Trade Update

April 9, 2020

By Michael Anderson

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Highlights

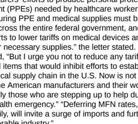
- **USMCA:** Both Canada and Mexico last week sent their respective notifications confirming completion of internal procedures required for the USMCA. The notifications were sent after April 1st setting the stage for July 1st entry into force date according to USMCA protocol, assuming the U.S. provides its notification in April. However, the Trump Administration is reportedly exploring options for a June 1st implementation date as business groups and several lawmakers urge for more time.
- **Tariff Relief:** President Trump continues to reject calls for suspension of section 232 tariffs on steel and aluminum imports and section 301 tariffs on over $300 billion of Chinese goods to mitigate the economic fallout from COVID-19. Meanwhile, White House advisor Larry Kudlow closed the door on possible 90-day suspension of other U.S. tariffs (i.e. MFN tariffs) citing complexity of such an action.
- **U.S. – EU:** The EU announced retaliatory tariffs, effective May 8th, on certain U.S. products in response to the Trump Administration's recent expansion of 232 tariffs on steel and aluminum imports to include certain derivative products.
- **China Trade:** China continues to undertake commitments in the phase one trade deal, including expanding agriculture purchases (i.e. corn). China's factories are slowly coming back online yet may face logistical constraints in sourcing important inputs and raw materials as supplying countries continue to grapple with the global pandemic.
- **WTO:** Director-General Roberto Azevêdo and Directors of the UN Food and Agriculture Organization (FAO) and the World Health Organization (WHO) issued a joint statement imploring governments to limit border restrictions on trade in food while combating the global pandemic.

USMCA

- Both Canada and Mexico issued their notifications certifying adjustments necessary to implement the USMCA, suggesting a July 1st entry into force, according to USMCA protocol and pending the U.S. submitting its notification in April.
- Last Thursday Canada provided notification it has completed internal procedures required for the USMCA, followed by Mexico's notification over the weekend. The Canadian spokesperson, Colin Bird, director of trade negotiations at Global Affairs Canada, said the Canadian trade team aggressively worked on USMCA implementation despite any technical "hiccups" spurred by COVID-19. Bird emphasized that Canada's government was still operating in "all-hands-on-deck" mode in working toward the deal's entry into force.
- Last Saturday Mexico notified the U.S. and Canada that it has completed internal procedures required for the USMCA to take effect. Mexican Undersecretary for North America Jesús Seade, in an April 4 tweet, said that while Mexico sent its notification on Saturday, the U.S. "remains to notify," according to an informal translation. Earlier Seade said a July 1 entry-into-force date is more favorable. In a tweet, he noted the ongoing negotiations on uniform regulations aimed at implementing complex automotive rules of origin and formation of panelists to manage enforcement of USMCA labor-enforcement provisions.
- According to the USMCA protocol of amendment, each country must provide written notification to the others once it has completed internal procedures required for entry into force. The agreement will enter into force on the "first day of the third month following the last notification.
- The White House apparently has not relinquished ambitions for a June 1st entry into force date. According to sources, Amb. Lighthizer is exploring options around the entry-into-force language included in the USMCA protocol. For the past several weeks, the Trump administration has been pushing for a June 1 entry-into-force date, which several key lawmakers and others have suggested was overly ambitious due the coronavirus pandemic and uncompleted work on auto and labor obligations detailed in the U.S. implementing legislation.
- According to a strict reading of the USMCA protocol, the next possible USMCA entry date is July 1st, as two of the three countries have submitted its notification certifying it has met all the necessary obligations and regulatory changes under the provisions of USMCA.
- Prior to Canada and Mexico's notifications, a bipartisan group of 19 Senators led by Senate Finance Committee Chairman Grassley and ranking Democrat Wyden are urging the White House to extend its targeted June 1 USMCA entry into force date. The group cited the demands on business to grapple with the COVID-19 pandemic limiting their resources and capacity to comply with the new USMCA rules. In the letter sent to Amb. Lighthizer the Senators wrote, "USMCA should not enter into force prematurely – particularly in light of the COVID-19 pandemic – and thereby deny American farmers, workers, and businesses its intended benefits. We ask you to delay the proposed June 1 entry into force and work with Congress and stakeholders to determine a more feasible timeline". The letter continued, "Even absent the pandemic, a June 1 deadline would be highly aggressive, and raises questions as to whether businesses have the information they need to adjust to the new rules and comply by that date." The other Senators signing the letter were John Cornyn, Debbie Stabenow, John Thune, Robert Menendez, Richard Burr, Tom Carper, Rob Portman, Ben Cardin, Tim Scott, Sherrod Brown, Todd Young, Michael Bennet, Bob Casey, Mark Warner, Sheldon Whitehouse, Maggie Hassan and Catherine Cortez Masto.
- Earlier USTR called for individuals to serve on the USMCA's new dispute settlement panels for cases involving alleged labor violations, as well as for business disputes brought under USMCA. According to the Federal Register notice, USTR "is seeking applications from U.S. citizens and nationals of other countries who are interested in serving as panelists for general state-to-state or labor dispute settlement panels established under the USMCA." The application deadline is April 20, 2020. Under USMCA the three countries to establish a general roster of up to 30 individuals to serve as panelists, with each country designating up to 10. Selected panelists will serve for at least three years, according to USTR's notice.

