Trade Update

November 26, 2019

By Michael Anderson

Highlights

- **USMCA:** The House left for Thanksgiving break without a completed deal. Contrary to Speaker Pelosi's comment two weeks ago that a deal was "imminent," she expressed doubts last week about the viability of completion of the deal before the year's end.

- **China Tariffs:** The newest hurdle in the quest for a signed U.S.-China Phase 1 deal is the Senate-passed legislation recently sent to President Trump's desk supporting the Hong Kong protesters, which Trump is expected to sign, and which is expected to anger the Chinese government.

- **WTO:** End of the World as We Know It? The impending Appellate Body shutdown, less than three weeks away, has led to the EU weighing an option to develop a new WTO dispute settlement mechanism along with China and a coalition of other countries and without the U.S.

USMCA

- The excitement over House Speaker Nancy Pelosi's announcement that a deal on USMCA was "imminent" subsided last week as the House left for Thanksgiving break without a deal. The House working group wrapped up their discussions of USMCA last week, and Amb. Lighthizer met with Speaker Nancy Pelosi and Rep. Richard Neal on Thursday to discuss the final sticking points in the agreement. Speaker Pelosi and Rep. Neal indicated that there are lingering concerns about the labor enforcement provisions. This leaves eight days in the official House calendar before the end of the year.

- Speaker Pelosi acknowledged the time crunch during a press conference before she met with House Ways and Means Chairman Richard Neal and Amb. Lighthizer on Thursday, saying, "I'm not even sure if we came to an agreement today, that it would be enough time to finish." Pelosi proceeded to lay out several procedural steps necessary to finalize USMCA, including that the U.S. must open discussions with Canadian and Mexican officials "in terms of the change on the actual treaty" before Congress can vote on the deal, that the implementing bill will also "take time to write" and the committees of jurisdiction will have to sign it, and that the bill may require the Congressional Budget Office to issue a report. Despite such challenges, Pelosi reiterated her position that the deal must reflect drastic improvements to existing USMCA text, but she is "eager to get this done."

- Rep. Richard Neal, who was part of the meeting with Speaker Pelosi and Amb. Lighthizer on Thursday, seemed to remain hopeful that movement could still happen before the end of the year, saying, "We're going to stay right at this through the next week, and we're going to have a couple counterproposals. With all seriousness, we do think we're down to two-and-a-half, maybe three issues." He sent a set of counterproposals to USTR after the discussions on Thursday.

- President Trump called out House Speaker y Pelosi and ALF-CIO President Trumka as the current obstacles to passing USCA. In an interview on "Fox & Friends," the President said that Speaker Pelosi is "paralyzed" and predicted she would not ultimately put USMCA up for a vote. Trump indicated that Trumka, whom he referred to "a good guy, but a big union guy," is part of the problem, saying that he "has her mortified." "Richard Trumka has her, he plays her like a fiddle," Trump said. "I predict she won't even do it." Trumka pushed back on Trump's comments in a tweet, saying the president had "missed the mark." "The notion that anybody could play @speakerpelosi like a fiddle is laughable," the labor leader said. "She wants the same thing we do: an enforceable agreement that actually works for workers."

- Mexico's Chamber of Deputies approved a 2020 federal budget that includes additional funding for the implementation of labor reforms required under the U.S.-Mexico-Canada Agreement. A Mexican Administration official, Jesús Seade, said in a tweet, "Mexico has now approved its #Budget2020 with an amount for the #LaborReform even higher than committed by President @lopezobrador in his letter to his visitor @RepRichardNeal." The comment was in reference to a letter from Mexican President López Obrador to Chairman Neal and other lawmakers to address concerns with Mexico's commitment and resources to implement labor reforms under USMCA.

(Mexican Undersecretary for North America, Jesús Seade)

- The new Mexican budget added 762 million pesos ($39 million) to 2019 spending levels for the implementation of its labor reforms, according to the governing MORENA party. "The Labor Reform represents a key element in the economic policy of the country and has been a topic fundamental in the negotiations of the new trade agreement with the governments of Canada and the United States of America," stated a comment from the budget committee.

