

## SPS EXPORT PROTOCOLS: TOWARDS GREATER RECIPROCITY IN FRESH PRODUCE TRADE

### *REFLECTION PAPER FROM THE FRESH FRUIT AND VEGETABLES SECTOR*

Whilst the term reciprocity is gaining significant political momentum, the lack of reciprocity resulting from different plant health systems around the world remains broadly unknown. However, this lack of reciprocity is today the main challenge for EU fresh fruit and vegetables exporters.

Therefore, on the occasion of the publication of the new EU Trade Policy Review, Freshfel Europe is presenting this reflection paper, outlining the main hurdles the fresh fruit and vegetables sector is facing to access third countries with the so-called '**export protocols**'. This is a requirement for most destinations of EU F&V exporters, while similar specific protocols are not required for the majority of imports of fresh produce into the Union. We hope this reflection raises awareness over this important issue, which should be at the center of the EU's future trade agenda, as it is essential for the competitiveness and livelihood of EU growers and for the development of mutually beneficial trade relationships with partners.



## 1. WHAT IS THE ORIGIN OF EXPORT PROTOCOLS?

The **WTO SPS Agreement** provides for countries to prevent the entry of pests that may pose sanitary and phytosanitary risks to their population, production and biodiversity. In addition, the agreement also 'attempts' to ensure that the measures established by the different countries to prevent the entry and spread of pests are based on scientific principles, proportional, non-discriminatory, and importantly, that they are not used as a justification for the implementation of barriers to trade.

In line with the WTO SPS Agreement, the **European Union** has implemented an '**open system**' to enable trade of fresh fruit and vegetables, a commodity with limited phytosanitary risk, compared with plants for planting or seeds. Therefore, any country can export to the EU as long as the established phytosanitary requirements are met for a concrete commodity or defined pest of concern present in their production area. These measures are **non-discriminatory**, as they apply uniformly to all imports. This does not mean that the EU does not control its imports, on the contrary, some specific products and harmful organisms are heavily regulated and controlled at import (e.g. citrus, for pests & diseases such as citrus canker and black spot). However, the measures are applied uniformly to all the origins where the pest is found without the need for bilateral talks or market opening. In other words, the market is open albeit subject to **phytosanitary conditions**.

However, most countries have chosen a '**closed system**' for phytosanitary issues related to plant health. The first export protocols were established in the 1970s by the USDA, but this practice has spread and many countries currently demand them, such as the USA, China, Korea, Japan, Mexico, India, Australia, New Zealand, South Africa, Vietnam, Thailand... This means that potential exporters to these countries cannot start operating freely, and no uniform rules apply to all exporters. Instead, in order to be able to export fruit and vegetables to these countries, the market has to be 'opened' on the basis of export protocols. These are **bilateral agreements** which have to be negotiated country by country and product by product (sometimes even variety by variety!), multiplying the workload and costs for administrations and operators, compared to the open system. What is more, these bilateral, non-transparent negotiations often lead to the discriminatory treatment of some countries over other, with conditions which are many times not supported by scientific evidence.



## 2. WHAT CONDITIONS ARE NEEDED TO EXPORT WITH A PROTOCOL?

Most export protocols include a wide range of **specific conditions which often go beyond the provisions of biosecurity guarantees**, to be fulfilled by the exporting country and sector. These include the following:

- The **plots** must be **listed** in registers created by the Ministry of Agriculture as plots whose product is assigned to be exported to the protocol country. This decision has to be taken between 4 and 8 months before the development of the season.
- The **warehouses** that will carry out the packaging of the product must be registered in the registers created by the Ministry of Agriculture as warehouses that will work for that country.
- **Inspectors** from the importing party visit and audit both the plots and the warehouses, to verify that they meet the requirements specified in the protocol. The exporting country will pay the travel expenses of the inspectors, their daily allowances, hotels and interpreters, without having any guarantees whether an agreement will actually be concluded. In most countries, these expenses must be assumed by the sector interested in exporting. This contrasts with the requirements for imports, as the EU does not conduct inspections systematically for products of non-animal origin. Instead, these are planned and executed on the basis of compliance with European legislation (i.e., priority is given to carrying out inspections in origins that have recorded non-compliances, and for which additional corrective measures

could be taken due to possible problems in the control of their exports).

