



April 22, 2024

Attention: Special Counsel Victor Ban
(202) 395-5962 or supplychain@ustr.eop.gov.

Submitted electronically to Docket: USTR-2024-0002

RE: Request for Comment: Promoting Supply Chain Resiliency Federal Register Notice

Dear Mr. Ban:

CropLife America (CLA) represents the manufacturers, formulators, and distributors of pesticides in the United States. CLA member companies produce, sell, and distribute virtually all the vital and necessary pesticide products used by farmers, ranchers, and landowners in every state. RISE represents the manufacturers, formulators, distributors, and other interested parties of specialty (or non-agricultural) pesticide and fertilizer products to both the professional and consumer markets. RISE member companies manufacture more than 90 percent of domestically produced specialty pesticides used in the United States, including a wide range of products used on lawns, gardens, sport fields, golf courses, and to protect public health. We would like to thank the Office of the U.S. Trade Representative (USTR) for the opportunity to comment on risks to the pesticide industry and its downstream users due to supply chain vulnerabilities in response to the Federal Register Notice (Document No. USTR-2024-0002).

Pesticides are crucial to many American industries. American farmers depend on them to grow healthy and safe row crops, oil crops, tree nuts, fruits, and vegetables that are used as food, as well as other farm products, including fibers, lumber, and fuel for Americans and consumers around the world. Without pesticides, insect pests, weeds, and crop diseases would reduce crop yields and quality and substantially reduce the availability of American-grown farm and food products. Similarly, without pesticides, American plant nurseries would suffer, as would turf protection for areas such as sports fields, golf courses, and even everyday Americans' lawns. Further, pesticides prevent public health problems by controlling harmful insects such as mosquitos and ticks. As we discuss below, a functioning supply chain is crucial to help ensure these innovative tools are available to combat diseases and pests.

In the Federal Register Notice, USTR raises important points about supply chain risks, the need to avoid a race to the bottom, and vulnerability to non-market policies and practices. These are undoubtedly challenges that CLA and RISE members face in the global marketplace, and we applaud USTR for taking on these challenges and trying to think about innovative approaches to trade policy.

However, we would submit that an approach to trade policy that focuses primarily on supply chain resilience is inadequate and risks creating or exacerbating supply chain problems. USTR should

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prioritize negotiating and enforcing trade agreements that expand market access, reducing trade distortions, and deepening integration, especially between market economies with strong commitments to the rule of law.

Pesticide Supply Chains

Pesticides are an important part of the food, agriculture, and environment supply chain. An adequate supply of pesticides that are effective for controlling a wide variety of pests and preventing resistance is essential for the competitiveness and security of U.S. agriculture and the protection of public health and infrastructure. For regulated industries, supply chains have been established to meet the criteria under government regulatory systems. The manufacture of pesticide products and their distribution to farmers, applicators, and users across the continent and around the world depends on an intricate web of supplies, suppliers, regulators, and transportation. Each pesticide product consists of a finely tuned recipe of chemical ingredients required not only to control the pests, but to keep it in solution, make it adhere to the target plant, preserve it in the container, protect non-target species, enhance absorption by pests and weeds, determine spray characteristics, and fill a host of other functions.

Beyond the pesticides themselves, chemical manufacturing involves complex and specialized equipment that is manufactured with domestic and imported components. These systems involve stringent regulations and specialized manufacturing processes. The industry's global nature, with raw materials sourced from various locations and products shipped worldwide, adds further layers. At each stage, from the manufacturing of active ingredients to distribution to farmers, applicators, and users, companies must ensure product safety, regulatory compliance that varies by country, and timely delivery while also combating challenges like counterfeit products.

It is also not realistic or desirable for every component and formulation to be produced within the United States, and even where there is both domestic and foreign supply, domestic production may not be adequate for the demands of the market and favoring domestic production could exacerbate supply chain risks by concentrating vulnerabilities. Trade liberalization is a key aspect of this, which is why CLA and RISE support negotiating new trade agreements and restoring trade preference programs, including the Generalized System of Preferences (GSP) and the Miscellaneous Tariff Bill (MTB). Ultimately, the reasons why a company chooses to offshore or outsource ingredients are complex and involve many factors, only some of which have to do with trade policy.

