EIB World Trade Headlines

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DDTC Announcement: (12.10.17)
Effective December 8th, the following informal structural and personnel changes were made to optimize resources for increased effectiveness in fulfilling DDTC's core functions.
The web phone roster will be updated within a few days.

Licensing:

- Senior Analysts Alex Douville and Pete Walker were detailed into Team Co-Lead roles in Division 6 in anticipation of upcoming retirements. Under their leadership, Division 6 will oversee licenses for USML Commodity Categories I and III.
- **Senior Analysts Mike Boyd, Jonathan Dennis, Yolanda Gantlin, Jo Anne Riabouchinsky, Fran Tucker, and Nate Young have been tasked with greater responsibilities for managing case flow and quality control.**
- **Licenses for USML Commodity Categories X and XIV are now redistributed to Divisions 5 and 3 respectively for increased load balancing and quality control.**

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Compliance:

• The Registration Team, led by Chief Dan Cook, was detailed to the DDTC Front Office (FO) to facilitate greater collaboration on fee collections.

• The remaining Compliance Office scope was narrowed to core functions and divided into the following three teams to better focus operations:

• 1. Compliance and Civil Enforcement, led by Acting Chief Jae Shin, who was detailed from his current role as Acting Division Chief for the Regional Affairs and Analysis (RAA)

• 2. Law Enforcement, led by Chief Julia Kruger Tulino.

• 3. Committee on Foreign Investment in the US (CFIUS) and Mergers/Acquisitions (M&A), led by Team Chief Melanie Flaharty.

• All AECA Section 3 investigations and reporting are now managed by DDTC's Military Officers within the Office of Licensing (DTCL). (Be ware up tick in enforcement [EIB added this])!

Policy:

• Acting Policy Deputy Director, Rick Koelling, also serves as Acting Division Chief for RAA.

• Nick Memos was designated as Acting Division Chief for the Commodity Jurisdiction and Classification (CJC) Team

As many of you have experienced there have been significant delays in State Department and Commerce Department Classifications and Licensing.
The State Department is getting heat on this now (most likely through congressional action due to constituent complaining!) Below is an announcement of how the State Department intends to rectify this situation.
Many Commerce filings also get reviewed by State and DoD and this is where the bottleneck is on those classification validations and licenses as well.

We wish we could do something further about these, but this is the current state of affairs at the State Department. We hope this reorganization of tasks will help move things along.

We will keep you posted!

Training

■ *Complying with U.S. Export Controls* – 2 Days

March 20-21, 2018
Nashville, TN
Registration: $499

This two-day program is led by BIS's professional counseling staff and provides an in-depth examination of the EAR. The program will cover the information exporters need to know to comply with U.S. export control requirements on commercial goods. We will focus on what items and activities are subject to the EAR; steps to take to determine the export licensing requirements for your item, how to determine your export control classification number (ECCN), when you can export or reexport without applying for a license, export clearance procedures and record keeping requirements, and real life examples in applying this information. Presenters will conduct a number of "hands-on" exercises that will prepare you to apply the regulations to your own company's export activities.

An early registration fee of $475 is available and is good until January 31, 2018.

For information and registration Click Here

■ *How to Build an Export Compliance Program* – 1 Day

March 22, 2018
Nashville, TN
Registration: $299

How to Build an Export Compliance Program is a one-day workshop that provides an overview of the steps a company may take to implement an internal Export Compliance Program. Developing and maintaining an export compliance program is highly recommended to ensure that export transactions comply with the EAR, and to prevent export control violations. Agenda topics include guidance on how to establish an Export Compliance Program, strategies to enhance your company's compliance program, how to avoid common compliance errors, and how to build a solid framework for your company's compliance program. This program includes small group discussion, hands-on exercises, compliance peer networking, and provides a written example of an export compliance program as well as the Office of Exporter Services January, 2017 revised Export Compliance Guidelines to assist in developing your compliance program. Recommended prerequisite: *Essentials of U.S. Export Controls* or *Complying with U.S. Export Controls* or equivalent experience.

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An early registration fee of $285 is available and is good until January 31, 2018.

For information and registration Click Here

■ *Complying with U.S. Export Controls* – 2 Days

April 4-5, 2018

Des Moines, IA

Registration: $550

This two-day program is led by BIS's professional counseling staff and provides an in-depth examination of the EAR. The program will cover the information exporters need to know to comply with U.S. export control requirements on commercial goods. We will focus on what items and activities are subject to the EAR; steps to take to determine the export licensing requirements for your item, how to determine your export control classification number (ECCN), when you can export or reexport without applying for a license, export clearance procedures and record keeping requirements, and real life examples in applying this information. Presenters will conduct a number of "hands-on" exercises that will prepare you to apply the regulations to your own company's export activities.

