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Export Control Not on Administration's Radar

Amidst reports of mass departures of State senior staff, export controls seem to be the last thing on anyone's mind in the Trump administration. Considering it was never mentioned during the presidential campaign, this is hardly surprising. Sources tell WTTL that there have been no transition team members at State or any of the departments between the election and the inauguration.

The only interaction that the Directorate of Defense Trade Controls (DDTC) had with the transition team was a 30-minute briefing before Christmas, where Acting Assistant Secretary Tina Kaidanow gave an overview of what the agency does. The same story was told at Bureau of Industry and Security (BIS): Not a single mention of export controls during the few meetings with the transition team.

Despite this, the true test of the fate of export control in this administration is what it decides to do on controversial categories I, II and III (firearms and ammunition). During that briefing with the transition team, when asked what DDTC could do that would be quick and significant, officials specifically highlighted publishing those rules as written. As previously reported, DDTC and BIS officials have said the rules are updated and "ready to go" if they get instructions to go forward (see **WTTL**, Dec. 19, page 1).

The transition officials serving as the "beachhead teams" (a real term they are using, like they are invading all the departments, one source noted) supposedly will use reports of those brief meetings to decide agency priorities. While DDTC is subject to the hiring freeze and the regulation moratorium, the agency is in good standing: all the promised regulations under export control reform, including Category XV (satellites) and the notices of inquiry for Category XII (night vision) "got done just in the nick of time," one source said.

Trump Orders Withdrawal from Trans-Pacific Partnership

As expected, President Trump Jan. 23 directed his yet-unconfirmed U.S. Trade Representative (USTR) to withdraw the U.S. from the multilateral Trans-Pacific Partnership

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(TPP) agreement. Withdrawal from the deal was one of the hallmarks of Trump's presidential campaign. "It is the intention of [Trump] administration to deal directly with individual countries on a one-on-one (or bilateral) basis in negotiating trade deals," he wrote in a presidential memorandum. Trump's USTR nominee, Robert Lighthizer, has yet to have a confirmation hearing and as of press time none had been scheduled.

Progress toward renegotiating NAFTA, another campaign promise, came to a screeching halt when Mexican President Enrique Pena Nieto cancelled a scheduled trip to Washington in response to Trump's order to start building the southern border wall. In the end, the two presidents spoke on the phone the morning of Jan. 27, in what Trump referred to as "a very good call" during his joint press conference with British Prime Minister Theresa May.

Industries reliant on overseas production and export of goods to the Asia-Pacific criticized TPP's demise. The Information Technology Industry Council (ITI) had strongly advocated for the deal, estimating that TPP could generate \$220 billion in additional global income each year. "There is no prospect for job creation and economic growth for the United States without an active trade agenda," ITI CEO and President Dean Garfield said in a statement.

"At the same time, we can't ignore the fact that many trade agreements were struck in an era that predates the internet and the global economy which depends on data flowing freely across borders for people and businesses to sell goods and services anywhere in the world. We can—and should—improve trade agreements to reflect the critical role digital trade plays in growing our economy and to help tech goods and services compete more fairly overseas," Garfield continued.

Matt Priest, president and CEO of Footwear Distributors and Retailers of America (FDRA), expressed his disappointment. "This 12-nation agreement involved key markets for the U.S. footwear industry, including Vietnam and Japan, and would have saved U.S. footwear companies and consumers more than half a billion dollars a year. FDRA will continue to support efforts for U.S. bilateral free trade agreements with these nations, and we stand ready to work with the President on trade agreements that will deliver real value for American footwear consumers and strengthen U.S. footwear companies," said Priest in a prepared statement.

The American Soybean Association (ASA), in noting its concern with TPP withdrawal, said that its farmers export more than half of the soy they grow. "Moving forward, we expect to see a plan in place as soon as possible to engage the TPP partner nations and capture the value that we lose with the withdrawal today," ASA President Ron Moore said, citing statistics from the American Farm Bureau Federation and the Peterson Institute for International Economics.