Response to Criticism of Previous U.S. Trade Policy Approach

As indicated by USTR, the previous U.S. trade and investment policy approach criticized in the Federal Register Notice did focus on tariff liberalization, and in our view, that should still be a core focus of U.S. trade policy.

Achieving an “unfettered global marketplace” – as the notice characterizes the objective of previous administrations – is still a worthwhile guidepost, with the recognition that there will be many

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necessary exceptions, such as compliance with domestic regulatory standards. We would also add that the aspirational goal of an unfettered market should always be held together with the goal of an *undistorted* market (again with necessary exceptions). Reducing distortions through enforcement under the World Trade Organization's (WTO) Agreement on Subsidies and Countervailing Measures (SCM Agreement) or other mechanisms should be a priority for USTR since heavily distorted supply chains that lead to production concentration in subsidizing countries are also likely to be less secure supply chains.

In addition, while USTR raises concerns about costs driving sourcing decisions, it is appropriate for businesses to consider the cost-efficiency of supply chains (including the costs of supply chain risks). Greater inefficiency usually equates to higher prices, contributing to inflation. Of course, there are many other factors that must be considered when designing supply chains, including ease of doing business, tax and regulatory policy, a trainable workforce, proximity to markets, proximity to suppliers, political risks, climate risks, security risks, and much more. Improving cost efficiency can improve income, but oftentimes it is simply a requirement of doing business since competitors and customers alike are constantly trying to improve efficiency and reduce costs.

Clearly, the pandemic revealed that some supply chains were too exposed, or that the risks of a global pandemic leading to mass isolations and factory closures were considered low enough that it did not affect sourcing decisions. Many supply chain managers will look at those risks differently in the future. As the blockade of the Suez Canal in 2021 and the tragic bridge collapse in Baltimore demonstrates, U.S. importers and exporters can be harmed by unforeseen supply chain disruptions that have nothing to do with trade liberalization.

Tariffs and their Effect on the Supply Chain

While tariffs can be a legitimate tool for addressing trade concerns and disputes, they can also strangle supply lines and result in higher consumer prices (inflation) and food insecurity. Even short-term food and nutrition insecurity can have a long-term devastating effect on human and animal health. Therefore, tariffs should only be used as a last resort.

The tariffs imposed on China under Section 301 of the Trade Act of 1974 are a case in point. The tariff lines included in the tariff increases covered many agrochemicals that are simply not available in the United States. The tariffs also covered important manufacturing intermediates used in U.S. production of chemicals manufactured in the U.S., as well as inert ingredients used in U.S.-based formulation operations. Indeed, CLA and RISE members identified 28 ten-digit tariff lines included on the 301 list under which active, intermediate, and inert pesticide chemicals and formulated products were imported from China in 2018. In 2018, Chinese products accounted for more than 75 percent of the volume of U.S. imports under these tariff lines.

Imports from China accounted for almost 90% of 2018 imports under tariff code 2933.69.6021, the code that includes triazine herbicides, commonly used on wheat, corn, potatoes, soybeans and fruit crops. None of the triazine chemicals classified under that tariff code are produced domestically.

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Likewise, China was the source of 97% of 2018 U.S. imports of fungicidal technical chemicals under tariff code 2926.90.2100, also not produced domestically. For certain important chemicals used in U.S. production of pesticide active ingredients, China was the sole import source in 2018.

Even where a chemical is manufactured in other countries, it should not be assumed that global capacity elsewhere is sufficient to fill the gap, or that such manufacturing capacity could become available quickly to CLA and RISE members. Importantly, CLA and RISE members primarily import technical active ingredients from China for further processing in the United States into end-use products for sale to farmers, applicators, and users. The sourcing process for these chemicals is highly regulated and time intensive. In fact, the process of developing and approving substitute sources for chemicals generally takes between three to five years, sometimes more. This process includes, but is not limited to, identifying manufacturing capacity or constructing new manufacturing facilities, product testing, and obtaining EPA registrations. Therefore, the imposition of these tariffs caused immediate harm to American interests.

