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Committee on Sanitary and Phytosanitary Measures

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**WORKSHOP ON PESTICIDE MAXIMUM RESIDUE LEVELS (MRLS):
RECOMMENDATIONS FOR ENDORSEMENT BY THE SPS COMMITTEE**

SUBMISSION BY KENYA, UGANDA AND THE UNITED STATES OF AMERICA

Revision

The following communication, received on 27 October 2017, is being circulated at the request of the Delegations of Kenya, Uganda and the United States of America.

Kenya, Uganda and the United States appreciate Members' feedback on our proposal originally circulated in March 2017. The present version incorporates the comments received from Members; our proposed Ministerial Decision is contained in an Annex. The text of this proposed Ministerial Decision draws directly from our paper. Kenya, Uganda and the United States invite the SPS Committee to endorse this Decision for transmission to the Ministerial Conference in Buenos Aires in December 2017.

Kenya, Uganda and the United States appreciate the in-depth examination of the impact of pesticide MRL-related issues on international trade at the Workshop on Pesticide MRLs held on 24-25 October 2016 for WTO SPS Committee Members.¹ We thank the Secretariat of the Committee for its efforts to organize the workshop. Discussions in the Committee on MRL-related concerns, as well as the views provided at the workshop by experts from a wide range of countries and organizations, confirm the central importance of risk analysis – including assessing, managing and communicating risks associated with pesticide use – to protecting public health and the environment, while enabling the safe use of plant protection products and facilitating international trade.

Workshop participants also confirmed there is a broad range of MRL-related issues that are currently having a significant impact on trade in food and agricultural products. We believe that the SPS Committee can play a constructive role in addressing these trade-related concerns. Indeed, several Members expressed the need to continue to advance work in the Committee on trade-related issues on MRLs at the meeting of the Committee on 27-28 October 2016. To initiate discussion on how the Committee might advance our work on trade-related MRL issues, we offer the following suggestions for Members' consideration.

1 ENABLE JMPR TO BETTER RESPOND TO INCREASED DEMAND AND MONITOR PROGRESS ON NEW CODEX MRLS

1.1. First, we heard from workshop participants that, despite the significant efforts to date by the Joint Meeting of Experts on Pesticide Residues from the Food and Agriculture Organization (FAO) and the World Health Organization (WHO), known as "JMPR", to streamline procedures and to manage the process of scientific review as efficiently as possible, the number of nominations put forward by the Codex Committee on Pesticide Residues (CCPR) for evaluation of new compounds and new uses, as well as for periodic re-evaluations of existing MRLs, by the JMPR far exceeds its current capacity. Further, the absence of MRLs for use in traded products is a significant concern,

¹ Presentations from the Workshop on Pesticide Maximum Residue Levels are available online via the following web link: https://www.wto.org/english/tratop_e/sps_e/wkshop_oct16_e/wkshop_oct16_e.htm.

particularly for specialty crop and minor use products, and for agricultural products produced in developing countries.

1.2. Participants in the workshop also discussed options to enable additional efficiencies in the Codex process to help maintain the relevance of Codex MRLs to all Member countries and, in turn, facilitate countries' abilities to adopt Codex MRLs.

1.3. *We believe the Committee should encourage Members, as a matter of some urgency, to approach their Codex representatives to highlight the trade issues raised during the MRL workshop and to participate actively in their inter-ministerial discussions on MRL issues. Members should encourage national discussions of options that could enable a more productive Codex MRL system; and in particular, to hasten discussions on ways to achieve sustainable funding for the scientific bodies. Such discussions would take place in the context of national resource availability, and could include, inter alia, options for increasing support to JMPR, increasing representative expert participation and other forms of support for the scientific bodies as well as encouraging programmes to support submission of data from developing countries especially on minor crops. The Committee should also invite regular updates from Codex on its progress in the evaluation of new compounds and new uses.*

2 STRENGTHEN NOTIFICATION PRACTICES FOR GREATER TRANSPARENCY AND PREDICTABILITY ON MRLS

2.1. Second, workshop participants emphasized the need for greater transparency and predictability in Members' regulatory approaches to pesticide registration, in the setting of national MRLs and in the adoption of Codex MRLs. Several participants noted that the WTO notification process can be a powerful tool for identifying potential trade problems associated with proposed MRLs. They stressed that the processes for accepting comments on notifications and for taking comments into account are primary vehicles for reducing and preventing adverse trade impacts resulting from new or revoked MRLs.

2.2. *We believe the SPS Committee should consider ways for WTO Members to provide greater transparency and predictability worldwide on MRLs by urging Members to: (1) notify all proposed changes to their MRLs, including changes to MRLs that are based on international standards; and (2) review and improve their ability to take the comments of their trading partners meaningfully into account when considering proposed changes on MRLs.*

3 REPORT TO THE COMMITTEE ON INTERNATIONAL AND REGIONAL ACTIVITIES ON MRLS

3.1. Third, workshop participants provided important information on harmonization and other collaborative activities taking place in international and regional forums other than Codex, such as the Organization for Economic Cooperation and Development (OECD), the Asia-Pacific Economic Cooperation (APEC), the North American Free Trade Agreement (NAFTA), and the East African Community (EAC). The goal of these collaborative activities include, *inter alia*, strengthening food safety, public health and environmental protection both domestically and globally; strengthening the scientific basis and enhancing regulatory efficiency by leveraging the scientific and regulatory resources of the international community; minimizing unwarranted trade barriers related to pesticide regulatory requirements; and, facilitating trade and competition.

