Opportunities to Mitigate Trade Uncertainties Related to MRLs

May T. Yeung, William A. Kerr,
Blair Coomber
and
Bryant Christie Inc.

252nd ACS National Meeting and Exposition,
Agro Division
Philadelphia, Aug 24, 2016

Divergent MRLs affecting global food trade

Domestic production compliant with national regulations and GAP but rejected in export market because of different regulations

Becoming a major non-tariff barrier to trade impeding global movement of agri-food products

Affects producers, exporters, importers and consumers.

Overall impact on food access and food security

Need MRL harmonization or convergence to reduce disruptions in global agri-food trade

How divergent MRLs affect agri-food trade

MRLs are differing

- Set at different levels for same commodity/pesticide in different countries
- Variance in GAP, growing conditions, testing and evaluation methods, import requirements
- Producers and exporting supply chain must be aware of resulting variations in each market

MRLs are missing

- Missing because not yet established for that commodity/pesticide combo in particular country
- Creates great uncertainty, increases risk
- Often default to zero tolerance
- Can deter exports entirely

Agri-food trade disruption due to MRLs are largely unintentional – commonly accepted that many MRL violations occur because of regulatory misalignment

How the current MRL situation developed

Standards and regulations are often misaligned between countries – this is the case with MRLs

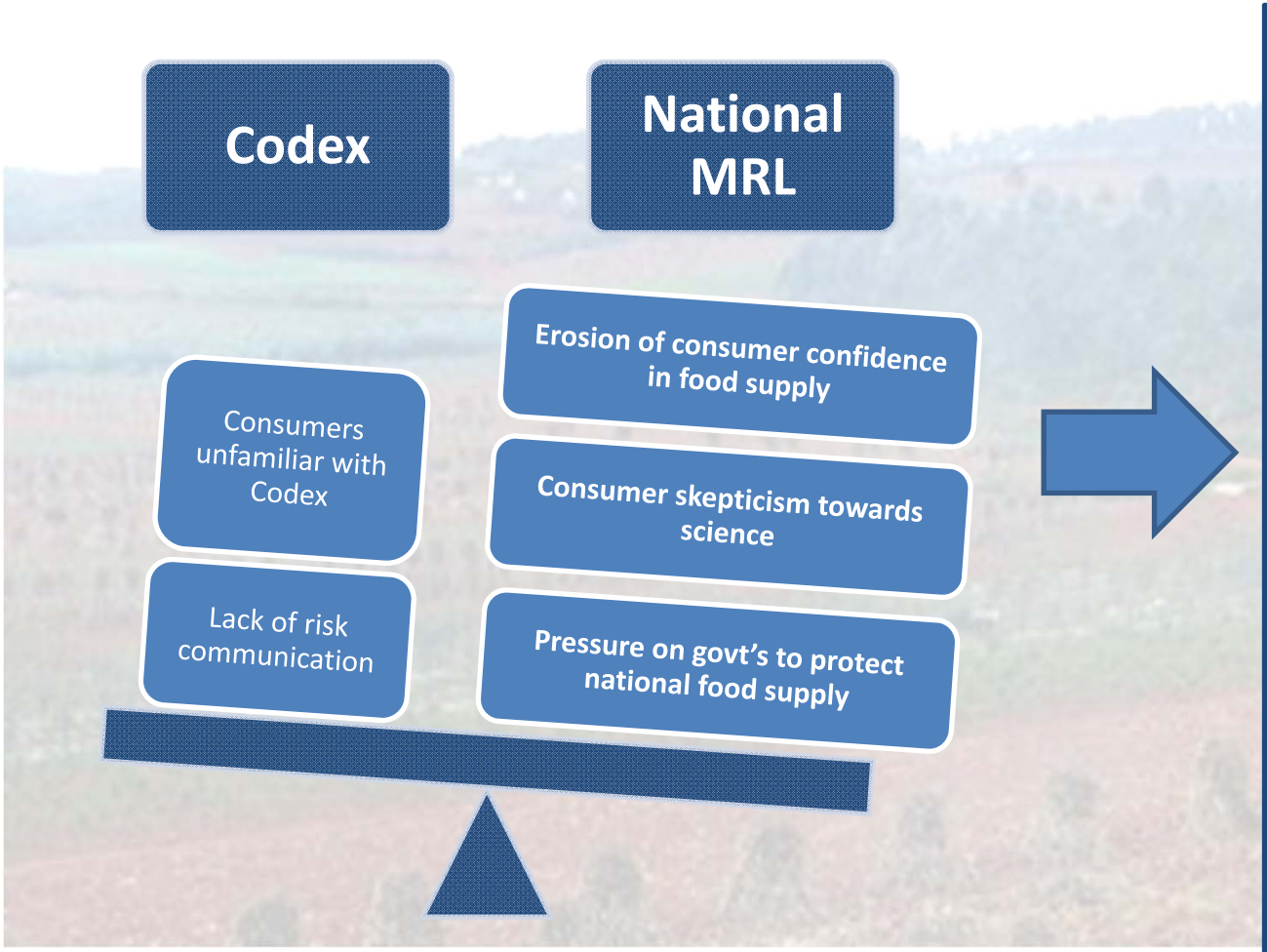
Countries are increasingly establishing their own MRL regimes

