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## Trump Nominates Nikakhtar to Be BIS Under Secretary

As previously rumored, the president April 11 formally nominated Commerce Assistant Secretary for Industry and Analysis Nazak Nikakhtar to be Bureau of Industry and Security (BIS) under secretary, filling a seat that had been vacant for almost a year. While no previous announcement was made, her name was added to a BIS organizational chart in February.

Nikakhtar, who has little export control experience and is widely perceived to be anti-China, joined the International Trade Administration (ITA) in April 2018 after Senate confirmation voice vote. She previously represented the Catfish Farmers of America in its long-standing antidumping duty case while at Cassidy Levy Kent LLP law firm.

WTTT reported on her nomination in January (see **WTTT**, Jan. 14, page 6). Nikakhtar previously served at BIS as an industry analyst, where she “performed key statistical analyses for the U.S. government’s first official survey of the U.S. biotechnology industry,” according to her Commerce bio.

In April 2018, former BIS Under Secretary Mira Ricardel was named to the National Security Council (NSC) senior staff as deputy national security advisor and served until November. Prior to BIS, Ricardel, a member of the Trump defense transition team, served as a special assistant to the president and associate director for presidential personnel.

## Standard Chartered Pays \$1.1 Billion More for Sanctions Violations

Some people pay a high price to learn. Under a global settlement with federal, state, local and United Kingdom (UK) government partners, UK-based Standard Chartered Bank (SCB) agreed April 9 to pay a combined \$1.1 billion for violations of Burmese, Cuban,

Iranian, Sudanese and Syrian sanctions. The bank previously agreed to forfeit \$227 million as part of a deferred prosecution agreement (DPA) with Justice and N.Y. County in December 2012.

From June 2009 until June 2014, SCB processed 9,335 transactions totaling more than \$437 million to or through U.S. financial institutions, including \$240 million for the benefit of Iranian entities. The bank did not voluntarily self-disclose these violations.

The settlement includes paying \$639 million to Treasury's Office of Foreign Assets Control (OFAC), as well as forfeiture of \$240 million, a fine of \$480 million, and the amendment and extension of its DPA with Justice for an additional two years for conspiring to violate the International Emergency Economic Powers Act (IEEPA). Separately, SCB agreed to pay \$18 million to settle OFAC charges of violating Zimbabwe sanctions, which SCB voluntarily self-disclosed.

Citing new information about recent sanctions violations and less-than-perfect compliance with a previous settlement, Justice in December 2014 extended a previous two-year DPA with SCB for three more years, requiring it to retain an independent compliance monitor who will "help to ensure SCB's implementation of an effective U.S. economic sanctions compliance program," the order said (see **WTTL**, Dec. 14, 2014, page 9).

In connection with the conspiracy, a former SCB employee in Dubai, United Arab Emirates (UAE), pleaded guilty in the District of Columbia for conspiring to defraud the U.S. and to violate IEEPA. A two-count criminal indictment was unsealed the same day in D.C. U.S. District Court charging Iranian national Mahmoud Reza Elyassi, a former customer of SCB Dubai, with participating in the conspiracy.

"Elyassi and certain of his co-conspirators used these UAE general trading companies as fronts for Company C-3, a money exchange business located in Mashhad, Iran, in order to provide services to Iranian individuals and companies seeking to conduct U.S. dollar transactions through the United States in violation of U.S. economic sanctions," the indictment said.

"We are pleased to have resolved these matters and to put these historical issues behind us. The circumstances that led to today's resolutions are completely unacceptable and not representative of the Standard Chartered I am proud to lead today," SCB Group Chief Executive Bill Winters said in a statement. "Fighting financial crime is central to what we do and who we are; we do not tolerate misconduct or lax controls and we will continue to root out any issues that threaten the trust we have built over more than 160 years," he added.

