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New Iran Sanctions Target Missile Procurement

As expected, the Trump administration followed its tough talk on Iran's recent missile test with new sanctions against networks and supporters of Tehran's ballistic missile procurement. Treasury's Office of Foreign Assets Control (OFAC) Feb.3 added 13 individuals and 12 companies in Iran, Lebanon, United Arab Emirates (UAE) and China, to its Specially Designated Nationals (SDN) List.

> The new listings were "involved in procuring technology and/or materials to support Iran's ballistic missile program, as well as for acting for or on behalf of, or providing support to, Iran's Islamic Revolutionary Guard Corps-Qods Force (IRGC-QF)," OFAC said in a press release. Separately, senators and House members introduced legislation to impose similar sanctions (see Briefs, page 6).

"Iran's continued support for terrorism and development of its ballistic missile program poses a threat to the region, to our partners worldwide, and to the United States. Today's action is part of Treasury's ongoing efforts to counter Iranian malign activity abroad that is outside the scope" of the Joint Comprehensive Plan of Action (JCPOA), said Acting OFAC Director John E. Smith.

Of the designations, five individuals and entities are part of an Iran-based procurement network connected to Mabrooka Trading, a UAE-based firm that was designated in January 2016 for having provided support to Navid Composite (see **WTTL**, Jan. 25, 2016, page 4). Others were part of a key IRGC-QF-run support network working with Hizballah, OFAC said. Senior administration officials in a conference call with reporters made clear that there are no redesignations of previously designated persons under the JCPOA and that the Boeing deal with Iran Air would not be directly affected by today's actions.

President Trump Wants to Speed Up NAFTA Talks

President Trump gathered the leadership of the Senate Finance and House Ways and Means committees at the White House Feb. 2 to discuss the future of U.S. trade policy and

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told them that the North American Free Trade Agreement (NAFTA), which he characterized as a "catastrophe," must be renegotiated. Per the fast-track procedures outlined in the Trade Promotion Authority bill passed in 2016, the administration must give Congress 90 days' notice before negotiations begin.

"I want to change it. And maybe we do it, maybe we do a new NAFTA, we put an extra 'F' in the term NAFTA. You know what the 'F' is for, right? Free and fair trade. Not just free trade: free and fair trade. Because it's very unfair," Trump told lawmakers. "So all of the statutory guidelines we're adhering to, I would like to speed it up if possible," he added.

> He also said that Commerce Secretary nominee Wilbur Ross would represent the U.S. at NAFTA talks. The comment raised eyebrows as by law the U.S. Trade Representative (USTR) is tasked with being the chief representative for the U.S. in trade negotiations. As of press time, Trump's pick for USTR Robert Lighthizer has yet to have a confirmation hearing scheduled.

Trump said he does not care if the deal is a revamped NAFTA or a totally new agreement. The lack of specificity gave lawmakers pause. Senate Finance Committee Ranking Member Ron Wyden (D-Ore.) issued a statement critical of Trump's apparent lack of a plan. "It has long been recognized that the trade relationship between the U.S., Canada, and Mexico needs an upgrade. The president today indicated he wants to change NAFTA, but did not specify what changes he would seek, or how he would achieve those changes."

"It's important to note that most House Democrats voted against NAFTA in the first place. I look forward to working with the President, my congressional colleagues on both sides of the aisle, and with stakeholders to determine what a NAFTA renegotiation should look like," Ways and Means Ranking Member Richard Neal (D-Mass.) said in a statement following the meeting.

"But there can be no doubt that the American public expects our negotiators to insist that Mexico end the abusive labor and environmental practices that have put the United States at a competitive disadvantage, cost American workers their jobs, and reduced their paychecks. All future trade agreements must include strong and enforceable rules to address currency manipulation, as well as labor and environmental provisions, consistent with the May 10 Agreement of 2007," concluded Neal.

Ways and Means Committee Chairman Kevin Brady (R-Texas), a trade proponent, argued for modernizing the deal, rather than throwing it away. "We specifically discussed the path forward on NAFTA. I believe that NAFTA contains many good provisions, but portions of it should be updated and improved. We also spoke about the importance of new markets for our manufacturing, agriculture, and services sectors and modernizing trade agreements so that they work for our workers and our country. The President wants to act decisively, and it's clear he supports using Trade Promotion Authority procedures and working closely with Congress," Brady said in a statement.

Sen. Orrin Hatch (R-Utah), chairman of the Senate Finance Committee, also applauded the president and likewise warned Trump not to overstep. "Ultimately, major shifts in policy are decisions that should be made with the consultation of Congress which, under the U.S. Constitution, has authority over tariffs. To that end, I appreciated the opportunity to talk with President Trump and discuss the path forward on our trade agenda," said Hatch in a statement.

