CRA Corn Refiners Association

Trade Update

May 5, 2020

By Michael Anderson

If you don't get regular trade updates, sign up here for CRA's weekly Trade Update

Highlights

- **USMCA:** Less than two months until USMCA enters into force (July 1st), President Trump announced the USMCA Interagency Labor Committee for Monitoring and Enforcement. The Committee, co-lead by Amb. Lighthizer and Labor Secretary Acosta, will monitor and enforce environmental obligations under the USMCA.
- **COVID-19 Developments**: President Trump issued an Executive Order to keep meat packing facilities in operation after nearly 20 plants had closed to stem the spreading COVID-19 among the facilities' work force. USDA Secretary Perdue, directed by the President to implement new safety and health guidelines and ensure the plants remain operational, said closed plants will open within weeks, not months.
- **U.S. - U.K.:** U.S. – U.K. talks will start Tuesday according tweets from British officials. Talks will commence with a video conference between Amb. Lighthizer and U.K. International Trade Secretary, Liz Truss. The first round of negotiations is expected to last two weeks.
- **U.S. - China Trade:** President Trump threatened additional tariffs on China as the Administration explores possible punitive actions in response to mounting frustration with China's handling of the coronavirus leading to the global pandemic.
- **WTO**: Three WTO member countries (Iceland, Pakistan and Ukraine) joined the interim appellate arbitration agreement group bring the total to 19 countries. Spearheaded by the EU, the group will resolve trade disputes among themselves along the lines of the WTO's dispute settlement system in the void of a functioning Appellate Body (AB). The AB dissolved last December as the U.S. has blocked new AB judges over longstanding concerns over the AB's errant operations.

USMCA

- Within two months, USMCA will enter into force (July 1) as announced by USTR last week. In a statement released last Friday, Amb. Lighthizer said, "The crisis and recovery from the Covid-19 pandemic demonstrates that now, more than ever, the United States should strive to increase manufacturing capacity and investment in North America. The USMCA's entry into force is a landmark achievement in that effort."
- Following the USTR announcement of a July 1st USMCA implementation date, Amb. Lighthizer visited with House Democrats to discuss USMCA implementation issues. Democrats are particularly focused on USMCA's enforcement. Ways and Means Committee Chair Richard Neal said, "My colleagues and I emphasized to the Ambassador that the USMCA's new enforcement mechanisms must be more than simply words on a page, particularly with regard to workers' rights and environmental protection." Democrats also raised question on intellectual property and access to biologics. The House Democrats also probed into the Administration's thoughts on how the COVID-19 pandemic will impact all three trade partner's implementation efforts, according to Chairman Neal.
- Checking another USMCA implementation box prior to the July 1st entry into force, President Trump issued an executive order establishing the USMCA's Interagency Labor Committee for Monitoring and Enforcement. According to executive order, the committee will "coordinate United States efforts to monitor and enforce environmental obligations consistent with title VIII of the Act and, with respect to Mexico and Canada, to carry out assessments of their environmental laws and policies, to carry out monitoring actions with respect to the implementation and maintenance of their environmental obligations, and to request enforcement actions." Amb. Lighthizer and Labor Secretary Alexander Acosta will co-chair the Committee. Other committee members will include representatives of the Departments of State, Treasury, Agriculture, Commerce and Homeland Security, along with the U.S. Agency for International Development.

Section 232 Tariff Actions

- A U.S. steel firm filed a legal challenge last week to President Trump's section 232 authority. Thyssenkrupp Materials NA Inc., a Michigan-based importer of aluminum and steel products, filed a complaint against President Trump, Commerce Secretary Wilbur Ross and U.S. Customs and Border Protection officials. The court filing at the U.S. Court of International Trade (CIT) alleges that the Commerce Department's granting of exclusions to certain parties has resulted in an "unconstitutional lack of uniformity in the application of tariffs imposed." The company claims that Commerce's decision to grant exclusions to "individual requestors" rather than for products themselves was contrary to language in the president's aluminum and steel tariff proclamations. "Contrary to the clear Presidential instruction that exclusions be granted for aluminum and steel articles, Commerce arbitrarily and capriciously determined that approved exclusions apply only to the requesting individual or organization," the court filing states. "In each instance, Commerce's rule states that 'Other individuals or organizations that wish to submit an exclusion request for a steel or aluminum product that has already been the subject of an approved exclusion request may request an exclusion under this supplement.'"
- Over two years ago, President Trump imposed tariffs of 25% and 10% on imports of steel and aluminum, respectively, based on Commerce's Section 232 investigation that found such imports were a threat to national security. Shortly thereafter, a product-exclusion process "limited to the individual or organization that submitted the specific exclusion request, unless Commerce approves a broader application of the product based exclusion request to apply to additional importers," was established.