For information and registration Click Here

For general information about the BIS Seminar Program contact the Outreach and Educational Services Division at, OESDSeminar@bis.doc.gov or (202) 482-6031.

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The BIS Web Site Team

Saudi Arabia's Crown Prince Is Pushing His Country To The Brink. Will It Hold Together?

WASHINGTON — Saudi Arabia in free fall would make the other crises in the Middle East look puny.

The hugely wealthy kingdom is key to U.S. efforts to combat America's most urgent threats. It has stockpiled thousands of ready-to-launch missiles, tens of thousands of bombs, uncounted reserves of small arms, hundreds of tanks and fighter jets and some of the most aggressive spyware available in the world.

Through Saudi Arabia's supply lines to Asia and its sway over the Organization of the Petroleum Exporting Countries, it wields vast power over the oil production that fuels global trade.

And its population of nearly 30 million is largely young and often vulnerable to terrorist recruitment, as striking levels of volunteering and fundraising for the self-described Islamic State and al Qaeda have shown.

Despite the risks, Mohammed bin Salman, the 32-year-old Saudi king-to-be, has spent close to three years pushing the kingdom to change in unprecedented ways — to forcefully intervene abroad, as it has to brutal effect in neighboring Yemen, to open up its state-dominated economy to entrepreneurs and foreign capital, and above all, to embrace rule by one near-omnipotent leader.

The crown prince is likely to see at least some success. But officials and experts monitoring the kingdom are increasingly worried about his methods. If Mohammed bin Salman pushes too hard, he could shatter his society — and unleash a nightmare.

Since Nov. 4, the prince has accelerated his campaign. His new anti-corruption agency has arrested hundreds of prominent Saudis — including royal family members like recently released Prince Miteb bin Abdullah, the son of the previous king and former head of the powerful National Guard, and noted billionaire investor Prince Alwaleed bin Talal — as well as dozens of military officers and private businessmen like construction magnate Bakr Binladin.

At least 17 detainees have needed medical attention because of abuse, according to The New York Times, and Saudi authorities say they seek to confiscate much of the wealth these figures accumulated — securing hundreds of billions of dollars to fund Mohammed bin Salman's agenda.

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The prince is aware of international anxiety about Saudi stability. In interviews with important Westerners like Thomas Friedman of The New York Times, he suggests that he shares that concern. Mohammed bin Salman's argument is that collapse would be likely — even inevitable — without his plans. He cites goals reformist Saudis and outsiders have long said Riyadh must adopt: ending endemic corruption, encouraging Saudis to be less dependent on the state with his Vision 2030 economic strategy, and discouraging ultra-conservative interpretations of Islam.

"Changing Saudi Arabia for the better means helping the region and changing the world. So this is what we are trying to do here. And we hope we get support from everyone," the prince told The Guardian in October.

But he's also fundamentally changing the methods his country has relied on to avert catastrophe.

"The [Saudi] system itself is in many ways built around trying to ensure stability," Derek Chollet, who has served in top positions at the White House, Pentagon and State Department since the 1990s, told HuffPost.

Consider the last time Saudi Arabia had a hostile army on its borders. It didn't announce a response for six days.

"You had King Fahd, but you had Crown Prince Abdullah, the head of the National Guard; Prince Sultan, the head of the defense ministry; Prince Nayef, head of the interior ministry; and Prince Saud Al-Faisal at the foreign ministry," said F. Gregory Gause, an expert on the Persian Gulf at Texas A&M University.

"These were all senior members of the family. They all had a voice in what went on," Gause continued, adding, "the king had to, if not get a consensus, at least consult around with various people. So if we look at 1990, which is relatively well-documented from the American side, we know that the Saudis for days didn't acknowledge that the Iraqis had invaded Kuwait because they hadn't come to a decision on how to handle it."

That consensus-based system — which King Salman, the crown prince's father, once described to American interviewer Karen Elliott House as Saudi Arabia's answer to democracy — dominated the kingdom's politics for decades.

Saudi Arabians do not choose representatives who can truly influence the policies of their king. Saudi courts have little judicial independence. And the regime's domestic critics have never wielded real power. Sons of the founder of the modern Saudi state, including King Salman, have ruled in succession since 1953, and various brothers, sons and cousins have developed independent power centers by running various aspects of the sprawling government.

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The chief checks and balances on any rulers of the kingdom were traditionally within the top tier of the thousands-strong royal family.

