

August 31, 2018

Washington Update

This Week in Congress

- **House** – The House is in recess until September 4.
- **Senate** – The Senate confirmed **Richard Clarida** to be Vice Chairman of the Board of Governors of the Federal Reserve System and six U.S. District Judges.

Next Week in Congress

- **House** – The House may consider the “**Ensuring Small Scale LNG Certainty and Access Act**” (H.R. 4606) and the “**Empowering Students Through Enhanced Financial Counseling Act**” (H.R. 1635).
- **Senate** – The Senate may consider an Act to amend the “**White Mountain Apache Tribe Water Rights Quantification Act of 2010**” (S.140) and several nominations for U.S. District Judge.

TAX

Office of Management and Budget Completes Reviews Section 385 and GILTI Regulations

Key Points:

- *OMB has completed its review of Section 385 rules that would remove regulations imposing documentation requirements on multinationals*
- *OMB is expected to conclude its review of proposed global intangible low-taxed income (GILTI) regulations in the coming days*

This week, the Office of Management and Budget (OMB) announced that they have completed its review of a proposal to eliminate regulations imposing documentation requirements on multinationals under regulation 1.385-2. OMB’s Office of Information and Regulatory Affairs (OIRA) received the proposed rules on June 21 that would withdraw

regulations for tax code Section 385. The OMB website confirmed the August 28 completion of its review, which was required under a memorandum of agreement with Treasury. The existing rules establish minimum documentation requirements that ordinarily must be satisfied for specified related-party interests in a corporation to be treated as indebtedness, rather than equity, for federal tax purposes. Treasury officials have

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said that the regulations would not be immediately replaced. A Treasury report announcing the removal of the rules said revised rules are being considered that “would be substantially simplified and streamlined in a manner that will lessen their burden on U.S. corporations, while requiring sufficient legal documentation and other information for tax administration purposes.”

Last Thursday, the Office of Management and Budget (OMB) said that it has received the proposed regulations addressing global intangible low-taxed income (GILTI) under Section 951A of the tax code. Under the provision, U.S. shareholders owning 10 percent or more of the stock of a controlled foreign corporation are required to pay tax on GILTI, which is income over 10 percent of tangible depreciable assets. The current law allows companies to avoid the GILTI tax if they pay rates in foreign countries of at least 13.125 percent, or 16.4 percent after 2025. However, because the way GILTI interacts with existing expense allocation rules, a corporation can end up owing tax on GILTI even though its foreign effective tax rate is above the 13.125 percent threshold. Due to an agreement made by OMB and the Treasury Department earlier this year, the OMB Office of Information and Regulatory Affairs (OIRA) now has more authority to oversee tax regulations. The proposed rule was labeled not economically significant.

September Tax Outlook: House Expected to Vote on “Tax Reform 2.0”

Key Point:

- *The House is likely to consider legislation prior to the midterms that would make TCJA individual tax cuts permanent*

In the weeks between when Congress returns from the August break and before they recess

for the mid-term elections, the House Ways and Means Committee and full House are expected to vote on “Tax Reform 2.0” legislation. House leadership has said that a House vote on the next tax reform package would occur before midterm elections in November. Further, House Ways and Means Committee Chairman Kevin Brady, (R-TX) previously told reporters that a House vote would occur sometime in September.

Chairman Brady unveiled a framework for the Tax Reform 2.0 package last month, which is expected to consist of three separate bills. Brady has said that making permanent the individual and small business tax cuts, enacted last December temporarily through 2025, will be the “centerpiece,” of the next tax reform package. The framework also proposes changes to retirement plans such as allowing universal savings accounts and changes to education savings related to 529 plans. A third prong of the package proposes to help new companies deduct a greater amount of their startup expenses. The Ways and Means Committee has not determined whether the tax cuts extension package, estimated by Brady “in the ballpark” of \$600 billion, would be paid for by an extension of the cap on state and local (SALT) deduction.

The House is scheduled to return from its August recess on September 4. Tax Reform 2.0 legislative language is expected to be released shortly thereafter.

For more information about tax issues you may [email](#) or call Christopher Hatcher at 202-659-8201. Nick Karellas, Henry Homans contributed to this section.

