



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY
Directorate D – Food chain: stakeholder and international relations
D2 – Multilateral International Relations

DIRECTORATE-GENERAL FOR TRADE
Directorate D – Sustainable Development, Bilateral Trade Relations,
D3 – Agriculture, Fisheries, Sanitary and Phytosanitary Market Access, Biotechnology

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Report of the 73rd WTO SPS Committee meeting (30 October-2 November 2018, Geneva)

EU Delegation:

DG SANTE: C. [REDACTED]

DG TRADE: P. [REDACTED]

SUMMARY

Once again, the EU policies dominated the Committee's proceedings. Two thirds of the formal meeting were devoted to discussing EU SPS measures. A total of **93 statements** were made by more than thirty Delegations to question, directly or indirectly, EU policies and measures in several areas, notably:

- **Endocrine disruptors** (and cut-off criteria) (22 Delegations)
- **MRLs of certain pesticides** (Buprofezin, Diflubenzuron, Picoxystrobin) (16 Delegations)
- **Limits of cadmium in cocoa and chocolate** (14 Delegations)
- **Precision Biotechnology** (14 Delegations)
- **Codex discussions on zilpaterol** (9 Delegations)
- **Veterinary Medicinal Products** (7 Delegations)
- **Glyphosate** (6 Delegations)
- **ECJ ruling on mutagenesis** (3 Delegations)

On the offensive front, the EU raised a **new STC against Russia** in relation to its import restriction on ruminants from areas affected by bluetongue. This new STC is in addition to those two that have been raised against Russia during the last years (ban on exports of fishery products from Estonia and on certain animal products from Germany). Furthermore, the EU took once again the opportunity to raise a **STC against South Africa** for blocking EU exports of poultry due to highly pathogenic avian influenza (HPAI); one **against the US** for continuing to delay the exports of apples and pears from the EU; one **against Indonesia** for the lack of transparency and undue delays in their approval procedures for animal products; and one on the import restrictions due to **BSE** by several trade partners.

In addition to the above, the EU, while sharing information about its control measures on **African swine fever (ASF) and HPAI**, urged trade partners to respect international standards and WTO rules - especially on regionalization, and called upon them to lift their restrictive and unjustified measures accordingly.

During the informal meeting 13 proposals put forward by members in the framework of the **5th review of the operation and implementation of the SPS Agreement** were discussed, among them the EU proposal on **regionalisation**.

In the margins of the Committee a half-day thematic session was conducted on **equivalence**, to be continued in March 2019.

Thirteen bilateral meetings offered opportunities for the EU to push for key market access interests.

DETAILED REPORT

EU offensive interests

The EU raised seven offensive specific trade concerns (STCs):

- New:
 - **Russian Federation:** bluetongue-related import restriction on ruminants and their genetic materials from areas affected by the disease. The Russian ban is not in line with OIE standards, and the agreed export health certificate is not respected;
- Previously raised:
 - **South Africa:** *import restrictions on poultry due to HPAI* – South Africa informed that the applications filed by PL and ES were concluded but not the HU one;
 - **US:** *import restrictions on apples and pears* – Still no publication date of the final rule;
 - **Russian Federation:** import restrictions on certain animal products from Germany;
 - **Russian Federation:** import restrictions on processed fishery products from Estonia;
 - **BSE:** The EU welcomed the progress made by China, Taiwan and Japan, and urged other Members (especially Sth Korea) to rapidly lift their long-standing and scientifically unjustified restrictions.
 - **Indonesia:** lack of transparency and undue delays in approval procedures for animal products

Under the agenda item on Monitoring of International Standards, the EU drew attention once again to the unjustified trade restrictions put in place by several WTO Members not respecting the OIE international standards on **ASF and on HPAI**. The EU highlighted the effectiveness of the EU system and the importance of international standards in ensuring that trade of safe commodities is not the cause of the spread of the diseases.

EU defensive interests

Seven STCs were raised against the EU.

Two new concerns were raised namely on the EU measure lowering the **MRLs for buprofezin, diflubenzuron, ethoxysulfuron, ioxynil, molinate, picoxystrobin and tepraloxydim** to the level of detection (by Colombia, India, supported by 14 other members – Argentina, Costa Rica, Brazil, Canada, Chile, the USA, Panama, Paraguay, Ecuador, Nicaragua, Honduras, Peru, Guatemala, Turkey) and on the recent **ECJ opinion on organisms obtained by new mutagenesis techniques** (by the USA, supported by Argentina and Paraguay).

