

16 March 2022

Re: Ref. Ares(2022)1138409 – *Application of EU health and environmental standards to imported agricultural and agri-food products (16 February 2022)*

CropLife America (CLA) is providing this submission in response to the Call for Evidence ([Ref. Ares \(2022\) 1138409](#)) seeking feedback on the application of European Union (EU) health and environmental standards to imported agricultural and agri-food products. 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 the pesticide 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, pesticide 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 harmful insects such as mosquitos and ticks. Pesticides play a crucial role in supporting healthy food, healthy people, and a healthy planet.

U.S. farmers depend on pesticides to grow healthy and safe crops, fruits, and vegetables that are used as food, as well as other farm products, including fibers, lumber, and fuel for consumers domestically and around the world. Without modern pesticides, 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. Many U.S. grown crops are exported to the EU so EU policies that adversely impact trade are critically important to U.S. growers and CLA.

In addition, pesticides play a vital role in achieving U.S. goals for sustainable productivity by allowing for reduced / zero-till 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 possible 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, disease, 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.

Registering these instrumental agricultural products already requires a thorough, science-based risk assessment evaluating potential adverse effects to the environment. The United States Environmental Protection Agency (EPA) conducts these risk assessments based off conditions relevant for the region where the products are applied. The U.S. EPA has listed tolerances (MRL) for more than 1,300 active

pesticide ingredients while the EU has just over 400 (more than a 60% reduction in comparison to 1991)¹. Mirror clauses requiring the production of agricultural goods in the U.S. or any other country following practices a manner determined by the EU is an extraterritorial overreach.

Furthermore, while the consideration of mirror clauses does not specifically mention MRLs, it is worthwhile pointing out that an MRL is a standard to estimate human dietary exposure to a molecule. It is not a measure of safety, nor is it a measure of environmental exposure. To apply environmental risk factors to a human dietary exposure standard is completely unscientific and serves only to introduce an unnecessary non-tariff trade barrier.

Mirror Clauses

The European Commission has asked stakeholders to provide feedback for its upcoming report to the Council of the European Union and European Parliament on the application to imports of certain production standards, including environmental standards, imposed on EU producers. This type of policy is known as a “mirror clause.”

CLA applauds the Commission’s commitment to the goal of improving agricultural sustainability, but urges it to consider that not all approaches to this goal need be identical. Given the diversity in global agriculture as determined in the United Nations’ Food and Agriculture Organizations’ Global Agro-Ecological Zones methodology², it is imperative that goals to improve environmental outcomes are not a one-size fits all approach. The European Green Deal and Farm to Fork initiative are ambitious, but this first-of-its-kind experiment reflects only the interests of a set of EU stakeholders in their preferred approaches to sustainability and ignores the many challenges that farmers face globally. The proposed solutions in Farm to Fork for meeting the EU’s sustainability goals may not be appropriate for producers in other countries depending on their specific agricultural, social, economic, and environmental needs.

The EU has the absolute right to regulate pesticides within the EU to be as protective as they see fit for the environment. However, measures that are not grounded in science and that restrict the trade of treated commodities, based solely on the EU’s perceived environmental risk, do violate the EU’s obligation to not create technical barriers to trade. Many other countries have similar capabilities to the EU in regulating pesticides. Some have also increased their standards for environmental protection. For example, in the U.S. the U.S. EPA has recently launched new procedures in regulating pesticides to ensure better protection of endangered species. These measures, however, do not have the same affect as the EU’s mirror clause in restricting the movement of agricultural commodities.

Similarly, the EU’s regulatory approach on pesticides should recognize that other countries have different agricultural situations and the use of pesticides within these countries should be regulated by their own capable national or regional authorities. This is especially – though not exclusively – true for producers in tropical climates that face different threats to their production than European producers. In imposing its domestic regulatory agenda on producers in other countries, the EU is effectively telling these producers

¹ <https://agbioinvestor.com/wp-content/uploads/2018/09/Challenges-Facing-Farmers-and-the-Plant-Science-Industry-in-the-EU-report.pdf>

² <https://www.fao.org/nr/gaez/en/#>

to use alternative approaches or technologies that either don't exist, are impractical, are riskier than substances banned by the EU, or else significantly reduce production and income.

