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OFAC Extends Wind-Down Time for Russian Firm

Responding to a petition to reverse sanctions on aluminum producer United Company RUSAL PLC, Treasury's Office of Foreign Assets Control (OFAC) April 23 issued General License (GL) 14 extending the authorization for transactions related to the "maintenance or wind down of operations, contracts, or other agreements, including the importation of goods, services, or technology into the United States," involving RUSAL, until Oct. 23.

Jersey-based RUSAL, which is responsible for 7% of global aluminum production, was designated April 6 for being owned or controlled by, directly or indirectly, EN+ Group, which is owned or controlled by, directly or indirectly, Oleg Deripaska, an associate of former Trump campaign chairman Paul Manafort.

At that time, OFAC designated seven Russian oligarchs, including Deripaska and 12 companies they own or control, 17 senior Russian government officials and a state-owned Russian weapons trading company and its subsidiary, a Russian bank (see **WTTL**, April 9, page 1). Under previously issued GL 12, OFAC authorized maintenance or wind down of agreement with RUSAL and 11 other companies through June 5.

"RUSAL has approached us to petition for delisting. Given the impact on our partners and allies, we are issuing a general license extending the maintenance and wind-down period while we consider RUSAL's petition," said Treasury Secretary Steven Mnuchin.

"Absent other adverse information and consistent with the facts and circumstances of any petition for delisting, the path for the United States to provide sanctions relief is through divestment and relinquishment of control of RUSAL by Oleg Deripaska," OFAC wrote in a frequently asked question (FAQ).

Deputy USTR Tapped as Acting Ex-Im President

Newly confirmed Deputy U.S. Trade Representative (USTR) Jeffrey Gerrish will soon be pulling double duty. Gerrish was tapped April 24 by the administration to serve as the

acting president of the Export-Import Bank (Ex-Im), much to the chagrin of Democrats in Congress. “Now is not the time to abandon efforts to install a full-time, Senate-confirmed President of the Bank. Designating the Deputy U.S. Trade Representative as Acting President of the Bank means that the position will not have the full attention it deserves,” House Democratic Whip Steny Hoyer (Md.) said in a statement.

“Additionally, naming an Acting President will do nothing to restore a quorum to the Bank’s Board; without a quorum the Bank has not been fully operational for more than three years, causing American businesses to miss out on many large overseas contracts that would boost American exports and jobs,” he added.

More than 20 Democratic senators, including Sens. Maria Cantwell (D-Wash.) and Heidi Heitkamp (D-N.D.), echoed the sentiment. “EXIM now needs a full-time Senate-confirmed President who fully supports the bank. Absent a new nominee and a functioning board, EXIM will languish, deals will stall, foreign export credit agencies will take advantage and American jobs will go overseas. We can and must do better,” they wrote in a letter April 27.

Sen. Pat Toomey (R-Pa.) is holding up the confirmation of four Ex-Im Board nominees over his displeasure that former Rep. Scott Garrett (R-N.J.) did not survive committee vote. The week before the personnel announcement, Toomey’s colleagues Heitkamp and Sen. Sherrod Brown (D-Ohio) called for a unanimous consent vote for the four board nominees who were approved by Senate Banking in December (see **WTTL**, April 23, page 9).

FLIR Systems Pays \$30 Million to Settle ITAR Violations

Oregon-based defense contractor and sensor maker FLIR Systems agreed April 25 to pay \$30 million under a State consent agreement to settle 347 charges of violating the International Traffic in Arms Regulations (ITAR). Of that, the department agreed to suspend \$15 million on the condition that the funds have or will be used for department-approved remedial compliance measures.

Charges include unauthorized exports of defense articles, including technical data; the unauthorized provision of defense services; violation of the terms of provisos or other limitations of license authorizations; and the failure to maintain specific records involving ITAR-controlled transactions.

The license management charges involved defense articles generally controlled under U.S. Munitions List Category XII and certain articles further defined as significant military equipment (SME) at that time, including thermal imaging systems, lenses and integrated dewar cooler assemblies. Other charges include failure to provide accurate and complete reporting on political contributions, commissions and fees in connection with commercial sales of defense articles or defense services.

