



Application of EU health and environmental standards to imported agricultural and agri-food products

Contribution to the call for evidence

March 2022

The European Commission is consulting stakeholders on the rationale and legal feasibility of applying EU health and environmental standards (including animal welfare standards and processes and production methods) to imported agricultural and agri-food products. **PAN Europe welcomes the opportunity of providing feedback and proposes below concrete actions to ensure greater consistency between the pesticide residue standards applied to domestic production and those applied to imported products.**

- **Rationale: towards a sustainable food system**

As part of its Farm to Fork Strategy, the EU is committed to move toward a sustainable food system by engaging in a deep transformation of its domestic production and consumption system. This path toward greater health, animal and environmental standards will notably be achieved *via* drastic reduction of EU dependency to chemical inputs, including to synthetic pesticides. To that end, the EU set clear reduction targets to cut by 2030 the use & risk of pesticides, as well as the use of more hazardous pesticides. However, the EU must ensure that these domestic reduction does lead simply to externalization of current unsustainable practices and that a greater consistency between domestic production and imported food products and feeds is achieved. For this purpose, sustainability of the food supply chain must also be at the heart of trade.

This is even truer than trade has considerably developed after World War II, enabling economic and cultural relations and ties between countries. This model has led to a certain number of favorable socio-economic developments to many regions of the world. On the other hand, trade has led to a series of negative side-effects such as: major environmental degradation, production of considerable quantities of greenhouse gas emissions, corruption, increased food and/or feed dependence, destruction of the agricultural system of a series of countries etc.

· Legal Feasibility of some concrete unilateral initiatives

EU proactive engagement in multilateral fora (incl. UN FAO/WHO Codex Alimentarius) to promote sustainable trade standards and encourage the production of agri-food products complying with high safety and sustainability standards is key. However, it will not be sufficient to meet EU citizens' expectations for higher quality and more sustainable foods and to fully deliver the European Green Deal and Farm to Fork Strategy communications.

Therefore, the EU must and can already engage with unilateral actions to lead globally sustainability efforts, as long as these actions remain in line with the core principles of the WTO Agreement, including transparency, non-discrimination and proportionality.

The overall rationale of the EU is not to discriminate imports to favor EU domestic production or protect the competitiveness of EU agricultural & agri-food sectors, but rather to achieve legitimate goals, which include tackling globally the biodiversity loss, protect humans and animal health and ensure similar on discriminatory standards between imported and domestic products. Not only do the WTO rules not prevent the EU from acting such way, but they provide general provisions that legitimize further action, including:

1. The Preamble of WTO Agreement includes *'the objective of sustainable development, seeking both to protect and preserve the environment'*. This was confirmed by the jurisprudence, including the Appellate Body in *US – Gasoline* which emphasized that *"WTO Members have a large measure of autonomy to determine their own policies on the environment (including its relationship with trade), their environmental objectives and the environmental legislation they enact and implement. So far as concerns the WTO, that autonomy is circumscribed only by the need to respect the requirements of the General Agreement and the other covered agreements."* In addition, the preamble of the WHO Agreement list includes the objective of *"raising standards of living"*
2. Article XX of the WTO Agreement on General Exceptions allows countries to deviate from WTO rules and adopt restrictive measures that are necessary to protect public morals or necessary to protect human, animal and plant life or health.

1. Alignment of Maximum Residue Limits of pesticides in food and feed

In its Farm to Fork Strategy, the European Commission announced it *"will take into account environmental aspects when assessing requests for import tolerances for pesticide substances no longer approved in the EU while respecting WTO standards and obligations"*. In addition, it will consider the *"review import tolerances for substances meeting the "cut-off criteria" and presenting a high level of risk for human health"*.

