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Committee on Sanitary and Phytosanitary Measures

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EU MRLS AND PESTICIDE POLICIES – SPECIFIC TRADE CONCERN 448: EU MRLS FOR BUPROFEZIN, CHLOROTHALONIL, DIFLUBENZURON, ETHOXYSULFURON, GLUFOSINATE, IMAZALIL, IOXYNIL, IPRODIONE, MOLINATE, PICOXYSTROBIN AND TEPRALOXYDIM

SUBMISSION BY THE UNITED STATES

The following submission, received on 30 March 2021, is being circulated at the request of the Delegation of the United States.

1.1. The United States thanks Colombia, Costa Rica, Ecuador, and Paraguay for continuing to support inclusion of this important issue on the SPS Committee's March 2021 meeting agenda.

1.2. The United States would like to emphasize our shared concern for human, plant, animal, and environmental health. However, we are disappointed that the EU continues to lower many MRLs to trade-restrictive levels without clear scientific justification or measurable benefit to human health, and we remain concerned that the EU's hazard-based approach to pesticide regulation and implementation of the "precautionary principle" will lead to trade barriers that threaten the security of global food systems.

1.3. For example, we note G/SPS/N/EU/394, which was notified to this Committee on 15 July 2020. Despite a Codex proposal to increase the chlorothalonil MRL for cranberries, the EU has not renewed the substance for use, and reduced the MRL to the limit of quantification or LOQ. In the same notification, and despite established Codex MRLs, the EU also reduced MRLs to the LOQ for fenamidone, a foliar fungicide used on many crops including leafy green vegetables and brassicas, and propiconazole, a systemic foliar fungicide used on mushrooms, corn, wild rice, peanuts, almonds, sorghum, oats, pecans, apricots, peaches, nectarines, plums and prunes.

1.4. The United States notes that pesticides can be an important component in integrated pest management (IPM) programs, and that unnecessarily removing active ingredients and modes of action can actually increase the development of resistance to pesticides, which adds an additional challenge for agricultural producers to face and overcome.

1.5. Along this vein, the United States would again like to raise our concern regarding the substance clethodim. In its justification for new MRLs, the EU indicated that it could not determine the genotoxic capacity of the clethodim metabolite-3 chloroallyl alcohol. Since the consumer risk assessment could not be completed, the MRLs were proposed at the LOQ. Although EFSA stated they could not rule out genotoxic potential, the United States would like to note that in the 2009 "Conclusion on the peer review of the pesticide risk assessment of the active substance (EZ)-1,3-dichloropropene1" it was noted that for the metabolite 3-chloroallyl alcohol there was no "genotoxic potential".[1]

[1] Conclusion on the peer review of the pesticide risk assessment of the active substance (EZ)-1,3-dichloropropene1. Conclusion on pesticide review, https://efsa.onlinelibrary.wiley.com/doi/pdf/10.2903/j.efsa.2009.1341.

1.6. In response to inconclusive genotoxicity potential for the metabolite, the applicant completed requested studies. From these data, the Rapporteur member State (Sweden) indicated that the "Maximum total dose (MTD) was not proved to be achieved".

1.7. While further data is collected, we would like to remind the EU that both the United States and Codex have existing MRLs for clethodim. Clethodim is a useful tool for both EU and US farmers, and it is important for soybean, cranberry, rapeseed, peanut, corn, blueberry, and hop production. We further remind the EU that Article 5 of the WTO SPS Agreement requires Members to consider available scientific information and the objective of minimizing trade affects.

1.8. We would also like to emphasize our concern that a 6-month transition period for clethodim MRLs is insufficient for producers to adapt production methods for newly produced goods to clear EU customs. The key products to which clethodim is applied tend to have longer shelf lives and may not clear trade channels within a 6-month transition period.

1.9. Finally, we recognize that EFSA is currently reviewing ten (10) member States' emergency authorizations for neonicotinoids, which are currently banned within the EU, including clothianidin, imidacloprid, and thiamethoxam. It would appear as though producers in the EU view these products as integral components of their IPM programs and, accordingly, we request that the EU consider affording producers in third countries equal access to these pesticides.

1.10. Overall, the United States continues to be concerned with the EU's MRL risk assessment process. The EU previously noted in its response to G/SPS/GEN/1847 in reference to the determination by European Food Safety Authority (EFSA) if an MRL is safe for consumers, "This requires that a minimum of supporting data is provided in line with the EU data requirements allowing EFSA to reach a conclusion on the safety of the MRL. If such supporting evidence is lacking or insufficient, EFSA cannot conclude that the MRL is safe."

1.11. This reasoning suggests that recent MRL decisions, including those for fenamidone, propiconazole, chlorothalonil, and clethodim are based on incomplete risk assessments and are thus provisional. We ask the EU to clarify the provisional nature of these recent MRL decisions, and confirm that scientific data, including from Codex, will be collected and analysed to maintain these measures, consistent with the SPS Agreement.

1.12. We note that this is a consistent issue in ongoing pesticide reviews. While the EU has not yet lowered MRLs for etoxazole, G/SPS/N/EU/408 indicates that the substance will not be renewed based on what appears to be an incomplete risk assessment. EFSA did not finalize its consumer dietary risk assessment for processed commodities and the fate of persistent soil metabolites in rotational crops, nor did it complete the isomerization for dietary risk assessment. While the EU states it will take additional information into account after the expiration of the grace period for uses on edible crops and prior to lowering MRLs, a "stop the clock" approach, that allows EFSA to gather the needed data and keep a temporary MRL in place until the process is completed, would facilitate continued safe trade.

1.13. Finally, the United States would again like to raise the manner in which the EU enforces newly reduced MRLs. The EU enforces new reduced MRLs at the point of production for domestic goods, and at point of importation for imported goods. This causes trade inefficiencies and disruptions for products destined for the EU market depending on when a new reduced MRL is enforced and results in both an inconsistent application of the SPS measure and an unfair advantage for EU producers.

1.14. Moving forward, we are increasingly concerned with the politicization of MRLs, particularly as evidenced in the EUs Farm to Fork Strategy, Biodiversity Strategy, and the Pesticide REFIT. We believe that science, not politics, should inform development of SPS measures and we look forward to productive engagement around the issues raised above.

1.15. On a positive note, we would like to thank the European Commission for the invitation to attend the Third Country Information Session on 20 January 2021 on the consideration of environmental factors in the MRL setting process. We look forward to continued engagement in this area and encourage the EU to continue facilitating dialogues with third countries in this context.