## **Univar Pays \$62.5 Million for Circumvention of Antidumping Order**

Univar USA Inc. agreed April 9 to pay \$62.5 million to settle allegations the firm acted with gross negligence and "reckless disregard for the truth when it misrepresented the

country of origin” on Customs and Border Protection (CBP) documents for saccharin imported purportedly from Taiwan. The alleged circumvention of the antidumping order on saccharin from China led Justice to file suit in the Court of International Trade (CIT) in August 2015, seeking more than \$83.9 million in lost duties and penalties from Univar (see **WTTL**, Sept. 14, 2015, page 5).

Univar imported 36 shipments of transshipped saccharin between 2007 and 2012. The saccharin was manufactured in China and transshipped through Taiwan to evade a 329% antidumping duty on saccharin from China, resulting in the evasion of approximately \$36 million in duties.

“The Company does not admit any liability and the DOJ will dismiss the complaint in its entirety,” Univar said in a statement. The company is a “leading global chemical and ingredient distributor and provider of value-added services,” according to its website.

In a ruling March 26, CIT Judge Mark A. Barnett noted that the matter had been scheduled for a jury trial to begin April 1. “The parties have completed discovery, [and] the court has ruled on two motions for partial summary judgment and a motion for summary judgment,” he wrote in *U.S. vs. Univar USA Inc.* “Having considered the parties’ memoranda and arguments, and after due deliberation, the court finds that the determination of civil penalties pursuant to 19 U.S.C. § 1592 is not triable by jury,” Barnett added.

## **UK Firm Settles OFAC Cuba, Iran Sanctions Charges**

In yet another case that highlights the importance of ensuring subsidiaries are complying with sanctions obligations, UK-based subsea service provider Acteon Group and its subsidiary 2H Offshore Engineering agreed April 11 to pay Treasury’s Office of Foreign Assets Control (OFAC) \$227,500 to settle seven charges of violating U.S. Cuba sanctions (CACR). Separately, global investment firm KKR Inc., Acteon and its subsidiary Seatronics agreed to pay OFAC \$213,866 to settle 13 additional CACR violations and three violations of Iran sanctions.

Specifically, between May 2011 and October 2012, Malaysian affiliate 2H KL “performed engineering design analyses for oil well drilling projects in Cuban territorial waters, and sent its engineers to Cuba to conduct workshops on these analyses,” the agency noted. 2H Offshore voluntarily self-disclosed the apparent violations.

Between August 2010 and March 2012, Seatronics rented or sold equipment for oil exploration projects in Cuban territorial waters, and sent company engineers to service equipment on vessels operating in Cuban territorial waters. In addition, between September and November 2014, Seatronics’ Abu Dhabi, UAE branch “rented or sold equipment to customers who appear to have embarked the equipment on vessels that operated in Iranian territorial waters,” OFAC noted. Acteon voluntarily self-disclosed the apparent violations.

“In October 2007, Acteon issued sanctions compliance guidance to all of its Seatronics locations that instructed them not to engage in transactions with Cuba, even indirectly through third countries,” OFAC noted. Separately, in December 2013, Acteon “issued updated sanctions compliance guidance to all Seatronics locations that instructed them not to engage in transactions with Iran, even indirectly through third parties,” it added.

“On discovering the violations, Acteon terminated the conduct and took swift remedial action. Acteon has since enhanced its compliance procedures, in order to further improve governance, oversight and internal controls. The voluntary nature of the disclosure and these corrective steps were recognized as mitigations by OFAC,” an Acteon spokesperson wrote via email to WTTL.

## WTO Panel Rules on “Zeroing” in Lumber Dispute

Giving the U.S. Trade Representative (USTR) another example of Appellate Body overreach, a WTO dispute panel on softwood lumber April 9 upheld one of Canada's complaints against U.S. practices in antidumping investigations while dismissing, or declining to rule on, additional claims.

In April 2018, Canada requested and was granted two WTO panels to examine Commerce’s application of the so-called Differential Pricing Methodology (DPM) in U.S. countervailing and antidumping duties on softwood lumber imports (see **WTTL**, April 16, 2018, page 3).

The panel found in applying the DPM in the underlying investigation, the U.S. acted inconsistently with its WTO obligations by aggregating differences in export prices across unrelated categories, i.e. purchasers, regions and time periods, to identify a single pattern of export prices that differed significantly among different purchasers, regions and time periods.

