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BIS Opens Door to Emerging Technology Controls

As promised, the Bureau of Industry and Security (BIS) Nov. 19 will publish an Advance Notice of Proposed Rulemaking (ANPRM) requesting public comments on certain aspects of emerging technologies, including how to define the term, the development status of these technologies, and the impact specific controls would have on that development.

> The 2018 National Defense Authorization Act (NDAA) authorized Commerce to establish "appropriate controls, including interim controls, on the export, reexport, or transfer (in country) of emerging and foundational technologies" (see **WTTL**, Oct. 1, page 1). In the notice, BIS listed as a starting point a dozen "representative general categories of technology," including biotechnology; additive manufacturing (*e.g.* 3D printing); robotics, position, navigation, and timing (PNT) technology; microprocessor technology and hypersonics.

"Commerce will issue a separate ANPRM regarding identification of foundational technologies that may be important to U.S. national security. Commerce seeks public comment, however, on treating emerging and foundational technologies as separate types of technology," the notice said. Comments are due in 30 days.

Other questions for comments include: criteria to apply to determine whether there are specific technologies that are important to U.S. national security; sources to identify such technologies; 4) other general technology categories that warrant review; and "any other approaches to the issue of identifying emerging technologies important to U.S. national security, including the stage of development or maturity level of an emerging technology that would warrant consideration for export control."

Despite Smiles, EU-U.S. Trade Relations Face Hurdles

While European Union (EU) Trade Commissioner Cecilia Malmström called a meeting with U.S. Trade Representative (USTR) Robert Lighthizer Nov. 14 a "good discussion," she

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made no effort to hide the frustration and sticking points between the two trading partners. For one, she told reporters she got no assurances that the U.S. would not impose potential tariffs on EU autos and auto parts. However, the EU is working under the assumption there will be no new tariffs, based on a statement the president and European Commission President Jean-Claude Juncker made after a meeting in July (see **WTTL**, July 30, page 3). "That is our point of departure," Malmstrom said.

If the U.S. does impose such tariffs, the EU has drafted a list of retaliatory tariffs, but would have to finalize that list with member states, she told reporters. Existing U.S. steel and aluminum tariffs have brought retaliation from the EU and other partners, as well as multiple complaints at the World Trade Organization (WTO).

While the USTR made a splash in October announcing new trade talks with the EU and other partners, Malmstrom emphasized that those talks have not formally started and have miles to go to get there. She said she can only ask for a mandate from EU member states after a "scoping exercise" has been done, but that hasn't begun. The EU is waiting for the U.S. administration go through its congressional process, she said. In the meantime, the EU has completed or is in intense negotiations toward trade agreements with Mercosur, Australia and New Zealand, Chile, Japan, Singapore, Mexico, Vietnam and South Africa.

The trade commissioner repeated the EU position that any talks will not include agricultural products, only industrial goods. While ag is "still important from the U.S side," she said, if the U.S. negotiating objectives included agriculture, the talks could be scuttled.

Before those talks begin, both partners are focused on regulatory cooperation, which was a large part of previous talks toward a Trans-Atlantic Trade and Investment Partnership (TTIP). The meeting with Lighthizer was to take stock of those efforts. "We made progress," she said. "Those talks will of course continue. Nothing conclusive today," Malmstrom added. Those efforts "can happen in parallel" with new trade talks, she said.

Malmstrom and Lighthizer also briefly discussed efforts that the U.S., EU and Japan announced in September to join forces to share their concerns over non market-oriented policies and practices of third countries. Since then, 13 other WTO members, not including the U.S., urged three main actions to fix current WTO dysfunction: fill those continued vacancies in the Appellate Body, reinvigorate the negotiating function, especially on fisheries subsidies, and strengthen the monitoring and transparency of members' trade policies (see **WTTL**, Oct. 29, page 1).