"With net farm income down by over 40% from levels just a few years ago, we need trade deals with the Asia-Pacific countries to make up for the \$4.4 billion in annual net farm income being lost by farmers from not moving forward with the TPP. Also, we expect

a seat at the table to help ensure these agreements in whatever form they take are crafted to capture their full value for soybean farmers,” Moore added.

Union and progressive groups applauded the action. “Formally withdrawing from the [TPP] will bury the moldering corpse of a deal that couldn’t gain majority support in Congress, but the question is going forward will President Trump’s new trade policies create American jobs and reduce our damaging trade deficit while raising wages and protecting the environment and public health not just here but also in trade partner nations?” asked Lori Wallach, director of Public Citizen’s Global Trade Watch, in a statement.

Senate Finance Committee Ranking Member Ron Wyden (D-Ore.) accused Trump of paying lip service to workers harmed by the global steel glut. “Symbolically pulling out of TPP doesn’t do a thing for workers harmed by Chinese dumping of steel and aluminum, and the hiring freeze means fewer trade enforcers on the front lines. It is shocking that the new president appears more interested in symbolism than protecting American jobs,” said Wyden.

House Ways and Means Chairman Kevin Brady (R-Texas), a vocal supporter of TPP, urged the president to take another look at the multilateral deal. “I believe the TPP agreement contains considerable benefits for the U.S. economy—but it fell short in other ways. That is why there weren’t enough votes to support it last year. It’s important that America not abandon the Asia-Pacific region because American companies and workers will lose out,” Brady said.

“I urge the Trump Administration to build on the work that has been done, identify what should be improved, and quickly act on a strategy that creates more economic opportunities for America in that region. In order for our country to create more jobs and increase the prosperity of all Americans, we have to reach new customers around the world through strong enforceable trade agreements,” he added.

Ways and Means trade subcommittee chairman Dave Reichert (R-Wash.), who chaired the Friends of the TPP Caucus, echoed Brady. “If the United States is to continue as a world economic leader, we must have the chance to compete globally through high-standard trade agreements, including in the critical Asia-Pacific region. Building upon the work done to establish rules and expand access abroad to the benefit of workers across America will lead to the creation of more good-paying jobs here at home. I look forward to working with the president and his Administration on this top priority,” he said in a statement.

Brady and Reichert’s Democratic counterparts called for new rules and better enforcement. “The TPP agreement was flawed in many respects, as all of the major presidential candidates recognized last year. But withdrawing from the TPP must be a first step, not a last one,” Ways and Means Ranking Member Richard Neal (D-Mass.) said in a statement.

“Most congressional Republicans supported the trade agreements President Trump now says he wants to abandon. While Democrats have spent decades fighting bad trade deals,

this is a Johnny-come-lately moment for the Republican party. I look forward to bringing them into the fold of fighting for American workers. Now is as good a time as any to start,” added Rep. Bill Pascrell, Jr. (D-N.J.).

Where Do TPP Countries Go from Here?

Though Trump’s order of withdrawal from the TPP came as no surprise to the other 11 Asia-Pacific countries involved in the deal, there is no consensus on how the deal should move forward, if at all. Japan’s government ratified the multilateral agreement, but has been adamant that it will not move forward without the U.S.

Speaking before his country’s parliament Jan. 26, Japanese Prime Minister Shinzo Abe indicated he hopes to bring the U.S. back into the agreement. “I believe President Trump understands the importance of free and fair trade, so I’d like to pursue his understanding on the strategic and economic importance of the TPP agreement tenaciously. The new rules that finalized in the TPP agreement after several years of negotiation will serve the model for future trade negotiations and are expected to become the 21st century global standard,” Abe said.

Australian Prime Minister Malcolm Turnbull spoke with Abe Jan. 23 about the possibility of salvaging TPP with the remaining countries plus China – a TPP “12 minus one” scenario, as Australian Trade Minister Steven Ciobo put it. Abe rejected such a proposal for now.

