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Wolf Acknowledges Difficulties of Firearms Transfers

Now that proposals to move some products from U.S. Munitions List (USML) Categories I (firearms), II (guns and armament) and III (ammunition) to the Commerce Control List (CCL) are moving forward, Bureau of Industry and Security (BIS) Assistant Secretary Kevin Wolf acknowledged the difficulties administration officials face trying to walk the fine line between defending any potential transfers and explaining continued controls. "There are a lot of preliminary steps we need to get through," Wolf told the agency's Materials Processing Equipment Technical Advisory Committee (MPETAC) May 19.

> The decision to go forward with revamping the three categories was reportedly made at an interagency meeting in April (see **WTTL**, May 4, page 1). The transfers were ready for publication in December 2012 but pulled back after the tragic shootings at the Newtown, Conn., elementary school.

"Guns and ammunition are a hard one -- obviously, the optics and the politics and the nature of the items. From an export control side, they don't really fit cleanly within the primary objective of the reform effort, which is, the three-part test of increasing interoperability with NATO allies. These are not things that are used by NATO allies, because by definition they're commercial firearms," Wolf noted.

"By the way, nobody's ever discussed moving military weapons to the Commerce Department. The things you can buy in Wal-Mart, you can't enhance the interoperability with our NATO allies for such items, because they're consumer, commercial hunting rifles or sporting rifles or handguns," he added. "So thus, you don't have the interoperability, you don't have the other variables. There is the general sense of getting the USML down to just those items that provide us [singular military capability]. So then it becomes just a standalone policy topic," Wolf said.

Ex-Im Faces Likelihood of Another Short-Term Extension

Despite a commitment that Senate Majority Leader Mitch McConnell (R-Ky.) made May 21 to Export-Import Bank supporters in the Senate that they would get a vote in the Senate in June on reauthorization of the bank, congressional sources say Ex-Im is likely to get another short-term extension to keep it operating after the June 30 expiration of its current charter. The short-term extension could run until December 2015 when Congress will be forced to vote on an omnibus appropriations bill to keep the rest of the government running. McConnell gave his promise to Sen. Maria Cantwell (D-Wash.) and other Democrats to win their vote in favor of a cloture motion to bring up a vote on an amendment to re-authorize the president's fast-track trade promotion authority (TPA) (see related story page 10). The

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cloture motion passed by a 62-38 margin with about a dozen Democrats supporting the move. "Today, Senate Democrats secured a commitment from the Majority Leader that reauthorization of the Export-Import Bank will receive a vote in June. The vehicle will be negotiated between Senator Cantwell and Senator McConnell," Cantwell said in a statement. The attachment of Ex-Im reauthorization to a bill in the Senate may provide a way to circumvent the roadblock House conservatives have raised to the bank.

> On the other side of the debate, the Republican Study Committee (RSC) "will not support the reauthorization of the Export-Import Bank and believes that the bank should begin an orderly wind down when its charter expires on June 30th," said a statement by RSC Chairman Rep. Bill Flores (R-Texas) May 21. The RSC has been among the leaders in opposition to the bank, along with House Financial Services Chairman Rep. Jeb Hensarling (R-Texas) (see **WTTL**, May 18, page 7).

Earlier in the week, McConnell had said he would give the Senate a chance to vote on the bank. "I'm not a supporter of Ex-Im, but what I've said was that they are entitled to their vote and we will be working to make sure they have an opportunity to see where the votes are in the Senate," he told reporters May 19. Although Cantwell wanted reauthorization added to TPA, he said "it shouldn't be because that would be another undue burden for TPA which has been a challenging enough exercise, as you know, already."

Congressional sources say reauthorization "still has a problem going forward" in the House. "Hensarling and his crowd have really dug themselves in and not left any room to go through the Financial Services Committee," one source said. The only way around them is for the Senate to attach reauthorization to one of the several appropriations bills that the House has already sent the Senate or to a supplemental appropriations bill, he suggested.

Sources also say there is a chance lawmakers will miss the June 30 deadline for reauthorization and the bank's charter will expire at least temporarily. This has happened before, with the charter getting renewed after a short hiatus. "This would not be an entirely bad thing," one source said. "It will help drive home to those who are undecided the need for the bank," he opined.

