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March Agchem Notes

Please accept our apology for the fact that these reports are a few days late. Jim had some minor surgery that delayed the release of this information.

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 been corrected, and while we thought that this issue would not have an impact on the statistical accuracy of this edition since the traditional HTS numbers were still in effect until January 27, 2022. This turned out to be incorrect as somehow all of the statistics for both Glyphosate and Glufosinate were combined into a big basket – 2931.59.00.00. This number did not exist during this time period. Therefore, please be careful relying on census details for these products. Hopefully, it will all be sorted out when February details are released.

While there was about 3 weeks of unbelievable confusion and panic, as a result of these corrections, 2931.49.00 which includes PMIDA, Glyphosate and Glufosinate was returned to where it was intended to be on the 301 surcharge list – tranche 4B - which was suspended before it was set to go in effect. If you are an importer from China of any of these materials, and your customs house broker is claiming that you still need to pay the 25% surtax, please let us know. We will respond back by providing all of the details directly out of the tariff schedules to show that such a payment is not necessary.

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 February 2022 imports.

Imports of Glyphosate, as acid, for September, October, November, December, January and February for the last 5 years are at least as much as shown below:

21-22	20-21	19-20	18-19

February 22	9,290 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	7,000 MT	5,200 MT	3,800 MT	8,900 MT
November	9,800 MT	4,700 MT	8,000 MT	6,000 MT
October	8,800 MT	3,200 MT	8,000 MT	8,100 MT
September	10,700 MT	4,000 MT	4,700 MT	8,600 MT
Totals	54,450 MT	25,071 MT	35,086 MT	30,935 MT

Now that the Olympic Games have ended, it will be fascinating to see how big an impact they had on the supply of Glyphosate as well as other pesticides where China plays an important role in the global supply chain.

From some of the discussions I'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 presents the world with a very difficult situation. From an Agricultural chemical perspective, there are a couple of important considerations:

- Both of these countries are significant exporters of wheat. It is unknown at this time to what extent this conflict impact international trade in these materials. The futures market suggests that it will have a significant impact.
- Clearly, Russian farmers are going to have a difficult time purchasing inputs.
- Except for modest quantities of copper sulfate from Russia, it does not appear that any other Agrochemicals are imported into the USA from either of these countries.
- Both the 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.
- Canada has already removed most favored nations treatment for imports from Russia, it is likely that other countries, including the USA will take this same action. If this provision is included, it would likely make it impossible to import anything from Russia into the USA as they would be subject to column 3 rates of duty which are very high.
- It now clear that Russian energy products will face international embargoes similar to the one put into place by the Biden Administration.
- It will be very interesting to see how the Government of China navigates through these difficult waters.

Attached, please find am excel spreadsheet "imports from Russia chapters 28, 29, 30, 31 & 38 if you wish to see if anything of interest to your company is potentially impacted.

General Update

The administration has doubled down on its commitment that trade policy will be based on equity, inclusion and helping under-served communities.

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 actions 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. You can be assured that there will be thousands of comments which will help slow down any decision making,

Since there has been little movement on the items listed below, much of what follows is a repeat from last month.

MTB (duty suspensions), GSP (Generalized System of Preferences) & 301 Exceptions: We have repeatedly reported that there were only two potential scenarios for successful passage of these programs. It looks like the first option, which was preferred, may actually happen. This possibility was enhanced by the fact that President Biden asked that this legislation be passed during his State of the Union Address to both Houses of Congress.

- 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. In each instance, the bills are well in excess of 2,500 pages in length. There are substantial differences in these bills that will require at least a few weeks to work out in a House/Senate conference committee. As of this date, the members of this committee have not yet been announced. The individuals picked to serve on this panel will be an important indicator of its likely direction.

  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 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.

- 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. So far, there has been no announcement of a decision on Paraquat or anything else that was on the list of 549 products. We will keep you posted if this situation changes.

U.S./China trade relationship:

Clearly, the trading relationship between the U.S. and China did not "cool off" in 2021, in fact it may have gotten more contentious. Some of the fall-out over the Olympic Games, especially the apparent tightening of the relationship between China and Russia, makes it less likely that a "big compromise" could be reached. There remains big bipartisan support for being "tough on China" as evidenced by the competing House and Senate bills discussed above. With all of this congressional pressure, the Biden Administration will avoid the appearance that it "caved" on its China policy.

