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## With Appeals Court Mandate, 3D-Printed Guns Move to BIS

And that, as they say, is that. Armed with the Court of Appeals for the Ninth Circuit mandate, Bureau of Industry and Security (BIS) and State June 1 will formally notify the public that the 3D-printed guns and their associated files are now under BIS jurisdiction.

“Software and technical data related to 3-D printing of firearms or components transferred to the Export Administration Regulations (EAR), administered by the Department of Commerce now is exclusively controlled by the EAR,” State writes in the Federal Register. The appeals court issued its mandate May 26.

Both BIS and State previously posted Frequently Asked Questions (FAQs) on their respective websites while waiting for the appeals court mandate (see **WTTL**, May 17, page 4). The court in April opened the door to online gun blueprints, reversing a lower court’s injunction against moving the technology from State to Commerce jurisdiction.

“If a person is unsure whether the criteria of section 734.7(c) are met, including whether the ‘technology’ or ‘software’ is ready for insertion into a computer numerically controlled machine tool, additive manufacturing equipment, or any other equipment, persons with such ‘technology’ or ‘software’ can submit an official classification request to BIS using the free online submission system, called SNAP-R, available on the BIS website, to receive an official classification of the ‘technology’ or ‘software,’” the BIS notice advises.

## Senate Passes Amendment to Renew Trade Programs with Caveats

First things first. The Senate May 27 overwhelmingly passed an amendment to a larger international competition bill that rolled several outstanding bills into one 852-page piece of legislation. However, whether the larger bill will pass remains to be seen. If it’s trade-related, it’s in the amendment: a provision to reauthorize three expired trade programs: the Generalized System of Preferences (GSP), the Miscellaneous Tariff Bill (MTB) and

the American Manufacturing Competitiveness Act (AMCA); language to restore exclusions to the Section 301 tariffs; and a provision to create an inspector general (IG) at the U.S. Trade Representative's (USTR) office, just to name a few.

The amendment passed in a 91-4 vote; voting "no" were Sens. Tom Cotton (R-Ark.), Josh Hawley (R-Mo.), Marco Rubio (R-Fla.) and Bernie Sanders (I-Vt.). Sen. Ron Wyden (D-Ore.) introduced the GSP/MTB legislation a week prior (see **WTTL**, May 24, page 1). The amendment would renew GSP until Jan. 1, 2027 and the MTB tariff relief through Dec. 31, 2023. The AMCA would be reauthorized for two more MTB cycles, the first beginning in 2022 and the second beginning in 2025.

Bipartisan senators introduced the IG bill (S.1489) in April. 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 (see **WTTL**, May 10, page 5).

Sen. Mike Crapo (R-Idaho) and Wyden "passed an amendment that goes after these rip-offs directly. It's about leveling the playing field with stronger trade rules and quicker enforcement, as well as greater transparency in trade," Wyden said in statement after the amendment's passage.

"It provides a comprehensive approach to combat China's manufacturing imbalances, threats to free and fair trade, and illicit activity which undermine America's leadership in innovation. This legislation will level the playing field for American consumers and companies, including workers, farmers, fishers and families by taking aim at China's worst practices," Crapo said prior to the vote.

Legal observers urged exporters to put their ducks in a row in case the bill passes. "There is no guarantee that the currently proposed language will be passed into law by Congress. However, the fact that such proposals are before Congress should tell importers across the country to start compiling relevant records for Section 301 entries that had been subject to exclusions. It will be easier to track the information now than try to find months of data later," David Fogue, partner at Barnes Richardson law firm, wrote in a blog post.

## **DDTC Proposes Rule Making Telework Permanent**

Some exporters may be able to keep their yoga pants and pajama bottoms. As expected, State May 27 proposed a rule to make permanent the definition of "regular employee" to allow continued telework operations. The rule would also "clarify the contractual relationships that meet the definition of regular employee," the Federal Register notice said. Comments on the proposed rule are due July 26.

