Pages number: 3; 6-24; 32-50 have been entirely redacted as out of scope

EUROPEAN COMMISSION

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

MISSION REPORT

Subject: **WTO/TBT Committee Meeting – 6-7 March 2019, 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
Art. 4(1)(b) GROW B.2

Out of scope

1. Highlights

Out of scope

- Systematic criticism from members (in particular tropical countries, but also USA and Canada) against EU policies on **pesticides and hazard based approach.**

Out of scope

- **The EU Endocrine Disruptors measures** continue to draw most attention among members with 13 countries raising concerns.

Out of scope

Out of scope

As to **defensive cases,** three new trade concerns were raised against the EU on **Out of scope** Chlorothalonil, and transitional periods for MRLs. The EU was, once more, one of the Members to receive most concerns, notably on identification of compounds as **endocrine disruptors** as well as **pesticides** Out of scope

Notably Colombia and other Latina American countries with tropical climate are becoming increasingly more critical against the EU on issues related to pesticides and MRLs (Maximum Residual levels) Out of scope

Out of scope

Out of scope

Art. 4(1)(b)

Out of scope

CC: Mr Demarty, Ms Gallina, Ms Konig, Art. 4(1)(b) Art. 4(1)(b) Mr García Bercero,

Art. 4(1)(b)

[redacted] (TRADE).
Mr Burgsmueller (Cabinet Malmström).
[redacted] (AGRI).
Mr Nunes de Almeida, [redacted] (GROW).
[redacted] (ENV).
[redacted] (SANTE).
[redacted] (ENER).
[redacted] (JUST).
[redacted] (CLIMA).
[redacted] (CONNECT).
[redacted] (LS).
[redacted] (EU Delegations).

ANNEX 2 – Specific Trade Concerns against the EU (EU Defensives)

Out of scope

Out of scope

2. European Union - Chlorothalonil (pesticide active substance) NEW

In total, 11 members, took the floor and raised their concerns for this new STC. Tropical based countries referred to negative impact on their banana production since a major part of their exports are for the EU market. This will also have a social-economic impact since many small farmers will be impacted. A common concern raised by the countries is the hazardous based approach used by the EU instead of using risk based approach. They all complained about the lack of sufficient scientific evidence and incomplete risk-assessments in the EU**. Colombia** had requested to include the issue as an STC. In addition to the arguments above, Colombia stated that this would be create difficulties to use certain category of pesticides in tropical areas and affect their agriculture production. Would lead to difficulties to combat pesticides in the region. Insisted to maintain the registration. **Guatemala** insisted that any risk assessment should be based on international standards in line with CODEX. Moreover, it is impossible to swiftly change to the use of another type of pesticides since there is no major alternatives available; it will be costly and require time. This would also be of great cause concern for smaller farmers with less economic capacity and resources. **US** referred to recent DVC with the EU where the issue was discussed in detailed. They maintained their concern, in particular for cranberry industry. The uncertainty of non-renewal will affect the planning for the next crop. **Brazil**, strongly supporting other members, insisted that measures will affect trade and claimed that their levels used in pesticides are well below established levels in the CODEX. **Panama, Paraguay, Canada, Ecuador, Costa Rica and Honduras** all took the floor and supported the concerns raised also underlining that EU decisions are not based on proper risk-assessment.

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 for use of products containing chlorothalonil.

The EU confirmed that the possibility for granting transitional measures will be considered when proposing any changes to existing MRLs. The timeframe for a possible amendment of the current EU MRLs will not be before expiry of the grace periods for use of products containing chlorothalonil in the notified draft Regulation. Furthermore, any action to reduce MRLs in the future will be subject to a separate notification under the WTO/SPS procedure.