> While the Trump administration and Congress figure out their priorities, Mexico is ready for renegotiations. Mexican President Enrique Pena Nieto said he expects formal talks to begin in May following a 90-day consultation with the private sector. "At the end of these 90 days, the negotiation to update our free trade agreement will have to start," he said. The U.S. is the largest export market for Mexican goods.

Canada's Foreign Affairs Minister Chrystia Freeland reassured members of her country's parliament that "it is incorrect that the clock was started [Feb. 2] by the U.S. That has not happened." The U.S. has not formally communicated to Canada that it plans to reopen negotiations, though the newly confirmed Secretary of State Rex Tillerson did call his Canadian and Mexican counterparts.

Brady Keeps Pushing for Border Adjustability Tax

House Ways and Means Committee Chairman Kevin Brady (R-Texas) has been making the rounds to think-tanks, universities and network television to argue for the Ryan-Brady Blueprint, named for coauthor House Speaker Paul Ryan (R-Wisc). While Brady advocates for a border tax, policy experts and retailers argue it could lead to other trading partners bringing cases to the World Trade Organization (WTO) or drive up prices for consumers.

"This policy—sometimes referred to as border adjustability [BAT] —is how all of our foreign competitors implement their VAT [value-added] taxes," he said in a speech Feb. 3. "But, unlike our foreign competitors, this is not a VAT. Also, unlike our current tax system, it's not an origin-based business income tax. This is a smarter, simpler destination-based cash flow tax that is far more pro-growth. And, with it, we will level the playing field," said Brady. President Trump has criticized the BAT as being too complicated, though his advisor Peter Navarro is now advocating for a border tax.

"In the end, this move to eliminate the 'Made in America' tax is a simple but very powerful way to promote true competition based on price, quality, and service instead of tax regimes. And, when combined with the other historic reforms we are proposing, it will eliminate every tax incentive for businesses to move jobs, headquarters, and research and development outside the United States," Brady argued.

Peterson Institute for International Economics (PIIE) President Adam Posen took a decidedly different view. "From a macro perspective, from a broad tax perspective, the amount of revenue you're going to get is very low, the amount of distortions you're going to create is very high, the amount of trouble you're going to create for the U.S. and the world economy is very large, and the distributional effects are not trivial. They're actually very harmful," said Posen at a panel discussion Feb. 1.

"So, in theory we just do this nice thing. We say U.S. has a big trade deficit. We have a 20% tax on the border and at imports, 100 billion in revenue. But that's wrong. The first thing is, it's very uneven in what gets covered. There's huge things like tourism, like education, like hospital services, like internet services that would not be covered under this. So, it's a huge share of revenue foregone," Posen added.

> "It's also very distortionary of course because what you're doing therefore is taxing only certain sectors and not others, which again, every tax does that to some degree, but biasing it very concentratedly on particular sectors is not good tax reform even for public finance economists, let alone for macro people," he said.

There's also the issue of whether Brady's plan would put the U.S. at odds with the WTO. PIIE Senior Fellow Chad Brown argued that the WTO could interpret the BAT as either an import restriction or as an export subsidy. Either way it could potentially lead to the WTO authorizing retaliation against the U.S. Brown identified China, the European Union, Mexico, Canada, Japan and others as countries that could potentially bring disputes to the tune of billions of dollars under an import restriction (trade effects) formula.

In a speech Feb. 1 before the U.S. Chamber of Commerce, Senate Finance Committee Chairman Orrin Hatch (R-Utah) said it was "too early" for him to take a position on border adjustability. He outlined three questions he needs answered in order to form an opinion. "First, who will ultimately bear the tax? To what extent will it be borne by consumers, workers, shareholders, and foreigners? Second, is border adjustability consistent with our international trade obligations? Finally, since border adjustability would likely be a significant shift in business tax policy, would adjustments need to be made to ensure we're not unduly increasing the tax burden on specific industries?" said Hatch.

The business community wasted no time in making its voice heard. More than 100 businesses and trade associations announced the launch Feb. 1 of Americans for Affordable Products (AAP), which stands opposed to BAT. Among AAP's members are NIKE, Macy's, QVC, Walmart and Gap.

"Whether it's the automobile you drive, the gasoline you use, the groceries you put on the table, or the shoes and the clothes you put on your feet and back, the prices of all of those things will get driven up by the Border Adjustment Tax," National Retail Federation (NRF) President and CEO Matthew Shay said in a statement released by AAP. "Consumers ultimately are the losers from any effort to tax imports because the economy in the United States is driven by consumers. There are plenty of taxes already on hard working Americans and the retailers that serve them, and higher prices just add to that burden," Shay added.