A short-term lapse would only prevent the bank from writing new financing. Existing loans and guarantees and the operation of the bank could continue. Existing deals will be honored under Ex-Im's residual permanent and indefinite appropriations, which is granted to government financing backed by the full faith and credit of the U.S. The bank's current appropriations remains good until the end of the current fiscal year Sept. 30. Even beyond that it could still have funds to manage open transactions with the profits it receives from its outstanding financing.

Ex-Im Report Cites Growth of "Asian Model" of Trade Finance

Countries such as China, Japan and Korea have adopted an "Asian model" to financing and managing major foreign projects, which results in their exporters having an advantage over American competitors, a draft of the Export-Import Bank's annual competitiveness report asserts. The large holdings of U.S. dollars in Asia gives those countries a "comparative advantage" over the U.S. through investment support that is outside normal export funding and the restrictions of the Organization for Economic Cooperation and Development (OECD) Arrangement on export support, Ex-Im Senior Vice President Jim Cruse told the bank's public advisory committee May 20.

The competitiveness report shows a continuing decline in official export financing that is subject to the OECD Arrangement, particularly from the seven top industrial countries (G-7), Cruse noted. The level of official G-7 medium and long-term funding declined to $50.9 billion in 2014 from $59.9 billion in

2013. At the same time, Asian governments are expanding their long- and medium-term financing. Chinese long and medium-term financing rose to $101 billion in 2014 from $78 billion in 2013; Japan's went from $33 billion to $40 billion and Korea's from $24 billion to $29 billion, the report shows. Short-term financing by export credit agencies (ECAs) in Asia, where there is little private bank export financing, also has grown, Cruse noted.

> In 2014, China's ECA provided $344.82 billion in short-term financing, Korea's ECA ($165.57 billion) and Japan's ($63.73 billion). In contrast, Ex-Im short-term aid was $7.01 billion, Canada's ($52.11 billion), Germany's ($17.32 billion) and Italy's ($0.82 billion). Comparing Korea, Japan and China to Germany and Italy, which have active private-sector banking, "is not appropriate," Cruse said.

Chinese investment financing is part of its broader "going out" economic policy aimed at securing foreign sources of raw materials and agriculture products to compensate for its lack of natural resources, Cruse suggested. Beijing's policy is creating "massive turmoil" in Asia among Chinese competitors, and what it started is "rippling across financial markets," Cruse said.

House Bill Would End COOL Following WTO Ruling

The House Agriculture Committee moved quickly May 20 to repeal country of origin labeling (COOL) requirements for imported meat two days after the World Trade Organization's (WTO) Appellate Body upheld a panel report that found the law violated trade rules by placing an undue burden on foreign exporters, particularly in Canada and Mexico. The legislation (H.R. 2393), which passed the committee on a bipartisan 38-6 vote, would drop the COOL requirements for beef, pork and chicken.

> The attempts by the Agriculture Department (USDA) to resolve the dispute by changing its regulations were deemed inadequate by the Appellate Body. USDA Secretary Tom Vilsack has said on several occasions that the department had gone as far as it could go without legislation to fix the underlying statute.

The Appellate Body ruling May 18 upheld almost every finding by a dispute-settlement panel that determined the complex labeling requirements, which forced beef packers to label the country of birth, raising and slaughter of imported beef, imposed rules on imports that were less favorable than those imposed on domestic beef (see **WTTL**, Oct. 27, 2014, page 4). The panel did not err in "finding that the amended COOL measure increases the recordkeeping burden entailed by the original COOL measure...in its analysis of the impact of point-of-production labelling...in its analysis of the impact of the elimination of the country order flexibility...and its analysis of whether the detrimental impact of that measure on imported livestock stems exclusively from legitimate regulatory distinctions."

"This bill is a targeted response that will remove uncertainty and restore stability for the United States by bringing us back into compliance," said Agriculture Committee Chairman K. Michael Conaway (R-Texas) in a statement. "We must do all we can to avoid retaliation by Canada and Mexico, and this bill accomplishes that through full repeal of labeling requirements for beef, pork, and chicken," he said. "We will continue working to get this to the House floor as quickly as possible," he added.

