TRADE UPDATE
Food & Agriculture

January 19, 2021

Provided by CRA

HIGHLIGHTS

- **U.S. – China:** The Department of Homeland Security broadened its ban on Chinese imports, now blocking imports of all cotton and tomato products from the Xinjiang region of China over findings that the products are commonly made with forced labor of Uighur Muslims.
- **U.S. – U.K.:** Head of the Trade and Agriculture Commission said that the U.K. will seek a tough approach to standards of imported food.
- **U.S.-Vietnam:** USTR's Section 301 report cited Vietnam's "unfair" currency practices that are harming U.S. workers and businesses while stopping short of imposing tariffs.
- **WTO:** Australia and the EU and are urging the incoming Biden administration to work with them to counter China, including by reforming the WTO.

Quote: "Whether it is contending with the challenges of China or making sure the USMCA lives up to its promising potential, we will only succeed if we work together. That means the administration working with Congress; Democrats and Republicans working together; labor with capital; entrepreneurs with the keepers and defenders of our natural resources. Stakeholders across the entire spectrum of the U.S. economy … the United States working with its allies." (*Katherine Tai, Incoming USTR*)

China Trade

Ken Cuccinelli, Acting Deputy Secretary, DHS

- The Department of Homeland Security said Wednesday that it would block imports of all cotton and tomato products from the Xinjiang region of China over findings that the products are commonly made with forced labor of Uighur Muslims. The action, administered by the U.S. Customs and Border Protection (CBP) is detailed in a new regional withhold release order (WRO). Based on its investigation, CBP found reasonable indications of the use of detainee or prison labor or other situations of forced labor. "This regional WRO sends a clear message to producers in Xinjiang and importers who may be thinking of sourcing from that region," Ken Cuccinelli, DHS acting secretary, told reporters on a call Wednesday. "DHS will not tolerate forced labor of any kind in U.S. supply chains." Under the WRO, CBP will detain cotton products (e.g., apparel, textiles, etc.) and tomato products (e.g., tomato seeds, canned tomatoes, tomato sauce, etc.) grown or produced by entities operating in Xinjiang at all U.S. ports.
- CBP had issued a company-specific WRO in early December that covered only the Xinjiang Production and Construction Corps. This WRO, CBP's fourth since the beginning of fiscal year 2021, is much boarder covering an entire area instead of one specific company. Some apparel industry participants have indicated they are struggling to comply with a regionwide ban on cotton because they may not be able to separate fibers from Xinjiang produced with forced labor.
- China responded to the various recent U.S. restrictions by releasing a blocking statute that allows Chinese companies to seek civil damages from companies abiding by restrictions Beijing deems unfair. U.S. sanctions and export controls, such as the expansion of the U.S. foreign-direct product rule, Entity List designations, and even sanctions imposed on individuals involved in the suppression of democracy in Hong Kong, could be subject to China's new blocking statute. If China determines these restrictions are unfair and infringe on the "legitimate rights and interests" of a Chinese entity, companies that comply with U.S. restrictions could be liable for civil damages in China. David Hanke, a partner at Arent Fox, commented on the statute stating, the policy is an attempt to "coerce the Biden team into softening U.S. policy on China."