China Trade

Phase One Agreement

- Under mounting frustration and external pressure to punish China for mishandling the coronavirus, President Trump indicated further tariffs were on the table. Speaking to reporters last week, Trump said, "It's certainly an option," "So we're going to see what happens. A lot of things are happening with respect to China," he said. "We're not happy, obviously, with what happened. This is a bad situation."
- Up to this point Trump administration officials have commented positively on China's preliminary actions to implement the phase one trade pact, recognizing the extreme economic complications stemming from the global pandemic. A USTR official speaking on a call with reporters regarding the USTR annual report on intellectual property rights protection said, "Obviously we're experiencing this unprecedented health crisis, which impacts a number of things that everybody is doing." "But I will say that we've had very good engagement with the Chinese throughout this time period. We're talking to them regularly on an ongoing basis, sometimes almost daily," and that recent calls between both sides "have been really constructive," the official said according to Politico reporting. The USTR official noted, "There has been some issues relating to purchases, and we really have been talking extensively with the Chinese to make sure that they stay on track to make the purchases and commitment."
- In the daily press briefing on COVID-19, President Trump threatened to "terminate" the phase-one U.S.-China trade agreement if China fails to meet its commitments. When asked whether China may invoke the "unforeseeable events" clause in the trade pact to delay implementation because of the COVID-19 pandemic, the President responded, "we're going to see." But if China does not live up to the agreement, the President said he would terminate it and "do what I can do better than anybody," a likely reference to additional tariffs on imported products from China.
- China has committed to buy additional purchases of U.S. agriculture products totaling $32 billion over two years, under the Phase 1 trade deal. That would include $12.5 billion above the corresponding 2017 baseline of $24 billion in 2020 and $19.5 billion above the baseline in 2021.

Section 301 Tariffs

- Displaying mounting frustration with China over the global coronavirus pandemic, President Trump's advisors are considering a range of punitive actions against China, including tariffs, according to reports. Sources emphasized the discussions were preliminary and no recommendations were reached at this point. "There is a discussion as to how hard to hit China and how to calibrate it properly," according to Reuters report. In responding to questions raised by reporters, Trump emphasized he is primarily focused on China's role in the origin and spread of the coronavirus and the phase one trade deal is secondary. "We signed a trade deal where they're supposed to buy, and they've been buying a lot, actually. But that now becomes secondary to what took place with the virus," Trump said. "The virus situation is just not acceptable."
- Days later, Larry Kudlow, Chief White House economic adviser downplayed the concern over the possible imposition of further tariffs on Chinese products, saying that the President has the final word and is considering multiple options. "With respect to future tariff decisions and other measures, that's going to be up to the president," Kudlow said on CNBC. "I don't think there's any rush right now. Our efforts here are to, first of all, get this virus down, open up the economy, get folks back to work. Let's get some economic growth back."

