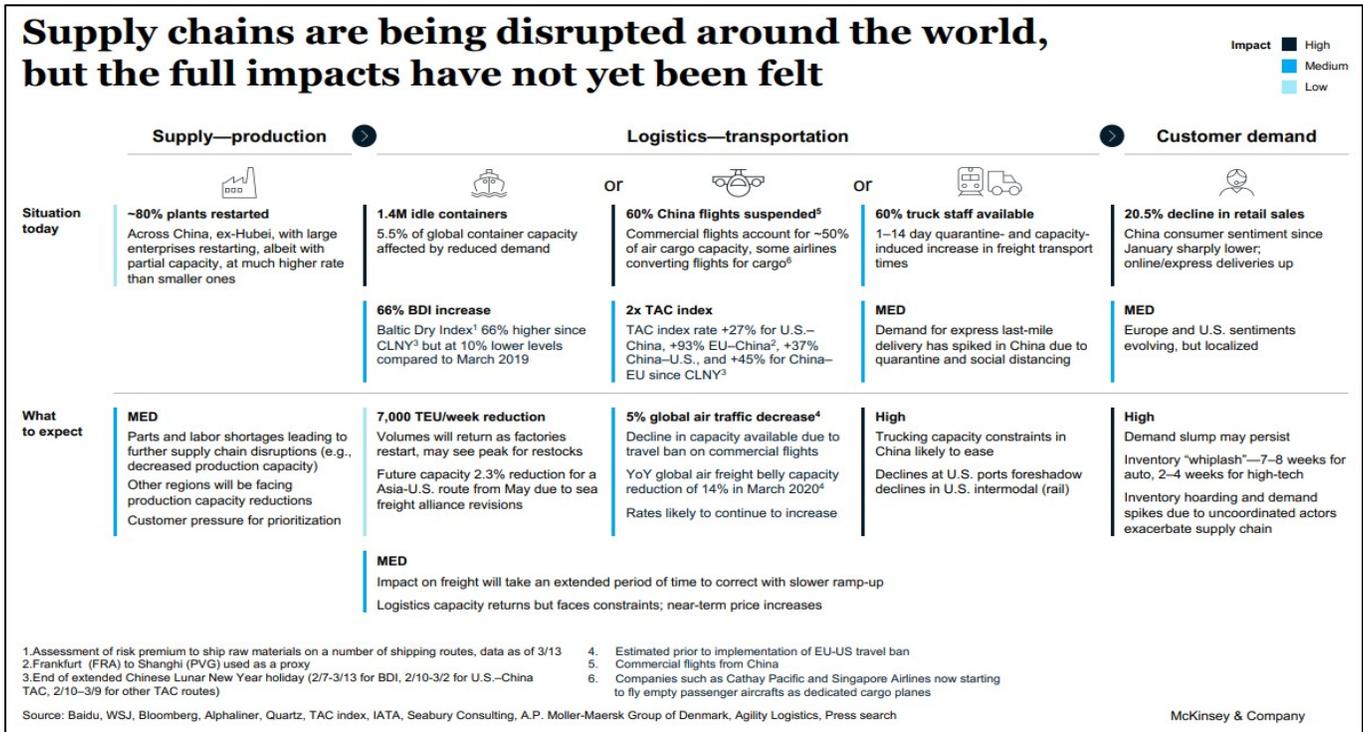


Outreach

March 30, 2020

Thank you for your membership in and work with NAEGA

Image of the Week:
Impact of COVID-19 on Global Supply Chains – As of March 30, 2020



Source: McKinsey & Co - <https://www.mckinsey.com/business-functions/risk/our-insights/covid-19-implications-for-business>

Recent Actions:

- COVID-19 Response
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- Supreme Court Ruling: Citgo vs. Frescati
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Current Opportunities & Actions:

- Exporting Animal Feed Products to China
- Contracts and Best Practices Seminars – Your advice requested

Ongoing Opportunities & Actions:

- U.S. ITC Investigation of MRL Impacts on Trade
- Impact of U.S. Sanctions Compliance
- Policy Teams

Recent Actions:

COVID-19 Response

In the March 23, 2020 edition of Outreach we described NAEGA's message on the war against COVID-19 and detailed the unique messaging for different stakeholders intended to inform and advise on Members needs and concerns related to COVID 19 response and mitigation. We greatly appreciate your advice and information on any elements of or actors in your supply chains.

