Trade Update

July 28, 2020

By Michael Anderson

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Highlights

- **U.S. - China Trade:** The U.S. and China clashed over forced closure of each other's consulates in Houston, TX and Cheng-du diverting attention from the trade war. Separately, China announced significant purchases of U.S. corn and soybeans for marketing year 2020/2021.
- **USMCA:** The U.S. may file USMCA enforcement actions this Fall according to Michael Nemelka, the nominee for Deputy USTR covering the Western Hemisphere.
- **Seasonal Produce:** Mexico warned it would respond firmly with dispute settlement claims should the U.S. pursue import restrictions on seasonal produce imports from Mexico. USTR's virtual hearings on seasonal produce are scheduled for August 13th and 20th.
- **U.S. - Kenya:** U.S. – Kenya trade talks are suspended as Kenyan team members reported possible exposure to the coronavirus in Nairobi during virtual round one talks..
- **WTO:** The WTO prepares for contingency of an acting Director-General as the eight candidates receive scrutiny in the phase two selection process. The Senate Finance Committee holds a hearing on WTO reform for July 29th with former WTO Appellate Body members and USTR negotiators.

China Trade

- Bilateral tensions escalated between the U.S. and China last week as the U.S. ordered closure of the Chinese consulate in Houston, and China fired back with demands for closure of U.S. consulate in Chengdu, China.
- Earlier this month President Trump announced signing an executive order ending U.S. preferential treatment of Hong Kong, effectively treating Hong Kong the same as mainland China, including on trade, tariffs, and export controls. The order suspended the "special treatment" under the Hong Kong Policy. Federal agencies have 15 days to "commence all appropriate actions to further the purposes of this order, consistent with applicable law." While the order did not mention section 301 tariffs, USTR has responsibility for implementing changes to U.S. tariff policy. When implemented, Hong Kong will be subject to the same tariffs presently imposed on $370 billion worth of imports from China.
- China condemned the U.S. action and vowed to sanction U.S. institutions and individuals. "The Chinese government resolutely opposes it and condemns it," the statement said. "We are officially telling the U.S. and the handful of opposition politicians in Hong Kong who follow America's lead to not underestimate our determination to protect Hong Kong's prosperity and stability, don't underestimate our belief to protect the 'one country, two systems policy' and don't underestimate our capabilities and strategies in protecting our country's sovereignty, safety, growth and rights," the statement said.
- Separately, the U.S. is contesting China's claim of compliance with a WTO dispute settlement panel ruling that found China was violating its agricultural domestic support commitments. The U.S. is requesting the WTO authorize retaliatory tariffs against China for China's failure to adhere to the ruling, seeking tariffs on $1.3 billion worth of Chinese products. U.S. officials said, "In the view of the United States, China failed to bring its measures into compliance with its WTO obligations within that period," the communication states. "The parties have not reached agreement on compensation. Therefore, the United States is entitled to authorization by the DSB to take countermeasures." The compliance deadline expired June 30 to implement the February 2019 dispute settlement panel decision that ruled China was providing excess of its domestic support commitments. China notified the WTO last month that it had complied.

Phase One Agreement

- During his Senate confirmation hearing, Deputy USTR nominee Michael Nemelka, expressed optimism that China will ratchet up its agriculture purchases later this year under the phase one deal. Mr. Nemelka noted that farmers and exporters should see a bounce in exports before the end of the year, stating, "In the fall … with these seasonal products and soybeans in particular that are currently in the ground, we expect to see those purchases rapidly increase." As noted earlier, June U.S. trade statistics suggest that China's agriculture purchase are 50% of the pace needed to meet 2020 purchase commitments under the deal.
- Last week USDA reported China purchased 765,000 tons of corn for shipment in the current marketing year which ends Aug. 31st and 600,000 tons for shipment in the following year. The total 1.365 million tons of corn purchase commitments by China is largest single-day purchase in over 20 years, behind only a 1.45-million-ton purchase in December 1994, according to USDA data.

