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BIS to Start Identifying Emerging Technology

Spurred by recently signed legislation formalizing its authority, the Bureau of Industry and Security (BIS) will soon publish an Advance Notice of Proposed Rulemaking (ANPRM) requesting public comments on emerging technologies, Hillary Hess, director of BIS regulatory policy division, told the agency's Regulations and Procedures Technical Advisory Committee (RAPTAC) Sept. 25.

> The 2018 National Defense Authorization Act (NDAA) strengthens regulatory jurisdiction over technology transfer (see **WTTL**, Aug. 20, page 2). The law requires BIS to lead a "regular, ongoing interagency process to identify emerging and foundational technologies" that are essential to U.S. national security. The ANPRM, currently under formal review, will request public comments on the difference between emerging and foundational technology, Hess told RAPTAC.

The question becomes whether the public will have more success identifying emerging technology than the devoted Emerging Technology and Research Advisory Committee (ETRAC) had in the last decade. As an example, ETRAC urged BIS in 2012 to fund a crowdsourcing tool to predict emerging technology, acknowledging the constraints of a limited number of government officials and advisors (see **WTTL**, Jan. 2, 2012, page 3).

In addition, BIS created a "holding" Export Control Classification Number (ECCN) for this technology, but it has only been used a handful of times. For example, BIS added targets "specially designed" for production of tritium and related technology to its "holding" ECCNs in August 2016. Receiving no public comments, the agency created a new ECCN in April 2018 for the technology (see **WTTL**, April 9, page 5).

Petrobras Pays $850 Million to Settle FCPA Charges

Petróleo Brasileiro S.A. (Petrobras), a Brazilian state-owned and state-controlled energy company, Sept. 27 agreed to pay $853.2 million in penalties to settle violations of the

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Foreign Corrupt Practices Act (FCPA) in connection with the company's role in facilitating payments to politicians and political parties in Brazil, as well as a related Brazilian investigation. Under the agreements, Petrobras will pay $85.3 million to Justice under a non-prosecution agreement (NPA) and the same amount to the Securities and Exchange Commission (SEC). The agreements also credit Petrobras' remittance of $682.6 million (80% of the resolution amount) to the Brazilian authorities to be deposited by Petrobras into a special fund, the company said in a statement.

> Between 2004 and 2012, Petrobras executives, managers, contractors and suppliers "facilitated massive bid-rigging and bribery schemes that, among other things, allowed contractors to obtain contracts from Petrobras through noncompetitive means and caused Petrobras to remain in the favor of many of Brazil's politicians and political parties," the NPA said.

During that period, former senior Petrobras executives "worked with Petrobras's largest contractors and suppliers to inflate the cost of Petrobras's infrastructure projects by billions of dollars. In return, the companies executing those projects paid billions of dollars in kickbacks that typically amounted to between 1% to 3% of the contract cost to the Corrupt Executives and conspiring politicians and political parties," the SEC order noted.

"These same executives submitted misleading documents as part of Petrobras's internal process of preparing its filings with the SEC. The overcharges caused by the kickbacks resulted in an inflation of property, plant and equipment (PP&E) in Petrobras's financial statements," it added.

"The company did not voluntarily disclose the conduct, but did notify the government of its intent to fully cooperate after learning of the allegations of misconduct; Petrobras fully cooperated in the investigation and fully remediated," Justice said in a press release.

"Under these agreements, DOJ also recognizes Petrobras's status as a victim of the embezzlement scheme and the SEC recognizes the company's status as an Assistant to the Prosecutor in more than 50 criminal proceedings in Brazil," the company said in a statement. "The resolution is in Petrobras's best interest and that of its shareholders. It puts an end to the uncertainties, risks, burdens and costs of potential prosecution and protracted litigation in the United States," it added.

Keppel Offshore & Marine Ltd. (KOM), a Singaporean company that operates shipyards and repairs and upgrades shipping vessels, and its wholly owned U.S. subsidiary, Keppel Offshore & Marine USA Inc. (KOM USA), agreed in December 2017 to pay more than $422 million in total penalties to U.S., Brazilian and Singaporean authorities for a decade-long scheme to pay millions of dollars in bribes to Brazilian officials (see **WTTL**, Jan. 1, page 1).