In the last week NAEGA has discussed directly with the U.S. Department of Agriculture (USDA)'s Federal Grain Inspection Service (FGIS) and with the Senate Agriculture Committee the need for a full toolbox of options be in place to provide for continuity of service FGIS and the U.S. Animal and Plant health inspection Service (APHIS), including continuity plans for sufficient and cost-effective options to address potential reductions in force. Contingency plans need to be put in place to ensure that a potential lack of capacity by FGIS or APHIS to provide for these and other official services does not impede the exporting of U.S. grain and oilseeds.

NAEGA is also engaging in joint efforts including the "Ag and Food Supply Chain Logistics Working Group" organized by the Agricultural & Food Transporters Conference of the American Trucking Association (ATA) and NGFA and is taking part in a bi-weekly COVID-19 Business and Infrastructure Partners call with the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA) and the Federal Emergency Management Agency (FEMA's) Office of Business, Industry, Infrastructure and Integration.

Globally, the International Grain Trade Coalition (IGTC) has initiated weekly information sharing calls. To date both calls hosted by IGTC have been widely attended and have included reports on developments from China, Australia, Brazil, Mexico and Canada as well as discussions on force majeure declarations. These weekly calls will be conducted as long as they are useful and the next scheduled call is on Thursday, April 2, 2020. IGTC has also been sharing email updates from member associations, providing up to date intelligence on developments in trade and supply chains around the world related to COVID-19.

Ongoing our thoughts are with everyone affected by the coronavirus outbreak, particularly those on the front lines helping to battle this disease. 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 the 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.

U.S. Food and Agriculture Dialogue for Trade

On Friday, March 27, the U.S. Food and Agriculture Dialogue for Trade hosted a conference call with officials from Office of the United States Trade Representative (USTR) and U.S. Department of Agriculture. The Dialogue was pleased to welcome off the record remarks from Ambassador Gregg Doud, Chief Agricultural Negotiator at USTR; Sharon Bomer Lauritsen, Assistant USTR for Agricultural Affairs; Ted McKinney; Under Secretary for Trade and Foreign Agricultural Affairs at USDA and Jason Hafemeister, USDA Secretary's Trade Counsel. The U. S government team provided an update on U.S.-China Phase One Implementation.

Clause 20 Certifications

Last week, NAEGA responded to two applications for certification as provided for in Clause 20 of the [NAEGA 2 F.O.B Contract](#). The NAEGA certifications conducted with [Clause 20 guidelines](#) followed Panel recommendations and found the CN Rail Strike in Canada of late 2019 to be a valid cause as they prevented the forwarding of commodity. The Certifications have been conveyed to the respective applicants. Redacted text of Panel recommendations and subsequent certification will soon be reported to the Contracts Committee and the Board of Directors.

News

Supreme Court Ruling: Citgo vs. Frescati

On March 30, 2020 the Supreme Court [issued a ruling](#) in the Citgo vs. Frescati Case. With a 7-2 ruling, the Court sided with Frescati, holding that the contract creates a safe-berth warranty, leaving the CITGO entities responsible for the oil spill. The Supreme Court affirmed the ruling of the Third Circuit which held that the clause embodied an express warranty of safety, embracing the notion of strict liability in this clause and in contract liability. The Court argued that the safe-berth clause's unqualified plain language establishes an absolute warranty of safety. It recognized although the contract clause does not expressly invoke the term "warranty" the charterer's duty is not altered and is not subject to qualifications or conditions. Further the Court noted that under contract law, an obligor is strictly liable for a breach of contract, regardless of fault or diligence and pointed out that while contractual parties are free to contract for limitations on liability, these parties did not. The dissent concluded that the plain language does not contain explicit warranty language and that they would have remanded to the district court to determine whether industry custom would establish a warranty in this particular case.

The Court ultimately made clear that the holding was limited to the contract at issue, and that the opinion "does no more than provide a legal backdrop against which future [charter parties] will be negotiated." In other words, parties to any maritime agreement can negotiate around the "unqualified language that would otherwise establish a warranty of safety, by expressly limiting the extent of their obligations or liability."

