

The European Parliament's recent diktat directs the EU member States to disregard WTO obligations.

Shocking!



Ganesan S
Advisor
CENTEGRO
(Centre for Environment & Agriculture)

About WTO and EU

The World Trade Organization (WTO) deals with the global rules of trade between nations. Its main function is to ensure that trade flows as smoothly, predictably and freely as possible. The WTO has many roles: it operates a global system of trade rules, it acts as a forum for negotiating trade agreements, it settles trade disputes between its members. The complete set of the WTO Agreement runs to over 30,000 pages consisting of about 30 agreements.

The WTO members are expected to operate a non-discriminatory trading system mindful of the WTO rules that spells out their rights and their obligations.

The principle of non-discrimination is very important under the WTO. This principle stipulates that the WTO Members shall not discriminate (i) between “like” products from different trading partners-giving them equally “most favoured nation” or MFN status and (ii) between its own and like foreign products, giving them “national treatment”. All “like products” are, by definition, directly competitive or substitutable products. For example, cotton imported from another country is a “like product” to the one produced domestically and should receive the same treatment as the one produced locally.

When a measure taken by any WTO Member discriminates between and among the “like” traded products, either in favour of domestic over the imported products or favour some foreign products over others, the WTO rules on trade can be invoked. The WTO rules on technical regulations disallow local regulations if they discriminate between and among the “like” traded products.

The WTO has over 160 members representing 98 per cent of the world trade. All the 27 Member States of the European Union (EU) are also WTO members in their own right. The EU is a single customs union with a single trade policy and tariff. The European Commission — the EU’s executive arm — speaks for all EU member States at the WTO meetings.

About WTO SPS Agreement

The Agreement on the Application of Sanitary and Phytosanitary Measures (the “SPS Agreement”) entered into force along with the establishment of the World Trade Organization on 1st January 1995. The SPS Agreement concerns the application of food safety and animal, and plant health regulations provides a framework of rules to guide the WTO member States in the development, adoption and enforcement of sanitary (human or animal life or health) and phytosanitary (plant life or health) measures which may affect trade. The right to adopt the SPS measures is accompanied by obligations aimed at minimising negative impacts of the SPS measures on international trade. The basic obligations are that the SPS measures must:

- I. be applied only to the extent necessary to protect human, animal or plant life or health and not be more trade restrictive than necessary;
- II. be based on scientific principles and not maintained without sufficient scientific evidence; and
- III. not constitute arbitrary or unjustifiable treatment or a disguised restriction on international trade.

Maximum Pesticide Limit (MRLs) under the SPS Agreements

A Maximum residue limit (MRL) is the maximum concentration of a pesticide residue (expressed as mg/kg), to be legally permitted in or in food commodities and animal feeds. MRLs are based on Good Agricultural Practice (GAP) data and foods derived from commodities that comply with the respective MRLs are intended to be toxicologically acceptable.

The principal international source of MRLs is the Codex Alimentarius. MRLs are set by the Codex Committee on Pesticide Residues (CCPR), based on recommendations made by the FAO/WHO Joint Meeting on Pesticide Residues (JMPR).

The MRLs setting in the EU

Pesticides and their residues are regulated in the EU under the Regulations (EC) No 396/2005 and No 1107/2009. Under these regulations, when a pesticide is not authorised for use in the EU following either a ban or a withdrawal from the

EU market, the MRL for that substance on imported products is fixed at a uniform default level of 0.01 ppm (0.01 mg/kg). This MRL is as good as zero tolerance. This means that the pesticide cannot be used in third countries in production of food or feed destined for export to the EU.

Pertinently, 0.01 ppm is equal to 1 gm of a pesticide residue for every 100 tonnes of food or feed commodity! At this trace level (1 gm in 100 tonnes of food), a pesticide residue would not be biologically, toxicologically, and environmentally relevant and there is also no scientific evidence to show that it causes adverse health effects. It only acts as an effective trade barrier.

The European Parliament's questionable diktat

On 12th Sept 2024, the European Commission moved its proposals before the European Parliament to amend the maximum residue levels beyond 0.01 ppm for five pesticides namely Cyproconazole, Spirodiclofen, Benomyl, Carbendazim and Thiophanate methyl that were banned for use in the EU a few years ago. The Members of The Parliament Committee on Environment, Public Health and Food Safety rejected the proposal to amend the MRL beyond 0.01 ppm giving the following reasons:

1. The proposed amendments to the MRLs for these 5 banned pesticides do not ensure a high level of consumer protection in the EU.
2. The proposed amendments to the MRLs promote a double standard by allowing imports of food products treated with pesticides banned in the EU.
3. The proposed amendments to the MRLs would put the EU farmers at a competitive disadvantage when compared to the non-EU famers.
4. The proposed amendments to the MRLs are not compatible with the aim and content of EU's internal Regulations (EC) No 396/2005 and (EC) No 178/2002, as well as with Regulation (EC) No 1107/2009, including points 3.6.2, 3.6.4 and 3.6.5 of its Annex II;

The European Parliament resolutions can be accessed from:

https://www.europarl.europa.eu/doceo/document/B-10-2024-0020_EN.html

https://www.europarl.europa.eu/doceo/document/B-10-2024-0021_EN.html

This is the third time in the last 10 months that the European Parliament uses its veto power on the pesticide's rules concerning MRL in imported foods. In December 2023, the European Parliament rejected a similar proposal to amend the MRL beyond 0.01 ppm for Tricyclazole, a rice fungicide. In January 2024, the European Parliament rejected the proposal to amend the MRL beyond 0.01 ppm for Thiacloprid, an insecticide.

The reasons given by the Members of European Parliament (MEP), a political body, are completely inconsistent with the binding provisions of the WTO SPS Agreement.