Trump, Abe to Start Trade Talks

The U.S. and Japan will start talks toward a bilateral trade agreement, President Trump and Japanese Prime Minister Shinzo Abe announced Sept. 26 before meeting on the sidelines of the United Nations (UN) General Assembly. The negotiations, following the completion of necessary domestic procedures, will focus on goods, "as well as on other key areas including services, that can produce early achievements," noted a joint statement. Following the completion of those talks, the two partners "intend to have negotiations on other trade and investment items," it noted.

The statement cited two specific positions that will be respected: For the U.S., "market access outcomes in the motor vehicle sector will be designed to increase production and jobs in the United States in the motor vehicle industries; and for Japan, with regard to agricultural, forestry, and fishery products, outcomes related to market access as reflected in Japan's previous economic partnership agreements constitute the maximum level."

> In remarks before the two leaders' meeting, Trump said that trade talks were "something that, for various reasons over the years, Japan was unwilling to do, and now they are willing to do so." Japan had been part of negotiations toward a Trans-Pacific Partnership (TPP) that Trump discarded when he took office in 2017.

Sen. Orrin Hatch (R-Utah) called the move a "welcome step," especially in accordance with Trade Promotion Authority (TPA). Japan is "our fourth largest trading partner. A trade agreement with Japan has the potential to open more markets for U.S. goods and services, which will help American producers expand operations and lower prices at home," he said in a statement.

The National Pork Producers Council (NPPC) strongly praised the announcement. "Japan has been our top export market for years, so it's good that the administration wants to solidify the relationship with that important economic and geopolitical ally," said NPPC President Jim Heimerl. "It comes at a time when pork producers were having concerns about losing market share in Japan," he added.

State Downplays EU Bypass of Iran Sanctions

When the U.S. withdrew from the Joint Comprehensive Plan of Action (JCPOA) or the Iran nuclear deal, it knew it was alone, since the remaining partners have long insisted they would maintain the deal. They formalized that agreement by announcing Sept. 24 on the sidelines of the UN General Assembly they would set up a Special Purpose Vehicle (SPV) to facilitate payments related to Iran's imports and exports.

The administration quickly attempted to downplay any effects of the SPV to avoid U.S. sanctions. Secretary of State Mike Pompeo said in a speech the next day he was "disturbed and, indeed, deeply disappointed" by the announcement. "This is one of the most counter-productive measures imaginable for regional and global peace and security. By sustaining revenues to the regime, you are solidifying Iran's ranking as the number one state sponsor of terror, enabling Iran's violent export of revolution, and making the regime even richer while the Iranian people scrape by," he said.

Brian Hook, special representative for Iran and coordinator of new Iran Action Group, explained further in a press briefing Sept. 25 (see **WTTL**, Aug. 20, page 1). “Companies have a choice to either do business in Iran or in the United States. And they are making those decisions based on what makes business sense. Potential deals with Iran just pale in comparison with deals in the United States,” he said.

> “Mindful of the urgency and the need for tangible results, the participants welcomed practical proposals to maintain and develop payment channels, notably the initiative to establish a [SPV], to facilitate payments related to Iran's exports (including oil) and imports, which will assist and reassure economic operators pursuing legitimate business with Iran,” Britain, China, France, Germany, Russia and the European Union (E3/EU+2) announced in a joint statement.

“In practical terms this will mean that EU Member States will set up a legal entity to facilitate legitimate financial transactions with Iran and this will allow European companies to continue trade with Iran, in accordance with European Union law, and could be opened to other partners in the world,” EU High Representative Federica Mogherini said after the E3/EU+2 ministerial meeting.

Device Maker Pays $7.8 Million to Settle Repeat FCPA Charges

Healthcare product manufacturer Stryker Corporation agreed Sept. 28 to pay $7.8 million to settle repeat Securities and Exchange Commission (SEC) charges of violating the FCPA in relation to its operations in India, China and Kuwait. The firm paid $13.3 million in penalties, disgorgement and interest in 2013 to settle similar charges (see **WTTL**, Oct. 28, 2013, page 5).

In the latest settlement, the company “failed to devise and maintain… a system of internal accounting controls sufficient to provide reasonable assurances that transactions were executed in accordance with management’s general or specific authorization, and that transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets,” the SEC noted.

