TRADE UPDATE
Food & Agriculture

July 20, 2021

Provided by CRA

HIGHLIGHTS

- **U.S. – China:** Several lawmakers are increasingly concerned with foreign ownership of U.S. agricultural land, specifically ownership from China, and contemplating legislation to curb the trend.
- **U.S. – USMCA:** The U.S. filed its first submission within the USMCA against Canada in the dairy tariff rate quota dispute, citing five areas of violation by Canada.
- **U.S. – U.K.:** USTR Katherine Tai and British Trade Secretary Liz Truss met in Washington, DC last week to discuss several trade issues, including China's trade practices and how to ensure fair competition and taking on forced labor. Truss acknowledged that completing U.S. – U.K. trade talks this year was unlikely.
- **WTO:** The U.S. requested the WTO authorize new tariffs on China for non-compliance regarding the dispute settlement body (DSB) ruling on China's tariff-rate quotes (TRQs) for certain agriculture products. China contends it has complied and requested a WTO compliance panel.

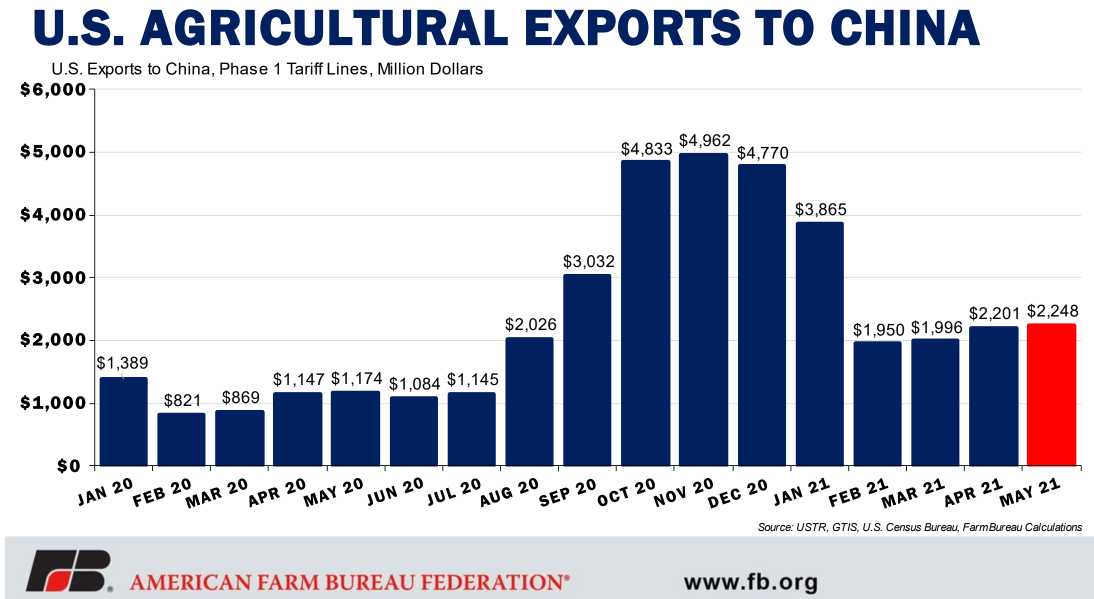
Quote: "In Congress, China is almost friendless." (*Rep. Gerry Connolly (D-Va) speaking at a program on China at the Progressive Policy Institute*)

China Trade

- The Unites States has started to look deeper into the foreign ownership of U.S. agricultural land, specifically ownership from China. By the start of 2020, agricultural owners from China owned about 192,000 acres in the U.S., worth $1.9 billion. While this is still a smaller number compared to acres owned by Canadian and European owners, the upward trend from China is worrying lawmakers. A recent amendment to the Agriculture-FDA spending bill would block new agricultural acre purchases from companies owned wholly or partially by the Chinese government and bar existing owners from China from receiving federal program support. Some states, such as Iowa and Minnesota, already have state laws restricting broader foreign ownership of agricultural land.
- The House Ways & Means trade subcommittee will hold a hearing on an issue of increasing importance and prominence for the U.S. and its allies: forced labor on July 21st. Subcommittee Chairman Earl Blumenauer (D-OR) announced the virtual hearing, titled "The Global Challenge of Forced Labor in Supply Chains: Strengthening Enforcement and Protecting Workers." A witness list of participants is pending. The hearing follows multiple actions by Congress and the Biden administration to include bans of goods from Xinjiang region of China, and to root out forced labor U.S. import supply chains.