With last month's arrests, Mohammed bin Salman signaled that the old system is dead. The prince had already slashed the power of the kingdom's religious establishment, the one institution in the country that can claim as central a role in Saudi history as the royal family, and jailed more than 30 clerics, intellectuals and activists. Now high-ranking sources in the kingdom say they are afraid of growing surveillance.

The prince has consolidated power in a way unknown to the kingdom since the the age of his grandfather in the 1930s and '40s. Experts say his goal is to show the only way to thrive in Saudi Arabia is to be loyal to his agenda and to him personally. But it's unclear what comes next, and why there should be any confidence that it will work.

"If you think you can change Saudi society without the religious types enthusiastically behind you, without the rich people supporting you and by marginalizing this huge network of regime support that the ruling family represented, that's a risky path," Gause, the Texas A&M professor, told HuffPost.

The Saudi government's response to those doubts is firm: We know what we're doing.

"The pace of change has changed due to the young and dynamic leadership in addition to the young and educated population," Fatimah Baeshen, the spokeswoman for the Saudi Embassy in Washington, told HuffPost in a recent email.

"Vision 2030 set long-term aims and also creates a platform for everyone to contribute, both of which ensure the country's sustainability," she added. "There is a symbiotic relationship between public sentiment and ongoing public discourse which informs policy development. This helps set the pace and ensures stability."

Mohammed bin Salman can rely on significant support.

His anti-corruption rhetoric resonates with millions of Saudis who feel that the elite have fleeced state oil revenues, as well as with businesspeople around the world who are frustrated with unaccountable Saudi partners. "It would be a mistake to dismiss all authoritarian efforts to clean up government as little more than 'political theater,'" analysts Andrew Leber and Christopher Carothers wrote of the crackdown in Saudi Arabia, suggesting it might lead to long-lasting and positive reforms.

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The prince's decision to allow Saudi women to drive and to defang the kingdom's long-feared religious police will likely also pay dividends. "He gets lots of people because of these cards, [like the] social liberalism card," said Hala Aldosari, a Saudi rights activist and current fellow at Harvard's Radcliffe Institute for Advanced Study. "For Saudis, this is a gain, even if it means this is a gain being made for political reasons, to present himself as the visionary leader more appropriate for relations with the West."

Mohammed bin Salman's approach of strategically reducing global oil supplies (and even Saudi market share) to keep prices high recently helped boost Saudi foreign reserves for the first time in months, and there are high expectations for the anticipated payouts to the treasury, courtesy of his anti-corruption drive and the income Riyadh can gain from publicly listing part of its state-owned oil company. The same month as the crackdown, Saudi Arabia's non-oil private sector grew at its quickest pace in two years, a recent economic survey showed.

But blunders are inevitable. The question is how big they'll be.

One possibility is that the prince won't be able to pull off most of the change he's gunning for, will decide that it's impossible, and will fall into old, self-destructive Saudi habits. There are already signs he will have to slow-roll attempted cuts to public benefits.

To Aldosari, a former government consultant, Mohammed bin Salman's challenges to the old system don't even seem as sweeping as many have suggested. "It's not a change of structure, it's a change of approach: how to distribute power," she told HuffPost.

She envisages the prince setting up his own new (if smaller) club of inevitably corrupt elites to replace the old guard, and believes he'll ultimately be seen as more personally linked to Saudi government policy than previous kings — and therefore, more likely to be blamed when things go wrong.

Saudis have blasted Mohamad bin Salman's response to recent floods in Jeddah, the kingdom's second-largest city, noting that he'd promised accountability measures that would force corrupt officials to actually spend government money on infrastructure to prevent such flooding.

His anti-corruption credentials have also suffered because of The Wall Street Journal's revelation that he spent close to half a billion dollars on a Leonardo da Vinci painting in October. It remains unclear how much money he and his branch of the royal family have made over the years.

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If Mohammed bin Salman chooses to mostly follow the path of previous kings, simply modifying it to accommodate his desire to have more personal control, the system could become even more repressive, Aldosari said, with the human rights community losing one potential check on the king's prerogative. In the past, she explained, royals with influence sometimes intervened on activists' behalf, as Prince Alwaleed did when he urged lighter prison sentences for women arrested for challenging the driving restrictions.

An even darker future may come to pass if Mohammed bin Salman's plans backfire dramatically. The lack of due process in the targeting of notable Saudis has already spooked the international investors he's hoping to court and the powerful figures at home who are now exploring ways to protect their assets because they think they might be next. There's a chance the decisive boom in non-oil Saudi business he's waiting for just won't come — and the country will be left with shrunken government reserves from his surrendering of Saudi market share in the oil trade, as well as a population angry about failed promises and slashed benefits.

