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## BIS Requests Comments on Huawei General License Extension

The Bureau of Industry and Security (BIS) March 12 for the third time extended a narrow and temporary General License (GL) authorizing some transactions with Huawei and 114 non-U.S. affiliates through May 15. This time, the agency requested public comments on future extensions.

In February, BIS extended the GL through April 1. On the same day, a 16-count superseding indictment was filed in Brooklyn U.S. District Court charging the Chinese firm and several subsidiaries with racketeering and conspiracy to steal trade secrets (see **WTTL**, Feb. 17, page 1). BIS originally added the Chinese firm and its affiliates to the Entity List in May 2019.

“BIS is requesting these comments to assist the U.S. Government in evaluating whether the temporary general license should continue to be extended, to evaluate whether any other changes may be warranted to the temporary general license, and to identify any alternative authorization or other regulatory provisions that may more effectively address what is being authorized under the temporary general license,” the Federal Register notices said. Comments are due March 25.

On the same day, a bipartisan group of lawmakers introduced the NETWORKS Act (S. 3469/H.R. 6235), which would add foreign companies producing 5G technology, like Huawei, to Treasury’s Specially Designated Nationals (SDN) List “should they engage in economic or industrial espionage or sanctions violations,” a joint statement noted. The bills would also exempt transactions involving existing 3G or 4G networks “in order to minimize disruption to global networks” and allow participation in international standards-setting bodies,” the lawmakers’ statement noted.

## Judge Orders 3D Printing Software to Remain Under State Jurisdiction

The legal fight over final rules transferring firearms and ammunition from the U.S. Munitions List (USML) to Commerce Control List (CCL) came down to the wire March 6,

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with a Seattle U.S. District Court judge issuing his order on the preliminary injunction 22 states filed to block the transfers at end of the business day Pacific time (see **WTTL**, March 9, page 1). Most of the transfers, with the exception of 3D printing software, went into effect March 9 as scheduled.

Judge Richard Jones enjoined State “from implementing or enforcing the regulation ...insofar as it alters the status quo restrictions on technical data and software directly related to the production of firearm or firearm parts using a 3D-printer or similar equipment.” He raised “serious questions going to the merits as applied to 3D guns. Again, the record evidence fails to explain the deviation from the State Department’s prior determination that controlling certain 3D gun files under ITAR was necessary to further world peace and national security.”

Jones cited the ability to separate the language on 3D files from the transfers. “There is no indication in the text ... for example, that the regulation would not have been passed but for their application to 3D gun files, or that the regulation of 3D gun files is so ‘intertwined’ with the effect of the Final Rules on unrelated products, he wrote. “By all accounts, the Final Rules are part of a decade-long reform to the export-control system and there is no indication, other than the Defense Distributed litigation, that any special attention was paid to 3D gun files,” Jones added.

“This is a major victory for public safety and common sense. Securing a preliminary injunction was critical in this case, because once these files are widely available, we cannot easily pull them back. This is a big first step, but we have a long fight ahead and Connecticut is ready to do what it takes to ensure the safety and security of our families,” said Connecticut Attorney General William Tong, one of the states that filed the lawsuit.

The National Shooting Sports Foundation (NSSF) which filed a motion opposing the lawsuit, applauded the ruling. “NSSF offered alternative language that would allow the court to address the 3D printing issue at a later date while allowing the bulk of the final rules to take effect without interruption. This was successful. NSSF accomplished the purpose for which we sought to intervene in the case,” Lawrence Keane, NSSF senior VP and general counsel, said in an email to **WTTL**.

In contrast, gun control organizations continued their opposition to the transfers. “We are pleased that part of the new rule focused on 3D-printed guns has been blocked, but Congress should act quickly to reverse the entire regulation. Lawmakers must pass legislation to reinstate congressional oversight and ensure that the overseas sale of firearms and ammunition is properly scrutinized,” Lindsay Nichols, federal policy director at Giffords Law Center, said in a statement.

## **Industry Rejects “Vague” Controls on Geospatial Imagery Software**

BIS had to know it was coming. In almost unanimous comments, industry denounced new export controls on geospatial imagery software and urged the agency to provide more

complete and narrow definitions of terminology included in the rule. As the first of potentially several rules on emerging technologies, BIS in January added “software specially designed to automate the analysis of geospatial imagery” to its “holding” Export Control Classification Number (ECCNs) 0Y521 series, specifically under ECCN 0D521 (see **WTTL**, Jan. 6, page 1). The agency received 28 comments on the rule.

