ISSN 0276-8275

WTTLonline.com

Washington Tariff & Trade Letter®

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

Publisher: Martin Kalin • Editor: Meredith Gilston • Associate Editor: Melissa Apter

Vol. 38, No. 15 **April 9, 2018**

Treasury Sanctions Russian Oligarchs, Officials

Eight months after Congress overwhelmingly passed a bill forcing the administration's hand on Russian sanctions, Treasury's Office of Foreign Assets Control (OFAC) April 6 designated seven Russian oligarchs and 12 companies they own or control, 17 senior Russian government officials and Rosoboronexport (ROE), a state-owned Russian weapons trading company and its subsidiary, a Russian bank.

> In January, on the bill's statutory deadline, Treasury issued a list of oligarchs, government officials and state-owned entities and then came under fire for its decision not to impose any further Russian sanctions as required under the bill (see **WTTL**, Feb. 5, page 1). All of the sanctioned oligarchs and many of the officials were on Treasury's previous list.

On the list of sanctioned oligarchs was Oleg Deripaska, an associate of former Trump campaign chairman Paul Manafort, as well as Igor Rotenberg, who was designated for "operating in the energy sector of the Russian economy." Treasury designated Rotenberg's father Arkady and uncle Boris in March 2014 (see **WTTL**, March 24, 2014, page 4). It also includes Vladimir Putin's son-in-law Kirill Shamalov.

At the same time, OFAC issued two general licenses (GLs 12 and 13) to "minimize immediate disruptions to U.S. persons, partners, and allies," and posted several new frequently asked questions (FAQs) to its website. Under GL 12, OFAC is authorizing a time-limited maintenance or wind down of operations, contracts, or other agreements. GL 13 authorizes certain divestment and transfer activities related to debt, equity, or other holdings in the blocked entities.

White House Escalates Trade Dispute with China

In a move experts fear could trigger a trade war, the White House April 5 asked the U.S. Trade Representative (USTR) to consider whether $100 billion of additional tariffs – in

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

addition to the $50 billion USTR proposed April 3 - would be appropriate under Section 301 of the Trade Act of 1974. In addition to tariffs, the White House also is pursuing cases against China at the World Trade Organization (WTO) and has directed Treasury to address concerns about Chinese investment in the U.S. (see **WTTL**, March 26, page 1).

USTR April 3 issued a list of approximately 1,300 separate tariff lines of imported goods from China valued at approximately $50 billion. USTR proposed an additional duty of 25% on products including: certain iron or non-alloy steel products, certain stainless steel products, hydraulic power engines and motors, linear acting (cylinders), milking machines, poultry incubators and brooders and more.

> "Economies around the world – including China's own – would benefit if China would implement policies that truly reward hard work and innovation, rather than continuing its policies that distort the vital high-tech sector," USTR Lighthizer said in a statement April 5. China's Ministry of Commerce declared it is unafraid of a trade fight (see related story below).

"China has chosen to respond thus far with threats to impose unjustified tariffs on billions of dollars in U.S. exports, including our agricultural products. Such measures would undoubtedly cause further harm to American workers, farmers, and businesses. Under these circumstances, the President is right to ask for additional appropriate action to obtain the elimination of the unfair acts, policies, and practices," Lighthizer added.

The initial proposed list of Chinese goods subject to tariffs will undergo "an extensive public comment period and public hearing," as will any additional tariffs, according to a White House statement. The due date for filing a request to appear at a public hearing is April 23. Written comments are due May 11, and a hearing at the International Trade Commission is scheduled for May 15.

As agriculture is likely to take a hit, Agriculture Secretary Sonny Perdue has been instructed to "implement a plan to protect American farmers and agriculture." the U.S. is "still prepared to have discussions in further support of our commitment of achieving free, fair, and reciprocal trade and to protect the technology and intellectual property of American companies and American people," President Trump said in a statement.

China Responds to U.S. Escalation

Following the White House's announcement of $100 billion in potential additional tariffs on Chinese imports, the Chinese government let it be known that they would not go down without a fight. "We declare to the United States that we will listen and observe what [they] do. If the United States disregards the opposition of the Chinese side and the international community and persists in unilateralism and trade protectionism, the Chinese side will dedicate itself to the end and will definitely fight back. It must adopt new comprehensive response measures, and at any cost, resolutely defend the interests of the country and the people," China's Foreign Ministry Spokesperson Lu Hao told the foreign press April 6. "This Sino-U.S. economic and trade conflict was initiated by the U.S. side. In essence, U.S. unilateralism is a challenge to global multilateralism and U.S. protectionism against global free trade. China will continue to expand reform and opening up, safeguard the multilateral trading system, and promote the liberalization and facilitation of global trade and investment," he added.

