



The Hazards of the Brussels Effect

Engaging a Regulatory Superpower

5.24.23 Presentation to MRL Harmonization Workshop | Ben Conner | DTB AgriTrade

<http://www.dtb-agritrade.com/>

Who We Are

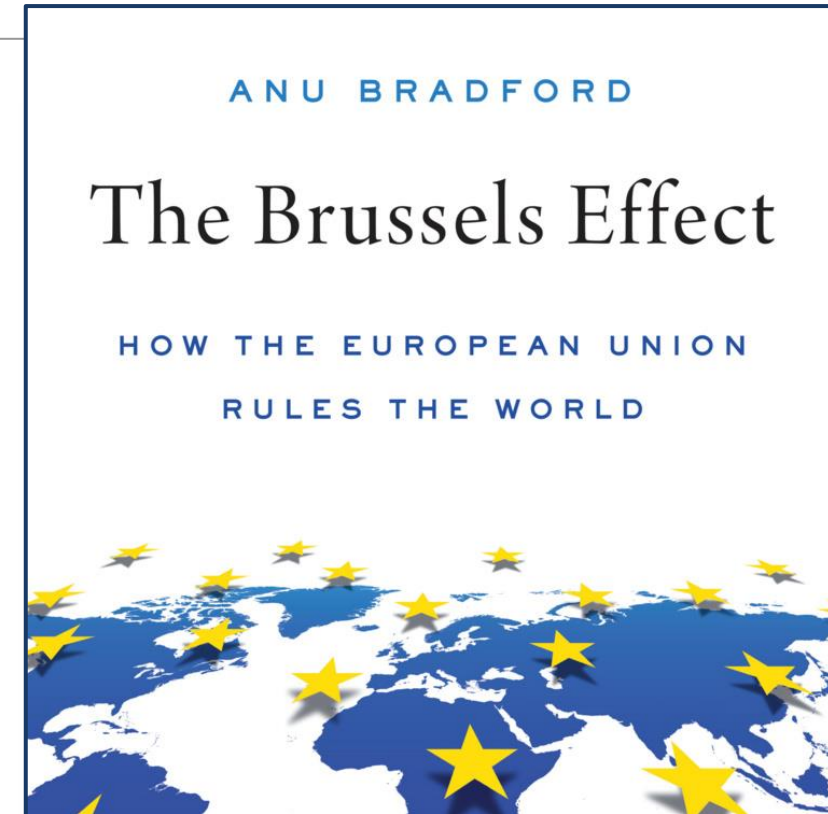
- DTB AgriTrade has been helping food and agriculture firms deal with international trade policy issues since 2000
- We specialize in negotiations, monitoring, and enforcement of trade agreements
- Our team has been involved in major ag trade disputes, including *EC Hormones*, *EC Biotech*, and *China Grains*

Key Messages

- EU MRL policies violate WTO commitments
- WTO members should bring a comprehensive case against the EU on its hazard-based approach to pesticide residues
- Private sector needs to be transparent with like-minded governments on EU policy impacts

The Brussels Effect

- Refers to the influence of EU regulatory bodies in effectively setting global standards because of their position in global trade.
- The EU wields “significant, unique, and highly penetrating power to unilaterally transform global markets.”
- Includes regulatory influence, cf. Mexico, Sri Lanka
- Can be a force for good but - in our view - it often amounts to regulatory overreach on agrifood trade that needs to be checked.