Industry, Lawmakers See Improvement in USMCA Deal

Many industry groups and lawmakers are withholding judgment on the final U.S.-Mexico-Canada Agreement (USMCA), but generally see the potential deal as an improvement over the "old" NAFTA, representatives of almost every U.S. trade sector testified Nov. 15-

16 at an International Trade Commission (ITC) hearing on the impact of the deal. Rep. Bill Pascrell, Jr. (D-N.J.), the ranking member (and incoming chair) of the House Ways and Means trade subcommittee, said he was "in the process of reviewing the agreement and consulting with stakeholders. We are collecting feedback and awaiting economic analysis like this Commission's report to inform our analysis." In general, "there are certainly some improvements in the USMCA over the previous NAFTA, but the jury is still out as to whether this deal meets my standard for a better deal for American workers," he added.

Retiring Rep. Sander M. Levin (D-Mich.) hoped the ITC analysis will lead to a "reconstructed policy on trade that focuses on harmonizing wages upwards and truly supporting good jobs," he said. "It is my belief that without the development of such policy that effectively rectifies the basic flaw in and the major source of controversy over NAFTA 25 years ago, USMCA will not receive strong support among the new House Democratic majority." The updated NAFTA was not a done deal in the old Congress, and might be even more difficult in the new one (see **WTTL**, Nov. 12, page 3).

> Cody Lusk, president and CEO of the American International Automobile Dealers Association (AIADA) said his group is "relieved that a trilateral agreement was reached with Canada and Mexico. However, we remain concerned about the potential for increased costs and lost auto jobs due to onerous new origin requirements, possible 232 tariffs, and crippling uncertainty stagnating an otherwise humming economy. Ultimately, we believe that the USMCA does more to manage trade than to expand it."

"The AFL-CIO has not yet taken a final position on the deal in its current form," Celeste Drake, trade and globalization policy specialist at the AFL-CIO testified. "We are seeking more than a description of the new terms and vague language discussing progress. We urge the Commission to make clear that if the obligations are not enforced, the lure of cheap and easy labor exploitation in Mexico will continue to draw production from the U.S. and hold wages down in both countries."

Neither has the National Council of Textile Organizations (NCTO), the group's president and CEO Auggie Tantillo said. "The new agreement is an improvement over the original NAFTA in many areas," he added. Tantillo cited the basic textile origin rules and the stand-alone textile chapter as positive steps in the new deal. However, the NCTO was disappointed the negotiators did not eliminate the Tariff Preference Levels (TPLs) as exemptions to the yarn-forward origin requirement. "While USMCA did reduce the size of some specific TPLs, the reductions will not cut into existing trade levels," he said.

Randy Gordon, president and chief executive officer of the National Grain and Feed Association (NGFA) said in a joint statement of the NGFA and the North American Export Grain Association (NAEGA). "On balance, NGFA and NAEGA believe USMCA makes significant steps forward," he said. Gordon cited three reasons for optimism: USMCA preserves and expands upon current agricultural market access, maintains the dispute-settlement process for antidumping and countervailing duty cases and makes significant improvements to reduce non-tariff trade barriers.

The two groups are "disappointed U.S. food and agriculture no longer would have access to investor-state dispute-settlement procedures," Gordon noted. "While the USMCA preserves these protections for some industries, including oil and gas, power generation, telecom, transportation and infrastructure, it eliminates protections for U.S. food and agriculture companies beginning three years after NAFTA's termination," he added.

USTR Should Coordinate with Allies on China, Report Says

In addressing Chinese behavior, lawmakers and the administration should look beyond individual WTO cases and consider "unused authorities" available to the USTR 's office, the U.S.-China Economic and Security Commission (USCC) recommended in its annual report to Congress Nov. 14.

> "In view of the emerging concerns that Chinese policy and practice cannot be disciplined by the current narrow interpretation and application of WTO rules, we have proposed Congress determine if USTR, in coordination with U.S. allies and partners, should coordinate a "non-violation nullification or impairment" case against China, a broad approach which would challenge China's failure to allow benefits expected under the agreement to materialize," USCC Chair Robin Cleveland said in her opening statement to the report.

Like last year's success in getting legislation updating the authorities of the Committee on Foreign Investment in the U.S. (CFIUS), many of the commission's recommendations mirror efforts already underway. For example, the USCC recommended Congress to direct USTR to "identify the trade-distorting practices of Chinese state-owned enterprises and develop policies to counteract their anticompetitive impact." The U.S., EU and Japan announced in September to join forces to share their concerns over non market-oriented policies and practices of third countries (see **WTTL**, Oct. 1, page 5).

