

FERTILIZERS: FERTILE GROUND FOR REMOVING ANTIDUMPING AND COUNTERVAILING DUTY TARIFFS ON AG INPUTS

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ABSTRACT

“Farming to Feed the World.” An ideal and goal which is commonly shared by agriculturalists the world over and is truly embodied by the American farmer. Fertilizers are one of the most critical agricultural inputs for crop farmers. However, protectionist measures imposed upon fertilizer inputs to the United States have created challenges for American farmers no matter the number of acres they plant. Nitrogen and phosphate fertilizers have seen some of the most

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aggressive price hikes these inputs have ever experienced in recent years. The increase in cost has been exacerbated by a myriad of factors including supply chain interruptions, raw material shortages, and international disputes. To add insult to injury, the United States government has either levied or previously levied, tariffs on fertilizer inputs from key nations like Morocco and Trinidad and Tobago. The tariffs on these agricultural inputs have caused fertilizer prices for American farmers to be even more out of reach in recent years than ever before, causing producers to choose between higher yields or their pocketbook. On November 2, 2023, the United States Department of Commerce reduced the tariffs imposed on phosphate from Morocco from 19.97% to 2.12%. While this is a monumental step in the right direction, American fertilizer companies do not need protectionist trade measures imposed by the government to turn a profit, and tariffs on these agricultural inputs should be eliminated in their entirety. In June of 2022, President Biden took emergency executive action to remove tariffs on solar modules imported from certain Asian countries to promote accessibility to renewable energy. President Biden set a precedent for emergency removal of protectionist trade measures when he issued the executive order to remove tariffs on solar modules.

This paper proposes the notion that, like the solar industry, the President of the United States should take emergency action to remove the tariffs imposed on fertilizer imports. Fertilizers are essential to feeding the world population, especially when analyzing global food shortages, rising food costs, and global unrest. Notably, since the writing of this Note, global unrest has continued to increase, the Black Sea Grain Initiative has been terminated and the Israeli conflict has begun. The increased market volatility within the borders of the United States and the ever-growing volatility of global grain markets, should further illustrate the need for emergency executive action to remove protectionist measures from fertilizer imports to the United States. If farmers are going to achieve their goal of feeding the world, they must be able to afford the necessary inputs so as to make that goal a reality.

INTRODUCTION

President Joseph Biden made a proclamation to promote clean energy on June 6, 2022.¹ President Biden used his executive authority to enhance solar manufacturing domestically, while also waiving tariffs on certain solar imports from various countries in Southeast Asia.² This action includes the promotion and

1. See Proclamation No. 10414, 87 Fed. Reg. 35067, 35067–69 (June 9, 2022).

2. *Id.* at 35068.

acceleration of domestic solar production through the Defense Protection Act.³ However, the most relevant piece of the puzzle for agricultural inputs is the emergency removal of antidumping (AD) and countervailing duty (CVD) solar import tariffs through the emergency provision of the Tariff Act of 1930.⁴ According to the World Trade Organization, “[d]umping is, in general, a situation of international price discrimination, where the price of a product when sold in the importing country is less than the price of that product in the market of the exporting country.”⁵ AD tariffs are a tool that can be used to equalize the price of imports to promote equity among market participants.⁶ CVD tariffs offset subsidies on the production of foreign products to further equalize the market when the product reaches the United States.⁷ Throughout the entirety of the 2022 crop seasons, United States farmers felt the heavy burden of inflation and exponentially rising fertilizer costs.⁸ Due to the existing and ever-increasing volatility in the marketplace, it is critical that the United States government take emergency action to remove harmful AD and CVD tariffs on imports of fertilizer to the United States before farmers face the same plight during growing seasons for years to come.⁹

DISCUSSION

United States farmers have been absorbing the brunt of skyrocketing fertilizer costs in the United States caused by the Ukraine-Russia conflict that began in 2022, market volatility, China’s suspension of fertilizer exports from 2021, the COVID-19 pandemic, and related supply chain shortcomings.¹⁰ This

3. Presidential Determination No. 2022–15, 87 Fed. Reg. 35071, 35071 (June 6, 2022).

4. Proclamation No. 10414, 87 Fed. Reg. 35067 at 35068; *see* Morgan Chalfant, *Biden to Delay New Solar Tariffs in Bid to Boost Industry*, THE HILL (June 6, 2022, 9:42 AM), <https://thehill.com/news/administration/3512969-biden-to-exempt-southeast-asian-nations-from-solar-tariffs-for-two-years/> [https://perma.cc/AV2U-GDG5].

5. *Technical Information on Anti-Dumping*, WORLD TRADE ORG. (Aug. 21, 2023, 7:32 AM), https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm [https://perma.cc/U3FW-6RFC].

6. *See generally id.*

7. *Antidumping and Countervailing Duty FAQs*, INT’L TRADE ADMIN. (Aug. 21, 2023, 7:33 AM), <https://www.trade.gov/antidumping-and-countervailing-duty-frequently-asked-questions?anchor=content-node-t7-field-lp-region-2-1> [https://perma.cc/U3FP-EMB4].

8. Mich. Farm Bureau, *Congress Letter to ITC: No Time for Fertilizer Tariffs*, MICH. FARM NEWS (Mar. 30, 2022), <https://www.michiganfarmnews.com/congress-letter-to-itc-no-time-for-fertilizer-tariffs> [https://perma.cc/P982-9TKW].

9. *See generally id.*

10. John Baffes & Wee Chian Koh, *Fertilizer Prices Expected to Remain Higher for Longer*, WORLD BANK BLOGS (May 11, 2022), <https://blogs.worldbank.org/opendata/fertilizer-prices-expected-remain-higher-longer> [https://perma.cc/G8KC-2YUA].

problem is exacerbated by CVD tariffs and the former threat of AD tariffs levied by the International Trade Commission on the import of foreign fertilizer products.¹¹ On June 6, 2022, President Biden took executive action to eliminate tariffs on solar modules from Southeast Asian imports through emergency measures.¹² The same emergency action should be taken by the Biden administration regarding tariff removal on fertilizer imports from Morocco, which will aid in putting money back into farmers' pockets so they can continue to produce food to feed the world.

I. THE WHITE HOUSE HAS ESTABLISHED A PRECEDENT TO EXERCISE EMERGENCY TARIFF REMOVAL UNDER 19 U.S.C. 1318

When President Biden issued the “Declaration of Emergency and Authorization for Temporary Extensions of Time and Duty-Free Importation of Solar Cells and Modules from Southeast Asia,” he set a precedent for the removal of AD and CVD tariffs in emergency situations.¹³ The United States solar industry has been under similar strains as the fertilizer industry: including the Ukraine-Russia conflict, extreme weather conditions, and supply chain interruptions.¹⁴ President Biden recognized these roadblocks to reaching targeted clean energy goals and maintaining the power grid.¹⁵ In response to these roadblocks, he issued a moratorium on import tariffs of solar modules from Cambodia, Malaysia, Thailand, and Vietnam.¹⁶ An investigation began looking into China's trade practices involving these countries in March 2022.¹⁷ The investigation delving into AD and CVD orders on solar cells and modules from

11. *Final Determination in the Countervailing Duty Investigations of Phosphate Fertilizers from Morocco and Russia*, DEP'T OF COM. INT'L TRADE ADMIN. (Oct. 9, 2023, 4:55 PM) [hereinafter *ITA: Morocco*], <https://www.trade.gov/faq/final-determinations-countervailing-duty-investigations-phosphate-fertilizers-morocco-and> [<https://perma.cc/73DY-AYXH>]; Press Release, Dep't of Com. Int'l. Trade Comm'n., Urea Ammonium Nitrate Solutions from Russia and Trinidad & Tobago Do Not Injure U.S. Industry, Says USITC (July 18, 2022) [hereinafter *ITC Press Release*], https://www.usitc.gov/press_room/news_release/2022/er0718111961.htm [<https://perma.cc/Y5Y4-2K45>].