- Updating food safety systems
- Responding to consumers' demands, (mis)perceptions of food safety
- Increased emphasis on pesticide residue testing on imported food
- Cascade effect

Countries are moving away from international MRL standards

- Codex, the accepted international standard
- Deferral to trade partners MRL
- Preference of own national standards

Why are countries moving away from Codex standards?



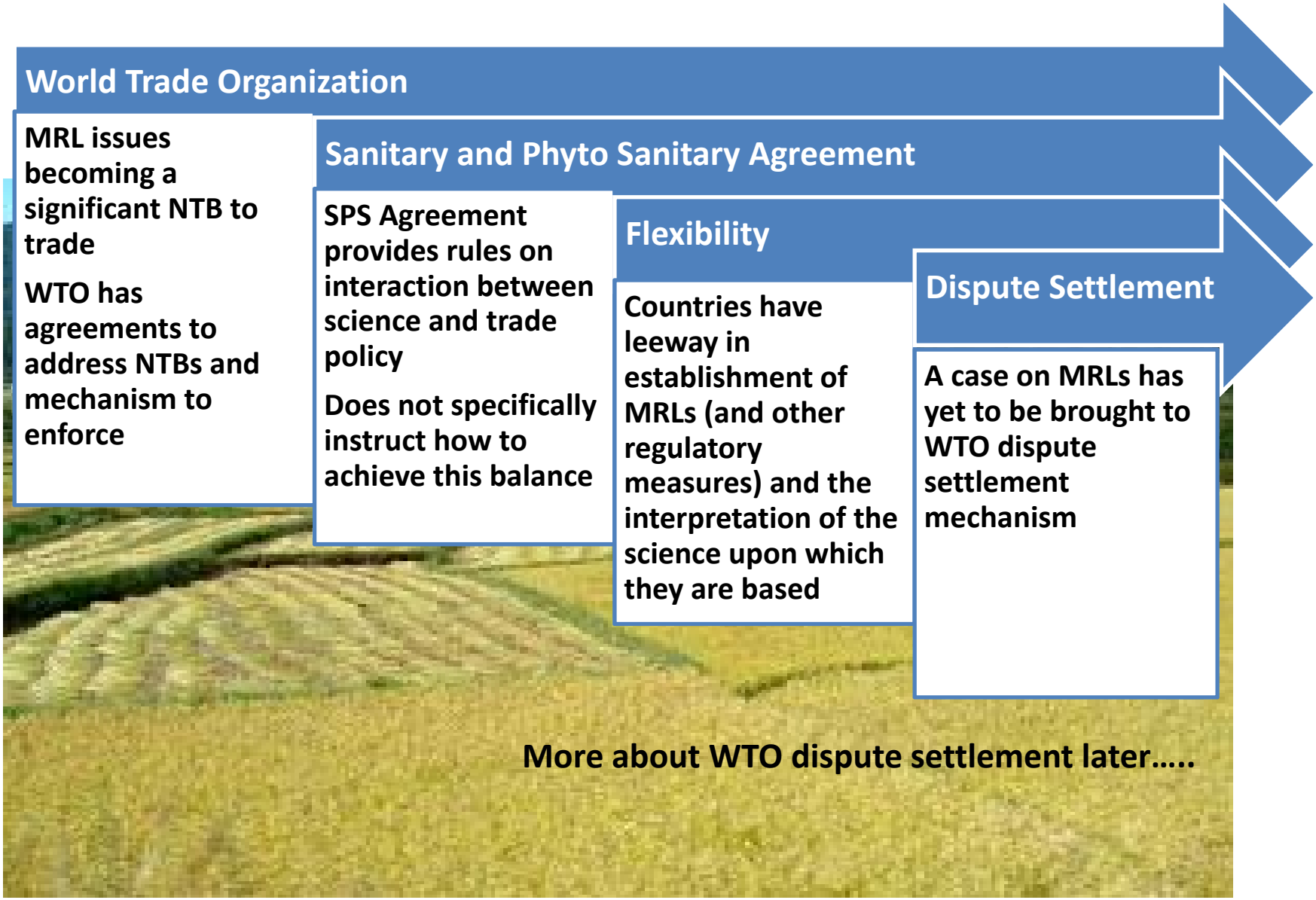
Creating national MRL regulations requires time

