Trade Update

March 10, 2020

By Michael Anderson

If you don't get regular trade updates, sign up here for CRA's weekly Trade Update

Highlights

- **U.S. – U.K. Trade**: The U.K.'s recently released trade negotiating objectives for a U.S. deal include reducing technical barriers to trade and upholding Britain's high levels of food safety and animal welfare. British officials said formal trade negotiations could start in weeks, not months.

- **China Trade**: After announcing a list of nearly 700 products eligible for retaliatory tariff exemptions, China began to approve some requests last week, including removing the 30 percent tariff on U.S. poultry imports. U.S. Treasury Secretary Mnuchin told Congress the Administration is presently not considering removing section 301 tariffs on China in response to the spreading coronavirus.

- **USMCA**: USMCA continues to progress through the Canadian Parliament as the Trump Administration announces new interagency committees to coordinate USMCA implementation regarding enforcement of provisions for auto parts and the environment under the USMCA.

- **WTO**: The U.S. rejects a recent WTO Appellate Body report affirming Canada's challenge to duties on imports of paper and questioned the eligibility of the remaining AB judge in the decision. Meanwhile WTO Director-General Azevedo said the WTO continues to closely monitor the spreading coronavirus but the WTO's 12th ministerial remains on track for this summer in Kazakhstan.

USMCA

- The USMCA implementing bill (C-4 - *An Act to implement the Agreement between Canada, the United States of America and the United Mexican States*) winds through the Canadian Parliament, now headed to a third and final reading in the House of Commons, which could occur this week. After the House has voted, the bill moves to the Senate for a parallel process (see guide to Canadian legislative process). To facilitate action on C-4, Canada's Senate Committee on Foreign Affairs and International Trade has begun a pre-study of the bill, which will accelerate the process. The bill is expected to pass both chambers of the Canadian Parliament 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 – June 1st, July 1st, or August 1st.

- Gearing up for expected implementation work on USMCA, the White House announced formation of two interagency committees to facilitate enforcement of provisions on auto goods and environment in the trade deal. USTR will lead the environmental enforcement committee, charged with conducting assessments of parties' environmental laws and policies -- with the aim of identifying "any gaps between such laws and policies and their environment obligations" -- as well as monitoring "actions with respect to the implementation and maintenance of their environmental obligations." The committee must submit a report to all "appropriate" congressional committees as well as USTR's Trade and Environment Policy Advisory Committee, within 90 days after USMCA enters into force. The report will identify "environmental laws and policies of the USMCA countries with respect to which enhanced cooperation, including the provision of technical assistance and capacity building assistance, monitoring actions, and enforcement actions, if appropriate, should be carried out on an enhanced and continuing basis."

- Further, USTR must submit an annual report for the next four years on the implementation of the deal's environmental chapter. The first report is due "not later than one year after" USMCA enters into force. That report will describe USMCA countries' efforts to implement their respective environmental commitments as well as "additional efforts to be taken with respect to USMCA countries that are failing to implement their environmental obligations," according to the USMCA implementing bill (H.R. 5430) approved by Congress.

Section 232 Tariff Actions

- Secretary Ross defended the Trump Administration's use of section 232 tariffs at a recent Hill hearing. Ross said the strategy of Section 232 to impose additional tariffs on imported steel and aluminum and the threat of applying those tariffs to imported autos and parts compelled other countries to the negotiating table. Testifying before the Senate Appropriations commerce, justice, science and related agencies subcommittee last week, Ross contended the 232-tariff threat facilitated the Administration negotiations on recent trade deals with China and Japan, as well as the USMCA, and the EU is more cooperative since threatening auto tariffs. He urged senators to "look at the end result," rather than the tariffs.

Wilbur Ross, Secretary of Department of Commerce

- As noted earlier, the American Institute for International Steel's (AIIS) legal challenge of the President's use of tariffs under section 232 regarding national security interests was denied. A three-judge panel at the U.S. Court of Appeals for the Federal Circuit rejected a challenge of the section 232 provision regarding national security-based tariffs imposed by President Trump to restrict steel imports. AIIS initiated the case in June 2018, challenging the constitutionality of the delegation of power under Section 232 of the Trade Expansion Act of 1962. AIIS argued Congress cannot delegate its legislative powers to federal agencies without giving "intelligible" guidance on which to base its recommendations, an idea known as the "non-delegation doctrine."

