Comments Regarding Foreign Trade Barriers

To U.S. Export Exports

For 2021 Reporting

Docket Number USTR-2020—0034

October 29, 2020

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On behalf of the U.S. Grains Council, we offer the following submission with respect to the request of the Office of U.S. Trade Representative for public comments regarding the Foreign Trade Barriers to U.S. exports for 2021 Reporting. As prescribed in this notice, this request includes comments to identify significant trade barriers of U.S. exports of goods and services. This submission responds to the request to identify various foreign trade barriers including among others: Import policies; Sanitary and Phytosanitary Measures and Standards-related measures.

We believe that resolution of the broad range of trade barriers outlined in this report could bring about a correction in the coarse grain trade trends of the last decade, restore market access and allow U.S. producers and agribusinesses to effectively explore and capture new markets and business opportunities.

The Council has worked cooperatively with USTR on a number of these issues. We look forward to continued collaboration.

Sincerely,

Floyd D. Gaibler
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U.S. Grains Council

The Americas

Mexico

Delay of Biotech Approvals

With respect to biotech approvals, what heretofore had been a predictable and timely risk assessment process hit a wall when approvals stopped in May of 2018. Mexico has a six-month statutory deadline for import approvals of biotechnology traits, which is more timely than the U.S. approval process. To date, there are 18 pending applications for import approvals, 7 of which are for corn; 6 for cotton; 2 for potatoes; 2 for apples; and one soybean and one canola trait.

Initially, the reasoning behind the delays was due to severe budget cuts to COFEPRIS (Federal Commission for Protection Against Sanitary Risk), and that many people had left the agency which contributed to a huge loss of institutional memory. More recently, we were told the agency was overwhelmed because of the impacts of the COVID pandemic.

Irrespective of these limitations, the continued delay puts it in conflict with the binding provisions of the biotechnology chapter of the USMCA, particularly the commitment of all parties to accept and review applications for the authorization of biotechnology on a year-round, ongoing basis, as well as WTO SPS Agreement commitments to avoid undue delay.

Should the situation continue, we will face the economic impacts of delayed commercialization of proven technologies in the U.S., loss of investment in new technologies, and loss of export opportunities.

More importantly, it puts our corn, soybeans, cotton and other ag exports in potential jeopardy if Mexico continues to delay approvals indefinitely, creating further uncertainty. **Answers are needed to the following questions:**

- **What is the rationale for the agency to postpone review of risk assessment approvals for biotech traits that have been on hold since May 2018?**
- **At what point do we expect that the backlog of applications can be addressed?**
- **Moving forward, will the agency be able to comply with its six-month statutory requirements?**

Glyphosate Import Ban

Mexico's rationale for banning the imports of glyphosate in 2019 is based solely on the precautionary principle while at the same time acknowledging the applications met the legal requirements for a permit and sale of the product. Mexican government documents provide indications of imposing similar restrictions of anywhere from 80 to more than 100 pesticide active ingredients.

Application of the precautionary principle to imports of pesticides, particularly if they follow the European model, is a precursor to similar policy issues regarding maximum residue levels and import tolerances, which would dramatically impact U.S. food and agricultural exports.
In addition, use of the precautionary principle violates the commitments to technical barriers to trade and SPS provisions of both USMCA and WTO.

Recent actions have appeared to exacerbate this issue. First, on June 2 NGOs with more than 180 signatures submitted a 14-page letter supporting the glyphosate ban and outlined 10 specific actions to continue the use of the precautionary principle, introduce legislation on the public right to know, formulate national policy to an agroecological transition and promote agroecological alternatives to pesticides, among others.

Second, the NGO action was followed by a statement by the Intersectoral Group on Health, Food, Environment and Competitiveness made up of 14 Mexican government ministries and agencies strongly advocating that the overwhelming evidence of the harmful impact of glyphosate on health and the environment implies the need to establish mechanisms and regulations to restrict and eventually eliminate its use. While the ministry of agriculture is a member of the Intersectoral group it was not cited as a signatory to the statement.

Fortunately, on June 26, SEMARNAT (Environment Ministry), CONACYT (Science and Technology) and SADER (Agricultural Secretariat) and the Health Ministry sent an agreement to the National Commission for Regulatory Improvement to "coordinate the technical studies that allow to determine the security of glyphosate as an active ingredient for herbicides in Mexico". This effort is to be completed in four years and will allow the pesticide industry and user associations to participate in the technological development.

Both of these issues appear to be part of an evolving shift in philosophy from some ministries in the AMLO administration to radically transform Mexico ag and food value chains. The outlines of this change initially were revealed when SEMARNAT Minister Toledo authored a May 5, 2020 op-ed that spoke of an overarching call for change to design and put into action a different economic and social recovery, founded on an ecological transition linked to food, water, energy, conservation, industries, cities, and education.

The following are quotes from the May 5, 2020 op ed. "*Pandemics are alarm calls about imbalances caused by the expansion of the industrial food systems based on monoculture and agro chemicals on farms. The editorial cited Germany's commitment to the Paris climate change agreement and the EU's Green Plan.*

To accomplish this there must be an immediate suppression of pesticides, starting with glyphosate. The need for a law that declares the country free of transgenics and the creation of markets that promote organics, local, municipal and regional self-sufficiency, encouragement of cooperatives to deliver healthy food to urban consumers in addition to rigorous labeling".

Secretary Toledo resigned from his post on September 2, 2020

Colombia

Threats to U.S. Corn Imports

Since 2017, the Colombian cereals growers' association (FENALCE) which represents domestic corn producers, has been behind a **series of actions against U.S. corn imports into the country.** This included the commission of a study that aimed to analyze the implementation of the FTA with the U.S. regarding corn. According to FENALCE, the study showed that **U.S. corn imports had been mistakenly classified under the Harmonized System (HS) code that didn't correspond with the quality of the received grain and therefore made it ineligible to the TRQ free-tariff benefit.** It was also used to argue that imported U.S. corn should be considered contraband, asserting that it is crippling the Colombian economy. The Council worked with the USG in D.C. and Colombia and accompanied importers, industry associations and traders throughout the process of solving the issue. In November 2017, the Free Trade Commission of the U.S. – Colombia FTA issued decision number three, clarifying the products subject to the TRQ for yellow corn. The HS code issue was solved temporarily.

In 2019, FENALCE used the same study to disqualify the decision of the Free Trade Commission of the U.S. – Colombia FTA and added misleading information related to the presence of aflatoxins in imported corn. They published articles arguing that imported corn was a risk to human health due to high mycotoxins presence. They also provided the Congress commission responsible for agricultural regulations with the above-mentioned study and with information related to quality concerns.

Further, they submitted a request to the office of the Attorney General of Colombia for a conciliation between FENALCE, the Ministry of Commerce, the taxes and customs agency (DIAN) and 24 importers of U.S. corn. They argue that their actions[1] caused damages to the domestic industry calculated in $ 5.5 million dollars. The office of the Attorney General granted the request for the hearing on October 1, 2019 but the hearing yielded no definitive actions.

[1] Stated actions are: 1) Lack of control of the FTA by MINCIT; 2) Administrative omission by DIAN; 3) Unfair competition and appropriation of funds that should be tariffs (technical contraband) by importers.

Despite the FTC decision, DIAN continues to periodically deny U.S. shipments of corn most recently in September 2020, arguing that the imports were mistakenly classified under the HS code with preferential treatment asserting the description does not match the physical analysis. Furthermore, they asserted the certificates of origin supporting the imports did not correctly describe the goods that meets the requirements to receive preferential treatment. USTR and USDA have been helpful in resolving these issues but we would urge continued monitoring of any future incidents, and if such should persist, to pursue resolution through the formal enforcement reviews under the Colombia FTA.

Additionally, in late 2019 and mid-2020 DIAN sent "special customs requirements" to four importers arguing that the preferential treatment to specific U.S. corn imports from 2017 should be denied as the certificate of origin didn't provide the name and contact information of the producers of the corn. Three of these cases have been already closed while one is still ongoing. USTR and FAS have been in communication with the Colombian government accompanying the domestic industry's actions that call for an exemption of this requirement for agricultural commodities.

In addition, there are lingering concerns from the Colombian feed and livestock industry that FENALCE may request the **initiation of a CVD case against U.S. corn** following Peru's action to self-initiate a CVD case against U.S corn. At this point, the Colombian government is not considering moving forward with a self-initiated CVD case against U.S. corn.

Finally, the Colombian Congress has under consideration a bill to amend Article 81 of Colombia's Political Constitution in order "**to prohibit entry into the country, as well as the production, marketing, export and release of genetically modified seeds, in order to protect the environment and guarantee the right of farmers to free seeds."** The rationale is driven by assertions of negative environmental, socioeconomic and health risks. While this legislation applies to seeds, it could potentially impact imports of U.S. corn once a legislative mandate is established.

Colombia is the third largest export market for U.S. corn benefitting from the U.S.-Colombia free trade agreement, which will provide total duty-free access by 2023. Exports of corn in 2015/16 totaled 4.5 MMT valued at $776 million. In 2018/19 corn exports totaled 4.8 MMT valued at $814 million. In 2019/20 exports increased to 4.9 MMT ($828 million).

<u>Countervailing Duty on U.S. Ethanol</u>

The Colombian Association of Sugarcane Producers (*Asocaña*) along with the National Federation of Biofuels (*Fedebiocombustibles*) along with the Colombian Ministry of Commerce initiated a **countervailing duty (CVD) investigation against U.S. ethanol imports** in January 2019. Under the U.S.-Colombia FTA, U.S. ethanol faces zero duties. The initiation of a CVD case is not in the spirit of the FTA and is viewed as a protectionist measure by the U.S. ethanol industry.

After questionnaires were completed, hearings were held. The Colombia government established a preliminary duty of 9.36% duty in May 2019, but it expired after 120 days, allowing U.S. ethanol to enter Colombia duty free at this point. The local industry advocated for a 22%-32% final duty. In May 2020, the Colombian government issued a final ruling placing a $0.066/kg duty (10-12% ad valorem) for two years.

Despite Colombia implementing increasingly restrictive carbon intensity measures for ethanol as a means by which to limit imports, U.S. ethanol exports to Colombia have increased significantly to 67 million gallons ($88 million) in 2018/19 over the last marketing year 2017/18 when exports totaled 40 million gallons ($69 million). This growth is a direct result of U.S. ethanol's continued competitiveness in the international marketplace, not due to subsidies or failure to comply with Colombian regulations, as has been alleged. United States ethanol exported to Colombia has met and continues to comply with the certification requirements and GHG restrictions created by Colombia. Additionally, the U.S. is consistently the most competitive source of ethanol around the world due to low feedstock costs for corn and sorghum, strong industry investment, and sound management practices by U.S. ethanol refineries.

United States ethanol (and the feedstock used in the production of ethanol) is not subsidized and is based on market pricing. Colombia does not price ethanol based on the market--making it uncompetitive in price compared to the United States and other regional ethanol producers. Losing access to this ethanol market would negatively impact an important ethanol export market at a time when U.S. farmers and ethanol producers already face economic hardship and uncertainty. E15 or higher blends of ethanol, which are used in the United States, would support Colombia to meet its environmental goals AND increase market access for Colombian and U.S. ethanol producers.

Colombia is currently our 6th largest buyer in 2019/20 with exports at 66 million gallons and valued at over $107 million. This compares with exports of 14 million gallons ($50 million) in 2016/17.

Peru

Countervailing Duty Case on U.S. Ethanol

In May 2017 Peru initiated an investigation on a **countervailing duty case against U.S. ethanol** on behalf of a Peruvian single monopoly ethanol company. The investigation was based on alleged subsidies on U.S. ethanol exports to Peru that supposedly affected the local industry, incurring in losses on ethanol sales of 25 percent in 2016.

