EUROPEAN COMMISSION

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

MISSION REPORT

Subject: **WTO/TBT Committee Meeting – 26-27 February 2020, Geneva - Report on Specific Trade Concerns (STCs), Thematic Sessions and other matters**

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

GROW B.1
Art. 4 (1)(b) GROW B.2
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Out of scope

1. Highlights

Out of scope

- EU measures on **Maximum Residue Levels (MRL) of plant protection products and the non-renewal of Chlorothalonil** continued to draw a lot of attention by members with 11 and 9 interventions respectively. The EU **approach to plant protection products** related to **endocrine disruptors** and the **setting of import tolerances** in case of non-renewal of pesticides provoked the reaction of 13 members.

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2. Specific Trade Concerns

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The EU was, once again, one of the Members to receive most concerns, notably on the approach to plant protection products (endocrine disruptors) and the setting of import tolerances, as well as on transitional periods for MRLs

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Art. 4(1)(b)

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CC: Ms Weyand, Ms Gallina, Ms Konig, Art.4 (1)(b)
Mr Redonnet, Art. 4(1)(b)
Art.4 (1)(b)
(TRADE).
Mr Tynan (Cabinet Hogan).
(b)
(1) (AGRI).
Mr Nunes de Almeida, Art.4
(GROW).
(ENV).
Art.4 (1) (b)
(SANTE).
(ENER).
(JUST).
(b)
(CLIMA).
(1)
(CONNECT).
Art.4
(LS).
(UKTF).
Art.4 (1) (b)
(EU Delegations).

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

Out of scope

Out of scope

7 European Union – Hazard-based approach to plant protection products and setting of import tolerances

In total, **13 Members** raised deep concern with the EU measures for the identification of endocrine disruptors (questioning in particular, the hazard-based approach instead of the risk based approach and the lack of scientific criteria/evidence). The **US** reiterated concerns on the adoption of the measures for plant protection products in spite of the unprecedented number of WTO Members expressing concerns and was disappointed about the hazard-based approach and the lowering of Maximum Residue Limits (MRLs). EU explanations given so far have not addressed US concerns. Concerns on the lack of scientific basis and unpredictability, as well as explicit questions were detailed in previous US statements, notably in November 2019. The US would like to have specific replies and asked the EU to be consistent with WTO obligations.

Brazil, stressed that EU regulations should follow scientific principles and serious evaluations and that MRLs should be addressed in accordance to SPS principles. **Canada** asked for EU seminars with third countries and stakeholders. New decisions are in the process of being implemented and clear procedures for import tolerances are required. In the framework of the recent EU "Farm to Fork strategy", Canada would like to have information on implementing measures and calls for coherence and transparency. **Australia** asked whether following the past EU elections, the risk approach for endocrine disruptors would be re-discussed and asked for information on guidelines on import tolerances. **Argentina** pointed to uncertainty on the applications for import tolerances for substances that trigger the hazard-based "cut off" criteria and is worried that the non-identification of risk would act as an obstacle to trade. Import tolerance applications are a solution in case of import tolerances. They EU should avoid trade restrictive measures and take into account the situation in developing countries. **Costa Rica** pointed to the need for scientific evidence, while **Colombia** expressed concern on the non-renewal of substances for plant protection products. **Uruguay** maintained that the evaluation of real risks is important for preparing legislation an noted that certain products are withdrawn from the market even if they are not dangerous, which has an important impact on sustainable agriculture and food protection. Codex Alimentarius work should be the reference to guarantee health protection and trade. The EU should pay attention to Members' comments and reconsider its regulatory approach.

According to **Panama,** the TBT Agreement allows deviations, but based on risk assessment and scientific evidence. Certain studies on some of the substances were based on risk assessment, but the EU called them inconclusive and it is necessary to have conclusive analysis. It has to be taken into consideration the type of measure that developing countries can take, in accordance to their climate. **Ecuador** noted that EU decisions are not provisional and therefore, they are difficult to modify, even if the reviewed MRLs are based on non-conclusive opinions, there is a lack of information, and the EU follows a precautionary approach by reducing the limits to minimum detection limits. In case no information is available, the EFSA should not make recommendations, but maintain current levels. **Guatemala** considered that the EU should provide scientific evidence to countries exporting agri-products and that their specific situation should be taken into consideration (different climate

conditions, control of plagues, time and distance for exports). **Paraguay** regretted that the EU forces the implementation of its standards in other Members, without considering the economic, climatic and political consequences and takes unilateral measures against Codex (which seems a valid framework to evaluate measures by other Members) and the SPS Agreement. It would seem there is a proliferation of protective measures both for conventional and organic products. Finally the **Dominican Republic** stated that EU measures are not aligned to international standards.

