

Congress of the United States

Washington, DC 20515

December 12, 2023

The Honorable David S. Johanson
Chair
U.S. International Trade Commission
500 E. Street, S.W.
Washington, D.C. 20436

Dear Chairman Johanson:

We write to express our continued concerns regarding countervailing duties on phosphate fertilizers and the recent remand by the U.S. Court of International Trade of the International Trade Commission's affirmative material injury determination (Consol. Court No. 21-00219, Ct. Int'l Trade Sep. 19, 2023). Specifically, we are concerned that the voices of farmers and agricultural retailers are not being allowed into the record for consideration by the Commission on remand.

Since this process began in 2020, growers, retailers, and suppliers have provided information to the Commission and the U.S. Department of Commerce about the U.S. fertilizer market and the worsening challenges we face obtaining adequate domestic supply. We are pleased that the Commission has reopened the record, at the direction of the court, and asked industry participants to provide additional information on remand. However, we believe that the Commission is arbitrarily limiting both the information allowed to be submitted and the parties permitted to respond. As you are aware, a questionnaire was sent only to U.S. producers and U.S. importers of phosphate.

We believe additional parties, namely the farmers who need phosphate fertilizer to grow crops, the retailers who sell phosphate fertilizers, and the organizations who represent them, should be given the opportunity to respond. It is apparent that their perspectives would be helpful in expanding the Commission's understanding of the U.S. fertilizer market. Farmers and retailers have made it publicly clear that delivered inventories are not reshipped to other parts of the country. Such information would be beneficial to the Commission during the remand and consistent with the findings of the court on remand.

We believe this is not a question of the Commission's authority. In its decision, the court indicated, “. . .the Commission **may take new evidence**, reconsider existing evidence, or take any other action allowed by its procedures on remand to come to a conclusion supported by substantial evidence.” Furthermore, the Commission consistently asserts that it has broad authority to gather information it deems relevant to determine harm. Considering the current state of the farm economy, we believe the Commission should exercise discretion to allow more voices to be heard rather than stifle those who would be most impacted by a CVD decision.

The number of countries with substantial exportable supplies of phosphate is very limited. The CVD and other disputes have resulted in only one of those countries still able to export to the U.S. duty free. Meanwhile, despite the trade protection afforded by the CVD orders, U.S. phosphate fertilizer production continues to decline, even as a meaningful share of that production is exported to other markets. Our farmers benefit from a diversity of options to remain competitive in global markets.

The bottom line is that fertilizer is critical to national security and national defense. Its affordability is also critical to the farm economy. Any decision that has the ability to increase the cost of production for U.S. farmers and ranchers threatens our food security and national security. This makes it preeminently important that the Commission takes a wide approach to gathering relevant information rather than a

narrow one. We urge the Commission to give careful consideration to the information it has received in the remand proceeding before issuing its response and request that the Commission expand the recipients of the questionnaire. Thank you for your consideration.

Sincerely,



Roger Marshall, M.D.
United States Senator



Tracey Mann
Member of Congress



Bill Hagerty
United States Senator



John Rose
Member of Congress



Cindy Hyde-Smith
United States Senator



Greg Pence
Member of Congress



Pete Ricketts
United States Senator



Julia Letlow, Ph.D.
Member of Congress



Deb Fischer
United States Senator



James R. Baird
Member of Congress



John Boozman
United States Senator



Jim Costa
Member of Congress



Jake LaTurner
Member of Congress

December 7, 2023

The Honorable David S. Johanson
Chairman
U.S. International Trade Commission
500 E Street SW
Washington, D.C. 20436

Dear Chairman Johanson:

We write in regard to the remand decision ordered by the U.S. Court of International Trade (CIT) to the U.S. International Trade Commission (ITC) for duties on phosphate fertilizer imported from Morocco (Consol. Court No. 21-00219). As farmers continue to experience high costs and supply challenges for fertilizer inputs, our organizations hold deep concern for actions that restrict availability of phosphate into the U.S. market. We urge the ITC to consider impacts on family farms as it works to reconsider its determination of material injury to domestic industries.

