General Conceptual Comments on the

DRAFT ISPM: MINIMIZING PEST MOVEMENT BY SEA CONTAINERS (2008-001)

Introduction

A working group of the Commission on Phytosanitary Measures (CPM), which oversees the implementation of the International Plant Protection Convention (IPPC), has drafted a possible International Standard for Phytosanitary Measures (ISPM) for minimizing pest movements by sea containers, and it has invited general conceptual comments on the draft ISPM.

The World Shipping Council (WSC), the Container Owners Association (COA), and the International Chamber of Shipping (ICS) – hereinafter referred to as “we”- respectfully offer these comments with the intent of being of assistance as the CPM further considers the topic. COA has been invited to participate as an expert to the CPM Working Group; WSC and ICS have not been previously contacted by the CPM or its working group.

WSC, with offices in Brussels and Washington, D.C., is a non-profit trade association whose member companies carry over 90% of the world’s containerized cargo by sea. WSC members operate approximately 400 regularly scheduled services linking the continents of the world. Collectively, these services transport about 60 percent of the value of global seaborne trade, or more than US$ 4 trillion worth of goods annually. WSC Member companies operate the overwhelming majority of the 17 million containers used to transport maritime commerce. WSC works with various governments and international regulatory agencies to address a wide range of environmental and regulatory issues affecting the liner shipping industry.¹

¹ More information about WSC and the liner shipping industry can be obtained at www.worldshipping.org
COA aims to represent the common interests of container owners worldwide. It has 165 Members of which 70 are full members representing shipping lines, leasing companies and intermodal operators. The full members own 25 million TEUs out of the world’s container fleet of 32 mill TEUs (or twenty foot equivalent-units).2

ICS is the global trade association for shipowners with a membership comprising national shipowners’ associations in 36 countries, representing all sectors and trades and over 80% of the world merchant fleet.3

The following comments identify a number of areas where the draft ISPM is deficient and/or requires further consideration. We recommend that the CPM suspend further action on this draft ISPM and defer to the more comprehensive revision of the packing guidelines for cargo transport units (CTUs), which is being finalized by the IMO, ILO and UNECE with a view to making these guidelines a Code of Conduct. WSC, COA and ICS and their member companies and associations are available to provide further information in the future to the CPM working group.

1. The premise of the proposal is flawed and lacks the support of a risk based analysis.

The Background section of the draft states: “Sea containers being moved around the world have been found to be a pathway for the introduction and spread of plant pests and other organisms including invasive alien species.” While this statement may be true in one sense at a high and general level, the draft ISPM proposes to regulate only that portion of a sea container’s movement that presents the relatively lowest risk of transference of plant pests: the surfaces of a container.

It is generally the contents that are loaded into containers by shippers that are the cause of the existence of any plant pest transference. We are aware that plant pests may be transported in cargoes that a shipper has loaded into a container or loaded onto a ship. We are aware that plant pests may be transported in wooden packing materials that a shipper has loaded into a container (e.g., Asian longhorn beetle).4 Neither of these problems or situations would be effectively addressed by the draft ISPM.

2 Additional information about COA and its members is available at www.containerownersassociation.org.

3 Additional information about ICS is available at www.ics-shipping.org.

4 See, e.g., “Pest risk assessment of insects in sea containers” (Australian Journal of Entomology (2001) 40, 180-192), page 185: “….the lack of apparent damage to floors of containers suggest that the timber pests collected are
This draft ISPM proposes that governments and industry focus on the cleanliness of the structures of containers, when the greater risk of plant pest transmission is what is put *inside* containers. And, it does so without acknowledging the fact that the risk of contamination of container structures varies very substantially around the world and is not, and cannot reasonably be assumed to be, the same for all containerized supply chains. The potential risk of contamination of a container structure with Dutch beer moving from the brewery in Amsterdam via the port of Rotterdam to a consignee in New York is significantly and inarguably lower than a container of forest products being moved from the Pacific region to New Zealand.\(^5\) One risk may be negligible, while the other may be significant.

