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Chinese Chips in the Soup

The Financial Times reports the US Government has information China's biggest memory manufacturer has been supplying Huawei in violation of export controls. Yangtze Memory Technologies Co (YMTC), a state-owned semiconductor firm, has already drawn attention as a potential supplier for future Apple iPhones.

In an April letter to Apple CEO Tim Cook, Sen. Marco Rubio (R-FL) said. "YMTC is a rapidly expanding, state-owned company with extensive links to the Chinese Communist Party's (CCP) armed wing, the People's Liberation Army (PLA). It is unacceptable that sales of the next generation of iPhones would end up strengthening the Chinese military and put the lives of American service-members at risk as a result."

Congress has been pressing Commerce (BIS) to include YMTC on the entity list, a move with implications for the revenues of not just Apple, but the US Semiconductor Equipment industry. Apple and most semiconductor suppliers owe nearly one-third of their revenue to China. Having lost customers Huawei and Semiconductor Manufacturing International Corporation (SMIC) to BIS actions, industry pushback can be expected.

"Dominance in the semiconductor market is a key objective of the Chinese Communist Party's 'Made in China 2025' plan, which seeks to satisfy 70% of the country's demand for chips domestically within the next five years," warned Roslyn Layton of *China Tech Threat* in a *Forbes* article last year. "To achieve that goal, the Chinese government has used state-owned companies to pilfer sensitive US-made 'dual-use' technologies, which have both civilian and military applications."

"Mr. Estevez needs to hit the ground running," Layton said in a post earlier this month on the confirmation of Alan Estevez as BIS Chief. "With recent news that Apple is sourcing chips from YMTC for the iPhone, BIS must stop dragging its feet on calls to add the Chinese military fab to the Entity List."

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The Entity List is a tool utilized by BIS to restrict the export, re-export, and transfer (in-country) of items subject to the Export Administration Regulations (EAR) to persons (i.e., individuals, organizations, and companies) reasonably believed to be involved, or to pose a significant risk of becoming involved, in activities contrary to the national security or foreign policy interests of the United States. According to *Open Secrets*, the electronics manufacturing and equipment industry spent \$186 million on lobbying last year, up from \$10 million in 1996.

De Meh-nimus for Now

The *de minimis* regulation was created in 1938 to lighten the burden of custom officials, saving them time from processing paperwork and doing inspections. One dollar at its inception, the \$200 threshold was raised to \$800 in 2016, the highest in the world. In Europe both duty and VAT are exempt when up to €22. VAT but not duty is assessed if shipment is between €22 and €150. In China's the *de minimus* is 50 yuan (\$7.90).

U.S. Customs and Border Protection (CBP) reports that roughly 771 million *de minimis* packages entered the U.S. in fiscal year 2021. According to *the Coalition for a Prosperous America*, the value of these shipments reached at least \$128 billion last year. If accurate, the nation's merchandise trade deficit in 2021 was almost 15% higher than reported.

One beneficiary is the import ecosystem created by the Fulfilled by Amazon (FBA) program, which grew 34 percent last year, totaling \$107.69 billion. These agency transactions are not imports by Amazon, and the program encourages participating merchants to ship in smaller lots, to conserve warehouse space and avoid customs clearance delays. Higher volumes of low-value packages with little or no inspection have facilitated counterfeit products entering the U.S. Over 90% of all intellectual property seizures occur in the international mail and express environments, and 83% of them originate in China, according to Customs.

In response, Rep. Earl Blumenauer (D-OR) earlier this year introduced the Import Security and Fairness Act (H.R.6412), which would eliminate the preference for "nonmarket economies," among others. As *Politico* reminded us last week, Blumenauer's brother Oregonian and Chair of the Senate Finance Committee, Ron Wyden (D) was an original co-sponsor of the Low Value Shipment Regulatory Modernization Act of 2015 which raised the threshold. Realpolitik and pressure to keep consumer prices muted may be expected to leave this dog lie.

Tariff Cuts to Whip Inflation?

After Treasury Secretary Janet Yellen said last week that tariff cuts were "worth considering" to temper inflationary pressures, White House Press Secretary Jen Psaki confirmed "this is an ongoing process and we're certainly looking at where we see costs being raised and, at a time where we're seeing heightened inflation, certainly that's on our minds." *Politico* notes that US Trade Representative Katherine Tai has refrained from hopping on the bandwagon, contending the negotiating leverage of tariffs should not be wasted.

