

**MAXIMUM RESIDUE LEVELS FOR PESTICIDES – IMPACT ON EXPORTS  
FROM DEVELOPING COUNTRIES**

Communication from Argentina

The following communication, received on 22 June 2007, is being circulated at the request of the delegation of Argentina.

**I. CODEX MAXIMUM RESIDUE LEVELS (MRLS) – BACKGROUND**

1. At the 39<sup>th</sup> Session of the Codex Committee on Pesticide Residues (CCPR), held in China from 7 to 12 May 2007, the Netherlands, as former Chair of the CCPR, prepared a "*Discussion Paper about Enforcement of Codex MRLs*"<sup>1</sup>, in the light of discussions at the 38<sup>th</sup> Session of the CCPR.
2. The paper analyses the problems affecting the international food trade which stem from the establishment of national pesticide residue limits that are stricter than those of the Codex Alimentarius, when such limits are not supported by a risk analysis based on recognized scientific evidence.
3. During the discussions, members pointed out in particular that exporting countries, especially developing countries, were confronted with different values of MRLs established in importing countries, for the same compound and same commodity. They also noted that, in some cases, national regulations did not take Codex MRLs into account.<sup>2</sup>
4. The paper concludes<sup>3</sup> that:
  - (a) Countries have the legal right to establish appropriate levels of protection based on risk assessments and supervised trials, and to apply these levels to products of the local market to enforce national authorization;
  - (b) the national aspect of MRL enforcement is different from the acceptance of products in international trade;
  - (c) Codex MRLs are safety standards established on the basis of worldwide risk assessment and are recognized as an international benchmark by the WTO in the context of the SPS Agreement;

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<sup>1</sup> CX/PR 07/39/10.

<sup>2</sup> CX/PR 07/39/10, paragraphs 3 and 6.

<sup>3</sup> CX/PR 07/39/10, paragraphs 13 and 15 *in fine*.

- (d) imposing stricter limits without thorough scientific justification is considered to be a barrier to trade.

5. It emerges from the above-mentioned paper and discussions that the main areas of concern are:

- (a) The establishment of national MRLs that are stricter than those set forth by the Codex Alimentarius;
- (b) in many cases there is no evidence from which to ascertain that national MRLs stricter than the Codex or the elimination of national limits have the necessary scientific backing;
- (c) the setting of national MRLs at detection level, for reasons unrelated to safety and without scientific justification;
- (d) the problems faced by developing countries as a result of such practices on the part of major importing countries.

6. During the discussions, the secretariat and several members said that the situation described in the paper prepared by the Netherlands was beyond the CCPR's terms of reference since the problem was trade-related and should be discussed in the WTO, and recommended that committee members take any such concerns they may have to the SPS Committee.

7. Lastly, during a tense discussion which revealed marked differences of opinion about this suggestion regarding procedure, it was agreed that the Codex Commission (Rome, 2-7 July 2007) would be informed of the discussion and that its guidance would be sought as to where and how the issue should continue to be addressed.

## **II. OUTLINE OF THE PROBLEM FROM A SYSTEMIC PERSPECTIVE**

8. The SPS Agreement recognizes that Members have a fundamental right to establish sanitary and phytosanitary measures which they deem suitable to ensure an appropriate level of sanitary protection<sup>4</sup>, provided the right is not misused with protectionist intent so that unnecessary or unjustified barriers are erected in international trade.

9. The SPS Agreement contains a number of provisions to qualify Members' freedom to adopt and implement SPS measures that could affect international trade, the most important being:

- (a) A requirement that SPS measures have a scientific basis<sup>5</sup>;
- (b) a requirement for Members to adopt international standards, harmonizing their national legislation with the provisions issued by relevant international organizations.<sup>6</sup>

10. In short, the system aims to ensure that SPS measures are science based, that they are "necessary" for the protection of human, animal or plant life or health and that they do not constitute a

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<sup>4</sup> First preambular paragraph and Article 2.1.

<sup>5</sup> Articles 2.2 and 5.1.

<sup>6</sup> Sixth preambular paragraph and Article 3.

disguised or unjustified restriction on international trade.<sup>7</sup> In other words, the SPS Agreement seeks to establish a "delicate balance" between the right of Members to safeguard health and the non-establishment of unjustified restrictions in international trade.

### III. MRLS AND THE CODEX ALIMENTARIUS

11. International harmonization of food safety by the Codex has taken on particular relevance<sup>8</sup> since the entry into force of the SPS Agreement within the framework of the WTO.

