Trade, Politics and Lawsuits: Issues Effecting Global Trade

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Introduction

Jim DeLisi

Fanwood Chemical, Inc.

President

- President of Fanwood Chemical Inc. (FCI).
- Fanwood Chemical specializes in the monitoring of imports and exports of agrichemicals and agrichemical intermediates. The company also carefully monitors international trade issues as they impact the chemical industry.
- Experience in marketing of organic chemicals and services within USMCA, South America, and Europe.
- Founding equity partner in REACh ChemAdvice GmbH (RCA).
- Chairman of the Industry Trade Advisory Committee for Chemicals, Pharmaceuticals, Health/Science Products and Services (ITAC 3). This committee reports to the Secretary of Commerce and the United States Trade Representative on international trade policy.
- Member of the AgriBusiness Global Advisory Board.
- Authored and co-authored numerous articles that have been published by Agribusiness Global.

International Trade Topics to be Addressed

- Democratic Trade Agenda
- Trump Administration 2nd Term Trade Agenda
- IPEF – Indo-Pacific Economic Framework
- Taiwan
- U.S. European Trade and Technology Council
- Other Current Discussions
- Russia/Ukraine
- BRICS
- China
- Strengths in International Trade
- 301 “surtaxes”
- 2,4 D Dumping

Likely Harris Administration Trade Agenda

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- A new Harris Administration would likely continue the existing path to reshape the economy from the bottom up and the middle out, with an even greater "leftist" approach. (not exactly sure what this means.)
  - The post WWII "vision of globalization" that was built around the notion that maximizing and liberalizing trade would lead to more peace and prosperity has not produced an equitable result.
- Biden story on trade:
  - Focus: Underserved Communities, Woman, Equity, Labor & Environment (including global warming). Business issues are not on the agenda.
  - Tariff elimination is not the goal – inclusivity is now the goal.
  - Ambassador Tai believes that there must be a strategic approach and a clean break from the traditional "FTA" approach.
    - Don't appear to care that the rest of the world, especially including China, is continuing to negotiate traditional free trade agreements which are leaving the U.S. "in the dust".
    - Her goal is a worker centered approach.
- Continued focus on Climate Change in all international forums.
- Protect the EV Industry.
- Tough on China – will be further discussed in a slide on 301 review.

Likely Trump 2nd Term Trade Agenda

- If past is prolog, then:
- Also agrees that the past definition of Free Trade is flawed.
- Would likely push quickly for renewal of Trade Promotion Authority so that he can re-engage and push for market opening Free Trade Agreement negotiations with the UK, Japan & Kenya.
- USMCA – will likely push for enhanced rules of origin to protect the EV industry.
  - Might promote the expansion of the USMCA to include other partners in the Americas.
- Has promoted a 10% across the board increase in import tariffs. However, in the past, they were very careful not to impact the cost of health care.
- Maintain and perhaps enhance the 301 tariffs against China.
  - Remove China's Favored Nation Status?
- Protect U.S. Auto industry, including EVs.
- Reduce or eliminate climate change goals as they impact trade.
- Increased exports of oil & gas.

IPEF (Indo-Pacific Economic Framework)

- This initiative continues to progress, with several “pillars” close to closing. There are a total of 14 countries involved with these talks, though all are not expected to agree to every “pillar”. The country list includes Australia, Brunei, South Korea, and Singapore, all of which have existing free trade agreements with the U.S. In addition, Fuji, India, Indonesia, Japan, Malaysia, New Zeeland, Philippines, Thailand and Vietnam are participating.
- “Pillars” include:
  - Supply Chain Resiliency – “substantially completed”
  - Clean Energy & Decarbonization
  - Tax & Anti-Corruption
  - Emerging Technologies (digital trade has been “dropped”)
  - Labor Commitments
  - Environment
  - Trade Facilitation & Dispute Settlement
  - Transparency & Good Regulatory Practices.
  - Corporate Accountability

- There is no market access component envisioned for these discussions. Many of the participants have expressed their disappointment in this fact, including many sectors in the U.S.
- Trump could use this initiative as a springboard if he wishes to produce a regional Free Trade Agreement.
- There is no intention to seek “Trade Promotion Authority” which would be necessary to greatly expand this agenda. The Agriculture community is not happy since they need market access agreements to expand our exports.
- While they are communicating with Congress, there is no intention of seeking Congressional approval for anything achieved by this initiative. They are considered “executive agreements”.
- However, the transparency and good regulatory practices pillar could provide an excellent forum to discuss market access issues involving regulatory practices in some of these countries that impede our exports.
- The Corporate Accountability pillar will very likely include a heavy emphasis on State Owned Enterprises (SOE).

