



Trade Update

Happy New Year!

By Michael Anderson

NEWS ALERT: At this writing we understand that USMCA consideration in the Senate may not occur as swiftly as reported below. According to sources there is a little-known parliamentary procedure in Sec. 151 (e)(2) of the Trade Act of 1974 that allows for multiple committee referrals in the Senate. The Senate Finance Committee (marking up USMCA tomorrow) was thought to be the only referral; however, one Senator has made a plea to the Senate Parliamentarian, stating Section 151 (e)(2) should apply to the implementing USMCA legislation. The Parliamentarian has ruled in favor of the multiple referral; thus, 7 committees were deemed to have jurisdiction. (Finance, HELP, Commerce, Appropriations, Budget, EPW and Foreign Relations). Each committee has up to 45 days to review and report out the legislation prior to full Senate consideration. This development may certainly delay USMCA Senate consideration.

Highlights

- **USMCA:** Senate USMCA vote may occur this week and precede an impeachment trial. Senate Finance Committee is scheduled to "mark-up" USMCA legislation Tuesday, Jan. 7th, paving way for possible Senate vote by this Friday.
- **China Tariffs:** President Trump announced signing of the phase deal with China on Jan. 15th in Washington, DC. Vice Premier Liu He is expected to sign the agreement for the Chinese delegation.
- **WTO:** U.S. – Japan phase one trade deal went into effect last week, while commencement of negotiations on a comprehensive phase two deal remain uncertain.

USMCA

- After the overwhelmingly strong bipartisan vote (341-70) in the House on December 19, 2019, the focus has turned to Senate timing for USMCA passage. Sen. Grassley announced previously that the Senate Finance Committee will ["markup" USMCA on Jan. 7, 2020. The Committee has scheduled the USMCA "markup" for 9:30 am on Tuesday, January 7th.](#)
- Revising previous statements, Sen. Mitch McConnell stated that the Senate would conduct business as usual until the House delivers articles of impeachment, providing an opening for a USMCA vote before an impeachment trial in the Senate. McConnell noted that Senate rules dictate that the chamber can't hold a trial until it receives the articles of impeachment approved by the House. "So for now, we are content to continue the ordinary business of the Senate while House Democrats continue to flounder," he said. Senate Finance Committee member Sen. John Cornyn last Thursday following comments on Democrats' impeachment plans said, "it looks like USMCA may be next order of Senate business."



Senator Mitch McConnell

- White House trade adviser Peter Navarro expressed optimism that USMCA will pass the Senate as early as this Friday. Speaking on Fox News, Navarro noted that the Senate Finance Committee plans a “markup” of the USMCA bill on Tuesday, and Senate Majority Leader Mitch McConnell could bring the legislation to the floor 20 hrs. later according to Trade Promotion Authority (TPA). “So, possibly, this week, we could actually do some great people's business -- dairy farmers in Wisconsin will rejoice,” he said. “Auto workers in Detroit, everyone in between, across the 50 states of America,” stated Navarro.
- Sen. Warren, a leading candidate for the Democratic presidential nomination, reversed her previous opposition to USMCA, saying she would vote yes after House Democrats secured significant changes to the deal in talks with the Trump administration. Warren explained her position saying, “I want to see improvement for our farmers and workers.” “It’s not as much improvement as I’d like to see but right now, they’re in a terrible hole where Donald Trump has put them. I want to get them out of that hole.” “Workers have had the legs taken out from underneath them and this agreement makes improvements,” she added. “It’s going to help open up some markets for farmers; they need that stability. It’s going to help with enforceable labor standards and that’s going to be useful.”



- A recap on the USMCA vote in the House is provided below in case you missed the last Trade Update. After the passage of over a year since the signing of the original agreement, a delayed statutory USITC report, the lifting of 232 tariffs on Canada and Mexico, and months of intense negotiations between House Dems and USTR, the House finally conducted the last vote of 2019, passing USMCA by a historic margin. The historic level of Democratic support is ascribed to the amended text of USMCA that addresses the House working group’s concerns, primarily labor and enforcement, and the endorsement by the AFL-CIO, the first endorsement of a trade agreement by the organization in 20 years.