The assertion is that federal programs regarding ethanol and corn production and state programs regarding ethanol production are conferring an actionable and unfair subsidy to U.S. ethanol producers that allows them to distort Peru's ethanol market and cause injury to the petitioner.

The Council provided the evidence required by the government demonstrating that no subsidies were applied to U.S. ethanol production and exports, and that Peru's domestic sales have been affected by a lack of competitiveness associated mainly to production and transportation costs. The industry and USG responded to the INDECOPI questionnaire and filed extensive comments. On August 30, 2018 INDECOPI issued a report on "essential facts" by the Technical Secretariat. It is not a decision under Peru law. The report included a preliminary CVD margin calculated at USD$126 per ton. They claim that the benefits from corn subsidies under federal programs constituted over 99% of the preliminary CVD calculation.

The industry provided a response asserting the report is incomplete and has an incorrect distillation of the facts on the record; they are not following procedures under the WTO agreement on Subsidies and Countervailing Measures and their own regulations. Further, the response challenges the assumptions finding in relation to the alleged direct and indirect benefits of federal and state programs to ethanol producers. The report incorrectly concludes that the alleged benefits to corn pass through to ethanol without meaningful analysis and in any event used a flawed methodology to determine the preliminary calculations that were incorrect.

A final duty of 14.8 cents/gallon was established in November 2018. The case is currently under appeal by all parties. If the decision is upheld the duty would last until November 2023.

Peru has had a E7.8 mandate since 2013, and consumes 48 M gallons per year, with 92 percent of its consumption coming from the United States. Peru only has one ethanol producer in the country, Sucroalcoholera, which produces around 47 M gallons per year and until recently exported most of its production to the EU. As a result of the United States' FTA with Peru, ethanol exports faced a 1.2% duty in 2017 and total phase-out of tariffs in 2018, further placing pressure on Peru's competitive domestic production.

U.S. exports of ethanol from 2016/17 totaled 49.5 million gallons ($81.5 million) but fell to 43.4 million gallons ($68.4 million) in 2017/18. In 2018/19, U.S. exports of ethanol increased to 48 million gallons ($72 million) but fell in 2019/20 to 39 million gals ($65 million). Despite the sharp decline, Peru is the ninth largest global buyer of ethanol.

Countervailing Duty Case on U.S. Corn

The outcome of the aforementioned ethanol case had huge implications for a **second self- initiated investigation on U.S. corn** instituted by Peru in July 2018. The Peruvian affected industry (e.g. domestic corn producers) claims that several U.S. federal agricultural policies and programs unfairly subsidize U.S. production of U.S. ethanol exports to Peru, harming the domestic producers. However, it was a self-initiated case, meaning the Peruvian investigative authority, INDECOPI, brought the case itself rather than the aggrieved party, corn producers.

The Council participated in a hearing in Peru in May 2019. It was noted that most of arguments made by witnesses were against imposition of any duties. In November 2019 INDECOPI issued an essential facts report that estimated potential duties of $15-19 per metric ton. **In January 2020 the Peruvian Government (INDECOPI) determined that the Peruvian corn industry was not injured by U.S. and additional countervailing duties on U.S. corn are not warranted.**

Similar to the ethanol case, the assertion is that federal programs regarding corn production, along with federal loan programs, GSM-102 Loan Guarantee Program and other related federal programs are conferring unfair subsidies that cause injury to Peruvian corn farmers.

The Council provided the evidence required by the government demonstrating that countervailable subsidies were not applied to U.S. corn production and exports, and that Peru's domestic sales have been affected by a lack of competitiveness associated mainly to lack of technology and high production costs.

Peru's corn consumption has doubled over the last 10 years, reaching nearly 5 MMT. The U.S. plays a positive role supplying corn and helping the Peruvian poultry industry with competitive costs to provide a primary protein source for the Peruvian population. Domestic corn producers are only able to supply a fraction of that demand, producing 1.2 MMT.

The U.S.-Peru Trade Promotion Agreement (PTPA) provided a 12-year tariff phase out, with the volume of the TRQ increasing by 6 percent, compounded annually. That growth resulted in an 895,500-ton quota in 2019 and starting in 2020 the TRQ was completely eliminated for corn.

In MY 2016/2017, Peru imported 2.99 MMT ($490 million), an 18 percent increase over previous marketing year. In MY 2017/18, Peru imports increased to 3.2 MMT ($525 million). In MY 2018/19, corn imports declined to 1.9 MMT valued at $333 million. In 2019/20, Peru imports continued to decline totaling only 553,000 MT ($85 million). It is worth noting that the decrease is explained by lack of competitiveness and not because of trade barriers.

Peru sells $2.3 billion of agricultural products to the United States. In contrast, the United States sells $1.2 billion of agricultural products to Peru, with corn accounting for almost 50% of total U.S. sales.

Brazil

Ethanol Import Tariff/TRQ

The US ethanol industry enjoyed a duty-free trade relationship between Brazil and the U.S. from 2012-2017. In 2017, Brazil imposed a two-year 600 million liters per year TRQ. Any volumes above the 150-million liter quarterly allocation were subject to a 20 percent tariff. With its expiration in August 2019, the industry strongly advocated to allow the TRQ to expire at the end of its 24-month term and continue the exemption for ethanol from Brazil's Common External Tariff as it was during 2017.

In September 2019, Brazil announced it has raised the quota on U.S. ethanol imports under the tariff rate quote (TRQ) up from 600 million liters per year to nearly 750 million liters per year. The TRQ regulates the threshold of ethanol that can be imported into Brazil without triggering a 20 percent tariff. The TRQ has negatively impacted U.S. ethanol export to Brazil. Exports from September 19-August 2020 fell 30 percent to just 263 million gallons.

The final decision on the expiration of the TRQ in August 2020 remains unresolved and the TRQ remains in place through December 2020. An independent economic analysis estimated the farm gate impact of the current TRQ at three cents per bushel of corn. If the TRQ is eliminated and a flat 20 percent tariff is imposed on all U.S. product, the brunt of those increased impacts will fall directly on U.S. corn and ethanol producers. In addition to inhibiting trade between our countries, it also hinders the development of a robust global ethanol marketplace. Free and reciprocal fair trade between the world's two largest ethanol producers should be a model for other countries to follow.

Separately, independent market analysis from Informa Economics demonstrates that, while the Brazilian Government will collect R$350 million in TRQ-related tariffs (if the TRQ is continued), the real price of this policy will be paid by the Brazilian consumer who will pay approximately R$7 billion in higher fuel costs over the next year as a result of higher ethanol prices compared to if the tariff were returned to zero. The results of the analysis provided very strong evidence in support for our position that the Brazilian government should eliminate the TRQ on ethanol and return to the free-trade relationship that existed between the two countries during 2012-2017 and as outlined in the Memorandum of Understanding signed by both countries in 2007.

The purpose of the study by Informa Economics was to evaluate the benefit to Brazilian consumers arising from imports of duty-free ethanol compared to a 20 percent import tariff on ethanol over the course of 12 months (September 2019 through August 2020). The study included a price parity model that evaluated variables including trade flows of ethanol; production and consumption patterns of sugarcane, ethanol and gasoline; and seasonality variables for sugarcane, ethanol, and gasoline. Additionally, the analysis measured the TRQ's impact on Brazil as a whole and not simply the Northeast region where most ethanol imports occur and where a larger impact was expected. For perspective, the price parity model developed by Informa concluded the landed U.S. ethanol price for Sao Paulo rose (on average) 11 percent after implementation of the TRQ with a seasonal peak increase of 20 percent due to domestic shortages and price increases.

Import tariffs on the delivered ethanol price in Brazil increased prices for Brazilian consumers around 17% for anhydrous ethanol and 3% on the final price of gasoline. It was also found that importing states (like those in the North and Northeast) are more vulnerable to ethanol shortages and price increases. However, the effects of the tariff are redistributed to other regions of the country since the tariff serves as protection only against imports. As a result, the study found that elimination of the 20 percent tariff would lead to an annual weighted average consumer benefit of R$0.22 on every liter of an estimated 32-billion-liter national ethanol consumption – or R$7 billion for the whole country. It was also determined that these benefits will rise as consumption rises which could further compound consumer gains as RenovaBio expands ethanol use within Brazil.

Brazil's new RenovaBio biofuels policy which will increase the role of biofuels in Brazil's transportation fuel market by focusing on reducing carbon intensities of fuel. RenovaBio was implemented in 2020 and is expected to generate 5 billion gallons of new demand through 2030. However, with RenovaBio, U.S. ethanol should receive more favorable trade terms—without which, consumers will pay the price of the tariff in the form of higher fuel costs. Economic analysis performed by Informa determined that under the current TRQ structure, consumers will pay $1.86 billion in higher fuel costs for MY 2019/2020.

Until recently, Brazil was the largest export destination for U.S. ethanol, and the U.S. imports the lion's share of Brazilian ethanol exports. U.S. exports to Brazil from MY 2015/16– 2017/18 ranged from $230 million to $806 million. In MY 2018/19 U.S. exports declined to $538 million and continued to decline in MY 2019/20 to $423 million.

The U.S. ethanol industry has expressed their disappointment in the Brazilian decision, especially after Brazil has been a vocal advocate for free and open trade of ethanol. The U.S. industry continues to advocate the USG to work with the government of Brazil to remove the TRQ and return to free and reciprocal trade.

Asynchronous Biotechnology Approvals

Brazil has not been a significant market for U.S. corn. From MY 2015/16 to MY 2017/18, U.S. exports of corn ranged from 8,000 to 486,000 metric tons. The tariff on corn is 8 percent. Brazil recently announced that it would suspend import tariffs on corn until March 31,2021.

Potential U.S. exports to Brazil are also up against several regulatory and logistical challenges. The first stumbling block is the asynchrony of approvals of genetically modified corn and soybean varieties between the United States and Brazil.

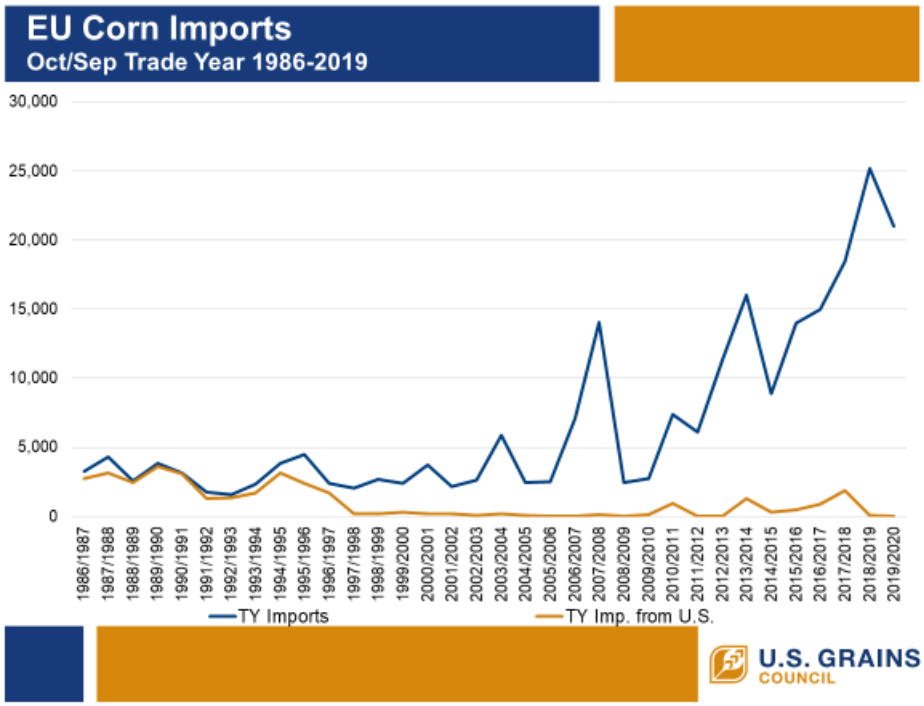
According to data from the International Service for the Acquisition of Agri-Biotech Applications (ISAAA), there are at least **nine commercially available biotech varieties of both corn and soybeans approved for cultivation in the United States, which are not currently approved in Brazil**. As grains are not sorted by varieties prior to export, any potential Brazilian importer would need to submit a special approval request to the National Technical Commission on Biosecurity (CTNBio). There are only two CTNBio meetings scheduled for the rest of 2020, and each request, if submitted, would have to be considered on case by case basis. **The recent U.S.-Brazil Agreement on Trade and Economic Cooperation provides an opportunity to address this long-standing asynchrony issue.**

