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USTR Takes World to Task in Trade Estimate Report

In the middle of a global pandemic, the U.S. Trade Representative's (USTR) office provided some good news along with the usual gloom and doom in its 2020 National Trade Estimate Report on Foreign Trade Barriers (NTE) published March 31. The administration signed trade deals with major partners in 2019, which is cause for modest celebration in official reports.

> The 540-page report covers 59 countries, plus the European Union (EU), Taiwan, Hong Kong, and the Arab League. Like in previous years, USTR fact sheets highlighted successes and barriers in agriculture and digital trade. These two areas were the focus of both the U.S.-Mexico-Canada agreement and the two-pronged deal with Japan, as well as the "phase one" agreement with China.

In the area of digital trade, the NTE is critical of Chinese cybersecurity measures, web filtering and blocking, restrictions on cloud computing and data flows, and forced technology transfer. The report also singles out data localization policies in China, India, Indonesia, Kenya, Nigeria, Russia, Saudi Arabia, Turkey and Vietnam.

On the positive side, the USTR's office highlights success in opening markets for U.S. apples in South Africa, beef in the EU and Japan, table eggs in Guatemala, oranges in Vietnam, chipping potatoes to Japan, and rice in South Korea. Overall, U.S. farmers and ranchers export more than 20% of what they produce, with 2019 agricultural domestic exports reaching nearly $137 billion, the USTR fact sheet noted.

Trading Partners at Odds over Medical Exports

A worldwide pandemic highlights the fragile nature of the global supply chain, the tenuous relationship with trading partners, and where the U.S. sources products when it needs them. The conflict gets especially fraught when government officials single out an individual company for negative attention. After days of talking about it, the admini-

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stration April 2 invoked the Defense Production Act (DPA) to secure masks that hospitals around the country desperately need. 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.

"We hit 3M hard today after seeing what they were doing with their Masks. 'P Act' all the way. Big surprise to many in government as to what they were doing - will have a big price to pay!" President Trump tweeted. French and German officials separately accused the U.S. of confiscating masks bound for their police departments and hospitals; Berlin's Interior Senator Andreas Geisel called it an "act of modern piracy."

> In response to the DPA order, 3M said, "the administration requested that 3M increase the amount of respirators we currently import from our overseas operations into the U.S. We appreciate the assistance of the administration to do exactly that. For example, earlier this week, we secured approval from China to export to the U.S. 10 million N95 respirators" the firm manufactured in China.

All seems good so far. However, 3M's statement went on to reject administration requests that the company cease exporting respirators to Canada and Latin America. "There are, however, significant humanitarian implications of ceasing respirator supplies to healthcare workers in Canada and Latin America, where we are a critical supplier of respirators. In addition, ceasing all export of respirators produced in the United States would likely cause other countries to retaliate and do the same, as some have already done. If that were to occur, the net number of respirators being made available to the United States would actually decrease," the company argued.

Canadian Prime Minister Justin Trudeau also denounced the president's request, citing the thousands of Canadian nurses who work in Detroit. "It would be a mistake to create blockages or reduce the amount of back and forth trade of essential goods and services, including medical goods across our border. That is the point we're making very clearly to the American administration right now," he said during a press briefing April 3.

"3M has indicated that it understands how important it is to continue with delivering on orders to places like Canada because there is much trade that goes back and forth in essential services and it could end up hurting Americans as much as it hurts anybody else. That is the point that we are making very directly," Trudeau added.

On the same day, Rep. Eliot L. Engel (D-N.Y.) separately urged the administration to restrict the export of personal protective equipment from the U.S. "There is mounting evidence that the critical shortages of surgical masks and other personal protective equipment are being exacerbated by the unregulated export of such medical supplies from the United States," he wrote to VP Mike Pence. Engel urged Pence to "bring the supply of personal protective equipment under federal regulation, including the immediate imposition of a requirement for a license for any export of such equipment," he wrote.

Canada Ratifies USMCA Deal, Will Determine New Date

Perhaps trade deals are not the highest priority right now. But right over the horizon is June 1, the supposed implementation day for the updated U.S.-Mexico-Canada trade agreement (USMCA). Perhaps it is impossible for practitioners to imagine all the levers being up and running while everyone is working from home and trying to contain a global pandemic.