USTR Report on Intellectual Property

The office of the United States Trade Representative (USTR) released their annual Special 301 Report reviewing the state of intellectual property protection and enforcement by trading partners around the world, identifying seven priority regimes (China, Russia, India, Indonesia, Argentina, Chile and Venezuela) and a watch list of 20 others, including Brazil, Canada, Mexico and Turkey.

The Report identifies concerns regarding:

- challenges with border and criminal enforcement against counterfeits, including in the online environment;
- high levels of online and broadcast piracy, including through illicit streaming;
- inadequacies in trade secret protection and enforcement in China, Russia, and elsewhere;
- troubling “indigenous innovation” and forced technology transfer policies that may unfairly disadvantage U.S. right holders in markets abroad;
- other ongoing, systemic issues regarding IP protection and enforcement, as well as market access, in many trading partners around the world.

The report calls out the European Union’s exclusionary geographical indications (GI) policies. According to the National Milk Producers Federation, the EU misuses protections meant for proper GIs to monopolize common cheese terms and raise unjustified trade barriers to block dairy exports from outside the bloc. The EU also pursues trade agreements worldwide that prohibit American-made products, including cheese, from using names like parmesan, asiago, and feta.

Trans-Atlantic Data Privacy Framework

The U.S. E.U. Transatlantic Data Privacy Framework announced March 25, remains pending Executive Order, which would then be sent to Brussels for an adequacy decision. In her testimony to the Senate Commerce Committee Commerce Wednesday April 27, Commerce Secretary Gina Raimondo indicated the Executive Order will be ready “very soon.”

The proposed Framework includes safeguards to limit access to data by U.S. intelligence authorities, A new two-tier redress system to investigate and resolve complaints of Europeans on access of data by U.S. Intelligence authorities, which includes a Data Protection Review Court, and obligations for companies processing data transferred from the EU, including the requirement to self-certify their adherence to the Principles through the U.S. Department of Commerce

April 26 the US Chamber of Commerce and the Business Roundtable led a multi-association letter to the White house in support of the Framework. The Chamber notes the data transfer relationship between the U.S. and EU is worth about \$7.1 trillion and global data flows now contribute more to global growth than global trade in goods.

Freeze it, Siese it, Forfeit, says Attorney General

The Justice Department will ask for authority to confiscate sanctioned individual assets as part of the President's supplemental budget request to support Ukraine. On April 28 Justice announced a package of proposals to Congress that would:

- Enhance the Justice Department's ability to hold the Kremlin and Russian oligarchs accountable for the ongoing invasion of Ukraine. Providing this authority requires amendments to multiple statutes governing the use of forfeited funds.
- Expand forfeiture authorities under the International Emergency Economic Powers Act (IEEPA) to reach property used to facilitate sanctions violations, taking away the violators' "tools of the trade." This proposal would amend IEEPA's penalty provision to extend the existing forfeiture authorities to facilitating property, not just to proceeds of the offenses.
- Add criminal violations of IEEPA and the Export Control Reform Act (ECRA) to the definition of racketeering activity in the Racketeer Influenced and Corrupt Organizations (RICO) Act.
- Extend the statute of limitations from five years to 10 years.
- Expand upon existing U.S. law to facilitate enforcement of foreign restraint and forfeiture orders for criminal property.

European Sanctions Get Smart

Pending EU sanctions on Russian energy will be "smart," crafted to cushion the costs to importers, according to European Commission executive vice president Valdis Dombrovskis in an interview with the *Times of London*.

"We are working on a sixth sanctions package and one of the issues we are considering is some form of an oil embargo. When we are imposing sanctions, we need to do so in a way that maximizes pressure on Russia while minimizing collateral damage on ourselves,"

JP Morgan said this week an immediate ban on Russian Oil Imports could send prices to \$185 per barrel. A full embargo would cut supply by 4 million barrels per day, Natasha Kaneva, Head of Global Commodities Strategy at J.P. Morgan, told *Bloomberg*.

Self-sanctioning by European traders has begun to reduce imports, though Russia remains the region's largest oil supplier, accounting for more than a quarter of imports. India, on the other hand, has already bought more than twice as much crude from Russia in the two months since the invasion of Ukraine on Feb. 24 as it did in the whole of 2021, according to *Reuters*.