Regulatory Recap

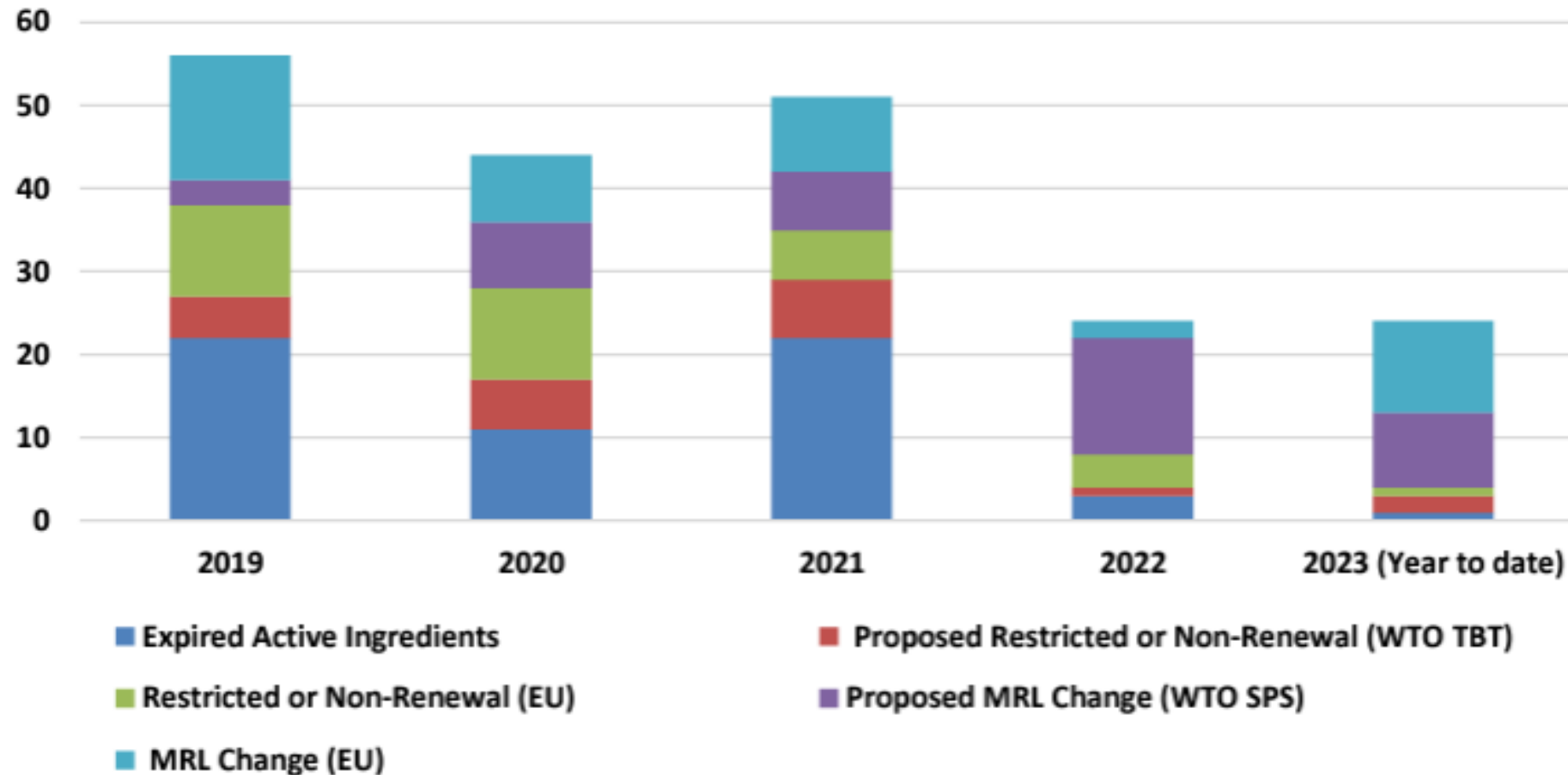
Hazard-Based Policies

- **Hazard-based Legislation** - 1107/2009 applied hazard-based cut-off criteria to domestic pesticide registrations
- **Cut-off Import Tolerances** - In 2018, DG Sante proposed a silver bullet from a WTO standpoint. Commission declared it would do no risk assessments on import tolerances (“Members shall ensure their measures are based on an assessment... of the risks...”)
 - **Legal vulnerability** - Like-minded countries and industry seemingly convinced the Commission that it was legally vulnerable. They did not change course but they did change strategy.