Mexico and Canada, which brought the complaint to the WTO, have both threatened retaliation if the U.S. didn't repeal the COOL rules. "In light of the WTO's final decision, and due to the fact that this discriminatory measure remains in place, our governments will be seeking authorization from the WTO to take retaliatory measures against U.S. exports," said a joint statement issued by Canadian International Trade Minister Ed Fast, Canadian Agriculture Minister Gerry Ritz, Mexican Economy Secretary

Ildefonso Guajardo Villarreal, and Agriculture Minister Enrique Martínez y Martínez. The change to the USDA regulations, which "causes Canadian and Mexican livestock and meat to be segregated from those of U.S. origin, is damaging to North America's supply chain and is harmful to producers and processors in all three countries," they said.

> As expected, trade critics jumped on the WTO ruling as an example of trade deals forcing the U.S. to change laws that protect consumers. "Our food safety policies in this country should not be dictated by a closed-door trade tribunal," said Debbie Barker, international and trade program director at Center for Food Safety (CFS), in a statement. "The WTO has essentially overruled our democratic law making process, which demonstrates how trade agreements can weaken U.S. food safety standards," she added. On the other side, a host of farm organizations cited the WTO ruling as reason to repeal COOL.

BIS, OFAC Ease Exports of Internet Software to Crimea

The Bureau of Industry and Security (BIS) and Treasury's Office of Foreign Assets Control (OFAC) coordinated efforts May 22 to allow exports of publicly available personal communication software and services to Crimea. BIS updated its Export Administration Regulations (EAR) to allow "exports or reexports without a license to the Crimea region of Ukraine of software that is necessary to enable the exchange of personal communications over the Internet, provided that such software is designated EAR99, or is classified as mass market software under Export Control Classification Number (ECCN) 5D992.c of the EAR, and provided further that such software is widely available to the public at no cost to the user," it said in the Federal Register.

> At the same time, OFAC issued General License No. 9, which authorizes the export or reexport from the U.S. or by U.S. persons to Crimea of certain services and software "incident to the exchange of personal communications over the Internet, such as instant messaging, chat and email, social networking, sharing of photos and movies, web browsing, and blogging, … provided that such services are widely available to the public at no cost to the user," OFAC said.

The BIS rule also clarified previous controls on Crimea it issued in January (see **WTTL**, Feb. 2, page 1). "The new footnote clarifies that for purposes of the Country Group provisions under the EAR, the Crimea region of Ukraine uses the same Country Group designations as the country of Ukraine. This is because the Crimea region of Ukraine is not a country," the notice said.

OFAC in January published General License No. 8, which permitted transactions related to telecommunications service. Those transactions to and from Crimea are authorized, "provided that no payment pursuant to this general license may involve any transaction with a person whose property and interests in property are blocked." The license, however, does not authorize: (1) the provision, sale, or lease of telecommunications equipment or technology; or (2) the provision, sale, or lease of capacity on telecommunications transmission facilities such as satellite or terrestrial network activity.

BHP Billiton Pays $25 Million for Violating FCPA at Beijing Olympics

Australian mining firm BHP Billon (BHPB) agreed May 20 to pay $25 million to settle Securities and Exchange Commission (SEC) charges of violating the Foreign Corrupt Practices Act (FCPA) by sponsoring the attendance of dozens of foreign government officials, including from Burundi, Philippines, Congo and Guinea, at the 2008 Summer Olympics in Beijing. The company invited approximately 176

officials and employees of state-owned enterprises to attend the games at its expense, ultimately paying for 60 such guests, the SEC order noted. "The majority of these invitations were extended to government officials from countries in Africa and Asia that had well-known histories of corruption. The three to four day hospitality packages included event tickets, luxury hotel accommodations, meals, other hospitality, and, in many instances, offers of business-class airfare for government officials and their guests," it added.

> "BHPB recognized that inviting government officials to the Olympics created a heightened risk of violating anti-corruption laws and the company's own Guide to Business Conduct, but the internal controls it developed and relied upon in an effort to address this risk were insufficient. As a result, BHPB invited government officials who were directly involved in, or in a position to influence, pending contract negotiations, efforts to obtain access rights, regulatory actions, or business dealings affecting BHPB in multiple countries," the agency said.