12. See Proclamation No. 10414, 87 Fed. Reg. 35067, 35067–68 (June 9, 2022).

13. See generally *id.*

14. See *id.*

15. See *id.*

16. *Id.* at 35068.

17. Ella Nilsen, *Feds Find Four Chinese Solar Panel Companies Have Been Evading US Tariffs*, CNN: POLS. (Dec. 2, 2022, 12:47 PM), <https://www.cnn.com/2022/12/02/politics/china-solar-tariff-investigation-climate/index.html> [<https://perma.cc/MC6R-5FAG>].

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China was conducted by the Department of Commerce (Commerce) and its subagency, the International Trade Administration (ITA).¹⁸ Commerce and the ITA conduct investigations in cooperation with the International Trade Commission (ITC), but undertake separate investigations.¹⁹ Prior to President Biden's action, if the final phase of the investigation of these Asian countries' business and trade practices yielded findings of material effects on domestic markets, tariffs would be imposed on the imports.²⁰ These investigations found that four Chinese companies should be subject to additional tariffs.²¹ Proposed tariffs could potentially include retroactive application of tariffs on solar module imports from April 1, 2022 onward or may even reach as far back as late 2021.²² The fear of retroactive tariffs has brought the United States solar industry to a near halt, and the threat of imposed tariffs caused a decrease in solar module imports from these nations.²³ Renewable energy producers in the United States are concerned that these tariffs will have monumental consequences for access to, and investments in, solar power.²⁴ As a result of the solar power stand-still, President Biden took action through a declaration of emergency regarding threats to electricity generation capacity and the ability to meet expected consumer demand.²⁵ The language of the Declaration does not expressly prevent Commerce from imposing tariffs on solar modules, rather it authorizes the Secretary of Commerce to "tak[e] appropriate action . . . until 24 months after the date of this proclamation or until the emergency declared herein has terminated . . . the Secretary may prescribe, the importation, free of the collection of duties" ²⁶

On June 6, 2022, President Biden exercised 19 U.S.C. § 1318(a), the emergency provision of the Tariff Act of 1930, which states:

18. Procedures Covering Suspension of Liquidation, Duties and Estimated Duties in Accord with Presidential Proclamation 10414, 87 Fed. Reg. 39426, 39427 (July 1, 2022) (codified at 19 C.F.R. pt. 362).

19. *Understanding Antidumping & Countervailing Duty Investigations*, U.S. INT'L TRADE COMM'N (Aug. 21, 2023) [hereinafter *Understanding AD and CVD*], https://www.usitc.gov/press_room/usad.htm [<https://perma.cc/DP63-NW2H>].

20. Shara Aranoff et al., *President Acts to Prevent Import Tariffs on Solar Cells and Modules from Southeast Asia*, COVINGTON (June 8, 2022), <https://www.insideenergyandenvironment.com/2022/06/president-acts-to-prevent-import-tariffs-on-solar-cells-and-modules-from-southeast-asia/> [<https://perma.cc/3Q29-59AH>].

21. Nilsen, *supra* note 17.

22. Aranoff et al., *supra* note 20.

23. *Id.*

24. Nilsen, *supra* note 17.

25. Proclamation No. 10414, 87 Fed. Reg. 35067, 35067 (June 9, 2022).

26. *Id.* at 35068.

Whenever the President shall by proclamation declare an emergency to exist by reason of a state of war, or otherwise, he may authorize the Secretary of the Treasury to extend during the continuance of such emergency the time herein prescribed for the performance of any act, and may authorize the Secretary of the Treasury to permit, under such regulations as the Secretary of the Treasury may prescribe, the importation free of duty of food, clothing, and medical, surgical, and other supplies for use in emergency relief work. The Secretary of the Treasury shall report to the Congress any action taken under the provisions of this section.²⁷

President Biden's actions show every sign of being consistent with § 1318.²⁸ He declared an emergency to exist and authorized the Secretary to "prescribe[] the importation free of duty" to "other supplies for use in emergency relief work."²⁹ This executive action also appears consistent with sections of the Tariff Act of 1930 that regulate AD and CVD investigations.³⁰ Furthermore, even though Commerce implemented President Biden's trade moratorium before preliminary investigations were complete, Commerce committed to continue the investigation of China's bad acts and apply tariffs once the emergency period ends.³¹

In a slightly different vein, solar module tariffs that were implemented by the Trump administration, which were set to expire, were extended by President Biden in 2022.³² Former President Donald Trump's tariffs were originally authorized under § 201 of the Trade Act of 1974.³³ President Biden is not taking any action regarding the existing § 201 tariffs, rather he is prescribing Commerce not to implement future AD or CVD tariffs on these four specific countries if investigations prove fruitful.³⁴

27. 19 U.S.C. § 1318(a).

28. *See id.*; Proclamation No. 10414, 87 Fed. Reg. at 35067–69.

29. Proclamation No. 10414, 87 Fed. Reg. at 35068; *see* 19 U.S.C. § 1318(a).

30. *See* 19 U.S.C. §§ 1671 et seq., 1673 et seq.; Proclamation No. 10414, 87 Fed. Reg. at 35067–69.

31. Press Release, U.S. Dep't of Com., Department of Commerce Statement on President Biden's Proclamation on Solar Cells and Modules (June 6, 2022), <https://www.commerce.gov/news/press-releases/2022/06/department-commerce-statement-president-bidens-proclamation-solar-cells> [<https://perma.cc/RWX3-LRSW>].

32. SOLAR ENERGY INDUS. ASS'N, SECTION 201 SOLAR TARIFFS 1 (2019), <https://www.seia.org/sites/default/files/2019-12/SEIA-Section-201-Factsheet-Dec2019.pdf> [<https://perma.cc/3BHJ-VCUZ>].

33. *Id.*

34. Proclamation No. 10414, 87 Fed. Reg. 39426, 39429 (July 1, 2022) (to be codified at 19 C.F.R. pt. 362).

II. THE EMERGENCY PROVISION OF 19 U.S.C. 1318 SHOULD BE EXTENDED TO FERTILIZERS IMPORTS

Record high prices across the board for food, fuel, and fertilizers have taken a toll on the pocketbook of United States farmers and citizens.³⁵ A major impact on fertilizer's skyrocketing price is duties imposed on phosphate and nitrogen fertilizer imports from Morocco.³⁶ To manage the fertilizer crisis in the United States, executive action should declare a national emergency and remove CVD tariffs on fertilizer imports from Morocco.

