WORLD TRADE ORGANIZATION

G/SPS/GEN/1926

25 June 2021

(21-5161) Page: 1/3

Committee on Sanitary and Phytosanitary Measures Original: Spanish

SPECIFIC TRADE CONCERNS – EUROPEAN UNION MAXIMUM RESIDUE LEVELS (MRLS) FOR BUPROFEZIN, CHLOROTHALONIL, DIFLUBENZURON, ETHOXYSULFURON, GLUFOSINATE, IMAZALIL, IOXYNIL, IPRODIONE, MANCOZEB, MOLINATE, PICOXYSTROBIN AND TEPRALOXYDIM - (NO. 448)

COMMUNICATION FROM COLOMBIA, ECUADOR, GUATEMALA AND PARAGUAY

The following communication, dated 23 June 2021, is being circulated at the request of the delegations of Colombia, Ecuador, Guatemala and Paraguay.

MODIFICATION OF EUROPEAN UNION MRLS FOR PLANT PROTECTION PRODUCTS

Colombia, Ecuador, Guatemala and Paraguay would like to ask the European Union the following questions further to the replies received from the European Union in document G/SPS/GEN/1896, and in light of the provisions of Article 5.8 of the SPS Agreement:

1. The European Union indicated, in document G/SPS/GEN/1896, that MRLs are set at the lowest level possible to achieve the desired effect, in line with the As Low As Reasonably Achievable (ALARA) principle. The ALARA principle is applied primarily in the field of radiation and not to phytosanitary measures. Would the European Union provide:

   a) The basis for the translocation of this principle to non-radioactive substances;
   b) The scientific justification for this translocation;
   c) The provision of the SPS Agreement covering the ALARA principle; and
   d) An explanation of the meaning of "the desired effect" that is sought when determining MRLs at the lowest level possible.

2. The European Union indicated that it accepts good agricultural practices (GAP) authorized in third countries even though they are different from those established in the European Union, and that third countries may submit a request to review import tolerances in cases where there is evidence supporting the request. According to which principles is the review of the GAP used by third countries incorporated in the process to define import tolerances? What elements of the GAP of third countries are taken into consideration?

3. Further to reply 2(a), provided in document G/SPS/GEN/1896, the European Union indicates the situations that, in its opinion, are covered by the precautionary principle referred to in Article 5.7 of the SPS Agreement. Could the European Union provide further details on the difference between its explanation on the measures covered by Article 5.7 and on the action that it is actually undertaking with regard to MRLs?

4. Further to reply 2(b) provided in document G/SPS/GEN/1896:

   a) Could the European Union indicate what is meant by "scientific uncertainty"? Is there scientific uncertainty when scientific evidence is insufficient?
   b) Could the European Union indicate what is considered a "reasonable period of time", taking into account the difference between the different approvals and their duration?

c) Does the existence of scientific uncertainty and the review of measures within a reasonable period of time imply the application of Article 5.7 of the SPS Agreement? What is the opinion of the European Union in this regard?

5. We welcome the explanation provided by the European Union for its submission of reservations concerning the MRLs adopted by Codex Alimentarius (CXLs). However, the question posed to the European Union sought clarification as to whether the submission of reservations exempts it, in its opinion, from the harmonization commitments undertaken under Article 3 of the SPS Agreement. We reiterate this question.

6. We thank the European Union for the submission of statistics with regard to its level of harmonization with the Codex since 2012. However, the information requested was specifically for the period from 2017 onwards. We would be pleased if the European Union could provide information for the period of time requested.

7. Furthermore, we appreciate the fact that the level of harmonization of the European Union's MRLs with the CXLs is 70%. We observe, however, that the issue of concern is precisely the remaining 30% of cases, in which the European Union deviates from the CXLs. In these cases, is there a conclusive risk assessment to support each of the MRLs that are not harmonized with the Codex?