Europe, Middle East, Africa

European Union

Biotechnology policies

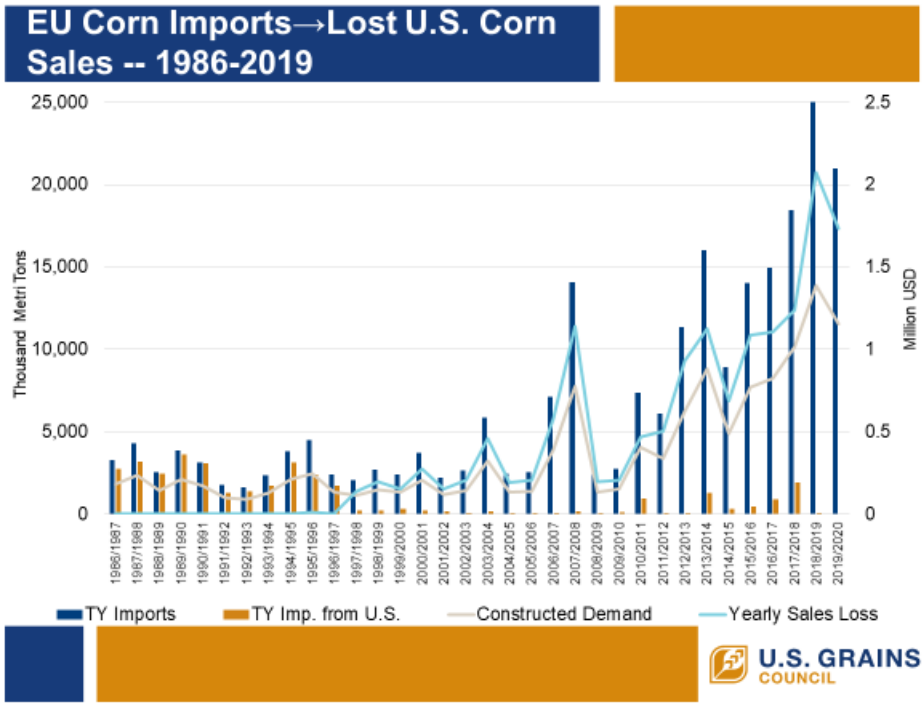
Historically, the EU has been a cereal surplus and protein-deficit market but has experienced domestic cereals production shortfalls, requiring EU member countries to import corn, sorghum and other feed products to make up for the shortfall of domestic cereals. Parts of the EU-27 are feed grain deficit on an annual basis such as Spain, Portugal, and Ireland, and to some extent the Netherlands and the United Kingdom. Thus, opportunities exist yearly for U.S. feed grain exports, all depending on the current biotech policies, price relationships between the U.S. and EU origin feed grains as well as annual weather-related grain production problems and what positions will adopt following its January 2021 exit from the EU.



Once the largest foreign supplier of corn to the EU—consistently exporting over 2 million MT of corn each year--there have been no substantial exports to the EU since the late 1990's, when U.S. producers began adopting biotechnology and EU consumers raised concerns and policy makers implemented unjustified restrictions on GMO products. Traditionally, U.S corn exports represented the lion's share of EU corn imports. Between 1987 and 1996 the US share of EU corn imports averaged 63%, fluctuating between 72% and 47%. In 1996/97 US corn market share was 58%.

Beginning in 1996. U.S. share dropped to single digits, which coincided with the introduction of GM events in the U.S. and a *de facto* moratorium on biotech approvals in the EU and has remained there for most years since then. Even after the *de facto* moratorium was lifted, the EU's approval of new biotech corn events has been very slow and as a result U.S. corn exports to the EU have continued to be much lower than before the GM controversy started in Europe.

Cumulative US corn sales to EU during the 16 years from 1997 to 2019 was 9.4 million metric tons. IF the US had continued to have a market share of 55% (Lower than all but 1 year in the previous decade), US cumulative sales would have been 109.3 MMT. Assuming an average unit price of $150/MT, Europe's asynchronous biotech regulatory process contributed a loss of 100 MMT of U.S. corn exports at a cost exceeding $15 billion. As it is, U.S. corn exports to EU increased from 410,000 MT ($69 million) in 2015/16 to almost 1.9 MMT ($320 million) in 2017/18 but plunged to only 31,000 MT ($10.5 million) in 2018/19 and 1,300 MT ($396,000) in 2019/20.



Source for historic data: USDA PS&D Online, GATS (unit price)

The **asynchronous biotech approval process** between the U.S. and the EU severely limits our ability to provide our traditional customers with corn and co-products (Dried Distiller Grains and Corn Gluten Feed and Meal) irrespective of competitive factors such as price and quality.

The EU risk assessment process by the European Food Safety Authority (EFSA) typically takes more than five years - far beyond the 19-22 months prescribed by EU law and exacerbated with a large backlog of submissions. This results in unnecessary trade disruptions that will continue to deny the opportunity for U.S. feed grain exports and increased input costs for our customers. At the same time that the EU authorization process is increasingly subject to delays, the major corn exporting countries of the Americas -- the U.S., Argentina and Brazil -- have been taking steps to improve and accelerate their respective authorization systems.

In addition to the increasing time for the European Food Safety Authority to assess the safety of biotechnology events, **the risk management process involving the now 27 Member States often extends beyond the 3-4 month procedure provided in the EU's legislation and when completed results in no qualified opinion for or against approval.** Thus, it is left to the European Commission to take a final decision. Heretofore, the Commission has consistently, albeit slowly, authorized those biotech events that have been positively assessed as safe by the EFSA.

That said, a pattern is being established whereby the Commission issues the approval of several biotech events on a twice a year basis – just before the EU summer recess and the Christmas and New Year holidays. This leads to final approval for some events being delayed even longer while the Commission assembles a "batch" of events to push through at one of the above time periods. Even that process appears to have changed as the Commission did not approve any events by July 31, 2020. The Commission eventually approved an event (soybeans) only in September 2020, even though the Appeal Committee

had returned a no opinion vote on the event (the last stage of the risk management procedure as far back as January 2020.

The exit of the United Kingdom resulting from the **Brexit vote** has complicated the Member States' voting pattern further given the UK's consistently strong voice championing science-based procedures and its position of 'voting with the science'. Under the EU's system, a vote for or against requires a qualified majority of at least 55% of Member States (15 out of 27), representing at least 65% of the EU population. The exit of the science-supportive UK, means a loss 13% of the EU population from the pro-GM vote.

Politically, the situation has worsened: whereas at the last vote before the departure of the UK from the voting process, the percentage of the EU population, represented by the votes of the Member States voting in favor (36.71 %) was slightly higher than those opposing (33.28 %) or abstaining (30.01 %). At the first vote on ne GM events after the departure of the UK (a written vote on a corn stack that took place in September 2020, the percentage of the EU population represented by the 14 countries voting against (35.8%) is higher than those 10 countries voting in favor (29.84%) or the 3 countries abstaining (34.48%). This demonstrates that one of the conditions for a qualified majority against (15 countries) is almost met. However, the second condition (65% of the population) is still far off – as long as large countries such as Germany and Italy keep abstaining and not voting against.

Separately, the European Parliament and the European Commission continue to have disagreements on biotech issues. The Parliament routinely raises objections over final approval of corn and soybean events and Plenary votes supporting these objections are trending higher. Such objections are non-binding and the Commission consistently argues it is following due process, but an increase in the political tension is ever-increasing particularly since the election of a large number of populist and 'green' MEPs in May 2019. This ongoing tension between the Commission and Parliament will likely complicate efforts to address the need for the EU to follow their respective timelines and provide for timely and predictable risk assessment and approval processes.

A continual complication is the increasing development of stacked biotech events, in which two or more GM traits are combined by means of conventional crossing. Most of the GM events entering the market today are stacked events, and as a result, the number of stacks to be approved in the EU is growing. In the United States, when a single event is approved, any combination of that event with other approved single events is automatically approved (or is approved thereafter with a fast-track procedure). The EU conducts a separate risk assessment for stacked events. To further complicate the matter, the EU has a policy of only starting the risk assessment for a stacked event after the risk assessment of all the single events composing that stack is completed, adding more time to the final approval.

The absence of a workable EU standard on low level presence is a further impediment. In 2011, the EU adopted a 0.1% tolerance threshold for testing--which applies to feed only—for the unintended presence of a GM event that is not yet approved in the EU. This so-called "technical solution" does not replace the EU's zero-tolerance policy and will not effectively address the risks associated with unapproved events that may be included in shipments to the EU. The European Commission has never put forward a proposal for a similar "technical solution" for food, as it originally promised.

With EU and U.S. political uncertainty amid potential imposition of reciprocal tariffs, the Council will continue discussions with USTR and USDA to coordinate our efforts with their negotiating strategy and expected outcomes on resolving the biotechnology and other sanitary and phytosanitary trade barriers.

In October 2020, the Legal Affairs Committee of the European Parliament adopted an amendment to change the comitology procedure which provides that only if the Appeal Committee votes results in a positive position (i.e., by qualified majority) a new biotech event or substance can be approved by the Commission. Given the usual voting pattern, if this amendment were to become legislation it would likely end the approval of new GM events by the EU. However, even if this amendment is supported by the full Plenary of the European Parliament, it will probably not be accepted by Member States. So far, the Member States have shown no interest in changes to the comitology procedure, and if that remains the case, the Parliament amendment is mute.

Plant Breeding Innovation (PBI)

The European Court of Justice's 2018 ruling that PBI is subject to the EU's GM legislation threatens the development and commercialization of PBI, particularly in the EU. The ruling also raised questions about the enforcement of the EU's laws on imports of such crops from countries where PBI is not regulated or comes under a 'light' regulatory regime. Political pressure for a change in the EU's legislation to allow a distinction between GM and PBI crops has increased significantly in recent years.

This pressure comes from several Member States and the private sector (including farmers, scientists and some media). **The Council of Ministers has requested the European Commission to submit a study on the EU's options for addressing the legal situation of PBI, in the light of existing legislation and the 2018 ECJ ruling. This study is expected to be published in April 2021. The outcome of this pending issue is unpredictable: the European Parliament and several Member States, under the influence of NGO pressure, may oppose a distinction between GM and PBI and/or may take the opportunity to complicate the situation not only for PBI but also for the current procedure that is used for GM import authorizations.**

Pesticides Regulation

Developments in EU policies and regulations pertaining to crop protection products (CPP) have the potential to negatively impact future U.S. grains exports to the EU. The EU's hazard-based approach to renewing the authorization of existing pesticides has resulted in an increasing number of active ingredients losing their authorization. This has led to the reduction or removal of Maximum Residue Levels (MRLs) of long-used products. **Products that have approval in the U.S but not in the EU risk becoming subject to an MRL of 0.01 mg/kg default or lower at the Level of Detection (LOD). Companies and exporting country governments will continue to have the ability to submit applications for an Import Tolerance (IT), but there are uncertainties regarding the timelines and exact criteria that will be used. The prospect of obtaining Import Tolerances in such situations has diminished further, after the European Commission indicated earlier this year that environmental considerations would also be taken into account in the future. The European Parliament also has the power to reject proposals for Import Tolerances.**

EU legislation, Regulation (EC) No. 1107/2009, governs the registration of pesticides in the EU. While the initial EU legislation on the authorization of plant protection products was based on a risk assessment, Regulation 1107/2009 introduced hazard-based criteria, requiring active substances to be approved only if they comply with both the hazard criteria as well as the risk assessment criteria. A number of widely used substances have not been reapproved due to these hazard "cut-off" criteria after their current registration expired and this trend is likely to continue.

