EUROPEAN COMMISSION

Directorate-General for Trade
Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

MISSION REPORT

Subject: **WTO/TBT Committee Meeting – 13-14 November 2019, Geneva - Report on Specific Trade Concerns (STCs), Thematic Sessions and other matters**

TRADE F.3
Art. 4(1)(b) TRADE F.3
TRADE F.3
Geneva DEL

Art. 4(1)(b) GROW B.1
GROW B.2
GROW B.2

Out of scope

1. Highlights

Out of scope

- EU measures on **Maximum Residue Levels (MRL) and Chlorothalonil** continued to draw a lot of attention by members with 9 and 8 interventions respectively.

Out of scope

2. Specific Trade Concerns

Out of scope

Out of scope The EU was, once again, one of the Members to receive most concerns, notably on identification of compounds as endocrine disruptors and the transition periods for MRLs, as well as pesticides,

Out of scope

Out of scope

Art. 4(1)(b)

Out of scope

CC: Ms Weyand, Ms Gallina, Ms Konig, Art. 4(1)(b) Art. 4(1)(b) Mr Redonnet, Art. 4(1)(b)

Art. 4(1)(b)

Art. 4(1)(b) (TRADE).

Mr Tynan (Cabinet Malmström).

Art. 4(1)(b) (AGRI).

Mr Nunes de Almeida, Art. 4(1)(b)

(GROW).

Art. 4(1)(b) (ENV).

(SANTE).

Art. 4(1)(b) (ENER).

Art. 4(1)(b) (JUST).
Art. 4(1)(b) (CLIMA).
Art. 4(1)(b) (CONNECT).
(LS).
Art. 4(1)(b) (UKTF).
Art. 4(1)(b)
Art. 4(1)(b) (EU Delegations).

ANNEX 2 – SPECIFIC TRADE CONCERNS AGAINST THE EU (EU DEFENSIVES)

1. Out of scope

Out of scope

Out of scope

4. European Union – Chlorothalonil (pesticide active substance)

In total, 8 members, took the floor and raised their concerns for this STC.

Columbia is concerned about the negative impact on their banana production since a major part of their exports is for the EU market. It stated that there was no scientific proof to ban the use of chlorothalonil and that a less restrictive measure could be used to protect consumers (Art. 2.2 TBT Agreement). In Columbia, chlorothalonil is vital when producing and protecting crops, including during storage, transportation and distribution. Columbia claimed that chlorothalonil can be used safely, based on scientific evidence. Columbia also stated that the EU did not take different climate conditions into account when amending this measure and would request that the EU keeps chlorothalonil on the register.

The **US** is concerned about the pesticide regulation and the fact that the measure was finalised without taking comments on board. The EU process is seen as problematic owing to a lack of scientific evidence and lack of transparency. Data gaps are not problematic elsewhere and therefore should not pose a problem. The US asks why the EU requires a certain level of genotoxicity when other countries do not. This measure has created significant problems for the US cranberry and almond industries owing to crop damage and food waste. The US requests that the EU confirm no action will take place before taking on board Member's comments.

Paraguay remains concerned and referred to its previous comments at earlier TBT meetings.

Ecuador is concerned about the non-renewal of chlorothalonil, especially the impact on bananas as Ecuador is a major exporter to the EU. The social-economic impact on farmers was highlighted, especially small farmers, along with the effect on jobs along the value chain. Ecuador believes that they have satisfied international safety standards and have the relevant certifications. Ecuador also noted the lack of sufficient scientific evidence and incomplete risk-assessments for this measure in the EU, as required by the SPS agreement and Codex.

Guatemala is also concerned especially due to the lack of substitutes for chlorothalonil and also noted the lack of risk assessment and scientific evidence for this measure.

Brazil is concerned about the hazardous-based approach used by the EU instead of using risk-based approach, and also the fact that chlorothalonil is accepted in more than 100 countries. The measure negatively affects the exports of fruit in Brazil, even though the MRLs used in Brazil are lower than those stipulated in Codex.