State's Directorate of Defense Trade Controls (DDTC) chief Mike Miller told the agency's Defense Trade Advisory Group (DTAG) a week earlier that it was preparing the rule for publication (see **WTTL**, May 24, page 2). In December, DDTC extended temporary and retroactive changes to its compliance procedures to allow continued telework operations

until June 30. Since the final rule will not be published before that date, there probably will be one more temporary extension, Miller said. In response to the 2020 rule announcing the temporary provisions, “many commenters, one industry association, and several individual entities endorsed the telework provisions and requested that this measure be effective until the end of the year, if not extended indefinitely. Additionally, many commenters mentioned that this temporary measure allowed industry to continue their business activities despite COVID-19 as many employees could work remotely,” State noted.

State also proposed “clear criteria that will allow regulated entities to treat certain contractual staff as regular employees for the purposes of the ITAR [International Traffic in Arms Regulations], provided those individuals are sufficiently subject to the employer’s control such that the Department can hold the regulated employer responsible for the individual’s actions,” the notice said.

## **USTR Raises “Issues of Concern” in China Meeting**

As USTR Katherine Tai held a virtual meeting with her Chinese counterpart, Vice Premier Liu He, May 26, the Senate was debating a bill that would fight competition with Beijing (see related story, page 5). Also hovering over the phone call was unfinished business of a phase-one trade agreement and remaining tariffs of U.S. and Chinese imports.

A USTR readout of the meeting said that the two officials “held an introductory virtual meeting ... to discuss the importance of the trade relationship” between the U.S. and China. “During their candid exchange, Tai discussed the guiding principles of the Biden-Harris Administration’s worker-centered trade policy and her ongoing review of the U.S.-China trade relationship, while also raising issues of concern,” the statement said. Those specific “issues of concerns” were not spelled out by either party.

On how Beijing has characterized the meeting, Foreign Ministry Spokesperson Zhao Lijian told reporters: “The two sides were engaged in candid, pragmatic and constructive communication with an attitude of equality and mutual respect. Believing that bilateral trade is of great significance, the two sides exchanged views on issues of common concern and agreed to keep in contact.”

Neither China nor the U.S. has removed its tariffs on respective imports. In addition, the last administration signed a phase-one agreement, where the two sides agreed that China would buy more than \$200 billion of American goods and services. It included agricultural products such as beef, pork, avocados and blueberries; as well as guaranteeing intellectual property (IP); and opening China’s financial markets to U.S. products. Most estimates show that Beijing has not lived up to its purchase commitments.

The two sides previously agreed that there would be a phase-two and, if the need arise, a phase-three to include unfinished business such as TikTok, WeChat, Huawei and ZTE and

other contentious issues. But the Biden team, especially Tai, has made clear two important principles when doing business with China: first, all foreign initiatives would have the American worker at the center; and second, China is viewed as a “fierce competitor.”

## **Dairy Industry Welcomes U.S. Action over Canadian Market Access**

So much for the Kumbaya. A week after the three North American trading partners smiled and said all the right things, the USTR’s office May 25 requested and established a dispute settlement panel with Canada over its allocation of dairy tariff-rate quotas (TRQs).

At a meeting of the U.S.-Mexico-Canada Agreement (USMCA) Free Trade Commission (FTC) a week earlier, the partners agreed to “recommit to fully implementing, enforcing, and fulfilling the agreement’s terms and high standards” (see **WTTL**, May 24, page 4). USTR drew praise in December when it filed the first USMCA enforcement action, initiating consultations with Canada over the TRQs.

“We want Canada to meet its dairy obligations - and that’s why we’re disputing their dairy tariff quota allocation measures to ensure no U.S. dairy farmers, workers, and exporters that sell or want to sell to Canadians are affected,” USTR Katherine Tai tweeted.

