

WTO AND THE TALE OF TRICYCLAZOLE IN THE EU



Tricyclazole is a fungicide used extensively in many countries for controlling blast disease in paddy. This disease is estimated to destroy enough rice to feed more than 60 million people globally. Though Tricyclazole is not registered for use in the USA, it has determined 3 ppm as MRL for this fungicide in rice to facilitate the international trade.

Unfortunately, the story is completely different in the EU.



Nov
2016

In November 2016, the European Food Safety Authority (EFSA) banned the use of Tricyclazole in the EU.

June
2017

In June 2017, EFSA reduced MRL for Tricyclazole 100 times from the previous 1 ppm to ≤ 0.01 ppm as “import tolerance” level without any risk assessment required under Article 5.1 of the WTO SPS Agreement.

Thereafter, the EU started rejecting several consignments of imported rice alleging the presence of Tricyclazole residues above 0.01 ppm. This adversely impacted leading rice exporters such as India, Pakistan, Thailand and several other countries.

2018

In 2018, Corteva Agrisciences submitted Good Agricultural Practices (GAP) data for Tricyclazole from Brazil to the EU to revise the so-called “import tolerance” upward from 0.01 ppm.

Oct
2022

In October 2022, the EFSA announced its proposal to revise the MRL for Tricyclazole in rice to 0.09 ppm on the strength of the GAP data submitted from Brazil.

May
2023

However, when the European Commission moved the proposal in May 2023 to the Member States of the EU, they did not grant a final approval to the proposed upward revision of the MRL to 0.09 ppm.

Reasons for not accepting the proposed revision:

1. The non-acceptability of import tolerance for plant protection substances no longer approved for use in the European Union.
2. Increasing the import tolerance MRL to a risk based 0.09 ppm would have a negative impact on the “competitiveness” of European rice farmers who are deprived of using the same tool (Tricyclazole) as those in other countries for effective control of paddy blast disease.

Source : <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SPS/GEN2171.pdf&Open=True>

Our Comments and Questions

The term “import tolerance” is not to be found in the text of the SPS Agreement. This term seems to be an “invention” of the EU to serve its domestic trade interests.

The requirement to establish “import tolerance” given in the EU Regulation (EC) No. 396/2005 is not in conformity with the obligations under **Article 2** and **5.1** of the WTO SPS Agreement.

Article 27 of the **Vienna Convention of the Law of Treaties (VCLT)** states “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty”. This means the EU cannot cite provisions of the EU Regulation (EC) No. 396/2015 or any other internal law for not meeting the obligation under the WTO SPS Agreement.

The reasons (listed above) put forth by the Member States of the EU go completely against the text and spirit of the WTO SPS Agreement.

Only the food safety risks assessed in accordance with Article 5.1 of the SPS Agreement should govern the decisions concerning pesticide MRLs. The Members of the EU cannot ignore this fundamental fact.

Members of the WTO have the sovereign right to restrict trade for the protection of human, plant and animal life or health against trade-related risks, provided that they follow the relevant principles of the WTO and in particular the SPS Agreement.

The main principles of the WTO framework are that *SPS measures should be non-discriminatory, transparent, science-based and not more trade-restrictive than required to achieve the appropriate level of protection.*

In the document WTO G/SPS/GEN/1872 dated 8th December 2020, the EU claims that “it is the responsibility of the applicant (Who? The exporting WTO Member?) to provide relevant data needed to carry out risk assessment under the SPS Agreement”. This is not compliant with SPS Agreement which requires each WTO Member to base all SPS measures on scientific evidence. The EU’s import tolerance MRL of 0.01 ppm is not based on scientific evidence and the task of correcting this MRL cannot be assigned to the exporting member countries.

**The
final
word**

It's evident that the EU pesticide MRL regulations are designed to be non-tariff barriers to protect their own domestic production/market and they deviate significantly from the mandatory requirements of the SPS Agreement. The non-EU countries may collectively challenge the EU availing the WTO's Dispute Settlement Understanding (DSU).