Unlike previous Saudi monarchs, Mohammed bin Salman also won't be able to rely on a system historically proven to manage dissent when he is king. He's scared off potential challengers for now, but experts believe anger might linger, particularly in agencies like the interior ministry that have long been controlled by branches of the royal family that he has sidelined. That resentment could fuel private scheming to thwart the king-to-be, perhaps after he loses his father's protection and lays his own claim to the throne. It could even inspire direct assaults, like the assassination attempt that claimed King Faisal's life in 1975, or the violent takeover of the holy complex in Mecca in 1979 by ultraconservative militants.

Wealthy Saudis have long been willing to fund men with guns — including extremists, as in the cases of al Qaeda and ISIS, which have both pledged to overthrow the Saudi regime. It's not hard to imagine some turning to that tactic again, perhaps even boosting internal pockets of resistance like the persecuted Shiite community in the oil-rich Eastern Province.

A Saudi civil war would be a brutal affair — one directly implicating and endangering the West, given how much American and European weaponry is in the kingdom and how Middle East security vacuums have proven to shelter militants planning attacks thousands of miles away.

Internal fissures could also lead Mohammed bin Salman to wreak havoc beyond the kingdom's borders. His efforts against regional rival Iran have already brought millions to the brink of famine in Yemen and proven "haphazard, unsettling and counterproductive," according to International Institute for Strategic Studies analyst Emile Hokayem.

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The bitterness he's inspired among traditionally Saudi-friendly Sunni Muslims in Lebanon by forcing the televised humiliation of their leader — in Saudi Arabia, no less — is a potent example.

But using foreign interventions to stoke Saudi nationalism is one of the prince's favored tactics to shore up support, Aldosari told HuffPost. The kingdom may embark on more messy, internationally condemned adventures abroad — and it's unclear how they will end. Well-connected former CIA official Bruce Riedel recently told a Washington audience that the prince's foreign policy has failed to account for any way out of the crises he has created so far.

The widely held view among observers of the region, including some fierce critics of the kingdom and the prince, is that it would be best for the kingdom and the world if Mohammed bin Salman's big gamble were to work out.

The expectation of relative stability has been part of the foundation of U.S.-Saudi relations, analysts Michael Stephens and Thomas Juneau wrote in 2016. Chollet, the former U.S. official now at the German Marshall Fund think tank, told HuffPost he recalled anxiety among Obama aides in 2011 and 2012 when then-King Abdullah's health began to falter and it appeared that the Saudi succession might become problematic. He counts himself as one of many in Washington rooting for Mohammed bin Salman to succeed, but unsure if he can.

When Riyadh errs, Chollet said, Washington has some leverage to spur better judgment, but sometimes not enough. And under President Donald Trump, who has loudly praised Mohammed bin Salman's purges and whose son-in-law Jared Kushner is enamored with the prince, even limited cautioning seems unlikely. A U.S. official working on the region recently described the White House as unwilling to hear criticism of Mohammed bin Salman's choices, and said the only prospect of a change is if the famously fickle U.S. president one day simply changes his mind on his own.

"In many ways, [Trump and the Saudi royals] feel very familiar to one another," Chollet said, joking, "They have the same interior decorator."

Some seasoned Saudi watchers say the young king-in-waiting is adjusting course. Official Washington was very pleased with a report last month from Washington Post grandee David Ignatius that suggested Mohammed bin Salman seeks calm resolutions to his November surprises — the corruption arrests and the Lebanese prime minister's since-reversed resignation announcement — by settling with detainees out of court and reiterating Saudi support for the U.S.-backed national army of Lebanon. But there's still anxiety in the air.

"Regime stability is an enduring concern," Chollet said. "Instability in Saudi Arabia does not stay in Saudi Arabia."

CHINA NO LONGER ACCEPTING U.S. RECYCLING

Like many Portland residents, Satish and Arlene Palshikar are serious recyclers. Their house is coated with recycled bluish-white paint. They recycle their rainwater, compost their food waste and carefully separate the paper and plastic they toss out. But recently, after loading up their Prius and driving to a sorting facility, they got a shock.

"The fellow said we don't take plastic anymore," Satish says. "It should go in the trash."

The facility had been shipping its plastic to China, but suddenly that was no longer possible.

The U.S. exports about one-third of its recycling, and nearly half goes to China. For decades, China has used recyclables from around the world to supply its manufacturing boom. But this summer it declared that this "foreign waste" includes too many other nonrecyclable materials that are "dirty," even "hazardous." In a filing with the World Trade Organization the country listed 24 kinds of solid wastes it would ban "to protect China's environmental interests and people's health."