12. MRLs are sanitary measures which can affect market access and must therefore be considered in the light of the SPS Agreement.<sup>9</sup>

13. As the paper by the Netherlands indicates clearly, since MRLs adopted within the framework of the Codex amount to food safety standards established on the basis of worldwide risk assessment and are recognized by the WTO as an international benchmark in the context of the SPS Agreement, any stricter limits imposed without scientific justification or on the basis of subjective concepts unrelated to the SPS Agreement, such as references to good agricultural practices, are considered barriers to trade.<sup>10</sup>

14. Governments must therefore be very careful when establishing limits that are stricter than those set by the Codex and ensure that the various commitments assumed at multilateral level are not breached.

15. In this regard, it should be noted that a number of countries have developed<sup>11</sup> food standards, including MRLs, which in some cases are based on supervised trials performed exclusively in the country or group of countries adopting the standards. This may cause problems where a product is not grown in the importing country or where the pesticide in question is not used in that country or group of countries, as in both cases MRLs tend to be automatically set at the limit of quantification (for example, a value of 0.01 mg/kg).

16. Moreover, there may be differences<sup>12</sup> in the results of supervised trials performed in different parts of the world, so that the setting of MRL values is influenced by the particular characteristics of each region, and the conditions and special characteristics of production in the exporting countries are overlooked.

17. MRLs are thus an obvious example of sanitary measures which must be set on harmonized international standards to avoid their becoming unjustified restrictions to international trade.

18. It should be noted in this respect that for many of the active substances used by food-exporting countries in relation to the products applied there are no Codex limits.

19. Argentina points out by way of example – and suggests that Members carry out surveys of their own – that of the 345 active substances currently registered to treat various crops that form part of Argentina's exportable supply of agricultural products, only 110 (i.e. 31.8 per cent) have Codex MRLs.

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<sup>7</sup> Articles 2.1 and 2.3

<sup>8</sup> Reaffirmed by paragraph 15 of document CX/PR 07/39/10.

<sup>9</sup> Article 1.1.

<sup>10</sup> CX/PR 07/39/10, paragraph 15.

<sup>11</sup> CX/PR 07/39/10, paragraph 11.

<sup>12</sup> CX/PR 07/39/10, paragraph 11.

#### IV. DEVELOPING COUNTRIES AND HARMONIZATION

20. From a legal perspective, scientific justification for the measures ensures objectivity, although in the event of a dispute it implies an almost insurmountable restriction for developing countries, which do not have the necessary resources or scientific analyses to demonstrate the inconsistency of a measure that has been imposed on them unfairly.

21. Moreover, in many cases, the removal of the active substances from the registers of the import markets occurs not for scientific, but for purely commercial reasons, and here too scientific and financial resources are needed to demonstrate inconsistency with the SPS Agreement. Hence the importance of adopting measures that meet international standards, which, as mentioned before, enjoy a presumption of necessity and consistency with the SPS Agreement and the GATT 1994.

22. Exporting countries frequently have to adopt the MRLs for pesticides set in their import markets or to remove pesticides from their registers in order to ensure that their products have access to external markets. This results in higher production costs, with serious consequences for the competitiveness of exports from developing countries that do not subsidize export production.

23. It should be recalled that at the Fourth WTO Ministerial Conference, held in Doha, Qatar, from 9 to 13 November 2001, the Directors-General of the FAO, OIE, WHO and WTO, together with the President of the World Bank, circulated a joint declaration aimed at strengthening the capacity of developing countries to implement science-based measures, meet the commercial requirements of trade partners, and participate fully in international standard-setting bodies.<sup>13</sup>

#### V. CONCLUSION

24. Bearing in mind the relevance of this issue and its direct relationship with market access<sup>14</sup>, the delegation of Argentina proposes that:

- (a) The SPS Committee set up appropriate mechanisms to ensure that the Codex Alimentarius envisages and/or accelerates work on establishing pesticide MRLs for substances of interest to Members which export agri-foods, and that it urge Members in all cases to provide the scientific information available to them so as to make technical work possible;
- (b) a mechanism be introduced to monitor the establishment of national MRLs for substances that have Codex MRLs;
- (c) procedures be defined to facilitate, and secure the transparency of, risk assessments which support MRLs that are more demanding than those of the Codex;
- (d) the SPS Committee analyse its own areas of responsibility and those of the Codex with a view to securing effective monitoring of the mechanisms and procedures established;

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<sup>13</sup> WT/MIN(01)/ST/97, 11 November 2001.

<sup>14</sup> Under the agenda item "Specific trade concerns" at SPS Committee meetings, there have been 12 submissions calling into question domestic regulation of MRLs on grounds of inconsistency with multilateral obligations.

- (e) the Committee make a recommendation to the Codex Alimentarius Commission, at its next session in Rome, to approve the decision to continue addressing this issue at its highest decision-making level and in the most appropriate technical fields.

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