Phase One Agreement

- U.S. monthly agricultural exports to China under the phase one deal remained steady at $2.2 billion in May. This compares to $1.5 billion in May 2020, the first year of the agreement, yet lower than the peak month of Nov. 2020 at $4.9 billion.



USMCA

- The United States has filed its first submission within the USMCA against Canada in the dairy tariff rate quota dispute. The recent submission claims that there are five provisions of the tariff rate quota that Canada is in violation of. At the heart of the U.S. complaint is the allocation of 85% to 90% of the TRQ to "processors", with the U.S. contending that the processor specific allocations violate specific USMCA articles. According to the U.S., reserving the TRQs for processors creates an adverse environment to fair competition amongst processors.
- As reported earlier, the panel selection for the USMCA Dairy Tariff-Rate Quotas dispute lodged by the U.S. was recently announced. On July 5, 2021, the Parties to the *Canada-United States-Mexico Agreement*, Chapter 31 dispute *Dairy TRQ Allocation Measures* (CDA-USA-2021-31-01) completed the Panel selection process. The Panel is composed of the following individuals:
  - Elbio Oscar Rosselli Frieri, Chair, by agreement of the disputing Parties
  - Julie Bédard, Appointed by the United States, the complaining Party
  - Mark C. Hansen, Appointed by Canada, the responding Party

Section 232 Investigations

- The U.S. Court of Appeals for the Federal Circuit (Federal Circuit) issued a majority 2-1 opinion reversing the ruling of the U.S. Court of International Trade (CIT) that former President Donald J. Trump violated the provisions of Section 232 of the Trade Expansion Act of 1962 (Section 232) by increasing tariffs on steel imports from Turkey beyond those previously implemented under an earlier Presidential proclamation. The Federal Circuit ruling remands the case to the CIT for an entry of judgment against the plaintiff group led by Transpacific Steel LLC.
- In the original filing, Transpacific Steel and other plaintiffs argued that the Trump administration's policy actions violated both the statutorily-mandated procedures for a Section 232 national security investigation and the U.S. Constitution's guarantee of equal protection under law. In its opinion, the CIT agreed, determining that the subsequent presidential proclamation implementing additional tariffs solely affecting Turkish steel (*i.e.*, raising the duty rate from 25% to 50%) was issued well after the statutory time period allowed under Section 232. The CIT also found that former President Trump acted "without a proper report and recommendation by the [Secretary of Commerce] on the national security threat posed by imports of steel products from Turkey."

