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DDTC's Gainor Explains Changes in Company Visit Program

Over the last year, State's Directorate of Defense Trade Controls (DDTC) revamped its company visit program (CVP), Sue Gainor, DDTC's director of compliance, told our sister publication, *The Export Practitioner*, in an exclusive interview. Gainor laid out what she's learned from the first year of the revamped CVP, how the latest settlement came about, and how her team's relationship with law enforcement has changed for the better.

Editor's Note: This exclusive interview with Gainor was published in the July issue of *The Export Practitioner*. A free copy will be sent to WTTL subscribers on request.

"We've made a lot of changes to alter industry's perception of the program," she said. "We've explained the way we select companies that we are considering visiting: we review registration information, whether we have open disclosures or not, whether the registrant is part of the regulated industry that we have less exposure to than others," she said.

Gainor also explained DDTC's most recent consent agreement with Microwave Engineering, the first in over two years. "We hadn't had a small consent agreement in a few years. This was an interesting opportunity for us to explore how to use our tools in a more tailored fashion, more of a scalpel than a sledgehammer," Gainor noted. "The sledgehammer's useful at times, but the scalpel gives you more options."

Gainor was very candid about her team's relationship with law enforcement. "We were able to come to an agreement with our partners about the way we do that process for law enforcement support. That has really improved," she said in the interview. Her team has "issued some guidance to law enforcement, such as when it does and doesn't need to come to us to take certain actions in certain types of cases," she said.

Single Export IT System's Future Is Uncertain, Report Says

It was supposed to be the least controversial of the four "singles" of export control reforms. But as developers know, tech projects are never that easy. Under the reform effort, the

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Bureau of Industry and Security (BIS) and other agencies were supposed to move all licensing into a single information technology (IT) system. That system was to be USXports, operated by the Defense Technology Security Agency (DTSA).

At the BIS Update conference in November 2015, BIS Under Secretary Eric Hirschhorn announced that as of the month before, Defense, Commerce, State and Energy “completed installing an interagency referral module on the Department of Defense’s USXports platform. As directed by President Obama, all four agencies now are reviewing and providing their positions on Commerce license applications on a single IT platform.” This carefully hedged statement meant that all departments could now see BIS export licenses, but BIS was not using USXports to process cases (see **WTTL**, Nov. 23, page 1).

Now the Commerce Inspector General says that the future of the single IT system is uncertain. “After more than 5 years and nearly \$2.6 million spent on the effort, BIS export functions have not been fully transitioned to USXPORTS,” it says in its final report issued July 5 (OIG-16-037-A).

“Even with the Interagency Referral Sub-System implemented—which enables other agencies to use USXPORTS to review the license applications and data BIS processes in the CUESS [Commerce USXPORTS Exporter Support System] Licensing Officer Access, or LOA, module—BIS is still using its own system to process licenses. Therefore, the ECR goal of a single IT system for licensing still has not yet been achieved,” it noted.

Sources tell **WTTL** that the rest of the interagency team was very disappointed in the Commerce unilateral decision to build a separate licensing database, as the single IT system was the least controversial and most obvious of the four singles.

The IG report found two major causes of the split. “Major challenges that led to delays resulted from overall ineffective coordination and collaboration between BIS and DTSA—specifically, (a) disagreements over data formats for synchronizing systems, (b) inadequate control over change requests, (c) inadequate allocation of resources, (d) inconsistent feedback during development, and (e) insufficient coordination during testing,” the report noted. In addition, continuing work on the separate system did not address the already identified inefficiencies.

In response, the IG offered two recommendations: that BIS establish an Integrated Project Team for future systems development projects with other agencies (including DTSA), incorporating shared accountability; and that BIS conduct a cost/benefit analysis on using the LOA module with the Interagency Referral Sub-System versus fully transitioning to USXPORTS.

“In its response to our draft report, BIS concurred and noted actions it would take to address our recommendations. BIS’ planned actions sufficiently address the recommendations and we look forward to its detailed action plan,” the report noted.

House Passes Trio of Bills Targeting Iran on JCPOA Anniversary

It's been one year since the P5+1 signed the Joint Comprehensive Plan of Action (JCPOA) with Iran curtailing that country's nuclear program in exchange for sanctions relief, but opponents of the deal continue to craft legislation making it all but impossible for businesses to engage with the Iranian market.