- **Handling and packaging** of the product should be totally separated from those not destined for the country for which they have been prepared, so that no spread is possible.
- **Special pre-cooling and cold treatment** requirement according to product and country are specified prior to loading or during transportation. The dedicated cold store chambers must be registered and audited to perform the specified cold treatments.
- **Phytosanitary control** are performed by the services of the exporting country, sometimes with the presence of the importing country's inspector also in the packhouse. In this case, the costs of the inspector's stay are also paid by the exporter.



### 3. WHY DO PROTOCOLS HARM EU EXPORTS?



The wide range of conditions introduced in exports protocols hinder EU exports, make the normal work of any exporting warehouse more expensive, and decrease the competitiveness of European exporters vis-à-vis their competitors in other countries.

They **hinder EU exports**, because decisions have to be made months before the campaigns on the destination of the products, whilst the countries that export without protocols can take the decision only a few days before the shipment is done and better react to the markets development and needs. Moreover, as the cost of inspections is often to be paid

by the sector, trade is only made possible when certain critical volumes are reached to compensate for this investment, leaving out of the market the EU export of minor crops or specialty crops.

They also make export operations **more expensive**, because the average additional cost of a protocol is about **0.12 to 0.14 €/kg**, which must be added to the normal costs of an export without protocol.

They **harm the competitiveness** of European exporters of F&V, because exporters have to comply with a large number of requirements that are not requested from countries which do not have to apply protocols, such as identifying parcels in advance or planning and paying for numerous systematic inspections.

Finally, it is important to add that, before even hindering trade, protocols **impede trade**. Until these agreements are concluded with the exporting country for a specific product, which usually takes several years or even decades, it is NOT possible to export to these destinations. This is a major obstacle for European exporters, who have to wait patiently for their countries to open export markets product by product.

This situation could also create **internal tensions** among European exporters themselves, due to the competition to prioritize the work to open markets, as the Ministries of the Member States and their importing counterpart often have limited resources to negotiate protocols. In addition, neighboring EU Member States sometimes have to comply with different protocols/requirements when they want to export similar products to the same third country, even in case of common EU standards and similar production and climatic conditions.

The sector wants to take responsibility to ensure biosecurity in fresh produce trade, which should be reflected in SPS agreements, legislation and/or protocols that are the least trade restrictive, and most proportional and transparent. However, our experience is that many protocols do not comply with these basic principles and therefore are not the preferred solution.

#### 4. THE CURRENT DIVISION OF COMPETENCES IN THE EUROPEAN UNION: AN ADDITIONAL HURDLE FOR EU EXPORTS OF FRUITS AND VEGETABLES

In the European Union, the SPS trade responsibilities for certain agricultural products, particularly fruit and vegetables, are separated. Whereas imports are regulated EU-wide, the negotiation of export protocols is conducted by EU Member States individually.

In the case of **imports**, countries that want to send fresh produce to any EU country have to comply with the EU legislation applicable to all business partners equally, and in case of problems **'talk with Brussels'**, since the rules to access the Single Market are centralized by EU regulations and common standards.

On the other hand, to **export** to a third country, **each Member State** has to negotiate on its own. This is partly due to pragmatic reasons (e.g. the European administration would not have the capacity to absorb all the technical work required, and different climatic & production areas can also explain the need for Member State leadership in the files). However, this can also be explained by a remaining micro-competition among Member States for access to third countries ahead of other EU countries.

As a result of this dichotomy, Member States negotiating market access with third country have **little leverage** in negotiations with

third countries, as they are in turn not in charge of regulating access to the EU market, which is centralized in Brussels.