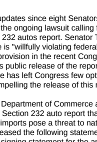
Section 232 Tariff Actions

- Last Friday National Economic Council Director Larry Kudlow closed the door on speculation the Administration may temporarily suspend tariffs. Kudlow said the administration had decided that temporarily suspending most-favored-nation (MFN) tariff payments would be "too complicated" and would send "the wrong signal in terms of the president's trade policy," according to a TV appearance. Kudlow elaborated that the Administration had "looked a little bit at some most-favored-nation customs duties, and we decided it was too complicated and it might send the wrong signals. So I would not expect to see any movement on tariffs right now." He continued, "Actually, we never looked in any serious way at rolling back tariffs."



President Donald Trump

- Earlier in the week President Trump denied reports the Administration was planning to defer tariff payments for 90 days. According to multiple news reports, President Trump was considering granting the Treasury Department the authority to waive MFN tariffs for up to 90 days. The tariff relief plan would be issued via executive order and not cover the Section 301 tariffs on imports from China, Section 232 tariffs on steel and aluminum, or Section 201 tariffs on solar panels. In response to the news reports, Trump said "I didn't do anything about tariff payments. I don't know who's talking about tariff payments. We haven't done that." "That's incorrect reporting," Trump said last Tuesday. "That might be, but I'm going to have to approve the plan. But one thing I will tell you, I approve everything and they haven't presented it to me so therefore it's false reporting."
- Several business groups and lawmakers have urged Trump to suspend section 301 and 232 tariffs, and last week a group of over 400 business CEOs specifically called for the MFN duty payment deferral. The CEOs, representing small, medium, and large companies from across the country urged Trump in a letter to delay the collection of duties for a period of 90 to 180 days to give companies access to cash that would normally be paid to the U.S. government, given virus-related shutdowns. "Delaying duties helps us preserve cash flow - critically important during a prolonged period of little to no revenue," the CEO's letter stated. "At the same time, delaying duties does not undermine the effect of tariffs on trade flows because the money is still due."
- The U.S. Chamber of Commerce also expressed its support for MFN duty payment deferral. The Chamber's executive vice president and head of international affairs, Myron Brilliant, said tariff relief would help businesses currently strapped for cash during the coronavirus outbreak. "There's never a bad time to embrace good policy, and tariff relief would provide some welcome breathing room for American businesses and consumers," Brilliant said. Last month the Chamber called for extending soon to expires tariff exclusions for Section 301 tariffs.
- Other stakeholders have argued the MFN tariff delay plan would be a mistake. Senate Sherrod Brown sent a letter to Amb. Lighthizer urging the Trump Administration not to temporarily defer most-favored nation (MFN) tariffs on products that are unrelated to medical supplies needed to fight the COVID-19 pandemic. Senator Brown wrote he favors duty reductions on medical equipment and supplies but lowering tariffs on other products that would undermine U.S. manufacturers' efforts to produce personal protective equipment (PPEs) needed by healthcare workers. "Producing and procuring PPE and medical supplies must be a top priority across the entire federal government, and I support your efforts to lower tariffs on medical devices and equipment and other necessary supplies." the letter stated. Brown continued, "But I urge you not to reduce any tariffs on unrelated items that would inhibit efforts to establish a PPE and medical supply chain in the U.S. Now is not the time to undermine American manufacturers and their workers, particularly those who are stepping up to help during the public health emergency." "Deferring MFN rates, even temporarily, will invite a surge of imports and further threaten this vulnerable industry."