- Another case at the U.S. Court of International Trade (CIT) remains under focus regarding the legality the President's authority to levy import tariffs under section 232. The CIT recently granted a Texas-based importer a temporary restraining order against the Trump administration's tariffs on derivative steel and aluminum products. The case sets up a trial where the CIT will evaluate whether the duties are unlawful.

- 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.

Auto Tariffs

- Several Senators ratcheted up pressure on the Trump administration to release the 232 report recommending tariffs on automobiles and auto parts for national security reasons. Eight Senators joined to file an amicus brief in the ongoing lawsuit calling for Commerce to the release the 232 autos report. Senator Toomey charged that Commerce is "willfully violating federal law" by refusing to comply with a provision in the recent Congressional spending bill that requires public release of the report. Toomey added that "Commerce has left Congress few options but to support legal action compelling the release of this report." The amicus brief was led by senators Toomey, Chuck Grassley, and Ron Wyden. The other five signatories were Senators Bill Cassidy, Ron Johnson, Mike Lee, Ben Sasse, and Mark Warner.

- 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

Tech and IP Policies – China

- Removal of section 301 tariffs on China are unlikely anytime soon. In responses to concerns raised by business groups, Treasury Secretary Mnuchin indicated the Trump administration is not presently considering suspending tariffs on Chinese and European products but noted that officials will "look at all the options that we think are important" to helping businesses.

- In contrast China has granted some retaliatory tariff relief. Shortly after the effective date of the China phase one trade pact, Beijing issued lists of nearly 700 products eligible for tariff exclusion requests. Last week China-based importers received exemptions from the 30% retaliatory tariffs, which Beijing recently reduced from 35%. In response to the decision, Jim Sumner, president of the USA Poultry and Egg Export Council said, "We now have product getting in without any retaliatory tariffs." Sumner continued, "We are now on a level playing field with the other poultry suppliers to China." Sumner noted that the duty was not in China's best interest, impeding such imports.

- The retaliatory tariff relief could facilitate China's ability to significantly increase purchases of American agricultural goods to achieve its import purchase commitments of $40-$50 billion annually as part of the U.S. – China phase one trade deal.

- Assessing the impact of the coronavirus on China and the global economy remains fluid as confirmed cases are now reported in over 50 countries. Most trade and policy 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."

Seasonal Produce

- USTR announced details on upcoming hearings in Florida and George on seasonal produce issues as promised in a letter from Amb. Lighthizer to Florida and Georgia Congressional delegations. In the Jan. 9, 2019 letter, Amb. Lighthizer outlined the administration's plan to review and determine options regarding "trade-distorting policies that may be contributing to unfair pricing in the U.S. market for seasonal and perishable products and to assess the impact of those policies on U.S. producers." The letter notes that within 60 days after "entry-into-force" of the USMCA, the USTR will "implement effective and timely remedies necessary to address any trade distorting policies" affecting U.S. growers. Additionally, within 90 days, the Department of Commerce, U.S. Department of Agriculture and USTR will have hearings in Florida and Georgia to hear testimony from growers.

- USTR, Commerce, and USDA will coordinate the two hearings scheduled for April 7 in Plant City, Florida, and April 9 in Valdosta, Georgia. In its hearing announcement USTR said, "At the hearings, officials from the federal agencies will hear from interested persons on how the Trump Administration can support these producers and redress any unfair harm.

- Earlier in the year in conjunction with the Lighthizer letter, Representative Austin Scott said, "For years, Georgia's producers have struggled to compete with unfair trade practices, like the dumping of foreign-subsidized fresh fruits and vegetables into U.S. markets well below the cost of production." He continued, "I am thankful that President Trump and Ambassador Robert Lighthizer have committed to addressing these concerns, and I look forward to continuing to work with the Administration to ensure our American farmers receive a square deal in any international trade agreements."

Austin Scott, House of Representatives

- In contrast, Senator Martha McSally decried the Trump Administration's produce plan and the Lighthizer letter. McSally said she was "extremely disappointed" that USTR promised "a plan that masquerades as fairness for U.S. farmers but instead raises the specter of future trade conflicts that will harm businesses in my state."