U.S.-MEXICO-CANADA TRADE AGREEMENT



- Democratic Leader Steny Hoyer noted prior to the vote that, "This USMCA agreement before us is a vast improvement over the first version shown to us by President Trump and his team." "It now includes critically important changes offered by Democratic members in order to ensure that its enforcement mechanisms are stronger, that it protects American workers, and that it will help lower prescription drug costs and improve access to medications. This agreement will also remove some of the uncertainty created by the President's erratic tariff policies."
- The composition of the USMCA vote are as follows:
 - Democrats: 193 votes in support (83% of the Democratic caucus); 38 opposed (16%); 2 no vote
 - Republicans: 192 votes in support (97% of the Republican caucus); 2 opposed (1%); 3 no vote
 - Independents: 1 vote opposed

As a frame of reference for the House USMCA vote last week in relation to prior trade agreements:

- The USMCA vote margins far exceeded NAFTA: 102 (40%) of House Democrats and 132 (75%) of Republicans voted to support NAFTA. NAFTA passed by 34 votes total.
- For the 11 roll call votes on U.S. trade agreements since NAFTA, just four exceeded 100 Democrats voting in support, with none approaching USMCA levels: Morocco (120 Democratic votes in support [60% of the caucus]); Australia (116 [58%]); Bahrain (115 [59%]); and Peru (109 [48%]).
- Several 2020 Democratic Party presidential candidates shared their opinions on USMCA during the Democratic debate on December 19th after the historic House vote passing by a margin of 385-41. Current U.S. Senator Bernie Sanders, unpersuaded by the moderator's point that union groups such as AFL-CIO endorsed the deal, stated that he will vote "no" on the deal when it comes to a vote in the Senate. "You're talking to somebody who unlike some of my colleagues here voted against NAFTA," he responded. He called USMCA "a modest improvement over what we have right now" in the form of NAFTA.
- Another candidate and current Senator, Sen. Amy Klobuchar, expressed that she will support the bill when it comes before the Senate. "I would not have voted for the agreement that President Trump put forward, but we have better labor standards better environmental standard and a better deal when it comes to the pharmaceutical provision, which I also oppose." Sen. Klobuchar explained. Vice President Joe Biden on December 23rd came out in support of the amended USMCA. Labor support for a modified USMCA apparently was the catalyst for Biden's support for the agreement. Biden told reporters, "what I've seen change is that the vast majority of the labor movement supported it." He noted the changes to labor, enforcement, and biologics stemming from months of negotiations between House Democrats and the Trump administration.

Section 232 Tariff Actions

- As reported earlier, Brazil averted threatened 232 tariffs on steel and aluminum. After a phone call in mid-December between Brazilian President Jair Bolsonaro and President Trump, Bolsonaro announced on his Facebook page that "Today I talked to President Donald Trump and, after exchange of views, he decided not to carry forward his intention to surcharge our steel/aluminum." President Trump, for his part, announced on Twitter after the call that "The relationship between the United States and Brazil has never been Stronger!" Trump's December 2nd tweet announcing renewed steel and aluminum tariffs on Brazil also announced the same renewed tariffs on steel and aluminum from Argentina; however, since that time, the Trump administration has made no further mention of the planned timeline for the re-introduction of the tariffs on Argentina.
- As reported earlier Sen. Grassley expressed continued ambitions to coordinate legislation to rein in the president's power under Section 232 — the law Trump has used to impose imposed steel and aluminum tariffs and consider the same on auto and auto parts imports. Grassley stressed a conversation with ranking Democrat Sen. [Ron Wyden](#) is necessary before moving forward. "I hope that he'll be anxious to move forward because when I last approached him on it and we were going to have a markup in November, Grassley said. 'I'm going to need a little bit more time because we're mixed up with USMCA.'" He continued. "Since you don't get anything done in our committee that's not bipartisan, I'm going to have to have his cooperation and I would expect to have it." Wyden indicated he remains supportive of "putting some guardrails in this Administration's unpredictable and chaotic trade policy." "We haven't been able to find the solution yet, but I am ready to continue to work with the chairman to find a legislative solution that will garner wide bipartisan support," Wyden said.

Auto Tariffs

- As the legal window has closed for President Trump to place tariffs on auto and auto parts in conjunction with the 232 investigation by Commerce, some observers indicate that President Trump may keep the pressure on EU officials through other trade tools, including a section 301 investigation, which would examine EU subsidies and other programs in the auto sector. A former EU official characterize the potential strategy as creating "a situation that, for another year, would give the president leverage over the EU."

Section 301 Tariff Actions

- USTR will hold a hearing on February 26th to help with the agency's preparations for the annual Special 301 review. According to the [announcement](#), the Special 301 review is conducted "to identify countries that deny adequate and effective protection of intellectual property (IP) rights or deny fair and equitable market access to U.S. persons who rely on IP protection." Members of the U.S. public can submit comments, hearing statements, and notices of intent to appear at the hearing through February 6th, while foreign governments can submit the same through February 28th.

