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Trade Update

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By Michael Anderson

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Highlights

- **China Tariffs**: China reiterates its commitment to meeting obligations under the phase one trade deal announcing over 700 products made eligible for exemption from existing retaliatory tariffs, which should facilitate purchase of U.S. imports. Chinese officials further reiterate U.S. imports must be competitive and meet market needs in China.
- **EU**: EU trade officials are meeting with their U.S. counterparts this week in D.C. aiming for further progress on a mini-trade deal prior to the scheduled increase in tariffs on EU aircraft imports from 10% to 15% on March 18th.
- **USMCA**: Canadian Agriculture Minister Marie-Claude Bibeau assures U.S. officials that USMCA is moving expeditiously through the Canadian parliamentary process and Canada is committed to ratifying the agreement.
- **U.S. – India Trade**: Trump visits India and discusses trade with Prime Minister Modi this week as expectations for securing a limited U.S.-India deal during the trip fade. President Trump says that U.S. remains committed to a longer-term trade pact with India.

USMCA

- Canada's Minister of Agriculture assured U.S. officials that USMCA remains on pace for timely consideration in the Canadian Parliament. Minister Marie-Claude Bibeau said, "Canada is committed to ratifying the new NAFTA [North American Free Trade Agreement] very soon," while speaking at the USDA Agricultural Outlook Forum in Arlington, VA. "It's on a fast-track," said Bibeau, adding that "I don't see any significant challenges to it" in Canada's legislative process.

Marie--Claude Bibeau, Canadian Agriculture Minister

- The latest report in Canada indicates that USMCA is now before the standing committee on international trade, which has started hearing from witnesses. Additional hearings are scheduled, and more witnesses could still be called. The committee is expected to vote this week on whether to invite recommendations from other committees, including agriculture, with a proposed deadline of April 2.
- After the committee hears from witnesses, the bill returns for a final reading in the House of Commons, and then through a similar process in the Senate. Once this legislation is passed by both houses it becomes law. See guide to Canadian legislative process. Ratification is currently expected in March or April at the earliest.
- After ratification by Canada, the three countries must work to "check off" all the obligations outlined in the deal that must be met before the deal can take effect. Once they have completed all required procedures, the countries will notify each other in an exchange of letters. Then, it will enter into force on the first day of the third month following the last party's written notification (i.e. Canada) or approximately 60 days later.

Section 232 Tariff Actions

- Recently the U.S. Court of International Trade (CIT) granted a Texas-based importer a temporary restraining order against the Trump administration's tariffs on derivative steel and aluminum products, setting up a trial where the CIT will evaluate whether the duties are unlawful. The CIT restraining order applies only to the Texas firm, PrimeSource Building Products, an importer and distributor of building materials. PrimeSource alleged the tariffs are in violation of several U.S. laws.
- The CIT's ruling and review of Trump's use of the 232 law may provide further impetus for several leading lawmakers who have decried the 232 tariff actions. 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.
- As reported earlier, President Trump last month issued a proclamation saying that Section 232 tariffs on steel and aluminum products imposed in March 2018 would be expanded to cover certain derivative goods. The tariffs on derivative steel products (additional 25 percent) and on derivative aluminum products (additional 10 percent), took effect on Feb. 8th.
- In announcing the tariffs, Trump stated that following his 232 tariffs on imported steel and aluminum products in 2018, such imports have declined, but imports of derivative products have increased. "Foreign producers of these derivative articles have increased shipments of such articles to the United States to circumvent the duties on aluminum articles and steel articles," the President said. The Presidential proclamation cited import surges for of steel nails, tacks, drawing pins, corrugated nails, staples, since May 2018 and surges in derivative aluminum products including aluminum stranded wire, cables, and plaited bands.

