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NAEGA MAP Trip Report – WTO MRL Seminar – February 24-28 – Geneva, Switzerland

Name of Traveler: Matt Lantz

Dates of Travel: February 24-February 28

Purpose of Travel:

Consistent with advancing NAEGA UES objectives Matt Lantz, NAEGA/IGTC contract representative, travelled to Geneva, Switzerland on February 24-28. In Geneva, Mr. Lantz advanced NAEGA and IGTC objectives of establishing sound trade facilitative practices and monitoring global and import market developments related to maximum residue limits (MRL) through his attendance at the WTO’s *Maximum Residue Limit (MRL) Workshop* on February 26-27. During the workshop Mr. Lantz worked closely to support the IGTC’s MRL Policy Team and advancing NAEGA and IGTC policy advocacy related to MRLs during discussions with importer and exporter government officials, intergovernmental organization representatives, and industry. An agenda for the workshop is attached. During these meetings, Mr. Lantz coordinated closely with the IGTC representation and considered the application and modification of IGTC Policy on MRLs.

Summary of Findings/Conclusions/Accomplishment:

Overview/Summary from Day One of the Government-Industry meeting and Next Steps:

- This was a strong meeting with sincere engagement on the issue of missing MRLs and trade. Having the event at the World Trade Organization (WTO) allowed the discussions to focus on the trade impact of MRLs, and to rise above some of the technical and bureaucratic issues that can weigh this issue down.
- The meeting was well attended by 17 countries from all over the world. Both developed and developing world officials participated. Country officials seemed to be decision-makers and trade officials. They were knowledgeable. Many had participated in the previous WTO meeting on MRLs in October 2016. Others, especially from the developing world, were new but their presentations were focused and relevant.
- Industry representatives came from both the agriculture industry and the registrants. On the agriculture side, all representatives were grain trade related. No specialty crops or minor use crops were represented, although some countries raised their issues on their behalf. Registrants such as Dow, BASF, Monsanto, Syngenta, and Bayer participated.
- Most participants from the countries and industries agreed that the subject of missing MRLs is relevant and clearly affected everyone in the room from the smallest markets to the largest. Largely there was agreement that this issue needs to be addressed, and sharing data, streamlining Codex reviews, and doing what can be done to harmonize MRL levels were good steps toward that end. With the exception of a representative from the UK, the EU was not represented. The EU’s hazard-based approach to pesticides was a concern throughout the room.
- The MRL issue is complex, but despite what was said by a few participants, with the



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exception of the EU, Mr. Lantz believes MRLs are largely unintentional trade barriers. The biggest challenges with MRLs are misaligned systems. Countries seeking to establish their own national MRLs for various reasons, differing data requirements, reviewers looking at the same data and coming up with differing solutions, etc. All of these are trade barriers and can affect trade flows, but they are not being intentionally designed to prohibit trade or protect domestic industries. With the possible exception of the EU which is an issue unto itself, countries are not arguing to establish a complicated MRL system to prevent imports from occurring. Instead, the systems are simply misaligned and missing MRLs emerge. This is a positive development, as it provides opportunities for corrections with fewer political complications.

- It became clear throughout the day that there are no easy solutions to this issue. Improvements can be made, but a one-size-fits-all solution is not realistic. Some of the options that can be considered to address the missing MRL situation include:
 - Standardizing submissions or using another country’s review when conducting a domestic review; participating in joint reviews,
 - Improving the Codex system through additional resources, training new reviewers, having additional technical meetings for reviews (which is happening in 2019),
 - Stressing science in reviews and a risk-based approach to reviews,
 - Encouraging markets to use Codex and exporting MRLs when possible.
 - Using Crop Groupings to get as many MRLs as possible for commodities.
- Currently the missing MRL issue is larger than the misaligned/differing MRLs. More shipments are rejected because no MRL is established than because the MRL in the foreign country is more restrictive. This could change as more markets move toward positive list systems.
- There is a coming major fight over hazard vs. risk regarding MRL reviews. This is going to be a big debate and will likely end up at the WTO. For the most part, this issue was not covered at the meeting as it was beyond the topic of missing MRLs, but it is the other major MRL issue to be addressed.
- There were discussions on how to find ways to encourage establishment of MRLs quickly, these included:
 - Submitting dossiers in different markets at the same time to encourage simultaneous reviews.
 - Standardizing data package submissions will allow registrants to make submissions easier. (The goal of the APEC document).
 - Encouraging simply deferring to Codex MRLs in part to supplement a national list or in whole, or to adopt Codex MRLs as a country’s own MRLs once they are established.
 - Deferring to exporting country MRLs is more complicated. Some countries are willing to do so, but the countries with the most advanced MRL systems are not.
- Older legacy/generic compounds continue to pose a challenge. Once a product is off patent, it may be sold by multiple companies, some of whom may not have the original data. There is also less economic incentive for the originator of the data to seek or assist with the submission. This strikes the developing world particularly hard as they often use these older compounds, but developed world growers also face this issue.



