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Dispute settlement procedures raise serious issues for South African citrus exporters

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An interview with Justin Chadwick, CEO of the Citrus Growers' Association of Southern Africa

Justin Chadwick is Chief Executive Officer of the Citrus Growers' Association of Southern Africa (CGA).

Q: In September 2013, after consultations with citrus industry stakeholders, the decision was taken in South Africa to restrict exports of citrus fruit from areas where Citrus Black Spot (CBS) infections had been detected. What economic impact is this likely to have on the South African citrus sector?

There are some 40,000 tonnes of oranges that will now have to be diverted to alternative non-EU markets. Given that orange prices in the EU were very good at the time of the decision to restrict exports, there will no doubt be some losses in realising lower prices in alternate markets. It is unclear what level of losses will be incurred.

Q: The CGA has long-standing reservations about the scientific basis for stricter EU CBS controls – would you like to explain the scientific basis for these reservations?

The South African position is very clearly explained in an international response to the European Food Safety Authority Pest Risk Assessment (PRA). The response can be accessed on the **Citrus Research International website under the market access tab**.

In essence, the South African position is that fruit is not a pathway for the disease, and the climatic conditions in the EU are unsuitable for the establishment of Citrus Black Spot.

Q: There appear to be differences in the approach of the EU and US authorities to controls on CBS. Would you care to elaborate on these differences?

Until this year, only areas free of CBS (pest-free areas, or PFAs) could export citrus0 to the USA, in fact making the US requirements more restrictive. With the establishment of CBS in Florida this has changed – with Uruguay now gaining access to the US.

In broad terms, the EU Directive 2000/29/EC established four possible means of accessing the EU from countries with CBS. Pest-free countries and PFAs are two means. The other is that CBS has not been in the orchard since the last harvest. The fourth, which is used by South Africa outside the PFAs, is that the orchard has received suitable treatment and no fruit with CBS symptoms has been harvested from that orchard.

Q: Given that the European Commission has highlighted the benefits to third countries of US–EU harmonisation of standards, how would you like to see US and EU standards harmonised in terms of CBS controls?

I don't believe that they can be harmonised. At the moment South Africa has access to the USA from CBS-free areas. South Africa has applied for access for the rest of the country based on equivalence with domestic regulations. Uruguay has access on this basis, and there is no reason to believe that South Africa will not get access on the same basis.

For the EU, we hope that the Pest Risk Assessment (PRA) process will result in a review of the Directive and the removal of CBS as a quarantine organism.

Q: South Africa has taken the case of its CBS dispute with the EU to the International Plant Protection Convention (IPPC). What outcome are you expecting from this IPPC process?

We have been terribly frustrated by the IPPC process. South Africa made its first official request to have the dispute considered by the IPPC Secretariat in 2010. For 2 years they did nothing. In that time, the EU escalated enforcement to near market closure. It was only when we received the letter in October 2012 – threatening action after five interceptions – that the IPPC Secretariat finally called for consultation.

We wanted to forego consultation (as the matter had been in dispute since 1992) and go directly to formation of an expert panel. The EU wanted consultation.

To move to the formation of an expert panel under the IPPC rules, *both* parties have to agree. The EU did not agree to go to expert panel formation at the consultations that took place in February 2013. Instead, they undertook to do a PRA (some 20 years after their measure had come into effect). The South African Department of Agriculture, Fisheries and Forestry agreed to wait until after the PRA was completed. Originally this was due by the end of July 2013. Then the EU added another step – issuing a draft PRA and allowing for comment on the draft. Scientists from around the world - Brazil, Uruguay, Argentina, Australia, South Africa and the USA – consolidated a response. This scientific response represented 600+ years of citrus research experience – and the conclusion reached was that there is *no* risk of CBS establishing itself in the EU.

EFSA are now drafting the final PRA – if they take due cognisance of the international input then there should be a review of CBS measures in the EU. If they do not, then the status quo (or additional measures) will continue. Should this be the case, then South Africa will approach the IPPC Secretariat again to go to the next step in dispute resolution – i.e. the formation of an expert panel.

There are two problems that we have with the IPPC and its secretariat.

First, they don't work particularly well. How can they sit on a request for 2 years, while trade is disrupted and almost closed? They are the WTO technical body for plant products – for where else can a technical issue be resolved? However, WTO dispute resolution is far more expensive – probably out of the reach of smaller countries – and much more confrontational.

Second, the rule that both parties have to agree to formation of a panel does not make sense. If two countries cannot agree on the issue, how are they suddenly going to be in agreement on the formation of a panel? The EU has strung the CBS issue out for years, and we remain without any conclusion in sight – with considerable trade disruption, costs and ongoing uncertainty.

Q: Do you feel there is a need to strengthen international consultation structures around the resolution of SPS and food safety disputes?

Absolutely. However, there are many who say that funding for the IPPC comes predominantly from the EU; hence the reluctance to proceed with our CBS matter. So, the structures must be independent. Whenever we questioned the slow response from the IPPC, the Secretariat cited capacity constraints. Given that most barriers to trade are now technical, the IPPC will need to have its capacity significantly enhanced if it is to deliver. *But*…an overhaul in the management and culture of the IPPC is also needed, to make it a genuinely independent, science-based arbitration body.

Q: How would you like to see international dispute settlement mechanisms for the resolution of SPS and food safety disputes evolve?

For food safety, the point of harmonised standards is relevant – we need one set of standards that determines whether food is safe or not (such as CODEX for maximum residue levels – MRLs). The use of percentages of safe levels just does not make sense – this is particularly found with German retailers. Food is either safe or not safe – 20% of a safe

level of an MRL does not make it any safer.

For phytosanitary issues it is a bit more complex. Climate etc. plays a role. However, mitigation treatments should be standardised. An example is Japan for Fruit Fly – a fruit fly with an Israeli passport needs treatment at one degree centigrade for 16 days, while one with a South African passport requires -0.6^{o}C for 12 days. South Africa has to go through *all* the research and technical exchange to prove efficacy at the same level – this is a waste of resources and against the principle of equivalence.

Where there is a dispute regarding the science (and let's be honest, scientists can make data and results prove different things) then there needs to be a robust, reliable, non-partisan body to resolve the dispute. There must be strict timelines set for the procedure, and both parties must be obligated to follow the process. If this is not done then signing the IPPC is a waste of time, trade is not promoted and we might as well all protect our domestic industries through bogus SPS scares.

I would like to add one point. The CGA does not have any problem with citrus interests in the EU ensuring that their industry is protected from real threats. And they perceive CBS as a real threat – why? Because there is a measure – and if there is a measure, then there must be a risk, right? Wrong – and that is the basis of our problem. When the measure was introduced, no risk assessment was done!

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