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November AgChem Notes

Special Note: As you know the MTB has not yet been enacted. This means that some of the granularity that had been the norm in the census statistics is still missing which makes pulling the necessary data for this report more difficult. Please see below for a further discussion on the potential for this legislation.

Imports of Glyphosate, as acid, for the period September through August for the last 5 years are at least as much as shown below:

	22-23	21-22	20-21	19-20	18-19	17-18
August		6,507 MT	7,847 MT	4,611 MT	5,997 MT	3,364 MT
July		8,414 MT	9,178 MT	7,985 MT	2,735 MT	6,562 MT
June		11,592 MT	8,972 MT	6,749 MT	3,495 MT	6,333 MT
May		12,420 MT	10,110 MT	9,029 MT	4,542 MT	12,307 MT
April		16,267 MT	8,067 MT	5,584 MT	3,241 MT	9,836 MT
March		12,334 MT	7,302 MT	2,927 MT	6,656 MT	10,711 MT
February		11,768 MT	2,311 MT	1,636 MT	3,235 MT	8,601 MT
January		8,908 MT	5,660 MT	8,950 MT	6,100 MT	6,081 MT
December		7,006 MT	5,200 MT	3,800 MT	8,900 MT	7,477 MT
November		9,809 MT	4,700 MT	8,000 MT	6,000 MT	5,900 MT
October	4,713 MT	9,417 MT	3,200 MT	8,000 MT	8,100 MT	3,800 MT
September	4,018 MT	10,661 MT	4,000 MT	4,700 MT	8,600 MT	4,298 MT
Total for the year		125,103 MT	76,547 MT	71,971 MT	57,511 MT	85,270 MT

The slowdown in import volumes, year on year, noted in September, appears to be continuing.

USTR CHINA "Special 301" Surtax Review Process

On November 15, 2022, USTR will open a new public docket on the web portal seeking comments as they work on the second stage of this review. The first stage completed a few months ago, only asked for U.S. Companies that benefit from these surcharges to comment. Thousands of such comments were received. This allows for the surtaxes to stay in place.

On November 15, the new docket will ask for comments, both for and against these levies. It will be open for comments until January 17, 2023.

The initial notice published on April 6, 2018, stated that the reasons for this action were the following:

- China uses foreign ownership restrictions, such as joint venture requirements and foreign equity limitations, and various administrative review and licensing processes, to require or pressure technology transfer from U.S. companies.
- China's regime of technology regulations forces U.S. companies seeking to license technologies to Chinese entities to do so on non-market-based terms that favor Chinese recipients.
- China directs and unfairly facilitates the systematic investment in, and acquisition of, U.S. companies and assets by Chinese companies to obtain cutting-edge technologies and intellectual property and generate the transfer of technology to Chinese companies.
- China conducts and supports unauthorized intrusions into, and theft from, the computer networks of U.S. companies to access their sensitive commercial information and trade secrets.

As a result, surtaxes were charged on a variety of Chinese goods, encompassing "lists 1,2,3, and 4A. Surtaxes on list 4B were not enacted.

Now, to aid in this review, USTR is opening this docket to seek comments on the following topics:

- The effectiveness of the actions in obtaining the elimination of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation.
- The effectiveness of the actions in counteracting China's acts, policies, and practices related to technology transfer, intellectual property, and innovation.
- Other actions or modifications that would be more effective in obtaining the elimination of or in counteracting China's acts, policies, and practices related to technology transfer, intellectual property, and innovation.
- The effects of the actions on the U.S. economy, including U.S. consumers.
- The effects of the actions on domestic manufacturing, including in terms of capital investments, domestic capacity and production levels, industry concentrations, and profits.
- The effects of the actions on U.S. technology, including in terms of U.S. technological leadership and U.S. technological development.
- The effects of the actions on U.S. workers, including with respect to employment and wages.
- The effects of the actions on U.S. small businesses.
- The effects of the actions on U.S. supply chain resilience.
- The effects of the actions on the goals of U.S. critical supply chains outlined in Executive Order 14017 and in subsequent reports and findings.
- Whether the actions have resulted in higher additional duties on inputs used for additional manufacturing in the United States than the additional duties on particular downstream product(s) or finished good(s) incorporating those inputs.