Australia’s neighbor New Zealand agrees that TPP “still has value as an FTA [free trade agreement] with the other countries involved,” said Todd McClay, New Zealand’s trade minister. Chile’s foreign minister said his government wants to continue “the advancement of integration with countries in the Asia-Pacific region” and would be open to adding countries not currently part of the pact.

Peruvian President Pedro Pablo Kuczynski said his country should work with China on free trade and extend Asia-Pacific Economic Cooperation (APEC) group membership to India. “We’re going to take the best things of the TPP, get them in [an APEC deal] and get the things that are not so good out of TPP,” said Kuczynski.

Le Hai Binh of Vietnam’s Ministry of Foreign Affairs said in a statement that his country is continuing its reform process despite the U.S. withdrawal from the deal. Malaysia said if TPP fails then it will focus on its economic relationship with Association of Southeast Asian Nations (ASEAN) and pursue bilateral trade with the U.S. Mexico’s president said his country will “immediately initiate conversations to generate new bilateral trade accords with the participant countries in the partnership,” should TPP fail.

Canada stands with Japan that the TPP cannot go forward without the U.S. Singapore agreed and said it will continue to participate in the Chinese led Regional Comprehensive

Economic Partnership (RCEP) that the Obama administration had warned would give China a leg-up on Asia-Pacific trade. As of press time, Brunei had not stated its position on TPP.

EU-U.S. Trade Talks “Firmly in the Freezer,” Malmstrom Says

European Union (EU) Trade Commissioner Cecilia Malmstrom didn't mince words in her “Future of EU Trade Policy” talk Jan. 24 in Brussels. The EU's trade negotiations with the U.S. are on hold indefinitely, but the EU will thrive, nonetheless. She hinted that if anything the U.S. election has reinvigorated trade talks with other trading partners.

“So let's consider our trade agenda. The election of Donald Trump seems likely to put our EU-U.S. negotiations firmly in the freezer at least for a while. Yet, even if the U.S. is our most important partner, and a necessary one, the world is bigger than one country. Trump or no Trump, we have a long list of many others willing to deal with the EU, and about 20 more trade deals already in the pipeline,” said Malmstrom. She added that since the U.S. election, the EU has seen its partners “throw more energy and more resources at their negotiations with the EU.”

Malmstrom acknowledged that a “perception of secrecy” undermines trade agreements, but reiterated that her negotiating team has nothing to hide. She praised her team for conducting negotiations toward a Transatlantic Trade and Investment Partnership (TTIP) with “unprecedented transparency.” Governments need to do a better job sharing their enthusiasm for trade with the public and demonstrating how sustainable trade and development benefits the EU and developing economies, Malmstrom added.

She stated her support for overhauling the much-maligned investor-state dispute system (ISDS). For the EU-Canada Comprehensive Economic and Trade Agreement (CETA), negotiators designed a new investment court system.

In her conclusion, Malmstrom took a thinly veiled parting shot at Trump and British Prime Minister Theresa May, who met in Washington Jan. 27 (see story, page 7). “The success of the EU relies on our open societies and open economies. We all have seen a Europe divided, separated by walls and borders in the 20th century. Those dark years should not return. Those who, in the 21st century, think that we can become great again by rebuilding borders, reimposing trade barriers, restricting people's freedom to move, are doomed to fail.”

Commerce Imposes Dumping, Subsidy Margins on Chinese Tires

Commerce announced its affirmative final determinations Jan. 23 in the antidumping (AD) and countervailing duty (CVD) investigations of imports of truck and bus tires from China. International Trade Commission (ITC) is expected to make its final injury determinations March 6.

Commerce imposed a dumping margin of 9% for mandatory respondent Prinx Chengshan (Shandong) Tire Co., Ltd. and other non-selected separate rate respondents. The

department calculated a China-wide dumping margin of 22.57% based on adverse facts available. Final subsidy rates were calculated for Double Coin Holding Ltd. at 38.61%, Guizhou Tyre Co. Ltd. at 65.46% and all others at 52.04%.

