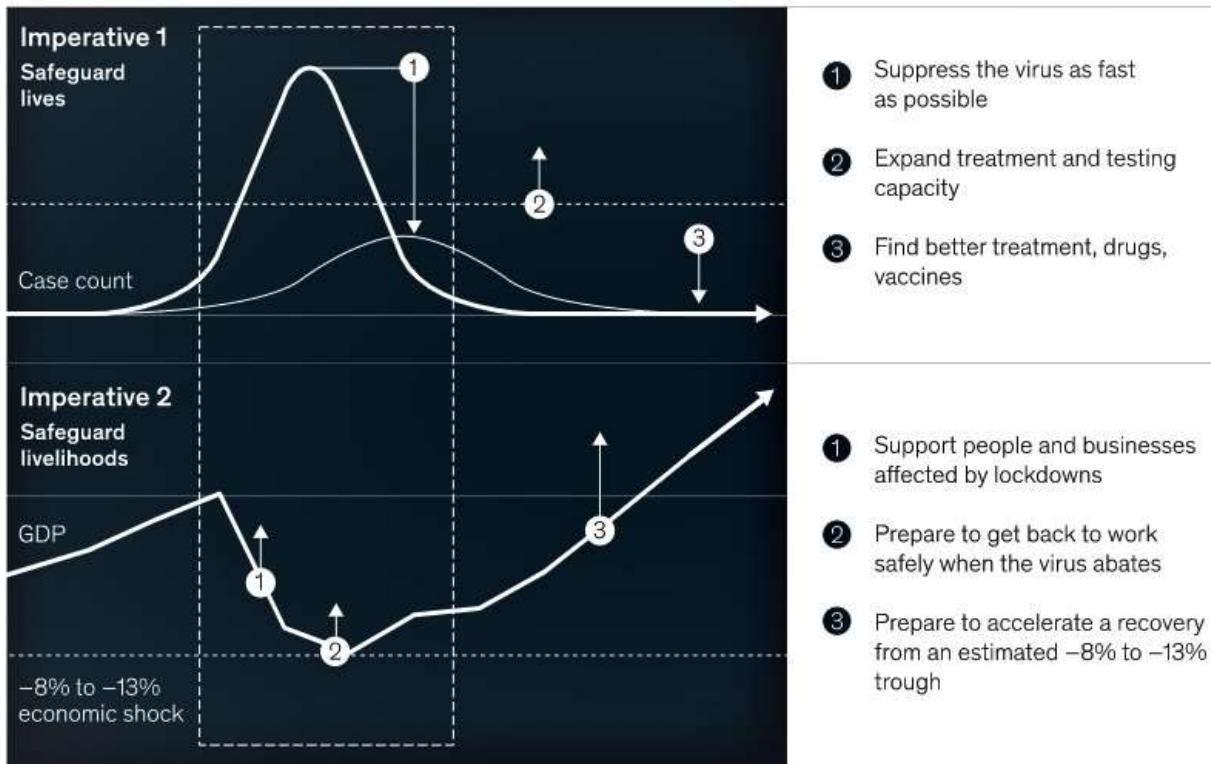


Outreach

April 21, 2020

Thank you for your membership in and work with NAEGA

Image of the Week:
How to Protect Lives & Livelihoods During COVID-19 – April 20, 2020



Source: *McKinsey & Company*: <https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/safeguarding-our-lives-and-our-livelihoods-the-imperative-of-our-time>

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- Impact of U.S. Sanctions Compliance
- Policy Teams

Recent Actions:

Advancing Virtual Communication

We continue to increase use of new tools to provide for improved communication. One key tool is the Microsoft Teams platform for virtual meetings. NAEWA Committee meetings will be taking place via Teams and we are encouraging members to [review this 5-minute video tutorial](#) that provides an introduction to using Microsoft Teams for virtual meetings.

COVID-19 Response

The Global Pandemic continues to be the priority for Association action. In the March 23, 2020 edition of Outreach we described NAEWA's message on the war against COVID-19 and our information sharing plans related to COVID 19 response and mitigation. We greatly appreciate your advice and information. The Contracts Committee has taken under consideration how to improve and enhance this effort. Your advice and comment are welcome.