In addition, the reports that China missed its purchase commitments under the phase one deal by 40% adds fuel to the fire. Therefore, 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:

- **<u>IPEF – Indo-Pacific Economic Framework</u>:** The Biden Administration continues to press for mini-deals with several important trading partners in this region. 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).

- **CPTPP – Comprehensive and Progressive Agreement for Trans-Pacific Trade**: This agreement, previously known as TPP could be a game changer for trade in the region, especially since China has now asked to join. While it is highly doubtful that this will occur, there will be significant tension in the region because of their desire to join. While the US was a founding partner under President Obama in the formation of this agreement, as one of his first official acts President Trump pulled us out. In either event, it is highly unlikely that this treaty would have been approved by Congress. However, the remaining countries plowed ahead and completed the deal. Included, among others, is Japan, Canada, Mexico, and Australia. The US has been very forceful in stating that China should not be allowed to join. The US has additional leverage in this action since there is a 6-month cancellation clause in USMCA that could be triggered if either Mexico or Canada agree to a trade deal that includes a non-market economy. Should the US wish to consider joining, there are significant changes that likely would be necessary in the existing agreement to make it palatable to Congress.

- **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 is likely to 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. See below on TPA, since without its provisions, 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.

- **Trade Promotion Authority**: Trade promotion authority is an important tool if the US wishes to be taken seriously as a true negotiating partner on the international stage. However, there is no indication that the Administration will ask Congress to pass this authority. It is important since it outlines Congressional intent for future FTAs, and then allows the Administration, once such an agreement is completed, to present it to

Congress for an up or down vote, no amendments are allowed. Without such authority, the US has 535 trade negotiators.

There are significant limits to Presidential authority in international trade negotiations. This was clearly evidenced in the "mini deals" that the Trump Administration signed with Brazil and most importantly Japan, were they pushed the limits of these powers. If the US wishes to do a "deal of substance" with Taiwan, India, Japan, Brazil, UK, Kenya, consider joining CTPTT, open negotiations with a group of African countries, or anyone else, it truly needs these provisions to be enacted into law before any such discussions begin.

- **<u>WTO</u>**: While a new Director General has been agreed, the Appellate panel has still not been re-constituted. There are several important cases waiting for this to occur, including a US request to overturn the fact that the WTO ruled that the China Surtaxes are a violation of the US's agreement with the WTO. While this process, once it starts, could be stretched out for a decade, a "win" for China upon appeal could be a significant game changer.

- **<u>China Surtax Lawsuit</u>**: This action will continue to weave its way thought the court system. 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 US Supreme Court if necessary.

- **<u>Syngenta IPO</u>**: Though this was expected to occur during the fourth quarter of 2021, there has not been any further public announcements on the timing of this initiative. As previously noted, the Biden Administration revamped the Trump Administration's actions concerning Syngenta's parent organizations, therefore neither Sinochem nor ChemChina, or their parent organization SASAC – State-Owned Asset Supervision and Administration Commission - are subject to trading or investment restrictions in the US.

  Therefore, it would appear that if they wanted to float all or part of the upcoming Syngenta IPO in the US or if a US based company or person wished to invest in the IPO, they would be free to do so under this Executive Order.

  It needs to be noted that since they are planning to float significantly less than a controlling interest in Syngenta, it would still be subject to the rules and regulations that many of the world's leading economies apply to a State-Owned Company.

<u>General observation:</u> We noted a significant up-tick in activity in March, 2021. The number of "lines" added to this report was significantly larger than the previous months. January represents another "big" month of imports. The update version of the "Index" which includes import details for all formulated Agrochemical imports in 3808.91, 3808.92 and 3808.93 for December is attached.

Below, please find value information for the month of January 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

January 2022 details are as follows (000): We are very concerned over the statistics for January imports of fungicides. We will do some digging over the next week or so to see if there is any way to find the error.

	1/2019	1/2020	1/2021	1/2022
3808.91 – insecticides	$32,328	$31,941	$28,524	$79,241
3808.92 – fungicides	$22,649	$38,713	$35,566	$4,556
3808.93 – herbicides	$25,883	$45,071	$43,265	$79,242

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