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Happy New Year!
Trust 2021 will be much better than 2020!

January Notes

General Update

This letter was written on January 13, 2020. What follows, is our expectations on how the incoming Biden Administration will handle issues related to international trade in agrochemicals. If this changes, we will immediately re-issue this report.

- Since the Democrats won both of the Georgia Senate races, they will therefore have operational control of both branches of Government on January 20, 2021. This will likely simplify and quicken the pace for the confirmation of new senior members of the incoming administration. As a "government geek", I hope that Senators McConnell and Schumer adopt the same power sharing model that was used by Senators Daschle and Lott the last time that the Senate was split 50/50.

- One of the key positions that can have an enormous impact on US Trade Policy is the USTR (United States Trade Representative) nominee. Katherine Tai, currently General Counsel for the House Ways and Means Committee, has been selected for this position. She is the first woman of Asian descent to hold this office. Borne in the U.S. to Taiwanese parents, she speaks Mandarin fluently and is a graduate of Yale and Harvard Law School. She is known to be a "China hawk". Her nomination has been widely supported by both sides of the isle. It will be interested to see how China responds to a USTR with this background.

- China Trade Issues: President-elect Biden ran on a platform that strongly supports reshoring and strengthening U.S. manufacturing. He included many bullet points that suggest that he will also have a strong adversarial relationship with China. The key difference with President Trump is he appears to prefer to work with our allies more closely rather than as he says "Trump's go it alone policies". There is clearly disappointment in the fact that the EU has come to a preliminary agreement with China on a new investment treaty. They had hoped that this would wait for the new administration so that the U.S. and EU could have cooperated on this pact.

- "301 Tariffs": At this point in time, it appears likely that they will remain in place until the new administration has an opportunity to carefully review the entire situation. It is likely that this process will take at least 6 months. This is a very complicated issue since unilaterally abandoning the tariffs would also nullify the phase one agreement, which includes significant purchase commitments by the Chinese Government. While it appears that they will not meet their commitments for 2020, the U.S. is likely much better off with these commitments being in place for 2021. Therefore, you should place incoming imports that are simply going into inventory of China Surtax-able items into a bonded warehouse, unless they are due to be processed or sold onward shortly after they arrive. 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.

- WTO: If new Administration follows through with a more "internationalist approach, it is likely that the WTO Appellate Body will be re-constituted shortly after they take office. This would have an impact on both of the issues discussed below.
    - Several months ago, China was successful in its claim that the 301 tariffs imposed by the U.S. violate our agreement with the WTO. The U.S. has appealed the decision. The practical effect of this win is nil, since it will be immediately appealed by the U.S. within the WTO. However, the appellate body of the WTO lacks a quorum so cannot meet.
    - There is also a WTO challenge to Presidents Trump's farm subsidies. It is likely that over time this effort will also result in the WTO ruling that these policies are a violation of our agreement with the WTO. As in the above issue, the actual impact of such actions will be nil until the appeals panel is put back into place.
    - It is also likely that the new administration will settle the current stalemate over the appointment of a new WTO Director General.

- China Surtax Lawsuit: As you likely saw, there are several law firms trolling for Clients to support a suit at the U.S. Court of International Trade to show that the much of the 301 effort was improperly imposed by the U.S. Government. However, this suit, even if successful in this venue, is appealable all the way to the U.S. Supreme Court. Therefore, if they are successful, the "pay-off" is likely years' away. Also, it is hard to imagine that if they are successful, that it would not become a class action suit so that anyone that paid these levies, would be eligible for a refund. I understand that literally thousands of companies have signed on to this effort. As the new Administration would now be responsible for defending this suit, it is now harder to predict how it will end. It would be expected that they would defend the suit avoid refunding all of the tariffs previously paid.

- On August 28, 2020, both ChemChina and Sinochem were added to a list kept by the U.S. Department of Defense of entities that are deemed to be "Communist Chinese military companies". While there is no immediate impact to this listing, it could eventually have a significant impact on Syngenta and Adama's ability to operate freely in the U.S. It is unknown how the new administration will work with this listing. However, if the "saber rattling" over Taiwan intensifies, as well as the claims of "forced labor" being used by state owned enterprises, this is one of the areas where the U.S. could put pressure on the Chinese Government without firing any bullets. The proposed EU/China agreement on investments has a section on State Owned Enterprises. This could put additional international pressure on Syngenta to be divested, sooner rather than later.

- **Trans Pacific Partnership**: The then Vice President was a proponent of this agreement which did come into effect, without the U.S. Even though much of the Democratic caucus will be opposed, I would expect him to try to re-engage in these discussions as a way to foster an international approach against China. It is highly unlikely that this could occur for quite some time since significant renegotiation would likely be required to update the rules of origin, as well as the labor and environmental provisions to get it up to USMCA standards. This could get a higher priority since a group of Asia countries have agreed to a new trade deal. China and Japan are participants. While it is not said to be nearly as robust as US Trade agreements, it could add impetus to the US to re-engaging in the Trans Pacific Partnership which currently does not include China.

  One other idea that has been floated is to invite additional countries to join the USMCA agreement. This agreement received wide support in Congress since it includes strong rules of origin, as well strong labor and environmental provisions.

- **Duty Suspension update**: Ways & Means Committee has now posted draft legislation. However, it needs some minor changes and adjustments to satisfy various Congressional Member demands. It was hope that this legislation would be included in the omnibus spending package that was passed a couple of weeks ago. As previously noted, all of the current duty suspensions/reductions expire on 12/31/2020. There will be tremendous pressure, led by NAM (National Association of Manufacturers) on the new Congress to pass this legislation as soon as possible. Traditionally, there have not been provisions for retroactivity for this program. You are urged to plan accordingly.