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

- The EU dampened expectations for a limited U.S. – EU trade pact ahead of the March 18th deadline for increased tariffs on EU aircrafts. A European Commission (EC) spokesperson last week said that it's "substance over speed" regarding trade talks with the U.S. and that EU Trade Commissioner Phil Hogan will not meet with Amb. Lighthizer when he visits Washington, DC on March 17th. According to the EC official, "Commissioner Hogan will make an official visit to North America from 16-18 March. The principal purpose of the visit is to participate in a meeting ... in Ottawa on 18 March ... [to] continue the discussions regarding the reform of the World Trade Organization." The spokesperson did not rule out potential for scheduling changes, stating, "other elements of the program will be finalised in due course."

- Phil Hogan, speaking at a conference in Dublin on Friday, said the EU and the U.S. were taking "slow and small steps toward a 'mini deal'" and that he hoped the two sides would make further progress when he travels to Washington, DC, in mid-March. Last month Hogan's tone was more optimistic to reach a mini deal with the U.S. before the administration's Airbus tariff hike. Hogan added, "There is now political will to make every possible effort to reach some understanding on the issues that have bedeviled us," adding that Lighthizer was engaging in "good faith." Hogan will speak at Georgetown Law's Institute of International Economic Law on March 17th.

- 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

- Last week (Monday, 2nd) the British Government released its negotiating objectives for U.S. – U.K. trade talks. Top level objectives outlined in the document include:
  o Broad goods tariff liberalization and simple and modern rules of origin;
  o Reducing technical barriers to trade and promoting the use of international standards;
  o Upholding the UK's high levels of public, animal and plant health, including food safety, and improving the timeliness and transparency of U.S. approval processes;
  o Securing digital trade provisions that benefit all sectors, including the free flow of data;
  o Comprehensive investment rules guaranteeing that UK investors in the United States have the same rights and protections they receive in the United Kingdom; and
  o Protection of the UK's National Health Service, including a refusal to negotiate on drug pricing

- U.S-U.K. trade talks could start in the next few weeks according to U.K. sources. "We have the best negotiators in the business and of course, we're going to drive a hard bargain to boost British industry," said U.K. Prime Minister Boris Johnson. Johnson vowed to "vigorously protect" Britain's public services including health care and to maintain the U.K.'s "high standards on food safety and animal welfare."

- USDA Secretary Sonny Perdue indicated he will travel to the U.K. "the middle of next month [March]" to promote modern agriculture and a free-trade agreement in upcoming bilateral trade talks. Specific dates or details were not provided.

Suspension Agreements

Sugar Suspension Agreement

- The CSC Sugar complaints with the Court of International Trade (CIT) remain pending. CSC is contesting the newly revised agreement announced by Commerce in January 2019 citing "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 rendering the amendment unsupported by substantial evidence and contrary to law."

- In January 2019 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."

U.S. - Brazil Trade

- Bilateral trade talks between the U.S. and Brazil may have new momentum according to Joe Semsar, Acting Under Secretary of Commerce for International Trade. Speaking at an Atlantic Council event, Semsar said, "through years of engagement under our bilateral mechanisms such as the U.S.-Brazil Commercial Dialogue, we have been able to have productive and meaningful discussions…. there's a general sentiment that we need to take advantage of this unique period in the U.S.-Brazil relationship." Semsar noted that Commerce "will continue to build the foundations for a potential free trade agreement," with several "bilateral engagement plans" in the next few months, including the 18th U.S.-Brazil Commercial Dialogue set to be held this summer in Washington, DC.

U.S.-India Trade Developments

- No significant updates on a larger U.S. – India trade talks since President Trump returned from visiting India in February. During the visit President Trump and Prime Minister Modi announced they had "agreed to initiate negotiations for a bigger deal," as ambitions for quick mini-deal remained elusive. Trump stated the two sides "have made tremendous progress on a comprehensive trade agreement." Trump said that a deal could be achieved toward the end of the year but offered that if there's no trade agreement "we will do something else that will be very satisfactory."

