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## Nilsson's Retirement Adds to DDTC Staff Shortage

State's Directorate of Defense Trade Controls (DDTC) was already facing more than 30% vacancy and acting directors in all four of its offices, as well as a long process to get even the most basic rules signed for publication. Add to that the news that Chief Brian Nilsson will be retiring from the government after 30 years of service, citing personal/family health reasons. His last day will be Dec. 22.

Nilsson addressed his retirement at a Practising Law Institute event in Washington Dec. 14. While there is no word who will be designated acting chief in his place, the directorate is working on an internal plan to create a leadership team, which will include acting policy chief Sarah Heidema, acting chief of staff Tony Dearth, acting licensing director Terri Davis and acting deputy policy director Rick Koelling. A final plan should be in place by Dec. 18, he said.

State has faced much criticism for its hiring freeze and lack of political leadership beyond the secretary (see **WTTL**, Dec. 11, page 4). Nilsson is the last of three deputy assistant secretaries in the department's political-military (PM) bureau, leaving only Tina Kaidanow as the principal deputy assistant secretary; she is no longer the acting assistant secretary because the maximum number of days she can be acting by law has expired.

At the same time, DDTC announced "informal structural and personnel changes" on its website Dec. 10. The changes include rebalancing certain divisions due to reduced licenses and staff vacancies; in addition, the Registration office will move to the DDTC front office out of Compliance in an effort "to facilitate greater collaboration on fee collections."

## WTO Ministerial Concludes with Zero Substantive Agreements

The 11th World Trade Organization (WTO) Ministerial Conference concluded Dec. 13 in Buenos Aires with no "substantive" agreements. Gains were made in a few areas, such as fisheries. "We have made important progress in some areas. In most of them it did not

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prove possible. Members did not manage to agree final, substantive agreements this time,” said WTO Director-General Roberto Azevedo in his closing remarks.

Members agreed to “engage constructively” on fisheries subsidies negotiations with a goal of adopting an agreement by the next Ministerial Conference in 2019. On a smaller scale, parties also agreed to maintain for two more years the current practice of not imposing customs duties on electronic transmissions, as well as to create a working party on accession for South Sudan.

“Ministers expressed their disappointment over the lack of progress, and gave their commitment to continuing to move forward on the negotiations related to all remaining relevant issues, including to advance work on the three pillars of agriculture (domestic support, market access and export competition) as well as non-agricultural market access, services, development, TRIPS, rules, and trade and environment,” a WTO press release noted.

On the final day of the conference, 70 members, including the U.S., issued a statement pledging to “initiate exploratory work together toward future WTO negotiations on trade related aspects of electronic commerce.” China, India, Vietnam and Indonesia were not party to the statement.

Unanimity is required for an agreement to be put forward, a benchmark U.S. Trade Representative (USTR) Robert Lighthizer criticized in his closing remarks. “Many members recognized that the WTO must pursue a fresh start in key areas so that like-minded WTO Members and their constituents are not held back by the few Members that are not ready to act,” said Lighthizer.

Lighthizer was not the only trade person upset with the meager outcomes. “The sad reality is that we did not even agree to stop subsidizing illegal fishing. Now, I hope that several WTO members, whose actions here in Buenos Aires prevented an outcome, will use the time following this Ministerial meeting for valuable self-reflection,” said European Union (EU) Trade Commissioner Cecilia Malmstrom in a statement.

Nevertheless, industry appreciated the effort on electronic commerce. “The fact that 70 countries, both developing and developed, are supporting a positive agenda to create a better environment for a digital trade framework is a tremendous boost for the e-commerce economy. It is an indication that countries around the globe are realizing how much new technologies drive entrepreneurship and benefit businesses of all sizes,” National Foreign Trade Council (NFTC) President Rufus Yerxa said in a statement.

