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Trade Update

March 17, 2020

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Highlights

- **USMCA**: Canada's Parliament ratified USMCA last Friday in an accelerated process before recessing over concerns with the coronavirus. Canada's swift approval of USMCA increases the chances of a June 1st entry into force after the exchange of letters by all three trade partners certifying procedures and laws are in place under the USMCA.

- **U.S. – U.K. Trade**: Two weeks after the U.K. released negotiating objectives for U.S. trade talks, official negotiations may be stalled or delayed as President Trump extended the U.S. travel ban for EU residents to include England and Ireland.

- **China Trade**: China continues to grant tariff exemptions taking steps to meet obligations under the phase one agreement. The Trump administration announced tariff exemptions on certain healthcare products from China (face masks, sanitizing wipes, latex gloves, etc.) essential to combating the COVID-19 pandemic. Meanwhile, Trump officials resisted calls from the business community to lift tariffs on China as part of an COVID-19 economic stimulus package.

- **U.S. – EU**: Tariffs on EU aircraft are scheduled to rise from 10% to 15% Wed., 18th as a mini-trade deal between U.S. and EU remains elusive. Further, EU trade Commissioner Phil Hogan canceled his trip to Ottawa and Washington DC owing to COVID-19 developments.

- **WTO**: The WTO suspended meetings through April, likely slowing progress on key initiatives, including fisheries talks and WTO reform. WTO Director General Azevedo says the 12th WTO Ministerial in June "will not be feasible."

USMCA

- Canada swiftly approved the USMCA last Friday before suspending Parliament until April 20th over concerns around the spreading COVID-19. The legislation (Bill C-4) unanimously passed the House of Commons last Friday morning after three readings and weeks of debate, sending it to the Senate for consideration. Hours later, the upper chamber introduced the legislation and completed all three readings and passed the bill, which then received "royal assent" from Canadian Governor General Julie Payette, a formal procedural step culminating in approval of USMCA.

- Amb. Lighthizer praised Canada's quick accelerated action stating, "Now that the USMCA has been approved by all three countries, an historic new chapter for North American trade has begun." "USMCA is the gold standard by which all future trade agreements will be judged, and citizens of all three countries will benefit for years to come," he said. Mexican President Lopez Obrador also lauded Canada's approval of the pact, calling it "good news" in a tweet.

Amb. Robert Lighthizer, U.S. Trade Representative

- Secretary Perdue applauded the development stating, "USMCA is a great victory for America's agriculture industry, and I am pleased to see Canada's Parliament approved the deal today. USMCA locks in and expands access to our neighbors to the North and South. I thank President Trump for negotiating this deal and for always supporting America's farmers and ranchers. We will continue to work with both Canada and Mexico in implementing this agreement."

- Canada's swift action last week, increases the odds that USMCA will enter into force on June 1st. Under the USMCA protocol, after ratification by three countries, each trade partner 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).

- Prior to Canada's ratification, the Trump Administration was pushing for USMCA implementation by June 1st. The direction apparently is coming "from the top" to make an "across-the-board" entry-into-force happen by that date, according to one report. Several observers reacted to the news, noting the ambitious timeline is highly problematic, referencing the uncertainty of the coronavirus, complexity of auto rules of origin, and extensive list of other new laws and regulation contained in the USMCA. Kenneth Smith Ramos, Mexico's former chief NAFTA negotiator said implementation of the uniform regulations was "lagging." He noted that, "There is a lot of nervousness in the Mexican auto sector and in the U.S. as well as to the pace of these discussions because the minute the agreement goes into effect you see the increase in the [regional value content] and the other provisions, [labor value content], percentage of steel and aluminum.

- As outlined in the U.S. implementing legislation, the president is "authorized to provide for the USMCA to enter into force with respect to Canada and Mexico not earlier than 30 days after the date on which the President submits to Congress the required written notice,… which shall include the date on which the USMCA will enter into force."

Section 232 Tariff Actions

- Despite pressure from several business groups to remove the section 232 tariffs as part of an economic stimulus move amidst the economic repercussions of COVID-19, Treasury Secretary Mnuchin said tariff relieve is not under consideration. He noted that President Trump may consider some specific exemptions that would help small businesses affected by the virus though. USTR granted some tariffs exemptions on Chinese medical products helpful to combating COVID-19. Mnuchin added that Amb. Lighthizer is looking at additional exemptions for U.S. firms particularly impacted by the virus and the economic downturn.

Steven Mnuchin, Treasury Secretary

- As reported earlier, Secretary Ross recently defended the U.S. section 232 tariffs during a Congressional 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, 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.

- An aluminum industry group filed antidumping (AD) and countervailing duty (CVD) cases last week alleging 18 countries are illegally dumping and or subsidizing aluminum sheet imports. Aluminum sheet is already subject to 10% tariffs imposed under Section 232. The U.S. industry group alleges that existing AD/CVD orders against Chinese imports from last February have led to import spikes from the other 18 countries - Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Oman, Romania, Serbia, Slovenia, South Africa, South Korea, Spain, Taiwan and Turkey.