Larry Kudlow, White House Economic Adviser

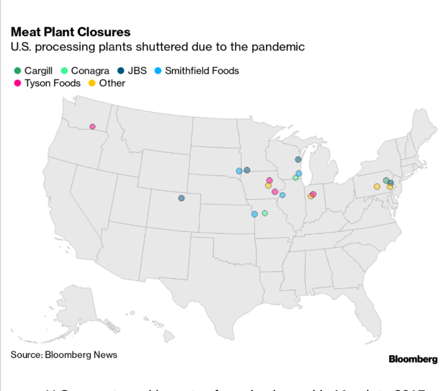
- The latest calls for the White to provide tariff relief include the Consumer Technology Association (CTA) and the fashion and apparel industries. In its statement to USTR on potential modifications to section 301 tariffs, CTA argued that section 301 tariffs are raising prices for many products associated with winning the coronavirus battle. CTA contends that tariff exclusions are needed in the current economic environment and should last at least 180 days. The technology association further requests USTR to reopen the exclusion processes for all four lists of section 301 product groups.
- A group of fashion, travel goods, and apparel organizations sent a letter to Congressional leaders recommending critical actions, including requesting inclusion of tariff relief in the next coronavirus aid package, to mitigate the impact of COVID-19 on the industries. The group's recommendations include an extension and expansion of the two-month duty payment deferral that Trump approved last month. The group also seeks tariff suspension for personal protective equipment (PPE) along with imported inputs used to make PPE in the United States.
- As industry groups and lawmakers call for economic assistance for the collapsing U.S. economy in the form of tariff relief, USTR indicates it is considering extending some previously approved China tariff exclusions for one year. The extension would cover certain products excluded from the 25 percent tariffs under the lists applying to $34 billion and $16 billion and products. USTR asked for public comment on the idea before June 1. USTR said it would evaluate the exclusions, currently set to expire on July 9 and July 31, on a case-by-case basis, rather than approve an across-the-board extension. "The focus of the evaluation will be whether ... the particular product remains available only from China," USTR said in a Federal Register notice. "In addition, USTR will continue to consider whether the imposition of additional duties on the products covered by the exclusion will result in severe economic harm to the commenter or other U.S. interests."

COVID-19 Developments

- Last week President Trump employed the Defense Production Act issuing an Executive Order to keep meat packing facilities in operation. The Executive Order noted "It is important that processors of beef, pork, and poultry ("meat and poultry") in the food supply chain continue operating and fulfilling orders to ensure a continued supply of protein for Americans." The Executive Order directs USDA Secretary Perdue to "ensure that meat and poultry processors continue operations consistent with the guidance for their operations" issued by federal public health and worker safety regulators. President Trump emphasized that the order would protect meat processing firms from legal complaints from workers who claim they're not being adequately protected from the virus.

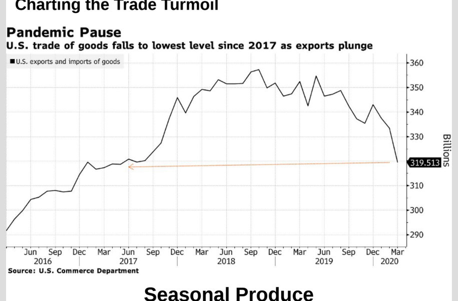
Sonny Perdue, Secretary of Agriculture

- Following the Executive Order, USDA Secretary Perdue released a statement regarding keeping meat and poultry processing facilities open during the COVID-19 national emergency. "I thank President Trump for signing this executive order and recognizing the importance of keeping our food supply chain safe, secure, and plentiful. Our nation's meat and poultry processing facilities play an integral role in the continuity of our food supply chain," said Secretary Perdue. "Maintaining the health and safety of these heroic employees in order to ensure that these critical facilities can continue operating is paramount. I also want to thank the companies who are doing their best to keep their workforce safe as well as keeping our food supply sustained. USDA will continue to work with its partners across the federal government to ensure employee safety to maintain this essential industry." Speaking to reporters, Secretary Perdue indicated the shortfall in meat production from shuttered plants will be reduced to as low as 10 percent as a result of the President's action, yet plants my run at less than full capacity due to social distancing measures and other health protections.
- Prior to the Executive Order, nearly 20 meat processing plants had closed as the pandemic spread among the meat packing plant workforce. The plant closures prompted several experts to warn that meat and poultry shortages we increasingly likely



- U.S. exports and imports of goods plunged in March to 2017 levels as the global economy caved due to the global coronavirus pandemic. Goods exports fell 6.7% from the prior month -- the sharpest decline since 2008 – sharp declines in auto shipments, oil, add other industrial goods were the main drivers as reported by the Department of Commerce.

Charting the Trade Turmoil



Seasonal Produce

- Citing an unprecedented time for famers and sharp decline in farm revenue due to the coronavirus pandemic, Rep. Ted Yoho sent a letter to President Trump to call for a "…force majeure motion to stop the importation of all Mexican, Central American, and South American food products during this pandemic…". Rep. Yoho argued that extraordinary measures are necessary to save America's food producers who face a "glut" of products in the market. The letter emphasized that the import ban "should include fresh fruit, vegetable, dairy, and meat products."