EU Regulators establish MRLs and import tolerances under separate legislation, Regulation (EC) No. 396/2005. The regulatory decision-making process under this regulation is nominally risk-based. Nevertheless, there is an overriding concern that for substances approved under Regulation 1107/2009 due to the cut-off criteria, the EU has decided that, when an active substance has been banned because it triggered the cut-off criteria, to ignore the normal risk assessment process and automatically reset the MRLs to the default level – 0.01mg/kg, or to the LOD if it is lower.

In July 2017, the European Commission stated in a policy document that MRLs should be lowered to the LOD and that applications for ITs should be refused when an active substance is not renewed because of the hazard-based cut-off criteria (Carcinogenic/Mutagenic/Toxic to Reproduction, Category 1 or Endocrine Disruptor) under Regulation (1107/2009).

In May 2018, the Commission updated its policy, which was endorsed by Member States in June 2019.The new document states that when an active substance is not renewed because it is triggered by hazard-based cutoff criteria, the existing MRL/IT will be reduced to the Limit of Determination versus the Level of Detection. Limit of Determination is defined as "the validated lowest residue concentration which can be quantified and reported by routine monitoring with validated control methods." In essence, it could be the default level, but it could also be lower.

The document stipulated that applications for new ITs would continue to be considered, using the risk assessment approach (i.e. an assessment by EFSA). This approach is an improvement compared to the 2017 policy document which outlined that applications for new ITs would not be considered. Reportedly, several Member States were not happy with the potential liability they could face by refusing IT applications.

However, the new document also states that the granting of the IT will be considered on a case-by-case basis, taking into account, **'where appropriate, other legitimate factors as well the precautionary principle'**. What such legitimate factors are is not defined anywhere in the legislation and leaves the European Commission with considerable scope for maneuver. The Commission has indicated that this new policy will be applied regardless of whether the company submits an application for the renewal of EU authorization of the active substance or does not seek such renewal in the EU.

In February 2020, EU Member States supported a Commission proposal to lower the MRLs of chlorpyrifos and chlorpyrifos-methyl in food and feed to the lowest level that can be measured by analytical laboratories. In practice, this probably means 0.01 mg/kg (the default value). This decision follows the EU's decision not to renew the authorization of these substances. The new lowered MRLs and will become applicable in the last quarter of 2020.

WTO rules governing such regulatory decisions are clear. The *Agreement on the Application of Sanitary and Phytosanitary Measures* (SPS Agreement) requires that SPS measures that trade be based on a risk assessment. According to the international standards-setting organization, a risk assessment for crop protection products involves hazard identification, hazard characterization, exposure assessment and risk characterization. If the EU chooses to reset MRLs for non-approved substances automatically to the default level, and subsequently were to consider applications for Import Tolerances by applying non-scientific risk assessments, it would risk being in violation of WTO obligations.

Resetting MRLs to a default level and not approving applications for import tolerances could have a negative impact on U.S. exports. Nearly all bulk commodities, fruits, vegetables, nuts, and processed foods could be affected depending on the residue level of the active substances in U.S. exports. U.S. producers (like European producers) rely on crop protection products to control pests and plant diseases, improve quality and yield, and limit human disease outbreaks associated with rodent and insect populations. Some of the products at risk of being delisted under Regulation 1107/2009 are important to this effort. Such substances might no longer be available for use by U.S. producers wishing to export to the EU. In many cases, adequate alternatives do not exist.

Pesticides and MRLs have increasingly become the target of the NGOs and their allies in the left and green parties in the European Parliament and several Member States. These 'alliances' could further exacerbate the issue. For example, in March 2019 for the first time ever, the European Parliament rejected a European Commission proposal for a new MRL, and this happened again in September 2020. The Commission itself is concerned that these votes may set a precedent for future cases - and is asking Member States to lobby MEPs not to reject such proposals.

The renewal of the authorization of glyphosate after 2022 will be particularly challenging, even if it does not meet the cut-off criteria. It has become a highly political issue in the light of the controversial International Agency for Cancer Research (IARC) 2015 opinion, the court cases in the U.S. and the horse-trading over the last EU renewal. NGOs have been relentless in their campaign against renewal and several European governments have adopted policies to phase out or ban the use of the substance in their territories.

The Council will continue to work with USTR and USDA to engage the European Commission on the scientifically questionable and unduly trade-restrictive regulations. In addition, the Council will increase its collaboration with other U.S. row crop associations and agricultural/industry allies in the U.S., other exporting countries, and in the EU.

Separately, the Council will work with the USG to expand efforts to put pressure on the EU in the WTO. We look forward to further work with other WTO members to ensure trade is not hampered by non-scientific regulatory barriers.

<u>European Union Farm to Fork Strategy (F2F)</u>

The European Commission published its Farm to Fork strategy on May 20, 2020. The main points are:

• A proposal for a revision of the Sustainable Use of Pesticides Directive to significantly reduce use and dependency on pesticides and enhance Integrated Pest Management (2020-2022)
Revision of implementing Regulations under the Pesticides Authorization legislation to facilitate placing on the market of pesticides containing biological active substances (no timetable yet);
• Revision of the pesticides statistics Regulation to overcome data gaps and reinforce evidence-based policy-making (no timetable yet);
• Regulatory and non-regulatory measures to be proposed in 2021 to reduce the EU's contribution to global deforestation;
• Proposal for a revision of the feed additives Regulation to reduce the environmental impact of livestock farming (no timetable yet);

• Launch initiatives to stimulate the reformulation of processed food, including maximum levels of certain nutrients and to restrict the promotion of food high in salt, sugar and/or fat;
• Revise EU legislation on Food Contact Materials;
• proposal for a legislative framework for sustainable food systems (2023);
• Proposal for a sustainable food labeling framework to empower consumers to make sustainable food choices;
• Examine EU rules to foster the replacement of critical feed materials (e.g. soya from deforested land) by more sustainable feed materials such as insects, marine feedstocks, and by-products from the bio-economy (of interest: no mention here of the protein plan...);
• Revise animal welfare legislation;
• A passing reference to the Commission study to assess the potential of new genomic techniques to improve sustainability along the food supply chain.

The Commission included specific targets for 2030:
• Reduction by 50% of the use and risk of pesticides,
• Reduction by at least 20% of the use of fertilizers,
• Reduction by 50% in sales of anti-microbials used for farmed animals and aquaculture;
• And reaching 25% of agricultural land under organic farming.

EU industry groups were immediately critical of the targets the Commission laid out for pesticide reduction, organic farming expansion and the exclusion of 10 % of active land. They argue that impact assessments should be carried out before making any changes to the legislation. The various farm groups also warn that the approach will lead to the EU exporting its environmental footprint and will end up importing more.

The EU Member States have laid out a series of conditions for "accepting the Commission's proposed targets for reducing chemicals in agriculture and boosting organic production under the Farm to Fork (F2F) strategy". Overall, the Council's paper welcomes and supports the goals and aims of the F2F but does emphasize several sections and calls for actions on a number of points.

In the draft Council conclusions, some of the main points are highlighted below:

• Achieving the F2F PPP targets will be a major challenge for Member States, industry and will need intensive consultations and collaboration with all sectors before any legislation is proposed.

• Welcomes the F2F point that innovative techniques including biotech can help to-ward sustainable agriculture.

• Calls for the Commission to develop an action plan in 2021 on how to reduce de-pendency on imported feed materials and the increase in EU vegetable protein and other alternative protein sources, e.g. insects.

F2F is not science-based; it seeks to severely limit tools available to farmers, inhibits the generation of new technologies, and would make EU agriculture less productive (along with agriculture in other countries that follow the EU's example) and therefore less sustainable. The most serious problem is the obvious one: the strategy mentions sustainability but does not include the sustainability of farmers and primary food producers.

Even more disconcerting is that the Commission is reflecting on a new approach that is aligned with the EU Green Deal and F2F strategy that while it will continue processing the applications for GM food and feed under existing rules a different pending approach may be based on sustainability considerations.

What kind of sustainability considerations is the Commission reflecting on? Are they referring to sustainability in producing countries outside the EU? How would sustainability consideration be incorporated into the approval process? These are just a few on the unanswered questions of this new approach.

Ethanol Anti-Dumping/Countervailing Duty

The EU tariffs for ethanol for fuel use differ depending on the ethanol content level: Greater than 80 percent Ethanol – 19.2 Euro per hL; Ethanol at any other strength – 10.2 Euro per hL. In addition, the EU has a number of trade preferences for individual countries, regional blocs, and trade development programs.

The United States was subject to an additional 62.0 Euro per metric ton (bioethanol content basis) duty for ethanol due to an antidumping/countervailing duty (AD/CVD) decision against U.S. exports that went into effect beginning in 2012. The AD/CVD was in place five years until 2018. Blenders' tax credits were the policies at issue in the AD/CVD case. Since those policies have expired in the United States, it was expected that the AD/CVD would be removed upon the scheduled review.

The Commission initiated its expiry review in March 2018. The initial duty was 62.9 Euro MT ($70MT = 10-15%). However, as part of the review, the EU determined that the original petition filed by ePURE was materially flawed. Bad math showed dumping but when corrected by U.S. industry, showed negative dumping margins. In May 2019, the European Commission issued a decision to allow AD duties to expire.

U.S. ethanol exports to the EU experienced substantial growth from 2010 to 2012. From 2010 to 2012, the EU was considered a top export destination, becoming the second-, third-, and top-ranked export destination, respectively. However, the AD/CVD placed on U.S. ethanol effectively discouraged trade in 2013. In MY 2015/16 U.S. ethanol exports were only 20 million gallons ($35 million). However, exports increased modestly in MY 2016/17 to 30 million gallons ($49 million) and rose dramatically in MY 2017/18 to 95 million gallons ($149 million). With the elimination of the anti-dumping duty, exports surged to 134 million gallons (($188 million) in MY 2018/19 but declined to 125 million gallons ($235 million) in MY 2019/20.

According to a recent study contracted by the U.S. Council, the EU is projected to dramatically increase both its production and consumption over the next 10 years. Consumption is expected to increase at a faster rate than production, which projects that net imports are projected to increase 290 million gallons by 2023. Additionally, the growth in production and consumption is not expected to occur in parallel. Fuel use is expected to increase steadily until 2020 before declining slightly, production's growth will be much steadier over the period. As a result, the baseline shows that net imports could reach as high as 850 million gallons in 2020 before production and consumption converge slightly.

The administration is urged to secure free trade negotiations with the EU and secure elimination of the existing ethanol tariffs and other trade preferences for individual countries, regional blocs, and trade development programs.

EU Retaliatory Tariffs

European Union retaliatory tariffs on U.S. goods came into force on June 2018 in response to U.S. tariffs on steel and aluminum. The majority of U.S. goods targeted by the E.U., such as tobacco, Harley Davidson motorcycles and food products including **corn**, rice, cranberries, cranberry juice, orange juice, sweetcorn and peanut butter, continue to carry **a tariff of 25%.** The tariffs target $3.4 billion (€2.9 billion) worth of American imports.

