

August 30, 2022

Dr. Susan Mayne
Director
Center for Food Safety and Applied Nutrition

Mr. Frank Yiannas
Deputy Commissioner
Office of Food Policy and Response

Dear Dr. Mayne and Mr. Yiannas,

The Food and Beverage Issue Alliance (FBIA) appreciates the continued opportunity to speak with both of you regarding supply chain disruptions that are impacting the food and agriculture sector. FBIA has compiled the following feedback from members as well as critical considerations for FDA to assist in addressing this ongoing challenge.

As previously noted in outreach to both of you in April 2022 (attached as appendix), most global commodities are experiencing supply chain disruptions and higher than normal prices due to a global production deficit of most major crops and enduring COVID-19 supply chain impacts on transportation, labor, materials, and commodities. Other factors, including changing consumer demands, are further straining an already stressed supply chain. Furthermore, the conflict in Ukraine is having a significant impact on the global commodities market given Ukraine and Russia's role as key exporters for many commodities, including sunflower, wheat, barley, corn, rapeseed, and potash for fertilizer. As previously expressed, industry does not foresee necessary resolution of the supply chain challenges in the immediate term, and issues are likely going to be impacted for the next few years.

In April 2022, FBIA provided a substantial list of examples outlining supply chain disruptions, which were often exacerbated by major transportation issues with ports, rail, and trucking, which caused interruptions for supply of raw and processed commodities to food manufacturers. As we outline below, these transportation challenges still remain, and in some instances, are worse than they were in April. Additionally, in April, FBIA noted many ingredients that food manufacturers were having difficulty procuring, including food gums and starches, edible oils, sweeteners, flavorings, and dietary fibers. FBIA also noted substantial challenges with shortages of plastic packaging. As noted below, many of these procurement issues are still major hardships for food companies.

Current Examples of Supply Chain Disruptions

As noted above, transportation issues are a key driver in much of the supply chain disruptions being experienced by the food and agriculture sector. Rail service failures, port disruptions, container availability and cost, and labor shortages have all contributed to ongoing supply chain issues. Below are several recent examples provided by FBIA members to illustrate this challenge:

- For two weeks this summer, BNSF instituted an embargo of freight cars from the Midwest to California that halted all shipments of grain, fuel, and chemicals to manufacturers in California, and a similar embargo has been announced for shipments to Texas. Embargos of this size are becoming increasingly common, and railroads simply cite "service challenges" as the root cause of shutting down this key part of the supply chain.
- On a daily basis in second quarter of 2022 and moving into this quarter, multiple food sector processing facilities around the country have been forced to shut down operations because of railroads' inability to get inputs in and finished goods out. This problem is markedly worse than it was prior to the second quarter of the year.

- Large grain handling facilities often own a private line that takes cars a short distance (e.g., less than a mile) from the primary railroad to the processing facility. Despite having done so for many years, railroads now routinely claim they lack staff or equipment to switch cars onto those private lines, leaving thousands of tons of grain that have traveled 99.9% of the way to their destination stranded and unusable, sometimes for weeks.
- One corn refiner has had a container stuck in Chicago for a month, in which time the railroad changed the orders for that container 36 times. For each of those 35 re-bookings of transport orders, time was invested and costs incurred.
- An edible oil supplier had several rail cars of soybean oil headed to a customer in Nevada that arrived at a local rail yard eight days after shipment, but the local rail yard near the customer plant had no available crew to transport the oil to the plant. The local rail yard moved the rail cars for several days and then shipped them to California. Three weeks after the soybean oil was initially shipped to the customer, the oil had yet to arrive at the customer facility, which resulted in a stop of production for the customer.