Ted Yoho, Congressman

- New dates for USTR's seasonal produce field hearings, postponed due to COVID-19 issues, are still pending. Prior to the hearing suspension Mexican government officials warned the country may be forced to react should the U.S. impose restrictions on seasonal produce trade. Mexican Undersecretary for North America Jesús Seade said Mexico would use USMCA's dispute settlement mechanism as well as direct measures "to start." He emphasized that Mexico would "probably take action of a similar commercial magnitude on appropriate sectors, it could be agricultural sectors." Seade affirmed that "if anything is inconsistent with our commitments, we will have to respond."
- In a January 9, 2019 letter to the Florida congressional delegation Amb. Lighthizer outlined the administration's plan to review and determine options regarding "trade-distorting policies that may be contributing to unfair pricing in the U.S. market for seasonal and perishable products and to assess the impact of those policies on U.S. producers." The letter notes that within 60 days after "entry-into- force" of the USMCA, the USTR will "implement effective and timely remedies necessary to address any trade distorting policies" affecting U.S. growers. Additionally, within 90 days, the Department of Commerce, U.S. Department of Agriculture and USTR will have hearings in Florida and Georgia to hear testimony from growers. According to USTR, "At the hearings, officials from the federal agencies will hear from interested persons on how the Trump Administration can support these producers and redress any unfair harm."

U.S. - Japan Trade

- USDA published a series of product briefs which provide concise overviews of how the U.S.- Japan phase one Agreement (USJTA) affects certain food and agriculture product groups. The briefs summarize tariff changes and 2019 import volumes for selected products under the USJTA. More comprehensive and additional details are found in the agreement text itself at the same location.
- Potential U.S.-Japan phase two trade talks, which as previously indicated would not commence prior to May 1, 2020, at the earliest, remain beholden to COVID-19. Former Assistant USTR for Japan, Korea and Asia-Pacific Economic Cooperation, Bruce Hirsch, opined that phase two talks with Japan are presently less about when, and more about how "intense" they might be amid a global health crisis. He highlighted the current focus by both governments on combating COVID-19 and the political will on both sides ahead of the upcoming election, as pivotal factors that could impact the timing and content of phase two talks. Hirsch emphasized, "With each government focusing on coronavirus management, the odds of it getting off to a fast start are even more remote." Hirsch said the timing of the phase two talks possibly commencing in 2020 remains uncertain, despite the earlier pronouncement by Amb. Lighthizer that the next round of negotiations could start as early as May. "I would distinguish between phase-two talks beginning and phase-two talks proceeding with any level of intensity," Hirsh said. "Neither side was prioritizing phase two before. It's likely to be even less of a priority now." Prior to the outbreak of COVID-19, commencement of negotiations on a phase two or a comprehensive trade deal were expected no earlier than May according to several sources.

U.S. - EU Trade Agreement

- Last month EU trade chief Phil Hogan expressed "hope" that both sides could reach a deal on aircraft subsidies before the WTO renders a verdict on damages in the Boeing case (while also saying "it's slow, it's technical" work). Regarding the broader bilateral trade relationship Hogan said the EU and U.S. "should be working together in order to reduce tariffs, eliminate tariffs where possible" and to "reignite the global economy post the pandemic."
- Earlier in the year the U.S. increased tariffs on EU aircrafts to 15% in mid-March according to a previous deadline announced by President Trump, no significant developments in conjunction with the WTO Airbus case involving tariffs on $7.5 billion of European imports. EU officials continue to emphasize the importance of reaching a larger understanding to end the 15-year aircraft dispute. The arbitrator's ruling on a damage amount in the EU counter-challenge on U.S. subsidies for Boeing was anticipated for June 2020, but it remains unclear how the global health crisis will impact that timeline.
- The EU and U.S. officials expressed optimism of a "reset" on the transatlantic trade relationship following changes in EU leadership this year. An EU spokesperson in recent months confirmed that contact between the U.S. and EU was "continuing with a view to exploring the contours of a possible new understanding on trade issues." "These ongoing engagements involve both technical and political levels," the spokesperson said, noting that Commission Hogan and Amb. Lighthizer have held numerous discussions.

U.S. - U.K. Trade Agreement

- U.K. officials over the weekend indicated bilateral trade talks will commence this week. According to reports the first round of negotiations will start on Tuesday via video conference and is expected to last for two weeks. U.K. International Trade Secretary Liz Truss tweeted. "We will be working to bring benefits to all parts of United Kingdom and boost our economies during #coronavirus recovery." U.K. Foreign Secretary Dominic Raab echoed the comments, tweeting that "Free trade & open markets will drive the global economic recovery. UK & US are natural partners & a bold, future-facing deal will benefit us both. This week work begins on a free trade agreement that can help steer our two great economies out of the downturn."