On the second day of the ministerial, the EU, Japan and the U.S. aimed directly at China, agreeing to strengthen their commitment to a global level playing field. “Severe excess capacity in key sectors exacerbated by government-financed and supported capacity expansion, unfair competitive conditions caused by large market-distorting subsidies and state owned enterprises, forced technology transfer, and local content requirements and preferences are serious concerns for the proper functioning of international trade, the

creation of innovative technologies and the sustainable growth of the global economy,” reads the trilateral statement.

Lighthizer underscored the current administration’s qualms with the international body in his opening remarks at the three-day conference. “[M]any are concerned that the WTO is losing its essential focus on negotiation and becoming a litigation-centered organization. Too often members seem to believe they can gain concessions through lawsuits that they could never get at the negotiating table. We have to ask ourselves whether this is good for the institution and whether the current litigation structure makes sense,” said Lighthizer.

## **BIS Will Continue Reform Effort, Tackle China**

Bureau of Industry and Security (BIS) will continue the export control reform effort started by the previous administration, but currently spends most of its time responding to threats from China, Assistant Secretary Richard Ashooh told the agency’s Regulations and Procedures Technical Advisory Committee (RAPTAC) Dec. 12.

In tackling China and such policies as Made in China 2025, “doing nothing is not an option,” he said. “One thing I consider to be a measure of success will be to change this dynamic that we’re in now, which really does feel very reactive to China’s strategies and turn that on its head and be more proactive in protecting American interests.” In total, “60-70% of my day is spent in some way on dealing with very forward-leaning China,” Ashooh noted.

When it comes to specific sectors such as semiconductors, Ashooh revealed that the agency is looking at specific controls and trying to define its overall vision. “We’re trying to really improve our vision into what makes a difference in this tussle we’re in. Our export controls are the most effective when they’re aimed really, really well. And that’s what I consider to be the imperative right now, is to really get more acute as to our vision into what will make a difference,” he told the TAC

Ashooh also soothed exporters’ concerns that the administration will continue the ECR process including notices of inquiry (NOIs) and eventually proposed rules on certain categories of products that should transfer from State’s U.S. Munitions List (USML) to BIS jurisdiction. “Absolutely, that process will continue,” he said. “I believe it’s an important tool.”

The next NOI in the queue, on USML categories V (explosives), X (protective personnel equipment) and XI (electronics), is coming “soon,” Hillary Hess, director of BIS regulatory policy division, told the committee. “We’re close,” she said. State’s parallel NOI just received clearance from the Office of Management and Budget (OMB) after sitting at the budget office for over a month (see **WTTL**, Dec. 4, page 1).

Beyond the reform effort, a big part of his agency’s time is spent on the record number of cases involving the Committee on Foreign Investment in the U.S. (CFIUS), which of

course also involve China. In certain of his offices, “most of the calories are being burned on CFIUS, [and] a record number of cases,” Ashooh said. The day before, the agency exceeded the historical record of 270 cases, he noted.

The assistant secretary referred to recent CFIUS legislation, which “would dramatically change that caseload even beyond its historical high,” he said. Rep. Robert Pittenger (R-N.C.) in November introduced the Foreign Investment Risk Review Modernization Act of 2017 (H.R.4311) to address national security risks (see **WTTL**, Nov. 20, page 4).

## Republicans from “Fly-Over” Country Warn Administration on NAFTA

Republican lawmakers have led the charge trying to convince the administration to keep NAFTA intact. The trilateral agreement is of particular importance to states heavily tied to agriculture. Sen. Pat Roberts (R-Kan.) made his case before a trade association Dec. 12, and two days later Vice President Mike Pence heard concerns from Republican governors.

“Strengthening and modernizing NAFTA should result in even stronger economic growth for the United States and for Canada and Mexico,” said Roberts, who has been traveling fly-over country listening to farmers and ranchers’ stories that demonstrate NAFTA’s necessity. “U.S. agriculture has grown because of agreements like NAFTA, and from the farmer in the field to the grocer in the store, American workers have benefited from that growth,” he said.

