



July 8, 2022

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PUBLIC DOCUMENT

Ambassador Katherine Tai
U.S. Trade Representative
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20006

Re: Docket No. USTR-2022-0005 – *Request for Comments on the U.S.-Taiwan Initiative on 21st-Century Trade*, 87 Fed. Reg. 34745 (Office of the United States Trade Representative June 7, 2022)

Dear Ambassador Tai:

CropLife America (CLA) provides this submission in response to the request for comments on the proposed U.S.-Taiwan Initiative on 21st-Century Trade put forward by the Office of the U.S. Trade Representative (USTR). CLA, established in 1933, represents the developers, manufacturers, formulators, and distributors of plant science solutions for agriculture and pest management in the United States. CLA's member companies produce, sell, and distribute virtually all products used by U.S. farmers, ranchers, and landowners to ensure healthy crops and strong yields.

Together with its members, CLA works to ensure that our companies can provide environmentally sustainable agricultural products that support a safe food supply and reduce the risks posed by destructive pests and plant diseases. Similarly, these products provide benefits to plant nurseries as well as turf protection for areas such as sports fields, golf courses, and lawns. Pesticidal chemicals also prevent public health problems by controlling and repelling harmful disease vectors such as mosquitos and ticks. Bottom line, CLA members' products play a crucial role in supporting healthy food, healthy people, and a healthy planet.

U.S. farmers depend on pesticides to grow a healthy and safe food crop as well as other agriculture products including fibers, lumber, and fuel for consumers domestically and around the world. Without these modern tools, insect pests, weeds, and crop diseases would destroy or reduce crop yields and quality and substantially reduce the availability of U.S.-grown farm and food products. Taiwan is the 6th largest market for U.S. agricultural exports, reaching nearly \$4 billion in 2021. It is a major market for a range of U.S. commodities, including soybeans, corn, wheat, apples, cherries, grapes, and vegetables. Policy approaches in Taiwan that threaten to adversely impact trade are a major concern for U.S. producers and CLA.

CLA is eager to see the United States build on its already close relationship with Taiwan and the Taiwanese people through the U.S.-Taiwan Initiative. Taiwan is a major economy in the Indo-Pacific region and a significant producer, consumer and importer of agricultural products. Working towards free and open trade among responsible trading partners in this region – including Taiwan – should be a top priority for USTR. This would enhance food security and create opportunities to thrive for farmers, workers and companies involved in agricultural supply chains.

Pesticides are a necessary part of protecting and growing the supply of food, feed, fiber, and clean energy that is needed in this region and the rest of the world. They enable safe agricultural production as long as regulations are developed in a manner that is appropriate to the risks and based on scientific evidence. In the United States these products are highly regulated by the U.S. Environmental Protection Agency (EPA)

on a risk-based regulatory approach. Unfortunately, not all countries' regulatory frameworks for pesticides are fit for purpose, which has the effect of stifling innovation and reducing tools available to farmers.

CLA's trade policy priorities in Taiwan and elsewhere primarily involve moving towards a more risk-based regulatory framework that is built on a predictable and scientifically sound policy environment. This increases the availability of tools for farmers who need to combat pests, and diminishes the risk of product rejection in foreign markets due to misaligned regulatory measures. A risk-based regulatory framework is the best way to ensure protection for people and the environment while also allowing farmers to safely produce the food that is so critically needed. A transparent risk-based regulatory framework provides the needed certainty for companies like CLA members that sell pesticides. No one in the agricultural supply chain benefits from an unpredictable regulatory framework, so CLA encourages USTR to use negotiations on the U.S.-Taiwan trade initiative to develop rules that lead to a more predictable agricultural trade environment that is underpinned by sound science and risk-based regulation.

While USTR has indicated it will not pursue tariff-reducing agreements in the Indo-Pacific region at this time, it can deliver results for the U.S. agricultural sector by encouraging Taiwan to better implement international rules on sanitary and phytosanitary (SPS) measures, good regulatory practices, and other non-tariff barriers (NTBs). Taiwan's improper implementation of SPS measures related to pesticides – especially import tolerances (ITs) and maximum residue limits (MRLs) – can be disruptive to U.S. producers and companies and makes its own agriculture sector less resilient and secure.