Auto Tariffs

- Several Congressional leaders, led by Senate Finance Chairman Grassley, continue to pressure the Trump administration to release the 232 report recommending tariffs on automobiles and auto parts for national security reasons. Grassley previously called on the administration to release the report but said the only response he got was "a finger poked in [his] eye by the Commerce Department." But, he added, "it's quite a different thing when 535 members of Congress have said this report ought to be released. So yes, I intend to pursue it." He said his next step will be talking with Sen. Ron Wyden (D-Ore.), the top Democrat on the Finance Committee, to decide on the path forward.
- Additionally, several members of Congress' New Democrat Coalition are calling for the "immediate release" of the report. In a letter sent to Trump, the members of the New Dems' trade task force also urged the president to abandon his outstanding threat to follow the Section 232 report's recommendations and impose automotive duties. "Your willful disregard for these laws threatens American workers as well as the balance of power that is so essential to our Constitution," the nine lawmakers wrote in the letter.
- Earlier in the year, the Department of Commerce announced it would not release the Section 232 auto report that concluded autos and auto parts imports pose a threat to national security. Commerce released the following, "Consistent with the president's signing statement for the appropriations bill, the Secretary of Commerce is not releasing the 232 autos report because releasing it now would interfere with the president's ability to protect confidential executive branch communications and could interfere with ongoing negotiations," a department spokesperson said in a statement. The decision was in part based on a Justice Department opinion that said releasing the report would " risk impairing ongoing diplomatic efforts to address a national-security threat."

Section 301 Tariff Actions

Digital Services Tax - France

- No significant updates on the trade détente announced by Trump and French President Macron in the battle over digital services taxes. Trump had threatened to impose up to $2.4 billion worth of tariffs on French goods in retaliation for the digital services tax France imposed last June. Under the truce, the U.S. has agreed to delay the imposition of tariffs on French goods in exchange for Paris' commitment to suspend the collection of taxes on digital services. Treasury Secretary Mnuchin, who met with his French counterpart in Davos, Finance Minister Bruno Le Maire, indicated their discussions focused on how to proceed with the OECD negotiations on digital services taxation and warned other countries that the U.S. views digital service taxes as discriminatory.
- Earlier the Trump Administration found discriminatory tax treatment for U.S. internet firms under a section 301 investigation into digital services taxes 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

- China took additional steps towards complying with its commitments under the phase one trade deal. China last week announced that it will allow importers to apply for tariff exemptions for nearly 700 U.S. products including farm and energy goods possibly avoiding retaliatory tariffs and likely facilitating purchasing goals laid out in the U.S.-China phase one agreement. China also issued a second list of eligible products for exemptions from retaliatory tariffs imposed against the U.S. as it continues to wrestle with containing the coronavirus and its impact on the national economy.
- Chinese officials reiterated their intent to fulfill the phase one agreement obligations, but that success includes cooperation from the U.S. "First of all, we will do our best [to increase purchases]; but the second point is that the US must provide good products at competitive prices," said Wei Jianguo, former vice-commerce minister. He added that China's promised purchases of U.S. farm goods is not a "one-sided obligation." Wei emphasized that the Chinese government cannot compel importers to purchase U.S. products and that American firms must compete for orders against the market. "We cannot exclude Brazil or Argentina [in farm products trade] or cut energy trade with the Middle East merely because we've promised to import more from the US," Wei said.
- As reported earlier, USTR announced a new office - "Bilateral Evaluation and Dispute Resolution Office" - to monitor the deal. According to USTR, "This office will monitor China's implementation of its commitments under the Phase One agreement and will be responsible for working with China's corresponding Bilateral Evaluation and Dispute Resolution Office to address disputes that arise over implementation matters". Ambassador Jeffrey Gerrish will serve as the "designated Deputy United States Trade Representative" heading the new office that will coordinate various levels of implementation review and dispute considerations.
- The impact of the coronavirus remains fluid, but many officials are acknowledging the adverse impact on China's ability to fulfill its purchase commitment at the outset of the phase one deal. Agriculture Secretary Perdue said the U.S. must be "understanding" of the potential impact of the coronavirus on Chinas trade commitments. "If they're really trying and it really just blows the economy out of the water, then we would have to be understanding of that." "There are force majeure type of things ... that I think you have to be sensitive to," Perdue continued. Notably the phase one agreement text contains a disaster clause to allow for delays: "In the event that a natural disaster or other unforeseeable event outside the control of the Parties delays a Party from timely complying with its obligations under this Agreement, the Parties shall consult with each other."
- The coronavirus' impact will likely extend into timing and expectations for a phase two deal with China. Speaking before the Senate Finance Committee, Treasury Secretary Mnuchin said, "Obviously, our biggest focus is implementing phase one." "That, to a certain extent, has slowed down" as China grapples with its coronavirus outbreak, he said. Mnuchin indicated that the U.S. goals in a phase two agreement, which could be rolled out in as many as four separate parts: 2a, 2b, 2c and 2d. "The president's been very clear he wants us to execute on phase one. He wants us to make sure as we move to phase two, we get what we need to get and doesn't want to set arbitrary timelines," Mnuchin said. "The president kept significant tariffs on to create an incentive for them to do phase two and those won't be reduced until we do that."
- House Ways & Means Committee will hold a hearing tomorrow, Wed., 26th on U.S.-China Trade And Competition at 10:30 am.

