Trade Update

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By Michael Anderson

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Highlights

- **USMCA**: Several industry groups and Congressional leaders raised concerns with the ambitious timeline of June 1st for entry into force of USMCA. The White House remains keen on a June 1st implementation date.
- **U.S. – U.K. Trade**: The start of U.S.- U.K. trade talks appeared delayed due to travel bans and other COVID-19 developments in both countries. Meanwhile, U.K. – EU trade negotiations were sidelined last week amidst COIVD-19 concerns and announcement that each sides' leading trade negotiators, David Frost (U.K) and Michael Branier (EU), tested positive for the virus and entered isolation.
- **China Trade**: Amidst COVID-19, China announced new measures and import actions increasing U.S. food and agriculture access under the China phase one trade deal. President Trump announced tariff exemptions for certain medical products (i.e. masks, latex gloves, etc.) from China. Additionally, USTR announced consideration of additional section 301 tariff exemptions to "keep current" in combating COVID-19, seeking public comments on additional virus-related products.
- **U.S. – Kenya**: USTR officially notified Congress of its intent to enter trade negotiations with Kenya and issued a notice soliciting comments on U.S. negotiating objectives, two required procedural steps under TPA setting the stage for starting official negotiations as early as June 15th. USTR further announced a "public hearing" date on the issue for April 28th following the April 15th deadline for public comments.
- **WTO**: WTO "virtual" fisheries talks hit a technical snag forcing participants to move to paper exchange of proposals and comments. WTO staff have moved to remote work through April and the 12th Ministerial Conference scheduled for June in Kazakhstan is suspended indefinitely.

USMCA

- As reported earlier, Canada accelerated approval of USMCA clearing both the House and Sente, then receiving "royal assent," all in the same day, prior to recessing until April 20th. The swift action on USMCA raised the initial odds of UMCA entering into force on June 1st, a date called for by the White House in recent reports. However, some industry groups and lawmakers are urging for additional time to prepare for implementation.
- In particular, the auto industry issued a joint statement raising concerns with rushing into a June 1st entry date for USMCA. The group emphasized the supply change disruptions and uncertainty amid the COVID-19 global pandemic and uncompleted work by governments for new auto rules of origin. "We are in the midst of a global pandemic that is significantly disrupting our supply chains, and the industry is throwing all available resources into managing production through this crisis for our employees and for the broader U.S. economy," the groups' statement said. "Even if it were reasonable to divert our attention to USMCA compliance, the United States, Canada and Mexico have yet to issue, even in draft form, the uniform automotive rules of origin regulations. Without them, many questions remain unanswered regarding how to interpret the new rules."
- Senate Finance Committee leadership - Senators Grassley and Wyden - expressed caution with a June 1st USMCA implementation date. Senator Grassley said, "I think the administration would be wise to reconsider and show some flexibility for the sake of our economy," regarding the USMCA timeline. He further echoed concerns expressed by the auto industry stating, "I think they do have a good argument." He continued, "And this issue is critical to the integrity of a new trade agreement and I have concern about the deadline. It's going to make it very difficult for the auto industry and we don't have enough information from the government that it needs to properly comply with USMCA."

Ron Wyden, U.S. Senator

- Senator Wyden said that USMCA should enter into force only "when facts indicate that our trading partners are complying with the obligations in the agreement, not an arbitrary date determined by political motive." "It would be a mistake to enter an agreement into force prematurely because doing so jeopardizes the benefits of the agreement that are hard fought wins intended to benefit American workers, farmers, ranchers, and innovators," Wyden said
- Mexico's former chief NAFTA negotiator also urged caution regarding the ambitious timeline, noting the complexity of auto rules of origin, and extensive list of other new laws and regulation contained in the USMCA, and disruptions to business and government operations owing to COVID-19. Kenneth Smith Ramos said implementation of the uniform regulations, particularly for auto provisions, 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."

Section 232 Tariff Actions

- President Trump and administration officials continue to reject calls for inclusion of tariff relief in an economic stimulus package to lessen the fallout from COVID-19. President Trump rejected a tariff request by over 160 firms last week (more details below) and Treasury Secretary Mnuchin said tariff relieve is not under consideration. Earlier 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.
- 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 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

- No significant updates since 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 Pat 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 statement, "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