One immediate concern, is that last year the EU included ethanol (both denatured and undenatured) in a list of potential commodities that could receive retaliatory tariffs after the recent announcement that the EU was awarded $4.5 billion in tariffs on U.S. goods in retaliation for subsidies U.S. states provided to Boeing. Previously, the U.S. was awarded $7.5 billion in tariffs of EU goods in retaliation for EU subsidies provided to Airbus. We would urge the administration to resolve this issue through negotiations with the EU.

Algeria

Corn Co-products Value-added taxes and tariffs

Depending on the weather, Algeria produces between 1.0 and 1.5 MMT of coarse grains, mainly barley. For the past four years, there was also a small corn crop (less than 100,000 metric tons) in an irrigated area in the northwest part of the country but it was all intended for corn silage**.** In CY 2017, domestic barley production was similar in size to the 2016 crop at 1 MMT. Barley is used, almost entirely, for feed. Algeria's total feed grains consumption has risen from 2 MMT in 2003 to 6.15 MMT in CY 2017. Imports increased from 1.7 MMT in 2003 to 5.17 MMT in 2017.

Corn imports were 4.8 MMT and barley imports were 630 TMT in CY 2019. Approximately 85 percent of corn imports go to the poultry sector. The U.S. corn market share has declined from over 50 percent down to less than 5 percent during the last decade**,** with no U.S. exports of DDGS and CGF over the last four years due to import duties and value added taxes (VAT). There is good potential for both DDGS and CGF imports to grow if the import duties and value added taxes are removed making it competitive with corn and soybean meal imports.

Annually, the Algerian government reviews and assigns import duties and VAT on all feed ingredients. Due to a downturn in the economy, the government has been trying to increase duties to make up for a shortfall in the budget. Despite this, the Council has been working with Algerian industry to get the import duties and VAT on U.S DDGS and CGF removed. Progress was achieved on removing the VAT. The duty is determined on annual basis and the VAT rated decreased from 9% to 0% on corn and 19% to 0% on DDGs and CGF on January 1, 2018. In addition, beginning January 1, 2018, the government suspended the need for import licenses by importers of corn.

Through the Council's work in collaboration with the feed, poultry and livestock industries in Algeria, DDGS and CGF were included in the list of products that benefited from advantageous import tariffs and import duties reduced to zero. However, these duties were re-imposed beginning in 2016. Currently, the duty on DDGS and CGF is 30 percent with no VAT. Meanwhile, the duties on corn and soybean meal is 5 percent, making import of these corn co-products uncompetitive with soybean meal and other feed ingredients. The Council continues to work with industry partners in Algeria to make sure the import duty on DDGS and CGF will be brought back to the December 2015 levels (zero percent) or at least kept in line with import duties of corn, and other similar feed ingredients (5 percent).

Efforts are needed to convince the Algerian government that is it critical that these corn co-products have their import duties and VAT remain at the current levels or at least harmonized at the same level as other imported feed ingredients with a 5% import duty and 7% VAT. The Council requests USTR work with FAS/Algiers to help ensure further reduction and permanence of these efforts.

Egypt

Value-Added Tax

Effective July 20, 2020, the Egyptian government imposed a **14% Value Added Tax (VAT Law #67 of 2016) on the ocean freight for imports of agricultural imports.** This taxation system puts U.S. exports at a competitive disadvantage in the Egyptian market, and we are asking you to intervene on our behalf with the Egyptian government.

The tax is based on ocean freight rates paid from the country of origin to Egypt. As an example, a 50,000 metric ton vessel of corn, soybeans, or wheat from the U.S. would pay approximately $90,000 more tax than the same 50,000 metric tons of the same product from the Black Sea. Since 2016, Egypt imported 3,151,000 metric tons of U.S. corn. Under this new tax regime, U.S. corn would have paid $5.6 million in additional taxes compared to the same corn out of Europe or the Black Sea.

This scenario highlights the tremendous disadvantage that U.S. origin feed grains would be put under in this new tax regime. Currently, freight rates are at a very low rate due to a decline in gasoline demand worldwide due to the pandemic; however, as the world economy recovers and freight rates return to their normal levels, this financial disadvantage for U.S. origin would only increase.

The U.S. Grains Council has been active in the Egyptian market for over 35 years, working in partnership with the Egyptian industry and farmers to promote the development of the Egyptian poultry, dairy, beef, and aquaculture sectors. This tax law would effectively exclude U.S. exports from competing in the Egyptian market. In the example above, we highlighted U.S. corn. However, our understanding is that this

tax applies to all private-sector agricultural raw material imports, so U.S. exports across the spectrum are under threat.

We are asking for your intervention with the Egyptian government to highlight this threat to U.S. exports. We would like to see this law overturned. If not overturned, then the solution would be to apply a flat tax regardless of origin, removing the disincentive to buy U.S. origin grains.

Secondly, **the Egyptian government is trying to collect this tax retroactively, going back as far as 2016.** This is an unreasonable expectation and means that U.S. companies could pay millions of dollars in back taxes on sales that they have already closed the books on. The Egyptian government needs to cancel their plans to retroactively implementing a law that the private sector was not aware of at the time nor had time to adjust their pricing structure to reflect this additional cost.

U.S. corn exports to Egypt have ranged from 47,000MT ($7.6 million) to 1.3 MMT ($232 million) over the MY 2015/16 to MY 2019/20. Corn gluten feed/meal exports ranged from 77,000 MT ($36 million) to 166,000 MT ($88 million) over the same time period. Similarly, U.S. exports varied from 84,000 MT ($16 million) to 246,000 MT ($48 million) over the five-year time period.

Kenya

Biotechnology Restrictions

One of the leading barriers to trade for U.S. corn and corn co-products into Kenya is an importation ban on all genetically modified food and feed. The ban, which has been in effect since November 2012, prohibits imports of all genetically engineered products, including crops, processed products and seeds. The ban put forth by the Kenyan Ministry of Health, sought to address food safety concerns related to GE products.

This ban includes all food aid commodities, many of which are genetically modified products, such as corn and corn-soy blends. As a food aid recipient country, no food aid derived of GE technology destined for a World Food Program lead project has been accepted into Kenya since 2012. With an estimated two million people dependent on food assistance in Kenya in 2019, the ban on food aid containing GE products continues to put those already acutely food insecure at even greater risk. Kenya's GE ban not only impacts local food aid programs, but transshipments of food aid destined for inland East Africa (such as Uganda and Burundi) which receives shipments through the Port of Mombasa.

While there have been ongoing discussions to lift the import ban over the past several years, it remains in place. Kenya is a corn deficit country, predicted to produce 3.6 MMT of corn in MY 2019/20 (a decrease of 400 TMT compared to MY 2018/19). Corn is a staple crop in Kenya, used not only in food but also in animal feed and oil. A shortage of corn in Kenya has caused prices to surge in the latter half of 2019, increasing by 35 to 70 percent per kilo in some cases. Much of the shortage can be attributed to drought conditions in the country, reduced planting areas, as well as lingering effects from a MY 2017/18 marketing crisis. It is predicted that Kenya may import as much of 1.3 MMT of corn in MY 2019/20 to meet local demand, doubling corn imports from the previous years.

Demand for corn and other coarse grains needed for animal feed in Kenya is expected to increase in the coming years. More than 1 million people are being added to the Kenyan population annually. By 2050, the country's population will be an estimated 85 million. Changing demographics and urbanization will increase demand for higher protein food in Kenya, intensifying the pressure on an already constrained industry.

Given production constraints concurrently facing the Kenyan feed industry, GE products can serve as a key tool for Kenya to meet the increased demand for the animal feed industry. The U.S. government needs to continue conversations with the Government of Kenya to increase support for GE products in Kenya.

The Council has begun working with the Kenyan feed industry through the Association of Kenya Feed Manufactures (AKEFEMA) to address the key market barriers not only hindering animal feed production in Kenya but opportunities for U.S. coarse grain exports to Kenya.

Market Access for Goods

Kenya is a member of the East African Community (EAC) free trade area and customs union, and a member of the Common Market for Eastern and Southern Africa (COMESA) free trade area. Kenya generally applies the EAC Customs Union's Common External Tariff, which includes three tariff bands: zero percent duty for raw materials and inputs; 10 percent duty for processed or manufactured inputs; and 25 percent duty for finished products. For certain products and commodities deemed "sensitive," Kenya applies ad valorem rates above 25 percent. This includes 50 percent for corn and corn flour. Kenya also applies substantial tariffs to imports of U.S. refined corn products. Kenya's MFN tariff rates range from 10 percent on corn starches, corn feed/meal and corn starches to 25 percent for corn oil.

Aflatoxin and Moisture Content Restrictions

Kenya subjects imported and domestically produced corn to a total aflatoxin limit of 10 parts per billion (ppb) and a 13.5 percent maximum moisture content. As a result, most U.S. exports are denied permits for importation. The aflatoxin limit is lower than the Codex Alimentarius Commission and U.S. standard of 20 ppb. Under special circumstances, such as food shortages, Kenya has allowed higher moisture content for imported corn, which must then be dried and milled immediately upon arrival to reduce the risk of aflatoxin contamination.

For U.S. corn exports that are permitted under special circumstances, the costs associated with the additional processing requirements make U.S. corn exports largely uncompetitive compared with corn not subject to these requirements. Kenya also restricts popcorn imports to a six percent maximum moisture requirement. The U.S. limit is 12.5 percent to 15 percent.

The Council is very supportive of the ongoing U.S.-Kenya trade negotiations. In addition to removing the ban on GMO imports and providing a timely, transparent and science-based risk assessment process, the Council supports the need to address numerous trade and non-tariff barriers.

Turkey

Biotechnology Restrictions

The largest impediment to the importation of corn and corn co-products into Turkey are restrictive biotech policies. A Biosafety Law in effect since September 26, 2010 bans imports of food and feed products containing biotech events not registered and approved by the Government. Currently there are some soy events and corn events which have been approved for feed import into Turkey, but there are other corn events which have been rejected for feed import, plus several new corn events which have come onto the world market and developers of these events have never even tried to apply for approval in Turkey.

Because of the way liability for those who own the intellectual property rights of a specific event are written in Turkey's Biosafety Law, none of the life science companies have or will submit an application for approval in Turkey. This is to protect their employees in Turkey and the large conventional seed market they have in Turkey. The Turkish Poultry Meat Producers and Breeders Association have submitted reports to the Biosafety Board to request the approval of GE traits for feed use.

There are currently 36 approved genetically engineered (GE) soybean and corn traits allowed to be imported to Turkey for animal feed. The most recent new GE traits were approved in August 2017 and 13 applications are still pending approval. No new applications have been made since 2018. No GE traits have been approved for human food use, so any GE presence in food products is prohibited. For feed, any approved GE product that contains more than 0.9 percent GE must be labeled as GE. There is a zero tolerance for the detection of unapproved GE traits, and a 0.1 percent low-level presence (LLP) tolerance in feed for GE traits pending approval in the application process. (Based on February 06, 2020 GAIN Report).

In August 2018, a decree was published that put the responsibility of the now abolished Biosafety Board under the new Ministry of Agriculture and Forestry. Prior to this, (and prior to its being abolished) the Biosafety Board had been an independent body. It is still unclear how things will operate under the Ministry--it might not be a board--but could function more like an internal Committee. The scientific committees are likely to still play a role. While a new Food and Health Council has been established, the existing Biosafety Board will continue on an interim basis. The Council will be under the Ministry of Agriculture and is portrayed as addressing high-level strategy and policy issues as opposed to actual risk assessment evaluation of specific events, which would be the responsibility of the scientific committees.