A. *The United States Fertilizer Crisis Warrants National Emergency Status*

The spring of 2022 saw fertilizer prices at record highs in many cases with six fertilizers (DAP, MAP, urea, anhydrous, UAN28 and UAN32) seeing all-time highs and the rest not far behind.³⁷ According to the Bureau of Labor Statistics (BLS), the inflation rate in the United States was 9.1% as of June 2022, which is the highest it has been in 40 years.³⁸ Fuel prices were also at zenith across the United States in 2022.³⁹ Even though cash crop prices also approached or hit record

35. *12-month Percentage Change, Consumer Price Index, Selected Categories*, U.S. BUREAU LAB. STATS. (Sept. 18, 2023, 2:38 PM), <https://www.bls.gov/charts/consumer-price-index/consumer-price-index-by-category-line-chart.htm> (choose "Show Table" located under graph to find data on the selected categories and hover cursor over graph to display specific data) [<https://perma.cc/7VHP-QQQ8>].

36. Shelby Myers, *Too Many to Count: Factors Driving Fertilizer Prices Higher and Higher*, AM. FARM BUREAU FED'N (Dec. 13, 2021), <https://www.fb.org/market-intel/too-many-to-count-factors-driving-fertilizer-prices-higher-and-higher> [<https://perma.cc/9VAN-JHMY>].

37. See Russ Quinn, *More Fertilizers Look to Set Price Records as 2022 Planting Season Begins*, PROGRESSIVE FARMER (Apr. 13, 2022, 5:00 AM), <https://www.dtnpf.com/agriculture/web/ag/crops/article/2022/04/13/fertilizers-look-set-price-records> [<https://perma.cc/ZYW7-3KQ7>]; Russ Quinn, *Stagnant Retail Fertilizer Prices Hover Near Record Highs*, PROGRESSIVE FARMER (June 1, 2022, 10:23 AM), <https://www.dtnpf.com/agriculture/web/ag/crops/article/2022/06/01/stagnant-retail-fertilizer-prices-2> [<https://perma.cc/NNK9-FAS6>].

38. Christopher Rugaber, *U.S. Inflation at 9.1 Percent, a Record High*, PBS: NEWS HOUR (July 13, 2022, 9:40 AM), <https://www.pbs.org/newshour/economy/u-s-inflation-at-9-1-percent-a-record-high> [<https://perma.cc/WJM9-JGUQ>].

39. Derek Saul, *\$5 Milestone: Gas Prices Hit an All-Time National High*, FORBES (June 9, 2022, 10:51 AM), <https://www.forbes.com/sites/dereksaul/2022/06/09/5-milestone-gas-prices-hit-an-all-time-national-high/?sh=57313647654b> [<https://perma.cc/69DU-FF9S>].

highs in 2022, the exponential increases in fertilizer costs, record-high fuel costs, and general inflation have left farmers struggling to make ends meet.⁴⁰

The American Farm Bureau Federation (AFBF) reports that fertilizer prices have increased more than 300% in some cases.⁴¹ The AFBF reports that like fuel prices, fertilizer prices have not seen hikes such as this since 2008, which was predominantly affected by high demand and low supply just as we are facing now.⁴² The United States is the third-largest producer of fertilizer but is also the third-largest fertilizer importer globally.⁴³ The United States requires nitrogen and potassium potash imports in a higher degree.⁴⁴ Belarus produces 16.5% of the world supply and ranks second in overall potash production.⁴⁵ However, a Belarus potash manufacturer, JSC Belaruskali, was unable to fill its contractual obligations and declared *force majeure* in early 2022, causing deep ripple effects in fertilizer markets.⁴⁶ United States sanctions on Belarus potassic producers and miners that went into effect in late 2021 and April 2022 have also contributed to increased United States fertilizer costs.⁴⁷

Russia is the world's largest fertilizer exporter with 9% of those exports arriving on American shores.⁴⁸ Due to the Ukrainian conflict, Russia has been hit with sanctions that affect their exportation of natural gas, potash, and nitrogen, which are crucial agricultural inputs needed by American crop farmers.⁴⁹ The United States imports 93% of potash used and a combined 12% of those imports come from Russia and Belarus.⁵⁰

40. Baffes & Koh, *supra* note 10; see U.S. DEP'T OF AGRIC NAT'L AGRIC. STATS. SERV., ISSN 1937-4216, AGRICULTURAL PRICES (MAY 2022) 6 (2022) [hereinafter USDA PRICE REPORT], <https://downloads.usda.library.cornell.edu/usda-esmis/files/c821gj76b/r494wr10s/f4753p101/agpr0522.pdf> [<https://perma.cc/T9RM-727F>].

41. Myers, *supra* note 36.

42. *Id.*

43. *Id.*; Joana Colussi et al., *War in Ukraine and its Effect on Fertilizer Exports to Brazil and the U.S.*, FARMDOC DAILY, Mar. 17, 2022, at 1, 2, <https://farmdocdaily.illinois.edu/wp-content/uploads/2022/03/fdd031722.pdf> [<https://perma.cc/BV38-KEGD>].

44. Myers, *supra* note 36.

45. *Id.*

46. *Belarusian Potash Miner Declares Force Majeure, No Major Impact Foreseen on India*, MONEY CONTROL: NEWS (Feb. 18, 2022, 5:53 PM), <https://www.moneycontrol.com/news/business/belarusian-potash-miner-declares-force-majeure-no-major-impact-foreseen-on-india-8126001.html> [<https://perma.cc/U3MN-DAVN>].

47. *Id.*

48. Colussi et al., *supra* note 43, at 1.

49. *Id.* at 2.

50. *Id.*

Natural gas is a major component of anhydrous ammonia production and a major building block for nearly all nitrogen fertilizers.⁵¹ Natural gas prices are on the rise, with United States' prices having more than doubled in just 2022 and Europe's natural gas prices increasing over 300% since May 2021.⁵² Due to this price hike, many European Union nitrogen plants have been forced to close, contributing to continued supply chain challenges.⁵³ It can take three to five years to build similar plants, putting the fertilizer industry, and fertilizer prices, on a lag.⁵⁴ COVID-19 also led to domestic fertilizer plant shutdowns, which further interrupted an already backed-up supply chain.⁵⁵ In 2022, the USDA announced a program that aims to ramp up domestic fertilizer production.⁵⁶ However, the Fertilizer Production Expansion Program (FPEP) aims to increase domestic manufacturing of fertilizers and nutrient alternatives, and it is not likely to create hasty results for farmers because increasing or expanding manufacturing capabilities does not happen overnight.⁵⁷ Another blow to the fertilizer market was China's cessation of fertilizer exports in July 2021, implemented to maintain their national supply, straining an already stressed market even further.⁵⁸

Among the many factors leading to rising fertilizer costs, as noted by AFBF economists, one major player is trade duties.⁵⁹ AFBF indicates that increased shipping costs for exports and AD and CVD trade dispute cases are likely to have an impact on high fertilizer prices.⁶⁰ Two crucial tariffs to American fertilizer imports are the CVD duties imposed on the Kingdom of Morocco and Russia and

51. Myers, *supra* note 36.

52. *Id.*

53. *Id.*

54. *Id.*

55. Sarah Marlow, *COVID-19: Effects on the Fertilizer Industry*, S&P GLOB.: COMMODITY INSIGHTS (Mar. 24, 2020), <https://ihsmarkit.com/research-analysis/report-covid19-effects-on-the-fertilizer-industry.html> [<https://perma.cc/YBM7-MFR6>].

