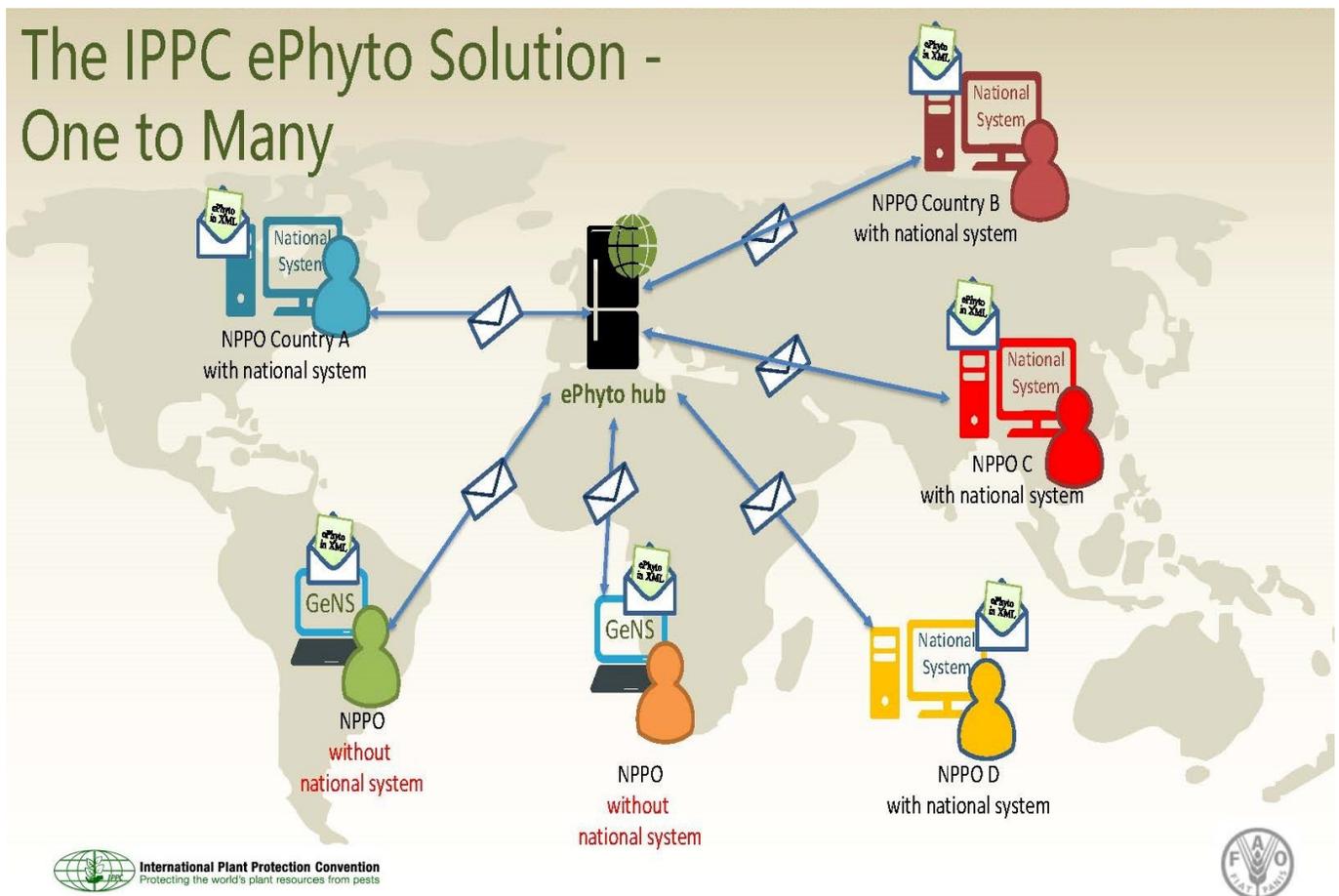


Outreach

May 11, 2020

Thank you for your membership in and work with NAEGA

Image of the Week: The ePhyto Solution



Source: <https://www.ippc.int/en/ephyto/>

Recent Actions:

- COVID-19 Response
- Safe Berth Clauses – Contracts Committee Discussion
- AgriVida Biotech Corn - Production Technology Committee Consultation

- Mexico ePhyto Case Studies
- GOMAI - Progress and Member Input
- IGTC Newsletter

Current Opportunities & Actions:

- Thailand Bans on Chlorpyrifos and Paraquat
- Bayer/Monsanto Petition for Nonregulated Status of GE Corn
- USDA Seeks Input into the Agriculture Innovation Agenda

News:

- U.S.-China Phase One
- U.S. and UK Launch Trade Negotiations
- OFAC Guidance on Humanitarian Aid during COVID-19

Ongoing Opportunities & Actions:

- U.S. ITC Investigation of MRL Impacts on Trade
- Advancing Virtual Communication
- Policy Teams
- Contracts and Best Practices Seminars – Your advice requested

Recent Actions:

COVID-19 Response

The Global Pandemic continues to be the priority for Association action. In the March 23, 2020 edition of Outreach we described NAEGA's message on the war against COVID-19 and our information sharing plans related to COVID 19 response and mitigation. We welcome and appreciate your advice and comment.