Sherrod Brown, U.S. Senator

- Turkey initiated a challenge at the WTO on the Trump administration's recent expansion of steel and aluminum tariffs to include derivative products. Turkey has requested consultations with the U.S. on the tariffs, arguing that the duties are safeguard measures and filed the complaint with the WTO Safeguards Committee. Turkey stated, "Although the United States explained that these measures were being imposed on grounds of national security, Turkey considers them to be an extension of certain previously imposed safeguard measures on imports of steel and aluminum articles," according to the filing requesting consultations.
- The EU, and other WTO members have challenged the U.S. steel and aluminum tariffs, arguing the actions are safeguard measures. The U.S. maintains that a WTO dispute panel has no jurisdiction to even rule on the case because the U.S. has invoked GATT Article XXI, the national security exception. The U.S. has counter-challenged Turkey, the EU and others for imposing retaliatory tariffs, maintaining these measures violate WTO rules. The WTO Reports on both the challenge to U.S. 232 tariffs, and U.S. counter-challenge are expected in the second half of 2020, although the impact of the global pandemic on Report timing remains fluid.
- According to sources, the European Commission will impose retaliatory tariffs on certain U.S. lighters, plastic fittings for furniture and coachwork and playing cards in response to the Trump Administration's recent expansion of 232 tariffs on steel and aluminum imports include certain derivative products. Sources indicate the retaliatory duties would be effective May 8th, leaving about one month for the two trade partners to negotiate a solution to the escalating tariff tensions.

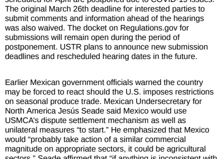
Auto Tariffs

- 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
- Previously, 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.

Section 301 Tariff Actions

Tech and IP Policies – China

- President Trump remains steadfast against removing tariffs, firmly rejecting the notion of tariff relief multiple times as a revitalization tool for sinking U.S. economic activity and trade flows. Speaking at a daily White House briefing on COVID-19, unsolicited, President said tariff relief was not an option, contending the tariffs on China, along with 232 tariffs on steel and aluminum have been good for the U.S. economy. He emphasized the tariffs on China provide critical negotiating leverage as the U.S. and China look towards phase two negotiations, though he commented China may be holding out until after November in hopes of a different U.S. President.
- Earlier a group of Senate Finance Committee Republicans, led by Senate Finance Chairman, Chuck Grassley, urged President Trump to expand tariff exemptions, place a moratorium on further tariff increases, and other trade measures to mitigate the economic downfall being caused by the COVID-19 pandemic. In the letter, the Republican senators proposed several options, including, Section 301 tariff relief on health, safety and medical devices and a total moratorium on new or increased tariffs.
- As China gradually reopens factories after the COVID-19 lockdown, acquiring essential inputs may prove another significant challenge as the virus spreads to countries that produce vital raw materials. This is particularly true with Africa, which provides many commodities (i.e. metals and minerals) critical for Chinese production in a wide range of industries. The interdependence of trade between China and Africa has increased in recent years, exceeding $200 billion in two-way trade.



USTR National Trade Estimate Report

- USTR released the 2020 National Trade Estimates Report of Foreign Trade Barriers, cataloging "significant foreign barriers to U.S. exports, U.S. foreign direct investment, and U.S. electronic commerce." The annual report is required under the Trade Act of 1974 and submitted to the President, Senate Finance Committee, and appropriate House Committees. Accompany this year's report, USTR issued a fact sheet touting key actions to lower trade barriers for U.S. agriculture products. USTR's fact sheet highlighted securing improved market access through the phase one Japan deal, China phase one agreement, removing restrictions on apple exports to South Africa, a new beef agreement with the EU, and lowering Vietnam's restrictions on U.S. orange exports, among other achievements.