FBIA members have also noted many issues with procuring key ingredients necessary for food production, and many of these challenges have been particularly difficult for small and medium sized food companies. Several examples of shortages are due to the supply of ingredients being from outside of the U.S. (e.g., tapioca), with some of these examples noted below. Some examples shared by FBIA members are outlined below:

- Chicken meat – Ongoing labor shortages across all markets are impacting the supply of chicken
- Cranberries – Projected shortage of cranberries impacting procurement ability of some smaller companies
- Edible oils and derivatives (e.g., lecithin) such as sunflower, soybean, and canola - continue to be challenged by weather conditions in the U.S. and around the world, the ongoing Ukraine conflict, and face tremendous challenges with U.S. rail delivery to customers. U.S. rails have become increasingly unreliable resulting in delays, backlogs, and in worst cases have caused production stoppages at end user facilities.
- Eggs – Ongoing avian influenza outbreak is causing disruptions in procurement of eggs
- Flavorings – Increased lead times for procurement of flavorings, often due to upstream challenges with transporting inputs
- Food gums (e.g., xanthan gum) – Difficulty in acquiring food gums for manufacturers
- Frozen (IQF) vegetables – Drought and labor shortages leading to procurement issues for smaller companies
- Mandarin oranges – Ongoing COVID-19 lockdowns in China are impacting sourcing
- Pasta – Wheat shortages caused by the conflict in Ukraine are particularly impacting smaller companies
- Pine nuts – Ongoing COVID-19 lockdowns in China are impacting sourcing
- Potatoes – Shortages across the U.S. due to drought, fertilizer supply issues, and supply chain constraints
- Sugar – Difficulty with obtaining contracts from normal sugar suppliers
- Tomato paste – Drought impacting tomato crops in California

Additionally, FBIA members have noted several examples of packaging challenges which adds to the supply chain disruption concerns for food manufacturers, including:

- Aluminum trays – Conflict in Ukraine leading to procurement issues given the export of aluminum from Ukraine and Russia

- Packaging – Lead times for packaging have gone from three weeks to three months, and could be as long as 16 weeks and is getting worse
 - Food companies have had to stop production due to incoming plastic packaging materials being late or due to inability to procure packaging
- Paper bags – Difficulty with procuring paper bags, potentially due to conflict in Ukraine
- Bulk cardboard packaging – Delivery times have gone from about a week up to six months

FBIA members have also noted significant lead time for procuring facility equipment, which can be up to one or two years. Additionally, FBIA members have noted increased delivery times for standard filter aids (six months) and electronic components such as variable frequency drives (over six months), which sometimes cannot be procured.

Furthermore, it has been shared by FBIA members that agricultural producers in the Midwest have had continuous difficulties obtaining equipment, especially temperature controlled containers, for export. This has resulted in significant delays in exporting and additional costs for moving products closer to the coast where carriers are keeping equipment. This issue is particularly concerning as harvest season approaches for many crops grown in the Midwest.

Industry Request

As previously noted by FBIA, FDA's COVID-19 Public Health Emergency flexibility guidance for labeling is often a lifeline that allows food manufacturers to get products to store shelves. We greatly appreciate the extension of this flexibility for an additional 90 days and submit that additional flexibility and temporary enforcement discretion should be continued for the longer term, at least through the beginning of next year when the food and agriculture industry can potentially gauge the state of supply chains. Further, as previously expressed, FBIA believes that instituting enforcement discretion on a case-by-case basis would be overwhelming for FDA staff without appropriate infrastructure and resources and is not sustainable to address the breadth of challenges currently being experienced by the food and agriculture supply chain.

Additionally, FBIA strongly encourages FDA to engage in interagency dialogue with other federal agencies to raise supply chain challenges being experienced by the food and agriculture sector and work with other agencies to determine means to resolve these critical disruptions, particularly regarding ongoing transportation challenges, specifically rail issues. As necessary, targeted outreach from the Commissioner to relevant senior federal officials and cabinet members is needed.

FBIA greatly appreciates the opportunity for continued dialogue to address and partner on supply chain disruption concerns and solutions. We would be pleased to address any questions and/or provide additional information as needed to work towards solutions.