Rising prices for fertilizer inputs have strained America's farmers and ranchers and have impacted availability for this critical component of nutrient and yield management. Without predictable options to source this product, farmers struggle to plan for the future. International supply chain issues further complicate the ability to source phosphate. For example, triple super phosphate is not available domestically but still faces a duty. Agriculture supply chains are intricate and complicated, and the premise that re-shipping product from an originally intended destination to respond to regional demand fluctuations is simply not correct. Instead, reliance on this incorrect premise has led to high fertilizer costs that create volatility and compromise the ability of farmers to be successful.

The ITC's affirmative injury determination in 2021 was appealed by the respondents, and several of our associations also submitted an amicus brief opposed to the determination. We understand that the CIT found that the ITC did not adequately consider factors that impacted the domestic supply when making their affirmative injury determination. The CIT further elaborated that the ITC's consideration of import increases in 2019 failed to take appropriate account for weather challenges that caused logistical hurdles and created a temporary mismatch between supply and demand in some parts of the country. Because the ITC did not consider the volume of imports in light of the regional impact of weather, the result was an injury determination without the necessary factual support. We urge the ITC to appropriately consider the issues raised by the CIT when developing their revised injury determination.

We understand that the Department of Commerce (Commerce) is also working on recalculating these duties, as the CIT found errors within their calculation process and remanded the case back to the agency. With impending decisions from Commerce and the ITC, our organizations simply want accurate consideration of the facts and impacts on American farmers. Farmers are the lifeblood of our food supply, contributing to our economic strength and the resilience of rural communities. When burdened with high input costs, farmers see ripple effects occurring in every

facet of their operation. This inhibits their ability to increase market access on the global stage and satisfy both local and regional customers.

We strongly urge the ITC to consider the points raised by the CIT in re-evaluating the material injury determination, as well as the impact on farmers. We are available to answer any questions and look forward to your forthcoming decision.

Sincerely,

A handwritten signature in blue ink that reads "Harold Wolle, Jr." The signature is written in a cursive, flowing style.

Harold Wolle, Jr.
President
National Corn Growers Association

American Farm Bureau Federation
American Soybean Association
International Fresh Produce Association
National Association of Wheat Growers
National Cotton Council
National Sorghum Producers
Society of American Florists
U.S. Rice Producers Association
USA Rice

Alabama Soybean and Corn Association
Arkansas Soybean Association
California Association of Winegrape Growers
Delta Council
Georgia Corn Growers Association
Georgia-Florida Soybean Association
Illinois Corn Growers Association
Illinois Soybean Association
Indiana Corn Growers Association
Indiana Soybean Alliance
Iowa Corn Growers Association
Iowa Soybean Association
Kansas Corn Growers Association
Kansas Soybean Association
Kentucky Corn Growers Association
Kentucky Soybean Association
Louisiana Cotton and Grain Association
Maryland Grain Producers Association
Michigan Soybean Association
Mid Atlantic Soybean Association
Minnesota Corn Growers Association

Minnesota Soybean Growers Association
Mississippi Soybean Association
Missouri Corn Growers Association
Missouri Soybean Association
Nebraska Corn Growers Association
Nebraska Soybean Growers Association
New York Corn and Soybean Growers Association
North Carolina Soybean Producers Association
North Dakota Corn Growers Association
North Dakota Soybean Growers Association
Ohio Corn and Wheat Growers Association
Ohio Soybean Association
Oklahoma Soybean Association
Pennsylvania Corn Growers Association
South Carolina Corn and Soybean Association
South Dakota Corn Growers Association
South Dakota Soybean Association
Tennessee Corn Growers Association
Tennessee Soybean Association
Texas Citrus Mutual
Texas Corn Producers Association
Texas International Produce Association
Texas Soybean Association
Virginia Grain Producers Association
Virginia Soybean Association
Wisconsin Corn Growers Association
Wisconsin Soybean Association

CC:

The Honorable Thomas J. Vilsack, Secretary, U.S. Department of Agriculture
The Honorable Gina Raimondo, Secretary, U.S. Department of Commerce
Members of Congress