The SEC acknowledged BHPB's remedial actions, including creating a compliance group within its legal department that is independent from the business units and reviewing its existing anti-corruption compliance program. Other changes include "embedding independent anti-corruption managers into its businesses and further enhancing its policies and procedures concerning hospitality, gift giving, use of third party agents, business partners, and other high-risk compliance areas," the agency added. A company statement said it has fully cooperated with the SEC. "Our Company has learned from this experience and is better and stronger as a result," BHP Billiton CEO Andrew Mackenzie said.

State Proposes Clarified ITAR Requirements for Defense Services

DDTC will propose changes May 26 to the International Traffic in Arms Regulations (ITAR) to clarify licensing and registration requirements for U.S. persons providing defense services while employed by foreign persons. The proposal in the Federal Register said DDTC wants "to clarify the registration and licensing requirements for U.S. persons located in the United States or abroad who are engaged in the business of furnishing defense services to their foreign person employers."

> In the preamble to the proposal, DDTC said it is considering amending its registration fee structure to go along with a final rule. "To accommodate the changes proposed in this rule, DDTC is considering modifying its registration fee structure. Of the many options being explored, one alternative involves providing a reduced base fee for individuals or natural U.S. persons," it added.

The agency said it seeks "to clarify when these same persons may be covered under existing DDTC authorizations previously issued to their employers and affiliates, and when they are instead obligated to apply for their own license or agreement prior to engaging in the provisions of defense services." Other changes would include a new note explaining that under specified circumstances, minority owners of a firm may list that company on their registration; a new definition of "natural person"; and a note saying natural persons employed by affiliates or subsidiaries of and listed on a U.S. person's registration are deemed to be registered as well.

The changes would apply to U.S. persons working at a foreign branch of a U.S. company; employees of a U.S. company's foreign subsidiary or affiliate; independent contractors outside the U.S., and U.S. employees of a foreign company with no U.S. affiliation, DDTC noted. DDTC also proposes revising text to clarify the existing requirement that U.S. persons performing defense services abroad are required to be registered and that defense services performed by natural U.S. persons may be authorized

via a DSP-5. The proposal would also add an exemption for natural U.S. persons employed by foreign persons located in NATO countries and other specified nations, as well as an exemption for natural U.S. persons employed by foreign persons engaged in foreign military sales-related activities.

U.S. Protests WIPO Expansion of Geographic Indications Rights

The World Intellectual Property Organization (WIPO), the United Nations (UN) body dedicated to the protection of intellectual property rights (IPR), brush aside the opposition of the U.S. and several other nations and agreed May 20 to expand rules that allow more geographic indications (GI) to be registered for trademark protection under WIPO agreements. "The United States is profoundly concerned with the Lisbon diplomatic conference and its outcome, the Geneva Act of the Lisbon Agreement," Ambassador Pamela Hamamoto, the permanent U.S. representative to the UN in Geneva, told the WIPO conference where the changes were adopted (see **WTTL**, March 23, page 6).

> WIPO negotiators adopted a revision of an international registration system to protect GIs for products such as coffee, tea, fruits, wine, pottery, glass and cloth. The change will allow registration of GIs, such as feta cheese, that are not linked to appellations of origin, which are tied to specific locations, a goal sought by the European Union (EU).

"We have heard from several Lisbon parties that the goal of this diplomatic conference was to improve the agreement and make it more attractive for a broader array of WIPO members and their stakeholders," Hamamoto said. "However, what we saw instead was that the long-term interests of the many and of the system have been sacrificed for the short-term and narrow interests of the few. It is hard to understand how the new Geneva Act of the Lisbon Agreement will actually advance the stated objectives of the current Lisbon parties, when the negotiation process and its outcome were undertaken without consensus by only 15% of the WIPO membership," she declared.

U.S. dairy exporters also protested the WIPO move. The National Milk Producers Federation (NMPF), the U.S. Dairy Export Council (USDEC) and the International Dairy Foods Association issued a joint statement calling on the U.S. Trade Representative to evaluate whether the agreement is likely to violate WTO obligations and called on Congress to examine the changes also. "The treaty and its proposed changes are clearly aimed at preventing competitors such as dairy producers and processors in the United States and other non-European countries from using names in international trade that they have used for decades," said NMPF President and CEO Jim Mulhern. USDEC President Tom Suber said, "It's clear that this agreement is an effort to promote the interests of GI holders at the expense of generic users."