Recent related actions include:

The Contracts Committee considered implications of the COVID-19 pandemic. Takeaways from the Committee discussion include:

1. Contracting parties using the NAEGA 2 contract are giving careful consideration to the potential implications considering the entire contract, addendum 1 and terms of use.
2. In response to numerous inquiries related to contract practices in reference to the COVID 19 pandemic, senior advisors and staff observe:
 - a. There are several clauses in the NAEGA 2 contract that need consideration, most prominent are Clause 20 and 21, both of which require NAEGA certification. Clauses 7, 15, 17, 18 and 26 also should be reviewed. **Clause 20** places obligations on the Seller to notify and has specific language when providing for a **suspension of 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; and 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 NAEGA 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.

- b. Common contracting practices include:
 - i. **Written contracts and contract amendments.** An exchange of emails may be enough, signatures of both parties help.
 - ii. **Secure agreement on all the details. Include** demurrage and despatch calculations. Avoid general statements such as "in accordance with the custom of the port." NAEGA 2 addendum no. 1 covers demurrage and despatch.
 - iii. **Be aware of the timelines and deadlines**, including notice deadlines such as the pre-advice deadline in NAEGA clause 8 for buyers, and deadlines which may allow you to take advantage of additional time to perform. For example, the seller's notice under clause 20(a) must be made within a very tight window, and a notice under clause 21 must be made "without delay."
 - iv. **Communicate with your counterparty.** It is far better to know if there is going to be a performance problem or delay now when it may be possible to agree to an amendment to deal with it, than to deal with it later as more of an emergency. Again, if agreements are reached as a result of these communications, get them in writing (a clear email exchange at a minimum).
3. While many situations arising from the COVID-19 pandemic may be addressed by Clauses 20 and 21, there may be some that may not be as clear. Under New York law which is the controlling law for the NAEGA 2 contract, Courts may look to the “unforeseeability” of the event at the time of contracting and if foreseeable, whether the parties contemplated the event in their contracts, such as through the inclusion of a provision like those in Clause 20.
4. Some parties are including additional provisions recognizing COVID-19 related disruptions that acknowledge the existence of the COVID-19 outbreak, provide for due diligence in performing obligations.
5. Consideration for modification of the NAEGA 2 Contract is integral to the work of the Committee however **no specific modifications or guidance is currently under consideration.**

The National Grain & Feed Association (NGFA) will be hosting a free webinar on workplace safety as it relates to COVID-19 on May 20, 2020 from 3:00-4:00pm Eastern Time. The webinar, entitled “COVID-19 Updates for Grain, Feed and Processing Industry: OSHA Guidance and Workplace Health and Safety Issues” will break down the workplace safety implications of the U.S. Occupational Safety & Health Administration’s (OSHA’s) recently issued “Guidance on Preparing Workplaces for COVID-19,” which defines risk categories and provides recommendations on how to protect employees. NAEGA members are invited to attend [and can](#)

[register here](#). NGFA continues to update 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 is now convening bi-weekly MS Teams meeting to facilitate information. The next scheduled meeting is on Thursday, 14, 2020. If you would like more details on IGTC’s reporting, please contact NAEGA staff.

The U.S. Coast Guard has updated the guidance provided to commercial vessels operating during COVID-19 in Marine Safety Information Bulletin (MSIB) Number 07-02. “COVID 19 – Port and Facility Operations - Change 2” provides updated information on operational concerns, clarifications, and guidance to help ensure the safety and security of workers, ports, and facilities during the COVID-19 pandemic. Updates on Seafarers Access, TWIC enrollment and safety inspections, among others, are included. [MSIB 07-02 can be found here](#).

Our ongoing 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 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.

Safe Berth Clauses - Contracts Committee Discussion

The Supreme Court of the United States (“SCOTUS”) decision in **CITGO Asphalt Refining Co. v. Frescati Shipping Co.**, March 30, 2020 which concluded that the plain meaning of the safe-berth clause in the Athos I dispute includes an unambiguous warranty of safety was considered by the Contract Committee. NAEGA submitted an *amicus* brief in the case arguing that the court should **not** find that the provision imposed a warranty of safety. The clause in question appeared in a charter party standard form “ASBATANKVOY”: “the vessel shall load and discharge at any safe place or wharf....which shall be designated and procured by the Charterer, provided the Vessel can proceed thereto, lie at, and depart therefrom always safely afloat, any lighterage being at the expense, risk and peril of the Charterer...” The court’s decision relied heavily on the Charterer having selected a clause that created an absolute warranty and pointed out that the Charterers had an opportunity to select a less onerous clause found in the INTERTANKVOY C/P Form: “Charterers shall exercise due diligence to ascertain that any places to which they order the vessel are safe for the vessel and that she will lie there always afloat.”