“FLIR’s alleged unauthorized exports also included the retransfer of ITAR-controlled technical data and provision of defense services to dual-national employees of Iran, Iraq,

Lebanon, and Cuba to which the United States restricts exports of defense articles and defense services,” State noted. FLIR made 18 voluntary disclosures of certain alleged violations, it added.

“The settlement also highlights the importance of ensuring effective oversight of intra-company transfers of controlled defense articles and the need to obtain appropriate authorization from the Department for such transfers to foreign-person employees,” State said in a press release.

“We appreciate the work by the U.S. Department of State to review our compliance practices. We accept responsibility for our actions leading to these penalties,” FLIR Systems CEO James Cannon said in a statement. “We remain fully committed to complying with U.S. export control laws and to working with the U.S. Government to help achieve its policy objectives, including its most important objective: protecting the U.S. warfighter,” he added.

Temporary Tariff Exemptions Set to Expire May 1

Temporary exemptions from Section 232 steel and aluminum tariffs for U.S. allies will go away May 1. Of the countries affected, only Korea managed to secure a permanent exemption based on the outcome of Korea-U.S. Free Trade Agreement (KORUS) renegotiations (see **WTTL**, April 2, page 1).

At a meeting of the World Trade Organization (WTO) Safeguards Committee April 23, China, Russia, Venezuela, Turkey, Norway, Switzerland, India and Singapore pushed back on the U.S. national security explanation for the imposition of the tariffs. The U.S. did agree to hold discussions with Turkey, a request Turkey made April 20, but on the conditions that the talks would not be under the Safeguards Agreement and would not prejudice the U.S. view that the tariffs are not safeguard measures.

The same day, Hong Kong, the European Union (EU), Russia, Thailand and India requested to join consultations between the U.S. and China regarding China’s dispute settlement complaint against the U.S. tariffs. Despite meetings between the U.S. administration and the heads of France and Germany, no exemption was announced for the EU as of press time.

White House economic adviser Larry Kudlow said in a television interview that the administration wants concessions on automobiles, but the European Commission has stated plainly that it expects permanent exemptions without conditions.

Dun & Bradstreet Settles SEC FCPA Charges

Financial information provider Dun & Bradstreet (D&B) April 23 agreed to pay the Securities and Exchange Commission (SEC) more than \$9 million to resolve Foreign

Corrupt Practices Act (FCPA) charges related to improper payments made by two Chinese subsidiaries from 2006 through 2012 to obtain or retain business. Without admitting or denying the allegations, the company agreed to pay \$6,077,820 in disgorgement, prejudgment interest of \$1,143,664, and a \$2 million civil penalty.

According to the SEC order, D&B's due diligence during joint venture negotiations with Chinese firm Huaxia, the company found that "unlike D&B's China operations, Huaxia used its government connections to source financial statement information directly from provincial offices of the Chinese State Administration of Industry and Commerce (AIC)."

"D&B's due diligence efforts indicated that Huaxia was directly acquiring certain non-public AIC business data through unofficial arrangements. D&B's Greater China management understood that Huaxia routinely obtained information through agents and the agents obtained information by making improper payments to government officials. The due diligence package disclosing these arrangements was circulated to the D&B transaction team," the SEC order noted.

In 2009, D&B entered another partnership with Roadway, a leading Chinese provider of direct marketing services. "From July 2009 through March 2012, Roadway employees continued to make improper payments to customer 'decision-makers' to obtain or retain business, including customers that were Chinese government agencies or entities that were SOEs [state-owned enterprises]. These payments were called '*Pin Tui*,' or promotional expenses, and were inaccurately recorded in Roadway's books and records as legitimate promotion and advertisement expenses," the order added.

At the same time, Justice declined to prosecute D&B under its new FCPA Corporate Enforcement Policy. After an 18-month pilot program to encourage cooperation in potential FCPA violations, Justice enshrined those those tenets in a revised policy in November 2017 (see **WTTL**, Dec. 4, page 4).