Whilst moving to EU-wide market access negotiations may not be the most adequate solution in many cases, e.g. due to different SPS and production conditions in various Member States, reinforced EU-wide coordination to discuss parallel issues or concessions over mutual market access would make negotiations more effective. The key principle for the sector remains to focus on "technical" negotiations, with requirements that are based on objective and accurate scientific data. However, **EU internal coordination with regard to mutual market access** is essential to help the prioritization of EU export files, create synergies when possible, and ensure leverage.



## 5. IS THIS A REALITY? MOST STRICKING CASES

The following are just a few concrete examples of the situation European F&V exporters are facing as a result of the imposition of export protocols by third countries, and lack of negotiating leverage due to the split of competences at EU level:

**CHINA.** We import 114,000 T of Chinese grapefruit, 42,000 T of garlic, and a total of 230,000 T of fruits and vegetables. After many efforts, protocols for Spanish citrus and stone fruits, pears from Belgium and Netherlands, kiwis from Italy and Greece, and bell peppers for Netherlands, have been obtained for this crucial market, leading to a total export of 67,000 T a year. The main competitors of EU exporters are far beyond: Chile exports over 232.000 T a year, South Africa 186.000 T, the US 162.000 T and Australia 122.000. Our competitors also required protocols but have a single negotiation body with import-export competences for their blocs, which demonstrates the effectiveness of a 'centralised', fully coordinated approach.

**JAPAN.** one of the world's leading importers of fresh fruits and vegetables with more than 2,400,000 T of imports a year. The EU, despite having a free trade agreement, only exports 9,000 T of vegetables, but has failed despite the efforts of the EU and its Member States, to conclude any workable protocol to export fruit to this attractive market. Spain completed a protocol for citrus which remains very expensive to make exports possible, as it incorporates systematic inspections during the whole season, to be paid by exporters. An apple protocol was also negotiated by France, but

only for a few varieties, and with the requisite to conduct methyl bromide fumigation, a banned practice in the EU given the ozone depleting features of this substance. Several applications have been pending for over 10 years, such as the Italian kiwifruit protocol, and the Belgium negotiations for pears.

**USA:** the case of the EU-US Apple and Pears Export Protocol for 8 EU Member States is a case in point of the political dimension of SPS negotiations. Whilst technical phytosanitary negotiations for this agreement were successfully completed in 2016, the publication of the final ruling by the USA to effectively allow exports from BE, DE, ES, FR, IT, NL, PL, and PT has been blocked since, for almost 5 years now since the technical agreement was concluded, making access of EU apples and pears to the US market impossible.



**MEXICO.** Thanks to the EU-Mexico free trade agreement, Mexican exporters are sending 194,000 T of fruit to the EU. These volumes benefit from preferential treatment, which has enabled Mexico to effectively multiply its exports to the EU, moving up from 15.000 T at the time of signing the FTA. In the meantime, EU exporters have failed, despite the desperate efforts of the industry and public authorities, to complete workable export

protocols to access this market, with a few exceptions in the last year, such as Italian kiwis, and Belgium & Dutch pears. Spain has a protocol for citrus and stone fruit, which have not been used as a result of the strongly burdensome conditions introduced, including systematic inspections pre-export, a practice called pre-clearance. EU F&V Exports to Mexico thus remain close to zero. The EU has now modernized its FTA with Mexico, and improvements have been negotiated in the area of SPS, but the proper implementation of these commitments is still to be seen once the deal is ratified.

**VIETNAM.** This growing market has only been opened for apples from France, Poland, Netherlands, Belgium and Italy, as well as pears for the Netherlands. However, the conditions of access widely differ for these Member States, and whilst cold treatment for most Member States is requested for up to 18 days, Italy has been imposed a condition for this measure to take 84 days, a decision which cannot be explained by technical SPS concerns, given the similarities of production conditions across these Member States.