In contrast, the panel rejected another of Canada’s claim, “finding that the relevant pattern could include export price to purchasers, regions or time periods ‘which differ significantly’ because they are significantly higher (and not just significantly lower) relative to export prices to other purchasers, regions or time periods,” the WTO said.

USTR applauded the mixed ruling. “For the fifth time overall, and the first time in relation to the specific ‘differential pricing’ methodology at issue in this dispute, a WTO panel has disagreed with the Appellate Body and found that WTO rules do not prohibit zeroing,” the agency said in a statement. The U.S. “never agreed to any such rule in the WTO negotiations, and never would. WTO Appellate Body reports to the contrary are wrong, and reflect overreaching by that body,” USTR Robert Lighthizer noted.

Sen. Jon Tester (D-Mont.) agreed. “This is a win for good-paying jobs in rural Montana,” Tester said in a statement. “We need to continue to hold trading partners accountable when they intentionally undermine Montana businesses,” he added.

## USTR Targets EU Products in Aircraft Dispute

In response to previous WTO rulings on European Union (EU) subsidies to Airbus, the USTR April 8 proposed a list of \$21 billion worth of EU products to “which additional duties may be applied until the EU removes those subsidies.”

The WTO Appellate Body (AB) confirmed March 28 that the U.S. has continued to provide subsidies to Boeing through tax concessions despite previous rulings in the long-standing dispute (see **WTTL**, April 1, page 6). In May 2018, the AB confirmed that the EU and four of its member states failed to comply with an earlier ruling by maintaining illegal subsidies for Airbus.

“This case has been in litigation for 14 years, and the time has come for action. The administration is preparing to respond immediately when the WTO issues its finding on the value of U.S. countermeasures,” said USTR Robert Lighthizer. “When the EU ends these harmful subsidies, the additional U.S. duties imposed in response can be lifted,” he added.

The proposed list of 317 tariff subheadings includes cheese, citrus fruits, seafood, olive oil, jams, chocolate milk, sparkling wine, handbags, wooden tools, lithographs, yarn, carpets, men’s suits, kitchenware, thumb tacks, screwdrivers and binoculars imported from any of 28 EU member countries.

In addition, USTR identified 9 Harmonized Tariff Schedule statistical reporting numbers that would be considered for additional duties if imported from Germany, France, the United Kingdom (UK) or Spain. These include types of new helicopters, non-military passenger and cargo transports, and fuselages and fuselage sections, predominantly aluminum wings and wing assemblies, and horizontal and vertical stabilizers for use in new civil airplanes.

USTR said it estimates the annual harm from the EU subsidies as \$11 billion in trade. “The final list of products subject to increased duties will take into account the report of the Arbitrator on the appropriate level of countermeasures to be authorized by the WTO,” the agency noted. USTR “anticipates that the WTO Arbitrator will issue its report regarding the level of countermeasures in the summer of 2019,” it added.

“The figure of \$11.2 [billion] presented by the USTR is greatly exaggerated & based on U.S. estimates, not awarded by the WTO. In the parallel Boeing dispute, EU will request the WTO-appointed arbitrator to determine our retaliation rights,” European Commission VP Valdis Dombrovskis tweeted April 12.

As part of the investigation, USTR invited public comments on the proposed action, including: the specific products to be subject to increased duties, including whether products listed in the Annex should be retained or removed, or whether products not currently on the list should be added; the level of the increase, if any, in the rate of duty;

the appropriate aggregate level of trade to be covered by additional duties; and whether increased duties on particular products might have an adverse effect upon U.S. stakeholders, including small businesses and consumers.

## Impulse for WTO Subsidies Reform Building

Decisions from recent World Trade Organization (WTO) disputes over claims of subsidies, safeguards and national security carve-outs are shaping reform initiatives expected to up the ante on notification and further hem in practices, trade experts suggested April 10 during an annual assessment of WTO dispute settlement in Geneva.