In its formal request, the U.S. charged that Canada’s dairy TRQ allocation measures are inconsistent with several provisions of the USMCA. For one, “Canada limits access to an allocation to processors, for example, by reserving access to an allocation or pool of TRQ volume exclusively for processors or so-called ‘further processors,’” it said. In addition, “Canada is not providing ‘fair’ and ‘equitable’ procedures and methods for administering its TRQs.”

Canadian Trade Minister Mary Ng said her country was “disappointed” by the U.S. action. “Under [USMCA], Canada agreed to provide some additional market access to the United States for dairy while successfully defending our supply management system and dairy industry. We are confident that our policies are in full compliance with our [USMCA] TRQ obligations, and we will vigorously defend our position during the dispute settlement process,” Ng added.

The U.S. dairy industry welcomed the action. “We have had long-standing and well-founded concerns that Canada undermines its trade agreements when it comes to dairy. Our trading partners need to know that failure to meet their agricultural trade commitments with the United States will result in robust action to defend U.S. rights,” Krysta Harden, U.S. Dairy Export Council (USDEC) president and CEO, said in a statement.

## Debate on Competition Bill Will Continue After Holiday

A \$250 billion bill intended to put America on a competitive path with China ran out of runway at press time May 28 in the Senate on issues such as shark fins, the government use of TikTok and boycott of the upcoming Olympics. However, bill cosponsors are hopeful the bill will advance after the Memorial Day holiday.

First titled the Endless Frontier Act, but now known as the U.S. Innovation and Competition Act (S.1260), the bill is intended to get America to the point where it catches and outcompetes China in areas where repeated studies say it lags in cybersecurity, artificial intelligence (AI), quantum computing, robotics and chip manufacturing. It has overwhelming bipartisan support and was first introduced in May 2020 but was scuttled because of partisan disagreements.

This time co-sponsors, Senate Majority leader Chuck Schumer (D-N.Y.) and Sen. Todd Young (R-Ind.), who seem to have the votes in the Senate as well as in the House, where Reps. Mike Gallagher (R-Wis.) and Ro Khanna (D-Calif.) are co-sponsors, are so sure of passage that they have opened the discussion to amendments, including a Trade Act of 2021 (see related story, page 1).

“Contributions from many of my colleagues on both sides of the aisle have been incorporated during what everyone agrees has been one of the most open processes the Senate has seen in quite some time. I look forward to quickly advancing this legislation following the Memorial Day State Work Period,” Young tweeted May 28. The Senate is scheduled to return to session June 7.

This bill makes the National Science Foundation (NSF) the Directorate for Technology and Innovation. The goal is to get the NSF to act as quarterback in dispensing basic research grants of \$100 billion over five years, in key technology focus areas, such as AI, high-performance computing, and advanced manufacturing, and the commercialization of those technologies to U.S. businesses.

In addition, “the Office of Science and Technology Policy shall annually develop a strategy for the federal government to improve national competitiveness in science, research, and innovation to support the national security strategy,” the bill notes.

There is also a key role for Commerce, which would be given \$10 billion to spend over five years to: establish a supply chain resiliency and crisis response program to address supply chain gaps and vulnerabilities in critical industries; designate regional technology hubs to facilitate activities that support regional economic development that diffuses innovation around the U.S.; and award grants to facilitate development and implementation of comprehensive regional technology strategies.

The bill extends through fiscal year (FY) 2026 the Manufacturing USA Program and expands the program to support innovation and growth in domestic manufacturing. But one of its chief critics is Sen. Bernie Sanders (I-Vt.), who is incensed that Senate colleague

Maria Cantwell (D-Wash.) is attempting to award Amazon's Jeff Bezos' space company, Blue Origin, a \$10 billion gift. "As part of the Endless Frontier bill, we should not be handing out \$53 billion in corporate welfare to some of the largest and most profitable corporations in the country with no strings attached," Sanders tweeted May 24.