56. *Fertilizer Production Expansion Program*, U.S. DEP'T. OF AGRIC. RURAL DEV. (Sept. 18, 2023, 2:38 PM) [hereinafter *Fertilizer Production Expansion Program*], rd.usda.gov/programs-services/business-programs/fertilizer-production-expansion-program (expand the Overview tab) [<https://perma.cc/F9Q6-5EG4>].

57. *See generally id.*

58. Chad P. Brown & Yilin Wang, *China's Recent Trade Moves Create Outsize Problems for Everyone Else*, PETERSON INST. FOR INT'L ECON. (Apr. 25, 2022, 1:00 AM), <https://www.piie.com/blogs/realtime-economic-issues-watch/chinas-recent-trade-moves-create-outsize-problems-everyone> [<https://perma.cc/6MBP-ZGU2>].

59. Myers, *supra* note 36.

60. *Id.*

the now revoked AD duties sought to be imposed on Trinidad and Tobago.⁶¹ The United States imports 9% of its phosphate, with 15% of those imports coming from Morocco.⁶² The ITC and Commerce Department began their investigations of Morocco and Russia's CVD practices of phosphate fertilizers in the summer of 2020.⁶³ Mosaic Co., the largest United States producer of phosphate, was the petitioner in this CVD case and ultimately won.⁶⁴ Due to the findings of the ITC and Commerce Department investigations, Morocco had an almost 20% tariff imposed to offset their subsidies.⁶⁵

In July 2022, the ITC revoked substantial antidumping tariffs on Trinidad and Tobago's ammonium nitrate fertilizer imports.⁶⁶ The ITC found that nitrate imports from Trinidad and Tobago were not injurious to American industries and declined to institute AD and CVD orders.⁶⁷ This rejection of tariffs provided some respite to the otherwise overburdened fertilizer market in summer 2022.⁶⁸ These tariffs were of critical importance because Trinidad and Tobago comprise 65% of nitrogen imports to the United States, the largest contributor to the United States nitrogen import market.⁶⁹ CF Industries Nitrogen, LLC and subsidiaries, the largest United States producer of UAN, were the petitioners in an antidumping investigation.⁷⁰

Given the vast data that clearly shows a tremendous crisis in fertilizer access and cost in the United States, something must be done.⁷¹ The multi-layered and

61. See generally Myers, *supra* note 36; David Lawder, *U.S. Panel Rejects Duties on Fertilizers from Russia, Trinidad and Tobago*, REUTERS (July 18, 2022, 3:39 PM), <https://www.reuters.com/markets/commodities/us-panel-revokes-duties-fertilizers-russia-trinidad-tobago-2022-07-18/> [<https://perma.cc/3ZHS-V6L3>].

62. Colussi et al., *supra* note 43, at 3 fig.2.

63. *ITA: Morocco*, *supra* note 11.

64. *Id.*; Myers, *supra* note 36.

65. *ITA: Morocco*, *supra* note 11.

66. Lawder, *supra* note 61.

67. ITC Press Release, *supra* note 11.

68. Lawder, *supra* note 61.

69. Colussi et al., *supra* note 43, at 3 fig.2.

70. *Preliminary Determination in the Antidumping Duty Investigation of Urea Ammonium Nitrate Solutions from Russia and Trinidad and Tobago.*, DEP'T OF COM. INT'L TRADE ADMIN. (Sept. 18, 2023, 12:54 PM), <https://www.trade.gov/faq/preliminary-determinations-antidumping-duty-investigations-urea-ammonium-nitrate-solutions> [<https://perma.cc/NTT6-SEXM>].

71. See Press Release, U.S. Dep't of Agric., Release No. 0060.22, USDA Announces Plans for \$250 Million Investment to Support Innovative American-made Fertilizer to Give US Farmers More Choices in the Marketplace (Mar. 11, 2022) [hereinafter USDA Investment

complex web of economic statuses, raw material availability, and geopolitical components all point to a finding by the United States government just the same as the one found by the solar industry.⁷² An emergency was declared for the solar industry based on the need to ensure a robust energy market.⁷³ The Declaration indicates that utilities and grid operators are becoming increasingly reliant on solar power to ensure sufficient electricity.⁷⁴ Further, the Declaration notes that climate change is recognized by the Department of Defense as a threat to national security.⁷⁵ The Department of Defense recognizes that food insecurity has the ability to be a global issue and a national security issue because food insecurity impacts readiness within the military.⁷⁶ Moreover, the Biden White House held a Conference on Hunger, Nutrition, and Health in September 2022, the first one since 1969.⁷⁷ The Biden administration leads the Executive Summary with a notation that they intend to solve a “nutrition-related health crisis,” showing that the Biden administration is under no delusions that we are, in fact, in a crisis situation.⁷⁸ With fertilizer costs increasing, the likelihood that farmers worldwide decrease fertilizer application to minimum rates increases, thereby failing to maximize yields, and contributes to the food insecurity epidemic.⁷⁹ The global food insecurity challenge is one already recognized by the Biden administration,

in American Fertilizer], <https://www.usda.gov/media/press-releases/2022/03/11/usda-announces-plans-250-million-investment-support-innovative> [https://perma.cc/6PAA-XWMK].

72. See Proclamation No. 10414, 87 Fed. Reg. 35067, 35067 (June 9, 2022).

73. *Id.*

74. *Id.*

75. *Id.*

76. Terri Moon Cronk, *Defense Official Says Food Insecurity is a Readiness, National Security Issue*, U.S. DEP'T OF DEF. (July 27, 2021), <https://www.defense.gov/News/News-Stories/Article/Article/2709598/defense-official-says-food-insecurity-is-a-readiness-national-security-issue/> [https://perma.cc/62G6-S5KS].

77. Press Release, The White House, White House Announces Conference on Hunger, Nutrition and Health in September (May 4, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/04/white-house-announces-conference-on-hunger-nutrition-and-health-in-september/> [https://perma.cc/LR2F-YPB8].

78. THE WHITE HOUSE, BIDEN-HARRIS ADMINISTRATION NATIONAL STRATEGY ON HUNGER, NUTRITION, AND HEALTH 4 (2022), <https://www.whitehouse.gov/wp-content/uploads/2022/09/White-House-National-Strategy-on-Hunger-Nutrition-and-Health-FINAL.pdf> [https://perma.cc/D5C5-8DDV].