- Separately, at the end of his trip to India, President Trump signaled deeper concerns about the present trade relationship with India stating, "As you know, India is probably the highest tariff nation in the world, meaning charging tariffs to outsiders." "I said we have to stop that. We must stop it. At least as it pertains to the United States," Trump said.

- A primary motivation for India in the trade deal is restoration of India's GSP benefits, valued at approximately $6.4 billion. The U.S. earlier revoked India's GSP benefits and is calling for reciprocal market access in India for agriculture products, industrial goods, and services in order to restore GSP.

- According to USTR, 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

- The White House reiterated in its 2020 Trade Agenda the pursuit of a U.S. – Kenya Trade Agreement. The Kenyan trade agreement was one of three trade negotiating priorities in 2020 (EU, U.K. the others). The next steps on the U.S. side will include the Trump Administration sending notification to Congress of its intent to enter formal trade negotiations. The notification is required under the auspices of Trade Promotion Authority before formal trade talks begin.

- 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.

General Trade/WTO Reform

- The U.S. took another step to fully dismantle the WTO's AB, questioning the qualifications of the sole remaining AB member and rejecting an AB report affirming Canada's challenge to U.S. countervailing duties imposed on supercalendared paper. USTR contended the AB's decision issued in a recent report is not valid because the terms of two of the three members on the panel – Ujal Bhatia (India) and Thomas Graham (U.S.) – had expired and the remaining member, Hong Zhao (China) is ineligible to serve because she is on the Chinese government payroll. Amb. Shea of USTR's mission in Geneva noted, the report "heightens the concerns that the U.S. has been raising about the Appellate Body and its effect on the WTO dispute settlement system." Shea elaborated that its "an unprecedented situation," because Zhao currently serves as Vice President of China's Ministry of Commerce Academy of International Trade and Economic Cooperation. The fact that Ms. Zhao's salary is paid by the Chinese government was not disclosed to WTO members when she was nominated as a candidate for the AB, USTR argued. Despite the U.S. objections the report was adopted.

- China refuted the allegations, arguing it "firmly opposes the groundless accusations." China emphasized that the Academy of International Trade and Economic Cooperation has been registered as an independent legal entity since 1997 and pointed out that the U.S. did not challenge Ms. Zhao's credentials during her nomination process. Both Canada and the EU said the U.S. allegations should be addressed through the proper channels, and not at the Dispute Settlement Body.

- Former AB member, Tom Graham, said the WTO's AB as we know it is not coming back anytime soon. Graham, the last U.S. member of the AB who departed last December when his term expired, generally supports U.S. criticisms regarding the AB's judicial overreach and operating outside its mandate. Graham suggested one solution to addressing U.S. concerns would entail empowering AB panel members independence in rendering decisions, and without staff influence; and agreeing that there can be more than one correct interpretation in a case rather than trying to reach a consensus on every case. Regarding trade remedies (i.e. anti-dumping or countervailing duties) which account for 45 percent of disputes at the WTO, should also be handled separately, he said. "Trade remedy procedure and creating a belief that trade is fair is politically necessary for maintaining the confidence needed to maintain an open international trading system," he said. "That put me increasingly in opposition with the prevailing ethos of the Appellate Body," Graham stated.

- The U.S. Chamber of Commerce recently published an article on the importance of WTO Reform and expressing concerns with the protracted Appellate Body impasse, potential withdrawal from the WTO Government Procurement Agreement, and Administration's possible move to raise bound tariff rates. (See, "The WTO and American Business").

- The WTO reported it continues to "monitor" the coronavirus, but plans remain intact to proceed with the 12th Ministerial meeting in June according to WTO Director General Roberto Azevêdo. "Regarding MC12, which some of you have been asking about, we are proceeding as planned. Of course, we will be monitoring the situation closely," Azevêdo said. He added, "Should the situation so demand, we will take any necessary action. We will do this, of course, in close consultation with the delegation of Kazakhstan and WTO members as a whole." The ministerial conference is scheduled to take place in Nur-Sultan, Kazakhstan, June 8-11.

