

Shutdown Figures To Tax An Already-Bustling USTR

By **Alex Lawson**

Law360 (January 16, 2019, 2:51 PM EST) -- This week's furloughing of staffers at the Office of the U.S. Trade Representative comes at a particularly inconvenient time for the small agency, which former officials say is likely to face challenges as it lays the groundwork for new trade talks and looks to resolve a simmering trade battle with China.

USTR would not comment on the exact scope of the furloughs this week, issuing only a brief statement explaining that "excepted personnel will ensure USTR continues to conduct operations, including trade negotiations and enforcement."

But a December White House memo laying out contingency plans in the event of a shutdown paints a bleak picture for the government's top trade negotiating and policymaking office. According to the memo, the agency will send home 191 of its 265 full-time staffers, roughly 72 percent, until the government's funding is restored.

A loss of that magnitude would be tough for any agency to bear, but especially so for USTR, which is often described as a lean, nimble agency that relies on an efficient and multitasking workforce.

As with most federal agencies afflicted by the shutdown, U.S. Trade Representative Robert Lighthizer and his deputies will undertake a triage effort that will focus newly limited resources on areas where they are most needed, according to former U.S. trade negotiator Barbara Weisel,

"The shutdown will significantly affect day-to-day operations," Weisel told Law360. "The political leadership will determine priority issues and then determine which staff to keep on duty to try to ensure those issues are covered. Advancing even these priority trade issues with a skeleton staff will be challenging and work on all other issues will be put on hold."

USTR is already juggling a number of initiatives that might all receive top priority in a calmer trade climate. But the Trump administration's fast-moving shift of U.S. trade policy has put the agency in an unenviable position with its workload.

The agency is in the preliminary stages of launching new trade negotiations with the European Union and Japan, with an eye toward talks with the United Kingdom further down the pike.

Those talks are authorized to begin as early as this month, but no formal plans have yet been made. Objectives for the looming EU and Japan negotiations have already been submitted to Congress, but the

agency's leaders will be at a strategic disadvantage if the shutdown lingers into the talks, according to former Deputy U.S. Trade Representative Robert Holleyman.

"Much of what goes into a trade negotiation is the background analysis of what a particular outcome can mean for the U.S. economically, by sector or for longer-term trade flows," Holleyman said. "The U.S. can continue to negotiate and make progress, but for the most fulsome negotiations, the U.S. should have its full team in place."

Holleyman explained that while the officials with the most seniority who would sit at the negotiating table are exempted from the furlough, they arrive at those negotiations briefed and prepped by technical-level staff that may be on the outside looking in if the shutdown should linger.

Also front-and-center for USTR is its ongoing dialogue with China to resolve a long-running trade spat that has resulted in punitive tariffs on roughly \$360 billion worth of goods traded between the two nations.

President Donald Trump and Chinese President Xi Jinping have agreed to hold off on new tariffs until March 2 as the two sides hold talks to address U.S. concerns over Chinese intellectual property and technology transfer rules, among other issues.

In the meantime, USTR is also running point on the process it has put in place for U.S. importers to earn exemptions from a portion of the duties it has imposed on China. This is a wholly new effort from the agency, and one that has already caused frustration even when the government was fully open, according to former U.S. Trade Representative Mickey Kantor.

"It is a burdensome process, even when everyone is there," Kantor said Tuesday. "It is a major, major challenge. Everyone who wants an exclusion is on the phone, on email, trying to get a hold of someone there and trying to get a meeting and plead their case, and they have every right to do so. The problem is: Who is going to listen to them?"

The hobbling of USTR also has a chilling effect on a broader policy level. Kantor, who served as USTR when the government closed in 1995, pointed out that the agency plays a crucial role in providing the rest of the executive branch, and most importantly the White House, background on the trade implications of new policies they are exploring.

That technical-level work is almost always conducted by career staffers who figure to be among those sent home this week.

"When the White House asks you for something, you need to get them the background that they need, but you don't have people to do it," Kantor said. "That becomes fairly serious ... everybody is put in a situation of not being able to perform."

--Editing by Katherine Rautenberg and Pamela Wilkinson.