

Dr. Kalyan B. Goswami
Executive Director



Ref. NSAI/2016/126

Date: 24.10.16

Dr. Amita Prasad
Additional Secretary, MoEF
Chairperson, Genetic Engineering Appraisal Committee (GEAC)
Ministry of Environment & Forests
Government of India
New Delhi

*26/10/16
PS to Adl. Secy (MoEF)*

Respected Madam,

Sub: Submission of information as a follow up to the discussions held on 20.10.16

- Ref: 1. Meeting of the Seed Industry delegation on 20.10.2016 in your office.
2. All the earlier correspondence with reference to the procedures adopted by GEAC which are leading to monopolization of cotton crop by Bt trait developer.

We thank you for giving us time to submit our views and for interacting with us on the subject referred above. We provide the following clarifications to the points that came up in the discussion.

1. The Seed Industry has been representing since 2003 that as mandated by Environment (Protection) Act (EPA), GEAC may confine to transgenic event approvals based on biosafety rather than continue beyond event approval with hybrid approvals also. Nowhere in the world, after biosafety approval of a transgenic event new varieties or hybrids, developed by various breeders through their own R&D, carrying the approved transgenic event, are regulated under environment safety provisions. In India, there are specific enactments like Seeds Act, 1966 and the Seed (Control) Order, 1983 which govern not only the release of new hybrids but also their seed quality parameters through a well-established and proven network. If GEAC undertakes event approval the question of NOC/LOC does not arise at all.
2. Though we have been representing since 2003, GEAC never replied to any of our letters due to which one of our member associations was constrained to approach the Hon'ble High Court, Hyderabad seeking for appropriate relief. As explained by us in the discussion, while the opinion of NSAI and its members, Monsanto or ABLE-AG can be considered by GEAC, the replies to the contentions raised by us have to be taken from an independent legal expert not connected with either side in accordance with law. We are grateful to you for accepting to this proposal.
3. There are several false allegations and campaigns based on false notions, that are being spread by Monsanto to further their monopoly by continuing the current processes and procedures being followed by the regulatory authority, which are not correct as per law, hence we have serious objections

a) **The Seed Industry is not willing to pay royalty.**

This is completely false. Due to the monopolistic practices followed by Monsanto, the State Governments started regulating the trait value and the seed prices. The Industry is offering to pay the trait value as per the State regulation. However, Monsanto wants the Industry to pay the trait value as per their one sided monopolistic agreements which are entered through misrepresentations based on the NOC/LOC stipulated by GEAC. The Industry has over paid to Monsanto to the tune of Rs. 1500 Crores since 2010 while Monsanto's claim is for Rs. 450 Crores. The matter is before arbitrators as Monsanto chose to approach the Hon'ble High Courts at Mumbai and Delhi. While the matter is still under consideration before the appropriate forum chosen by them, Monsanto is spreading false news mentioning only about their claim only and not mentioning Industry's claim.

Further Monsanto ousted hundreds of seed companies and public sector breeders from cotton breeding by introducing hybrid wise approval with NOC/LOC so as to create a monopoly. This matter is also being investigated by CCI.

b) **As pointed out by us, if the objectives of the NOC/LOC is to ensure seed quality, the same can be achieved through the notified referral laboratory Central Institute for Cotton Research (CICR).**

It is perplexing to us that while there is a notified referral laboratory, how can GEAC depend for seed quality assurance on a party with vested interest and having a conflict? At field level across the country, the quality is regulated by the State Governments with their robust regulatory system having designated Seed Inspectors, Seed Analysts and Seed Testing Laboratories under the provisions of the Seeds Act, 1966 and the Seed (Control) Order, 1983 which are also notified to cover transgenic crops under EPA. When such a regulatory mechanism exists, how a private party like Monsanto can claim that they alone can ensure supply of quality seeds to the farmers. It should be hazardous to hand over the reins of regulatory system to a private party Monsanto and depend upon it. No law allows an involvement of a private party having conflict of interest in quality control mechanism, which is mandatorily assigned to the regulators, which could even amount to abdicating mandatory role by the regulators.

c) **The Monsanto claim that the seed companies are only multiplying their seeds and they have the IP right on all Bt cotton seeds.**