## 6. TOWARDS A MORE RECIPROCAL SPS RELATIONSHIP: SECTOR RECOMMENDATIONS

At this time and as a result of the Covid-19 pandemic and the EU sustainability agenda, the European Commission has initiated a reflection over the future of the EU trade strategy. From a fresh fruit and vegetables perspective, this should involve a **deep reflection of the current SPS 'protocol' system** and its effect on trade of fresh

produce, with a view to **improve reciprocity** between the treatment of EU exports and imports of fresh fruits and vegetables.

With this in mind, the sector is calling for the EU to define, together with Member States, a concrete, comprehensive **EU SPS strategy**, with the ultimate objective to secure a coordinated diversification of market access for European exports, and to limit the burden of export protocols. This strategy should include actions on **short and longer term**.

### On the short term:

- In all trade negotiations towards Free Trade Agreements, the negotiation of the **chapter on phytosanitary measures** must establish concrete measures to, at least in the short term, ensure that protocol negotiations are as quick, transparent and inexpensive as possible for the sector. This should include the agreement over concrete timelines, and the possibility for the EU to coordinate joint actions on behalf of its Member States, a process which has already started with some partners like the US. A commitment of equal treatment for all exporting Member States when phytosanitary risks are similar should also be included, as well as the banning of disproportional practices, such as pre-clearance (the latter has been a big achievement secured in the CETA and the modernized EU-Mexico agreement). The full implementation of these commitments should also be guaranteed.

- **Coordination and information exchanges among the EU institutions and Member States' capitals** should be reinforced, to overcome the problem of lack of leverage in market access discussions. This

exercise, already started and pushed by the Commission, for instance with the set-up of a Market Access Database to exchange relevant market access information, is most welcome by the sector. This coordination should also ensure that inspections, if needed, can be jointly coordinated and conducted to limit costs. A successful experience with joint audits in 2019 coordinated by the EU Delegation in Bangkok already secured a first success, with the opening of the Thai market for apple exports from Belgium, Netherlands, Germany and Italy.

- The EU should also step-up discussions and push progress on **international standards** at multilateral bodies such as the WTO or IPPC, where agreements on phytosanitary mitigation measures can be negotiated, which could in the long term replace individual protocols. Emphasis should be given in these fora, for the urgency to base plant health policy worldwide on **justifiable scientific principles**.

**Over the long-run**, the sector believes there is an urgent need to evaluate in depth whether there is any real benefit to justify export protocols versus an open plant health system such as the EU one, which has proven its effectiveness to guarantee biosecurity. The negative impacts of export protocols and non-scientific based phytosanitary requirements in general of fresh fruit and vegetable trade globally should also be further analyzed, in order to build the necessary evidence to propose viable **alternatives to enable free and fair trade whilst keeping high biosecurity** standards.

The EU is in a pole position to open this debate with trade partners, discuss the inefficiencies of these agreements and seek **alternatives**

**to ensure safe and fair trade** in fresh fruit and vegetables. The Covid-19 pandemic has worldwide emphasized the importance of the fresh fruit and vegetable sector to guarantee the supply of safe, healthy and affordable food, for which market access (import and export) and globalization are crucial, specifically taking into account the seasonal nature of the production worldwide.

The EU as major trade bloc could successfully influence the current approach to plant trade, by giving the right example to secure an open system with guarantees to prevent phytosanitary risks in house, as well as by encouraging partners at WTO level to adopt this approach. In the future, this could eventually lead to **limiting or eliminating overall the need to negotiate individual SPS protocol negotiations globally**.

**Freshfel Europe is the European Fresh Produce Association, representing the interests of the fresh fruit and vegetables supply chain in Europe and beyond. Freshfel Europe currently has over 200 members, including both companies and associations, and provides support and advice to its members in the process and challenges to gain market access in new markets, in close contact and cooperation with EU institutions.**

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