Key takeaways from the Committee Discussion include:

1. Clause 8 of the NAEGA 2 contract states in relevant part that “Seller shall, if applicable, declare port and berth of loading ...” and therefore does NOT in itself contain a safe port /

safe berth clause. Such clauses are commonly found in charter parties that accompany a NAEGA 2 transaction. Indeed, Clause 20 of the NAEGA 2 references separate charter parties when addressing demurrage rates in a “Charter Party”.

2. A charter party is always engaged with a shipment carried by water.
3. Parties to a NAEGA 2 contract should be aware of the SCOTUS decision and may wish to seek counsel to advise about the potential implications of charter party provisions on NAEGA 2 counterparty obligations and consider provisions that make clear the parties’ intentions consistent with the SCOTUS decision.

AgriVida – Biotech Corn Production Technology Committee Consultation

On Tuesday, May 4, 2020, at the invitation of the National Grain & Feed Association’s (NGFA) Crop Technology Committee, the NAEGA Production Technology Committee took part in a consultation with AgriVida, Inc. AgriVida recently submitted a petition to the U.S. Department of Agriculture’s Animal & Plant Health Inspection Service (USDA/APHIS) seeking a determination of nonregulated status of Maize Event PY203 and agreed to answer questions on their plans for NGFA & NAEGA’s committees. NGFA & NAEGA are considering submitting comments to USDA/APHIS on the petition, [which can be found here](#). Comments are due June 15.

Mexico ePhyto Case Studies

Mexico has announced that it has developed its technical and operational capacity to implement the ePhyto solution, a paperless, digital exchange for electronic phytosanitary certificates, and is ready to start the process for bilateral exchange with the U.S. in bulk trade operations by sea vessel and rail.

NAEGA will be assisting the International Grain Trade Coalition (IGTC) by helping to coordinate “case studies” to monitor exchanges between the U.S. and Mexico to evaluate ePhyto effectiveness and interoperability with the grain trade. NAEGA and the Association of Suppliers of Agricultural Products Mexico (APPAMEX) have entered into an agreement for APPAMEX to act as chief liaison with the National Agro-Alimentary Health, Safety and Quality Service of the United Mexican States (SENASICA) during the period the case studies will be conducted, act as chief liaison with Mexican Corporate Stakeholders in conducting case studies, and submit reports on 5-10 case studies, as well as a final report and recommendations to NAEGA

80 countries have now registered for the ePhyto Solution and there is positive momentum with countries actively exchanging. Key countries are Argentina, USA and Mexico, who are/will soon be exchanging with Chile, Brazil, Fiji, Ghana, Jamaica, Morocco, Netherlands, New Zealand, Samoa, Sri Lanka and others. More details on the ePhyto solution [can be found here](#).

GOMAI – Progress and Member Input

Thanks to all member personnel who scored market access for the 13th Grain & Oilseed Market Access Indexes (GOMAI). In the April 28, 2020 edition of Outreach, and through communication with members, we asked completion of a Country Market Access Scoresheet to assess market access conditions in 31 priority countries that will be used in quantifying tariff and non-tariff

barriers to grain and oilseed products in international markets. We received a very robust response and a NAEGA scoring has been forwarded to the contractor.

The Scoresheet which contains members [average scores for each country can be found here](#). It also contains previous years scores. NAEGA uses this data [and the GOMAI](#) to help identify and address market access concerns as well as measure the success of its International Programs.

This GOMAI is a collaborative effort between NAEGA and the U.S. Soybean Export Council. Volunteers to further assist in the work led by the International Programs Committee are welcome.

IGTC Newsletter

The latest IGTC newsletter is now available! Highlights include IGTC's reporting on the global response to COVID-19, details on the now-virtual London Grains Week taking place in June, and an update on the ePhyto project.

Read the [newsletter here](#).

Current Opportunities & Actions:

Thailand Bans on Chlorpyrifos and Paraquat.

Thailand's National Hazardous Substances Committee (NHSC) met on April 30 and voted NOT to delay beyond June 1 the implementation of bans on chlorpyrifos and paraquat used in crop protection products. The NHSC considered a proposal from the Thai Chamber of Commerce to delay the ban until the end of the year, [but voted to reject the proposal](#). The no detection / a zero tolerance for the presence of both chemicals will apparently apply to import, sale, use, production, and residues in food.