The complete ban takes effect Jan. 1, but already some Chinese importers have not had their licenses renewed. That is leaving U.S. recycling companies scrambling to adapt.

"It has no value ... It's garbage."

Rogue Waste Systems in southern Oregon collects recycling from curbside bins, and manager Scott Fowler says there are always nonrecyclables mixed in. As mounds of goods are compressed into 1-ton bales, he points out some: a roll of linoleum, gas cans, a briefcase, a surprising number of knitted sweaters. Plus, there are the frozen food cartons and plastic bags that many people think are recyclable but are not.

For decades, China has sorted through all this and used the recycled goods to propel its manufacturing boom. Now it no longer wants to, so the materials sits here with no place to go.

"It just keeps coming and coming and coming," says Rogue employee Laura Leebrick. In the warehouse, she is dwarfed by stacks of orphaned recycling bales. Outside, employee parking spaces have been taken over by compressed cubes of sour cream containers, broken wine bottles and junk mail.

And what are recyclables with nowhere to go?

"Right now, by definition, that material out there is garbage," she says. "It has no value. There is no demand for it in the marketplace. It's garbage."

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For now, Rogue Waste says it has no choice but to take all of this recycling to the local landfill. More than a dozen Oregon companies have asked regulators whether they can send recyclable materials to landfills, and that number may grow if they can't find someplace else that wants them.

At Pioneer Recycling in Portland, owner Steve Frank is shopping for new buyers outside of China.

"I've personally moved material to different countries in an effort to keep material flowing," he says.

Without Chinese buyers, Frank says U.S. recycling companies are playing a game of musical chairs, and the music stops when China's ban on waste imports fully kicks in.

"The rest of the world cannot make up that gap," he said. "That's where we have what I call a bit of chaos going on."

Adina Adler, a senior director with the Institute of Scrap Recycling Industries, says China's new standards are nearly impossible to meet. The group is trying to persuade China to walk back its demanding target for how clean our recycling exports need to be. But Adler doesn't think China's decision is all bad.

"What China's move is doing is probably ushering in a new era of recycling," she says.

A helping (mechanical) hand

Bulk Handling Systems is betting that robots can be the future of recycling. At its research facility, bits of waste pass by on a conveyor belt as robotic arms poke down, sucking up plastic bags and water bottles then dropping them into bins.

CEO Steve Miller says the robot uses cameras and artificial intelligence to separate recycling from trash "in the same way that a person would do it," but faster and more accurately.

"It actually moves at a rate of 80 picks per minute," he says. "A person might only get 30 picks per minute."

Miller believes technology like this could let the U.S. make its recycling clean enough for China. But the robots are expensive, and few companies have them.

For now, the best bet may come back to the curbside bin.

Recycling companies are considering changing the rules for what's allowed in them or adding an additional bin for paper only to help streamline the sorting process. Steve Frank says Pioneer Recycling is even looking into adding cameras to collection trucks to catch people putting trash in their recycling bins.

United States House of Representatives Committee on Financial Services Subcommittee on Monetary Policy and Trade

Examining the Operations of the Committee on Foreign Investment in the United States (CFIUS)

Opening Remarks of The Honorable Kevin J. Wolf Partner, Akin Gump Strauss Hauer & Feld LLP Former Assistant Secretary of Commerce for Export Administration (2010-2017)

December 14, 2017

Chairman, Ranking Member, and other distinguished members of the subcommittee. Thank you for convening this hearing and for inviting me to testify on this important national security topic.

For nearly 25 years in both the private sector and government, I have focused my practice on the law, policy, and administration of export control and related foreign direct investment issues. From 2010 to 2017, I was the Assistant Secretary of Commerce for Export Administration. In this role, I was primarily responsible for the policy and administration of the U.S. dual-use export control system and, as a result of the Export Control Reform effort I helped lead, part of the defense trade system. I was also during this time a Commerce Department representative to the Committee on Foreign Investment in the United States (CFIUS), particularly with respect to cases involving technology transfer issues.

Although I am now a partner at Akin Gump Strauss Hauer & Feld LLP, the views I express today are my own. I am not advocating for or against any potential changes to CFIUS or its legislation on behalf of another. Rather, I am here to answer your questions about how the CFIUS and export controls systems work and how they could or could not address whatever policy issues you would like to discuss. I will not speak about any specific case that was or is before CFIUS.