The **EU** explained that 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 is aware of general concerns on the EU policy on plant protection products for the definition of scientific criteria to identify endocrine disruptors, as well as 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 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 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 agreed to keep Members duly informed about further developments.

Out of scope

8 European Union – Regulation (EC) No 1107/2009-Non-renewal of approval of the active substance chlorothalonil

In total, **9 Members** raised their concerns on this issue. **Colombia** expressed concern for the non-renewal of approval of chlorothalonil, used in banana crops for the control of plagues such as "cigatoca negra" or "hongo devastador", and regretted that EU policy aims at reducing the use of products and MRLs without scientific evidence. EFSA publishes opinions even in case of insufficient, non-conclusive information and the Commission, following a precautionary approach and decided not to renew the approval of the substance. Commission decisions are final and there seem to be no effort to get additional information. The proposed measure is a violation of Article 2.2 of the TBT Agreement, since there should be less restrictive measures to achieve legitimate objectives, such as consumer protection. At scientific level, the effect on health of chlorothalonil is not clear. In cases of non-sufficient evidence, a risk assessment approach should be used. Since the thresholds for a safe use of the substance are unknown, Colombia asked for the substance to be renewed.

Panama based its intervention on its previous statement in November 2019 and noted that bananas have a strong peel, not consumed by humans, making the use of the substance harmful. In order to explain the need to use chlorothalonil in pesticides, this country stressed that there is a proliferation of plagues due to climatic conditions and that 2020 is announced as the hottest year. Panama noted that the EFSA study on this substance is not conclusive and that it is necessary to align with Codex Alimentarious until more accurate information is available. Panama criticised the contradictory message transmitted by the EU, namely, the need to combat climate change, while at the same time forbidding the mechanisms to fight it. Panama referred to its vulnerability as a developing country. **Brazil** regretted the EU decision banning the substance and the hazard-based approach, instead of a risk-based approach. The reduction of MRLs by the EU would affect Brazilian exports of papaya, coffee and watermelon and would create systemic concerns. Brazil stressed that the reduction of MRLs should be notified to the TBT Committee and not only to the SPS Committee. **Costa Rica**

emphasized that there are not substitute products available and that, taking into account its prominent position as exporter of bananas to the EU, the measure would affect around 40.000 direct employments and 100.000 indirect ones. Costa Rica follows good agricultural practices ad fair trade principles and samples have confirmed the absence of chlorothalonil in their products.

Ecuador referred to previous statements at the TBT Committee detailing concerns for the non-renewal of authorisation for this substance. The reduction of MRLs would be affecting the commercialisation of bananas, in spite of their high efforts to produce high quality products. This country claimed it makes a responsible use of plant protection products and noted the importance of technological investments. Ecuador referred to a recent FAO study on the sustainability of banana, which referred to the role of the intensification of rains, and floods, high temperatures and proliferation of plagues as real threats to food production. In its comments to the EU TBT notification, Ecuador pointed to non-conclusive elements on water contamination and considered the measure to be unnecessary. Before reducing MRLs for this substance, a risk assessment would appear necessary, as provided for in the SPS Agreement and in Codex. Therefore, Ecuador suggests maintaining the current limits for the moment until new data are available. **Guatemala** joined the Members asking for a risk assessment of this measure and pointed to the lack of sufficient scientific evidence on its impact on human health and of proof of product contamination. The lack of alternative pesticides is of great concern in the fight against plagues. **El Salvador** shared the Members' concerns on the negative impact of the EU measure on exports of agriproducts from developing countries, the same as **Nicaragua**, who follows this subject with great interest. **Paraguay** pointed to related issues of concern, such as the EU hazard-based approach on plant protection products and the setting of import tolerances, as well as the EU non-renewal of other substances, such as picoxystrobin.