FINANCIAL SERVICES***Senate Moves Forward with Financial Regulator Nominations****Key Points:*

- *The Senate confirmed Richard Clarida for a four year term as Vice Chairman of the Federal Reserve by a vote of 69-26.*
- *The Senate confirmed Dawn DeBerry Stump and Dan Berkovitz as CFTC Commissioners.*
- *Next week, the Senate will begin consideration of the nomination of Elad Roisman to be an SEC Commissioner.*

On August 28, the Senate voted to confirm Richard Clarida for a four year term as Vice Chairman of the Federal Reserve Board of Governors by a vote of 69-26. Clarida's nomination was favorably reported by the Senate Banking Committee on June 12, 2018. Clarida previously served as Assistant Secretary of the Treasury for Economic Policy under President George W. Bush. The Senate also confirmed Clarida for the remainder of a fourteen year term as a member of the Federal Reserve Board ending February 1, 2022 by voice vote.

The Senate also confirmed Dawn DeBerry Stump and Dan Berkovitz to be members of the Commodity Futures Trading Commission (CFTC) by voice vote.

In addition, Majority Leader McConnell filed cloture on the nomination of Elad Roisman to be a member of the Securities and Exchange Commission (SEC). The Senate will next convene for legislative business on Tuesday, September 4, and at 5:30 p.m. that day the cloture vote on Mr. Roisman's nomination is to occur. A final vote on his nomination may occur sometime later next week.

SEC Releases Statement on the Status of the Consolidated Audit Trail*Key Point:*

- *Division of Trading and Markets Director Brett Redfearn urged industry members to work cooperatively with the SROs to facilitate CAT implementation as quickly as possible.*

On August 27, Securities and Exchange Commission (SEC) Division of Trading and Markets Director Brett Redfearn released a [statement](#) on the status of the Consolidated Audit Trail (CAT). Redfearn's statement noted that in November 2017, SEC Chairman Jay Clayton said that he would not support a request from the self-regulatory organizations (SROs) to extend the deadlines for reporting data to the CAT. He stated SEC staff has encouraged the SROs to: (1) centralize their decision making; (2) enhance their focus on project management and accountability; and (3) increase the CAT Plan Advisory Committee's participation in the CAT development process. Redfearn reiterated, "As Chairman Clayton has emphasized, protection of the information submitted to the CAT is of paramount importance, and the SEC will not retrieve sensitive information from the CAT unless the SEC needs it and believes appropriate protections to safeguard it are in place."

Redfearn noted that there have been delays in CAT implementation, stating:

To date, the SROs have not begun reporting required data to the CAT as required by the first phase of the SRO CAT Plan. There continue to be delays in the SROs' development and build of the CAT, and, recently, the SROs and Thesys have missed new, self-imposed deadlines.

The statement offered the following summary of the SRO “Master Plan” for CAT implementation:

The SROs’ Master Plan calls for “first phase” (SRO) reporting to commence on November 15, 2018 (compared to November 15, 2017 under the SRO CAT Plan), “second phase” (large broker-dealer) reporting to commence on November 15, 2019 (compared to November 15, 2018 under the SRO CAT Plan), and all phases of small broker-dealer reporting to be complete by November 15, 2022 (compared to November 15, 2019 under the SRO CAT Plan)—but not all data and functionality required by the SRO CAT Plan will be available on those dates. For example, only equities data—not options data—will be included in the large broker-dealer reporting that will commence on November 15, 2019.

In regards to the second phase of implementation for broker-dealers Redfearn stated:

The Division recognizes that it is not practicable for industry members to report some or all of the contemplated industry data to the CAT unless and until the CAT has been sufficiently developed to receive that data. The Division also recognizes that the industry member reporting specifications are a prerequisite for industry member reporting. Accordingly, and subject to the ongoing good faith efforts and cooperation of industry members to facilitate the development of the CAT as promptly as practicable, the Division does not expect to make enforcement referrals concerning industry members for failure to report data to the CAT if the CAT is not sufficiently developed to receive that data. In this regard, the Division expects the industry member community to work cooperatively and expeditiously with the SROs to develop effective technical specifications for reporting to the CAT and

to otherwise make good faith efforts to implement the CAT as promptly as practicable.