Before adjourning for a seven-week break, the House passed a trio of bills targeting Iran for non-nuclear related offenses. In a vote overwhelmingly along party lines, the House July 14 passed the Iran Accountability Act of 2016 (H.R. 5631). The legislation requires mandatory sanctions on Iran's Revolutionary Guard Corps (IRGC), Mahan Air, Supreme Leader of Iran and its president, and financial institutions that facilitate human rights abuses or the export of sensitive technology to Iran. The same day, it passed the United States Financial System Protection Act of 2016 (H.R. 4992) that blocks Iran's access to the dollar.

One day earlier the House passed No 2H2O from Iran Act (H.R. 5119) that prevents federal agencies from purchasing or facilitating the purchase of heavy water from Iran. The U.S. purchased 32 tons of heavy water from Iran in April. The bills passed one week after the House moved to block Boeing from selling its planes to Iran Air (see **WTTL**, July 11, page 3).

Prior to the bills' passage, Obama issued a Statement of Administration policy July 11 strongly opposed to the legislation saying the bills would "undermine the ability of the United States to meet our JCPOA commitments." Obama vowed to veto the legislation.

"The JCPOA demonstrates what can be achieved by principled diplomacy and a sustained commitment to stopping the spread of nuclear weapons. America's willingness to engage directly with Iran opened the door to talks, which led to the international unity and sustained engagement that culminated in the JCPOA. We still have serious differences with Iran, but the United States, our partners, and the world are more secure because of the JCPOA," Obama said in a separate statement marking the anniversary.

Sens. Bob Corker (R-Tenn.), Robert Menendez (D-N.J.), Marco Rubio (R-Fla.) and Joe Manchin (D-W.Va.) announced July 13 their intention to introduce the Countering Iranian Threats Act of 2016. The proposed legislation would impose mandatory sanctions on entities and persons involved with Iran's ballistic missile program and against members and affiliates of the IRGC, codify the prohibition on U-turn transactions, prohibit the president from using sanctions relief imposed by the legislation as a means of striking additional accords with Iran, and extend the Iran Sanctions Act to Dec. 31, 2026.

"Iran is a supporter of international terrorism, continues to develop its ballistic missile capabilities, actively seeks to destabilize friendly governments, has conducted cyber attacks against the United States and our allies, continues human rights abuses, and does so with impunity. The United States must reserve the right to hold Iran accountable for its actions and that is exactly what this legislation will do, imposing stricter sanctions tied to the specific actions outside of the nuclear portfolio," Menendez said in a statement.

USTR Takes China to WTO over Export Duties

In its 22nd enforcement action taken to the World Trade Organization (WTO), U.S. Trade Representative (USTR) Michael Froman announced July 13 it was beginning dispute settlement proceedings with China over export duties on nine raw materials used as inputs in such U.S. industry sectors as aerospace, automotive, electronics and chemicals.

The U.S. is challenging the export duties on 21 tariff lines relating to nine raw materials: antimony, cobalt, copper, graphite, lead, magnesia, talc, tantalum and tin. These materials are used from products ranging from lithium ion batteries, flame retardants, gas turbine engines, electronic capacitors and packing construction, trade officials told reporters on a conference call July 13. These duties range from 5 to 20%.

Trade officials were reluctant to put a price tag on the effect of the duties. One told reporters that the raw materials price “fluctuates within a global framework.” Another said a “specific figure is hard to predict.” In two previous disputes on other raw materials, including tungsten and molybdenum, the WTO confirmed that China is obligated to eliminate export duties on any products other than those specifically listed in accession documents (see *WTTL*, Jan. 12, 2015, page 1).

Not surprisingly, U.S. manufacturers and trade-friendly members of Congress applauded the USTR action. “I am pleased that the Obama Administration is taking this step and hope it continues to use all available trade enforcement tools to tackle other big challenges, including rampant Chinese subsidies to steel, aluminum and other commodities that have driven overcapacity and decimated American manufacturers,” said Sen. Ron Wyden (D-Ore.) in a statement.

“China’s export restrictions on key raw materials give them an unfair advantage and are hurting a wide range of manufacturers in the United States from aerospace and automobiles to electronics and chemicals. It’s time that the United States take action, and we are pleased that the Obama administration is doing so,” noted National Association of Manufacturers (NAM) President and CEO Jay Timmons.