79. Joel K. Bourne, Jr., *Global Food Crisis Looms as Fertilizer Supplies Dwindle*, NAT'L GEOGRAPHIC (May 23, 2022), <https://on.natgeo.com/3HHtWeK>. [https://perma.cc/Q7H7-6HWJ].

particularly in response to Russia's invasion of Ukraine.⁸⁰ Biden's Administration pledged to contribute \$670 million to food assistance efforts aiding many African and Middle Eastern nations as Ukraine's 2022 crop is unable to reach those countries, which leaves them in a precarious situation with regard to food security.⁸¹ Additionally, the Biden Administration aims to "End Hunger and Malnutrition and Build Sustainable Resilient Food Systems," a goal which cannot be achieved without promoting fertilizer markets.⁸² Theo de Jager, President of the World Farmers' Organization, believes avoiding a food crisis at this moment is unlikely given that the question is really about how deeply it will spread.⁸³

As President Biden declared an emergency for the solar industry, in large part, to achieve their renewable energy goals, the President should declare a national emergency for agricultural inputs.⁸⁴ Declaring a national emergency with regard to the cost of fertilizer is not only critical to feed the global population, but is also necessary to achieve the goals that the Biden White House has set out.⁸⁵ The Biden Administration set out goals with regard to maintaining an adequate and affordable national food supply while also working toward their goal of eliminating hunger and food insecurity.⁸⁶

*B. Executive Action Should Be Taken Under 19 U.S.C. 1318 to Place a
Moratorium on Fertilizer Import Tariffs*

1. The impact of current policies on the fertilizer market.

Imposing trade duties on nations the United States markedly relies on to obtain fertilizers is impractical and harmful at the current juncture.⁸⁷ There is no

80. Press Release, U.S. Dep't of Agric., Release No. 0096.22, Biden Administration Announces Hundreds of Millions of Dollars in Global Food Aid to Respond to Putin's Unprovoked Invasion of Ukraine (Apr. 27, 2022), <https://www.usda.gov/media/press-releases/2022/04/27/biden-administration-announces-hundreds-millions-dollars-global> [<https://perma.cc/C4ZQ-QEMF>].

81. *Id.*

82. Press Release, The White House, Fact Sheet: Biden-Harris Administration Commit to End Hunger and Malnutrition and Build Sustainable Resilient Food Systems (Sept. 23, 2021) [hereinafter White House Fact Sheet], <https://www.whitehouse.gov/briefing-room/statements-releases/2021/09/23/fact-sheet-biden-harris-administration-commit-to-end-hunger-and-malnutrition-and-build-sustainable-resilient-food-systems/> [<https://perma.cc/V4AL-BRNR>].

83. Bourne, *supra* note 79.

84. See Proclamation No. 10414, 87 Fed. Reg. 35067, 35067 (June 9, 2022).

85. See White House Fact Sheet, *supra* note 82.

86. *Id.*

87. Myers, *supra* note 36.

time for protectionist measures to remain in place given the state of the fertilizer market globally.⁸⁸ A study conducted by Iowa State University has concluded that profits from some fertilizer companies have risen over 400% since 2018.⁸⁹ Fertilizer companies like Mosaic, Bunge Limited, and Nutrien all showed exponential profit margin increases in the study.⁹⁰ The American fertilizer industry has proven they no longer need the protection of trade duties to maintain a profit margin.⁹¹

The United States government has already taken domestic action comparable to that taken in the Biden Administration through the Defense Production Act which sought to increase domestic production of solar inputs and provide incentives to create new avenues for solar manufacturing in the United States.⁹² On March 11, 2022, the USDA announced it would be supporting additional domestic fertilizer production to address rising costs.⁹³ The USDA claimed that they planned to make \$250 million available through a new grant program in support of innovative and sustainable American fertilizer production.⁹⁴ As noted previously, the Biden Administration also launched the FPEP to promote domestic production of fertilizers.⁹⁵ Furthermore, the USDA plans to spearhead a public inquiry that seeks information regarding agricultural inputs, fertilizer, and retail markets to combat growing supply chain concerns.⁹⁶

While this domestic action is a step in the right direction and will certainly prove to be advantageous in the long term, it does not eliminate the impact of tariffs on imports of crucial fertilizers.⁹⁷ Since the Commerce Department's decision to impose tariffs on Moroccan phosphate imports, phosphate fertilizer prices have increased by 93% as of February 2022 according to a letter written to the

88. *See generally id.*

89. JOHN M. CRESPIET AL., IOWA STATE UNIV., 22-SR 117, AN EXAMINATION OF RECENT FERTILIZER PRICE CHANGES (2022), <https://www.card.iastate.edu/products/publications/pdf/22sr117.pdf> [<https://perma.cc/5Y4C-FN93>].

90. *Id.*

91. *See generally id.*

92. *See* USDA Investment in American Fertilizer, *supra* note 71; Presidential Determination No. 2022-15, 87 Fed. Reg. 35071, 35071 (June 9, 2022).

93. USDA Investment in American Fertilizer, *supra* note 71.

94. *Id.*

95. *Fertilizer Production Expansion Program*, *supra* note 56.

96. *See* USDA Investment in American Fertilizer, *supra* note 71; Presidential Determination No. 2022-15, 87 Fed. Reg. 35071.

97. *See* USDA Investment in American Fertilizer, *supra* note 71.

Commerce Chair Jason Kearns from numerous members of Congress.⁹⁸ Furthermore, due to the nitrogen import CVD investigation that surrounded Trinidad and Tobago, the import volume of urea ammonium nitrate fertilizers decreased 97%.⁹⁹ These two protectionist duties have had a profound impact on the prices and availability of fertilizer in the marketplace.¹⁰⁰

2. The legality of antidumping and countervailing duty tariff moratoriums

The executive branch should take executive action to remove protectionist trade measures in favor of fertilizer consumers. It is established that 19 U.S.C. § 1318 is the provision of the Tariff Act of 1930 that deals with national emergencies and comes into effect after the President “declare[s] an emergency.”¹⁰¹ As previously noted, the fertilizer crisis has risen to such a level that a national emergency should be declared. 50 U.S.C § 1631 deals with the declaration of a national emergency by executive orders.¹⁰² The provision states that:

When the President declares a national emergency, no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which he proposes that he, or other officers will act. Such specification may be made either in the declaration of a national emergency, or by one or more contemporaneous or subsequent Executive orders published in the Federal Register and transmitted to the Congress.¹⁰³

President Biden declared a state of emergency and his implementation of § 1318 in one executive action, which conforms to “one or more contemporaneous or subsequent Executive orders.”¹⁰⁴ President Trump, however, declared a state of emergency in his utilization of § 1318 in 2020 and his implementation of the Tariff Act emergency powers in separate executive orders.¹⁰⁵ President Trump declared a national emergency for the COVID-19 pandemic which was further extended by

98. Letter from Tracey Mann, Member of U.S. Cong. et al., to Jason E. Kearns, Chair, U.S. Int’l Trade Comm’n (Mar. 17, 2022), https://www.grassley.senate.gov/imo/media/doc/grassley_et_al.totradecommissionfertilizerprices.pdf [<https://perma.cc/23ZT-EQDN>].

99. *Id.*

100. *Id.*

101. 19 U.S.C. § 1318(a).

102. 50 U.S.C. § 1631.

103. *Id.*

104. *See id.*; Proclamation No. 10414, 87 Fed. Reg. 35067, 35068 (June 9, 2022).

