



June 21, 2021

Dr. Melissa R. Bailey
Agricultural Marketing Service
United States Department of Agriculture
1400 Independence Avenue SW
Room 2055-S, STOP 0201
Washington, DC 20250

Submitted electronically via Federal eRulemaking Portal

RE: Request for Comments: Supply Chains for the Production of Agricultural Commodities and Food Products (Docket # AMS-TM-21-0034, 86 FR 20652)

Dear Dr. Bailey,

CropLife America (CLA) represents the manufacturers, formulators, and distributors of pesticides in the United States. Our member companies produce, sell, and distribute virtually all the vital and necessary crop protection products used by farmers, ranchers, and landowners in every state. We appreciate the opportunity to comment regarding the United States Department of Agriculture's (USDA) Supply Chains for the Production of Agricultural Commodities and Food Products as the agency prepares their report required by the *Executive Order on "America's Supply Chains."*

Pesticidal chemicals are crucial to many American industries. American farmers depend on them to grow healthy and safe row 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 modern crop protection technology, 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 pesticide products, American plant nurseries would suffer, as would turf protection for areas such as sports fields, golf courses, and even everyday Americans' lawns. Further, pesticidal chemicals prevent public health problems by controlling harmful insects such as mosquitos and ticks. As we discuss below, a functioning supply chain is crucial to ensure these innovative tools are available to combat diseases and pests.

Global MRL Harmonization

The U.S. agriculture supply chain is global, from the ingredients used for farm inputs to the exports of final agriculture and food goods. Consumers around the world are dependent on this strong supply chain. For pesticide inputs, Maximum Reside Levels

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(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).

The rules of the World Trade Organization (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 and requires members to “play a full part” in Codex “to promote ... the development and periodic review of standards, guidelines and recommendations¹.” 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, as found in the U.S. International Trade Committee (USITC) MRL reports^{2,3}, 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 U.S. as well. The Federal Food, Drug, and Cosmetic Act (FFDCA) §408(b)(4)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

¹ The WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement)

: https://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm

² USITC Global Economic Impact of Missing and Low Pesticide Maximum Residue Levels, Vol. 1:

<https://www.usitc.gov/publications/332/pub5071.pdf>

³ USITC Global Economic Impact of Missing and Low Pesticide Maximum Residue Levels, Vol. 2:

<https://www.usitc.gov/publications/332/pub5160.pdf>

⁴ FFDCA) §408(b)(4):

<https://www.epa.gov/pesticide-registration/pesticide-registration-manual-chapter-11-tolerance-petitions>



provision for routinely revisiting the status of Codex MRLs to effect greater harmonization. The EPA, USDA, Food and Drug Administration, United States Trade Representative, 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.

Established Supply Chain for Regulated Industries

For regulated industries, supply chains have been established to meet the criteria under government regulatory systems. The manufacture of modern pesticide products and their distribution to farmers 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 crop 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.

The following are examples of significant problems in recent experience that have demonstrated how vulnerable supply chains can be to disruption by external factors:

- In the latter part of 2019, a major industrial accident in China, accompanied by regulatory shutdowns of manufacturing facilities, cut off the sole source of a key preservative used in a wide range of pesticide product formulations in the U.S. and around the world. There were no “drop-in” substitutions available, and gearing up manufacturing elsewhere in the world was not an option.
- In February of 2021, a major winter storm very suddenly shut down petrochemical manufacturing across the Gulf States, causing significant damage to facilities there. Recovery has taken many weeks and is still in progress. The country’s major sources of the chemical feedstocks ethylene oxide and propylene oxide were offline. A number of key ingredients in a wide range of pesticide products are dependent on these feedstocks. The situation caused serious disruption in formulation of pesticide products, jeopardizing supplies to U.S. growers for the spring planting season. We are still dealing with lingering force majeure declarations, restricted allocations, and skyrocketing prices for some ingredients. The pesticide industry competes with many other industries for very tight supplies of these commonly used EO and PO derivatives.
- The coronavirus pandemic has seriously impacted the crews and staffing of shipping vessels that bring goods and supplies to U.S. ports from foreign suppliers. Along with other industries, pesticide manufacturing in the U.S. has



suffered the delays of container ships kept at sea because crews were not allowed to dock.

In addition, during the COVID-19 Pandemic much agility was needed to pivot and react to ever changing global supply conditions, to respond to potential shortfalls, additional, unplanned customer demand and manage overall supply resilience across increasingly global and interconnected supply chains. This was made especially challenging by the complexity of rapidly reconfiguring supply chains for regulated products.

The above examples illustrate a strong need for a faster pathway for simple, low risk change which can have a large potential impact on supplying critical tools for American Farmers to produce safe and reliable food for the U.S. and the world. We also must explore other ways to reduce such supply chain vulnerabilities.

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 members identified 28 ten-digit tariff lines included on the 301 list under which active, intermediate, and inert pesticidal chemicals and formulated products were imported from China in 2018. In 2018, Chinese products accounted for more than three quarters 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. 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 pesticidal active ingredients, China was the sole import source in 2018.

Even where an agrochemical 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 members. Importantly, CLA members primarily import technical active ingredients from China for further processing in the United States into end-use products for sale to farmers and



professional applicators. 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 two 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 members, but also by American farmers, nurseries, turf protection companies, and American consumers. Disrupting the supply of critical crop protection, turf protection, and pest control chemicals increased costs to farmers and consumers. Indeed, based on 2018 imports from China under the tariff codes identified by CLA members, the crop protection 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. Despite rising demand due to the economic recovery from the lifting of COVID-19 pandemic restrictions and government stimulus in some regions, overall input and service costs have not returned to pre-pandemic levels, which has resulted in rising prices. The inflation of these costs has [largely] been passed on to customers, thereby causing additional burden to the American farmer.

Some relief currently exists under U.S. Trade Facilitation law. Companies are 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 that must be retained, and necessary to maintain U.S. manufacturing jobs.

Non-Tariff Barriers and their Effect on the Supply Chain

The agricultural supply chain is incredibly complex, employing 40% of the world's population. Rules for trading, including the rigorous risk-based requirements established by the WTO SPS and Technical Barriers to Trade Agreements, are necessary to ensure a robust, predictable, safe, and nutritious supply of food. When these basic tenets of trade and science are ignored, whether through lack of MRL harmonization, unnecessary certificates, redundant licenses, or basing measures on arbitrary pseudo-science—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 on-going 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 crop protection 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 common place. 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), China, and Taiwan, to name a few major markets for U.S. growers, might implement legislation that is 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) founded upon scientific principles and internationally agreed standards. Delays in the establishment of MRLs and the resulting lack of harmonization have important consequences for market access, productivity and farmer livelihoods.

Export 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 U.S. as a Gold Seal Letter, or GSL) attests that the pesticide product is indeed registered in the U.S. 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. However, the Department of 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 origin** (COO) 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 COOs upon request from pesticide manufacturers, attesting that the pesticide producing establishment listed for a specific product is indeed registered by EPA. But in 2016 the Agency issued a policy statement, abruptly halting the issuance of COOs, claiming the agency lacked the statutory authority for doing so. Manufacturers have been left scrambling for lesser substitutes which draw considerable skepticism from importing countries.

EPA should resume issuing the COOs and remove this non-tariff trade barrier to export of pesticide products. EPA's 2016 policy statement overlooks a statutory/regulatory mechanism that could be used immediately to authorize issuance of COOs – the same fee-for-service provision used for Gold Seal Letters.

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.

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

Sincerely,

A handwritten signature in black ink that reads "Christopher G. Novak".

Chris Novak
President & CEO
CropLife America

Representing the Crop Protection Industry