We are working on several fronts to encourage Thailand to provide for practical and science based Maximum Residue Levels for both chlorpyrifos and paraquat. For example, related comments are due to USDA FAS Thursday, May 14. Insights and analysis from NAEGA members are welcome.

Bayer/Monsanto Petition for Nonregulated Status of GE Corn

Bayer/Monsanto has submitted a petition to the U.S. Department of Agriculture's Animal & Plant Health Inspection Service (USDA/APHIS) seeking nonregulated status of a corn variety intended for hybrid seed production genetically engineered for tolerance to dicamba, glufosinate, quizalofop, 2,4-D, and tissue-specific glyphosate tolerance. The petition [can be found here](#) and USDA/APHIS is accepting comments on the through July 7, 2020. NAEGA is considering comments on this petition and any input from members would be welcome. [Comments can be submitted through this link](#).

USDA Seeks Input into the Agriculture Innovation Agenda

The U.S. Department of Agriculture (USDA) [is soliciting comments and suggestions](#) on objectives and opportunities leading to research goals and informed product goals to facilitate transformative breakthroughs to enable U.S. agriculture to meet the Department's goal of increasing agricultural production by 40 percent to meet the needs of the global population in 2050 while cutting the environmental footprint of U.S. agriculture in half. This effort is part of USDA's Agricultural

Innovation Agenda, the Department's commitment to the success of American farmers, ranchers, producers, and foresters in the face of future challenges. NAEGA is considering providing input to this request. All comments are due August 1, 2020. More details [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 some conflicting reporting in the past week from the U.S. Government on the ongoing implementation of the agreement. On Thursday, May 7, U.S. Trade Representative Robert Lighthizer and Treasury Secretary Steven Mnuchin spoke with Chinese Vice Premier Liu He and [released a joint statement](#) saying they were optimistic China would meet its purchase commitments under the terms of the agreement. On Friday, May 8, U.S. President Donald Trump, [in an interview with Fox News](#), said that he was "having a very hard time with China", reflecting the U.S.'s blaming of China for the severe economic and health impacts of COVID-19.

The U.S. Department of Agriculture's [most recent weekly export sales reporting](#) shows a mixed picture, with U.S. soybean exports to China are running at about half the 2017 level, but other commodities like corn and pork are sharply higher.

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.

U.S. and UK Launch Trade Negotiations

The United States and United Kingdom formally began negotiations on a free trade agreement on Tuesday, May 5, vowing to work quickly on a trade agreement that could counter the economic drag of the coronavirus pandemic. The talks will be conducted via virtual meetings and will involve over 300 U.S. and UK staff and officials in nearly 30 negotiating groups. U.S. Trade Representative Robert Lighthizer and UK trade minister Liz Truss [said in a joint statement](#) that "We will undertake negotiations at an accelerated pace and have committed the resources necessary to progress at a fast pace." Lighthizer named the UK trade talks one of his top priorities for 2020 and published objectives more than a year ago that sought full access for U.S. agricultural products and reduced tariffs for U.S. manufactured goods.

OFAC Guidance on Humanitarian Aid during COVID-19

The U.S. Treasury Department's Office of Foreign Asset Control (OFAC) has a fact sheet: "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 fact sheet, which [can be found here](#), 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.

Ongoing Opportunities & Actions:

U.S. ITC Investigation of MRL Impacts on Trade

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 of 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 can be found here.](#)

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. Since the beginning of the pandemic, NAEGA and IGTC have hosted over 30 meetings of committees, working groups and policy teams, as well as consultations with industry and U.S. Government, via the Teams platform. We continue to be encouraging members to [review this 5-minute video tutorial](#) that provides an introduction to using Microsoft Teams for virtual meetings. If you have had trouble using Teams and would like additional assistance, please contact Patrick Hayden at phayden@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](#).

Contracts and Best Practices Seminars – Your advice requested

Due to COVID-19, NAEGA is currently only available to hold virtual Contracts and Best Practices Seminars, 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 will consider locations for in person contract seminars once it is safe for the NAEGA team to travel.

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 Virtual Seminar. [Click here](#) for more information on the in-depth, interactive programs NAEGA conducts!

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

14 – International Grains Council Seminar - Impact of COVID-19 on the grains value chain – Gary Martin Presenting - [Details Here](#)

20 – NGFA Webinar - OSHA Guidance and Workplace Health and Safety Issues – [Register Here](#)

25-26 - Organization for Economic Cooperation and Development Annual Meeting – Paris, France – Postponed

*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 - [Details Here](#)

10-12 – G-7 Meeting - Camp David, MD – Now taking place via videoconference

27-28 – Asia Pacific Economic Cooperation (APEC) Trade Ministers Meeting – Malaysia - Moved from April

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 – NAEGA Contracts & Best Practices Seminar – Tokyo, Japan - Tentative

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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