SEC Chairman Clayton Speaks on Capital Formation Issues

Key Point:

- *Clayton discussed the SEC’s capital formation agenda, noting that they are looking at changing Sarbanes-Oxley thresholds and expanding the availability of the “test the waters” provision.*
- *Clayton noted the SEC is working on a concept release related to harmonizing exempt offerings.*

On August 29, SEC Chairman Jay Clayton gave a [speech](#) at the Nashville 36|86 Entrepreneurship Festival focused on the SEC’s efforts to promote capital formation. Clayton discussed three areas of focus in promoting capital formation and encouraging companies to go public: (1) scaled disclosure framework for smaller companies, (2) disclosure modernization and simplification, and (3) staff guidance helpful to the IPO process.

In regards to “Scaled Disclosure Framework for Smaller Companies” Chairman Clayton noted that in June 2018 the SEC expanded the number of companies that qualify as smaller reporting companies (SRCs). He said the new definition enables a company to qualify as an SRC if its public float is less than \$250 million, which is an increase from the previous \$75 million threshold. He stated that in April 2018, the Division of Trading and Markets hosted a roundtable that explored the market structure for the securities of smaller, more thinly-traded companies. He stressed that their goal is to make sure market structure meets the needs of all companies, both large and small.

In the “Disclosure Modernization and Simplification” category Clayton noted that in October 2017, the Commission proposed amendments, as required by the FAST Act, to streamline rules and forms that public companies use to provide information to investors, and also incorporate technology to improve access to information in a manner that reduces the costs to registrants. He said the SEC has also taken steps to simplify and update financial disclosures, noting that last month they proposed amendments to financial disclosures to encourage guaranteed debt offerings to be conducted on a registered rather than a private basis.

Regarding “Guidance from the SEC’s Division of Corporation Finance Helpful to the IPO Process”, Clayton explained that the Division of Corporation Finance expanded the draft submission process to all first-time registrants and newly public companies conducting IPOs and offerings within one year of an IPO. He said, “The Division of Corporation Finance also provided registrants with guidance on the preparation of financial statements with the goal of identifying areas where flexibility could reduce burdens and costs without materially altering the total mix of information available to the public.”

Clayton also discussed the SEC’s agenda, noting that over the next several months the Commission will examine the thresholds that trigger Section 404(b) of the Sarbanes-Oxley Act, which requires certain registrants to provide an auditor attestation report on internal control over financial reporting. He expressed support for utilizing a scaled approach, emphasizing that “one size regulation of public companies does not fit all.”

Clayton added that SEC staff is working on a recommendation to expand the ability of companies who are contemplating raising

capital to “test the waters.” He emphasized the benefits of the “test the waters” provision to emerging growth companies, suggesting the SEC would be “considering this initiative in the coming year.”

Clayton also discussed the work of the SEC relating to capital formation for private companies. He indicated that SEC staff is working on a concept release on how to harmonize exempt offerings. He explained considerations should include: evaluating the level of complexity in the current exemptive framework for issuers and investors; examining “whether current rules that limit who can invest in certain offerings should be expanded to focus on the sophistication of the investor, the amount of the investment, or other criteria”; considering “whether more can be done to allow issuers to transition from one exemption to another and, ultimately, to a registered IPO, without undue friction.”

Bank Regulators Issue Rules Implementing the Economic Growth, Regulatory Relief, and Consumer Protection Act

Key Points:

- *The bank regulators issued rules to allow insured depository institutions with less than \$3 billion in assets to utilize and 18-month examination cycle.*
- *The Federal Reserve issued an interim final rule to raise the asset threshold for the small bank holding company policy statement from \$1 billion to \$3 billion.*

On August 23, the Federal Reserve, Federal Deposit Insurance Corporation (FDIC), and Office of the Comptroller of the Currency (OCC) jointly issued an [interim final rule](#) on “Expanded Examination Cycle for Certain Small Insured Depository Institutions and U.S.

Branches and Agencies of Foreign Banks.” As described in a Federal Reserve [press release](#), the interim final rule “as authorized by the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), the interim final rules generally would allow qualifying insured depository institutions with less than \$3 billion in total assets to benefit from an extended 18-month on-site examination cycle.” The rule will go into effect upon publication in the *Federal Register* and will be subject to a 60 day comment period.

