Submission of Comments on the Draft Model APMC Act, 2016

As per the OM dated 22nd February 2017, the D/o Agriculture, Cooperation and Farmers Welfare (D/o ACFW) invited suggestions/comments on the draft Model APMC Act, 2016. Accordingly, following are the comments from CUTS International for your kind consideration.

Preliminary comments

CUTS International welcomes the changes/improvements made in this new draft over the earlier model APMC Act, 2003. For instance, more (regulatory) freedom to private players and removal of contract farming from the purview of APMC Act, the two most remarkable changes are welcome. However, it still falls short of CUTS' expectations.

It was expected that this opportunity would see transformation of the age-old regulatory model/design, with innovations to take into account developmental and technological changes happened overtime. The basic structure of regulation – designation of market area, regulated by respective market committees – remains the same. The changes that have been made this time, actually, should have been done in 2003 to meet the then objectives (which are valid even now). One of the objectives of the 2003 model law was to remove "hurdle to adoption of innovative marketing system and technologies", in which it failed miserably. Adhering to the same model is likely to yield similar result, which would be unfortunate.

It should be noted that (1) competitive price realisation, and (2) farm gate value addition, are the two most important policy pillars for doubling of farmers' income by 2022. Although the new draft model law would engender increased competition amongst various markets (thanks to freedom given to private markets and other wholesale buyers), but it is not yet clear as to how competitive bids of farmers' produce are ensured within such markets. This is more important in this ICT era when prices (in other markets) are already known to the bidding actors. "Where, when and how the price of agriculture produces is determined" is likely to remain a mystery even under new regime.

Furthermore, the new Model Act, like its earlier versions, also fails to promote farmers to climb up the agriculture value chain. Still, as per the definition, "agriculturists" are not supposed to "grade, process, store…" etc. By involving in these activities, technically, they will cease to be an "agriculturist" and will become a "market functionary" subject to be regulated under the Act accordingly.

Generally, model laws are part of a vision. Here the myopic vision is fixed to "regulation & development" of a market, instead of it having a far-sighted vision where Indian farmers capture and control as much part of the global agriculture value chain as possible.

Even with the myopic vision, the new model Act somewhat retains many of the earlier provisions – more focus on 'regulation', hardly on 'development'. For instance, the role of Marketing Committee about developing agricultural value chain, cold storage and infrastructure etc. remains too generic in nature. Though it mentions about setting up PPP in management of agricultural markets, the incentives to attract PPP is not clear. If the terms and conditions (e.g. fee and other norms) are same as that of previous model Act and Rules, private investment and market yard may be difficult to realise.

More so, like the earlier version, even the new Model APMC Act largely contains texts that are devoted to the structure, constitution, conduct of business, powers & duties etc. of various bodies set up under the Act, and a very small portion is devoted on the "marketing aspect" of agriculture produce. The Model Act recommends a vast bureaucracy for market regulation, which is neither required nor desirable, and hindrance to "professionalisation of the regulated market" in an era of apps and automation (technological advancement).

Secondly, there has been talk of getting rid of licensing system and introduction of registration system. The new Model Act fails to capture this shift that is fast happening for "ease of doing business" in other sectors. Thus the best option would be a "registration system based on standardised conditions", instead of licensing system.

In light of the above-said, it would have been better if the new draft model law is revisited and revised, rather overhauled.

Specific comments

Definition of "Agriculture produce"

This definition under S.2(3) gives sweeping powers whereby any produce can be notified under the Act and hence would come under the purview of regulation. One the one side there is growing acceptance of "de-listing" from APMC regulation; on the other the new Model Act tends to give widest possible coverage of agriculture produce, which include even "horticulture, pisciculture, apiculture, forest and animal husbandry including livestock and poultry".

It is recommended to narrow down this definition significantly.

Definition of "Agriculturist"

The definition under S.2(4) excludes "any market functionary". That means (read with definitions of 'marketing' u/S.2(26) and "processing unit" u/S2(36)) a farmer cannot take up grading/processing/ trading etc. along with farming. Once farmer chose to grade or process its product, s/he would cease to be an "agriculturist" and among other things, disqualify for being member of the Market Committee. It may be noted here that restriction on multiple role applies only to farmers and not on other market functionaries. Thus, it discourages farmers from going up in the agriculture value chain. On the contrary, the demand of the time is that farmers (like entrepreneurs) need to be promoted to adopt as much value addition as possible at the farm gate itself.