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- A complete summary of the presentations at the Monday meeting is attached, along with comments Mr. Lantz drafted in response to some of the presentations.

Results from Day Two of the Government Only meeting and Next Steps:

The second day of the meeting was government-only. The goal was to come up with practical next steps to address the missing MRL issue.

According to my discussions with US government officials, the following were the concrete next steps that will be undertaken:

- The US will draft a paper on missing MRLs and their challenges: It will focus on four types of missing MRLs:
 1. Missing MRLs when there is a new pesticide introduced and the MRLs are not in place in a foreign market. This commonly occurs and affects trade.
 2. Missing MRLs when an older compound is still used, but MRLs have been withdrawn in the developed world through periodic reviews. This is a particular challenge in the developing world, but could affect everyone should the EU move ahead with its plans to remove chemicals and MRLs from the community with the implementation of a hazard-based cut off criteria.
 3. Missing MRLs when there is a major MRL transition by a country, and MRLs are removed or not established, such as Korea.
 4. Default MRLs, such as 0.01 ppm, which some markets such as Europe claim as established MRLs, while many trading partners claim are missing MRLs.
- The Canadian government will draft a paper on the obstacles to deferring to Codex.
- All countries agreed on the importance of training additional reviewers for Codex's technical experts, the Joint Meeting on Pesticide Residues (JMPR). Many current reviewers are nearing retirement. A new set of experts needs to be developed and trained by the existing reviewers.
- Finding ways for private sector funds to help with Codex reform and establishing more MRLs was discussed. This can be tricky given international organization rules (see Recommendation Four below).
- Hosting another meeting on MRLs at the WTO. This would not occur for at least another year, and the results of the above would need to be known prior to scheduling such a meeting. That meeting would focus on lessons learned from the projects above and practical next steps that can be taken.

Recommendations:

As a result of the two days of meetings and numerous discussions with government officials, registrants, and participating agriculture industry officials, Mr. Lantz provided eight recommendations for NAEGA and the IGTC coalition to consider moving ahead on the MRL issue.

Recommendation 1

NAEGA and the IGTA should continue and expand its engagement on MRL issues. Pesticide MRL issues have been a concern for 19 years, since Taiwan started the first regulatory transition



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in 1999. The MRL issue has largely been the domain of the specialty crop industry. This makes sense as their product is more perishable and consumed directly. The MRL issue has not to date been a large focus of the grains industry until recently. This is changing with the IGTC statement and the MRL workshop. This engagement is positive and should continue. Missing MRLs and The lack of harmonization of existing MRLs continues, and grains’ engagement and political clout are needed to ensure your concerns are heard regarding MRLs.

Recommendation 2

Coordination should be improved between grains and specialty crops on this issue. Specialty crops have a lot of knowledge and background on MRLs. It was surprising that no one from that industry was invited to the meeting. During the meeting, many of the individual countries’ comments, especially from the developing world, focused on specialty crop issues.

Although there are some differences between the two types of commodities (shipping in bulk vs containers), and Mr. Lantz understands why grains wanted to host this meeting, the larger MRL issues affect everyone. Issues such as improving the functionality of Codex, challenging the EU hazard-based approach, and ensuring new MRLs are in place in foreign markets when a new pesticide is approved affects all agriculture and both grains and specialty crops should be part of this solution. Including them may result in better engagement from some countries because much of their exports are specialty crops.

Recommendation 3

The IGTC MRL paper deferral recommendations in its MRL paper should be adjusted. Deferral to Codex or a foreign country MRL is more complicated than is being asked in the paper. Mr. Lantz received some feedback from government officials that the request seemed a little naïve. The goal is fine, but it needs to be presented in a more realistic way.

Mr. Lantz views the MRL countries in tiers. There are essentially eight countries that conduct their own MRL reviews and have positive MRL lists. They are: the US, EU, Canada, Japan, Taiwan, Hong Kong (on hold), Australia, and soon Korea. It is unrealistic to ask these countries to simply defer to Codex or especially to an exporting country MRLs. This is not going to happen. Korea currently moving away from its Codex deferral.