Digital Services Tax - France

- As noted earlier, the Trump Administration has found discriminatory tax treatment for U.S. internet firms under a section 301 investigation into digital services taxes in Canada. The [report](#) published by USTR's sets out the findings of the investigation.
- USTR is accepting public comments until January 6, 2020 and holding a public hearing on January 7th on the proposed Section 301 actions on French products because of France's digital services tax.
- USTR announced possible imposition of 100 percent duties on up to \$2.4 billion worth of French products — including cheese, Champagne, handbags, cosmetics and fine dinnerware under section 301 authority, unless France agrees to drop or modify the country's new digital services tax unfairly aimed at American internet giants. The [proposed retaliation](#) could also include fees or market restrictions on French services companies operating in the United States.

Tech and IP Policies - China

- Last Tuesday President Donald Trump said he will sign a "Phase One" trade deal with China on Jan. 15, and plans to visit China soon to start talks on a "Phase Two." "I will be signing our very large and comprehensive Phase One Trade Deal with China on January 15," Trump tweeted. "The ceremony will take place at the White House. High-level representatives of China will be present." He added that "at a later date I will be going to Beijing where talks will begin on Phase Two!"



Donald J. Trump ✓
@realDonaldTrump

I will be signing our very large and comprehensive Phase One Trade Deal with China on January 15. The ceremony will take place at the White House. High level representatives of China will be present. At a later date I will be going to Beijing where talks will begin on Phase Two!

2:16 PM · Dec 31, 2019 · [Twitter for iPhone](#)

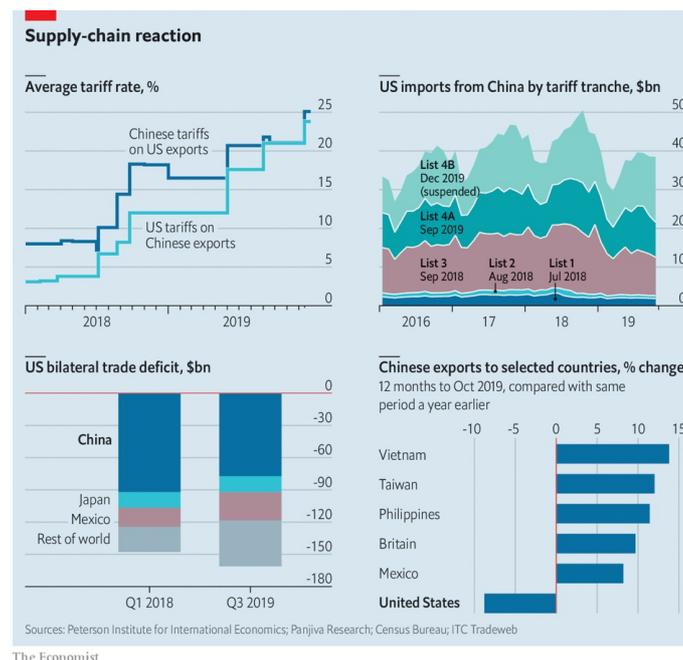
- Vice Premier Liu He will be signing for the Chinese side, rather than Chinese President Xi. Vice Premier He was the principle Chinese negotiator working with his counter parts Amb. Lighthizer and Treasury Secretary Mnuchin over the past nearly two years since the U.S. first imposed section 301 tariffs on Chinese imports



Amb. Lighthizer and Vice Premier Liu He

- The deal reportedly requires China to expand U.S. import purchases by \$200 billion, including \$40-\$50 billion in agriculture products. Regarding ag purchases, Amb. Lighthizer stated, "There's a commitment to increase by \$32 billion over the course of two years." "Their objective is to go to \$50 [billion]. The commitment is to go to \$40 [billion]." The baseline for increased agricultures purchases compares to the 2017 level of U.S. agriculture exports to China (\$24 billion). Further details regarding China's import commitments, contained in the 86-page agreement, which also includes reforms in China's IP protections, technology transfer, reduced barriers to financial services, and improved dispute resolutions procedures, are expected around the Jan. 15th signing. The deal is expected to go into effect on February 3rd.
- With the current truce in the nearly two-year long escalating tariff battle between the world's two largest economies, U.S. and China trade patterns demonstrate the importance of market forces. The U.S. bilateral trade deficit with China fell, driven by successive rounds of section 301 tariffs. Yet the

bilateral deficits with several other Chinese countries, including Mexico, rose. In China, exporters reacted to U.S. tariffs pursuing customers in alternative markets, including Vietnam and the Philippines. China's import purchase commitments under a phase one deal (\$200 million) will likely further shift the composition of U.S. – China trade in 2020. The changing face of U.S.-China trade since the beginning of higher tariffs under the trade war is captured in charts below.



