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OFAC Removes Russian Firms from Sanctions List

As promised, Treasury's Office of Foreign Assets Control (OFAC) Jan. 27 lifted sanctions on three firms owned by Russian oligarch Oleg Deripaska -- En+ Group plc (En+), UC Rusal plc (Rusal) and JSC EuroSibEnergo (ESE). OFAC had notified Congress a month prior of its intention, and the Senate failed to secure a resolution denouncing the administration's controversial move.

> OFAC took the action armed with a promise that Deripaska had relinquished ownership. "This action ensures that the majority of directors on the En+ and Rusal boards will be independent directors – including U.S. and European persons – who have no business, professional, or family ties to Deripaska or any other [Specially Designated National], and that independent U.S. persons vote a significant bloc of the shares of En+," OFAC said in a press release.

In a joint statement after the OFAC action, House Ways and Means Committee Chair Richard Neal (D-Mass.), Foreign Affairs Committee Chair Eliot L. Engel (D-N.Y.), Intelligence Committee Chair Adam Schiff (D-Calif.) and Financial Services Committee Chair Maxine Waters (D-Calif.) questioned "whether the agreement reached between Treasury and Deripaska sufficiently divests him of resources for this ability."

"We are deeply troubled by the decision … to move forward with lifting sanctions …before Congress had the opportunity to review the terms of this deal thoroughly," the lawmakers said. While the Senate failed to act, the House passed a similar measure (H.J. Res. 30) in a 362-53 vote (see **WTTL**, Jan. 21, page 1). The chairs "are considering additional legislative actions to ensure that Treasury and these companies comply with the agreement in letter and in spirit, and to prevent something like this from happening again," they said.

Huawei Indictment Could Complicate Trade Talks

Although U.S. officials are quick to downplay the political connection between ongoing trade talks and indictments against Chinese telecom giant Huawei and its chief financial

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officer (CFO) Meng Wanzhou, the timing shows how difficult it will be to separate the two. The day before new trade talks between the two nations resumed in Washington, U.S. authorities Jan. 28 slapped Huawei and Meng with two indictments in Seattle and Brooklyn U.S. District Court. Among the 23 charges were violating Iran sanctions, as well as bank fraud and stealing trade secrets.

> In a curious parallel, Meng was arrested in Canada the same night in December the U.S. and Chinese presidents had dinner in Argentina (see **WTTL**, Dec. 10, page 1). Now Justice unsealed multi-count indictments as Chinese officials are in Washington for trade talks (see related story, page 3).

The first indictment alleges that Huawei and Meng misled the U.S. government and bank officials about their business dealings in Iran by going through a third party - Skycom. Both Meng and Huawei executives referred to Skycom as a "local partner." But prosecutors allege Skycom was Huawei's longstanding Iranian subsidiary.

In addition, since 2007, Huawei "repeatedly misrepresented to the U.S. government and to various victim financial institutions... and their U.S. and Eurozone subsidiaries and branches… that although Huawei conducted business in Iran, it did so in a manner that did not violate applicable U.S. law," including the Iranian Transactions and Sanctions Regulations (ITSR), the Brooklyn indictment noted.

"In reality, Huawei used U.S. Subsidiary 1 and other financial institutions operating in the United States to process U.S.-dollar clearing transactions involving millions of dollars in furtherance of Huawei's Iran-based business," it added. Meng, who owns a home in Vancouver, was released on bond and awaits extradition to the U.S. Following the Justice indictment, the U.S. sent Canada a formal request for her extradition.

Commerce Secretary Wilbur Ross tried to separate the indictment from the trade talks. "To be clear – these indictments are law enforcement actions, and are wholly separate from our trade negotiations with China. Commerce will continue to work with our interagency partners to protect U.S. national security interests. We will ensure our sanctions and export control laws are enforced, and violators brought to justice," Ross said.

