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DDTC Faces Shortage of Permanent Office Directors

The staff shortage in almost every department of the administration came into clear focus Aug. 28 with the announced departure of Ed Peartree as State's Directorate of Defense Trade Controls (DDTC) policy chief. With the exception of DDTC Chief Brian Nilsson, DDTC now has no permanent office directors due to the hiring freeze.

> Sarah Heidema replaced Peartree in an acting capacity, joining three other acting directors of compliance, licensing and management, DDTC posted on its website. Peartree is going to work for BAE Systems in the United Kingdom.

One DDTC source called it "dark times at the department," but the staff is "working hard to sustain our output." The agency is working on an exemption request to the existing hiring freeze to fill the posts on a permanent basis, but the understanding is that all exemptions for civil servants have been denied.

Industry sources feel the impact in two ways. One is a hesitancy to make significant changes or decisions since the officials may not be in those positions going forward. In addition, the departures saw a lot of experience and seasoned judgment walk out the door, one told WTTL. "A lot of issues are on hold and the decisions on … the other issues that they are tackling have a lot of industry shaking our heads in confusion," the source added.

Previously announced leadership includes Tony Dearth as the acting managing director, pending the identification of a permanent replacement. Dearth is listed on the DDTC personnel roster as acting chief of staff. Terry Davis is acting licensing chief, sitting in for Dearth, and Arthur Shulman holds the post of acting compliance chief.

NAFTA Talks Continue Despite U.S. Bluster

Canadian, U.S. and Mexican officials are gathered in Mexico City Sept. 1-5 for the second round of NAFTA renegotiations. The negotiating teams are expected to broach 25 areas of

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interest, including the digital economy, but if President Trump makes good on a threat to withdraw from NAFTA that could spell the end of the process, Mexican officials said.

At a rally in Arizona Aug. 22, Trump told the crowd that he didn't think the U.S. could make a better deal on NAFTA. "I personally don't think you can make a deal without a termination but we're going to see what happens, OK?" he said. The president repeated the sentiment in a tweet on Aug. 27.

> That did not sit well with Mexican Foreign Minister Luis Videgaray; when asked if Mexico would continue to negotiate if Trump triggered the six-month withdrawal process, he said "No." Videgaray and Mexico's Economy Minister Ildefonso Guajardo traveled to Washington days ahead of the second round and met with USTR Robert Lighthizer and Commerce Secretary Wilbur Ross, who committed to continue with the renegotiation process.

Mexico wants to wrap up talks by the end of the year so as not to let NAFTA become a campaign issue during the country's presidential election scheduled for July 2018. During a call between Trump and Canadian Prime Minister Justin Trudeau Aug. 31, the two leaders "discussed the ongoing NAFTA renegotiation and stressed their hope to reach an agreement by the end of this year," the White House said.

The third round of negotiations is expected to take place in Canada later this month. The first round was held in Washington Aug. 16 and got off to a rocky start with Lighthizer taking a more combative stance than his counterparts (see **WTTL**, Aug. 21, page 5).

Administration Tightens Sanctions on Venezuela

In response to the election of an "illegitimate" Constituent Assembly and other crackdowns, the Trump administration Aug. 24 took aim at bonds and other securities sold by the Venezuelan government to finance the regime.

Executive Order (EO) 13808 blocks transactions "related to, provision of financing for, and other dealings" in the following: new debt with a maturity of greater than 90 days of Petroleos de Venezuela, S.A. (PdVSA), the government oil company; new debt with a maturity of greater than 30 days, or new equity, of the Venezuelan government, other than debt of PdVSA; government bonds issued prior to this order; and dividend payments or other distributions of profits to the Venezuelan government from any entity owned or controlled, directly or indirectly, by the government.

The White House said it took the action in light of government policies, including "serious abuses of human rights and fundamental freedoms; responsibility for the deepening humanitarian crisis in Venezuela; establishment of an illegitimate Constituent Assembly, which has usurped the power of the democratically elected National Assembly and other branches of the Government of Venezuela; rampant public corruption; and ongoing repression and persecution of, and violence toward, the political opposition." OFAC earlier designated eight more individuals, including seven current and former officials of the Venezuelan government, under a previous executive order (see **WTTL**, Aug. 14, page 3).

At the same time, Treasury's Office of Foreign Assets Control (OFAC) issued four general licenses carving out specific exemptions to the sanctions. These include provisions allowing for a 30-day wind-down period; transactions only involving Citgo Holdings; dealings in select existing Venezuelan debts; and the financing for agricultural commodities, medicine and medical devices to Venezuela.