U.S. - Japan Trade Agreement

- No significant updates on phase one U.S. Japan trade pact. Commencement of negotiations on a phase 2 or a comprehensive trade deal are expected no earlier than May according to several sources.

U.S. - EU Trade

- EU trade chief Phil Hogan is working to get a deal with the U.S. by March 18, he recently told reporters. Hogan said he is preparing a package of several provisions for European Commission President Ursula von der Leyen to present to President Donald Trump in the next few weeks. Hogan indicated the Trump Administration's pass last week on further increasing retaliatory tariffs on agricultural products in the long-running Airbus WTO case was a positive sign that the U.S. is willing to negotiate a deal.
- Earlier USDA Secretary Perdue indicted the U.S. is seeking major changes to the EU's standards for plant and animal health and food safety including combating Europe's geographical protections for foods like feta cheese and restrictions on chemically treated poultry, and other products. Purdue noted, "We're not suggesting initially that tariffs have to be on the table, but certainly the [food standards] have to be addressed, and the non-tariff barriers, which are a fairly formidable barrier to U.S. exports to the EU."
- USTR's Agriculture Ambassador, Greg Doud would not comment on the possibility of a limited U.S. – EU deal before the March 18th increase in tariffs on EU aircraft but expressed considerably angst with the current training relationship. "The word 'frustration' comes to mind," Doud said, when contemplating the trans-Atlantic trade relationship. "They sell us $15 billion more ag products than we sell them. Don't you think we can do better than that?"
- As reported earlier, President Trump announced raising the initial tariffs on EU aircraft to 15 percent from 10 percent, effective March 18th, in conjunction with the WTO Airbus case involving tariffs on $7.5 billion of European imports. The Administration passed on the opportunity to further increase tariffs on other European products including cheese, wine and whiskey, which remain at 25 percent, much to the relief of several business and consumer groups. According to the White House announcement, the revised tariffs take effect March 18, 2020.
- Under Section 407 of the Trade and Development Act of 2000 the initial retaliatory duties USTR announced on October 18, 2019 under the WTO dispute settlement process are subject to review and revisions (i.e. carousel) every 180 days afterwards. The retaliatory tariffs on $7.5 billion of European goods were authorized under a long-running WTO case dispute over European government launch aid for Airbus.

U.S.-U.K Trade Agreement

- U.S-U.K. trade talks could start in early March according to Gregg Doud, USTR's Ambassador for Agriculture. "It's a matter of weeks, is the best way of describing it," Doud said during USDA's Agricultural Outlook Forum last week. Doud emphasized the bilateral trade negotiations will be challenging, noting the differences in food and safety regulatory approaches in the EU and U.S.
- USDA Undersecretary Ted McKinney, said he was "bullish" on the pending trade negotiations with the U.K. He characterized the talks as an opportunity to "rebrand" U.S. agricultural exports and dispel some of the negative perceptions in the U.K., many surrounding U.S. production practices. As an example, he addressed the European restrictions on "chlorinated chicken," a reference to the pathogen reduction treatments used by U.S. facilities to clean the poultry of harmful bacteria. No American plants that export chickens use "chlorinated water" to clean the birds, McKinney said. As part of the rebranding initiative McKinney encouraged U.K. agriculture and environmental officials to visit American farms and production facilities to personally assess the safety and quality of U.S. products.
- As reported earlier, Prime Minister Johnson railed against excessive concerns in Britain with U.S. food safety practices, and possibly opening the door on genetically modified food imports from the U.S. Johnson called for an end to "hysterical" fears of certain U.S. food products in the context of a possible U.S. – UK trade deal. Johnson emphasized the UK would not accept "diminution" of food standards, but that Britain would be "governed by science, not mumbo-jumbo". He criticized "American bashers" who view U.S. food as "inferior." "I look at the Americans, they look pretty well nourished to me. Johnson has acknowledged there was an argument against chlorinated chicken on animal welfare grounds.
- The British government is expected to release both EU- and U.S.-specific objectives for trade negotiations in the next few weeks, a prerequisite to the U.K. entering formal trade talks. Policy experts and observers are keen for access to the details of the U.K.'s negotiating goals and how details may parallel or diverge between the EU and U.S. The U.K. last month outlined its broader trade negotiating objectives, to "secure comprehensive, far-reaching and mutually beneficial tariff reductions ... which will increase access to the US market for UK businesses, and lower prices and increase choice for UK consumers," signaling ambitions with the U.S. for a comprehensive trade pact.