“From at least 2010 through 2015, Stryker’s wholly-owned subsidiary in India (Stryker India) failed to keep and maintain any documentation with respect to 27% of the transactions tested in an internal forensic review that targeted Stryker India’s high-risk and compliance-sensitive accounts and payments,” it added.

“From 2015 through 2017, at least 21 sub-distributors of Stryker’s Sonopet product in China were not vetted, approved, or trained, as required by Stryker’s policies. At times, Stryker China employees worked directly with these unauthorized sub-distributors, and at other times installation records were falsified to hide the involvement of the unauthorized sub-distributors in the sale of Sonopet products,” the SEC order said.

During that time, "the Kuwait Distributor made over $32,000 in improper 'per diem' payments to Kuwaiti HCPs [health-care professionals] to attend Stryker events, when Stryker had directly paid the costs for lodging, meals, and local transportation for these individuals," it added.

U.S., EU, Japan Take on Chinese Trade Practices

After a trilateral meeting at the UN General Assembly Sept. 25, Japanese Economy Minister Hiroshige Seko, U.S. Trade Representative (USTR) Robert Lighthizer and EU Trade Commissioner Cecilia Malmström joined forces to share their concerns over non market-oriented policies and practices of "third countries," which translates to "China."

> Those policies and practices "lead to severe overcapacity, create unfair competitive conditions for their workers and businesses, hinder the development and use of innovative technologies, and undermine the proper functioning of international trade, including where existing rules are not effective," the joint statement said.

The ministers also cited industrial subsidies and state-owned enterprises and forced technology transfer policies, as well as World Trade Organization (WTO) reform, digital trade and e-commerce. "Recalling that forced technology transfer policies and practices create unfair competitive conditions for their workers and businesses, hinder the development and use of innovative technologies, and undermine the proper functioning of international trade, the Ministers will reach out to and build consensus with other like-minded partners," they noted.

On digital trade, the ministers "agreed to intensify and accelerate this process to deepen understanding among members on possible elements to be included in a future agreement on digital trade aiming at updating the WTO rulebook, as well as the significant economic benefits of such an agreement. The Ministers agreed to continue work toward the timely launch of negotiations of a high standard agreement with the participation of as many members as possible," the statement said.

Chilean Mining CEO Settles FCPA Charges

In what could seem like a drop in the bucket, Patricio Contesse González, then CEO of Chilean chemical and mining company Sociedad Quimica y Minera de Chile (SQM), Sept. 25 agreed to pay $125,000 to settle Securities and Exchange Commission (SEC) charges he violated the FCPA from 2008 to 2015 by making $14.75 million in improper payments to Chilean political figures.

SQM agreed in January 2017 to pay more than $30 million to the SEC and Justice to settle related charges (see **WTTL**, Jan. 16, 2017, page 5). Contesse "directed and authorized these improper payments" to Chilean politicians, political candidates and individuals "based on contracts, invoices, and other false documents," the latest SEC order noted.

"Most of the improper payments involved falsified documents submitted to SQM on behalf of third-party vendors associated with PEPs who posed as legitimate vendors to SQM. Those payments were not supported by documentation that services were actually provided to SQM," it added. Contesse "personally caused fictitious contracts with the third-party vendors to be created, and approved the contracts, invoices and other documents, so that the improper payments would be inaccurately recorded as legitimate business expenses," the order said.

"By falsifying contracts and invoices and submitting documents Respondent knew to be false into SQM's accounting system, and by failing to inform SQM's accountants about those fictitious transactions, Respondent knowingly circumvented SQM's internal accounting controls and violated rules that prohibit falsifying a public company's books and records and omitting material facts to an accountant in connection with an audit," the SEC order said.

WTO Appellate Body Down to Minimum

And then there were three. As another member of the WTO Appellate Body's (AB) term ends, the U.S. Sept. 26 repeated its long-held opposition to the reappointment of Shree Baboo Chekitan Servansing from Mauritius at the monthly meeting of the WTO's Dispute Settlement Body (DSB). Without him, the body is now down to its minimum of three members as Servansing's term ended Sept. 30.

The U.S. posture suggests it can live with a blocked AB, however grievance without proposals is "a bit peculiar," a trade official said. The U.S. has blocked the selection process while proposing nothing, which implies that proposals from others are needed to break the deadlock, he said. Restarting the AB nomination process is more urgent than the timing of the end of Trump's presidential tenure, a trade official said.

