TRADE UPDATE
Food & Agriculture

October 27, 2020

Provided by CRA

HIGHLIGHTS

- **U.S. – Brazil:** USTR Robert Lighthizer squashed any hopes of an FTA with Brazil in the near future. Lighthizer stated, "The reality is there is no support for an FTA in the Democratic Party. I would say an FTA right now is probably not in the cards."
- **U.S. – China:** USTR and USDA issued a joint report indicating China has purchased nearly $23 billion in U.S. agriculture goods in 2020 reaching nearly 71% of the target amount in the phase one agreement.
- **U.S. – U.K**.: The fifth round of U.S. and UK trade negotiations are "intensifying" and "are in a good position to move forward after the (U.S.) election," according to USTR Amb. Robert Lighthizer and UK Trade Secretary Liz Truss.
- **U.S. – EU:** Transatlantic trade tensions escalated as the EU rebutted USTR's demand for compensation in the Airbus civil aircraft dispute and the EU said it is on an "automatic path" to impose $4 billion in retaliatory tariffs in the WTO ruling on illegal subsidies for Boeing.

- **Quote of the week:** "Since the Agreement entered into force eight months ago, we have seen remarkable improvements in our agricultural trade relationship with China, which will benefit our farmers and ranchers for years to come." (*USTR Robert Lighthizer on China's Phase One Agreement*)

China Trade

- China's updated export control law, which was first signed in 2017, has included language that authorizes retaliation against trading partners, raising concerns that China will use the law as a geopolitical tool. *Inside U.S. Trade* reports Article 48 of the export control law states, "Where any country or region abuses export control measures to endanger the national security and interests of the People's Republic of China, the People's Republic of China may take reciprocal measures against that country or region based on actual conditions." The retaliatory language was present in the 2017 law, only to be removed in 2019. Its return is likely due to the trade war escalation between the U.S. and China. The export control law will go into effect on Dec. 1.
- As reported earlier, President Trump, threatened U.S. tariffs against China while issuing an Executive Order increasing domestic mining to lessen U.S. reliance on critical minerals from China. The Order noted 35 minerals that are "essential to the economic and national security of the United States," and serve "an essential function in the manufacturing of a product, the absence of which would have significant consequences for our economy or our national security."
- "China has exploited its position in the rare earth elements market by coercing industries that rely on these elements to locate their facilities, intellectual property, and technology in China," the order stated. The President, declaring a national emergency in the Order, calls for a multi-agency report led by the Secretary of Interior to advise on whether the imposition of tariffs or quotas or other import restrictions against China and other non-market foreign adversaries are required.

Phase One Agreement

- USTR and USDA issued a joint report indicating China had bought about $23 billion in U.S. agriculture goods in 2020 equating to around 71% of the target amount set out in the Phase One Agreement. USTR stated, "Since the Agreement entered into force eight months ago, we have seen remarkable improvements in our agricultural trade relationship with China, which will benefit our farmers and ranchers for years to come." The joint report further touted that under the deal the U.S. has successfully addressed 50 of the 57 technical commitments regarding structural barriers in China that had been impeding exports of U.S. food and agricultural products. Such resolved technical commitments include:

  - Lifting the ban on imports of U.S. poultry meat, including pet food containing poultry products.
  - Lifting the ban on imports of beef and beef products from animals over 30 months of age and removing all references to age restrictions on China's internal list of beef product imports.
  - Signing protocols that allow the importation of U.S. horticultural products, including fresh chipping potatoes, California nectarines, California Hass avocados and blueberries.
  - Allowing imports of U.S. barley for processing, along with the forage products Timothy hay, alfalfa hay pellets and cubes, and almond meal pellets and cubes.
  - Lifting restrictions on imports of U.S. pet food containing ruminant material.
  - Updating an approved list of U.S. seafood species that can be exported to China.
  - Expanding China's internal list of U.S. beef and pork products eligible to enter its ports, including processed meat products

- The report noted that "it is still to be seen whether they meet their target but particularly given the COVID-19 effects on the global economy they are making substantial progress." "It is worth noting that the Phase One Agreement did not go into effect until February 14, 2020, and March is the first full month of its effect. That means that we have seen seven months of agreement sales," the report said.
- China's corn imports year to date are the highest in 15 years. The surge in imports originate from the Phase One commitments and shrinking corn stockpiles within China. However, Chinese government officials believe the gap will subside as their domestic new crop harvest will be completed at the end of the month, so officials do not plane to intervene.