“In the case of rare earths, China’s predatory practices of restricting access to these vital products to users around the globe and providing incentives for companies needing these products to manufacture in China, were well-documented, said United Steelworkers (USW) International President Leo W. Gerard in a statement. “For many products, the effect of China’s policies has corroded America’s manufacturing base along with production in other countries,” Gerard added.

EGA Negotiations to Conclude This Year

G20 trade ministers made strong headway on the Environmental Goods Agreement (EGA) and addressing global excess capacity with regards to steel, USTR Michael Froman said in a statement July 10. While in Shanghai for the meeting, trade ministers set two deadlines

for the EGA. They agreed to “finalize a landing zone” by the G20 leaders meeting in September and to conclude the agreement before the end of the year.

The EGA trade accord involves 44 countries and seeks to reduce tariffs on environmental goods. Such action could increase U.S. environmental goods exports by \$13 billion per year and global exports by \$119 billion per year, according to a study by the U.S.-China Business Council. The U.S. exported \$130 billion environmental goods in 2015 and global trade in environmental goods tops \$1 trillion annually, according to USTR.

China recently upped its engagement in ongoing EGA negotiations, putting forward a snap-back provision during meetings among 17 EGA members that concluded June 24 in Geneva (see **WTTL**, July 4, page 8).

Excess industrial capacity is a global issue that has hurt the international market, the trade ministers agreed, but in a statement they failed to specify what actions will be taken. “We recognize that excess capacity in steel and other industries is a global issue which requires collective responses,” they wrote. G20 steel-producing countries will gather for the second Organization for Economic Cooperation and Development (OECD) steel committee meeting Sept. 8-9 to address global overcapacity.

“On excess capacity, the G20 took an important step in the right direction by recognizing that excess capacity is a global issue. Building on recent U.S.-China bilateral commitments, the G20 has added to the chorus of voices calling for tackling the root causes of excess capacity for the benefit of both developing and developed countries,” said Froman.

U.S. to Seek Trade Sanctions Against India in Poultry Dispute

The U.S. is seeking trade sanctions against India for failure to comply with a World Trade Organization (WTO) Dispute Settlement Body (DSB) ruling in favor of the U.S. The U.S. July 8 requested a meeting with the DSB, and the proposed DSB July 19 schedule shows “India – measures concerning the importation of certain agricultural products.”

The WTO Appellate Body (AB) upheld a decision by a dispute settlement panel in favor of the U.S. in its challenge of India’s ban on U.S. poultry, meat, eggs and live pigs back in June 2015 (see **WTTL**, June 8, 2015, page 3). The AB upheld the panel’s finding that India’s measures were “significantly more trade-restrictive than required to achieve India’s appropriate level of protection.” India claimed it put restrictions in place to protect against avian influenza. The AB upheld the finding that India’s avian influenza measures were inconsistent with the Sanitary and Phytosanitary Agreement. India had until June 19 to come into compliance.

Should India balk at the U.S. request to impose countermeasures, a WTO arbitration panel will determine the retaliation amount the U.S. can impose. USTR previously said annual U.S. export of poultry to India could “exceed \$300 million a year” once India’s restrictions are lifted.

TTIP Round 14 Concludes, Significant Differences Remain

Significant differences remain between the EU and U.S., negotiators said following the conclusion of the 14th round of Transatlantic Trade and Investment Partnership (TTIP) talks in Brussels July 11-15.

In a press conference July 15, Assistant USTR Dan Mullaney praised the progress that has been made in the nearly three years of negotiations, but did not hold back on U.S. areas of concern. “Now that Privacy Shield is coming into force, we look forward to having a full discussion of electronic commerce obligations on data flows and the location of computing facilities. Our inability even to discuss these obligations, which are vital to digital trade, has been unfortunate,” said Mullaney (see related story, page 7).

The U.S. wants elimination of all tariffs, but right now there is agreement on only 97% of tariff lines. The U.S. also wants an increase in the de minimis level in order to facilitate trade by small and medium size enterprises. Mullaney raised the issue of technical barriers, like the ones keeping U.S. laboratories from testing products for the EU market.