- President López Obrador said last month that his government would increase the budget for the reforms by 23 percent after many Democratic Congressional Members expressed concern that the previous budget would not be sufficient to carry out the necessary labor reforms. Despite this 23 percent increase, some Democrats have called for even more funding for the reforms, including House Ways & Means trade subcommittee member Bill Pascrell, who published an op-ed in the The American Prospect on November 20th saying, "While noting that Mexico's budget to effectuate labor reforms was significant, he [López Obrador] did not promise that Mexico would ratify that funding. Furthermore, even if the promised funding is allocated, it is backloaded, with only a small fraction of it earmarked for FY 2020, when any new institutions will be created and filled."

(Rep. Bill Pascrell)

- Senate Finance Committee Chairman Chuck Grassley indicated last Tuesday that USMCA will easily pass the Senate once it passes the House without any other issues coming to the forefront. "I think by the time [a deal] gets done we've got something that's going to pass the Senate very easily," he stated. Senator Grassley also expressed his optimism that the agreement will be passed before Christmas.

Section 232 Tariff Actions

Auto Tariffs

- Despite expectations that President Trump would make an announcement two weeks ago regarding an additional delay on a Section 232 action on import tariffs, no announcement has been made to date, raising hopes among some Members of Congress that Trump may decide against enacting these tariffs. "I think we are heading in the right direction—so that's good news. All the information that I've received—it looks like we are heading in the right direction" Senate Finance Committee member Tim Scott said last week. Sen. Ben Cardin and Sen. Rob Portman concurred.

- With the lapse in President Trump's 180-day, self-imposed deadline on an auto tariff decision, Sen. Pat Toomey said that a recent Court of International Trade ruling makes clear the window has closed for Trump to impose national security duties on auto imports from the EU or any other country. Toomey said, "As a recent U.S. trade court opinion stated, the president's authority to impose 'national security' tariffs or other import restrictions under Section 232 is not indefinite." "With the 180-day deadline having passed, the window for new 'national security' taxes on imported automobiles has closed."

(Sen. Pat Toomey)

- Outgoing European Trade Commissioner Cecilia Malmström is cautiously optimistic the threat for tariffs on EU autos has passed. She stated at an EU members' meeting, "We haven't received a formal announcement that they will not take place. That's why I'm still a little bit cautious." Georgetown Law professor and former General Counsel at USTR, Jennifer Hillman echoed the noted that "… the deadline has passed and there are severe legal limitations for the president to take further action." Professor Hillman stated, "I strongly believe if the president were to impose tariffs now, there would unequivocally be legal challenges." "They could be at substantial risk of losing that one."

- 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."

- As reported previously, Trump's decision on auto tariffs was expected nearly two weeks ago, stemming from his May 17 declaration that automotive imports posed a threat to U.S. national security, but he delayed a decision on duties or other restrictions for 180 days to give Lighthizer the chance to negotiate trade deals to address the concerns.

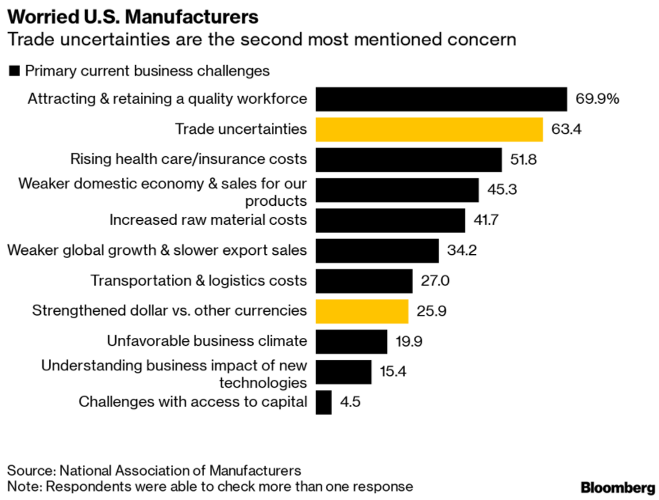
Section 301 Tariff Actions

- Last week President Trump threatened he would "raise the tariffs even higher" if China does not come to an agreement on trade, according to reports stemming during a Presidential cabinet level meeting. "China is going to have to make a deal that I like," Mr. Trump told reporters at the meeting. "If they don't, that's it. Okay? I'm very happy with China right now. They're paying us billions and billions. We'll be over a hundred billion dollars in the not-too-distant future."