Additionally, on August 28, the Federal Reserve issued an [interim final rule](#) “to amend the Small Bank Holding Company and Savings and Loan Holding Company Policy Statement and related regulations; Changes to Reporting Requirements.” A Federal Reserve [press release](#) explained:

The policy statement facilitates the transfer of ownership of small community banks by allowing their holding companies to operate with higher levels of debt than would normally be permitted. While holding companies that meet the conditions of the policy statement are excluded from consolidated capital requirements, their depository institutions continue to be subject to minimum capital requirements.

The interim final rule raises the statement's asset threshold from \$1 billion to \$3 billion in total consolidated assets. The statement also applies to savings and loan holding companies with less than \$3 billion in total consolidated assets.

The interim final rule will go into effect upon publication in the *Federal Register* and will be subject to a 30 day comment period.

UPCOMING EVENTS

September 5

Future of Money: The House Financial Services Committee’s Subcommittee on Monetary Policy and Trade will hold a hearing entitled “The Future of Money: Coins and Banknotes.” Witnesses will include: Leonard Olijar, Director, Bureau of Engraving and Printing; and David Ryder, Director, United States Mint.

Housing: The House Financial Services Committee’s Subcommittee on Housing and Insurance will hold a hearing entitled “The Cost of Regulation on Affordable Multifamily Development.”

September 6

GSE Reform: The House Financial Services Committee will hold a hearing entitled “A Failure to Act: How a Decade without GSE Reform Has Once Again Put Taxpayers at Risk.”

September 13

Investor Advisory Committee: The Securities and Exchange Commission (SEC) will hold a meeting of its Investor Advisory Committee (IAC). The agenda for the meeting includes: (1) Discussion Regarding the U.S. Proxy Voting Infrastructure (which may include two separate panel discussions); (2) Discussion Regarding the Commission’s Proposed Transaction Fee Pilot in NMS stocks (which may include a Recommendation of the Market Structure Subcommittee); and (3) Discussion Regarding the Implications of Passive Investing.

September 17

Credit Access: The Consumer Financial Protection Bureau (CFPB) will hold a symposium entitled “Building a Bridge to Credit Visibility.”

September 20

Investor Roundtable: The SEC will hold an investor roundtable to discuss the

Commission’s recently proposed rules regarding the obligations of financial professionals to investors.

For more information about financial services issues you may [email](#) or call Joel Oswald at 202-659-8201. Alex Barcham and Rebecca Konst contributed to the articles.

DEFENSE

Annual China Military Report

Key Points:

- *The DOD’s annual report details China’s expanding efforts to spread its influence through an ambitious overhaul of its military capabilities*
- *The DOD also discussed its plans in countering and partnering with China as appropriate*

This month, the Department of Defense (DOD) sent its annual report on “[Military and Security Developments Involving the People’s Republic of China](#)” to Congress, which detailed the Department’s view on China’s ongoing military modernization program and foreign policy aimed to expand the influence of the country in east-Asia and elsewhere. The report will likely inform the efforts of Members of Congress looking to curtail the economic influence of Chinese companies in U.S. markets such as the language in the “John S. McCain National Defense Authorization Act for Fiscal Year 2019” (P.L. 115-232) barring the use of ZTE and Huawei systems and components.

The DOD explained that:

In support of the goal to establish a powerful and prosperous China, the “China Dream” includes a commitment to developing military power commensurate with that of a great

power. Chinese military strategy documents highlight the requirement for a People’s Liberation Army (PLA) able to secure Chinese national interests overseas, including a growing emphasis on the importance of the maritime and information domains, offensive air operations, long-distance mobility operations, and space and cyber operations.

The DOD asserted that:

China’s leaders continued to advance an ambitious military modernization and organizational reform agenda to achieve those requirements. China’s military modernization targets capabilities with the potential to degrade core U.S. operational and technological advantages. To support this modernization, China uses a variety of methods to acquire foreign military and dual- use technologies, including targeted foreign direct investment, cyber theft, and exploitation of private Chinese nationals’ access to these technologies. Several recent cases and indictments illustrate China’s use of intelligence services, computer intrusions, and other illicit approaches to obtain national security and export-restricted technologies, controlled equipment, and other materials.