In the declination letter to D&B, the department said it reached its decision based on a number of factors including "the fact that the Company identified the misconduct; the Company's prompt voluntary self-disclosure; the thorough investigation undertaken by the Company; its full cooperation in this matter, including identifying all individuals involved in or responsible for the misconduct, providing the Department all facts relating to that misconduct, making current and former employees available for interviews, and translating foreign language documents to English."

In addition, Justice cited "the steps that the Company has taken to enhance its compliance program and its internal accounting controls; the Company's full remediation, including terminating the employment of 11 individuals involved in the China misconduct, including an officer of the China subsidiary and other senior employees of one subsidiary, and disciplining other employees by reducing bonuses, reducing salaries, lowering performance reviews, and formally reprimanding them."

No NAFTA Announcement Ahead of USTR Trip to China

Trade watchers will have to wait at least another week before a breakthrough announcement on ongoing NAFTA talks. Despite a push to get a deal done before May, the three NAFTA trade ministers were not at a point to announce a deal April 27 before USTR Robert Lighthizer heads to China. The three will meet again May 7, said Mexican Economy Minister Ildefonso Guajardo.

Guajardo said progress had been made on important aspects of the deal, including state-owned enterprises, technical barriers to trade, financial services and the environment. Auto rules of origin remains a sticking point. Lower level officials will continue negotiating while political staff will meet with stakeholders in the break, Canadian Foreign Minister Chrystia Freeland told reporters (see **WTTL**, April 23, page 3).

Apparently Lighthizer was so intent on NAFTA before his China trip that he canceled meetings on Capitol Hill, including with the New Democrat Coalition. The coalition in turn criticized the lack of transparency as a failure by the administration to meet its “consultation obligations under the Bipartisan Trade Priorities and Accountability Act,” in a letter to Lighthizer April 26.

“While NAFTA has been a resounding success for U.S. agriculture, a handful of frictions still remain. But rather than aggressive consultation with the Canadians about their new trade distorting Class VII pricing program that is undercutting American market access in both Mexico and Canada, your team has focused its attention on a seasonal produce provision which is opposed by a broad range of U.S. agriculture including apple and cherry producers,” the coalition wrote.

“Instead of focusing on Canada and Mexico’s de minimis thresholds sixteen to forty times lower than our own which adversely impact the ability of U.S. companies to sell to our closest trading partners, the Administration is proposing government procurement restrictions which threaten \$10 billion per year in U.S. contracts with the Mexican and Canadian governments. Instead of increasing the competitiveness of auto manufacturing in the NAFTA region, auto rules of origin proposals from USTR are expected to drive American auto jobs overseas,” it added.

USTR Moves Canada, Colombia to Priority Watch List

In its annual Special 301 report on intellectual property rights on April 27, the USTR’s office moved close trading partner Canada to the Priority Watch List over border and law enforcement issues. As in most years, the report held few other surprises. “The ideas and creativity of American entrepreneurs fuel economic growth and employ millions of hardworking Americans. This report sends a clear signal to our trading partners that the protection of Americans’ intellectual property rights is a top priority of the Trump Administration,” USTR Robert Lighthizer said in a statement.

The Priority Watch List now includes Algeria, Argentina, Canada, Chile, China, Colombia, India, Indonesia, Kuwait, Russia, Ukraine and Venezuela. While most of the list remains consistent from the 2017 report, Canada was a surprise addition as it is the only G7 country identified in the report.

“Significant concerns include poor border and law enforcement with respect to counterfeit or pirated goods, weak patent and pricing environment for innovative pharmaceuticals, deficient copyright protection, and inadequate transparency and due process regarding GIs,” noted the report on Canada’s status.

USTR also moved Colombia from the Watch List to the Priority Watch List for “lack of meaningful progress, particularly in relation to its CTPA [U.S.-Colombia Trade Promotion Agreement] obligations,” the report noted. Colombia needs to enact recently introduced copyright law amendments and needs to implement “significant IP-related commitments” including commitments to address online piracy. In 2018, USTR will conduct out-of-cycle reviews of Colombia, Kuwait and Malaysia.