Suspension Agreements

Sugar Suspension Agreement

- Last month the Department of Commerce announced signing of the amended Sugar Suspension Agreement. In the notice Commerce reported, "…sugar producers/exporters accounting for substantially all imports of sugar from Mexico have signed an amendment to the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico (AD Agreement). The amendment to the AD Agreement modifies the definitions for sugar from Mexico, revises the reference prices for the applicable sugar from Mexico, and provides for enhanced monitoring and enforcement mechanisms."
- Shortly after the Commerce announcement, CSC Sugar filed two complaints with the Court of International Trade (CIT), each contesting the newly revised agreement that would suspend the antidumping and antisubsidy duties on raw sugar imports from Mexico. CSC noted in the filing, "The failure of Commerce to provide a reasoned explanation for the inclusion of both the bulk shipment provisions and the changes in the polarity standards in adopting the amendment renders the amendment unsupported by substantial evidence and contrary to law."
- CSC Sugar's successful petition to the CIT last year against Commerce for not keeping proper records during the 2017 negotiations led to the most recent changes in the agreements. CSC continues to object to Commerce's decision and remains dissatisfied with the department's proceedings.

U.S. - India Trade Developments

- President Trump's visit to India (Feb. 24-25) is now not expected to result in a limited U.S.-India trade deal. Trump's schedule in India still includes meetings with Prime Minister Modi, a visit to Delhi and Modi's hometown of Ahmedabad, but signals from President Trump and the administration have quickly dampened expectations for a trade package. While trade discussions are expected between Modi and Trump, an administration official confirmed that differences remain ahead of the visit. "The trade and economic relationship with India is critically important to the United States, and I think also access to the United States market is critical to the Indian government," the official said. "We do want to make sure that we get this balance right. We want to address a bunch – a lot of concerns, and we're not quite there yet."

Narendra Modi, Indian Prime Minister

- Earlier USTR announced that Amb. Lighthizer would not travel to India in an effort finalize a deal with his counterpart Indian Commerce and Industry Minister Piyush Goyal but was rather continuing discussions via phone. President Trump also recently made comments suggesting the Administration was shifting focus to a larger trade deal with India over the longer term, lessening possibility of a limited short-term agreement during this week's visit. "We can have a trade deal with India, but I'm really saving the big deal for later on," Trump said last week. "We're doing a very big trade deal with India. We'll have it. I don't know if it'll be done before the election, but we'll have a very big deal with India," Trump said.
- Earlier in the month India proffered several concessions for U.S. dairy, fruit and poultry exports to regain GSP benefits. India has further proposed a 50% tariff reduction on heavy-weight motorcycles, such as Harley-Davidson motorcycles though not a large market for these products. In contrast India's recent budget proposal included tariff increases on imported products and the "Make in India" program remains a concern for U.S. officials in securing enhanced market access in India.
- As reported earlier, the potential trade deal 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. earlier revoked India's GSP benefits, valued at approximately $6.4 billion, and is call for reciprocal market access in India in order to restore GSP.
- The United States is India's second-largest trade partner after China, and bilateral goods and services trade climbed to a record $142.6 billion in 2018. The United States had a $23.2 billion goods trade deficit in 2019 with India, its 9th largest trading partner in goods.

U.S.-Kenya Trade Developments

- USDA Under Secretary Ted McKinney, said that Kenya is the start of a broader ambition for increased trade with Africa. He said Kenya was deemed the "most ready" for a deal with the U.S. but noted that "My team has been at work for some time looking at what might be the products to exchange; what might be the policies that we can recommend that USTR consider." "So we are kind of all in. And now we are working closely with State Department, with the Department of Commerce and at some level USTR to dive even more deeply on larger broad cross-functional projects. So were all in on Africa," he said. McKinney will lead an agriculture trade mission to Morocco next month.

