ONPF.	<p style="text-align: center;">Countries that apply it</p> <ul style="list-style-type: none"> ✓ Thailand ✓ Argentina ✓ Chile ✓ Argentina ✓ Chile ✓ Dominican Republic
vi)	Shipments must be certified by ONPF.	<ul style="list-style-type: none"> ✓ Canada ✓ USA ✓ European Union (Only in non-member countries)
vii)	The trackability of each shipment must be guaranteed.	<ul style="list-style-type: none"> ✓ Peru ✓ Argentina
viii)	The potatoes must be packed in packages of 20 Pounds (9.09 kg) or less.	<ul style="list-style-type: none"> ✓ Chile ✓ Dominican Republic
ix)	The packages must show the caption indicated in the draft.	<ul style="list-style-type: none"> ✓ Australia ✓ New Zealand
x)	The shipments must be sealed in the exporter country.	<ul style="list-style-type: none"> ✓ Canada
xi)	Simplified method for fresh potatoes that will be submitted to manufacturing processes.	<ul style="list-style-type: none"> ✓ European Union (Only in non-member countries)
xii)	Application of phytosanitary measures for cases of detection of regulated pests.	<ul style="list-style-type: none"> ✓ Canada ✓ Argentina ✓ Canada
xiii)	The shipments will be inspected by personnel from SAGARPA at the entry checkpoint.	<ul style="list-style-type: none"> ✓ Argentina ✓ Canada ✓ Canada ✓ Venezuela ✓ Australia ✓ Argentina ✓ Venezuela ✓ Peru ✓ Australia

It is also estimated that the costs and benefits associated to the issuing of the new draft might differ marginally, with respect to those referred to in official notice COFEME/12/3254, since the phytosanitary measures foreseen in this last version of the draft were also contained in the version from 2012. Therefore, and since it is estimated that the adjustments made to the draft are pertinent, COFEMER reiterates the statements exposed through the reference official notice.

III. Considerations on the proceedings of the draft

As is indicated by official notice COFEME/12/3254, this Commission points out that after the issuing of the reference draft it will be necessary to create the proceeding for the request of authorization of international transit that is referred to in article 7 of the regulatory proposal, which must be submitted in writing to SENASICA.

Due to the above, and in terms of the provisions of article 69-N of the LFPA, it is informed to that Secretary that they must provide this Commission, within the 10 working days following the subject draft being in force, with the information foreseen in article 69-M of that legal regulation, regarding the creation of the above mentioned proceeding.

IV. Public Consultation

In compliance with the provisions of article 69-K of the LFPA, this agency disclosed the subject draft through its website, from the first day after receiving it. In that regard, through official notice COFEME/12/3254 this Commission stated that until the date of issuing the total pronouncement with effect of final, 64 comments and proposals for improvement were received from individuals interested in the matter, and based on which the regulatory proposal was modified for the first time, remaining in the terms of the version received on October 19, 2012.

In this regard, it is important to note that the 64 comments from individuals received until the date of issuing said document were punctually responded by that Secretary by means of the document titled *27272.177.59.7.Reply_to_comments_Agreement_Potatoes_191012(1).xls*, attached to the MIR received in the above mentioned date, thus complying with the provisions of article 69-J of LFPA. In addition to the above, it is worth noting that since then only new comments have been received, which are included in the following table:

Interested Individuals	Document Identifier
Confederación Nacional de Productores de Papa de la República Mexicana.	B0014005849
B0014005849 Comité Estatal Sistema Producto Papa de Coahuila.	B0014005850
Comité Nacional Sistema Producto Papa.	B0014005851
Gonzmonther S.P.R.. de R.L.	B0014005852
Agrícola La Agujita	B0014005853
Agrícola y Ganadera San Ignacio de Loyola S.A. de C.V.	B0014005854
Agrícola Magu, S.A. de C.V.	B0014005855
Agrícola Morales	B0014005856
Agrícola Gura San Gerardo, SPR de RL	B0014005857
Agrícola Villareal S.P.R. de R.L.	B0014005858
Asociación de Productores de Hortalizas del Yaqui y Mayo (Sección Papa).	B0014005859
Comité Estatal Sistema Producto Papa de Guanajuato.	B0014005860
Productores de Papa de León	B0014005861
Comité Estatal Sistema Producto Papa del Estado de Puebla.	B0014005862
Comité Estatal Sistema Producto Papa de Sinaloa	B0014005863
Asociación Local Agrícola de Productores de Papa de Zamora.	B0014005864
Unión de Productores de Papa de Jalisco	B0014005865
Asociación de Productores de Papa de Huatabampo Sonora.	B0014005866
Asociación de Productores Papa de Navojoa. A.C.	B10014905867
Asociación Agrícola Local de Productores de Papa de San Francisco del Rincón, GTO.	B0014005868
Consejo del Sistema Producto Papa de Sonora A.C.	B0014005869;
Sistema Producto Papa de Michoacán A.C.	B0014005870
Sociedad de Producción Rural de R.L. Santa Elena de la Laguna S.PR. de RL:	B0014005871
Unión de Productores de Papa de la Sierra Tarasca, A.C.	B0014005872

Particular Interesado

Document
Identificator
B0014005873

Jose Ma. Basagoiti Caicoya

The above referred comments may be consulted at the following link, in order for said comments to have the opportunity of being evaluated by SAGARPA:

<http://207.248.177.30/regulacione.s/scd expediente 3.asp? ID= 12/1308/040912>

Due to the above, COFEMER decides to issue the present Total Pronunciation which has the effects of a Final Pronunciation with respect to the provisions of article 69-L, second paragraph, of LFPA. Therefore SAGARPA may proceed with the necessary formalities in order to publish the draft referred to in the DOF as final, in order for it to have legal effects for individuals.

The above is notified based on the mentioned legal dictates, as well as in articles 7, fraction I, 9, fraction XI and last paragraph, and 10, fraction VI of the Internal Regulations of the Federal Commission for Regulatory Improvement, as well as article 6, last paragraph of the Agreement that sets terms for the Federal Commission for Regulatory Improvement to decide on drafts, and discloses the Manual of the Disclosure of Regulatory Impact, and First, fraction I, of the Agreement by which power is delegated from the Head of the Federal Commission for Regulatory Improvement to the public officials indicated, both published in the Official Gazette on July 26, 2010.

Please receive my cordial regards,

Sincerely
The General Coordinator

JULIO CESAR ROCHA LOPEZ