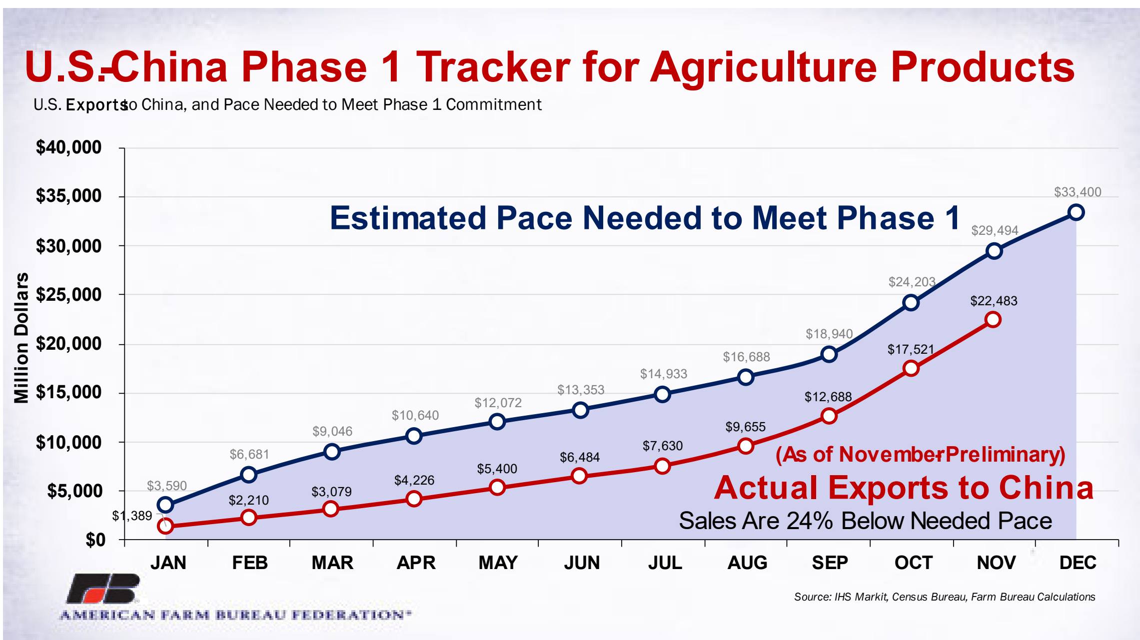
- Yu Jianhua will be China's new chief international trade negotiator. Yu was China's ambassador to the WTO from 2013 until 2017 and then briefly served as a MOFCOM vice minister and deputy China international trade representative. In December 2017 Yu acted as China's envoy to international organizations in Geneva. Derek Scissors, a China scholar at the American Enterprise Institute, said that promoting Yu to international trade representative could be Beijing's way of offering the incoming Biden administration a "clean slate."

Yu Jianhua, China's Chief Trade Negotiator

- Myron Brilliant, executive vice president and head of international affairs at the U.S. Chamber of Commerce, said that a high-level Chinese delegation is expected to visit the U.S. closely following the inauguration of President-elect Joe Biden. These meetings are expected to facilitate engagement between the U.S. and China. Brilliant added, "I keep in touch with obviously key officials on the Chinese side and the U.S. side and what I can tell you is that they recognize that the path we are on is contrarian to what we all want, which is to find some common ground between China and the United States on some of the really tricky global issues. And to do that you've got to have a dialogue and you've got to have engagement."

Phase One Agreement

- China's year-to-date U.S. agricultural product purchases continue to increase as the gap on the lagging pace of agriculture purchase commitments narrows. Based on November trade data, purchases are approximately 24% under the level needed to meet the Phase One deal commitments. *(For further details on tracking select agriculture sectors and U.S. exports to China under the phase one deal see last page).*



