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## New BIS Leaders Hit Ground Walking, Not Running

After just a month in their posts, the new political leadership of the Bureau of Industry and Security (BIS) attended a meeting of the agency's Regulations and Procedures Technical Advisory Committee (RAPTAC) Sept. 12. BIS Under Secretary Mira Ricardel and Assistant Secretary Richard Ashooh, who were confirmed in August, still seem to be learning the rules of the road.

For example, the new BIS leadership did not answer specific questions about their priorities, specifically on continuing the export control reform effort from the Obama administration. "From the very top, this administration has talked about streamlining and making government more efficient in what it does," Ricardel said.

"We're trying to make sure that we have effective controls on technology for national security purposes but also to protect America's competitiveness. The issue is how do you do that best and how do you do that with the knowledge that technology is dynamic," she added, with a daunting lack of specifics.

For his part, Ashooh was similarly vague. "Things are moving very quickly, and government agencies are not good at keeping up with rapidly moving things," he said. "We want to change the dynamic; we found ourselves being very reactive to things going on globally, and we want to try to get ahead of that," Ashooh added.

During the meeting, RAPTAC members provided a show-and-tell of industry concerns to the new leadership. Top of the list were: Wassenaar controls on intrusion software, encryption reporting requirements, technical parameters for high-performance computers and a license exception for intra-company transfers.

## N.J. Manufacturer Settles DDTC Export Charges

In a case that could give heartburn to exporters that self-classify defense articles, Bright Lights USA, Inc. of Barrington, N.J, agreed Sept. 12 to pay State's Directorate of Defense

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Trade Controls (DDTC) a \$400,000 civil penalty to settle 11 charges of violating the International Traffic in Arms Regulations (ITAR). The charges involve unauthorized exports of defense articles, including the export of technical data to China from 2010 through 2012 and shipments of spare parts that the firm misclassified following export control reform (ECR) from 2014 to 2015.

According to the DDTC proposed charging letter, the company's business primarily consists of manufacturing minor spare parts (including rubber stoppers, seal assemblies and grommets) for both private- and public-sector customers. Many of these parts transitioned off the U.S. Munitions List (USML), beginning in October 2013, as a result of ECR.

An internal audit, completed in July 2013, "identified more than 270 instances where Respondent sourced, or sought to source, potentially ITAR-controlled parts from foreign vendors. In most cases, Respondent directly provided potentially controlled technical data to foreign person manufacturers. For some orders, however, Respondent posted technical data to a manufacturer sourcing website where it was accessed by foreign persons," the charging letter noted.

In addition, in a second voluntary disclosure in 2016, the firm disclosed that "parts and components of the [Phalanx] anti-missile system had been mistakenly classified in response to ECR as pertaining to a shipborne missile system rather than a weapon system under USML Category II(j)." The company identified the issue when its application to Commerce for an authorization to replace an expiring, pre-ECR, DDTC license was returned without action, DDTC noted. These included five instances of unauthorized exports to entities in the United Kingdom, the United Arab Emirates, Turkey, Spain and Portugal.

A subsequent internal review "concluded the root cause was confusion between parts and components for vehicles (which were largely moved off the USML) and parts and components for systems mounted on the vehicles (particularly weapon systems which remain on the USML)," the charging letter said.

In an email to WTTL, a company spokesperson called the "inadvertent." As soon as the company learned of the violations, it "immediately made voluntary disclosure to the State Department and implemented extensive corrective actions to insure the mistakes will not happen again. The State Department is satisfied with the improvements we've made to our compliance program, and it is noteworthy that the State Department has required no additional corrective actions or monitoring," the spokesperson added.

## **Administration Extends Iran Nuclear Sanctions Relief**

Amid accusations by President Trump and Secretary of State Rex Tillerson that Iran is not living up to the Joint Comprehensive Plan of Action (JCPOA), the administration Sept. 14 nonetheless extended nuclear sanctions relief to Iran. Meanwhile, the House voted on two amendments that would block aircraft sales to Iran.

Speaking with reporters aboard Air Force One, Trump said the deal was one of the worst he'd ever seen. "They have violated so many elements but they have also violated the spirit of that deal," said Trump. He has called for the dissolution of the deal and told reporters "You'll see what we're doing... it's going to be in October."

Speaking at a press conference in the United Kingdom, Tillerson said that no decisions have been made regarding the future of the deal. "As the administration continues this review of JCPOA, President Trump has made it clear to those of us who are helping him develop this policy that we must take into account the totality of Iranian threats, not just Iran's nuclear capabilities; that is one piece of our posture towards Iran," said Tillerson. Another piece is placing sanctions on Iran for non-nuclear related activities, as Treasury did the same day (see Briefs, page 6).