Boeing cited the lack of a definition for the term “‘geospatial imagery’, which is a critical scoping element of the control text,” it wrote. “Without a narrowed definition of ‘geospatial imagery’, software being used and developed across industries involved in autonomy (marine, automotive, and aviation) will be negatively impacted without enhancing national security,” the company added. “We believe that companies involved in autonomy are already developing and using software that meets more expansive definitions of ‘geospatial imagery,’” Boeing wrote.

Mapbox commented that “improving the definitions of (1) geospatial imagery and (2) point cloud is warranted to ensure that the terms do not subject unintended software to export control.” While the map and location services provider believes “it is unlikely that an informed practitioner would make the mistake of subjecting street-level systems to scrutiny under the interim final rule, it is desirable to avoid ambiguity and the potential for future confusion. Defining ‘geospatial imagery’ to specifically refer to raster imagery collected from aerial or satellite sources will substantially reduce uncertainty and the risk that this rule could be misinterpreted in the future,” the company wrote.

FLIR argued that the terminology in the rule is “too vague and may result in unintentional over-control of certain software data.” Specifically, the company requested BIS “provide a clear and concise definition of ‘geospatial imaging’ to explicitly exclude data obtained from sources other than satellite or extreme, high altitude aircraft or spacecraft, including multispectral and hyperspectral imagery outside the visible spectrum. The new definition should delineate data based on the *method* obtained (satellite vs. aircraft) rather than the *type* of data,” it commented.

The University of Wisconsin-Madison (UWMadison) suggested that BIS provide a more complete definition of “object” to remove the current subjectivity. “This definition should address whether natural/meteorological structures and phenomena are included in the definition,” it wrote. In addition, UWMadison suggested that BIS exempt software used for environmental forecasting and monitoring by: adding a note stating that software used for environmental purposes is not included under 0D521 and is considered EAR99; and creating a definition of “object” that “specifically does not include geophysical phenomena,” it wrote.

Corteva Agriscience noted that the rule “has the potential to disrupt considerable progress being made in Digital Agriculture across the United States and around the world.” The company and other agriculture firms “utilize the automated analysis of satellite, aerial and other geospatial imagery in a number of different manners ranging from research and development, product placement, crop health management, environmental stewardship, risk management and quality control, to name a few. As written, however, the current rule

has considerable ambiguity, complicating the process of establishing compliance and monitoring protocols,” it wrote. The World Geospatial Industry Council (WGIC) cited the rule’s effects on work towards the Sustainable Development Goals (SDGs). “The new rule would mean that several countries and developmental organizations relying on these technologies and software will either have to procure them from other sources, look for possible exemptions, or, in the worst case scenario, halt the ongoing work on SDGs altogether.”

“The enforcement of the new rule will not have any impact on the proliferation of the target technology, since the geospatial imagery analysis, features and capabilities mentioned in it have already been embedded in numerous aspects of commercial products,” WGIC added.

## **Trade Agencies Postpone Conferences, Hearings**

As sports leagues and school districts around the country are canceling games and classes due to the coronavirus, and firms mandate employees to work from home if possible, U.S. and international trade groups are not exempt from the measures. With more announcements to come, the World Trade Organization (WTO), International Trade Commission (ITC) and the Export-Import (Ex-Im) Bank are postponing conferences and hearings. At the same time, retail industry groups urged the U.S. to lift its import tariffs to provide economic help to their companies.

Regarding the WTO Ministerial Conference (MC12) scheduled for June in Kazakhstan, Director-General Roberto Azevêdo March 12 circulated a note to members saying that “it is our considered view that holding MC12 as previously agreed from 8-11 June will not be feasible.” Azevêdo added that he and the General Council chair “will consult with WTO members, including through a special General Council meeting to be held as soon as conditions permit, on how to proceed with revised arrangements for MC12.”

The ITC postponed any Administrative Law Judge hearings and Title VII (antidumping and countervailing duty) preliminary phase staff conferences scheduled in the next 60 days. “All discovery will continue and any essential outside participation by staff will be decided on a case-by-case basis,” it said. “Regarding hearings (final phase Title VII investigations, five-year (sunset) reviews, and those held under Section 332 and Section 131), the Commission has decided not to hold in-person hearings. In lieu of in-person hearings, interested parties will be invited to answer written questions issued by the Commission with certified written responses,” the commission said.