Roberts is concerned about certain NAFTA proposals and their potential impact on the food and agriculture value chain. He joined with Sen. John Boozman (R-Ark.) and 16 other senators in requesting that before a commitment to changes are made there should be an “economic analysis illustrating the impact on the full supply chain of industries involved and that should be determined and shared publicly,” the senator explained (see **WTTL**, Nov. 27, page 1).

Governors from Iowa, Michigan, Tennessee and Arkansas met with Pence, Commerce Secretary Wilbur Ross and USTR Robert Lighthizer Dec. 14. “The administration was clear that it wants to be able to negotiate a better NAFTA deal for American manufacturers and workers,” Arkansas Governor Asa Hutchinson said in a statement.

“The administration recognizes the importance of North American trade and prefers to modernize NAFTA under more fair terms that acknowledge the economic changes in the past 20 years,” he added. “I respect that negotiating position, but my message is that Arkansas must be able to continue its access to North American markets unimpeded by trade barriers. Otherwise, there will be serious harm to Arkansas agriculture, and retail and manufacturing sectors.”

“Continued cross-border trade with our North American partners is very important to our farmers and businesses. But as we consider trade agreements, and work toward fairness and modernization, we must remember the basic principle that we do no harm to our

global trading relationships. It is clear that there is great potential for harm in Arkansas, especially to our farmers, if the United States reverses course regarding cross-border trade,” Hutchinson added.

## Cabinet Secretaries Highlight Indo-Pacific Trade

Speaking in Washington Dec. 12, Commerce Secretary Wilbur Ross expressed optimism on rebalancing trade in the Indo-Pacific region, the administration’s preferred term for the Asia-Pacific, and focused particularly on trade with Korea. Later at the same event, Secretary of State Rex Tillerson commented on China’s economic ambitions.

Since the U.S.-Korea free trade agreement (KORUS) went into effect in 2012, the trade deficit has tripled to \$27.7 billion, Ross said. “Among the most important reasons for the increased deficit has been the imbalance between our automotive imports and exports. Our automotive imports from Korea are almost nine times our exports of autos to them, and, remarkable as it may sound, we export to Korea more dollars worth of corn and beef combined than we do cars. Seems strange for an industrialized economy,” he noted.

“Auto exports from Korea to us are more than twice as much as their combined exports of cell phones, electronic circuits and semiconductors, three areas in which they are among the world’s leaders, so yet another surprise this year at the government’s urging for Koreans to buy more American products. The trade in goods deficit has decreased by about \$4 billion compared to the previous year. We appreciate the effort, but we need permanent solutions, not temporary forbearance,” he added.

The schedule of KORUS negotiations is being dictated by the Korean side, Ross said, though the Koreans are close to finishing their governmental process. Ross declined to put a timetable on negotiations that haven’t begun, but he said he hopes they will go “quickly and smoothly.”

Though the discussion largely focused on Asia, Ross did comment on the Transatlantic Trade and Investment Partnership (TTIP), the U.S.-EU free trade agreement currently in the freezer (see **WTTL**, Jan. 30, page 5). “When we withdrew from TPP [Trans-Pacific Partnership], we deliberately did not withdraw from TTIP and the purpose of that was to send the message that we were open for discussion,” he said. TTIP “is maybe, at most, 60% completed, so in any event, there would have to be more work to do if we were to stay just within the confines of TTIP as opposed to a more fully blown agreement,” Ross added.

On the relationship with China, Ross posited that “so far, it appears to us as though the Chinese are more interested in trying to work something out than not.” That would come as news to Ross’ BIS, which is spending most of its time trying to defend U.S. industry from Chinese policies (see related story, page 3).

Tillerson highlighted China’s One Belt, One Road, which is “a policy they have to continue their economic development, and our policies do not seek to contain China’s economic

development. But China's economic development, in our view, should take place in the system of international rules and norms, and One Belt, One Road seems to want to define its own rules and norms," said Tillerson.

Tillerson quoted Defense Secretary James Mattis' comment on One Belt, One Road. "For China, he said: Well, the U.S. and the rest of the world has many belts and many roads, and no one country gets to decide what they are. So a free and open Indo-Pacific means all countries have access to continue their economic development and free access for trade through the region," Tillerson noted.