Section 301

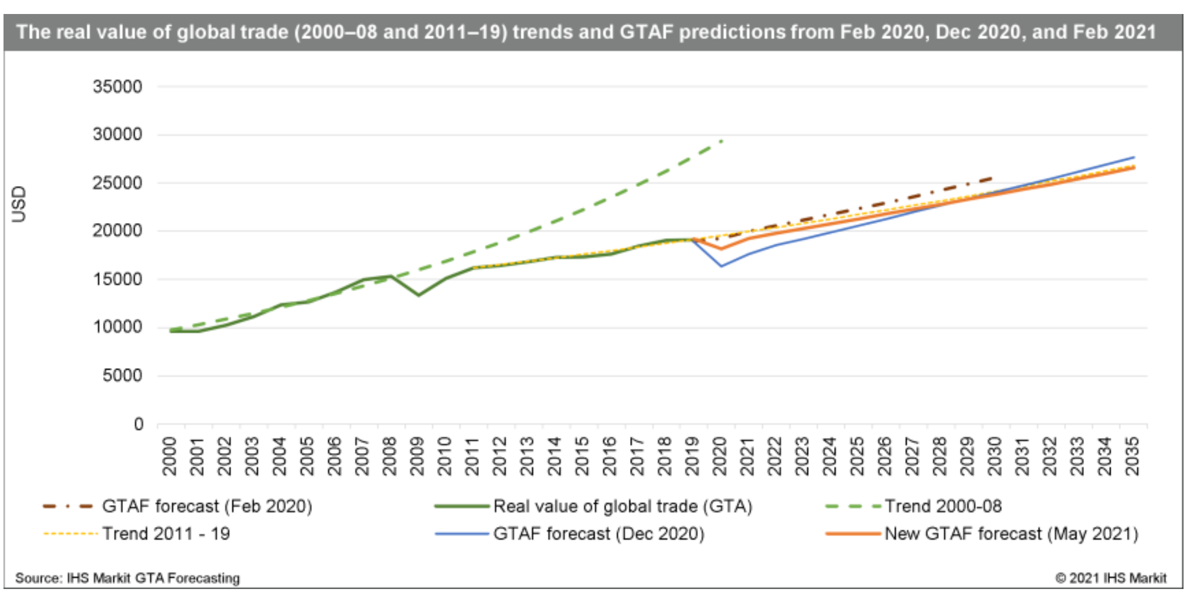
- Treasury Secretary Janet Yellen criticized the Trump Administration's ineffective use of section 301 tariffs on China and that the phase one deal did not address critical market-distorting behaviors by China. "Tariffs are taxes on consumers. In some cases it seems to me what we did hurt American consumers, and the type of deal that the prior administration negotiated really didn't address in many ways the fundamental problems we have with China," she said in an interview with the *New York Times* published last Friday. "My own personal view is that tariffs were not put in place on China in a way that was very thoughtful with respect to where there are problems and what is the U.S. interest," she said. Thus far, the Biden administration has not signaled it would remove the roughly $370 billion worth of tariffs on China but continues to review the China trade issues.

Janet Yellen, U.S. Treasury Secretary

- As reported earlier, the U.S. Court of International Trade (CIT) granted a preliminary injunction against finalizing some of the Section 301 tariffs on products from China imposed by the Trump Administration. In a two to one ruling, the CIT concluded that U.S. importers of Chinese products covered in List 3 or List 4A of the Section 301 tariffs would be harmed if the duties are liquidated. The CIT decision said that "Plaintiffs demonstrated they will likely suffer irreparable harm because their entries of subject merchandise will liquidate absent an injunction." Over 3,500 companies have sued the U.S. government over the Section 301 duties. "The liquidation of Plaintiffs' entries constitutes irreparable harm in this case because it may foreclose Plaintiffs' ability to challenge the Government's imposition of duties paid or have those duties returned," according to the decision. In addition, the court found that the "government fails to meaningfully dispute that liquidation will cause harm that cannot be undone and instead argues that any unlawfully collected duties would be forever unrecoverable." Chief Judge Barnett dissented, saying that while he agreed with much of his fellow judges' analysis, he felt the plaintiffs failed to establish the likelihood of irreparable harm.

COVID-19 Developments

- Global merchandise trade in 2020 is forecast to reach $18,163 billion or a 5.5% year-over-year increase, representing a slight upward revision from prior estimates. *IHS Markit* forecasts that the real value of global trade will rise to $19,247 billion in 2021 and $19,824 billion in 2022, resulting in a year-on-year increase in the real value of global trade by 6.0% in 2021 and 3.0% in 2022. The revised estimates suggest a broader and more sustainable recovery in global trade.



