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BIS Under Security Nominee Returns to ITA

In an administration that has had a higher than usual turnover rate, it is not surprising that one nominee walked away during the process, especially at the Bureau of Industry and Security (BIS), which is in the middle of the most controversial and notable decisions involving national security and tariffs.

> Acting BIS Under Secretary Nazak Nikakhtar, who had come under fire from several directions, has returned to her role at the International Trade Administration. "Nikakhtar has decided to return to her Senate confirmed role as Assistant Secretary of Commerce for Industry and Analysis, a critical position here at the Department, where she will continue to advance the Administration's trade and national security policy priorities," Commerce said in a statement Aug. 28.

Industry groups maintained their opposition to Nikakhtar, who sources say has tried to stop the publication of final rules on the transfer of firearms from State to Commerce jurisdiction or at least slow them down (see **WTTL**, Aug. 19, page 1). Her exit can "only help. She was actively impeding publication," one source told WTTL. She had been in the acting role since February.

At press time, the Senate Banking Committee has not received formal word from the White House on the decision. The committee held a hearing on Nikakhtar's confirmation in June, but never scheduled a vote. Congressional sources doubt the withdrawal will come before a new name is floated. Whether a new nominee could make it through the paperwork process before the next election also remains to be seen.

Deutsche Bank Agrees to Pay $16 Million for FCPA Violations

Global financial firm Deutsche Bank agreed Aug. 22 to pay the Securities and Exchange Commission (SEC) more than $16 million to settle charges that it violated the Foreign

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Corrupt Practices Act (FCPA) by hiring relatives of foreign government officials in the Asia-Pacific region and Russia to obtain or retain business. "Between at least 2006 and 2014, Deutsche Bank provided valuable employment to the relatives of foreign government officials in various parts of the world as a personal benefit to the officials in order to improperly influence them to assist the bank in obtaining or retaining business or other benefits," the SEC order noted.

> "Deutsche Bank employees created false books and records that concealed corrupt hiring practices and failed to accurately document and record certain related expenses and Deutsche Bank failed to devise and maintain a system of internal accounting controls around its hiring practices sufficient to provide reasonable assurances that its employees did not bribe foreign government officials," the agency added.

"Deutsche Bank provided substantial cooperation to the SEC in its inquiry and has implemented numerous remedial measures to improve the bank's hiring practices," a company spokesperson wrote WTTL via email. The SEC considered the company's remedial acts and its cooperation with the investigation when determining whether to accept the bank's offer of a settlement, which included disgorgement of $10.8 million, prejudgment interest of $2.4 million and a $3 million civil penalty.

The bank previously agreed to pay a $258 million penalty to the N.Y. Department of Financial Services (NYDFS) and the Federal Reserve for violating N.Y. and U.S. banking laws (see **WTTL**, Nov. 9, 2015, page 6). From 1999 through 2006, Deutsche Bank used "non-transparent methods and practices" to conduct more than 27,200 transactions on behalf of Iranian, Libyan, Syrian, Burmese and Sudanese financial institutions and other entities subject to U.S. economic sanctions.

U.S. Exuberant, Japan Careful on Trade Deal

For some, a long-awaited and hyped movie is the best movie ever and has Oscar-winning potential, while for others it was just, well, meh. At the G-7 meeting in France Aug. 25, President Trump and Japanese Prime Minister Abe saw the same movie, but had slightly different reactions.

In joint remarks after their bilateral meeting, Trump said, "We're very far down the line. We've agreed to every point, and now we're papering it and we'll be signing it at a formal ceremony." The deal "involves agricultural and it involves e-commerce and many other things. It's a very big transaction, and we've agreed in principle. It's billions and billions of dollars," Trump added.

In contrast, Abe was much more measured. "We successfully reached consensus with regard to the core elements of both the agricultural and industrial products of our bilateral consultations," he said. "We still have some remaining work that has to be done at the working level, namely finalizing the wording of the trade agreement and also finalizing the content of the agreement itself," Abe added.

Specifically, Trump claimed Japan agreed to buy all U.S. excess corn, to the tune of "hundreds of millions of dollars" of the crop. "On behalf of Japan, they're going to be buying all of that corn. And that's a very big transaction. They're going to be buying it from our farmers." Later he tweeted: "Big Trade Deal just agreed to with Prime Minister Abe of Japan. Will be great for our Farmers, Ranchers and more. Really big Corn purchase!"

