



## Trade Update

### November 5, 2019

Provided by the [Corn Refiners Association](#)

### Highlights

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- **USMCA:** USMCA vote in 2019? Several key figures in the USMCA negotiations, including Rep. Richard Neal, have indicated their beliefs that the agreement will go up for a vote in Congress before the end of the calendar year, although some Members of Congress continue to express doubts about the labor provisions.
- **China Tariffs:** U.S.-China Phase 1 inches forward amidst the search for a new signing venue. Phase 1 provisions on agriculture, currency, and financial services are virtually completed, while sections on enforcement, intellectual property, and forced technology transfer are still being negotiated.
- **WTO:** Last week, China was awarded \$3.579 billion retaliation against the U.S. for a 2013 dispute, prompting further U.S. criticism of the WTO Appellate Body.

# USMCA

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- Representative Richard Neal said last Tuesday that the House working group might reach a compromise on USMCA with USTR by the end of the week, which would allow the agreement to go up for a vote before the end of the year. Jesús Seade, Mexico's Undersecretary for North America, last week also indicated optimism about the progress made based on contact he has had with USTR, saying he thinks it is possible the negotiations between USTR and the working group will finish before Thanksgiving. Based on this context, he added, he believes that the changes made to the agreement so far will be quickly accepted by Mexico, allowing the agreement to go up for a vote in Congress before the end of the year.
- An agreement on labor and enforcement remains the most challenging discussion on the table, according to USTR and Hill sources. In light of the continuing issues surrounding the labor provisions, Rep. Neal suggested last week that Amb. Lighthizer meet during the Congressional recess with the AFL-CIO and other organized labor leadership in order to bridge the divide between the two groups, after AFL-CIO President Trumka said in recent weeks that USMCA will not pass a vote in its current state, a viewpoint echoed by other organized labor leaders.
- Many members of Congress have expressed concern that if the agreement is not brought up for vote by the end of 2019, it will become caught up in the 2020 election season and will not be brought up for a vote at all. The soonest USTR could deliver the implementing language to House leadership is now November 12th, the next time that both the House and the Senate are back in session.
- Several Congress Members, including Rep. Bill Pascrell, have indicated that they are still not convinced by Mexico's promises to carry through with implementation of its labor reform legislation and that they will likely vote "No" when USMCA comes up for a vote. Despite the letter sent several weeks ago to Rep. Richard Neal by Mexican President López Obrador detailing the steps his administration will take to ensure effective implementation of labor reforms, Pascrell, who is not a member of the House working group on USMCA, described the changes planned as "...a nibble and a drop in the bucket to what is needed to finally fix a broken system."



*(Pictured: Rep. Bill Pascrell)*

- Mexican Under Secretary for North America Jesús Seade said last week that Mexico and Canada would need to review any deal reached by USTR and House Democrats, raising timing questions for USMCA. Seade told reporters that while Mexico ratified the deal earlier this year, both Canada and Mexico will have to evaluate any deal with Pelosi's working group. "Whatever resolution they come to will be in the nature of a proposal for Canada's and Mexico's consideration," he said. "Some things are complicated and may take offers and counteroffers ... so we don't want to create expectations that everything is going to happen within a few days." Seade further stated, "We're not in a hurry and won't accept just anything. There are some things that could take us a few days to improve upon and offer counterproposals." Mexico's response could take up to a month, he said.



*(Pictured: Under Secretary Jesús Seade)*

## **Section 232 Tariff Actions**

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- The Commerce Department's Inspector General released a memo last week alleging issues in the Section 232 tariffs exclusion process that "contributes to the appearance of improper influence." The memo detailed three factors that contributed to alleged lack of transparency in the exclusion process:
  - "Evidence of an unofficial appeals process exists"
  - "Communications with an objector prompted a change in internal criteria review"
  - "Off-record discussions between interested parties and Department officials are not documented"

The memo went on to list three suggested ways to mitigate the issues, including "regarding all decisions as final once they are posted online," "creating a formal process for modifying internal criteria that is used to review exclusion requests," and "documenting all discussions with interested parties, and directing all emails concerning specific exclusion requests to BIS' official organization email addresses."

- The 180-day extension on President Trump's decision on 232 auto tariffs is rapidly approaching (est. Nov. 13), with little indication from the Administration of potential outcome of talks with the EU. On May 17, Trump delayed the tariff announcement, instructing USTR and other officials to negotiate a solution to reduce auto and auto imports from the EU, Japan, and other major exporters.
- As reported earlier, Sen. Grassley was spearheading efforts to develop consensus legislation that draws on bills proposed by Portman and fellow panel member Sen. Toomey to restrict the Presidential authority to impose Section 232 tariffs. Sen. Portman recently confirmed any new legislation on the issues is not likely prior to the 180-day tariff extension period concludes.