Both Huawei and the Chinese government denied the charges, claiming political reasons. "For some time, the U.S. has been using national power to tarnish the image of and crack down on specific Chinese companies in an attempt to strangle their lawful and legitimate operations. Behind such moves are deep political intentions and manipulations. We strongly urge the U.S. to stop its unreasonable bashing on Chinese companies including Huawei and treat them objectively and fairly," Chinese Foreign Ministry Spokesperson Geng Shuang said in a press briefing.

EU Creates Payment Vehicle for Iran Business

While the U.S. has withdrawn from the Joint Comprehensive Plan of Action (JCPOA) or the Iran nuclear deal, despite international verification that Tehran is fulfilling its commitments, France, Germany and the United Kingdom (E3) are maintaining the deal. Foreign ministers from the three countries Jan. 31 created a Special Purpose Vehicle (SPV) to facilitate payments related to Iran's imports and exports.

The vehicle, known as INSTEX SAS (Instrument for Supporting Trade Exchanges) "will support legitimate European trade with Iran, focusing initially on the sectors most essential to the Iranian population – such as pharmaceutical, medical devices and agri-food goods. INSTEX aims in the long term to be open to economic operators from third countries who wish to trade with Iran and the E3 continue to explore how to achieve this objective," the ministers said in a joint statement. The partners first announced the SPV on the sidelines of the UN General Assembly in October (see **WTTL**, Oct. 1, page 3).

> "The European Union continues to be committed to the full and effective implementation of the JCPOA in all its aspects as long as Iran continues to implement in full all its nuclear commitments, as set out by the agreement," EU High Representative/Vice-President Federica Mogherini said in a statement.

The International Atomic Energy Agency (IAEA) has verified Iran's compliance more than a dozen times. Most recently, IAEA Director General Yukiya Amano told the Board of Governors in November, "Iran is implementing its nuclear-related commitments under the [JCPOA]. It is essential that Iran continues to fully implement those commitments."

In Senate testimony Jan. 29, Director of National Intelligence (DNI) Dan Coats agreed to a point. "While we do not believe Iran is currently undertaking the <u>key</u> activities we judge necessary to produce a nuclear device, Iranian officials have publicly threatened to push the boundaries of JCPOA restrictions if Iran does not gain the tangible financial benefits it expected from the deal," he said.

China, U.S. Officials Make "Substantial Progress" in Talks

The fat lady didn't sing, and no one sang "Kumbaya," but U.S. and Chinese officials Jan. 31 hailed "substantial progress" toward an agreement that would lift the Section 301 tariffs on Chinese goods. With a month to go before the administration's deadline to add even more duties, it is unclear what progress might look like.

Administration officials set low expectations in advance of the two days of meetings (see **WTTL**, Jan. 28, page 2). But the White House remained positive in a statement. "The two sides showed a helpful willingness to engage on all major issues, and the negotiating sessions featured productive and technical discussions on how to resolve our differences," it said.

The U.S. "is particularly focused on reaching meaningful commitments on structural issues and deficit reduction. Both parties have agreed that any resolution will be fully enforceable," the White House added. U.S. Trade Representative (USTR) Robert Lighthizer and Treasury Secretary Steven Mnuchin are due to travel to China in February for further talks.

In remarks just before a meeting between Trump and Chinese Vice Premier Liu He, Lighthizer said, “I think we’ve made progress. We have much work to do if we’re going to have an agreement, but we made substantial progress. We focused on the most important issues, which are the structural issues and the protection of U.S. intellectual property, stopping forced technology transfer, intellectual property protection, agriculture and services issues, and enforcement, enforcement, enforcement.”

While this sounds positive, two contentious issues were not discussed. “We haven’t talked about extending the deadline. The deadline is March 1st. That deadline has stayed, and we really haven’t talked about it,” Trump noted. The president also said the officials did not discuss the indictment against Huawei and its executives (see related story, page 1). “No, we haven’t discussed that yet. It will be, but it hasn’t been discussed yet.” Then, he added, “Well, it will be discussed. I’m sure at some point that’ll be — that, actually, as big as it might seem, is very small compared to the overall deal, but that will be discussed.”