U.S. – Taiwan Trade

- One of the most prominent discussions in recent U.S. - Taiwan trade talks concern U.S. pork exports to Taiwan. Earlier in 2021 Taiwan lifted some trade barriers to U.S. pork and beef products. While U.S. beef exports have benefited since then, pork exports have declined sharply. When Taiwan lifted its zero-tolerance policy on ractopamine residues on imported U.S. pork, Taiwanese consumers and producers became more worried that the pork was tainted and started to cancel orders. In the first five months of 2021, the U.S. exported $8.5 million worth of products to Taiwan, a 54% decrease from the $18.6 million in the first five months of 2020. Taiwan will hold a referendum on whether to reinstate the restrictions on ractopamine residues in December. The U.S. is concerned with the lost U.S. pork exports and will raise the issue during the first meeting of the “Agriculture Working Group” in August.
- Both the U.S. and Taiwan recently resumed “high-level trade engagements, and expressed a desire to work closely together.” The two sides brought up areas of trade where progress has been made, including Taiwan’s enforcement of trade secret protections, and upcoming changes to Taiwan’s medical device approval process. Some outstanding trade concerns that the U.S. and Taiwan seek to engage on include addressing market access barriers to Taiwanese markets faced by U.S. beef and pork producers, as well as Taiwanese copyright legislation, digital privacy, financial services, and regulatory transparency.
- The virtual TIFA was the first between the two countries since 2016 and held under the auspices of the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States. Assistant U.S. Trade Representative for China affairs Terry McCartin and Taiwan’s Office of Trade Negotiations Deputy Trade Representative Jen-ni Yang co-led the discussions.

U.S. – EU Trade

- A potential irritant between the U.S. and EU is an EU proposal to tax international imports from countries that lack aggressive carbon-reduction policies. The proposal that was unveiled on Wednesday could derail multi-lateral discussions on how to tackle climate change. If the tariffs were to go ahead and target the U.S., the Biden administration would be left with the two options of challenging the tax within the WTO or imposing retaliatory tariffs. The Office of USTR has touted carbon border tariffs in its annual strategic plan but has not ruled out utilizing retaliatory tariffs on the EU. Climate envoy John Kerry said in March that he was concerned about a potential carbon border tax that could inflame tensions heading into the UN climate talks in November.

John Kerry, Special Presidential Envoy for Climate

- Earlier in this year, the EU and U.S. issued a joint announcement aiming to work together on finding collaborative solutions to global excess capacity in steel and aluminum and engage in effective discussions regarding the section 232 tariffs. The two trade partners stated that, “European Commission Executive Vice President Valdis Dombrovskis, United States Trade Representative Katherine Tai and U.S. Secretary of Commerce Gina M. Raimondo today announced the start of discussions to address global steel and aluminum excess capacity.

U.S. - U.K. Trade

- During Lis Truss’ meetings in Washington, DC last week with USTR Katherine Tai, the trade officials covered a number of topics related to China’s trade practices, including how to ensure fair competition and taking on forced labor, according to a readout from USTR. Both leaders stressed the importance of fair competition in the global economy and agreed to work together both bilaterally and through multilateral fora to promote fair competition, enhance the international trade system, and address forced labor issues. Ambassador Tai and Secretary Truss committed to continue strengthening the trade and economic partnership between the United States and United Kingdom,” USTR reported.

- USTR did not indicate whether Tai and Truss spoke about re-starting discussion on a potential U.S.-U.K. trade deal. Several observers had originally hoped the meeting would spur movement on talks, but Truss suppressed such expectations after the meeting stating, "I have never set a deadline for any trade negotiation because the important thing is to get the right deal that works for both countries." She added that the goal is a "high-quality agreement." However, she did acknowledge that reaching an agreement this year is likely off the table. "That would be a very rapid timeline," Truss told Bloomberg Television. "We just concluded an agreement in principle with Australia and that took a year from start to finish and that was a very rapid timeline. So, I'd agree that the kind of timeline that you're talking about would be extremely fast."