BIS Warns Exporters of Potential Reexports to Russia

As BIS eased restrictions on telecommunications software to Crimea, it warned companies to practice due diligence in exporting controlled items that could be transshipped to Russia (see related story page 4). "BIS remains concerned about efforts by front companies and other intermediaries, who are not the true final end users, to transship or reexport U.S.-origin items to the Russian Federation in violation of these measures and other export controls," it said in guidance posted on its website May 19. "Even prior to the imposition of restrictions based on the situation in Crimea, front companies and other intermediaries obtained U.S.-origin items that may require a license to Russia through intermediate countries subject to a more favorable licensing policy under the Export Administration Regulations," it wrote.

"Whenever a person who is clearly not going to be using the item for its intended end use (e.g., a freight forwarder) is listed as an export item's final destination, the exporter has an affirmative duty to inquire

about the end use, end user, and ultimate destination of the item to ensure the transaction complies with the EAR," BIS said. "In addition, the ex-porter should pay attention to any information that may indicate an unlawful diversion is planned. This may include discrepancies in the destination country and the country from which an order is placed or payment is made," it added.

> "Exporters should pay attention to the countries a freight forwarder serves, as well as the industry sectors a distributor or other non-end user customer supplies. The exporter should then determine whether a license is required based on the likely country of ultimate destination and end use and end user," it noted. "If the exporter continues to have any doubts or concerns surrounding the end use, end user, or country of ultimate destination after exercising due diligence, the exporter should present all relevant information to BIS in the form of a license application or refrain from the transaction," BIS said.

TPP Debate Continues Between Administration, NGOs

As the Senate debated fast track Trade Promotion Authority (TPA), Obama administration officials continued to be locked in a battle of words with nonprofit labor and environmental groups over the Trans-Pacific Partnership (TPP). The debate has led some observers to wonder if the opposing sides are discussing the same trade agreement. As the debate heated up, the New Zealand press reported that a TPP ministerial meeting planned for Guam the week of May 26 has been canceled in part because of the uncertain outcome of the TPA debate in Congress.

> As part of the administration's TPP push, Secretary of State John Kerry spoke at a Boeing plant in Seattle May 19, stressing the foreign policy justification for the deal. The speech came just a few weeks after Secretary of Defense Ash Carter spoke on the national security reasons for TPP (see **WTTL**, April 13, page 2).

TPP is "as important to American interests in the Asia Pacific as our military posture," Kerry said. "Completing the TPP would send a message throughout the region as well as the world that America is – and will continue to be – a leading force for prosperity and security in the Asia Pacific," he declared.

In hopes of winning difficult points with the environmental movement, the U.S. Trade Representative's (USTR) office May 20 released a new report, "Standing Up for the Environment: Trade for A Greener World." The administration "is leading the charge to shape an international response to the global environmental challenges we face," the report contends.

"Across this critical zone, the TPP would establish the toughest environmental protections of any regional trade agreement. We are on track to establish new commitments to protect marine life from illegal fishing and harmful fisheries subsidies. With respect to fish subsidies, these are protections that have been sought, without success, for over a decade in the World Trade Organization," the report adds.

Environmental groups were quick to denounce the report. The USTR's office "is grasping at straws with this misleading report," Ilana Solomon, director of the Sierra Club's Responsible Trade Program, said in a statement. "Given the history of U.S. trade deals and leaked draft chapters of the Trans-Pacific Partnership, it's clear the TPP would harm our air, water, and climate. Let's be clear -- the environmental chapter of the TPP is still secret. Yet every indication is that it will fall short of actually prohibiting dangerous practices like illegal timber trade and shark finning," she said.

Separately, labor groups have rejected claims that TPP will increase worker rights in the region and draw trade away from China. "From what we know about the TPP, it's a low-standards agreement from the

perspective of working people,"said AFL-CIO Policy Director and Special Counsel Damon Silvers in a conference call announcing his organization's report, "The U.S.-China Economic Relationship: The TPP is Not the Answer." "It would solidify a model of globalization that drives wages and public interest policies down, it wouldn't address job killing currency manipulation, and it could allow China to reap the benefits of the agreement without joining," he said.