The burden of the proposed tariffs was felt not only by CLA and RISE members, but also by American farmers, nurseries, turf protection companies, and American consumers. Disrupting the supply of critical pesticide products increased costs to farmers and consumers. Indeed, based on 2018 imports from China under the tariff codes identified by CLA and RISE members, the pesticide industry and its downstream users faced increased costs of more than \$393 million per year as a result of the tariffs. Additional punitive import tariffs have the effect of raising the cost of goods, and adding to the general inflation of cost experienced by many in our industry, as we all see significant price increases globally for freight and logistics services, as well as raw material inputs. The inflation of these costs has [largely] been passed on to customers, thereby causing additional burden to the American farmer.

Exports of Pesticide Products

The U.S. is an important link in the supply chain for products manufactured here and exported to other countries. Maintaining a dependable source of supply for pesticide products retains foreign customers, benefits U.S. employment, and indirectly protects the U.S. food supply. Furthermore, as a recognized source of reliable, high-quality pesticide products, the U.S. can assist other countries in combatting potentially dangerous counterfeit products.

U.S. manufacturers export pesticide products to countries around the world. The importing countries require two principal forms of government documentation of the authenticity of these products. A certificate of registration (known in the United States as a Gold Seal Letter, or GSL) attests that the pesticide product is indeed registered in the United States by the EPA, having been closely scrutinized by the world's most advanced regulatory system. EPA routinely issues GSLs upon request from the manufacturer and payment of the required fee. This strictly paper-document process was severely disrupted by the pandemic in March of 2020 when the entire society was forced to work remotely. EPA pivoted to create digital GSLs and a process for distributing them electronically. This change has significantly improved the process. However, the Department of

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State, which must authenticate the GSLs for many importing countries, is still insisting the electronic document be printed on a piece of paper, exchange by physical mail, and affixing a physical stamp. This has turned a process once accomplished in a few days to take several weeks because of the ways the pandemic has limited in-person contact.

Many countries also require a certificate of establishment (COE) for imported pesticide products, attesting that the product is indeed manufactured in the U.S. This is particularly important to the efforts of importing nations to combat traffic in counterfeit pesticide products of dubious origin, unknown quality, and potentially dangerous consequences. EPA has routinely issued COEs upon request from pesticide manufacturers, attesting that the pesticide producing establishment listed for a specific product is indeed registered by EPA, helping ensure the COEs are processed efficiently and facilitates timely trade.

The U.S. government regulators must seek to reduce unnecessary trade barriers as the agencies have pivotal roles in facilitating the export of products they regulate. The U.S. Government should work with trading partners around the world to create, facilitate, and promote processes of electronic commerce to make such transactions fully electronic.

Recommended Policy Approaches

USTR plays an important role in contributing to supply chain stability, but this is best done through trade liberalization and facilitation policies while preventing harmful non-market policy distortions. CropLife America is open to working with USTR to design supply chain policies that could mitigate some of the more obvious risks (see below), but we suggest that embracing its core mission of negotiating removal of trade barriers would be the most effective way for USTR to promote supply chain resiliency. Perhaps this could be coupled with highly targeted initiatives that address clear supply chain risks that cannot be addressed by the private sector, but there should be very clear and limited criteria for these initiatives.

Regardless, USTR should be careful not to micromanage redundancy and efficiency in supply chains. These are risks that companies and industries are in a much better position to take into account than USTR because they employ thousands of people around the globe who work on political risk every day. Companies always have to take these risks into account and the lessons of the trade war and the pandemic are top-of-mind for companies now. The enormous complexity of input supply chains is better managed through a disaggregated approach by companies, cooperatives, financial institutions, and farmers and professional applicators who daily make millions of decisions that ensure availability of products and ingredients. USTR should guard against overcorrecting for the supply chain problems and creating new problems in the process.