U.S. – Kenya Trade

- Since Ambassador Katherine Tai's appearance before the Senate Finance Committee hearing on President Biden's trade agenda, there has been no further indication on U.S. engagement on bilateral trade talks. Ambassador Tai responded to questions on the status of the Kenya free trade agreement by stating, "In 2020, the United States and Kenya officially launched and completed two rounds of negotiations to pursue a free trade agreement. Since announcing the negotiations, the United States completed two rounds of negotiations with Kenya…I will review the U.S.- Kenya bilateral relationship, and the African Growth and Opportunity Act (AGOA) program. The United States' economic relationship with the African continent will be a priority..."
- The bilateral trade talks remain paused as the Biden administration reviews the progress on the two rounds of trade negotiations with Kenya under the prior administration. USTR Katherine Tai earlier indicated she is reviewing the negotiations to "ensure that any agreement aligns with the Biden-Harris Administration's Build Back Better agenda," according to a USTR statement. Earlier USDA Secretary Vilsack expressed his optimism that the Biden Administration will move forward with the Kenya trade talks although he did not specify a time frame.

U.S. – Vietnam

- Several farm groups joined a broader group of businesses this week in urging USTR Katherine Tai not to impose Section 301 tariffs on products from Vietnam. In a letter to Tai, the groups including the American Soybean Association, the American Seed Trade Association, the National Pork Producers Council and CropLife America said they were worried that the Biden administration might impose the tariffs pursuant to the Trump administration's "currency manipulation" and "illegal timber" investigations.

U.S. – Ecuador

Senator Rob Portman

- In a floor speech last week, Sen. Rob Portman (R-OH) called for a new trade agreement with Ecuador and stronger trade ties with other countries in the region. The comments follow on a trip by Sen. Portman and five other colleagues to Mexico, Ecuador, and Colombia to discuss trade and economic stability as a means to counter increasing migration to the United States. Portman stated, "In Ecuador, in particular, we talked about the need for a new trade agreement, which I support, which would really help to strengthen our ties with Ecuador at a critical time in their history, but also would be good economically for both countries. Mutual benefit," Portman contended that deeper trade ties are need foster economic growth in the country as more Ecuadorians are making the "treacherous journey north" to the U.S. He added that "And they want those people to stay in Ecuador and to be citizens there and to help contribute to that country's growth." Ecuador recently surpassed Honduras in the number of its citizens leaving for the U.S., according to the Portman's remarks. Sen. Portman further stressed the opportunity to counter China's expanding influence in the region stating, "[I]n terms of trade, not aid, and commerce, it's a great opportunity for us right now." "Certainly China thinks so. They're investing in these countries. We should be too."

- Under the prior administration the U.S. and Ecuador signed a Trade and Investment Council (TIC) Agreement, which Ecuador's National Assembly will review after its recent approval by Ecuador's Constitutional Court. A USTR statement at the time noted the TIC meeting "reflects the high priority both countries place on deepening trade and investment ties." The TIC provides a forum for discussing a wide range of trade and investment issues. "In addition to implementing this Protocol, the United States and Ecuador will continue to work within the TIC to promote increased trade, including by promoting reform of Ecuador's import licensing regime."