Ted McKinney, USDA Undersecretary for Trade

- In conjunction with the White House announcement of intentions to negotiate a bilateral trade deal with Kenya, the Trump Administration is preparing its notification to Congress, required under the auspices of Trade Promotion Authority before formal trade talks begin. Amb. Lighthizer said "Kenya is a recognized leader across the continent, an important strategic partner of the United States, and there is enormous potential for us to deepen our economic and commercial ties. He continued, "Under President Trump's leadership, we look forward to negotiating and concluding a comprehensive, high-standard agreement with Kenya that can serve as a model for additional agreements across Africa."
- According to a USTR fact sheet, Kenya is the United States' 98th-largest trading partner in goods, with $1 billion in two-way trade in 2018. Major U.S. imports include apparel, tree nuts, essential oils, and coffee, while Kenya's major imports include aircraft, machinery and agricultural goods.
- The initial announcement received positive comments from multiple Members of Congress. Ways and Means Chairman Neal commented on Congress' support for the potential trade deal. Neal said after meeting with President Kenyatta, "I look forward to working with President Kenyatta and his government to make sure that any US-Kenya trade arrangements that build on AGOA are mutually beneficial, reflect our shared economic aspirations and democratic values, respect Congress's freedom to regulate in dynamic areas of domestic policy and demonstrate a commitment to the enforcement of strong worker rights, environmental protections and good governance."

General Trade/WTO Reform

- Speaking before the European Commission Parliament, Phil Hogan said WTO members must update "ineffective rules" and reformulate policies to move forward with current challenges at the 25-year old institution. "One thing is clear, however: We will need more than cosmetic changes to the WTO. Tweaking at the margins will not be sufficient," the EU Commissioner for Trade said. "And we have to find a new balance of rights and obligations that unlocks the organization and part of this equation is the updating of ineffective rules and partially then the creation of new rules."
- USTR recently released a detailed 174-page report inventorying the complaints and failures of the WTO's Appellate Body, but offered no solutions or reform proposals. As stated in the report, "The purpose of this report is not to propose solutions to the problems facing the WTO dispute settlement system. Rather, its purpose is to provide a thorough examination of the Appellate Body's failure to comply with the WTO Agreements." USTR's statement continued, "The Report demonstrates the Appellate Body's persistent failure to follow basic WTO rules and highlights several examples of how the Appellate Body has altered WTO Members' rights and obligations through erroneous interpretations of WTO agreements."
- Amb. Lighthizer said a re-examination of the WTO is a key part of President Donald Trump's trade agenda. "Unfortunately, the conduct of the Appellate Body has converted the WTO from a forum for discussion and negotiation into a forum for litigation," he said in a statement. The U.S. ambassador to the WTO, Dennis Shea, further dampened expectations of moving from "why" to proposed solutions, citing a "failure of engagement" and that the U.S. had "not received an adequate response" acknowledging the United States' longstanding concerns.
- Some observers suggest the anticipated report, with highly detailed examples of AB overreach, delay in producing reports, creating judicial precedent, and many other complaints, may serve as a launching point for a deep and thorough discussions of how the AB has strayed from its mandate, which USTR maintains is absent among the WTIO members and necessary before formulating adequate solutions. An examination of the report is available on the Trade Craft podcast (Marc Busch, Georgetown Univ.).
- As reported earlier, the Trump administration is considering raising the present ceilings on U.S. MFN bound tariffs to compel a renegotiation of relationships with other WTO members and upend the tariff-setting system known as Most Favored Nation (MFN). President Trump and senior aides have long complained that other countries can charge higher tariffs on certain products than the U.S. is permitted. The potential plan would upend the U.S. tariff approach made by previous administrations over decades of negotiations, according several experts familiar with the discussions.
- Several lawmakers and observers were alarmed by the potential policy developments. Senator Grassley warned that Congressional approval was needed before the administration could modify the United States' negotiated tariff schedule. "All I can tell you at this point is they can't do it without Congress' approval and we have not had that discussion," he said last week. "If anybody is thinking about moving ahead and leaving Congress out of it, they can't do that," he continued.
- Several experts on the WTO have warned the U.S. potential action could greatly disrupt the present WTO system could severely shock the American economy. They contend the WTO, despite some flaws, provides policy stability and certainty to businesses, fostering trade and international investment, which leads to export industries that create good jobs, and for consumers, access to diverse and low-cost products from around the globe.
- Article XXVIII of the General Agreement on Tariffs and Trade (GATT) allows WTO members to modify their schedule of tariffs, but only in consultation with other members that would be affected by the change. Those members are entitled to some compensation for such changes, the agreement says, which could be achieved through the lowering of other tariffs. If no agreement on compensation can be reached, however, affected countries can retaliate by raising tariffs on U.S. goods.

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