Chlorothalonil is part of the third stage of the EU renewal programme for active substances used in plant protection products and has been evaluated in accordance with Regulation (EC) No 1107/2009 on the placing of plant protection products on the market1. A comprehensive and transparent assessment of the information submitted by the applicant was carried out by the designated rapporteur Member State and peer-reviewed by all other Member States and the European Food Safety Authority (EFSA). EFSA's Conclusion on chlorothalonil following this extensive peer review process was published in January 2018.

[1] http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1489747880535&uri=CELEX:32009R1107

EU stated that during this assessment, it has not been established with respect to one or more representative uses of at least one plant protection product that the approval criteria provided for in Article 4 of Regulation (EC) No 1107/2009 are satisfied.

A critical concern was identified by the Authority in relation to the contamination of groundwater by certain metabolites of chlorothalonil. Therefore, it cannot currently be established that the presence of metabolites of chlorothalonil in groundwater will not result in unacceptable effects on groundwater and in harmful effects on human health as required by Article 4(3)(b) of Regulation (EC) No 1107/2009. Furthermore, 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.

Furthermore, several areas of the risk assessment could not be finalised due to insufficient data in the dossier. In particular, the assessment of consumer risk from dietary exposure could not be completed because of lack of data to confirm the definition of the residue in plants and the livestock exposure assessment, including the toxicological assessment of a metabolite.

Additionally, 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.

Out of scope

3. European Union - Transitional periods for MRLs and international consultations

In total, 8 members, took the floor and raised their concerns for this new STC. Colombia strongly questioned the transitional period of 6 months which is not enough in order for operators to adopt. Farmers need longer time to find replaceable products. Colombia also expressed their concern about the national treatment since exporters need to adopt their products in country of origin and thereby not taking into account the time for transport and delivery, i.e the 6 months period will be shorter that for producers based in the EU. Moreover registration of new products can take as much as 30 months. Colombia requested to have technical discussions on the issue in order to allow for longer transitional period. Guatemala underlined that these measures are one of many that the EU has adopted on pesticides that are unfavourable for countries with tropical climate. US, Paraguay, Brazil, Ecuador, Costa Rica and Panama supported the concerns raised by other members. Several of them requested that the EU establish a dialogue with affected countries and made reference to the TBT agreement

regarding special consideration for developing countries as regards time limits for implementation of new measures.

The EU responded, as a matter of principle, that the issue of 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 stated that it 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 a final decision is taken. This had been clearly and extensively explained in each EU reply to those trading partners that submitted comments.

As regards possible transitional periods when MRLs are lowered, the EU explained the 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 cannot be demonstrated.

Out of scope

Out of scope

5. European Union - Hazard-Based Approach to plant protections products and setting of import tolerances

In total, 13 WTO members raised deep concerns with the EU measures for the identification of endocrine disruptors. The common point, 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. 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.