> Again, Abe was careful. "We believe that there is a need for us to implement emergency support measures for the Japanese private sector to have the early purchase of the American corn," he said. "Against such backdrop, I do think that there is a possibility for us to cooperate to address this issue," Abe added.

Despite the difference of opinion, industry groups responded immediately. "Along with more stability for soybean exports to Japan, this FTA also brings potential to increase pork and beef exports; a value-add opportunity for soybeans and way to create more jobs here in the U.S," Davie Stephens, president of the American Soybean Association (ASA), said in a statement.

"Given the existing volatility and uncertainty in global markets, today's news …is a welcome step in the right direction. However, the U.S. Chamber strongly urges the Trump Administration to continue its efforts to reach a comprehensive, high-standard agreement that addresses the full range of U.S. trade priorities from services and intellectual property protection to regulatory barriers," Myron Brilliant, U.S. Chamber of Commerce executive VP, said in a statement.

DDTC Moves Radars to CCL, Extends Temporary Software Controls

Public comments do make a difference. In the Federal Register Aug. 30, State's Directorate of Defense Trade Controls (DDTC) moved certain lower performing radars and radar components, including those in driver-assisted and self-driving ground vehicles and in detect and avoid systems for autonomous aerial systems, from the U.S. Munitions List (USML) Category XI (military electronics) to Commerce jurisdiction.

In response to a notice of inquiry, DDTC received several public comments that identified "current and imminent commercial uses" for those radars. State in February 2018 published parallel notices of inquiry requesting public comments on USML categories V, X and XI (see **WTTL**, April 23, 2018, page 5).

Specifically, DDTC removed "those transmit/receive modules and transmit/receive monolithic microwave integrated circuits (MMICs) fabricated exclusively with homojunction complementary metal–oxide–semiconductor (CMOS) silicon-based circuits on silicon substrates, as well as radars and radar antennas that are specially designed to use only such modules or MMICs."

At the same time, the agency extended temporary controls on certain intelligence analytics software under Category XI by reinserting the words "analyze and produce information from" and by adding software to the description of items controlled in paragraph (b). Changes will be effective until Aug. 30, 2021.

Talks Ripen Between Commerce, Mexican Tomato Growers

In the nick of time and after all the fuss, Commerce Aug. 21 announced a new draft agreement to suspend the ongoing antidumping (AD) investigation of fresh tomatoes from Mexico. Under the deal, the U.S. will set new inspection mechanisms and reference prices.

> The dispute between Florida and Mexican tomato growers turned rotten two weeks earlier with U.S. groups and their senator accusing their southern neighbors of "blatant blackmail" and "inflammatory rhetoric" when they made a proposal to resolve the dispute (see **WTTL**, Aug. 12, page 2).

"This draft agreement meets the needs of both sides and avoids the need for antidumping duties," Secretary of Commerce Wilbur Ross said. Under the deal, Commerce can audit up to 80 Mexican tomato producers per quarter, or "more with good cause," it said. In addition, the agreement sets the reference prices for various types of tomatoes, with organic tomatoes priced 40% higher than non-organics.

While the Mexican government was not party to the agreement, the Mexican Economy Ministry expressed its "satisfaction" with the deal reached at midnight. "For more than two decades, the Tomato Suspension Agreement allowed to regulate and give certainty to Mexican tomato access to the United States, in a market with a growing demand," the ministry noted. "With the announcement of a possible termination of this agreement, a serious risk for the export sector was opened due to its impact on production and employment," it added.

After a 30-day notice period, Commerce and the Mexican growers could sign a final agreement Sept. 19. If this happens, Commerce will suspend the ongoing AD investigation without issuing a final determination. Commerce in May terminated its 2013 suspension agreement with Mexican tomato exporters and resumed its antidumping investigation of fresh tomato imports from Mexico. The department announced its intent to withdraw from the deal in February.

BIS Expands Huawei Entity List, Extends General License

As perhaps could be expected given history, BIS Aug. 19 extended a narrow and temporary General License (GL) authorizing some transactions with Huawei for 90 days. At the same time, the agency added 46 additional non-U.S. Huawei affiliates to its Entity List because "they also pose a significant risk of involvement in activities contrary to the national security or foreign policy interests" of the U.S.