He said TTIP must include “significant obligations with respect to trade in services.” To that end, services negotiators met in Geneva for Trade in Services Agreement negotiations. “Our view of the urgent need for rapid progress on services and investment market access is well-known, and we will hope for that progress next week,” said Mullaney.

As for how the UK factors into negotiations, Mullaney said, “Brexit affects anew the calculations of everyone, but we are convinced that the strategic and economic rationale for TTIP remains strong. TTIP can help strengthen a transatlantic relationship that has weathered many previous challenges and has been the foundation of our common prosperity and security for more than 70 years.”

EU Chief Negotiator Ignacio Garcia Bercero voiced many of the EU’s concerns on access to procurement markets. Offers have only been exchanged once, and the U.S. offer “brings very limited improvements on market access,” Bercero said in his remarks. For its part, the EU published nine of its proposals July 14. The texts represent the EU’s negotiating position on regulatory cooperation in the sectors of cosmetics, medical devices, cars, chemicals and textiles, it said.

In addition, it published a “new article on climate protection as a part of the chapter on sustainable development, as well as separate chapters on energy and raw materials, market access for financial services, and on institutional cooperation within TTIP. The proposal for regulatory cooperation in the engineering sector will follow.” Negotiators had wanted a consolidated text by the end of July, but now expect that won’t happen until the end of September. EU Trade Commissioner Cecilia Malmstrom said the next round of negotiations will likely take place in September or October.

“For the EU, substantial improvements in market access at all levels of government continue to be a key objective of these negotiations. And we are still very far from

achieving that goal. Indeed, the gap between the level of ambition on tariffs and procurement remains a serious cause of concern,” Bercero noted. Bercero also acknowledged the political climate in the U.S. and the EU, but said the EU is prepared to make political choices to conclude the deal with the Obama administration “provided that the substance is right.”

EU, U.S. Formally Adopt Privacy Shield Framework

As expected, Commerce Secretary Penny Pritzker and European Union (EU) Justice Commissioner Věra Jourová announced the formal approval of the EU-U.S. Privacy Shield Framework July 12. “With new privacy protections in place, we are confident the Framework will withstand further scrutiny. We worked hand in hand with the European Commission to address the concerns raised throughout this process,” Pritzker said in a joint press conference.

Other EU officials, including European Data Protection Supervisor (EDPS) Giovanni Buttarelli, expressed remaining skepticism on the controversial framework, but U.S industry applauded its adoption (see **WTTL**, July 11, page 2).

The agreement “includes new privacy protections for companies to implement, new commitments from my Department to oversee compliance, new collaboration with European institutions to ensure the Framework functions as intended, and new redress options for people across the EU,” she added.

Commerce will start accepting self-certifications of voluntary compliance Aug. 1. “In parallel, the Commission will publish a short guide for citizens explaining the available remedies in case an individual considers that his personal data has been used without taking into account the data protection rules,” the EU said in a press release.

Trade Takes Center Stage in Party Platforms

In advance of their respective conventions later in July, both political parties are taking surprising positions on free trade. For one, the typically pro-free trade Republican Party is taking a softer stance. The platform subcommittee on the economy, jobs and debt voted July 11 to remove all references to the Trans-Pacific Partnership (TPP) and recommended language that large agreements should not be undertaken during a lame-duck session.

The party’s presumptive nominee has been outspoken in his disapproval of TPP and a desire to bring manufacturing jobs back to the U.S. Four years ago, the GOP 2012 platform had called on a Republican president to conclude TPP negotiations.

On the other side, the Democratic Party platform stopped short of criticizing TPP, leaving supporters of Sen. Bernie Sanders (I-Vt.), who unsuccessfully pushed for an amendment blocking TPP, disappointed. The platform language states that Democrats will only

approve new trade agreements that support American jobs, raise wages, improve national security, and include “strong and enforceable” labor and environment standards in its core text. The language narrowly keeps the platform from being in direct opposition to President Obama, who wants to conclude TPP and TTIP before his presidency ends.

AFL-CIO President Richard Trumka issued a statement praising the Democratic Party’s language on trade. “The voices of working people put the brakes on TPP and forced a real, vibrant debate about ending corporate trade. Secretary Clinton has made clear that she opposes the TPP before or after the election and believes in a whole new approach to trade that shares our values. Now, the Democratic Party has listened to working families and responded in a powerful, positive way.”