Recent related actions include:

NAEWA staff and senior advisors are responding to numerous inquiries related to contract practices in reference to the COVID-19 Pandemic. In comments related to contracts, there are several clauses in the NAEWA 2 Contract that need to be understood, most prominent are Clause 20 and 21, both of which require NAEWA certification. Clauses 7, 15, 17, 18 and 26 should also be reviewed. Key points we are making include that:

Clause 20 places obligations on the Seller to notify and has specific language when providing for a **suspension or the sellers obligation to load** resulting from either a delay or

prevention delivery at the port, elevator, or elsewhere and/or if the forwarding of the commodity is prevented as result of one or a combination of three conditions:

- Riots, strikes, lockouts, interruptions in or stoppages of the normal course of labor,
- Embargoes or exceptional impediments to transportation.
- Action by Federal, State or local government or authority.

Epidemics, pandemics, viruses, illness, diseases are not specified, however for example a seller might find it appropriate to invoke clause 20 if labor is stopped or government action is taken as a result of COVID 19.

Clause 21 also requires Seller notification but results in **contract cancellation** if and when NAECA certifies to a “prohibition of export, blockade or hostilities or in case of any executive or legislative act done by or on behalf of the government of the country of origin or of the territory where the ports of loading are situated, restricting export, whether partially or otherwise.” Again, no mention of epidemic or pandemic, but a government action that restricts exports could apply.

Clauses 20 and 21 have been used to explain the relationship the NAECA 2 has to two principles of common law for contracts. Both principles are only valid if the event is unforeseeable. First is the treatise Restatement (Second) of Contracts - Section 261 of the Uniform Commercial Code (UCC) in U.S. law which has been applied if, after a contract is made, a party's performance is made impracticable without his fault by an occurrence of an event unforeseen when the contract was made. Section 261 does not explicitly define the scope of what is considered impracticable which is where the NAECA clause comes into play and ultimately arbitration to settle any disputes. The second is section 2-615 of the UCC the so called “Doctrine of Impracticability” which also deals with impracticability but in the context of the sale of goods under NY law. Contingencies such as embargoes, government actions and supply impediments, certainly a quarantine preventing delivery, may be causes of impracticability.

The NAECA & the National Grain & Feed Association (NGFA) provided a document on “Information for Official Inspection and Weighing Service Providers on Workplace Safety” Use of this information, like all of the extensive information we are sharing, is optional and will vary based upon the level of communication already occurring between facility management and Official personnel. The document [can be found here](#).

NGFA updated its webpage to provide employers and workers with current information on COVID- 19, including links to important material on the CDC and OSHA webpages regarding the use of PPE - ngfa.org/covid-19.

The International Grain Trade Coalition (IGTC) is providing intelligence on developments in trade and supply chains around the world related to COVID-19. IGTC has provided updates from industry and governments, including: Argentina, Australia, Bangladesh, Brazil, the East African Grain Council, Egypt, El Salvador, the EU, India, the International Grains Council, Iraq, Kazakhstan, Madagascar, Mexico, Myanmar, Nigeria, Philippines, Russia, Ukraine, United States, Vietnam and more.

IGTC is convening weekly MS Teams meeting to facilitate information. The next scheduled meeting is on Thursday, April 23, 2020 during which guest participants from India and the United Nations Food and Agriculture Organization (FAO). FAO will address the latest information about its activities to support food security in developing countries amid the Covid-19 pandemic and a representative from Yes Bank in India will discuss the “Citizen Assistance and Relief in Emergency Situations Fund” (PM CARES Fund) and provide an update on agri business and the food distribution chain in India.

If you would like more details on IGTC’s reporting, please contact NAEWA staff.

Ongoing our thoughts are with everyone affected by the coronavirus outbreak, particularly those on the front lines helping to battle this disease and ensure agricultural products continue to move to markets around the world. We continue to monitor the impact of the pandemic on our industry and are updating entities who value and bear the risk for transboundary movements of grain, oilseeds and other agri-bulks with relevant information as it becomes available.

We have implemented a new and temporary policy in light of COVID-19 to minimize the contagion and support public health. We have a robust telework system and while we are often working remotely, we are prepared to help through these extraordinary times. Thank you for your understanding and use of email to contact us. We know you share our hope that we can get back to more normal operations soon.

