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## Industry Posts Comments on Emerging Technology Controls

If industry submits 228 comments in the forest, but there's no one at Commerce to read them, do the comments still exist? Jan. 10 was the deadline to submit comments on potential controls on emerging technology, but the licensing and regulatory staff at Bureau of Industry and Security (BIS) is on furlough.

Nonetheless, comment writers love a deadline, so a few industry groups and firms published their comments on BIS' Advance Notice of Proposed Rulemaking (ANPRM) without waiting for Commerce officials to post them online at regulations.gov. Watch this space for many more after the government reopens. BIS already had extended the comment period in response to industry complaints (see **WTTL**, Dec. 17, page 6).

In its comment, IBM argued for "narrowly focused" controls. Toward that end, the company proposed several "threshold questions" to decide whether a technology warrants control. These include: Is the technology truly new and different? Is the technology dynamic, growing, and constantly evolving? How widely available is the technology? Will controls actually prevent access, or can the technology be procured elsewhere? Are the means for evolving the technology known only to a select few?

The Semiconductor Industry Association (SIA) echoed the sentiment of limiting and tailoring controls to only those technologies exclusive to the U.S. and "those necessary to address national security concerns, not trade policy concerns." Specifically, the group suggested BIS "delay the imposition of any new controls until the technology can be controlled multilaterally;" then "rescind any unilateral controls not agreed to by a regime after three years unless for well-supported national security reasons."

## New Congress Starts from Scratch on Nominations

It happens every two years. Nominees who have been sitting on pins and needles for confirmation, even those who are highly qualified, must now go home without being

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confirmed. In addition, members of Congress, including high-powered committee chairs, retire and members shuffle to replace them. Just before the new Congress took its place Jan. 3, a last-minute deal between the parties allowed dozens of nominations to be approved by voice vote. However, as is always the case, many hopeful nominees were returned to the president. The most recent list included controversial nominations to the Export-Import (Ex-Im) Bank, such as Kimberly Reed to be president, Mark Greenblatt to be inspector general, and three Ex-Im board nominees -- former Rep. Spencer Bachus (R-Ala.), Judith DelZoppo Pryor and Claudia Slacik.

After the committee rejected the president's first choice for the job, the Senate Banking Committee unanimously approved Reed in August after she sailed through a nomination hearing the month before (see **WTTL**, Sept. 3, page 9). The other nominees passed through the committee in 2017 with little controversy or fanfare.

Also returned to the White House were three International Trade Commission (ITC) nominees, Dennis Devaney, Randolph Stayin and Amy Karpel, as well as Jeffrey Kessler to be Commerce assistant secretary for enforcement and compliance and Jeffrey Nadaner to be Commerce assistant secretary for export enforcement.

The Banking committee held a hearing for Nadaner in April 2018; committee sources say he was not controversial but never had a full Senate vote. The Finance committee held a hearing in June 2018 for Stayin, Karpel and Kessler. Devaney was still waiting for a hearing. Stayin and Devaney were nominated in October 2017; the president nominated Karpel in February 2018.

Leadership changed in many committees with the change of control and retirements. Sen. Chuck Grassley (R-Iowa) formally took over the Finance committee gavel from retired Sen. Orrin Hatch (see **WTTL**, Jan. 7, page 2). Sen. Jim Risch (R-Idaho) Jan. 8 was elected Foreign Relations Committee chairman, replacing Sen. Bob Corker (R-Tenn.) who also retired. "I look forward to giving Idaho a voice on the global stage as we look to confront many issues that hit home across my state, like advancing the interests of Idaho citizens and businesses in international trade and investment, [and] promoting Idaho exports," Risch said in a statement.

Rep. Eliot Engel (D-N.Y.) became chair of the House Foreign Affairs Committee Jan. 4. "In the days ahead, the Committee will push the Administration for answers about the way it has crafted policy dealing with some of the world's most important hotspots, from Saudi Arabia and Yemen, to Venezuela, to Syria, to Russia, to North Korea. I'm confident the Committee can do this work in a way that puts politics to the side and gets to the facts about matters pivotal to our security," he said in a statement.

## **U.S., Chinese Officials Discuss "Needed Structural Changes"**

U.S. trade officials are leaving nothing to chance. At the same time U.S. Trade Representative (USTR) Robert Lighthizer was meeting with European Union (EU) Trade

Commissioner Cecilia Malmstrom and Japanese Economy Minister Hiroshige Seko on how to deal with China (see related story, page 5), another delegation of USTR and other administration officials were in Beijing talking directly to Chinese officials.