In terms of the DOD’s response to China’s actions and plan, the DOD explained that:

The *2017 National Security Strategy*, the *2018 National Defense Strategy*, and the *2018 Nuclear Posture Review* recognize the growing trend of military competition in a dynamic security environment. The United States will continue to seek areas of cooperation

with competitors, while preserving the ability to compete successfully from a position of strength. The United States seeks a constructive and results-oriented relationship with China. U.S. defense contacts and exchanges conducted in 2017 were designed to support overall U.S. policy and strategy toward China. They are carefully tailored to clarify and develop areas of cooperation where it is in our mutual interest and to manage and reduce risk; contacts are also conducted in accordance with the statutory limitations of the National Defense Authorization Act for Fiscal Year 2000. While the Department of Defense engages substantively with the People's Liberation Army, DOD will also continue to monitor and adapt to China's evolving military strategy, doctrine, and force development, and encourage China to be more transparent about its military modernization. The United States will adapt its forces, posture, investments, and operational concepts to ensure it retains the ability to defend the homeland, deter aggression, protect our allies and partners, and preserve regional peace, prosperity, and freedom.

Upcoming Hearings and Events

September 5

NATO: The Senate Foreign Relations Committee will hold a [hearing](#) titled "Assessing the Value of the NATO Alliance."

China: The Senate Foreign Relations Committee's East Asia, The Pacific, and International Cybersecurity Policy Subcommittee will hold a [hearing](#) titled "The

China Challenge, Part 2: Security and Military Developments."

September 6

Export Control and Trade: The Senate Appropriations Committee's Commerce, Justice, Science Subcommittee will hold a hearing "to conduct oversight of the Bureau of Industry and Security, the International Trade Administration, and the United States International Trade Commission."

For more information on defense issues you may [email](#) or call Michael Kans at 202-659-8201.

HEALTH

CMS Offers New Tools to Medicare Part D Plans

Key Point:

- *Beginning in 2020, the Centers for Medicare and Medicaid Services will provide Medicare Part D plans will greater flexibility to tailor formularies using indication-based formulary design.*

On August 29, the Centers for Medicare and Medicaid Services (CMS) issued a memo to Medicare Part D plans which will allow plan sponsors to begin implementing indication-based formulary design in calendar year 2020. CMS expects this to increase the number of drugs available at lower prices.

Indication-based formulary design will allow plan sponsors to tailor formulary coverage of drugs predicated on specific indications. By allowing Part D plan sponsors to tailor which drugs are on their formulary by indication, sponsors will have additional negotiating leverage with manufacturers. If plan sponsors choose to use indication-based formulary design, it must still ensure there is another therapeutically similar drug on the formulary

for the non-covered indication to meet the anti-discrimination requirements under the Social Security Act.

Department of Health and Human Services Secretary Alex Azar said “this action delivers on President Trump’s drug pricing blueprint by offering Medicare plan new tools to negotiate lower drug prices and offer patients better choices.” CMS Administrator Seema Verma echoed these comments asserting “plans will have more negotiating power with drug companies, which will result in lower prices for Medicare beneficiaries.”

Read the memo [here](#).

Upcoming Hearings and Meetings

September 5

Health Outcomes: The House Energy and Commerce Committee will hold a hearing on “Opportunities to Improve Health Care.”

September 6

Nursing Homes: The House Energy and Commerce Committee will hold a hearing on “Examining Federal Efforts to Ensure Quality of Care and Resident Safety in Nursing Homes.”

For more information about healthcare issues you may [email](#) or call Nicole Ruzinski Bertsch or George Olsen at 202-659-8201. Michaela Boudreaux contributed to this section.

TRANSPORTATION AND INFRASTRUCTURE

FY 2019 Transportation Topline May Get Cut

Key Point:

- *As part of negotiations on final 302(b) allocations, T-HUD appropriators may need to cut the topline for their bill, thus possibly reducing transportation funding*

This week, there were reports that the topline for the “Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2019” (T-HUD) would be cut as part of negotiations between the House and Senate to reconcile different, non-defense 302(b) allocations. The chair of the Senate Appropriations Committee’s subcommittee of jurisdiction was quoted as expressing disappointment with the topline she has been provided, which would require appropriators to trim some funding levels in the package. These comments may suggest that the House and Senate are not close in negotiating a final T-HUD package and so these programs may be funded via a continuing resolution (CR) for some part of FY 2019, most likely until after the mid-term elections.