Natural gas continues to flow to Europe from Gazprom via the Ukraine Pipeline, although Russia's state-owned energy firm cut supplies of natural gas to Poland and Bulgaria earlier this week, after both nations refused to pay for the commodity in rubles

Customs Deploys Modernized ACE Forms

U.S. Customs and Border Protection (CBP) deployed the new CBP Forms application April 23. The CBP Forms application allows trade users to view, respond and manage electronic versions of CBP Form 28 (Request for Information), Form 29 (Notice of Action), Form 4647 (Notice to Mark and/or Notice to Redeliver) and Docs Required response and management functionality.

ATF Frame & Receiver Clarification

The Bureau of Alcohol, Tobacco, Firearms and Explosives proposed a rule to better define “frame or receiver” by providing an updated, more comprehensive definition. Some courts have treated the regulatory definition of “firearm frame or receiver” as inflexible when applied to the lower portion of the AR-15-type rifle, a conclusion that as many as 90 percent of all firearms would not have any frame or receiver subject to regulation.

This rule also finalizes, with minor changes, the proposed definition of “privately made firearm,” along with definitions for “complete weapon” and “complete muffler or silencer device,” and adds a new definition for “multi-piece frame or receiver” under the new definition of “frame or receiver.”

End Use Monitoring: Blue Lantern & Golden Sentry

State’s Directorate of Defense Trade Controls (DDTC) released their FY2021 report on End-Use Monitoring of Defense Articles and Defense Services April 14. Blue Lantern monitoring includes pre-license, post-license/pre-shipment, and post-shipment checks to verify the *bona fides* of foreign consignees and end-users, confirm the legitimacy of proposed transactions, and to the extent possible, confirm recipients are complying with use and transfer requirements.

DDTC approved 19,125 export authorization requests, closing 256 Blue Lantern checks in FY 2021, an increase of more than 38 percent from FY 2020. Of these, 175 (68 percent) reported “favorable” results, with 77 cases deemed “unfavorable” in FY 2021. Because the selection process is risk-based, transactions targeted for closer scrutiny are more likely to result in unfavorable findings than a random sampling of license applications.

In FY 2021 CEA reviewed 72,472 DDTC Watch List name matches or “hits” (including false hits) and made 1,487 new entries and 1,889 modifications to the DDTC Watch List. DDTC’s Watch List is an internal screening tool containing more than 224,500 entities, ranging from entities that require further review to restricted or denied parties. CEA uses this database to flag export authorization applications for possible Blue Lantern checks.

Blue Lantern checks not only review specific transactions but also analyze the management structure and security controls of foreign companies that may pose a risk of diversion due to their acquisition by another foreign entity, bearing on dozens of licenses and agreements per entity.

OFAC Rings Toll's Bell

Australia-based global logistics firm Toll Holdings Limited agreed to remit \$6,131,855 to settle its potential civil liability for 2,958 apparent violations of the Iranian Transactions and Sanctions Regulations, the North Korea Sanctions Regulations, the Syrian Sanctions Regulations, the Weapons of Mass Destruction Proliferators Sanctions Regulations, and the Global Terrorism Sanctions Regulations.

While Toll had a sanctions compliance policy in place, its compliance program, personnel, and associated controls failed to keep up with the pace and complexity of its growing operations, including with respect to the risks associated with the use of U.S. financial institutions to make or receive payments related to U.S.-sanctioned jurisdictions and persons.

The statutory maximum civil monetary penalty applicable in this matter is \$826,431,378. The settlement amount reflects OFAC's determination that Toll's apparent violations were non-egregious and voluntarily self-disclosed

FMC Hammers Hapag Lloyd on Terminal Snafu

The Federal Maritime Commission Office of Enforcement (OE) has fined Hamburg-based Hapag-Lloyd \$822,220 as a civil penalty for fourteen willful and knowing violations of section 41102(c) of the Shipping Act of 1984 (Docket 21-09).

OE found that the shipping line incorrectly applied detention and demurrage charges on 11 containers of the California firm Golden State Logistics. OE originally requested civil penalties of at least \$16.5 million, asserting that Respondent's violations were knowing and willful, each day of a continuing violation is a separate offense, and "a substantial civil penalty is appropriate and warranted by the facts of this case." Hapag-Lloyd transports 11.9 million TEU (Twenty-foot Equivalent Units) per year.