United Steelworkers (USW) union was the original petitioner for the investigations. The complaint is only the second antidumping and CVD case filed by workers without the support of any domestic manufacturer since 1983. Imports of truck and bus tires from China were valued at \$1.07 billion for 2015.

USW welcomed the announcement. “This ruling would be a major victory for American rubber workers, their families and their communities if the ITC decides that workers have been ‘injured.’ Every sector of the U.S. tire industry has been under siege from China’s unfair and illegal trade practices,” said USW International Secretary-Treasurer Stan Johnson.

Brady Pitches “Better Way” Tax Reform Agenda

As part of his “Better Way” tax reform agenda, House Ways and Means Committee Chairman Kevin Brady (R-Texas) Jan. 25 laid out three major reforms, including a border adjustment tax, which many U.S. trading partners already impose.

First, Brady proposed “the lowest rates on job creators in modern history and a redesign of our tax code so American companies, large and small, can compete anywhere in the world and win, especially here at home,” said Brady at an event in Washington. That translates to a 43% tax rate cut across the board, regardless of company size. Full and unlimited investment could be “immediately written off” for the first time, which Brady called an investment in human capital.

International taxes would get an overhaul, too. “We propose to no longer tax U.S. earnings overseas, not only making our companies more competitive, but allowing that capital to flow back to the U.S. to be used for new investment, new research, new jobs, new manufacturing. A key part of our blueprint,” Brady said.

“But we also know that our competitors from China, Europe, Mexico to Canada all border adjust their taxes. They take taxes off their products heading toward the U.S.; they put it on our products heading into their country. As a result, Made in America products are at a tax disadvantage here and a tax disadvantage abroad. And it creates major incentives for U.S. companies to move overseas,” he noted.

In Brady’s simplified plan, goods, services or intellectual property consumed in the U.S. would be taxed at a 20% rate, regardless of where it was made. Brady said the move would reestablish the U.S. as a place to set up business headquarters and deter companies from leaving. The second reform is to go “all-in on fairness and simplicity.” In Brady’s plan, Americans should be able to file taxes using a postcard. Third would be to “bust up” the IRS and redesign it into a singular organization focused on customer service.

UK Prime Minister Highlights “Special Relationship” During Visit

As the first foreign head of state to visit with President Trump, British Prime Minister Theresa May Jan. 26-27 sought to emphasize the special relationship the two countries enjoy. During her address to the Republican conference in Philadelphia and in her joint press conference with Trump the following day, she tried to quell European concerns about the new president, as well as find common ground with him.

Prior to her visit, May had been under pressure to confront Trump about his pro-torture stance and remarks he made about potentially leaving the North Atlantic Treaty Organization (NATO). During the joint press conference, Trump allayed some European concerns by saying he would defer to Defense Secretary James Mattis’ judgment. Mattis has publicly said he is against torture. May said that Trump had assured her privately that the U.S. is “100% behind NATO.”

Trump in turn praised May for her country’s vote to leave the EU. “It will end up being a fantastic thing for the United Kingdom and it will be a tremendous asset and not a liability,” said Trump, referring to Brexit. Trump suggested that once the United Kingdom (UK) leaves the EU, his administration would be ready for a “quick” bilateral deal.

For her part, May noted that she and Trump have begun discussions about that potential deal. “We are discussing how we can establish a trade negotiation agreement, take forward immediate high-level talks, lay the groundwork for U.K.-U.S. trade agreement and identify the practical steps we can take now in order to enable companies in both countries to trade and do business with one another more easily,” she told the press.

Two days before her visit, the UK’s Supreme Court ruled that May’s government must hold a vote in parliament before it can begin leaving the EU. Scotland, Wales and Northern Ireland legislatures will not get a veto. May had said she wanted to trigger Article 50, the mechanism for beginning the departure, by the end of March. Those in opposition to leaving the EU have vowed to put up a fight. It is expected to take two years to fully separate from the EU.