With neither major party candidate supporting the 12-nation free trade agreement, it’s little wonder then that National Foreign Trade Council (NFTC) President Rufus Yerxa said at a press event July 12 that he doesn’t see the “political will” in Congress to take up TPP right now. “That doesn’t surprise me because we’re in the middle of an election,” he added. Congress could wait until the lame-duck session to approve and implement TPP, which wouldn’t be too difficult given that very little in U.S. law would need to change in order to become TPP compliant, Yerxa pointed out.

Praise for TPP at Digital Trade Hearing

Witnesses raised the alarm over restrictions on data flows at a House Ways and Means Trade Subcommittee hearing on U.S. digital trade and U.S. digital exports July 13.

Robert Atkinson, founder and president of the Information Technology and Innovation Foundation (ITIF), testified that countries are erecting data flow barriers out of concern for privacy and security or, in some cases, for obvious protectionist purposes. ITIF and the Internet Association support the Trans-Pacific Partnership (TPP) because it would prohibit forced data localization and strengthen intellectual property rights.

Even the financial services industry has come around, thanks to the administration’s new position on financial data in trade deals. The Financial Services Roundtable announced its endorsement of the deal July 13, as did the Securities Industry and Financial Markets Association and the American Council of Life Insurers.

Chris Padilla, vice president of government and regulatory affairs at IBM, summed it up. “We shouldn’t have to have a data center in Brazil in order for a Brazilian to watch Serena Williams on the Wimbledon app, but there are regulations proposed that would require that,” he told the hearing.

“Arbitrary blocking of cross-border Internet traffic, which effectively prohibits digital trade by U.S. companies, is another long-term problem in many countries throughout the world. China is a particularly extreme example. In addition, inadequate protection of intellectual property rights – such as digital piracy of media or software – hurts our

innovative companies,” said Ways and Means Trade Subcommittee Chairman Dave Reichert (R-Wash.).

Rep. Ron Kind (D-Wis.) wondered what the consequences would be should Congress fail to pass the TPP. “If we don’t pass the TPP with these very strong provisions to have digital openness and digital trade, I would predict that what we’re going to see is the tipping point just going the other way to essentially a regime of digital nationalism, to a pre-WWII balkanized digital economies, and that, first of all is going to be bad for the global economy, and particularly it’s going to be bad for us,” Atkinson replied.

*** * * Briefs * * ***

COOKWARE: In 5-0 “sunset” vote July 12, ITC said revoking antidumping duty order on porcelain-on-steel cooking ware from China would renew injury to U.S. industry. Commissioner Meredith Broadbent did not participate.

WIRE ROD: In 6-0 “sunset” votes July 8, ITC said revoking antidumping duty (AD) orders on stainless steel wire rod from Japan, Korea and Taiwan would renew injury to U.S. industry. At same time, ITC determined that revoking AD orders on product from Italy and Spain would not renew injury. Negative vote on Spain was 6-0, while 4-2 for Italy. Commissioners Pinkert and Schmidlein voted yes.

AMMONIUM SULFATE: In 6-0 preliminary vote July 8, ITC found U.S. industry may be injured by allegedly dumped and subsidized imports of ammonium sulfate from China.

FALSE CLAIMS: China-based clothing manufacturer Motives Far East and Motives China Limited agreed July 14 to pay \$13.4 million to settle government complaint in Manhattan U.S. District Court under False Claims Act. Suit claimed company engaged in scheme to evade customs duties on garments imported from China from 2009 through 2013 by underreporting value of shipments.

FCPA: Former Alstom Power executive William Pomponi died May 24 while awaiting sentencing for charges of bribing Indonesian officials to secure power contracts. Justice filed unopposed motion to drop charges July 6 in New Haven, Conn., U.S. District Court. Pomponi pleaded guilty to conspiracy to violate FCPA in July 2014 (see **WTTL**, July 21, 2014, page 11).

HACKING: Chinese national Su Bin was sentenced July 13 in Santa Ana, Calif., U.S. District Court to 46 months in prison for conspiring to hack into computer networks of major U.S. defense contractors, including Boeing. Su pleaded guilty in March to computer fraud and violating Arms Export Control Act (see **WTTL**, March 28, page 10). Su also admitted to stealing USML technical data and sending stolen data to China.

