

Vol. 40, No. 15

April 13, 2020

WTO Forecasts Double-Digit Trade Downturn

Amid record-breaking unemployment and business closures around the world, this is perhaps not a surprise. World merchandise trade is expected to fall by between 13 and 32% in 2020 due to the coronavirus pandemic, the World Trade Organization (WTO) predicted April 8.

On one end of that scale is an “optimistic scenario,” with a recovery starting in the second half of 2020, and the other is a “more pessimistic scenario with a steeper initial decline and a more prolonged and incomplete recovery,” the WTO noted. While the body projected that trade will fall steeply in every region and across all sectors, “trade is likely to fall more steeply in sectors characterized by complex value chain linkages, particularly in electronics and automotive products,” the forecast noted.

“These numbers are ugly — there is no way around that,” WTO Director General Roberto Azevedo said in remarks. “Let me emphasize that all these projections are highly uncertain given the large number of unknown factors at play here. For instance, credit market stresses are affecting the availability of trade finance,” he added.

“Services are not included in the WTO’s merchandise trade forecast, but most trade in goods would be impossible without them (e.g. transport). Unlike goods, there are no inventories of services to be drawn down today and restocked at a later stage. As a result, declines in services trade during the pandemic may be lost forever,” the WTO said.

U.S. Blocks PPE Exports to Protect Domestic Hospitals

Some might argue that the worst time for a government agency to try out a new skillset or jurisdiction is during a global health crisis. The Federal Emergency Management Agency (FEMA) April 10 will test that theory, announcing it would block exports of certain personal protective equipment (PPE). The agency issued a temporary rule “to allocate

© Copyright 2020 Gilston-Kalin Communications LLC
P.O. Box 5325, Rockville, MD 20848-5325
All rights reserved. Reproduction, photocopying or
redistribution in any form, including electronic, without
written approval of publisher is prohibited by law.

WTTL is published weekly 50 times a year except last week
in August and December. Subscriptions are \$747 a year.
Additional users pay only \$100 each with full-priced sub-
scription. Site and corporate licenses are also available.
(301) 460-3060 www.wttlonline.com

certain scarce or threatened materials for domestic use, so that these materials may not be exported from the United States without explicit approval by FEMA,” the Federal Register notice said. The notice follows a White House executive order (EO) late April 3 covering the following items: N-95 filtering facepiece respirators; other filtering facepiece respirators, including single-use, disposable half-mask respiratory protective devices; elastomeric, air-purifying respirators and appropriate particulate filters/cartridges; PPE surgical masks; and PPE gloves or surgical gloves.

After days of talking about it, the administration April 2 invoked the Defense Production Act (DPA) to secure masks for U.S. hospitals (see **WTTL**, April 6, page 1). The Homeland Security secretary “shall use any and all authority available under the Act to acquire, from any appropriate subsidiary or affiliate of 3M Company, the number of N-95 respirators that the Administrator determines to be appropriate,” the White House memo noted.

Prior to the FEMA notice, 3M and the administration agreed to import 166.5 million respirators from China over the next three months to support U.S. healthcare workers. “The Administration is committed to working to address and remove export and regulatory restrictions to enable this plan,” the company said April 6.

The FEMA notice includes an exemption for shipments made by or on behalf of U.S. manufacturers with “continuous export agreements with customers in other countries” since at least Jan. 1, 2020, so long as at least 80% of such manufacturer's domestic production of covered materials, on a per item basis, was distributed in the U.S. in the preceding 12 months, the notice said.

Trade experts immediately took issue with the order. “These steps put U.S. medical workers at risk for a simple reason. The United States depends on imports for medical gear and their components. Last year, Americans bought more than five times the amount of the same respirators, masks, and gloves from foreign sources as the Trump administration is now refusing to sell abroad. U.S. trading partners will not sit idly by in response,” Chad Bown of the Peterson Institute wrote in a blog post.

Cato Institute’s Simon Lester noted the lack of FEMA’s previous export control experience: “This could be an adventure for FEMA. Will they look to Commerce and State for guidance? How long will it take them to be ready to make judgments about whether to allow export?” he tweeted.

