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April 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.

In addition, the USITC made an error when the revised tariff schedule was put into place on January 27, 2022. The 10-digit breakouts for Glyphosate and Glufosinate were mistakenly omitted from the new schedules and the newly created HTS number, 2931.49.00, was included in the tranche 3 list for China surcharges – 25%. Everything has now been corrected, but for some reason the census statistics on both the old number as well as the new number were not reported for January, making it difficult to truly analyze the imports of these important compounds.

Further to last months “Special Comments” on Glyphosate, it continues to be widely reported that there are significant shortages expected in 2022 of a number of herbicides, especially Glyphosate. Since Glyphosate is so important and has a “knock-on” effect on just about every large volume herbicide, we thought it would be useful to update the chart below to include March 2022 imports.

Unfortunately, the best kept secret in the world is the productive capacity of the Glyphosate facility in Lulling. While it has been publicly reported that this facility was fully shut down for 5 weeks because of flooding last summer, it is not possible to estimate the shortfall in production that was caused by this event. Further, Bayer CropScience has not released any details as to the extent of the production shortfall under the current force majeure event.

Imports of Glyphosate, as acid, for September, October, November, December, January, February and March for the last 4 years are at least as much as shown below:

	21-22	20-21	19-20	18-19
March 22	12,014 MT	7,302 MT	2,927 MT	6,656 MT
February 22	9,362 MT	2,311 MT	1,636 MT	3,235 MT
January 22	8,860 MT	5,660 MT	8,950 MT	6,100 MT
December 21	7,000 MT	5,200 MT	3,800 MT	8,900 MT
November 21	9,800 MT	4,700 MT	8,000 MT	6,000 MT
October 21	8,800 MT	3,200 MT	8,000 MT	8,100 MT
September 21	10,700 MT	4,000 MT	4,700 MT	8,600 MT
Totals	66,536 MT	32,373 MT	38,013 MT	37,591 MT

Now that the Olympic Games have ended, it appears as if they had little or no impact on the supply of Glyphosate as well as other pesticides where China plays an important role in the global supply chain. The chart below, showing a series of herbicide imports, many of which are sourced from China, aptly makes this point:

	Annual in MT 100% basis				1st Q MT 100% basis				
product	2018	2019	2020	2021	2018	2019	2020	2021	2022
2,4 D	19,437	20,351	18,352	18,904	5,885	3,554	4,656	4,390	9,298
Atrazine	11,488	11,767	11,454	13,490	4,229	2,620	1,391	1,638	2,557
Clethodim	3,440	3,112	3,414	4,221	1,315	1,266	1,296	1,525	2,822
Clomazone	3,261	3,330	2,451	2,500	983	1,299	693	203	1,639
Dicamba	26,898	11,433	11,483	17,727	8,437	4,240	4,376	3,708	5,146
Ethephon	13,289	12,745	12,226	9,862	2,246	1,806	2,758	1,172	2,039
Glufosinate	9,960	9,558	5,969	12,632	2,178	3,097	2,940	4,355	6,036
Glyphosate	95,325	63,472	61,965	95,911	25,393	18,837	10,221	14,923	32,691
Mesotrione	3,895	3,735	4,717	6,378	1,000	1,665	1,279	1,793	1,764
Metribuzin	4,000	5,134	4,054	5,163	1,170	1,407	1,674	1,090	512
Paraquat	21,356	12,718	15,910	14,373	8,560	4,951	5,221	3,009	5,241
S-Moc	26,599	33,786	19,647	42,972	5,340	9,973	6,637	14,032	13,902
Sulfentrazone	2,875	2,061	1,823	3,101	777	889	521	681	731
Trifluralin	3,865	1,746	306	864	1,579	324	72	36	1,062

From some of the discussions we've had, it could be that the shortage of containers and lids could be a significant factor in supply chain disruptions in the distribution of agrochemicals.

Ukraine/Russia

The war in the Ukraine continues to present the world with a very difficult situation. From an U.S. agricultural chemical perspective, the impact is minimal.

- Last month, we circulated a list of materials imported from Russia into the USA. Please let us know if you need another copy.
- Clearly, both Ukrainian and Russian farmers are having a difficult time purchasing inputs. It is likely that planted acreage in Ukraine will also drop for 2022.
- Both Ukraine and Russia are heavily involved in the world's supply of fertilizers. Therefore, it is likely that the price of fertilizers will increase, perhaps dramatically.
- The U.S. House of Representatives passed legislation to remove Russia's normal trade relations status. The Senate passed similar legislation today. Interestingly, all of the tariffs in chapter 31, Fertilizers, are "free" both to most favored nations countries as well as "column 2" rates of duty countries. Therefore, this action would not have an impact on the duty if someone wanted to import fertilizer from Russia. (Existing dumping orders on fertilizers are not impacted by any of these potential changes.)
- Canada removed most favored nations treatment for imports from Russia, it is likely that other countries will take this same action, especially if the hostilities continue.
- It now clear that Russian energy products will face international embargoes similar to the one put into place by the Biden Administration. Energy prices are significantly impacting producers in the EU, making them potentially much less competitive on the international stage.