U.S.-U.K. Trade Agreement

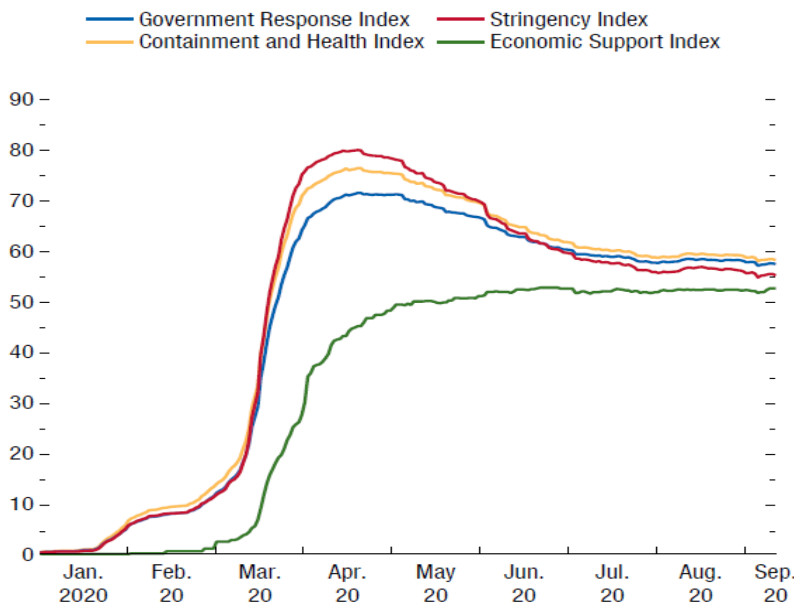
- The U.S. and the U.K. were optimistic on a trade deal amidst the fifth round of negotiations. *Reuters* reported USTR Lighthizer stating, "I am optimistic across the board and I think that it is going to happen reasonably soon." Liz Truss, U.K. International Trade Secretary shared the positive sentiments tweeting, "We're intensifying negotiations, so we are in a good position to move forward after the (U.S.) election." No target date for an agreement has been reached. The fifth round of talks will conclude this week, the last round before the U.S. Presidential election, which may impact the steady momentum of the U.S.-UK negotiations on a comprehensive FTA.
- Despite Amb. Lighthizer and Secretary Truss' positive tone, complicated agriculture negotiations are expected. The UK emphatically promised to maintain the ban on chlorine-treated chicken and hormone-treated beef, blocking the majority of U.S. chicken and beef exports. The UK's Department of International Trade stated in a tweet, "We won't compromise on our high food, environmental protection or animal welfare standards." Hinting at the ongoing negotiations of the U.S.-UK trade deal, "We're focused on getting trade deals that protect and advance the interests of our farmers & consumers. If a deal isn't the right one, we will walk away."

COVID-19 Developments

- The International Monetary Fund (IMF) issued a lower revised forecast for global economic activity. Global growth is projected at -4.9 percent in 2020, 1.9 percentage points below the April 2020 World Economic Outlook (WEO) forecast. The IMF noted that the COVID-19 pandemic "has had a more negative impact on activity in the first half of 2020 than anticipated, and the recovery is projected to be more gradual than previously forecast." The global index showed a flat to slowing re-opening of economies as the rate of global COVID-19 cases increased in recent months.

Figure 1.3. Government Lockdowns and Economic Responses to COVID-19: Global Index

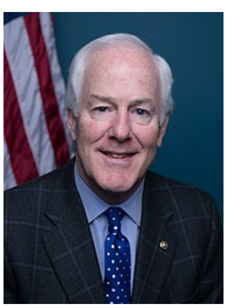
Reopening has slowed as new infections have increased.



Source: Oxford COVID-19 Government Response Tracker.

USMCA

- Over 40 Members of Congress asked the White House to resolve Mexico's market-access barriers for U.S. energy companies that run contrary to USMCA. In a letter signed by 43 Senators and House Representatives, led by Rep. Vicente Gonzalez (D-TX) and Sen. John Cornyn (R-TX), the lawmakers are requesting President Trump tackle Mexico's alleged unfair treatment of U.S. energy companies operating in Mexico. The letter was addressed to Secretary of State Mike Pompeo, Commerce Secretary Wilbur Ross, Energy Secretary Dan Brouillette, USTR Robert Lighthizer and U.S. Ambassador to Mexico Christopher Landau. The letter notes Mexico's constitutional reforms in 2014 in the energy sector have resulted in billions of dollars' worth of U.S. investment. However, the lawmakers contend that Mexico is providing preferential regulatory treatment to Petróleos Mexicanos, or PEMEX -- Mexico's national oil and gas company -- and "delaying or cancelling outright permits for U.S. energy companies." "These efforts violate and contradict the spirit, if not the letter, of the USMCA, an agreement among whose primary objectives are to promote growth among the participant countries," the lawmakers wrote. "Therefore, we are deeply concerned that these actions demonstrate a pattern of obstruction and urge you to find a resolution with the Government of Mexico to keep the current market conditions that the Energy Reform regulatory framework provides, along with certainty and fairness for U.S. companies operating and competing in Mexico."



