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## Hirschhorn Pushes for BIS Resources to Match Workload

At a Senate Banking Committee hearing on emerging technology July 18, former Bureau of Industry and Security (BIS) Under Secretary Eric Hirschhorn urged Congress to give the agency more resources and to avoid using export controls as leverage in trade talks. Committee members denounced the absence of current administration officials to respond to their questions.

Current BIS officials recently highlighted the increase in the agency's workload, due to Section 232 investigations and product exclusions and the usual work of processing and approving export licenses (see **WTTL**, July 15, page 3). In addition, the agency has been tapped to implement the president's recent executive order (EO) on telecom and information security and will be consulted in a growing number of Committee on Foreign Investment in the U.S. (CFIUS) reviews.

In response to Sen. Sherrod Brown (D-Ohio) on whether BIS has adequate resources, Hirschhorn said, "No, it does not." During his time at the agency, the former official had to "beg, borrow and steal resources wherever I could get them," he said. "It's a continuing challenge," Hirschhorn added. He estimated the current budget to be around \$114 million and "probably should be at least \$130 million, maybe more."

Hirschhorn also addressed the current administration's tendency to use national security as levers in ongoing trade talks. "As a general matter, I don't think it's a sound policy to treat export controls—which are imposed for military security and foreign policy reasons—as an element of our commercial trade policy, to be bargained over along with sales of beef, chicken, soybeans, and the like. And it's even worse to treat the *enforcement* of export controls in that manner," Hirschhorn said in his opening statement.

## President Punts Decision on Section 232 Finding on Uranium

Like the auto report before it, the administration July 12 tried to have it both ways with its response to the Section 232 report on uranium imports. While Commerce reported that

dependence on imports threaten national security, the president said he disagreed with the findings, but created a new nuclear fuel working group to study the issue.

“The Secretary found and advised me of his opinion that uranium is being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States as defined under section 232 of the Act,” the White House memo said. Commerce submitted the final report to the president in April; neither the uranium nor the auto report has been made public.

Currently, the U.S. imports approximately 93% of its commercial uranium, compared to 85.8% in 2009. “The Secretary found that this figure is because of increased production by foreign state-owned enterprises, which have distorted global prices and made it more difficult for domestic mines to compete,” the memo added.

Commerce Secretary Wilbur Ross launched the investigation in July. Energy Fuels Inc. and Ur-Energy Inc. jointly petitioned Commerce in January 2018, claiming that imports of uranium from state-owned enterprises in Russia, Kazakhstan and Uzbekistan now fulfill nearly 40% of U.S. demand. The investigation drew comments from hundreds of individual environmentalists and the hospitality industry, in addition to the expected domestic mining trade associations (see **WTTL**, Oct. 15, 2018, page 1).

“Although I agree that the Secretary’s findings raise significant concerns regarding the impact of uranium imports on the national security with respect to domestic mining, I find that a fuller analysis of national security considerations with respect to the entire nuclear fuel supply chain is necessary at this time,” the president said. The working group has 90 days to report to the president and make “recommendations to further enable domestic nuclear fuel production if needed.”

The two petitioners commended the president “for recognizing the significant challenges facing the American uranium mining industry,” Energy Fuels Inc. and Ur-Energy Inc. said in a joint statement. “Our two companies will stand ready to support the working group as it conducts its study,” they added.

Canadian Foreign Affairs Minister Chrystia Freeland also welcomed the decision not to impose tariffs, but for different reasons. “Canadian uranium is not a threat to the national security of the United States,” she said. “Canada is a stable and reliable supplier of uranium for American civilian nuclear power reactors. Our two countries need to work together to ensure we have reliable supplies of critical minerals, including uranium,” Freeland added. Canadian Prime Minister Trudeau raised the issue with the U.S. president during a meeting in June, she noted.

## **WTO Appellate Body Upholds Mixed Ruling on Countervailing Duties**

The World Trade Organization (WTO) Appellate Body July 16 upheld a dispute panel’s ruling regarding U.S. compliance with an earlier WTO ruling on countervailing duties

levied on certain Chinese goods. In a mixed ruling on a mixed ruling, the report contains a separate dissenting opinion from one of the three AB members on the appeal.

In upholding the compliance panel report in its entirety, the Appellate Body ruled that the Commerce's "public body" determination in the CV investigations was not inconsistent with WTO's Agreement on Subsidies and Countervailing Measures (SCM Agreement). It also ruled that Commerce's benefit and specificity determinations were inconsistent with the SCM Agreement, respectively.

The U.S. and China received the mixed results in March 2018 (see **WTTL**, March 26, 2018, page 4). China originally requested consultations with the U.S. in May 2016; both sides appealed the dispute panel's findings.

The dissenting member agreed with the majority's views with regards to upholding the compliance panel's conclusions on "public bodies," but disagreed with the majority's criteria for determining whether an entity is a public body. The member also disagreed with both the majority's decision to uphold the compliance panel's findings on Commerce's benefit analysis and the majority's finding on specificity under the SCM Agreement.