To that end, the European Commission can rely on the preamble of the WTO Agreement and its Article XX, as well as on the SPS (Sanitary and Phytosanitary) Agreement which allows WTO Members to take measures that are stricter than international standards (i.e., Codex CXLs) to protect human, animal or plant life or health that impact international trade, if *"sufficient scientific evidence"* is carried out in accordance with Article 5 of the SPS Agreement. Sufficient scientific

evidence means a detailed risk assessment, as the one performed by the Food Safety Authority EFSA when reviewing MRLs applications. The difficulty is that Regulation (EC) No. 396/2005 on MRLs aims at ensuring a high level of protection for consumers but does not take into account the environmental effects. However, article 17 of this same Regulation (EC) No 396/2005 provides that an MRL modification or deletion *“following the revocation of an existing authorisation for a plant protection product [which may be due to environmental concerns] may be adopted without seeking the opinion of the Authority”*. **In other words, the European Commission can build on the risk assessments conducted by EFSA on active substances to review import tolerances.**

From a legal perspective, risk assessments carried out by EFSA in the context of Regulation (EC) No 1107/2009 gives the EU *sufficient scientific evidence* in accordance with the SPS Agreement to delete import tolerances and adopt instead default MRLs of 0.01mg/kg. From a policy perspective, this approach gives the European Commission a comprehensive overview and clear criteria on the environmental effects of active substances to be considered when reviewing import tolerances (i.e., points 3.7 and 3.8 and 4 of Annex II of Regulation (EC) No 1107/2009). It also gives good indications on what must be understood by *“substances presenting a high level of risk to human health”* as mentioned in the Farm to Fork Strategy (point 4 of Annex II of Regulation (EC) No 1107/2009).

Last but not least, the **review of import tolerances can and should legally be extended to all MRLs for imported products**, i.e., existing/obsolete MRLs for substances no longer approved in the EU and to Codex CXLs, to avoid arbitrary and discriminatory approach. Indeed, MRLs of active substances no longer approved in the EU pose a similar threat to health, animal and environmental protection than import tolerances, and must be similarly tackled. Likewise, Codex CXLs, which for 68% of them are above EU MRLs (2019, EC data) due to less strict assessment criteria, cannot either constitute a suitable solution at a time the EU aims at raising its food standards. The rationale and legitimate goals to delete Codex CXLs and MRLs for substances no longer approved in the EU are therefore the same as for import tolerances and should therefore lead to similar action.

For all these reasons, we consider the current substance-by-substance review of MRL lowering undertaken by the Commission for substances of environmental concerns of global nature is a first step we welcome, but which needs to be further reinforced thanks to a more generic but WTO-compliant initiative, as the one suggested above. We understand the willingness to act carefully towards third countries but believe the current approach is too restrictive for the EU to fully meet its commitments under the Farm to Fork Strategy.

2. Proposal for a legislative framework for a Sustainable food system

As already expressed in our [contribution](#) to the EU feedback mechanism on Sustainable Food Systems, this new legislative proposal should legally lay down the rationale and legitimate goals of the EU, **include horizontal provisions on EU minimum food sustainability standards, as**

well as minimum sustainability requirements for imported food. This “mother” regulatory framework will further enable sectoral actions (pesticide, animal welfare antibiotics, deforestation etc.). It is worth noting that in the field of pesticide residues, the adoption of this new legislative framework is complementary and does not prejudge any immediate action, as the pesticide framework (1107/2009/EC and 396/2005/EC) already gives the means to act immediately.

3. Mirror clauses in trade agreements

The inclusion of mirror measures in trade agreements constitutes another tool to ensure the reciprocity of standards (on health, environmental protection, and animal welfare) in trade. These clauses should explicitly mention and request the alignment of pesticide residues’ standards in imported food and feed.

Again, these clauses are not *per se* incompatible with WTO rules but can duly be justified as long as they comply with provisions laid down in the preamble of WTO Agreement and its article XX. In addition, article 2 (2) (a) on imported products constitutes another legal basis for action.

Nb: all these concrete actions are meant to be complementary to ensure a consistent and comprehensive approach

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