## **Section 301 Tariff Actions**

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- USTR opened the exclusion process for List 4A products on October 31 and will keep it open until January 31, 2020. There are no official details on List 4B tariffs, which take effect on December 15, though White House economic advisor Larry Kudlow reported several weeks ago on Fox Business that tariffs could be "off" if the Phase 1 talks go well. Further, USTR announced last week that it might extend some tariff exclusions for List 1 tariffs, originally granted last December and scheduled to

expire on December 28, 2019.

- The Asia Pacific Economic Cooperation (APEC) summit where the U.S. hoped to sign its Phase 1 agreement with China next month has been canceled due to civil unrest and the subsequent declaration of a state of emergency in Santiago, Chile, prompting a search for a new site for the summit. A statement released by the White House after the cancellation announcement indicated that the administration hopes for information about a new site for the summit quickly. "We look forward to finalizing Phase One of the historic trade deal with China within the same time frame, and when we have an announcement, we'll let you know" it said. President Trump said on Thursday that Phase 1 will represent 60 percent of the eventual comprehensive deal.



- National Economic Council Director Larry Kudlow said on Friday that the U.S. and China had "virtually completed" portions of the Phase 1 trade deal related to agriculture, currency, and financial services, with sections related to enforcement, intellectual property, and forced technology transfer still being discussed. He indicated that the discussions on forced technology transfer, in particular, may be included in the eventual Phase 2 deal instead of Phase 1. The same day, the Chinese Ministry of Commerce said that the U.S. and China had reached consensus on main principles of the agreement.
- China released several new policies several weeks ago in the areas of intellectual property protections and its foreign exchange market. These were two of the key areas of contention between the U.S. and China that led to the current trade war between the two countries. Among the changed IP protection policies include applying national treatment to IP law enforcement, improving protection of trade secrets, instituting more punitive measures for IP infringement, and "never allow[ing]" forced technology transfers. In terms of currency exchange, China will ("basically") stabilize the yuan's exchange rate relative to a basket of currencies, maintaining a floating exchange rate with "adjustment and management." However, several analysts have said the new policies do not work to solve the structural issues that led to the original imposition of U.S. tariffs on China.

## U.S. - Japan Trade Agreement

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- The U.S.-Japan trade deal is moving closer to going into effect after the approval by Prime Minister Abe's cabinet of a bill to ratify the agreement. The next step will be for the Japanese parliamentary body, the Diet, to approve the bill before the end of the extraordinary session it has called in order to move the trade pact to ratification. The extraordinary session will conclude on December 9.

## U.S. - EU Trade

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- On October 1st, the announced 10% or 25% tariffs of \$7.5 billion of EU goods, resulting from the WTO's ruling of illegal launch aid to Airbus, went into effect. According to the [final list](#) released by the White House, products subject to additional 25% duties include a wide range of agriculture and manufactured goods, notably cheeses, yogurt, butter, fruits, whiskey, and certain textile and apparel items. The 10% duties comprise solely of non-military aircraft and parts.

# U.S.-U.K Trade Agreement

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- The prospects for a U.S.-U.K. trade deal appear to have become more complicated after President Trump said on Thursday that a U.S.-U.K. deal would not be possible under Prime Minister Johnson's current Brexit plan. "To be honest with you, this deal, under certain aspects of the deal, you can't do it. You can't trade. We can't make a trade deal with the U.K." he stated. Prime Minister Johnson's administration pushed back against Trump's statement on Friday, saying that the Brexit plan "enables us to secure deals with a range of growing economies (and) we'll be setting out to do that."
- President Trump and Prime Minister Johnson previously expressed that they aim to have a U.S.-UK free trade agreement concluded quickly after the exit of Britain from the European Union. According to Bloomberg Economics, about 0.9% of global GDP is exposed to Brexit trade risk. For some context, EU-UK trade is about 3.1% of world trade.

## Suspension Agreements

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### *Tomato Suspension Agreement*

- Despite the recently concluded Suspension Agreement, the Commerce Department has re-instituted the antidumping investigation (AD) on fresh tomatoes from Mexico at the request of some U.S. tomato producers. Signed on September 19th, the Suspension Agreement removed the preliminary AD duties and enacted additional enforcement measures (i.e. increased inspections) on fresh tomatoes imports from Mexico. However, last week, the Florida Tomato Exchange, which successfully petitioned Commerce to withdraw from a previous suspension agreement, called on Commerce to resume the AD investigation.
- Commerce Secretary Ross stated, "At the request of domestic producers, the Department is completing the investigation into imports of Mexican fresh tomatoes," "Now it is up to the International Trade Commission to determine whether dumped imports harm the American tomato industry -- and whether, as a consequence, the suspension agreement will remain in place."
- According to the Commerce Department, the agreement remains in force even as the AD investigation continues. Should the ITC find in the affirmative (i.e. injury to domestic tomato industry) the Suspension Agreement will remain in place and the antidumping duties will be suspended. Under a negative ITC determination, the Suspension Agreement "will have no force or effect, allowing tomatoes from Mexico to enter the United States free of antidumping duties," according to Commerce. The ITC resumed its investigation with a [hearing](#) last Thursday and its decision is expected in December.

