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BIS Hopes for Emerging, Foundational Rules by Year End

In case you were putting off major surgery, the Bureau of Industry and Security (BIS) is aiming to publish proposed rules on emerging technologies and an advanced notice of proposed rulemaking (ANPRM) on foundational technologies “before the end of the calendar year,” Karen Nies-Vogel, director of the BIS Office of Exporter Services, told the agency’s Regulations and Procedures Technical Advisory Committee (RAPTAC) Sept. 17.

At the BIS annual conference in July, Assistant Secretary Richard Ashooh said the proposed rules would be issued in “weeks, but not months” (see **WTTL**, July 15, page 5). At the same time, the agency was hoping to issue the ANPRM “very soon,” former Acting Under Secretary Nazak Nikakhtar told the attendees.

Nies-Vogel explained that potential proposed rules on emerging technologies could follow two different tracks: one, adding new technologies to the existing “holding” Export Control Classification Number (ECCN) 0Y521 as a stopgap measure, the other via the traditional rulemaking process, either by creating new ECCNs or adding new items to existing controls.

The agency is also planning on multiple rules, rather than a single rule that would encompass any potential controls. We’re “looking at separate technologies,” Hillary Hess, director of BIS regulatory policy division, told RAPTAC. The goal is for “specific control text that you could propose to a multilateral body,” she noted.

Treasury Proposes Expanded CFIUS Reviews

That didn’t take long. Just days after the Senate confirmed the Treasury official responsible for the day-to-day operation of the Committee on Foreign Investment in the U.S. (CFIUS), Treasury Sept. 17 proposed revised regulations to expand the scope and juris-

diction of CFIUS reviews as authorized by the 2018 Foreign Investment Risk Review Modernization Act (FIRRMA). The Senate Sept. 12 confirmed in an 85-1 vote Thomas Peter Feddo to be assistant Treasury secretary for investment security. At the time, law firm Wiley Rein said it expected that one of Feddo's first official acts will be to publish the revised regulations "within days" (see **WTTL**, Sept. 16, page 7).

Comments on the proposed rules are due Oct. 17. As required by FIRRMA, a final rule will take effect no later than Feb. 13, 2020. Treasury published the proposed regulations in two parts: provisions pertaining to certain investments in the U.S. by foreign persons and those pertaining to certain transactions by foreign persons involving real estate in the U.S. Both rules will be published in the Federal Register Sept. 24.

The first rule would "implement the changes that FIRRMA made to CFIUS's jurisdiction and process with respect to transactions that could result in foreign control of any U.S. business, as well as certain non-controlling "other investments" that afford a foreign person certain access, rights, or involvement in certain types of U.S. businesses," Treasury said in a Frequently Asked Question (FAQ).

While many of the provisions were expected, some observers are very unhappy with changes to the threshold of voting interest held by a foreign person that determines "substantial interest" and dictates mandatory declaration under the rules. That threshold was set as a 10% baseline under the law, but was changed to 25% for U.S. businesses in the proposed rules. "It's driving me nuts," one source told **WTTL**.

The proposed rules do not affect an ongoing pilot program launched in October 2018 to review certain transactions involving foreign persons and critical technologies, one FAQ noted (see **WTTL**, Oct. 15, 2018, page 1). "CFIUS continues to evaluate the pilot program on critical technologies, and the Department of the Treasury welcomes comments on the retention of the mandatory declarations for certain transactions involving critical technologies," it added.

OFAC Designates Iranian Company, Sovereign Wealth Fund

Responding to the recent attack on Saudi oil facilities, Treasury's Office of Foreign Assets Control (OFAC) Sept. 20 designated the National Development Fund of Iran (NDF) and Etemad Tejarate Pars Co., as well as adding sanctions to the Central Bank of Iran (CBI). How much effect this will have on an already blocked country remains to be seen.

Iran-based company Etemad Tejarate Pars is used to conceal financial transfers for Ministry of Defense and Armed Forces Logistics (MODAFL) military purchases, including funds originating from the NDF, OFAC said. "During 2018 and early 2019, the CBI facilitated the transfer of hundreds of millions to both the Atomic Energy Organization and MODAFL from the NDF. Some of the funds to be transferred via Iran-based Etemad Tejarate Pars Co. were intended to be used for military purchases," it added.

OFAC designated CBI in November 2018 as part of the “snap back” of nuclear-related sanctions against Iran that were lifted under the Joint Comprehensive Plan of Action (JCPOA) (see **WTTL**, Nov. 12, 2018, page 4).

