



EUROPEAN COMMISSION

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

MISSION REPORT

Subject: WTO/TBT Committee Meeting – 14-15 November 2018, Geneva - Report on Specific Trade Concerns (STCs), Thematic Sessions and other matters

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

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

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

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

Art. 4(1)(b) Geneva DEL

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

Out of scope

1. Highlights

Out of scope

- Continued interest in the EU Endocrine Disruptors measures with 15 countries raising concerns mainly on the EU hazard based approach (in contrast to risk-based approach).

Out of scope

2. Specific Trade Concerns

The whole page 2 has been redacted as out of scope

The EU was, once more, one of the Members to receive most concerns, notably on identification of compounds as **endocrine disruptors**

Out of scope

Art. 4(1)(b)

Out of scope

C.c.: Mr Demarty, Ms Gallina, Ms König, Art. 4(1)(b)
Mr García Bercero,

Art. 4(1)(b)

Art. 4(1)(b)

(TRADE)

Mr Burgsmueller (Cabinet Malmström)

Art. 4(1)(b)

(AGRI)

Mr Nunes de Almeida,

Art. 4(1)(b)

Art. 4(1)(b)

(GROW)

(ENV)

Art. 4(1)(b)

(SANTÉ)

(ENER)

(JUST)

(CLIMA)

(CONNECT)

(LS)

Art. 4(1)(b)

Art. 4(1)(b)

(EU Delegations)

Out of scope

Out of scope

4. European Union - Revised Proposal for the Categorization of Compounds as Endocrine Disruptors of 19 February 2013 (G/TBT/N/EU/383 and Add.1; G/TBT/N/EU/384 and Add.1)

In total, 15 WTO members raised deep concerns with the EU measures for the identification of endocrine disruptors. The US raised their ongoing concerns with the EU's hazard-based approach to the pesticide Regulation and its implementation of criteria for identifying and subsequently banning endocrine-active substances. Given the many concerns raised in the TBT Committee, they were disappointed that the EU still has not explained its objectives. 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. Nor would it address any WTO concerns or satisfy the concerns raised by Members in the TBT Committee. 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. To that end, the US stressed the importance that the EU's approach comport with the principles of non-discrimination, transparency, necessity, and predictability in the implementation of TBT measures.

Canada reiterated concerns with the hazard-based approach followed by the EU in the regulation and prohibition of active ingredients and the absence of risk assessment taking into account exposure, which leads to the restriction of trade. Canada noted that import tolerances have to be possible, in respect of international commitments. **Argentina** joined in the call for a risk assessment approach to identify endocrine disruptors and noted that, while a WTO member can ensure a high level of protection of human health, it must also respect WTO agreements. Argentina considered that the concerns expressed at the SPS Committee were not fully replied to by the EU. Import tolerances must be in place when MRLs are revoked. Argentina also noted that no proposal on derogations (clause on negligible exposure for plant protection products), is in the agenda of the relevant Commission committee, which creates uncertainty. If there is no derogation, the use of those substances with minimum risk would be forbidden, without scientific basis. The Commission should maintain MRL and import tolerances based on risk assessment in order to avoid disproportionality. **Australia** showed constructive engagement and interest in the new regulations on criteria for endocrine disruptors and noted the importance of minimising impact on their implementation. **Costa Rica** expressed concerns with the EU approach for the implementation of the hazard-based approach for plant protection products and asked for risk assessment. **Colombia**, stressed that the EU proposals should take into account scientific basis, the Codex Alimentarius, ecological and environmental conditions of countries, in order to avoid technical obstacles. **Brazil** reiterated concerns on the failure to respect principles of science and the inaccurate manner to address safety concerns, as well as on the reduction of MRLs and tolerance levels.

Thailand supported the statement of the previous members as regards the selected hazard based approach and the growing number of banned substances and noted that international standards should be respected. Thailand called for the development of draft criteria for the derogation for plant protection products and the notification to the TBT Committee. **Guatemala** joined the members asking for a risk-based approach for identifying endocrine disruptors and referred to the specific tropical climatic conditions, specific in the area, as well as to the negative impact of the EU measures for developing countries. This country expressed specific concerns for the non-renewal of "iprodione". **Panama** noted the unnecessarily strict precautions taken by the EU, since the use of products with undetectable traces is forbidden, based on hazard, which has important consequences in the region. Panama called for dialogue and for the respect of international standards. **New Zealand** asked for an update on the implementation of the measures and on the derogation for plant protection products. **Paraguay** highlighted the negative effects of the EU measures and noted that the criteria on import tolerances must include full risk assessment. **Ecuador** referred to the uncertainty in the consequences of EU legislation and the impact for its economy. **India** mentioned that it had explained its concerns in meetings in Brussels and that the removal of crop protection tools had adverse consequences and caused trade disruption. India called for guidelines to facilitate risk management decisions and asked to withdraw hazard-based measures. **Uruguay** supported the members concerns.

The EU took note of the Member's concerns and stressed that the scientific criteria to identify endocrine disruptors for biocides and pesticides were now in place. The new criteria are applicable – also to on-going processes for the approval or renewal of approval of active substances - from 7 June 2018 (biocides) and from 10 of November 2018 (pesticides). They are set via Delegated

Regulation (EU) 2017/21001 and Regulation (EU) 2018/6052, for biocides and pesticides respectively, which were notified to the WTO members under the TBT agreement. The criteria for pesticides and biocides are the same in practice and thus ensure a harmonised approach. They are based on the WHO definition of endocrine disruptors. They require consideration of all relevant scientific information (including scientific publications), as well as the application of a weight of evidence approach. As regards the act including the technical amendment to the clause on negligible exposure for plant protection products, discussions with EU Member States were resumed. At the meetings of the Standing Committee on Plants, Animals, Food and Feed on 19/20 July and 23/24 October 2018, it was clear that there was no qualified majority of Member States in favour of such an amendment and, as a consequence, no further discussions will be held. The EU reiterated its commitment to act in full transparency and will keep Members duly informed about further developments.

Out of scope

5.

Out of scope

Out of scope

Out of scope

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

Brazil reiterated concerns from previous TBT Committees in relation to the EU regulation for the non-renewal of the approval of picoxystrobin, in particular the hazard-based approach and not taking into account international standards and genotoxicity (according to the EFSA report, it is not possible to conclude on the genotoxicity, while the FAO/WHO concluded that the substance is not genotoxic). Many countries (e.g. the US, Canada and Japan) consider the substance as non-toxic. The reduction of MRLs will imply serious consequences and there will be unnecessary restrictions failing to respect the TBT Agreement. Brazil welcomes any information on new developments. **Canada** showed concern on the EU measure, since picoxystrobin is used in crops cultivated in Canada and exported to the EU, as well as on the EU hazard based approach. Lowering MRLs for this substance will have an impact on trade, if no import tolerance, based on

risk assessment, is set. Canada asked confirmation that further proposals on import tolerances will be notified to the SPS committee giving sufficient time to make comments. **Paraguay** supported the members expressing concern for the non-renewal of picoxystrobin, ignoring international scientific criteria.

The **EU** provided a procedural update on the Commission Implementing Regulation on the non-renewal of picoxystrobin and noted that the measure did not lead to immediate disruptions in trade, as it itself does not amend the maximum residue levels (MRLs) and provides for a grace period for use of products containing picoxystrobin. The EU also informed that 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 and the revised MRLs are expected to be formally adopted and published in January 2019, and to apply from July 2019. The EU emphasized that import tolerance requests would however remain possible and will be assessed case by case by EFSA.

Out of scope

8.

Out of scope