WORLD TRADE ORGANIZATION

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Committee on Sanitary and Phytosanitary Measures Original: English

STC 448: EU MRLS FOR BUPROFEZIN, CHLOROTHALONIL, DIFLUBENZURON, ETHOXYSULFURON, GLUFOSINATE, IMAZALIL, IOXYNIL, IPRODIONE, MOLINATE, PICOXYSTROBIN AND TEPRALOXYDIM

SUBMISSION BY THE UNITED STATES

The following document, received on 26 June 2020, is being circulated at the request of the delegation of the United States.

1.1. The United States thanks the sponsoring Members for continuing to support inclusion of this important issue on the Committee's agenda.

1.2. We remain deeply concerned over the European Union's implementation of pesticide policies that lower maximum residue levels (MRLs) to trade restrictive levels without clear scientific justification or measurable benefit to human health. The European Union's codification of a hazard-based approach to pesticide regulation and implementation of the so-called "precautionary principle" is adversely impacting global agricultural production and trade, particularly in developing countries.

1.3. The European Union has claimed that its pesticide and MRL measures are transparent, science-based, and non-discriminatory. Unfortunately, we do not find the EU claims about its regulatory procedures or its "high level of protection" to comport with its actions.

1.4. As the United States conveyed in our November 2019 statements to the Committee — circulated as G/SPS/GEN/1749 and G/SPS/GEN/1750 — we continue to have serious concerns about the scientific underpinnings, objectivity, and consistency in application of EU measures.

1.5. At the November 2019 meeting, the European Union responded to our concerns only by saying that our statement was lengthy. We agree. Our itemized account of concerns regarding the scientific underpinnings, objectivity, and consistency of EU actions was lengthy. Again, as one of our largest trading partners, we invite the European Union to respond in good faith to our concerns detailed in documents G/SPS/GEN/1749 and G/SPS/GEN/1750.

1.6. Beyond the concerns previously detailed, we are troubled by additional actions taken by the European Union. We would like to bring the attention of the Committee to recent actions taken by the European Union that raise serious questions regarding its implementation of the SPS Agreement.

1.7. First, we recall the precedent set in March 2019, when the European Parliament blocked the implementation of an import MRL for clothianidin on potatoes, despite determinations by the European Food Safety Authority (EFSA) and European Commission that the proposed import MRL met all approval and safety criteria.

1.8. The European Commission's subsequent withdrawal of the proposed import MRL, based on the Parliament's objections, appears to contradict the European Union's repeated assurances to this Committee that EU MRLs will be established through an objective, risk-based process.

1.9. In April 2020, the Committee on the Environment, Public Health and Food Safety of the European Parliament passed a resolution to block the implementation of MRLs for a series of products, despite determinations by EFSA and the European Commission that the proposed MRLs met all approval and safety criteria.

1.10. In this case, we understand that a COVID-19-related suspension prevented the European Parliament from acting on the resolution within the established legislative timelines. Will the European Commission resubmit a draft Commission regulation to set these MRLs at the same level recommended in its original draft resolution? If the European Commission is considering lowering these MRLs in a resubmission, we ask the European Union to explain the basis for such changes.

1.11. In addition to the Farm to Fork Strategy, the Commission released in May 2020 the Pesticide REFIT evaluating Regulations 1107/2009 and 396/2005. Recalling that over 40 Members have in this Committee raised concerns about these Regulations in the last five years, we invite the European Union to inform the Committee how it intends to implement several conclusions contained in the Pesticide REFIT in a manner consistent with its obligations under the SPS Agreement, including the obligation to base such measures on risk assessment.

1.12. The Pesticide REFIT calls for improved implementation of the "cut-off criteria" contained in Regulation 1107/2009, including: (1) through increased certainty in the use of the cut-off criteria, and (2) by only continuing to conduct a full risk assessment if either the active substances do not meet the cut-off criteria or a least one of the derogation possibilities is invoked.

1.13. In light of the many questions in our previous statements on: (1) how the European Union is achieving consistency in the level of protection it considers appropriate with respect its actions on specific substances, (2) whether or not the European Union applies a weight of evidence approach when considering, for example, genotoxicity data, and (3) the operation of the derogation provisions, we invite the European Union to explain how it will attain increased certainty going forward in the use of cut-off criteria and when it will invoke derogations.