Senate Appropriations Committee T-HUD Subcommittee Chairman Susan Collins (R-ME) said “I prefer the Senate allocation” but declined to identify the new proposed allocation she and other T-HUD appropriators may need to work with. She added “[w]e’ve been given the new allocations and I, we, will be making decisions, working with our House counterparts, with the minority, [T-HUD Subcommittee Ranking Member] Jack Reed (D-RI), to figure out how we reach the new allocation level.” Collins stated that “[t]hose decisions have not been made.”

The House bill, H.R.6072, would provide \$27.771 billion for the Department of Transportation (DOT) in new budget authority and set an obligation limitation of \$58.986 billion for many surface transportation programs as authorized by the “Fixing America’s Surface Transportation Act” (FAST

Act) (P.L. 114-94) and funded by the proceeds of the Highway Trust Fund. The package would provide appropriations of \$71.8 billion for the programs covered by the bill. Overall, the bill would provide \$131.786 billion in budgetary resources for DOT, HUD, and other programs.

The Senate's package, S.3072, would provide \$26.577 billion for DOT programs in need of discretionary appropriations, \$59.987 billion for FAST Act authorized transportation programs, and \$71.417 billion in total appropriations for DOT, HUD, and other programs. In all, the package would provide \$131.04 billion in total budgetary resources.

Both chambers' bills provide more funding than the Trump Administration's FY 2019 budget request, which would provide \$47.995 billion in appropriations and \$59.986 billion for FAST Act programs. Overall, the Administration's request would make available \$107.981 billion.

The Senate has passed its T-HUD bill as part of the "Interior, Environment, Financial Services and General Government, Agriculture, Rural Development, Food and Drug Administration, and Transportation, Housing and Urban Development Appropriations Act, 2019" ([H.R.6147](#)). However, the House has not yet brought its package to the floor.

Upcoming Hearings and Events

September 5

Aviation and Cybersecurity: The House Homeland Security Committee's Cybersecurity And Infrastructure Protection and Transportation And Protective Security Subcommittees will hold a [joint hearing](#) titled "Understanding Cybersecurity Threats To America's Aviation Sector."

Surface Transportation Innovation: The House Transportation & Infrastructure Committee's Highways and Transit Subcommittee will hold a [hearing](#) titled "Innovation in Surface Transportation."

September 6

New Aircraft: The House Transportation & Infrastructure Committee's Aviation Subcommittee will hold a [hearing](#) titled "Airspace Integration of New Aircraft."

September 7

Water Resources Projects: The House Transportation & Infrastructure Committee's Water Resources and Environment Subcommittee will hold a [hearing](#) titled "Building a 21st Century Infrastructure for America: Water Resources Projects and Policy, Part II."

For more information on transportation issues you may [email](#) or call Michael Kans at 202-659-8201.

TECHNOLOGY

DSB Calls on Administration To More Fully Develop Cyber Capabilities

Key Point:

- *An influential defense advisory body lays out the case for more robust offensive cyber operations and an overarching U.S. cyber strategy to combat the cyber and information operations being waged by Russia, China, Iran, North Korea and others*

The Defense Science Board (DSB) released the [executive summary](#) of a final report drafted by the Task Force on Cyber as a Strategic Capability. The full report was completed earlier this year and remains classified. Nonetheless, the DSB was tasked with

determining how U.S. offensive cyber capabilities and information operations compare with those of U.S.' adversaries, and the overall conclusion is that the US lacks an overarching strategy that would enable us to compete on equal footing. The DSB Task Force made detailed recommendations on concrete steps the Department of Defense, Department of Homeland Security, Cyber Command, and others could take. As has been the case with past DSB reports, these recommendations could form the basis for provisions in future National Defense Authorization Acts or standalone legislation.

In terms of scope, the DSB stated that “[t]his study is one in a long line of cyber-related studies, but it is the first to specifically address how cyber capabilities can and should be used to pursue strategic objectives and protect strategic interests.” The DSB contended that “[t]he United States is currently years behind its rivals in cyberspace, both conceptually and operationally...[and] [t]he findings of this study illuminate the scope of the problem.” The DSB stated that “[t]he recommendations proposed in this report will, if implemented, create the necessary conditions for the Department of Defense to possess cyber as a strategic capability.”