> OFAC answered a series of frequently asked questions (FAQs), including why the agency is imposing sanctions specific to bonds and other securities. "The Government of Venezuela is selling assets for much less than they are worth at the expense of the Venezuelan people and using proceeds from these sales to enrich supporters of the regime."

"Bonds and other securities are among the assets being sold. The prohibitions and related general licenses are meant to prevent U.S. persons from contributing to the Government of Venezuela's corrupt and shortsighted financing schemes while mitigating market disruptions and harm to investors," OFAC explained.

House Foreign Affairs Committee Chairman Ed Royce (R-Calif.) applauded the administration's actions to "deny Maduro additional financing to line the pockets of his enablers, and further shore up his dictatorship. We must continue to stand with the people of Venezuela – and with our allies – to restore democracy and basic human rights," he said in a statement.

Senate Foreign Relations Committee Chairman Bob Corker (R-Tenn.) agreed. "These carefully calibrated sanctions send a strong signal to the Maduro regime while still allowing for much needed humanitarian assistance," said Corker in a statement.

CBP Needs to Strengthen FTZ Risk Assessment

U.S. Customs and Border Protection (CBP) needs to strengthen its risk assessment and response in regard to Foreign Trade Zones (FTZs), according to a Government Accountability Office (GAO) report released Aug. 28 (GAO-17-649). Groups representing FTZ firms warn this report might bring increased attention to companies' compliance programs.

"While FTZs were created to provide public benefits, little is known about FTZs' economic impact," the GAO report noted. "CBP has not assessed compliance risks across the FTZ program, and its methods for collecting compliance and enforcement data impair its ability to assess and respond to program-wide risks," it added.

GAO made three recommendations for executive action. First, the CBP commissioner should "centrally compile information from FTZ compliance reviews and associated enforcement actions so that standardized data are available for assessing compliance and internal control risks across the FTZ program." Second, the agency should conduct a risk analysis of the program using data across FTZs. Finally, the commissioner should "utilize the results of the program-wide risk analysis to respond to identified risks."

> "Without a program-wide assessment of the frequency and significance of problems identified during compliance reviews, risk levels determined, and enforcement actions taken, CBP cannot verify its assertion that the FTZ program is at low risk of noncompliance. Incorrect determinations about program risk level may impact program effectiveness and revenue collection for the FTZ program, which accounted for approximately 11% of U.S. imports in 2015," GAO found.

In an email blast, the National Association of Foreign-Trade Zones (NAFTZ) urged its members to expect more attention from local CBP offices in response to the report. "In wake of the report, NAFTZ members are encouraged to review for compliance their FTZ Board Scope of Authority, FTZ Operations Manuals, and CBP filings in expectation of more frequent and detailed inquiries from local CBP port offices," NAFTZ President Erik Autor wrote to the group's mailing list. He called the report "an interesting review and analysis with tables of data not previously publicly available."

Senate Finance Committee Ranking Member Ron Wyden (D-Ore.), who requested the report, welcomed the findings. "It is clear that FTZs are a good deal for companies that import materials from abroad. But we don't know whether these duty-free zones are a good deal for American jobs or American taxpayers. Americans need to know if FTZ are effective at creating jobs, and whether operators are complying with all laws on imports into the United States. This report revealed that there are gaps in our understanding of both those issues," said Wyden in a statement.

Commerce Postpones Final Softwood Lumber Determinations

In another twist in the ongoing softwood lumber saga, Commerce will postpone final determinations in the antidumping (AD) and countervailing duty (CVD) investigations of imports of softwood lumber from Canada until November, Commerce Secretary Wilbur Ross announced Aug. 28. "This extension could provide the time needed to address the complex issues at hand and to reach an equitable and durable suspension agreement," Ross said in a statement.

The announcement irked Senate Finance Committee Ranking Member Ron Wyden (D-Ore.). "The administration's decision forces American companies to pay the price for continued talks with Canada. This delay creates a window for Canadian companies to ship subsidized lumber to the U.S. without paying tariffs, inviting major harm to U.S. producers and workers. I support continued negotiations to reach a lasting solution on softwood lumber, but more talks need not and should not come at the cost of not enforcing the law."

Prior to Ross' announcement, Canadian provincial envoys from New Brunswick, Quebec, Ontario, Alberta and British Columbia convened in Washington Aug. 24 with Canada's Ambassador to the U.S. David MacNaughton and the National Home Builders Association to show support for a negotiated solution. "While a negotiated solution that is fair to workers, businesses and communities on both sides of the border is preferred, we must also be clear that provinces are prepared to proceed with litigation on all fronts if a fair solution cannot be achieved," the envoys warned in a statement.

