

**Vol. 38, No. 42****October 22, 2018**

## **USTR to Start Three New Trade Talks**

Fresh from its victory lap on a new NAFTA deal, the U.S. Trade Representative (USTR) Oct. 16 formally notified Congress it intends to negotiate three separate trade agreements with Japan, the European Union (EU) and the United Kingdom (UK) “as soon as practicable, but no earlier than 90 days from the date of this notice.”

Of course, the talks with the UK would not start until after March 2019, when the Brexit deal is completed. “We may seek to pursue negotiations with Japan [and the EU] in stages as appropriate, but we will only do so based on consultations with Congress,” USTR wrote in its letters. Under existing Trade Promotion Authority (TPA), USTR will publish objectives for the negotiations at least 30 days before formal trade negotiations begin.

“We’ll see where it turns out. We’re hopeful. We certainly have a very ambitious, pro-trade, fair-trade, reciprocal-trade agenda,” USTR Robert Lighthizer said at a Cabinet meeting Oct. 17. Sources say that there is a lot of excitement in Congress for the new deals, but also a lot of questions as to whether there is a “meeting of the minds,” especially with the EU.

The president at the same meeting revealed his strategy of using tariffs as leverage. “You go to the European Union, they had no intention of renegotiating; now they’re renegotiating,” he said. “That’s okay. We’re going to put tariffs on every product you sell to the United States.’ And they said, ‘We would like to negotiate immediately,’” he added. “President Obama was unable to get anybody even to go to the table,” Trump said. In fact, President Obama was negotiating a Transatlantic Trade and Investment Partnership (TTIP) that the new administration froze soon after taking office.

## **Industry, Lawmakers Welcome More Trade Deals**

Like clockwork, lawmakers and industry groups responded to news of the upcoming trade talks with the EU, Japan and the UK even before the ink was dry on the notification

letters. Many welcomed the news but were cautious to see the scope of the distinct deals, especially whether the agreements moved beyond existing trade relationships or those attempted by previous administrations.

Sen. Orrin Hatch (R-Utah) said he was “pleased that the administration is pursuing new trade agreements” under TPA, or fast-track authority. “TPA guarantees that Congress and the administration will work hand-in-hand so that new trade pacts achieve the high-standards necessary to advance and safeguard U.S. interests and ensure continued economic growth. Today’s notification begins a 90-day clock where Congress will work closely with Ambassador Lighthizer,” he said.

Sen. Ron Wyden (D-Ore.) generally welcomed “the administration’s shift to focus on additional markets where there are barriers to U.S. exports and opportunities for made-in-America manufactured goods, agricultural products and services,” he said in statement, but warned against a “quick, partial deal.” The administration “must take the time to tackle trade barriers comprehensively, including using this opportunity to set a high bar in areas like labor rights, environmental protection and digital trade, in ways that actually benefit American workers and businesses,” Wyden said.

Ways & Means Committee Ranking Member Richard Neal (D-Mass.) urged Lighthizer to “aim for results that are at least as ambitious and strategic as recent efforts that have been made with these partners,” he said in a statement. “I look forward to working closely ... in defining the scope of these trade agreement negotiations and ensuring that these potential agreements incorporate strong provisions on worker rights, environmental protection, and enforcement,” he added.

Several industry groups highlighted the agreements’ potential utility in blocking unfair Chinese trade practices. The new agreements “will not only result in fairer trade, but also create a united front to address China's discriminatory trade practices,” the Business Roundtable said in a statement.

“Meeting the needs of our modern economy requires that trade agreement negotiations be comprehensive, covering the exchange of all goods and services, fully protecting investors, eliminating tariffs and addressing non-tariff barriers. They should comply with the objectives and procedures of Trade Promotion Authority (TPA) and should proceed without the threat of tariffs,” it said.

Jay Timmons of National Association of Manufacturers (NAM) agreed, calling the announcement “solid news” in a tweet Oct. 16. “Manufacturers welcome negotiations for new bilateral trade agreements with Japan, the EU and the UK. The more allies who can work with the U.S. to keep China from cheating, the better,” he added.

Software & Information Industry Association (SIIA) Senior VP for Public Policy Mark MacCarthy echoed the sentiment. “Deepening the trade relationship with strong allies such as Japan, the EU and UK would help revitalize rules-based international trade and

perhaps form the basis for a coalition of countries to address harmful Chinese trade and investment practices.” In a blog post, Jennifer Sanford, Cisco senior manager of international trade and energy/ environment policy, outlined specific provisions her firm would like to see. In general, the agreements would “secure high-standard commitments that facilitate trade in information and communications technology (ICT) products and services,” Sanford wrote.

