Trade Update

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By Michael Anderson

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Highlights

- **USMCA:** The U.S. has not submitted its letter of notification to date as the Trump Administration aims for a July 1st entry into force date for USMCA. Several lawmakers and industry stakeholders have pushed for a delay to accommodate complexities of implementing the agreement's auto provisions amidst COVID-19 priorities. An advisory panel of the Customs and Border Patrol Agency recently recommended delaying USMCA implementation until January 1, 2021.

- **Tariff Relief and COVID-19**: President Trump issued an Executive Order Sunday granting narrow tariff relief to certain companies and products related to the COVID-19 economic downturn. Qualifying companies that meet a "hardship test" would be granted a 90-day delay in tariff payments. The tariff payment delay does not cover steel and aluminum and China 301 tariffs.

- **U.S. - Brazil:** The White House announced that the U.S. and Brazil intend to accelerate trade talks, aiming to conclude a limited trade deal by the end of 2020. The trade talks would occur under the Brazil-U.S. Commission on Economic and Trade Relations (ATEC) with a view to concluding a limited agreement on trade rules and transparency, including trade facilitation and good regulatory practices.

- **China Trade:** USTR Amb. Gregg Doud said U.S. – China trade relations have significantly improved over the past year, yet two months into the phases one trade deal China's agriculture purchases are not on pace to meet agreed levels of $40-50 billion.

USMCA

- Both Canada and Mexico have issued their notifications certifying adjustments necessary to implement the USMCA, while the White House is seeking a July 1st entry into force date though the U.S. has not formally submitted its notification to date. 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.

- An advisory panel for U.S. Customs and Border Protection is recommending the Trump administration delay the USMCA start date until January 1, 2021 to allow the auto and other industries sufficient time to adhere to the complex provision in the agreement. The Commercial Customs Advisory Committee argued the coronavirus pandemic and the economic downturn has complicated the ability of the auto sector and others to meet the new requirements before early next year. The auto sector and its stakeholders in all three countries are urging the White House to provide more time to comply with the rules of origin. While President Trump has acknowledged that COVID-19 has complicated the situation for the auto industry, USTR has not signaled a change in the July 1st goal.

- Rep. Ron Kind said Amb. Lighthizer is wrestling with options to allow flexibility in the implementation of USCMA auto rules of origin, as requested by many in the industry and by many lawmakers. Rep. Kind noted that the administration continues to push for a July 1st enter into force for USMCA. Rep. Kind said that in a conversation with Amb. Lighthizer, USTR aims for USMCA to enter into force "sooner rather than later." "I think, and I think [Lighthizer] agrees, that if they need some more time for clearer guidance and regs to be put in place -- fine. But let's not hold up the whole agreement until we have everything perfectly set in it because there was a lot of good that was accomplished in it and until it gets implemented, we don't see any of it.," Kind said last week. He continued, "So, I'd like to see that done sooner rather than later and continue to work with the auto industry with the concerns they are raising right now. And I think that can be dealt with the flexibility from all three nations."

Ron Kind, Congressman

- Earlier a bipartisan group of 31 lawmakers urged the Trump Administration to delay implementation of the USMCA's automotive rules of origin, as automakers are grappling with unprecedented supply chain disruptions owing to the global COVID-19 pandemic. In a letter sent to Amb. Lighthizer, the lawmakers, led by Representatives Haley Stevens, Jackie Walorski, Terri Sewell and Jim Baird, called for a longer USMCA transition period for the auto industry which is currently coping with regional shutdowns or retooling production lines to produce medical equipment. The letter noted that auto companies still need to make costly and complex changes required to comply with the USMCA. "This targeted extension is necessary to allow the auto industry an appropriate adjustment period and account for delays caused by the COVID-19 pandemic," the letter stated. "Taking the time to do this process right will allow manufacturers and their workforces across the country to maximize the intended benefits of the agreement and will minimize disruption during a particularly challenging time for the industry."

COVID-19 and Tariff Relief

- President Trump issued an Executive Order announcing narrow tariff relief on Sunday for certain imports of products due to economic fallout and hardship related to COVID-19. The action does not cover section 232 steel and aluminum tariffs, China section 301 tariffs or safeguard tariffs on washing machines and solar panels. On Sunday, the Treasury Department and Customs and Border Patrol (CBP) jointly announced a 90-day delay in tariff payments on certain imports arriving in March and April. The announcement issued by CBP notes that U.S. importers seeking a tariff-payment delay must "demonstrate a significant financial hardship" and have operations that are "fully or partially suspended during March or April 2020 due to orders from a competent governmental authority limiting commerce, travel, or group meetings." To qualify companies must show a 60 percent decline in gross receipts to qualify and the losses must result from partial or full closure due to government order, according to the notice.