(President Donald Trump)

- To date, a U.S. – China "phase 1" deal remains elusive. Among the factors complicating the efforts is the possible ruffles over the Hong Kong protests; Congress recently sent President Trump a Senate-passed bill in support of the Hong Kong protesters. Beijing has furiously promised retaliation if Trump signs the bill, which he's expected to do. The U.S. and China agreed to a "phase one" trade deal in October, but Beijing and Washington have since sent mixed signals about how the countries will move forward.

- Trade tension, including the current discussion between the U.S. and China, are rising on the list of manufactures' competitiveness concerns according to a recent survey.



- On a positive note for U.S.-China negotiations, China recently agreed to lift a ban on U.S. poultry imports that has been in place since the December 2014 avian influenza outbreak. U.S. poultry groups expect $1 billion to $2 billion in annual sales to China now that the ban has been lifted.

U.S. - Japan Trade Agreement

- The lower house of the Diet, the Japanese parliamentary body, passed the U.S.-Japan deal on Tuesday, November 19th, leaving the upper house several weeks to consider and pass the deal before the extraordinary session of the Diet concludes on December 9th. The goal remains for the deal, which the Trump administration has determined does not need to be approved by the U.S. Congress, to enter into effect in January 2020.

- The House Ways and Means Committee held a hearing on the U.S.-Japan Trade Agreement on Wednesday, Nov. 20th. Several participants expressed concern with the Trump administration's choice to pursue the agreement without input from Congress and voiced worry that a limited trade deal violates the basic WTO principle of most favored nation treatment (MFN). Other participants pointed to widespread support for the agreement from the U.S. agricultural community, including when Ways and Means Committee Member Jason Smith entered into the record a letter of support for the agreement signed by over 30 ag-related organizations.

U.S. - EU Trade

- As reported previously, 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 on October 18th. 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, according to the final list released by the White House. The 10% duties are comprised solely of non-military aircraft and parts.

U.S.-U.K Trade Agreement

- Proposed changes to the EU and U.K. tariff schedules after the completion of Brexit remain a major concern for the U.S. and other WTO members. The U.S. was recently joined by Australia, New Zealand, Canada, China, Mexico, South Korea and others in speaking out against the proposals, arguing that they would lead to diminished market access.

- The U.S. stated during the Geneva meeting that the UK and EU plan will not equitably divide access to the two members' markets but will rather decrease it. Citing two examples, the U.S. noted that TRQs (tariff rate quotas) would be effectively eliminated, pointing to grape juice exports to the bloc and pizza cheese exports to the UK. "Furthermore, the proposed approach fails to address how bilateral EU-UK will be treated once the UK is no longer part of the European Union. Currently that trade is not subject to the TRQs. But what happens once Brexit concludes?" The U.S. further stated, "This is unjustifiable, and clearly an unacceptable outcome for other WTO members," and invited both trade partners to engage with the U.S. in "productive negotiations" on the issue.

- President Trump and Prime Minister Johnson previously expressed a common goal 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.Proposed changes to the EU and U.K. tariff schedules after Brexit came under heavy fire from the U.S. and other WTO members last week in Geneva. The U.S. was joined by Australia, New Zealand, Canada, China, Mexico, South Korea and others, arguing that they would lead to diminished market access.

Suspension Agreements

Tomato Suspension Agreement

- The Florida tomato growers won a victory in the anti-dumping case last Friday. The ITC voted affirmatively, finding that the "U.S. industry is threatened with material injury by reason of imports of fresh tomatoes from Mexico that the U.S. Department of Commerce (Commerce) has determined are sold in the United States at less than fair value."

- Following the ITC vote, Commerce Secretary Wilbur Ross stated, "This action cements the strong suspension agreement that Commerce recently negotiated that protects the U.S. tomato industry from the damaging effects of unfair trade and provides certainty for the market."

