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by Steve Kopperud
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Trump Declares Border Emergency Setting Off, Joint Resolution Fight, Avalanche of Lawsuits

Declaring “I didn’t have to do this,” President Trump used executive authority late last week to declare a “humanitarian and security” national emergency along the U.S.-Mexican border, technically allowing him to tap “unobligated” federal funds to build his multi-billion-dollar border wall. And with the ink on that declaration barely dry, 16 states, led by California, as well as at least four private organizations and individuals filed suits in federal court to block the emergency declaration.

Broadly, Trump’s actions keep the government operating through the September 30 end of FY2019, eliciting a huge sigh of relief from the 350,000 furloughed workers and 800,000 unpaid employees affected by the historic 35-day partial federal shutdown.

Agriculture Secretary Sonny Perdue said in a statement, “I am pleased that Congress passed, and President Trump signed funding for USDA for the remainder of FY2019. We will be moving at full speed on all of our responsibilities...since Congress did not act to protect our southern border, the President has also declared a national emergency...he is exercising his constitutional authority, as presidents from both parties have done many times in the past.” Perdue then made a strong pitch for Congress to approve disaster assistance funding.

While Trump wanted \$5.7 billion as part of the FY2019 spending package he signed last week to avoid a second partial shutdown of the federal bureaucracy, congressional appropriators allotted only \$1.37 billion. Following the president’s emergency declaration, acting White House Staff Director Mick Mulvaney said Trump would transfer \$3.6 billion from unobligated discretionary military construction funds – the biggest pot of money and the one for which the emergency declaration is needed – and under separate authority, \$600 million from a Treasury Department drug forfeiture fund and \$2.5 billion from a Pentagon drug prevention program.

However, a Pentagon spokesperson said late this week only \$85 million remains unspent in the Pentagon drug prevention account, meaning the Department of Defense (DoD) may need to ask Congress permission to “reprogram” other defense funds.

On the legislative side, House Speaker Nancy Pelosi (D, CA) and Senate Minority Leader Charles Schumer (D, NY) moved forward with a resolution of “termination” or disapproval, a procedural ploy, which if upheld, would nullify Trump’s declaration. Both Schumer and Pelosi have publicly called the emergency declaration “an unlawful act” and an end-run around Congress.

It’s expected the House resolution will be filed by Rep. Joaquin Castro (D, TX) on February 22, and once approved by the House – after weeks of committee hearings – action moves to the Senate which is expected to introduce its own identical resolution. The resolutions need a simple majority to

clear their respective chambers, but there's deep skepticism there are enough votes to override a guaranteed Trump veto.

Sen. Susan Collins (R, ME) has already declared she'll vote in favor of the resolution, but three more GOPers are needed to cross over and vote with the Democrats. On both sides of Capitol Hill, there's a growing number of GOP lawmakers who object to the White House move, seeing it as "robbing the Pentagon" to pay for the border wall and/or a political move by the president that could be used later by a Democrat White House resident to further an agenda unpopular Republicans in Congress. Others see the declaration as trivializing the executive order process, jeopardizing Congress's "power of the purse" when it comes to spending.

The White House, which contends the executive authority used by Trump "has been on the books since 1976," posted to its website several conservative legal opinions supporting the president's action, all contending constitutional authority is on Trump's side. It's expected anything Congress sends to Trump will be vetoed, the president's first.

Five suits have been filed in federal court, including that filed by California on behalf of itself and 15 other states. The state suit, which was filed in the Northern District of California, seeks a preliminary injunction to stop the president's declaration, calling it "an unconstitutional and unlawful scheme" that could cost them millions in federal funding and "cause damage to their economies." Fifteen of the 16 states have Democrat governors.

The American Civil Liberties Union (ACLU), Sierra Club, ACLU of Texas, and ACLU of Northern California filed a lawsuit on behalf of the Sierra Club and the Southern Border Communities Coalition in the Northern District of California. "The president is using a bogus declaration of a non-existent emergency to undermine our constitutional system of checks and balances, in the process deeply harming communities living and working at the border," said the ACLU.