> Prior to the White House announcement, China April 5 requested consultations with the U.S. under the World Trade Organization's (WTO) Dispute Settlement Mechanism regarding the U.S.' Section 301 trade measures. Two days prior, China notified the WTO of its intention to impose $611.5 million worth of tariffs on $2.75 billion U.S. imports primarily from the agricultural sector in retaliation for U.S. duties on imports of steel and aluminum. China added tariffs of up to 25% on 128 U.S. products effective April 2 (see **WTTL**, March 26, page 1).

Deputy USTR Dennis Shea responded in a letter to the WTO April 4. "Because the actions under the Steel and Aluminum Proclamations are not safeguard measures, the United States considers that Article 8.2 of the Agreement on Safeguards does not justify China's suspension of concessions or other obligations. China has asserted no other justification for its measures, and the United States is aware of none. Therefore, it appears that China's actions have no basis under WTO rules."

Industry, Congress React to Proposed Tariffs

Reaction to U.S. and China's proposed tariffs ranged from overwhelmingly negative in agricultural sectors to cautiously optimistic that the two sides might end up in negotiations rather than a full blown trade war (see story, page 1). Trade observers note that trade negotiations with China tend to end in long lists of aspirational goals, rather than specific and enforceable commitments.

As expected, agriculture was not pleased by China's proposed 25% tariffs. The American Soybean Association (ASA) expressed its "extreme frustration about the escalation of a trade war with the largest customer of U.S. soybeans." China purchases 61% of total U.S. soybean exports, equaling more than 30% of overall U.S. soybean production, the trade group noted.

"Soybean futures are already down nearly 40 cents a bushel as of this morning [April 4]. At a projected 2018 crop of 4.3 billion bushels, soybean farmers lost $1.72 billion in value for our crop this morning alone. That's real money lost for farmers, and it is entirely preventable," ASA President John Heisdorffer said in a statement. "We call on President Trump to engage the Chinese in a constructive manner—not a punitive one—and achieve a positive result for soybean farmers," he added.

Manufacturers are also worried. "These tit-for-tat trade actions could spell disaster for the U.S. economy and make it harder for Americans across the country to afford everyday products and basic necessities. It is inevitable that China will respond with more retaliatory actions that cause even further harm to American farmers, businesses and consumers. We urge the administration to change course and stop playing a game of chicken with the nation's economy," National Retail Federation President and CEO Matthew Shay said in a statement.

The American Chemistry Council (ACC) also weighed in. "China is one of the U.S. chemical industry's most important trading partners, importing 11%, or $3.2 billion, of all U.S. plastic resins in 2017. We are particularly concerned that 40% of the products to which China has assigned new tariffs are chemicals, including polyethylene, PVC, polycarbonates, acrylates, and others," ACC President and CEO Cal Dooley said.

> Dooley commented that $185 billion in new chemical factories, expansions and facilities restarts are "predicated on current tariff schedules." Market shifts from tariff increases may cost the U.S. business. He urged both sides to reach "a productive and meaningful agreement" before the scheduled tariffs go into effect.

The National Association of Manufacturers (NAM) tried to strike a cautiously optimistic tone. "If the imposition of tariffs is the first bid in negotiating a more level playing field, manufacturers believe the end product must be a new, strategic approach that includes negotiating a fair, binding and enforceable rules-based trade agreement with China that requires them to end their unfair trade practices once and for all," read a NAM statement.

"President Trump is determined to confront China's unfair trade practices. The deliberation period announced by the President gives the U.S. and China a long overdue opportunity to resolve this serious trade dispute. It is in both of our countries' interest—and frankly, the world's—to find a new path forward on unfair trade practices," said House Ways and Means Committee Chairman Kevin Brady (R-Texas) said in a statement. Congressional Democrats have been notably quiet in response.

"Everyone's asking: 'Are we in a trade war'? The best answer is that while the order for now remains 'hold your fire,' the troops are mobilizing to get into formation," said CATO's Daniel Ikenson. "If Presidents Trump and Xi get into a chest-puffing contest to show who can win a trade war, then a trade war there will be. But, as things stand currently, there is still hope for averting a descent into the protectionist abyss," he added.

* * * Briefs * * *

<u>TRADE FIGURES</u>: Merchandise exports in February jumped 7.5% from year ago to $137.2 billion, Commerce reported April 5. Services exports gained 4.8% to $67.3 billion from February 2017. Goods imports increased 11.0% from February 2017 to record-high $214.2 billion, as services imports gained 10.5% to record-high $47.8 billion.

<u>BIODIESEL</u>: In 4-0 final vote April 3, ITC found U.S. industry is materially injured by dumped imports of biodiesel from Argentina and Indonesia. Commissioner Jason E. Kearns did not participate in these investigations.

HONEY: In 4-0 "sunset" vote April 3, ITC said revoking antidumping duty order on imports of honey from China would renew injury to U.S. industry. Commissioner Jason E. Kearns did not participate in this review.

