

Vol. 41, No. 19

May 10, 2021

## Democratic Lawmakers Urge Oversight of 3D-Printed Firearms

Citing a recent appeals court decision on 3D-printed firearms, more than a dozen Democratic senators and 48 House members, led by Rep. Grace Meng (D-N.Y.) and Sen. Ed Markey (D-Mass.), May 7 urged the Biden administration to keep in place “strict regulatory controls over these weapons -- and the technical data for their manufacture.”

The Ninth Circuit Court of Appeals in April opened the door to online gun blueprints, reversing a lower court’s injunction against moving from State to Commerce jurisdiction (see **WTTL**, May 3, page 3). In a 2-1 mixed vote, the appeals court cited a seemingly technical issue, that Congress expressly blocked courts from reviewing regulatory actions in the Arms Export Control Act.

Three days later, State’s Directorate of Defense Trade Controls (DDTC) said, “not so fast,” in a notice posted on its website. “The district court’s injunction remains in place until the appellate process is complete,” it cautioned. “Although the Ninth Circuit issued an opinion holding that the district court lacked jurisdiction to enter the preliminary injunction and remanding to the district court with instructions to dismiss the complaint, the preliminary injunction remains in effect until the mandate of the Ninth Circuit issues. Only once the Ninth Circuit issues its mandate will the preliminary injunction be vacated and the district court reassume jurisdiction such that it may dismiss the case,” DDTC posted.

“It is entirely within the power and authority of your administration to transfer regulatory control over 3D printed firearms and their technical data back to the State Department, return them to the Munitions List, and once again control them under ITAR -- a regulatory scheme that makes sense,” the lawmakers wrote to President Biden.

## Honeywell Pays \$13 Million to Settle ITAR Violations

Honeywell International, Inc. agreed May 3 to pay a \$13 million civil penalty to settle 34 charges of violating the International Traffic in Arms Regulations (ITAR). Of that, the

department agreed to suspend \$5 million on the condition that the funds will be used for department-approved remedial compliance measures. “All of the violations disclosed involved unauthorized exports or retransfers of technical data resulting from the failure to exercise appropriate internal controls,” State’s Directorate of Defense Trade Controls (DDTC) said in its proposed charging letter.

Honeywell submitted two voluntary disclosures. “The first voluntary disclosure described violations that took place between July 2011 and October 2015, and the second voluntary disclosure described violations that took place between June and July of 2018,” DDTC added.

“Based on an internal investigation and additional analysis conducted at the department’s request, Honeywell ultimately identified 71 ITAR-controlled drawings that between July 2011 and October 2015 it had exported without authorization via DEXcenter to Canada, Ireland, [China] and Taiwan, 65 of which form the basis of the alleged violations,” the agency said.

The drawings, which the company identified as controlled under categories VIII(i), XI(d), and XIX(g) of the U.S. Munitions List (USML), contained “engineering prints showing layouts, dimensions, and geometries for manufacturing castings and finished parts for multiple aircraft, military electronics, and gas turbine engines,” including the F-35 Joint Strike Fighter, B-1B Lancer Long-Range Strategic Bomber, F-22 Fighter Aircraft, C-130 Military Transport Aircraft, A-7H Corsair Aircraft, A-10 Aircraft, Apache Longbow Helicopter, M1A1 Abrams Tank, Tactical Tomahawk Missile and T55 Turboshaft Engine.

In November 2013, DDTC issued a three-year administrative debarment to LeAnne Lesmeister, a former senior export compliance officer at Honeywell (see **WTTL**, Dec. 2, 2013, page 1). Lesmeister was charged with 21 violations of the Arms Export Control Act (AECA) and ITAR between 2008 and 2012. The department said civil penalties were not appropriate at that time.

“The issues Honeywell reported involved technology that was assessed as having an impact on national security, though is commercially available throughout the world. No detailed manufacturing or engineering expertise was shared,” said Scott Sayres, Honeywell director of communications, in an e-mail to **WTTL**.