In addition, the USCC also urged Congress to "enhance consultations on mitigating the export of dual-use technology to China and identifying other foundational technologies essential for national security." With the updated CFIUS authority, the administration began that effort with an Advance Notice of Proposed Rulemaking (ANPRM) requesting public comments on emerging technologies (see related story, page 1).

Other recommendations covered U.S. companies' relations with Taiwan, U.S.-China collaborative initiatives in technical cooperation, food safety and mechanisms for addressing sanitary and phytosanitary problems, U.S. treatment of Hong Kong and China as separate customs areas, and the current state of Chinese enforcement of sanctions on North Korea.

* * * Briefs * * *

<u>EXPORT ENFORCEMENT</u>: Naum Morgovsky was sentenced Nov. 13 in San Francisco U.S. District Court to 108 months in prison and three years' supervised release for role in scheme to export components for production of USML night-vision rifle scopes, including image intensifier

tubes and lenses, to Russia without State licenses. Irina Morgovsky was sentenced in October to 18 months in prison and three years' supervised release for her role in scheme (see **WTTL**, Nov. 5, page 7). Irina and Naum Morgovsky pleaded guilty in June to conspiracy to violate Arms Export Control Act. Both were charged in superseding indictment in April 2017.

MORE EXPORT ENFORCEMENT: Hicham Diab of Tripoli, Lebanon, and Nafez El Mir, Canadian citizen residing in Lebanon, were charged Nov. 9 in Seattle U.S. District Court with conspiracy to violate Arms Export Control Act. Men were arrested day before at warehouse where they stocked firearms, including 20 Glock handguns, Smith & Wesson .50 revolver, FN Fiveseven pistol, AR15 rifle kit and M203 grenade launcher. Diab and El Mir "began hiding the firearms in door panels and bumper space inside a sport-utility vehicle," Justice noted. Both men remain in custody.

CUBA: State in Federal Register Nov. 15 added 26 new subentities and five updates to previously listed subentities on Cuba Restricted List. Revisions include three name changes, one new alias, and one typographical correction. New listings include 16 hotels owned by Cuban military, security and telecom services, and subsidiaries of GAESA, largest Cuban holding company.

CONGO: In Federal Register Nov. 15 OFAC updated Congo sanctions regulations to implement 2014 executive order, as well as "other technical and conforming changes." Revisions include incorporating new designation criteria, clarifying which transactions are exempt from prohibitions, defining key terms and adding general license authorizing payments from outside U.S. for provision of legal services. In addition, regulations are "being amended to clarify that the property and interests in property of an entity are blocked if the entity is directly or indirectly owned, whether individually or in the aggregate, 50 percent or more by one or more persons whose property and interests in property are blocked, whether or not the entity itself is listed," notice said.

STEEL PLATE: In 5-0 "sunset" vote Nov. 16, ITC said revoking antidumping duty order on imports of clad steel plate from Japan would renew injury to U.S. industry.

COOL TOOLS: Commerce Secretary Wilbur Ross Nov. 15 introduced new Market Diversification Tool (MDT) to help exporters identify "top potential foreign markets for their products." MDT produces ranked list of recommended markets using calculations of 11 different indicators, including trade growth, tariffs, language match and logistics performance. Tool is available at https://www.export.gov/marketdiversification.

INDIA: U.S. Nov. 9 submitted counter notification on India's market price support (MPS) for cotton at WTO Committee on Agriculture (COA), second ever COA notification under WTO's Agreement on Agriculture regarding another country's measures. Issues included quantity of production used in market price support calculations, exclusion from India's notifications of information on total value of production (VoP) of cotton, and currency conversions, USTR said. National Cotton Council in statement applauded "efforts to seek transparency in the support provided to cotton producers in other countries, and no country devotes more area to cotton production than India." U.S. submitted first counter notification on India's MPS for wheat and rice at COA in May (see **WTTL**, May 14, page 5).