John Cornyn, U.S. Senator

- As October nears closure, no further reports on the expected U.S. filing of a USMCA labor complaint after Mexican officials reported their preparations for the expected filing. Earlier this month, Mexican economic secretary Graciela Márquez Colín indicated the readiness of the government to respond to a U.S. labor compliant under USMCA. The AFL-CIO complaint is likely to be filed under USMCA's facility-specific rapid-response mechanism, a tool which would be utilized for the first time. Márquez Colín stated, "We're ready to respond, we're ready to implement the rapid-response mechanism, but we do not expect [it]." She added, "We need to receive the request, [then] we will act promptly and according to what was regulated." In preparation of a response, Mexico also recently established a rapid-response labor mechanism task force.

- The AFL-CIO intends to file the first USMCA labor complaint against Mexico. Richard Trumka, AFL-CIO President stated, "We will file a case within the next 30 days." The complaint could utilize the USMCA's facility-specific rapid-response mechanism, a mechanism inserted as an annex into the USMCA after intense negotiations between House Democrats and USTR. The other filing mechanism is via the USMCA labor chapter provision. "We think that when we do the rapid-response, and if we're able to block products from coming in, it will get their attention real fast and they will understand that they will have to change and comply with the law."

Section 301 Investigations

- Vietnam's prime minister urged the Trump Administration to objectively assess Vietnam's currency before imposing trade restrictive measures. Prime Minister Nguyen Xuan Phuc said Vietnam's exchange rate policy was not aimed at helping its exports and asked that President Trump have "a more objective assessment of the reality in Vietnam." "If the dong is devalued, it will seriously hurt the economy," Prime Minister Phuc told a U.S. International Development Finance Corporation official, at a meeting in Hanoi on Monday. Phuc concluded that, "Vietnam is not using exchange rate policy to create competitive advantage in international trade."

Nguyen Xuan Phuc, Vietnam Prime Minister

- Several trade observers suggested USTR's Section 301 investigation into Vietnam's currency devaluation is intended to inject further pressure on China and portend similar trade policy tools in a possible second Trump Administration. "I think [U.S. government officials] are very much seeing Vietnam as the number-one country for displacement from China, so they're tackling the China exports to the U.S.," Joseph Gagnon, a senior fellow at the Peterson Institute for International Economics, said. "It's like squeezing a balloon. You squeeze it in one place, the air goes to another place. Here, it's going to Vietnam." The U.S. has imposed tariffs of approximately $370 billion worth of Chinese goods under Section 301. According to the South China Morning Post, some China companies have moved or shifted export supply chains to Vietnam to avoid the section 301 tariffs.
- The USTR launched the section 301 investigation on Vietnam on Oct. 2 and issued a press release which stated, "USTR will investigate Vietnam's acts, policies, and practices related to the import and use of timber that is illegally harvested or traded, and will investigate Vietnam's acts, policies, and practices that may contribute to the undervaluation of its currency and the resultant harm caused to U.S. commerce."

Section 232 Investigations

- The Commerce Department completed and delivered its report on transformer parts to the White House last week according to press reports. The section 232 report assesses the national security implications of key electrical transformer input imports, which could allow the President Trump to impose tariffs on such imports over national security concerns. Commerce initiated the investigation on May 11, 2020 stemming from requests from lawmakers from Ohio and Pennsylvania. The products at issue cover laminations for stacked cores for incorporation into transformers, stacked and wound cores for incorporation into transformers, electrical transformers, and transformer regulators.
- Should Commerce's report find that transformer part imports impair national security, the report would outline recommendations for actions to restrain such imports. The next steps then would call for the president to render a decision no later than 90 days after receiving the report to impose Commerce's recommendation on trade restrictions or craft a different set of tariff or trade restrictions. Then the President has 15 days to implement any trade actions and 30 days to submit a report to Congress explaining the President's action or inaction.
- The other two ongoing section 232 investigations at the Department of Commerce under "threat to national security" of the Trade Expansion Act of 1962 involve mobile cranes and vanadium.

