

Mr Ladislav Miko
Deputy Director General
DG Health and Food Safety
European Commission
Rue de la Loi 200
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1 September 2016

Import suspension and marketing in France of cherries from EU Member States or third countries where the use of plant protection products containing dimethoate active substance is authorized in cherry treatment

Dear Mr Miko,

Following the letter sent to Mr Flueh on 27 April 2016, Freshfel would like to further raise its concerns with regard to placing on the market in France of cherries originating from EU Member States or third countries where the use of plant protection products containing dimethoate active substance is authorized in cherry treatment.

Following the introduction of ban, on 18 July 2016 French Authorities have notified the measure to the World Trade Organisation (G/SPS/N/FRA/11). All WTO Members are committed to respect international standards, in particular, to conduct a risk assessment based on scientific evidence. French Agency for Food, Environmental and Occupational Health & Safety (ANSES) responsible for evaluation of active substances and registrations at national level has withdrawn the national registration of dimethoate at the beginning of this year for French cherries.

The WTO Members can exercise their right to determine their appropriate levels of sanitary protection and to restrict trade accordingly on the basis of sanitary concern, however only when this is done in line with WTO rules. The basic aim of the WTO SPS Agreement is to maintain the sovereign right of any government to provide the level of health protection as it deems appropriate, but also to ensure that these sovereign rights are not misused for protectionist purposes and do not result in unnecessary barriers to international trade.

On 13 July 2016, the French Official Journal published a *Notice to Importers and Exporters*¹ indicating the countries subject to restrictions of trade with France. The legitimacy of actions by French Authorities are questionable with regard to the European food safety and trade policy. The *Notice to Importers and Exporters* indicates that imports of cherries from Canada, United States and Turkey are banned, while specific conditions are applicable for Argentina and Chile. While the Regulation (EC) No 178/2002, SECTION 2 lists conditions and procedures under which emergency measures can be introduced by a Member States, there is no provision in the WTO or in the European food safety law stating that the ban of produce can be based on the origin of product. Such ban is unjustified as it is not based on the principle of food safety and risk to consumer. The evidence of safety of produce therefore should be analytical results of residues provided by accredited laboratories. This allows to assert that France imposed the ban based on a discriminatory basis. Moreover, since the publication and immediate

¹ Avis aux importateurs et aux exportateurs : https://www.legifrance.gouv.fr/jo_pdf.do?id=JORFTEXT00003288796

implementation of the national regulation², some countries were indirectly forced to eliminate the national authorisations in order to be allowed to export cherries (treated or untreated with dimethoate), while dimethoate has been subject to a risk assessment and product authorisation decision in that country.

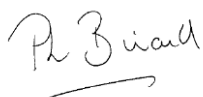
The measure introduced by France endangers the entire confidence in the European food law. If such approach will be overtaken by other European Union Member States, the risk will occur for trade disruption and lack of confidence on the EU regulatory environment.

The application of art. 53 of the General Food Law, Regulation (EC) No 178/2002 was applied by French Authorities without any pre-notifications to the sector or traders. That had severe implications for the planning of trade and sales as the season was already in progress. This consequently leads to financial and food losses, given that imports/exports are initiated while applying existing law in the country to which the products is destined. Overstepping the margins set in the European legal framework is not adequate to the concept of the European Union trade policy.

The sector urges the European Commission to clarify its position with regard to imposed measures by French Authorities on cherries from EU Member States or third countries where the use of plant protection products containing dimethoate active substance is authorized in cherry treatment. The sector requests the Commission to clarify what were the actions and steps undertaken in order to remove this unfair trade suspension, which could create a dangerous precedent.

We are looking forward to hearing from you and we remain available at your disposal for any questions you might have.

Kind regards,



Philippe Binard
General Delegate

Annex

Partner	2014	2013	2012	2011	2010
Total	7,327.80	6,829.30	8,081.10	10,592.90	6,521.60
Spain	4,508.00	4,090.40	4,221.00	3,233.90	2,139.20
Germany	1,463.40	646.50	857.50	4,273.10	2,266.30
Belgium	482.70	988.90	694.70	646.20	366.50
Netherlands	266.50	186.80	520.10	417.80	182.90
Chile	253.60	300.70	282.50	273.10	216.20
Turkey	117.00	194.70	505.30	431.80	36.60
United States	84.30	77.40	391.90	363.10	116.90
Canada	35.70	22.20	52.80	64.90	39.60
Italy	34.20	159.60	275.50	544.90	864.20
Argentina	27.00	37.80	59.90	37.20	101.50

² Arrêté du 21 avril 2016 portant suspension d'importation et de mise sur le marché en France de cerises en provenance d'Etats membres ou de pays tiers où l'utilisation de produits phytopharmaceutiques contenant la substance active diméthoate est autorisée en traitement des cerisiers: https://www.legifrance.gouv.fr/affichTexte.do;jsessionid=1C0F77D34D5A868D17F2A2B940190398.tpdila17v_3?cidTexte=JORFTEXT000032439552&dateTexte=&oldAction=rechJO&categorieLien=id&idJO=JORFCONT000032438891.