My fellow panelists have already described the content and scope of CFIUS, so I will get straight to my main point, which is that the CFIUS and export control systems complement each other. CFIUS has the authority to control the transfer of technology of national security concerns, but only if there is a covered transaction, however defined. The export control rules regulate the transfer of specific or general types of technology of national security, foreign policy, and other concerns regardless of whether there is a covered transaction. This means that if concerns arise about specific or general types of technology -- whether as part of a CFIUS review or from any other source -- then the export control system can and should control the technology to the specific destinations, end uses, and end users of concern.

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Identifying, describing, and deciding how or whether to control dual-use technologies – that is, technologies that have both benign commercial applications and applications of concern – is inherently complex. The export control system is also complex, but its authority to control the transfer of technology for national security, foreign policy, or other reasons is not limited by the need for a transaction. Moreover, the system is designed to constantly evolve as new threats are identified, new technologies of concern are discovered, and widespread commercialization makes existing controls unnecessary or impossible to implement.

The Export Administration Regulations (EAR), implemented by the Commerce Department's Bureau of Industry and Security (BIS), have the authority to impose such controls in coordination with other departments, primarily Defense, State, and Energy. The descriptions of technology in the regulations can be as broad or as narrow as the national security or foreign policy concerns warrant. They are generally connected to physical commodities, but do not need to be. They could be based on a technology's technical parameters, end uses, or merely just a reference to the name of the technology. After a technology or other item is identified, the controls on its transfer can be tailored in the regulations to apply to the whole world or to specific destinations, end uses, and end users to address specific concerns. The control choice is a function of a national security and foreign policy judgment to be made on a technology-by-technology basis and regardless of the existence or nature of any underlying commercial transaction.

Most of the EAR implement U.S. commitments to one of four multilateral export control regimes. These are groups of roughly 30-40 countries that have generally agreed to control the transfer of missile, nuclear, chemical/biological, military, and other items of common concern in similar ways. The advantage to such controls is that our regime allies impose essentially the same controls on their exporters. However, the process for achieving consensus from the member states can take a long time, and the limited resources and time available to the regimes limit the number of proposals that can be considered in a review cycle. These disadvantages are outweighed by the well-tested conclusion that unilateral controls -- those that only one country imposes -- are generally counterproductive because they create incentives for foreign companies to develop the technology outside of the country's control. In the long run, they only hurt industry in the country imposing the control and do not deny the technology at issue to the destination of concern. Indeed, this is why the multilateral systems were created decades ago.

The imposition of unilateral controls, however, can be an effective short-term technique for regulating the export of unlisted sensitive technology.

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It is with this thought in mind that in 2012, I and my colleagues at Commerce created a novel tool in the EAR to quickly and unilaterally control emerging and other unlisted technologies that warranted control, so long as the technology was eventually submitted to the relevant regimes to be controlled multilaterally.1 This is referred to as the "0Y521" series of controls in the EAR, which mirrors similar authority in U.S. Munitions List Category XXI in the State Department's International Traffic in Arms Regulations.2

There are many additional tools within the EAR to address technology transfer concerns. For example, BIS could, with or without a public notice and comment process, add unilateral controls over types of emerging technologies to the control list and control them with a licensing or notification requirement to specific destinations. If the concern is about specific end users, then controls can be placed on those end users through the Entity List, the Unverified List, or amending the military end-user controls.3 Another tool is the "is informed" authority. Basically, BIS has the authority to inform an exporter in certain cases that licenses are required to export otherwise uncontrolled technologies and other items to specific destinations or specific end users.4 If the existing authorities in the EAR are too narrow to address a new concern, then they can be easily amended. If, for example, a policy concern pertains to types of industrial know-how and capabilities that are hard to define as technologies, then the EAR could be amended to impose notification or licensing controls on specific types of services provided to particular end uses (such as for intelligence activities).

The precursor to using any of these tools is, of course, identifying the emerging or other unlisted technologies of concern. Admittedly, the focus of the previous administration's export control reform effort was defense trade. Hundreds of individuals put in thousands of hours over the course of eight years to develop and refine after massive public input from scores of Federal Register notices revisions to controls affecting hundreds of thousands of defense and related items. Although the revised control lists (intentionally) require constant tweaking, we made the system significantly better and enhanced our national security as a result.

Whether as part of CFIUS reforms, a new export control reform effort focused on dual- use technologies, or just day-to-day good government, there should be a regular, robust, and creative whole-of-government effort, working closely with industry and our allies, to identify technologies that, for national security or foreign policy reasons, warrant control or decontrol. This is already done as part of the regular annual process to propose changes to the multilateral regime controls, but a fair question raised by this hearing is whether a more aggressive, better-resourced effort is needed to analyze novel and emerging unlisted technologies.