The DSB stated that “the Department of Defense must move beyond tactical applications for cyber and realize cyber as a strategic capability.” The DSB stated that “[t]o accomplish this, the [U.S. government] and DOD need to revamp cyber strategy, to ensure we are not self-limiting or focused on only tactical outcomes.” The DSB stated that “[t]he adoption of a comprehensive cyber strategy oriented towards strategic effects and outcomes is essential for changing the current culture that often slows down or halts cyber options.” The DSB asserted that “[s]tronger defenses in both the public and private sectors will be necessary

to ensure offensive options are routinely considered as part of the trade space...[and] [t]he DOD must view cyber offense and defense as interdependent.”

The DSB stated that “[t]he Task Force deliberations resulted in the following five overarching findings:

Finding 1: Current cyber strategy is stalled, self-limiting, and focused on tactical outcomes. The DOD must build and adopt a comprehensive cyber strategy.

Finding 2: Defense is a necessary foundation for offense. Effective offensive cyber capability depends on defensive assurance and resilience of key military and homeland systems.

Finding 3: Cyber forces, including leadership, require more experience and readiness. Sustained experience in operations is essential to readiness of U.S. cyber capability.

Finding 4: The DOD must integrate cyber into a whole-of-government approach. Cyber capabilities developed by DOD must be integrated into a whole-of-government approach, and integrated with private sector and coalition efforts to most effectively defend our collective interests.

Finding 5: Current policies often thwart cyber capability. Policy guidance is both essential and currently at odds with effective use of cyber capabilities.

The DSB Task Force then made 16 recommendations for action to address the issues and problems turned up in these findings. One of the recommendations has already been fulfilled although not necessarily because of the DSB Task Force: rescission of Presidential Policy Directive (PPD) 20, the interagency process put in place during the last Administration to govern the use of cyber

operations. Nonetheless, this DSB report could be the basis for future administrative and legislative action to strengthen U.S. cyber strategy and capabilities.

Upcoming Hearings and Events

September 5

Social Media and Foreign Influence: The Senate Intelligence Committee will hold a [hearing](#) titled “Foreign Influence Operations’ Use of Social Media Platforms.”

Twitter’s Monitoring of Content: The House Energy and Commerce Committee will hold a [hearing](#) titled “Twitter: Transparency and Accountability.”

For more information on technology issues you may [email](#) or call Michael Kans at 202-659-8201.

TRADE

U.S., Mexico Agree to Bilateral Deal, Discussions with Canada Continue

Key Points:

- U.S. Trade Representative (USTR) Robert Lighthizer will notify Congress today of plans to finalize either a bilateral deal with Mexico, with the possibility that Canada would join later) or a trilateral deal with both Mexico and Canada.
- President Trump announced on Monday that he will terminate the North American Free Trade Agreement (NAFTA) because of the new deal with Mexico.
- Senators have questioned whether Trade Promotion Authority (TPA)

allows the Administration to complete a deal with only Mexico.

- Section 232 steel and aluminum tariffs will remain in place.

The U.S. and Canada trade ministers are continuing to meet through Friday in an attempt to finalize Canada’s entry into the free trade agreement reached between the U.S. and Mexico. USTR Lighthizer said earlier this week that he will notify Congress of the new deal this Friday, regardless of whether Canada has joined the agreement. Negotiators are hoping to notify Congress so that the deal can be signed on November 29, the day before Andrés Manuel López Obrador (AMLO) becomes President. However, Mexican Foreign Affairs Secretary Luis Videgaray clarified that the notification of a bilateral deal “does not preclude the possibility of Canada” entering the agreement later. USTR Lighthizer also stated that “ideally Canada will be in and we’ll be able to notify that. If Canada’s not in then we’ll notify that we have an agreement with Mexico and that we’re open to Canada joining it.”

On Monday President Trump announced that he would formally terminate NAFTA because of the new deal and “bad connotations for the United States because it was a rip-off,” going on to say, “One way or another we’ll have a deal with Canada... It’ll either be a tariff on cars or it’ll be a negotiated deal. Frankly, a tariff on cars is a much easier way to go. Perhaps the other would be much better for Canada.”