- The U.S. International Trade Commission (USITC) announced suspension of conferences and hearings, and other adjustments to trade remedy proceedings amidst the COVID-19 outbreak. Specifically, preliminary-phase staff conferences for AD and CVD investigations are canceled for the next 60 days, and the agency will solicit written submissions instead. There will be no in-person votes for AD and CVD cases over the next 60 days. Hearings for the final phase of AD and CVD investigations, five-year sunset reviews and other investigations (e.g. studies under section 332 of the Tariff Act of 1930) will not be held in person. Instead, "interested parties will be invited to answer written questions issued by the Commission with certified written responses." Changes are in effect until May 12.

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

- The Trump administration lifted tariffs on several medical and healthcare products imported from China, according to a Federal Register notice published last week. The items include latex gloves, face masks, sanitizing wipes and antimicrobial products commonly seen in medical exam rooms: scrub shirts and pants, for example, as well as operating room table covers. The exemptions from the 7.5 percent tariffs will apply as of Sept 1, 2019 and will be effective for a year. While not specifically mentioning the coronavirus in the announcement, several observers note the temporary tariff exemptions was triggered as the U.S. faces potential shortages of medical equipment, and face masks, which could exacerbate public concerns with the spreading virus.

- USDA announced several steps China recently performed to meet phase one obligations concerning agriculture as follows:
  - Signing a protocol that allows the importation of fresh California nectarines (USDA's Animal and Plant Health Inspection Service will share details once they are finalized);
  - Conditionally lifting a ban on imports of beef and beef products from animals over 30 months of age (Lifting Restriction on U.S. Beef 30 Months and Over Announcement), subject to other relevant import requirements;
  - Updating lists of facilities approved for exporting dairy, infant formula, seafood, and fish oil and fish meal.

- USDA further noted that China's new tariff exclusion process went into effect on March 2 and importers can now apply for exclusions from retaliatory tariffs (Tariff Exclusion Process Announcement). USDA has published a translation and analysis of China's guidance for participating in this latest round of exclusions (USDA Report on China's New Round of Tariff Exclusions). On February 28, China announced new exclusions of U.S. hardwood products; these exclusions were issued under the previous exclusion process (USDA Report on Tariff Exclusions for U.S. Hardwood Products).

- "These implementation measures are promising steps showing that China is taking steps to fulfill their purchase commitments," Secretary Perdue said. "Under President Trump's leadership, this agreement will produce positive gains for the entire economy, especially our agriculture sector. We look forward to China continuing to achieve their commitments in future months."

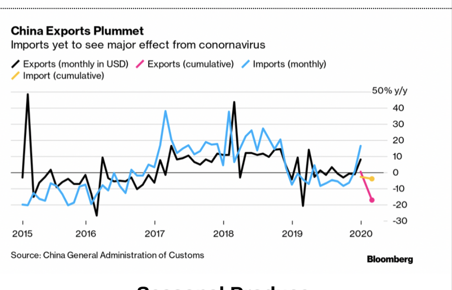
- The Trump Administration is apparently not budging on increasing calls for lifting tariffs on $360 billion worth of Chinese goods and section 232 tariffs on steel and aluminum amidst the economic weakness associated with the coronavirus. Several U.S. business groups (e.g. NAM, U.S. Chamber) are pushing for removing or reducing the tariffs as part of an economic stimulus package. In announcing the ban on all travel from EU-27 for 30 days, last week, President Trump did not mention the tariffs among the measures being taken to stimulate the U.S. economy.

- Amb. LIghthizer met with several House Ways and Means Committee members who urged lifting of section 232 tariffs on steel and aluminum and China 301 tariffs as part of the economic stimulus package. However, Amb. Lighthizer was cool to the suggestion. Earlier Treasury Secretary Steven Mnuchin said in Congressional testimony that tariff cuts are not among the options being considered by the Administration to stimulate the economy. Mnuchin said that small and medium-sized businesses as well as workers are of particular focus for the Administration.

- Separately, Secretary of State Mike Pompeo announced that the G7 ministerial meeting previously scheduled for March 24-25 in Pittsburgh will take place by video conference. The United States is hosting the G7 this year.

- China's global exports fell sharply in Jan. and Feb. this year as COVID-19 hobbled economic activity, slowed factory output, disrupted supply chains, and compelled an extended Chinese New Year holiday. Imports declined less dramatically, offset in part by increased commodity purchases.

Charting the Trade War



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.

- Though no official announcement, the COVID-19 pandemic may delay announced field hearings scheduled for April 7 in Plant City, Florida, and April 9 in Valdosta, Georgia, coordinated by USTR, Commerce, and USDA. 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."

