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## Administration to Consolidate Space Commerce Regulations

The Office of Space Commerce and the Commercial Remote Sensing Regulatory Affairs office will move from the National Oceanic and Atmospheric Administration (NOAA) to direct oversight in the secretary's office, Commerce Secretary Wilbur Ross told the second meeting of the National Space Council Feb. 21.

“This elevated and amplified Office of Space Commerce will coordinate all space-related functions at the Department – remote sensing, spectrum policy, business and trade promotion, and export controls, to name a few,” Ross said. He will also soon name an office director, which has been vacant for over ten years, he added.

During the meeting, the council agreed to four recommendations, two of which relate to export controls. For one, Commerce will “develop a legislative proposal to create an Under Secretary of Space Commerce,” according to a White House fact sheet. The council also will “initiate a policy review of the current export licensing regulations affecting commercial space activity” by Jan. 1, 2019, the White House noted.

“Today, if a company launches a vehicle that returns to Earth in international waters or non-U.S. territory, it is treated as an ‘export’ of sensitive and dangerous technology. This approach is a primary complaint of space companies,” Ross told the council. State and Commerce made the last major changes to satellite export controls in January 2017 (see **WTTL**, Jan. 16, 2017, page 8).

The day before, Vice President Mike Pence announced candidates for the council's Users Advisory Group. These include senior executives from Northrop Grumman, Lockheed Martin, Boeing Company, Sierra Nevada Corporation (SNC), SpaceX and Blue Origin.

## NAFTA Negotiators Head to Mexico with ISDS Concerns Swirling

As NAFTA negotiators head to Mexico Feb. 25 for the seventh round of talks, much of the focus will be on the investor-state dispute settlement (ISDS) provision, a sticky subject for

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negotiators and the topic of a whirlwind of rumors over the past week that Canada may propose eliminating the measure in part or in full. “The United States has been public about its preference to opt out of ISDS in NAFTA, which would therefore render it meaningless. Given U.S. interest in opting out of ISDS, Canada and Mexico are focusing their efforts on a bilateral and progressive ISDS mechanism in the context of NAFTA,” Adam Austen, press secretary to Canadian Foreign Affairs Minister Chrystia Freeland, wrote in an email to WTTL.

Canada has proposed a “comprehensive investment chapter with a progressive approach to ISDS building off” the Canada-European Union trade deal, Austen noted. “That was our position last fall and it remains our position today,” he added.

Joshua Bolten, president and CEO of Business Roundtable, balked at the idea of eliminating ISDS. The U.S., Canada and Mexico “should work together to retain ISDS provisions in NAFTA that ensure fair treatment of investors, and reject any efforts to undermine the positive role of these protections. Eliminating or weakening ISDS would be harmful to U.S. businesses and workers,” he said in a statement.

“Instead of weakening NAFTA by removing ISDS, the Administration should focus on modernization proposals that will strengthen this trade agreement and create more economic opportunities for U.S. businesses and workers,” Bolten added.

Jack Gerard, president and CEO of the American Petroleum Institute, took a similar stance in an op-ed published Feb. 20. “If ISDS is watered down or falls through the cracks, it opens the door for other nations to withdraw similar agreements safeguarding U.S. investments around the globe,” he warned.

In other NAFTA news, House Ways and Means Committee Democrats don’t believe the committee has paid enough attention to the trade pact. A Feb. 22 letter to Trade Subcommittee Chairman Dave Reichert (R-Wash.) calls for the scheduling, as soon as possible, of a hearing on the NAFTA renegotiation with administration witnesses. Trade Subcommittee Ranking Member Bill Pascrell (D-N.J.) requested such a hearing in a private letter in October. “In the intervening four months, the NAFTA renegotiation has continued to progress at an accelerated pace. In that time, three more rounds of negotiations have taken place with yet another one scheduled to begin at the end of this month,” reads the most recent letter.

## **Bipartisan Lawmakers Tell Senate to Move on Ex-Im Bank Nominees**

Move forward now on Export-Import Bank (Ex-Im) board nominees, 68 bipartisan House members told Senate leaders in a letter Feb. 20. The Senate Banking Committee approved four Ex-Im board nominees in December - Kimberly Reed, Spencer Bachus, Judith Pryor and Claudia Slacik - but the full Senate has yet to vote, depriving the bank of a badly needed quorum, the lawmakers wrote.