Maine's Governor Paul LePage (R) previously asked Ross in August to exempt Canadian provinces New Brunswick and Quebec from tariffs, arguing that such tariffs would lead to "devastating" job losses, Maine press outlets reported.

Per U.S. law, Commerce has the right to postpone an AD preliminary determination for 135 days after publication. Because the CVD case was tied up with the AD investigation, the same deadline applies. Commerce published its CVD preliminary determination in April and its preliminary AD determination in June (see **WTTL**, July 3, page 1).

U.S., Korea Fail to Find Consensus on Free Trade Agreement

As expected, Korean Trade Minister Kim Hyun-chong and U.S. Trade Representative (USTR) Robert Lighthizer did not reach any agreement during a videoconference Aug. 22 as part of a day-long meeting in Seoul regarding renegotiating the U.S.-Korea Free Trade Agreement (KORUS). The U.S. called for the KORUS Joint Committee special session in July (see **WTTL**, Aug. 21, page 7).

"We have found the two sides have different views on the free trade agreement and have not reached any agreement," Kim said to reporters following the meeting. The Korean government stuck to its argument that the U.S. trade deficit is not due to KORUS and suggested that the two countries jointly study the impact of the free trade deal.

> Lighthizer is unlikely to capitulate, as renegotiating trade deals is a White House priority. In particular, President Trump has highlighted the automotive trade imbalance with Korea. According to data from the Korea Trade International Association, Korea's automotive exports to the U.S. in 2016 were $16.2 billion while imports of U.S.-made vehicles totaled $1.74 billion for the same year.

"The United States and Korea have an important economic relationship," said Lighthizer in a statement free of specifics. "Unfortunately, too many American workers have not benefited from the agreement. USTR has long pressed the Korean government to address burdensome regulations which often exclude U.S. firms or artificially set prices for American intellectual property. This negotiation offers us an opportunity to resolve these and other barriers," he continued.

Lighthizer said discussions will continue over the coming weeks and noted he "remains focused on improving implementation of KORUS and amending or modifying the agreement to benefit American workers, farmer, ranchers, and businesses."

U.S. Still Fighting over WTO Appellate Body, Agriculture

At a regularly scheduled meeting of the World Trade Organization's (WTO) Dispute Settlement Body (DSB) Aug. 31, the U.S. continued to butt heads with China on agriculture, and also with the rest of the world regarding Appellate Body appointments.

> The U.S. requested the establishment of a dispute panel concerning China's tariff rate quotas (TRQs) for wheat, rice and corn (DS517), claiming that China's administration of the TRQs is inconsistent with the country's 2001 accession agreement. China promptly rejected the U.S. request saying it made its best effort to explain its position during dispute consultations in February. The U.S. first filed for consultations in December 2016 (see **WTTL**, Dec. 19, 2016, page 5). The U.S. can make another request for a panel at the next DSB meeting scheduled for Sept. 29.

Yet again, member countries were unable to reach a final agreement on how to replace departed and outgoing Appellate Body members. Ricardo Ramirez-Hernandez's second and final term expired June 30, though he is wrapping up three ongoing appeals proceedings, and Peter Van den Bossche's final term will expire Dec.11. Kim Hyun-chong submitted his resignation Aug. 1 in order to serve the Korean government in its talks with the U.S. regarding the U.S.-Korea Free Trade Agreement (see **WTTL**, Aug. 21, page 7).

The European Union (EU) and some Latin American countries are ready to move forward with a search immediately, while the U.S. said it cannot support the selection process until the DSB addresses how recent departures impact the EU's appeals proceedings against Indonesia regarding that country's antidumping duties on fatty alcohol. DSB rules require three Appellate Body members to sign off on an appeal ruling, but Kim, who was working on the proceedings, is now gone, and Ramirez-Hernandez, despite the extension, is not technically a member, leaving only one actual member to sign off on the appeal ruling. Chair Juichi Ihara of Japan said he was ready to hold an informal open-ended meeting to address U.S. concerns.

The next day, WTO Director-General Roberto Azevedo marked the beginning of his second term. In prepared remarks Sept. 1, Azevedo acknowledged that now "is a testing time for global trade" as growth has remained "persistently low." He stressed that the WTO must be vigilant in keeping protectionism at bay and ensure that trade fuels job creation, growth and development.