As regards MRLs, members questioned the risk assessment followed by EFSA, complained about the short time granted to phase the measures in and argued that the measures should take into account the specific climatic situation of developing countries and the lack of readily available

alternatives. Several members pointed out that the trade of certain products such as bananas would be unduly affected, thus reducing the livelihood of local populations. **On the ECJ opinion**, the EU was requested to explain the scientific basis of the decision and to provide clarification on how proper implementation would be insured. Legal uncertainty caused to trade flows was also underlined. The US took the opportunity to criticise undue delays in the EU GM approval procedure.

Once again members raised concerns about Endocrine Disruptors (EDs) (led by Argentina, the USA China, India and supported by 16 other Members – New Zealand, Korea, Colombia, Chile, Costa Rica, Guatemala, El Salvador, Brazil, Canada, Taiwan, Panama, Paraguay, Peru, Thailand, Australia, Honduras and ECOWAS). Members argued that a hazard-based approach was inconsistent with the SPS Agreement and would lead to the banning of many safe substances for which favourable risk assessments already exist. Several countries complained about the lack of predictability in establishing MRLs for EDs. Those Members insisted that import tolerances should be granted on the basis of a full risk assessment and that factors other than science (Other Legitimate Factors) should not be taken into account in establishing MRLs for EDs or other plant protection products.

The EU legislation on **veterinary medicinal products** was again raised as an STC by Argentina and the USA and supported by 5 other countries – Colombia, Canada, Brazil, Paraguay, and Australia). Members expressed strong criticism on the extension of the ban on antimicrobials for growth promotion and on the EU list of antimicrobials designated for human use to third country operators. The EU measures were thought to compromise international efforts to fight AMR, including the ongoing work in Codex and the OIE. The EU was requested to explain what criteria it would use for setting the list of critical antimicrobials and how the imposition of a ban on the use of antimicrobials for growth promotion on third countries would be in line with the SPS Agreement.

EU **maximum level of cadmium** in foodstuffs (raised by Peru, Colombia, Cote D'Ivoire; supported by 11 other Members - the USA, Venezuela, Guatemala, Trinidad and Tobago, Costa Rica, El Salvador, Ecuador, Panama, Indonesia, Nicaragua, and Bolivia). Members questioned that the EU measure was based on updated scientific principles with respect to the risk to human health. The EU measures were cited not to be in line with the SPS Agreement as they were set without taking into account the objective of minimising trade impact. The EU was requested to postpone the entry into force of the MLs until Codex MLs have been adopted and to extend the transitional period until 2022. Colombia criticised the EU in general for not taking trade partners' comments into account during the legislative process and urged the EU to notify drafts at an earlier stage.

China requested the removal of **residue testing requirements** for the remaining products in Decision 2002/994/EC. Once again, China asked for the revision of the **residue definition for folpet** and welcomed recent developments.

Under a different agenda item, Argentina presented an **international statement on agricultural applications of precision biotechnology** (G/SPS/GEN/1658/Rev 2). 12 other Members (Uruguay, Brazil, Paraguay, Jordan, Dominican Republic, Canada, the USA, Australia, Guatemala, Vietnam, Honduras, Colombia and an observer organisation (ECOWAS) spoke emphasizing the critical role of new mutagenesis techniques in agricultural innovation to address global environmental challenges, food insecurity, antimicrobial resistance, animal and plant health outbreaks and animal welfare issues. Some members expressed their concerns about different domestic rules which create asymmetry in trade. The USA called for a constructive dialogue between trade partners.

The US criticised the initiative endorsed by the Codex Alimentarius Commission in July 2018 to clarify the **correlation between Codex standards and the WTO/SPS Agreement** to find a solution to the stalled negotiations on the MRLs for zilpaterol. The US supported by Argentina and others, considered that Codex standards should be based exclusively on science and that the

relations between Codex standards and the WTO should be discussed in the WTO alone. Only did the EU defend Codex autonomy to decide their own agenda, cautioning again interferences from the SPS Committee into Codex work.

Finally, the US, supported by five other Delegations raised concerns about Members adopting or considering regulatory measures not based on science in relation to **Glyphosate**.