BIS Adds Restrictions to Exports of Cybersecurity Items

After a few fits and starts, BIS May 20 proposed new restrictions on exports of cybersecurity products and network intrusion software the Wassenaar Arrangement adopted in December 2013. Admitting it was unsure of the impact or effectiveness of the new rules, it requested public comments on the changes.

> In March, administration officials said they had resolved the interagency disagreement that had delayed publication of the new rules. In April, it seemed that year-long disagreement still hadn't been settled, and agencies were still grappling with the scope of the entries and what is controlled in them (see **WTTL**, May 4, page 4). Unlike past regulatory changes implementing Wassenaar agreements, which BIS has issued as final rules, the agency published the cyber controls as a proposal.

BIS proposes to add two Export Control Classification Numbers (ECCNs) to the Commerce Control List (CCL): 4A005 ("systems," "equipment," or "components" therefor, "specially designed" for the generation, operation or delivery of, or communication with, "intrusion software") and 4D004 ("software" "specially designed" for the generation, operation or delivery of, or communication with, "intrusion software"). These ECCNs would be controlled for national security (NS), regional stability (RS), and anti-terrorism (AT) reasons to all destinations, except Canada, the Federal Register notice said.

"No license exceptions would be available for these items, except certain provisions of License Exception GOV, e.g., exports to or on behalf of the United States Government," BIS said. In addition, the rule "continues applicable Encryption Items (EI) registration and review requirements, while setting forth proposed license review policies and special submission requirements to address the new cybersecurity controls, including submission of a letter of explanation with regard to the technical capabilities of the cybersecurity items," it said.

The rule would also add Internet Protocol (IP) network communications surveillance systems or equipment to ECCN 5A001. The new entry "is restricted to products that perform all of the functions listed; however, the Export Administration Regulations (EAR) also prohibits the export of equipment if the exporter intends it will be combined with other equipment to comprise a system described in the new entry," BIS noted.

BIS also proposed adding the definition of "intrusion software" to the EAR. The term would be defined as: software "specially designed" or modified to avoid detection by 'monitoring tools,' to defeat 'protective countermeasures,' of a computer or network-capable device, and performing extraction of data; modification of system or user data; modification of the standard execution path of a program or process to allow the execution of externally provided instructions. The proposed rules would not control the software itself, but the delivery systems for the intrusion software, Randy Wheeler, director of the BIS Information Technology Controls Division, told a conference call May 20.

"In reviewing how to interpret the scope of these entries, it was determined that we have to date identified a number of penetration testing products that have been classified under Category 5 part 2 due to

encryption functionality and that have been exportable to non-government end users all over the world, except for the embargoed countries under license exception ENC to date," she said. "However, the technical description of the delivery systems for intrusion software does encompass those penetration testing products," she explained. While the products identified are sold as defensive products generally for internal network testing, "they are capable of being used offensively as well," Wheeler noted.

> The proposed rule also included a license review policy for these items. "Cybersecurity items controlled for RS are proposed to be reviewed favorably if destined to a U.S. company or subsidiary not located in Country Group D:1 or E:1, foreign commercial partners located in Country Group A:5, [and] government end users in Australia, Canada, New Zealand or the United Kingdom." These governments "have partnered with the United States on cybersecurity policy and issues, which affords these countries with favorable treatment for license applications," BIS noted.

For other transactions, approval would be given "on a case-by-case basis to determine whether the transaction is contrary to the national security or foreign policy interests of the United States, including the foreign policy interest of promoting the observance of human rights throughout the world," the notice said. "Note that there is a policy of presumptive denial for items that have or support rootkit or zero-day exploit capabilities," BIS added.

Comments are due on the proposed rule by July 20. Specifically, BIS is seeking information about the impact and effectiveness of the rule, as well as the additional burden the licensing requirements would incur and any negative effects on "legitimate vulnerability research, audits, testing or screening and your company's ability to protect your own or your client's networks."