Many commodity trading partners in Turkey have encountered import problems due to Turkey's lags in approvals of GE traits compared to other importing and exporting countries (asynchronous approvals) for food and feed. Turkey's very low threshold for pending and unapproved varieties, and lack of approvals of many varieties, has caused uncertainty in the market and disrupted imports. The testing of imported products remains inconsistent and continues to be a considerable cost for importers. The unpredictable situation has increased corporate risk and costs, contributed to high food prices in Turkey and led to increased public suspicion of GE products.

There is much misinformation in the Turkish media about GE products and their safety. This has resulted in a very skeptical public and widespread misunderstanding and fear about agricultural technology.

U.S. corn sales to Turkey are small and intermittent (0 in MY 2016/17; 665 MT in MY 2017/18; 988 MT in MY 2018/19; 1,157 MT in MY 2019/20), yet Turkey continues to import in total around 1.5 MMT annually. Corn gluten feed/meal exports have declined since MY 2015/16 from 220,000 MT to 40 ,000 MT in MY 2018/19. DDGs exports steadily increased from 334,000 MT in MY 2014/15 (S81 million) to 1,365,000 MT ($214 million) in MY 2016/17. For MY 2017/18, exports reached 1.2 million MT ($240 million) but declined to 602,000 MT ($122 million in MY 2019/20), dropping Turkey from the third largest export market for DDGs to currently the 6th largest market.

Asia

China

The Council applauds the structural reforms achieved as part of the U.S.-China Phase One Agreement that went into effect in February 2020. Several issues that have been consistently raised in this report have been resolved, including streamlining of DDGs plant registration; GMO processing certificates; Phytosanitary protocol for barley and malt; and a commitment to ensure China's domestic support program come into compliance and the tariff rate quota (TRQ) for corn is fully utilized by reallocating unused allocations. Separately, the agreement requires that China's biotech approval process will become more predictable, science-based, with approvals being made, on average, in 24 months. This would include more streamlined procedures by the National Biosafety Committee. Procedures will be established in the event of a Low-Level Presence situation.

These represent substantial improvements in (and in some cases clarifications of) China's commitments, though recent experience with China's implementation of its WTO commitments suggest that there will be an on ongoing need to monitor China's policies to prevent trade disruptions and use enforcement mechanisms if necessary. Despite these improvements, there remains a number of barriers that continue to inhibit trade, particularly DDGs and ethanol.

DDGS Anti-Dumping and Countervailing Duty Cases and Value-Added Tax

China imported more than 50 percent of the exportable supply of U.S. distiller's dried grains with solubles (DDGS), or 6.2 MMT valued at nearly $1.8 billion in MY 2013/14. While the U.S. Grains Council was working diligently around the world to identify and develop new markets, the value of the Chinese market cannot be overstated.

On Jan. 12, 2016, China's Ministry of Commerce (MOFCOM) announced it had initiated anti-dumping (AD) and countervailing duty (CVD) investigations of U.S. DDGS exports to China. The Council led a joint industry effort that registered 82 individual ethanol plants and trading companies, representing 72 percent of total U.S. ethanol production.

On a preliminary basis, MOFCOM assigned all producers of U.S. DDGS up to 44.5 percent in AD and CVD tariffs. As a result of a preliminary finding**, China also began imposing a 13 percent value-added tax (VAT) on U.S. DDGS though both imported and domestic DDGS had been exempt since 2001.** ***State Administration of Customs Notice No.21 implements Cai Guan Shui [2009] No.23.***

The final determination was released Jan. 11, 2017. All told, U.S. DDGS entering China face up to 96.2 percent in tariffs and taxes. In addition, DDGs faces an additional 25% in retaliatory tariffs. This makes U.S. DDGS uncompetitive at current market values. Total DDGs exports in MY 2014/15 exceeded 5.3 MMT ($1.4 billion) but fell to a record low level in MY 2017/18 of only 161,000 MT ($33 million) and only 180,000 MT ($39 million) in MY 2018/19 and 205,000 MT ($40 million) in MY 2019/20.

China's internal support and purchasing policy for domestic corn is the primary cause for the large gap between the domestic and international prices for corn and feed grains. The root of the imports is the high corn price policy in China. While the Council is disappointed by the pursuit of the meritless case, the imposition of a VAT is further damaging U.S. ethanol and DDGS industries.

USGC asserts that under WTO rules, the remedies for dumping and subsidization are limited to the collection of additional import duties, and therefore, China is violating WTO rules. Additionally, China is violating the "national treatment" obligation in GATT Article III and GATT Article I's most-favored-nation treatment. The Council is urging USTR to challenge China in this matter and welcomes an opportunity to support such action.

Higher Tariffs Reduce U.S. Ethanol Exports

At the end of December 2016, China's Ministry of Finance announced that effective January 1, 2017, it would cancel the temporary duty of 5 percent on China's imports of fuel (denatured) ethanol that had been in effect since 2010. With the temporary duty cancelled, China's ethanol tariffs returned to their WTO bound rate of 30 percent for fuel ethanol. **The situation was exacerbated with the imposition of 15% and 25% tariffs (resulting in 70 percent total) in retaliation for Section 232 and Section 301 tariffs implemented by the U.S. government.**

The U.S. ethanol industry strongly urges the government of China to reverse these protectionist decisions and return the ethanol import tariffs to 5 percent. We believe increasing tariffs is contrary to China's efforts to improve air quality in its urban areas and reduce the negative environmental impact of its rapidly rising transportation fuel use.

While we acknowledge the decision to cancel the temporary rate of 5 percent and return it to the WTO bound (or maximum) rate of 30 percent is within China's WTO rights, we believe higher import tariffs only reduce total ethanol supplies available to Chinese fuel blenders and increase fuel prices to Chinese consumers.

Rather than raise barriers to imports, the United States would like to offer China a better solution. We propose much closer collaboration between our two countries' governments and ethanol industries on the technical and policy front so China can "fast forward" through the ethanol learning curve by leveraging off of our ethanol experience. The U.S. Grains Council is leading this effort worldwide and, along with its partners Growth Energy and the Renewable Fuels Association, is willing to do the same in China.

This new restriction on imported ethanol is the latest chapter in the larger issue of China's corn policy and the trade distortions it caused – as was the DDGS case before that**. Any negotiation to resolve the U.S. complaint to the WTO on China's agricultural policy should strive to address the AD/CVD penalties on U.S. DDGS and the higher tariffs on ethanol as part of resolving the larger policy complaint.**

Growth in U.S. exports is vital to the economic health of the U.S. ethanol industry and the U.S. Grains Council believes China will play a major role in driving U.S. exports upward over the next decade. China began importing significant quantities of U.S. ethanol in 2015 as part of an effort to increase the use of cleaner burning renewable fuels and reduce smog formation in major cities like Beijing. Ethanol exports to China rapidly expanded in late 2015 and throughout 2016. By the end of marketing year MY 2015/2016 (September-August basis), the country became the U.S. ethanol industry's second-largest export market, receiving 22 percent of total exports. China received shipments of 209 million gallons of ethanol, worth almost $336 million. Since then, exports fell to 49 million gallons ($80 million) in MY 2016/17 and 109 million gallons ($165 million) in MY 2017/18. With the recent Sec. 301 and Sec. 232 retaliatory tariffs from China in full effect, ethanol exports in MY 2018/19 fell dramatically to 63,000 gallons ($342,000) and 114,000 gallons ($445,000) in MY 2019/20.

The U.S. Grains Council believes China could be a 3 billion-gallon export market if market access barriers do not prevent this from occurring. China has announced the move to nationwide E10 blending by 2020. This change in policy will have major impacts on Chinese domestic corn stocks, will require significant expansion in Chinese ethanol production capacity, and will require imports to meet the mandate. China is currently blending at about E2.5 and given the increasing rate of fuel demand, will require a more than fourfold increase in domestic ethanol production.

Pesticides Regulation

The anticipation of **China's Import Tolerance policy for pesticides is of particular concern to U.S. Grains Council. China continues to establish domestic maximum residue limits (MRLs) for a number of crop protection substances used in their domestic production. In lieu of an established Import Tolerance policy, the implementation of these domestic MRLs must be followed by anyone wishing to export to China.**

As climate patterns, pests and diseases vary greatly around the globe, domestic use patterns lead to different application rates and at times, different tolerance levels. We have, therefore, seen a variety of disharmonized MRLs for our commodities being shipped to China. The lack of clarity around when these proposed domestic MRLs will take effect and whether or not they will be enforced for imports into the country have created uncertainty for global grain trade. We continue to emphasize the importance of Import Tolerance policies and/or reliance on international standards in order to avoid trade disruptions.

India

Biotech Regulatory Framework

USDA FAS, the U.S. Grains Council (USGC), and the feed and livestock industry in India have worked for the past seven years to try **to achieve authorization of distillers dried grain with solubles (DDGS) for import into India.** Because they are derived from genetically engineered (GE) plants, DDGS fall under the scope of the *Rules for Manufacture, Use/Import/Export & Storage of Hazardous Micro Organisms/Genetically Engineered Organisms or Cells*, commonly referred to as 'Rules 1989,' of the 1986 Environmental Production Act. Despite receiving 11 applications from local companies, the Government of India (GOI) has thus far failed to provide a clear process, much less a decision, on the import of DDGS.

DDGS production is limited in India from the wet milling industry and around 0.2 MMT is available made via different grains (Rice, Maize, Sorghum etc.) and is inconsistent in quality.

India's livestock sector is negatively impacted by volatile feed ingredient prices and is not competitive in the world market. Shortages of feed ingredients lead to farmers losing money and closing operations which affect their earnings. India needs to increase the supply of high-quality animal feed ingredients to meet the growing demand for dairy, poultry and fish sectors and to make the livestock sector more competitive and enable a stable income for the sector's stake holders.

The Rules 1989 define the competent authorities for handling various aspects of the rules. Most relevant to authorization of DDGS for import is the **Genetic Engineering Appraisal Committee (GEAC)**, under the Ministry of Environment, Forest and Climate Change (MOEF&CC). GEAC is responsible for the approval of proposals relating to release of GE organisms and derived products into the environment, including experimental field trials. The feed companies submitted their application to GEAC and have since requested a meeting. USGC, local industry, and other partners are advocating that GEAC exempt DDGS from further regulatory requirements because DDGS is a processed product that is not viable, and therefore poses no risk to the environment. USDA FAS and others have received verbal indications that GEAC would support this argument and recognize **Food Safety and Standards Authority of India (FSSAI)** as the competent authority to take a decision on the DDGS applications.

In 2006, the GOI enacted an integrated food law, which designates FSSAI as the sole authority responsible for establishing and implementing science-based standards for food, including GE food.

In August 2020, FSSAI came out with the notification on GM free Origin and GM free certificate listing 24 crops. The date of implementation is January 2021. While DDGS is not listed, the notification does reflect a no tolerance policy on imports of GM crops and there is also no policy for Adventitious Presence (AP) or Low-Level Presence (LLP).

FSSAI has not yet established regulations for the safety assessment and approval of foods derived from GE plants for human consumption. GEAC, at the request of FSSAI, continues to regulate GE food until such regulations are in place.

The above notification indicates that FSSAI has assumed its authority over GE products for human as well as animal consumption, which earlier was under the purview of the **Department of Animal Husbandry, Dairy, and Fisheries (DADF)** at the Ministry of Agriculture and Farmers Welfare.

The Department of Biotechnology has established the **Biosafety Support Unit (BSU)** to assist both GEAC and the Review Committee on Genetic Manipulation (RCGM) in the review of applications and in updating protocols and guidelines, among other roles. The BSU is an extra-legal entity that is not recognized as a competent authority under the Environmental Protection Act of 1986 or the Rules 1989. Any risk management decision relying on the BSU is therefore vulnerable to legal challenge.