U.S.-Japan Trade Developments

- A new Congressional Research Service (CRS) analysis concluded that the implementation of the stage one agreement between the U.S. and Japan without congressional approval is “unprecedented” and Congress must address whether “significant shift in U.S. trade policy” aligns with congressional objectives. The CRS report states that due to the narrowness of the agreement, “U.S. agricultural exporters may continue to be disadvantaged in the Japanese market against those from the CPTPP countries or the EU.” The report continues, “the lack of legal text on non-market-access provisions” may prevent the U.S. “from seeking recourse if Japan were to align its requirements for agricultural imports more closely with those of the EU or of other CPTPP countries.”
- Japan defended the U.S.-Japan trade agreement after the EU, Israel, China, Canada and New Zealand raised questions to the WTO on whether the bilateral deal would violate Article XXIV of GATTS which requires “substantially all trade” to be covered in a free trade agreement. Japan noted the subjectivity of “substantially all trade” by stating, there “has been no common understanding among WTO Members on how to define the phrase ‘substantially all the trade’ in Article XXIV of GATT.” Furthermore, Japan argued that the Article 5 provision within the bilateral deal will eliminate tariffs on substantially all trade, thus, the Japan-U.S. trade agreement is consistent with Article XXIV. Article 5 states, “Further to the existing commitments by each Party under the WTO Agreement, unless otherwise provided for in this Agreement, each Party shall improve market access in accordance with Annex I or Annex II.”
- No significant developments on potential phase two trade talks with Japan as Japan transitions to a new Prime Minister and both U.S. and Japanese economies grapple with the global pandemic. Notably, USTR remains fairly quiet on timing of phase two talks with Japan. Earlier this year Amb. Lighthizer conceded that the coronavirus has delayed phase two negotiations with Japan. During 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

- A U.S-EU trade agreement in the near future is becoming increasingly unlikely. Marjorie Chorlins, senior vice president for European Affairs at the U.S. Chamber of Commerce stated, "I do think it highly unlikely that the U.S. and EU would undertake a free trade agreement negotiation anytime soon, regardless of administration.” "No FTA negotiations are currently underway, and the Biden team has not indicated that this would be on their priority list," Chorlins added.
- EU frustrations with U.S. trade policy have continued to mount over lobsters, civil aircraft disputes and a potential U.S. complaint at the WTO regarding the EU’s farm to fork policy. Bernd Lange, chair of European Parliament’s International Trade Committee, recently urged the EU to reconsider the lobster deal with the U.S. which cut tariffs on U.S. lobsters. Frustrated with the recent actions by the U.S. to increase aluminum import duties, which included the EU, and the lack of efforts to lower burgeoning transatlantic trade tensions, Lange sees, “no alternative to make clear that we are unwilling to accept these unilateral measures coming from the United States.” In August, the EU agreed to remove tariffs on U.S. lobsters if the U.S. removed 50 percent of tariffs on EU goods up to an equal amount. The deal sought to act as a stepping-stone for trade war de-escalation.
- As previously reported, U.S. Agriculture Secretary Sonny Perdue indicated the U.S. may bring a complaint to the WTO over the EU’s Farm to Fork legislation that restricts the use of pesticides and restricts fertilizers permissible in agricultural goods in favor of organic farming. Additionally, Ted McKinney, USDA’s Undersecretary of Agriculture for Trade and Foreign Agricultural Affairs, criticized the EU’s Farm to Fork initiative as “misguided” and stating it will cause a “battle royale” in U.S.- EU trade. McKinney indicated that 35 countries have expressed their concern over the EU policy.

Civil Aircraft Disputes

- Commission Vice-President Valdis Dombrovskis said there is "no basis" for the U.S. demands that to resolve the trade war, Airbus should repay government loans. "What the U.S. seems to be suggesting is that there should be compliance obligations also for the past, and this is not in line with the principles which are followed by the WTO subsidy law which follows the principle of prospective compliance, so therefore we see no basis of this request," stated Dombrovskis.
- The EU is on an automatic path to impose the $4 billion in retaliatory tariffs, signaling further escalation without negotiations. Franck Riester, France's minister delegate for trade and economic attractiveness, stated, "We think in France that either Trump or Biden have to create the condition of de-escalation. That's why I insisted a lot on the automatic effects of the decision." Riester added, "Unless the U.S. removes those tariffs, the EU must proceed with its own retaliation to be able to negotiate with the United States from a comparable position of power."