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In addition, existing export control law enforcement authorities must be used to ensure that those who are developing or transferring technologies of concern have comprehensive programs to ensure compliance with the rules, regardless of whether the company is domestic or owned by a foreign entity. (The export control rules apply equally to companies in the United States regardless of whether they are foreign- owned. U.S. export control rules also apply to and regulate U.S.-origin technology and other items even when they are outside the United States and owned by foreign persons.)

Given my combined CFIUS and export control backgrounds, my opening comments have focused on the technology transfer aspects of CFIUS. Other types of national security issues implicated by foreign direct investment include those that:

(i) have co-location issues (e.g., acquisitions next to military facilities);

(ii) create espionage risks or cybersecurity vulnerabilities;

(iii) could reduce the benefit of U.S. Government technology investments;

(iv) reveal personally identifying information of concern;

(v) create security of supply issues for the Defense Department and other government agencies;

(vi) implicate national security-focused law enforcement equities or activities; or

(vii) create potential exposure for critical infrastructure, such as with the telecommunications or power grids.

Each of these topics warrants its own, separate analysis and commentary when considering possible changes to CFIUS.

In my experience, the existing CFIUS structure, authorities, and internal procedures generally allowed for the resolution of these issues quite well. The Treasury Department was an excellent honest broker and facilitated consensus conclusions – often after lengthy interagency discussion and always with the terrific support from the intelligence community. The agencies were always respectful of the need for a whole- of-government decision that accounted for the particular equities and expertise of the other agencies. The career staff were and remain talented, dedicated public servants.

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This last point is key. Given the increase in filings and the increase in more complex cases, the staff was stretched thin when I was there, and I expect they are even more stretched now. They need help. They need more resources, particularly aimed at those involved in monitoring mitigation agreements and studying transactions. I make this polite suggestion not only for their benefit but also for the sake of our national security. I also make the suggestion so that the U.S. remains known as a country that welcomes foreign direct investment with the minimum necessary and quickest possible safe-harbor review burden.

Thus, when considering changes to CFIUS to address national security concerns associated with foreign direct investment (such as those in the list I just mentioned), the questions I would ask are whether

(i) the statutory authority already exists to address the issue through a regulatory or process change;

(ii) another area of law -- such as trade remedies, government contracts, or export controls -- could address the issue more directly and without collateral consequences on foreign investments of less concern; or

(iii) the solution lies simply in more resources to the agencies.

If the answer to any of these questions is "no," then that is the sweet spot for consideration of change to CFIUS legislation.

For each possible change in CFIUS's scope, however, it is vital to weigh the costs. For example, if there is even a small expansion in the scope of CFIUS's review authority, then some companies may be less willing to invest in the United States with the actual or perceived extra burden and time involved in closing a transaction, particularly if there is not a significant expansion in staff. Will investing in other countries become more desirable as a result of any changes? With every expansion in scope, there will be a corresponding and exponential expansion in burdens and costs generally. More regulations lead to more words, which leads to more analyses of those words in novel fact patterns, leading to more filings, more reviews, more mitigation agreements, and on and on. Also, if legislation becomes too prescriptive, then it may limit the ability of the Administration and staff to resolve novel national security issues in a creative way. There were many such situations over the course of the last seven years that I suspect could not have been contemplated by the original drafters of the legislation and the regulations.

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National security concerns are, of course, paramount and should guide any final decisions. I absolutely agree with my former Defense Department colleague Alan Estevez that the United States never wants to be in a fair fight and the right, aggressively enforced technology transfer, investment, and other controls are a critical part of maintaining that advantage. I am absolutely not suggesting that they be ignored or traded off for other concerns, but only that they are properly calibrated so as not to create unintended or unnecessary consequences. I am also not suggesting that export controls are the solution to all policy concerns, only that they be used to their fullest possible extent because they can be more tailored. These are intensely difficult decisions to make and cannot be made on the fly without a process and without the input of all those with expertise and an equity in the outcome. Also, the right answer for one type of technology will not be the same for another type of technology.

Finally, when considering any changes to the system, it is important to consider how our allies are controlling or considering controls over foreign direct investment into their respective countries. Just as the objectives of export controls are furthered by multilateral cooperation, multilateral coordination among allies over foreign direct investment issues could be of common benefit. At a minimum, the US CFIUS process could significantly benefit if there were more authority to share facts and concerns with our allies, after business confidential and classified information issues were addressed.

On export control and CFIUS topics, I have a three-minute, a thirty-minute, a three-hour, and a three-day version. So, I will stop here with these general opening comments and look forward to answering your questions. Thank you again for spending the time to think through this complex and important national security issue.