-process of establishing specific MRLs

-backlog results in accumulation of missing MRLs

-methodological differences result in different MRLS = misalignment

What about the WTO?



Need a reliable, predictable, stable agri-food trading environment

Scientifically based

- sound science
- reduce influence of political factors
- Int'l regulatory system must not become overly complicated and unworkable

Globally collaborative efforts

- bilateral, regional, multilateral
- Mutually beneficial solutions
- Resist the trend of going-it-alone

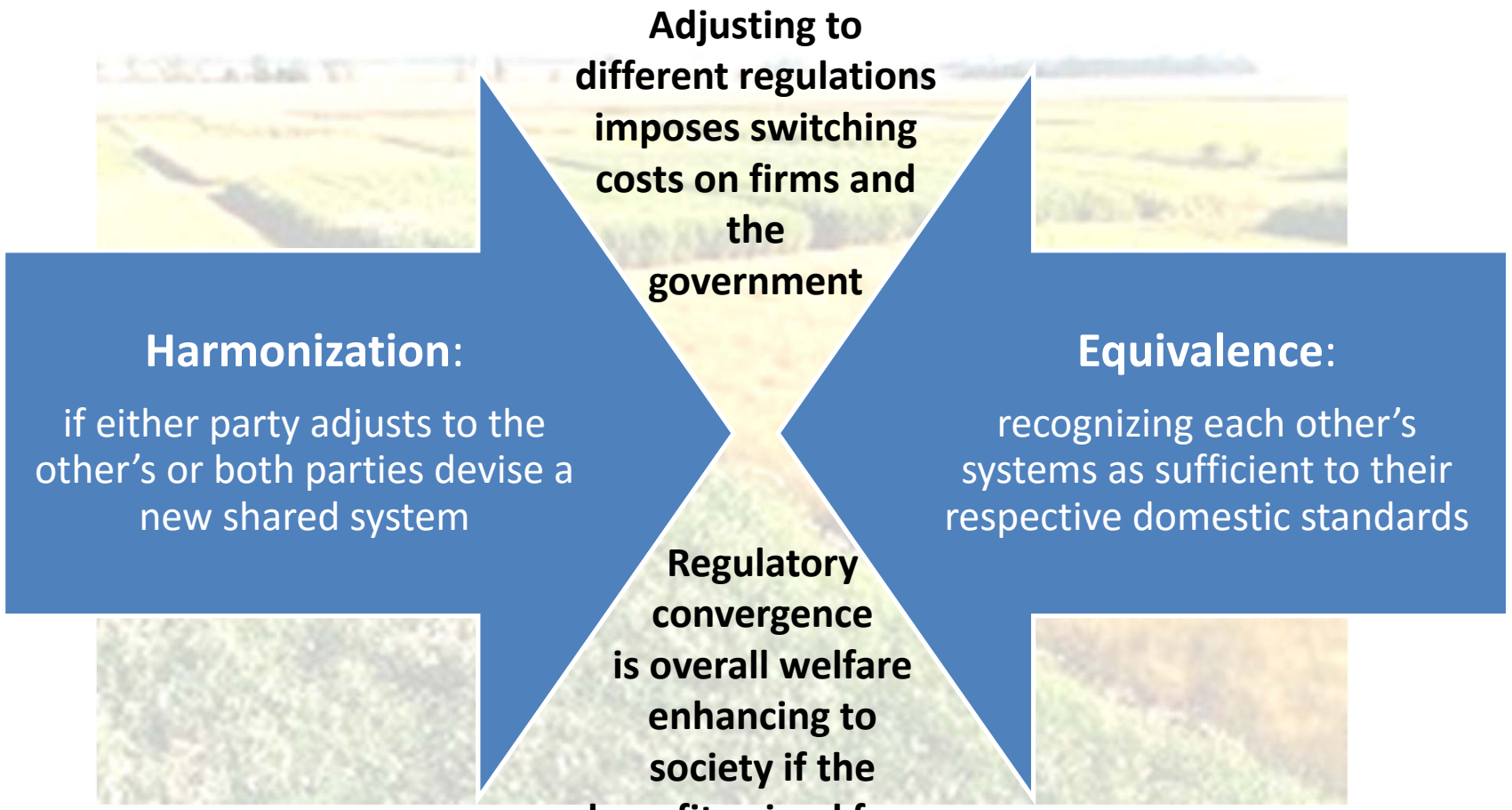
Strengthen Codex

- capacity and efficiency
- efficient use of scarce human, knowledge and physical resources

First steps towards MRL convergence

- International issue
- National govt support
- Multi-disciplinary
- Many depts and agencies stakeholders involved
- Building networks, strengthening relationships, opening communications channels
- Diplomats, trade officials, scientists, technical experts, regulators, both domestic and abroad
- Agri-food industry, commodity groups, crop protection industry, domestic & int'l

Economics of regulatory convergence



Factors inhibiting regulatory convergence 1

Type 1 errors

- Well-recognized in decision making literature
- When a positive decision is made when it should not have been – converge, approve, allow etc
- Consequences are obvious and can be costly – thalidomide, UK BSE
- Probability of Type 1 error unknown at time of decision
- Risk averse choose status quo, maintain national control

Incentives & the bureaucracy

- Responsibility for regulatory convergence often under dept of int'l trade but implementation is other depts whose mandate is not trade liberalization – different priorities, resource allocation
- Scientific method has broad scope for divergence in interpretation - inherent bias - ours is best
- Resistance to procedural change – staffing levels, resources, responsibility

Limited negotiating resources

- Trade agreements – trade negotiators may not be comfortable working with highly technical issues in science based regulations – usually create venue of discussion
- Trade negotiations operate on priorities and probabilities to achieve desired goals in limited time.

Factors inhibiting regulatory convergence 2

Political precaution

- High sensitivity to events or circumstances that negatively affect ability to govern or continuance of governing
- Impact - from answering difficult questions to resignation, amplified by social media
- Proactively to prevent issue or reactively to limit potential damage –both = precautionary approach to policies or events
- Increasing especially in issues of human health and safety
- Politicians are pressured by members of society to 'do something or to be seen to be doing something' even when risks are very low or speculative
- Politicized issue = political precaution is the motivation for politicians, regulatory convergence will be resisted, despite economic benefits

Economic protection

- Removal of trade barriers results in economic winners and losers, potential losers can lobby for protectionist measures
- Granting of economic protection is a political decision, debate about it is well known – Adam Smith, Wealth of Nations, 1776.