Panama is concerned about the blocking of the use of this active ingredient, which is an essential use in the rest of the world, especially in the production of bananas. Without the use of chlorothalonil, this reduces production by 50% and damages 100% of sales as black spots appear on the bananas. Due to climate change, this problem is becoming more acute. Chlorothalonil is used to stop the spread of disease. Panama cannot understand why the EU, being a champion of fighting climate change, does not want forests to be preserved; forests are at risk as chlorothalonil cannot be used. The EU is questioned as to what Panama should do? Should it stop exporting to the EU entirely or fell the tropical forests? This ban will ultimately lead to job losses.

Costa Rica is also concerned as there is no substitute product available. It is the fifth largest exporter of bananas in the world and many jobs depend on exports to the EU. It believes that chlorothalonil has limited residues and there is a lack of risks to human health and the environment. The lack of a risk-based assessment, as per the TBT agreement, was also highlighted, therefore further analysis should be required.

The **EU** responded that it proposed not to renew the approval of chlorothalonil and had notified third countries of the draft Regulation via the TBT procedure. The measure did not lead to immediate disruptions in trade, as the measure itself does not amend the maximum residue levels (MRLs) and provides for a grace period. The EU confirmed that the possibility for granting transitional measures will be considered when proposing any changes to existing MRLs, which will not take place before expiry of the grace period. Furthermore, any action to reduce MRLs in the future will be subject to a separate notification under the WTO/SPS procedure. Chlorothalonil has been evaluated in accordance with Regulation (EC) No 1107/2009 on the placing of plant protection products on the market. EFSA's conclusion on chlorothalonil, following this extensive peer review process, was published in January 2018. During this assessment, the approval criteria provided for in Article 4 of this Regulation were not satisfied, with respect to one or more representative uses of at least one plant protection product. During the assessment a critical concern was identified by the Authority in relation to the contamination of groundwater by certain metabolites of chlorothalonil; the Authority could not exclude a genotoxicity concern for residues to which consumers will be exposed and identified a high risk to amphibians and fish for all the uses evaluated; several areas of the risk assessment could not be finalised due to insufficient data in the dossier, and it was noted that chlorothalonil is classified as carcinogen category 2 in accordance with Regulation (EC) No 1272/2008 of the European Parliament and of the Council, while in the conclusion of the Authority it is indicated that chlorothalonil should be classified as carcinogen category 1B. In light of the above, the European Union proposed not to renew the approval of chlorothalonil in accordance with Article 20(1)(b) of that Regulation. On 29 April 2019, the Commission adopted Implementing Regulation (EU) No 2019/677 concerning the non-renewal of the approval of the active substance chlorothalonil. The grace period shall expire by 20 May 2020, at the latest. Import tolerance requests however remain possible and will be assessed on a case-by-case basis by the rapporteur Member State and EFSA. Such requests would have to be supported by substantial new data addressing the concerns.

5. European Union – Transitional periods for MRLs and international consultations

In total, 10 members, took the floor and raised their concerns for this STC.

Columbia is concerned about the transitional period as 6 months is insufficient for farmers to implement changes; 36 months is deemed more appropriate. The reason for notifying to the WTO is not just a formality but to take on board different technical arguments. There is also discrimination between EU and non-EU products as Columbia products will need to meet the new requirements on week before the implementation such that goods arriving in the EU on the specific date comply with the new limits. This is against the MFN and GATT regulations. The trend of modifying MRLs with short timelines is very problematic for farmers as they have fewer options to fight against disease. More scientific studies are required. Columbia called on the EU to prolong the transitional period i.e. an additional 12 months for changes to MRLs, in consideration for substances used throughout Latin America.

The US reiterated its concerns regarding the transitional period, which does not allow for application of the lower MRL. Even worse, the date of import into the EU and not the date of production is to be the reference date. This measure shifts the burden of EU-only regulation and cuts off access to the EU for crop trade. The US requested an extension to the transitional period for issues concerning food and agricultural products and encouraged the use of risk-based decisions in the changing of MRLs.