The day before, the House passed by voice vote appropriations legislation (H.R.3354) containing two amendments authored by Rep. Peter Roskam (R-Ill.) to block the sale of Boeing and Airbus aircraft to Iran. One amendment prohibits Treasury's Office of Foreign Assets Control (OFAC) from using funds to authorize a license necessary to allow aircraft to be sold to Iran. The other ensures that Iran cannot receive loans from U.S. financial institutions to purchase "militarily-fungible aircraft" by preventing OFAC from using funds to authorize such transactions.

Boeing in April confirmed it signed a memorandum of agreement with Iran Aseman Airlines valued at \$3 billion for 30 Boeing 737 MAX airplanes with purchase rights for an additional 30 (see **WTTL**, April 10, page 1). Rep. Earl Blumenauer (D-Ore.) said blocking aircraft sales would penalize American companies "for no good purpose." He worried about jeopardizing the JCPOA. "That Iranian nuclear agreement has held and is one of the few bright spots in that region," added Blumenauer.

## **White House Blocks Chinese Acquisition of Semiconductor Firm**

Citing national security, President Trump issued a rare executive order Sept. 13 blocking a Chinese firm from acquiring an Oregon-based semiconductor manufacturer. The executive order prohibits the acquisition of Lattice Semiconductor Corporation by Canyon Bridge Fund I, LP (CBFI); CBFI's subsidiaries; CBFI's limited partner, Yitai Capital Limited; and Yitai's parent company, China Venture Capital Fund Corporation Limited, which is controlled by Chinese state-owned entities.

This is only the fourth time a president has blocked such a deal on national security grounds in the last 30 years. In 2016, former President Obama blocked a Chinese company from buying Germany's Aixtron SE. Before that, he stopped Chinese-owned Ralls Corp. from developing a wind farm near a Navy base in Oregon in 2012. In 1990, then-president George H.W. Bush stopped a Chinese acquisition of MAMCO Manufacturing Inc., an aircraft-parts maker.

Lattice is required to abandon the proposed transaction not later than 30 days from the order. The company said it will comply. Canyon Bridge and Lattice, which makes

programmable computer chips, spent eight months trying to convince the Committee on Foreign Investment in the U.S. (CFIUS) to clear the deal. Instead, CFIUS, which is chaired by Treasury Secretary Steve Mnuchin, recommended to the president that he block the transaction.

“The national-security risk posed by the transaction relates to, among other things, the potential transfer of intellectual property to the foreign acquirer, the Chinese government’s role in supporting this transaction, the importance of semiconductor supply chain integrity to the United States Government, and the use of Lattice products by the United States Government,” White House Press Secretary Sarah Huckabee Sanders said in a statement.

In 2004, Lattice agreed to pay a \$560,000 civil fine to settle Bureau of Industry and Security (BIS) charges that it exported semiconductors and semiconductor technology to China without approved licenses (see **WTTL**, Sept. 20, 2004, page 2). Five of the technical data charges were for deemed export violations linked to the training of Chinese nationals in the U.S.

In a statement, Lattice CEO Darin Billerbeck expressed disappointment. “The transaction with Canyon Bridge was in the best interests of our shareholders, our customers, our employees and the United States. We also believe our CFIUS mitigation proposal was the single most comprehensive mitigation proposal ever proposed for a foreign transaction in the semiconductor industry and would have maximized United States national security protection while still enabling Lattice to accept Canyon Bridge’s investment and double American jobs,” Billerbeck said in a statement.

## **Canada, UK Join Forces in Aircraft Dispute**

When United Kingdom (UK) Prime Minister Theresa May and Canadian Prime Minister Justin Trudeau meet Sept. 18 in Ottawa, the two world leaders are expected to discuss how to work closely to back Canadian aerospace company Bombardier against antidumping and countervailing duty claims by Boeing. Smaller U.S. airlines are also fighting against the petitions, which they say will hurt consumers

The U.S. company filed the petitions at Commerce and International Trade Commission (ITC) in April against imports of 100- to 150-seat large civil aircraft from Canada then requested Commerce delay its preliminary determination (see **WTTL**, July 10, page 7).

Bombardier has a large manufacturing presence in Belfast, Northern Ireland, hence the decision for the UK and Canada to join forces. May reportedly raised the issue in a recent phone call with President Trump. “We have indeed been working closely with our British allies on this issue. They have a strong interest in Bombardier and I think it absolutely makes sense for us to work in close partnership, and that’s exactly what we’ve been doing,” Canadian Foreign Affairs Minister Chrystia Freeland told reporters, according to CBC News.