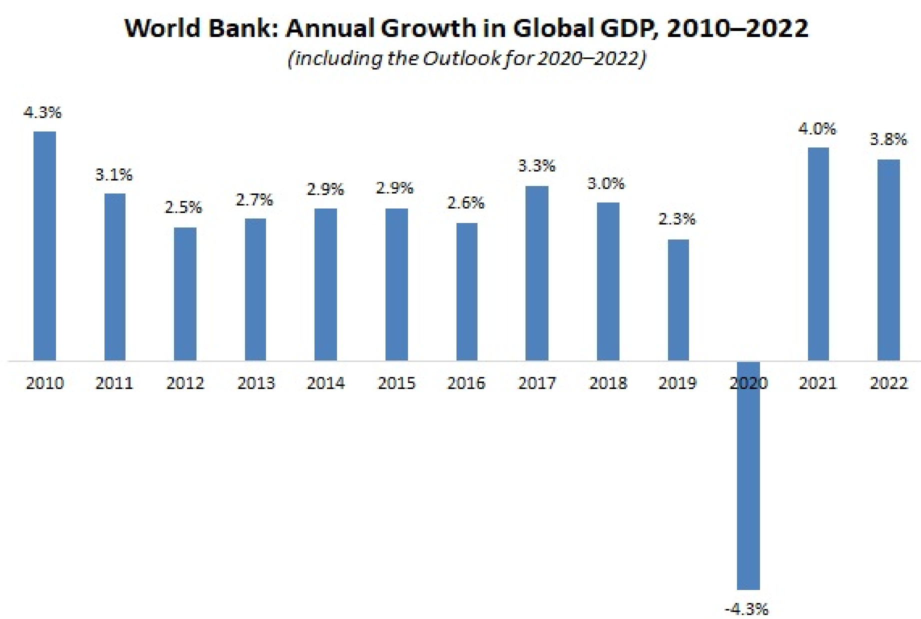
U.S. - U.K. Trade

- Tim Smith, who heads the Trade and Agriculture Commission, said the U.K. will seek a tough approach to standards of imported food. Smith said, "We've spent two or three decades evolving our food standards, and consumers in this country and other stakeholders don't want to see any deterioration or change." "We can't concede that it is sensible to do trade deals with countries that aren't prepared to accept our standards, for example in antibiotics use," Smith added. The Trade and Agriculture Commission was created in July 2020 with a purpose to advise the government on its trade strategy as it relates to farming and will produce recommendations for the government in February 2021. Mr. Smith continued, "It is possible to say that the UK has made fantastic strides in reducing antibiotics used in meat production, and we'd like to see the same progress from countries that we trade with."

- U.K. Trade Secretary Liz Truss has indicated that she plans to meet with the Katherine Tai, the incoming USTR, to resolve the civil aircraft dispute. Truss stated this week, "I'm seeking an early meeting with the new U.S. Trade Representative Katherine Tai and this will be one of the items on my agenda. I've been clear with the United States and the European Union that we want to de-escalate this dispute and reach a negotiated settlement."
- Some British officials are optimistic for a completion of a U.S.-U.K. trade deal in 2021, aiming for engagement with the incoming Biden Administration. The U.K. ambassador to the U.S., Karen Pierce said "I don't want to be presumptuous about the Biden administration's policies and priorities, but we believe this deal can be done, it can be done in 2021."
- The scheduling of another formal round of bilateral talks is unlikely until after the January 20th inauguration and the Senate confirmation of a new USTR. Critical to timing of any U.S. – U.K. trade deal in 2021 is the expiration of Trade Promotion Authority (TPA) in June 2021, historically key to timely Congressional consideration of trade agreements. Under TPA or previously known as "fast track" authority, USTR would need to submit the signed U.S-U.K. trade agreement to Congress by April 2021 to receive consideration under TPA.

COVID-19 Developments

- The [Commerce Department reported](#)the U.S. trade deficit increased 8 percent in November, reaching its highest level since August 2006. Imports of consumer goods reached a record high prior to the holiday season as imports of capital goods used by manufacturers were the highest in two years. The combined deficit for goods and services was $68.1 billion, while the deficit for only goods was a record $86.4 billion.
- The World Bank predicts that the world GDP will grow by 4.0% in 2021, bouncing back after declining 4.3% in 2020. With that said, global output will remain 5.0% below pre-pandemic levels by the end of this year. While COVID-19 and its spread remain downside risks to the economic outlook, the prospects of a vaccine and a return to "normalcy" in spending and activity should help the overall recovery.



USMCA

- Richard Trumka, AFL-CIO president, said the labor organization will "quickly" initiate a labor dispute against Mexico under USMCA after the inauguration of President-elect Joe Biden. "We had some real resistance from the old administration, and we became worried that they would tank it," Trumka said. "You're going to see it happening quickly after the new administration comes in, I can assure you of that." Trumka also commented that the Trump administration was being "passive-aggressive," adding "they 'yessed' us to death."

- Recently USTR filed the first-ever USMAC enforcement action against Canada for failing to implement dairy tariff-rate quotas (TRQs) and other market-opening provisions that Canada established for its dairy industry that took effect on July 1. USTR says the provisions unfairly shield Canadian firms in violation of the USMCA, which was supposed to open the protected market to American producers. “By setting aside and reserving a percentage of each dairy TRQ exclusively for processors, Canada has undermined the ability of American dairy farmers to utilize the agreed-upon TRQs and sell a wide range of dairy products to Canadian consumers,” the USTR press release stated.
- As reported earlier, Canada has requested that the U.S. remove the "safeguard" tariffs on its solar products, which it said violate the new USMCA. “Canada has requested consultations with the United States on its continued tariffs on solar products, as first steps in the CUSMA dispute settlement process," Canadian Trade Minister Mary Ng said in a statement. "These tariffs are unwarranted and clearly violate the provisions and the spirit of CUSMA."
- According to Canadian officials, Canada's exports of solar products to the U.S. have declined by as much as 82 percent under the global safeguard duties. Should the consultative mechanism fail, Canada can request a USMCA dispute settlement panel within the next 30 days. The request by Canada adds to the growing list of trade issues facing the new the Biden administration and the next USTR.
- Senate Majority Leader Mitch McConnell has named the last two members of the 12-member Independent Mexico Labor Expert Board required by the USMCA implementing bill. The two members are Kyle Fortson, a former labor policy staff member for the Senate Health, Education, Labor and Pensions Committee, and Charlotte Ponticelli, a former Labor Department official. The board is designed to advise an interagency labor enforcement committee on “capacity-building activities needed to support such implementation and compliance,” according to the USMCA implementing bill.