8. We welcome the confirmation that compliance with MRLs must be ensured in order for member States of the European Union to trade with one another. In light of this:

a) Must the MRLs established by the European Union be met by the member State granting an emergency authorization for a specific substance, with regard to imports from other member States of the European Union or third countries?
b) On what criteria is the European Union's analysis based to determine the absence of unacceptable risks for the consumer?
c) How many countries in the European Union are marketing within their territories products that do not comply with the MRLs established by the European Union?
d) Have the member States of the European Union submitted scientific justification to apply MRLs that are higher than those stipulated in European Union standards, which demonstrates that the MRLS do not pose a risk to consumers?
e) Could the European Union share the evidence submitted by members of the European Union to justify the application of MRLs that are higher than those stipulated in European Union standards?
f) How does the European Union conduct controls to ensure that products with higher MRLs produced in member States with emergency authorizations are not marketed in other member States?
g) In view of the absence of border controls and inspections within the European Union, could the European Union indicate the mechanism used to ensure compliance with the MRLs in intra-Community trade?

9. As regards trade with third countries:

a) What mechanisms exist for the control of the MRLs of substances authorized only for emergencies in the case of exports outside the European Union?
b) Are there products for export with MRLs that are higher than those authorized for the European Union or specific cases in which they have been exported outside the European Union? Are these products regulated by other standards? Do the MRLs for these products exceed those established by international standards such as Codex?
c) When a member States grants an emergency authorization for a substance, does the European Union allow the importation of products complying with the same MRLs for that substance which are imposed for domestic products?

10. Could the European Union explain why there are emergency authorizations for States that are not members of the European Union in its database? Could the European Union also explain how this mirror mechanism works in the case of emergency requests from producers in non-EU countries? Do the same conditions as those for European producers requesting emergency authorizations apply to producers in non-EU countries?

11. How does the European Union reconcile the high level of protection for its consumers with the high number of emergency authorizations issued by its member States? Once the time-limit for an emergency authorization has expired, is there another time-frame in which a new emergency authorization for the same substance may be requested?

12. In light of reply 4(a) in document G/SPS/GEN/1896, would the European Union confirm that Article 5.3 of the SPS Agreement applies to MRLs?

13. The European Union indicated, in reply 4(d) provided in document G/SPS/GEN/1896, that there are no objectives for third countries in the Farm to the Fork strategy. However, this strategy includes an external dimension as part of the fourth section entitled "Promoting the global transition". The section indicates that the European Union will achieve this objective "through its external policies, including international cooperation and trade policy". European authorities have also indicated that their trade partners must comply with the same standards to level the playing field with European competitors. In this context, could the European Union confirm that it will not require its trade partners to meet the same reduction targets as those required of its producers?

14. Would the European Union explain why the assessment of the impact of the Farm to Fork strategy will be conducted after the implementation of the strategy?

15. In reply 5(b) provided in document G/SPS/GEN/1896, the European Union recognized that "other legitimate factors" fell outside of the scope of the SPS Agreement, even though they apply to food products. Could the European Union indicate the provision of the multilateral trade rules under which these "other legitimate factors" would fall?

16. If the possible consideration of "other legitimate factors" could result in MRLs that are lower than those determined on strictly sanitary and phytosanitary grounds, how would these MRLs be compatible with those stipulated in the SPS Agreement?

17. If the majority of emergency authorizations are granted for substances the use of which is permitted in the European Union, as stated in document G/SPS/GEN/1894, what is the reason behind the need for these emergency authorizations and their frequent use?

18. Could the European Union indicate which MRLs, among those revised since 2017, have been lowered to the limit of detection (LOD)? Could the European Union clarify whether the LOD is a variable or fixed number? Would the European Union indicate which criterion was used to establish the LOD at 0.01 mg/kg in its two regulations?

19. We reiterate our question on the costs at the European level that would result from the withdrawal of plant protection products that have not been renewed to date.

20. Further to reply 9(b) provided in document G/SPS/GEN/1896, could the European Union indicate which criteria are used to identify sources of data and information?

21. Further to reply 9(e) provided in document G/SPS/GEN/1896:

a) Could the European Union establish an MRL of 0.01 mg/kg in view of "global concerns", despite the existence of a higher CXL?
b) Could the European Union provide an exhaustive list of what constitutes its "global concerns"?
c) Could the European Union share the source of its definition of "global concern", and a definition of the term "transboundary"?