Franck Riester, France's Foreign Trade Minister

- Earlier this month, the WTO granted the EU a green light to move froward with $4 billion in retaliatory tariffs against U.S. products under the civil aircraft dispute regarding Boeing. The U.S. countered immediately stating the EU has no legal basis to impose aircraft tariffs in in conjunction with recent WTO's arbitrator's announced award level of $4 billion on U.S. products. USTR Robert E. Lighthizer said in a statement that "While we disagree with certain aspects of its valuation, the more important point is that the arbitrator did not authorize any retaliation for subsidies other than the Washington State tax break." "Because Washington State repealed that tax break earlier this year, the EU has no valid basis to retaliate against any U.S. products. Any imposition of tariffs based on a measure that has been eliminated is plainly contrary to WTO principles and will force a U.S. response."
- Ambassador Lighthizer continued, "The United States is determined to find a resolution to this dispute that addresses the massive subsidies European governments have provided to Airbus and the harm to U.S. aerospace workers and businesses. We are waiting for a response from the EU to a recent U.S. proposal and will intensify our ongoing negotiations with the EU to restore fair competition and a level playing field to this sector."
- EU Trade Commissioner Valdis Dombrovskis has urged the U.S. to make the first move and remove existing tariffs on EU products saying, "This would generate positive momentum both economically and politically and help us to find common ground in other key areas." He emphasized the European Commission will finalize its list of U.S. products retaliatory tariffs if negotiations fail. The previously published list covers many agriculture products including, nuts, grapes, distilled spirits, and seafood products. Under WTO rules, the EU must receive authorization from the Dispute Settlement Body (DSB) prior to imposing tariff measures. The next DSB meeting is scheduled for October 26th.

French Digital Services Tax

- Resolution on new rules for digital services taxes at the OECD, will likely be pushed back until June 2021. The OECD published updated proposals for the two areas of its digital tax which will be provided to ministers at the G-20 meeting in October before being released to the public, sometime before January. In total, the two pillars are expected to generate $100 billion in tax revenues. OECD officials believe that the COVID-19 pandemic and the upcoming U.S. Presidential election have severely hampered efforts in reaching an agreement by the end of this year, as originally planned.
- The OECD talks, known as an "Inclusive Framework" for an international digital tax agreement involve more than 130 countries. France suspended imposing the digital tax 180 days to promote a solution through OECD talks on a broader digital tax accord but is urging the European Commission to make a formal proposal for a digital tax in the first quarter of 2021 anticipating unsuccessful OECD talks.
- Earlier in the year, USTR threatened section 301 tariffs on French goods before both sides agreed to pursue OECD talks aimed at securing an international agreement. The pending USTR tariff list covers $1.3 billion worth of French goods including 25% tariffs on soap, handbags and cosmetic products (fashion

tariffs). Other sensitive products, like French wine and cheese, were not included. The tariffs are delayed up to 180 days (i.e. Jan. 6, 2021) – as long as France continues to defer imposition of the tax. 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.

U.S.-Brazil

- USTR Robert Lighthizer squashed any hopes of an FTA with Brazil in the near future. Lighthizer stated, "The reality is there is no support for an FTA in the Democratic Party. I would say an FTA right now is probably not in the cards." Lighthizer also stated there are negotiations with Brazil over ethanol and sugar market access, among other agricultural concerns. This week, House Ways and Means Chair Richard Neal (D-Mass.) delineated Democrats' concerns saying the Trump administration rewarded "a Brazilian administration that lacks respect for basic human rights, the environment, and its own workers."
- As previously reported, the U.S. and Brazil have reached an agreement on a mini trade deal. The agreement or U.S.-Brazil trade protocols includes trade facilitation, regulatory practices, and anti-corruption measures. Brazilian President Bolsonaro announced on Monday, "This triple package will be able to slash red tape and bring about even more growth to our bilateral trade with beneficial effects to the flow of investments as well." Observers cautioned that in spite of both sides committing to continue negotiations on a comprehensive bilateral trade agreement, U.S. House Democrats will likely oppose such a deal over concerns of Bolsonaro's record of abusing civil, human, environment, and labor rights.
- Digital trade and eliminating barriers to trade were not included in the mini-deal and remain areas for further talks. "We need to talk more in depth about that and just building this economic partnership that can include a free trade agreement, that can include an investment agreement, a double taxation agreement," stated Brazilian Foreign Minister Ernesto Araújo.
- Senator Grassley said the new U.S.-Brazil trade protocols unveiled by last week are "small potatoes" compared to ethanol negotiations with Brazil, as the U.S. seeks to regain duty-free access into Brazil. Senator Grassley, Chair of the Senate Finance Committee, said he expects the U.S. to get a "good agreement out of Brazil" even if it's the same tariff rate quota (TRQ) of nearly 200 million gallons that existed for past couple of years before expiring on Aug. 31. The U.S. and Brazil agreed to a temporary 90-day quota, effective Sept. 11 while the two sides hammer out a longer-term agreement. Brazil announced that it would suspend the import tariffs on corn, soybeans, soy meal, and soy oil from countries outside the Mercosur trade bloc, but there are several hurdles to substantial imports from the United States due to current price spreads and several regulatory and logistical challenges, the Agriculture Department's Foreign Agricultural Service reported.