105. Exec. Order No. 13,916, 85 Fed. Reg. 22951, 22951 (Apr. 23, 2020); Proclamation No. 9994, 85 Fed. Reg. 15337, 15337 (Mar. 18, 2020).

the Biden Administration.¹⁰⁶ President Trump's declaration allowed the Secretary of the Treasury to extend deadlines for importers suffering financial hardship in paying their trade duties.¹⁰⁷ President Truman exercised the same power by first declaring a national emergency and then implementing the emergency powers of the Tariff Act to amend the collection of duties during the Korean War through the Secretary of the Treasury.¹⁰⁸

Some critics of President Biden's executive action may say that a national emergency for solar energy is not warranted, especially compared to the COVID-19 pandemic or the Korean War. Similar criticisms might be made if a President were to put a moratorium on fertilizer tariffs. However, the statutory plain language does not limit the President to the kind or manner of national emergency they can declare, making the solar module national emergency statutorily permissible.¹⁰⁹ Courts generally give high deference to the President and their actions, particularly when they are statutorily permissible.¹¹⁰

That being the case, President Biden did not precisely conform to the plain language of § 1318 of the Tariff Act.¹¹¹ President Biden, in his proclamation, instructed the Secretary of Commerce to act on removing AD and CVD tariffs on four Southeast Asian nations.¹¹² This is contrary to the plain language of the statute that indicates the Secretary of the Treasury is meant to act in removing duties on foreign imports.¹¹³ Moreover, the Presidents who have taken § 1318 action before have all given the authority to the Secretary of the Treasury.¹¹⁴ Since this is also the first time that a President has circumvented an ongoing AD or CVD investigation by the Commerce Department, this is slightly unprecedented.¹¹⁵ However, there is no provision in § 1318, nor does the plain language indicate, that the emergency provision of the Tariff Act should not extend to AD and CVD

106. Proclamation No. 9994, 85 Fed. Reg. at 15337.

107. 50 U.S.C. § 1601(a)-(b); 19 U.S.C. § 1318(a); Exec. Order No. 13,916, 85 Fed. Reg. at 22951.

108. Proclamation No. 2948, 16 Fed. Reg. 10589, 10589 (Oct. 17, 1951).

109. 50 U.S.C. § 1601(b).

110. *See, e.g.*, *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 634–655 (1952).

111. *See* 19 U.S.C. § 1318(b)(1); Proclamation No. 10414, 87 Fed. Reg. 35067, 35068 (June 9, 2022).

112. Proclamation No. 10414, 87 Fed. Reg. at 35068.

113. 19 U.S.C. § 1318(a).

114. Proclamation No. 2948, 16 Fed. Reg. 10589, 10589 (Oct. 17, 1951); Exec. Order No. 13,916, 85 Fed. Reg. 22951, 22951 (Apr. 23, 2020).

115. Procedures Covering Suspension of Liquidation, Duties and Estimated Duties in Accord with Presidential Proclamation 10414, 87 Fed. Reg. 39426, 39427 (July 1, 2022) (codified at 19 C.F.R. pt. 362).

tariffs, or that it should not extend to them because they are still under investigation.¹¹⁶ Moreover, Reorganization Plan No.3 of 1979 favors President Biden directing the Secretary of Commerce to act rather than the Secretary of the Treasury.¹¹⁷ Reorganization Plan No.3 of 1979, “Structure, functions, powers, and personnel” of the Trade Act of 1974, gives Commerce the authority to dictate “the administration of the antidumping and countervailing duty laws, export controls, trade adjustment assistance to firms and communities, research and analysis, and monitoring compliance with international trade agreements to which the United States is a party.”¹¹⁸ This plan specifically enumerates, in plain language, the duties of the Commerce Department.¹¹⁹ The primary purpose of the plan, overall, was to clearly organize functions relating to international trade under Title 19, which both the Trade Act of 1974 and the Tariff Act of 1930 fall under.¹²⁰ This language and legislative history indicate that the President did not improperly delegate duties to the Secretary of Commerce because AD and CVD statutorily are under the Commerce’s jurisdiction.¹²¹

Yet, the chief complaint from the United States solar industry is that the President is acting beyond his authority and reaching into a “quasi-judicial” branch function and usurping power improperly.¹²² The Department of the Treasury is part of the executive branch, as is Commerce.¹²³ The Secretary of Commerce and the Under Secretary for International Trade (who oversees the ITA) are appointed by the President with the advice and consent of the Senate.¹²⁴ These officers are chiefly responsible for carrying out AD and CVD duty investigations within the Commerce Department.¹²⁵ Commissioners to the ITC are also appointed by the President with the advice and consent of the Senate, however, the ITC is an independent, quasi-judicial federal agency.¹²⁶

116. See generally 19 U.S.C. § 1318.

117. See generally Reorganization Plan No. 3 of 1979, 44 Fed. Reg. 69273 (Dec. 3, 1979), reprinted as amended in 5 U.S.C. app. at 250 (2018), and in 93 Stat. 1381 (1979).

118. *Id.* at 69274, reprinted as amended in 5 U.S.C. app. at 251 (2018), and in 93 Stat. at 1382.

119. *Id.*

120. See *id.*

121. See *id.*

122. Aranoff et al., *supra* note 20.

123. *Role of the Treasury*, U.S. DEP’T OF THE TREASURY (Sept. 18, 2023, 2:28 PM), <https://home.treasury.gov/about/general-information/role-of-the-treasury> [<https://perma.cc/N5JS-8A2U>]; *About Commerce*, U.S. DEP’T OF COM. (Sept. 18, 2023, 2:29 PM), <https://www.commerce.gov/about> [<https://perma.cc/Q6L5-VXLJ>].

124. 15 U.S.C. § 1501; 19 U.S.C. § 2171(b).

125. Aranoff et al., *supra* note 20.

126. 19 U.S.C. §§ 2231(a), 1330(a).

Many United States solar manufacturers are discussing taking legal action regarding the removal of AD and CVD tariffs because they believe President Biden is impermissibly exercising executive authority and circumventing a quasi-judicial process.¹²⁷ Quasi-judicial is defined as “[a] proceeding ... requiring the taking and weighing of evidence, determinations of fact based upon the consideration of the evidence, and the making of an order supported by such findings, has a quality resembling that of a judicial proceeding.”¹²⁸ Commerce and the ITC’s investigations of AD and CVD practices by other countries are performing a quasi-judicial function in this instance because they are weighing evidence and ultimately issue an order supporting their findings.¹²⁹

The Supreme Court of the United States (SCOTUS) has dealt with the President and quasi-judicial power chiefly regarding removal actions in the past.¹³⁰ SCOTUS has historically tailored a President’s authority narrowly when it comes to the removal of quasi-judicial officers.¹³¹ But, SCOTUS has also found that the President has executive authority under the “Take Care” and “Vesting” clauses of the Constitution to ensure that the laws are faithfully executed through their unitary executive authority.¹³²

Notably, President Biden is not taking away Commerce’s or the ITC’s quasi-judicial power of investigation.¹³³ In *Portland Audubon Society v. Endangered Species Committee*, the Ninth Circuit found that the President was subject to ex parte communication regulations so as to not improperly influence a quasi-judicial body.¹³⁴ President Biden is not influencing or negating the results of the ITC’s or Commerce’s investigations and is not denying them the opportunity to implement their findings once the emergency period has ended.¹³⁵ President Biden is simply placing a moratorium on the tariffs that would result from Commerce’s and the ITC’s findings.¹³⁶ Commerce has clearly indicated that they will not allow this moratorium on tariffs to stop their investigation and that they will likely implement the trade duties upon the emergency’s end.¹³⁷

127. Aranoff et al., *supra* note 20.

128. *Morgan v. United States*, 298 U.S. 468, 480 (1936).

