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May AgChem Notes

Hope to see you at the CPDA convention in Nashville in the middle of May!

New Entries:

- ADAMA imported from Colombia a product known as Qualipro 2D ® which is said to be a mixture of Triclopyr and Clopyralid.

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 April for the last 4 years are at least as much as shown below:

	21-22	20-21	19-20	18-19
April 22	16,293 MT	8,067 MT	5,584 MT	3,241 MT
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	82,829 MT	40,440 MT	43,597 MT	40,832 MT

Clearly, if the BCS plant in Lulling is not totally crippled, there has to be a significant inventory bubble in Glyphosate!

Ukraine/Russia

The war in the Ukraine continues to present the world with a very difficult situation. There is no current update on this tragedy at this time.

General Update

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 Administration published a Federal Register Notice on May 3, 2022, requesting comments from those impacted by these tariffs. This input will determine how they proceed. It could easily be imagined that all or some of these tariffs (those that impact the price of consumer goods?) could be abruptly sunsetted to fight inflation, as some senior officials, including the Treasury Secretary have suggested. Clearly, while the list 1 & 2 tariffs are nearing the 4-year deadline for comments, list 3 and 4a are not there yet, but they are included in this federal register notice.

China has not yet incentivized the U.S. to remove the surtaxes.

However, it is hard to imagine that these same officials want to see a headline, above the fold, in every major newspaper around the world, that reads “Biden Administration caves to China”!

Hopefully, over the next couple of weeks, we will begin to understand where all of this is headed. In the meantime, the only way to protect yourself from holding expensive, surtax paid inventory is to store materials in a bonded warehouse until they are needed for sale or production.

China Surtax Lawsuit: Even if they sunset the tariffs, this lawsuit does not “go away” until there is some sort of a settlement on previously paid surtaxes. As you will recall from last month, the Court of International Trade produced a split decision, partially in favor of USTR and partially in favor of the plaintiffs. USTR has until the end of June to respond to the court with requested details. Clearly, a petition to sunset would have an impact on such a response, so this needs to be handled very carefully.

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, to avoid the need to pay refunds.

MTB (duty suspensions), GSP (Generalized System of Preferences) & 301 Exceptions – no progress: These initiatives remain bundled into “the China Chips Acts”. Congress has now formed a conference committee that includes more than 100 Members. It is hard to believe that a committee of this size can effectively accomplish anything! While there is general agreement on language for the MTB as well as renewal of GSP, there is no agreement on pressing to re-open the China exclusions portal. The Administration has directly asked the Democrats in the Senate to drop any language forcing the re-opening of the China surtax exceptions procedures. The Senate Republicans continue to push hard for inclusion of this provision.

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/or December.

U.S./China Trade relationship: It is important to repeat the following, especially because USTR is in process of reviewing this entire subject.

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 U.S. 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. USTR has publicly stated that Taiwan may be part of the IPEF further described above.
- **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. The updated “Index” is attached.

Below, please find value information for the month of March 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

March 2022 details are as follows (000):

	3/2019	3/2020	3/2021	3/2022
3808.91 – insecticides	\$43,812	\$33,859	\$59,832	\$43,186
3808.92 – fungicides	\$29,714	\$52,000	\$71,180	\$80,919
3808.93 – herbicides	\$82,892	\$67,094	\$65,538	\$105,116

First quarter totals for the period (000) are shown below:

	2019	2020	2021	2022
3808.91 – insecticides	\$103,889	\$101,309	\$123,151	\$121,996
3808.92 – fungicides	\$75,231	\$133,129	\$161,843	\$229,959
3808.93 – herbicides	\$189,340	\$166,170	\$155,170	\$272,396

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

Very truly yours,

Jim

V.M. (Jim) DeLisi

VMJD: me