Trade war with China: The only agrochemical in tranche 3 to remain exempted was Paraquat which expired on December 31, 2020. There was enormous pressure on the Trump administration to re-institute an exceptions procedure that was much more transparent and equitable. I would anticipate that the new administration will institute such a procedure relatively quickly.

Surprisingly, there are no changes from last month in any of the other issues surrounding China surtaxes. While the rhetoric from the leaders of both the USA and China continues to be very heated, it appears that “the guy’s in the trenches” are proceeding to try to make the phase one agreement work! Therefore, the following US tariffs against Chinese imports, impacting chemicals remain in place:

- Tranche 3: 25%. This rate was scheduled to be increased on 10/15 to 30%. That increase remains on hold at this time. The time period for requesting exclusion has elapsed. USTR is currently reviewing all of the requests that were made. According to the terms of the phase one agreement with China, it is likely that these tariffs will be in place at least until a phase 2 agreement can reached. This will likely take at least 6 – 8 months, maybe longer. Please plan accordingly.
- Tranche 4a: On September 1, 2019, tariffs of 15% were imposed for products on this list. Exception requests window is open until 1/31/2020. The 15% tariff for products in this tranche were cut to 7.5% on February 14, 2020. Please plan accordingly.
- Tranche 4b: On December 15, 2019, tariffs of 15% were scheduled to kick-in. As you know, these tariffs were held in obeyance because of the agreement on a phase one deal. However, if there is any break-down in this agreement, it is likely that these tariffs will be imposed on very short notice. Please plan accordingly.

If you don't already have it, please ask for the list we prepared detailing our best efforts to sort out how this impacts individual Agrochemicals.

US/UK Free Trade Agreement: Continued to be on a fast-track. Clearly, in this instance, there were two "gorillas in the room", the change in the U.S. Administration and the approaching deadline for the UK to make a permanent deal with the EU. Now that the UK has a deal with the EU, that issue is as resolved as it can be.

As the U.S./UK deal is said to be almost completed, it will be very interesting to see if the Biden Administration chooses to finalize the deal or put it on the shelf for a while. In order for any such deal to have a chance for enactment, it needs to be considered under "Trade Promotion Authority" which expires in July. It is said to be unlikely that this program will be extended. Therefore, if they do decide that competing this deal is a priority, the new Administration will need to quickly state their goals and priorities, while ordering USTR staff to continue their engagement with their UK counterparts.

Also of note – it is now clear that the UK has established its own version of REACh. It is likely that the "pre-registration" phase could end as early as October 2021. It is import to understand that a significant portion of the data that has been created to support this program in the EU is only usable for EU REACh. Therefore, a UK REACh program could present significant unexpected costs for those doing business in the UK, even if you already have a registration in the EU.

You can also expect that the UK will establish their own fully independent method of regulating agrochemicals and seeds. Interestingly, how the UK handles biotech is on the agenda for the U.S./UK FTA talks.

Please let me know if you are interested in any particular chapters that will become part of this agreement. If you like USMCA, you will likely also like this agreement.

US/Kenya Free Trade Agreement: It is expected that the incoming Biden Administration will put this agreement on the shelf for an ill-defined period of time until they have had a chance to enunciate a new trade policy.

GSP: The entire GSP program expired at the end of 2020. Democrats are looking for significant changes to address labor and environmental issues which are currently not part of the GSP program. Since it was not renewed, this program has lapsed. In the past, when this program lapsed, upon reinstated retroactive refunds were easily obtained, especially if the import declarations were properly coded to show GSP status. Please plan accordingly.

It also needs to be noted that USTR pulled about one third of Thailand's GSP benefits, effective April 25, 2021 because of issues surrounding worker's rights. Upon request, we can provide a list of the items that were pulled from this program.

US/Japan Stage 2 free trade agreement: It is expected that the incoming Biden Administration will put this agreement on the shelf for an ill-defined period of time until they have had a chance to enunciate a new trade policy.

USMCA: It came into force on July 1, 2020. NAFTA is now sunsetted. There are significant changes in the rules of Origin that will likely have a positive impact on the business of chemistry, especially for Mexico's exports to the USA.

Since this is a treaty, it cannot be altered by a change in Administrations. However, Congress did "fix" the implementing language so that it now maintains NAFTA provisions on how Free Trade Zones are treated. This change reflects the initial intention. Therefore, it will only be possible to ship materials to Mexico or Canada, produced in a Free Trade Zone, to first export them into the territory of the U.S.

Upon request, we'd be pleased to share further details on how this agreement will impact the agrochemical industry.

General observation: November showed some improvements over the same month in previous years. However, the outlook for the agrochemical industry, on a year-to-date basis continues to face a very cloudy outlook, except for Fungicides.

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

November details are as follows (000):

	11/2018	11/2019	11/2020
3808.91 – insecticides	$32,328	$15,432	$18,746
3808.92 – fungicides	$29,108	$26,620	$38,332
3808.93 – herbicides	$44,260	$22,658	$31,024

Year-to-date Details (000):

	2018	2019	2020
3808.91 – insecticides	$394,927	$262,300	$272,444
3808.92 – fungicides	$370,462	$268,261	$381,239 #
3808.93 – herbicides	$586,303	$277,733	$399,885

Reduced by $10,000,000 as noted in the March report.

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

Very truly yours,

Jim

V.M. (Jim) DeLisi

VMJD: me