The U.S. will host the upcoming G7 ministerial virtually by video teleconference instead of gathering in Pittsburgh March 24-25. “We thank the city of Pittsburgh for its willingness to host this year’s G7 ministerial and for the support and assistance planning this year’s event. We look forward to holding future events there,” Secretary of State Mike Pompeo said in a statement.

Ex-Im Bank announced “relief measures, including waivers, deadline extensions, streamlined processing, and flexibility, to its customers for an initial period of 30 days (with the possibility of a further extension of the period, at Ex-Im’s discretion)” for the following programs: Working Capital Guarantee Program; Multi-Buyer and Single-Buyer Short-Term Insurance Program; and Medium-Term Single-Buyer Insurance Policies Issued to Exporters. The bank also postponed its 2020 Annual Conference, previously scheduled for April 3-4, until September.

BIS canceled its Export Control Forum scheduled for April 1-2 in Los Angeles. “As BIS places a high value on the benefits of export control outreach education and interaction with our stakeholders, we hope to offer a remote-access program in the near future to highlight some of the material we intended to present in the Forum. We will announce the date and details of the program as they become available,” the agency posted on its website.

The pandemic also aggravated the division between importers and domestic industry, especially in the textile industry. Two dozen retail and fashion industry groups requested “the immediate elimination of tariffs imposed under Section 301 of the Trade Act of 1974 and retroactive refund of duties imposed on U.S. imports of consumer and commercial products from China – such as travel goods, clothing, footwear, headwear, accessories, furniture, building products, baby products, textiles, and back to school items,” they wrote in a letter to National Economic Council director Larry Kudlow.

“Any push by importers and retailers to take advantage of the situation and press for removing China 301 tariffs on finished consumer goods—a penalty imposed by the administration in a separate investigation of China’s illegal intellectual property (IP) abuses—should be rejected immediately,” National Council of Textile Organizations (NCTO) President and CEO Kim Glas said in a statement. “Tariff breaks on finished products will only pad the pockets of retailers that have long benefitted from China’s trade abuses, and ultimately will not be passed on to the consumer,” she added.

## **Sanctions Agencies Face Hiring Challenges, GAO Says**

All three of the main U.S. sanctions implementation units – Treasury’s Office of Foreign Assets Control (OFAC), State’s Office of Economic Sanctions Policy and Implementation (SPI), and BIS’ Foreign Policy Division (FPD) -- have received steady or increasing resources in the last five years, but have faced challenges in filling positions, the Government Accountability Office (GAO) found in a report published March 11 (GAO-20-324).

In FYs 2014 to 2019, OFAC received a 58% budget increase and additional hiring authority, but vacancies ranged from 6 to 26% of its authorized full-time equivalents (FTEs). “OFAC officials attributed the gap to challenges in hiring due to competition from other agencies and the private sector and the time needed for new hires to obtain security clearances,” the GAO noted.



“State SPI has also generally received additional authorized inflation-adjusted budgetary and human resources but has not been fully staffed in recent years. Commerce’s FPD has received relatively steady inflation-adjusted budgetary resources but, according to Commerce officials, lacks funding to fill one of its 10 positions,” it added.

Specifically, State SPI “received authority to hire six additional FTEs in fiscal year 2020, for a total of 21, but more than half of its authorized positions were vacant at the start of the fiscal year,” the report said. “GAO recommends that State include additional information about the expenditures it considers in its reporting for the Proliferation of Weapons of Mass Destruction sanctions program. State concurred with the recommendation,” it added.

“Treasury, State, and Commerce units that focus primarily on sanctions implementation have information that can measure changes in agency workload over time; however, agency officials cited challenges in using this information as accurate measures of workload for the purpose of informing resource needs,” GAO noted.

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

USMCA: Canadian Senate March 13 passed implementing legislation for U.S.-Mexico-Canada agreement (USCMA). U.S. Trade Representative (USTR) Robert Lighthizer applauded Canadian vote. “Now that the USMCA has been approved by all three countries, an historic new chapter for North American trade has begun,” he said in statement. U.S. hosted ceremonial signing of implementing legislation (H.R. 5430) in January on same day Canada introduced its own bill for Parliament’s approval (see **WTTL**, Feb. 3, page 3).