This is completely false propaganda. As can be seen from the license agreement which are submitted to Joint Secretary, Monsanto supplies 100g of donor seeds of a transgenic variety which contains the transgenic trait. The seed companies breed new varieties and hybrids which process takes 5-8 generations (4-5 years). After evaluation of such hybrids by ICAR or State Agriculture Universities for 1-2 years with the performance data, the seed companies under the current procedure (which we have been objecting to)

approach GEAC or the Standing Committee under EBAM from 2009 seeking for commercial approval of new Bt cotton hybrids. Under the Indian IPR policy which was again reaffirmed in May, 2016 by the Govt. of India, the plant varieties including transgenic varieties are provided IP protection only under the PPVFR Act, 2001. There cannot be any patent rights on plant varieties. The clarifications issued by DIPP are enclosed. Even the Patent Authorities in the recent meetings have confirmed the above. The patent claims that were granted by Patent Authority to Monsanto excluded plant varieties and seeds therefore despite knowing that they do not have rights, Monsanto is continuously making false propaganda. They are banking only on the NOC/LOC of GEAC to force the seed companies to sign monopolistic license agreements which are not required under any Indian IP laws. The day NOC/LOC is dispensed with by GEAC, Monsanto will lose its acquired dominance and monopoly, despite its tall and false claims of patent rights, which no court will uphold. On the other hand, these agreements that need to be signed only because of NOC/LOC stipulated by GEAC, are extinguishing the rights available to the breeders and farmers under the PPVFR Act which also has been explained in our letter which is attached.

- d) As such GEAC is a body functioning under EPA and not competent to rule on IP laws, whereas the Courts at the District level and above have the jurisdiction to dwell on the IP laws. If the NOC/LOC system is discontinued and the actions of seed companies lead to infringement of any IP rights Monsanto claims to enjoy either under Patent Act or PPVFR Act, it can take recourse to approach the courts and obtain remedies.
 - e) Based on the provisions of PPVFR Act, the authority alone can determine the trait value if the claimant makes an application under section 26 of the Act. Since Monsanto wants to charge exorbitant trait value without any regulation, they are avoiding to use the option available in IP law and trying to create monopoly using the NOC/LOC stipulation of GEAC.
4. The present NOC/LOC stipulations have led to a single gene/two genes giving monopoly on the entire cotton crop on which 80 lakh farmers and an estimated 500 seed companies (except 49 rest of them got ousted from the business after approval of Bt cotton traits by GEAC) depend upon contrary to the provisions of IP laws and against natural justice. The PPVFR Act provides a solution balancing interest of all stakeholders including the trait developers if the NOC/LOC stipulation is removed.

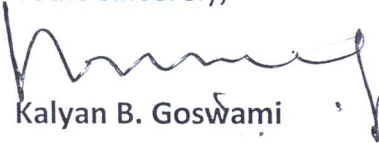
In view of the above submissions clarifying all the aspects that came up for discussions yesterday, we request you

1. To dispense with the stipulation of NOC/LOC from trait developer for approval of new Bt cotton hybrids in the interest of the Indian agriculture

2. To deliberate and modify the process of approval of GM traits so that the new transgenic traits conferred by a specific transgenic event is assessed and approved for biosafety and new varieties developed carrying such approved transgenic traits will not go to GEAC and are approved as per the prevailing practices and procedures under the Seeds Act or the Seed (Control) Order, 1983.

Thanking you,

Yours sincerely,


Kalyan B. Goswami

Office of JS (GERD/TMOP)
Govt. of India
Ministry of Agriculture
(Deptt. of Agri. & Coopn.)
Krishi Bhawan, New Delhi

Enclosures:-

1. NSAI letter to Chairperson (GEAC), dated, 21.06.2016 regarding Biosafety Approvals leading to monopoly in GM crops.
2. NSAI letter to JS (Seeds), dated, 20.09.2016, summarizing NSAI views on Draft Guidelines for GM Traits
3. NSAI Letter to JS (MoEF&CC), dated, 01.10.2016 regarding removal of the GEAC stipulation of NOC.
4. NSAI Letter to JS (MoEF&CC), dated, 04.10.2016 regarding removal of the GEAC stipulation of NOC.
5. NSAI Letter to Hon'ble Minister of Agriculture & Farmers Welfare, dated, 19.10.2016
6. DIPP explanation to amendment of Patents Act
7. Opinion of Justice B. P. Jeevan Reddy on Bt Cotton in the matter of INSIA.

Copies to:

1. Shri Nripendra Mishra, Principal Secretary, PMO, New Delhi
2. Dr. Trilochan Mohapatra, Director General, Indian Council of Agricultural Research (ICAR),
Krishi Bhawan, New Delhi.
3. Prof. K Vijay Raghavan, Secretary, Department of Science & Technology, Government of India, CGO Complex, Lodhi Road, New Delhi.
4. Shri Gyanesh Bharti, Joint Secretary, Dept. of Environment, Forests & Climate Change, Ministry of Environment, Forests & Climate Change, New Delhi
5. Shri R K Singh, Joint Secretary (Seeds), Dept. of Agriculture, Cooperation & Farmers Welfare, Ministry of Agriculture & Farmers Welfare, New Delhi
6. Shri Anurag Jain, Joint Secretary, PMO, New Delhi

संशोधन (इंफो) एवं म.नि. (भा.कृ.अनु.प.) का कार्यालय
Secy. (DARE) & DG (ICAR)'s Office
29/10/16
R. 29/10/16
उपरी सं. / Dy. No.
दिनांक / Date