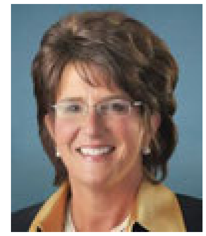
U.S. – Vietnam

- USTR’s released its Section 301 report on Vietnam’s currency practices citing illegal policies yet declined to impose tariffs. “Unfair acts, policies and practices that contribute to currency undervaluation harm U.S. workers and businesses, and need to be addressed,” stated U.S. Trade Representative Robert Lighthizer. “I hope that the United States and Vietnam can find a path for addressing our concerns.” The USTR statement announcing the investigative findings continued, “USTR is not taking any specific actions in connection with the findings at this time but will continue to evaluate all available options. The Section 301 investigation was initiated in October 2020.”
- The announcement to forgo tariffs was welcomed by several business groups urging the Trump Administration to consider non-tariff means to address the currency issue. More than 200 companies and trade associations sent a letter urging the Trump administration to avoid imposing Section 301 tariffs on goods from Vietnam. The letter stated, “Responding with tariffs would undermine American global competitiveness and harm American businesses and consumers at a time when they can least afford it, as they are struggling from the impacts of COVID-19
- Earlier the U.S. Treasury Department named Vietnam a currency manipulator along with Switzerland. Treasury said in the report that the U.S.’ goods trade deficit with Vietnam “reflects a large expansion of Vietnam’s export capacity in apparel and technology, and its growing global supply chain integration,” as well as tariff and non-tariff barriers hindering U.S. automotive and agricultural exports.

Section 232 Investigations

- Several U.S. steel industry and labor groups are urging President-elect Biden to keep existing steel tariffs imposed by the Trump Administration citing the tariffs are essential to the “viability of the domestic steel industry.” In a letter endorsed by American Iron and Steel Institute and United Steel Workers, among others, the groups said, "Continuation of the tariffs and quotas is essential to ensuring the viability of the domestic steel industry in the face of this massive and growing excess steel capacity." "Removing or weakening of these measures before major steel producing countries eliminate their overcapacity and the subsidies and other trade-distorting policies that have fueled the steel crisis will only invite a new surge in imports with devastating effects to domestic steel producers and their workers," the groups said.

- In 2018, President Trump imposed 25 percent tariffs and 10 percent tariffs on steel and aluminum, respectively, under national security concerns outlined in Section 232 of the Trade Expansion Act of 1962. Several steel and aluminum consuming U.S. industry groups (e.g., Business Roundtable and American Farm Bureau) earlier urged the incoming Biden Administration to remove China section 301 and section 232 tariffs, in part, to support national economic recovery in the wake of the global pandemic. On the international front, the EU, China and other countries challenged the U.S. tariff action at the WTO. A WTO ruling on the case is expected in 2021.
- Rep. Jackie Walorski (R-IN) has promised to continue efforts to rein in executive tariff-making authority during the Biden Administration, particularly Section 232 reform. "I supported 232 reform and I always made that very clear, including moving investigations to the Department of Defense and putting tariff actions to a vote in Congress. I supported it when the president was from my own party and I'll support it when the president's not from my own party," Walorski said.



Congresswoman Jackie Walorski

- Presently Commerce is conducting two section 232 investigations involving transformer parts and vanadium. Under Section 232, the President must render a decision no later than 90 days after receiving the Commerce 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.