1.14. If the European Union will no longer conduct "full risk assessments" on substances meeting the "cut-off criteria", we also ask the European Union to explain the relationship of the assessments it will undertake to the elements established by Codex guidelines.

1.15. We are also interested in the European Union's plans announced in the Pesticide REFIT, to use all of its "diplomacy, trade policy, and development support instruments" to promote adoption of its hazard-based approach to pesticides in third countries, as well as to encourage support of its approach in the WTO SPS Committee and the Codex Alimentarius. The REFIT document makes clear that EU diplomatic, trade, and development policies are intended to "ensure a level-playing field for EU operators."

1.16. Article 12 of the SPS Agreement directs the Committee to carry out the functions necessary to implement its provisions and to further its objectives. We welcome other Members' views on the European Union's intention to level the playing field for EU operators by, what would appear to be, restricting market access on the basis of use of crop protection tools that are deemed safe through scientific evaluation by competent regulatory authorities around the world, as well as to use this Committee to advance these objectives.

1.17. With respect to the REFIT reference to Codex, we note that last year, the European Union requested that the Joint FAO/WHO Meeting on Pesticide Residues (JMPR) re-evaluated certain substances that are being banned in the European Union. In September 2019, the JMPR evaluated the European Union's concern forms for several such substances and disagreed with the EU findings. On the basis of risk assessments, JMPR reaffirmed the safety of existing Codex MRLs for these substances. Around the world, national regulators, JMPR, and Codex are being compelled to divert limited resources to defend risk-based evaluations of substances already deemed safe for agricultural use and for consumers. Meanwhile, the EU efforts are contributing to an erosion of public confidence in risk-based regulatory systems and casting unwarranted doubt in consumers' minds about the safety of the global food supply. We invite the European Union to explain how its efforts advance implementation of the SPS Agreement and further its objectives.

1.18. Lastly, our growers and processors are increasingly concerned that the European Union continues to implement transition measures that do not provide adequate time for legally produced commodities to clear the channels of trade, and that appear to establish differences in treatment between domestic and imported products.

1.19. If the European Union's short transitional measures for imported products are based on health concerns, as the European Union has claimed, then why are MRL changes only notified to the SPS Committee after EU producers have benefitted from grace periods that ensure their own treated products can clear the channels of trade? Why has the European Union not extended corresponding grace periods or transition measures to foreign producers?

1.20. In the European Union's response to US comments on G/SPS/N/EU/248 — one of the first notified EU MRL measures to introduce the transition measures in question — the European Union explicitly acknowledged that non-EU countries would have a shorter time to comply with new MRLs compared to EU member States.

1.21. Although the European Union indicated during our last meeting in November 2019 that it would begin notifying its pesticide non-renewal measures to the SPS Committee, it is not clear what steps the European Union plans to take to ensure that its transition measures do not arbitrarily or unjustifiably discriminate between its own territory and that of other Members.

1.22. As conveyed at the Council for Trade in Goods in November 2019 and June 2020, and as emphasized in the joint statement found in document G/C/W/767/Rev.1, farmers around the world rely on access to the full range of tools and technologies available for agricultural production, and these tools are essential to mitigate food security risks and to alleviate poverty.

1.23. This access is facilitated by well-functioning, objective, and science-based regulatory systems that protect consumers and establish the basis for fair trade.

1.24. This access is critical to protecting crops from pests and diseases, which are estimated to cause annual losses of 20 to 40%, and allows farmers to enhance yields and productivity while also limiting post-harvest losses and reducing unnecessary food waste, thus ensuring that the resources invested in producing food are being managed efficiently and sustainably.

1.25. This access promotes an abundant supply of affordable, safe food to meet the growing demands of global consumers, many of whom rely directly or indirectly on agriculture to sustain their livelihoods.

1.26. And yet, despite the concerns expressed by an unprecedented number of Members in the SPS and TBT Committees over the past 4 years, the European Union continues to implement measures that jeopardize this access, without clear scientific justification or measurable health benefit, and without apparent regard for the potential to undermine rural livelihoods and sustainable development.

1.27. For these reasons, we once again call on the European Union to re-evaluate its approach to regulating pesticides; to confirm that import MRLs will be established on the basis of science and internationally-accepted approaches to risk analysis; and to cease implementation of those measures that unnecessarily restrict international trade.