Biden Transition

- Last week The Senate Finance Committee voted to advance the nominations of Sarah Bianchi and Jayme White for deputy U.S. Trade Representative posts. White, a longtime Finance Committee staff member, was approved 25-3, with Republican Sens. Tim Scott (SC), James Lankford (OK) and Steve Daines (MT) voting against, according to committee aides. Only Lankford voted against the nomination of Bianchi, who advised President Biden during the Obama administration as well as afterwards, in the private sector.
- The three votes against advancing the deputy USTR nomination of Jayme White were cast by Sen. James Lankford (OK), Sens. Tim Scott (SC) and Steve Daines (MT). Sen. Lankford citied concerns with Biden's trade agenda thus far stating, "President Biden's trade agenda has so far focused on undermining U.S. energy independence, supporting an ill-advised intellectual property waiver for vaccines, and failing to pursue new trade agreements to reduce our dependence on China." It's unclear why Senators Scott and Daines cast no votes. Post-hearing answers to questions for the record submitted by panel members to Bianchi and White following their confirmation hearing were released last week. If confirmed by the full Senate, White will likely serve as deputy for the Western Hemisphere, Europe, the Middle East, labor and environment, while Bianchi's portfolio would cover Asia, Africa, investment, services, textiles and industrial competitiveness.
- On April 16th President Biden announced intentions to nominate both Sarah Bianchi and Jayme White to Deputy USTR roles. Bianchi was appointed in 2011 by then Vice President Biden to serve as his top economic and domestic policy adviser. She has also worked on the White House Domestic Policy Council, in the Office of Management and Budget, on the staff of the Senate Health, Education, Labor and Pensions Committee, and is a former deputy assistant to the president for economic policy. Jayme White, currently the chief trade adviser for the Senate Finance Committee, has worked on the Committee since 2014.
- President Biden announced his intent to nominate Lisa Wang, a longtime trade lawyer, to serve as Assistant Secretary for Enforcement and Compliance at the Department of Commerce's International Trade Administration. The White House noted in release that Ms. Wang, a partner with Picard, Kentz and Rowe LLP since 2016, "specializes in international trade law matters, including antidumping and countervailing duty litigation and trade policy issues." Wang is a former senior attorney in Commerce's Office of the Chief Counsel for Trade Enforcement and Compliance; she also was once assistant general counsel in the Office of the U.S. Trade Representative. Before that she was a senior import administration officer in the U.S. embassy in Beijing, China. The position reports to the Under Secretary for International Trade.

WTO

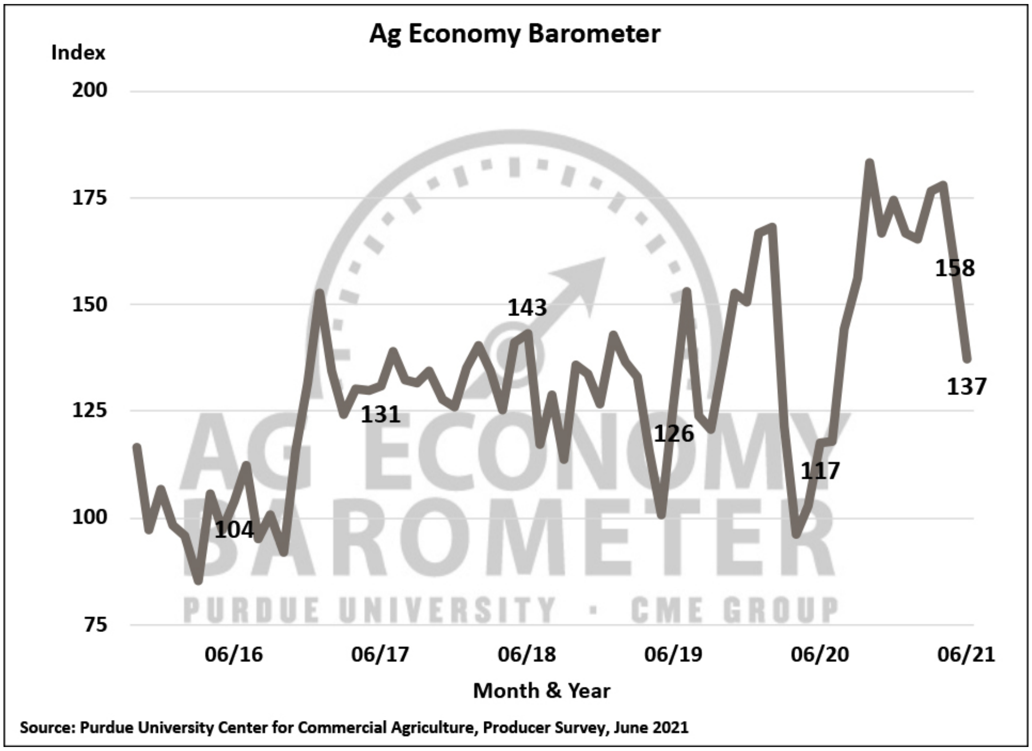
- The U.S. requested the WTO authorize new tariffs on China for non-compliance in the dispute settlement body (DSB) ruling on China's tariff-rate quotas (TRQs) for certain agriculture products. The U.S. last week said that China has not implemented the DSB recommendations in the dispute, which involved Chinese TRQs on wheat, rice and corn. The U.S. request noted that each year, it "would suspend concessions or other obligations equivalent to the level of nullification or impairment through a formula that relates to the value of the unfilled portion of any tariff-rate quota for wheat, rice or corn, as set out in China's WTO

Schedule. The value prescribed by this formula will be updated annually according to the most recent calendar year data."