Panama referred to its previous statement and requested extra time when adopting measures that everyone has to respect.

Ecuador noted that the issue affects developing countries more, especially farmers, and before the entry into force of this measure, the EU should consider the effects on agricultural production. If a new substance is required then 36 months would be needed for the change. As it stands, the deadline is much too short.

El Salvador called on the EU to reassess MRLs, given the impact on the export of agricultural products. They are very concerned about the transitional period and note that this will affect trade with the EU.

Guatemala is also concerned that exports of agricultural products to the EU will be negatively impacted, as well as the entire value chain involved. Food security is a key area for cooperation and 6 months is far too short to remain in compliance. The harvesting period should be taken into account therefore a longer transitional period is required i.e. 24 months to adapt. It is also necessary to identify alternative substitutes that will assure the same level of protection.

Canada acknowledged the necessity of applying food safety measures but highlighted that a longer transitional period would be necessary to adapt, also taking into account the agriculture supply chain and inventories.

Brazil referred to Article 2.12 of the TBT agreement where reasonable time is necessary to adapt to new measures. They noted that the scientific evidence was inconclusive and they are concerned that the transitional period is incompatible with the planting and production process. Ultimately, this measure will affect farmers.

Costa Rica requested a deadline extension otherwise the export of bananas to the EU will be negatively affected. It is currently impossible for the agricultural sector to adopt to this new tolerance level within 6 months. Costa Rica supported the comments of other members and also requested a dialogue with agriculture exporting countries. A decision adopted at a multilateral level would be most appropriate.

Uruguay noted that the harvesting period and the need to develop appropriate substitutes meant that the transitional period is not long enough to ensure compliance with the new MRLs. Measures should be based on internationally accepted standards and based on scientific evidence. If the evidence shows a need to reduce MRLs, then the transitional period should take Member's concerns into account.

The **EU** clarified that it considers concerns on the setting of Maximum Residue Levels (MRLs) for pesticides – and any details regarding their implementation – to be a matter for discussion at the SPS Committee, rather than at the TBT Committee. The EU fulfils all its obligations under both the TBT and the SPS Agreement, including notifying its trading partners of planned measures that fall within the scope of either of these agreements. Information and comments received in response to these notifications are duly considered and taken into account before final decisions, as explained in EU replies to trading partners. As regards possible transitional periods when MRLs are lowered, the EU would like to inform the Committee about two key provisions of such measures: First, following the formal adoption, publication and entry into force of an act lowering MRLs, a deferred date of application is set. The date of application is the date from which the new/lower MRLs are effectively enforced. The length of the deferral is 6 months after entry into force, in the vast majority of cases. This deferral of the application date permits inter alia. third countries and food business operators to prepare themselves to meet the new requirements that will result from the modification of the MRLs. Second, products produced in the EU or imported into the EU before the aforementioned application date may continue to benefit from the old/higher MRLs and remain on the market, if information shows that a high level of consumer protection is maintained. This is regularly not the case where MRLs are lowered because the safety of consumers could not be demonstrated.

Out of scope

9. European Union - Regulation (EC) No 1107/2009 - non-renewal of approval of the active substance picoxystrobin

Brazil reiterated that EU should have notified these measures to the SPS committee in parallel. The proposed transition periods are considered too short. The EFSA studies were not conclusive. **Paraguay** reiterated it concerns expressed at the last TBT committee.