Criminal Conger Conspiracy

Justice's Environment and Natural Resources Division, Environmental Crimes Section, unsealed an indictment charging a major seafood distributor and eight of its employees and associates with smuggling, Lacey Act violations and conspiracy to violate the Endangered Species Act, stemming from their trafficking in large volumes of eels. .

The indictment alleges American Eel Depot conspired to unlawfully smuggle large quantities of live baby European eels out of Europe, to their eel-rearing factory in China. After rearing the baby eels to maturity, defendants' Chinese facility would then slaughter and process the eels for shipping to the United States, to be sold as sushi products.

Over a four-year period, the defendants imported approximately 138 ocean containers full of eel meat into the United States, with a market value exceeding \$160 million. Six of those containers were seized after it was determined the eels were European, mislabeled to evade detection.

Briefs

Glycine From the People's Republic of China: Final Results of the Expedited Sunset Review Commerce finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and that the magnitude of the margins of dumping likely to prevail would be up to 155.89 percent. Glycine is used in the manufacture of the herbicide glyphosate (Roundup).

Styrene-Butadiene Rubber From Italy Commerce preliminarily determines that emulsion styrene-butadiene rubber (ESBR) from Italy is being, or is likely to be, sold in the United States at less than fair value Interested parties are invited to comment on this preliminary determination. About 50% of car tires are made from SBR.

Extension of Bond for Temporary Importation (CBP Form 3173) CBP proposes to extend the expiration date of this information collection and to revise this information collection to allow electronic submission via the Document Image System (DIS).

Appointments

Arun Venkataraman was sworn in as Assistant Secretary of Commerce for Global Markets and Director General of the U.S. and Foreign Commercial Service for the International Trade Administration (ITA). Prior to his appointment, he served as Counselor to the Secretary of Commerce, advising the Department on trade and other international economic matters. Before joining the Biden Administration, Arun was a Senior Director at Visa, leading global government engagement strategy on a range of international policy issues including digital economy, trade, tax and sanctions. He also served in the Obama Administration as ITA's Director of Policy and the Office of the U.S. Trade Representative as its Director for India.

Grant Harris was sworn in as Assistant Secretary of Commerce for Industry and Analysis for the International Trade Administration (ITA). Harris previously served as CEO of Connect Frontier LLC, where he advised companies and organizations on strategy, policy, and mitigating risk with respect to doing business in emerging and frontier markets. Harris also taught business in emerging markets at Northwestern University's Kellogg School of Management and the University of California Berkeley's Haas School of Business. Harris served in the Obama administration as Special Assistant to the President and Senior Director for African Affairs at the White House.

Calendar

WTO's 12th Ministerial Conference (MC12) will take place June 12-15 at WTO headquarters in Geneva. MC12 was originally scheduled to take place June 2020 in Nur-Sultan, Kazakhstan, but was postponed due to the COVID-19 epidemic. It was rescheduled for early December 2021 then postponed due to the outbreak of the Omicron variant of COVID-19. The Draft Agreements, Ministerial Decisions and Negotiating Group Reports have been prepared since November, though many technical subcommittees have not met since before the pandemic.

The WTO Work Programme on E-commerce will be worth watching. The 1998 Declaration on Global Electronic Commerce, contained the following operative text on electronic transmissions: Members will "continue their current practice of *not imposing customs duties on electronic transmissions*". This wording has been replicated in subsequent decisions renewing the moratorium, while e-commerce has grown markedly. Most developing countries are net importers of digital products, and advocate an active industrial policy on E-commerce, including tariffs on digital sector imports. India and South Africa have indicated they will push for an end to the moratorium.

BIS – Update 2022. June 29 thru July 1, BIS will hold the Annual Conference on Export Controls and Policy at the Marriott Marquis in Washington, DC. Update will be an in-person event this year, with more details coming soon. Last year's conference scheduled for July was postponed, then moved to virtual due to the pandemic. Details from BIS pending.

