This Week In Congress

House – The House was in recess.

Senate – The Senate began the impeachment trial of President Trump. The Senate approved a resolution setting the rules for the trial. The resolution provides the House managers and the President’s defense team each with 24 hours over three days to make opening arguments. The House managers began their arguments Wednesday and are expected to conclude on Friday. The defense team will begin their opening arguments Saturday. Under Senate rules, the Senate must remain in session six days per week during an impeachment trial and be in recess only on Sunday. Following opening arguments, the resolution provides for 16 hours of questioning by Senators. After the questioning period, the resolution allows 4 hours of argument by the parties, equally divided, followed by deliberation and vote on whether to call witnesses or subpoena documents.

Next Week In Congress

House – The House is expected to take up H.R. 3621, “The Student Borrower Credit Improvement Act,” as well as a pair of resolutions to repeal the 2002 Authorization for Use of Military Force Against Iraq and clarify that Congress has not previously authorized any use of military force against Iran.

Senate – The Senate will continue the impeachment trial of President Trump. The White House counsel is expected to continue opening arguments, and the Senate is then expected to begin the questioning period and vote on whether to call witnesses. The trial could end as early as the end of next week but may extend into the following week, depending on whether witnesses are called. Limited legislative activity is likely to occur during the trial.

TAX & TRADE

Digital Trade Tensions Ease with France, Escalate with UK and Italy

Key Points:
- The U.S. came to an agreement with France to avert U.S. tariffs and prevent U.S. companies from being subject to France’s new digital tax.
- The U.S. also warned the UK and Italy that passing their own digital taxes would result in tariffs, but the UK nonetheless committed to moving forward with its proposal by April.
The U.S. and France formally declared a truce over their ongoing digital taxation dispute. Talks on Thursday between U.S. Treasury Secretary Steve Mnuchin and French Finance Minister Bruno Le Maire resulted in a pledge from the U.S. to suspend planned tariffs on $2.4 billion of French goods in exchange for France ceasing collection of its four percent digital tax on the revenue of digital services companies (corporate liability will still be accrued). France adopted the new tax in July 2019 after a breakdown in talks for a harmonized European approach. The U.S. was prepared to begin levying retaliatory tariffs on France under Section 301, which also likely played a part in the detente reached this week.

The discussions also reportedly include an agreement by the U.S. to drop its previously held policy that any global digital tax should be opt-in with the carrot being protection under a series of protections and norms; a stance which had in part had slowed OECD negotiations on an international tax agreement on this issue. Le Maire commented earlier in the week that, “I don’t know of any company that would opt for taxation,” while clarifying that France had not dropped its tax (merely deferred collection) and would not do so before an international agreement was enacted. Angel Gurria, Secretary-General of the Organisation for Economic Co-operation and Development (OECD), expressed the hope that further progress will be made on digitize tax issues in next week’s OECD conference in Paris. The primary issue centers on adapting centuries-old rules that tax companies based on where they are headquartered or the location of their patents and licenses. Many European nations are interested in updating these rules to shift taxing power to countries with large consumer markets but small domestic technology companies. Meanwhile the U.S. views that approach as a naked attempt to tax U.S. companies which tend to dominate the sector.

The UK also pledged this week that it will introduce a national tax on technology in April, despite warnings from the U.S. about retaliatory tariffs. UK Chancellor Sajid Javid asserted there is a “growing disconnect between where customers are based and where profits are generated,” and said the country would move forward with imposing its tax if no OECD deal was struck. Secretary Mnuchin had warned the UK and Italy earlier in the week that they would face retaliatory tariffs were they to proceed with their taxes impacting U.S. digital services companies. On Thursday, the Treasury Department Deputy Assistant Secretary for International Tax Affairs Chip Harter asserted “the United States has not changes its position on the issue,” indicating that despite reported inroads with France, negotiations on digital tax remain contentious.