On the Watch List USTR listed: Barbados, Bolivia, Brazil, Costa Rica, Dominican Republic, Ecuador, Egypt, Greece, Guatemala, Jamaica, Lebanon, Mexico, Pakistan, Peru, Romania, Saudi Arabia, Switzerland, Tajikistan, Thailand, Turkey, Turkmenistan, United Arab Emirates (UAE), Uzbekistan and Vietnam. Saudi Arabia and UAE are new additions to the Watch List since the 2017 report.

Thailand was moved to the Watch List following an out-of-cycle review in late 2017 (see **WTTL**, December 18, page 7). No country was named a Priority Foreign Country. USTR closed Out-of-Cycle Reviews (OCRs) for Kuwait without a change in status and Tajikistan with a downgrade to the Watch List.

U.S. Still Focus of WTO Disputes

The U.S. was once again the center of several disputes at the WTO’s Dispute Settlement Body (DSB) meeting April 27. The meeting included updates on U.S. talks with India on hot-rolled carbon steel flat products; certain products with Korea and China; and China’s concerns over the U.S. Section 301 report on intellectual property rights (IPR). The DSB will next meet on May 28.

At India’s request, the DSB agreed to establish a panel to determine if the U.S. has complied with the WTO’s ruling on countervailing measures on imported hot-rolled carbon steel flat products from India. A previous panel found that the U.S. breached its obligations under the WTO’s Agreement on Subsidies and Countervailing Measures (ASCM) and the U.S. was given until April 16, 2018 to comply.

India said the U.S. failed to meet its obligations and consultations in 2017 failed to resolve the differences. Now two years past the compliance date, the DSB agreed to establish a panel. The U.S. maintains that there is no basis for India’s position and said it was willing to engage in proceedings to prove that it is compliant.

The U.S. blocked Korea's first request to establish a panel to examine the U.S. use of adverse facts available in antidumping and countervailing investigations on certain products. Korea said the U.S. use of adverse facts available is inconsistent with U.S. obligations under WTO's Anti-Dumping Agreement and ASCM. Consultations held in March failed to resolve the differences between the two countries.

The U.S. has appealed a WTO compliance ruling on the subject of U.S. countervailing duty measures on certain products from China, DSB Chair Sunanta Kangvalkulkij told the body. China, for its part, raised concerns regarding the U.S. Section 301 report on IPR protection of in China that resulted in the U.S. threatening to implement additional tariffs on \$50 billion of Chinese imports.

China strongly pushed back at unilateralism that undermines the multilateral trading system. The U.S. thanked China for giving the DSB the opportunity to discuss the "seriously trade distorting policies adopted by China." Other countries took to the floor to voice concerns about China's practices, but many, including Chinese Taipei and the European Union, said unilateral action outside the WTO was not the best course of action.

Yet again, the WTO members failed to agree to start the selection process to fill three Appellate Body (AB) vacancies (see **WTTL**, April 2, page 5). Mexico, on behalf of 66 WTO members, proposed the establishment of a Selection Committee, the submission of candidates within 30 days, and committee recommendations within 60 days. The U.S. said it was not in a position to agree to the proposal, as it has for the past eight months. The U.S. says the DSB has not addressed its concerns about AB members whose terms have expired continuing to work on cases.

*** * * Briefs * * ***

EXPORT ENFORCEMENT: FedEx Express (FedEx) agreed to pay \$500,000 civil penalty to settle BIS allegations of 53 EAR violations relating to its carrier and freight forwarding services, agency announced April 24. Charges include attempted unlicensed exports of civil aircraft parts and equipment used for electron microscope manufacturing to Aerotechnic France SAS or Pakistan Institute for Nuclear Science and Technology (PINSTECH) from July 2011 to January 2012. Items were classified under ECCN 9A991 or 7A994 and worth about \$58,000. FedEx neither admitted nor denied charges. Company previously paid BIS \$370,000 civil penalty in 2012 for unlicensed exports to other blocked entities (see **WTTL**, Jan. 9, 2012, page 4).

MORE EXPORT ENFORCEMENT: Weiming Zhang, aka John Zhang, and Seasia Enterprises (USA), Inc. agreed to pay BIS \$100,000 civil penalty to settle charge of exporting electronic equipment to China controlled on national security grounds without BIS license, agency announced April 24. Of penalty, \$50,000 will be suspended for five years and then waived if Zhang and Seasia commit no further violations.