In order to facilitate preparation of comments prior to the November 15 opening of the web portal, USTR has posted a copy of questions for the docket. The questions can be found at Four-Year Review Docket For Posting 103122.pdf (ustr.gov)

The USTR dockets are generally pretty user friendly. While the topics listed above reflect the overall action at a very high level, USTR recognizes that many commenters will not be knowledgeable in all areas. Therefore, they will also take comments on “micro” concerns, even at the specific product level.

If you are impacted in any way by these surcharges, you should seriously consider raising your voice by responding to this request for comments. USTR is expecting to receive several thousand comments, if not many more. It will take at least a few months to sort through all of these responses.

Existing 301 Exemptions

There is no news from USTR concerning the existing 301 exceptions that expire on 12/31/2022, including Paraquat and NBPT, and everything else on that list. At this point, it is highly unlikely that anything could be accomplished between now and the end of the year. It may be that any decision will need to wait for the outcome of the full four-year review cycle discussed above. It is unlikely that this can be accomplished until well into next year, perhaps not before the second half of the year. You are urged to plan accordingly.

MTB (duty suspensions), GSP (Generalized System of Preferences) & 301 Exceptions

Unfortunately, these issues are orphans at this point in time. Congress has left Washington until after the election. The best we can hope for is that the MTB and GSP renewal will be handled by voice vote when they return. If these items are important to your business, you are urged to let your Congressional representatives know of your concerns.

It has been recently reported that Congressional Democrats will not move these provisions without including Trade Adjustment Assistance (TAA) which has also expired. Should this happen, it is likely that Congressional Republicans will not move forward unless Trade Promotion Authority (TPA) is also part of the package. This being the case, we are back to stalemate!

While there is general agreement on language for the MTB as well as renewal of GSP, in both Houses of Congress, and they are generally considered to not be controversial, there is no agreement on pressing to re-open the China exclusions portal. The Administration remains opposed to this action.

Even if the MTB is passed after the elections in the “lame duck” session, it will have a serious impact on renewals and/or new requests for the next round. Under normal circumstances, USITC would have been soliciting nominations in October/November of this year so that the reviews could be completed prior to the expiration of this round of the MTB on December 31, 2023.

It is highly unlikely that if the MTB is enacted in the “lame duck” session that they will be able to extend the termination date from 12/31/2023 to 12/31/2024 to provide time for renewals to be processed. The USITC report that was produced to create the list would not cover this additional time-period. Our best hope is that the retroactive provisions will be increased from 120 days to something larger, hopefully at least 180 days, perhaps a full year. NAM (The National Association of Manufactures), the lead lobbing group on this issue, is pushing for full retroactivity back to 1/1/2021. It remains to be seen how the renewal process for 2024 is handled.

It remains highly likely that once GSP is re-enacted that it will be retroactive to its expiration on 12/31/2020. Refunds should be "almost" automatic for properly recorded entries. Even if India is allowed back into this program, it is highly unlikely that there will be any retroactivity for India.

Uyghur region – Forced Labor Initiative: No update – and there has been very little news in the trade press suggesting that Customs has been aggressively enforcing these provisions, except in the case of certain silicones and perhaps solar panels that contain these chemicals.

However, if you are importing from China, please visit www.dhs.gov/UFLPA-EntityList for complete details on this program

Importers of products from China need to have complete documentation on file so that they can respond rapidly to defend themselves against an allegation that forced labor played a role in their shipment.

Syngenta IPO: No update – though we are continuing to carefully monitor this situation.

Ukraine/Russia: No update – though we are continuing to carefully monitor this situation. Recent threats by Russia to use nuclear weapons, as well as President Biden's "off the record" response to these treats, have added an additional level of anxiety to this entire situation.

General Update

Taiwan: No update – but Congress did push the Administration to formally include Taiwan in the IPEF and also again pressed the Administration to enter into Free Trade Negotiations with Taiwan. Since Taiwan is not an "independent State" it is hard to imagine how a Free Trade Agreement could be negotiated in accordance with our WTO commitments.

IPEF – Indo-Pacific Economic Framework: no update, though USTR continues to push the narrative that this is an important and valuable initiative, even though there is no market access component envisioned.

China Surtax Lawsuit: no update

U.S./China Trade relationship: It is important to repeat the following, especially because USTR is in process of reviewing this entire subject and there is public pressure from some parts of the Administration to significantly alter these levies.