This year officials and academics turned away from the looming uncertainty in the WTO Appellate Body, and the crush of disputes, instead focusing on the changes in case law delivered by the dispute settlement process. For example, subsidy notification failures may in the future be used to undermine a country's full participation in the multilateral trade body.

Trade experts raised questions about recent, current and ongoing WTO disputes and appeals, namely steel and aluminum, taxation and charging, and aircraft subsidies. One open question is whether the U.S. steel duty will be considered a safeguard or a national security measure, or both, moderator Joost Pauwelyn, an international law professor at the Graduate Institute, said. Speakers were skeptical that steel duties are considered safeguards, he said.

Quentin Baird, a WTO Rules official, said reform proposals related to subsidies are appearing in other avenues. A proposal by the Central African Republic and a group of least developed countries (LDCs) to the WTO General Council addressed a concern from countries graduating up from the United Nations (UN)-classified LDC status, he said. The proposal deals with a WTO provision that lists countries not subject to the export subsidy prohibition, said Baird, who described the preference as "significant." The provision also addresses knock-on effects for special and differential treatment, he added.

Baird described a U.S. proposal in the WTO General Council that would define self-designation for developing country status based on four objective criteria: OECD membership; G-20 participation; World Bank high-income classification; and more than 0.5% of global trade measured by imports and exports.

The proposal would affect the operation of the WTO Subsidies Agreement, especially Article 27, which includes a list of special and differential treatment circumstances. If a developing country is no longer considered a developing country, then application of rules would differ, Baird noted.

Trade ministers from the EU, Japan and the U.S. in January foreshadowed a proposal on transparency in the WTO General Council that also suggests changes to the operation of the WTO Subsidies Agreement, Baird said (see **WTTL**, Jan. 14, page 5). That proposal

may be more closely tied to issues in recent WTO disputes, he said. Trade experts also addressed vacancies in the WTO Appellate Body (AB). The AB will be unable to review new appeals after Dec. 10 unless the vacant seats are filled, said current AB Chair Hong Zhao. The dispute settlement system could revert back to the GATT-era practice of adopting panel reports only with endorsement from both parties, and the appeals process may be suspended indefinitely, she said.

Last year was one of “the most challenging years” for the WTO Dispute Settlement Body (DSB), Thailand’s WTO Ambassador Sunanta Kangvalkulkij, the outgoing DSB chair said. Work in the DSB rose “significantly” last year, she said. Requests for consultations rose 44%, and the number of new dispute panels rose 69% over 2017, she said.

Disputes on steel and aluminum and additional duties prompted “at least 15 panels,” she said. Developed countries in 2018 accounted for 68% of complainants and 72% of respondents, she said. The average number of third-party countries to a dispute has risen to 18, a 33% rise over 2017, she said.

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

UNVERIFIED LIST: In April 11 Federal Register BIS added 50 entities in China, Hong Kong, United Arab Emirates (UAE), Malaysia and Indonesia to its Unverified List (UVL). At same time, BIS removed 10 entities in China, Finland, Russia and UAE from list. Rule also added additional address for current UVL in Hong Kong: Ling Ao Electronic Technology Co., Ltd.

WTO: At special meeting April 11, WTO Dispute Settlement Body (DSB) agreed to appointment of New Zealand’s WTO Ambassador David Walker to succeed Thailand’s Ambassador Sunanta Kangvalkulkij as DSB chair for next year. Sunanta, who became chair of WTO General Council in February, expressed her disappointment that WTO members were not able to resolve impasse over appointment of new Appellate Body members. Former General Council Chair Junichi Ihara in January appointed Walker to assist him in working out WTO members’ differences over organization’s Appellate Body (see **WTTL**, Jan. 21, page 5).

RUBBER BANDS: In 5-0 final vote April 9, ITC found U.S. industry is materially injured by dumped imports of rubber bands from Thailand.

WIND TOWERS: In “sunset” votes April 9, ITC said revoking antidumping and countervailing duty orders on imports of utility scale wind towers from China and Vietnam would renew injury to U.S. industry. Vote for China was 4-0; Vietnam was 3-1. Chairman David Johanson voted no. Commissioner Meredith Broadbent did not vote in these reviews.