Free Trade Agreements

USTR's first priority should be to initiate comprehensive trade negotiations with reliable strategic partners who have a firm commitment to making progress on the rule of law. New trade agreements can diversify supply chains, thereby reducing risk, and lead to increased transparency, closer

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relationships, and increased trade flows, which will better help companies assess risks than any policies designed to reverse past trade liberalization policies. They would also be beneficial throughout the agriculture sector, as new agreements lower market barriers for farmers' and manufacturers' exports and can help reduce input costs and therefore inflation.

These negotiations can incorporate reasonable environmental and labor provisions, recognizing that there is no one-size-fits-all for different regulatory approaches. Furthermore, deeper integrate via bilateral and regional trade agreements can improve U.S. influence and provide more avenues to collaborate on labor and environmental concerns.

Finally, while new agreements will inevitably include some rules of origin provisions, USTR should be careful not to make these so restrictive that the costs of compliance exceeds the benefits of tariff reductions. Instead, USTR should focus on distortions created by countries that are not party to the agreement. Industry is likely to be in a better position to identify systemic risks, such as the concentration of critical inputs in unreliable countries or price suppression driven by subsidies. The U.S. government could work with industries to develop an appropriate response in these situations, while recognizing that trade policy may not provide the right tools to address these problems.

Trade Enforcement

This latter point requires a more robust commitment to trade enforcement. Policies contributing to trade distortions that can create supply chain risks are often disciplined under international agreements. Dispute settlement through the WTO should be used much more frequently when USTR or U.S. organizations have identified trade barriers or subsidies that do not comply with WTO disciplines. A robust and proactive use of WTO consultation and dispute mechanisms – especially in partnership with like-minded trading partners – would be a useful deterrent to the kinds of policies that exacerbate supply chain risks.

Enforcement is also important for farmers, who are constantly facing pressure from politically motivated trade barriers in export markets. Maintaining or expanding their supply chains through negotiation and enforcement (including the threat of enforcement) benefits farmers and consequently their upstream suppliers.

Trade Rules and Standards

International standards for pesticides are fundamentally important for agricultural supply chains. Standard-setting bodies like Codex Alimentarius use science-based risk assessments to move towards harmonization and help countries that have more limited capacities to regulate imports appropriately. For pesticide inputs, Maximum Residue Levels (MRLs) are a trading standard that must be met before entering the supply chain in any given country. These standards are established using a science-based risk assessment, countries can use their own regulatory bodies to determine these levels or can adopt the Codex standards created under the Codex Committee on Pesticide Residues at the United Nations Food and Agriculture Organization (FAO).

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The rules of the WTO, in particular those established in the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), require WTO members to base regulatory measures on sound science and risk assessment. Moreover, it requires members to base their SPS measures on international standards, where they exist, unless they have a scientific justification for deviating from those standards. The SPS Agreement designates the Codex Alimentarius as the international standards-setting organization for food safety. These rules are intended to facilitate trade and to prevent the imposition by WTO members of SPS restrictions that are disguised barriers to trade.

Countries that ignore their WTO obligations, reject international standards, and adopt regulatory systems that are out-of-step with those of their trading partners are bound to cause serious trade disruptions. However, missing and misaligned MRLs create trade barriers and can threaten food security, particularly in developing countries. In addition, if a food import shipment is rejected by a country due to lack of an MRL, the food can go to waste, contributing to food waste and other negative environmental factors.

Global harmonization of MRLs is needed to avoid unnecessary trade barriers. When a valid regulatory system is not in place, or a country does not have MRLs on goods being imported, countries should defer to the Codex standards. This does not just apply to our trading partners, but also in the United States. The Federal Food, Drug, and Cosmetic Act (FFDCA) §408(b)(4) requires the Environmental Protection Agency (EPA) to harmonize each new pesticide tolerance with any corresponding Codex MRL, or explain the reasons for departing therefrom. However, EPA commonly establishes tolerances before Codex establishes MRLs for the same pesticide products and crops. When additional Codex MRLs are established for those pesticides that do not correspond to crop uses registered in the U.S., there is no statutory or regulatory provision for routinely revisiting the status of Codex MRLs to effect greater harmonization. The EPA, USDA, Food and Drug Administration, USTR, and other government agencies must work together with the pesticide industry, U.S. growers, food processors, exporters, and importers to systematically and routinely update harmonization of U.S. tolerances with MRLs of Codex and other trading partners. Innovative approaches to filling the gaps of “missing MRLs” must be explored and pursued.