- USDA Secretary Perdue, testifying at a House Agriculture Committee hearing said his is considering new rules for labeling meat that would not run afoul of the WTO, which ruled against the U.S. country-of-origin labeling (COOL) law. Perdues statement was in response to a query from Rep. Roger Marshall about what he termed "misleading" labels on imported meat that identify some as American products despite only minor processing or repackaging in the U.S. Perdue affirmed the observation saying, "I would agree with that," but cautioned that the WTO's prior adverse ruling on the U.S. COOL system warrants careful attention.

- Perdue offered, "We think there's a middle ground that we think is an appropriate label that looks at like, 'slaughtered and processed in the United States.' I don't think meat that just comes in and maybe just cut up and packaged from somewhere else ought to be product of the U.S.," he said. "I think that's another definition. We do feel like we would probably be treading on very difficult ground -- as some people in the cattle industry want 'born, slaughtered and processed' -- we think we'd be, again, be taken back to WTO court."

- The previous COOL law was challenged by Canada and Mexico in 2008. It was found to violate WTO rules because it placed an unfair recordkeeping and verification burden on the two countries.

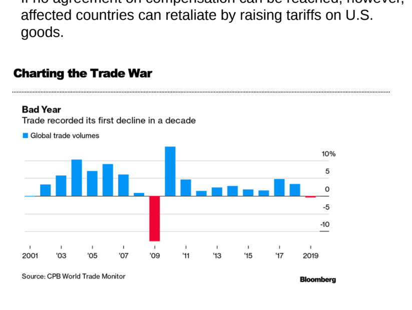
- President Trump's consideration of raising current U.S. bound tariffs the WTO remains in play despite considerable concern expressed by several lawmakers and policy experts. In a recently released fact sheet related to the President's 2020 Trade Agenda, USTR noted:

  "The WTO currently locks in an outdated tariff framework that no longer reflects deliberate policy choices and economic realities. Members need to fundamentally rethink tariff commitments by the United States and its trading partners."

- The Trump administration is particularly concerned with large disparities in bound and applied tariff rates by other WTO members. The President's 2020 Trade Agenda cites one example where the average U.S. "bound" tariff rate and the "applied" tariff rate are only 3.4 percent. In contrast, India's bound rate is 48.5 percent and its applied rate is 17 percent, while Brazil's bound rate is 31.4 and its applied rate is 17 percent.

- Senator Grassley among others has clarified that modifications to the U.S. tariff schedule must pass through Congress. "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.

- 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.

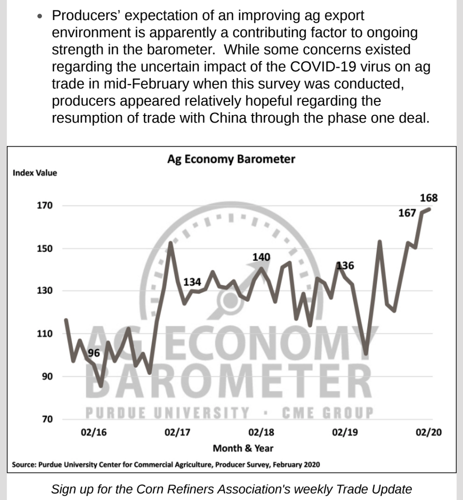


- Global trade dipped to a deficit in in 2019 as weaker world growth, trade tensions, and a nascent manufacturing recession took hold. Global trade volumes fell 0.4% in 2019, the first decline since 2009 and follows growth of more than 3% in 2018. The spreading coronavirus and its impact on businesses and households is expected to further slow global trade flows in the first half of 2020.

Ag Economy Barometer

- The *Ag Economy Barometer* remained strong last month reaching 168 in February, rising one point higher than in January. The one-point rise in the sentiment index is a new all-time high, eclipsing the previous record set in January of this year.

- Producers' expectation of an improving ag export environment is apparently a contributing factor to ongoing strength in the barometer. While some concerns existed regarding the uncertain impact of the COVID-19 virus on ag trade in mid-February when this survey was conducted, producers appeared relatively hopeful regarding the resumption of trade with China through the phase one deal.



Sign up for the Corn Refiners Association's weekly Trade Update

SUBSCRIBE

Corn Refiners Association | 1701 Pennsylvania Avenue, NW, Suite 400, Washington, DC 20006

Unsubscribe