Seasonal Produce

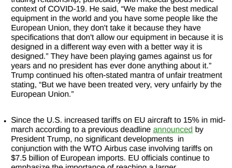
- As reported earlier, USTR's seasonal produce field hearings scheduled for April are postponed due to COVID-19 issues. The original March 26th deadline for interested parties to submit comments and information ahead of the hearings was also waived. The docket on Regulations.gov for submissions will remain open during the period of postponement. USTR plans to announce new submission deadlines and rescheduled hearing dates in the future.
- Earlier Mexican government officials warned the country may be forced to react should the U.S. imposes restrictions on seasonal produce trade. Mexican Undersecretary for North America Jesús Seade said Mexico would use USMCA's dispute settlement mechanism as well as unilateral measures "to start." 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."
- 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

- Former Assistant USTR for Japan, Korea and Asia-Pacific Economic Cooperation, Bruce Hirsch, opined that phase two talks with Japan are presently less about when, and more about how "intense" they might be amid a global health crisis. He highlighted the focus by both governments on combating COVID-19 and the political will on both sides ahead of the upcoming election, as pivotal factors that could impact the timing and content of phase two talks. Hirsch emphasized, "With each government focusing on coronavirus management, the odds of it getting off to a fast start are even more remote." Hirsch said the timing of the phase-two talks possibly commencing in 2020 remains uncertain, despite the earlier pronouncement by Amb. Lighthizer that the next round of negotiations could start as early as May. "I would distinguish between phase-two talks beginning and phase-two talks proceeding with any level of intensity," Hirsh said. "Neither side was prioritizing phase two before. It's likely to be even less of a priority now." Prior to the outbreak of COVID-19, commencement of negotiations on a phase two or a comprehensive trade deal were expected no earlier than May according to several sources.

COVID-19 and Food Prices

- Contracting demand due to the COVID-19 pandemic is causing sharp declines in food prices. World food prices fell 4.3% in March from a month earlier, reaching a five-month low, according to the UN's Food & Agriculture Organization. The Farm Bureau issued an analysis of COVDI-19's impact on U.S. commodity prices over the past few months. According the analysis, price declines included -12% for vegetable-oil and -19% for sugar.



U.S.-EU Trade Agreement

- Bilateral communications between the U.S. and EU have shifted to working to address the global health crisis. The U.S. Chamber of Commerce and the American Chamber of Commerce to the EU have called on both governments to resist temptation to impose new trade restrictions amid the coronavirus outbreak, arguing that the crisis is an opportunity to reinvigorate the trans-Atlantic relationship. However, Trump expressed deep frustration with the present trading relationship, particularly with medical goods in the context of COVID-19. He said, "We make the best medical equipment in the world and you have some people like the European Union, they don't take it because they have specifications that don't allow our equipment in because it is designed in a different way even with a better way it is designed." They have been playing games against us for years and no president has ever done anything about it." Trump continued his often-stated mantra of unfair treatment stating, "But we have been treated very, very unfairly by the European Union."
- Since the U.S. increased tariffs on EU aircraft to 15% in mid-march according to a previous deadline announced by President Trump, no significant developments in conjunction with the WTO Airbus case involving tariffs on $7.5 billion of European imports. EU officials continue to emphasize the importance of reaching a larger understanding to end the 15-year aircraft dispute. The arbitrator's ruling on a damage amount in the EU counter-challenge on U.S. subsidies for Boeing was anticipated for Spring 2020, but it remains unclear how the global health crisis will impact that timeline.

U.S. - U.K. Trade Developments

- Progress on U.S-U.K. trade talks are delayed or essentially in a holding pattern due to several developments in both countries stemming from the coronavirus pandemic. Negotiators and government officials are adjusting to travel bans, national shelter-in-place policies, and diversion of government policies resources to combat the spreading COVID-19. Sources indicate that some groundwork may continue through virtual meetings.
- As previously reported, the U.K. and EU trade talks face another hurdle 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.