“The UK is a big buyer of Boeing aircraft ... and if I were Boeing, I’d be paying attention to it,” said Canadian Ambassador to Washington David MacNaughton, speaking at the same event as Freeland.

In letters to Commerce Secretary Wilbur Ross and ITC Chair Rhonda Schmidlein, U.S.-based Sun Country and Spirit airlines also opposed the duties sought by Boeing against the Bombardier C series. “The U.S. traveling public deserves to have access to the benefits of all aircraft platforms, regardless of whether the platform is made by Boeing, Airbus, Embraer, Bombardier or any other aircraft manufacturer,” Sun Country wrote in a letter dated Aug. 31.

## Steel Importers Make Case Against Additional Restrictions

As Commerce continues to take its time releasing its Section 232 investigations findings on steel and aluminum imports, the American Institute for International Steel (AIIS) Sept. 12 bolstered its case against new restrictions by unveiling an economic impact study that showed significant potential U.S. job loss and would make agricultural sectors an easy target.

The AIIS report found that the 34.4 million tons of iron and steel imported to U.S. seaports in 2016 supported 1.3 million jobs, generated \$239.8 billion in total economic activity and \$19.4 billion in taxes. Steel import restrictions could put at risk 84,000 jobs in the Marine Transportation System and another 1.2 million jobs associated with users of imported iron and steel products. The agricultural sector could take a big hit, too.

The AIIS report found that if steel imports are restricted, 47 million tons of grain exported via Lower Mississippi River ports could be at risk. The report noted that 10,830 jobs are created by grain exports on the Marine Transportation System and an additional 39,000 agricultural jobs are supported. This is exactly why representatives from the National Chicken Council (NCC) and the American Soybean Association (ASA) joined AIIS’ press briefing to release the report. “Trade doesn’t happen in a vacuum,” said Patrick Delaney, ASA’s director of policy communication.

Kevin Brosch, attorney for NCC, recalled a “cautionary tale” about the \$700 million a year market loss the domestic chicken industry suffered when President Obama raised tariffs in 2009 in response to a United Steelworkers (USW) trade complaint over Chinese-manufactured tires. USW said dumped tires led to 5,000 American jobs lost. Poultry became the “innocent collateral” when China decided to retaliate, Brosch noted.

Domestic steel producers got a boost from 10 retired military officers and senior national security experts in a letter to President Trump Sept. 12. “America’s increasing reliance on imported steel and aluminum from potentially hostile or uncooperative foreign governments, or via uncertain supply routes, jeopardizes our national security. If U.S. manufacturing capabilities are compromised, we will be forced to rely on countries like

China and Russia to supply our military and critical infrastructure needs,” the officers wrote. Do not delay the investigation, they warned.

Indeed, frustration is mounting over the publication of the Section 232 report. Commerce Secretary Wilbur Ross had initially said the report would be completed by the end of June, but three months later it has yet to surface. Ohio Sens. Rob Portman (R) and Sherrod Brown (D) demanded action in a letter to Ross Sept. 15, noting that in the first half of 2017, steel imports increased 25% compared to 2016.

“Further postponement of the Section 232 investigation will invite a growing deluge of steel imports into the U.S. and cause even greater damage to the U.S. steel sector. We urge you to conclude the Section 232 steel investigation expeditiously to prevent the idling of additional U.S. steel facilities and the layoffs of more U.S. steelworkers,” they wrote.

**\* \* \* Briefs \* \* \***

**BRIBERY:** Former BIS official Raushi J. Conrad was sentenced Sept. 8 in Alexandria U.S. District Court to 48 months in prison followed by two years’ supervised release. Federal jury convicted Conrad in June of conspiracy to receive bribes and acceptance of bribes by public official from 2010 through 2011. Co-conspirator James C. Bedford of Dumfries, Va., was sentenced in June in same court to probation for related charges (see **WTTL**, July 3, page 9). Conrad sought out and accepted bribes from Bedford in exchange for ensuring that Bedford’s company was awarded and maintained lucrative BIS data migration project.

**TRADE PEOPLE:** Former Commerce Secretary Carlos Gutierrez was named National Foreign Trade Council (NFTC) board chairman Sept. 12, replacing Alan Wolff, who took World Trade Organization (WTO) deputy director-general post. Gutierrez, who served at Commerce from 2005 to 2009, is currently chair of Albright Stonebridge Group and U.S.-Cuba Business Council (USCBC), affiliate of U.S. Chamber of Commerce (see **WTTL**, Feb. 15, 2016, page 7).