Leaked Text Shows Troubled TISA Talks

Newly leaked documents from the November 2016 negotiating round of a Trade in Services Agreement (TISA) published Jan. 30 show much disagreement between the parties. The documents include annexes on telecommunications, e-commerce, localization provisions, restraints on domestic regulation, temporary movement of services labor, state-owned enterprises, maritime, road and air transportation, and delivery services.

In the documents, much of the text is inside brackets or shaded indicating that no final agreement has been reached on any of the provisions. "The TiSA negotiations are in trouble. Despite attempts to strip out some of the most extreme proposals, the shading on the texts shows that very little has been agreed in almost any of the services areas," said a blog post by Our World Is Not For Sale, a network of 150 organizations in over 50 countries, committed to challenging trade and investment agreements.

> "The fact they cancelled the proposed ministerial meeting in December where they planned to sign the final agreement shows this is another over-ambitious unbalanced deal that deserves to go the same way as the Trans-Pacific Partnership," the blog noted (see **WTTL**, Dec. 12, page 2).

Electronic Frontier Foundation (EFF) specifically took issue with a "brand new U.S. government proposal on Internet intermediary safe harbors," which they called the "right idea in the wrong place, and which European Union is shown as opposing. "It's likely, then, that this proposal is either dead in the water, or else that it will be considerably watered down before TISA is finalized, if ever. And there in a nutshell lies the reason why EFF, despite our support for Section 230, can't support the inclusion of this provision in a closed, secret trade agreement such as TISA," EFF Senior Global Policy Analyst Jeremy Malcolm wrote in a blog post.

Other proposed texts from the failed Trans-Pacific Partnership (TPP) agreement have been transferred to TISA, according to Our World. These include state-owned enterprises; rights to hold data offshore (including financial data); e-commerce; and prohibitions on performance requirements for foreign investors. "While these texts originated with the United States, they appear to be supported by other parties to the TPP, even though those governments were reluctant to agree to them in the TPP and will no longer be bound by that agreement," the group wrote.

* * * Briefs * * *

<u>EXPORT ENFORCEMENT</u>: Michael Andrew Ryan, of Manhattan, Kans., was sentenced Jan. 30 in Topeka U.S. District Court to 52 months in prison for exporting and attempting to export firearms illegally to Australia, England, Ireland and Scotland. Items included Beretta and Glock pistols, revolvers, UZI and ammunition. Ryan pleaded guilty in June 2016, admitting that he used hidden internet marketplace to make sales (see **WTTL**, June 13, page 9).

<u>NUCLEAR CONTROLS</u>: BIS in Federal Register Feb. 1 delayed effective date of one provision in November final rule due to new administration's regulatory freeze. "Software" "specially designed"

for "development," "production," or "use" of items previously controlled under ECCN 3A292 will continue to be classified and licensed by BIS under EAR99 through March 21. As of March 22, such "software" will be classified under ECCN 3D991. While most provisions in November rule became effective immediately, implementation of this change had been Jan. 31 (see **WTTL**, Nov. 28, page 7). "This action is issued in accordance with the Memorandum that required temporary postponement of rules that have been published in the Federal Register but have not yet taken effect, for 60 days from the date of the Memorandum for the purpose of reviewing questions of fact, law, and policy," notice said.

IRAN: Reps. Peter Roskam (R-Ill.), Lee Zeldin (R-N.Y.), Leonard Lance (R-N.J.) and Doug Lamborn (R-Colo.). Feb. 1 reintroduced Iran Non-nuclear Sanctions Act (H.R.808), which would impose harsh financial and economic sanctions countering Iran's non-nuclear provocations, including ballistic missile violations, human rights abuses and support for international terrorism. Companion bill (S.227) introduced by Sens. Marco Rubio (R-Fla.), Todd Young (R-Ind.) and John Cornyn (R-Texas) Jan. 24. Specific provisions include: imposing new sanctions against Iran's Islamic Revolutionary Guard Corps (IRGC) and Mahan Air; creating new Treasury watchlist for entities in which IRGC has ownership interest of less than 25%; and codifying current prohibitions against Iran's direct and indirect access to U.S. financial system, while also streamlining and strengthening requirements for president to remove Iran or any other country from state sponsors of terrorism list.

MORE IRAN: OFAC Feb. 1 updated list of medical devices that are not authorized for export or reexport under Iran regulations (see **WTTL**, Jan. 2, page 12). Added to list were balancing machines, motion simulators and rate tables. OFAC removed endoscopy equipment incorporating lasers for tissue ablation, elastography equipment, centrifuges and centrifugal separators.

STILL MORE IRAN: OFAC Feb. 3 issued Finding of Violation to B Whale Corporation (BWC), based in Taiwan and member of TMT Group of shipping companies, for violating Iran sanctions. In 2013, BWC vessels conducted ship-to-ship transfer with, and received 2,086,486 barrels of condensate crude oil from blocked vessel owned by National Iranian Tanker Company, OFAC said. BWC entered into bankruptcy proceedings in U.S. Bankruptcy Court in June 2013, prior to transactions, so vessel M/V B Whale was subject to U.S. sanctions regulations, agency noted.