Senator Chuck Grassley

U.S. – Kenya Trade Developments

- The second round of U.S and Kenya trade negotiations are underway and anticipated to conclude around Nov. 7. During this round, the U.S. and Kenya expected to exchange text on several chapters. Observers suggested a Trump victory in November would likely generate a subsequent round in December. Biden has not stated whether he would move forward with the U.S.-Kenya FTA.

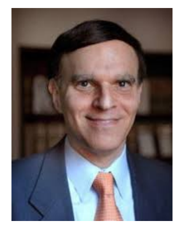
Section 201 Investigations

Seasonal Produce

- As reported earlier, the section 201 blueberry investigation has been deemed extraordinarily complicated by the U.S. International Trade Commission (USITC), triggering a 15-day extension. The extra days push the deadline for an injury decision to Feb. 11, 2021 and the report will be sent to the president by March

29, 2021. The *Federal Register* notice stated, "The Commission's decision to designate this investigation 'extraordinarily complicated' is based on the complexity of the investigation, including the need to collect data and other information from a large number of firms involved in the domestic production, processing, and/or marketing of blueberries." Key dates in the section 201 investigative process are noted USITC fact sheet:
  - **September 29, 2020:** USITC initiated Section 201 blueberry investigation.
  - **January 12, 2021:** Hearing on injury
  - **February 11, 2021:** Vote on injury (Statute requires vote by 180 days (Feb. 26, 2020), but USITC invoked 15-day extension under "extraordinarily complicated" provision).
  - **February 25, 2021:** Hearing on remedy (if affirmative injury vote)
  - **March 19, 2021:** Vote on remedy recommendation (if affirmative injury vote)
  - **March 29, 2021:** USITC report and recommendation to the President (if affirmative injury vote).
  - **May 28, 2021:** Presidential announcement on action – (e.g. adopt USITC remedy recommendation, develop different remedy, decline to take any remedy action).
- Florida strawberry and bell pepper groups sent separate letters to Amb. Robert Lighthizer requesting USTR to initiate import monitoring investigations as part of the seasonal produce action plan. The Florida Fruit and Vegetable Association (FFVA), Florida Strawberry Growers Association (FSGA), and Florida Farm Bureau requested USTR to formally request the USITC "monitor and investigate imports of strawberries, which could enable an expedited Section 201 global safeguard investigation later this year." The FFVA, Florida Farm Bureau sent a similar letter regarding bell peppers requesting a similar investigation. To date public confirmation that USTR has requested the monitoring investigations is not available.

Solar Cells



Judge Gary Katzman, CIT

- Over the weekend, the Court of International Trade (CIT) temporarily blocked President Trump's recent attempt to include bifacial (i.e. two-sided) panels into the current section 201 tariff order. CIT Judge Gary Katzmann issued a temporary restraining order that effectively prevents the tariff exemption from being removed for two weeks, unless the court takes other action during that time. The CIT decision temporarily stymies the Trump Administration's latest efforts to eliminate a tariff exemption for the two-sided, or bifacial, panels.
- On Oct. 10, President Donald Trump issued a Presidential Proclamation announcing further action to safeguard domestic production of crystalline silicon photovoltaic (CSPV) cells (*i.e.*, solar cells). In June 2018, the president implemented tariffs on imports of certain solar cells (see Update of January 23, 2018) under Section 201 of the Trade Act of 1974 for a four-year period. The tariffs started at 30 percent the first year but were set to decrease 5 percent annually. The remedy implemented in 2018 excluded certain types of solar cells, such as 2.5 gigawatts (GW) CSPV cells.
- The White House announced that while the domestic industry "has begun to make positive adjustment to import competition," modifications to the safeguards are necessary for imports of CSPV cells and other CSPV products (e.g. modules). The proclamation revokes the exemption from the tariffs for bifacial modules and adjusts the duty rate of the safeguard tariff for the fourth year of the safeguard measure to 18 percent instead of the previously scheduled rate of 15 percent.