Administration Imposes Sanctions on Venezuelan Oil Company

As international outcry grows over Venezuelan President Maduro and the opposition leader who has claimed the presidency, Treasury’s Office of Foreign Assets Control (OFAC) Jan. 28 designated the Venezuelan state-owned oil company Petroleos de Venezuela, S.A. (PdVSA) under a November executive order.

> “Today’s designation of PdVSA will help prevent further diverting of Venezuela’s assets by Maduro and preserve these assets for the people of Venezuela. The path to sanctions relief for PdVSA is through the expeditious transfer of control to the Interim President or a subsequent, democratically elected government,” Treasury Secretary Steven Mnuchin said in a statement.

Venezuelan President Maduro “and his cronies have used state-owned PDVSA to control, manipulate, and steal from the Venezuelan people for too long, destroying it in the process,” Secretary of State Michael Pompeo said in a separate press statement.

President Trump in November issued Executive Order (EO) 13850, imposing sanctions on persons operating in Venezuela’s gold and oil sectors. OFAC “expects to use its discretion to target in particular those who operate corruptly in the gold or other identified sectors of the Venezuela economy, and not those who are operating legitimately in such sectors,” the agency said at the time.

Democratic lawmakers welcomed the sanctions but expressed concern over the impact on Venezuelan citizens. “I urge the Administration to approach this situation with great care to avoid any collateral impact on the people of Venezuela,” Rep Eliot Engel (D-N.Y.) said in a statement.

Sen. Robert Menendez (D-N.J.) agreed. “Given the potential implications of this announcement for the well-being of the Venezuelan people, the U.S. should also pair sanctions with expanded efforts to peacefully address Venezuela's humanitarian crisis," he said in a separate statement. OFAC at the same time amended General License (GL) 3 authorizing transactions related to, provisions of financing for, and other dealings in certain bonds and issued eight new Venezuela-related GLs authorizing maintenance and wind-down operations in connection with this designation. The next day, OFAC issued several new frequently asked questions (FAQs) and updated two existing FAQs explaining the GLs.

> One FAQ defined what was authorized under the GLs. "Transactions and activities authorized by General Licenses 6 and 11 could include entering into or renewing contracts, paying invoices, or receiving services, consistent with the terms of the relevant general license, that were initiated after the applicable sanctions effective date involving the blocked entities if such activity is ordinarily incident and necessary to contracts in effect prior to the applicable sanctions effective date," OFAC noted.

Three weeks before the sanctions announcement and two days before Maduro began his second term, the country requested World Trade Organization (WTO) dispute consultations with the U.S. over other recent sanctions actions. On the same day, OFAC designated even more individuals and entities for a bribery scheme involving the Venezuelan national treasury (see **WTTL**, Jan. 14, page 3).

Trade Talks Will Not Include Agriculture, EU Repeats

EU Trade Commissioner Cecilia Malmstrom said it once, she'll say it again: Trade talks with the U.S. will be narrowly focused on industrial goods and regulatory cooperation and will not include agriculture, according to a progress report the EU released Jan. 30. In contrast, the USTR's recently released negotiating objectives include dozens of chapters, including one on agriculture (see **WTTL**, Jan. 21, page 2).

"It is all out there for everyone to see what we are discussing and, as importantly, what we are not discussing. For instance, we are not proposing any negotiations with the U.S. to reduce or eliminate tariffs on agricultural products. It is my firm intention to ensure the highest level of transparency throughout this process," Malmstrom said in a statement.

"The joint agenda does not include agriculture – which is a sensitivity for the EU side – or public procurement – which is a sensitivity for the U.S. In this sense, cooperation under the joint agenda should not be compared with the wide-ranging and comprehensive scope of a typical modern EU trade agreement," the progress report noted.

The European Commission also repeated its warning against potential Section 232 tariffs on cars and car parts. "The application of restrictions on trade of automobile products would in any event lead to the suspension of negotiations in industrial tariffs as well as to rebalancing measures as in the area of steel and aluminium," it said.