A third federal suit was filed in the Western District of Texas by El Paso County and the Border Network for Human Rights, again seeking injunction of the executive order. At the same time, the Center for Biological Diversity, Defenders of Wildlife and the Animal Legal Defense Fund filed in the U.S. District Court for the District of Columbia saying Trump's order unlawfully circumvents Congress, alleging the wall will harm the environment. And lastly, three landowners in south Texas and the Frontera Audubon Society, represented by Public Citizen, allege the order exceeds presidential authority and will cause harm because the federal government intends to seize their land for the wall.

CFTC Grateful for Increased Funding

In addition to Agriculture Secretary Sonny Perdue's gratitude his department is funded through at least the end of the fiscal year, outgoing Commodity Futures Trading Commission (CFTC) Chair Chris Giancarlo is doubly thrilled he's not only got a budget, but Congress finally increased his operating bank account after several years of flat funding.

"I am grateful for (congressional) support for the CFTC and its increased funding," Giancarlo said in a statement this week. "I am also grateful to the Administration for recognizing the agency's critical

oversight of America's financial and commodity derivatives markets. This funding increase is an essential step in making the CFTC a 21st century regulator for modern digital markets.”

Giancarlo also thanked and praised his fellow commissioners for supporting his request for more funding, and he praised CFTC staff for their work during several years of flat funding.

Strong Corn 2019 Acres, Less Beans; Uncertainty Fuels Income Drop, Bankruptcy Spike: Outlook Forum

USDA Chief Economist Rob Johansson followed in the steps of his predecessors this week, headlining USDA's 95th Agricultural Outlook Forum and reporting farmers are expected to plant more corn this spring, but fewer soybeans, while meat and dairy production could hit record levels. “Uncertainty,” however, means stagnant to lower farm income and increased bankruptcy filings in major ag states, the economist said.

The year ahead, particularly the next few months, is fraught with uncertainty, particularly the ongoing tariff wars with China, he cautioned. “Trade, policy, weather and market information” are all unsettled, making 2019 “less certain than perhaps since the first year of the Freedom to Farm Act in 1996.”

Farm income is expected to stay under \$80 billion annually for the next decade, a sharp contrast to the \$134 billion reported in 2013. That uncertainty has also led to higher bankruptcy filings in key ag states, Johansson said, with increases registered in Wisconsin, Minnesota, Kansas and Nebraska compared with a year ago and the 10-year average. California saw an increase in bankruptcies, but less than the 10-year average.

Corn plantings are expected to hit 92 million acres, about 3.3% more than last year, with price generally flat to 1.4% higher to an average \$3.65/bushel. For soybeans, the department is projecting planting on 85 million acres, nearly 5% fewer than 2018, with uncertainty about Chinese purchases playing a major role in that production decision, Johansson said. Prices could average \$8.80/bushel, just slightly higher than a year ago.

The outlook for wheat shows stable plantings and price, Johansson said, with plantings seen dropping about 1.7% to 47 million acres, and prices up just 1% to \$5.20/bushel.

Production of meat and dairy could hit records this year, the economist reported, with beef, pork, chicken and milk production all strong, with proteins averaging a 2.3% overall increase. Dairy output will be up about 1.1% to 220.1 billion pounds. Pork output will be 3.8% higher at 27.3 billion pounds, with beef up 2.7% to 27.6 billion pounds and broilers at 43.1 billion, an increase of 1.4%.

McConnell to Force Vote on “Green New Deal” Next Week

Making sure all who listen know his statements last week were not idle chatter, Senate Majority Leader Mitch McConnell (R, KY) this week confirmed he will bring to the floor for a vote as early as

next week Sen. Ed Markey's (D, MA) version of the "Green New Deal," a wide-ranging resolution basically seeking to wean the U.S. off fossil fuels in less than 10 years.

Democrats, particularly those who have declared their desire to be president, are not happy, quite rightly seeing the vote as a McConnell move to split the Democrats while uniting his own caucus ahead of the 2020 elections.

The broad Democrat caucus must decide whether to back Markey's plan, the mirror image of a resolution introduced in the House by Rep. Alexandria Ocasio-Cortez (D, NY). The plan has not gotten a warm reception on Capitol Hill. In the media, it's criticized broadly as unfocused and too far-reaching.

Documents circulated by Ocasio-Cortez this month talked about cow flatulence and banning all airplane travel, and the freshman lawmaker disassociated herself from the broader discussion when GOP lawmakers branded the effort "socialism."