- As a result of the ITC's affirmative determination, the suspension agreement that Commerce previously entered concerning fresh tomatoes from Mexico will remain in place and the antidumping duties will be suspended. The finding provides a backstop in the form of anti-dumping duties to the Florida Growers should Mexico or the U.S. withdraw or otherwise terminate the current Suspension Agreement.

Sugar Suspension Agreement

- The Court of International Trade (CIT) recently announced an extension, requested by the Department of Justice, delaying the enforcement date to December 6th, 2019 for "vacating" the existing Sugar Suspension Agreement with Mexico. The Justice Department had requested a 90-day stay of a CIT's ruling ordering the U.S. to vacate the 2017 amendments to sugar suspension agreements with Mexico. The request was supported by domestic producers, the Mexican industry, and Mexican government as necessary to ensure that all parties have ample time to file comments with the Department of Commerce on the suspension agreements, and to give the Department of Commerce time to follow proper procedure during the process, according to an American Sugar Alliance spokesperson.
- In the recent ruling, the CIT agreed with CSC Sugar LLC, a Connecticut-based sugar refiner and trader, which 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 CIT's 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.

U.S. - India Trade Developments

- U.S. trade negotiators were scheduled to travel to India last week to extend discussions on a partial trade deal with Indian Commerce Minister Piyush Goyal and his team. Market access for medical devices and related products is one of the key topics for both sides, according to Indian press reports.

- As reported earlier, the U.S. and India are contemplating a limited trade pact that may restore some Generalized System of Preferences (GSP) for India. Reports indicate that Amb. Lighthizer is 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. According to the sources, "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."

U.S. - Brazil Trade Developments

- Several Washington officials applauded Brazil's November 14th move to implement a tariff-rate quota (TRQ) for wheat, a promise it made upon its accession to the WTO in 1994 but had not yet carried through with. Brazil finally announced it would create the TRQ during the meeting between President Trump and Brazilian President Bolsonaro in March. The TRQ allows 750,000 metric tons (MT) to enter Brazil duty-free annually. "At a time of low prices and trade uncertainty, this is welcome news to U.S. wheat growers, especially in Kansas, the largest wheat producing state" Senate Agriculture Committee Chairman Pat Roberts said last Thursday.

- A trade deal with Brazil remains under consideration, according to some sources. An official from the Brazilian Embassy said several weeks ago that the Brazilian government hopes to negotiate "a USMCA-like…agreement" with the U.S. According to another Embassy official at that same time, "Things are going fast, but some things are happening, and you don't see them happening because they are happening at the technical level. We will see things happen very, very soon." Some analysts in Washington have predicted that if a trade agreement is concluded between Brazil and the U.S. before the 2020 elections, they expect that it will be a "mini-deal" similar to the current Japan or China Phase 1 deals, as opposed to a comprehensive agreement like USMCA.