## **USTR Statement on Vaccine Waiver Causes Fits**

It might not be everything, but it’s something. When U.S. Trade Representative (USTR) Katherine Tai May 5 announced the Biden administration’s support for a temporary intellectual property (IP) waiver for COVID-19 vaccines, civil society groups and Democratic lawmakers hailed it as a miracle, while industry groups denounced it as their demise. Perhaps the truth is somewhere in-between.

“This is a global health crisis, and the extraordinary circumstances of the COVID-19 pandemic call for extraordinary measures,” Tai said. “We will actively participate in text-

based negotiations at the World Trade Organization (WTO) needed to make that happen. Those negotiations will take time given the consensus-based nature of the institution and the complexity of the issues involved,” she added.

As WTO member countries debated the waiver at a formal meeting of the WTO Council on Trade-Related Aspects of IP Rights (TRIPS) in April, Tai met with leaders of all the major vaccine manufacturers and Bill Gates to discuss “increasing vaccine production, global health issues and the proposed waiver,” the USTR’s office said in a series of readouts (see **WTTL**, May 3, page 1).

Response to the USTR’s support came quickly from all sides of the ideological spectrum. “Waiving the intellectual property rights of America’s innovators—which was supported by U.S. taxpayers—will not result in any new manufacturing capabilities in time to respond to the pandemic. What this decision will do, if it goes forward, is benefit countries like China that are aggressively trying to obtain U.S. technology to bolster their own domestic champions,” Sen. Mike Crapo (R-Idaho) said.

“Pitching in to defeat the COVID-19 pandemic globally is essential to protecting Americans’ health and accelerating our economic recovery. More importantly it is simply the right thing to do. I support the administration’s efforts to quickly identify and break down barriers to getting vaccines in arms as rapidly and safely as possible,” Sen. Ron Wyden (D-Ore.) argued.

“A pandemic is not the time to fuss over intellectual property rights; it is a time to come together and crush the virus around the world,” a group of nine Democratic House members said in a joint statement. “Much of the required vaccines should be manufactured abroad near those in greatest need using American technology. The TRIPS waiver will allow sharing of the intellectual property required for vaccine manufacturing to get underway immediately,” they wrote.

WTO Director-General Ngozi Okonjo-Iweala applauded the U.S. return to the negotiating table, as the original sponsors said they are their proposal. “It is only by sitting down together that we will find a pragmatic way forward — acceptable to all members — which enhances developing countries’ access to vaccines while protecting and sustaining the research and innovation so vital to the production of these life-saving vaccines,” she said.

However, the U.S. found resistance from its closest trading partners. “Our government firmly believes in the importance of protecting IP and recognizes the integral role that industry has played in innovating to develop and deliver life-saving COVID-19 vaccines,” Canadian Trade Minister Mary Ng said. “Canada has actively worked with partners to identify barriers to vaccine access—many of which are unrelated to IP, such as supply chain constraints,” she added.

“This decision will undermine the global fight to defeat COVID-19, including ongoing efforts to defeat new variants,” said Business Roundtable President & CEO Joshua Bolten. “U.S. companies have worked tirelessly to harness innovation and technology and partnered with governments to combat COVID-19. Waiving intellectual property

protections risks progress in defeating COVID-19 and our ability to fight future pandemics,” he added. “By fighting for the rest of the world to have access to vaccines as we have in the U.S., the Biden administration is recognizing that ‘no one is safe until we are all vaccinated’ is more than a slogan, given COVID-19 outbreaks anyplace could hatch vaccine-resistant variants that sweep the world,” Lori Wallach, director of Public Citizen’s Global Trade Watch argued.

## **FLIR Systems Agrees to Settle BIS Export Charges**

Lesson learned: Don’t knowingly overpromise to the government, and then underdeliver. Oregon-based defense contractor and sensor maker FLIR Systems agreed April 30 to pay Bureau of Industry & Security (BIS) a \$307,922 civil penalty to settle charges of making “incomplete or inaccurate representations, statements, or certifications” while seeking a Commodity Jurisdiction (CJ) determination on a newly developed Uncooled Focal Plane Array (UFPA) in April 2013.

FLIR previously agreed to pay State \$30 million under an April 2018 consent agreement to settle 347 charges of violating the International Traffic in Arms Regulations (ITAR) (see **WTTL**, April 30, 2018, page 2). Of that, the department agreed to suspend \$15 million on the condition that the funds have or will be used for department-approved remedial compliance measures.