BIS Implements Extensive Wassenaar List Changes

BIS implemented numerous export control list changes May 21 to put in place revisions that the Wassenaar Arrangement, the multilateral export control regime, adopted at its plenary session in December 2014. The new rules cover such areas as machine tools, information security, spacecraft and high-performance computer (HPC) technology. In all, the final rule in the Federal Register revises 42 Export Control Classification Numbers (ECCNs) on the Commerce Control List (CCL).

These include new or updated controls on spacecraft equipment (Category 9), technology for fly-by-wire/flight-by-light systems (Category 7), machine tools (Category 2), optical equipment for military utility and fiber laser components (Category 6); equipment for production of electronic devices (Category 3), and certain telecommunications equipment and general purpose computers or servers (Category 5P2). New controls in ECCN 2B001.a cover turning machines with "unidirectional positioning repeatability" equal to or less (better) than "1.1 μm along one or more linear axis" and two or more axes "which can be coordinated simultaneously for 'contouring control'."

> The change to machine tool controls capped a two-year effort to shift the control methodology to the measurement of unidirectional repeatability from precision accuracy. This rule also revises three ECCNs -- 3B001, 3D001, and 3E001-- to add License Exception CIV eligibility for Anisotropic plasma dry etching equipment and related software and tech-nology for the development and production of this equipment, as a result of BIS' foreign availability assessment in February (see **WTTL**, Feb. 9, page 3).

It also added ECCN 9D005 to "control related software to the new spacecraft controls added to 9A004. However, these Items are already controlled under ECCN 9D515 on the CCL, as indicated by the text in

the parentheticals," BIS said. "People who look for them here first will be directed to ECCN 9D515 where they are controlled in the CCL. BIS will keep using 9D515 for this software because it works best with the unique export controls of the U.S., in that the '15' in the number corresponds to the category on the USML that specifies related military items," BIS said. It added definitions of fly-by-light system, fly-by-wire system, library, operations, administration or maintenance (OAM), plasma atomization, quantum cryptography, spacecraft bus, and spacecraft payload; and updated terms: civil aircraft, cryptanalytic items, cryptographic activation, end-effectors, information security, local area network, and technology.

Agencies Harmonize Export Destination Control Statements

As exporters transition products from the jurisdiction of DDTC to BIS, the two agencies are looking to make the exporting process as seamless as possible for companies that straddle the line between them. One example of that effort is seen in parallel Federal Register proposals that BIS and DDTC published May 22 to harmonize destination control statements (DCS) required under the Export Administration Regulations (EAR) and International Traffic in Arms Regulations (ITAR).

> "This change in jurisdiction for many of the parts and components for military systems has increased incidence of exporters' shipping articles subject to both the ITAR and the EAR in the same shipment. Both regulations have a mandatory destination control statement that must be on the export control documents for shipments that include items subject to those regulations. This has caused confusion to exporters as to which statement to include on such mixed shipments, or whether to include both," the two notices said.

The proposal reads: "These items are controlled and authorized by the U.S. Government for export only to the specified country of ultimate destination for use by the end-user herein identified. They may not be re-sold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized end-user or consignee(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations."

Fast-Track Legislation Passes Senate After Hard Debate

If Shakespeare were writing the script for the Senate consideration of fast-track trade promotion authority (TPA) the week of May 18, he might have titled it, "All's Well That Ends Well." After much maneuvering, Republicans and Democrats TPA supporters were able to muster enough votes to invoke cloture thrice to keep the legislation moving and in the end, at 9:22 P.M., Friday May 22, to approve final passage of an amended version on a vote of 62-37. The votes marked a big defeat for labor unions, environmentalists and consumer groups that oppose TPA, setting up another fight in the House.

> Along the way, a bipartisan coalition held mostly together to defeat amendments that could have derailed the measure. Among the defeated amendments was one offered by Sens. Rob Portman (R-Ohio) and Debbie Stabenow (D-Mich.) to make enforceable rules against unfair currency manipulation a principal negotiating objective in trade talks and to subject violations to dispute settlement.