The WTO SPS Agreement allows member countries to introduce sanitary or phytosanitary measures including pesticide MRLs only if they meet the following conditions:

- i. They are taken only to the extent necessary to protect human, animal or plant life or health and are based on scientific evidence and not maintained without sufficient scientific evidence (**Article 2.2**);
- ii. They do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail, including between their own territory and that of other members and are not applied in a manner which would constitute a disguised restriction on international trade (**Article 2.3**);
- iii. They are based on an assessment as appropriate to the circumstances, of the risks to human life or health, etc., arising from the presence of contaminants in food, beverage or feedstuffs (**Article 5.1** read with **Annex A**);

Ignoring all these obligations and fundamental requirements, the European Parliament directs imposing a uniform MRL of 0.01 ppm on many pesticides widely used in crop production in countries outside the EU. This is shocking, to say the least.

The European Parliament Resolution should be held to in contravention of the WTO law on following counts:

I. The European Parliament Resolution is inconsistent with the provisions of the SPS Agreement

Globally, determining pesticide MRLs is governed by the legal framework established under the SPS Agreement. Determining and implementing

pesticide MRLs is not an unfettered right in the hands of Member countries of the WTO. They have the right to restrict international trade for the protection of human, plant, or animal health against trade-related risks only when such measures are consistent with the relevant principles of the WTO in general and the SPS Agreement in particular.

II. The underlying principle of the European Parliament Resolution is not based on risk assessment

Each WTO Member must base their phytosanitary measures (including pesticide MRLs) on scientific evidence and risk-assessment, which are substantive requirements under the SPS Agreement. *“Theoretical uncertainty is not the kind of risk to be assessed under Article 5.1”* of the SPS Agreement as held by the Appellate Body (AB) Report in the *EC-Hormone* case, para 186. It further states in para 187 *“It is essential to bear in mind that the risk that is to be evaluated in a risk assessment under Article 5.1 is not only risk ascertainable in a science laboratory operating under strictly controlled conditions, but also the risk in human societies as they actually exist There must be a rational relationship between the measure and the risk assessed”*. None of these factors are true for the EU’s hazard-based import tolerance of 0.01 ppm.

Risk assessment consistent with the SPS Agreement is a *sine qua non* for determining the MRLs. The Annex A-4 of the SPS Agreement defines “risk assessment” as *“the evaluation of the potential for adverse effects on human or animal health arising from the presence of... contaminants... [including residues of pesticides] in food, beverages or feed stuff*. The SPS Agreement requires assessment of the potential adverse effects on human health arising from the presence of contaminants in food as held by the AB in *EC-Hormones*, para 206.

III. The European Parliament Resolutions is a disguised restriction on international trade

Basic obligation contained in Article 2.3 of the SPS Agreement requires that SPS measures (including pesticide MRLs) shall not be applied in a manner which would constitute a disguised restriction on international trade.

IV. The European Parliament Resolution violates Article 27 of the Vienna Convention of Law of Treaties (VCLT)

The provisions of VCLT are applied in all the WTO settlement cases. Article 27 of the Vienna Convention clearly states that a Party [in this case EU] cannot

invoke the provisions of its internal laws* as a justification for its failure to perform its obligations under a treaty [in this case the WTO SPS Agreement].

The internal laws invoked by the European Parliament are: Regulations (EC) No 396/2005 and (EC) No 178/2002, as well as with Regulation (EC) No 1107/2009, including points 3.6.2, 3.6.4 and 3.6.5 of its Annex II.

In the EU, the final decision on pesticide MRLs is strangely political

In other WTO member States, the determination and final adoption of the pesticide MRLs is strictly a scientific process from the beginning to the end, managed by technically qualified experts, but not in the EU. In the EU, the European Food Safety Authority (EFSA) gives scientific advice to the European Commission on matters concerning pesticide MRLs in food and feed and makes proposals regarding the setting of MRLs. However, the MRL proposals are placed before the European Parliament, a political body of elected representatives, for a final approval before adoption by the member States.

Final word:

The WTO agreement prohibits discrimination against and among imported products, requiring that imports be accorded “national treatment” and “most favoured nation” treatment.

Under the WTO SPS Agreement, it is important for the Members to:

- I. Follow risk-based analysis of pesticide residues or Codex standards while determining the pesticide MRLs
- II. Avoid arbitrary definitions of pesticide residues that differ from the one set by Codex.
- III. Ensure transparency and predictability of pesticide regulations concerning MRLs
- IV. Implement science-based MRL policies and avoid politically driven ones.

It's evident that the politically imposed pesticide MRL of 0.01 ppm is designed to be a non-tariff barrier to protect the EU's own domestic production from outside competition. The EU is apparently trying to impose “mirror measures” to ensure that the EU's plant protection policies are also applied extra-territorially to the imported products.

The primary purpose of the WTO is to open the trade for the benefit of all Members. However, the EU seems to be moving in the opposite direction. The European Parliament Resolution shows “deliberate disregard” to the binding provisions of the SPS Agreement and deviates significantly from the mandatory requirements set thereunder.

EU is the world’s largest importer of agricultural products. It accounts for 1/3rd of the world’s import. The EU should not abuse its dominant position in any manner to the disadvantage of the non-EU WTO members.

If the member States of the EU want to continue with arbitrary, trade restrictive, unscientific and the WTO inconsistent trade measures with reference to the pesticide MRLs, then they have only one option. Exit the WTO.



Centre for Environment and Agriculture (CENTEGRO) is a Mumbai based think tank in India. We actively work, among others, on matters that concern agriculture, trade, economy, health, and the environment. E: info@centegro.org W: indianagriculturalfacts.com

Author's direct Email id: ganesanicc@gmail.com