WORLD TRADE ORGANIZATION

G/SPS/GEN/1760

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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, MOLINATE, PICOXYSTROBIN AND TEPRALOXYDIM (NO. 448, SEE ALSO RELATED SPECIFIC TRADE CONCERNS NOS. 453, 454, 457)

COMMUNICATION FROM COLOMBIA, COSTA RICA, ECUADOR AND PARAGUAY

The following communication, received on 26 February 2020, is being circulated at the request of the delegations of Colombia, Costa Rica, Ecuador and Paraguay.

Colombia, Costa Rica, Ecuador and Paraguay would like to ask the European Union the following questions related to specific trade concern No. 448 and the modification of MRLs.

1 MODIFICATION OF EUROPEAN UNION MRLS FOR PLANT PROTECTION PRODUCTS (G/SPS/N/EU/264/ADD.1, G/TBT/N/EU/625 AND G/SPS/N/EU/263/ADD.1)

1. Could the European Union define and identify the appropriate level of protection it is seeking through the modification of the MRLs for these substances?

2. Does the European Union consider that there is enough relevant scientific evidence to support the modification of the MRLs for these substances?

3. How do the measures adopted by the European Union to modify MRLs reconcile with its obligation under Article 3.1 of the SPS Agreement, which provides that "[t]o harmonize sanitary and phytosanitary measures on as wide a basis as possible, Members shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations, where they exist, except as otherwise provided for in this Agreement, and in particular in paragraph 3"?[1]

4. Could the European Union elaborate on its assertion in reply number 2 in document G/SPS/GEN/1753 that "[a]n LOQ […] provides legal certainty to the operators"?

5. In practice, what is the distinction between the setting of an MRL of 0.01 mg/kg (the lowest level of analytical determination) and zero tolerance?

6. Paragraph 10 of the preamble to Regulation (EC) No. 396/2005 on maximum residue levels of pesticides in or on food and feed of plant or animal origin refers to products "*intended for human consumption or animal feed*", and points out the need for "*securing a high level of protection for*

[1] Article 3.3 of the SPS Agreement reads: "*Members may introduce or maintain sanitary or phytosanitary measures which result in a higher level of sanitary or phytosanitary protection than would be achieved by measures based on the relevant international standards, guidelines or recommendations, if there is a scientific justification, or as a consequence of the level of sanitary or phytosanitary protection a Member determines to be appropriate in accordance with the relevant provisions of paragraphs 1 through 8 of Article 5. Notwithstanding the above, all measures which result in a level of sanitary or phytosanitary protection different from that which would be achieved by measures based on international standards, guidelines or recommendations shall not be inconsistent with any other provision of this Agreement.*"

human and animal health". Considering that Article 5.3 of the SPS Agreement applies to the assessment of risk to animal life or health, could the European Union elaborate on reply number 4 in document G/SPS/GEN/1753, which reads, "*Article 5.3 is not relevant in the case of SPS measures as defined in Annex A, paragraph 1.b*" (that is, measures to protect human or animal life or health)?

7. With regard to the information provided in reply number 5 in document G/SPS/GEN/1753, which safe alternatives did the European Union consider in establishing its MRLs?

8. The European Union claims, in reply number 5 in document G/SPS/GEN/1753, that "*Applications for new MRLs/import tolerances can always be submitted under Regulation (EC) No. 396/2005*". Article 14.2(f) of this Regulation (Decisions on applications concerning MRLs) provides that "*other legitimate factors relevant to the matter under consideration*" shall be taken into account. Would the European Union please provide a definition and comprehensive list of what it regards as "*other legitimate factors*" to be taken into account in the establishment and granting of import tolerances?

9. Could the European Union indicate in which cases it has taken into account the comments made by other Members in the 60 days between the draft notification of these measures and their adoption?

10. On the understanding that the European Union is engaged in an ongoing process of reviewing multiple substances and their MRLs, and since the information available on the EFSA website is incomplete or disjointed, could the European Union provide a complete list of the substances and MRLs that have already been reviewed and updated, to date, as well as a complete list of substances and MRLs that are currently at the evaluation phase?

11. At the most recent meeting of the SPS Committee in November 2019, the delegation of the European Union indicated that it would launch a process of parallel notification in the TBT and SPS Committees should the measure hold implications for both. Since then, the European Union has notified measures to the TBT Committee that could have implications within the framework of the SPS Agreement, but they have not been notified to the SPS Committee. Could the European Union indicate when it might begin to implement this system of dual notification?