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**Communication by Brazil
at the International Coffee Council
on 24 September 2009**

This document contains a communication on phytosanitary matters presented by the delegate of Brazil, at the 103rd Session of the International Coffee Council on 24 September 2009.

PHYTOSANITARY MATTERS

COMMUNICATION FROM BRAZIL

I. New European Union Regulations on Pesticides

On 24 September 2009, the European Union adopted a Regulation on placing plant protection products (pesticides) on the EU market. Brazil is of the opinion that this new Regulation imposes stricter criteria for authorizing the sale of these products. The new Regulation will be applied within 18 months after its entry into force (the date will be determined after publication of the legal instrument in the EU Official Journal).

The new EU Regulation will replace Directive 91/414/EEC establishing rules and procedures for the authorization, placing on the EU market and use of plant protection products and their active substances. With the publication of the new text, the Commission is taking a further step in the revision of the regulatory framework relating to the use of pesticides in the EU.

The Regulation adopted by the EU Council, which was approved by the European Parliament in January this year, prohibits the authorization of substances that, according to EU technical bodies, are carcinogenic, mutagenic, endocrine-disrupting or toxic to reproduction, as well as those that are extremely persistent. In such cases, the substance can only be approved if handling does not involve contact with human beings and if its maximum residue levels in foods and animal feed do not exceed 0.01 mg/kg.

In practice, the combination of these two conditions will imply the adoption of a 'danger assessment' criterion (stricter than the internationally adopted 'risk assessment'); in other words, considerations on scientifically acceptable levels of exposure to the substance by human beings will be eliminated from technical assessments.

Apart from differences in context, the new EU Regulation is directly applicable in Member States and is not dependent on complementary national legislation. EU Directives, as in the case of the existing Directive 91/414/EEC, are binding only in respect of objectives, with responsibility for deciding on the form of implementation being left to national Governments.

It should be borne in mind that in October 2008 the draft EU Regulation was the subject of a joint letter signed by the representatives in Brussels of Brazil, Argentina, Bolivia, Ecuador and Paraguay. In this joint letter, the five countries expressed disagreement with the use of a 'danger assessment' criterion and the establishment of a general default level (0.01 mg/kg) as the maximum residue level of pesticides in food and animal feed, without the necessary justification based on risk assessment. Both practices would be incompatible with the World Trade Organization (WTO) Agreement on Sanitary and Phytosanitary Measures. In

the same joint letter, concern was expressed at the possible negative impacts of the proposed EU regulation on exports of agricultural products by Latin American countries, as well as its eventual impact on food supplies in the EU.

II. Regulation 396/2005 of the European Union: Maximum Residue Levels

The new EU Regulation on the use of plant protection products (pesticides) complements Regulation (EC) No. 396/2005 on Maximum Residue Levels (MRLs), a regulation that may also create obstacles for agricultural exports to the EU. Brazil's main concern is the inversion of the burden of proof imposed by the EU in this new Regulation; in other words the onus is on exporters to provide, without any sanitary reason, technical justification supporting the setting of MRLs above those established in the EU rules.

In the case of Regulation 396/2005, the main points considered problematical are, among others, the following:

- (a) the option of recourse to the 'import tolerance' procedure suggested by the European Commission for third countries that have concerns regarding MRLs for certain pesticides has already been objected to by Latin American countries in their joint letter of 13 October 2008. The 'import tolerance' provided for in Regulation (EC) No. 396/2005 (Articles 6 and 7), implies the setting of specific MRLs for imported products. The EC authorities should be responsible for justifying the setting of MRLs at the 'lower level of analytical determination' and not, as established in Regulation (EC) No. 396/2005, requiring exporters to provide technical justification for setting MRLs above the level concerned;
- (b) the same principle should apply to cases in which EU legislation establishes a 'default value' MRL of 0.01 mg/kg (ppm). The EU should be responsible for justifying why combinations of active substance/agricultural product that do not contain the MRL specified in Regulation (EC) No. 396/2005 should respect the 'default value' of 0.01 ppm;
- (c) the same principle should also apply in the case of setting MRLs for environmental reasons. Brazil is not opposed to setting MRLs for these reasons in the case of European agricultural production but considers it unjustifiable to fix MRLs for the agricultural production of third countries. On this point, there would be inconsistency with obligations undertaken by the European Union in the framework of the WTO;

- (d) many prohibited substances have no risk analysis by the EFSA (European Food Safety Authority) for the agricultural products of interest to the Latin American countries. Brazil is concerned at the EC practice of withdrawing from the European market active pesticide substances for purely commercial reasons, without any sanitary reason, and then requiring exporters to provide technical studies proving that these substances pose no risk to human health;
- (e) it seems equally unfair that the EC legislation should give more favourable treatment to Member States to the detriment of third countries: in withdrawing a given active substance from the market the EU allows a grace period for Member States; for third countries, however, there is no grace period for setting 'default' MRLs (0.01 ppm). In this sense, it violates the principle of National Treatment, one of the cornerstones of the multilateral trade system;
- (f) at a meeting held on 31 October 2008, between Latin American countries and the DG-SANCO, the European Commission agreed that combinations of active substances/agricultural products, which had higher MRLs than the level in the Codex Alimentarius, would be subject to revision by the EFSA; and
- (g) certain provisions of Regulation (EC) No. 396/2005 do not comply with the principles of the WTO Agreement on Sanitary and Phytosanitary Measures and are creating unjustifiable restrictions against imports of food and animal feed.