- China took the first step in reopening U.S. Exports of Distillers Dried Grains (DDGs) in conjunction with commitments under the phase one trade pact. China's General Administration of Customs last week approved 88 U.S. companies eligible to ship DDGs to China. While the action does not remove the existing tariffs, some observers acknowledged the positive change. Randall Doyal, CEO of the Minnesota-based Al-Corn, one of the firms on the certified exporter list noted that China historically was a primary DDGs market and noted the action was an important first step. Doyal said, "If we can get this knocked out ahead of time, when they [China] finally decide they need the feed, that's when they'll remove the tariffs." "And we want to make sure we're ready to roll." Another industry source confirmed that China's move to certify U.S. suppliers is a "key part" of resuming trade. "If you can't get the permit, it doesn't matter if there are no tariffs or 100% tariffs, so it's an important issue."
- China announced other measures and actions facilitating increased U.S. exports of food and agriculture products as part of the phase one trade pact as highlighted below.
  - USDA announced list of 492 U.S. plants that can export beef to China and 449 plants allowed to ship pork. China agreed to lift its zero-tolerance policy for growth hormone residues in beef. China also eliminated its ban on beef from cattle over 30 months old at slaughter and agreed to accept the U.S. traceability system.
  - USDA announced China will purchase 340,000 metric tons of U.S. hard red winter wheat valued at approximately $70 million to $85 million. The buy is the "largest since China implemented retaliatory tariffs on U.S. wheat in March 2018," according to Vince Peterson, president of the U.S. Wheat Associates.
  - According to USDA China also committed to purchase 756,000 metric tons of U.S. corn and 110,000 metric tons of U.S. soybeans.
- Late last Friday the Trump administration announced consideration of tariff breaks for Chinese imports on select products to combat the spread COVID-19. In the announcement, USTR "opened a docket for submission of public comments on section 301 tariff relief for virus-related imports from China. "Submissions are limited to comments on products subject to the tariff actions and relevant to the medical response to the coronavirus," USTR stated. The process does not replace existing procedures for evaluating requests to exclude other 301 products from the tariffs. The comment period is open through June 25, 2020. Earlier in the month, USTR announced lifting tariffs on several medical and healthcare products imported from China (see below).
- A chorus of industry voices continued to push for lifting section 301 and 232 tariffs to provide economic relief to U.S. consumers, businesses, and other stakeholders wrestling with adverse implications of COVID-19. Americans for Free Trade, a coalition of 160 American retailing, transportation and other business groups, sent a letter requesting President Trump temporarily suspend tariffs on more than $350 billion of Chinese goods to help companies cope with the coronavirus pandemic. The letter tied tariff removal to COVID-19 stating, "we urge you to provide tariff relief as one of the measures to help those hurting financially from the economic effects resulting from the current public health crisis." The group also included section 232 tariff removal on steel and aluminum products in the request.
- The Business Roundtable, comprising leading CEOs, sent a separate letter to President Trump and congressional leaders advocating for similar tariff relief amidst the pandemic. "As an immediate step, the U.S. government should suspend tariffs on all medical and health products and other supplies necessary for the public health response to the COVID-19 outbreak," the group's letter stated.
- Other groups calling on the Trump administration for tariff relief include the Can Manufacturers Institute, seeking "an immediate waiver on tinplate steel tariffs so foreign steel can be imported quickly without the bureaucratic hurdles imposed by tariffs." The group cited the "dire need" for canned products as demand has surged as consumers have accelerated food purchases creating "outsized demand" and straining product supply chains.
- During a White House news conference regarding the COVID-19 pandemic, President Trump quickly rejected the notion of tariff relief. Referencing the Americans for Free Trade letter, Trump said there was "no reason" to include tariff relief in his administration's plan to mitigate the economic impact of the coronavirus pandemic. He continued, "I can't imagine Americans asking for that. But it could be that China will ask for a suspension or something. We'll see what happens."
- Several lawmakers added their voices to others calling for lifting 232 and 301 tariffs. Last week Senate Finance Chairman Chuck Grassley added his support for tariff relief. Representatives Stephanie Murphy and Joe Cunningham called on congressional leaders to include tariff relief in the latest economic stimulus bill.
- The New Democrat Coalition, which represents moderate Democrats, added its voice to Congressional Members calling for tariff relief. The Coalition released a lengthy set of actions, including suspending section 232 and 301 tariffs, to support workers and businesses wrestling with the economic fallout from COVID-19. The group further called for halting any additional tariffs during the national health emergency. The group called for tariff exemptions on goods "that may result in a negative effect on the supply chains and result in either exacerbated harm to the health care industry or economic wellbeing of this country if not granted."
- USTR announced last Friday its considering extending existing section 301 tariff waivers on $34 billion of imported products that are set to expire this June. In Federal Register notice, USTR said that it would consider possible extensions for up to 12 months of some items that received exclusions in June 2019 and is seeking public comments by April 30th. The products under current exemptions include, water pumps, icemakers, antennas, speed controllers, and printed circuit assemblies.
- As reported earlier, 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 products commonly seen in medical exam rooms (e.g. scrub shirts and pants and operating room table covers). The exemptions from the 7.5 percent tariffs will apply as of Sept 1, 2019 and will be effective for one 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 masks, which could exacerbate public concerns with the spreading virus.
- The American Chamber of Commerce in South China released a report urging both countries to renew focus on securing a phase two trade pact. In the report the group said the phase one deal between the U.S. and China "will go down as one of the biggest political and economic failures in a generation," absent securing a phase two deal. The reported said, "For the sake of international markets and trade growth, the negotiations must continue to make progress."