In December 2013, State determined that the UFPA was subject to Commerce jurisdiction, after a review of the UFPA’s technical characteristics and performance specifications. Commerce determined that the UFPA was classified under Export Control Classification Number (ECCN) 6A002.a.3.f on the Commerce Control List (CCL).

Starting with the earliest meetings between FLIR and the U.S. regarding the UFPA in November 2012, U.S. officials expressed “concerns over whether the UFPA contained sufficient safeguards to prevent it from being adapted and diverted to end uses of concern, including uses in thermal imaging weapon sights,” the BIS order noted.

To overcome the government’s concerns, FLIR repeatedly represented that it “had developed an innovative anti-tamper system known as a ‘handshake’ requirement. FLIR stated that the UFPA by itself would be ‘effectively useless’ because of anti-tamper protection features, including the ‘handshake encryption,’ that only allowed the UFPA to operate in conditions defined by FLIR thermal camera hardware,” the agency added.

“In fact, contrary to FLIR’s representations in its communications with the U.S. Government, a functional ‘handshake encryption’ anti-tamper protection was never successfully developed by FLIR nor added as a feature of the UFPA at issue. After the 2013 CJ issued, FLIR produced cameras incorporating the UFPA without the ‘handshake encryption,’” BIS said.

A FLIR company spokesperson told **WTTL**, “We don't have any further comment.”

## USTR Sets Transparency Principles

A week after lawmakers introduced legislation establishing an inspector general (IG) for the office, U.S. Trade Representative (USTR) Katherine Tai May 7 released a set of principles that “establish the foundation for a high transparency standard for the day-to-day operations” of the USTR’s office.

The principles “make clear that USTR will engage new, and frequently silenced, voices to find innovative solutions and forge consensus. Importantly, the principles announced today are just a starting point as we build a broad-based and equitable trade policy,” Tai said in a statement. At the same time, Tai designated General Counsel Greta Peisch as the USTR Chief Transparency Officer. Peisch previously served as senior international trade counsel on the Senate Finance Committee.

Under the principles, USTR will: provide inclusive opportunities for the public to participate in the development of trade policy and trade initiatives; facilitate participation in trade policy development by a broad range of stakeholders; ensure its website contains up-to-date information; and strive to ensure that the membership of federal advisory committees includes a wide variety of expert interests.

Bipartisan senators introduced the IG bill (S.1489) April 29, citing “reports and allegations of inconsistent policy implementation, conflicts of interest, and political favoritism.” The USTR Inspector General Act of 2021 would establish a statutory IG and require the president to appoint someone to the office within 120 days. House and Senate Democrats introduced similar bills in August 2020 (see **WTTL**, Aug. 10, 2020, page 4).

“The current lack of oversight over U.S. trade policy is problematic,” said bill sponsor Sen. Bob Menendez (D-N.J.). “Americans deserve honest and transparent trade policy that prioritizes the economic interests of the country and cracks down on waste, fraud, and abuse,” he added. Joining Menendez as cosponsors are Sens. John Cornyn (R-Texas), Ron Wyden (D-Ore.), Pat Toomey (R-Pa.), Sherrod Brown (D-Ohio), Catherine Cortez Masto (D-Nev.), Sheldon Whitehouse (D-R.I.), and Tom Carper (D-Del.).

## G7 Ministers, Allies Set Benchmarks for Cyberspace

Like other arms of the four-month-old Biden administration, the U.S. delegation at the G7 meeting of foreign and development ministers in London that ended May 5 emphasized not only a call to rebuild resiliently after the coronavirus pandemic, but also to build back a better world of democratic alliance, especially in the area of cybersecurity.

To understand the significance, loyal observers recall that the former U.S. president spent most of his four years cajoling allies to abandon Chinese-built 5G networks, most notably Huawei and ZTE (see **WTTL**, March 22, page 2). The argument went something like this: they would build backdoors, break into your network, steal data and the Chinese Communist Party would benefit.



