EUROPEAN COMMISSION

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

MISSION REPORT

Subject: **WTO/TBT Committee Meeting – 20-21 June 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
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Art. 4(1)(b) Geneva DEL
Art. 4(1)(b) GROW B.1
Art. 4(1)(b) GROW B.2
Art. 4(1)(b) GROW B.2
Art. 4(1)(b) GROW B.2

Out of scope

1. HIGHLIGHTS

Out of scope

- **The EU Endocrine Disruptors measures** continue to draw most attention among members with 14 countries raising concerns.

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

Many countries with tropical climate are continuing to be increasingly critical against the EU on issues related to pesticides and MRLs (Maximum Residual levels).

Out of scope

Out of scope

Art. 4(1)(b)

Out of scope

CC: Ms Weyand, Ms Gallina, Ms Konig, Art. 4(1)(b)
Mr Redonnet, 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)
Art. 4(1)(b) (GROW).
Art. 4(1)(b) (ENV).
Art. 4(1)(b)
(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)
(TF50).
Art. 4(1)(b)
Art. 4(1)(b) (EU Delegations).

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

Out of scope

8. European Union – Chlorothalonil (pesticide active substance)

In total, 9 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 and US** had requested to include the issue as an STC. In addition to the arguments above, **Colombia** stated that this would 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. **US** highlighted the impact on its cranberry industry and informed that its almond industry did also express concerns. The uncertainty causes a lot of problems, especially for long shell live products such as nuts. **Guatemala** supported statements from other delegations. **Brazil** insisted that measures will affect trade of products such as bananas, coffee, citrus fruits, water melon. It claimed that its levels used in pesticides are well below established levels in the CODEX. **Panama, Paraguay, 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. 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, 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. 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.

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

In total, 9 members, took the floor and raised their concerns for this new STC. **US** considered the transitional periods as insufficient, esp. for long shelf live products. It referred to the discussions in SPS committee on transition periods. **Brazil** referred to art 2.12 TBT that talks about reasonable intervals before entry into force, not less than 6 months. **Panama** made reference to its concerns expressed in the SPS committee. **Colombia** questioned the transitional period of 6 months which is

not enough in order for operators to adopt, especially for PAPs and frozen products. Colombia requested to have technical discussions in the WTO on the MRL levels and called for accompanying producers to find solutions. **Costa Rica, Paraguay, El Salvador, Ecuador and Canada** 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** 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

Out of scope

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

In total, 14 WTO members (the **US, Canada, Paraguay, Panama, Brazil, Costa Rica, Colombia, Australia, Argentina, Uruguay, Thailand, India, Ecuador** 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. **Members with tropical climate** called upon the EU to take into account the specific tropical climatic conditions, as well as the negative impact of the EU measures for developing countries.

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

17. 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. **Panama** expressed also their concerns.

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. 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 European Union 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 will apply from 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