- China challenged the U.S. action arguing that it has fully complied with the 2019 WTO ruling and requesting establishment of a compliance panel. China is contending that the U.S. proceeded directly to a request for authorization to take countermeasures (i.e., tariffs) without first initiating a dispute settlement process to challenge compliance ."China has engaged, and continues to engage, in good faith with the United States on its implementation of the DSB's recommendations and rulings," according to China's request. "Despite China's adoption and notification of measures taken to comply in full with the DSB's recommendations and rulings before the expiry of the agreed RPT, and despite China's good faith cooperation in relation to the evaluation of those measures by the United States, the United States has filed a request under Article 22.2 of the DSU for authorization from the DSB to suspend concessions or other obligations under the GATT 1994 or other agreements listed in Annex 1A to the WTO Agreement."
- In 2019, A WTO panel report found that China's administration of its TRQs for wheat, rice and corn was inconsistent with its obligations to administer TRQs on a transparent, predictable and fair basis. Following the favorable ruling on the complaint lodged by the U.S., both countries agreed that the reasonable period of time for China to implement the panel's recommendations would expire on June 29, 2021. "In the view of the United States, China failed to bring its measures into compliance with its WTO obligations within that period," the United States said, adding that there is no agreement on compensation.
- WTO Director-General (DG) Okonjo-Iweala hailed last week's virtual meetings on fisheries subsidies as a success, saying that members now have a text that can be used to negotiate a final agreement to eliminate harmful fisheries subsidies. The negotiation chair, Santiago Wills (Colombia) and Okonjo-Iweala touted the prospects of moving negotiations forward among the WTO members. The DG said there is a "political will" to move forward, noting, "The text has been agreed by all members and we could not have wished for a better outcome," she continued.
- In contrast, many member countries publicly criticized the current text as imbalanced and questioned whether the WTO had consensus to move forward. Several ministers and senior officials from developing and least-developed countries, who took part in the meeting, called for prohibiting harmful subsidies. They objected to the text for its limited approach to reigning in big subsidizers driving overcapacity and overfishing and the global depletion of fish stocks. These members expressed deep concerns as to the specific carve outs provided to big subsidizers to continue with their industrial scale fishing.
- The U.S. noted the text still need improvements to reflect its concerns, including on forced labor issues. USTR Katherine Tai said the draft text on reining in harmful fisheries subsidies is not sufficiently ambitious, particularly in its treatment of special and differential treatment. The U.S. has maintained that the fisheries negotiations outcome must be "meaningful", and one measure would include robust disciplines reflecting the U.S. proposal on forced labor. USTR officials noted that these two issues -- special and differential treatment and forced labor -- as the biggest concerns with the present talks.
- The Pew Charitable Trusts has published research showing disappointing results from the current fisheries subsidies plan. The research pointed to a mere 1.59% restoration in fish biomass by 2050 if the current draft text is approved without any improvements. The U.S. has been consistently pushing for greater improvements.

<u>Ag Economy Barometer</u>

- June's Ag Economy Barometer index receded 21 points, falling to a reading of 137, the second monthly decline, and the weakest ag producer sentiment reading since July 2020. Producers in June were less optimistic about both current conditions on their farming operations as well as their expectations for the future. The weakening farmer sentiment was largely attributable to producers' eroding confidence in their farms' financial performance and rapidly rising production costs are a concern for agriculture producers. Farmers expect their input costs to rise much more rapidly in the year ahead than they have over the last decade contributing to their concerns about their farm finances.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Source: Purdue University Center for Commercial Agriculture, Producer Survey, June 2021