Maine robotics company Howe and Howe vying for billion-dollar Army contract

A Maine robotics company is in the running to build the Army's next generation of battlefield support vehicles.

Waterboro-based Howe and Howe Technologies is competing with three other firms for a massive government contract to build autonomous vehicles that will carry ammunition and supplies into combat with Army ground forces.

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"It is going to be a huge thing in the future, as big as drones or Humvees," said Michael Howe, who owns the company with his twin, Geoffrey. The Army is expected to order thousands of the units by 2020.

"We are sitting on the precipice of a massive contract," he said. "If we can win the final bid, it will be a billion-dollar contract."

To get to this point, Howe and Howe had to pass a grueling field test of their vehicle in the thick swamps and forests of Fort Benning, Georgia. The RS2-H1, a midsized unmanned vehicle, is under consideration for the Army's Squad Multipurpose Equipment Transport program, aimed at "enhancing soldier lethality and reducing logistical burdens," said Lt. Col. Cory Berg, product manager for large unmanned ground systems with the Army. That means saving soldiers' lives and moving equipment quickly.

The tracked vehicle, powered with a diesel-electric hybrid motor and carrying 1,000 pounds in its top cargo cage, completed a 60-mile field test in 29 hours – less than half the time allotted during trials held in September and October. Howe was right alongside the machine, wading through streams and thick underbrush, dodging poisonous snakes and forcing himself into a pace that averaged 2 mph.

"We walked every single mile of that and we did it in 29 hours. It was the hardest thing I've ever done," Howe said.

The outcome, however, was worth it. Howe and Howe passed the trials, beating major defense companies like Lockheed Martin and AM General, which builds the Humvee, and moving onto the next phase of product development.

It will now get a contract to build 20 robots that will be safety-tested at the Army's proving grounds in Aberdeen, Maryland. Howe declined to disclose the exact value of the contract, except that it is in the "millions" of dollars. After safety tests, two finalists will be field-tested for a year by Army units.

Based on the results of the field test, the Army plans to award a multi-year contract in 2019, Berg said.

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The other companies moving onto the next development phase are General Dynamics Land Systems, HDT Global and a combined effort from Applied Research Associates and Polaris Defense.

The robot designed by Howe's company has some unique features, such as modular armor plating, a universal generator that can charge batteries used in soldiers' equipment, and a front-mounted tool that can trigger roadside bombs while keeping soldiers safe. The robot was built on the basis of a platform designed to deal with IEDs, or improvised explosive devices, that Howe and Howe Technologies has been developing for seven years, Howe said.

Although the company has invested hundreds of thousands of dollars into the project, it isn't betting everything on the RS2-H1. When defense funding was slashed during budget reductions, the so-called sequestration in 2013, Howe and Howe took a big financial hit and had to lay off many of its workers. Since then, the company has moved into the civilian market, building firefighting robots, luxury supertanks and vehicles for Hollywood blockbusters. Howe and Howe now employs between 30 and 50 people, depending on its workload.

"This will not be a make-or-break for us," Howe said. "Sequestration really hurt us, (but) we were able to diversify really well."

Web Notice: The Directorate of Defense Trade Controls (DDTC) is currently in the process of modernizing its IT systems. During this time period, we anticipate there may be delays in response times and time to resolve IT related incidents and requests. We apologize for any inconvenience, and appreciate your patience while we work to improve DDTC services. If you need assistance, please contact the DDTC Service Desk at (202) 663-2838, or email at DtradeHelpDesk@state.gov (06.28.16)

"Your positive action combined with positive thinking results in success"

Web Notice

(12.08.17)

The IT Modernization Team is continuing its development efforts aimed at producing a modernized system to securely and efficiently provide web-based applications for select DDTC functions. The Defense Export Control & Compliance System (DECCS) testing and release is targeted for early 2018. The project team will provide more information for testing and release preparations as they are available.

U.N. passes measure implicitly condemning Trump administration's recognition of Jerusalem as the Israeli capital

The U.N. General Assembly overwhelmingly adopted a resolution that implicitly condemns the Trump administration's decision to recognize Jerusalem as Israel's capital and calls on countries not to move their embassies to the city.

The measure is nonbinding but carries political resonance, particularly in the Middle East where the U.S. decision has sparked protests and has been condemned by Arab governments. Underscoring the U.S. isolation on the issue, even many allies have publicly appealed to the administration to reverse its position and leave Jerusalem's status undecided until Israelis and Palestinians negotiate terms.

The Trump administration had threatened to cut billions of dollars in U.S. foreign aid depending on how countries voted. "This vote will be remembered," U.S. Ambassador to the United Nations Nikki Haley said.