WORLD TRADE ORGANIZATION

G/SPS/GEN/2140

7 July 2023

(23-4637)

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Committee on Sanitary and Phytosanitary Measures

Original: Spanish

SPECIFIC TRADE CONCERNS – EUROPEAN UNION MAXIMUM RESIDUE LEVELS (MRLS), EUROPEAN LEGISLATION ON ENDOCRINE DISRUPTORS AND IMPORT TOLERANCES FOR CERTAIN PESTICIDES TO ACHIEVE ENVIRONMENTAL OUTCOMES IN THIRD COUNTRIES – STC NOS. 448, 382 AND 534

COMMUNICATION FROM COLOMBIA, ECUADOR, GUATEMALA AND PARAGUAY

The following communication, received on 6 July 2023, is being circulated at the request of the delegations of Colombia, Ecuador, Guatemala and Paraguay.

The delegations of Colombia, Ecuador, Guatemala and Paraguay would like to ask the European Union (EU) the following questions, covering trade concerns Nos. 448, 382 and 532:

According to the minutes of the Standing Committee on Plants, Animals and Food and Feed (PAFF) of 10-11 May 2023, "*[t]he Commission presented Revision 4 of the draft Regulation, which clarifies that the MRLs for tricyclazole should be set in Annex II to Regulation (EC) No 396/2005. [The Commission] proposes modifying the MRL for tricyclazole in rice from 0.01* mg/kg to 0.09 mg/kg, based on an import tolerance request based on a Brazilian GAP, for which EFSA confirmed that the proposed MRL is fully supported by data and safe for consumers*". Despite this, several EU member States did not support the draft Regulation presented by the Commission, and no qualified majority was reached. The following reasons were given by those member States voting against the measure: (i) the non-acceptability of import tolerances for substances no longer approved in the EU; and (ii) a negative impact on the competitiveness of European rice farmers that are deprived of using the same tools as third countries for effective control of certain pests.

1. In the light of the above, could the EU please indicate:

   a) Which Annex(es) of Regulation (EC) No 396/2005 did the Commission propose to amend? We note that the *text* of the minutes of the PAFF refers to **Annex II** (EU MRLs), but the *title* of the minutes refers to **Annex III** (Temporary MRLs).

   b) In practical terms, what is the difference between Annex II and Annex III of Regulation (EC) No 396/2005?

   c) How are temporary MRLs established? What is their period of validity?

   d) When an import tolerance is accepted, does this generate a new EU MRL that is set in Annex II to Regulation (EC) No 396/2005?

   e) If an import tolerance is accepted for a given substance and crop, what MRL applies to domestic crops in the EU?

   f) If an import tolerance is granted and an emergency authorization is granted by a member State:

   – Is the establishment of a temporary MRL necessary — as indicated in item 11 of the emergency authorization notification form — or does the MRL set for the import tolerance apply?

   – If the MRL for import tolerance is applied, is the product authorized to be placed on the market throughout the EU?

2. If an import tolerance is proposed for an MRL that "*is fully supported by data and safe for consumers*", how would rejecting such an import tolerance because of "*a negative impact on the competitiveness of European producers*" be compatible with the obligations of the SPS Agreement?

3. With respect to MRLs set with the objective of protecting human health, if member States do not vote in favour of import tolerances, how can the Commission argue that requesting import tolerances is a feasible way forward for MRLs set with environmental outcomes (e.g. neonicotinoid substances)?

4. In response to repeated challenges to the excessive use of emergency authorizations by member States, the EU indicated, in this and other committees and councils at the WTO, that in light of the ruling of the Court of Justice of the European Union (CJEU) of 19 January 2023 (Case C-162/21), member States may no longer grant emergency authorizations for plant protection products containing banned neonicotinoids. In this regard, we note the following:

a) There are a number of emergency authorizations that were approved *before* the CJEU judgment, but whose application covers a period *subsequent* to that ruling. Will these emergency authorizations remain valid for the entire period for which they were approved, in light of the CJEU judgment?

b) On 4 April 2023, subsequent to the CJEU ruling, the Czech Republic granted an emergency authorization for the banned substance thiamethoxam between 20 April 2023 and 16 July 2023, using as justification and as a mitigation measure that "*the product will only be used on the crop intended for export to countries outside the European Union*".

   i. How can the export of the crop for which thiamethoxam has been used be considered a mitigation measure that protects European pollinators?

   ii. How is the emergency authorization granted by the Czech Republic compatible with the outcome that the European Union claims to pursue with Regulation (EU) No 2023/334, i.e. to protect pollinator populations worldwide?

   iii. Regulation (EU) No 2023/334 refers to the ban of *outdoor* uses of clothianidin and thiamethoxam in the Union and sets MRLs for these substances. At what point and in what way does it take into account the fact that the imported products may have been produced in *greenhouses*?

5. We remind the EU that it has not yet responded to the questions submitted in document G/SPS/GEN/2076, dated 2 November 2022.