Sincerely,

American Bakers Association
 American Frozen Food Institute
 American Herbal Products Association
 Consumer Brands Association
 Corn Refiners Association
 Council for Responsible Nutrition
 FMI – The Food Industry Association

Global Cold Chain Alliance
Institute of Shortening and Edible Oils
International Bottled Water Association
International Dairy Foods Association
Juice Products Association
National Association of Chemical Distributors
National Confectioners Association
National Fisheries Institute
National Grocers Association
National Pasta Association
National Restaurant Association
National Seasoning Manufacturers Association
North American Millers' Association
Peanut and Tree Nut Processors Association
Refrigerated Foods Association
SNAC International
The Association for Dressings & Sauces

Appendix (April 2022 FBIA Letter)

April 27, 2022

Dr. Susan Mayne
Director
Center for Food Safety and Applied Nutrition

Mr. Frank Yiannas
Deputy Commissioner
Office of Food Policy and Response

Dear Dr. Mayne and Mr. Yiannas,

The Food & Beverage Issue Alliance (FBIA) appreciates the opportunity to have spoken you both regarding supply chain disruptions which are impacting the food and agriculture sector. As requested, FBIA has compiled feedback presented during this discussion, as well as additional critical considerations shared by FBIA members.

Global and Inflationary Overview

Most global commodities are experiencing higher than normal prices due to a global production deficit of most major crops and lingering COVID-19 supply chain impacts in transportation, labor, materials, and commodities. Additionally, factors such as rising energy costs, changing consumer demands, and the impact of the Russia-Ukraine war have further strained the already stressed supply chain. Balancing all of these factors, commodity price increases, resulting food price increases, and volatility are anticipated to continue for the foreseeable future.

According to the U.S. Department of Agriculture's (USDA) Food Price Outlook 2022 March Report, food at-home (grocery store or supermarket food purchases) and food-away-from-home (restaurant purchases) prices are expected to continue to increase between 4.5-5.5% in 2022, with food-away-from home prices expected to be impacted the most, between 5.5 and 6.5%. From February 2021 to February 2022 alone, food prices increased by 7.9%, which was the largest price jump in one year since July 1981.

“While prices did not decrease for any reported food price category, prices for 11 disaggregate food categories increased by more than a percent in February. The impacts of the conflict in Ukraine and the recent increases in interest rates by the Federal Reserve are expected to put upward and downward pressures on food prices, respectively.”

Meanwhile, the United Nations (UN) Food and Agriculture Organization (FAO) reported that world food prices jumped nearly 13% in March to a new record high.

“Disruption to supplies of crops from the Black Sea region has exacerbated price rises in food commodities, which were already running at 10-year highs in the FAO's index before the war in Ukraine due to global weather and harvest challenges.”

As reported by many news outlets, gasoline prices are fluctuating a great deal and are likely to keep moving higher, particularly during peak summer travel seasons. According to an article this week, CNBC is reporting that:

“For the year, U.S. natural gas prices are now up 108%, which is adding to inflationary concerns across the economy. The move is less extreme than in Europe, where natural gas futures have risen to record levels as the bloc scrambles to move away from dependence on Russian energy.”

Russia-Ukraine Impact

As noted during FBIA's recent meeting with FDA, Russia and Ukraine produce a significant portion of several key global commodities, including 78% of the world's sunflower exports, 29% of the world's wheat exports, 31% of the world's barley exports, 19% of the world's corn exports, and 23% of the world's rapeseed exports. While neither Russia nor Ukraine are big exporters to the U.S., having so many commodities impacted on the global market already has, and will continue to result in volatility in global commodity prices and availability as well as pressure on U.S. production, with developing countries bound to experience the most significant impact.

While Ukrainian farmers may be attempting to plant as much as possible for the fall harvest, much of the conflict is overlaid in agriculture-rich areas of the country as well as key ports for shipping commodities, that have been completely stalled. Expectations that Russia will continue to put increased tension on these key parts of Ukraine will likely further impact the ability of farmers to plant and harvest key commodities.

Furthermore, Ukrainian farmers, as well as farmers around the world, are experiencing challenges with accessing fertilizer and fuel due to lack of availability and significant price increases. While there has been some suggestion that planting can be shifted to other parts of the world, including the U.S., farmers in the U.S. are now making or have already made planting decisions, due in part of fertilizer availability and cost. According to the March 31, 2022, USDA Prospective Planting Report, the indicated soybean planted area for all purposes in 2022 is estimated at 91.0 million acres, up 4 percent or 3.8 million acres from last year. Corn planted area for 2022 is estimated at 89.5 million acres, down 4 percent from last year. While Spring wheat acreage is expected to be trimmed to 11.2 million acres, down slightly from last year, durum is estimated to increase 19% from last year to 1.9 million acres. Soybeans have a lower threshold need for fertilizer inputs, which appears to be having some impact on planting decisions. While this may change as farmers make final decisions on spring planting in the coming weeks, it is a telling sign that market signals and input availabilities are leading farmers to make planting decisions.