- In a statement Treasury Secretary Mnuchin said, "We are providing much-needed relief to affected businesses." "This will protect American jobs and help these businesses get through this time," he continued. Chad Wolf, acting Homeland Security Secretary, said the decision "gives the Administration the ability to help the trade community and U.S. businesses who keep critical supply chains for U.S. manufacturers moving during this unprecedented time."

- Responses to the limited tariff relief varied. Rep. Kevin Brady, the ranking member of the House Ways and Means Committee, said the new tariff measure "will free up much-needed cash, allowing these businesses to pay these duties when they, as well as the economy, are on sounder footing." The Retail Industry Leaders Association (RLA), a consistent proponent of broad tariff relief, including suspending section 232 and China 301 tariffs said applauded the decision, yet noted that a decision covering all duties and lasting for 180 days would be more impactful. "Millions of jobs are on the line, and we urge the Administration to consider further duty relief to help retailers put workers back on the payroll when this crisis abates," Brian Dodge, president of RLA, said.

Kevin Brady, Congressman

- On Saturday, Representatives, Ron Kind, Suzan DelBene, Lizzie Fletcher, and Gregory Meeks, leading members of the New Democrat Coalition sent a letter to chief White House economic adviser Larry Kudlow urging the administration to defer import duty payments. They said Kudlow's earlier explanation that the administration won't defer payments because the issue is "too complicated" was "completely unacceptable," given the current circumstances.

Section 232 Tariff Actions

- A bipartisan group of lawmakers called on President Trump last week to halt the "blatant circumvention" of Section 232 tariffs on electrical steel by including derivative products in the scope of the tariffs. "While relief from direct imports of [grain-oriented electrical steel] was imposed by your Administration under the Section 232 steel tariff program, the bad actors have found a way to circumvent those tariffs and quotas. Because the Section 232 tariffs do not apply to derivative electrical steel articles including laminations and cores (i.e., simply cut and shaped electrical steel) imports of those products are now surging into the United States," the lawmakers wrote in the letter to President Trump. "Mexico and Canada are being used as a staging ground for this blatant circumvention of the Section 232 program," the letter said. The letter was coordinated by Reps. Mike Kelly and Marcy Kaptur and signed by several lawmakers from Ohio and Pennsylvania and several members of the Congressional Steel Caucus.

Mike Kelly, U.S. Congressman

Auto Tariffs

- No significant updates since eight Senators filed 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.

China Trade

Phase One Agreement

- According to Amb. Gregg Doud, USTR's chief agriculture negotiator, China purchases of U.S. agricultural products presently are not on pace to fulfil the levels agreed to in the phase one trade deal that went into effect on February 14, 2020. Amb. Doud emphasized that the U.S.-China trade relationship has improved during the last year while acknowledging continual crop-specific issues that both countries must address despite the challenges posed by the coronavirus pandemic. "We're doing better than we were a year ago," he said. "We've got a lot of new opportunities that we've opened up in phase one. We've been successful so far in implementing this. But are we on pace for where we need to be to implement the dollar amount on Phase 1? No, we are not yet." Doud noted the U.S. and China remain in "constant contact" the past two months since the deal went to effect. "Here we are now at kind of the two-month point." "And so far, we're doing very, very well. We're in constant contact with China almost every single day ... back and forth... making sure we are getting things fixed. And, you know, we're not perfect. There are still a few things that we're trying to sort out. But I will tell you, every single day, despite what's going on in China …we see the difficulty they've been going through for most of this year … despite all of that, they're working very hard. Our folks at USDA, [Food and Drug Administration], etc. are working very hard to get all of this implemented," Doud said.

Gregg Doud, USTR Chief Agriculture Negotiator

- Separately, White House National Economic Council Director Larry Kudlow said last Friday that while China is purchasing U.S. agricultural goods, the U.S. would like it to accelerate purchase activity. "I think there is good evidence that China has been purchasing our commodities as per the phase-one trade deal," he said. "On the other hand, it is probably coming in slower, but it is coming in. They are doing it. I mean, of course, they have had terrific economic downturn so it's probably a little behind schedule, but they are buying but they are not buying enough. We would like them to speed it up, but certainly anybody could understand they have been through a pretty tough period here too."