129. *Understanding AD and CVD*, *supra* note 19.

130. *Humphry’s Ex’r v. United States*, 295 U.S. 602, 630 (1935).

131. *Id.* at 629.

132. U.S. CONST. art. II, §§ 1, 3; *Myers v. United States*, 272 U.S. 52, 110 (1926).

133. *See* 19 C.F.R. § 362.103 (2022).

134. *Portland Audubon Soc’y v. Endangered Species Comm.*, 984 F.2d 1534, 1546 (9th Cir. 1993).

135. 19 C.F.R. § 362.103.

136. *Id.*

137. Press Release, U.S. Dep’t of Com., *supra* note 31.

In this instance, the President is simply exercising his executive authority and duty to take care in maintaining the well-being of the nation through this executive order.¹³⁸ Furthermore, the vesting clause places executive power solely with the President.¹³⁹ There are some advocates who indicate that the vesting clause, and therefore the regulation of executive departments, should be curtailed.¹⁴⁰ The Court in *Myers v. United States* advocated for a unitary executive where Presidential directive authority is constitutionally required.¹⁴¹ Yet, another view of Presidential directive authority is that the President should only act when a statute expressly gives him the authority to do so.¹⁴² However, President Biden's actions are within the scope of Presidential power under both lenses of Presidential directive authority.¹⁴³ President Biden has the authority to prescribe that Commerce remove the AD and CVD tariffs because it is a power that has been expressly granted to him through multiple statutes.¹⁴⁴

President Biden's actions in this executive order are likely to be found permissible and constitutional. While this specific analysis of the President's authority in the quasi-judicial process is a more novel area of law in federal courts, deference by the court is given to the plain language of statutes, legislative history, and, most importantly, the Constitution. President Biden was not acting recklessly or usurping a quasi-judicial agency's power when he prescribed solar module importation free of duty to the Secretary of Commerce.¹⁴⁵

3. Next steps for President Biden to implement a fertilizer tariff moratorium

President Biden's prescribed removal of duties for an emergency period on solar modules should also be implemented for fertilizer imports from Morocco.¹⁴⁶

138. U.S. CONST. art. II, §§ 1, 3.

139. *Id.*; *Myers v. United States*, 272 U.S. 52, 134 (1926).

140. Saikrishna B. Prakash & Christopher H. Schroeder, *The Vesting Clause: Common Interpretation*, NAT'L CONST. CTR. (Sept. 18, 2023, 2:29 PM), <https://constitutioncenter.org/the-constitution/articles/article-ii/clauses/347> [<https://perma.cc/ZCB5-Z4TL>].

141. *Myers*, 272 U.S. at 110.

142. Robert V. Percival, *Who's in Charge? Does the President have Directive Authority over Agency Regulatory Decisions?*, 79 FORDHAM L. REV. 2487, 2487–90 (2011) (discussing levels of presidential directive authority).

143. *Id.*

144. 19 U.S.C. §§ 2171, 1318; 50 U.S.C. § 1601 et seq.

145. See Procedures Covering Suspension of Liquidation, Duties and Estimated Duties in Accord with Presidential Proclamation 10414, 87 Fed. Reg. 39426, 39427 (July 1, 2022) (codified at 19 C.F.R. pt. 362).

146. See Proclamation No. 10414, 87 Fed. Reg. 35067 (June 9, 2022).

To declare a national emergency for the state of fertilizer markets, the President would quite plainly need only to declare a national emergency and invoke the emergency powers granted under § 1318.¹⁴⁷ The emergency provision of the Tariff Act chiefly applies to fertilizer duties because they are AD and CVD duties, just like solar, whose regulation is controlled by the Tariff Act.¹⁴⁸

President Biden has set a precedent for taking executive action in removing tariffs from industries being harmed by the duties designed to protect industries once they no longer are serving the American people.¹⁴⁹ The Biden Administration recognizes the impact of American energy and the consequences that could be seen if duty-free imports are not permitted.¹⁵⁰ What is more critical than providing proper nutrition to American citizens and people around the world? Without respite from the fertilizer crisis through emergency declaration and emergency tariff action taken, we may see food insecurity increase exponentially.¹⁵¹ The President of the United States should therefore declare a national emergency and direct the Secretary of Commerce to allow imports free of duty on fertilizers from Morocco.

III. THE POSITIVE GLOBAL IMPACT OF REMOVING FERTILIZER TARIFFS

Food costs are steadily increasing across the United States.¹⁵² The “Food” inflation rate was 10.1% according to the BLS Consumer Price Index in May 2022.¹⁵³ More concerning, the “Food at Home” inflation came in at 11.9%.¹⁵⁴ Wheat and corn prices are likely to hit all-time highs in the coming months if they continue to increase at the same rate by following in soybeans’ footsteps as they have hit their all-time high as of May 2022 at \$15.80/bu.¹⁵⁵ Bart Melek of TD Securities says that “[farmers are] going to get lower yield simply because they’re economizing, particularly in emerging markets.”¹⁵⁶ Lower yields will lead to grain

147. 19 U.S.C. § 1318.

148. *Id.*; 19 U.S.C. §§ 1671–73.

149. *See* 19 C.F.R. § 362.103 (2022).

150. *See generally id.*

151. Bourne, *supra* note 79.

152. Rugaber, *supra* note 38.

153. Press Release, U.S. Dep’t of Lab. Bureau of Lab. Stat., USDL-22-1113, Consumer Price Index – May 2022, at 1 (June 10, 2022), https://www.bls.gov/news.release/archives/cpi_06102022.pdf [<https://perma.cc/JMU9-JJG>].

154. *Id.* at 4.

155. USDA PRICE REPORT, *supra* note 40, at 3 (bu – abbreviation for bushel).

156. Patti Domm, *A Fertilizer Shortage, Worsened by War in Ukraine, is Driving up Global Food Prices and Scarcity*, CNBC (Apr. 6, 2022, (9:51 PM), <https://cnb.cx/39Okfig>) [<https://perma.cc/ANJ8-FPA9>].

shortages, and shortages drive up the price of commodities.¹⁵⁷ The same is true for agricultural inputs—scarcity has driven up the price, thereby affecting the farmer and eventually the consumer.¹⁵⁸ The predicted food shortages have experts concerned, fearing that vulnerable populations will suffer even higher rates of food insecurity.¹⁵⁹ Moreover, United States' commodity prices approaching all-time highs has strengthened fears that high-quality and nutritious food will become even more inaccessible for underserved populations globally.¹⁶⁰

To make matters worse, Russia and Ukraine have historically exported nearly 30% of the global wheat trade and 20% of global corn.¹⁶¹ These grain stores were unable to reach the marketplace for the better part of 2022 due to the Black Sea blockade which was mitigated by the Black Sea Grain Initiative.¹⁶² In 2021, Ukraine accounted for 10% of the global grain trade and was the fourth-largest exporter of grain following the United States, Argentina, and Russia.¹⁶³ In 2022, Ukrainian grain exports were down 64% compared to 2021 due in large part to the fact that they were being exported by train and truck for a great part of 2022.¹⁶⁴ Aside from wheat production, Ukraine is a major producer of corn, sunflower oil, and sunflower meal, which is used by many African and Middle Eastern nations who could face starvation if they cannot access these basic foodstuffs.¹⁶⁵ These impoverished countries will be at an even steeper disadvantage due to the extreme food shortages they face.¹⁶⁶ While the Black Sea Grain Initiative did ease the strain by allowing Ukrainian exports to go to those nations who need grain the most and allowing for ammonia exports, the massive decrease in crop yields due to the Russian aggression and its effect on farmland will continue to play a key role in

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*; USDA PRICE REPORT, *supra* note 40, at 6.