Thus there is a need to relook at the definition of "agriculturists", treating farmers as entrepreneurs capable of rising up on agriculture value chain, by grading, processing, packaging, including having a brand name. Distinguishing farmers from other producers is not conducive with today's world – why other producers should enjoy much more commercial freedom than that of farmers? If the objective of this differential treatment is for farmers' welfare, well there is a need to relook at this philosophy.

In fact, promoting 'agriculture' processing (policy distinction can be made with 'food' processing) at farmers' level would yield best outcome and meaning to the addition of words "Farmers Welfare" to the "Ministry of Agriculture and Cooperation".

Constitution of market committee

The shift to "direct election" of representatives of agriculturists from political nomination model is a welcome shift. One would hope that this would help get rid of the nefarious political-trader nexus. Be that as it may, the Committee as regulator still looks very bureaucratic and unprofessional given contemporary technological advancements.

If the same model is retained, then it is suggested to include, apart from 10 agriculturists, at least one representative of registered FPOs in the market area.

Qualification to vote and be the representative of agriculturist (S.22(1) (a))

As per the new model law, for a tenant to vote – s/he should have his name in land record as a tenant as per the Land Reforms Act. It may be noted that the Land Reform Act is still pending in many states. A simple agreement/contract between the owner and the tenant should be considered instead. It is also believed that the government is thinking to bring in new land lease law. The model APMC law need to make reflection on such developments.

Sale transaction of notified agricultural produce

The language of S.51(1) seems to be confusing. It says:

> "All notified agriculture produce shall ordinarily be sold in the principal market yards, sub-market yards, market sub-yards licensed under this Act or not, private market yards or at the electronic trading platforms –
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> Provided that the notified agriculture produce may be sold at other places also to a license holder especially permitted in this behalf under this Act."

At one place it says "licensed under this Act or not", while at other place it says "to a license holder". This confusion may be done away with reformulating the section.

Terms and Procedure of Buying and Selling

S.52(1) states:

> "Except in the commercial transaction between two traders, any other person who buys notified agricultural produce in the principal market yards and sub-market yards, shall execute an agreement in triplicate in such form, as may be prescribed in favour of the seller. One copy of the agreement shall be kept by the buyer, one copy shall be supplied to the seller and the remaining copy shall be kept in the record of Market Committee".

This provision, which remains largely unchanged from the 2003 version, requires execution of agreement between first seller (generally farmers) and buyer, but it does not apply in subsequent sales between two traders. This is not only discriminatory but by not recording further trade of the goods it promotes collusion to fix the price (at which the goods would be bought at the first instance). For instance, if a farmer sells his produce (at say Rs.10/Kg) the same would have to be recorded and the market fees would have to be paid based on this sale. However, the buyer is then free to sell to other buyers at any amount (say Rs.20/Kg) as the same need not be recorded and also for the same the fees would not be paid. This presents an opaque system, promoting formation of a syndicate (cartel) influencing price of the goods.

In addition, the very execution of agreements "in triplet" sounds archaic. There may be newer electronic formats for the purpose that a new model Act should have captured or should have been flexible enough to accommodate.

Be that as it may the distinction made between the levy perishable and non-perishable (u/Ss 52 (3) (53 (1)) is appreciable.

Establishment of private market yard and farmer-consumer market yard (Ss 60 & 61)

At the outset there seems to be good advancements made over the 2003 Model Act as far as freedom of private players (from the suckles of APMC) are concerned. This is a welcome step. However, in past, concerns have been raised over "reasonable conditions" and "fee" applied to such markets. These have proved to be hurdles in investment (and development) in agriculture market infrastructures.

Even though these are the domain of APMC Rules, it would be better to provide some illustration in the main Act, learning from the past restrictions. For instance, such "reasonable conditions" would be "qualitative" rather than "quantitative" (i.e. no minimum land area requirement; no minimum capital/investment requirement etc.)

Direct marketing (whole sale direct purchase from farmers outside the market yard, sub market yard, private market yard) (S.65)

Allowing direct marketing and wholesale purchases by individuals, farmer cooperatives and FPOs is a commendable step. However, it is not clear whether same status (to that of FPOs) is enjoyed by an individual farmer (as proprietor) or a joint family unit that wants to establish retail presence in their vicinity (say nearest towns) under the Act. Can such proprietary, who wants to purchase from nearby fields, be eligible to do so like FPOs? If the answer no (which *prima facie* looks like) then it must be asked: why this distinction? Why create entry barriers for (individual/joint family) farmer entrepreneurs?

If FPOs have been granted some freedom for direct sale, there is no justification that an individual farmer should not be given the same freedom. Therefore, it is requested that these provisions be relooked and redrafted.

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