Trade Update

January 21, 2020

By Michael Anderson

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Highlights

- **USMCA:** Senate convincingly passes USMCA (89-10), moving agreement to President Trump for signature. Canada’s parliament returns at the end of this month and could consider USMCA as early as February, while some observers suggest not until April given the election results which diminished control in the Parliament of Trudeau’s Liberal Party.

- **China Tariffs:** The long-anticipated phase one China deal was signed, and details released on January 15th. China commits to purchase $200 billion in U.S. goods and services over next two years and undertake several trade reforms involving intellectual property protections, financial services, technology transfer, and dispute settlement resolutions.

USMCA

- At long last, the USMCA implementing bill overwhelmingly passed the Senate (89-10) on January 16th, after a marathon effort in the Senate at the beginning of last week. Previously the Senate Parliamentarian determined that seven total committees would have the ability to review and vote on the bill before it advanced to a full Senate floor vote—the Finance Committee; the Environment and Public Works Committee; the Budget Committee; the Commerce, Science, and Transportation Committee; the Health, Education, Labor, and Pensions Committee; the Foreign Relations Committee; and the Appropriations Committee. Other than the Finance Committee, which pass the USMCA two weeks ago, the other six Committees scrambled to hold “mark-ups” and send USMCA legislation forward prior to delivery of the articles of impeachment. The Committees’ speedy response enabled the Senate to vote on the agreement before the start of the impeachment trial.

- Ten Senators voted “no” on the USMCA implementing bill, including Senator Bernie Sanders, Senate Minority Leader Chuck Schumer, Senator Pat Toomey, and Senator Kamala Harris.

- President Trump is expected to sign USMCA next week upon returning from meetings at the World Economic Forum in Davos, Switzerland.

- With the USMCA ratified in Mexico and approved by the U.S. Congress, attention is focused on Canada. Canadian legislators return from a winter break on Jan. 27th and could possibly take up the legislation in mid- to late-February. One possible complicating political factor is the Libera Party’s majority control was reduced in an October election and must work more closely with opposition parties to push through the legislation. Most observers expect the legislation to pass.

- Mexican Undersecretary for Foreign Trade Luz María de la Mora said Mexican government expects Canada will ratify USMCA in April and the agreement will enter into force by July 1st. De la Mora met with her U.S. counterparts in Washington, DC last week to begin planning for USMCA implementation. De la Mora stated, “We have had conversations with our counterparts in Canada and this process is going to require discussion [in Parliament] because of an internal political matter there. The information that we have is that the question is not will it be ratified; the question is when could it pass?” de la Mora said. “There is a 21-legislative day limit for USMCA to be discussed [in Canada after it is introduced]. So, being conservative that they will take all the time required to have that discussion, we believe that in April the approval process will be completed.”

Luz Maria de la Mora, Mexican Undersecretary of Foreign Trade

- USMCA will enter into force on the first day of the third month following the last party’s written notification (i.e. Canada) that its internal ratification procedures have been completed.

Section 232 Tariff Actions

- President Trump has used the "national security" provision of section 232 to impose steel and aluminum tariffs and has threatened the same on auto and auto parts imports, much to angst of several leading lawmakers. Senator Grassley recently stressed that he remains committed to developing a bipartisan, veto-proof bill to rein in the President's trade authority under section 232. Grassley has previously noted that a key step in the process is a candid conversation with ranking Democrat Senator Wyden to find common political ground on the legislation. "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, he said, 'I'm going to need a little bit more time because we're mixed up with USMCA.'" Grassley 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."

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

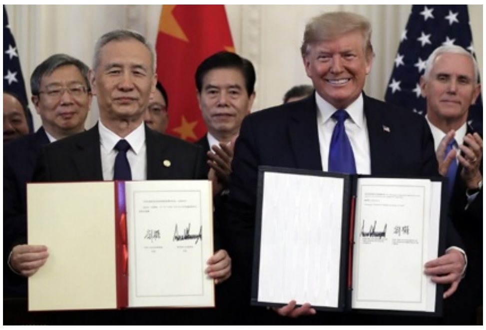
- EU officials expressed optimism regarding a path toward a compromise without the U.S. following through on its threat to impose tariffs on $2.4 billion in French goods. EU Finance Minister Bruno Le Maire will meet with Treasury Secretary Mnuchin on the sidelines of the World Economic Forum in Davos. Le maire said had spoken at length with White House economic adviser Larry Kudlow and presented "a number of" new proposals to resolve the issue. "We are progressing and hoping to come close to an agreement," Le Maire said. Sources have indicated that the U.S. and France agreed to a truce on the issue until the end of this year, noting that Presidents Donald Trump and Emmanuel Macron spoke recently by phone on the issue and "agreed its important to complete successful negotiations on the digital services tax."

- 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 sets out the findings of the investigation.

- 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.