This submission will highlight a few areas where the U.S.-Taiwan initiative could advance a trade policy agenda that reduces NTBs, especially through efforts to improve the harmonization of pesticide residue limit standard setting for agricultural products.

Maximum Residue Levels

For pesticides, MRLs are trading standards that must be met before an agricultural product can enter a country's supply chain. Missing MRLs are a growing problem for U.S. agricultural exports and can create food security problems. When countries have regulatory systems that are not responsive to changing technology and usage, this can lead to trade disruptions. Global MRL harmonization and recognition of country of origin's MRL for missing MRLs are needed to avoid unnecessary trade barriers. The United States and Taiwan should explore ways to reduce these MRL challenges and achieve greater alignment in regulatory approaches, including routinely and systematically updating the harmonization of domestic tolerances with Codex MRLs. While Taiwan is not a member of the Codex Alimentarius, it is still required to base its measures on Codex standards, guidelines, or recommendations unless it has scientific justification for deviating per Annex A, paragraph 3(a) and Article 3 of the World Trade Organization (WTO) *Agreement on the Application of Sanitary and Phytosanitary Measures* (SPS Agreement).

Taiwan possesses deep scientific expertise and a penchant for innovation with few equals. However, these admirable features are not reflected in Taiwan's regulatory approach towards agricultural technology. In particular, establishing pesticide tolerances follows a hazard-based approach instead of risk analysis and scientific evidence, threatening product commercialization and international trade. For example, Taiwan has set ITs based on hazards, i.e. the *potential* to cause adverse health effects, rather than completing risk assessments that take into account the probability of adverse health effects due to both hazards and level of exposure. This violates Taiwan's obligations under Article 5 of the SPS Agreement, as well as Taiwan's domestic laws implementing that agreement. Categorizing substances as inherently hazardous also has the potential to restrict Taiwanese farmers' access to new and currently registered substances. The deficiencies in the MRL/IT setting process are extremely disruptive to trade, and also have the potential to impact food security in Taiwan.

CLA member companies report that it takes 3 to 5 years (sometimes more than 6 years) to establish ITs in Taiwan. For comparison, establishing an IT in the United States for a new active ingredient has a 21-

month timeframe, and new ITs for previously registered active ingredients are reviewed within 15 months. Meanwhile, in the face of mounting political pressure, establishing new ITs in Taiwan virtually stopped in 2017, 2019, and 2020 without explanation while the regulatory agencies provided no transparency on the status of application reviews (EPA delays of even a few weeks are announced upfront). There also seems to be a political goal to aim for the lowest possible residue limits, even when the risk analysis does not justify these tighter limits.

Finally, Taiwan uses crop groupings in setting limits for compounds that are significantly different from the groupings used in other countries. The U.S. Environmental Protection Agency, along with most other countries, harmonizes crop groupings with Codex. Taiwan's rejection of these harmonized crop groupings contributes to the challenging regulatory environment companies and agricultural exporters face in Taiwan.

As part of the U.S.-Taiwan initiative, USTR should press for specific improvements to Taiwan's pesticide registration and IT setting processes to bring them into line with its international commitments, as well as APEC and Codex guidelines. Substantive and reasonable improvements could include:

- Greater transparency throughout the review process.
- Predictable approval timelines.
- Use of estimated daily intake (EDI) instead of theoretical maximum daily intake (TMDI) in calculating aggregate exposure estimates.
- More frequent publication of new MRLs.
- Consideration of Codex standards or U.S. MRLs in the absence of domestic tolerances.

In its comments on the Indo-Pacific Economic Framework (IPEF), CLA suggested that the U.S. government should use those discussions to expand cooperation on pesticide reviews, as this will benefit farmers across the region. USTR should include Taiwan in this expanded cooperation, and build on the MRL work already being done in the Asia-Pacific Economic Cooperation (APEC) forum. Article 3 of the WTO SPS Agreement begins with the objective of "harmoniz[ing] sanitary and phytosanitary measures on as wide a basis as possible," which is still a worthy goal, even though many WTO members have moved in the opposite direction. Moving Taiwan towards greater MRL harmonization would provide tangible results for U.S. and Taiwanese producers by reducing policy risks to their sales.