Canada has completed its domestic ratification process of the new NAFTA, Canadian Deputy Prime Minister Chrystia Freeland announced April 3. "The Canadian government will continue to work with the United States and Mexican governments to determine an 'entry into force' date that is mutually beneficial. We want to ensure the new NAFTA will support a strong economic recovery once we have put the COVID-19 pandemic behind us," she said. "With this step, I am hopeful that the new NAFTA will enter into force later this year," Freeland noted.

> Senate Finance Committee Members three days earlier urged USTR Robert Lighthizer to delay the deal's entry into force. "USMCA should not enter into force prematurely – particularly in light of the COVID-19 pandemic – and thereby deny American farmers, workers, and businesses its intended benefits. We ask you to delay the proposed June 1 entry into force and work with Congress and stakeholders to determine a more feasible timeline," the senators wrote.

"Even absent the pandemic, a June 1 deadline would be highly aggressive, and raises questions as to whether businesses have the information they need to adjust to the new rules and comply by that date. Entry into force should only happen after all necessary regulations are in place and our industries have had an opportunity to understand and implement them effectively," they added.

Five automotive industry groups, including dealers and manufacturers, cited the lack of clear automotive rules in a similar statement in March. "Even if it were reasonable to divert our attention to USMCA compliance, the United States, Canada and Mexico have yet to issue, even in draft form, the uniform automotive rules of origin regulations. Without them, many questions remain unanswered regarding how to interpret the new rules," the groups wrote March 13 (see **WTTL**, March 23, page 1).

Administration Denies Plans to Defer Tariff Payments

Will he or won't he? Despite press reports to the contrary, administration officials denied that it plans on deferring certain tariff payments for 90 days in light of the global coronavirus pandemic. That didn't stop industry groups from quickly embracing or denouncing the news.

Since the crisis began, importers, domestic industry, lawmakers and the administration have continued their disagreement on tariffs (see **WTTL**, March 23, page 2). In response to a question during a coronavirus task force briefing March 31, the president adamantly denied the reports. "I didn't do anything about tariff payments. I don't know who's talking about tariff payments. They keep talking about tariff payments. And we haven't done that. China is paying us — we made a deal with China. Under the deal, they're paying us 25% on $250 billion, and they pay it," Trump said.

White House economic adviser Larry Kudlow confirmed the administration's decision in a television interview two days later. "We looked a little bit at most-favored nation custom duties, and we decided it was too complicated," Kudlow said April 3. "We never looked in any serious way at rolling back tariffs," he added.

> The reports of deferred payments, even though officials quickly dismissed the plan, quickly drew both applause and criticism. "There's never a bad time to embrace good policy, and tariff relief would provide some welcome breathing room for American businesses and consumers. Liquidity has emerged as one of the top challenges for businesses of all sizes, and tariff relief … would alleviate some of that strain," U.S. Chamber of Commerce Executive VP Myron Brilliant said in a statement.

Domestic industry representatives took a contrasting view. "Incentivizing imports would kill many U.S. jobs that remain. Textile manufacturers, for example, have seen demand go away. Nobody is buying underwear and shirts. Textiles have an average of 14% MFN tariffs, up to as much as 33%. Bangladesh, Vietnam and China are producing and stockpiling unsold products that will be dumped here," Coalition for a Prosperous America (CPA) said in a statement.

The United Steelworkers (USW) called the reported plan "ill advised" and puts thousands of jobs at risk. "The argument that this move is necessary to increase 'liquidity' is also extremely troubling, as any flexibility it will afford will go to foreign producers and importers, while putting further strain on domestic manufacturers at a time when they can least afford it," the union said.

National Council of Textile Organizations (NCTO) President and CEO Kim Glas agreed. "These unnecessary tariff concessions would benefit importers and retailers at the direct expense of manufacturers on the front lines of the COVID-19 response and send a demoralizing message. Tariff deferrals would severely exacerbate ramifications for the U.S. economy, manufacturers and workers and open the floodgates for imports," she said.