The **EU** proposed not to renew the approval of chlorothalonil and notified third countries of the draft Regulation via the TBT procedure. The measure did not lead to immediate disruptions in trade, as it does not amend the maximum residue levels (MRLs) and provides for a grace period. 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, the EU reiterated that any action to reduce MRLs in the future will be subject to a separate notification under the WTO/SPS procedure. Chlorothalonil was evaluated in accordance with Regulation (EC) No 1107/2009 on the placing of plant protection products on the market. The EFSA conclusion on chlorothalonil, following assessment by the "rapporteur" Member State and an extensive peer review process, was published in January 2018. During this peer review process, the approval criteria provided for in Article 4 of the Regulation were not satisfied with respect to one or more representative uses of at least one plant protection product. During the assessment: (i) a critical concern was identified by EFSA in relation to the contamination of groundwater by certain metabolites of chlorothalonil; (ii) EFSA 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; (iii) several areas of the risk assessment could not be finalised due to insufficient data in the dossier, and (iv) it was noted that chlorothalonil is classified as carcinogen category 2 in accordance with Regulation (EC) No 1272/2008, while the EFSA conclusion of the Authority indicated that chlorothalonil should be classified as carcinogen category 1B. In light of the above, the EU proposed not to renew the approval of chlorothalonil in accordance with Article 20(1)(b) of the plant protection products 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 the European Food Safety Authority. Such requests would have to be supported by substantial new data addressing the concerns.

9 European Union – Transitional periods for MRLs and international consultations

In total, **11 Members** expressed deep concerns on this EU measure.

Colombia refers to the non-renewal of certain substances to be used in pesticides in the EU and stresses that there is no alternative to replace those products for South American producers of foods and vegetables. More inclusive technical discussions are needed, involving stakeholders and measures should not act as technical barriers to trade. Producers bear an important burden and need to take action to protect their crops at least one year in advance, which is very challenging. Colombia referred to the short transitional period granted by EU measures and to the discrimination faced by products imported in the EU. WTO notification of technical rules should not only be a procedural step and Members must be able to effectively present their views and that they are taken into account. It is not sufficient for the EU to say that, by the time the EFSA decision is known, the concerned countries have to do the relevant adjustments. The **US** shared the concern that the EU's transition measures do not provide adequate time for producers to modify their pest management programs to clear the channels of trade. Furthermore, EU policies appear to establish arbitrary differences in the treatment of domestic and imported products, and do not appear to account for obstacles posed to imported products compared with generally non-existent risks of non-fulfilment with their described legitimate objectives of human health and safety. According to the US, In previous TBT Committees, the EU suggested that the matter of transition periods for MRLs should be referred to the SPS Committee. When the SPS Committee met in 2018 and 2019, however, the EU suggested that Members should refer to the TBT notifications as their "early warning" of possible future impact to MRLs. The US considers that the lack of consistency and transparency around statements of possible future impact does not provide foreign growers with the regulatory certainty needed to inform food production practices and decision-making in the present. Rather, it places foreign growers who comply with existing EU MRL standards at the time of production in jeopardy of facing future rejection at EU borders—a damaging prospect that EU growers do not face under the current regulatory provisions. The EU appears to be suggesting that foreign producers should stop using substances simply because the EU has chosen not to renew them domestically, even when the EU's domestic producers can continue using non-renewed substances through the domestic grace period and expect to be regulated under the older MRLs. If the EU's short transitional measures for imported products are based on health concerns, as the EU has claimed for certain pesticides, the US asked then the EU explain why MRL changes are only notified to the SPS Committee after EU growers have benefitted from grace periods and ensured that their own treated products can clear the channels of trade. The US wonders why the EU has not extended corresponding grace periods or transition measures to foreign producers. According to the US, in the EU's response to comments on G/SPS/N/EU/248, one of the first notified EU MRL regulations to introduce the transition measures in question, the EU explicitly acknowledged that non-EU countries would have a shorter time to comply with new MRLs compared to EU Member States. Given this acknowledgement, the US asked again the EU to clarify how it is considering its obligations to not arbitrarily or unjustifiably discriminate between its own territory and that of other Members. The US reiterated its request that the EU conduct a risk assessment prior to resetting MRLs and determining transition periods. Additionally, it is asked that the EU extends its MRL transitional measures to account for realistic production and processing times for food and agricultural products.