The Contracts Committee is expected to consider the decision and may provide further guidance.

China Trade

NAEGA continues to monitor the implementation of the U.S.-China Phase One agreement. The U.S. and Chinese government continues to work on implementation and provide updates on progress. [A March 24, 2020 statement](#) from U.S. Trade Representative Robert Lighthizer and U.S. Secretary of Agriculture Sonny Perdue listed a number of steps taken by the Chinese Government to boost U.S. exports of beef, poultry and other farm products and said U.S. food and agricultural products exports were benefiting from Chinese tariff relief, through China's [recently announced tariff exclusion process](#) and their reduction in retaliatory tariff rates on certain U.S. agricultural goods .

The Office of the U.S. Trade Representative (USTR) [released an additional list of exclusions from the Section 301 additional 25 percent tariff on List 3 goods from China. These exclusions, a list of which can be found here, will be retroactive to September 24, 2018. Importers can review the newly excluded products and apply for refunds of any tariffs paid on such goods since September 24, 2018.](#)

USTR is also [soliciting comments](#) on possible further modifications to the Section 301 tariffs in an effort “to keep current on developments in our national fight against the coronavirus pandemic.” U.S. industry has been advocating for more tariff relief to offset the economic impact of the COVID-19 pandemic. USTR has set no deadline for submissions, [which can be made here](#).

NAEGA continues to monitor for any reporting of force majeure certificates, [issued by the China Council for the Promotion of International Trade](#) to businesses in China if their businesses with overseas partners have been affected by the virus outbreak, impacting the bulk commodity trade. NAEGA also will be looking into contract implications and we appreciate member advice on how we might assist.

NAEGA is 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.

Turkey Action on Tilletia in Wheat

Turkey's National Plant Protection Organization, announced on March 24 that effective immediately, they will reexport will reexport any imported wheat, including from the U.S., in which they detect several new Tilletia species. They state that they are now regulating Tilletia controversa (dwarf bunt, TCK), Tilletia caries (wheat smut) and Tilletia laevis (syn.T.foetida) (common bunt) on wheat, adding these species to the already regulated Tilletia indica (Karnal bunt). USDA's Animal Plant and Health Inspection Service has noted that they are preparing a response.

U.S.-Kenya Trade Agreement

The Office of the U.S Trade Representative (USTR) [has notified Congress of its intent to begin negotiations on a bilateral trade agreement with Kenya](#). 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 public comments](#) 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

The deadline to submit comments to USTR is April 15. [Comments can be submitted here](#).

Current Opportunities & Actions:

Exporting Animal Feed Products to China

The U.S. Food and Drug Administration (FDA) is seeking input to finalize a qualified facility list for exporting animal feed products to China, which is required under Phase One of the U.S.-China trade agreement. FDA will submit to the General Administration of Customs of the People's Republic of China (GACC) a list of animal food facilities from which China intends to allow imports of feed additives, premixes, or compound feed. U.S. companies interested in exporting feed additives, premixes, or compound feed to China should provide to FDA the name(s) and address(es) of their registered facility/facilities, as well as permission for FDA to share that data with China. Details on how to submit this information [are available here](#). The deadline for submission is April 3, 2020.

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 NAEGA 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:

U.S. ITC Investigation of MRL Impacts on Trade

The U.S. International Trade Commission (ITC) has begun 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 states it will issue two reports, one on April 30, 2020, and one on November 2, 2020, which 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.

Written submissions for the first report are now closed. Submissions for the second report are due June 5, 2020. The [notice from ITC can be found here](#).

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

March

30-April 2 – International Plant Protection Convention (IPPC) International Year of Plant Health 2020, Commission on Phytosanitary Measures (CPM) – Rome, Italy

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

8-11 – World Trade Organization 12th Ministerial Conference – Kazakhstan - Cancelled

9-10 – IGC Grains Conference – London, UK

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

3 - U.S. Presidential Election

12 - APEC in Kuala Lumpur, Malaysia.

21-22 – G-20 Annual Summit in Riyadh, Saudi Arabia.

TBD – IGTC General Assembly – Singapore

TBD – NAEGA 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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