G20 Trade Ministers Assure Domestic, Foreign Industry

Following in the footsteps of their leaders, the G20 trade ministers March 30 assured industry that they would keep markets and logistics networks open during the coronavirus pandemic, while emphasizing measures would be proportionate, temporary and consistent with World Trade Organization (WTO) rules. Four days earlier, the G20 nations' leaders said all the right words on keeping markets open and resolving disruption to global supply chains (see **WTTL**, March 30, page 1).

"We agree that emergency measures designed to tackle COVID-19, if deemed necessary, must be targeted, proportionate, transparent, and temporary, and that they do not create unnecessary barriers to trade or disruption to global supply chains, and are consistent with WTO rules," the ministers said in a joint statement following a virtual conference.

> "We will continue monitoring and assessing the impact of the pandemic on trade. We call on the international organizations to provide an in-depth analysis of the impact of COVID-19 on world trade, investment and global value chains. We will continue working with them to establish coordinated approaches and collect and share good practices to facilitate flows of essential goods and services," the ministers added.

While the U.S. signed on to the joint statement, officials took pains to reassure domestic industry and push perceived political points. "Like others, we are learning in this crisis that over-dependence on other countries as a source of cheap medical products and supplies has created a strategic vulnerability to our economy. For the United States, we are encouraging diversification of supply chains and seeking to promote more manufacturing at home," USTR Robert Lighthizer said in a separate statement.

WTO Director-General Roberto Azevedo applauded the statement but downplayed any attempt to boost domestic supply over imports. "We can and must scale up the production of things like protective equipment, ventilators, testing kits — and ultimately treatments and vaccines," he said. "But we want manufacturers to be focused on maximizing output, not figuring out how to source domestically, or whether imported materials or components will ever arrive," Azevedo added.

* * * Briefs * * *

TRADE FIGURES: Merchandise exports in February dipped 1.5% from year ago to $137.2 billion, Commerce reported April 2. Services exports gained 1.6% to $70.3 billion from February 2019. Goods imports dropped 5.8% from February 2019 to $198.4 billion, as services imports dipped 0.1% to $49.1 billion.

IRAN: France, Germany and United Kingdom (E3) March 31 confirmed that INSTEX, European vehicle to facilitate transactions with Iran, has "successfully concluded its first transaction, facilitating the export of medical goods from Europe to Iran," three partners said in statement. "INSTEX aims to provide a sustainable, long-term solution for legitimate trade between Europe and Iran as part of the continued efforts to preserve the JCPOA. Now the first transaction is complete, INSTEX and its Iranian counterpart STFI will work on more transactions and enhancing the mechanism," E3 added.

MORE IRAN: More than 30 House members and senators March 31 urged administration to end Iran sanctions. "Rather than continue to invoke new sanctions in the Iranian people's hour of need, we urge you to substantially suspend sanctions on Iran during this global public health emergency in a humanitarian gesture to the Iranian people to better enable them to fight the virus," they wrote. OFAC March 26 designated 20 Iran- and Iraq-based front companies, senior officials and business associates that support Islamic Revolutionary Guards Corps-Qods Force (see **WTTL**, March 30, page 6).

MATTRESSES: Brooklyn Bedding, Corsicana Mattress Company, Elite Comfort Solutions, FXI, Innocor, Kolcraft Enterprises, Leggett & Platt, Teamsters and AFL-CIO filed countervailing and antidumping duty petitions March 31 with ITA and ITC against imports of mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey. and Vietnam. Companies previously filed antidumping duty petition with ITA and ITC against mattresses from China in September 2018 (see **WTTL**, Sept. 24, 2018, page 5). "It is not unusual for U.S. industries to file AD and CVD petitions against multiple countries or to file new petitions after the successful conclusion of other trade cases," International Sleep Products Association wrote.

FIREARMS: Defense Export Control and Compliance (DECCS) Licensing application has been updated to reflect USML firearms transfers, DDTC announced April 3. "Industry users will be able to select from the new category and subcategory values detailed in the regulation. This change only applies to new license submissions. It does not apply to previously submitted license applications," agency said. Transfers went into effect March 9 after last-minute court ruling (see **WTTL**, March 16, page 1).

VENEZUELA: OFAC April 3 issued general license (GL) 13E, extending previous GL that authorized certain activities involving Nynas AB. Specifically, OFAC extended GL expiration date to May 14 from April 14.