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WTO Members to Begin Talks on Electronic Commerce

More than 20 years after customers began shopping online, 75 World Trade Organization (WTO) countries will begin negotiations on “trade-related aspects of electronic commerce,” seeking to “achieve a high standard outcome,” according to a joint statement Jan. 25. The countries, which include the U.S., China, the European Union (EU) and 45 other WTO partners, made the announcement from the margins of the World Economic Forum in Davos, Switzerland.

The U.S. “is committed to seeking a high-standard agreement that creates strong, market-based rules in this area and reduces the barriers around the world that threaten to undermine the growth of the digital economy, including restrictions on cross-border data flows and data localization requirements,” U.S. Trade Representative (USTR) Robert Lighthizer said in a statement. “To be successful these talks must lead to an ambitious, high-standard agreement that is enforceable and has the same obligations for all participants,” he added.

The “negotiating process planned to start in March 2019 is open to other WTO members who may still be interested to join,” the EU noted. Potential new rules could: improve consumers’ trust online and combat spam; tackle barriers that prevent cross-border sales; guarantee validity of e-contracts and e-signatures; permanently ban customs duties on electronic transmissions; and address forced data localization requirements and forced disclosure of source code.

Irish House Approves Israeli Boycott Bill

In a move that could put U.S. firms that have Irish divisions or subsidiaries and also do business in Israel between a rock and a hard place, Ireland Jan. 24 took a step closer to banning Israeli imports that are produced in Palestinian territories. Despite the vote,

however, the Irish government opposes the bill for multiple reasons, including its potential violation of EU law and increased costs, and could have the power to stop it.

The lower house of the Irish parliament approved the Control of Economic Activity (Occupied Territories) Bill in a 78-45 vote. Independent Senator Frances Black, who introduced the bill in the upper chamber in 2018, tweeted: “Ireland will always stand for international law + human rights & we’re one step closer to making history. Onwards.”

“The overriding point that frames the Government’s view is that the Bill asks the State to do something that is not within our power,” Deputy Prime Minister Simon Coveney said in a speech to the Dail Jan. 23. “We are not in a position to raise a barrier and declare that it is prohibited to bring to Ireland, for sale or personal use, goods which enter the EU legally, and are freely circulating elsewhere in the Single Market,” Coveney added.

The bill could make life difficult for companies that would have a “painful choice between violating Irish law and violating U.S. law,” Orde Kittrie, professor of law at Arizona State University and senior fellow at the Foundation for Defense of Democracies, wrote in an email to WTTL. “If the bill does become law, it seems likely to adversely impact Ireland’s economy, more than it would have any impact on Israeli policy,” he added.

And that choice could get even more difficult, as at press time, Congress is debating legislation (S.1/H.R. 336) that would allow a U.S. state or local government to adopt measures to divest its assets from entities using boycotts, divestments or sanctions to influence Israel’s policies. Of course, existing antiboycott law forbids U.S. companies from participating in boycotts of Israel and requires firms to report such requests to participate.

Even though both houses have approved the bill, the Irish government can still resort to the rarely used maneuver to block a “money message” under the Irish Constitution due to the costs surrounding the bill, including investigation, enforcement and potential prosecution costs to customs authorities. “Because of these costs across a wide range of areas, there can be no doubt that the Bill will require a Money Message in order to proceed to Committee Stage,” Coveney said.

Ahead of China Meeting, U.S. Officials Set Low Expectations

In preparing for a planned meeting with Chinese trade officials, Commerce Secretary Wilbur Ross was careful to set expectations of any trade deal that could remove tariffs on billions of dollars of Chinese imports. Chinese Vice Premier Liu He is scheduled to meet with USTR Robert Lighthizer and Treasury Secretary Steven Mnuchin Jan. 29-30 in Washington.

“There has been a lot of anticipatory work done. But we’re miles and miles from getting a resolution,” Ross said during a Jan. 24 interview on CNBC. “It’s too complicated a topic. Too many issues. It’s not a realistic expectation. That’s different from saying that we won’t

get to a deal. I think there's a fair chance we do get to a deal," he added. "Remember, we have until March 1st. That's when the new tariffs are supposed to go in, the increase from 10% to 25%. So there's quite a little bit of time between now and then to judge just where do we stand, is it worth going forward or have we reached an impasse?" Ross said.

"Not just how many soybeans and how much LNG [liquefied national gas], but even more importantly, structural reforms that we really think are needed in the Chinese economy. And then even more important than that, enforcement mechanisms and penalties for failure to adhere to whatever we agree to," he added. China reportedly agreed to buy U.S. soybeans in December, and a U.S. delegation discussed that pledge and other structural reforms in Beijing in January (see **WTTL**, Jan. 14, page 2).