U.S. - Japan Trade Agreement

- The U.S.-Japan stage 1 deal took effect last Wednesday, reducing tariffs and raising quotas on many U.S. agriculture exports. Commencement of negotiations on a phase 2 or a more comprehensive trade deal are expected no sooner than 4 months or even longer. Junichi Sugawara, senior research officer at the Mizuho Research Institute, expressed muted expectations of phase 2 negotiations beginning any time soon. "The second round of talks with Japan will be a low priority for the Trump administration," he said. He noted that Trump officials are deeply engaged in securing trade agreements with China and want to focus on EU trade tensions heading into the November U.S. presidential election. He further stated the U.S. is likely to demand a clause on currency manipulation, a difficult and complex issues for both trade partners. Sugawara observed the U.S. side is also showing interest in opening Japan's finance, services and investment markets and may press for more agricultural access. Even the threat of a 25 percent tariff on autos hasn't necessarily disappeared, he said.

U.S. - EU Trade

- The EU's new trade commissioner, Phil Hogan from Ireland, will visit Amb. Lighthizer January 14-16 to discuss a plethora of bilateral trade issues. Hogan said he would seek a reset of EU/US trade relations on several contentious issues in his first meeting with USTR Lighthizer, though the two have previously spoken by phone since Hogan stepped into the new role. Among the most contentious trade issues include the Trump administration imposing tariffs on European steel and aluminum in mid-2018, the \$7.5 billion in tariffs on EU products in the WTO Airbus case, potential 232 tariffs on EU autos, U.S. demands to include agriculture in bilateral trade negotiations on reducing industrial goods tariffs, and threat of retaliatory tariffs regarding France's digital services tax. Both countries are also at odds regarding the dissolution of the WTO appellate body, and other WTO reform measures sought by the U.S. Hogan noted the two trade officials had earlier "agreed to meet in Washington in mid-January to discuss the long list of issues causing strain in the relationship between the EU and the US. There is no point in getting into the details of resolving trade irritants unless we agree a line on a common trade agenda."



Phil Hogan, EU Trade Commissioner

- Amb. Lighthizer signaled that the Trump Administration's will increasingly turn its attention and resources to the EU and U.K. in 2020. With USMCA before Congress and a China phase one deal receiving the final touches, USTR intends to focus on several thorny EU trade issues, including the bilateral trade deficit. Speaking on Fox Business, Amb. Lighthizer said, "It's funny, the president tells me what my priorities are," "So, for sure, the U.K. is a priority. As soon as they get their objectives agreed to, we will start talking. It'll take a while before it all comes into effect because of their circumstance." Lighthizer also said the objective with Brussels would be to reduce the U.S. trade deficit with the 27-nation bloc. "You can't get the global trade deficit down without getting the trade deficit down with Europe, at least significantly," he said.
- USTR continued to pursue potential tariffs on \$7.5 billion of EU goods of up to 100% in the long-running WTO dispute over Airbus launch aid. USTR imposed initial retaliatory duties of 10 percent on large civil aircraft and 25 percent on a wide variety of EU food and alcoholic products two months ago. USTR issued a [list of European products](#) under consideration for up 100% tariffs. USTR is seeking comments by Jan. 13, 2020 on removal or tariff increases for products on the list.
- The EU anticipates countering with its own tariffs in early 2020 when a WTO arbitrator is expected to approve retaliatory tariffs in the countersuit on Boeing for illegal subsidies.

U.S.-U.K Trade Agreement

- President Donald Trump is anxious to move on a "massive" trade deal with the U.K., and Prime Minister Boris Johnson is ready to do something "ambitious" as soon as Brexit is done at the end of January according to several reports. The Trump Administration has maintained that the U.S. is first in line for a bilateral trade deal once the U.K. leaves the European Union. Despite the cordial and optimistic statements by President Trump and Prime Minister Johnson regarding a trade pact, the U.K. government must still first establish new trade standards and regulations that may or may not be different than the present EU standards. "This isn't necessarily about just getting the U.K. to sign an agreement," said Sam Lowe, a London-based senior research fellow at the Center for European Reform and a member of the British government's strategic trade advisory group. "It's about the U.S. setting a precedent in the European context in which a European country takes on U.S. [regulatory] approaches.
- Last month, White House economic adviser Larry Kudlow indicated he'll be part of a U.S. delegation of White House officials visiting London this month to talk trade and other subjects. President Trump is expected to push for the start of formal trade negotiations shortly after London departs the massive economic bloc on Jan. 31. More than 130 businesses and organizations submitted comments early in 2019 to the Trump administration as it was formulating its objectives for a U.S.-U.K. trade deal. As noted earlier, US-EU trade talks are stalled over EU's refusal to include agriculture and other topics in the scope of negotiations. Several observers suggest that progress on opening the U.K. agriculture market could put pressure on the EU and the highly sensitive agriculture sector.
- The U.K. is expected to officially withdraw from the European Union on January 31st following the U.K. Parliament's December 20th passage of Prime Minister Boris Johnson's Brexit deal. Once the U.K. withdraws from the EU, it will have until December 2020 to negotiate a comprehensive free trade agreement defining their future relationship, a deadline that has left many experts skeptical. Until that time, the U.K. will largely continue trading under the rules that were defined for it while it was part of the EU.