PLIERS: CAFC April 9 affirmed CIT ruling that imported hand tools are properly classified as pliers in *Irwin Industrial Tool Company v. U.S.* “The government does not dispute that Irwin’s tools are properly classified as pliers under the Trade Court’s definitions, which we have adopted here. We therefore need not discuss in detail the nature of Irwin’s tools and analyze whether the tools fit into those definitions,” Circuit Judge Alan Lourie wrote for three-judge panel.

TILE: Coalition for Fair Trade in Ceramic Tile filed countervailing and antidumping petitions April 10 with ITA and ITC against ceramic tile from China.

SODIUM SULFATE: Cooper Natural Resources, Elementis Global LLC and Searles Valley Minerals filed antidumping petitions March 28 with ITA and ITC against sodium sulfate anhydrous from Canada.

PERU: Citing Peru's move to return independence to nation's forest auditor (OSINFOR) as required under U.S.-Peru trade agreement, USTR April 9 hailed resolution of first consultations under environment chapter of trade deal. Agency requested consultations in January (see **WTTL**, Jan. 7, page 10). "Strong enforcement works. I am committed to using enforcement tools to ensure that our trade agreements protect the environment," USTR Robert Lighthizer said in statement. Sen. Ron Wyden (D-Ore.) applauded Peru's action. "USTR used enforcement tools to convince Peru to restore independence to an important agency tasked with cracking down on illegal logging," senator said in statement.

VENEZUELA: OFAC April 12 designated one Italian and three Liberian companies operating in Venezuela's oil sector and identified nine vessels, some of which transported oil from Venezuela to Cuba, as blocked property owned by those four companies. Week prior, OFAC designated two Liberian and Greek shipping companies, tanker and 34 vessels (see **WTTL**, April 8, page 5).

EXPORT ENFORCEMENT: Thai national Apichart Srivaranon was sentenced April 12 in D.C. U.S. District Court to 26 months in prison for exporting USML firearm parts to Thailand with State licenses between 2012 and 2014. Day before, he received same sentence in Greenbelt, Md., U.S. District Court. Sentences will run concurrently. He pleaded guilty in both courts. Srivaranon was arrested in Las Vegas in January 2018 and has been in custody since his arrest. According to Justice sentencing memo, he and others would repackage parts; falsely label USPS and Customs forms by using fake names for return addresses; falsely declare contents of packages and understate their value; then ship parts to Thailand via USPS and private shipping companies.

USMCA: In letter to USTR April 11, House Ways & Means Committee Chairman Richard Neal (D-Ma.) and 25 committee Democrats raised concerns with labor provisions in U.S.-Mexico-Canada Agreement (USMCA). "We question whether there is reason to believe that the new Agreement will lead to meaningful change and real improvements for labor standards in Mexico. Our questions relate to both the specifics of the language of the new labor provisions and their enforceability in particular," they wrote. AFL-CIO President Richard Trumka repeated union's opposition to current deal in speech week earlier (see **WTTL**, April 8, page 2).

INDIA: Rep. Joe Wilson (R-S.C.) and five cosponsors April 8 introduced bipartisan bill to "provide for United States actions to advance the United States-India strategic relationship" (H.R. 2123). Wilson previously introduced similar U.S.-India Enhanced Cooperation Act of 2018 that would require "an assessment of the defense export control regulations and policies that need appropriate modification, in recognition of India's capabilities and its status as a major defense partner."

IRAN: In first designation of government entity, State April 8 designated Islamic Revolutionary Guard Corps (IRGC) as foreign terrorist organization. "We're taking an entirely new approach to this ...significant sort of sustained maximum economic pressure to deny the IRGC and the Iranian regime of the revenue that it needs to conduct its foreign policy," Brian Hook, Special Representative for Iran, said in press briefing. "We're adding a layer of additional sanctions on the IRGC to make radioactive those sectors of Iran's economy that are influenced or controlled by the IRGC," he added. OFAC most recently designated IRGC for its activities in support of the IRGC-Qods Force in October 2017 (see **WTTL**, Oct. 16, 2017, page 1).