USMCA

- The U.S. is contemplating enforcement actions under USMCA this fall, according to Michael Nemelka, the nominee for Deputy USTR for investment, services, labor, environment, Africa, China and the Western Hemisphere to replace CJ Mahoney. During his Senate confirmation hearing, Mr. Nemelka stated, "We are working with stakeholders and others to identify the best cases," he said. It was important "not only to do it quickly but also to pick the right cases and work and consult with you and this committee to identify the best cases and to win them." "Of course, before we bring the case we need to consult with Canada and Mexico and try to resolve the case before actually litigating. But if those consultations fail, I agree with you that we need to be fully prepared to use the tools that you have given us."

Michael Nemelka, Deputy USTR nominee

- U.S. officials prior to USMCA implementation signaled possibly invoking USMCA enforcement mechanisms regarding biotech approvals and glyphosate in Mexico. Senator Grassley last month noted multiple lingering agricultural concerns between the U.S. and Mexico—most recently blocking glyphosate and suspending agricultural biotechnology permits—stating they are "definitely" worth state-to-state dispute actions under the USMCA. Sen. Schumer claimed Canada was attempting to circumvent its USMCA obligations on dairy, urging USTR to ensure that Canada upholds its commitments in that area.
- Mr. Nemelka also commented on labor enforcement under USMCA. Nemelka said, "I think the priority is labor, is to ensure that the workers in Mexico know about the labor rights, know about the reforms and ensure that protectionist unions that are currently there, [that] there is a fair process to challenge those." "So capacity building under labor is a priority."

U.S-U.K. Trade Agreement

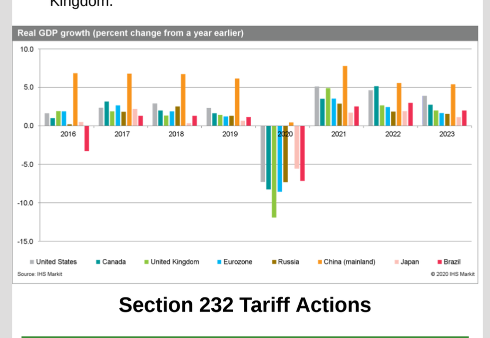
- A third trade negotiation round between the U.S. and the U.K. will begin on July 27, according to reports. Secretary of State Pompeo confirmed the timeline and mutual desire by both sides to move expeditiously. Speaking during a visit to London Pompeo said the U.S. is seeking to secure a deal "as quickly as possible." "We've completed two rounds, more work to do; a third round scheduled for later this month." He noted. "It is a primary focus of the United States to see if we can make progress on this and bring this to a closure just as quickly as possible." In recent remarks, U.K. Trade Secretary Liz Truss said there is no specific timeline tamping down expectations of securing a deal by end of 2020. Amb. Lighthizer expressed similar concerns targeting a completed deal in the 6 months, stating in Congressional testimony, "That would be a very, very, very quick time."

Mike Pompeo, Secretary of State

- Negotiations on agriculture provisions will likely be complex and challenging. U.K. officials, including Truss, have publicly sounded a tough stance on food and agriculture safety protocols. "Any deal the Government strikes must be fair, reciprocal and ultimately in the best interests of the British people and the economy. Furthermore, the Government remains clear on protecting the NHS and not compromising on the UK's high environmental protection, animal welfare and food safety standards," Truss said.

COVID-19 Developments

- Economic growth will continue to decline through 2020 until rebounding in 2021 in major global economies according to expectations from HIS Markit. With the exception of China, real GDP declines from 6% to over 12% are expected during 2020, with sharpest downturn expected in the United Kingdom.



Section 232 Tariff Actions

Aluminum Tariffs

- The specter of the U.S. re-imposing 232 tariffs on Canadian aluminum remains uncertain after forceful opposition from Canadian Prime Minister Justin Trudeau and other Canadian officials. President Trump has threatened to reinstate tariffs on aluminum imports from Canada to address surging imports. Amb. Lighthizer last month said that USTR was looking at ways to address the surges under the deal struck last year to lift the tariffs.

Ongoing 232 Investigations

- Three separate investigations are progressing at the Department of Commerce under "threat to national security" provision contained in section 232 of the Trade Expansion Act of 1962. The investigations involve transformer parts, vanadium, and mobile cranes. The initial comment period on Vanadium closed last week, with rebuttal comments due on August 17th.
- The Department of Commerce has 270 days to provide a report to President Trump determining whether the imports in question threaten to impair U.S. national security, along with a recommendation for action. President Trump will then have 90 days to determine whether or not to impose restrictions so that imports no longer threaten national security.
- Since Trump entered office, the Commerce Department has initiated eight section 232 investigations, the latest three on imports of vanadium, transformers and parts, and mobile cranes. The first section 232 investigations resulted in President Trump imposing tariffs of 25% and 10% on imports of steel and aluminum, respectively, based on Commerce's Section 232 investigations that found such imports were a threat to national security.