Other issues

A **half-day thematic session on equivalence** of SPS measures, systems and processes was held on 30 October. This focused on the relevant provisions of the SPS Agreement, on existing international standards and on WTO jurisprudence. The thematic session will continue with sharing Members' experience on equivalence determinations in March 2019.

An **informal meeting** took place on 31 October to discuss proposals for specific topics under the **5th review** of the operation and implementation of the SPS Agreement. Members had submitted proposals on issues such as equivalence, regionalisation, the importance of science and risk assessment as the basis of sanitary measures, transparency, third party certification, strengthening national SPS committees and pesticide MRLs. All proposals, but the one on third party certification from Belize, which was not present during the discussion, were broadly supported.

Bilateral meetings

Twelve bilateral meetings were held in the margins of the SPS Committee namely with **Argentina, Brazil, Canada, China, Indonesia, Japan, Philippines, Saudi Arabia, South Korea, Thailand, UAE and US** (Sth Africa refused the EU's request for a bilateral meeting). The EU strongly encouraged all these countries to process market applications faster, follow international standards and provide real market openings. In the case of Argentina, Brazil, Canada, China, Philippines and USA, the EU also responded to their concerns about their exports to the EU. To different degrees, all the trading partners were open to the questions put forward by the EU and undertook to follow-up. Highlights of the offensive issues discussed in these meetings include:

- **Argentina** raised its concerns in relation to the ECJ ruling.
- **Brazil** provided no feedback to the two letters sent by the Commission in 2018. The Commission reiterated the cooperative approach suggested in writing by the TRADE/SANTE/AGRI Commissioners to start solving all pending issues in 2019. On the Salmonella issue, Brazil threatened again with launching dispute settlement proceedings against the EU. On the delistings, Brazil's request is to re-establish the prelisting and the normal trade flows as soon as possible.
- **Canada** undertook to looking again at possible options to import tomatoes from Italy. Canada reiterated its concerns on EDs, VMPs, the ECJ ruling and on the EU MRLs on picoxystrobin, underlining the need for setting import tolerance following a risk assessment.
- **China** provided a constructive message on regionalization and agreed to further work together on the certification of low risk products. China raised its concerns on the EU measures regarding unauthorised genetically modified rice in rice products and asked the EU to clarify the sampling and detection method. The EU MRLs for lambda-cyhalotrin was considered by China as not in line with the SPS Agreement. China also asked for an extension of the transition measures for tea leaves.
- **Indonesia** only promised to follow on the message conveyed by the EU in the STC.
- **Japan** confirmed that it continues to work on zoning for Avian Influenza. On VMPs Japan handed over a list of questions to SANTE. On the Japanese market access applications, they requested the EU to finalise all procedures and allow exports by February 2019.
- **Philippines** provided information about the imports of plants and committed to follow-up on the remaining issues (animals). The EU undertook to provide information on AFS in the EU.

The Philippines requested information on their market access request for Calamansi and Pili Nut. The latter according to the Philippines should not be considered as a novel food.

- **Saudi Arabia** indicated that its BSE conditions to import beef may soon be relaxed, agreed to start a dialogue on regionalization but, unfortunately, did not provide any information about the possible lifting, derogation or postponement of the ban on the stunning of poultry.
- **South Korea** reported that the conclusion of the parliamentary review of market access application for beef from DK and NL is planned for the end of 2018.
- **Thailand** reported some progress on several (unfinished) applications for pork and apples.
- The **United Arab Emirates** undertook to report to its capital on EU's concerns expressed on the new legislation on Emirates conformity assessment scheme (ECAS) for certain dairy products and fruit juices.
- The **USA** did not (yet) provide any indication about the date of publication of the final rule granting market access from 8 Member States for apples and pears which, after the conclusion of the technical work in the US, is pending since 2016. The USA reiterated its concerns on EDs, VMPs, the ECJ ruling and on the EU MRLs on diphenylamine.
- **Kenya** requested a bilateral meeting on the spot requesting assistance from the EU to prepare their dossier for momordica which is expected to be listed as a high-risk plant.

Next meeting

The next SPS Committee meeting will take place on 21-22 March 2019 and will be preceded by a thematic session on Equivalence and on Fall Armyworm (19 March) and an informal meeting (20 March).