We agree that a shipping company should provide its shipper customer with a clean empty container for that shipper’s loading and use. The CMP working group recognizes that ocean carriers generally have, as a matter of commercial and operating practice and/or contractual obligations, policies to clean empty containers before the containers are dispatched to shippers for loading. The CMP Working Group also has recognized that other international organizations (the International Maritime Organization, the International Labour Organization, and the United Nations Economic Commission for Europe), governments, and industry have been working to revise the existing guidelines for the packing and handling of cargo transport units to become a Code of Practice. As part of this revision, phytosanitary requirements for containers have been included in the Code of Practice.

The draft ISPM lacks any discussion or explanation of why that on-going effort is inadequate to address the issues that this draft seeks to address.

The draft ISPM also lacks any discussion or explanation of why a non-risk based requirement addressing only one element of the potential container pathway – the structures of the container -- should be pursued in all trade lanes around the globe when documents available to more likely to be associated with the cargo in the containers, particularly timber dunnage, rather than the floors themselves”. See also *ibid.*, page 182: “[Pests of stored products] were often associated with residual foodstuffs, mostly cereal, that had not been cleaned from containers”. (The same conclusion regarding organic residues, not removed by the consignees, potentially attracting pests is stated on page 185). The article has been registered with IPPC as document EWG2011/SeaCon/DOC006.

\(^5\) “Empty containers from the Pacific region are much more frequently contaminated with soil and live arthropods than containers elsewhere in the world” in *Biosecurity Monitoring Group: Monitoring Research and Pathway Review: Sea Containers July-September 2006*, New Zealand (page 10). The same review also commented on the very significant difference in external contamination rates identified under the Australian and New Zealand inspection regimes, observing that “different container origins and suppliers, as well as different standards for contamination, may account for at least some of the differences in the [rates]”(page 53). The review has been registered with the IPPC as document Foum2011/SCDF/DOC010.
the CPM working group very clearly demonstrate that the risk of contamination of the container structures differs from country/region to country/region.

The IMO/ILO/UNECE effort is more comprehensive than the current draft ISPM because it addresses the responsibilities of each of the parties that receive, load and unload containers, and does so with an understanding and appreciation for the different parties’ roles and responsibilities. By comparison, this draft ISPM is limited by the fact that it appears to address only the responsibility of shipping companies, and does not address the responsibility of other parties, such as shippers/consignors or consignees.

Accordingly, we recommend that the CMP should postpone further work on this draft ISPM until such time as the IMO/ILO/UNECE revision of the container Code of Practice has been completed, and it can assess whether that Code is sufficient, or whether further standard setting is needed. Such a postponement would also allow the CMP to review and analyse the results of the surveys regarding pest interceptions on sea containers that NPPOs are now – belatedly in our view – invited to undertake (see also Section 3 below).

2. The scope of the proposed standard

The draft ISPM describes the “scope” of the proposal as follows: “This standard provides guidelines on how to reduce the risk of the introduction and spread of quarantine pests associated with the movement of sea containers in international trade, empty or full, regardless of associated cargo.” In fact, the draft ISPS does no such thing.

First, the draft ISPM does not address the responsibilities of the shipper/consignor in loading or “packing” the container. As the relatively highest potential threat of plant pest transmission arises from what is put in the container during the loading/packing process, this omission ensures that the standard does not address the risks that may be present in “full [containers], regardless of associated cargo”. Shipping companies do not load the contents of a container; shippers do. Shipping companies do not open a container once the shipper seals it; consignees do.

Second, the draft ISPS does not address the responsibilities of the consignee when it finds a plant pest in the delivered container, or what its cleaning/disposal/reporting obligations may be to reduce the risk presented by that pest.⁶

⁶ Non-reporting and other failures to address potential pest infestation at “transitional facilities”, i.e., locations where packed containers are de-vanned, was identified as a major concern in the review mentioned in footnote 5, e.g., “those transitional facilities operating without [accredited persons], approved procedures or proper equipment demonstrate a lack of appreciation of their role and responsibility in biosecurity” (page 56).
Third, the draft ISPM does not address the responsibilities of other parties that have custody and control of a container during its transit, and tries to address this significant omission by assigning unrealistic responsibilities only to the “shipping company” (a term that is not defined in the draft ISPM).