Suspension Agreements

Sugar Suspension Agreement

- The U.S. and Mexico have conducted their semi-annual review of the sugar agreement, with the US increasing the import quota for Mexican sugar eight six percent, from 670,000 tons to 1,251,000 tons.

U.S. - India Trade Developments

- The Trump Administration is keen to lower India's high tariffs. Peter Navarro, White House Director of Trade and Manufacturing said, "India is the maharaja of tariffs," having the largest tariffs of any other country. Navarro asserted that 90% of US exports to India face higher tariffs India's export into the United States. "We got to get India to belly up to that bar and lower tariffs," Navarro stated. Navarro repeated his frequent mantra that President Trump's authority to unilaterally raise tariffs on imports to the same levels as US exporters pay with its trade partner would be an effective tool to lower tariffs, such as those in India.



White House Trade Director, Peter Navarro

U.S. - Brazil Trade Developments

- No significant updates since initial reports last month of a potential for U.S. – Brazil trade talks. As noted earlier, according to a [joint statement](#) released at the end of the annual U.S.-Brazil CEO Forum, additional "higher-level" meetings under a bilateral forum led by USTR and the Brazilian foreign affairs and trade ministries could occur. According to reports, initial discussions between the two sides also discussed several aerospace, infrastructure and transportation initiatives.

General Trade Cooperation/WTO Reform

- WTO reform and the current appellate body impasse are among the trade topics President Trump intends to discuss at the World Economic Forum later this month (Jan. 20-24). Commerce Secretary Ross, a member of the U.S. delegation, said that Trump intends to send a message to other world leaders that U.S. trade policy has been successful. Other members of U.S. delegation include Amb. Lighthizer, Treasury Secretary Mnuchin, Transportation Secretary Elaine Chao, and White House advisors Ivanka Trump and Jared Kushner.
- The next WTO ministerial conference will be held Nur-Sultan, Kazakhstan from June 8-11, a mere six months away, raising questions about what the U.S.' role ahead of and at the conference will be. While the U.S. has historically played a leadership role in such ministerial conferences, some sources in Geneva have expressed concern that the U.S. is not demonstrating any direction to play any such role this time around, which may affect the successful resolution of any effective outcomes at the June conference. Sources point out that no other member country is willing to step into the role that the U.S. typically plays. The ongoing issue of fishery subsidies is an example of one such issue that will be difficult to resolve without U.S. leadership, sources say.

- In the void of a functioning Appellate Body (AB), which collapsed on December 10th, the U.S. appealed a WTO panel ruling initiated by India against U.S. countervailing duties (CVD) on certain hot-rolled carbon steel products from India. The U.S. action represents the first test of the WTO settlement systems since the collapse of the AB and represents an outcome characterized by some observers as “appealing into the void”, ostensibly blocking the panel ruling.
- In the absence of the AB, U.S. officials said it will discuss a way forward with India on the appeal. The two sides should be able to determine a way to resolve the issue – either bilaterally or through an alternative to the appellate process. As it has repeatedly done, the U.S. again blocked a proposal from 119 WTO members calling for the start of the selection process to fill the vacancies on the AB. Some 20 WTO members took the floor at a recent WTO meeting to underline the importance of resolving the impasse over the appointment of new members as soon as possible and reestablishing a functioning AB.
- As reported earlier, The House Ways and Means Committee passed a [resolution](#) recently affirming the U.S.’ position on the paralyzed Appellate Body (AB), with the hopes that the resolution will serve as a mark of U.S. commitment to effective WTO reform and U.S. leadership in this endeavor. In the resolution, the Committee confirmed support for the WTO as an organization at large, but maintained specific U.S. critiques of the institution, including the AB. “We felt it was important for the Congress to weigh in with this resolution in order to give our current ambassador further tools in order to take the argument in the WTO about why this is important to get done, especially in a timely manner.” Rep. Ron Kind said. The resolution covered such topics as dispute settlement, special and differential treatment, transparency, and updated rules for the 21st century.



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