U.S. – EU Trade

- As reported earlier, USTR Robert Lighthizer said the U.S. will not impose the 25% tariffs on French products, which would be valued at $1.3 billion, expected to go into effect this week in retaliation for France's digital services tax (DST). Lighthizer said he did not impose the tariffs because, "the ongoing investigation of similar DSTs adopted or under consideration in 10 other jurisdictions." USTR's press release on the issue provided no timeframe for further action.

Civil Aircraft Disputes

- France's Economy Ministry said that new tariffs imposed by the U.S. were "illegitimate under WTO law." "Once again, we call for a global settlement of the trade disputes between the United States and Europe, which will only result in losers, especially in these times of crisis," the ministry continued. The EU continues to hope that an incoming Biden Administration can help restore U.S.-EU relations. A Commission spokesperson said, "We are looking forward to engage constructively with the new U.S. administration to resolve this long-lasting dispute as part of a renewed transatlantic agenda."
- USTR recently announced imposition of additional tariffs on European goods in the aircraft case. According to USTR, the EU errored in calculating its WTO authorized tariffs as it used "trade data from a period in which trade volumes had been drastically reduced due to the horrific effects on the global economy from the COVID-19 virus." USTR says the EU also calculated the amount of trade "using EU-27 trade volume," excluding United Kingdom trade. "The effect of this was to unfairly increase the retaliation for the 52 days in which the UK remained within the EU for tariff purposes," and the EU "needs to take some measure to compensate for this unfairness."
- On November 4, 2020 the EU imposed tariffs of 15% on U.S. aircraft and 25% on agricultural goods, totaling $4 billion under the WTO ruling on U.S. subsidies for Boeing civil aircraft. USTR Robert Lighthizer previously argued that the EU tariffs were no longer valid as regulations in Washington State regarding Boeing business activities now comport with the WTO rulings. In October the WTO granted the EU the 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.

Transition 2020

- President-elect Biden's nominee for USTR indicated that confronting China and ensuring the USMCA "lives up to its promising potential" are top priorities for the next Administration. "Whether it is contending with the challenges of China or making sure the USMCA lives up to its promising potential, we will only succeed if we work together," Tai said. "That means the administration working with Congress; Democrats and Republicans working together; labor with capital; entrepreneurs with the keepers and defenders of our natural resources. Stakeholders across the entire spectrum of the U.S. economy … the United States working with its allies," Tai continued.

Katherine Tai, Biden nominee for USTR

- Speaking during a virtual National Foreign Trade Council conference, Tai also emphasized a domestic and worker-centric trade policy approach. "The president-elect's vision is to implement a worker-centric trade policy. What this means in practice is that U.S. trade policy must benefit regular Americans, communities, and workers. And that starts with recognizing that people are not just consumers – they are also workers and wagerers," she said. "Users are also producers. One company's downstream customer is another's upstream supplier. Americans don't just benefit from lower prices and greater selection in shops and markets – Americans also benefit from having good jobs with good wages." Tai concluded noting that, "It is going to be a lot of hard work but I promise you, it will be worth it," and she pledged to be a "tireless advocate for the country" who "will pursue trade policies that place the humanity and dignity of every American and all people at the heart our approach."
- A new Congressional Research Service (CRS) report highlights Major Agricultural Trade Issues in the 117th Congress. The report states that, "The 117th Congress may consider other options to assist the U.S. farm sector in the face of higher foreign tariffs on its exports or if other unforeseen events contribute to declines in farm sales," after the several large ad hoc spending programs by the Trump Administration in the wake of COVID-19 may violate U.S. commitments to the WTO to reduce trade-distorting agricultural subsidies. The report continues, "Other trade issues that may arise in the 117th Congress concern various nontariff trade barriers, seasonal produce, and foreign restrictions on U.S. meat and dairy products. Improving market access for agricultural biotechnology products has long been a U.S. trade priority, and U.S. goals include establishing a common framework among trading partners for approval, adoption, and labeling of such products. With mandatory labeling of bioengineered food products offered for sale in the United States to begin in January 2022, the 117th Congress may engage with the Biden Administration's trade negotiation efforts to ensure that U.S. adoption of this labeling requirement contributes to harmonization of such standards with bilateral partners and at the multilateral level."
- The U.S. Chamber of Commerce produced a list of over a dozen recommendations for the 117th Congress and the incoming Biden Administration. Notably, the Chamber calls for legislation to curb the ability of the president to impose tariffs stating, "The Chamber will advocate for legislation to ensure that executive tariff actions under any of the existing delegated authorities in U.S. law are contingent on an affirming vote by both chambers of Congress." The Chamber urged Biden to rescind Trump's tariffs on steel and aluminum and negotiate a trade deal with China and to counter "the challenges posed by China's state capitalist policies." While the Chamber did not call for immediate renewal of presidential Trade Promotion Authority, which expires July 1, the group did say it supports TPA's renewal in "due course."
- Rep. Earl Blumenauer (D-OR), head of the House Ways and Means subcommittee on trade, told *POLITICO* that he expects Congress will focus on labor and environmental protections in trade policy after the Democrats took control of both chambers of Congress. Blumenauer stated he that would write new labor and environmental protections into the Generalized System of Preferences (GSP) program. "I don't think there are any ideological, philosophical or practical differences with the Biden administration" on GSP renewal, said Blumenauer. "We will work with them in terms of defining it and having the GSP provisions reflect where we are now on worker rights and the environment," he continued.
- Reports suggest Nora Todd, a longtime trade adviser for Sen. Sherrod Brown (D-OH), is a top candidate to serve as next USTR chief to of staff. Todd, who has served as a senior policy adviser for Sen. Brown since 2014, and heavily involved in USMCA negotiation process in Congress.