RUSSIA: OFAC Feb. 2 issued Cyber-related General License (GL) 1, authorizing certain transactions with Federal Security Service (FSB) that are "necessary and ordinarily incident" to "requesting, receiving, utilizing, paying for, or dealing in licenses, permits, certifications, or notifications issued or registered by" FSB. GL does not authorize exportation, reexportation or provision of goods or technology to or on behalf of FSB, OFAC noted. White House Press Secretary Sean Spicer defended move same day. "We're not easing sanctions… From what I understand, it's a fairly common practice for the Treasury Department, after sanctions are put in place, to go back and to look at whether or not there needs to be specific carve-outs for either industries or products and services that need to be going back and forth," he said.

TRADE ENFORCEMENT: Nine Democratic senators urged White House to reverse damaging freeze on federal hiring, which is hampering U.S. trade enforcement efforts, they said in letter Feb. 2. "Freezing hiring for the very agencies that will be essential to fulfilling this objective runs contrary to your own campaign promises and undermines long-running bipartisan efforts to enhance trade enforcement throughout the federal government," Sens. Ron Wyden (D-Ore.), Sherrod Brown (D-Ohio), Robert Casey (D-Penn.), Debbie Stabenow (D-Mich.), Ben Cardin (D-Md.), Bob Menendez (D-N.J.), Tom Carper (D-Del.), Michael Bennet (D-Colo.) and Maria Cantwell

(D-Wash.) wrote. Senators specifically highlighted continued need for: investigators and attorneys at Commerce; trade specialists and border agents at Customs and Border Protection; lawyers and other staff at USTR's office; investigators at Labor's Bureau of International Labor Affairs; Law Enforcement officers at Interior's U.S. Fish and Wildlife Service; and Justice attorneys.

ASEAN CAUCUS: Reps. Joaquin Castro (D-Texas) and Ann Wagner (R-Mo.) announced Jan. 26 creation of bipartisan Congressional Caucus on ASEAN. Caucus will focus on strengthening ties between U.S. and Association of Southeast Asian Nations (ASEAN). "ASEAN plays a significant role in the global economy and in matters of global security. It's essential that members of Congress are informed of events occurring in that region and grasp the importance of our nation's engagement there," Castro said in statement.

TPP: Acting USTR María Pagán issued letter to Trans-Pacific Partnership (TPP) Depository Jan. 30 stating U.S. intention not to become party to TPP agreement. She requested New Zealand notify other signatories of U.S.' formal withdrawal. President Trump Jan. 23 directed USTR to withdraw multilateral deal (see **WTTL**, Jan. 30, page 1).

TRADE TASK FORCE: New Democrat Coalition, group of 52 Democratic legislators, Feb. 2 launched new policy task forces, including Global Competitiveness and Trade Task Force, co-chaired by Reps. Rick Larsen (Wash.) and Greg Meeks (N.Y.). Stated goal of trade task force is "to advance a U.S. trade agenda that grows the economy, creates U.S. jobs, and ensures the United States sets the rules for a level playing field in the global economy," according to online post by Coalition Vice-Chair for Policy Rep. Derek Kilmer (Wash.).

BREXIT: Britain's parliament Feb. 1 passed European Union Bill 498-114. Legislation allows UK Prime Minister Theresa May to invoke Article 50 of Lisbon Treaty, which is needed to formally separate from EU. Bill now goes to committee in House of Commons and then must be reviewed by House of Lords before it becomes law. May has set March 31 deadline to trigger Article 50…Separately, UK government Feb. 2 issued white paper with plan for 'new, positive and constructive' partnership. Paper "highlights the mutual interest to the UK and the EU of maintaining the freest and most frictionless trade possible in goods and services following UK exit," government said in press release.

CFIUS: Law firm Wilson Sonsini Goodrich & Rosati Feb. 1 launched online resource center on Committee on Foreign Investment in the United States (CFIU). New site provides: detailed CFIUS overview and committee background information; News and updates on the latest CFIUS regulations and legislation, thoughtful insight and analysis on important CFIUS topics and links to useful reports and committee websites, firm said. Find more information here: www.wsgr.com/CFIUS/

SUDAN: Sudan resumed WTO membership negotiations at third meeting of Working Party on the country's accession Jan. 31, 13 years after its last formal meeting. Sudan's Minister of International Cooperation Osman Ahmed Fadul Wash called on members to accelerate negotiations. "We hope this meeting has contributed towards the acceleration and facilitation of Sudan's accession to the WTO by the 11th Ministerial Conference next December in Buenos Aires," he said.