Senate Minority Whip Dick Durbin (D, IL) called it a "resolution aspiration," a description Sen. Amy Klobuchar (D, MN) and a White House hopeful, embraces.

Democrats, however, also see a floor vote as a way to get Republicans on the record when it comes to wrestling with climate change. However, even senior Democrat leaders have minimized the vote's importance given there will be more legislation on climate change as the election nears.

White House to Create Climate Security Committee

In the wake of negative reactions elicited by the "Green New Deal" put forward by Rep. Alexandria Ocasio-Cortez (D, NY) and Sen. Ed Markey (D, MA) to wean the U.S. off fossil fuels in 10 years and the publication of several new reports contending Ocasio-Cortez and Markey's effort is right on the money, the White House is getting ready to announce President Trump will issue an executive order creating a new panel to look at how climate change is impacting national security, according to media reports this week.

The "Presidential Committee on Climate Security" will have 12 members and will include scientists who both agree human activity is contributing to shifts in climate, as well as so-called "deniers," scientists who don't see humans as the main catalyst for shifting climate patterns and who argue heavy-handed CO2 controls won't help. This mix of climate change philosophies is already drawing criticism of the new committee.

The White House earlier in the month released its 2019 Worldwide Threat Assessment, which said in part, "Global environmental and ecological degradation, as well as climate change, are likely to fuel competition for resources, economic distress and social discontent through 2019 and beyond," reports the New York Times. Threats include rising sea levels, threats to low-lying military facilities and "the likelihood that drought and flooding could lead to mass human displacement and increased conflict."

Likelihood of March China Tariff Deal, Trump-Xi Summit Increasing as Talks Progress

President Trump was set to meet with China's Vice Premier Liu He, that nation's top trade negotiator and recently named "special envoy," as the U.S. and China concluded the third round of talks aimed at ending the bilateral tariff wars plaguing both countries. The meeting is seen as the best signal the talks are progressing quickly and that the outcome will be positive.

As to whether the world's two largest economies will have a deal ready to sign by March 1, the deadline set by Trump and China's President Xi Jinping back in December, Trump this week told reporters, "The talks are going very, very well. I can't tell you exactly about timing, but the date is not a magical date. A lot of things can happen." If "substantial progress" continues, it could clear the way for a mid-March summit with Xi, most likely to finalize a package and announce it formally.

Sen. Rob Portman (R, OH), who served as President Bush's U.S. Special Trade Representative (USTR), told CNBC this week he thinks at least a partial agreement will be announced by March 1. Portman sees a three-part deal coming that includes China upping its purchases of agriculture and manufactured goods to cut the U.S. trade deficit, a "significant" commitment by the Chinese to protect U.S. intellectual property, while cutting subsidies and other unfair support for state-owned companies.

As the latest round of negotiations wound down this week in Washington, DC, reports circulated the two nations could be ready to sign as many as six memoranda of understanding (MOUs) addressing key issues in the tariff wars, according to Reuters and Politico. The agreements would cover agriculture – China has reportedly agreed to increase corn, soybean and wheat purchases by \$30 billion above pre-tariff levels over several years – services, non-tariff trade barriers, currency, intellectual property rights and forced technology transfers and cybersecurity. More work is needed on the technology transfer issue, as well as on how overall enforcement of the agreements would work.

Agriculture Secretary Sonny Perdue made it clear to reporters that nothing is agreed to until it's all agreed to. "These are proposals and counterproposals. They are all contingent upon a resolution of the core issue of structural reform (by China). So, it's premature to discuss quantities and values until we have a deal. I don't want to raise or lower expectations," Perdue said.

He did tell the annual Outlook Forum that once a deal is done, the U.S. will be able to recover Chinese markets quickly.

Also on the table at this week's talks were 10 issues that don't force major reforms, but provide political victories for both sides, *Politico* reports, including an increase in Chinese acceptance of U.S. biotech crop varieties, no tariffs on polysilicon used in making solar panels, as licenses for credit card companies to provide electronic payment services in China.