The new deal significantly alters the administration’s initial sunset clause proposal, instead creating a 16-year sunset with a review every six years. Canada had rejected the original sunset clause proposal. The administration is hoping Canadian officials will make concessions on agriculture including on the issue of dairy market access, though a USTR spokesperson said Friday that “there have been no concessions by Canada on agriculture.” The deal also includes an altered investor-state

dispute settlement (ISDS) provisions for some sectors, though oil, gas, infrastructure, energy, and telecommunications will have “classic ISDS,” according to an administration official. Sources expect details to be finalized over the next few weeks.

Multiple senators have questioned whether the Administration has authority under TPA to create a bilateral deal with Mexico. Senator Pat Toomey (R-PA) explained his concerns: “NAFTA was enacted with legislation, it required legislation to pass Congress and be signed into law in order to become operative. Similarly, a change to NAFTA requires legislation. What the administration submitted to Congress in setting up the opportunity to use TPA, and the expedited process TPA allows, contemplated a revision to a tri-party agreement. So, it’s my understanding that this has to be a tri-party agreement.” Finance Committee Chairman Orrin Hatch (R-UT) said “a final agreement should include Canada” and Senate Homeland Security Chairman Ron Johnson (R-UT) suggested passing a bilateral agreement “would be almost impossible.”

White House Amends 232 Tariff Exclusion Process for Quota Countries

Key Point:

- The U.S. altered the Section 232 exclusion process to enable companies to seek product exclusions for goods from the countries that agreed to quotas to avoid steel and/or aluminum tariffs: Argentina, Brazil, and South Korea.

On Wednesday, President Trump signed a proclamation allowing Secretary of Commerce Wilbur Ross to provide targeted relief from quotas imposed under Section 232 on steel from South Korea, Argentina, and Brazil, and aluminum from Argentina. Companies can apply for product exclusions based on

insufficient quantity or quality available from U.S. steel or aluminum producers.

The Commerce Department explained the alteration to its Section 232 product exclusion process on Wednesday: “Companies can apply for product exclusions based on insufficient quantity or quality available from U.S. steel or aluminum producers. In such cases, an exclusion from the quota may be granted and no tariff would be owed.” Commerce went on to explain that in a “limited number of cases, steel articles are being used in a facility construction project in the United States that were contracted for purchase prior to the decision to impose quotas, and cannot presently enter into the United States because a quota has already been reached... an exclusion from the quota may be granted, but the product may only be imported upon payment of the 25% tariff.” This action provides relief from the absolute quotas that were imposed earlier this year, as President Trump noted that some of the subcategories of quotas have “already been filled this year.”

UPCOMING EVENTS

September 4

House Rules Committee - Full Committee Business Meeting: House Rules Committee (Chairman Pete Sessions, R-Texas) meets to formulate a rule on H.R.1635, the "Empowering Students Through Enhanced Financial Counseling Act"; and H.R.4606, the "Ensuring Small Scale LNG Certainty and Access Act."

Federal Maritime Commission (FMC) Meeting: Federal Maritime Commission (F.R. Page 44271) holds a closed meeting on "Conditions and Practices Relating to Detention, Demurrage, and Free Time in International Oceanborne Commerce."

September 5

Senate Health, Education, Labor and Pensions Committee Hearing: Senate Health, Education, Labor and Pensions Committee (Chairman Lamar Alexander, R-Tenn.) hearing on "The Impact of Zero Tariffs on U.S. Autoworkers."

The Hudson Institute - Panel Discussion: The Hudson Institute holds a discussion on "The Costs of the China-Pakistan Economic Corridor."

September 6

Department of Commerce (DOC) Bureau of Industry and Security (BIS) – Meeting on Materials Export Controls: Commerce Department; Bureau of Industry and Security (F.R. Page 42638) holds a meeting of the Materials Technical Advisory Committee on technical questions that affect the level of export controls applicable to materials and related technology. Agenda includes: introductions and opening remarks by senior management; presentation by Rocco Casagrande on "United Nations Weapons Inspections in Pre-War Iraq"; questions and answers; notice of inquiry for sprayers and foggers; open session report by regime representatives; and a closed session.

For more information on trade issues you may [email](#) or call Christopher Hatcher at 202-659-8201. Riyad Carey contributed to this section.

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