TRITIUM: In Federal Register April 5 BIS created new Export Control Classification Number (ECCN) 1A231 for specified target assemblies and components for production of tritium and added related "production" technology for 1A231 commodities under ECCNs 1E001 and 1E201. In August 2016, BIS added certain targets "specially designed" for production of tritium and related "development" and "production" technology to its "holding" ECCNs 0A521 and 0E521 (see **WTTL**, Aug. 8, 2016, page 6). Agency received no comments to August 2016 interim final rule. U.S. then submitted proposal to Nuclear Suppliers Group (NSG) and members agreed in June 2017. Items identified in final rule are controlled for nuclear nonproliferation Column 1 and anti-terrorism Column 1 reasons, BIS noted.

ITC: Jason Kearns was sworn in April 2 as ITC commissioner. He was first nominated by President Obama in January 2017; nominated by President Trump in June 2017; and Senate confirmed him March 1 (see WTTL, March 5, page 3). Three other ITC nominations still waiting: Randolph Stayin and Dennis Devaney were nominated in October and await Senate Finance Committee hearing; president nominated Amy Karpel Feb. 27.

TRADE PEOPLE: Nazakhtar Nikakhtar was sworn in April 3 as assistant Commerce secretary for industry and analysis. Senate confirmed nomination by voice vote March 19.

MORE TRADE PEOPLE: Bob Vastine, former president of Coalition of Services Industries (CSI), died March 30. Bob served as CSI president from 1996 to 2012. Previous posts included deputy assistant secretary of Treasury for international trade and commodity policy under President Ford. He was 80.

THANKSGIVING DINNER: CAFC April 2 affirmed CIT ruling in *WWRD U.S., LLC v. U.S.* that festive holiday dinnerware was not eligible for duty-free treatment. "WWRD argued that Thanksgiving and Christmas dinners are specific cultural ritual celebrations, its articles are used in the performance of such celebrations, and thus its articles belong in HSTUS 9817.95.01," Circuit Judge Raymond Clevenger wrote for three-judge panel. "According to the trial court, such general-purpose articles do not qualify as articles used in the performance of specific religious or cultural ritual celebrations," he wrote. WWRD brands include Waterford, Wedgwood and Royal Doulton.

FCPA: Julia Vivi Wang, naturalized U.S. citizen, pleaded guilty April 4 in Manhattan U.S. District Court to violating FCPA and conspiring to violate FCPA for her role in scheme to pay $500,000 bribe to Antiguan ambassador to UN to buy diplomatic positions. Wang also admitted to tax fraud. Wang was arrested in March 2016 and released on $1,500,000 bond. Sentencing has not been scheduled. Bribe was "solicited and facilitated" by John Ashe, then Antiguan ambassador who died in 2016, and Francis Lorenzo, then-deputy permanent representative to UN for Dominican Republic, according to original complaint. Ashe and Lorenzo were also connected to Ng Lap Seng, owner of Macau Real Estate Development Company, who is awaiting sentencing on separate bribery charges (see **WTTL**, March 5, page 7).

STEEL: Court of International Trade Judge Jane Restani April 5 denied plaintiffs' motion for preliminary injunction in case of Severstal Export GMBH and its American affiliate Severstal Export Miami Corporation vs. U.S. Parties will proceed to further brief government's motion to dismiss according to Rules of the Court, noted public filing. Severstal challenged lawfulness of steel tariffs and sought preliminary injunction to prevent U.S. government from collecting 25% additional tariff pending case outcome (see **WTTL**, April 2, page 3).

WASHERS: Korea April 5 informed WTO Goods Council of proposed suspension of "substantially equivalent" concessions and other obligations in response to U.S. imposition of three-year tariff rate quotas on imports of certain large residential washers and parts (see **WTTL**, Jan. 29, page 1). U.S. measure impacts $303.6 million of annual imports from Korea as of 2017, resulting in $151.8 million duty to be collected. Application of suspension will come into effect Feb. 7, 2021. Suspension of concessions and other obligations will apply until U.S. safeguard measure lifted, according to Korean document filed with WTO.

SOLAR: Japan and Korea also informed WTO April 6 of intent to suspend safeguard concession in 2021 "substantially equivalent" to U.S. measures to safeguard imports of crystalline silicon photovoltaic cells. According to Korean filing, U.S. measure impacts $1,099.906 million of annual imports from Korea in 2017, resulting in $329.972 million of duty to be collected, which amounts to 30% tariff increase by U.S. (see **WTTL**, Jan. 29, page 1).

NAFTA: USTR Robert Lighthizer hosted his Canadian and Mexican counterparts in Washington, April 6 for ongoing NAFTA discussions. At press time, no formal announcement had been made, though Canadian Foreign Affairs Minister Chrystia Freeland reportedly told Canadian press that NAFTA negotiations have entered "new, more intensive phase of engagement."