<u>U.S. – India Trade Developments</u>

- No significant updates on a potential U.S. – India limited trade deal. As reported earlier, a former USTR official said the White House should move swiftly to "seize the opportunity" to conclude a limited deal with India, contending the U.S. should do so before India gets "cold feet." Mark Linscott, a former USTR negotiator said, "It's just hard to fathom why it's not getting done." Linscott expanded on the mini-deal stating, "It definitely would solve some immediate problems on the U.S. side, from medical devices to getting some new access on agriculture to some tariff cuts. On the Indian side, it would be essentially the restoration of GSP benefits, which shouldn't be a big lift on the U.S. side." USTR has not publicly responded to conclude the trade deal.

- Similarly, India's Commerce Minister Piyush Goyal said, "India is open to signing on what we have agreed on." "I've left it to [Lighthizer] to make the final call," he added. Goyal had previously noted that after two years of negotiations a deal is in reach. "We are almost there," Minister Goyal said at an event hosted by the U.S.-India Business council in July. 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.

WTO

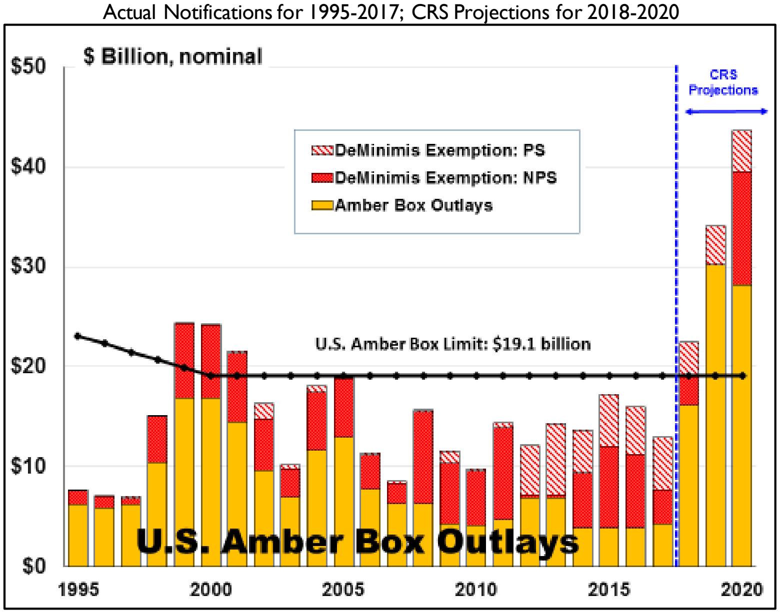
- According to a new report, the U.S. agricultural domestic support for 2019 and 2020 is likely to surpass WTO limits by $10 billion. The USDA claims the farm support was WTO compliant. As reported by *Inside U.S. Trade*, a USDA spokesperson stated, "USDA was mindful of WTO obligations when designing these programs and USDA remains confident that we will meet our commitments." Within the WTO commitments, the U.S. is allowed to spend $19.1 billion on agricultural support annually. If the support exceeds WTO commitments, other members can bring a challenge to the WTO. "If the United States were to exceed its WTO annual spending limit, then offending farm programs (whether ad hoc or traditional) could be vulnerable to challenge by another WTO member under the WTO's dispute settlement rules," the report states. "However, if the payment programs that appear likely to cause the United States to exceed its WTO spending limits in 2019 and 2020 prove to be temporary, then a successful WTO challenge might not necessarily result in an adverse ruling against the United States or any other authorized retaliation."
- A recent analysis by Congressional Research Service (CRS) concluded the U.S. may exceed WTO allowable agriculture subsidy limits depending on how the U.S. allocates outlays. The CRS report states:

  > "If USDA follows historical precedent in how it has categorized and notified U.S. domestic support outlays in recent years, then CRS analysis suggests that the United States will be in compliance with WTO spending limits during 2018, but could exceed the annual U.S. spending limit of $19.1 billion in both 2019 and 2020."