TAIWAN

- USTR continues to engage with Taiwan on an investment deal which has been expanded to include most if not all of the pillars that are part of the IPEF.
- China continues to be very distressed that the U.S. is taking these actions.
- While Taiwan will not be invited to join the IPEF, this would not be an impediment since it is not envisioned that the IPEF will include “a grand signing ceremony” where all the participants will accept the agreement. Further, this has allowed Taiwan to proceed at a faster pace. Deals have been concluded covering:
  - Trade facilitation
  - Services
  - SME’s (Small, Minority Enterprises)
  - Good regulatory practices
  - Anticorruption.
- Since the U.S. has a “one-China” policy, these agreements will actually be executed under the U.S. Taiwan relations act of 1979. This act created The American Institute of Taiwan, which is a non-profit institute headquartered in Washington, DC.
- Though it would likely “enrage China”, Trump could use this vehicle to negotiate a full-fledged Free Trade Agreement with Taiwan.
  - There is already evidence of bipartisan support for such an undertaking in Congress.

U.S. European Trade and Technology Council

- Focusing on:
- Climate friendly trade policies.
- Critical minerals.
- Investments in clean technologies
- China
  - Trade practices.
  - State owned enterprises.
- Key from EU point of view is to not be locked out of participating in subsidies that the Administration has implemented to support its “green agenda”, especially including EVs.
- Trump could use this initiative to achieve other goals, though his reluctance to support Global Warming Targets will likely set back the U.S./EU Trading partnership.
  - A Free Trade Agreement between the U.S. and the EU has been a goal for many for years.
  - Industries, on both sides of the Atlantic, including services and manufacturing have been generally supportive.
  - EU Agricultural practices/farm policies/geographical indicators represent some of the sticking points.

Other Discussions

- None of these imply any market opening discussions:
- Brazil – discussions concerning “economic cooperation” continue.
- Kenya – similar to the IPEF discussions.
  - Kenya is likely the springboard to deeper cooperation in Africa, especially to counter China’s belt & road initiatives.
- Critical Minerals – variety of countries, current focus is mostly on processing, not mining.
- U.S./India Trade Policy forum – looks to overcome the myriad of trade policy issues between the U.S. and India.
  - India has made it abundantly clear that these discussions would more likely lead to a positive conclusion if GSP beneficiary rights were on the table!
- USMCA – Labor issues, GMO Corn and Glyphosate bans likely need to await the formation of a new Government in Mexico to be resolved.
- APEP – Americas Partnership for Economic Prosperity.

Russia/Ukraine

- We remain in completely unchartered waters here. Clearly this conflict will not be resolved amicably or quickly. It remains the case that U.S. relationships with major trading partners are being impaired, not only with Russia, but also with China, India as well as several countries in the Middle East that are taking advantage of "cheap Russian oil". Therefore, everything in this presentation is subject to change, on no notice.
- This being said:
  - From the U.S. Chemical industry point of view, imports and exports are minimal so there is not a big direct impact.
  - Loss of PNTR (Permanent Normal Trade Relations) for Russia is therefore not a major factor for our industry. However, for the few materials that are imported, it is likely that the tariffs have been increased, in some instances to over 35%.
  - Both are major exporters of fertilizers. PNTR has no impact on fertilizer tariffs, since everything in chapter 31 is duty free when imported into the USA from all countries under any circumstance. This does not include dumping duties, which are substantial, and are not related to PNTR.
  - This issue will continue to have a huge impact on the ability of European based facilities to function as their energy costs go through the roof and raw materials and intermediates previously purchased from both of these countries disappear from their supply chains. Many of the major EU players actually had facilities in these countries.
  - Most western companies have completely pulled out of Russia.
  - If Chinese or Indian munitions turn up on the battlefield, this would have a huge impact on the chemical industry companies that supplied the necessary components.

BRICS

- "Trading Partnership" started by Brazil, Russia, India, & China in 2009.
- Now also includes South Africa, Iran, Egypt, Ethiopia, and the United Arab Emirates.
- Saudi Arabia is considering membership.
- Many more have applied for membership.
- Foremost rival of the "G7".
- Includes a large development bank.
- Seeking to form a currency to compete with the USD as the world's reserve currency.
- Covers 41% of the world's population, 24% of the world's GDP and more than 16% of "world trade".

China’s Strengths

- China joined the WTO on December 11, 2001, as a developing country.
  - There is pressure to change their status from “developing” to “developed” as China has the second largest economy in the world.
- China has bilateral investment agreements with over 107 countries and economies, including Austria, the Belgium-Luxembourg Economic Union, Canada, France, Germany, Italy, Japan, South Korea, Spain, Thailand, and the United Kingdom.
  - China’s bilateral investment agreements cover expropriation, arbitration, most-favored-nation treatment, and repatriation of investment proceeds.
- China maintains 17 Free Trade Agreements (FTAs) with its trade and investment partners and is negotiating or implementing an additional eight FTAs.
  - FTA partners are ASEAN (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, Timor-Leste, and Vietnam), Korea, Pakistan, New Zealand, Chile, Peru, Costa Rica, Iceland, Switzerland, Maldives, Mauritius, Georgia, South Korea, Australia, Cambodia, Hong Kong, and Macao.
- In November 2020, China and 14 other countries signed the Regional Comprehensive Economic Partnership (RCEP), which China ratified in early 2021.
  - The RCEP is a free trade agreement among the Asia-Pacific nations of Australia, Brunei, Cambodia, China, Indonesia, Japan, South Korea, Laos, Malaysia, Myanmar, New Zealand, the Philippines, Singapore, Thailand, and Vietnam.
  - The 15 member countries account for about 30% of the world's population (2.2 billion people) and 30% of global GDP ($29.7 trillion), making it the largest trade bloc in history.
- Has an FTA with Brazil that includes provisions to trade in Yuan.
- The “Belt & Roads” initiative gives China inside access to many countries, especially numerous “LDCs”.