**STEEL NAILS:** In 4-0 “sunset” vote Sept. 14, ITC said revoking antidumping duty orders on imports of steel nails from United Arab Emirates would renew injury to U.S. industry.

**EXPORT ENFORCEMENT:** Joao Pereira da Fonseca, Portuguese citizen, was sentenced Sept. 14 in D.C. U.S. District Court to 20 months in prison for conspiring to export goods and technology to Iran without BIS or OFAC licenses between October 2014 and April 2016. He pleaded guilty in July (see **WTTL**, July 24, page 9). Items included precision lens equipment from N.H. company and inertial guidance system test table manufactured by North Dakota company. Precision lens equipment is categorized under ECCN 2B001 and controlled for national security (NS) and anti-terrorism (AT) reasons; inertial guidance system test table under ECCN 2B120 and controlled for missile technology (MT) and AT reasons.

**IRAN:** OFAC Sept. 14 designated 11 entities and individuals for “engaging in support of designated Iranian actors or malicious cyber-enabled activity.” List includes Iranian computer company ITSecTeam and seven Iranians working for ITSecTeam and Mersad Company. Federal indictment against employees was unsealed in Manhattan U.S. District Court in March 2016 for launching distributed denial of service attacks on U.S. banking websites (see **WTTL**, March 28, 2016, page 10). Companies were sponsored by Iran’s Islamic Revolutionary Guard Corps, indictment noted. At same time, OFAC also designated Iran-based Sadid Caran Saba Engineering

indictment noted. At same time, OFAC also designated Iran-based Sadid Caran Saba Engineering Company for proliferation activities related to Iran's ballistic missile program and Ukraine-based Khors Aircompany and Dart Airlines for aiding designated Iranian and Iraqi airlines through provision of aircraft and services.

CHINA: Commerce Secretary Wilbur Ross to lead trade mission to China in mid-November that will coincide with President Trump's first visit to country. Mission delegation will be composed of senior executives from 12-25 firms. Applications due Sept. 29 via Commerce website.

TORTURE: Alliance for Torture-Free Trade, initiative of Argentina, EU and Mongolia, will launch Sept. 18 at beginning of UN General Assembly in New York. Countries agree to "establish national export bans on products used for torture or executions, while further empowering their customs authorities to enforce the prohibitions," wrote EU Trade Commissioner Cecilia Malmstrom, Mongolian Foreign Minister Tsend Munkh-Orgil, and Argentine Foreign Minister Jorge Faurie in recent op-ed. EU adopted new rules restricting "goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment" in November 2016 (see WTTL, March 20, page 6).

RUFFLES OR LAYS: Japan is expanding market access for U.S. chipping potatoes, resuming imports from Idaho for first time in 11 years, USDA announced Sept. 15. Japan halted imports of chipping potatoes from Idaho after detection of pale cyst nematode (PCN) in 2006. U.S. holds 98% share of Japanese potato market, according to USDA numbers.

SOFTWOOD LUMBER: Testifying Sept. 12 at ITC hearing on softwood lumber from Canada, Democratic Sens. Jon Tester (Mont.) and Ron Wyden (Ore.) argued for immediate action. "Fundamentally, this case is about American jobs and ensuring a fair shake for our companies and our workers," said Wyden. He estimated Canadian subsidies account for 350,000 American jobs lost and "declining land values for 11 million American private landowners." Noting that new agreement will "take some time," Tester said "to limit the onslaught" U.S. needs to "immediately deploy our trade enforcement rules." Commerce in August postponed final determinations in antidumping and countervailing duty investigations of softwood lumber imports until November (see WTTL, Sept. 4, page 4).

INDIA: Indian Commerce Minister Nirmala Sitharaman Sept. 3 was promoted to defense minister, taking reins from finance minister Arun Jaitley. Sitharaman is first woman to hold position independently. Railway minister Suresh Prabhu moved to commerce post. At meeting with Indian investment agency two days later, Prabhu called for a "paradigm shift in approach for enhancing investments," ministry said in statement. He also called for "proactive approach to reach out to global companies," it added.

ASEAN: After Association of Southeast Asian Nations (ASEAN) economic ministers' meeting Sept. 7-11 in Philippines, ministers for 16 countries announced that Regional Comprehensive Economic Partnership Agreement (RCEP) unlikely to be concluded by end of year as hoped, but pledged to make progress before November meeting in Manila. Assistant USTR for Southeast Asia and Pacific Barbara Weisel met with Philippines Secretary of Trade and Industry Ramon Lopez Sept. 9 for consultations. Two-way trade between U.S. and ASEAN reached \$211.8 billion in 2016, two noted.