**House Poised to Release Infrastructure Package**

**Key Points:**

- The House announced it will release infrastructure legislation next week, although no bill text is currently available.
- Democratic leadership expressed optimism that bipartisan legislation is achievable after reaching a consensus with the Administration on the United States-Mexico-Canada Agreement (USMCA).

Speaker of the House Nancy Pelosi (D-CA) announced Thursday that the House plans to proceed with releasing an infrastructure package next week. Speaker Pelosi suggested the Administration could have a renewed interest in bipartisan legislation in the wake of Congress passing the USMCA, while pointing to previous statements from President Donald Trump about prioritizing infrastructure. Congress and the Administration had previously agreed to a $2
trillion infrastructure package in Spring 2019, but the talks broke down due to contention over the ongoing Mueller investigation. The sides had not agreed on financing mechanisms before walking away from negotiations.

House Ways and Means Chairman Richard Neal (D-MA) also announced Thursday that he would meet with Treasury Secretary Steve Mnuchin next week to discuss work on a bipartisan infrastructure deal. Sources on the House Transportation and Infrastructure Committee, the lead committee on drafting the legislation, said there is currently no draft text but that more details will be released next week.

**Trump Administration Ignores Mandate to Release Section 232 Report**

*Key Points:*
- The Trump Administration ignored a Congressional mandate enacted late in 2019 to release the Section 232 investigation report defending the use of auto import tariffs for national security reasons.
- The decision was announced by the Department of Commerce (Commerce) and based on an opinion from the Department of Justice (DOJ).

The Trump Administration announced this week it would refuse to provide its Section 232 auto industry investigation report to Congress. The report details the investigation into the national security risks posed by imported vehicles and auto parts. The Commerce Department explained the Administration was not turning over the report “because releasing it now would interfere with the President’s ability to protect confidential executive branch communications and could interfere with ongoing negotiations.” Commerce’s decision was reportedly informed by a DOJ opinion that the Administration was justified in withholding the report before negotiations on the tariffs have been resolved. President Donald Trump indicated on Tuesday that he was still considering imposing the tariffs, particularly on imported vehicles from Europe.

The refusal contravenes a provision in the Fiscal Year 2020 spending package enacted in December of 2019 which demanded that the Administration provide the report to Congress. Members of Congress, including prominent Republican senators, criticized the Administration’s decision as a violation of the law. Automakers have been vocal opponents of the possible tariffs and warned about negative impacts on consumer prices and auto sector employment.

**U.S. and EU Move Towards Discussions on Trade Agreement**

*Key Points:*
- President Trump expressed optimism about the potential of reaching a trade agreement with the European Union (EU) by November.
- EU officials expressed optimism that a deal on some easier trade issues could occur in weeks.
- New EU Trade Commissioner Phil Hogan visited the U.S. last week as part of an effort to reset the contentious relationship between the two sides.

President Donald Trump, speaking at the World Economic Forum in Davos, said Wednesday that he expected the U.S. to negotiate a trade deal with the EU ahead of the November presidential election. However, he also criticized the EU for trade barriers, said it was “more difficult to do business with than China,” and warned that the U.S. is poised to impose the long-threatened tariffs on the European auto sector. In response, European Commission President Ursula Von der Leyen indicated that an agreement that focuses on lower hanging
issues could be reached in weeks, potentially. That assessment and timeline may be optimistic in our view, as an editorial note.

Last week, EU Trade Commissioner Phil Hogan expressed optimism about negotiations in his first visit to the U.S. Talks reportedly centered on France’s digital tax and the Trump Administration’s proposed tariffs on roughly $10 billion of European goods. Commissioner Hogan said no commitments were made during the talks, but he suggested the two sides could negotiate a “mini-package” of regulatory issues to expand each other’s agricultural exports. Before the visit Hogan had acknowledged the EU has a “challenging relationship with the U.S.”