As expected, the U.S. Trade Representative's (USTR) office, which has blocked the filling of AB vacancies for what seems like years, criticized the AB ruling. The U.S. "has proved that China uses state-owned enterprises (SOEs) to subsidize and distort its economy. Nonetheless, the majority in the report says that the United States must use distorted Chinese prices to measure subsidies, unless the U.S. provides even more analysis than the hundreds of pages in these investigations," it said.

The report also illustrates U.S. concerns about the Appellate Body's functioning, including "adding to WTO Member obligations and diminishing their rights, exceeding the mandatory 90-day deadline for reports, permitting individuals to continue to serve on appeals past the end of their terms, engaging in fact-finding on appeal, and treating prior reports as precedent," the agency noted.

## **Industry, Lawmakers Press for USMCA Passage**

As the summer progresses, industry and pro-trade lawmakers are getting hot under the collar for Congress to pass the updated new U.S.-Mexico-Canada (USMCA) trade agreement as promised, ignoring other lawmakers and think tanks concerns.

The Mexican Senate approved the deal in a 114-4 vote in June, a month after the U.S. administration's formal notification to Congress (see **WTTL**, June 24, page 2). Vice President Mike Pence previously said the administration was working with members of Congress to "pass the USMCA this summer."

Sen. Chuck Grassley (R-Iowa) took the case to the Senate floor July 16. "This successor trade agreement to NAFTA will allow for more market access for agriculture, new

commitments in critical areas such as customs, digital trade, intellectual property, labor, environment, currency and the lowering of non-tariff barriers will translate into higher wages, greater productivity and more jobs.”

Grassley acknowledged Democrats’ concerns over the deal, particularly on enforcement of labor and environment provisions. “I’m looking forward to hearing concrete suggestions from House Democrats sometime soon. I’m glad Speaker Pelosi has formed working groups to work with [USTR] Lighthizer to address Democrats’ concerns and that these meetings are underway. Any additions to USMCA that can improve outcomes for American workers, I’m happy to consider,” he said.

Members of National Association of Manufacturers (NAM), including General Motors Chairman and CEO Mary Barra, met with Pence July 15 and lawmakers two days later to press their case. “The certainty that comes from having USMCA in place will allow us to continue to invest in manufacturing in the United States with confidence,” Barra said in a statement.

Other groups argued for changes to the deal, but agreed there should be faster action. “The [USMCA] requires more than cosmetic changes. It’s time for Congress to set that process in motion,” the Peterson Institute tweeted July 19. “Overall, the [deal] would increase uncertainty for traders and investors alike and have a negative impact on growth. Congress should call the president’s bluff and just say no to the deal,” it posted on Twitter two days earlier.

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

**EXPORT ENFORCEMENT:** Iranian national Behzad Pourghannad was extradited and appeared in White Plains, N.Y., U.S. District Court July 16 on charges of exporting carbon fiber to Iran between 2008 and July 2013 without OFAC licenses. Pourghannad was arrested in Germany in May 2017. Co-defendants Ali Reza Shokri and Farzin Faridmanesh are still at large. Three-count indictment was first filed in July 2013 and unsealed day before appearance in court. Carbon fiber is controlled under ECCN 1C010 or 1C210 (after 2010) and can be used in gas centrifuges for uranium enrichment, indictment noted.

**IRAN:** OFAC July 18 designated procurement network of seven entities and five individuals in Iran, China and Belgium acting as front companies and agents for Iran Centrifuge Technology Company (TESA). Treasury sanctioned TESA in November 2011. Network sought items controlled by Nuclear Suppliers Group (NSG), including Chinese-origin aluminum goods, agency noted.

**VENEZUELA:** OFAC July 19 designated four officials of Venezuela’s General Directorate of Military Counterintelligence (DGCIM), including deputy director, current and former directors of investigations and head of DGCIM’s special affairs unit. OFAC designated DGCIM July 11 for operating in country’s defense and security sector (see **WTTL**, July 15, page 6).

**STAPLES:** In 4-0 preliminary vote July 19, ITC found U.S. industry may be injured by allegedly dumped and subsidized imports of collated steel staples from China. Commission further found that imports from Korea and Taiwan are negligible. Commissioner Jason Kearns did not participate in these investigations.

**CYLINDERS:** In 4-0 final vote July 17, ITC found U.S. industry is materially injured by dumped imports of steel propane cylinders from China and Thailand and subsidized imports from China. Commissioner Meredith Broadbent did not participate in these investigations.

**NAME CHANGE:** DDTC Office of Defense Trade Controls Compliance (DTCC) Registration division's name changed to Registration Compliance & Analysis (RCA) division, DDTC announced on website July 15. "There is no change to Registration organization structure," agency said.

**JOIN THE CLUB:** Day after leaving government service, former DDTC Chief of Staff Anthony (Tony) Dearth July 13 hung out shingle of private consulting firm in Phoenix. Services include export control risk management, U.S. government coordination and executive leadership mentoring, according to new website. No word yet on replacement. Dearth announced his departure from government service in April (see **WTTL**, April 29, page 6). Contact him at [www.dearthconsulting.org](http://www.dearthconsulting.org).

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