  CRA's estimates of 2020 agriculture subsidy outlays are detailed further in graph below.

U.S. Compliance with WTO Spending Limit

Actual Notifications for 1995-2017; CRS Projections for 2018-2020



Source: Data for 1995-2017 are from official USDA notifications to the WTO. Data for 2018-2020 are compiled by CRS from USDA spending projections supplemented by other sources cited in the text and based on historic notification and exemption trends.

- USDA defended the farm aid provided under the Trump Administration saying it was "confident" the programs were WTO-compliant but noted that the agency had not yet crunched the numbers because the U.S. won't be notifying its 2019 and 2020 support "for another year or two."
- House Agriculture ranking member Michael Conaway (R-TX) stated his opposition with the level of support stating, "No, we cannot maintain this level, an unprecedented level. If you go back to this time last year when we had the first [Market Facilitation Program] payments and everything that's happened since then, that would be a stunning amount of money to put into any one farm bill that either Collin or I would get to write in the past."

Michael Conaway, House Agriculture Committee

- The WTO council on Trade Related Aspects of Intellectual Property (IP) Rights have rejected a proposal to waive IP rules in essential health technologies related to Covid-19. Developing countries such as South Africa, India, Egypt, Indonesia, and Argentina support the proposal, claiming that the current TRIPS agreement does not ensure timely access to essential medical supplies such as PPE necessary to combat COVID-19. The EU, the U.S., and the U.K oppose the proposal, claiming that a lack of evidence exists demonstrating IP rights are actually hindering access to COVID-19 related supplies. Politico reported that a U.K. representative stated, "A waiver to the IP rights set out in the TRIPS Agreement is an extreme measure to address an unproven problem".

WTO Leadership

- The EU has indicated its backing of WTO Director-General (DG) candidate Ngozi Okonjo-Iweala. EU trade officials will likely announce their decision on Oct. 28. The EU aims to remain united in their candidate support and one EU diplomat stated, "Some EU countries are strongly in favor of Ngozi. The other ones don't have a strong position, so the expectation is for the EU to back the Nigerian candidate," according to a report by *Politico*.
- The final two candidates vying for the WTO DG have entered the third phase of the selection process (October 19-27). Amb. Walker, Chair of the WTO General Council stated the third phase of consultations will allow WTO members sufficient time further to prepare their positions and support for one of the two finalists. During this period, WTO members will be asked in confidential consultations to indicate their preferred candidate to Amb. Walker of New Zealand, Amb. Castillo, chair of the Dispute Settlement Body, and Amb. Aspelund, chair of the Trade Policy Review Body, known as the "troika" leading the DG selection process. Amb. Walker would then call a formal General Council meeting and present the recommendation to the membership for a formal decision, with a decision by November 7th.
- The remaining two DG candidates are Nigeria's Ngozi Okonjo-Iweala and South Korea's Yoo Myung-hee. With two female finalists, the stage is set for the first female leader and first African or second Asian to the lead the global trade institution.

WTO DG Candidates – Round 3

Candidate	Country	Experience
Ngozi Okonjo-Iweala	Nigeria	World Bank executive, Minister of finance, economy, and foreign affairs for Nigeria | Biography
Yoo Myung-hee	South Korea	Trade Minister for the Republic of Korea | Biography

WTO Reform

- In a webinar hosted by AEI on *The World Trade Organization dispute settlement mechanism and the future of world and agricultural trade*, Jennifer Hillman, former WTO appellate body members, indicated her optimism on the future of reform of the WTO dispute settlement mechanism because of the support it has from the U.S. Congress. Hillman stated that Congress wants to see a functioning appellate body with new rules that leads to a productive and efficient international trade organization. She added that Congress has noted the benefits the U.S. has received in agriculture through the appellate body.

- As previously reported, the U.S. proposal for WTO reform addressing special and differential treatment is gaining traction. The proposal would identify four categories of developed members which would include China, India and several Latin American who are currently defined as developing. However, the proposal is quite divisive, and consensus remains unlikely. While European Union, Australia, Japan and Brazil support the reform of special and differential treatment in the WTO; India, South Africa, China and the LDC group all vehemently oppose it. This week, U.S. Ambassador to the WTO Dennis Shea addressed WTO reform stating, "The institutional paralysis of the negotiating function should be at the center of our reform efforts. It is clear to us that piecemeal reforms will not suffice to pull the WTO from its current rut. Consequential reform of the negotiating function needs to begin with a shared commitment to the foundational principles of the WTO."