For these countries, the ask should be that they consider/incorporate Codex MRLs when they are establishing their own national MRLs. Believe it or not, this already happens in the EU. They are obliged to take a Codex MRL if they do not have one and the Codex review meets their review standards. Unfortunately, 62% of the time in 2016 the Codex standards did not, so this is not a very effective path.

Recommending these countries consider Codex levels when they set their national MRLs and seeking to set MRLs as quickly as possible is a reasonable goal.

A second set of countries are those who are not actively conducting their own reviews, but will use Codex as part of their own MRL list. Vietnam just started doing this in July 2017. Other



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ASEAN countries may as well. Magda Gonzalez reported this was Costa Rica’s policy. It is nuanced, but you cannot say these countries simply defer to Codex. They use Codex MRLs, but make them their own. Occasionally there are differences but most MRLs are set at the Codex level, but they are considered national MRLs. China has been setting most of its national MRLs at Codex levels. Mr. Lantz thinks this continues to show the value of Codex MRLs, even if there is not a straight Codex deferral. Having a Codex MRL published encourages harmonized national MRLs. This also demonstrates why having MRLs established at Codex is so important. Pressing for these countries to formalize their policies of using Codex MRLs in their own national lists might be something worthwhile. Especially in Southeast Asia and Latin America.

It will be a bigger lift to encourage these countries to defer to exporting country MRLs if there is a missing MRLs. It is more possible than the first set of countries, but most of these countries are setting MRLs as part of a national food safety effort, and deferring to another country’s MRLs would undermine that. Still, Costa Rica reported when there is no Codex MRL, they will use the higher of the US or EU MRL. This option should be encouraged - especially using the higher MRL.

A final set of countries has a limited set of MRLs and then use Codex to supplement that list, or simply use Codex MRLs completely. A woman from Ecuador represented this group at the meeting. These countries often do not have resources to do MRL reviews, so Codex MRLs are used. They also often do not test imported product for residues. Their MRL concerns are largely ensuring that crops exported from their markets meet the foreign standards of the US, EU, Japan, etc. For these countries we should encourage them to continue to use Codex MRLs and participate in Codex. The alternative is for them to begin adopting EU MRLs (which are the most conservative) in order to avoid trade issues, which could be problematic should they decide to test imports in the future.

These countries are largely not focused on import residue testing, and might be convinced to use a foreign country MRL if there is no Codex MRL in place.

Given this complicated situation, asking countries to simply defer to Codex or an exporting country MRL, while concise, is not reflective of the current situation. Mr. Lantz suggests the document be adjusted to reflect the current MRL situation.

Recommendation 4

Encourage more MRLs at Codex. As reported above, Codex MRLs are used in a variety of ways: as references in reviews, incorporated into national lists, to supplement limited national lists, or as flat out deferrals. This is to be encouraged. The more Codex MRLs there are, the better it will be for trade, no matter how the Codex MRLs are used. There are already significant efforts underway to set more MRLs at Codex. Establishing more MRLs at Codex involves Codex efficiency and resources. NAEGA and the IGTC should support Codex reform efforts.

One main area of concern is Codex reviews. Codex conducts its own reviews using a volunteer network of experts. The chemicals being reviewed at Codex have already been evaluated in a country. The goal should be to have Codex reviewers to the greatest extent possible use the



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reviews that have already occurred. The consensus of the best way to do this is a joint review with foreign countries. This was attempted once before and it failed. Australia and the EU objected to the review. At the meeting in Geneva, Australia said it would no longer object to such reviews. This is encouraging. One of the outcomes from Tuesday’s government-only meeting was to try another joint review for a compound. We will see the lessons learned, and if successful, the system might speed up establishing MRLs at Codex.

A second issue at Codex is resources. Again, steps are being undertaken to address this. There is a backlog of chemicals seeking a Codex review. Due to limited number of reviewers and resources, Codex’s technical experts at the Joint Meeting on Pesticide Residues (JMPR) can only review a certain number of chemicals per year. When a new review is desired, it will not be on the Codex agenda for at least three years. The Canadian government has offered to pay for a second JMPR meeting in 2019. This will greatly assist with the backlog of Codex MRLs. NAEGA and the ITC should support this meeting and consider whether a third meeting might be needed.