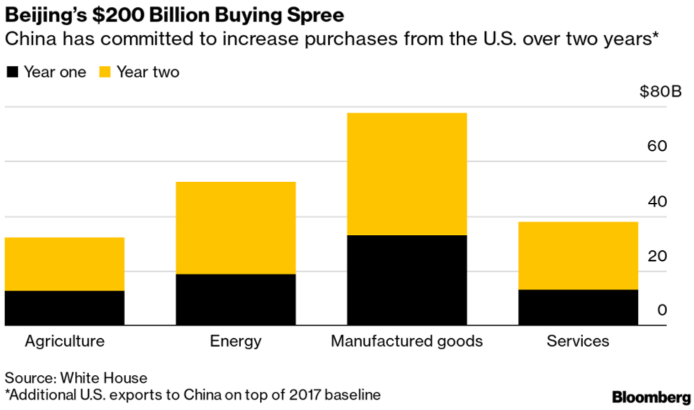
Tech and IP Policies - China

- Phase one China deal signed! President Trump and Chinese Vice Premier Liu He signed the Phase One agreement last Wednesday, January 15th at the White House. President Trump estimates that the phase-one deal covers roughly half of what the two sides hope to negotiate overall. Trump said, "Well, phase one is a big, big number." "It's a big percentage of the deal. Some would say half, some would say a little less or a little more than half. But it's a tremendous percentage. It's pretty much all for the farmers, also bankers. We also have regulations for ... a lot of things are covered that people are going to be very surprised to see. But it's a big chunk of it," Trump said previously.



President Donald Trump and China's Vice Premier Liu He

- As announced earlier, under the agreement China commits to purchase $200 billion in U.S. goods, including $40-$50 billion of food, agriculture, and seafood products over two years. The agreement also includes specific provisions on reforms in China's IP protections, technology transfer, reduced barriers to financial services, and improved dispute resolutions procedures. Most of the provisions will be effective 30 days after signing, or February 14th.



- USTR's chief Agricultural Negotiator Gregg Doud touted the agreement noting the voluminous commitments China will undertake to improve market access for U.S. food, agriculture and seafood exporters. Doud said, "There are over 50 specific commitments that China has made on agriculture with specific time periods that cover a range of commodities." He noted that China pledges in the agreement to remove impediments that have blocked sales of a long list of U.S. farm goods, including beef, pork, poultry, seafood, dairy, rice, potatoes, blueberries, barley, avocados, alfalfa, hay, distillers grain and pet food. Further, China has also agreed to reduce the time it takes to approve new agricultural biotechnology traits to an average of 24 months, from currently about 5 to 7 years.

Gregg Doud, USTR Chief Agriculture Negotiator

- USTR released multiple fact sheets touting the provisions of the agreement beyond China's purchase commitments. USTR highlighted the following agriculture-related provisions in the phase one deal.

- **Agricultural Biotechnology**: China has agreed to implement a transparent, predictable, efficient, science- and risk-based regulatory process for the evaluation and authorization of products of agricultural biotechnology. China's time frame for review and authorization for products for feed or further processing will be an average of 24 months. China has also agreed to certain administrative improvements in the application process, and to certain steps to address situations of low- level presence.

- **Domestic Support**: China has agreed to abide by its current WTO obligations on the transparency of its domestic support measures. Separate from this Agreement, as part of a WTO dispute brought and won by the United States, China previously agreed to comply with its WTO obligations on its domestic support for rice and wheat by March 31, 2020.

- **Tariff Rate Quota Administration**: China has agreed to comply with its WTO obligations and to make specific improvements to its administration of wheat, corn, and rice tariff-rate quotas (TRQs), including the allocation methodology, treatment of non-state trading quota applicants, and transparency. Separate from this Agreement, as part of a WTO dispute brought and won by the United States, China agreed to comply with its WTO obligations for the administration of TRQs for wheat, corn, and rice by December 31, 2019.

- **Sanitary and Phytosanitary Measures**: The Phase One agreement streamlines and establishes timeframes for Chinese regulatory actions for meat, poultry, seafood, dairy, infant formula, rice, potatoes, nectarines, blueberries, avocadoes, barley, alfalfa pellets, hay, feed additives, distillers' dried grains (DDGs), distillers' dried grains with solubles (DDGS), and pet food. The Parties agreed to not implement food safety regulations that are not science- and risk-based and shall only apply such regulations to the extent necessary to protect human life or health. The Parties have agreed that China will improve SPS measures affecting a wide variety of products, which will facilitate exports of U.S. food and agricultural products to China.

- **Geographical Indications (GIs)**: China has agreed to not undermine market access for U.S. exports to China using trademarks and generic terms through any GI measures taken in connection with an international agreement, to use certain relevant factors when making determinations for genericness, and to not provide GI protection to individual components of multi-component terms if the individual component is generic.

- **Intellectual Property for Agriculture**: China has agreed to prohibit the unauthorized disclosure of undisclosed information, trade secrets, or confidential business information by government personnel or third-party experts or advisors when such information is submitted to the central or sub-central levels of government.