Liz Truss, U.K. International Trade Secretary

- Prior to the announcement, The BritishAmerican Business association had urged U.S. and U.K. officials to restart bilateral trade talks in conjunction with economic recovery plans from the coronavirus. In a statement CEO Duncan Edwards said, "In a post-Covid world there will be calls for reduced international trade and greater protection for domestic businesses and workers; through a full and comprehensive trade agreement, the U.S. and UK have the chance to demonstrate that trade, free and fair, continues to be the driver of economic growth, jobs and prosperity that it has been throughout history and set a new benchmark for quality in Trade Agreements." "They should restart the talks." Duncan continued, "While this work rightly remains at the top of the agenda it is also important to spend time on what comes next," and that the strength and security of the transatlantic relationship could speed the post-COVID-19 recovery.
- Earlier in the year President Trump and British Prime Minister Boris Johnson discussed their "shared commitment" to reach a bilateral free trade agreement but did not mention specific timing. USTR added that both governments are "rightfully focused" on arresting the COVID-19 pandemic. USTR's chief agricultural negotiator, Amb. Doud said that expectations to start official talks were sidelined by the coronavirus and he expected negotiations will start "as soon as we can figure it out, when everybody can get back up and running again here, but who knows when that is."

U.S.-Kenya Trade Developments

- The Congressional Research Service (CRS) released a "In Focus" brief on the pending U.S. – Kenya Trade talks. The two-page brief summarizes the present economic and trade ties, present tariffs and barriers for U.S. exporters in Kenya, and key issues for the trade talks and Congress.
- The extended deadline for comments on negotiating objectives on the U.S- Kenyan trade talks closed last week and USTR may release its negotiating objectives in mid-May according to a previously stated target date of June 15, at the earliest, to commence formal negotiations.
- USTR formally notified Congress of its intent to undertake trade talks with Kenya, starting the 90-day clock prior to commencement of official negotiations. The USTR letter(s) said that the U.S. will begin negotiations "as soon as practicable," but not before 90 days from now, or June 15." The letter also affirmed that USTR will publish its formal negotiating objectives at least 30 days before talks begin, a requirement under Trade Promotion Authority (TPA), and USTR committed to working "closely and transparently" with Congress throughout the process.
- According to a USTR fact sheet, Kenya is the United States' 98th-largest trading partner in goods, with $1 billion in two-way trade in 2018. Major U.S. imports include apparel, tree nuts, essential oils, and coffee, while Kenya's major imports include aircraft, machinery and agricultural goods.

U.S. - Brazil Trade Developments

- Last week four leading U.S. and Brazilian business groups - the U.S. Chamber of Commerce, the Brazil-U.S. Business Council, the American Chamber of Commerce for Brazil, and the National Confederation of Industry of Brazil – sent a letter to Brazilian and U.S. government leaders, supporting plans for a limited bilateral trade agreement in 2020. The letter highlighted that the business sector sees the deteriorating global economy as even further impetus to pursue market opening measures and believes that a bilateral trade agreement would spur job creation and economic in both countries.
- Earlier the White House announced that the U.S. and Brazil are moving forward to accelerate bilateral trade dialogue under the Brazil-U.S. Commission on Economic and Trade Relations with the goal of concluding an agreement on trade rules and transparency, including trade facilitation and good regulatory practices be the end of this year. During a recent high-level discussion between U.S. and Brazilian trade officials, both sides committed to engage in domestic consultations to glean stakeholder input on how best to enhance and expand the existing trade and economic bilateral relationship.
- The accelerated talks stem from recent communications between Amb. Lighthizer and Brazilian Minister of Foreign Affairs Ernesto Araújo and other senior officials. The two ministers discussed potential steps to deepen the economic partnership between the two countries under the current Agreement on Trade and Economic Cooperation (ATEC). The call between Amb. Lighthizer and Minister Araújo follows on the recent meeting between Presidents Trump and Bolsonaro in Florida where the leaders agreed to aggressively pursue trade talks.