GOMAI

The week of April 13, 2020 we contracted with a food and agriculture consulting firm, Agralytica, to help create the 13th Edition of the Grain & Oilseed Market Access Indexes (GOMAI). The GOMAI is a collaborative effort between NAEWA and the U.S. Soybean Export Council (USSEC) to document and quantify tariff and non-tariff barriers to U.S. grain and oilseed products in international markets. We use this information and analysis to draft comments, set advocacy strategy and inform thought and decision leaders. These reports are integral to our annual Unified Export Strategy (UES) application for U.S. Department of Agriculture Market Access Program (MAP) funding. MAP funding is used to help offset the cost of NAEWA programming, including international travel, and other projects that advance our UES objectives of “improving market access, trade facilitation and stakeholder best practices education for grains, oilseeds and their primary products.” Over the next two weeks, we will be seeking member input on non-tariff barriers to trade that we will provide to Agralytica to help produce the report and analysis. The 12th Edition of the GOMAI, produced in 2019, [can be found here](#).

International Programs - Trip Report

A trip report for recent travel using NAEWA Market Access Program funding to London, UK is now available. From March 4-5, 2020, Katy Lee, Secretariat of the International Grain Trade Coalition (IGTC), traveled to London to attend and participated in the International Grains Council (IGC) Market Conditions Committee (MCC). The meeting March 5 MCC meeting brought together government representatives from Algeria, Australia, Brazil, Canada, Côte d’Ivoire, EU, France, Iraq, Japan, Russian Federation, Spain, United Kingdom and Ukraine and IGTC reported its activities to the IGC MCC. The full report [can be found here](#).

News

U.S. - China Phase One

We continue to monitor developments in the implementation of the U.S.-China Phase One trade agreement. There has been an increase in negative rhetoric between the U.S. and China in regards to the COVID-19 outbreak but official from both governments continue to highlight implementation of Phase One.

The U.S. Department of Agriculture (USDA) reported that China has ordered 12.6 million metric tons of soybeans from the U.S. for the entirety of 2020, which is slightly less than the 12.9 million metric tons China had ordered from U.S. farmers at this time in 2019. In contrast, China ordered a record 11.6 million metric tons of soybeans from Brazil in March. USDA has pointed to an increased in corn sales and the removal of barriers to beef exports as a sign China intends to meet its commitments, but many observers have noted that the only way for China to meet its commitment to buy \$200 billion in U.S. energy and agricultural products this year is through U.S. soybean purchases.

As reported in the March 30, 2020 edition of Outreach, the office of the U.S. Trade Representative is soliciting comments on possible further modifications to the Section 301 China tariffs in an effort “to keep current on developments in our national fight against the coronavirus pandemic.” USTR has now set a deadline of June 25, 2020 for submission, which can be made here

We are providing leadership, advice and coordination across the value chain. **NAEGA Member input remains critical and needed** to identify practices to support a more efficient trade. Please contact us as soon as possible with your advice and questions on practices to support a more efficient trade with China.

Coronavirus Impact on Shipping

The North of England Protecting and Indemnity Association (NEPIA) has set up a resource page of public notices from a number of countries, ports and organizations that have published details of the measures that they are putting in place to deal with COVID-19 that have the potential to impact global shipping. While not an authoritative guide, it can serve as a useful reference guide to the types of measures that are being implemented worldwide. NEPIA’s site can be found here: <https://www.nepia.com/industry-news/coronavirus-outbreak-impact-on-shipping/>.

London Grains Week – Now virtual

London Grains Week will be conducted virtually between June 8-12, 2020. A series of high-level virtual meetings, education sessions and networking opportunities will soon be announced. Virtual information sharing is especially important in these challenging times and London Grains Week will be an important opportunity to meet with colleagues and partners to cover timely issues such as digitalization, enhancing globalization, climate change and trade finance.

OFAC Guidance on Humanitarian Aid during COVID-19

The U.S. Treasury Department’s Office of Foreign Asset Control (OFAC) has issued a fact sheet regarding the “Provision of Humanitarian Assistance and Trade to Combat COVID-19”. highlighting relevant exemptions, exceptions, and authorizations for humanitarian assistance and

trade to countries currently under sanction, including [Iran](#), [Venezuela](#), [North Korea](#), [Syria](#), [Cuba](#), Ukraine & Russia. The factsheet also outlines specific guidance for OFAC-administered sanctions programs related to agricultural goods, personal protective equipment (PPE) and other COVID-19-related humanitarian assistance and trade. The fact sheet [can be found here](#).