The U.S./China phase one deal that was signed in January 2020 has now expired. Clearly, China did not meet, and in fact was significantly below, its purchase commitments under this deal. Ambassador Tai has publicly stated her dismay over the significant shortfalls and pledged to push China to keep its commitments. So far, no plan has been announced to try to make this happen. Technically, since this part of the agreement has expired, China no-longer has any remaining purchase commitments to the U.S.

As part of the phase one deal, and in anticipation that a phase two deal could be successfully negotiated, the U.S. held off on increasing the 301 tariffs against China as described below. Clearly USTR would have the authority to immediately increase all of the tariffs in these tranches if they believed that it would help "encourage" China to agree to U.S. requests.

- Tranche 3: 25%. This rate was scheduled to be increased from 25% to 30% on October 15, 2019. That increase was put on hold pending the signing of the phase one deal. There are at least a hundred agricultural chemical active ingredients, as well as all formulated agrochemicals included in this tranche, with the exception of Paraquat that is under an exemption through the end of 2022.

- Tranche 4a: On September 1, 2019, tariffs of 15% were imposed for products on this list. The 15% tariff in this tranche was cut to 7.5% on February 14, 2020, as part of the phase one deal. There are at least 18 active ingredients on this list, including some big volume products where China has a sizable presence, including but not limited to 2,4-D, Atrazine, Bromoxynil, Dicamba, and Metribuzin.

- Tranche 4b: On December 15, 2019, tariffs of 15% were scheduled to kick-in. These tariffs were held in abeyance because of the agreement on a phase one deal. There are at least 11 active ingredients on this list, including some of the biggest herbicides imported from China, including Chlorothalonil, Glufosinate, Glyphosate (acid and 62%), Oxyfluorfen, and PMIDA.

Once again, if you are in process of importing materials for inventory, unless they are due to be processed or sold onward shortly after they arrive, you should consider placing such imports of China surtax-able items into a bonded warehouse. Since President Trump imposed these levies by Executive Order, they can be reversed by another Executive Order on very short notice. If this were to occur, you could end out with a warehouse full of very expensive inventory, with little or no chance of receiving any refunds of surtaxes previously paid. This has happened in several instances where similar tariffs were removed against the EU, including over the Boeing/Airbus dispute.

Other issues that need to be considered, include:

- **U.S. – EU:** No update at this time. Next big gathering is expected to be held in early December and will likely address some signi9ficant concerns, especially Russia/Ukraine and China trade tensions.
- **U.S. – UK Free Trade Agreement**: Clearly, the UK wants to complete the Free Trade Agreement negotiations that were started under the previous administration. The Biden Administration has now again made it abundantly clear that they are not interested in proceeding on this initiative.
- **India**: Recent bi-lateral discussions suggested that the U.S. India relationship may be "on the mend". However, it remains unlikely that the U.S./India relationship will improve in the short term to the point where renewing India's participation in the GSP program could be entertained. This could change quickly if India appears to be cooperating with the "IPEF" agenda and more importantly supporting the "western" position vis-a-via Russia/Ukraine.

- **US – Kenya Free Trade Agreement:** no update

General observation: Imports continue to arrive at a blistering pace. Please see additional details below in the notes section under "the Index".

The update version of the "Index" which includes import details for all formulated Agrochemical imports in 3808.91, 3808.92 and 3808.93 for August is attached.

Below, please find value information for the month of September as well as totals for the first nine of each year.

It is important to observe, that the value figures are "customs value" which would include materials entered into Free Trade Zones, but not China surtaxes

September 2022 details are as follows (000):

	9/2019	9/2020	9/2021	9/2022
3808.91 – insecticides	$11,638	$18,583	$28,393	$28,302
3808.92 – fungicides	$14,234	$18,044	$25,408	$54,668
3808.93 – herbicides	$28,728	$14,726	$34,588	$51,799

Nine-month totals for the period (000) are shown below:

	2019	2020	2021	2022
3808.91 – insecticides	$244,737	$237,582	$329,611	$367,120
3808.92 – fungicides	$222,459	$317,982	$520,086	$652,594
3808.93 – herbicides	$347,182	$338,437	$377,476	$652,784

Please let us know how we can best be of service.

Very truly yours,

Jim

V.M. (Jim) DeLisi

VMJD: me