General Trade Cooperation/WTO Reform

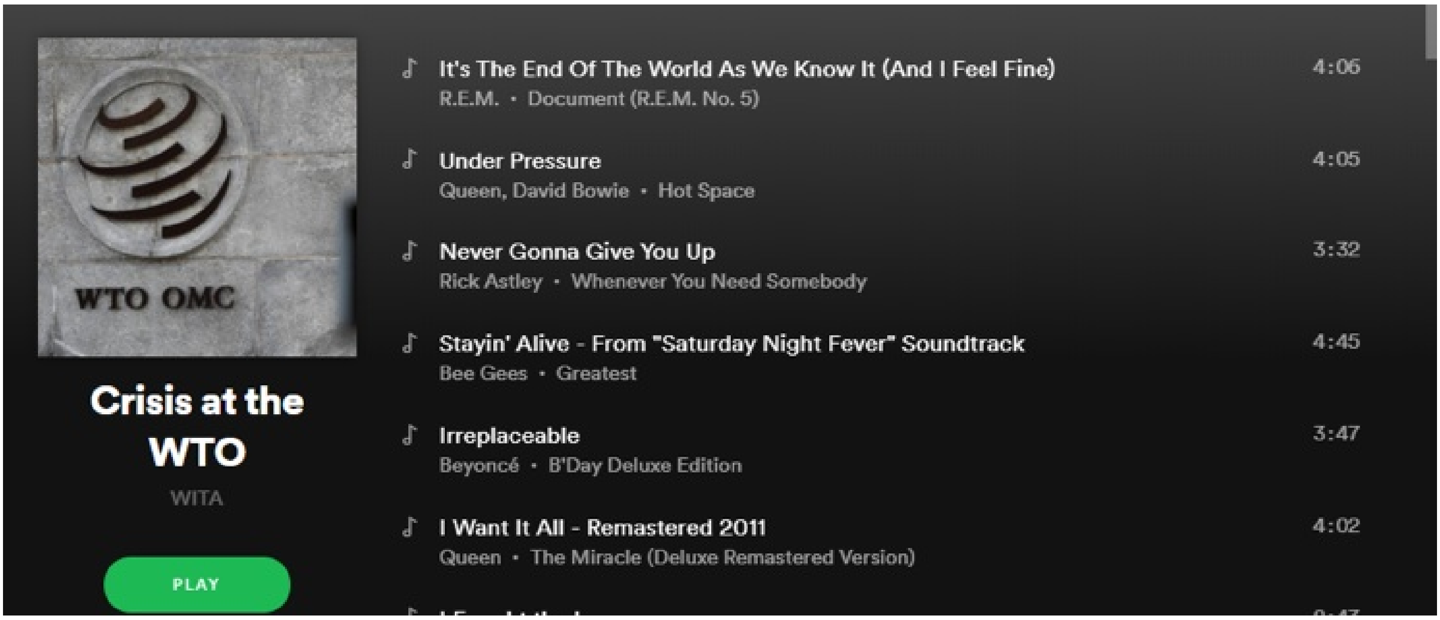
- The WTO Appellate Body is rapidly approaching the December 10th cliff, with no signs the U.S. will lift its block on appellate body judges to avert the crisis. Without quorum, the pending 12 AB cases will stall indefinitely, and resolution of international trade disputes may entail an infinite holding pattern or could quickly evolve into tit-for-tat tariff wars absent the binding mechanisms of the AB system. Other WTO Members bemoaned this fact at the Dispute Settlement Body meeting on November 22nd, with China describing the WTO's dispute settlement system as a "crown jewel" and with Norway warning "winter is coming," in a reference to Game of Thrones.

- The U.S. launched a new complaint about the Appellate Body last week, criticizing the AB's compensation structure, which, according to U.S. calculations, amounts to over 300,000 Swiss francs, or $330,648 USD a year for a part-time position. The U.S. argued that this compensation structure incentivizes AB panel members to continue working on pending appeals even after their terms expire, which is permissible under Rule 15 of the WTO Working Procedures for Appellate Review. "Without debate or effective oversight, have WTO Members acquiesced in a compensation structure that undermines, rather than promotes, the prompt resolution of a dispute?" U.S. Ambassador to the WTO Dennis Shea said in a statement.

- The U.S.' continued blocking of new WTO Appellate Body panelists may be driving Europe closer to China, according to some EU officials, several of whom have indicated that the EU is considering negotiating with a coalition of countries, including China, to develop a new WTO dispute settlement mechanism without the U.S. While the new EU trade chief Phil Hogan declined to confirm the possibility, saying "We have made no decisions yet," other EU officials have indicated that the process could start as early as Thursday of last week. "If the U.S. does not engage to find a timely solution, we can't but fully support the Commission's contingency planning. We won't stand idly by as the international trade order collapses" Christophe Hansen, a member of the EU parliament, stated.

- As a reminder, over the past several years the U.S. has blocked appointments of new panel members over longstanding concerns with several functions of the AB, including judicial overreach. According to sources, the U.S. filed its first brief 15 years ago, citing complaints in the proper functioning of the AB system. A full Appellate Body consists of seven members, who are appointed by consensus of all WTO members for four-year terms. The terms of Chairman Ujal Singh Bhatia (India) and Thomas R. Graham (United States) expire on Dec. 10th.

- Interested in a lighter side of the WTO Crisis? Check out the Crisis at the WTO playlist on Spotify developed by the team at WITA (Washington International Trade Association) following a WTO Crisis panel forum. "It's the End of the World as We Know it (And I Feel Fine) – R.E.M. tops the list.



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