- 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 remains open to lowering certain agriculture barriers such as GMOs as part of a mini trade deal, but broader concessions such as tariffs or revamping EU laws and regulations are not in the offering according to an EU official. "We are really looking at only regulatory issues that are in a way harming trade, so we're trying to find facilitating measures that by the way have been long-standing," said Chiara Dellapasqua, an EC trade policy official. Dellapasqua emphasized that some of those regulatory issues include EU demands "in the vegetable sector, or in the meat sector," and U.S. requests on "the length of certain procedures [and] the food safety system's recognition." Dellapasqua comments confirm the EU interest only in a limited trade deal, rather than comprehensive trade talks.

- EU Trade Commissioner Phil Hogan cancelled his trip to Washington, DC next amid swirling concerns regarding the spreading coronavirus. It's unclear whether the decision was in conjunction or unrelated to President Trump's announcement Wednesday banning EU nationals from traveling to the U.S.

- Hogan was not scheduled to meet with Amb. Lighthizer during his visit to North America from 16-18 March. The principal purpose of the visit was to attend to in Ottawa on 18 March regarding the reform of the World Trade Organization, along with speaking at an international law conference in Washington, DC.

- This Wednesday, 18th is the deadline set by President Trump for raising the initial tariffs on EU aircraft to 15 percent from 10 percent, 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

- Two weeks ago the British Government released its negotiating objectives for U.S. – U.K. trade talks. Top level objectives outlined in the document include:
  - Broad goods tariff liberalization and simple and modern rules of origin;
  - Reducing technical barriers to trade and promoting the use of international standards;
  - 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;
  - Securing digital trade provisions that benefit all sectors, including the free flow of data;
  - Comprehensive investment rules guaranteeing that UK investors in the United States have the same rights and protections they receive in the United Kingdom; and Protection of the UK's National Health Service, including a refusal to negotiate on drug pricing

- U.S-U.K. trade talks were expected to start this month, but over the weekend President Trump extended the travel ban on the EU to include U.K. and Ireland, likely delaying or canceling any face-to-face negotiations. U.K. sources had previously indicated they were prepared to start negotiations this week or next. "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."

- The COVID-19 pandemic earlier also halted trade negotiations in London between the U.K. and EU to define the post-Brexit trade and tariff relationship. Sources indicate both sides remain far apart on key issues, suggesting the December 31, 2020 timeline for formalizing the agreement is increasingly in jeopardy.

- USDA Secretary Sonny Perdue cancelled a trip to the U.K. this month due to COVID-19 complications. During the trip Perdue intended to make progress on market access provision for agriculture products in conjunction with overall bilateral trade talks for a U.S-U.K. agreement.

Suspension Agreements

Sugar Suspension Agreement

- No significant updates on the pending CSC Sugar complaints with the Court of International Trade (CIT). 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

- As reported earlier, 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 pact 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."

- 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

- Amb. Lighthizer last week took further steps to commence official trade talks with Kenya. Amb. Lighthizer is scheduled to consult with House and Senate advisory groups before officially notifying Congress of the administration's intent to initiate trade talks with Kenya. The meetings, along with consultations with the House Ways & Means and Senate Finance committees, are required Trade Promotion Authority (TPA) law. According to TPA, USTR must notify Congress 90 days before the U.S. enters into free trade agreement negotiations. Amb. Lighthizer said, USTR "can send the letter, which gives you 90 days and after the 90 days [we] can start negotiating." "So, I'm just consulting with members on a whole variety of things."

- The House advisory group is chaired by House Ways & Means Chairman Richard Neal and includes ranking member Kevin Brady plus three additional members of that committee, not more than two of whom must be members of the same political party, according to TPA. The group also includes the chairs and ranking members, or their designees, of other House committees with jurisdictions over provisions of law affected by trade negotiations, including Agriculture, Foreign Affairs and more.

- The Senate advisory group is chaired by Finance Committee Chairman Chuck Grassley and includes ranking member Sen. Ron Wyden as well as Sens. Mike Enzi, John Cornyn and Michael Bennet.

- 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 WTO announced suspension of meetings through April following confirmation that a Secretariat staff member tested positive for COVID-19. "We take the health of Secretariat staff and our members very seriously which is why we have taken this unprecedented step," Director-General Roberto Azevêdo said in a statement. He continued, "We are monitoring the situation very closely and will take whatever measures are necessary to protect health and safety." WTO staff members are largely working remotely during this period. Separately, Azevêdo said the WTO's 12th Ministerial in June in Kazakhstan "will not be feasible." No further details on rescheduling were provided.

Roberto Azevedo, WTO Director-General

- Prominent meetings affected by the announcements include, multiple meetings on fishery subsidy negotiations and a heads-of-delegations meeting and a trade policy review of Japan. While some meetings may prove conducive to teleconferences, further disruptions in the WTO's work schedule could severely impact progress on key items such as fisheries talks and WTO reform, originally slated for the 12 ministerial conference (MC12) in Nur-Sultan, Kazakhstan, now delayed indefinitely.

- 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").

- As noted earlier, President Trump is entertaining the option of raising current U.S. bound at the WTO 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.

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