- It will be very interesting to see how the Governments of India and China navigate through these difficult water's vis-a-via relations with the U.S.
- This conflict could lead to a complete break-down of the United Nations as well as the WTO.
- Many of the large EU based chemical companies have facilities or suppliers based in Russia and/or the Ukraine. The impact caused by disruptions of supplies from these facilities is still ill-defined.

General Update

The administration has doubled down on its commitment that trade policy will be based on equity, inclusion, worker rights and helping under-served communities. They have not sought, nor do they appear to want Congress to grant them Trade Promotion Authority (TPA). Without TPA it is highly unlikely that any of the "trade opening" discussions they have announced including the UK, EU, Asia or Africa can include a tariff component.

China Surtax Lawsuit: Plenty of news here. The U.S. Court of International Trade wrote a 71 page decision on this lawsuit. They clearly stated that the actions were lawful but criticized the way the Administration handled the implementation of lists 3 and 4a. USTR was given until the end of June to fix these procedural discrepancies. The decision makes it clear that the hurdles to overturn these tariffs are quite high.

Once USTR completes this task, both sides will present their further arguments to the court. Whatever this court decides, it is then highly likely that whoever loses will appeal the decision to a higher court. We continue to believe that it is highly likely that the Administration will continue to defend the Trump Administration's actions in this area all the way up to the U.S. Supreme Court if necessary.

China 301 Surtaxes: The law that allowed the Trump Administration to impose these surtaxes requires that they expire four years after implementation, unless the USTR does a study to show that they are accomplishing their stated objective and then take an affirmative action to keep them in place. The earliest of these surtaxes are approaching this four-year deadline. It will be at least a few months before this can be accomplished. Once the process starts, there will need to be a federal register notice requesting comments, which as of this writing has not yet been released. You can be assured that there will be thousands of comments which will help slow down any decision making,

USTR Tai's Congressional Testimony: Late in March, Ambassador Tai testified to Congress. She made a few key points that are important to our industry:

- The on-going talks with China to change its non-market practices have not borne any fruit. She stated that the U.S. must "turn the page" and focus on vigorously defending U.S. interests with new and existing tools, as well as domestic investments.
- There may be further "301 actions".
- There likely will be expanded systemic antidumping and countervailing duty investigations.
- Despite pressure from both sides of the isle, and the fact that she believes that the existing 301 tariffs have not incentivized China to modify its practices, Ambassador Tai would

not commit to re-open the exceptions portal for 2022, and her statements make it appear that it might not open in 2023.

What this all says to me is that the China 301 tariffs are here to stay for the foreseeable future, without any modifications.

MTB (duty suspensions), GSP (Generalized System of Preferences) & 301 Exceptions – no progress: They have not publicly nominated members of the House and Senate to work on a conference committee to negotiate a compromise so that these items can be enacted into law. Key provisions of importance to our industry are discussed below.

- The House of Representatives passed its version of the Senate's "China Chips Act". For clarity, the House bill is actually named "America Creating Opportunities for Manufacturing, Pre-Eminence in Technology, and Economic Strength (COMPLETES) Act. The Senate version is actually called U.S. Innovation and Competition (USICA) Act. If you need some fascinating nighttime reading, we would be pleased to send a copy of both of the bills.

  For this discussion, we will only be focusing on the trade provisions that are import to our industry.

  As previously reported, the Senate bill was enacted with a very large bipartisan majority. It contains provisions on the MTB, GSP renewal as well as a requirement to re-open the China surtax exception portal at USTR. In addition, it is important to note that a bipartisan group of 41 Senator's signed on to a letter to Ambassador Tai requestion that she re-open the portal.

  While the House version is silent on reopening the China surtax exclusions portal, it does include provisions for the renewal of the MTB as well as provisions for renewal of GSP. These provisions are not the same as the Senate. Key differences are as follows:

  - MTB (duty suspensions/reductions):
    - It is expected that the House list of eligible items will be in the final legislation. It is slightly different that the Senate, as there were a few items removed from the list by the Ways & Means Committee after the Senate put together their list. The House bill calls for the suspensions to be in place until 12/31/23. The Senate has the same end date. Both the Senate and the House allow for 120 days of retroactivity for this program, based on the date of its enactment into law.
    - Both bills authorize a continuation of the current USITC led process for two more cycles.
    - Main difference is that the House bill contains a provision that limits the ability to request a duty suspension on a "finished" goods in the future. There is no clear definition of what a finished good might be. If this provision survives the conference, clearly, an imported material that is packaged and labelled for retail sale would be considered a finished good. Whether an imported tote of a formulated pesticide that needs to be packaged and labelled in the U.S. would be considered a finished good is likely going to be subject to interpretation by the USITC.