Seasonal Produce

- USTR postponed seasonal produce field hearings scheduled for April due to COVID-19 issues. USTR cited guidelines from CDC in suspending the two hearings in Florida on April 7 and in Georgia on April 9, respectively. The original March 26 deadline for interested parties to submit comments and information ahead of the hearings was also waived. The docket on Regulations.gov for submissions will remain open during the period of postponement. USTR plans to announce new submission deadlines and rescheduled hearing dates in the future.
- The Mexican government is weighing potential responses should the U.S. imposes restrictions on seasonal produce trade according to Mexican Undersecretary for North America Jesús Seade. He opined that Mexico would use USMCA's dispute settlement mechanism as well as unilateral measures "to start" if the U.S. imposes trade restrictions on seasonal produce. He emphasized that Mexico would "probably take action of a similar commercial magnitude on appropriate sectors, it could be agricultural sectors." Seade affirmed that "if anything is inconsistent with our commitments, we will have to respond."

Jesus Seade, Deputy Foreign Minister for North America, Mexico

- Ken Smith Ramos, a former Mexican trade official, said Mexican officials are "ready to hit key exports of U.S. agriculture products as well, the argument being that it's not just fruits and vegetables that have a season. There's a season in everything -- corn, soybeans." Additionally, the president of the National Agriculture Council of Mexico (CNA), Bosco de la Vega, said the that President Obrador has indicated Mexico will respond should the U.S. impose trade restrictions on Mexican seasonal produce.
- As reported earlier, in a Jan. 9, 2019 letter to the Florida delegation 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. According to USTR, "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."

U.S. - Japan Trade Agreement

- No significant updates on phase one U.S. Japan trade pact. Prior to the outbreak of COVID-19, commencement of negotiations on a phase 2 or a comprehensive trade deal were expected no earlier than May according to several sources.

U.S.-U.K Trade Agreement

- U.S-U.K. trade talks were expected to start this month, but President Trump's expansion of the recent travel ban on the EU to now include U.K. and Ireland, likely delays or precludes any face-to-face negotiations. Sources indicate that some groundwork may continue through virtual meetings and both sides are committed to moving forward.
- As reported earlier U.K. sources are prepared to launch negotiations. "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."
- In a related development, U.K. and EU trade talks sustained another unexpected setback, as both lead negotiators announced testing positive for COVID-19 and entering quarantine. David Frost, the U.K.'s chief negotiator, and Michel Branier, Frost's EU counterpart confirmed testing positive, though they had not met in person since the first round of talks in Brussels two weeks ago. While the scheduled talks in London were earlier postponed due to COVID-19 complications, this development heightens concerns that the U.K. and EU governments will miss the December 31, 2020 deadline to formalize the details of a post-Brexit agreement.

Michel Branier, EU Chief Brexit negotiator

U.S. - Kenya Trade Developments

- USTR formally notified Congress last week of its intent to undertake trade talks with Kenya, starting the 90-day clock prior to commencement of official negotiations. The USTR letter(s) said that the U.S. will begin negotiations "as soon as practicable," but not before 90 days from now, or June 15." The letter also affirmed that USTR will publish its formal negotiating objectives at least 30 days before talks begin, a requirement under Trade Promotion Authority (TPA), and USTR committed to working "closely and transparently" with Congress throughout the process.
- Last Friday, USTR issued a *draft* Federal Register notice soliciting comments to formulate U.S. negotiation objectives in anticipation of formal trade negotiation with Kenya. The notice, set to be officially published on Monday, indicates interested parties can submit written comments by April 15 and request opportunity to testify at a hearing scheduled for April 28. USTR indicated it seeks feedback on general and product-specific negotiating objectives; barriers to trade in goods and services; ways to address export priorities and import sensitivities; and transparency issues, among other trade areas. The notice is the second required step under TPA by USTR to launch trade talks. Under TPA, USTR is required to publish negotiating objectives at least 30 days before talks begin.
- President Trump announced his intent to nominate Michael Nemelka, a special adviser to Amb. Lighthizer, to serve as deputy USTR, replacing C.J. Mahoney, to cover investment, services, labor, environment, Africa, China and the Western Hemisphere. The position carries the rank of ambassador. Before joining USTR, Nemelka was a partner at Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C. where his practice focused on commercial litigation, and previously clerked on the U.S. Court of Appeals for the Fourth Circuit for Judge Paul V. Niemeyer. Nemelka last month said he would be leading trade talks with Kenya.

Michael Nemelka, USTR Special Advisor

- 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.

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.-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.

General Trade/WTO Reform

- The WTO announced the 12th ministerial conference (MC12) in Nur-Sultan, Kazakhstan is now delayed indefinitely and suspended official 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.
- The work disruptions are severely impacting progress on key items such as fisheries talks and WTO reform. To complicate matters, last week virtual meetings on WTO fisheries talks were suspended due to technical difficulties and government restrictions. According to WTO spokesperson, the Committee overseeing the talks is moving to a written exchange of comments and questions about separate proposals advanced by India and the least-developed countries group. India and the LDCs would subsequently respond to the questions and concerns raised by April 6th, the official said.
- The U.S. and China agreed last week to extend the deadline to May 29th, for China to comply with a recent WTO decision regarding violation of rules on applying TRQs for rice, corn, and wheat, according to reports in Geneva. The notification said, "This extension will allow the United States additional time to evaluate China's compliance measures." The U.S. prevailed last year and China said it would not appeal the ruling.
- No further development on an earlier report that President Trump was considering 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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