Upcoming Hearings and Meetings

January 28

**Fiscal Path:** The Senate Homeland Security and Government Affairs Committee will hold a hearing entitled “Examining the Root Causes of America’s Unsustainable Fiscal Path.”

January 29

**Infrastructure Financing:** The House Ways and Means Committee will hold a hearing entitled “Paving the Way for Funding and Financing Infrastructure Investments.”

**Budget Outlook:** The House Budget Committee will hold a hearing entitled “The Congressional Budget Office’s Budget and Economic Outlook.” Congressional Budget Office Director Phillip Swagel will testify at the hearing.

For more information about tax issues you may email or call Christopher Hatche at 202-659-8201. Thomas McGrath contributed to this section.

FINANCIAL SERVICES

SEC Holds Events on Small Business Capital Formation, Proxy Voting, and Exchange Tier Rebate Disclosure

**Key Points:**

- The Office of the Advocate for Small Business Capital Formation held its first “Capital Call” to discuss trends in capital raising and describe the recommendations in its annual report.
- The Investor Advisory Committee approved recommendations related to proxy advisors/shareholder proposals and exchange tier rebate disclosure.

On January 23, the Securities and Exchange Commission (SEC) Office of the Advocate for Small Business Capital Formation held its first Capital Call to discuss trends in capital raising for small businesses. Advocate for Small Business Capital Formation Martha Legg Miller described the five recommendations in the Advocate’s 2019 annual report. First, she noted that they recommended that the SEC modernize and harmonize the exempt offering framework. She said many companies find the offering framework to be contradictory and confusing. She commended the SEC’s efforts to address this issue. She said the second recommendation deals with investor participation in private offerings, including both through the accredited investor definition and pooled investment vehicles. She urged participants to comment on the SEC’s proposed rule on the accredited investor definition. She said the SEC should look at ways for all investors to benefit from private market holdings through professional asset management. Miller said the third recommendation focused on providing clarity on what role finders can play in providing services that fall short of requiring registration as a broker-dealer. She stated that the fourth recommendation focused on ways to improve Regulation Crowdfunding (CF), including
increasing the amount companies can raise, reevaluating disclosure obligations, and allowing the use of Special Purpose Vehicles (SPVs). She explained that the fifth recommendation was for scaled obligations for smaller, less complex reporting companies.

Additionally, on January 24, the Securities and Exchange Commission (SEC) convened a telephonic meeting of its Investor Advisory Committee (IAC). The Advisory Committee approved recommendations on two topics: (1) SEC Guidance and Rule Proposals on Proxy Advisors and Shareholder Proposals; and (2) Exchange Rebate Tier Disclosure.

The proxy advisor/shareholder proposal (PA/SP) recommendation states that “[w]e believe the PA/SP actions as currently framed will not reliably achieve their stated goals, because the system is in need of more basic reform, and because it is necessary to establish a link between the actions and clearly identified problems.” The recommendation further stated that “it critical that the SEC take up end-to-end vote confirmations, reconciliations, and universal proxies.” The recommendation called for the SEC to revise and reissue the rule proposals.

The IAC approved the PA/SP recommendation by a vote of 10-5 with 2 abstentions. The opponents of the recommendation argued that it goes too far in calling for the SEC to repropose the rules, suggesting that the SEC is in the best position to determine whether a re-proposal is necessary.

The exchange rebate tier disclosure recommendation includes proposals to: (1) enhance exchange disclosure to the SEC Division of Trading and Markets; and (2) enhance public disclosure of rebate tiers by exchanges.

The IAC approved the exchange tier rebate disclosure recommendation by a vote of 16-0. J.W. Verret (Mercatus Center) explained that the recommendation had modified from an earlier draft to call for the public disclosure of data to be done in an anonymized format. He noted that exchanges had raised concerns that non-anonymized data disclosure could result in the exposure of proprietary data about their clients.