3. Requirements

The “Requirements” section’s introduction and Section 1 of the draft ISPM, which propose a container cleanliness standard, are drafted in the passive voice and do not identify what parties are responsible for the container’s cleanliness. It does not identify what parties are expected to perform the “visual examination” described in section 1.1. It does not identify any time or frequency for the inspection function.

The scope of the draft ISPM is not limited to empty containers being dispatched by a shipping company to shippers for loading with cargo. Instead, the draft ISPM would appear to apply to all containers in all locations at all times. This represents a potentially overwhelming and unsustainable burden if it means that there is a constantly recurring obligation for a visual inspection of a container or at every change of possession. The draft ISPM is silent, however, on when a cleanliness inspection under the standard is necessary.

The draft ISPM states that “If a container has no visible contamination, it is considered to be clean. Documentary verification of the cleanliness will be required.” This raises a number of issues. First, the draft ISPM’s cleanliness standard would appear to require an extensive and intensive manual examination by a human being of a container that could not be performed remotely. For example, the draft states the hollow spaces inside a container’s corner castings are to be checked, which requires a manual process by a human being that is incompatible with another portion of the draft that states: “pole-mounted remote cameras should be used...” This would require a huge potential cost when applied to all container moves. The draft ISPM compounds the problem with a requirement that every cleanliness examination have some kind of “documentary verification” which must be stored electronically and made available to

---

7 For example, it is not uncommon for a container to undergo a “street turn”, where it is unloaded at a consignee’s premises and then repositioned directly to the next consignor/shipper without ever being returned to a “yard”, “depot”, or port. Today, the shipper agrees to clean such a container, if the consignee has not done so. Would the draft ISPM allow the relevant commercial parties to continue to allocate such responsibilities amongst themselves?

8 The draft ISPM defines a “visual examination” to be the “physical examination of plants, plant products, or other regulated articles using the unaided eye, lens, stereoscope or microscope to detect pests or contaminants without testing or processing” (emphasis added).
any importing country at any time upon request. The recordkeeping systems needed to capture, store and retrieve documentary verification of the cleanliness of every container moving in ocean carriers’ global operations would be an enormous burden to create and operate. Such a universal documentation system would also be completely disconnected from generally accepted principles for pest risk assessment, including the IPPC’s own guidelines for proper pest risk analysis (PRA). We note in this regard that after having spent considerable time already in developing this draft ISPM, only in May of this year did the CPM request “the SC, with input from the Secretariat, to develop guidance for a survey to be carried out by volunteer NPPOs to gather information on the rate of pest interceptions on sea containers” and, further, “encouraged NPPOs to voluntarily take part in the survey and gather information on pest interceptions on sea containers, over a limited time, and submit this information to the Secretariat for analysis and reporting”. We believe that this approach for developing a regulatory standard before determining the scope of the problem is wrong and deficient, and does not meet basic standards for a regulatory process, including – arguably – the IPPC’s own guidelines for proper pest risk analysis. This is one more reason why the draft ISPM should be suspended.

Rather, documentation of any substantial risk of plant pest from particular geographic locations should be systematically obtained together with the identification of those risks and other relevant pest management data, e.g., time of year of prevalent risk of infestation, so that authorities and industry could understand the risk at issue and could develop appropriate, specific remedial responses. For example, the Canadian and U.S. response to the risk of Asian gypsy moths’ laying eggs on ship and container surfaces at certain times of year in certain North Asian geographies is a targeted response to an identified risk. It would not justify a global, year-round container inspection response – just as the current draft ISPM and its lack of systematic documentation regarding pest infestation on the structures of sea containers cannot, in our view, justify the proposed globally applicable requirements.

The liner shipping industry operates roughly 17 million containers globally. If one assumes that containers on average carry cargo shipments for approximately five and half

---

9 For a general discussion of pest risk analysis and management, see “Biological Invasions: Assessment and Management of Environmental Risk” bulletin by D.A. Andow, University of Minnesota. Incidentally, and referencing the article mentioned in footnote 4 above, the bulletin notes that “the wood from which the containers were made was not an important dispersal pathway for timber pests, but wood inside the containers could be an important one. Moreover, the containers could be an important pathway for pests that found shelter in the container, or for pests associated with the contents of the containers” (page 10). The bulletin has been registered with the IPPC as document EWG2011/SeaCon/Doc005.