Current Opportunities & Actions:

Upcoming NAEGA Committee Meetings

NAEGA Committees are preparing to hold virtual meetings in April. The Arbitration Education Sub-Committee of the Contracts Committee will meet on Wednesday, April 22 at 11:30AM Eastern; the Grades & Inspections Committee will meet on Wednesday, April 22 at 2:00PM Eastern; and the Contracts Committee will hold a call on Thursday, April 23 at 3:00PM Eastern Time. If you are not a member of these Committees and would like information on taking part in these calls or joining a Committee, please contact NAEGA staff (Patrick Hayden, phayden@naega.org Sydnie Sousa, ssousa@naega.org and Gary Martin, gcmartin@naega.org) for assistance.

U.S. ITC Investigation of MRL Impacts on Trade – Update

In 2019 the U.S. International Trade Commission (ITC) began an investigation into the global economic impact of maximum residue level (MRL) policies for pesticides. In response to a request by the Office of the U.S. Trade Representative (USTR), ITC indicated that MRLs, particularly those that are missing or low, can serve as barriers to U.S. agricultural exports.

The ITC will release two reports on the impact pf MRL policies. The first was supposed to be released April 20, 2020, but ITC has announced that due to COVID-19 the date of delivery of the report is now June 30, 2020. The second report is still scheduled for a November 2, 2020 release and submissions for the second report are due June 5, 2020 and paper copies of the submission are no longer required. Both reports will contain information on:

- The role of plant protection products and their MRLs in relation to global production, international trade, and food safety for consumers.
- The approaches taken in setting national and international MRLs for crops - risk-based approach vs. hazard-based approach.
- How MRLs are developed and administered in major markets for U.S. agricultural exports.
- Challenges and concerns faced by exporting countries in meeting importing country MRLs.
- The costs and effects of MRL compliance and non-compliance for producers.
- How missing and low MRLs affect production, exports, farmer income, and prices, both on the national level and, to the extent possible, for small and medium-sized farms.

[The notice from ITC updating their timeline can be found here.](#)

U.S.-Kenya Trade Agreement

The Office of the U.S Trade Representative (USTR) continues to [seek public comments on negotiating objectives for a](#) U.S.-Kenya Trade Agreement. USTR states that the aim of this agreement, is to address both tariff and non-tariff barriers and achieve free, fair, and reciprocal trade. USTR has also stated that a U.S.-Kenya agreement could serve as a model for additional trade agreements with other African countries.

USTR [is seeking input](#) on a number of issues for the purposes of developing objectives for a U.S.-Kenya trade agreement, including:

- General and product-specific negotiating objectives.
 - Relevant barriers to trade in goods and services.
 - Economic costs and benefits to U.S. producers and consumers of the removal or reduction of tariffs and non-tariff barriers.
 - Treatment of specific goods, including product-specific import or export interests or barriers, experience with particular measures that should be addressed, and ways to address export priorities and import sensitivities
- Sanitary and phytosanitary measures and technical barriers to trade

Due to COVID-19, USTR has delayed a public hearing on a U.S-Kenya agreements and has extended the deadline to submit comments from April 15 to April 28. USTR is [Comments can be submitted here](#).

Contracts and Best Practices Seminars – Your advice requested

Virtual as well as in person Contracts and Best Practices Seminars are now being conducted with the direction of the NAEGA Contracts Committee. Please let us know when, how and where you and your colleagues are interested in participating in the NAGA Senior Advisor led seminars. The Committee is now considering in person contract seminars in the following locations:

- St. Louis, MO
- Winnipeg, Manitoba
- Tokyo, Japan

NAEGA seminars are an intensive and informative review of commercial and official practices taught in an interactive environment.

NAEGA conducts both public and private seminars, and curriculum can be tailored to your needs. Please contact NAEGA staff if you are interested in hosting a private, tailored seminar at your office or if you would like to host a Virtual Seminar. [Click here](#) for more information on the in-depth, interactive programs NAEGA conducts!