"The WTO must continue to meet these challenges head on. We must continue our work to boost growth and development, and to improve all aspects of the trading system – from monitoring and technical assistance, to dispute settlement and negotiations," he said.

Ex-Im Slow in Making Dual-Use Determinations, GAO Says

While the Export-Import Bank (Ex-Im) is generally monitoring dual-use exports on whether they comply with bank policies, it makes those determinations without required documents or after internal deadlines, according to a Government Accountability Office (GAO) report (GAO-17-730R) released Aug. 29.

This year, the bank determined that dual-use exports under two financed transactions are used mostly for civilian purposes: fixed- and mobile-service satellites for the Mexican government, and construction equipment for the government of Cameroon. "However, Ex-Im made the determination of Mexico's compliance before receiving end-use documents required by the credit agreement and made the determination of Cameroon's compliance after the bank's internal deadline for these decisions," GAO noted.

> "Ex-Im officials stated that the engineer responsible for this transaction made the determination of compliance in January because he planned to retire in March, before Ex-Im received the Mexican government's certification. Ex-Im officials said the technical operating report contained sufficient information for him to make this determination," the report said.

In response, Ex-Im officials "expressed their confidence that the information used to determine Mexico's compliance with dual-use policy in 2015 and 2016 was complete and conclusive," the report noted. Ex-Im did not finance any new exports under its dual-use authority in fiscal year 2016, GAO said.

* * * Briefs * * *

<u>ANTIBOYCOTT</u>: CH Robinson Freight Services, Ltd (CHR) of Indianapolis agreed Aug. 24 to pay $37,000 to settle 17 violations of BIS antiboycott regulations. CHR allegedly furnished information about business relationships with boycotted countries or blacklisted persons and failed to report receipt of request to engage in restrictive trade practice or foreign boycott against country friendly to U.S. from June 2012 through July 2015 during transactions with UAE.

<u>MORE ANTIBOYCOTT</u>: Carrier Saudi Services Company Ltd. (CSSC) of Riyadh, Saudi Arabia, agreed Aug. 22 to pay $12,000 to settle four violations of BIS antiboycott regulations. CSSC allegedly refused to do business and failed to report receipt of request to engage in restrictive trade practice or foreign boycott against country friendly to U.S. in 2012 during transactions with Saudi Arabia. CSSC is controlled-in-fact foreign affiliate of heating and air conditioning company Carrier Corporation, which in turn is part of UTC Climate, Controls & Security, unit of United Technologies Corp.

<u>STEEL</u>: In 4-0 "sunset" vote Aug. 30, ITC said revoking antidumping duty orders on imports of stainless steel sheet and strip from Japan, Korea and Taiwan would renew injury to U.S. industry.

<u>REBAR</u>: In 4-0 final vote Aug. 30, ITC found U.S. industry is materially injured by dumped imports of steel concrete reinforcing bar from Taiwan.

<u>PIPE FITTINGS</u>: In 4-0 preliminary vote Aug. 25, ITC found U.S. industry may be injured by allegedly dumped and subsidized imports of cast iron soil pipe fittings from China.

<u>EXPORT ENFORCEMENT</u>: Audi N. Sumilat of El Paso, Texas, was sentenced Aug. 25 in Concord, N.H., U.S. District Court to 18 months in prison for his role in directing scheme to buy numerous guns, including at least 22 .9mm handguns, then smuggle them to members of Indonesian

Presidential Guard. Sumilat pleaded guilty in July 2016 to conspiracy to make false statements in connection with acquisition of firearm, to make false statements in records federal firearms licensees are required to keep, and to smuggle goods from U.S. Feky Sumual, naturalized U.S. citizen and Sumilat's uncle, who lived in Dover, N.H., was sentenced May 2 to time served and two years' supervised release on related charges (see **WTTL**, May 8, page 4).

MORE EXPORT ENFORCEMENT: Miami-Dade Police Officer Michael Freshko was sentenced Aug. 25 in Miami U.S. District Court to four years in prison for smuggling six firearms from Miami International Airport (MIA) to Dominican Republic in 2012. Freshko pleaded guilty June 12 (see **WTTL**, June 19, page 10). Firearms included four Glock .9 mm pistols, one Sig Sauer .9 mm pistol, and one Sig Sauer 5.56 rifle.