Even without 5G access during the previous administration, both the Chinese and Russians broke into U.S. networks, stole from leading corporations and meddled in the 2020 election. Moreover, the Russian SolarWinds saga occurred during Trump's last year in office, although experts believe it may have occurred earlier. To be clear, these were all cybercrimes.

So as G7 ministerials go, this one had extra significance. Although chaired by the United Kingdom (UK), it centered President Biden's mantras: "America is Back" and "Build Back Better." Also invited were India, South Africa, South Korea and Australia as guests of the UK. And as Secretary of State Anthony Blinken said in an interview the day after the meeting, if China and Russia are prepared to play by these democratic values, they too would be welcomed.

At the end of the G7 meeting, participants committed to "work together to further a common understanding of how existing international law applies to cyberspace," they wrote in a joint communique. "We reaffirm a shared commitment to uphold international law, which is an essential and binding element of the framework for state action in cyberspace and applies to state behavior in cyberspace just as it applies to activities in any other domain," they added.

"We encourage all states to share their national positions on how existing international law applies to state behavior in cyberspace," the communique emphasized. "We will enhance efforts toward the promotion of this approach at the UN and other international fora," it concluded.

## **UK, France Escalate Post-Brexit Fishing Dispute**

It's not surprising that the big post-Brexit fight between French President Emmanuel Macron and United Kingdom (UK) Prime Minister Boris Johnson involved fishing access in the English Channel, just as the G-7 Ministerial was concluding in London. Both countries sent into military boats to monitor a dispute over new fishing license requirements set by the island of Jersey, then called them back.

"The Trade and Cooperation Agreement brought in changes to fishing arrangements between the UK and the EU. Jersey authorities have a right to regulate fisheries in their waters under this agreement and we support them in exercising those rights. We will work with Jersey to support the discussions underway with the European Commission," according to a statement from Johnson's office May 6, after pulling back the UK boats.

"We are alongside the [French] fishermen dependent on access to UK waters. Our neighbors impose criteria that do not belong to the post-agreement Brexit. The law is formal, conventions must be respected. We will ensure that the agreement signed at the end of 2020 is," Annick Girardin, French minister of the sea, tweeted May 4, after a speech that escalated the dispute.

What is surprising that although fishery as an industry is so fiercely fought over, the UK's own statistics make clear that it was merely 0.02% of the country's GDP in 2019, accounting for £126 billion. By contrast, financial services, which is considered a UK strength, is £437 billion, yet not a part of the Brexit agreement.

Adding fuel to the fire was French fishermen's anger about the amount of paperwork to get fishing licenses from UK officials, as well as how long it took to get them. Also, most of the UK's catch finds its way onto European plates than the other way around. Put another way, Britain exports (or pun intended, releases) most of its catch. Therefore, the UK has more to lose.

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

**TRADE FIGURES:** Merchandise exports in March jumped 11.9% from year ago to \$142.9 billion, Commerce reported May 4. Services exports dipped .57% to \$57.1 billion from March 2020. Goods imports jumped 20.8% from March 2020 to record-high \$234.4 billion, as services imports grew 4.8% to \$40.0 billion.

**WTO:** Long-time House trade staffer Angela Ellard, currently chief trade counsel for Ways and Means Republicans, May 4 was named World Trade Organization (WTO) deputy director-general from U.S., replacing Alan Wolff. "For the first time, half of the Deputy Directors-General at the WTO are women and the selection of Angela Ellard from the United States brings a proven negotiator and trade expert to this critical role," USTR Katherine Tai said in statement. Ellard will serve alongside Deputy Directors-General Anabel González (Costa Rica), Jean-Marie Paugam (France) and Xiangchen Zhang (China).

**FCPA:** Jose Orlando Camacho of Miami, former official of Venezuela's state-owned energy company, Petroleos de Venezuela S.A. (PDVSA), was sentenced May 6 in Houston U.S. District Court to 12 months and one day for conspiracy. July 2017 guilty plea was unsealed in September 2018 (see WTTL, Sept. 17, 2018). At that time, Juan Carlos Castillo Rincon (Castillo), manager of Houston-based logistics and freight forwarding company, pleaded guilty to conspiracy to violate Foreign Corrupt Practices Act (FCPA) for paying bribes to Camacho in exchange for favorable business treatment. Castillo was arrested in Miami in April 2018 and released on \$100,000 bond. Sentencing is set for Aug. 19.