BIS added Huawei and 68 affiliates to its Entity List in May; five days later, the agency issued the GL. In June, President Trump said U.S. companies would be able to sell to

Huawei, but nearly two months later, neither BIS nor the White House has released anything official or more specific (see **WTTL**, July 15, page 1).

Of the 46 new additions, 27 were listed under new, separate entries, and the other 19 added under the existing entry for Huawei. The additions and modifications include Huawei affiliates in 25 different destinations: Argentina, Australia, Bahrain, Belarus, Belgium, Brazil, China, Costa Rica, Cuba, Denmark, France, India, Indonesia, Italy, Kazakhstan, Mexico, New Zealand, Panama, Portugal, Romania, Russia, South Africa, Sweden, Thailand and the United Kingdom (UK).

> In a separate notice, BIS also extended the GL until Nov. 18. The rule also clarified the authorized transactions under the GL to "improve public understanding," the agency said. In addition, the rule revised the GL by "changing which party to the transaction is required to create the certification statement by requiring that the exporter, reexporter, or transferor obtain a certification statement from the pertinent Huawei listed entity" prior to using the GL.

At the same time, BIS issued its first advisory opinion in five years "in response to questions that BIS has received regarding the disclosure of technology or software subject to the Export Administration Regulations (EAR) between and among members of standards setting or development groups or bodies."

"Regardless of whether such exchanges occur within a standards body designated or characterized as an organization that develops international standards, a consortium, or some other designation, a variety of activities in the standards setting or development context are prohibited absent a license or other authorization from BIS if any of the listed Huawei entities (or another listed entity) is involved," the advisory opinion said.

Examples of prohibited activities include: participating in a non-public working or study group, a non-public standards or technical committee or subcommittee meeting, session, or other technical discussion, or electronic exchanges within a standards body; releasing or providing access to blueprints, flowcharts, schematics, prototypes, or similar materials; and giving presentations or demonstrations in non-public settings; and exchanging or otherwise providing access to position papers, or drafts or edits of such materials.

France, U.S. Report Agreement on Digital Tax

During the G-7 meeting Aug. 26, the U.S. and France celebrated an agreement on the 3% digital services tax (DST) on certain "giant" companies that France adopted in July. Specifics were few and far between, but in theory, the two countries will work together to make the national tax international in scope, and then France would reimburse U.S. companies.

"We have reached a very good agreement. And once again, the solid work that has been done upstream by our ministers has really helped us to make progress," French President

Macron said in joint remarks with President Trump during the summit. "We have reached an agreement to overcome the hurdles. So we're going to work on a bilateral and multi-lateral basis to find a solution together," he added.

"The day international tax exists on digital services, France will do away with its national tax. And everything that has already been paid under the French tax system will be reimbursed," Macron said. The day before France adopted the tax, the U.S. Trade Representative's (USTR) office opened a Section 301 investigation, claiming that France is unfairly targeting the tax at U.S.-based technology companies (see **WTTL**, July 15, page 1).

Following up on that announcement, French Finance Minister Bruno Le Maire met with Organization of Economic Cooperation and Development (OECD) Secretary-General Angel Gurria Aug. 29. The two want to "speed up the work with one goal: to get an international solution to the OECD in the first half of 2020," Le Maire tweeted.

U.S. lawmakers bristled at the deal. "The Trump administration should reject any deal that allows France and other countries to move ahead with discriminatory taxes on U.S. technology companies, in exchange for vague promises down the line. If Donald Trump gives France a pass now, then it will be open season for foreign governments to go after major American employers," Sen. Ron Wyden (D-Ore.) said in a statement.

Export Controls Are Confusing, Burdensome, Businesses Say

Aside from that, how was the play, Mrs. Lincoln? U.S. businesses in China argue that "U.S. export control regulations are confusing and burdensome, and often place U.S. business entities at a competitive disadvantage while not substantially protecting U.S. national security and foreign policy interests," AmCham Shanghai wrote in its latest report on U.S. export controls released Aug. 30.

> Specifically, U.S. policy on Huawei "has resulted in a breakdown of trust between American suppliers and Chinese customers," the group said (see related story, page 5). U.S. actions have "become overly politicized, causing a widespread perception in China that the U.S. is shrouding its true intentions — to use Huawei as a political cudgel or bargaining chip — behind a veneer of national security," AmCham added.

