ISSN 0276-8275

WTTLonline.com

A Weekly Report for Business Executives on U.S. Trade Policies, Negotiations, Legislation, Trade Laws and Export Controls

Washington Tariff & Trade Letter®

Publisher: Martin Kalin • Editor: Meredith Gilston

Vol. 39, No. 3 **January 21, 2019**

Federal Shutdown Costly to U.S. Exporters

U.S. exporters are losing more than $1 billion daily due to a shuttered federal government, but industry has reason to hope that Directorate of Defense Trade Controls (DDTC) licensing officers will clear much of the accumulated backlog after 29 days on furlough.

> With both DDTC and Bureau of Industry and Security (BIS) out of commission, U.S. exporters are losing out on $1.4 billion a day of unauthorized exports, according to former Deputy Assistant Secretary of State for Defense Trade Controls Brian Nilsson. Nilsson noted that DDTC authorized $192.3 billion arms exports in fiscal year 2018, while BIS approved $318.1 billion in licensed exports in calendar year 2017, numbers he used to get his projected figures.

At DDTC alone, the total exports not processed will be $15.3 billion. If every $1 billion in exports directly supports over 6,000 U.S. jobs, then 91,674 American jobs have been at risk, Nilsson noted. Add lost BIS licenses, and the figure grows to $23.5 billion in unauthorized exports, imperiling 232,872 jobs, he added.

State employees, including DDTC, were informed Jan. 17 they must return to work for at least two weeks. "Although most personnel operations can resume, bureaus and posts are expected to adhere to strict budget constraints with regard to new spending for contracts, travel, and other needs, consistent with … the Department's guidance on lapse in appropriations," the Deputy Under Secretary for Management wrote in urgent message to State employees.

U.S. Congress Divided over Russian Sanctions

What a difference an election makes. The day after the Senate failed to secure a resolution denouncing the administration's controversial move to lift sanctions on companies owned by Russian oligarch Oleg Deripaska, the House Jan. 17 passed a similar measure (H.J. Res. 30) in a 362-53 vote. The day before the House vote, the Senate failed to invoke

WTTL is published weekly 50 times a year except last week in August and December. Subscriptions are $697 a year. Additional users pay only $100 each with full-priced subscription. Site and corporate licenses are also available. Phone: 301-460-3060 Fax: 301-460-3086

cloture on S.J. Res. 2 in a 57-42 vote. Eleven Republicans and every Democrat voted in favor of the measure, while Sen. Bernie Sanders (I-Vt.) did not vote. House Ways & Means Committee Chairman Richard Neal (D-Mass.) a week prior requested Treasury delay implementation of the move, citing the government shutdown and a congressional recess (see **WTTL**, Jan. 14, page 6).

Democratic senators denounced the vote since it could allow Deripaska to continue to profit financially. "I am frustrated that most of my Republican colleagues voted today to allow this deal to go forward. If Treasury now moves to implement it, I will insist on regular reporting to Congress on its enforcement. If any of the parties fail to comply, the administration must snap back sanctions," said Sen. Sherrod Brown (D-Ohio) in a statement.

> Former U.S. Ambassador to Russia Michael McFaul echoed the sentiment. "It is naive beyond belief to argue that this reduction in Deripaska's formal ownership will actually reduce his de facto control of these companies. (Again, as if the American people should care about that issue in the first place). He also will make more money in long run," he wrote on Twitter.

On the same day as the Senate vote, Treasury's Office of Foreign Assets Control (OFAC) extended the expiration date of certain general licenses related to Deripaska's firms -- En+ Group plc (EN+), United Company RUSAL PLC (RUSAL), and JSC EuroSibEnergo (ESE) -- to Jan. 28 from Jan. 21. "This short-term extension enables En+, RUSAL, and ESE to continue to operate as they execute technical steps that must be taken prior to the completion of the agreement between OFAC and these entities," the agency said in a press release.

Specifically, OFAC issued general license (GLs) 13J, 14E and 16E extending authorization for transactions related to GAZ Group, EN+, RUSAL and other companies to the same date. GAZ Group was not included in the removal of sanctions.