U.S. - Japan Trade Agreement

- As reported earlier, USTR released a statement announcing that the U.S. and Japan have expanded an "organic equivalence arrangement" struck in 2014 to include livestock. The deal, which went into effect on July 16, "reduces costs and streamlines the process for anyone involved in the organic livestock supply chain by requiring only one organic certification," USTR said. Under the 2014 deal, plant-based products were covered; now, the expansion covers organic livestock products. Chief Agricultural Negotiator Gregg Doud said, "Japan is a key international partner in the organic market sector." "This expanded arrangement protects and increases access for American organic farmers, ranchers, and businesses to the third largest U.S. organic export market," Doud added.
- Regarding timing of phase two bilateral negotiations, Amb. Lighthizer acknowledged that the coronavirus has delayed phase two negotiations with Japan. During recent Congressional testimony, Amb. Lighthizer said he would expect the phase two talks to start "in the next couple of months." 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 sources.

U.S.-EU Trade Developments

- The EU announced changes to launch aid policies for Airbus and asserted the EU is now in full compliance with WTO rulings in the long-running dispute with the U.S. over Airbus subsidies. In a statement the EU announced the changed policies "reflect market conditions," taking a step toward resolving the transatlantic civil aircraft disputes. "Today, the governments of France and Spain agreed with Airbus SE to modify the terms of the Repayable Launch Investment granted by them for development of the A350 aircraft to reflect market conditions," the European Commission said in a statement. "This means that the European Union and the Member States concerned -- France, Spain and Germany, also known as the 'Airbus Member States' -- are in full compliance with the rulings of the World Trade Organization (WTO) in the Airbus case."
- In conjunction with the EU announcement, Phil Hogan, EU Trade Commissioner urged the U.S. to remove the current $7.5 billion in tariffs on EU goods allowed under the WTO ruling against Airbus. "Unjustified tariffs on European products are not acceptable and, arising from the compliance in the Airbus case, we insist that the United States lifts these unjustified tariffs immediately," Hogan said. He emphasized the EU proffered multiple proposals to settle the decade-long, dueling aircraft disputes and the EU remains open to finding a mutually acceptable and balanced outcome.
- With the EU announcement, both the U.S. and EU claim compliance with WTO rulings on Boeing subsidies and Airbus launch aid cases, respectively, yet the U.S. is unlikely to remove the $7.5 billion of tariffs on EU goods in the short term. Amb. Lighthizer said recently that ending the dispute would not only require the EU's full compliance with the WTO ruling, "but also paying back some element of the subsidy and that's tricky because people don't have the same number."
- As reported earlier, USTR announced the list of French goods worth $1.3 billion for potential imposition of 25% tariffs should France impose digital services taxes on U.S. companies next year. The potential tariffs result from a Section 301 investigation in which USTR concluded and announced it had found France's tax would discriminate against U.S. companies. Section 301 tariffs were delayed earlier in the year when President Trump and French President Macron struck a deal that would delay the imposition of U.S. tariffs while France deferred the collection of the tax to let negotiations at the OECD on a new international tax structure play out in hopes of a resolution. Those efforts have stalled, and France originally stated digital services taxes would start in January 2021.
- The list of goods from France facing 25% tariffs include soap, handbags and cosmetic products (fashion tariffs). Other sensitive products, like French wine and cheese, were not included. The tariffs could be delayed up to 180 days (i.e. Jan. 6, 2021) – as long as France continues to defer imposition of the tax.