“The importance of EXIM in the ever-growing international market cannot be understated. This entity allows American companies to compete against the more than 79 nations that maintain export credit agencies to assist their nation’s exports, including top exporters like China, Canada, and Mexico,” reads the letter spearheaded by Reps. Chris Collins (R-N.Y.) and Denny Heck (D-Wash.). Without quorum, the bank cannot approve deals of greater than \$10 million.

The letter notes that without a quorum, in fiscal year (FY) 2017 Ex-Im authorized only \$2.4 billion in loans, guarantees and insurance as compared to FY 2014, when Ex-Im had quorum, it authorized \$20.5 billion. The letter writers’ ire should be directed at Sen. Pat Toomey (R-Pa.) who placed a hold on all four nominees over his displeasure that former Rep. Scott Garrett (R-N.J.) did not survive the committee vote (see **WTTL**, Feb. 19, page 4). The administration has yet to put forward another nominee to lead Ex-Im.

### **Korea Challenges U.S. over AD/CVD Investigations**

As expected, Korea is going after the U.S. at the World Trade Organization (WTO) over Commerce’s use of adverse facts available in antidumping (AD) and countervailing duty (CVD) investigations. Korea’s request for consultations with the U.S. was circulated Feb. 20. The U.S. has 60 days to try and resolve the issue, after which Korea can request the formation of a panel.

In its request dated Feb. 14, Korea challenged duties placed on steel products and transformers, including the May decision regarding imports of corrosion-resistant steel (see **WTTL**, May 30, page 7). Per Article 6.8 of the WTO’s Anti-Dumping agreement, if a targeted entity refuses to provide necessary information within a reasonable time frame, then a determination can be made on facts available. Korea maintains that the U.S. acted inappropriately.

“With respect to the antidumping and countervailing duty measures listed in section I.A of this request, it appears that [Commerce] did not assess the facts properly and objectively in finding that the affected Korean producers and exporters failed to act to the best of their abilities and to cooperate in providing information necessary to determine a margin of dumping or an amount of subsidization. Therefore there appears not to have been a valid basis for resorting to the use of facts available in the way [Commerce] did,” noted the Korean request for consultations.

### **Full CPTPP Text Published, 22 Provisions Suspended**

New Zealand released the full text of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), formerly known as the TPP, Feb. 20. The 11 CPTPP countries will sign the agreement March 8 in Santiago, Chile. The original agreement had to be renegotiated after the U.S. withdrew following President Trump’s inauguration. The resulting CPTPP, which was finalized in January, suspends 22 items from the original

deal. Most of the suspended proposals had been inserted at the behest of the U.S., such as rules on data protection for biologics (see **WTTL**, Oct. 2, page 3).

The investor-state dispute settlement (ISDS) mechanism is narrower, according to a New Zealand analysis. For instance, private companies who enter into an investment contract with the New Zealand government cannot use ISDS clauses in a dispute. Copyright protections will remain at 50 years, instead of 70 years.

At the World Economic Forum in Switzerland last month, Trump said the U.S. is open to negotiating bilateral deals with CPTPP countries or “perhaps as a group, if it is in the interests of all” (see **WTTL**, Jan. 29, page 5). The reality is the U.S. is unlikely to rejoin CPTPP anytime soon, especially with those key provisions removed.

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

**EXPORT ENFORCEMENT**: Giovanni Zannoni, Italian national and member of Italian armed services, was sentenced Feb. 22 in Brooklyn U.S. District Court to 11 months in prison for illegally exporting night vision goggles and assault rifle components to Italy between June 2013 and May 2017 without State licenses. Zannoni pleaded guilty in December (see **WTTL**, Jan. 1, page 8). He was arrested in May 2017 at Miami International Airport. Rifle components included M4 gas blocks, two M4 barrels, one M4 muzzle brake, one M4 end plate, five AR-15 upper receivers, two AR-15 handguards, two AR-15 stock kits and two AR-15 bolt completion kits.

**MORE EXPORT ENFORCEMENT**: Indictment against Usama Darwich Hamade, Samir Ahmed Berro and Issam Darwich Hamade was unsealed Feb. 16 in Minnesota U.S. District Court on charges of conspiring to illegally export goods and technology to Lebanon and to Hizballah, designated foreign terrorist organization, without State or Commerce licenses from 2009 through December 2013. Goods included inertial measurement units (IMUs) for use in unmanned aerial vehicles (UAVs), jet engine, piston engines and recording binoculars. Usama Hamade and Issam Hamade are currently in custody in South Africa. Berro remains at large.