While there is no formal trade agreement on the table, officials in Beijing Jan. 7-9 “discussed the need for any agreement to provide for complete implementation subject to ongoing verification and effective enforcement,” USTR said in a statement. Specifically, the talks followed up on the leaders’ dinner in Argentina, “with a view to achieving needed structural changes in China with respect to forced technology transfer, intellectual property protection, non-tariff barriers, cyber intrusions and cyber theft of trade secrets for commercial purposes, services, and agriculture,” USTR added.

“The talks also focused on China’s pledge to purchase a substantial amount of agricultural, energy, manufactured goods, and other products and services” from the U.S. China reportedly agreed to buy U.S. soybeans in December (see **WTTL**, Dec. 17, page 2). In addition to USTR team, the delegation included officials from Agriculture, Commerce, Energy and Treasury. “The delegation will now report back to receive guidance on the next steps,” the statement concluded.

## **Venezuela Asks for WTO Consultations over U.S. Sanctions**

Two days before Venezuelan President Maduro began his second, term, the country Jan. 8 requested World Trade Organization (WTO) dispute consultations with the U.S. over recent sanctions actions. On the same day, Treasury’s Office of Foreign Assets Control (OFAC) designated even more individuals and entities for a bribery scheme involving the Venezuelan national treasury.

Venezuela claims that certain U.S. regulations covering goods of Venezuelan origin, the liquidity of Venezuelan public debt, transactions in Venezuelan digital currency, and the Specially Designated Nationals (SDN) List are inconsistent with WTO provisions. These measures include a March executive order barring any U.S.-based financial transactions involving Venezuela’s new “petro” cryptocurrency; a May executive order preventing the Maduro government from selling or collateralizing certain Venezuelan financial assets; a September OFAC action designating four members of Maduro’s inner circle; and a November executive order banning U.S. persons from dealing with entities and individuals involved with “corrupt or deceptive” gold sales (see **WTTL**, Nov. 5, page 7).

On the same day as the WTO request, OFAC sanctioned seven Venezuelan individuals, 23 companies (and one private aircraft) involved in a scheme to bribe the Venezuelan Office of the National Treasury (ONT) to conduct illicit foreign exchange operations. The individuals include two former Venezuelan national treasurers and prominent Venezuelan businessmen. Entities include Globovision Tele C.A, a Venezuelan television station. Along with the designations, OFAC issued General License (GL) 6 authorizing U.S. persons to engage in specified transactions related to winding down or maintaining

business with Globovision and its subsidiaries until Jan. 8, 2020. “Transactions and activities authorized by General License 6 could include entering into or renewing contracts, paying invoices, or receiving services, consistent with the terms of the general license, that were initiated after January 8, 2019 involving the blocked entities if such activity is ordinarily incident and necessary to contracts in effect prior to January 8, 2019 (provided the terms are consistent with past practices, as demonstrated by transaction history),” OFAC wrote in a new Frequently Asked Question (FAQ).

## EU Trade Commissioner Stands Firm, Yet Optimistic

In a speech in Washington Jan. 10, EU Trade Commissioner Cecilia Malmstrom waxed optimistic about the bilateral trade relationship between the U.S and EU, despite potential conflicts. As the head of “one of the busiest trade negotiators in the world,” the commissioner also outlined the multiple trade agreements that the EU has either finalized or are in the midst of negotiating.

While her team is not directly involved, Malmstrom addressed the U.S. effort to talk directly to the Chinese about issues such as forced technology transfer and state subsidies (see related story, page 2). “The U.S. is currently trying to tackle these issues through unilateral action. We understand and shared the frustration with the current status quo, but we believe that only multilateral solutions can provide a sustainable response,” she said.

Malmstrom also provided an update on ongoing talks with the U.S., saying the two parties “have made good progress” after meeting with Lighthizer several times during the week. “Our ambition is endless,” she said. “We have taken stock of where we are, to see how we can go forward,” she said. “We are identifying possible outcomes and making progress – like buying more liquified natural gas, buying more soya beans, and also in our discussions on regulatory cooperation in some areas,” Malmstrom added.

Despite the optimism, Malmstrom addressed a few potential challenges in the relationship. One sticking point is possible Section 232 tariffs on autos, from which the EU expects to be excluded. When asked if the EU would consider implementing a quota on its auto exports to the U.S. to avoid such tariffs, she responded: “No, we wouldn’t.”

As the two sides are beginning talks toward a trade agreement on industrial goods, Malmstrom was clear that the talks would not include agriculture, as she does not have a consensus or mandate from EU member states. In contrast, Senate Finance Committee Chair Chuck Grassley (R-Iowa) has said he expects the EU agreement to address agriculture (see **WTTL**, Jan. 7, page 2).