U.S. - Kenya Trade Developments

- Last month USTR issued the Federal Register notice soliciting comments to formulate U.S. negotiation objectives for a U.S. – Kenya trade agreement. 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.
- USTR has formally notified Congress 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.
- 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.

U.S.-India Trade Developments

- Progress on India trade talks have stalled as India instituted a 21-day national lock down to stem repercussions of the spreading coronavirus. Separately, the U.S. – India Business Council recently expressed optimistic that prior trade discussions provided important groundwork for future trade talks. U.S.-India Business Council Vice President Amy Hariani said last week that Trump's visit to India in February revitalized the potential for bilateral trade talks. She noted a promising "level of energy" on both sides suggesting a limited trade deal remains possible this year, which might provide the impetus for a larger deal in the future. "I think both governments are eager to get this done in the next few months; it just depends on how COVID-19 will effect everything," she continued. Hariani acknowledged both countries are entirely focused on managing COVID-19 and should boost coordination on trade issues in the context of the global pandemic
- President Trump and Prime Minister Modi announced in February they had "agreed to initiate negotiations for a bigger deal," as earlier ambitions for a quick limited deal evaporated. 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.

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."

General Trade/WTO Reform

- WTO Director-General Roberto Azevêdo, along with his counterparts UN Food and Agriculture Organization (FAO) and the World Health Organization (WHO) issued a joint statement urging governments to minimize the impact of COVID-19 related border restrictions on trade in food. "Now is the time to show solidarity, act responsibly and adhere to our common goal of enhancing food security, food safety and nutrition and improving the general welfare of people around the world." according to the statement. The leaders emphasized that "We must also ensure that information on food-related trade measures, levels of food production, consumption and stocks, as well as on food prices, is available to all in real time."
- Rescheduling of the 12th Ministerial Conference (MC12) remains in limbo. WTO officials recently discussed options of June 2021 or even December 2021 as the most likely candidates depending on the availability of a venue. Azevêdo and New Zealand Ambassador David Walker, the General Council chair, conducted conference-call consultations with nearly 30 delegations, including those that coordinate groups of members. Specifically, Azevêdo and Walker sought input on three potential options for a rescheduled ministerial: The end of 2020, mid-2021 or the end of 2021.
- Recently G20 leaders, meeting virtually committed to enhance global cooperation to fight the coronavirus pandemic, and to ensure any "emergency" trade measures are limited and temporary. In a joint statement the leaders emphasized, "Emergency measures aimed at protecting health will be targeted, proportionate, transparent, and temporary." The statement continued, "We commit to continue working together to facilitate international trade and coordinate responses in ways that avoid unnecessary interference with international traffic and trade." Additionally, said they would direct their trade ministers to assess "the impact of the pandemic on trade."
- Amid the COVID-19 outbreak, WTO staff are working remotely, and several priorities including fisheries and agriculture negotiations are moved forward, albeit incrementally, having reverted to information exchange via hard copy due to technical difficulties and government restrictions regarding COVID-19. As noted earlier, Ambassador John Deep Ford, WTO Chair of the Agriculture Committee urged member countries to move forward despite challenges posed by the global health crisis. Amb. Ford said, "[W]ith determination and flexibility, members will be able to make progress and take a step forward in achieving our collective goal towards establishing a fair and market oriented agricultural trading system, enabling it to effectively address the challenges facing it."
- With the Appellate Body (AB) reform at a virtual standstill, the EU along with 15 other WTO member countries announced an interim alternative arrangement to address the defunct AB system. Known as The Multiparty Interim Appeal Arbitration Arrangement, the 16-country group emphasized they remain committed to a "functioning, two-step dispute settlement system at the WTO." Participating countries are Australia, Brazil, Canada, China, Chile, Colombia, Costa Rica, the EU, Guatemala, Hong Kong, Mexico, New Zealand, Norway, Singapore, Switzerland and Uruguay. Under the alternative approach, the 16 countries agreed to solve any appeals or disputes among themselves. "This is a stop-gap measure to reflect the temporary paralysis of the WTO's appeal function for trade disputes," said Phil Hogan, EU Trade Commissioner. According to sources, the Multiparty Interim Appeal Arbitration Arrangement closely tracks the existing WTO appeal rules and can be used between any members willing to join.

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