

**SUBMISSION BY CHILE ON THE APPLICATION OF ARTICLE 5 ASSESSMENT
OF RISK AND DETERMINATION OF THE APPROPRIATE LEVEL OF
PHYTOSANITARY PROTECTION WITH RESPECT TO
PSEUDOCOCCIDAE IN FRESH FRUIT
FOR CONSUMPTION**

Statement by Chile at the Meeting of 21-25 June 2004

The following communication, dated 16 June 2004, is being circulated at the request of the delegation of Chile.

1. The Agriculture and Livestock Service, as Chile's National Plant Protection Organization, recognizes the right of Members to establish the phytosanitary measures necessary to ensure plant protection and to protect their territory from damage caused by the entry, establishment or spread of pests. It also recognizes that exported fresh fruit can represent a significant pathway for the entry and spread of quarantine pests, as confirmed by information in the databases of the Agriculture and Livestock Service and other National Plant Protection Organizations on the interception of major pests.

2. The Agriculture and Livestock Service also recognizes that in the area of plant health in general, and specifically as regards the assessment of phytosanitary risk the competent international organization is the International Plant Protection Convention, which has issued international standards for phytosanitary measures with respect to pest risk analysis, both for "quarantine" pests and for "regulated non-quarantine pests".

3. Chile would like to express its concern at the phytosanitary measures adopted by certain Member countries in relation to the potential risk assigned to the presence of insects of the family *Pseudococcidae* in fresh fruit exported for consumption.

International Regulations

4. Article VI of the new revised text of the International Plant Protection Convention (IPPC) states that:

"Contracting parties may require phytosanitary measures for quarantine pests and regulated non-quarantine pests, provided that such measures are:

- (a) *No more stringent than measures applied to the same pests, if present within the territory of the importing contracting party; and*

- (b) *limited to what is necessary to protect plant health and/or safeguard the intended use and can be technically justified by the contracting party concerned.*

Contracting parties shall not require phytosanitary measures for non-regulated pests."

5. According to the standards approved by the IPPC, only phytosanitary measures designed to control quarantine pests apply to products for consumption.

6. A *quarantine pest* is defined as "a pest of economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled".

7. Nevertheless, certain Members have adopted measures such as:

- Rejection of consignments and notification of emergency measures because of dead insects of the genus *Pseudococcus*;
- Rejection of consignments and emergency measures because of insects identified only to the level of genus *Pseudococcus*, and not to the species level, and regardless of the existence in their own territory of the same species that are present in Chile;
- Rejection of consignments because of insects of the family *Pseudococcidae* acknowledged to exist in their territory only because there are national rules establishing phytosanitary measures applicable to "live insects", without carrying out any identification that would make it possible to discriminate according to quarantine status, and failure to submit timely notifications of non-compliance;
- Highly restrictive phytosanitary measures against *Pseudococcidae* species present in Chile for which there are records and publications of unquestionable scientific quality establishing their presence in the importing country, and which are not subject to official control. Moreover, the importing country does not establish the same phytosanitary measures for equal species of fresh fruit from other Member countries which also record the presence of the same species of *Pseudococcidae* in their territories;
- Suspension of producers and packaging plants for the export season.

8. In the introduction of the above phytosanitary measures is disproportionate to the level of risk posed by these insects of the family *Pseudococcidae* in exported fresh fruit.

9. In such cases, decisions are clearly being adopted that conflict with the international standards issued by the IPPC, which is the reference framework for the WTO SPS Agreement as regards plant health. According to the IPPC, these exceptions require scientific justification if the measures are to be maintained. In practice, this has not happened, with the result that Articles 2.2 and 3.3 of the SPS Agreement have been violated. So has Article 2.3 of the Agreement, which refers to the principles of national treatment and non-discrimination.

Risk assessment and adequate level of protection

10. In the light of ISPN No. 11, Rev. 1 (Pest Risk Analysis for Quarantine Pests Including Analysis of Environmental Risks), the following clarifications should be made with respect to risk assessment of the *combination fresh fruit for consumption x presence of **Pseudococcidae***.

11. The assessment of the potential for introduction must take account of both the entry and establishment of the pest. However, the phytosanitary measures introduced by certain countries are based only on the probability of entry of the said pest.

12. In this connection, it is important to bear in mind the difference between phytosanitary danger and phytosanitary risk. Danger is understood to mean the organism's potential to cause damage, direct or indirect, to plants or plant products, while risk is understood to mean the estimated probability of occurrence of a danger and its potential consequences. In the specific case of insects of the family **Pseudococcidae** in fresh fruit for consumption, given their phytophagic nature, they can only qualify as a phytosanitary danger. These insects cannot become a risk, since they do not have the capacity to spread autonomously from the fruit to the receiving environment.

13. The international spread of these diseases is the result of the international movement of propagating material, essentially plants – their spread through exported fresh fruit has not been expressly documented.

14. On the basis of the above considerations, certain Member countries have opted not to introduce phytosanitary measures for these pests in fresh fruit, accepting that the risk of introducing them by that pathway is minimal, and relying on the easy detection of the insects during routine inspection.

15. Other countries have introduced risk management phytosanitary measures based on the inspection of shipments, and accept the phytosanitary certification with the additional declaration that the shipments are free of the pests in question. When they are detected in the country of destination, the importing Member merely rejects the shipments and notifies the exporting Member.

16. These measures differ considerably from the clearly more restriction measures ranging from the suspension of producers and/or export plants in the country of origin to the suspension of trade in certain species.

These restrictive measures clearly have not taken account of Articles 5.1, 5.2, 5.4, 5.5 and 5.6 of the SPS Agreement.

17. Chile urges Members that have established measures of this kind to comply with international rules, and to reassess their risk analyses without undue administrative delay and rationalize their phytosanitary risk management measures to ensure that they:

1. Are in harmony with international standards (Article 3);
 2. are scientifically justified (Article 5);
 3. are proportionate to the risk involved (Article 5.4);
 4. do not discriminate between Members (Article 2.3);
 5. are similar or identical to those applied in their territory and to other Members (Article 2.3).
-