**MORE FCPA:** Daren Condrey, co-president of nuclear cargo delivery firm Transport Logistics International (TLI) of Fulton, Md., was sentenced April 30 in Greenbelt U.S. District Court to 24 months in prison and three years' supervised release for bribing official at TENEX, subsidiary of Russia's State Atomic Energy Corporation, to obtain and retain business. Condrey pleaded guilty in June 2015 to conspiracy to violate Foreign Corrupt Practices Act (FCPA). Former TLI President Mark Lambert was sentenced in October 2020 to 48 months in prison for related charges (see WTTL, Nov. 2, 2020, page 7). Lambert was found guilty in November 2019. TLI agreed in March 2018 to pay \$2 million criminal penalty under three-year deferred prosecution agreement (DPA) to settle related charges. In December 2015, TENEX official Vadim Mikerin was sentenced to 48 months in prison for conspiracy to commit money laundering involving FCPA violations after pleading guilty in August 2015.

**EXPORT ENFORCEMENT:** Federal jury in San Antonio U.S. District Court May 7 convicted Mehrdad Ansari, Iranian citizen and resident of UAE, for his role in scheme to obtain dual-use and

military parts for Iran without OFAC or Commerce licenses from October 2007 through June 2011. Sentencing is set for Sept. 1. He was extradited from Georgia in March 2020 (see **WTTL**, March 23, 2020, page 5). Codefendant Susan Yip (aka Susan Yeh), Taiwanese citizen, was sentenced to two years in prison in October 2012 on related charges. Yip pleaded guilty to conspiracy to violate Iran sanctions. Mehrdad Foomanie (aka Frank Foomanie) of Iran remains at large. June 2011 indictment was unsealed at same time as Yip's sentencing.

**MORE EXPORT ENFORCEMENT:** MDA Precision LLC, of Gilroy, Calif., agreed April 30 to pay BIS \$60,000 civil penalty for exporting five-axis benchtop milling machine to UAE in April 2015 without required BIS license. Machine was classified under Export Control Classification Number (ECCN) 2B201, controlled on nuclear nonproliferation and anti-terrorism grounds, and valued at approximately \$34,000. Firm knew or had reason to know license was required "given that during 2013-2014, it had applied for and received BIS licenses to export its five-axis milling machines to various destinations, including Israel, Chile, and China," agency said. Of penalty, \$35,000 will be suspended for two years then waived if MDA Precision commits no further violations.

**EVEN MORE EXPORT ENFORCEMENT:** Leon Madorsky of Pittsburgh was indicted April 27 in Pittsburgh U.S. District Court on export charges. In October 2020, Madorsky caused "submission of false and misleading information through the Shippers Export Declaration (and any successor document) and the Automated Export System," stating that parcel contained "Autoparts Set" when in fact, he knew contents were five black metal semi-automatic pistol slides, indictment said. Madorsky was released on \$25,000 bond.

**STEEL GRATING:** In 5-0 "sunset" vote May 7, ITC said revoking antidumping and countervailing duty orders on certain steel grating from China would renew injury to U.S. industry.

**FORCED LABOR:** CBP in Cleveland May 4 seized shipment of 3.97 million nitrile disposable gloves produced in Malaysia by subsidiary of Top Glove under forced labor finding. In March, agency determined disposable gloves produced in Malaysia by Top Glove using forced labor are being, or are likely to be, imported into U.S. (see **WTTL**, April 5, page 7). Estimated value of shipment was \$518,000.

**STEEL WIRE ROD:** CAFC April 30 affirmed CIT decision sustaining Commerce's use of adverse facts available (AFA) in 2014-2015 administrative review of antidumping duty order on carbon and certain alloy steel wire rod from Mexico. "After Commerce placed additional information on the record corroborating the 40.52% rate, the CIT sustained Commerce's second remand results," Circuit Judge Evan Wallach wrote for three-judge panel in *Deacero S.A.P.I. de C.V. v. U.S.* "As Commerce has properly corroborated Deacero's AFA rate, Commerce acted within its discretion in its selection of that AFA rate," he added.