- GSP (Generalized System of Preferences):
  - Both bills include reauthorization of this program, with retroactivity back to when it lapsed. The House bill has tougher environmental and labor provisions than the Senate version.
  - There is no direct reference to India's ability to regain this benefit in either bill. But clearly, if GSP is reauthorized, Ambassador Tai would have the ability to allow India to return to this program in some manner, likely without any retroactivity. This action could be part of the package that is being negotiated with India to settle various points of friction in the trading relationship between the U.S. and India.
- China 301 tariff exceptions:
  - The Senate bill requires USTR to reopen the portal to accept requests for exceptions. Despite the fact that a group of 41 bipartisan Senators sent a letter to USTR supporting this process, the House bill is silent on this action.
  - The House position is bolstered by the fact that during his recent news conference, President Biden noted that he was not yet ready to consider changes in the China surtax situation.
- There are numerous other provisions in these two competing pieces of legislation that need to be worked out. It needs to be noted that there was only one republican vote for the House bill, so it passed with a very slim majority. It is unlikely that the House version could pass the Senate without amendment, which forces the need for a conference committee. It will be at least a few more weeks before we have a firm idea where this is all headed. Once (when?) a compromise is reached, both Houses will need to vote again. It is likely that the House would need to move first because of the revenue provisions that are part of this legislation.
- If this process does not produce a result, the only remaining hope to enact GSP and MTB would be in the "lame duck" congressional session that is customarily held after the election in November and December.

- As you will recall, USTR did re-open the exceptions window for items that were subject to an exclusion through December 31, 2021. The only agrochemical that was on the list was Paraquat. Paraquat was granted a new exception that runs from October 14, 2021 through December 31, 2022. Any surtaxes paid since this date will be refunded.

U.S./China trade relationship: It is important to repeat the following:

- 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.

- 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:

- **IPEF – Indo-Pacific Economic Framework:** The Biden Administration continues to press for mini-deals with several important trading partners in this region. Ambassador Tai is expected to visit this region again shortly to press for progress. There appears to be broad agreement in support for this activity. Since they do not have Trade Promotion Authority, there are significant limits on what can be accomplished. It will not include market access provisions, but likely could include renewed/revised rules on digital trade, labor and environmental provisions, a focus on easing supply chains, as well as competition issues which likely would include close scrutiny of the impact of SOEs (State Owned Enterprises) on trade and investment.

- **U.S. – EU:** The Administration continues to look for ways to cooperate with the EU on trade issues. This will likely include a stronger focus on trade and investment concerns including State Owned Enterprises (SOEs), digital trade, labor, environment, and global warming.

  Syngenta, the largest agrochemical company in the world, is an SOE. These actions will likely impede Syngenta's ability to continue to acquire organizations outside of China, especially such investments that involve biotechnology, since an acquisition of a US biotech company would be an automatic triggering of the CFIUS process (Committee on Foreign Investment in the US).

- **India**: USTR is again in negotiation with India that could lead a further opening of their economy to imports. If an agreement is reached, it may include renewal of GSP benefits assuming that this program is re-instituted.

- **Taiwan**: USTR continues to engage with Taiwan on an investment deal. This is a flash point for China. Taiwan has also asked to join the CPTPP.

- **Kenya:** It appears as if the Administration is preparing to re-engage with Kenya on some sort of a trade agreement. However, lacking TPA, it is unlikely that any such deal could include a market access component. In the case of Kenya, this may not be an obstacle for them since they already enjoy the benefits of AGOA (African Growth and Opportunities Act) which gives them duty free access to a large portion of the U.S. Tariff schedule.

- **Syngenta IPO**: No news to date.

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

Notes:

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

Below, please find value information for the month of February as well as annual totals for four years.

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

February 2022 details are as follows (000):

	2/2019	2/2020	2/2021	2/2022
3808.91 – insecticides	$34,194	$35,509	$34,795	$40,264
3808.92 – fungicides	$22,868	$42,191	$55,077	$72,608
3808.93 – herbicides	$61,267	$54,006	$46,366	$88,035

Annual totals for the period (000) are shown below:

	2018	2019	2020	2021
3808.91 – insecticides	$441,906	$302,276	$296,800	$428,038
3808.92 – fungicides	$405,162	$299,509	$412,968	$677,835
3808.93 – herbicides	$652,532	$417,473	$443,761	$543,863

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

Very truly yours,

Jim

V.M. (Jim) DeLisi

VMJD: me