Lack of Transparency Sours Mexico Sugar Agreement

A 2017 agreement between the U.S. and Mexico over sugar imports isn't as sweet as it seemed and should be terminated due to Commerce's failure to keep public records of meeting during the negotiation of the deal, according to a brief filed Jan. 23 at the Court of International Trade (CIT) by CSC Sugar.

The U.S. and Mexico approved final amendments suspending tariffs on imports of Mexican sugar in July 2017 (see **WTTL**, July 10, 2017, page 6). CSC complained in September 2017 that the deals were not based on substantial evidence and citing press reports, asked for "discovery to determine the nature and details of all *ex parte* contacts not placed on the record." In June 2018 the court ordered Commerce to supplement the administrative record ... by filing with the court the record of any *ex parte* meetings" by July 2018.

Commerce proceeded to provide information about some meetings, but not others, CSC charged. "Indeed, Commerce admitted that, because of the time elapsed since the meetings, it could no longer 'summarize the information that was presented or discussed during meetings and phone calls,'" the firm noted in its most recent brief.

"By failing to create the statutorily-required record of *ex parte* meetings, Commerce both violated the [Trade Agreements Act of 1979] and upended Congress's intent to ensure transparency in countervailing duty proceedings. As a result of Commerce's failure, interested parties—including CSC Sugar—were entirely foreclosed from commenting on the *ex parte* meetings," the company wrote in its brief.

"This Court should hold Commerce's violation of a clear statutory directive to be "not in accordance with law" and grant CSC Sugar's motion for judgment on the agency record. Because Commerce's violation was not harmless error and infected the suspension agreement, the Court should vacate the agreement," it added. At press time, Commerce was closed due to the government shutdown and could not comment on CSC's request.

Industry Groups Repeat Call to Lift Tariffs

As the updated U.S.-Mexico-Canada Agreement (USMCA) moves to Congress for approval, more than 45 industry groups urged Commerce Secretary Wilbur Ross and USTR Robert Lighthizer Jan. 23 to lift U.S. tariffs on steel and aluminum imports, which could then lead to the removal of all retaliatory tariffs.

“For many farmers, ranchers and manufacturers, the damage from the reciprocal trade actions in the steel dispute far outweighs any benefit that may accrue to them from the USMCA. The continued application of metal tariffs means ongoing economic hardship for U.S. companies that depend on imported steel and aluminum, but that are not exempted from these tariffs,” wrote the groups led by the National Pork Producers Council (NPPC) and including representatives from retail, agricultural and manufacturing sectors.

“We urge you to take all necessary steps to resolve this matter so that zero-tariff North American trade can resume, and we can turn our attention to working with you to gain prompt Congressional approval of the USMCA,” they added. New Senate Finance Chair Chuck Grassley (R-Iowa) recently echoed these sentiments in a floor speech (see **WTTL**, Jan. 7, page 2).

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CIT: President Jan. 23 re-nominated Miller Baker and Timothy Reif to be Court of International Trade (CIT) judges, replacing Donald Pogue and Richard Eaton who retired. Baker is litigation partner and co-chair of appellate practice group in Washington office of McDermott Will & Emery, LLP. Reif serves as USTR senior advisor and lecturer at Columbia Law School.

SYRIA: House passed Caesar Syria Civilian Protection Act (H.R. 31) Jan. 22 by voice vote. Bill, introduced by Rep. Eliot Engel (D-N.Y.), seeks sanctions on Syria’s Bashar al-Assad regime. House previously passed same bill in May 2018 (see **WTTL**, May 22, page 8).

IRAN: OFAC Jan. 24 designated Qeshm Fars Air, civilian airline linked to Mahan Air, previously designated Iranian airline. Agency also identified two B747 aircraft as property in which Qeshm Fars Air has interest: EP-FAA and EP-FAB. At same time, OFAC designated Armenian general sales agent (GSA) Flight Travel LLC for acting for or on behalf of Mahan Air. Flight Travel provides cargo services and passenger booking services to airline. OFAC in September designated Thai firm My Aviation Company Limited for similar services (see **WTTL**, Sept. 17, page 6). Mahan Air was designated in October 2011 for providing support for Islamic Revolutionary Guard Corps-Qods Force (IRGC-QF).

CONGRESS: Rep. Sean Duffy (R-Wis.) and 18 cosponsors Jan. 24 introduced Reciprocal Trade Act (H.R. 764) that “would give the President the tools necessary to pressure other nations to lower their tariffs and stop taking advantage of America,” Duffy said in statement. President hosted “preliminary meeting” at White House same day. “Because of its cherry-picking approach to tariffs, it will not even involve reciprocal trade. Rather, it looks like nothing more than an excuse to raise U.S. tariffs,” Cato scholar Simon Lester said in blog post.