In addition, "the constant revision of Huawei-related restrictions creates a compliance minefield for U.S. companies. U.S. companies must continuously consult legal counsel or outside consultants, often at great expense, to ensure the correct implementation and modification of compliance procedures to ensure adherence with U.S. regulations," AmCham wrote.

Add to that Commerce review times for license applications "are overly protracted," member companies reported. "Onerous documentation requirements and an unrealistically short response window for [BIS] to verify the bona fides of certain Chinese entities results in too many Chinese entities being unnecessarily added to the UVL [Unverified List]," it added.

The group's recommendations include: adequate BIS staffing, tailored regulations, partnership with allies and signatories to multilateral control regimes, investment in U.S. commercial competitiveness, more notice to industry around changes, and rewards for companies that have strong compliance programs.

Trump Plays Blame Game on China Tariffs

The one thing clear about U.S.-China trade relations is deja vu. The president makes statements; his team clarifies. Then, he makes more statements to clarify earlier statements. His team cleans up those statements which he later changes by tweeting. So, the only thing clear about U.S.-China trade tensions at press time is that on Sept. 1, the Trump administration planned to levy a 15% tariff on $125 billion of additional Chinese imports including footwear, watches and TVs.

In August, when it became clear that China would not be conceding to Trump's wishes he increased the tariffs set to come into effect in September and December to 15% from 10%; that is, in addition to the $250 billion already paying a 25% tariff. The administration also formally announced a 5% increase in those existing tariffs to go into effect Oct. 1.

> The second thing that is clear is what Chinese Foreign Ministry spokesman Geng Shuang told the press in Beijing: Both "the Chinese and U.S. teams have all along maintained effective communication. Second, we hope the U.S. could show sincerity and take concrete actions to meet China halfway and find a solution on the basis of equality and mutual respect."

But how effective is that communication if it is unreliable? Trump told the media Aug. 26 that in recent phone conversations, China wants a deal and that the two sides will get back to the negotiating table. But reporters were hard-pressed to get Beijing to either reiterate or confirm that conversation ever took place.

A Chinese Commerce Ministry spokesperson went even further. "This unilateral and bullying trade protectionism and extreme pressures violate the consensus of the heads of state of China and the United States, violate the principle of mutual respect, equality and mutual benefit, seriously undermine the multilateral trading system and the normal international trade order, and will surely suffer from it," the spokesperson said Aug. 24 after the president first announced the tariff increases.

Moreover, at the recent G-7 meeting, no leader could convince Trump to either tone down the rhetoric or change his approach. In fact, the president referred to the trade war with China as a little spat. He did not recognize the knock-on effect it would have on U.S. allies the European Union (EU) or Germany, the largest exporter to China.

On Twitter Aug. 30, he lamented how the falling Euro benefits the EU and not the U.S. "The Euro is dropping against the Dollar "like crazy," giving them a big export and manufacturing advantage...and the Fed does NOTHING! Our Dollar is now the strongest in history. Sounds good, doesn't it? Except to those (manufacturers) that make product for sale outside the U.S," the president argued. He then continued his attack on Federal Reserve Chair Jerome Powell for not lowering rates and blamed U.S. corporations, not tariffs for any downturn. "If the Fed would cut, we would have one of the biggest Stock Market increases in a long time. Badly run and weak companies are smartly blaming these small Tariffs instead of themselves for bad management...and who can really blame them for doing that? Excuses!" the president bemoaned.

> Industry groups denounced the president's blaming of U.S. companies. "Tariffs are taxes that cost American jobs and hurt consumers, creating a problem for the entire U.S. economy. The fact that companies find extra taxes as high as 30% challenging is not an excuse, it's an economic reality," the Americans for Free Trade said in a statement.

"Unfortunately, small businesses on Main Street are the ones that are really suffering – many have slowed hiring or laid off employees and some will even be forced to close their doors. At the same time, farmers across the country are losing income every day as this trade war threatens their entire livelihoods," the group said.

Sen. Chuck Grassley (R-Iowa) took the more traditional Republican route, arguing that the president is right to take on China's practices. "The only way to end this trade war is for China to come to the table and negotiate seriously on an enforceable deal that ends its bad behavior and unfair trade practices. In the meantime, tariffs cannot be the only negotiating tool. Tariffs are not a long-term solution."