EVEN MORE EXPORT ENFORCEMENT: Cryofab, Inc., of Kenilworth, N.J. agreed Aug. 18 to pay BIS $35,000 civil penalty to settle two charges of exporting gas storage containers and related tools and accessories to blocked Indian entity without required BIS licenses in 2012. Firm shipped items, including liquid helium storage container and accessory and liquid nitrogen storage container and operating tool, which were designated EAR99 and worth $21,570, to Bhabha Atomic Research Center (BARC), Indian Department of Atomic Energy entity in Mumbai. BARC was added to Entity List in June 1997.

STILL MORE EXPORT ENFORCEMENT: Chinese national Fuyi Sun, aka Frank, was sentenced Aug. 31 in Manhattan U.S. District Court to three years in prison in connection with scheme to illegally export Toray type M60JB-3000-50B carbon fiber to China without license. Sun pleaded guilty in April to violating International Emergency Economic Powers Act (see **WTTL**, May 1, page 9). He was arrested in April 2016 after being caught in undercover sting.

SANCTIONS: Singaporean oilfield services firm COSL Singapore Ltd agreed Aug. 24 to pay OFAC $415,350 to settle 55 charges of violating Iran sanctions for re-exporting U.S-origin oil rig supplies through its subsidiary companies to four separate oil rigs in Iranian territorial waters between October 2011 and February 2013. Company did not voluntarily self-disclose apparent violations.

TPP-11: Three-day meeting of remaining Trans-Pacific Partnership (TPP) countries concluded Aug. 30 in Australia with 11 members effectively agreeing to suspend rules to protect pharmaceutical industry. U.S. had pushed for extension of biologics protections in original deal (see **WTTL**, Nov. 7, 2016, page 5). Japanese chief negotiator Kazuyoshi Umemoto told reporters that "common understanding between their various countries had progressed." Countries will meet in Japan later this month. Japan and Australia want talks wrapped up by Asia-Pacific Economic Cooperation forum in November.

TOGO: In Aug. 22 Federal Register USTR announced eligible products from Togo qualify for textile and apparel benefits under African Growth and Opportunity Act (AGOA). Agency determined Togo "has adopted an effective visa system and related procedures to prevent the unlawful transshipment of textile and apparel articles and the use of counterfeit documents in connection with the shipment of such articles."

TITANIUM: Titanium Metals Corporation Aug. 24 filed countervailing and antidumping duty petitions at ITA and ITC against imports of titanium sponge from Japan and Kazakhstan.

ELECTRONICS: In Federal Register Aug. 30, DDTC extended temporary controls on certain intelligence analytics software under USML Category XI (military electronics) by reinserting words “analyze and produce information from” and by adding software to description of items controlled in paragraph (b). Changes will be effective until Aug. 30, 2018, “while a long term solution is developed,” notice said. Department will publish any permanent revision as proposed rule for public comment, it noted.

<u>NORTH KOREA</u>: OFAC Aug. 22 designated 10 entities and six individuals that assist already designated persons who support North Korea’s nuclear and ballistic missile programs, deal in North Korean energy trade, facilitate its exportation of workers, and enable sanctioned North Korean entities to access U.S. and international financial systems. Blocked entities include three Chinese coal companies collectively responsible for importing nearly half billion dollars’ worth of North Korean coal between 2013 and 2016; Chinese front company for Foreign Trade Bank (FTB), North Korea’s primary foreign exchange bank; two Singapore-based companies involved in providing oil to North Korea; and Moscow company involved in procurement of metals for previously designated Korea Tangun Trading Corporation’s Moscow office. Actions complement United Nations (UN) Security Council Resolution (UNSCR) 2371, enacted Aug. 5.

<u>FCPA</u>: Retired U.S. Army colonel Joseph Baptiste of Fulton, Md., was arrested and charged Aug. 29 in Boston U.S. District Court with conspiracy to violate Foreign Corrupt Practices Act (FCPA) in connection with planned $84 million port development project in Haiti. Baptiste allegedly solicited bribes from undercover agents, saying he would funnel payments to Haitian officials through his nonprofit.

<u>GRAINS</u>: Vietnam will lift its suspension of U.S. distiller’s dried grains with solubles (DDGS) imports and ease fumigation requirements for U.S. corn and wheat imports, U.S. Grains Council (USGC) announced Sept. 1. “While we never want to see a market closed to our products for any reason, this was an example of how to effectively and comprehensively tackle a scientific challenge impeding trade flows,” USGC President and CEO Tom Sleight said in statement. “Vietnam is one of the fastest growing feed markets in the world, and the disruptions and losses this issue caused reinforce the need for agreements that ensure open access and outline resolution processes for mutual concerns,” he added.