China "301"

- President Trump began imposing surtaxes on a variety of imports from China in 2018 in 4 tranches. President Biden had made no significant modifications, until May of this year.
- Biden Administration released the results of the mandatory 4-year review of this program on May 14, 2024.
  - The report includes a litany of issues that the U.S. hoped would be disciplined in China as a result of these tariffs, most of which are on-going.
  - It included a substantial increase in the tariff on electric vehicles to 100%.
  - Included new tariffs on several items, including some that will increase the cost of healthcare and solar panels.
  - Included new exceptions for equipment necessary in the production of "green technology" items.
  - No discussion about exceptions procedures for any additional materials.
  - Includes the following on page 44: "In December 2022, President Xi Jinping stated that China 'must persist in agricultural science and technology self-reliance and accelerate the push on breakthroughs in critical core agricultural technology'".
- Interesting to note that USTR reduced their budget request to handle exceptions.
- USTR released a review of the existing 301 exceptions on May 24.
  - Declined to renew the exceptions for over 100 items, including some that will increase the cost of healthcare.
    - Mostly based on a perception that nothing was being done to move sourcing outside of China on these items (includes Paraquat).
- Balance of the exceptions were renewed for an additional year.

2,4 D Dumping

- 2,4 D imports, as acid for the last four years, by quarter appear to be as follows:

	2024	2023	2022	2021
Q1	9,524 MT	12,865 MT	9,948 MT	4,930 MT
Q2	11,885 MT	5,203 MT	10,656 MT	4,902 MT
Q3		1,902 MT	12,194 MT	3,434 MT
Q4		5,121 MT	11,511 MT	6,179 MT
Total	**21,409 MT**	**25,091 MT**	**44,309 MT**	**18,905 MT**

- Prices from China and India have fallen by roughly 50% in the last 2 years.
  - This puts them back to where they were in prior years.
- Other comments:
  - U.S. Dumping law heavily favors the U.S. Producer.
  - Objectors goal is to receive the lowest over-all dumping margins.
  - Likely no impact on imports from Colombia.
  - Countervailing duty margins are crucial since they might offer a window into the future.
  - If there is an import surge, Customs could go back 3 months and collect additional duties.
  - Australia has had a dumping order in place against Chinese 2,4 D for at least the last couple of years.

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- This case should be concluded before the end of the year.
- Coupled to the fact that the Administration did not renew the exception to the China surtax on formulated Paraquat, if the price of both Paraquat and 2,4 D goes up, what other chemistries will come into play?
- Will Bayer CropScience, BASF and other U.S. AI producer's "go to school" on this case and follow suit?

2,4 D Dumping #2

- USITC voted to continue the case on May 17, 2024.
  - Even though opponents argued that the “scope” of the investigation had been defined to include 2,4 D Acid, Salts and Esters, and products that contain the same, Corteva prevailed and has standing to continue to prosecute this case. Corteva is the only producer of 2,4 D Acid in the U.S., while Nufarm, Drexel, PBI Gordon and Albaugh produce Salts, Esters and formulated Agrichemicals containing 2,4 D.
  - It also implies that Corteva has proven that they have been “damaged” by imports.
  - **Advancing beyond this steps implies that it is highly likely that there will be dumping and countervailing duty margins imposed on these products.**
- Department of Commerce is now scheduled to post preliminary CVD (Counter Vailing Duty) margins on September 3 and dumping margins on September 10, 2024. This implies that the potential 90 day look back period if there is an “import surge” and Corteva claims critical circumstances, could be as early as June 6, 2024.
- There was testimony that Corteva had pulled back from the supply of 2,4 D Acid to the domestic market. While this issue was not germane, it was very awkward for the petitioner.
- The “Corn Board” testified in opposition on behalf of U.S. Corn Farmers.
  - On July 12, American Soybean Association, National Association of Wheat Growers, National Barley Growers Association, National Corn Growers Association, National Sorghum Producers, and the U.S. Durum Growers Association penned a letter to Commerce Secretary Raimondo asking that she “kill” this petition.
- The way the scope has been written, if a producer in a third country were to convert 2,4 D Acid to salt, ester, or formulated product it would be covered by the order.
  - This would likely be the case for all countries that benefit from most favored nation trade status with the U.S.
  - It is likely that countries that have a Free Trade Agreement with the U.S. that allows for a chemical reaction to determine origin, may not be impaired.
    - US Free Trade Agreements with Colombia, Mexico, Canada, Australia, Chile, Singapore, South Korea, Peru and DR CAFTA all have the Chemical Reaction Rule.

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THANK YOU!

Questions?

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