Data and Innovation

Protection for regulatory data supporting the registration of pesticide products is an important incentive that enables innovation. The global norm is ten years of protection, but not all countries follow this. The ten-year period allows companies time to recoup their investment in product innovation, which is an extremely risky and expensive process. Ensuring that Taiwan adopts and enforces ten years of regulatory data protection would help boost investment in developing new products and new uses.

Beyond protecting the data, it is also important that countries harmonize data requirements for pesticide registration. Pesticide regulatory programs should be directed towards convergence with other countries with openness to input from stakeholders and responsiveness to marketplace needs. Providing data for registration is expensive and time-consuming. While sound data is critically important for appropriate regulatory decision-making, it is usually unnecessary for regulators to have substantially different data requirements as this contributes to divergence in regulatory programs and unnecessary duplication of studies. The U.S.-Taiwan initiative can help encourage convergence on data requirements and other aspects of the pesticide registration process.

The primary international forum for developing subject-matter data guidelines for pesticide registration and harmonizing their use across the world is the Organization for Economic Cooperation and Development (OECD). Likewise, OECD hosts a robust system of Good Laboratory Practice Standards (GLPS) to assure the quality and integrity of regulatory studies supporting pesticide registration. OECD

member nations plus participating adherent nations conform to GLPS in their pesticide regulatory programs and agree to the Mutual Acceptance of Data (MAD) from other countries that are conducted according to GLPS. Taiwan is neither an OECD member nor a non-member adherent to the MAD program. The United States should use this initiative to encourage Taiwan to (a) accept those standard data guidelines; (b) accept GLPS; and (c) participate in the MAD program, either formally (through seeking adherent status) or informally (through acceptance of GLPS studies from OECD member and adherent countries).

Agriculture is also undergoing significant disruption with the increase in use of data, artificial intelligence, and robotics. USTR should work with Taiwan to promote advancement of technologies like, but not limited to, the use of automated/remotely piloted equipment in agricultural production systems.

Pesticides & Sustainability

As previously noted, pesticides play a vital role in achieving U.S. goals for sustainable productivity by making possible reduced/zero tillage agriculture and the use of cover crops. These agronomic practices allow U.S. farmers to reduce greenhouse gas emissions, improve soil quality, and sequester atmospheric carbon dioxide.

Increasing production while minimizing environmental impacts and preserving natural resources is the greatest challenge for today's farmers, especially in the face of a changing climate and the pressures on agriculture that come with it. Farmers carefully track which pests and diseases are affecting their crops and which parts of their fields are affected. If they must use pesticides, they carefully select the right pesticide and smallest quantities necessary for each pest and crop at issue. In response to changing methods of farming, pesticide manufacturers are focusing on the farmers' needs by developing more targeted, more selective, and safer solutions to control weeds, diseases, and insects that threaten the food supply. These new pesticide innovations allow farmers to use fewer, more targeted pesticides within an Integrated Pest Management system.

CLA strongly supports using this initiative to make the U.S. and Taiwanese economies – including agriculture – more sustainable in the face of climate change and the need to ensure food security. Broadly speaking, CLA supports voluntary, market-, and incentive-based approaches that advance science-based outcomes. This initiative should encourage both countries to approach sustainability realistically and with a proper appreciation of the magnitude of the challenges facing global agriculture. However, it should avoid one-size-fits-all and overly prescriptive approaches that do not account for the wildly different situations facing agricultural economies across the region and even within individual countries.

Conclusion

CLA appreciates the opportunity to comment on the Biden-Harris Administration's proposed framework. The U.S.-Taiwan 21st Century Trade Initiative could be an important building block towards a future comprehensive agreement that improves market access and contains enforceable, high-standard provisions. Taiwan could benefit its agriculture economy and food security by using internationally recognized regulatory processes that reduce the costs of innovation and the potential for disruption created by NTBs. CLA supports the Administration as it seeks to explore new models of reducing friction in international trade among like-minded countries, including through both the Indo-Pacific Economic Framework and the U.S.-Taiwan 21st Century Trade Initiative, and stands ready to assist in any way.

Sincerely,

A handwritten signature in cursive script that reads "Christopher A. Novak".

Chris Novak
President & CEO
CropLife America