U.S. – Kenya Trade Negotiations

- No significant updates since the recent conclusion of the second round of U.S.-Kenya trade negotiations. At the last round in Kenya, Nairobi prepared text for several chapters market access for goods, sanitary and phytosanitary measures, and technical barriers to trade. USTR aims to negotiate a comprehensive deal with Kenya prior to TPA's expiration.

Section 201 Investigations

Seasonal Produce

- At the Section 201 blueberry investigation hearing last week, the American Blueberry Growers Alliance argued that farmers across the country "have been devastated by an influx in blueberry imports by 75 percent in the past five years." The Florida Blueberry Growers Association testified that a "massive increase" in Mexican imports during harvesting season has crippled the Florida blueberry industry and threatens its very existence. Several members of Congress, including Reps. Austin Scott (R-GA), Bill Huizenga (R-MI), Earl Carter (R-GA), Gregory Steube (R-FL) and John Rutherford (R-FL), also testified in support of American blueberry growers.
- In contrast, Blueberry Coalition for Progress and Health, representing blueberry importers and other stakeholders contended that "Imports have not hindered growth in domestic production; they have complemented such growth." Counsel for the Coalition argued that the investigation was politically motivated stating, "Please don't forget how this case started -- requested by USTR as a political gift during an election year."
- The USITC decision on is expected on Feb. 11, 2021 and USITC injury report due to the President by March 29, 2021. Key dates in the Section 201 investigative process are noted in a USITC fact sheet:
  - **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).
- At present, the USITC is conducting four "monitoring" investigations on imports of strawberries, bell peppers, cucumbers and squash, respectively, in concert with USTR's Seasonal Produce Plan. The plan outlined the monitoring investigation stating, "USTR will work with domestic producers to commence an investigation by the International Trade Commission to monitor and investigate imports of strawberries and bell peppers, which could enable an expedited Section 201 global safeguard investigations."

WTO

- The EU and Switzerland have formally objected to the U.S.' proposed modification of its government procurement coverage to exclude essential medicines. The EU and Switzerland argued that the U.S. has not accounted for the "likely consequences of the change" for other WTO members. In December, the U.S. notified the WTO that it intended to remove from coverage of the WTO Government Procurement Agreement (GPA), "any goods that are deemed necessary for responding to threats arising from chemical, biological, radiological, and nuclear (CBRN) threats and public health emergencies, including emerging infectious diseases such as COVID-19." The EU and Switzerland both argue that the U.S. has not completed the requirements for such a modification of its coverage of the GPA because it has omitted the "likely consequences" information.

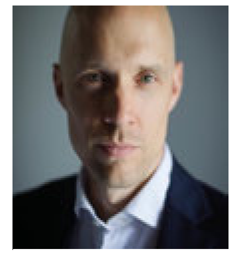
WTO Leadership

- As reported earlier, progress on breaking the deadlock on the new WTO leader remains stalled as Amb. Lighthizer reaffirmed the Trump Administration's support of Korean Trade Minister Yoo Myung-hee for the Director-General position, again rejecting Nigerian candidate Ngozi Okonjo-Iweala who has widespread support from other WTO member countries. In a BBC interview last week, Lighthizer said, "The United States' view is that we need someone with real experience in trade, not someone from the World Bank or a development person. We need a real trade expert," signaling a hardening U.S. stance further delaying the WTO consensus on a new leader.

