

**EUROPEAN COMMUNITIES – RESTRICTIONS ON THE IMPORTATION
OF FRUIT, FRUIT JUICES**

Submission by Brazil

1. The European Communities has published Directive 2002/71/CE, of 19 August 2002, which establishes new maximum levels for dimethoate residues in and on cereals, foodstuffs of animal origin and certain products of plant origin, including fruit and vegetables. Where no or insufficient data are supplied by residue trials and toxicological data to support different MRLs than the ones proposed, as, for example in citrus, the MRL was arbitrarily set as the Limit of Analytical Determination (LOD), which is equivalent to a prohibition.

2. On 6 June 2002, when the above-mentioned Directive was still in discussion (notification G/SPS/N/EEC/160), the Brazilian Government submitted timely comments, indicating its objection to the new maximum level of residues for dimethoate with solid arguments, based on the available scientific information. Nevertheless, the Directive was enacted, allowing only a six months period, until January 2003, for the exporters of juices to adapt to the new measure. The European Communities answered the Brazilian comments on 15 July 2002, mentioning a decision made in the Codex Alimentarius about the need to change the MRL of this active ingredient. On 6 August 2002, Brazil contested, indicating that in fact the Codex Alimentarius had the active ingredient in its agenda, but “decided to **retain** the CXLs for ... **citrus fruit** ... pending the residue evaluation by the 2003 JMPR”. In the same letter, Brazil also asked for a special meeting on the subject for late September 2002, but got no reply. The request for a technical meeting was reiterated in a new letter dated 12 September.

3. The technical and legal arguments, in support of Brazil’s objection to the above-mentioned Directive are the following:

- Dimethoate – a broadly used insecticide – has been used for over 40 years and remains today an extremely important tool for growers due to its attested effectiveness against virtually most of destructive insect species, specially against the citrus leaf hopper in Brazilian citrus.
- The WHO Panel of the JMPR (FAO/WHO, 1996) established an Acceptable Daily Intake (ADI) of 0.002 mg/kg bw/day for the sum of dimethoate and ometoate expressed as dimethoate. The determination of the ACUTE reference dose of dimethoate are shown to be within of 0,03 mg/kg bw.
- The risk assessment for dimethoate is available and supports the MRLs. Based on US and EU monitoring data, the risk assessment shows that the acute and chronic consumer exposure is acceptable for all consumer groups.
- Dimethoate is currently registered in Brazil for citrus, apple, cotton, tomatoes, wheat and ornamentals.

- The Brazilian exports of concentrated orange juice (ton) from July 2000 to June 2001 are reported in the table below:

European Union	NAFTA	Asia	Mercosur	Other	Total
845.781	264.674	99.176	1.779	22.864	1.234.274

Ref.: ABECITRUS, 2002

- Brazil is the main concentrated orange juice exporter of the world and the impact of orange juice exports on the trade balance is significant. Most of the concentrated orange juice produced in Brazil is exported to the EU.
- Based on the residues of dimethoate, there is no risk at all to consumers of orange juice made from dimethoate treated oranges.
- The total annual domestic agricultural imports of dimethoate were about 330 tons of the active ingredient (Ref.: SECEX/DECEX/SERPRO - 2002). About 80% of this quantity is used in the citrus area, which receives at least 2-3 applications of dimethoate per season.
- The establishment of the Limit of Analytical Determination (LOD) for the MRLs, as enacted by the EU for dimethoate, will terminate exports of all dimethoate treated crops to the EU. Further, since growers cannot effectively segregate shipments according to destination, they will have to cease using dimethoate on all citrus and apples for export, losing the use of this effective insecticide, especially against the leaf-hopper in citrus. There is no alternate product on the market today that can be applied to effectively and economically protect the crops.
- The proposed EU MRL's are not in line with Brazil's, US and Codex Alimentarius tolerance levels, being these MRL's the best scientific evidence available in the world today, which need to be considered when establishing a sanitary barrier to imports, in conformity with the WTO Agreement. It should be noted that EU member countries are all Codex Alimentarius member countries and they had the right to veto any LMR they did not agree with. Unanimously, though, they accepted the LMRs established for dimethoate in citrus, which is today in force as a CODEX standard, being the base for any trade sanitary disputes involving WTO member countries, in conformity with the WTO SPS Agreement.
- Moreover, the establishment of the Limit of Analytical Determination (LOD) for dimethoate has no scientific justification, since the decision will be made without full review of the available information. The burden of proof is responsibility of the sanitary body that imposes the new regulation, based on the understanding that any country or region can establish the adequate level of protection. Therefore, the sanitary body should present unquestionable scientific evidence about the potential damage to the health of humans, animals and the environment.
- It can be pointed out that there is another incongruence in establishing LOD for dimethoate for citrus, due to the fact that the same active ingredient has tolerance levels different and above LOD for other products than citrus, as for example cherries, olives and spring onions.

- This new maximum level of residues for dimethoate represents a non -tariff barrier to international trade in agricultural products. As such, it is inconsistent with the obligations of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (Article 2.2, 2.3 and 2.4; Article 3.2 and 3.3; Article 5.1, 5.2, 5.3, 5.4 and 5.5; and Article 6.1).
- Article 3.1 of the SPS Agreement requires Members to base their SPS measures on international standards, guidelines and recommendations, where they exist. According to Article 3.3, Members may only introduce or maintain SPS measures which result in a higher level of protection than would be achieved by measures based on the relevant international standards, if there is a scientific justification, or as a consequence of the level of protection a Member determines to be appropriate based on a risk assessment in accordance with the relevant provision of Article 5. In particular, Articles 5.4 and 5.6 require that Members take into account the objective of minimizing negative trade effects and ensure that SPS measures are not more trade-restrictive than required to achieve an appropriate level of protection. Article 10 of SPS Agreement establishes that member countries should consider the special needs of developing countries in the preparation and application of sanitary and phytosanitary measures.

4. In view of the above considerations, Brazil requests the European Communities to revise this particular Directive which will ban Brazilian orange juice from the European market, taking into account all scientific information available. Brazil also requests the European Communities not to apply the same approach as in the case of dimethoate in the reevaluation of 320 active substances that is now underway.