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

NOMINATIONS: President Dec. 12 announced intent to nominate Andrea Thompson to be under secretary of State for arms control and international security. Thompson, former military officer, currently serves as special advisor in State's office of policy planning. Previously, she was deputy assistant to president and national security advisor to VP.

NOMINEES: Deputy USTR nominee Jeffrey Gerrish can breathe sigh of relief: He will not be charged with voter fraud for voting in Virginia after moving to Maryland (see **WTTL**, Oct. 30, page 3). "His actions were at most, negligent, and do not fall within the scope of criminal conduct contemplated under Va. Code 24.2-1004. In summary, it appears based on the evidence that Mr. Gerrish's actions amount to an unintentional mistake and not knowing or intentional criminal conduct. This office will not pursue a criminal charge against Mr. Gerrish," Fairfax County Commonwealth's Attorney Raymond Morrogh wrote in Nov. 3 letter to county elections director.

PIPE FITTINGS: In 4-0 "sunset" vote Dec. 14, ITC said revoking antidumping duty orders on imports of stainless steel butt-weld pipe fittings from Italy, Malaysia and Philippines would renew injury to U.S. industry.

CENTRAL AFRICAN REPUBLIC: OFAC Dec. 13 designated Okot Lukwang and Musa Hatari, who "facilitated the transfer of ivory, weapons, and money" in support of Lord's Resistance Army (LRA). OFAC added Salim Kony and Ali Kony, sons of LRA leader Joseph Kony, to SDN list in August 2016 (see **WTTL**, Sept. 5, 2016, page 10). Agency designated LRA and Joseph Kony in March 2016.

AWARDS: BIS Deputy Assistant Secretary Matthew S. Borman Dec. 7 received Presidential Rank Award for his "extraordinary leadership ability and policy acumen," said Commerce Secretary Wilbur Ross in statement Dec. 11. "Matt represents the highest standards of public service," Ross added.

EXPORT ENFORCEMENT: Turkish citizen Resit Tavan, owner and president of Ramor Dis Ticaret, Ltd., was charged Dec. 11 in Milwaukee U.S. District Court with conspiring to defraud U.S. and to smuggle U.S.-made products to Iran via Turkey. Tavan, Ramor and company deputy manager Fulya Oguzturk allegedly arranged purchase and acquisition of marine products, including outboard engines, generators and propulsion systems, manufactured in Wisconsin for shipment to and use by Iranian navy. Tavan was arrested in Romania in June, extradited and is in custody pending trial. BIS in January added Oguzturk, Ramor and Tavan to Entity List for "their involvement in the procurement and/or retransfer of U.S.-origin items to Iran for use by the Iranian military," BIS noted (see **WTTL**, Jan. 16, page 11).

IRAN: Deadline to reimpose Iran sanctions came and went Dec. 13. In October, administration did not certify to Congress that Iran is meeting its obligations under Joint Comprehensive Plan of Action, triggering 60-day provision of Iran Nuclear Agreement Review Act that allows Congress to reimpose sanctions (see **WTTL**, Oct. 16, page 1).

AIRCRAFT: Canada Dec. 12 announced open bidding process for 88 advanced fighter aircraft. Clearly taking shot at Boeing, fact sheet notes: “When bids are assessed, any bidder responsible for harm to Canada’s economic interests will be at a distinct disadvantage.” Canada objects to Commerce’s preliminary 219.63% countervailing duty on Bombardier C Series commercial jets and has retaliated (see **WTTL**, Dec. 11, page 8). Commerce to issue final duties Dec. 18, same day as ITC hearing on 100- to 150-seat large civil aircraft from Canada. Canadian Ambassador to U.S. David MacNaughton scheduled to appear at hearing, along with UK ambassador to U.S. and representative of EU’s delegation to U.S.