Committee Recommends Revoking China Telecom Authorizations

A committee of several U.S. government agencies April 9 unanimously recommended that the Federal Communications Commission (FCC) revoke and terminate China Telecom (Americas) Corp.’s authorizations to provide international telecommunications services to and from the U.S. Agencies include Justice, Defense, State, Commerce, Homeland Security, and the U.S. Trade Representative (USTR). The recommendation comes just

days after an Executive Order (EO) establishing the committee and naming Attorney General Bill Barr its chair. “This is a national security and public safety issue. That’s why the federal government must be vigilant and ensure that a foreign adversary cannot undermine the networks our country depends on,” Barr said. The FCC and other administration agencies have argued against Chinese companies, including Huawei, participation in U.S. networks (see **WTTL**, March 23, page 3).

“We welcome foreign participation in our communications system, but we must ensure that anyone licensed to do business here is a trusted partner. The National Security Division is ready and proud to lead this effort to increase transparency to the public, certainty and timeliness for the business community, and security for the nation,” argued Assistant Attorney General John Demers.

It did not take long for China to respond. Foreign Ministry Spokesperson Zhao Lijian April 10 said China was firmly opposed to the Trump administration’s decision. “We urge the U.S. side to keep to the principles of market economy, stop abusing the concept of national security and politicizing economic issues, and stop wantonly oppressing Chinese companies. It should foster a fair, unbiased and non-discriminatory environment for Chinese companies investing and operating in the U.S.,” the spokesman said.

Specifically, the committee is expected to review applications for telecommunications, submarine cable landing, and other FCC licenses following a referral. Under the EO, once an application is deemed complete, the committee must complete an initial review of an application within 120 days, and if a review reveals potential risks, must complete a secondary assessment within 90 days.

Justice made its recommendation based on China Telecom’s failure to comply with the terms of an existing agreement with the department. “The security of our government and professional communications, as well as of our most private data, depends on our use of trusted partners from nations that share our values and our aspirations for humanity. Today’s action is but our next step in ensuring the integrity of America’s telecommunications systems,” Demers said.

Other factors included: the evolving national security environment and China’s role in malicious cyber activity targeting the U.S.; concerns that China Telecom is vulnerable to exploitation, influence, and control by the Chinese government; inaccurate statements by China Telecom to U.S. government authorities about where China Telecom stored its U.S. records; inaccurate public representations by China Telecom concerning its cybersecurity practices; and the nature of China Telecom’s U.S. operations.

FCC Commissioner Brendan Carr welcomed the recommendation. “Years ago, the FCC authorized China Telecom to connect their facilities to networks here in the U.S. A lot has changed since that authorization, though it continues to allow China Telecom to carry network traffic that originates in the U.S. I have encouraged the national security agencies to examine the threats posed by China Telecom’s network access,” Carr said in a statement.

N.J. Firm Settles Privacy Shield Violations

Ortho-Clinical Diagnostics, Inc., a N.J.-based provider of medical diagnostic devices and services, settled Federal Trade Commission (FTC) charges of misleading consumers about its participation in the European Union (EU)-U.S. Privacy Shield framework, the FTC announced March 30.

In February, four other companies settled similar FTC charges. Those settlements involved mobile services provider Click Labs Inc., performance development company Incentive Services, disaster recovery firm Global Data Vault and managed services provider TDARX (see **WTTL**, Feb. 10, page 1).

Although Ortho-Clinical obtained Privacy Shield certification in April 2017, that certification lapsed a year later, the FTC complaint noted. “In August 2018, Commerce warned the company to take down its claims that it participated in Privacy Shield unless and until such time as it completed the recertification process. Respondent did not do so. While Respondent retained data it collected while it participated in Privacy Shield, it did not withdraw and affirm its commitment to protect such data,” the complaint added.

Under the proposed settlement, Ortho is “prohibited from misrepresenting its participation in the EU-U.S. Privacy Shield framework, as well as any other privacy or data security program sponsored by any government or self-regulatory or standard-setting organization. It also is required either to continue to apply the Privacy Shield protections to personal information it collected while participating in the program, or to return or delete the information,” the agency said.

* * * Briefs * * *

CORONAVIRUS: Senate Finance Committee Chair Chuck Grassley (R-Iowa) and House Ways and Means Committee Chair Richard Neal (D-Mass.) April 6 requested ITC prepare report under Section 332 “that identifies products that may be needed to respond to the COVID-19 pandemic” by April 30. Lawmakers asked ITC to identify “imported goods related to the response to COVID-19, their source countries, tariff classifications, and applicable rates of duty so as to assist the Committees and USTR in proposing or taking appropriate and responsive actions.”