"The Commission's proposal for negotiating directives on industrial tariffs envisages that the removal of restrictions on exports of steel and aluminium is a precondition for the conclusion of negotiations," the EU added. Despite the seeming disagreement, the EU and U.S. officials have made progress on "exploring how to deliver results on regulatory issues," as well as "on facilitating imports of U.S. soya beans," the EU report noted.

U.S. Laws Will Change for Trade Agreement, Eventually

While the updated U.S.-Mexico-Canada Agreement (USMCA) may not get full congressional approval any time soon, it never hurts to be prepared. Senate Finance Committee Chairman Chuck Grassley (R-Iowa) Jan. 29 posted technical and substantive changes to U.S. law that will be needed for eventual USMCA implementation.

> These changes include: creating tariff-rate quotas (TRQs) on goods, including dairy, sugar, sugar-containing products, peanuts and peanut products, and cotton; revising the duty drawback exception for sugar to reflect new tariff nomenclature and expanding this exception to include sugar-containing products; potential changes to implement USMCA provisions on express shipments; and making significant changes to the rules of origin for automotive goods, textile inputs and optical fiber and certain steel, glass, titanium and chemical products.

The Internet Association (IA) took specific issue with the provisions that would grant the USTR "broad flexibility to lower the U.S. express shipments (de minimis) threshold level now or in the future." Specifically, "USTR's proposed provision in the implementing legislation would force small businesses to navigate a complicated, confusing net of customs rules. USTR should ensure this language is not in the final implementing legislation, as it will undermine the robust digital trade provisions in USMCA," IA Director, Trade Policy Jordan Haas said in a statement.

* * * Briefs * * *

<u>OLIVES</u>: European Union (EU) Jan. 31 requested WTO dispute consultations with U.S. over antidumping and countervailing duties on imported ripe olives from Spain. In tweet Jan. 28 EU Trade Commissioner Cecilia Malmstrom called duties "unjustified, unwarranted and go against [WTO] rules." USTR Robert Lighthizer said in statement: "It would be unfortunate if the WTO were to encourage the type of unfair and market-distorting trade that was at issue in this case. We believe that the EU's case is without merit, and we intend to fight it very aggressively." In 3-1 final vote in July 2018, ITC found U.S. industry is materially injured by dumped and subsidized olive imports (see **WTTL**, July 16, page 8).

<u>EXPORT ENFORCEMENT</u>: Eric Baird, former owner and CEO of mail and package forwarding company Access USA Shipping, LLC, in Sarasota, Fla., which does business as MyUS.com, was sentenced Jan. 30 in Tampa, Fla. U.S. District Court to two years' probation. He pleaded guilty in December to one count of smuggling. At same time as guilty plea, Baird agreed to pay $17 million to settle 166 BIS charges of causing, aiding or abetting violation related to company's business model (see **WTTL**, Jan. 7, page 7).

<u>MORE EXPORT ENFORCEMENT</u>: Folasade Omowanile of Brooklyn, N.Y., agreed Jan. 17 to pay $10,000 civil penalty to settle BIS charge of causing, aiding or abetting violation in November 2014

in connection with export of handcuffs and legcuffs to Nigeria without license. Items were classified under Export Control Classification Number (ECCN) 0A982 and controlled for crime control reasons. Handcuffs were valued at approximately $10,032 and legcuffs at approximately $2,311. "An acquaintance of Omowanile paid him to place the items at issue in three used vehicles that he was exporting to Nigeria. Omowanile placed the items inside the vehicles, which were then placed inside a container for export," BIS settlement noted. Of penalty, $9,000 shall be suspended for three years and then waived, provided Omowanile commits no further violations.

STILL MORE EXPORT ENFORCEMENT: Multiwire Laboratories, Ltd. of Ithaca, N.Y., agreed Jan. 16 to pay BIS $80,000 civil penalty to settle two charges of exporting Real-Time Back Reflection Laue camera detectors and accessories to blocked Chinese entity University of Electronic Science and Technology of China (UESTC) without required BIS licenses in February 2014 and August 2015. Items were designated EAR99 and worth $177,156. Multiwire neither admitted nor denied charges. Mohawk Global Logistics of North Syracuse, N.Y., agreed in August 2018 to pay $155,000 civil penalty to settle related charges (see WTTL, Aug. 20, 2018, page 5).