- President Trump reiterated his view that China will fulfill obligations in the phase one deal including buying $250 billion worth of U.S. products. Referencing his close friendship with Chinese President Xi, Trump said he expects China will comply with the deal, although the COVID-19 pandemic has complicated China's efforts to implement the agreement. Trump warned that "if they don't produce, we're not going to be happy." He emphasized there are "plenty" of steps he can take should China fail to live up to the agreement. Trump also criticized the WTO in the context of China's status as a developing country. The Trump Administration has content China and other more advanced developing countries should no longer receive developing country status in order to gain special and differential treatment.

- According to latest customs reports, China's agriculture imports from the U.S. were $5.05 billion in the first-quarter. China imported in $5.05 billion in agriculture goods from the U.S. in the first quarter of 2020, up 110% from last year, according to customs data. China purchased in 7.81 million tons of soybeans from the U.S. in the first quarter of 2020, up 210% from last year, according to data from the General Administration of Customs. Shipments of U.S. pork to China were also higher during the first quarter at 168,000 tons, up 640% from the previous year. Imports of U.S. cotton were at 124,000 tons, up 43.5% from last year.

- China has committed to buy additional purchases of U.S. agriculture products totaling $32 billion over two years, under the Phase 1 trade deal. That would include $12.5 billion above the corresponding 2017 baseline of $24 billion in 2020 and $19.5 billion above the baseline in 2021.

Section 301 Tariffs

- A decision on China's challenge to Section 301 tariffs is expected in June. The WTO dispute settlement panel examining China's challenge U.S. Section 301 tariffs on some $250 billion worth of Chinese products could issues their decision by end of June according to a notification to the chair of the Dispute Settlement Body.

- The Trump administration granted a one-year extension to expiring tariff exclusions to some Chinese products covering $37 billion worth of Chinese imports under Section 301. The one-year extension will end on April 18, 2021, according to USTR a Federal Register notice. The exclusions cover products such as roller, etching or embossing paper, foil or fabric, forklift parts, steel and forging tools, and electrical measuring devices, among other products.

- As reported earlier, USTR on March 20 also announced a public comment process for potential modifications for products facing Section 301 tariffs and needed for the medical response to
the COVID-19 pandemic. In a follow-up notice, USTR stressed that public comments would be open until June 25.

Seasonal Produce

- New dates for USTR's seasonal produce field hearings, postponed due to COVID-19 issues, are still pending. Prior to the hearing suspension Mexican government officials warned the country may be forced to react should the U.S. impose 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 January 9, 2019 letter to the Florida congressional 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 potential U.S.-Japan phase two trade talks, which as previously indicated would not commence prior to May 1, 2020, at the earliest. 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 current 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.

U.S. - E.U. Trade Agreement

- The U.S. and EU are continuing discussions on trade issues despite the priority to focus on COVID-19 and its economic implications. Susan Danger, CEO of the American Chamber of Commerce to the EU said, the U.S. and EU remain in "constant contact" on a limited trade deal. She noted that while "priorities have changed" -- with a shift to combatting the global pandemic -- the U.S. and EU continue efforts on a trade deal that will "ideally" agreed to prior to the U.S. presidential election. "I think that is very positive," she said. "In my conversations that I've had, there is very much a mood that this is the opportunity to park some of our differences and find some renewed positive momentum." Danger said EU Trade Commissioner Phil Hogan and Amb. Lighthizer, as well as their respective trade teams, have been in regular contact.

- Earlier a European Commission spokesperson confirmed that contact between the U.S. and EU was "continuing with a view to exploring the contours of a possible new understanding on trade issues." "These ongoing engagements involve both technical and political levels," the spokesperson said, noting that Commission Hogan and Amb. Lighthizer have held numerous discussions.

- Since the U.S. increased tariffs on EU aircrafts 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 June 2020, but it remains unclear how the global health crisis will impact that timeline.

U.S. - U.K. Trade Agreement

- USTR indicated U.S-U.K. trade talks could start in the "near future." "Both the United States and the United Kingdom are committed to starting trade negotiations as soon as possible," a USTR official said. "At the present time, both our governments are rightfully focused on stemming the spread of the coronavirus, protecting the health and safety of our citizens, and finding innovative solutions to combat this outbreak. Therefore, we will begin active trade negotiations at an appropriate time in the near future." According to USTR, both countries "remain in regular contact on when to proceed with the negotiations."