Specifically, these provisions would: continue to provide duty-free access in ICT products; promote cooperation on and use of risk-based approaches to cybersecurity; prevent governments from requiring data localization; prohibit governments from demanding source code disclosure as a condition of market access; enable free data flow across borders; open trade in commercial encryption; enable interoperability of privacy regimes; allow for open trade in remanufactured products and products destined for reuse; facilitate and simplify customs procedures; protect intellectual property rights (IPR), including trade secrets; provide open, nondiscriminatory access to government procurement; promote market access and competition in telecommunications services; liberalize treatment of computer- and computer-related, distribution and repair services; and avoid duplicative testing and certification requirements for telecom products.

## Privacy Shield Review Reveals Ongoing Difficulties

Despite the diplomatic niceties, the second annual review of the U.S.-E.U. Privacy Shield revealed two major fissures in the program: the lack of a permanent U.S. official as an ombudsperson and the fallout from recent privacy breaches by firms that are certified under the program.

In a joint statement after the review, Commerce Secretary Wilbur Ross and Justice Commissioner Věra Jourová gave the usual boilerplate: “U.S. and EU officials will continue to work closely together to ensure the framework functions as intended, including on commercial and national-security related matters.” The European Commission will publish a report of its findings by the end of the year, the officials noted.

However, the statement also noted some problems. “Review participants are discussing the functioning of the Privacy Shield Ombudsperson Mechanism, including President Trump’s recent decision to name a senior, politically appointed State Department official as Ombudsperson. Nonetheless, both sides recognize the need for prompt progress on nominating a permanent Under Secretary. This process is well underway and the U.S. will be in close contact with the EU on this important matter,” the joint statement noted.

Acting Under Secretary for Economic Growth, Energy and the Environment Manisha Singh in September was named to the role, which also includes duties of Ombudsperson. In August, the Interactive Advertising Bureau and other leading trade associations urged Secretary of State Pompeo to quickly appoint a “strong candidate” to the position. Singh was sworn in as assistant secretary of State for economic and business affairs in November 2017.

The two ministers also cited incidents involving certified companies. “In the wake of recent privacy incidents involving the personal data of Europeans and Americans, the U.S. and EU reaffirm the need for strong privacy enforcement to protect our citizens and ensure trust in the digital economy.” Among other things, Commerce “will revoke the certification of companies that do not comply with Privacy Shield's vigorous data protection requirements,” they said.

In a non-binding resolution in July, the EU Parliament called on the European Commission to suspend Privacy Shield unless U.S. is fully compliant by Sept. 1 (see **WTTL**, July 9, page 7). The body cited “recent revelations of misuse of personal data by companies certified under the Privacy Shield, such as Facebook and Cambridge Analytica.”

### **Administration Still Boasting About USMCA**

Like the fourth remake of a melodramatic movie, there are hopes and expectations that are sure to lead to disappointment. At a Cabinet meeting Oct. 17, the president boasted about the outsized effects of the updated U.S.-Mexico-Canada (USMCA) trade agreement that will replace NAFTA and that has not yet been signed, approved by Congress or implemented.

“So the USMCA has turned out to be a deal that’s been incredible for our farmers, for our manufacturers, for everybody. It’s going through the process now. It’s been approved by Mexico, been approved by Canada,” he said (see **WTTL**, Oct. 8, page 1). “USMCA — it’s new, it’s good. It takes the place of NAFTA, which was a total disaster. Thousands of factories and plants closed. The farmers were never treated properly by NAFTA. The USMCA is a whole different ballgame. It opens up Canada. It opens up Mexico for our farmers and for others,” he added.

In his turn, USTR Lighthizer echoed the president’s line. “So we have redesigned the rules. It’s not going to punish anybody. It’s not going to make it worse for any other country. But it is going to make it better for American manufacturing,” he said during the Cabinet meeting. Lighthizer shared his boss’ affinity for hyperbole. USMCA includes “the most ambitious provisions on labor and the environment,” as well as “the most advanced language ever on digital trade, intellectual property,” and “the best provisions, by far, on currency and currency manipulation that we’ve ever had in a trade agreement.”

Meanwhile, members of Congress who will vote on the deal in 2019 have started looking at the agreement in more detail, as staff begin going through the text line by line. Areas of concern that already have emerged include, not surprisingly, the status of steel and aluminum tariffs, the sunset clause, investor state dispute settlement, de minimis, government procurement and the enforcement of specific labor provisions.