Current Examples of Supply Chain Disruptions

As noted above, the COVID-19 pandemic has caused major disruptions in supply chains, with substantial cost impacts, and Russia's invasion of Ukraine has been the greatest shock to commodity markets since 1973, which is only beginning to appear in supply chain disruption. Further, new pandemic-related impacts keep coming, which will continue to have significant economic impact on all sectors of our economy. On April 1, Shanghai, the busiest container port in the world, entered a COVID-19 lockdown which remains in effect. Shanghai normally handles four times the tonnage of the port of Los Angeles. This lockdown means arrested movement for 10% of the world's shipping containers. Even prior to the Shanghai port lockdown, the Logistics Managers' Index (LMI) for March 2022 reached an all-time high of 76.2%, demonstrating the increasing stress on freight logistics. The LMI score addresses several components that make up the logistics industry, including inventory levels and costs, warehousing capacity, and transportation capacity, and a score about 50% indicates that logistics are expanding.

Transportation issues continue to hamper availability of commodities as supply of raw commodities is not necessarily the main issue. A recent survey of U.S. agriculture exporters reported that over 20% of confirmed U.S. agriculture export sales in 2021 were lost due to carrier problems. This is symptomatic of problems being felt by importers and those in domestic transport. Metrics of transportation systems indicate that disruptions are higher in the first quarter of this year compared to last year, including for Pacific transit times, unfilled rail car orders, train speeds, and trucking shortages. For example, even

before the Shanghai shutdown, the average container transit time from Asia was up to 111 days, and it is expected to take a couple of years for Pacific freight traffic to resolve itself.

The issues with U.S. rail and Pacific transit can be characterized through the example of food starch, which is one of the many products named by food companies as currently difficult to source. As noted by the Corn Refiners Association (CRA) during the FBIA discussion, U.S. rail service failures have forced at least two temporary shutdowns of corn refineries this year, the effect of which is unheard of. Corn refineries normally operate 24/7 for 361 days per year to produce a number of products, including food starches, that are used in numerous categories of food. Production schedules are finalized months in advance, and customers receive shipments in rail car quantities, if not train load quantities. However, if rail cars do not show up, production comes to a halt. Further, food companies who may have been sourcing food starches from Asia are no longer able to acquire these shipments reliably, leaving these companies to frantically work to reformulate with other starches. Although one may assume that with lots of corn and corn refining capacity that corn refiners would be able to produce more starch to help with sourcing, refiners are operating near finishing capacity for drying and packaging. In order to respond to the surge in demand, refiners would need to acquire large industrial equipment and modify facilities to accommodate, as well as undergo necessary permitting. Prior to COVID-19, this process would have taken about two years, and it is unknown how long it would take now.

As noted by the Consumer Brands Association (CBA) during the FBIA discussion, many food companies are experiencing significant sourcing issues with a number of ingredients, and when an ingredient sourcing issue is addressed through substitution, oftentimes, that substitute ingredient then becomes difficult to source. For example, the Russia-Ukraine War continues to exacerbate the global sunflower supply and has had a direct impact on the U.S. market when it comes to sunflower lecithin availability. Currently the U.S. does not produce sunflower lecithin and predominately sources it from Russia and Ukraine. Since that market and supply is no longer available, manufacturers are moving away from using sunflower lecithin and are sourcing canola lecithin and soy lecithin, among other substitutes.

Moreover, when ingredients are available, costs are higher and labor shortages and unprecedented trucking and rail disruptions continue to impact deliveries of ingredients and products.