Ongoing Opportunities & Actions:

Japan Phyto Requirements

In the November 26, 2019 edition of Outreach, NAEGA reported [on a proposal from Japan's Ministry of Agriculture, Farms and Fisheries \(MAFF\)](#) that would enforce the Phytosanitary Certificate Requirement for Certain Agricultural imports, removing an unofficial exemption for grains & oilseeds. NAEGA [submitted comments](#) that proposed that MAFF include grains & oilseeds on the officially exempt list due to industry's strong history of meeting Japan's needs on plant safety and past experience at effective pest risk management across the value chain.

The date for the new requirements to take effect is currently June 1, 2020. NAEGA has received information from USDA's Animal & Plant Health Inspection Service (APHIS) that MAFF has

informed them that they are hoping to publish an amendment to the proposal by the end of April 2020 and that MAFF will provide a “grace period” of 6 months or longer after the expected amendment is published before Phytosanitary Certificate’s will be required. APHIS noted that MAFF has not yet made an official announcement and NAEGA will continue to track this issue as it develops.

Impact of U.S. Sanctions Compliance

NAEGA continues to seek guidance from Member Company personnel about how OFAC and sanctions compliance is impacting the trade and how NAEGA might best engage on this issue to advance member interests. Complying with new sanctions has become a regular part of international trade, and member input is helping us develop an approach that would alleviate industry concerns while ensuring compliance with OFAC regulation. We are thankful for input we have already received and encourage members who are dealing with these issues and have yet to comment to reach out to NAEGA as we begin to develop a plan of action. Members can send comments to Sydnie Sousa at ssousa@naega.org.

Policy Teams

With the evolving global trade environment, we expect many more fast-paced and dramatic developments that could greatly change the terms of trade for NAEGA members. Your involvement is needed!

NAEGA ad hoc policy teams of member personnel working largely through conference calls are helping to guide our multifaceted effort to address the evolving trade environment. A policy team focused on the Asia-Pacific Market is already established. Over the next few months the team will be focused on U.S. trade relations with China, Japan, Korea and the Trans Pacific environment more generally.

Full Details on Upcoming Events can be found in the Meetings & Events Section of the [NAEGA Member's Only Page](#).

Calendar & Member Notices:

Click [here](#) for a copy of the IGTC Calendar

2020

Events that have been cancelled, postponed or changed to virtual events due to COVID-19 are italicized

May

1 - Deadline for U.S.-Japan to begin trade Talks

25-26 - Organization for Economic Cooperation and Development Annual Meeting – Paris, France – Now taking place via videoconference

28 – 2020 U.S. Coast Guard Alternate Security Program Workshop – Washington, DC – Cancelled

June

8 – Global Low-Level Initiative Meeting – Indonesia - Postponed
8-12 – International Grains Week – London, UK – Now taking place virtually
8-11 –World Trade Organization 12th Ministerial Conference – Kazakhstan - Cancelled
9-10 – IGC Grains Conference – London, UK – Now taking place via videoconference
27-28 – Asia Pacific Economic Cooperation (APEC) Trade Ministers Meeting – Malaysia -
Moved from April
10-12 – G-7 Meeting - Camp David, MD – Now taking place via videoconference

September

15-30 –75th annual United Nations General Assembly - New York, NY
23-24 - World Agri-Tech Innovation Summit – Sao Paul, Brazil

October

TBD - DBTG Operational & Technical Conference – Rotterdam, The Netherlands – Postponed from April 2020
5 – G-20 Meeting in Riyadh, Saudi Arabia
TBD – Convention on biological diversity (CBD) COP 15– Kunming, China
TBD – China World Grain Forum

November

2-6 – IGTC General Assembly – Singapore - Working with several others IGTC is planning for a series of meetings in Singapore 2 – 6 November 2020.
3 - U.S. Presidential Election
12 - APEC in Kuala Lumpur, Malaysia.
21-22 – G-20 Annual Summit in Riyadh, Saudi Arabia.
TBD – NAEWA Contracts & Best Practices Seminar – Tokyo, Japan

December

TBD – International Grains Council’s 52nd Session – London, UK

2021

March

14-16 – NGFA Annual Convention – San Diego, CA

2022

December

TBD – COP 16 – CBD – Turkey

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