10 Source: “Sea Containers (2008-001)” summary of events to date. Available at https://www.ippc.int/core-activities/standards-setting/expert-drafting-groups/expert-working-groups/sea-containers
shippers per year, more than 100 million empty containers are being dispatched to shippers around the world per year. The industry already incurs substantial costs in providing clean empty containers to shippers for their use. There are literally many hundreds of millions of changes in container custody during any year. It would be completely unreasonable to require a cleanliness inspection by human beings at each one, and unreasonable to expect “documentary verification” of cleanliness at each one. Even if that much documentation could be created and processed, who would review it, when, at whose expense and for what purpose?

The CPM has demonstrated sensitivity to costs that it might incur under such a standard. Explaining its decision not to become involved in accrediting “shipping companies”, it stated that such a responsibility “could potentially have huge financial and image impacts for the organization.” The financial impacts of the proposal on the industry deserve equal consideration, particularly when the proposal is not targeted at a specific or defined or documented risk.

4. The draft ISPM’s “certification” section is unclear.

Section 2 of the draft ISPM states: “Shipping companies may be certified based on their ability to undertake specific procedures that may result in clean sea containers.” While this would appear to be motivated by a helpful intent, it is unclear what this means, what is intended, or how it would work.

First, we note that only “shipping companies” may be so certified. Are shipping companies the only parties that the draft ISPM intends to have an obligation to ensure the cleanliness of a container?

Second, as noted above, the scope and frequency of application of the standard are unclear, meaning certification that a shipping company meets the standard would likely engender difficulties, disagreements and confusion.

Third, the purpose and value of certification are not stated or clear. Section 2 states: “The certification of a shipping company would mean that its procedures are deemed satisfactory wherever it operates.” If a shipping company’s procedures are “deemed satisfactory wherever it operates”, why would it need to keep records of each individual container’s inspection, and present them to an import country upon request? If a shipping company’s procedures are “deemed satisfactory”, would it be relieved of the obligation to keep records of each individual container’s inspection?
Fourth, if a shipping company operates in 100 different countries, does the party performing the certification/validation need to validate the operation of the company’s systems in all 100 locations? If not 100, is one or two countries sufficient? How are the authorities of country A supposed to validate systems or procedures used in country B?

Finally, if a certification means that a shipping company’s “procedures are deemed satisfactory wherever it operates”, then is a certification approved by the authorities in one country automatically to be accepted by the authorities in the 99 other countries where the shipping company may be operating? If not, what criteria would govern?

5. The draft ISPM proposed obligation on “shipping companies” is disconnected from how containerized shipments actually are handled and by whom.

Section 4 of the draft ISPM states:

“4. Preventing the Contamination of Clean Containers

Shipping companies should ensure that appropriate measures are taken to prevent the contamination of clean containers. This may involve taking measures when a sea container is moved to/from a depot or terminal to another site to be unpacked, packed or stored or is transiting through another country ....” (emphasis added)

First, when a container is at a location where it is being packed or unpacked, it is not in the custody of the shipping company, and the packing and unpacking activities are not functions performed by the shipping company, but by the consignor/consignee/shipper. Second, when containers are moved between inland locations, such movements may be under the control of a shipping company, but very often they are not. This section tries to ignore the real world complexities of container custody and operation by arbitrarily assigning responsibility to “shipping companies” to ensure that containers stay clean at all times, even when they are not in the custody of the shipping company. While we recognize the challenge that the ISPM seeks to address, this proposal is unrealistic and unworkable.11

11 From our review of the background information describing the draft ISPM, it appears that it was only in May 2013 that it was decided (during the 2013-05 SC discussion) to include loaded (packed) containers’ cargoes and packing material in the scope of the ISPM. Up until that point, the discussions had focused exclusively on empty containers. For example, at 2012-04, it appears that the Standards Committee had agreed that: “Contamination at packing is a different topic related to cargo and should not be covered in this draft ISPM at this stage”. (Source: https://www.ippc.int/core-activities/standards-setting/expert-drafting-groups/expert-working-groups/sea-containers). While the relatively highest potential pest risk, and the principal challenge, arises from what is put into containers, not the structures of the container itself, and while it is understandable why there may be a desire
6. Section Five’s discussion of “inspection for compliance” and “non-compliance” is unclear and unworkable.