The USDA's comparative look at the U.S. and EU sustainability objectives³ points out the key differences including that the U.S. is focusing on outcomes and asserts that science and technology are the solution, while the EU is focusing on restricting inputs (e.g. chemicals) and expects that natural systems are sufficient to maintain production, preserve nature and sustain the environment. The USDA's Agriculture Agenda, launched in 2020, has a goal to increase production by 40% while reducing agriculture's carbon footprint by 50%. This implies a paradigm shift from "removing" to "improving" the tools required for economical and sustainable cultivation. By contrast, Farm to Fork strategy aims at reducing inputs by as much as 50% and limits the innovation. In fact, new technologies have been adopted within EU agriculture at a rate 50% less than in the US and the rest of the world⁴. The USDA study concludes that this policy will simply shift production and trade away from the EU, with subsequent impacts on food cost and availability in the EU.

The EU has the right to determine the appropriate level of protection for people from pesticide residues on products entering its markets (within the parameters of the World Trade Organization's *Agreement on the Application of Sanitary and Phytosanitary Measures*) and restrict trade to fulfill legitimate objectives. These rights very clearly though describe residues on crops and any possible dietary risk. They do not speak to trade restrictions related to environmental protection. The EU should not impose barriers to protect European farmers from imports of goods produced in countries that pursue different approaches to environmental protection or need to make a different set of trade-offs for their respective social, economic, or environmental needs.

Furthermore, various analyses have projected that the EU will see a significant decline in production, and thus food available for export, under its current policy trajectory.⁵ Many countries with high populations and insufficient arable land are dependent on global suppliers for food security. As the disruptions caused by the war in Ukraine and Covid-19 have demonstrated, supply chain disruptions and restrictive trade policies can make these countries more vulnerable to supply shocks, which may lead to political instability, malnutrition, and a host of other problems. The EU is poised to reduce its productive capacity without ensuring that alternative approaches are capable of offsetting this disruption. Mirror clauses would impose this reduced capacity on the EU's trading partners, further increasing vulnerability to supply shocks.

The European Commission should not repeat the mistakes other countries have made by undermining the rules-based trading system through unilateral measures designed to force coalescence around a preferred objective. The application of mirror clauses threatens to rupture trade relationships that could be

³ <https://agbioinvestor.com/wp-content/uploads/2018/09/Challenges-Facing-Farmers-and-the-Plant-Science-Industry-in-the-EU-report.pdf>

⁴ <https://agbioinvestor.com/wp-content/uploads/2018/09/Challenges-Facing-Farmers-and-the-Plant-Science-Industry-in-the-EU-report.pdf>

⁵ See *Impact Assessment Study on EC2030 Green Deal Targets for Sustainable Food Production* from [Wageningen University and Research](#) and *Economic and Food Security Impacts of Agricultural Input Reduction Under the European Union Green Deal's Farm to Fork and Biodiversity Strategies* from the [U.S. Department of Agriculture Economic Research Service](#).

collaborative. Instead of working with the EU on improving sustainability, stakeholders in exporting countries may direct their energy towards opposing real or perceived protectionist measures imposed on them by the EU. Maintaining trust in a rules-based trading system vital to the European project and international order. If stakeholders conclude that trade agreements are worthless paper that cannot discipline an agreement's proponents, there is little hope for maintaining a shared, global approach to trade and sustainability.

As such, the EU should work to ensure consistency with World Trade Organization (WTO) rules and exercise utmost caution before proposing mirror clauses that would impose EU production and environmental standards on exporting nations.