EX-IM: Senate Banking Committee will vote Dec. 19 to advance Ex-Im Bank nominees, including former Rep. Scott Garrett (R-N.J.) who faces uphill battle to be Ex-Im president. All Democrats and Sen. Mike Rounds (R-S.D.) are expected to oppose Garrett’s advancement. Sen. Tim Scott’s (R-S.C.) vote is unknown. Garrett has support from Sens. Richard Shelby (R-Ala.) and Pat Toomey (R-Pa.) (see **WTTL**, Nov. 6, page 3).

SPECIAL 301: USTR is moving Thailand from Special 301 Priority Watch List to Watch List after out-of-cycle review, agency announced Dec. 15. “We welcome the corrective actions that Thailand has taken and look forward to continuing to work with Thailand to resolve our remaining IP [intellectual property] concerns,” USTR Robert Lighthizer said in statement. Engagement “has yielded results on resolving U.S. IP concerns across a range of issues, including on enforcement, patents and pharmaceuticals, trademarks, and copyright,” USTR noted. Office initiated review in September (see **WTTL**, Sept. 25, page 8).

TRADE PEOPLE: Art Shulman, previously acting DDTC compliance chief, joined Boeing as director of global trade controls Dec. 11. His predecessor and boss at DDTC Sue Gainor joined Boeing as vice president of global trade controls in August (see **WTTL**, Aug. 21, page 6).

OPTION 4: Customs & Border Protection (CBP) is looking for companies to participate in post-departure pilot. Goal of pilot is to validate new requirements, not to test compliance or to vet companies, Robert Rawls, CBP outbound enforcement and policy branch chief, told BIS RAPTAC Dec. 12. Potential participants should make at least 25 shipments per month, he said. Interested companies should contact Rawls at [robert.c.rawls@cbp.dhs.gov](mailto:robert.c.rawls@cbp.dhs.gov). Manufacturers long have pushed to retain Option 4 post-departure filing for eligible companies (see **WTTL**, June 19, page 10).

AES: BIS is working on adding “multi-dimensional edit” to Automated Export System (AES), which would consider three data points -- license type, ECCN and destination country -- to determine eligibility for shipping No License Required (NLR), Gerry Horner, director of BIS Office of Technology Evaluation, told BIS RAPTAC Dec. 12. If shipment not eligible, system will issue “compliance alert,” he said. Horner hopes to launch feature within six months.

WOMEN AND TRADE: On sidelines of WTO Ministerial in Buenos Aires, 118 WTO members and observers agreed to first-ever joint declaration on trade and women’s economic empowerment. Signers agreed “to collaborate on making our trade and development policies more gender-responsive,” declaration said. Commitments include: sharing respective experiences; sharing best practices for conducting gender-based analysis of trade policies; sharing methods and procedures

for collection of gender-disaggregated data and analysis of gender-focused trade statistics; removing barriers for women's economic empowerment and increase their participation in trade; and ensuring that Aid for Trade supports tools and know-how for analyzing, designing and implementing more gender-responsive trade policies. "For us to truly reap the benefits of trade, women's independence and entrepreneurship need to take centre-stage in our policies. We need to transform ideas into action," EU Trade Commissioner Cecilia Malmström said in statement.

**BUY AMERICAN:** Seiler Instrument & Manufacturing Co., St. Louis-based defense contractor, agreed Nov. 30 to pay \$1,500,000 in forfeiture under pretrial diversion agreement for using optical materials from China in weapons sights manufactured under DOD contracts in 2008. Company admitted that parts were improperly certified as compliant with Buy American Act. "Resolution reflects Seiler's continuing commitment to being a trusted supplier to the U.S. Government and Seiler's improved compliance processes implemented over the past seven years," Seiler said in statement. "The issue was the source, but not the quality of the parts," it added.

**EDITOR'S NOTE:** In keeping with our schedule of 50 issues a year, there will be no *Washington Tariff & Trade Letter* issue Dec. 25. Our next issue will be Jan. 1, 2018. As always, we wish all our readers **HAPPY HOLIDAYS** and **HEALTHY AND PROSPEROUS NEW YEAR**.

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