In her prepared speech and during the joint press conference, May tried to project commonality between the two countries and their recent uptick in populist feelings. “If you look at the approach we’re taking, one of the things we have in common is we want to put the interests of ordinary working people center stage. Those people who are working all the hours, doing their best for their families, and just sometimes feel the odds are stacked against them. It’s that interest in ensuring what we do, our economies and our government, actually work for everyone in our countries. I think we both share that,” said May.

*** * * Briefs * * ***

EXPORT ENFORCEMENT: Milwaukee Electric Tool Corporation agreed Jan. 19 to pay BIS \$301,000 to settle 25 charges of exporting thermal imaging cameras to Hong Kong, Colombia,

Ecuador, El Salvador and Mexico without Commerce licenses. Items were classified under ECCN6A003, controlled for National Security and Regional Stability reasons, and worth approximately \$129,284. Of penalty, \$31,000 will be suspended for two years then waived if company commits no further violations. Post-shipment verification determined that at least one camera shipped to Milwaukee Electric affiliate was subsequently shipped to China, BIS noted. Milwaukee Electric neither admitted nor denied charges.

TRADE PEOPLE: Former BIS Assistant Secretary Kevin Wolf joined law firm Akin Gump Strauss Hauer & Feld LLP in Washington office as partner in its international trade practice, firm announced Jan. 23.... Former USTR Michael Froman joined Council on Foreign Relations as Distinguished Fellow, CFR announced Jan. 26.

CABINET: Senate Foreign Relations Committee voted 11-10 along party lines to confirm Secretary of State Rex Tillerson Jan. 23 despite strong questioning, especially from Sen. Marco Rubio, who ultimately voted for Tillerson (see **WTTL**, Jan. 16, page 4).... Senate Commerce Committee in voice vote Jan. 24 confirmed Wilbur Ross to be Commerce Secretary. Both votes go to full Senate.

FCPA: Two former executives at Och-Ziff Capital Management Group were charged Jan. 26 with violating Foreign Corrupt Practices Act (FCPA) for their roles as “masterminds” in crafting “sprawling scheme involving serial corrupt transactions and bribes” paid to high-ranking African government officials. Michael L. Cohen, who headed Och-Ziff’s European office, and investment executive Vanja Baros allegedly caused tens of millions of dollars to be paid to officials in countries including Libya, Chad, Niger, Guinea and Democratic Republic of Congo, Securities and Exchange Commission (SEC) noted in complaint filed in Brooklyn U.S. District Court. Och-Ziff agreed in September to pay over \$412 million to resolve related charges (see **WTTL**, Oct. 3, page 2).

PRIVACY SHIELD: Tech industry groups worry U.S.-EU Privacy Shield could be in danger from President Trump’s executive order Jan. 25 excluding non-U.S. citizens or permanent residents from privacy protection regarding personally identifiable information. Nuala O’Connor of Center for Democracy & Technology (CDT) called order “profoundly bad for American business,” she wrote in blog post Jan. 27. European Commission spokesperson reportedly denied risk, but other EU officials want guarantees that Privacy Shield and Umbrella Agreement will be maintained. However, German Parliament member Jan Philipp Albrecht tweeted: “If this is true @EU_Commission has to immediately suspend #PrivacyShield & sanction the U.S. for breaking EU-U.S. umbrella agreement.”

ACE: Country of Ultimate Destination field has been added to data element universe for ACE Export Reports, Census reported Jan. 27. Data element can now be added to customized reports in AES 201: Filer Transactions Report and AES 202: USPPPI Transactions Report, bureau noted in email to users.

CHINA: World Trade Organization (WTO) Dispute Settlement Body (DSB) established panel Jan. 25 to examine U.S. complaint that China is illegally subsidizing wheat, Indica rice, Japonica rice and corn. U.S. claims China provides domestic support in excess of 8.5% de minimis level specified in China’s WTO Accession Protocol. This is U.S.’ second request; China blocked first request for panel at Dec. 16 DSB meeting (see **WTTL**, Dec. 19, page 5).