CHINA: Month after “phase one” trade deal with China, Agriculture Secretary Sonny Perdue March 10 cited further evidence of China’s progress in implementing its agriculture-related commitments. Most recent actions include: signing protocol that allows importation of fresh California nectarines; conditionally lifting import ban on beef and beef products from animals over 30 months of age; and updating lists of facilities approved for exporting dairy, infant formula, seafood, and fish oil and fish meal. Perdue and USTR Robert Lighthizer in February applauded “numerous actions” China previously had taken (see **WTTL**, March 2, page 4).

ENTITY LIST: BIS in Federal Register March 16 adds 24 entities to Entity List in (China), Iran, Pakistan, Russia and United Arab Emirates (UAE). At same time, rule modified five entries in France, Iran, Lebanon, Singapore and United Kingdom. Iranian national airline Iran Air has “history of diverting spare aircraft parts intended for civil aviation to military-linked entities and for military purposes,” notice says. OFAC designated Iran Air in November 2018 with 700 other individuals, entities, aircraft and vessels (see **WTTL**, Nov. 12, 2018, page 4).

ALUMINUM SHEET: Aluminum Association Common Alloy Aluminum Sheet Working Group, Aleris Rolled Products, Arconic, Constellium Rolled Products Ravenswood, JW Aluminum, Novelis and Texarkana Aluminum filed Countervailing and antidumping duty petitions March 9 with ITA and ITC against imports common alloy aluminum sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, South Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and Turkey. ITC in December 2018 found U.S. industry is materially injured by dumped and subsidized imports of common alloy aluminum sheet from China (see **WTTL**, Dec. 10, 2018, page 4).

FCPA: Boston U.S. District judge March 11 granted motion for new trial for Roger Richard Bony, dual U.S. and Haitian citizen who resides in Spain, and retired U.S. Army colonel Joseph Baptiste of Fulton, Md. Defense attorney Donald LaRoche's "failure to meaningfully review discovery produced by the Government until the days leading to trial was prejudicial to Defendant Baptiste in that it significantly impeded LaRoche's ability to prepare for trial," U.S. District Judge Allison Burroughs wrote. Men were convicted in June 2019 after two-week jury trial of conspiracy to violate Foreign Corrupt Practices Act (FCPA) and other charges in connection with planned \$84 million port development project in Haiti (see **WTTL**, June 24, 2019, page 7). Bony and Baptiste solicited bribes from undercover agents, with Baptiste saying he would funnel payments to Haitian officials through his nonprofit.

MORE FCPA: Lawrence Hoskins, former Alstom Power Inc. (API) senior VP in Asia, was sentenced March 6 in New Haven, Conn., U.S. District Court to 15 months in prison for role in scheme to bribe Indonesian officials in exchange for assistance in securing contracts. Judge Feb. 26 granted motion for new trial on seven FCPA charges for his alleged participation (see **WTTL**, March 2, page 6). He was convicted in November after two-week trial. Judge did not dismiss money laundering charges. Superseding indictment was unsealed in February in New Haven court against two former executives of Indonesian Alstom subsidiary and former Marubeni executive for their alleged participation in scheme.

ZIMBABWE: OFAC March 11 designated Anselem Sanyatwe, former commander of Zimbabwean National Army's Presidential Guard Brigade, and National Security Minister Owen Ncube for involvement in human rights abuses, including attack on peaceful demonstrators and political opponents. At same time, OFAC removed sanctions on four former officials who were designated in 2005. Three of four are deceased, and fourth, former provincial chair Ray Kaukonde, no longer meets sanctions criteria.

VENEZUELA: OFAC March 12 designated Swiss-incorporated Rosneft subsidiary TNK Trading International S.A. (TTI) for operating in Venezuelan oil sector. After agency designated Rosneft in February, "cargoes of Venezuelan oil allocated to [Rosneft Trading] were changed to TTI in order to evade U.S. sanctions," OFAC said (see **WTTL**, Feb. 24, page 4). Rosneft Oil Company obtained control over TTI in December 2017. At same time, OFAC issued amended General License (GL) 36A authorizing certain activities necessary to wind-down of Rosneft or TTI transactions until May 20. Agency also issued amended GLs 15C and 16C authorizing transactions involving certain banks for certain entities, including MasterCard, Visa and American Express, and maintenance of U.S. person accounts and noncommercial, personal remittances involving certain banks.