CIVIL PENALTIES: In Federal Register April 9, OFAC adjusted for inflation maximum civil monetary penalties (CMPs) under relevant regulations. These include: Iran, Zimbabwe, Syrian, Darfur, Congo, Belarus, Lebanon, Magnitsky Act and Hizballah sanctions programs.

NORTH KOREA: OFAC April 10 updated its North Korea sanctions regulations with changes from 2017 sanctions law and 2020 NDAA. Specifically, agency incorporated “blocking and correspondent account sanctions provisions,” added new prohibition applicable to persons owned or controlled by U.S. financial institution and established or maintained outside U.S., added “new statutory exemptions relevant to certain newly added prohibitions,” made technical and conforming edits to three definitions, revised interpretive provision, and updated authorities and delegation sections, Federal Register notice said. OFAC also amended definition of luxury goods.

SUGAR: In 5-0 “sunset” vote April 7, ITC said terminating suspended investigations on imports of sugar from Mexico would renew injury to U.S. industry. U.S. and Mexico approved final amendments suspending tariffs on imports of Mexican sugar in July 2017 (see **WTTL**, July 10, 2017, page 6).

CHLORINATED ISOCYANURATES: In 4-0 “sunset” vote April 7, ITC said revoking the existing countervailing duty order on imports of chlorinated isocyanurates from China would renew injury to U.S. industry. Commissioner Jason Kearns did not participate in review.

GARLIC: CAFC March 27 affirmed CIT ruling sustaining Commerce’s final results and partial rescission of 21st administrative review of antidumping duty order on fresh garlic from China. “Just as Commerce has inherent authority to protect the integrity of its proceedings by reopening them to address potentially false information, so it has the inherent authority to defend the integrity of its proceedings in the first instance while they are ongoing,” Circuit Judge Alvin Schall wrote for three-judge panel in *New Mexico Garlic Growers v. U.S.*

VENEZUELA: OFAC April 10 issued GL 5C delaying effectiveness until July 22 of authorization of licenses applicable to holders of Petroleos de Venezuela, S.A. (PdVSA) 2020 8.5% bond.

SEAMLESS PIPE: CIT April 6 remanded Commerce’s final results of remand redetermination that seamless pipe imported by TMB 440AE, Inc. (formerly known as Advance Engineering Corporation) (AEC) was within scope of antidumping and countervailing duty orders on certain seamless pipe from China. “At base, Commerce’s conclusion that that (k)(1) sources are dispositive on whether AEC’s pipe is properly included in the scope is unsupported by substantial evidence and clear reasoning. Commerce cannot ignore the context given to the order language, both inclusive and exclusive, and whether AEC’s pipe was covered by the ITC determination that certain pipe possessed material injury or threat of material injury to domestic producers,” CIT Judge Jane Restani wrote in *TMB 440AE, Inc. v. U.S.* (Slip Op. 20-44).

ALUMINUM EXTRUSIONS: CIT April 6 sustained Commerce decision on whether kitchen appliance door handles fall within scope of antidumping (AD) and countervailing duty (CVD) orders on aluminum extrusions from China. “In the Second Remand Redetermination, Commerce ruled that the finished merchandise exclusion did not apply to the Type B handles and that the extruded aluminum component of each Type B handle was within the scope of the Orders while the other components (plastic end caps and screws) were not,” Chief Judge Timothy Stanceu wrote in *Meridian Prods., LLC v. U.S.* (Slip Op. 20-43). In May 2018, CAFC remanded two related cases brought by Aluminum Extrusions Fair Trade Committee (see **WTTL**, May 28, 2018, page 5).

MUSICAL CHAIRS: President April 10 announced intent to nominate Treasury official Marshall Billingslea to be State special presidential envoy for arms control. President in August 2018 nominated him to be under secretary of State for civilian security, democracy and human rights, but nomination was returned (see **WTTL**, Sept. 3, 2018, page 9). Amnesty International lobbied against nomination given his “well-documented history of advocating for the use of torture and other unlawful interrogation practices,” group said on day of committee hearing in September 2019. Senate confirmed Billingslea as Treasury assistant secretary for terrorist financing in 65-35 vote in June 2017. Prior to Treasury, Billingslea was managing director for Deloitte Advisory and previously spent more than decade at Defense.