**EVEN MORE EXPORT ENFORCEMENT**: Indictment against Scott Douglas Browning of Fayetteville, N.C. was unsealed Feb. 16 in Raleigh U.S. District Court on charges of illegally exporting stolen military property to Netherlands via eBay without required State licenses from January 2013 through September 2014, and other charges. Items included three types of image intensifier, and BAE Systems OASYS SkeetIR Micro Thermal Imaging Monocular 640x480. Browning was arrested and released.

**ANTIBOYCOTT**: Mitsui Plastics, Inc. of White Plains, N.Y., agreed Feb. 9 to pay \$28,600 civil penalty to settle nine violations of BIS antiboycott regulations. Company 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 December 2010 through May 2011 during transactions with Bahrain.

**BIODIESEL**: Commerce Feb. 21 issued affirmative final determinations in antidumping duty investigations of imports of biodiesel from Argentina and Indonesia. Dumping rates calculated between 60.44% and 86.41% for Argentina. Indonesian exporter/producers Wilmar Trading PTE Ltd. calculated at 92.52%, P.T. Musim Mas at 276.65% and all others at 95.52%. Petitioner is National Biodiesel Board (NBB) Fair Trade Coalition. ITC expected to make its final

determinations April 6. “Today’s decision provides room for the domestic biodiesel industry to flourish and produce more volumes of this American-made fuel, which provides so many economic and environmental benefits,” NBB VP Kurt Kovarik said in statement.

**NOMINATIONS:** After publication of Section 232 reports Feb. 16, Sen. Chuck Schumer (D-N.Y.) released hold on Commerce Under Secretary for International Trade nominee Gilbert Kaplan, who was nominated May 25. Schumer placed hold on two nominees - Kaplan and Nazakhtar Nikakhtar - in October over administration’s “failure to resolve” then-ongoing 232 investigations. Kaplan sailed through Senate Finance Committee in September and awaits full Senate vote (see **WTTL**, Jan. 1, page 7). Thomas Sneeringer, president of Committee to Support U.S. Trade Laws, said in statement that release of Kaplan “makes a lot of sense to us” and urged Schumer to release his hold on Nikakhtar, nominee to be Commerce assistant secretary for industry and analysis.

**WTO:** European Union (EU) has “grown increasingly worried about the U.S. administration’s lack of appointment of judges to the WTO’s appellate body,” members of European Parliament wrote to Congress Feb. 22, following visit to Washington. Appellate Body is supposed to be composed of seven judges with minimum of four to function; fourth judge’s term is set to expire in September. U.S. has rejected EU and Latin American proposals on selection process due to criticisms of how body functions (see **WTTL**, Feb. 12, page 5). “We in Europe stand ready to discuss your ideas on improving the WTO dispute settlement system. Yet we press upon you that the continued blocking of appointments to the WTO appellate body only further compromises the functioning of that very trade system that should help us address unfair trade practices such as by China,” letter said.

**NORTH KOREA:** On eve of Olympic closing ceremonies, OFAC Feb. 23 added Taiwanese individual, 27 shipping companies in China, Panama and North Korea and 28 vessels to Specially Designated Nationals (SDN) List. At same time, agency issued advisory with State and Coast Guard to “alert persons globally to deceptive shipping practices used by North Korea to evade sanctions,” it said. Practices include physically altering vessel identification, North Korean Ship-to-Ship (STS) Transfers, falsifying cargo and vessel documents, disabling Automatic Identification System (AIS) and manipulating AIS, OFAC noted. House Foreign Affairs Committee Chair Ed Royce (R-Calif.) called announcement “very important” in statement.

**ITC:** President Feb. 23 announced intent to nominate Amy Karpel of Washington to be member of International Trade Commission for remainder of nine-year term expiring in June 2020, replacing F. Scott Kieff, who resigned in June 2017 (see **WTTL**, July 10, 2017 page 7). Karpel most recently was USTR chief counsel for negotiations, legislation and administrative law. Before joining USTR in 2004, she was associate attorney at Stewart and Stewart law firm. Randolph Stayin and Dennis Devaney were nominated to ITC in October and await Senate Finance Committee hearing. Jason Kearns, another ITC nominee, passed out of committee in October and awaits full Senate vote.