U.S. - Kenya Trade Developments

- The U.S. – Kenya trade negotiations are hold as some members of the Kenya negotiating team were exposed to the novel coronavirus in Nairobi during virtual negotiations, according to a Politico report. The first round of trade talks concluded last week, and a second round was expected to start in August.
- During the first round, Kenya pushed to "create a framework through which any EAC Partner State that did not participate in these negotiations at the outset is allowed to join the negotiations," according to a statement. The countries would be subject to terms already agreed to "or accede to the concluded FTA," the objectives state. No official response from USTR on the proposal.
- According to the WTO, Kenya's average applied MFN tariff rate for all partners was 13.5% in 2018. Several top U.S. exports, such as machinery and aircraft, however, face low or zero tariffs. Kenya's agriculture sector presents the highest barriers to U.S. exports, with an average tariff of 20.3%, and relatively high tariffs on dairy (51.7%), animal products(23.1%), and cereals (22.2%).
- Prior to the launch of talks, the U.S. and Kenya agreed on a "Strategic Cooperation Framework to provide technical assistance and trade capacity building in Kenya with the aim of maximizing Kenya's utilization of the African Growth and Opportunity Act trade benefits for the remaining years of the preference program, which is scheduled to expire in 2025," USTR and Kenya said in a July 8 statement.

Seasonal Produce

- Mexico warned it would initiate a USMCA or WTO dispute settlement case should the U.S. pursue import restrictions on seasonal produce imports from Mexico. Mexican Undersecretary for Foreign Trade Luz María de la Mora said, "We will respond firmly if the U.S. were to impose commercial measures that violate its WTO obligations." "We count on the dispute settlement mechanisms in our agreement to legitimately defend our commercial interests and the interests of producers. We will do it via the mechanisms of international commerce rules, but it is also clear to us that to the extent the U.S. pressures us and seeks to impose measures that are outside of what is allowed in USMCA, Mexico should also evaluate the type of response that should be made," De la Mora said during a forum in Mexico.

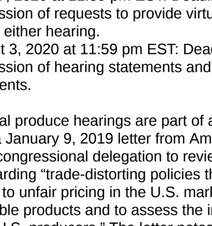
Luz Maria De la Mora, Mexican Undersecretary for Foreign Trade

- The USTR field hearings on the issue of seasonal produce are rescheduled for Aug. 13 and Aug. 20 via virtual format, according to a *Federal Register* notice published last Friday. USDA and Dept. of Commerce will join USTR at the virtual hearings to "discuss foreign trade policies that may be harming American growers of seasonal and perishable produce," the notice indicated. "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." Hearing details and comment deadlines are:
  - Virtual hearing dates: August 13, 2020 at 9:00 am EST and August 20, 2020 at 9:00 am EST

    Submission deadlines:
  - July 27, 2020 at 11:59 pm EST: Deadline for submission of requests to provide virtual testimony during either hearing.
  - August 3, 2020 at 11:59 pm EST: Deadline for submission of hearing statements and written comments.
- The seasonal produce hearings are part of a multi-step plan outlined in a January 9, 2019 letter from Amb. Lighthizer to the Florida congressional delegation 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. – India Trade Developments

- India's Commerce Minister Piyush Goyal reiterated his optimism that a limited U.S. – India trade deal is in reach after two years of negotiations. "In the long term, I believe we have a quick trade deal which has some of the pending matters built up over the last couple of years, which we need to get out of the way quickly. We are almost there." Minister Goyal said an even hosted by the U.S.-India Business Council last week. Goyal emphasized that the U.S. and Indian leaders should also look at a preferential trade pact with 50 to 100 products and move to a comprehensive free trade pact in the long term. Earlier Goyal said he and Commerce Secretary Wilbur Ross exchanged views "on the ongoing India-U.S. trade discussions and appreciated the substantial progress made by both sides on most of the outstanding issues."



Piyush Goyal, Commerce Minister, India

- Amb. Lighthizer told lawmakers last month that the U.S. is currently in trade negotiations with India. Ambassador Lighthizer previously said negotiations with India are taking longer than he expected. "They are dogged and insistent on keeping their tariffs and we are dogged in insisting that we are going to get a fair deal. So we are working on it very much. And hopefully we'll get a good outcome," Amb. Lighthizer added.