BIS - Transportation and Related Equipment Technical Advisory Committee May 11, at 11:30 a.m., EDT, via teleconference. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology. The open session will be accessible via teleconference. To join the conference, submit inquiries to Ms. Yvette Springer Yvette.Springer@bis.doc.gov

BIS - Materials and Equipment Technical Advisory Committee May 12, 2022, 10 a.m., EDT, via teleconference. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology. The open session will be accessible via teleconference. To join the conference, submit inquiries to Ms. Yvette Springer Yvette.Springer@bis.doc.gov

BIS - Complying with U.S. Export Controls June 14-17, 9am to 12pm PDT each day. This interactive course delivers critical information for compliance with the Export Administration Regulations (EAR). The information covered will include the same topics typically covered in the two day, in-person programs: scope of the EAR, how to classify your items for export, how to apply for an export license, understanding and using license exceptions, deemed exports, de minimis and direct product rules, export clearances, export enforcement, and developing an export management and compliance program. A speaker from the Census Bureau will discuss the Automated Export System. Fee: \$400 for non-members and \$350 for WTC Denver members info World Trade Center Denver at (303) 592-5760 or institute@wtcdenver.org.

BIS - Encryption Controls August 10-11, via teleconference. Details from BIS pending.

CFIUS Conference June 16, 8am to 4pm. Department of the Treasury Cash Room, Washington, DC, and online. This inaugural event will feature speakers from across the U.S. Government who will provide insights on CFIUS authorities, processes, and practice primarily for the business community. For questions regarding the event, contact CFIUSConference@treasury.gov

ITA- Export Week

U.S. Commercial Service will host a number of export sessions during the first week of May. The sessions, led by both private and public sector experts, will feature tradecraft programs and industry focused opportunities. Many of the programs are being offered free of charge and you can choose as many as you'd like to attend.

Full schedule and registration info at: <https://www.trade.gov/us-commercial-service-export-week>

Navigating Export Compliance Date: Tuesday, May 3, 9:00 - 11:00 AM EDT. Foreign Trade Regulations (FTR), including: AES & EEI Compliance, Standard & Routed export transactions, Regulatory roles & responsibilities. Export Administration Regulations (EAR), including: The Commerce Control List (CCL), ECCN & Dual-use commodities, Commodities Jurisdiction, Licensing, Antiboycott, the Consolidated Screening List (CSL) and Restricted Party Screening.

ATA Carnets: The Merchandise Passport Date: Tuesday, May 3, 11:00 AM - Noon EDT. Scope and use of ATA carnets - conditions for use, 'Duplicate' and 'Replacement' carnets, document review, compliance, benefits and cost

Export Compliance – Back to Basics Date: Tuesday, May 3, 1:00 - 2:00 PM EDT For exporters with little or no familiarity of export controls.

Developing a Corporate Export Management and Compliance Program (EMCP) Date: Wednesday, May 4, 1:00 - 2:00 PM EDT. What points an EMCP should cover, best practices on how to roll out procedures on the ground, and how to make this document relevant to your company.

Managing Global Trade Costs through Foreign Trade Zones (FTZ) Date: Wednesday, May 4, 1:30 - 3:00 PM EDT. FTZs and how they operate, the resources and options open to U.S. businesses to help them with international trade and assess whether FTZ are right for them.

Global Considerations Relating to Intellectual Property Rights Date: Thursday, May 5, 12:00 - 1:00 PM EDT. The basics of patents from the application process to enforcement, both domestically and abroad. Similarly, trademark protection and enforcement in the U.S. and foreign jurisdictions will be addressed.

Duty Drawback– Does your company have a viable opportunity? Date: Thursday, May 5, 1:00 - 2:00 PM EDT Duty drawback is the recovery of import duties on merchandise that is imported and subsequently exported. U.S. Customs & Border Protection estimates that over 5 billion dollars a year goes unclaimed. The law was recently updated and now those who have been exporting for years and did not have an opportunity may find that they now do.

UKCA Mark and Market Access to the UK Date: Friday, May 6, 11:00 AM - Noon EDT Cost: \$25 Speakers from the BSI Group and the British Consulate General in New York for a discussion of the new certification requirement, when and how to use the UKCA mark, rules for usage, technical documentation and record keeping, alternative options, and compliance mechanisms.

Understanding the Harmonized Classification System: HS Basics Date: Friday, May 6, 12:00 - 1:00 PM EDT A basic introduction to the Harmonized System (HS).

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