Upcoming Hearings and Meetings

January 29

**Community Reinvestment Act:** The House Financial Services Committee will hold a hearing entitled “The Community Reinvestment Act: Is the OCC Undermining the Law’s Purpose and Intent?”

**Insurance:** The House Financial Services Committee’s Subcommittee on Housing, Community Development and Insurance will hold a hearing entitled “Examining the Availability of Insurance for Nonprofits.”

January 30

**Mobile Payments:** The House Financial Services Committee’s Task Force on Financial Technology will hold a hearing entitled “Is Cash Still King? Reviewing the Rise of Mobile Payments.”

**CFTC Open Meeting:** The Commodity Futures Trading Commission (CFTC) will hold an open meeting to consider two items: (1) Proposed Rule: Position Limits for Derivatives; and (2) Proposed Rule: Amendments to Codify No-Action Relief in Swap Execution Facility and Real-Time Reporting Requirements.

**Federal Reserve Board Meeting:** The Federal Reserve Board of Governors will hold an open meeting to consider two items: (1) Notice of
Proposed Rulemaking on Section 13 of the Bank Holding Company Act (The Volcker Rule); and (2) Final Rule to Revise the Board's Control Framework.

**FDIC Board Meeting:** The Federal Deposit Insurance Corporation (FDIC) will hold an open meeting to consider a proposed rule regarding Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds (The Volcker Rule).

**February 4**

**Small Business Capital Formation Advisory Committee:** The SEC will hold a meeting of its Small Business Capital Formation Advisory Committee.

For more information about financial services issues you may email Joel Oswald or Alex Barcham.

**ENERGY & ENVIRONMENT**

EPA Finalizes “Waters of the United States” Regulatory Revisions

**Key Points:**
- The Trump Administration finalized a significant rule to define the extent of federal jurisdiction under the Clean Water Act.
- The new regulations replace a 2015 Obama Administration rule that defined what is considered “waters of the United States”.

On January 23, the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE) released the text of the final rule titled “The Navigable Waters Protection Rule: Definition of “Waters of the United States”.

The final rule’s preamble declares that it “increases the predictability and consistency of Clean Water Act programs by clarifying the scope of ‘waters of the United States’ federally regulated under the Act.”

The rule establishes four categories of water bodies that are considered jurisdictional “waters of the United States” and therefore subject to Clean Water Act regulation:
- “the territorial seas and traditional navigable waters;”
- “perennial and intermittent tributaries that contribute surface water flow to such waters;”
- “certain lakes, ponds, and impoundments of jurisdictional waters; and”
- “wetlands adjacent to other jurisdictional waters.”

Any water feature not included in those four categories is excluded from the definition of “waters of the United States”. In addition, the rule also sets forth 12 categories of waters or features specifically excluded from the definition, and therefore not subject to federal regulation under the Clean Water Act:
- “groundwater, including groundwater drained through subsurface drainage systems;”
- “ephemeral features that flow only in direct response to precipitation, including ephemeral streams, swales, gullies, rills, and pools;”
- “diffuse stormwater runoff and directional sheet flow over upland;”
- “ditches that are not traditional navigable waters, tributaries, or that are not constructed in adjacent wetlands, subject to certain limitations;”
- “prior converted cropland;”
- “artificially irrigated areas that would revert to upland if artificial irrigation ceases;”
“artificial lakes and ponds that are not jurisdictional impoundments and that are constructed or excavated in upland or non-jurisdictional waters;”

“water-filled depressions constructed or excavated in upland or in non-jurisdictional waters incidental to mining or construction activity, and pits excavated in upland or in non-jurisdictional waters for the purpose of obtaining fill, sand, or gravel;”

“stormwater control features constructed or excavated in upland or in non-jurisdictional waters to convey, treat, infiltrate, or store stormwater runoff;”

“groundwater recharge, water reuse, and wastewater recycling structures constructed or excavated in upland or in non-jurisdictional waters; and”

“waste treatment systems.”