“Treasury’s action targets a crucial funding mechanism that the Iranian regime uses to support its terrorist network, including the Qods Force, Hizballah, and other militants that spread terror and destabilize the region. The United States will continue its maximum pressure campaign against Iran’s repressive regime, which attempts to achieve its revolutionary agenda through regional aggression while squandering the country’s oil proceeds,” said Treasury Secretary Steven Mnuchin.

The president tweeted two days earlier: “I have just instructed the Secretary of the Treasury to substantially increase Sanctions on the country of Iran!” Thus began the waiting game as observers looked for official word from the administration.

Secretary of State Mike Pompeo explained the then-forthcoming sanctions in remarks to reporters Sept. 19. “We have set about a course of action to deny Iran the capacity and the wealth so that they can conduct their terrorist – to prevent them from conducting their terror campaigns. And you can see from the events of last week there’s still more work to do. We’re going to continue to drive towards that end,” he said.

Commerce, Mexican Growers Sign Tomato Deal

No ketchup was spilled as Commerce and Mexican tomato growers Sept. 19 signed a deal to suspend the ongoing antidumping duty (AD) investigation of fresh tomatoes from Mexico. Commerce announced the new draft agreement in August (see **WTTL**, Sept. 2, page 4).

Under the deal, the U.S. will set new inspection mechanisms and reference prices. Specifically, Commerce can audit up to 80 Mexican tomato producers per quarter, or “more with good cause,” it said. In addition, the agreement sets the reference prices for various types of tomatoes, with organic tomatoes priced 40% higher than non-organics.

“The Department’s action brought the Mexican growers to the negotiating table and led to a result that protects U.S. tomato producers from unfair trade. It also removes major uncertainties for the Mexican growers and their workers,” Commerce Secretary Wilbur Ross said.

“Considering that we started the negotiations with Commerce with the Florida Tomato Exchange demanding that the reference prices should be extended downstream to the final sale and that U.S. buyers be stripped of legal rights, we believe we have ended up in a much better place,” said Oscar Woltman, president of AMHPAC, Mexico’s largest growers’ association, said in a statement.

Sen. Marco Rubio (R-Fla.) also applauded the deal. “This new agreement includes strong monitoring, enforcement and anti-circumvention provisions to defend American-grown produce and should serve as a model for helping to rebalance agricultural trade with Mexico,” he said in a statement.

Thanks to the deal, the International Trade Commission postponed a hearing on the investigation scheduled for Sept. 24 and all subsequently scheduled dates. “Commerce’s suspension of its investigation is scheduled to take effect on the day on which its notice of such suspension is published. When Commerce’s suspension of the investigation takes effect, the Commission will suspend its related investigation,” it posted on its website.

U.S., South Korea Will Consult over Illegal Fishing

There’s a first time for everything The U.S. Trade Representative (USTR) announced Sept. 19 it will seek the “first-ever” consultations under the environment chapter of the U.S.-Korea Free Trade Agreement (KORUS) after another government agency identified the trading partner for illegal, unreported and unregulated (IUU) fishing.

In its biennial report, the U.S. National Marine Fisheries Service (NMFS) identified South Korea for “failing to apply sufficient sanctions to deter its vessels from engaging in fishing activities that violate conservation and management measures” adopted by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), an international fishery management organization, it said.

Under the KORUS Environment Chapter, Korea is obligated to “adopt, maintain, and implement” measures to fulfill its obligations under CCAMLR, the USTR’s office noted.

While Korea “did take some actions to address these violations, including directing the vessels to return to port and suspending the Distant Water Fisheries License and Seafarers Certification of one of the vessels for 60 days at the end of the season, it did not assess any monetary or other sanctions against the vessel owners or operators, nor was the illegal catch confiscated,” the NMFS report said.

Industry Urges Congressional Oversight on Tariff Authority

At a time when the administration is waging a tariff war with traditional allies, National Foreign Council (NFTC) and 22 other industry groups co-signed a letter Sept. 18 urging leaders of Senate Finance and House Ways and Means committees to “exercise greater oversight and control to ensure that Presidential tariff actions serve our overall national interest.”

Lawmakers have previously introduced bills limiting the president’s tariff authority. At the same time, the European Union is waiting to see if the White House will impose further tariffs in response to World Trade Organization decisions in the Airbus and Boeing subsidy disputes (see **WTTL**, July 8, page 3).