To date, MOEF&CC and GEAC have made very few regulatory decisions on GE plants. India is a major producer of GE cotton, and as such, the MOEF&CC has authorized the use of six GE cotton events (cottonseed meal is a feed ingredient for the livestock sector). GEAC has also given clearance for the import of soybean oil derived from five GE soy events and canola oil derived from one GE canola event. In the case of soybean and canola oils, clearance was given only for oil derived from certain GE events, with the companies needing to seek clearance for additional events upon their commercialization.

Field trials for two new GM eggplant (brinjal) varieties have been approved (subject to approval from states). There are reports of farmers planting GM eggplant (brinjal), HT cotton and in some cases soybeans, which also shows that farmers need the technology, but are unable to get it legally.

The DDGS applicants are seeking the exemption of DDGS so as to avoid needing to get more GE events authorized in the future and risk a situation of asynchronous approvals that could disrupt trade. As noted earlier, such an exemption appears to be possible, however, the competent authorities have so far been unable to communicate a decision to the applicants. We understand that there was a discussion to list DDGs as a NON-Living Modified Organism, but that too has not been notified as yet.

TRQ System and Tariffs

India maintains an import Tariff Rate Quota system for corn imports. Imports within the TRQ of 500,000 metric tons incur a duty of 15 percent, while imports above the TRQ limit would be taxed at 50 percent of the delivered (CNF) price. Imports of bulk grains are only possible through State Trading Enterprises. U.S. DDGS imports are subject to 30% import tariff and other taxes, which add to a total of 36.5 percent over the CNF price.

With the duty, DDGS imports are currently not viable. India is likely to remain a protein deficit country and it is important that DDGS be treated at par with other plant protein meals when the GOI does allow import of protein meals under a duty-free/lower duty status.

This normally occurs between May and September when oil meal prices move up. Should the tariff be reduced or eliminated altogether, there would be an opportunity for use of the commodity in poultry/dairy rations in some areas with large feed milling operations, especially close to port areas, where transport costs will be lower. The feed, poultry and dairy sectors are interested in importing and using U.S. DDGS as it is a consistent product and is being used in neighboring countries. However, because of biotechnology barriers, current market access is not available.

For sorghum, an import tariff of 50 percent exists. Duties remain high on other coarse grains and co-products. They are as follows:

- Malt – 30%
- Corn gluten feed – 30%
- DDGS – 30%

With the addition of taxes (CESS), the duty on all of these products ends up closer to 40%.

Sanitary and Phytosanitary regulations

India maintains **strict import policy requirements for plant quarantine and SPS issues**. All agricultural imports must be accompanied by a Phyto-Sanitary Permit which certifies that the commodity meets all of India's phytosanitary requirements for the product. Corn must be certified to be free from weevil infestation, Ergot, Large Grain Borer, and about 31 weed seeds. For sorghum there is no published list; barley must be free from Ergot (Claveceps Purpurea), which US APHIS is not able to certify. Overly restrictive SPS measures present significant barriers to U.S. grain and co-product exports to India.

Government Procurement

The Indian government maintains a procurement system that includes a set Minimum Support Price (MSP) for nearly all grain. The Food Corporation of India and other designated agencies are estimated to procure over 65 MMT of food grains (wheat, rice, coarse grains) at minimum support prices for distribution to over two-thirds of the Indian population at subsidized rates. Studies suggest that several advanced developing countries, including India **are already exceeding their domestic support levels agreed to in the Uruguay Round negotiations. Procurement is linked to the Public Distribution System (PDS) which has been blamed in the past with distribution problems and corruption and that there is diversion of stocks that are later dumped at subsidized prices onto the world market.**

Ethanol Restrictions

In 2019/20, India had a total domestic demand for 5.5 billion liters of ethanol of which fuel grade ethanol was set at 3.29 billion liters (as per the tender); potable ethanol demand at 1.2 billion liters; followed by industrial grade ethanol for 0.83 billion liters. Against the demand, the total domestic supply of ethanol was 3.2 billion liters, creating a deficit of 2.3 billion liters. While 0.742 billion liters of the shortfall was fulfilled by imports of industrial grade ethanol, worth approximately $348 million, fuel grade ethanol demand was unmet, and India was able to achieve 4.92% blending against the mandate of 10%. In 2019, India was the third largest importer of ethanol for industrial use.

In volume terms, India had a shortfall of 1.41 billion liters for fuel grade. Despite the shortfall, India has introduced a highly restrictive biofuels policy, which prohibits import of biofuels for blending applications.

Currently, India's basic import tariff on denatured ethanol intended for the manufacturing of excisable goods is 2.5 percent. However, undenatured incurs a basic import tariff of 100 percent.

Imports will not replace local/domestic ethanol, but rather will supplement the domestic ethanol production and will be able to fulfill the mandate of E10 immediately. By fulfilling the mandate now, India would have more gasoline (10-15%) to sell in the domestic/world market using the same amount of crude processing capacity. Using the E10 blend, India will also be able to reduce the Air pollution in major cities, and help India to adhere to its COP 21 commitments in Paris to reduce greenhouse gases and cap global warming to 2 degrees C. Therefore, ethanol should be allowed to be blended in the gasoline pool at the level to which local producers do not meet their commitments from the government issued tender. Moreover, private oil marketing companies (OMCs) should be allowed to engage in pilot projects to

determine the effects of free and unregulated imports, should their refineries be situated in states where blend rates are less than one percent.

In addition, on May 24, 2019, The Directorate General of Foreign Trade (DGFT), under India's Ministry of Commerce, issued a notification ***restricting import,*** through additional requirement of import licenses, of biofuels (including ethanol) for non-fuel purpose. India's 'National Policy on Biofuels 2018' already ***prohibits imports*** of biofuels for fuel blending***.***

The new regulation requires that Indian importers obtain an import license from DGFT for importing ethanol for non-fuel purposes. This process is time consuming and involving onerous paperwork which can take several months, resulting in major supply chain issues for importers and users of ethanol.

Hence, India has taken a step back from practices that ensure ease of doing business and created uncertainty and complications in the market for industrial ethanol imports. These policy measures severely hurt U.S. corn farmers and U.S. exporters of ethanol, as many are already anticipating delays in the processing time for permits, which will then result in delayed shipments, which can reduce the total amount of exports of ethanol to India.

The Council urges the administration to close the pending negotiation with India to provide access for DDGs and fuel ethanol. An initial agreement would provide the foundation to secure a comprehensive free trade agreement and address other market access and non-tariff barriers

Indonesia

Import Restrictions on Corn Imports

U.S. feed grain and co-product competitiveness continues be affected by market access issues, including tariffs, non-tariff barriers and restrictive import regulations set by local government. The Ministry of Agriculture has continued a campaign for self-sufficiency bans for the importation of corn for feed manufacturing. Corn imports for feed are monopolized and restricted through the National Logistics Agency (BULOG). Corn imports for milling operations destined for human consumption are allocated through a strict permit system. The system is very restrictive, and often used as leverage to force private companies to buy low quality, local corn.

Dried distiller grains face continued 5% import tariff. U.S. corn exports declined from $63 million in 2016/17 to $1.7 million in 2018/19 and $4.9 million in 2019/20. U.S. exports of corn gluten feed and meal declined from $138 million to $70 million over the same time period.

Ethanol Restrictions

The government of Indonesia has mandated an ethanol blending program to achieve its goal of a 10 percent national ethanol blend by 2020 as called for by Regulation 12/2015. Despite this national mandate requiring E10 blends by 2020 in all vehicles not within the public sector, the Government of Indonesia has not sufficiently supported its ethanol blending program and its state-owned oil company has excluded ethanol from its gasoline tendering process.

Until recently, the state-owned oil company, Pertamina, explicitly prohibited gasoline blended with ethanol from its tendering process. As Pertamina represents 90 percent of the fuel market, alterations to its gasoline tender that allows for ethanol—thus, stimulating ethanol blending and delivering immediate costs savings for Indonesian gasoline suppliers and consumers. U.S. exports of ethanol have ranged annually from $21,000 to $76,000 over the 2015/16 to 2019/20 time period.

Moreover, Indonesia currently imposes **a 30 percent duty on fuel ethanol** despite granting low tariffs (5 percent or less) on fossil fuel products such as aromatics and gasoline. This tariff structure unnecessarily punishes ethanol as a cost competitive fuel component, which in turn, negatively impacts Indonesian consumers and stifles potential reductions in emissions from the transport sector.

Most recently, an in-depth cost savings estimate and summary analyzing national E10 blending (with and without the current 30 percent tariff) in addition to pre-blended savings from imported E10 (attached) was submitted to the General Secretary of the National Energy Council. This analysis indicated that removal of the 30 percent tariff on E10 blending nationwide would have contributed to foreign exchange savings of approximately USD$1.33 billion in 2018.

While the current cost of infrastructure improvements needed for direct E10 blending nationally in Indonesia are unknown, the GOI has the ability to immediately capitalize on the benefits of ethanol by importing pre-blended E10 on the nearly 5 billion gallons of gasoline that Indonesia imports annually. In fact, cost savings estimates indicate that Indonesia could have saved nearly USD $750 million in 2018 by importing pre-blended E10 alone.

The United States ethanol industry recognizes the potential that Indonesia has as an export market should it decide to allow imports to meet its stated policy goals. Indonesia is the ninth largest gasoline market globally and is expected to grow to be the sixth largest market over the next decade. With current gasoline consumption of 10.2 billion gallons per year, fuel ethanol blending in Indonesia could contribute significant foreign exchange savings to the Indonesian government while improving air quality and reducing overall greenhouse gas emissions.

Myanmar

Ban on Chlorpyrifos

In July 2020, in response to Thailand's ban on Chlorpyrifos, Myanmar issued a notice that Chlorpyrifos pesticide will be specified as a "Banned pesticide" effective on 1st July 2021. Import recommendation for that pesticide will be issued until 31st December 2020. Therefore, it is declared that any registration, importation, formulation, repacking, selling and application of Chlorpyrifos pesticide will not be permitted from 1st July 2021.

Restrictions on Corn Imports

Corn imports into Myanmar are restricted and impair access to that market. The Council recently completed a full economic study of the impacts of corn imports on the industrial output of Myanmar. The results showed increased opportunity for the Myanmar economy.

Philippines

Import Challenges/Minimum Access Volume System

U.S. feed grains competitiveness and U.S. market share continue to be affected by trade policy barriers that constrain feed trade flows into Southeast Asia. **The most serious issue regionally, exists in the Philippines where corn imports are under a Minimum Access Volume (MAV) system with a 35 percent tariff for in-quota and 50 percent tariff for out-quota shipments.** The size of the MAV quota is set annually by the National Food Authority, a state monopoly in charge of strategic grain reserves and imports, with quotas ranging from 200 to 250 TMT/year. The TRQ and import tariff systems serve as de-facto market protection mechanisms to safeguard local corn production from corn imports. Sorghum and barley face a 7 percent import tariff and there is a 1 percent tariff for Dried distiller grains and corn gluten meal.

For the above products, only those with a biosafety certificate will be issued sanitary and phytosanitary clearance (also called import permit). Import permits are needed for all shipments destined for the Philippines. In addition, import permit must be secured prior to loading cargo in vessels.

Moreover, all imports with GMO events must have a biosafety certificate. Biosafety certificates must be obtained from Philippines' Bureau of Plant Industry. Biosafety certificate application must be done by the brand owner.

Conversely, corn and sorghum from the Southeast Asian countries are levied a preferential tariff of 5 percent due to the ASEAN FTA (AFTA). In addition, feed wheat (and other grains) from Australia has free market access through the ASEAN-Australia and New Zealand free trade agreement (ASNZFTA). The U.S. competitiveness in grain trade is negatively affected by the absence of a U.S.-Philippines FTA.