Grassley’s not the only one. In true fashion, the USTR’s office released its negotiating objectives for a U.S.-EU trade agreement Jan. 11 after close of business. Amid 24 chapters that range from digital trade and rules of origin to labor and environment, the agency includes a section on agricultural goods. These objectives include: secure comprehensive

market access, provide reasonable adjustment periods, eliminate non-tariff barriers and restrictive rules, promote regulatory compatibility, and establish specific commitments on biotechnologies.

Celeste Drake, AFL-CIO trade and globalization policy specialist, quickly tweeted that the negotiating objectives “look a lot like” the former Transatlantic Trade and Investment Partnership (TTIP) and Trans-Pacific Partnership (TPP), despite the EU’s insistence this will be a narrow trade agreement. Drake also welcomed the exclusion of investor-state dispute settlement (ISDS).

## U.S., EU, Japan Tackle Unfair Trade Practices

In their fifth meeting since launching the trilateral effort in 2017, the U.S., EU and Japanese trade and economy ministers Jan. 9 focused on writing new rules and sharing anxiety over “non-market policies and practices, market-oriented conditions, industrial subsidies and state-owned enterprises, forced technology transfer policies and practices, WTO reform and digital trade and e-commerce,” according to a joint statement.

On WTO reform, “the three partners submitted a joint transparency and notification proposal to the Council for Trade in Goods last November with other co-sponsors, and the Ministers agreed to intensify engagement with other trading partners to advance this proposal,” the joint statement noted. The three ministers last met at the UN General Assembly in September (see **WTTL**, Oct. 1, page 5).

In another nod to China, the ministers “reiterated their call on advanced WTO Members claiming developing country status to undertake full commitments in ongoing and future WTO negotiations,” they said. On forced technology transfers, they “confirmed their agreement to cooperate on enforcement, on the development of new rules, on investment review for national security purposes and on export controls and further take stock of this cooperation by spring.”

### \* \* \* Briefs \* \* \*

**WTO:** At special Dispute Settlement Body (DSB) meeting Jan. 11, Turkey blocked first U.S. request for dispute panel over retaliatory duties on certain U.S. imports in response to U.S. duties on steel and aluminum imports. This would be sixth panel over such duties, following requests by Canada, China, European Union (EU), Mexico and Russia (see **WTTL**, Jan. 7, page 8). “Just as these members appear ready to undermine the dispute settlement system by throwing out the plain meaning of Article XXI and 70 years of practice, so too are they ready to undermine the WTO by pretending to follow WTO rules while taking measures blatantly against those rules,” U.S. said in statement at DSB meeting.

**TRADE PEOPLE:** Tim Brightbill, partner at Wiley Rein LLP, was named executive committee chairman of Committee to Support U.S. Trade Laws (CSUSTL) Jan. 10, replacing Roger Schagrin, president of Schagrin Associates. Brightbill testified in July on behalf of SolarWorld Americas in defense of administration’s Section 301 action (see **WTTL**, July 30, page 7).

RUSSIA: House Ways & Means Committee Chairman Richard Neal (D-Mass.) Jan. 10 requested Treasury delay implementation of move to lift sanctions on companies owned by Russian oligarch Oleg Deripaska (see **WTTL**, Jan. 7, page 4). Neal asked to delay effective date “by 28 days following the end of the current shutdown and the reopening of the government.” Treasury Secretary Steven Mnuchin gave classified briefing to House members earlier same day. “Your notification to Congress was delivered just prior to an adjournment for an extended recess and during which time a government shutdown ensued,” Neal wrote in letter to Mnuchin. Seven House committee chairs, including Neal, requested both briefing and delay in letter to Mnuchin two days earlier.

EXPORT ENFORCEMENT: Rawnd Khaleel Aldalawi of Seattle was sentenced Jan. 11 in Seattle U.S. District Court to 12 months and one day in prison for scheme to smuggle dozens of firearms to Turkey and Iraq without licenses between October 2016 and November 2017. Aldalawi pleaded guilty in September to conspiracy to violate Arms Export Control Act (see **WTTL**, Sept. 17, page 6). Federal jury indicted Aldalawi and Paul Stuart Brunt of Bellevue, Wash., in January 2018. After arrest, Brunt was released on bond. He pleaded guilty in July; sentencing is set for March 1.

NO VACANCY: Commerce Assistant Secretary for Industry and Analysis Nazak Nikakhtar is moving to BIS as acting under secretary, filling long-vacant seat, and will eventually be nominated to post, sources tell **WTTL**. BIS officials would not confirm whether she has started, citing government shutdown. Nikakhtar, who has little to no export control experience and is widely perceived to be anti-China, joined ITA in April after Senate confirmation in voice vote. She previously represented Catfish Farmers of America in antidumping duty case.

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