When basic tenets of trade and science are ignored, whether through lack of MRL harmonization, unnecessary certificates, redundant licenses, or basing measures on arbitrary pseudoscience — human, animal, and plant life suffers. These non-tariff barriers cause unnecessary disruptions to the food supply, bear heavy costs reflected in prices, and instill in consumers negative attitudes toward food and nutrition that are difficult to overcome.

In addressing supply-chain vulnerabilities, we cannot ignore an ongoing disinformation war in agriculture that has led to illegitimate barriers and unnecessary costs and burdens. For many years, we seemed to be on a path toward regulatory convergence, led by the Organization for Economic Cooperation and Development (OECD) member countries. The legislation governing pesticide

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products in countries around the world was, on the whole, based on sound scientific principles and risk assessment. As such, it was fundamentally compatible across countries, who cooperated in setting international residue standards under the auspices of the Codex Alimentarius. National regulators worked together in organizations, such as the OECD, Asia-Pacific Economic Cooperation and the North American Free Trade Agreement, to harmonize data requirements and share regulatory burdens. These efforts raised global standards for human health and environmental protection while minimizing unnecessary impacts on trade and reducing regulatory burdens.

However, the situation has changed, and we are now headed into a period when trade disruptions could become commonplace. First, certain countries that had previously relied on Codex MRLs or MRLs established by regulatory agencies in other countries are now establishing their own regulatory regimes. Our hope remains that these countries establish MRLs in a scientifically robust way that is protective of human health and the environment, yet is not unduly disruptive of trade. Second, we are very much concerned that the European Union (EU), Mexico, China, and Taiwan, to name a few major markets for U.S. growers, might apply policy measures that are fundamentally incompatible with established global trading rules. The problems are particularly acute in the EU, where regulators are already implementing a hazard-based regulatory regime and where risk management decisions are increasingly politicized.

We support robust, transparent, pragmatic, and risk-based regulatory regimes for establishing MRLs and import tolerances (ITs) based upon scientific principles and internationally agreed-upon standards. Delays in establishing MRLs and the resulting lack of harmonization have important consequences for market access, productivity, and farmer livelihoods.

USTR and partner agencies should engage robustly at Codex Alimentarius and the WTO Committee on Sanitary and Phytosanitary Measures (SPS Committee) to ensure that member governments base their measures on international standards and scientific principles. When governments persist in maintaining measures that violate the SPS Agreement, USTR should be willing to use all available tools under international agreements, including WTO dispute settlement.

Avoid New Tariffs

USTR and the Department of Commerce should not impose new tariffs under their statutory authority unless it goes through a WTO-consistent process like a trade remedy investigation or a suspension of concessions in response to non-compliance with an adverse Dispute Settlement Body decision. Existing WTO-inconsistent tariffs should be removed.

Some relief from tariffs has previously existed through the Miscellaneous Tariff Bill, recognizing tariff relief when ingredients are not produced in the U.S. Previously companies were able to submit duty drawback upon export, refunding of a portion of the duty paid for the active ingredients. This is an important offset to tariffs and must be reestablished and retroactivated as soon as possible to maintain U.S. manufacturing jobs.

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Domestic Policies

Lastly, many supply chain risks can be better addressed through domestic policy changes than through trade policy. A more predictable regulatory, tax, and investment climate will help encourage investment in domestic chemical manufacturing.

Thank you for this opportunity to comment on the global supply chain structure that impacts the pesticide industry and, ultimately, U.S. farmers and consumers.

Sincerely,



Alexandra Dunn
President and CEO
CropLife America



Megan Provost
President
RISE