U.S. - Kenya Trade Agreement

- While USTR canceled the in-person hearing on U.S. – Kenya trade talks scheduled for April 28, the agency extended the deadline for comments on negotiating objectives to 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 and other areas.

- USTR 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.-Brazil Trade Developments

- The White House announced that the U.S. and Brazil are moving forward to accelerate bilateral trade dialogue under the Brazil-U.S. Commission on Economic and Trade Relations with the goal of concluding an agreement on trade rules and transparency, including trade facilitation and good regulatory practices be the end of this year. During a recent high-level discussion between U.S. and Brazilian trade officials, both sides also committed to engage in domestic consultations to gather stakeholder input on how best to enhance and expand the existing trade and economic bilateral relationship.

- The accelerated talks stem from recent communications between Amb. Lighthizer spoke by phone with Brazilian Minister of Foreign Affairs Ernesto Araújo and other senior officials. The two ministers discussed potential steps to deepen the economic partnership between the two countries under the current Agreement on Trade and Economic Cooperation (ATEC). The call between Amb. Lighthizer and Minister Araújo follows on the recent meeting between Presidents Trump and Bolsonaro in Florida where the leaders agreed to aggressively pursue trade talks.

- The Americas Society and Council of the Americas (ASCOA) is optimistic that Brazil and the U.S. have an opportunity to tackle global trade barriers and produce some sector-specific agreements in the near future. Regarding the recent reports of Amb. Lighthizer's communications with Brazil's Foreign Affairs Minister Araújo, Eric Farnsworth, vice president of ASCOA said, "If we look at this incrementally with one step at a time, you can begin to make some real tangible progress. It doesn't necessarily mean everything gets done before November, but you can put some down payments on trade and economic liberalization. No question." Farnsworth continued, "I think they're trying to show that there is a conceptual desire to move forward without committing to anything. But it's a positive shift in that they are going to keep looking at this and are making a real effort to try to move this forward."

U.S. - India Trade Developments

- Substantive movement on India trade talks are on hold 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.

Suspension Agreements

Sugar Suspension Agreement

- The USITC, as expected, recently voted to maintain the existing suspended antidumping and countervailing duty orders on sugar imports in effect against Mexico. The five-year(sunset) review is required by the Uruguay Round Agreements Act and does not impact the current sugar suspension agreement. The next Sunset investigation occurs in 2025.

- 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

- In the daily coronavirus press briefing, President Trump lashed out at the World Health Organization (WHO) and the WTO, labeling the international organizations as the "the Bobbsey twins." President Trump asserted that WTO reform is on the table only because "they know I will leave if we don't get treated fairly." He alleged that the U.S. rarely won dispute settlement cases at the WTO until he threatened to pull the United States out. "Now we are winning a lot of them," Trump said, adding that "we will pull out if we have to."

- For over a decade, the U.S. has complained about the failures and overreach of the WTO's appellate body (AB) system, blocking the appointment of new panel members to the AB leading to dissolution of the body on December 10, 2019. The Trump Administration has consistently rejected several reform proposals by EU, China and other WTO members as insufficient and only a superficial response to a deeper systematic problem. Earlier in the year, USTR released a detailed 174-page report inventorying the complaints and failures of the WTO's Appellate Body, but offered no solutions or reform proposals. As stated in the report, "The purpose of this report is not to propose solutions to the problems facing the WTO dispute settlement system. Rather, its purpose is to provide a thorough examination of the Appellate Body's failure to comply with the WTO Agreements." USTR's statement continued, "The Report demonstrates the Appellate Body's persistent failure to follow basic WTO rules and highlights several examples of how the Appellate Body has altered WTO Members' rights and obligations through erroneous interpretations of WTO agreements."

- The International Monetary Fund (IMF) forecast global trade volumes of both goods and services will plummet 11% this year, reflecting the economic fallout from the COVID-19 pandemic. That compares with a January 20th estimate for 2.9% expansion. The IMF projects global trade could rebound of 8.4% in 2021. The IMF's forecast intersects with the lower end of the recently announced WTO estimates of a global trade plummeting by 13- 32 percent or more compared to last year depending on the duration and damage of the novel coronavirus to the global economy.

- 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 Amb. 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.

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