U.S. - India Trade Developments

- No significant update on U.S. -India trade talks as both countries are focused on economic recovery and arresting the spread of the coronavirus. President Trump and Prime Minister Modi announced in February they had "agreed to initiate negotiations for a bigger deal," as earlier ambitions for a quick limited deal evaporated. Trump stated the two sides "have made tremendous progress on a comprehensive trade agreement." Trump said that a deal could be achieved toward the end of the year but offered that if there's no trade agreement "we will do something else that will be very satisfactory."
- A primary motivation for India in the trade deal is restoration of India's GSP benefits, valued at approximately $6.4 billion. The U.S. earlier revoked India's GSP benefits and is calling for reciprocal market access in India for agriculture products, industrial goods, and services in order to restore GSP.

Suspension Agreements

Tomato Suspension Agreement

- Supporters of the revised tomato Suspension Agreement commented recently on the importance of the agreement under the present depressed economic conditions from COVID-19. In particular, Florida tomato growers cite that collapsing economic conditions are forcing the destruction of tons of produce due to a shift in demand as a result of the pandemic lockdown. Michael Schadler, executive vice president of the Florida Tomato Exchange, which represents the state's growers, said "We support that provision and the overall agreement. In fact, it's times such as these when there is an oversupply in the market that the agreement is most necessary." As reported last year, the agreement was revised in August 2018 between U.S. and Mexican growers, avoiding anti-dumping duties on Mexican imports but set minimum prices for certain tomatoes from Mexico and imposed a new border inspection process.

General Trade/WTO Reform

- Three WTO member countries (Iceland, Pakistan and Ukraine) joined the interim appellate arbitration agreement group bring the total to 19 countries. As reported last month, the "multi-party interim appeal arbitration arrangement" or MIAA group aims to resolve disputes among the group's members along similar WTO procedures for dispute settle structures in lieu of a functioning appellate body (AB). The group notified the Dispute Settlement Body (DSB) of the additional members and noted that any disputes among the 19 parties pending as of the notification will be governed by the new appeals mechanism "except if the interim panel report, in the relevant stage of that dispute, has already been issued on that date." Members can also mutually decide to deviate from the arrangement in specific disputes according to the notification. While any WTO member can join the group, the U.S. has not joined. Several observers suggested that more countries will join as the impasse over reforming the AB has no clear resolution at the moment.
- The MIAA group emphasized they remain committed to a "functioning, two-step dispute settlement system at the WTO." Participating countries are Australia, Brazil, Canada, China, Chile, Colombia, Costa Rica, the European Union, Guatemala, Hong Kong, Mexico, New Zealand, Norway, Singapore, Switzerland and Uruguay. Under the alternative approach, the 16 countries agreed to solve any appeals or disputes among themselves. "This is a stop-gap measure to reflect the temporary paralysis of the WTO's appeal function for trade disputes," said Phil Hogan, EU Trade Commissioner. He continued, "This agreement bears testimony to the conviction held by the EU and many other countries that in times of crisis working together is the best option. We will continue our efforts to restore the appeal function of the WTO dispute settlement system as a matter of priority." According to sources, the Multiparty Interim Appeal Arbitration Arrangement closely tracks the existing WTO appeal rules and can be used between any members willing to join.
- For over a decade, the U.S. has complained about the failures and overreach of the WTO's appellate body (AB) system, blocking the appointment of new panel members to the AB leading to dissolution of the body on December 10, 2019. The Trump Administration has consistently rejected several reform proposals by the EU, China and other WTO members as insufficient and only a superficial response to a deeper systemic problem. Earlier in the year, USTR released a detailed 174-page report inventorying the complaints and failures of the WTO's Appellate Body, but offered no solutions or reform proposals. As stated in the report, "The purpose of this report is not to propose solutions to the problems facing the WTO dispute settlement system. Rather, its purpose is to provide a thorough examination of the Appellate Body's failure to comply with the WTO Agreements." USTR's statement continued, "The Report demonstrates the Appellate Body's persistent failure to follow basic WTO rules and highlights several examples of how the Appellate Body has altered WTO Members' rights and obligations through erroneous interpretations of WTO agreements."

Sign up for the Corn Refiners Association's weekly Trade Update

SUBSCRIBE

Corn Refiners Association | 1701 Pennsylvania Avenue, NW, Suite 400, Washington, DC 20006

Unsubscribe