- **Purchases**: China will purchase and import on average at least $40 billion of U.S. food, agricultural, and seafood products annually for a total of at least $80 billion over the next two years. Products will cover the full range of U.S. food, agricultural, and seafood products. On top of that, China will strive to import an additional $5 billion per year over the next two years.

- Critics of the agreement pointed out that the phase one deal left out the most complex and key underlying structural issues that lead to the trade war. Consequently, they predict re-engaging the Chinese for a phase two deal has become more challenging. "I still don't think we're any better off than we were before the Trump administration pursued a trade action against China," said Dan Griswold, a senior research fellow at George Mason University's Mercatus Center. "Another observer noted the deal skirts the complex issues of China subsidies and state-owned enterprises structure. "That's a giant hole in the phase one deal, and there's no way to get around it," said Chad Bown, a senior fellow at the Peterson Institute for International Economics. He argued the agreement does little to resolve the systemic issues that led the White House to begin imposing tariffs against China two years ago. He continued, "We're no closer today to resolving any of those fundamental frictions than we were before the trade war started."

- Separately, preceding the phase one signing, the U.S. Treasury Department sent a semi-annual report to Congress on Monday, which was due in October 2019, that included a statement that China is no longer considered to be a currency manipulator. The Treasury Department had labeled China a currency manipulator last August. Several members of Congress spoke out against the news, including Senator Rick Scott, who wrote on Twitter, "They [China] are a currency manipulator. Period."

U.S. - Japan Trade Agreement

- The U.S.-Japan stage 1 deal took effect January 1, 2020, 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. According to reports, negotiations with Japan on a secondary trade deal are set to begin by May 1.

- Last week trade ministers from the U.S., EU, and Japan, along with their advisory teams, are met in Washington, DC to continue efforts to address non-market-oriented practices, industrial subsidies, forced technology transfer policies and WTO, among other issues. The trilateral talks will be the first for new EU Trade Commissioner Phil Hogan, who replaced Cecilia Malmstrom, and his Japanese counterpart, Kajiyama Hiroshi, who was appointed to replace Hiroshige Seko as Japanese minister of economy, trade and industry last October.

U.S. - EU Trade

- The EU's new trade commissioner, Phil Hogan, visited Amb. Lighthizer last week (January 14-16) to discuss several bilateral trade issues. Hogan reported he is seeking reset of EU/US trade relations on several contentious issues and that we're off to a "good start". 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

- USTR continues 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 illegals subsidies.

U.S.-U.K Trade Agreement

- The U.S. ambassador to the U.K., Woody Johnson, confirmed the Trump administration's ambitions to start negotiations for a bilateral trade deal with the U.K., and emphasized the U.K. should prioritize trade with the U.S. over trade with the EU. In reference to his meeting with Liz Truss, the UK Trade Minister, Johnson tweeted, "Great to catch up with UK Trade Secretary [Liz Truss] today -- I emphasized the excitement in the U.S. to get started on a comprehensive [U.S.-UK] Free Trade Agreement ASAP!" In a second tweet, Johnson affirmed the U.S. was prepared to start negotiating with the UK "on DAY 1" post-Brexit. On January 31st the UK is slated to leave the EU upon which the U.S. can negotiate with the UK. However, the UK will remain closely aligned with EU rules during a transition period ending in Dec. 2020.

Woody Johnson, U.S. Ambassador to U.K.

- In response to the Johnson's tweet, Truss emphasized In her own tweet, the "great opportunities" for both countries, and noted the UK Department of International Trade, which was created after the Brexit referendum in 2016, has "the teams in place, ready to start negotiating."

Suspension Agreements

Sugar Suspension Agreement

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

U.S. - India Trade Developments

- India's outgoing ambassador to the U.S., Harsh Vardhan Shringla, said at a farewell reception last week that the U.S. and India had made progress toward a bilateral trade package and urged continued progress towards a bilateral trade deal. "On the trade front, we have seen a number of rounds of talks and we're very happy that we're making significant progress in that front," Shringla said.

- The U.S. and India have been working toward a trade agreement that could include restoration of India's GSP benefits in exchange for greater market access for U.S. medical devices, agricultural goods, and addressing non-tariff barriers. The U.S. has called for India's GSP benefits, valued at approximately $6.4 billion, to be matched by reciprocal market access in India. Sources indicate that while a resolution is likely this year, it could take weeks or months of additional work.

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

- US. Trade Representative Robert Lighthizer, EU Trade Commissioner Phil Hogan, and Japanese Economy, Trade, and Industry Minister Kajiyama Hiroshi met in D.C. on last week to discuss weaknesses in the WTO Agreement on Subsidies and Countervailing Measures (ASCM) and propose new rules to address these weaknesses. In a statement released after the meetings, the group identified industrial subsidies as a major issue that the ASCM does not cover in great enough detail. Their statement also mentioned the need to "continue working on a definition of 'public body'"; the lack of "incentive for WTO Members to properly notify their subsidies"; and "the determination of the proper benchmark for subsidies consisting of the provision of goods or services or purchase of goods by a government in situations where the domestic market of the subsidizing member is distorted."

- 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 initiative 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.