EU Doubles Down on Narrow Trade Objectives

Family dinner is going to be fun. As expected, the European Union's (EU) mandate for an U.S.-EU trade agreement, which it published Jan. 18, is much more narrow than the U.S. objectives published a week earlier. Most strikingly, the member states agreed to pursue an agreement strictly focused on the removal of tariffs on industrial goods, but excluded agricultural products.

After a visit with U.S. Trade Representative (USTR) Robert Lighthizer in Washington Jan. 10, EU Trade Commissioner Cecilia Malmstrom was clear that the talks would not include agriculture, as she did not have a consensus or mandate from EU member states (see **WTTL**, Jan. 14, page 4). The U.S. objectives released Jan. 11 in contrast feature 24 chapters that range from digital trade and rules of origin to labor and environment, including a section on agricultural goods.

"The goal of the negotiations on the elimination of tariffs will be to eliminate all duties for industrial goods, on a reciprocal basis, with the objective of achieving a substantial elimination of tariffs upon entry into force and a phasing out of such tariffs in a short time frame. Industrial goods encompass all goods other than those included in Annex I of the WTO [World Trade Organization] Agreement on Agriculture," the EU mandate noted.

"Account may be taken of the particular sensitivities of certain products. In this connection, the EU is ready to take into account potential U.S. sensitivities for certain automotive products," it added. An additional EU mandate approved talks toward a second agreement on conformity assessment, "that would help address the objective of removing non-tariff barriers, by making it easier for companies to prove their products meet technical requirements on both sides of the Atlantic," the EU said.

White House Returns Trade Nominees to Senate

Let's try this again. In a game of bureaucratic boomerang, the president Jan. 16 sent dozens of nominations back to the Senate, including candidates for vacant Export-Import Bank (Ex-Im), Commerce and State posts. Time will tell if these candidates will have better luck than in the last congressional session (see **WTTL**, Jan. 14, page 1).

> Nominees include Kimberly A. Reed to be Ex-Im Bank president and Spencer Bachus, Judith DelZoppo Pryor and Claudia Slacik to be Ex-Im board members. The president nominated previous Ex-Im inspector general candidate Mark Greenblatt to be Interior inspector general Jan. 17.

R. Clarke Cooper was renominated to be assistant secretary of State for political-military affairs. At his confirmation hearing in August, Sen. Ed Markey (D-Mass.) announced he would put a hold on the nomination until the administration's settlement with Defense Distributed over posting of 3-D gun blueprints online is formally withdrawn and the policy changed (see **WTTL**, Aug. 6, page 2)

At Commerce, the White House returned the nominations of Jeffrey Kessler to be assistant secretary for enforcement and compliance and Jeffrey Nadaner to be assistant secretary for export enforcement. Also returned to the Senate were two International Trade Commission (ITC) nominees: Randolph Stayin and Amy Karpel; Dennis Devaney was not renominated. He was previously an ITC commissioner in 2001.

Industry Offers History Lessons for UK Trade Talks

As the British parliament voted against a Brexit deal, throwing the withdrawal process into even greater chaos, U.S. industry urged the USTR and the United Kingdom (UK) to learn from previous experience and not let strained trade relations affect talks toward a robust U.S.-UK trade agreement. USTR announced potential trade deals with the UK, EU and Japan in October (see **WTTL**, Oct. 22, page 1). The Software & Information Industry

Association (SIIA) welcomed a U.S.-UK trade deal, urging the two sides to "strive to come to an agreement that provides for a positive cross-border data flow commitment with a narrow public policy exception that allows enforcement of local privacy laws," as was done in the recently negotiated NAFTA update, the U.S.-Mexico-Canada (USMCA) agreement.

"Although the UK's room for maneuver may be limited by trade arrangements it makes with the EU, it is essential for the U.S. government to find a way to limit this exceptions language so that enforcement of privacy rules cannot be used to distort trade or discriminate against foreign competitors," the group continued.