A third issue is the number of reviewers. Most reviewers conduct their reviews in their spare time. There are currently 22 toxicologists and 17 residue experts that undertake reviews for Codex. Often they are government reviewers by day and Codex reviewers by night and weekend. Many are older and nearing retirement. Recognizing this, Canada and the US have used resources to train new, younger reviewers on how to conduct a JMPR review. Those trained are now working with current reviewers as mentors. This is a positive step and should be encouraged and expanded. More reviewers mean additional capacity.

Perhaps NAEGA or industry can find a way to support such efforts by paying for additional training. Of note: FAO and WHO are VERY sensitive about industry funds being used for their work. It is not as simple as industry writing a check or paying to an institution that then conducts such training. Discussions on how industry resources can be used and accepted by FAO or the WHO would need to be handled carefully.

All of these steps seek to establish more Codex MRLs and should be supported by NAEGA and the IGTC politically and through resources if needed. IGTC members are part of the Agri-Food Trade Network working on Codex reviews, and their support of that effort should be continued.

Recommendation 5

Go to the Codex Committee on Pesticide Residues (CCPR). Someone or several individuals from the IGTC should participate in the annual CCPR meeting. This might already happen. Mr. Lantz suspects it does, but if the group wants to be serious about support of Codex MRLs, establishing additional Codex MRLs, and making Codex more efficient, they need to be at the meeting to talk to the people there and form opinions on how the system might be improved. Whoever attends should report back to the IGTC with their findings.

Recommendation 6

The challenge of default tolerances: If the IGTC seeks a heavy lift, it could try to encourage



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countries to adopt higher default tolerances. Canada and New Zealand have default tolerances of 0.1 ppm. These protect consumers and facilitate trade. Other countries like Japan, the EU, and soon Korea, set their default MRL at 0.01 ppm, which is often the limit of quantification or limit of detection. This essentially means if any residue is detected, the shipment is rejected. As mentioned previously, in some cases, default MRLs are used to claim a country does not have missing MRLs. The EU will argue they have tens of thousands of MRLs in place, but often these are the MRLs at the LOQ.

Markets like Taiwan and the US simply do not have default tolerances. In the US there are over 20,000 MRLs, so this is not as problematic, but many tropical products entering the market face a zero tolerance. This is an issue in Taiwan, where there is a positive list and no default.

Australia has an interesting system, where they will set a MRL for “all other food”. A MRL will be set for certain of commodities and then there will be an “everybody else” MRL. This can facilitate trade.

Having acceptable default MRLs could facilitate trade. However, like the deferral to Codex issue above, some countries are unlikely to adopt higher default MRLs as their systems are firmly established. Still, encouraging ASEAN or other developing world markets to set a default standard at 0.1 ppm would help ensure trade is not affected by missing MRLs. Encouraging an Australian “all other food” approach in other markets perhaps such as China, Taiwan, Hong Kong, or Korea might also address this issue.

This would be a big ask and difficult to undertake, but if successful, it would do much to facilitate trade.

Recommendation 7

Limit/Harmonize sanctions policies: This issue was not discussed at all during the Geneva meeting, and is perhaps more of an issue for specialty crop exports who ship in containers, but NAEGA and the IGTC may wish to begin focusing on sanctions policies that are in place.

What happens when there is a violation? These policies can diverge greatly. Advocating for the least- trade-restrictive action should be encouraged. Taking sanctions against the shipper and not an entire industry should also be sought. Mandatory confirmation testing should be considered.

Perhaps an option to consider is that only when a violation occurs will a country consider a Codex MRL or a foreign country MRL as an alternative. If the violating residue is legal in the exporting country, it could be enterable. This might be easier an easier lift than full Codex or foreign country deferrals.

This issue will be discussed at length at the upcoming APEC meeting in Australia in October.

Recommendation 8

NAEGA should encourage US grain and row crop grower groups to enter their priorities into the



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US MRL Grower Priority Database for key markets. This database was developed with USDA Technical Assistance for Specialty Crops (TASC) funds to allow grower groups to share their MRL priorities with registrants and the US government. Forty commodity groups, all specialty crops, have their priorities in the database. Currently, no row crops do.

Registrants use this database when checking MRL needs from industries. When a MRL transition occurs or a MRL is lowered, the registrants can go to the database and determine who has listed the product as important.

At the Geneva meeting, a registrant informed me they used the database frequently and would like to see row crop priorities within. This helps registrants with their decision making. Likewise, the US government uses it in a similar fashion.

Bryant Christie maintains the Grower Priority Database (which is a separate database from GlobalMRL.com) and can work with row crop groups should they wish to enter their priorities into the database.

Attachments:

- *MRL Seminar Agenda*
- *Annotated Notes on Seminar Presentations*