> China addressed U.S. criticisms of the Appellate Body raised at the last DSB meeting for what the U.S. said was the Appellate Body's consistent review and reversal of "fact-finding" by WTO panels. China disagreed with the assertion that the Appellate Body has no authority to review panel fact-finding or panel findings concerning the meaning of a member's domestic laws.

Also at the meeting, the DSB agreed to establish two panels to rule whether U.S. safeguard measures on imported solar cells and imported large residential washers are compatible with WTO rules. The U.S. blocked Korea's first requests for panels in August (see **WTTL**, Sept. 3, page 8). Korea requested WTO dispute consultations in May. The next DSB meeting will take place Oct. 29.

U.S., Korea Sign Updated Trade Agreement

With perhaps more hype than the occasion required, President Trump and Korean President Moon Sept. 24 signed the updated U.S.-Korea Free Trade Agreement (KORUS) on the sidelines of the UN General Assembly in New York. "We pledge to direct our officials to move forward with additional steps, as required in our respective countries, to bring the updated agreement into force as soon as practicable," the two leaders said in a joint statement.

> "The new U.S.-Korea agreement includes significant improvements to reduce our trade deficit and to expand opportunities to export American products to South Korea. In other words, we are now going to start sending products to South Korea," Trump said in the signing ceremony. Observers have noted that the actual changes and potential economic impact are quite limited.

In a fact sheet on agreement outcomes, USTR cited the phaseout of U.S. truck tariffs, greater access for U.S. auto exports, harmonization of testing requirements, Customs improvement and pharmaceutical reimbursements. USTR and its Korean counterpart in September released similar "agreed outcomes" (see **WTTL**, Sept. 10, page 4).

Impulses Take Shape to Frame WTO Reform

Major trading partners are beginning to harness rising pressure over international trade to power calls for China to update policies and practices, and to gather support to update WTO dispute settlement, trade sources suggested. A cat's cradle of initiatives aims to frame proposals on WTO reform, boost engagement between major players, and advance work agreed at the 2017 WTO Ministerial Conference.

Trade officials point to new disputes filed by the U.S. as evidence it will not abandon the WTO. U.S. calls for WTO reform won't disappear with Trump, a trade official said. Concerns have been widely shared in the U.S., including in the Obama administration, but the Trump administration has raised them more sharply, a trade official said.

Changes to dispute settlement are part of a broader set of issues teed up for talks on WTO reform. The trade official referred to a variety of serious issues associated with state-owned enterprises and industrial policy practices, such as unconditional bailouts and other trade-distorting subsidies. Separately, the U.S., Japan and EU trade ministers Sept. 25 shared their concerns over these policies (see related story, page 5).

The state-of-play in China means that many foreign companies cannot compete fairly in domestic and international markets. Tariffs do not solve that problem, the trade official said, adding that rules must be voluntarily updated. China must understand the issue is "real," and the issue must be addressed, he said.

Commercial entities have "very valid" reasons to be concerned about China's massive aid to handpicked entities, forced technology transfer, and impacts on intellectual property. Many Chinese entities purchasing U.S. or European companies are state-owned enterprises, and those target companies work not only in technology, but also security and defense, he said. Advanced country trade officials hope the Nov. 30 G-20 summit makes the highest political level call for urgent attention to WTO reform, the trade official said. The EU in September floated initial ideas about modernizing the WTO and for updating international trade rules to meet new challenges.

> Talks have commenced on fisheries and other initiatives, namely electronic commerce, investment facilitation and micro, small and medium-size enterprises, but progress is reportedly thin. The picture is "fairly bleak," a trade official said. However, the mood is changing on related work on agriculture, namely public stockholding and domestic support. The agriculture file won't move without the U.S. and India, he said.

Separately, trade officials are scoping out possible objectives for a trade deal between the EU and U.S., a trade official said. French President Macron in recent months has been more vocal in his opposition to a trade deal with a country that is not party to the Paris climate accord. The European Council would consider French concerns during debate on a trade mandate, the trade official said.