Section 5.1 of the draft ISPM states: “NPPOs of importing countries should check compliance through inspections or audits.” This raises, but does not answer, the fundamental question of “compliance with what?” What is it that an importing country is to be checking? Is the importing country to check only the structures of a container for cleanliness? If the importing country is to check a container for the possible presence of plant pests, the contents of the packed container would be what present the relatively greatest risk, but the draft ISPM does not address that fundamental issue. If it is the content of the container that is to be checked, how would and could the above discussed certification of shipping companies be of any relevance, considering that shipping companies are not responsible for and do not undertake the packing of containers? What constitutes “compliance”?

Section 5.1 goes on to state: “Where there is no evidence that a visual examination and cleaning system is in place, and the importing country has reason to believe that plant pests may be moved with the sea containers from a specific country, imported containers from that country should be inspected. The pest risks should be identified by conducting a PRA.” We note that Section 5.1 is the first and only time in the draft ISPM that there is any mention of PRA or “pest risk analysis”. This entire regulatory proposal lacks any pest risk analysis, until one gets to this point of the draft document. That is a fundamental flaw.12

The industry can support specific actions based on scientifically justified and documented specific pest risk analysis. For example, as noted above, the U.S. and Canada have established specific inspection regimes for surfaces of ships and containers at certain, defined times of years for ships that have called at certain, defined North Asian ports to protect against Asian gypsy moths. This kind of specific targeted regime to address a known identified risk of invasive species transfer makes sense. A generic proposal for inspecting all sea containers across the globe does not.

Section 5.2, entitled “Noncompliance”, goes on to state: “Where non-compliance occurs, the importing country may take phytosanitary action as noted in section 5.1.6.1 of ISPM 20:2004”. In addition to the confusion about what may constitute “compliance” or “non-

---

12 See also, footnote 5 and the associated text.
compliance”, the stated consequences for non-compliance in the draft document are a “cut and paste” job that have little apparent logic. If the only actions to be taken by an importing country are the kind of container or cargo detention actions mentioned in 5.1.6.1 for remedying situations where an identified plant pest is found, then what is the difference between that state of affairs and the status quo?

7. Conclusion

WSC, COA and ICS recognize that minimizing pest movements around the globe is a difficult challenge. The shipping industry has been working within the IMO and with various governments about ballast water discharges as a potential vector for the transference of invasive aquatic species, and we recognize the difficulty and many issues involved in that challenge. WSC and its member lines have worked with Canadian and U.S. authorities on addressing the risk of Asian gypsy moth egg masses on ships and containers at certain times of years. WSC and its member companies have worked with shippers and shipper organizations to ensure their awareness of phytosanitary requirements applicable to wood packing materials in order to minimize the risk of movement of Asian longhorn beetles and similar insects that may be in wood packing material. WSC member companies work closely and cooperatively with Customs authorities that wish to inspect containers of goods (especially agricultural goods) that may present a risk of carrying plant pests. WSC and ICS are members of the Group of Experts that has been revising the existing IMO/ILO/UNECE guidelines for packing CTUs to become a Code of Conduct, and which has unanimously agreed to recommend to these three UN organizations that the Code of Conduct include phytosanitary measures to be undertaken by container operators, shippers and consignees, respectively.

Each of these efforts is in support of addressing a defined, specific risk with a response that has a logical chance of mitigating, if not preventing, that risk,

The problems with this draft ISMP are that it is too broad, too burdensome, and not risk focused and based. It seeks to address potential contamination of container structures in a global and uniform way that is de-linked from the modus operandi of international containerized commerce, and without appropriate recognition that the potential for such contamination varies very significantly between geographic regions. Finally, the draft ISMP fails to address the risk of the contents and the cargo handling practices applicable to what is put inside the container, which constitute a relatively higher risk for plant pest infestation. The draft ISMP should be reconsidered.

###