The Hard Way

- Revised import tolerance guidance
 - Import tolerances now granted on a case-by-case basis following a risk assessment
- Is this compliance?
 - Probably not. But it is a more complicated case.
 - Need to show a **de facto violation**, which means we cannot point to explicit legal measures for core claims.

Total Active Ingredients per EU Pesticide Renewal Monitor (PRM)



EU WTO Notification on Neonicotinoids

- **Withdrawing MRLs (setting to LOQ)**
 - Environmental Concerns
 - Notification to TBT Committee
- **Major event in regulatory circles and WTO**
 - New legal ground, dangerous precedent
 - Highly critical international response



WTO Opportunities and Leverage

What is the World Trade Organization?

- Consists of a rulebook, committees, negotiations, and enforcement
- Provides leverage for resolving trade issues, such as:
 - Normative influence
 - Opportunities for persuasion
 - Opportunities to shame/isolate
 - Neutral arbitration on compliance
 - Justified retaliation



Relevant SPS Agreement Provisions

- **Annex A (Scope)**
 - SPS measures are applied to protect human or animal life or health from contaminant risks in food, beverages, or feed
- **Article 2.2**
 - Extent necessary to protect health, based on scientific principles, sufficient scientific evidence
- **Article 3.1**
 - Based on international standards (may exceed if there is scientific justification)
- **Article 5.1-2,5-6**
 - Based on a risk assessment, taking into account available scientific evidence, avoid arbitrary distinctions, not more trade-restrictive than necessary

SPS Committee

- Over 100 countries since 2014, nearly 20 consistently active
- Questions on a number of EU practices, like:
 - Sufficiency of scientific evidence, risk assessments, and application of hazard-based cut-off criteria
 - EU approach to regulation of endocrine disruptors
 - Apparent refusal to grant import tolerances for cut-off substances
 - Precautionary approach to risk assessments for non-cut-offs
 - Emergency use authorizations
 - Deletion of MRLs based on environmental criteria
 - Failure to account for local conditions, trade impacts

Relevant TBT Agreement Provisions

- **Article 2.1**
 - Treat imports no less favorably than domestic products or other imports
- **Article 2.2**
 - Properly calibrate policy to fulfill a legitimate objective, considering available scientific and technical information
- Neonic regulation and notification structured as an environmental issue – attempt to avoid SPS disciplines even though it uses SPS measures
- EU unilaterally restricts imports and ignores production and regulatory differences between sovereign countries



WTO Dispute

Is it time for a WTO dispute?

- Yes – as soon as it can be done right
 - The EU has consistently disregarded its WTO commitments
 - It has been unresponsive to trading partner concerns
 - Changes made are cosmetic – mean to obscure, not comply
 - At some point, credibility of a dispute will be lost, including for other trading partners
- EU regulatory policies undermine WTO
 - Persistent non-science-based EU trade barriers create perception that global trade rules are ineffective

What should be included?

- Multiple WTO members
- Scope should be as broad as possible – challenge the trade-related aspects of system, not just a symptom
 - Cut-off criteria applied to import tolerances
 - Precautionary approach to non-cut-off substances
 - Emergency use authorizations
 - Environmental criteria for SPS measures
- A broad challenge will require cooperation of the private sector, **including providing governments with usable information on their experiences** with EU approval processes

Conclusion

- Dealing with the hazard-based approach is not a WTO-only strategy
- There are many levels to address this:
 - Robust agricultural innovation agendas at international organizations for food security and sustainability
 - Protect the role of science in Codex and other standard-setting bodies
 - Proactive outreach to regulators and decision-makers
 - Effective communication to consumers, farmers, and NGOs
 - Encourage safe and responsible use of pesticides on farms
- ***But the WTO and a WTO dispute play a necessary role in bringing science-based decision-making back to EU pesticide policy and slowing the contagion***



Thank you!



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