BREXIT: House Ways and Means Committee Chairman Kevin Brady (R-Texas) and Senate Finance Committee Chairman Orrin Hatch (R-Utah) July 13 introduced resolution (H.Con.Res. 146/S.Con.Res. 47) “expressing strong support for closer economic and commercial ties” between U.S. and UK following UK’s vote to leave EU. Resolution urges president to begin discussions toward future bilateral trade agreement and supports conclusion of “high standard” TTIP. Same day, new UK Prime Minister Theresa May named Liam Fox to be Secretary of State for International Trade. He is reportedly tasked with negotiating new trade agreements with Britain’s trading partners.

NEW TRADE GROUP: Information Technology & Innovation Foundation (ITIF) July 11 launched Global Trade and Innovation Policy Alliance, “international network of think tanks that conduct evidence-based research into policies that can foster greater trade liberalization, curb ‘innovation mercantilism,’ and encourage governments to play proactive roles in spurring innovation and productivity,” according to ITIF press release.

CHINA: International arbitral tribunal July 12 ruled in favor of Philippines in its dispute with China over claims in South China Sea. Tribunal determined major elements of China’s claim, including land reclamation activities in Philippine waters, are illegal. China’s Ministry of Foreign Affairs called ruling “null and void and has no binding force,” though Chinese government said it wants to resolve dispute peacefully. Ruling may cause other Asian countries, like Vietnam, to pursue similar cases against China, U.S.-China Economic Security Review Commission predicted. U.S. annual trade through South China Sea stands at \$1.2 trillion.

CUBA: U.S. and Cuban officials, including BIS Deputy Assistant Secretary Matthew Borman, met in Havana July 12-13 for third Regulatory Dialogue. Next day, State’s John Creamer and Director General for U.S. Division of Cuban Ministry of Foreign Affairs Josefina Vidal met for biannual migration talks. U.S. said Cuban government should accept return of Cuban nationals removed from U.S. Next round of migration talks will take place in Washington before end of year.

EXPORT ENFORCEMENT: Chinese national Daofu Zhang was sentenced July 8 in New Haven U.S. District Court to 15 months in prison for trafficking in counterfeit goods/services. Charges are related to scheme to obtain and illegally export sophisticated Xilinx semiconductors stolen from U.S. military. Zhang pleaded guilty in April and has been detained since his arrest in December (see **WTTL**, Dec. 14, page 9). Two other Chinese nationals, Jiang Guanghou Yan and Xianfeng Zuo, pleaded guilty to related charges in March and are in custody awaiting sentencing.

MORE EXPORT ENFORCEMENT: Gregory Allen Justice, of Culver City, Calif., was arrested July 7 on charges of economic espionage and violating Arms Export Control Act. In March 2016, Justice allegedly provided sensitive satellite materials to person that he believed was agent of Russian government, when in fact that person was undercover FBI employee. “The materials that Justice provided were trade secrets and contained technical data that required an export license” under ITAR, said criminal complaint filed in Los Angeles U.S. District Court. Justice worked for cleared defense contractor as engineer on military and commercial satellites, complaint noted.

ISDS: International arbitral tribunal July 8 formally dismissed tobacco giant Philip Morris’ claims against Uruguay’s cigarette packaging regulations. Case was filed in March 2010 under 1988 bilateral investment treaty (BIT) with Switzerland. Tribunal has also asked Philip Morris to reimburse Uruguay \$7.7 million for its legal expenses. U.S. arbitrator Gary Born dissented. “This precedent-setting decision not only upholds Uruguay’s public health measures, but sends a strong signal to other countries that they can move forward with strong tobacco control regulations without fear of intimidation by big tobacco companies like Philip Morris,” said Foley Hoag attorney Paul Reichler in statement.

COLOMBIA: Labor’s Office of Trade and Labor Affairs will review Colombia’s compliance with its labor obligations under U.S.-Colombia free trade agreement (FTA). AFL-CIO and four Colombian unions filed petition May 16 asking for “thorough, wide-ranging investigation” (see **WTTL**, May 23, page 8). “This failure to vigorously enforce the provisions of the Colombia FTA gives us no confidence that actions to protect workers under the TPP will be any timelier or robust,” AFL-CIO International Affairs Director Cathy Feingold said in statement July 15.