### *Sugar Suspension Agreement*

- The US Court of International Trade (CIT) vacated the Administration's 2017 changes to the Sugar Suspension agreement with Mexico. The Court agreed with CSC Sugar LLC, a Connecticut-based sugar refiner and trader, that argued that the Dept. of Commerce failed to adequately document and make public records of meetings with outside parties, as required by law, in the negotiations of the Sugar Suspension Agreement. The decision voids the Commerce Department's amendments to the Agreement secured with Mexico in 2017 and reverts the suspension agreement back to its 2014 version, which suspended anti-dumping and countervailing duties against sugar imports from Mexico. The Commerce Department [announced](#) it will implement the ruling by November 18.
- A Commerce Department spokesperson said the agency was currently reviewing the decision, but "would take all actions required by the law" to implement it. It referred further questions about the case to the Justice Department, which litigates on behalf of the Dept. of Commerce.
- The American Sugar Alliance (ASA), which supported the 2017 modifications to the Suspension Agreement, noted that the CIT decision faults procedural missteps, not the substance of the agreements.

- "The CIT's recent ruling was purely a decision based on Department of Commerce record-keeping procedures and has nothing to do with the merits of the suspension agreements," ASA spokesman Phillip Hayes said in a statement. "The U.S. sugar industry is considering its legal options and consulting on next steps with the Commerce Department."

## U.S. - India Trade Developments

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- The U.S. recently won a case at the WTO against India regarding illegal export subsidies valued around \$7 billion, requiring India to terminate the subsidies. India attempted to argue that the subsidies were legal according to provisions in the Agreement on Subsidies and Countervailing Measures allowing special and differential treatment for developing countries, but the Dispute Settlement panel determined that India has graduated from the "developing" category and is not eligible for a grace period to transition from the subsidies. The timeline requires India to end the subsidies within 90 to 180 days from the date that the report on India is adopted.
- Sources report that a limited U.S.- India trade pact could include limited restoration of Generalized System of Preferences (GSP) for India. Amb. Lighthizer is reportedly exploring aligning GSP benefits to reciprocal Indian market-access concessions. For example, the amount of GSP benefits reestablished would equal the amount of new market access India provided the U.S. on a dollar-by-dollar basis. Source familiar with the issue indicate, "They are trying to quantify the concessions and then figure out which products in essence they would allow back under GSP and try and match up that sort of benefit to the concession benefit. "So, they are trying to figure out a subset of products and line it up so the benefits are co-equal."

## General Trade Cooperation/WTO Reform

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- The WTO awarded China with \$3.579 billion retaliation against the U.S. as a result of a dispute brought to the WTO in 2013 related to the U.S.'s antidumping duties on Chinese goods, which China alleged were improperly determined following improperly conducted investigations. The WTO determined in 2017 that the U.S. had violated WTO rules in its determination of antidumping duties and ordered Commerce to comply by August 22, 2018, which was not done. The U.S. on Friday said that it was "disappointed" with the WTO's latest decision, calling it "another flawed Appellate Body report seeking to weaken trade remedies against Chinese dumped imports."
- Sixteen countries are moving closer to finalizing a free trade agreement that would encompass a third of global gross domestic product. The ten Association of Southeast Asian Nations (ASEAN) member countries (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam) and six other countries in the region—China, Japan, South Korea, Australia, and New Zealand—are working to complete the Regional Comprehensive Economic Partnership (RCEP), progress on which is accelerating due to the ongoing trade war between the U.S. and China. Many analysts see the RCEP as China's alternative to the Comprehensive and Progressive Treatment for Trans-Pacific Partnership (CPTPP), which includes Australia, Brunei, Japan, Malaysia, Singapore, Vietnam, and New Zealand as members. The talks on RCEP, which Chinese assistant commerce minister Li Cheggang recently described as being "in the final sprint," will continue in Bangkok after the 35th ASEAN summit from October 31-November 4.
- The U.S., Canada, Brazil, Norway, Switzerland, Argentina, Australia, New Zealand, Costa Rica, Singapore, and Taiwan released a joint statement in late October urging fellow WTO members to increase transparency in dispute settlement procedures at the WTO through the publicization of written submissions and the publicization of statements to both other WTO members and to the public. The EU, which did not co-sponsor the statement, has agreed with the U.S. on this subject in the past, but has been made clear that this is conditional on the existence of a functioning dispute settlement system, referring to the impending paralysis of the AB in December when two of the remaining three panelists' terms expire.



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