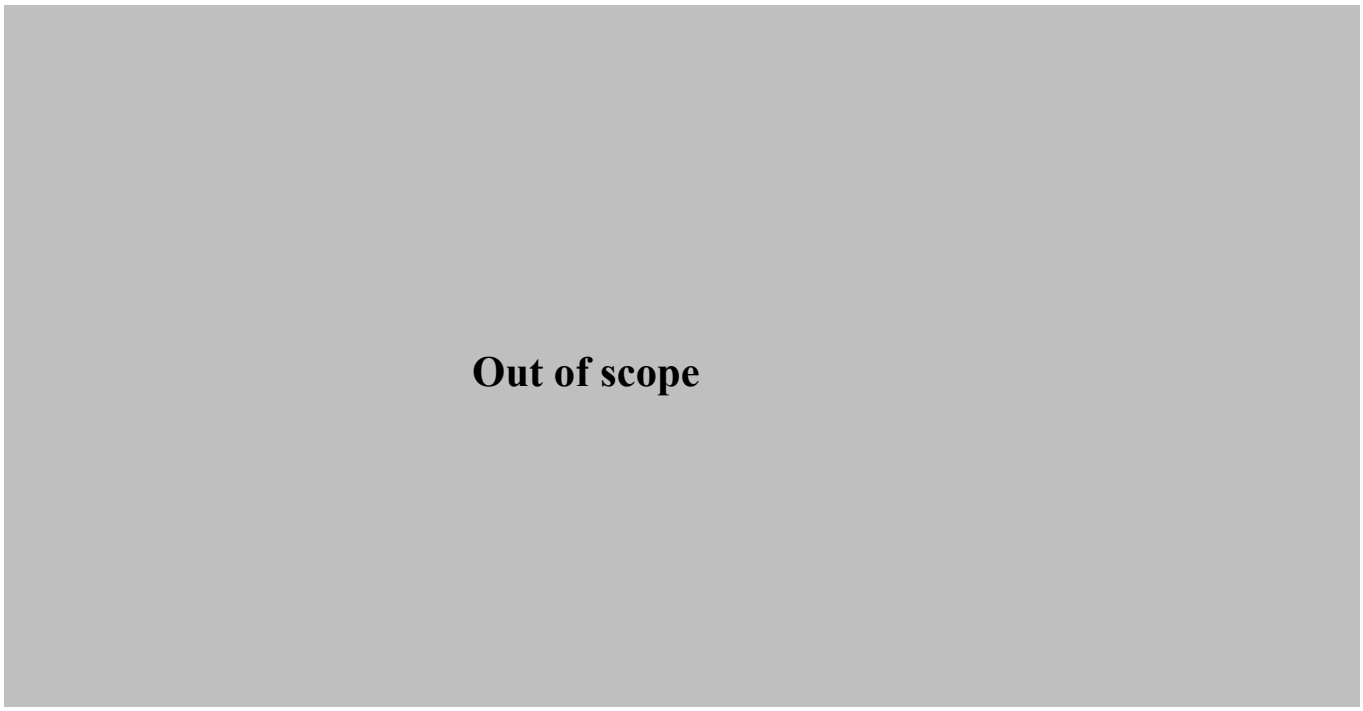
Canada reiterated concerns with the hazard-based approach followed by the EU in the regulation and prohibition of active ingredients and the absence of risk assessment taking into account exposure, which leads to the restriction of trade. Canada noted that import tolerances have to be possible, in respect of international commitments. **Argentina** joined in the call for a risk assessment approach to identify endrocrine 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. The Commission should maintain MRL and import tolerances based on risk assessment in order to avoid disproportionality. They also asked for clarification on the issue of "legitimate factors". **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 Alimentarious, 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. **Panama** referred to statements made in previous committee and referred to international standards established in CODEX. **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. **Paraguay** and **Uruguay** supported the members concerns.

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 general concerns on the EU policy on plant protection products for the definition of scientific criteria to identify endocrine disruptors and is also 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.



7. 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 The reduction of MRLs will imply serious consequences and there will be unnecessary restrictions failing to respect the TBT Agreement. Brazil also reiterated that EU should had notified these measures to the SPS committee in parallel. The proposed transition periods are considered too short. **Canada** showed concern on the EU measure, since picoxystrobin is a key active substance 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. **Panama** expressed their concern that this was the 4th time

they took the floor for a similar topic during the TBT committee and they expressed that EU is not taken into account that tropical countries depends on active substances for their agriculture production. **Paraguay** supported the members expressing concern for the non-renewal of picoxystrobin, ignoring international scientific criteria. **Colombia** supported the statements made by the other members.

The **EU** provided a procedural update on the Commission Implementing Regulation on the non-renewal of picoxystrobin. Authorisations for plant protection products containing picoxystrobin in the EU were required to be withdrawn by 30 November 2017 and Member States were permitted to allow for a grace period until 30 November 2018 at the latest.

The EU had notified to 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.

The EU also informed that 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 had 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 European Commission formally adopted the revised MRLs in January 2019. The revised MRLs will apply from 13 August 2019.

Out of scope