



Policy Advocacy Paper

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EU pesticide MRL policy, a science-coated trade barrier - questionable under WTO.

A. The default Maximum Residue Level (“MRL”) imposed by European Union

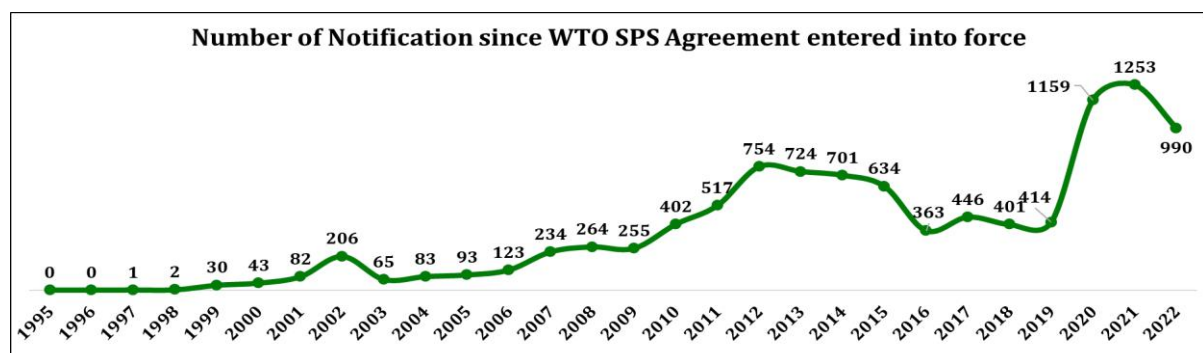
MRL is the maximum acceptable level of a pesticide residue that is legally tolerated in/on food and agricultural products when they are traded. It is often measured and expressed in terms of parts per million (ppm) or mg/kg.

Pesticides and their residues are regulated in the EU under Regulations (EC) No 396/2005 and No 1107/2009. Under the EU Regulation (EC) No 396/2005, when a pesticide is not authorised for use in the EU following either ban or withdrawal from the EU market, a default value of ≤ 0.01 ppm (≤ 0.01 mg/kg) is set as import tolerance MRL. Pertinently, **0.01 ppm is equal to 1 gm of a pesticide residue for every 100 tonnes of food commodity!**

In the EU, MRLs are set for more than **1300** pesticides covering **378** food products. Of this, a default MRL of ≤ 0.01 ppm applies to as many as **690** pesticides. In other words, for over **50%** of the pesticides the EU applies default MRL of ≤ 0.01 ppm. **This import tolerance MRL is as good as zero tolerance.**

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.

B. Sharp increase in the number of EU MRL notifications leading to rejection of imported consignments.



Source: Notification on Pesticides Residues in the Rapid Alert System for Food and Feed (RASFF) – 2022, from 1981 to 2020, by Marcin Piglowski; data for 2021 & 2022 extracted from RASFF on 23rd August 2023.

There is a spurt in the EU notifications alleging pesticide MRL violations in recent years. In the year 2022 alone, the EU notified/rejected as many as **990** imported consignments on MRL violations.

Rejection of imported consignments by the EU, applying uniformly the default MRL of ≤ 0.01 ppm poses serious consequences on agricultural production, commodity prices and farmers' income in the exporting countries.

C. Understanding the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement)

WTO SPS Agreement enables Member countries to introduce *sanitary or phytosanitary measures*, as long as the following conditions, amongst others, are met:

- (i) Such measures are taken to protect human, animal or plant life or health **(Article 2.1)**;
- (ii) 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)**;
- (iii) 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)**;
- (iv) 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)**;

The EU pesticide MRL policy (of ≤ 0.01 ppm) violates the above conditions that are mandatory under the WTO-SPS Agreement. The EU's policy is not based on any scientific evidence and is not an end result of risk-based assessment of the **contaminants** concerned. Rather, it is hazard based. In fact, EU in statement No. G/SPS/GEN/1847 dated 21/10/2020 before SPS Committee admitted that "***given the concerns identified by EFSA, it is not possible to determine MRLs based on a risk assessment and therefore all MRLs must be lowered to the limit of determination***".

D. What is a valid 'risk assessment' under SPS Agreement?

Annex A to SPS Agreement, in paragraph 1(b), defines, *inter-alia*, 'sanitary measure' as "*any measure applied to protect human or animal health within the territory of the*

member from risks arising from additives, contaminants, ... in foods, beverages or feedstuffs.” As per Footnote 4 to Annex A, ‘contaminants’ include, *inter-alia*, pesticide residues.

It is pertinent to understand that contaminants are substances that have not been intentionally added but are inadvertently present in agricultural commodities.

SPS Agreement defines “risk assessment”, as “*evaluation of the potential for adverse effects on human or animal health arising from the presence of ... contaminants... in food, beverages or feedstuffs*”.

The SPS Agreement is concerned with risk, if any, arising from the “contaminants” (pesticide residues) that might be present in/on the imported food commodities. Risks arising from the pesticide formulations as used in the farms are not within the scope of SPS Agreement.

Despite repeated demands from other Members, the EU fails to submit robust scientific evidence that objectively supports the alleged risk from the contaminants (pesticide residues) at levels of ≤ 0.01 ppm.

In *EC – Hormones*, the Panel defined a ‘risk assessment’ as “*a scientific process aimed at establishing the scientific basis for the sanitary measure a member intends to take*”.

In the same case, the Appellate Body (AB) observed “*... the risk that is to be evaluated in a risk assessment under Article 5.1 is not only risk ascertainable in a science laboratory....., but also risk in human societies as they actually exist*”.

The EU Regulation (EC) No 396/2005 is based on “risk” arising from pesticide active ingredient and not on pesticide residue (“contaminant”). Therefore, it does not meet the requirements of the SPS Agreement.

Conclusion

The EU import tolerance pesticide MRL of **≤ 0.01 ppm** is inconsistent with the provisions of the SPS Agreement.

The EU’s MRL policy also violates the core principles of “**Non-Discrimination**” and “**National Treatment**” of the WTO.

The EU’s pesticide MRL policy is designed and implemented to restrict importation of agricultural commodities to protect the domestic market.

Several countries have already raised specific trade concerns (**STCs**) in respect of this issue repeatedly at the SPS Committee meetings. However, the EU has so far failed to provide any objective response to the STCs. In the meantime, the EU continues to reject hundreds of imported consignments applying the impugned default MRL of ≤ 0.01 ppm. An emerging opinion is that **it's time to opt for a dispute settlement before the WTO.**

For more details, see our presentation at <https://indianagriculturalfacts.com/risk-assessment-valid-under-sps-agreement/>

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