Factors inhibiting regulatory convergence 3

Resistance to Regulatory Convergence			
		Politicized issue	
		Yes	No
Pre-existing regulations	Yes	bureaucratic resistance and political resistance	bureaucratic resistance only
	No	political resistance only	no resistance

This general discussion of factors inhibiting regulatory convergence is wholly applicable to the issue of MRL misalignment and harmonization

Economic literature review: MRL misalignment

Smyth et al (2015)	***Challenges and Opportunities of Integrating the Canadian and American Regulatory Systems for GM Crops*, presented at the 19th International Consortium on Applied Bioeconomy Research, Ravello, June 16-19**
Swinnen & Vandemoortele (2011)	**'Trade and Political Economy of Food Standards', *Journal of Agricultural Economics*, 62 (2): 259-80**
Winter & Jara (2015)	**'Pesticide Food Safety Standards as Companions to Tolerances and Maximum Residue Limits', *Journal of Integrative Agriculture*, 14(11): 2358-64**

Economic literature review
MRL misalignment

Summary of findings in academic literature relevant to MRL misalignment and convergence
Non-harmonized food safety standards, including MRLs are most detrimental to developing and least developed countries
Exporters whose home countries maintain stringent domestic MRLs have less difficulty in complying with foreign market MRLs as they are already compliant
Effects of divergence in MRLs can both increase and decrease trade, of developed and developing countries. Effects are not equally distributed.
Political issues affect the ability to harmonize MRL policy beyond the rationale of the economic benefits
There is a likely correlation between consumers' (whether domestic or foreign) awareness of health and food safety and increasing demand for products subject to stringent MRLs
Despite uneven distribution of benefits and incurring adjustment costs, working towards some form of harmonization is net welfare enhancing

Institutional developments and progress 1

Countries are adjusting domestic requirements to reduce MRL differences

- Streamlining timing for review and registration of MRL submissions, allowing concurrent submission packages in different countries, consideration of Codex MRLs if no objections to the data are lodged, new systems to allow faster establishment of MRLs

Pesticide registrants now have global MRL strategies

- New crop protection products are introduced to market with an international MRL strategy for key markets and at Codex.

Codex reforms

- Revised procedures to increase speed and efficiency of the MRL setting system
- Standardized how and when MRL reviews are conducted
- Greater use of crop groupings to set MRLs
- Capacity, timing and resources still an issue, funding, additional meetings

Institutional developments and progress 2

IR4

- Initial purpose is to facilitate the registration of minor use pesticides through the collection of residue and efficacy data – smaller production volumes makes registration of crop protection products for these crops uneconomic.
- Evolved to become int'l partner in MRL harmonization via data provision to int'l institutions and govts for minor use pesticides

WTO

- WTO SPS Committee is promising forum for multilateral discussion and development of global MRL harmonization strategy
- SPS Agreement itself if applied consistently by members could reduce trade disruptions
- SPS Meetings can facilitate informal and formal discussions to foster movement on MRL issues
- Bringing case on MRLs to the SPS dispute settlement mechanism would clarify a number of issues – i.e. not scientifically based
- Current and upcoming discussion on LoD (India paper) shows promise of SPS meetings as forum for MRL discussion when trade is affected

Institutional developments and progress 3

APEC

- Food Safety Cooperation Forum is promising opportunity to harmonize int'l food safety standards
- 2013 Action Plan for regulatory cooperation
- 2015 draft Import Guideline for Pesticides
- Voluntary, trade facilitating
- Key component - application of assessment methodologies when import MRL requests, particularly from consumer protection perspective