161. Domm, *supra* note 156.

162. *Ukraine Grain Exports Down 29.6% at 23.6 Mln T So Far in 2022/23*, REUTERS (Jan. 9, 2023, 5:43 AM), <https://www.reuters.com/markets/commodities/ukraine-grain-exports-down-296-236-mln-t-so-far-202223-2023-01-09/> [<https://perma.cc/H6UK-YXEL>].

163. Simeon Djankov & Oleksiy Blinov, *Restarting Ukraine's Agriculture Exports*, CTR. FOR ECON. POL'Y RSCH.: VOXEU (June 10, 2022), <https://cepr.org/voxeu/columns/restarting-ukraines-agricultural-exports> [<https://perma.cc/76TN-TW7T>].

164. *Id.*; Derek Saul, *Ukraine Says May Grain Exports Down More than 60% Compared to 2021 in Latest Alarming Sign of International Food Crisis*, FORBES (May 19, 2022, 10:56 AM), <https://www.forbes.com/sites/dereksaul/2022/05/19/ukraine-says-may-grain-exports-down-more-than-60-compared-to-2021-in-latest-alarming-sign-of-international-food-crisis/?sh=76c2b1102cc6> [<https://perma.cc/UY3V-XBYS>].

165. Saul, *supra* note 164.

166. *Id.*

food shortages around the world.¹⁶⁷ However, the Black Sea Grain Initiative was not renewed after its third term as of July 17, 2023.¹⁶⁸

In May 2022, Ukraine was able to export about one million tons of grain, and in May 2021, over three million tons were exported.¹⁶⁹ Projections indicated that Ukraine's grain crop production would be decreased in 2022 by 34%, the lowest since 2011, because of the inability to export crops and the Russian invasion causing a missed planting period.¹⁷⁰ All of these factors contribute to continued supply chain disruptions that cannot be afforded in the global marketplace, nor in the countries that rely on Ukrainian exports.¹⁷¹

Thus, the global grain market is volatile.¹⁷² With Ukrainian coarse grain exports having been unable to reach the countries that need it most, and as the United States is likely to see decreased crop yields this year due to high fertilizer costs, it is imperative that a presidential administration take swift action to eliminate AD and CVD tariffs on fertilizer imports to make agricultural inputs more accessible to American farmers.¹⁷³ As already noted, the trade duties placed on Morocco have had broad-reaching impacts on crop production in the United States.¹⁷⁴ Economic protectionist measures that continue to line the pockets of American fertilizer companies at the expense of their direct and indirect consumers cannot justify maintaining AD and CVD tariffs when global food shortages loom.¹⁷⁵ United States farmers cannot aid in leveling the massive grain supply and demand imbalance if they are unable to afford the inputs that allow them to maximize production, leaving countless people hungry at home and abroad.

167. *The Black Sea Grain Initiative: What It Is, and Why It's Important for the World*, UNITED NATIONS: NEWS (Sept. 16, 2022), <https://news.un.org/en/story/2022/09/1126811> [<https://perma.cc/ES8B-3VBY>].

168. *Beacon on the Black Sea*, UNITED NATIONS: BLACK SEA GRAIN INITIATIVE JOINT COORDINATION CTR. (Nov. 12, 2023, 12:10 PM), <https://www.un.org/en/black-sea-grain-initiative> [<https://perma.cc/3KST-UE72>].

169. Djankov & Blinov, *supra* note 163.

170. *Id.*

171. *See id.*

172. *Agricultural Markets in Russia and Ukraine*, U.S. DEP'T OF AGRIC. ECON. RSCH. SERV. (Sept. 11, 2023), <https://www.ers.usda.gov/newsroom/trending-topics/agricultural-markets-in-russia-and-ukraine/> [<https://perma.cc/U9L6-MMLF>].

173. *See generally* Domm, *supra* note 156.

174. Letter from Tracey Mann et al. to Jason E. Kearns, *supra* note 98.

175. *See ISU Study Sheds Light on Fertilizer Price Spikes Affecting Iowa Farmers*, IOWA STATE UNIV. CTR. FOR AGRIC. & RURAL DEV. (June 22, 2022), <https://www.card.iastate.edu/news/release/?n=136> [<https://perma.cc/WC9D-4L7N>]; *see also* CRESPI ET AL., *supra* note 89.

Without executive action from the President, farmers cannot hope to increase production enough to feed deprived nations and causing irreparable harm.

CONCLUSION

Emergency action by the executive branch to prescribe duty-free trade from Morocco due to the fertilizer crisis is imperative to allow United States crop farmers to return to maximum efficiency and productivity while they continue to feed the world in a safe and sustainable manner. President Biden has set a precedent by using emergency methods to remove AD and CVD solar tariffs which should also be extended to fertilizer tariffs. The removal of fertilizer tariffs is not only needed due to vast geopolitical and economic crises but is also warranted because United States companies who have sought these protective tariffs are no longer in need of them. Global food shortages and record-high inflation make it clear that now, more than ever, rapid and decisive action should be taken so farmers can continue to feed the world.

Not only would a removal of fertilizer tariffs be in line with agricultural ideals, but it would also be in line with the American consumer, and the global consumer's goals and pocketbooks. While there may be pushback from powerful fertilizer corporations, it is clear that the best course of action is to remove tariffs on fertilizer imports so that the United States, and the world, can begin to rebuild economic and political stability while also promoting food security.

Less than 2% of the United States population enjoy the job title of "farmer" or "rancher."¹⁷⁶ The global population is projected to increase by a staggering 2.2 billion people by the year 2050.¹⁷⁷ This means that farmers across the world will be tasked with growing or raising 70% more food than is currently produced.¹⁷⁸ This is a monumental task that America's farmers are prepared to tackle head-on, hand-in-hand with farmers and ranchers from across the globe. However, current fertilizer tariffs make this colossal undertaking exponentially more difficult. The exponential toll these tariffs have around the world show just how critical their emergency removal is today and as we look to 2050.

176. *Fast Facts about Agriculture*, AM. FARM BUREAU FED'N (Oct. 12, 2023, 3:11 PM), <https://www.fb.org/newsroom/fast-facts> [<https://perma.cc/RS7N-WQBZ>].

177. *Id.*

178. *Id.*