The European Commission decided not to renew the approval of picoxystrobin through Commission Implementing Regulation (EU) 2017/1455. Authorisations for plant protection products containing picoxystrobin in the EU were required to be withdrawn by 30 November 2017. Member States were permitted to allow for a grace period until 30 November 2018 at the latest. The **EU** notified third countries of the draft Regulation via the TBT procedure. The measure did not lead to immediate disruptions in trade, as the measure itself does not amend the Maximum Residue Levels (MRLs) and provides for a grace period for use of products containing picoxystrobin. Given the issues identified by the European Food Safety Agency (EFSA), the existing MRLs were reviewed in a separate measure in view of their safety to consumers. A draft measure lowering the MRLs for picoxystrobin to the limit of quantification (LOQ) was prepared and presented to the Standing Committee on Plants, Animals, Food and Feed. The EU notified third countries of the draft Regulation via the SPS procedure. Comments received from non-EU countries and stakeholders were available to the Standing Committee, where a summary of the key points raised was presented. The Standing Committee gave a favourable opinion on the draft. The European Commission formally adopted the revised MRLs in January 2019. The revised MRLs are applicable since 13 August 2019. Import tolerance requests however remain possible and will be assessed on a case-by-case basis by EFSA. Such requests would have to be supported by substantial new data addressing the concerns.

Out of scope

Out of scope

14. European Union - Hazard-based approach to plant protection products and setting of import tolerances

In total, 10 WTO members (the **US, Canada, Paraguay, Panama, Brazil, Costa Rica, Australia, Argentina, Uruguay** and **Guatemala**) raised deep concerns with the EU measures for the

identification of endocrine disruptors. They all questioned the hazard-based approach instead of risk based and the lack of scientific criteria's/evidence. The **US** raised their ongoing concerns (and as raised in previous TBT committee meetings) with the EU's hazard-based approach to the pesticide Regulation and its implementation of criteria for identifying and subsequently banning endocrine-active substances. Simply identifying hazards without identifying ascertainable risks or considering reasonable methods for managing risk raises concerns that the EU's regulatory approach may be more trade-restrictive than necessary. The US remains troubled by the EU's opaque process for managing import tolerances for substances that trigger the hazard-based cut-off criteria. The EU has stated that import tolerances will only be granted on a case-by-case basis, factoring in "legitimate factors" and the precautionary principle. Regrettably, the EU's case-by-case approach does not seem to be examining the specific circumstances relevant to each substance, as would be considered in a risk-based approach. No one has answered what a "legitimate factor" is, which leads to an *ad-hoc* approach to the precise legal regime that may apply. This *ad-hoc* approach will cause considerable uncertainty for applicants and producers. The US noted that, in order to address those concerns, the EU needs to clarify this matter with precision by explaining what the factors are, how these factors relate to safeguarding human health and the environment, how long the process is anticipated to take, and how producers can effectively take advantage of it. The US reminded that other less trade restrictive regulatory approaches exist that provide the high levels of human health and environmental protection, without posing unnecessary barriers to trade. Other members supported the concerns raised by US and highlighted the need to use risk based approach with sound scientific data. They also underlined the need for guidance and clarification in the implementation and asked for the organisation of informative sessions. Developing country members raised their concern as regards the negative socio-economic impact it will have on their agriculture sector.

The **EU** took note of the Member's concerns and their interest in the ongoing work in the EU on defining criteria to identify endocrine disruptors for plant protection products. As the EU had informed in previous TBT Committee meetings, the scientific criteria to identify endocrine disruptors for plant protection products based on the WHO definition are applicable since 10 November 2018 onwards and included in Regulation (EU) No 2018/605. The EU stated that it is aware of more specific concerns, in particular, on whether import tolerances can be established for substances that are not authorised in the EU, due to the so-called "cut-off" criteria in Regulation (EC) No 1107/2009. After having examined the different policy options and taking into account the concerns raised by stakeholders, Member States and third countries, the EU had decided to follow the procedures laid down in Regulation (EC) No 396/2005 for the management of import tolerance requests concerning active substances falling under these cut-off criteria. These procedures include a risk assessment by an Evaluating EU Member State and a scientific opinion by the European Food Safety Authority (EFSA). The granting of the import tolerance will then be considered in line with risk analysis principles on a case-by-case basis and taking into account all relevant factors. The EU reiterated its commitment to act in full transparency and keep Members duly informed about further developments.

Out of scope