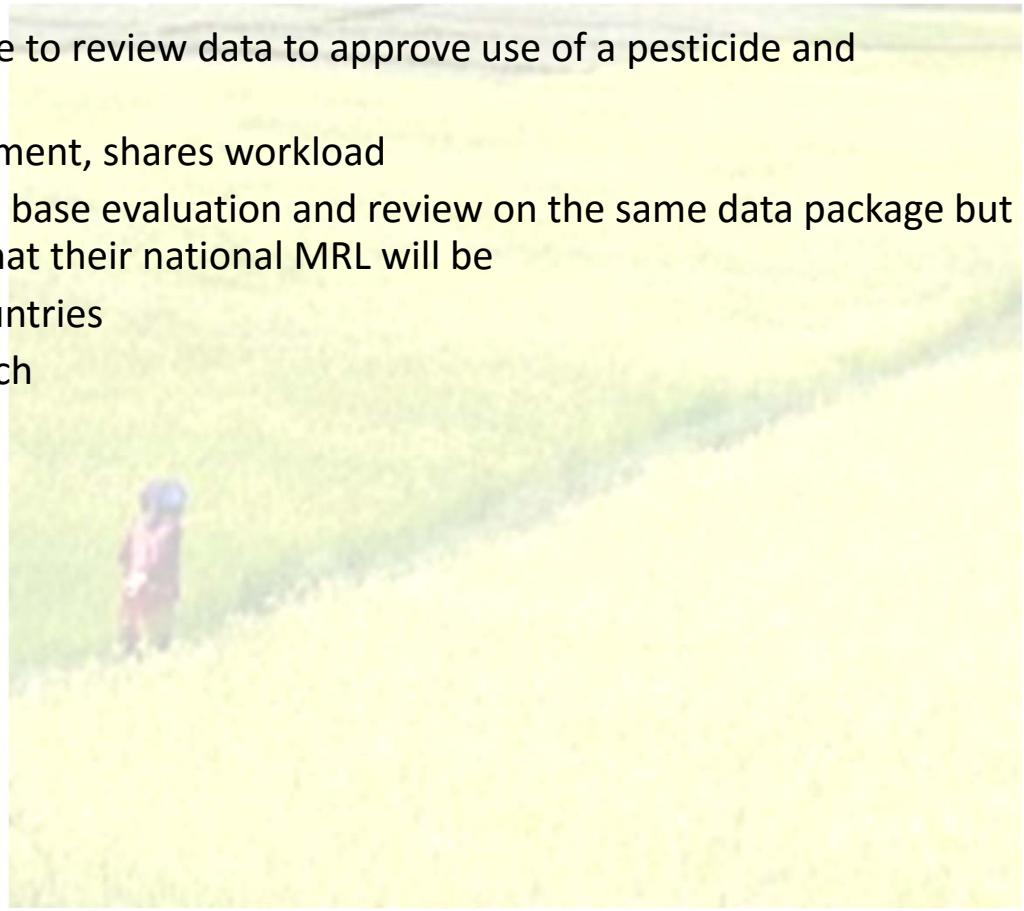
OECD calculator

- Provides consistent data parameters to establish MRLs based on residue measurements obtained from field trials, that can be used by all countries. Harmonizes data packages
- Recognized as providing statistically robust and scientifically defensible MRLs
- Canada, US and other OECD countries use to better coordinate pesticide regulatory frameworks
- Not all OECD members use or to what extent
- Non-OECD members may be not aware of or use

Institutional developments and progress 4

OECD Global Joint Reviews

- 2 or more countries collaborate to review data to approve use of a pesticide and concurrently establish a MRL.
- Reduces likelihood of misalignment, shares workload
- Process allows each country to base evaluation and review on the same data package but makes sovereign decision on what their national MRL will be
- Used by limited number of countries
- Does not have multilateral reach



Fulfilment costs

Trade problems and costs due to misaligned regulatory systems is not a new problem and not unique to MRLs

Govt's recognized the problem and created organizations to address:

World Org Animal Health (1924)

Int'l Plant Protection Convention (1951)

Codex (1961), WTO SPS (1994), WTO TBT (1994)

Reduce **'fulfilment costs'**

similar to private sector transactions costs –

friction which inhibits the smooth functioning of goal achievement

OECD Calculator & APEC Guidelines are tools to reduce fulfilment costs of harmonization

Some Int'l Recommendations

Move away from LoD or zero tolerance as default when a MRL is missing.