While the president is pleased with the talks' progress, he says outright the threat of the U.S. imposing yet more tariffs on Chinese imports has been a major incentive for the Chinese to compromise. While currently, the U.S. has 10% tariffs on about \$200 billion in Chinese exports,

Trump has threatened to hike that tariff 25%. China has retaliated by slapping 10% tariffs on about \$110 billion in U.S. sales to China, with ag exports taking most of the hit.

Trade Shorts

U.S. Pushes Forward with WTO Reform Proposals – Cutting the number of World Trade Organization (WTO) members which can designate themselves as “developing” countries thus eliminating “special and deferential treatment” is key to the U.S. formal proposals for reforming the WTO. Today, countries can self-designate as “developing,” leading to nearly all 164 WTO member nation’s claiming “developing status,” including China, India, South Korea, Saudi Arabia, Hong Kong and several oil-rich Mideastern countries. Among the benefits accrued by developing nations is twice the allowable agricultural subsidies enjoyed by “developed” nations like the U.S., Canada and most of the European Union (EU). The U.S. proposed to the WTO such “high income” nations as identified by the World Bank should be denied developing country status. Status should be denied as well to OECD members, G20 countries and any country accounting for 0.5% or more of world trade.

Trump Threatens Tariffs on EU Auto Exports; EU Threatens End to Soybean Buys – President Trump has over the last year repeatedly threatened the European Union (EU) and other trading partners with new tariffs on automobiles and parts exported to the U.S., and this week’s Department of Commerce (DOC) report delivered to the White House on whether such exports to the U.S., totaling about \$360 billion in 2017, are a national security problem has increased particularly the EU’s concerns the president may just go ahead and impose the new levies. Trump has 90 days to decide what he’s going to do based on the DOC report, and in addition to lost jobs and increased car prices to U.S. buyers, European Commission President Jean-Claude Juncker said this week that he expects Trump won’t impose the new tariffs as he committed to Juncker last summer, but if he does, the EU “will no longer feel bound by our commitment” to buy more U.S. soybeans.

EPA Notes

Agency Purges TSCA Inventory of Old, Off-Market Chemicals – EPA has completed an “inventory reset,” removing from its list of regulated chemicals almost 50% of the substances listed given they’re no longer on the market. Companies were asked to tell EPA about any chemical that was made, used or imported in the last 10 years and was legally required to be listed under the Toxic Substances Control Act (TSCA) as updated in 2016. The agency reported just 40,655 of the 86,228 substances in the TSCA inventory are still in commercial use. Any of these chemicals could go back into use, but if they do, they must be relisted in the TSCA inventory, EPA explained.

Long-delayed RFS Pollution Studies Planned – In a pre-publication notice released this week, EPA says it will go forward with long-delayed studies of the “anti-backsliding” impacts on air pollution of the Renewable Fuel Standard (RFS), part of the settlement of a lawsuit filed by the Sierra Club. The pre-pub notice carries a 30-day comment period. When the RFS was created in 2007, Congress included a requirement that EPA study the air impacts of the agency’s ethanol requirements every three years, with EPA releasing its initial study in 2011, a year late. Reports were due in 2013 and 2016 and were never conducted.

EPA Looking at RIN Market Reforms – Open market trading of Renewable Identification Numbers (RIN), a way for fuel blenders to offset their legal obligation to actually mix biofuels with gasoline, is well recognized as a Wild West kind of exercise, critics contending trading rules are vague, allowing hoarding and excessive price swings. *Bloomberg* reports EPA is putting together a plan – actually, several options for a plan to be put out for public comment – to bring adult supervision to RIN credit markets. Among changes contemplated at this point are barring Wall Street and outsiders from speculating in RIN markets by banning their participation; setting position limits to prevent hoarding; public position reporting; a limit on how long a trader can hold RINs, and limiting trading to “obligated parties,” i.e. fuel refiners and importers. The agency action is part of an order from President Trump to fix the RIN market chaos, which critics contend involves overt manipulation and oversensitivity to policy news. The American Petroleum Institute (API) says the RIN reform effort – just like EPA’s impending announcement of year-round E15 sales – is “critically flawed.”

Contact Us

Kathy Zander, Executive Director

Roxanne Rice, Finance Director

Phone: 605/224-2445

Fax: 605/224-9913

Email: info@sdaba.org

Website: www.sdaba.org