> "A successful U.S.-UK trade agreement would not only reduce the relatively high auto import tariffs in the UK; it could also lead to automotive regulatory convergence or, ideally, mutual recognition of each country's automotive safety and environmental standards. This would provide important new auto export opportunities for American automakers to a UK market," wrote American Automotive Policy Council (AAPC), which represents Fiat Chrysler, Ford and General Motors.

Information Technology Industry Council (ITI) recognized the Brexit negotiations "continue to be characterized by significant uncertainty," including how the UK will import EU regulatory approaches such issues as "data flows and data protection, cybersecurity, intermediary liability, taxation, platform regulation, and many others." The council also encouraged USTR to "seek elimination of customs duties for physical goods as well as an increase in the *de minimis* threshold for the imposition of duties." A U.S.-UK deal "should also prohibit customs duties on digital products and electronic transmissions in order to reduce unnecessary costs on digital trade," ITI added.

As would be expected, the California Cherry Board (CCB) urged officials to address agriculture in the U.S.-UK negotiations, a current sticking point in the nascent EU talks (see related story, page 4). The group seeks an agreement "that eliminates all UK tariffs on fresh cherries from the United States and that strengthens the role of science-based sanitary and phytosanitary measures," it added.

Semiconductor industry association SEMI wrote that the U.S. "should ensure that U.S. trade relations with the EU will not be adversely affected by a U.S.-UK agreement." Specifically, SEMI suggested the talks: embrace non-discrimination, maintain strong respect for intellectual property and trade secrets, remove tariffs and end technical barriers; simplify and harmonize customs and trade facilitation processes, combat forced technology transfer, enable the free flow of cross-border data, eliminate forced data localization measures, harmonize global standards, create transparent rules for state-owned enterprises and establish privacy protections.

In addition, SEMI took subtle aim at the U.S. administration with its call to "maintain appropriate discipline on trade actions based on national security." The group wrote that it is important to confirm a narrow and predictable scope for actions justified on national "security grounds and to ensure that national security is not stretched to include purely commercial and competitive considerations."

The AFL-CIO proposed a five-chapter agreement with the UK: tariffs, labor, environment, enforcement and dispute settlement, and other, which could encompass working groups to discuss so-called "trade irritants" and possibilities for trade cooperation and coordination. In general, "the U.S.-UK trade agreement must not include any restrictions on the obligation to protect the public interest," the group wrote.

> Specifically, "the agreement should contain no rules regarding technical barriers to trade, regulatory practices, sanitary and phyto-sanitary standards or the like; no negative lists or ratchet mechanisms; no ISDS; no procurement obligations; no limitations on anti-trust law or financial services regulations; no restrictions on the ability to adopt policies to constrain growth in the price of medicines; and no limitations or restrictions on public services of any kind," it added.

While many comments urged USTR to use the USMCA as a template for the U.S.-UK talks, the Association of American Publishers (AAP) argued that the deal "contains a number of flawed provisions that should not be carried forward into future U.S. agreements," including the provision on open government data that weakens rather than strengthens rights holders' ability to protect and enforce their rights.

"An agreement that not only enshrines existing strong protections for copyright but seeks to advance an enforcement regime better suited to addressing the nature and scope of piracy that rights holders face today, while ensuring that future efforts to enhance enforcement mechanisms are not hamstrung by the inclusion in international instruments of current frameworks that are no longer adequate nor effective," AAP wrote.

* * * Briefs * * *

<u>CONGRESS</u>: Rep. Earl Blumenauer (D-Ore) Jan. 16 was named House Ways and Means trade subcommittee chair; Rep. Vern Buchanan (R-Fla.) will be ranking member.

<u>WTO</u>: General Council Chair Junichi Ihara Jan. 18 appointed New Zealand's WTO Ambassador David Walker to "assist him in working with WTO members to resolve differences on the urgent matter of the functioning of the organization's Appellate Body." U.S. has blocked multiple AB nominations and rejected members' proposals to settle long-running dispute (see **WTTL**, Jan. 7, page 8). Ihara said he sought ambassador with "thorough knowledge and practical experience" in WTO dispute settlement, someone who had chaired WTO body and someone familiar with WTO informal processes.