#### **\* \* \* Briefs \* \* \***

**ITC:** Nannette Christ was named ITC investigations director Oct. 17. She has served as chief of applied economics division in office of economics since 2010. Christ was international trade

economist in office of economics' country regional analysis division from 2001-2010.

**STRONTIUM CHROMATE:** In 5-0 preliminary vote Oct. 19, ITC found U.S. industry may be injured by allegedly dumped imports of strontium chromate from Austria and France.

**PET RESIN:** In 5-0 final vote Oct. 18, ITC found U.S. industry is not materially injured by dumped imports of polyethylene terephthalate (PET) resin from Brazil, Indonesia, Korea, Pakistan and Taiwan.

**SODIUM GLUCONATE:** In 5-0 final vote Oct. 16, ITC found U.S. industry is materially injured by dumped and subsidized imports of sodium gluconate, gluconic acid and derivative products from China.

**USER TESTING:** DDTC is looking for industry testing and feedback for new versions of registration and advisory opinion (AO) applications housed on cloud-based Defense Export Control and Compliance System (DECCS), agency posted on website Oct. 15. Testing period runs through mid-November. To participate, contact DDTC Test Support Team at [PM-DDTC-DECCS@state.gov](mailto:PM-DDTC-DECCS@state.gov) or (202) 663-1282 / (202) 663-2838.

**EXPORT ENFORCEMENT:** Patrick Germain of Evanston, Ill., pleaded guilty Oct. 9 in Chicago U.S. District Court to attempting to illegally export 16 handguns, five shotguns, rifle and ammunition to Haiti via Miami. Germain placed ammunition and firearms inside plywood container and loaded container in cargo van for shipping, plea agreement noted. Sentencing is set for Jan. 29, 2019.

**CURRENCY:** Treasury in semiannual report Oct. 17 again found no major trading partner met criteria for currency manipulation in 2018. At same time, department maintained "Monitoring List" of partners that "merit close attention to their currency practices," including China, Germany, India, Japan, Korea and Switzerland. Treasury added India to list in April (see **WTTL**, April 23, page 10). "One of Trump's most emphatic campaign promises was to declare China a currency manipulator on Day One and crack down on any country misaligning its currency to cheat on trade, but Trump's Treasury secretary has chosen to rely on criteria created by the previous administration that ensure no action is taken," said Lori Wallach, director of Public Citizen's Global Trade Watch, in blog post before report was issued.

**TRAVEL PLANS:** World Trade Organization's (WTO) 12th Ministerial Conference will be held June 8-11, 2020, in Astana, Kazakhstan, WTO General Council announced Oct. 18. Members agreed in July to hold next ministerial in Kazakhstan (see **WTTL**, July 30, page 12).

**YARN:** Unifi Manufacturing, Inc. and Nan Ya Plastics Corporation, America, filed countervailing and antidumping duty petitions Oct. 18 with ITA and ITC against polyester textured yarn from China and India. Alleged average dumping margins are 40.5-130.58% for China and 67.93% for India.

**RUSSIA:** OFAC Oct. 19 issued general license (GL) 13F, extending previous GL that expanded sanctions relief for certain designated firms. Specifically, OFAC extended GL expiration date for certain firms to Dec. 12 from Oct. 23. OFAC also issued GL 15A extending authorization for transactions related to GAZ Group until same date.

**BEEF:** EU members Oct. 19 approved consultations with U.S. to review functioning of existing quota to import hormone-free beef into EU. "This negotiation will not entail any changes to the

level of the existing quota or the quality of beef imported into the EU,” EU Agriculture Commissioner Phil Hogan said in statement. Obama administration threatened retaliatory tariffs over dispute in December 2016 (see **WTTL**, Jan. 2, 2017, page 6).

IRAN: OFAC Oct. 16 designated network of businesses providing financial support to Basij Resistance Force (Basij), paramilitary force subordinate to Iran’s Islamic Revolutionary Guard Corps (IRGC). Blocked entities include Bonyad Taavon Basij, or Basij Cooperative Foundation, which is comprised of at least 20 corporations and financial institutions. OFAC also designated Mehr Eqtesad Bank, as well as Bank Mellat which has provided Mehr Eqtesad Bank “hundreds of millions of dollars each year in the form of dividends, interest free loans, and lines of credit,” OFAC noted. Other blocked entities include Iran Tractor Manufacturing Company (ITMC), Iran’s Zinc Mines Development Company (IZMDC), Technotar Engineering Company and Esfehan’s Mobarakeh Steel Company.

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