Panama shared the US and Colombia's views and mentioned that there are certain situations in which perishable goods are at risk, not being possible to send them to the EU, and leading to significant losses. **Brazil** referred to Article 2.12 of the TBT Agreement, according to which an interval of time shall elapse between publication and enter into force except in cases of public health, or urgency. Brazil noted that the scientific evidence is inconclusive and is concerned that the transitional period is incompatible with the planting and production process. Brazil expressed concern on the short grace period of 3 months granted for the active substance chlorpyrifos. **Ecuador** claimed that developing countries are mostly affected and asked for reasonable transitional periods, taking into account harvest time. Farmers need more time for MRLs, since developing a new pesticide takes a long time and a minimum of 36 months as a transitional period. **Canada** acknowledged the necessity of applying food safety measures but highlighted that a longer transitional period would be needed for exporters to

adapt to new requirements, claiming that the same conditions should apply for domestic producers and importers. **Paraguay** supported the Members as regards the insufficient nature of transitional periods for the transformation of production systems and urged the EU to take account of the MFN principle. EU measures have great impact on **Costa Rican** production and the EU is invited to adopt studies and analysis in the context of Codex and WTO. **Uruguay** asked the EU to consider harvest times and ensure the registration of alternative substances. Measures should be based on international standards and conclusive scientific evidence. **Egypt** follows the discussions with interest, and at the Trade Policy Review (TPR) meeting, expressed concerns on the short transitional period (also for other substances such as chlorophyrifos). It pointed to the need of time to adjust to new requirements, in particular, by less developed countries and micro-enterprises. **Guatemala** reiterated the importance to give transitional periods in line with stages of production of crops in tropical countries and to give time for finding alternative substances. The WTO process should not be the only one, but there should be discussions and dialogue in other fora other to avoid abuse. Since Members' comments cannot be part of the substance review process directly (only producers are involved), this country claimed there is no transparency in the procedure.

The **EU** explained that, as a matter of principle, it considers concerns on the setting of 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. Further to requests by some Members, and in the interest of transparency, the EU decided to notify all draft measures on pesticide active substances that are relevant for the TBT Committee additionally also to the SPS Committee. In practice, it means that future draft acts on the non-approval or restriction of approval of an active substance will be notified to both Committees. However, in the interest of efficient proceedings in both Committees, and in line with the respective Agreements, the EU continues to consider that matters on approvals of active substances should be discussed exclusively in the TBT Committee, and matters on the setting of MRLs for pesticides should be discussed exclusively in the SPS Committee. The EU fulfils all its obligations under both the TBT and the SPS Agreement, including notifying its trading partners about 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 are taken, as explained in EU replies to trading partners. As regards possible transitional periods when MRLs are lowered, the EU would like to remind 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

Out of scope

11. European Union – Regulation (EC) No 1107/2009 – Non-renewal of approval of the active substance picoxystrobin

Brazil explained that the EU had notified the non-renewal of this substance to the TBT Committee only in July 2018 and that the MRLs, which are extremely low, had been notified to the SPS committee. Brazil considers that the transitional period granted is unreasonable and that the measure is based on inconclusive EFSA studies. The non-renewed substance is in fact used in more than 65 countries. Brazil has also voiced its concerns at the SPS Committee, together with the need for time to adapt for those restrictions. Brazil asks for the notification of these type of measures to both the TBT and SPS Committees. **Paraguay** has given extensive comments in previous TBT Committees and noted that this trade concern is related to the transitional periods for MRLs, also discussed in this Committee. **Colombia** is following this issue as a systemic concern, the same as **Guatemala** and **Panama,** since the EU measure would affect the production of other substances.

As the **EU** explained in detail at previous TBT Committees, 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 MRLs and provides for a grace period for use of products containing picoxystrobin. Given the issues identified by 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