Use exporter MRL country or Codex (APEC)

Joint and global joint MRL reviews

global regional MRL research hubs

Continue modernization of Codex

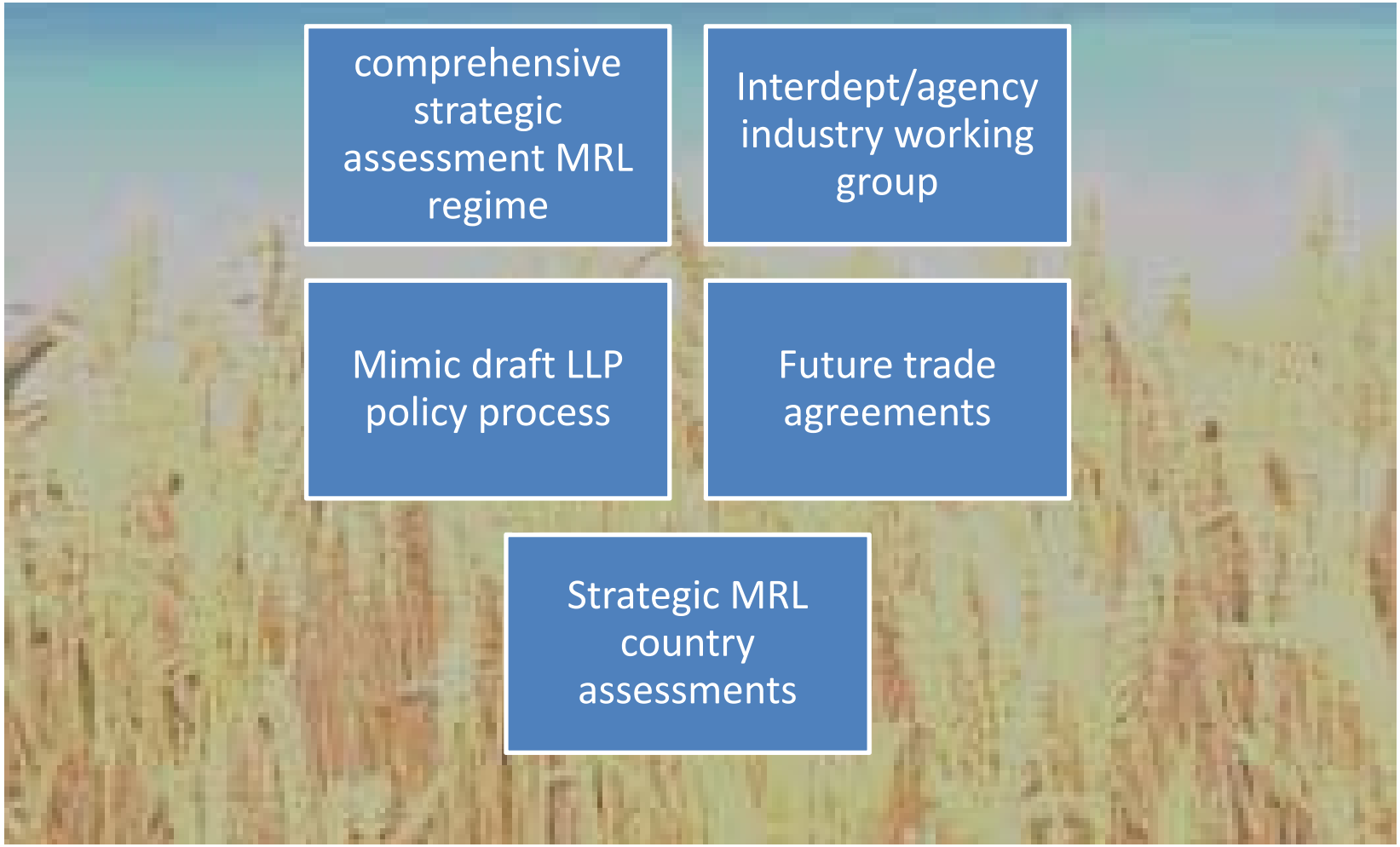
Enable OECD calculator to accept crop groupings

Harmonize parameters and methodologies in data

WTO dispute settlement

Clawback of concept of MRLs, promote PFSS

Some suggestions for Canada



Conclusion

Consistent engagement

Relationship building

Outreach

Collaboration

Time & resources

Domestic government &
Domestic agri-food industry
PLUS
Internationally:
between governments
Int'l organizations &
Global food industry

INT'L REGULATORY CONVERGENCE

Thank you!

Opportunities to Mitigate Trade Uncertainties Related to MRLs

The authors gratefully acknowledge

The Canola Council of Canada

for their funding of this project