“Given the emergence of tariffs as the single most significant mechanism for restructuring U.S. trade relations and impacting domestic production, we urge both Committees to consider a robust congressional review of this policy shift,” they wrote. “Congress should strongly consider revisions designed to clarify the circumstances in which Executive action is justified under these statutes and to introduce appropriate Congressional review prior to implementation of new tariffs,” the groups added.

With this introductory letter, the 23 groups formed the Tariff Reform Coalition. In addition to the NFTC, other signers include: Association of Global Automakers, Consumer Technology Association, Farmers for Free Trade, National Retail Federation and United States Fashion Industry Association.

*** * * Briefs * * ***

GLYCINE: In 3-0 final vote Sept. 18, ITC found U.S. industry is materially injured by dumped imports of glycine from Thailand. Commissioners Randolph Stayin and Amy Karpel did not participate in vote. Commission in May found injury by dumped imports from India and Japan and subsidized imports from China and India (see **WTTL**, June 3, page 7).

KEGS: In 3-0 final vote Sept. 6, ITC found establishment of U.S. industry is materially retarded by dumped imports of refillable stainless steel kegs from Mexico. Commission also found negative critical circumstances on these imports. Commissioners Randolph Stayin and Amy Karpel did not vote.

FCPA: Former Cognizant Technology Solutions COO Sridhar Thiruvengadam agreed Sept. 13 to pay \$50,000 civil penalty to settle SEC charges of violating Foreign Corrupt Practices Act (FCPA) by participating in scheme to bribe Indian government official. Cognizant agreed in February to pay SEC \$25 million to settle related charges (see **WTTL**, Feb. 18, page 1). At the same time, two other former executives were charged for their roles in scheme.

EXPORT ENFORCEMENT: Oben Cabalceta of Atco, N.J., was sentenced Sept. 17 in Camden U.S. District Court to 42 months in prison for providing non-conforming military equipment parts to DoD and illegally accessing technical information. He also will pay \$1.89 million in restitution. Cabalceta pleaded guilty in April to wire fraud and conspiracy to violate Arms Export Control Act (AECA). His brother-in-law Roger Sobrado was sentenced Sept. 4 in same court to 36 months in prison for related charges (see **WTTL**, Sept. 9, page 7).

VENEZUELA: OFAC Sept. 17 designated three relatives of previously blocked individuals and 16 entities that “have enabled former President Nicolás Maduro and his illegitimate regime to corruptly profit from imports of food aid and distribution in Venezuela.” Agency in July designated Colombian national Alex Nain Saab Moran (Saab) and business partner Alvaro Pulido Vargas (Pulido) (see **WTTL**, July 29, page 6). Latest designation list includes Saab’s two brothers, Amir Luis Saab Moran and Luis Alberto Saab Moran, and Pulido’s son, David Enrique Rubio Gonzalez.

SANCTIONS: British Arab Commercial Bank plc (BACB) in London agreed Sept. 17 to pay OFAC \$4 million to settle 72 charges of violating Sudan sanctions. BACB did not voluntarily self-disclose violations. Between September 2010 and August 2014, BACB processed 72 bulk funding payments totaling \$190.7 million related to Sudan, agency said. “During this time, BACB operated USD

accounts on behalf of at least seven Sudanese financial institutions, including the Central Bank of Sudan. BACB actively solicited USD business from Sudanese banks,” it noted. Rest of \$228 million proposed penalty was suspended. “BACB is pleased finally to put these historical matters to rest. We note that OFAC recognized that the Bank did not set out to violate U.S. sanctions and believed the transactions in question would be processed outside the U.S. financial system,” BACB CEO Susannah Alikier said in statement. Administration in October 2017 revoked certain sanctions on Sudan (see **WTTL**, Oct. 9, 2017, page 9).

GSP: Bipartisan group of 44 House members Sept. 17 urged USTR Robert Lighthizer to reinstate India’s GSP eligibility. Lawmakers suggested even partial reinstatement, arguing that “early harvest” approach “would ensure that long-sought market access gains for U.S. industries are not held up by negotiations over remaining issues.” U.S. in July requested WTO consultations over several tranches of tariffs India imposed on U.S. goods in response to U.S. policy, including decision to remove country from GSP in May (see **WTTL**, July 8, page 5).

DEPARTURES: Under Secretary of State for Arms Control and International Security Andrea Thompson is out, department announced Sept. 20. She was confirmed by Senate in April 2018...Commerce Under Secretary for International Trade Gil Kaplan resigned Sept. 19. Department confirmed resignation, but had nothing on effective date or acting replacement. He had served since March 2018.

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