EVEN MORE EXPORT ENFORCEMENT: Asim Fareed of Boca Raton, Fla., VP of Compass Logistics International, agreed Dec. 19 to settle BIS charge of conspiracy to export pressure aging vessel and bending beam rheometer to Iran via UAE without authorization in 2014. Under settlement, he agreed to provide two annual reports of all export and reexport transactions. Items were designated EAR99 and worth almost $50,000. Fareed was sentenced in September 2016 in Scranton, Pa. U.S. District Court to two years' probation for related charges (see WTTL, Sept. 19, 2016, page 10).

PIPE AND TUBE: U.S. Jan. 25 appealed WTO panel report on Turkey's complaints against U.S. countervailing duty measures on certain oil country tubular goods (OCTG), welded line pipe (WLP), heavy walled rectangular welded carbon steel pipes and tubes (HWRP) and circular welded carbon steel pipes and tubes. Panel upheld several of Turkey's complaints in December (see **WTTL**, Jan. 7, page 7).

WTO: Second time's charm. At WTO Dispute Settlement Body (DSB) meeting Jan. 28, body agreed to China's second request to establish panel to rule on U.S. Section 301 tariffs. DSB also agreed to U.S. second request to establish panel to rule on retaliatory duties Turkey imposed on certain U.S. imports in response to U.S. duties on steel and aluminum imports (see **WTTL**, Jan. 14, page 5). This is sixth panel over such duties, following requests by Canada, China, EU, Mexico and Russia.

SANCTIONS: e.l.f. Cosmetics, Inc. (ELF) of Oakland, Calif., agreed Jan. 31 to pay $996,080 to settle 156 OFAC charges of violating U.S. sanctions by importing false eyelash kits from two suppliers in China that contained materials sourced from North Korea from 2012 through 2017. ELF voluntarily self-disclosed apparent violations. "This enforcement action highlights the risks for companies that do not conduct full-spectrum supply chain due diligence when sourcing products from overseas," OFAC said.

COOL TOOL: DDTC will release new version of advisory opinion application housed on cloud-based Defense Export Control and Compliance System (DECCS) Feb. 4, agency posted on website Feb. 1. "All current DTrade Super Users with valid email addresses will automatically be enrolled in DECCS as Corporate Administrators over the coming weeks and will receive an email … to activate their DECCS accounts in order to access the Advisory Opinions application," agency said.

CONGRESS: Rep. Mike Gallagher (R-Wis.), Sen. Pat Toomey (R-Pa.) and two dozen cosponsors Jan. 31 introduced parallel bipartisan bills (H.R.940/S. 287) requiring congressional approval of Section 232 tariffs on steel and aluminum imports. Industry groups expressed support even before bills were introduced. "Congressional oversight of national security trade actions is critically needed in order to ensure a proper weighing of the overall national interest before tariffs or quotas go into effect. It is clear that these overall interests were not properly weighed in the case of steel and aluminum and there are proposals for future use in the autos sector that make this need for a balanced weighing of interests even more apparent," wrote 30 business groups to lawmakers Jan. 30. Other Republican lawmakers introduced opposite Reciprocal Trade Act (H.R. 764) week before (see **WTTL**, Jan. 28, page 4).

TRADE PEOPLE: President Trump Feb. 1 announced intent to nominate Ian Paul Steff to be assistant secretary of Commerce and director general of U.S. and Foreign Commercial Service. Steff currently serves as deputy assistant secretary of Commerce for manufacturing. Prior to that, he served as Indiana's first chief innovation officer. Senate confirmed predecessor Elizabeth Erin Walsh to post in August 2017; she held job until May 2018 (see **WTTL**, Aug. 7, 2017, page 8).