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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 – CONCERNS OF .... (Nº 448)

COMMUNICATION FROM COLOMBIA, ECUADOR, GUATEMALA AND PARAGUAY

The following communication, dated 3 March 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 (G/SPS/N/EU/XXX, ...)

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/1872, and in light of the provisions of Article 5.8 of the SPS Agreement:

1. Further to the European Union's assertion in point 1 of document G/SPS/GEN/1872:
   (a) Could the European Union define the "lowest achievable level" in the setting of MRLs?
   (b) Could the European Union indicate whether "good agricultural practice(s)" can vary from country to country?
   (c) Does the European Union accept "good agricultural practices authorized in third countries", even though they are different from those established in the European Union?

2. In light of the European Union's statements in point 2 of document G/SPS/GEN/1872:
   (a) Does the European Union consider that, in cases where scientific evidence does not exist or is insufficient and the European Food Safety Authority (EFSA) is unable to conclude that an MRL is safe, Article 5.7 of the SPS Agreement is being applied?
   (b) Article 5.7 of the SPS Agreement indicates that in cases where relevant scientific evidence is insufficient, a Member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information. Could the European Union indicate why it adopts definitive measures when EFSA studies do not deliver conclusive results?
   (c) Does the European Union consider that the submission of reservations regarding MRLs adopted by the Codex Alimentarius (CXLs) releases it from its obligations under Article 3 of the SPS Agreement?
   (d) The European Union has indicated that many CXLs are outdated and should therefore be reviewed again by EFSA. In this regard, could the European Union indicate how many CXLs have been reviewed since November 2017?
   (e) We refer once again to the consultations on the degree of alignment between CXLs and European Union MRLs from November 2017 to date.

3. With regard to emergency authorizations granted by the European Union to its Member States for plant protection products which are not already authorized in the European Union and whose MRLs have therefore been reduced to 0.01 mg/kg:

(a) Could the European Union indicate how many emergency authorizations have been granted since 2017, indicating the full list of products and Member States where they have been granted?
(b) Could the European Union indicate whether, when emergency authorizations are issued to Member States, agricultural products that use these substances can be marketed within the European Union and also exported to third countries?
(c) What criteria are taken into account to issue an emergency authorization for the use of prohibited substances? How many consecutive times can an emergency authorization be renewed for the use of substances above the MRLs in force established by European legislation?
(d) Do emergency authorizations have any impact on import tolerances with regard to like or similar plant protection products?
(e) How does the European Union reconcile the emergency authorizations granted to its Member States with its obligations on national treatment under Article III of the GATT and Articles 2.3 and 5.5 of the SPS Agreement?

4. With regard to the European Union's reply in point 4 of document G/SPS/GEN/1872:

(a) Could the European Union confirm that MRLs apply both to food and to feed?
(b) Do MRLs applied to feed have the purpose of protecting the life and health of animals?
(c) If so, does the European Union consider that MRLs applied to feed come within the scope of Article 5.3 of the SPS Agreement?
(d) Has the European Union conducted a regulatory impact analysis of the effects that would result from reducing the use of pesticides to 50% in the production of certain foods regarding which no alternative pest control substances are registered?

5. In point 5 of document G/SPS/GEN/1872, the European Union has indicated that it cannot provide an exhaustive list of "other legitimate factors" that could be taken into account when setting MRLs and cannot provide specific examples of the practice. However, it has observed that "societal, economic, traditional, ethical and environmental factors" should be taken into account in risk management decisions.

(a) Given that most of these factors are not strictly scientific in nature – but rather sociological or anthropological – and that SPS measures must be based on scientific principles, how would the consideration of these other factors be compatible with the European Union's obligations under Article 2.2 of the SPS Agreement?
(b) Could the European Union indicate how these other factors are covered by the SPS Agreement?
(c) Could weighting these other factors determine the setting of lower MRLs than those derived from strictly scientific or sanitary factors?

6. We reiterate our request for specific examples that illustrate how comments by third countries have been taken into account by the European Union before taking a final decision.

7. The request for a single list containing all already reviewed substances and the status of those being revised was presented to the European Union in its TPR of February 2020 and reiterated in the subsequent SPS Committee meetings, but to date no copy of that list has been made available. The European Union has indicated, in point 7 of document G/SPS/GEN/1872, that the feasibility of the request is being considered. While the European Union is analysing this feasibility:

(a) Could the European Union confirm whether the informal list contained in document RD/SPS/131 and the information contained in that list are correct?

8. With regard to the process of setting MRLs for specific substances:

(a) Could the European Union indicate whether account is taken in that process of the existence of alternative substances?
(b) Does the European Union consider the possibility that, after the process of reviewing all substances and setting MRLs at the analytical detection limit, there will be no alternative plant protection products for specific crops?
(c) Has the European Union carried out an estimate of the total cost at European level that would result from the withdrawal of various plant protection products that are currently available for farmers?

9. In point 9 of document G/SPS/GEN/1872, the European Union indicates that the burden of supplying scientific evidence is shifted onto applicants because they have a direct or indirect commercial interest in placing their product on the market. Moreover, in point 2 of document G/SPS/GEN/1872, the European Union indicates that, to establish an MRL, an EFSA risk assessment must show that the MRL is safe for consumers.

(a) Does the European Union consider that under the SPS Agreement it is for the Member that imposes a sanitary measure to undertake the risk assessment on which this measure is based?
(b) In the European Union's view, does the SPS Agreement provide for the burden of supplying scientific evidence to fall on an applicant third country? Could the European Union indicate where the legal basis for this is to be found in the text of the SPS Agreement?
(c) What specific scientific evidence should applicants provide who have an interest in exporting to the European market?
(d) In cases where the European Union adopts MRLs lower than those established by the Codex Alimentarius and, in light of the provisions of Article 3.3 of the SPS Agreement, does the European Union consider that the burden of providing scientific evidence for stricter MRLs than those provided for in international standards also falls on applicants?

10. At the seminar organized by the European Union on the weighting of environmental factors in setting MRLs, held online in Brussels on 20 January 2021, the European Union asserted that imported food that does not meet the relevant environmental standards of the European Union will not be allowed into the European market in order to avoid the transfer of non-sustainable practices. Moreover, the European Union indicated that environmental factors that will be taken into account are those that are of global concern and, as specific examples, the decline in the population of pollinators and the accumulation in the environment of persistent, bioaccumulative and/or toxic substances (PBTs and vPvBs) were mentioned.

(a) Could the European Union provide a definition of "sustainable practices" and the criteria taken into account to define them?
(b) Could the European Union provide a definition of "global concern" and the criteria taken into account to define it?
(c) The Stockholm Convention of 2001 only refers to POPs (persistent organic pollutants). Could the European Union provide an exhaustive list of the substances that it considers to be PBTs and vPvBs?
(d) Has the classification of substances as PBTs and vPvBs been undertaken by the European Union itself or is it based on some international standard?
(e) Can a pesticide be of "global concern", according to the European Union, in cases where a CXL exists for that pesticide?

11. At the same seminar referred to above, the European Union indicated that it considers the fact that current risk assessment tools do not correctly reflect the complex behaviour of these substances to be problematic. In these cases, would Article 5.7 of the SPS Agreement apply?