These regulations replace the “Clean Water Rule: Definition of ‘Waters of the United States’” final rule, published by the EPA and USACE in the Obama Administration on June 29, 2015. That rule established a more expansive definition of “waters of the United States”, seeking to clarify the contours of federal regulations following Supreme Court decisions on this issue in Rapanos v. United States and Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC). The Trump Administration EPA and USACE published the final rule to repeal the Obama Administration final rule on September 12, 2019.

Congressional Democrats expressed strong opposition to Thursday’s final rule. In a statement, House Transportation and Infrastructure Committee Chairman Peter DeFazio (D-OR) promised to “continue to fight this destructive plan in Congress and through my committee, because in the United States of America, access to clean water is a right that must be protected.”

Upcoming Hearings and Meetings

January 28

Public Disclosure and Climate: The House Natural Resources Committee’s Subcommittee on Energy and Mineral Resources will hold a hearing on “The Importance of Public Disclosure Requirements for Protecting Human Health, the Climate, and the Environment”.

Pending Legislation: The House Natural Resources Committee’s Subcommittee on Water, Oceans, and Wildlife will hold a hearing on pending legislation.

Wildfires: The House Energy and Commerce Committee’s Subcommittee on Energy will hold a hearing titled “Out of Control: The Impact of Wildfires on our Power Sector and the Environment”.

January 29

Energy Outlook: The Bipartisan Policy Center will host an event for the release of the Energy Information Administration’s (EIA) Annual Energy Outlook. The program includes “a presentation by EIA Administrator Dr. Linda Capuano followed by a panel discussion on the challenges and market trends facing the electricity sector.”

Chemical Safety: The Senate Environment and Public Works Committee will hold a hearing titled “Stakeholder Perspectives on the Importance of the U.S. Chemical Safety and Hazard Investigation Board.”
January 30

**Pipeline Certificate:** The Federal Energy Regulatory Commission (FERC) will hold a special open meeting to consider the pending pipeline certificate for the PennEast Pipeline Company.

February 11

**NEPA Changes:** The Council on Environmental Quality (CEQ) will hold a hearing in Denver, Colorado on the Notice of Proposed Rulemaking (NPRM) titled “Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act”.

February 19-20

**Pipeline Safety Research and Development:** The Pipeline and Hazardous Materials Safety Administration (PHMSA) will hold a “Pipeline Safety Research and Development Forum.” The forum will allow “the public, government and industry pipeline stakeholders to develop recommendations on the technical gaps and challenges for future pipeline safety research.”

February 25

**NEPA Changes:** The CEQ will hold a hearing in Washington, D.C. on the NPRM titled “Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act”.

For more information about energy and environment issues you may email or call Frank Vlissak at 202-659-8201. Updates on energy and environment issues are also available on twitter.

HEALTH

Upcoming Hearings and Meetings

January 27

**Supply Chain:** The Center for Global Development will hold a briefing on “Global Health Supply Chains: The Role of Private Wholesalers & Distributors in Improving Access to Medicines.”

January 28

**Opioids:** The House Judiciary Committee will hold a hearing on “Fentanyl Analogues: Perspectives on Classwide Scheduling.”

**Family Leave:** The House Ways and Means Committee will hold a hearing on “Legislative Proposals for Paid Family and Medical Leave.”

**Maternal Health:** The House Education and Labor Committee will hold a hearing on “Expecting More: Addressing America’s Maternal and Infant Health Crisis.”

January 29

**Safety:** The House Energy and Commerce Committee will hold a hearing on “Improving Safety and Transparency in America’s Food and Drugs.”

**Pharmaceuticals:** Waxman Strategies will hold an event on “Nonprofit Pharmaceutical Companies: Background, Challenges, and Policy Options.”

For more information about healthcare issues you may email or call Nicole Razinski Bertsch or George Olsen at 202-659-8201.

This Week in Congress was written by Alex Barcham.