CBA noted a number of ingredients which their members are having trouble sourcing, including, but not limited to:

- Food gums and food starches, including corn starch
- Shortening, edible oils, and lecithin
- Phosphates, such as sodium hexametaphosphate
- High fructose corn syrup (HFCS)
- Garlic
- Emulsifiers
- Organic acids and salts, such as lactic acid and citric acid
- Flavorings
- Maltodextrins
- Dietary fibers
- Gelatin
- Enrichments
- Rice crisps
- Carrageenan

- Sugar alcohols/polyols

It was also noted that companies are experiencing shortages of packaging materials, such as plastics and corrugate, as well as shortages of labeling stock, which is causing delays in new labels being printed. Lack of available packaging materials is impacting the ability of industry to introduce incremental package updates for minor labeling changes. Additionally, lead times have increased up to six months for packaging materials, and standard packaging updates takes approximately 12 weeks from content/artwork creation to printed materials, regardless of material availability. Therefore, with these significant delays, companies are increasing size orders to protect against supply chain volatility, leading to increased disposition costs and material waste if labels are not used.

Industry Request

As noted during the discussion, FDA's flexibility guidance for labeling has been, and remains, instrumental in ensuring that food manufacturers are able to get products to store shelves. FBIA greatly appreciates this flexibility, and submits that the labeling flexibility and temporary enforcement discretion should continue for the longer term, at least through the end of this year due to continued supply chain disruptions and the substantial impact on the entire food and agriculture sector. While FDA may consider instituting enforcement discretion on a case-by-case basis, given the breadth of current ingredient sourcing issues, FBIA believes that FDA would quickly be overwhelmed. As described during our discussion, we anticipate these supply chain challenges to worsen over the coming months, exacerbated by ongoing COVID-19 pandemic disruptions globally and the Russia-Ukraine war.

During the FBIA discussion, several additional labeling flexibilities were noted that could provide more options to manufacturers without introducing food safety or consumer risk concerns, including:

- In some cases, increase (or elimination) of the 2% minor ingredient threshold limit as long as all other parameters specified by FDA are met
- Allow for "and/or" labeling or use of a broader category listing similar to "Modified Food Starch" to address starch sourcing issues
- Allow for labeling as "plant gum(s)" or "vegetable gum(s)" to address shortages of food gums, such as locust bean gum and guar gum
- Utilize similar language to that approved by USDA for "fried in vegetable oil", when applicable, to address supply chain disruptions of certain edible oils
- Consider allowing labeling flexibilities for substitutions of alternate sources of similar ingredients or ingredients with the same technical function, such as for starches, chemical leavening agents, and emulsifiers
- Allow for flexibility around where items fall within the ingredient declaration

Further, FBIA agrees with FDA that consumers need to be able to trust the ingredient and nutrition information on product labels as this, helps consumers with their purchasing decisions. We believe that we can accomplish this goal while allowing for reasonable, necessary labeling flexibilities to ensure that Americans are able to seek a diverse array of available food with minimal disruptions.

Finally, while FDA has suggested that stickering could be used to update labels more quickly, as noted in the FBIA discussion, this is not a viable option to manage short-term labeling deviations for a number of reasons. Given the speed at which production lines operate, sticker application typically would have to occur after a product is packaged, meaning that finished products would be put on hold or sent to a secondary location to be stickered, which is difficult to manage, costly, and adds complexity to an

already challenged supply chain. Further, stickers can fall off, are difficult to place accurately, and can diminish the quality perception of a product. Additionally, stickering requires additional staffing that is difficult due to persistent labor shortages, and even if there are available staff to sticker, there is the possibility for human error with incorrect stickering or covering up important product information. Lastly, stickers need to be printed, and as noted above, delays in printing would impact the ability to sticker products appropriately.

FBA greatly appreciates the opportunity for continued dialogue to address and partner on supply chain disruption concerns and solutions. We would be pleased to address any questions.

Sincerely,

American Bakers Association

American Beverage Association

The Association for Dressings & Sauces

American Frozen Food Institute

Consumer Brands Association

Corn Refiners Association

Council for Responsible Nutrition

FMI - The Food Industry Association

Institute of Shortening and Edible Oils

International Food Additives Council

Juice Products Association

National Confectioners Association

National Seasoning Manufacturers Association

North American Millers' Association

Peanut and Tree Nut Processors Association

Refrigerated Foods Association

SNAC International