3.2. Workshop participants also noted many instances in which a creative initiative developed in a regional forum has produced benefits worldwide. For example, the OECD MRL calculator and use of a common application format, known as the OECD dossier, has been taken up by JMPR and many national authorities, thereby enabling greater alignment of MRLs. Further, these tools have also enabled these national authorities to work collaboratively to improve the harmonization of MRLs, including through Global Joint Reviews and regional economic integration efforts, such as those of the EAC. Participants also discussed activities on global data generation and global joint reviews that are being used as the basis of widely-accepted MRLs by many countries.

3.3. Participants noted the benefits to many developing countries of participation in the Codex process and recounted that some developing countries are seeking to dovetail their national and

regional efforts to those of the OECD, NAFTA and APEC in order to encourage registrations of new substances that could enable greater access to lower-risk chemistries by their producers.

3.4. We believe the Committee should welcome efforts by Members of these regional initiatives and the relevant observer organizations to provide regular updates to the Committee on their harmonization and other collaborative activities on MRLs. Such information could provide the basis for other Members to take up creative new MRL-related initiatives at the national and regional levels to improve harmonization to Codex MRLs as well as to regional MRLs where relevant, in order to facilitate trade.

4 COLLABORATE ON SOLUTIONS FOR MRLS FOR MINOR USE AND SPECIALTY CROPS

4.1. Fourth, workshop participants noted the need for developing countries to have greater access to newer, lower-risk alternative pesticides to replace pesticides that are no longer supported by the manufacturers. Participants explained the often complex and difficult issues involved in enabling greater access to minor-use and low-risk chemistries in developing countries, and suggested careful analysis of these issues in order to arrive at practical and effective solutions. Presentations on efforts of the EAC, as well as the capacity building activities on minor use associated with the IR-4 program of Rutgers University, the US Department of Agriculture, and the Standards and Trade Development Facility (STDF), provided creative and collaborative examples of practical ways in which Members have begun to effectively address these issues, including through the Global Minor Use Summits.

4.2. Participants noted that regulatory approval procedures that are not harmonized with international best practices (such as the OECD guidance documents on pesticide registration) can add unnecessary costs and act as a disincentive to potential registrants. In the case of the EAC, its members are working to identify and prioritize products based on grower needs that could be registered at the regional level, thereby increasing the attractiveness of the business case for investment.

4.3. We believe the SPS Committee should invite Members, on a voluntary basis, to explore ways in which their domestic regulatory approaches to pesticide registration and use can impact – both negatively and positively – the incentives of the private sector to invest in registration and stewardship of lower-risk alternative pesticides in their countries. The SPS Committee should also invite Members to evaluate their own minor use needs, to consider participating in the Global Minor Use Summit to be held in Montreal, Canada on 1-4 October 2017 and to collaborate in global data generation activities.

5 DISCUSS THE ROLE OF THE COMMITTEE IN INCREASING COORDINATION AND HARMONIZATION

5.1. Lastly, we note the important role of the Committee conferred by Article 3.5 of the SPS Agreement to monitor the process of international harmonization, and by Article 12.2 to sponsor technical consultation and study with the objective of increasing coordination and integration between international and national systems and approaches for establishing tolerances for contaminants in foods. We believe the Committee should follow up on the trade-related issues outlined above as identified by the experts who graciously shared their perspectives with us at the workshop.

5.2. We recommend the Committee include these recommendations in its Report of the Fifth Review of the Operation and Implementation of the SPS Agreement. We further recommend that Members endorse the Decision on the Committee's work on pesticide MRLs for transmission to the Ministerial Conference to be held in Buenos Aires in December 2017. The proposed Decision is contained in an Annex to this document.

COMMITTEE ON SANITARY AND PHYTOSANITARY MEASURES

PROPOSED DECISION OF XX DECEMBER 2017

The Ministerial Conference *decides* as follows:

We recognize the work undertaken by the SPS Committee to examine pesticide-related issues that have an adverse impact on international trade in food and agricultural products, and to achieve consensus on collaborative actions to reduce that impact on trade, particularly on the agricultural exports of developing countries. We affirm the central importance of risk analysis to assess, manage and communicate [risks of concern] [risks] associated with pesticide use in order to protect public health while enabling the safe use of pesticides and facilitating trade in food and agricultural products. We endorse the consensus reached in the SPS Committee on voluntary actions by Members to increase the capacity and efficiency of Codex in setting international standards on pesticide maximum residue levels (MRLs); to improve transparency and predictability in Members' setting of national MRLs; to achieve greater [harmonization] [alignment] across national and regional MRLs; and, to enable greater access to alternative pesticides and pesticides for minor-use crops, particularly in developing countries. We acknowledge the productive work of the Standards and Trade Development Facility (STDF) in building knowledge and capacity for developing countries in the area of pesticide MRLs. We encourage the SPS Committee to monitor the effectiveness of the voluntary actions and the STDF work in addressing trade concerns related to food and agricultural products and to consider further collaborative, consensus actions as appropriate.