* * * Briefs * * *

ENTITY LIST: BIS in Federal Register Sept. 26 added 14 entities to Entity List in Belarus, Iran, Russia and Singapore. At same time, agency modified listing of entry in United Arab Emirates and removed Antony Emmanuel in Hong Kong "in connection with a request for removal." Emmanuel was added to list in October 2008. OFAC designated one Russian entity Divetechnoservices in June (see **WTTL**, June 18, page 7).

VENEZUELA: OFAC Sept. 25 designated four Venezuelan officials including First Lady Cilia Adela Flores de Maduro, defense minister, executive VP and minister of popular power. OFAC also targeted network supporting front man Rafael Alfredo Sarria Diaz and blocked Sarria's Gulfstream 200 private jet. Sarria was designated with other officials, along with companies and property Sarria owned, in May (see **WTTL**, May 21, page 9).

CENSUS: Effective Oct. 1, international trade management division (ITMD) will become government and trade management division (GTMD) under acting division chief Omari Wooden. Former chief Dale Kelly is now chief of Census field division.

ALUMINUM WIRE: Encore Wire Corporation and Southwire Company filed countervailing and antidumping duty petitions Sept. 21 with ITA and ITC against aluminum wire and cable from China.

HIZBALLAH: House Sept. 25 passed Hizballah International Financing Prevention Amendments Act of 2018 (S. 1595) by voice vote. House Foreign Affairs Committee Chair Ed Royce (R-Calif.) and Ranking Member Eliot Engel (D-N.Y.) introduced bill to increase sanctions on terrorist group Hizballah (H.R. 3329) in July 2017 (see **WTTL**, July 24, 2017, page 10). Sens. Marco Rubio (R-Fla.) and Jeanne Shaheen (D-N.H.) introduced companion Senate bill (S. 1595) at same time. "Bill will build on existing sanctions against Hezbollah by targeting its global fundraising and recruiting, as well as those who provide it weapons. This legislation is the product of months of bicameral, bipartisan work, and I hope the Senate will take it up quickly," Royce said in statement.

EDIS: ITC Sept. 24 upgraded Electronic Document Information System (EDIS), its online document management tool. New features include: filtered searching capabilities, saved searches, guided submission process and automatic lock-out clearance. Updates "lay the groundwork for future improvements (including e-filing)," ITC noted. Find tool at edis.usitc.gov/external/

E-WASTE: BIS is working on notice of inquiry (NOI) seeking public comments on potential restrictions on exports of electronic waste (e-waste). BIS and Census proposed controversial "yes-no indicator" for exports of used electronics but backed off plans due to negative industry response in 2017 (see **WTTL**, April 24, 2017, page 1). House bill introduced in 2017 prohibits e-waste exports or re-exports (H.R. 917). NOI is with BIS lawyers, but officials hope to get out "sometime soon," BIS analyst Nancy Kook told agency's RAPTAC Sept. 25.

FCPA: Anthony "Tony" Mace and Robert Zubiate, former executives at SBM Offshore, Dutch oil and gas services company, were sentenced Sept. 28 in Houston U.S. District Court for conspiracy to violate FCPA for their roles in scheme to bribe foreign government officials in Brazil, Angola and Equatorial Guinea. Mace was sentenced to 36 months in prison, followed by year of supervised release; Zubiate 30 months and three years' supervised release. Mace was SBM's CEO from 2008 to 2011 and former board member of wholly owned Houston subsidiary. Zubiate was former sales and marketing executive at same subsidiary. Both pleaded guilty in November. Three weeks after pleas, SBM Offshore and U.S. subsidiary agreed to pay $238 million criminal penalty to settle related charges (see **WTTL**, Dec. 4, 2017, page 1).

TRADE PEOPLE: President Sept. 28 nominated retiring Rep. Darrell Issa (R-Calif.) to be director of U.S. Trade and Development Agency (USTDA). White House announced intent to nominate Issa week before (see **WTTL**, Sept. 24, page 4).

TORTURE: At first ministerial meeting Sept. 24 during UN General Assembly in New York, Alliance for Torture-Free Trade, initiative of EU, Argentina and Mongolia, agreed to work towards binding UN convention to stop trade in torture instruments. Alliance launched in 2017 (see **WTTL**, Sept. 18, 2017, page 7). "By joining the Alliance, countries commit themselves to restricting exports of these goods and to making it easier for customs authorities to track down shipments and identify new products," EU said in press release. Five countries joined Alliance at meeting, bringing total to more than 60 members.