IRAN SANCTIONS: Joyce Eliabachus, aka "Joyce Marie Gundran Manangan," naturalized U.S. citizen born in Philippines, was arrested and charged April 25 in Newark, N.J. U.S. District Court with violating Iran sanctions for role in scheme to smuggle \$2 million worth of aircraft components, including brake and rotor assembly parts, to Iran via Turkey and UAE without required licenses. From May 2015 through October 2017, Eliabachus and her conspirators allegedly

facilitated at least 49 shipments containing approximately 23,554 controlled aircraft parts to Iran. She was released on \$100,000 unsecured bond with home confinement.

DEBARMENT: State in Federal Register April 25 added 168 persons to three-year statutory debarment under ITAR. All were convicted of violating, or conspiracy to violate, Arms Export Control Act (AECA). Persons are prohibited from participating directly or indirectly in activities regulated by ITAR, including brokering and any export from or temporary import into U.S. of defense articles, technical data, or defense services in all situations covered by ITAR, notice said.

TRADE PEOPLE: Former Hughes Hubbard partners Amanda DeBusk and Melissa Duffy joined Dechert law firm as partners in international trade and government regulation group, firm announced April 25. DeBusk will serve as chair of firm's global international trade practice; she is former BIS assistant secretary for export enforcement.

WAYS & MEANS: Gary Andres named new majority staff director of House Ways and Means, Chairman Kevin Brady (R-Texas) announced April 23. Andres served as majority staff director of Energy and Commerce Committee from January 2011 to February 2017.

STATE: Senate April 26 confirmed Mike Pompeo as secretary of State in 57-42 vote. Immediately following, Pompeo set out on first trip as secretary to Brussels, Riyadh, Jerusalem and Amman.

DDTC: With new secretary in place, DDTC made some of acting leadership team permanent, agency posted on website April 27. Anthony Dearth was named DDTC chief of staff; Sarah Heidema policy director; and Catherine Hamilton licensing director. At same time, Jae Shin was selected as new chief of compliance and civil enforcement team, effective April 29. Dearth and Heidema were named to acting roles in December (see **WTTL**, Jan. 1, page 1). Hamilton previously served as chief of space, missile and sensor systems division. Terry Davis had been acting licensing director and returns to deputy role. Compliance chief office is still vacant.

AGOA: President Trump April 23 signed African Growth and Opportunity Act and Millennium Challenge Act Modernization Act (H.R. 3445). Senate passed bill April 9 without amendment by unanimous consent; House passed bill by voice vote in January (see **WTTL**, Jan. 22, page 8).

OIL COUNTRY TUBULAR GOODS: Court of Appeals for Federal Circuit (CAFC) April 25 vacated and remanded Court of International Trade (CIT) decision in *Bell Supply Company, LLC v. U.S.* that certain imported oil country tubular goods (OCTG), fabricated as unfinished OCTG in China and finished in other countries, were not subject to antidumping (AD) and countervailing duty orders covering OCTG from China. "Commerce is entitled to use the substantial transformation analysis to determine country of origin before resorting to the circumvention inquiry. Where an imported article is 'from' can be an inherently ambiguous question. Because a single article can be assembled from various components and undergo multiple finishing steps, Commerce must have some way to determine the country of origin during scope inquiries," Circuit Judge Todd Hughes wrote for three-judge panel. In May 2017, CAFC remanded Boomerang Tube and U.S. Steel's appeal of CIT decision, which affirmed Commerce's final AD determination on OCTG (see **WTTL**, May 14, 2017, page 5). Boomerang and U.S. Steel are defendant-appellants in latest case.

BELARUS: Treasury April 27 issued General License 2E extending authorization of transactions with nine blocked companies in Belarus and any entities owned 50% or more by them until Oct. 30, 2018 (see **WTTL**, Oct. 30, 2017, page 5). Transactions are authorized with Belarusian Oil Trade House, Belneftekhim, Belneftekhim USA, Inc., Belshina OAO, Grodno Azot OAO, Grodno Khimvolokno OAO, Lakokraska OAO, Naftan OAO and Polotsk Steklovolokno OAO.