Obama administration officials said they would recommend a presidential veto of TPA if the amendment were attached. The amendment was defeated on a 48-51 vote (see **WTTL**, May 18, page 1). Instead, members voted 70-29 on an alternative offered by Finance Committee Chairman Orrin Hatch (R-Utah) and Ranking Member Ron Wyden (D-Ore.), to make currency a principal negotiating objective but providing different ways to deal with it, including transparency, monitoring and reporting. With a core of

about a dozen Democrats, the Senate passed three cloture votes to keep action on TPA moving. The votes were 65-33, 62-38 and 61-38. Although more than 150 amendments were filed for potential attachment to the TPA measure, in the end, just a handful were brought to the floor for a vote. Among defeated amendments were those offered by Sen. Elizabeth Warren (D-Mass.) (39-60) to strike investor-state dispute settlement from the bill; Sen. Sherrod Brown (D-Ohio) (47-53) to require congressional vote to add new members to any TPP deal; and Sen. Jeff Flake (R-Ariz.) (36-62) to end Trade Adjustment Assistance (TAA). It approved by a 62-37 margin the Hatch-Wyden substitute amendment that included the measure passed by Finance April 22, with several modifications. The final amendment picked up a House tax bill (H.R. 1314) and replaced all its text with the final Senate version of TPA.

> Earlier in the week, Hatch, Wyden and House Ways and Means Committee Chairman Paul Ryan (R-Wis.) issued a joint statement promising to bring a Customs enforcement bill to the House floor for a vote. "Expanding trade creates the opportunity to create new, higher-paying jobs across the country. A strong enforcement agenda is critical to making sure our trading partners live up to their end of the deal, and making the most of the opportunities for American businesses and workers," they said May 18.

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FALSE ALARM: Customs and Border Protection reported delay of C-TPAT Portal 2.0 Phase II release for exporters, which was supposed to go into place May 18, until May 30 (see **WTTL**, May 18, page 1). "All data may not be available until June 1st. This deployment will restructure the security profile function into individual line items," agency posted on its website May 22.

SHIPPING CONTAINERS: ITC in 5-0 negative final vote May 19 found U.S. industry is not injured by dumped and subsidized imports of 53-foot domestic dry containers from China. Commissioner F. Scott Kieff did not participate in final phase of investigations.

CITRIC ACID: In 6-0 "sunset" vote May 21, ITC determined revoking countervailing duty order on citric acid and certain citrate salts (CACCS) from China and antidumping duty orders on CACCS from Canada and China would renew injury to U.S. industry.

MAHAN AIR: OFAC May 21 added Iraq-based Al-Naser Airlines, Syrian businessman Issam Shammout, and his UAE-based Sky Blue Bird Aviation to its Specially Designated Nationals (SDN) list for providing support to Iran's Mahan Air. At same time, BIS added Al Naser Airlines, Bahar Safwa General Trading, and Ali Abdullah Alhay to existing Temporary Denial Order (TDO) against Mahan Air. Alhay is 25% owner of Al Naser Airlines, and Bahar Safwa of Dubai, UAE, is suspected front company for Mahan, BIS said. Mahan Air was first designated in October 2011 for providing financial, material and technological support to Iran's Islamic Revolutionary Guard Corps-Qods Force (IRGC-QF).

EXPORT ENFORCEMENT: Svetalina Zagon pleaded guilty May 15 to conspiracy to violate International Emergency Economic Powers Act (IEEPA) and Arms Export Control Act (AECA), and to commit wire fraud. She originally was indicted in October 2012 with 10 other Russian and U.S. naturalized citizens on charges of unlicensed export of microelectronic products to Russian military and intelligence agencies, with superseding indictment handed up in November 2014 (see **WTTL**, Oct. 8, 2012, page 1). Sentencing is set for Dec. 3.

FOREIGN DEFENSE SALES: State and Defense have initiated several steps aimed at coordinating help for U.S. firms selling defense goods abroad and increasing transparency in departments for U.S. exports, Assistant Secretary of State for Political-Military Affairs Puneet Talwar told Aerospace Industry Association (AIA) May 21. Among steps they are taking are: building single Defense Advocacy Working Group to identify areas that require heightened communication and an extra advocacy effort; coordinating better their roles at trade shows; and being more transparent and responsive to industry. "Starting in July, we are launching a senior-level, quarterly industry outreach forum to have a two-way conversation with you. This quarterly forum will allow us to get input from you, assess upcoming sales, and build an advocacy strategy rooted in unity," he said.