* * * Briefs * * *

<ins>EXPORT ENFORCEMENT</ins>: Iranian national Behzad Pourghannad pleaded guilty Aug. 29 in White Plains, N.Y., U.S. District Court to charges of exporting carbon fiber to Iran between 2008 and July 2013 without OFAC licenses. He was extradited and appeared in court July 16 (see **WTTL**, July 22, page 4). Pourghannad was arrested in Germany in May 2017. Co-defendants Ali Reza Shokri and Farzin Faridmanesh are still at large. Three-count indictment was first filed in July 2013 and unsealed day before appearance in court. Carbon fiber is controlled under ECCN 1C010 or 1C210 (after 2010) and can be used in gas centrifuges for uranium enrichment, indictment noted. Sentencing is set for Dec. 13.

<ins>MORE EXPORT ENFORCEMENT</ins>: Rami Ghanem, naturalized U.S. citizen living in Egypt, was sentenced Aug. 19 in in Los Angeles U.S. District Court to 30 years in prison for conspiring to acquire, transfer and use missiles and missile systems. Federal jury convicted Ghanem in November 2018 (see **WTTL**, Nov. 26, 2018, page 6). Two weeks earlier, Ghanem pleaded guilty to six other charges including unlicensed export of weapons and ammunition, smuggling, money laundering and unlicensed arms brokering. In August 2015 Ghanem placed order for $220,000 worth of sniper rifles, pistols, silencers, laser sights, ammunition, night-vision goggles and other items that were to be shipped to Libya, Justice said in press release. He was extradited in April 2016 after arrest in Greece and has been in custody since.

<ins>STILL MORE EXPORT ENFORCEMENT</ins>: Mehdi Hashemi, dual U.S.-Iranian citizen was arrested Aug. 18 and charged in scheme to ship prohibited items, including computer numerical control

(CNC) machines, to Iran via UAE without BIS or OFAC licenses. April indictment on 21 counts was unsealed in Los Angeles U.S. District Court day after arrest. Co-defendant Feroz Khan of UAE is at large. CNC machines are used to process raw materials to precise standards and are controlled under ECCN 2B201 for nuclear non-proliferation and anti-terrorism reasons.

NORTH KOREA: OFAC Aug. 30 designated two Taiwanese individuals and three Taiwan and Hong Kong-based entities involved in illicit ship-to-ship (STS) transfers to circumvent UN sanctions on North Korea that restrict country's import of petroleum products. Agency also identified one vessel *Shang Yuan Bao* as blocked property. "Shipping companies trading with North Korea are exposing themselves to significant sanctions risk, despite the deceptive practices they try to employ," said Treasury Under Secretary Sigal Mandelker.

ITC: Randolph Stayin and Amy Karpel were sworn in as ITC commissioners Aug. 23 and Aug. 26, respectively. In flurry of 66 voice votes before recess, Senate confirmed Stayin and Karpel Aug. 1 (see **WTTL**, Aug. 5, page 7).

WIND TOWERS: In 3-0 preliminary votes Aug. 22, ITC found U.S. industry may be injured by allegedly dumped imports of utility scale wind towers from Canada, Indonesia, Korea, and Vietnam and subsidized imports from Canada, Indonesia, and Vietnam. Commissioners Irving Williamson and Meredith Broadbent did not participate in these votes.

STEEL RACKS: In 3-0 final votes Aug. 20, ITC found U.S. industry is materially injured by dumped and subsidized imports of steel racks from China. Commissioners Irving Williamson and Meredith Broadbent did not participate in these votes.

IRAN: OFAC Aug. 28 designated five individuals and five entities, including Hong Kong-based front company, as part of Iranian regime-linked networks "engaging in covert procurement activities benefitting multiple Iranian military organizations." Three additions -- Hamed Dehghan, his company Ebtekar Sanat Ilya, and Hadi Dehghan -- "have procured more than one million dollars' worth of military-grade electronic components for Rastafann Engineering Company … and have had multiple other Iranian military clientele," agency said. OFAC designated Rastafann in October 2017 (see **WTTL**, Oct. 16, 2017, page 1).

PESTICIDES: USTR Aug. 30 requested ITC conduct Section 332 investigation on global economic impact of national maximum residue level (MRL) policies on plant protection products. Administration "seeks to gain a greater understanding of existing and emerging challenges to the current international and country-specific frameworks for pesticide MRLs, particularly in major markets, and a better understanding of whether current frameworks provide adequate support for agricultural trade," USTR wrote.