From MY 2013/14 through MY 2016/17, U.S. corn exports have ranged from 18,000 MT to 80,000 MT ($5 to $14 million). However, in MY 2017/18, corn exports rose sharply to 192,000 MT ($37 million) before declining to 89,000 MT ($19 million) in 2018/19 and 95,000 MT ($18 million) in 2019/20. Sorghum exports have ranged from 16 MT to 1,244 MT ($3,500 to $304,000). Similarly, in MY 2017/18, sorghum exports increased to 1,200 MT ($304,000). However, sorghum exports in MY 2018/19 fell sharply to 227 MT valued at $60,000 but jumped to 1,090 MT ($355,000) in MY2019/20.

The country's agribusiness sector is dominated by oligopolies whose private interests are intertwined with special interest groups and maintain close ties with the government. The National Food Authority (NFA), the government agency in charge of the grain trade, has essentially been a monopoly whose practices have hurt rather than help, the Philippines achieve its food security goals. The NFA's nonmarket-based activities have disrupted the domestic grains market, creating oversupply situations, depleting government budgets and baffling the supply and demand situation.

The Philippines needs to abolish the NFA and let private traders do most of the importing to cover local grain production shortfalls. We would encourage this approach and ask for USTR to support this issue. The policies seem to work for other goods such as vegetables, pork, poultry and fish, whose prices are also stable though free from heavy state interventions readily imposed on grains.

Thailand

Import Policies/ Government procurement restrictions

Thailand has been a growing DDGS importer in Southeast Asia and an importer of corn gluten meal (CGM). There is strong potential demand for DDGs despite being constrained because of tariffs. Thailand imports only limited amounts of U.S. corn. Thailand's government is very protective of its crop production, crushing, feed and livestock industries and has implemented measures to curb the flow of competing products into the market.

Tariffs are used heavily to protect domestic industry and restrict access and competitiveness of other global suppliers.

o U.S. **corn** (and other non-ASEAN corn) is subject to strict import barriers (import tariff and quota system) to protect local corn producers. Corn imports falling **under the TRQ of 54,700 MT is subject to a 20 percent tariff rate, while out- of-quota corn imports are subject to a 73.8 percent tariff rate for non-ASEAN origins.**

o U.S. **DDGS** are subject to a **9% import tariff** imposed as a measure to protect the local soybean crushing sector and local corn production sector.

o U.S. **CGM** is subject to a **5% import tariff** imposed as measure to protect the local soybean crushing sector and local corn production sector.

- U.S. **sorghum and barley** are subject to a **27% import tariff**, while under the ASEAN FTA, ASEAN-Australia/New Zealand, ASEAN-China, and ASEAN-Korea, the import tax is zero.

- U.S. **ethanol** faces a **28 cents/gallon import tariff.**

Preferential treatment is provided to domestic suppliers. Thailand imposes domestic purchase requirements for several tariff-rate quota products, including corn, soybeans and soybean meal, in violation of WTO commitments. The Thai soybean crushing sector enjoys preferential treatment by the domestic feed milling sector, which is required to give preference to domestic soybeans and soybean meal before purchasing any foreign product. This measure displaces imported U.S. DDGS and affects U.S. market share in the Thai market.

U.S. corn exports have ranged from a high of $8.4 million in MY 2015/16 to a low of $285,000 in MY 2017/18. In 2019/20 they totaled $3.8 million. Corn gluten meal exports have ranged from $16.5 million to $24.7 million over the same time period and exports in 2019/20 were $16 million. U.S. sorghum exports have been zero since MY 2014/15 until increasing to $416,000 in MY 2019/20. Barley exports have ranged from zero to $62,000 over the MY 2015/16 to MY 2019/20 time period. Ethanol exports have ranged from zero in MY 2015/16 to $63,000 in MY 2019/20.

Restrictions of DDGs Imports

In December 2019 the Thai Department of Agriculture issued a complete suspension of DDGs imports due to the identification of a quarantine pest (Khapra Beetle). **As a result of intense cooperation with domestic importers and other allies a temporary fumigation protocol was reached. However, a final fumigation protocol is still under discussion and needs resolved.**

U.S. exports of DDGs increased steadily from MY 2015/16 through MY 2017/18 ranging from 582,000 MT ($112 million) to 945,000 MT ($184 million) in MY 2017/18. However, following the suspension, exports declined in MY 2018/19 to 725,000 MT ($155 million). They did recover in MY 2019/20 to 872,000 MT ($192 million), but well below the peak level in MY 2017/18.

Ban on Paraquat and Chlorpyrifos

Thailand notified the WTO of its proposed ban on paraquat and chlorpyrifos effective on June 20, 2020. In particular, as the maximum level for chlorpyrifos is legally set at a higher level than 0.001 ppm in exporting countries and by Codex, potentially affecting the impacts of exports of agricultural commodities to Thailand. Thailand should use Codex MRLs and provide transitional measures and longer grace periods to implement any new policy for grain.

Vietnam

As one of the fastest growing economies in Southeast Asia, Vietnam serves as a critical market opportunity for U.S. corn, DDGS, sorghum, and ethanol. With burgeoning pork and aquaculture industries in addition to a rising middle class (thus, increasing demand for gasoline), Vietnam is the largest animal feed market and corn importer in Southeast Asia. However, Vietnam poses significant challenges with a number of tariff and non-tariff barriers. Roughly 30 biotech events have not been approved since 2016 and as a result, imports have been impacted. Recent issues concerning changes in pesticide protocols (including a ban on glyphosate) and sanitary/phytosanitary measures has propelled Vietnam to the top tier of countries for which USGC is seeking U.S. government assistance.

While Vietnam is the largest corn importer in Southeast Asia at roughly 11 MMT annually, the U.S. is at times not competitive due to a 5% corn tariff. Vietnam imported 11.5 MMT of corn in MY 2018/19 with only 165 TMT from the U.S. However, in MY 2017/18 the U.S. exported nearly 2 million metric tons ($353 million) of corn to Vietnam. Exports increased marginally in MY 2019/20 to 222,000 tons ($38 million). Conversely, U.S. DDGS face a zero tariff and Vietnam has become the second largest U.S. global market with total volumes exceeding 1.3 MMT ($278 million) in MY 2018/19 and 1.2 MMT ($267 million in MY 2019/20.

Import Tariffs

U.S. ethanol exports to Vietnam presently face aggressive tariffs of 17 percent for 99 percent pure ethanol and 20 percent for 100 percent pure ethanol. Such a tariff structure deters imports of ethanol from the world's most cost-competitive supplier and limits the ability of Vietnam to meet its own stated, policy goals of E10 by the end of 2019. In June 2020, the Council was able to secure a five percent reduction in ethanol import tariffs. U.S. ethanol exports have ranged from zero in MY 2016/17 to 3.5 million gallons ($5.1 million) in MY 2018/19 and 2.7 million gallons ($6.6 million) in MY 2019/20.

U.S. corn exports to Vietnam face a 5 percent tariff whereas ASEAN members and Russian origin corn are imported duty-free. This tariff structure disincentivizes the use of U.S. corn and limits cost-competitiveness relative to competitors.

SPS/Plant Quarantine Restrictions

In mid-2016, Vietnam instituted **SPS/plant quarantine restrictions for corn and DDGs requiring fumigation for large cabinet beetle at the export loading point.** Any shipments found with pests at import locations are required to be fumigated and must be re-exported from Vietnam rather than released to importer. Interceptions of pests in DDGs shipments led to the Ministry of Agriculture & Rural Development (MARD) Plant Protection Department (PPD) issuing a notice on September 26, 2016 to USDA-APHIS that beginning December 1, 2016, exporters must implement a pre-shipment treatment of Methyl Bromide in place of phosphine for all U.S. consignments of wheat, corn and DDGs.

Because Methyl Bromide has been determined to be a Class I ozone depletion substance under the Montreal Protocol, there are limited quantities and additional restrictions and added costs in using it as a fumigant. That was followed on October 17, 2016 by issuance of a MARD notice that all U.S. imports of DDGs will be under temporary suspension beginning December 17, 2016. The Council was heavily engaged with USDA-FAS and USDA-APHIS and sent an industry team to Vietnam in mid-October to meet with government and industry officials. During much of 2017, government-government discussions led to a workable fumigation protocol and beginning in September 2017, provided for the allowance of imports of DDGs and fumigation requirements for corn.

While the situation was resolved, sanitary and phytosanitary (SPS)/plant quarantine restrictions remain for DDGS and corn imports requiring fumigation at the export loading point of methyl bromide or phosphine. In addition, exports continue to experience slow import document processing by country's quarantine and customs authorities.

The compulsory fumigation at origin policy for imports of U.S. DDGS has limited export capabilities during periods of cold weather. As Vietnam is the third largest imported of DDGS with increasing demand, this non-tariff barrier represents a critical deterrent to DDGS market access.

MARAD- PPD issued a notice in September 2018 that starting November 1, grain found contaminated with **Canada thistle (Cirsium arvense) seed would be reexported without possibility of post entry conditioning or processing.** Shipments of corn are not affected or at risk but has threatened market closure for some crops, such as soybeans and wheat. The underlying problem is a lack of transparency of sampling methodologies, and excessively strict enforcement.

In addition, Vietnam's Plant Protection Department (PPD) released a letter in May 2018 officially restricting the import of **U.S. sorghum into the country due to a lack of a pest risk analysis**. The lack of any Pest Risk Analysis within Vietnam has prevented U.S. sorghum exports. **In May 2020, a new pest risk assessment was approved by both countries.**

In summary, Vietnam should increase its transparency and dialogue with industry on such issues as pesticide use, import sampling methodology, and SPS protocol enforcement.

Biotechnology

Regarding approval of biotechnology events, Vietnam has used the approach that relies on approvals granted in other OECD countries as a way to fast track approval submissions and timelines. However, with recent political changes in MARD, political support for biotechnology has decreased and the Vietnamese are no longer following their own documented policy (numerous products have remained in queue for years now despite their clearance in numerous OECD countries).

Since 2017, the Ministry of Agriculture and Rural Development (MARD) has not approved any new biotech corn varieties for commercialization. The Government of Vietnam (GVN) currently approves only the commercialization of biotech corn. MARD approved a total of 16 biotech corn varieties to be grown in Vietnam in 2015-2016.

From October 2018 to September 2019, MARD issued ten Certificates of Food and Feed Safety Approvals for outstanding biotech events. The approved events included, three corn events, five soybean events, and two alfalfa events. Currently, there are eight biotech corn varieties pending MARD's review and/or commercialization approval. Among those, four varieties contain biotech traits resistant to Fall Army Worm (FAW).

In September 2018, MARD repealed Circular 69/2009 regulating field trials for environmental risk assessment before commercialization, causing a gap in regulations on field trials and biosafety certification for biotech crops in Vietnam. There is also concern that a draft Government Decree guiding the implementation of the new Cultivation Law, which took effect on January 1, 2020, lacks guidance on biotech crop recognition and biotech seed importation.

As of October 2019, no official trade barriers affecting GE agricultural products have been reported. However, biotechnology companies continue to raise concerns about MARD's delay in approvals of outstanding biotech events for food and feed use. These delays have started to cause trade disruptions and raise the likelihood that there are unapproved varieties entering the market. Additionally, the delay in the approval of recognition for new biotech hybrid corn varieties is hindering the ability of biotech companies to introduce new biotech hybrid seed corn to farmers.

Vietnam must improve its biotechnology approval process in order to avoid costly disruptions to its livestock industry. Moreover, despite being one of only several GMO cultivating countries in Asia with a system that has the potential to make it the leader of biotech approval events in the region, the current Vietnamese administration has sought to push back on scientific, risk-based approaches to regulatory measures.