- The WTO Director-General selection is further complicated by COVID restrictions in Geneva. The WTO General Council chair, David Walker in December postponed a meeting to discuss the DG selection. Ambassador David Walker cited "the health situation and current events" in announcing he was postponing the meeting "until further notice." "It has come to my attention that for reasons including the health situation and current events, delegations will not be in a position to take a formal decision on 9 November," Walker said in his communication to members.

WTO Reform

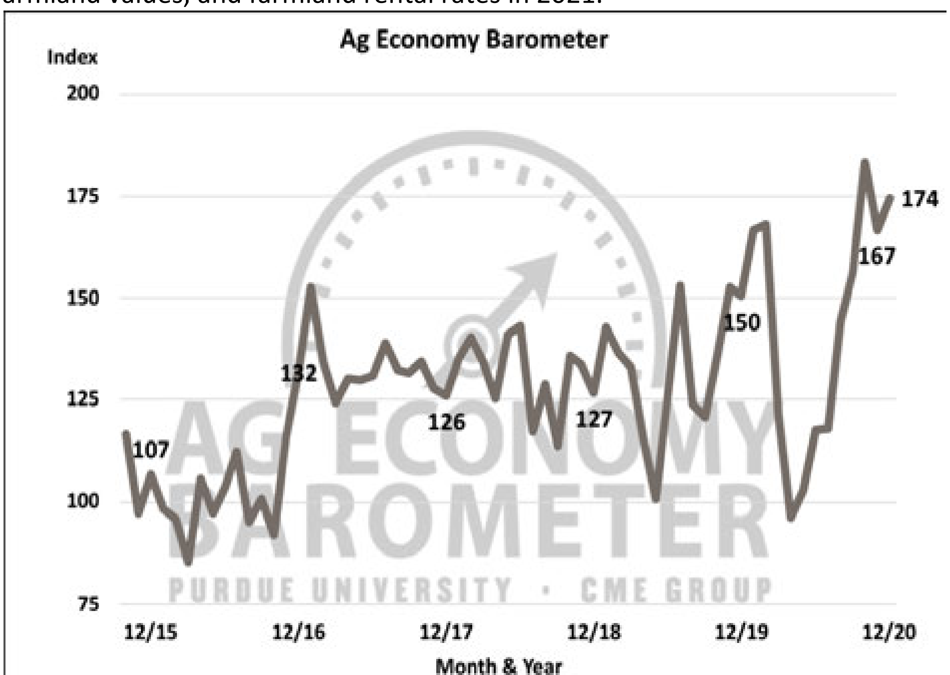
- Australia and the EU and are urging the incoming Biden Administration to work with them to counter China, including by reforming the WTO. Tomas Baert, head of trade and agriculture with the European delegation to the U.S., argued that the EU would be seeking to move forward on China with the U.S. "The biggest trade challenge I would think right now for us in Europe -- but also in the United States -- is to deal with China. I would very much submit that what we need is kind of a multi-prong approach to dealing with that issue, which consists of unilateral liberalization or unilateral action, as well as bilateral and perhaps also trilateral work, in addition to multilateral work," Baert said. Andrew Jory, minister-counsellor for trade at the Australian Embassy, pushed for the Biden administration to rejoin the Comprehensive and Progressive Agreement on Trans-Pacific Partnership and open up a "pathway" for WTO Appellate Body reform.



Tomas Baert, Head of Trade & Agriculture, EU delegation to the U.S.

Ag Economy Barometer

- The Ag Economy Barometer increased 7 points to an index level of 174. December's increase in sentiment remains 9 points lower than the Barometer's peak in October at 183. December's index of 174 reflects a higher sentiment than the pre-pandemic high set back in February. The rebound in positive sentiment the past few months is tied to optimism for the ongoing rally in crop prices, and expectations for higher farmland values, and farmland rental rates in 2021.



Source: Purdue University Center for Commercial Agriculture, Producer Survey, December 2020

China Phase One Tracker – Select Agriculture Products