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FAS USEU Roundtable on Import Tolerances (ITs) and EDs

Report Categories:
SP2 - Prevent or Resolve Barriers to Trade that Hinder U.S. Food and Agricultural Exports
Agricultural Situation

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Report Highlights:
On September 7, 2017, FAS/USEU hosted a breakfast roundtable meeting in order to discuss the latest developments on the European Commission's rules for identifying endocrine disruptors (EDs) and what that means for agri-food exports to the EU through the setting of maximum residue levels (MRLs) for plant protection products. The European Commission is now developing its policy on the setting of import tolerances for active substances that will be affected by the hazard based cut-off criteria. The Commission has developed an informal working document and has requested feedback from Member States by mid-September 2017. The European Crop Protection Association (ECPA) believes that the current developments will have an enormous impact on trade and explained the current situation to the U.S. and other likeminded third countries during the meeting.

General Information:

Following the vote on the endocrine disruptor criteria on July 4, the Commission is now developing its policy on the setting of import tolerances (IT) for active substances that will be affected by the hazard based cut-off criteria. This IT policy could have a major impact on availability of plant protection products (PPPs) and trade. The Commission developed an informal working document and requested feedback from Member States by September 13, 2017. Representatives of third countries and several agrochemical companies discussed some key strategies in order to influence Member States positions on the Commission's stated intention to use approach b from their working document, which means not maintaining existing ITs and refusing ITs for imported food and feed for substances with non-approval under 1107/2009 and where the non-approval is due to hazard criteria. The issue is on the agenda of the next Standing Committee on Plants, Animals, Food and Feed (PAFF) on September 21-22, 2017.

Key points of the discussion:
The need remains for full risk assessment for maximum residue levels (MRLs) and ITs in line with WTO (SPS Agreement). Third countries should continue to raise this issue at every opportunity at the highest level in the hierarchy, including examples to show the impact on trade. The cut-off criteria are purely political, because they are hazard-based and there is no genuine health reason. This is not in compliance with WTO rules and should be raised as such.

There is also a need for capacity building at EU Member State level. One of the key action points at this time is to engage with the EU Member States because of their ability to change EU policy. The idea was to explain the broader view and the impact in the long term, as well as the need to bring the derogation back into the discussion.

The European Commission decided 10 years ago on how to move forward, resulting in a hazard based approach when drafting Regulation 1107/2009 on PPPs. The impact of that decision are starting to become visible now and for the next 10-15 years from now, especially with regard to the Commission's current decisions on MRLs, EDs, and ITs. This is why there is a need for an impact assessment in order to fully understand how these current decisions will affect trade with the EU in the long term. The Interinstitutional Agreement on Better Law making provides a tool to support this request: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016Q0512(01)&from=EN – see - III. TOOLS FOR BETTER LAW-MAKING – point 13: '*The Commission will carry out impact assessments of its legislative and non-legislative initiatives, delegated acts and implementing measures which are expected to have significant economic, environmental or social impacts…'*

Background presentations on the current policy

Part 1: Status of the ED criteria
The Commission proposal transferred to Council and European Parliament (EP). The Council signed off and will not oppose, while two objections were raised at the ENVI committee (EP) by the Greens and Socialists & Democrats (S&D). Both parties will draw up a resolution together before September 21, 2017, which will be voted at the next plenary session of the EP.

The adoption of the criteria is still expected by the end of this year, in order to enter into force by mid-2018. This is when the Commission is expected to restart the discussion on the derogation, although there is no commitment from its part on when exactly it will be brought back.

Part 2: The bigger picture – Potential impact on ITs

Two pieces of legislation: Regulation 1107/2009 on the approval of active substances in Plant Protection Products (PPPs), which is hazard based, and Regulation 396/2005 for the setting of MRLs and ITs based on risk assessment.

The Commission has now developed a working document on how to deal with ITs under Regulation 1107/2009, when substances fall under the hazard based criteria. It means the substances that, upon renewal, would be triggered by the ED criteria, as well as substances that fall under any other category of hazard-based criteria, or so called cut-off criteria, such as carcinogenic, mutagenic, reproductive toxicants (CMR), persistent organic pollutant (POP). etc. This working document contains six scenarios on how to deal with ITs.

The Commission's stated intention is to use approach b from their working document, which means not maintaining not existing ITs and refusing ITs for imported food and feed for substances. For substances with non-approval under 1107/2009 and where the non-approval is due to hazard criteria.