Mirror Clauses and the WTO

Members of the WTO, including a broad array of both developed and developing countries, have consistently criticized the EU sanitary and phytosanitary (SPS) measures that seek to externalize the costs that the EU imposes on its own farmers in response to domestic politics. At the WTO SPS Committee, the EU has been the target of over 20-percent of all Specific Trade Concerns raised since 1995, more than twice as many as any other member.⁶

The EU seeks to be a leader on agricultural sustainability, but it is increasingly isolated on this topic due to its unilateral approach, particularly on pesticide products. In a July 2019 meeting of the WTO Council on Trade in Goods, over 100 WTO members – about 70 percent of the non-EU membership of the WTO – criticized the EU for its approach to pesticide regulation. The delegate from Sri Lanka stated that “such an approach would marginalize the developing and least developed countries, as they did not have either capacity to comply with such standards or the ability to adapt to such new and highly sophisticated requirements. This in turn would increase the existing disparities and have a drastic impact on their productive capacities by closing the EU market, which they had heavily relied upon for generating export income for their economic development.” Other delegates focused on the threats to sustainability and food security from the EU's approach.⁷ Imposing unilateral mirror clauses to ensure parity with the EU's domestic regulations would invite additional consternation from EU trading partners and further isolate the EU in discussions on agricultural sustainability.

The WTO SPS Agreement applies to measures imposed to protect human or animal life or health within the territory of the EU from additives, contaminants, toxins, or disease-causing organisms in foods, beverages, or feedstuffs (see Annex A). Trade measures that relate to risks arising from pesticide residues would clearly fall under the SPS Agreement and be subject to the risk assessment and procedural requirements of that agreement. Mirror clauses that seek to impose on trading partners EU production practices like prohibition of certain pesticides would likely not fall outside the scope of the SPS Agreement since these provisions transparently follow from regulatory measures that are intended to achieve the purposes described in that agreement.

⁶ *Specific Trade Concerns*, [G/SPS/GEN/204/Rev.20](#), p. 9.

⁷ *Minutes of the Meeting of the Council on Trade in Goods 8 and 9 July 2019*, [G/C/M/135](#), pp. 18-31.

Even outside the SPS Agreement, these measures could potentially be challenged under the *Agreement on Technical Barriers to Trade* (e.g. Article 2.1 and 2.2) or the *General Agreement on Tariffs and Trade* (e.g. Article I:1, III:4, X:3, XI:1). The EU would have a monumental task to demonstrate that requiring enforcement of its regulatory measures within the sovereign territory of another member (indeed, all other members supplying affected commodities) is the least trade restrictive means of achieving its objectives and that its regulations have been applied in a uniform, impartial, and reasonable manner.

Alternative Approaches

We would request the EU to not focus on enforcing uniformity in production practices through unilateral trade measures, but rather ask the European Commission to collaborate with trading partners to promote shared goals like sustainable productivity growth. This could involve research cooperation, experience sharing, funding for best practices, etc. Where international standards and agreements are appropriate, they should take into account different approaches to meeting the same or similar objectives and ensure that regulatory measures have a rational relationship between the objectives and the burdens placed on producers in originating countries. In fact, the U.S. and EU have launched a collaborative platform on agricultural intended to allow for such sustainability discussions between trading partners.

The EU could also seek to negotiate rules on agricultural sustainability at the World Trade Organization or through another appropriate forum. However, this would require a good faith approach that to date we have not seen from the EU. Instead, the pattern has been that the EU imposes high costs on its farmers and in response to their complaints, it externalizes those costs on their competitors regardless of the consequences on producers in other countries or appropriateness of the EU policies to their specific situations.

French Agriculture Minister Julien Denormandie recently suggested that “Europe must impose its standards on others and not have others’ standards imposed on it.”⁸ On the contrary, the EU and its member states are far more aggressive in imposing standards – particularly non-science- and non-risk-based standards – on its trading partners. As EU Director-General for Trade Sabine Weyand has noted, “it is important to respect the regulatory sovereignty of others if we are going to rightly demand it for ourselves.”⁹

Agricultural sustainability and an improving environment are important objectives for producers and agribusinesses around the world; these objectives are not exclusive to the EU. We welcome productive discussions on how to achieve those objectives but ask that the EU first lower its trade weapons.

⁸ *Macron’s fair trade ‘crusade’ faces enemies within*, [Politico](#), 20 January 2022

⁹ *The Double Integration Doctrine, A Conversation with Sabine Weyand*, [Groupe d’Étude Géopolitique](#), 31 January 2022.