WTO

WTO Leadership

- Amb. David Walker, Chair of the WTO's General Council is likely to schedule another General Council meeting before the WTO's August recess to finalize the director-general (DG) selection process, including the naming of an acting director-general. Amb. Walker indicated in his consultations with members the need for additional time to review the process for naming an acting director-general from one of the four deputy director-generals should members not agree on a new DG prior to September 1st. Any one of the four Deputy DGs are available and willing to step into the acting role, though the decision may prove contentious given they represent the U.S., China, Germany, and Nigeria.
- The second stage of DG the selection process will continue until September 7. The third stage entails WTO members expressing their candidate preferences to the triad selection committees comprised of General Council Chair Ambassador David Walker, Dispute Settlement Body Chair Ambassador Dacio Castillo of Honduras and Trade Policy Review Body Chair Ambassador Harald Aspelund from Iceland. However, the weeding out process has informally commenced as several observers suggest that multiple candidates will not proceed to the next stage.
- During the first session of the General Council, the eight Director-General (DG) candidates articulated their qualifications and priorities for the WTO top leadership position as part of the second stage of the DG selection process. Appearing before the general counsel in a mix of in-person and virtual discussions, the candidates responded to a wide range of WTO member questions, from structural issues such as resurrecting the defunct Appellate Body (AB) to specific country or product issues, such as cotton issues in Africa. Several key priorities mentioned by the DG candidates include:
  - Resolve Dispute Settlement crisis, solve impasse over non-operating AB
  - Reconvene 12th Ministerial
  - Conclude fisheries subsidies negotiations
  - Reform WTO's three pillars – negotiation functions, dispute settlement and WTO Secretariat
  - Ensuring inclusive trade and sustainable development

Full video recordings of the meetings and candidates statements are available at: https://www.wto.org/english/res_e/webcas_e/pc_dg_selection2020_e.htm

- The final list of candidates and their professional backgrounds are provided below.

WTO DG Candidates

Candidate	Country	Experience
Jesús Seade	Mexico	Undersecretary of Foreign Relations for North America, Chief negotiator for the Uruguay Round, Chief Economist at World Bank | Biography
Ngozi Okonjo-Iweala	Nigeria	World Bank executive, Minister of finance, economy, and foreign affairs for Nigeria | Biography
Abdel-Hamid Mamdouh	Egypt	Egyptian Trade negotiator, trade lawyer at King & Spalding (Geneva), Director WTO Trade in Services Division | Biography
Tudor Ulianovschi	Moldova	Former Moldovan Minister of Foreign Affairs and Ambassador to the WTO | Biography
Yoo Myung-hee	South Korea	Trade Minister for the Republic of Korea | Biography
Amina C. Mohamed	Kenya	Former Foreign Affairs and International Trade Minister for Kenya | Biography
Mohammad Maziad Al-Tuwaijri	Kingdom of Saudi Arabia	Minister advising royal court on international and local economic strategic matter, former Minister of Economy and Planning for Saudi Arabia | Biography
Liam Fox	United Kingdom	Former United Kingdom Trade Secretary | Biography

WTO Reform

- The Senate Finance Committee has scheduled a hearing on WTO reform for July 29th. The slate of witnesses includes two former U.S. AB members, two former USTR negotiators with deep services and agriculture expertise, and former Justice Department lawyer (below). USTR or other trade agency officials are not scheduled to appear. Scheduled Witnesses:
  - Jennifer Hillman - Senior Fellow for Trade and International Political Economy, Council on Foreign Relations (former WTO AB member, USITC Commissioner, USTR General Counsel)
  - Thomas R. Graham - Partner, Cassidy Levy Kent (former WTO AB member, former USTR Deputy General Counsel, trade lawyer)
  - Laura J. Lane - President, Global Public Affairs, UPS (former USTR services negotiator, State Dept. officer)
  - Joseph Glauber, Ph.D - Senior Research Fellow International Food Policy Research Institute (former USDA Chief Economist, USTR's chief agricultural negotiator)
  - Michele Kuruc, Vice President, Ocean Policy, World Wildlife Fund (former Justice Department and National Oceanic and Atmosphere Administration lawyer)

Other WTO Developments

- WTO discussions on scheduling the next Ministerial (MC12) stalled at the General Council meeting last week. MC12, originally planned for June in Kazakhstan was postponed due to the pandemic. Despite Kazakhstan offering to host MC12 in June 2021, the original WTO member countries are split on whether to lock down a new date given the uncertainty of the virus. Some members support scheduling the conference to bring certainty to ongoing negotiations while others want to wait noting continuing restrictions on international travel associated with the pandemic.

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