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

ENTITY LIST: BIS June 1 will add eight entities in Pakistan and UAE that "are involved in proliferation to unsafeguarded nuclear activities that are contrary" to U.S. national security and/or foreign policy to its Entity List, Federal Register notice says. At same time, agency revises two existing entries and corrects one existing entry in China and removes one entity from and revises one existing entry on Military End-User (MEU) List in China. Lastly, this rule removes one Pakistani entity -- IKAN Engineering Services -- "on the basis of a removal request." IKAN was added to BIS Entity List in September 2014 (see **WTTL**, Sept. 22, 2014, page 8).

EXPORT ENFORCEMENT: Indictment against Tina Chen was unsealed May 27 in Las Vegas U.S. District Court on charges of exporting electronic and computer components, including photomultiplier and two bandpass filters, to Iran via Hong Kong from November 2015 to May 2019 without required OFAC license. In May 2016, for example, defendant "submitted a revised Customer End-User Certificate to a U.S. company that falsely stated that the goods purchased would be used for a startup application in Hong Kong and falsely certified that the purchased goods would not be sold to a restricted country without obtaining the required government approval," indictment said.

MORE EXPORT ENFORCEMENT: Gene Shilman of Edison, N.J., was sentenced May 25 in Newark U.S. District Court to 24 months in prison for exporting controlled firearm components and parts, ammunition, night-vision goggles and bulletproof vests to Russia and Ukraine from May 2014 through October 2018 without required State or Commerce licenses. He pleaded guilty in May 2019 (see **WTTL**, May 27, 2019, page 6). In September 2018, Shilman falsely represented on Customs form that parcel destined for Ukraine contained tools and cartridges.

FCPA: Indictment against Austrian bank executives Peter Weinzierl and Alexander Waldstein was unsealed May 25 in Brooklyn U.S. District Court on charges of conspiracy for their roles in money laundering and bribery scheme involving Odebrecht S.A., Brazilian global construction conglomerate. Weinzierl served as CEO and Waldstein as officer of Austrian bank, and both served as board members of Antiguan bank. Weinzierl was arrested in UK; Waldstein remains at large. Jose Carlos Grubisich, former CEO of Odebrecht subsidiary Braskem S.A., pleaded guilty in April to related charges (see **WTTL**, April 19, page 7). Braskem and Odebrecht agreed in December 2016 to pay combined penalty of \$3.5 billion to settle FCPA charges with U.S., Brazilian and Swiss authorities related to schemes to pay hundreds of millions of dollars in bribes to government officials in 12 countries.

MORE FCPA: Indictment against two former Chadian diplomats was unsealed May 20 in D.C. U.S. District Court on charges of soliciting and accepting \$2 million bribe from Canadian start-up energy company and conspiring to launder bribe payment between August 2009 and July 2014. Mahamoud Adam Bechir and Youssouf Hamid Takane were country's former ambassador to U.S. and Canada and former deputy chief of mission for U.S. and Canada, respectively. Bechir's wife, Nouracham Bechir Niam, was also charged in indictment. Naeem Tyab, Canadian citizen and founding shareholder of energy start-up, who served as company director from 2009 through 2011, is also charged in indictment for allegedly arranging for bribe to be paid. Tyab was arrested in

February 2019, and he pleaded guilty to conspiracy to violate FCPA in April 2019. Under plea, Tyab agreed to forfeit \$27 million. Other three defendants remain at large.

**FORCED LABOR:** CBP May 24 modified November 2019 withhold release order (WRO) on tobacco and products containing tobacco from Malawi that is produced using forced labor and forced child labor. Agency will admit tobacco imported from Malawi by Premium Tobacco Malawi Limited (PTML) to all U.S. ports of entry, “based on a rigorous evaluation of PTML’s social compliance program and efforts to identify and minimize the risks of forced labor in its supply chain.” Agency previously modified order in June 2020 (see **WTTL**, June 8, 2020, page 7).

**NOMINATIONS:** President Biden May 27 sent slew of names to Senate including: Sarah Bianchi to be deputy USTR; Brian Eddie Nelson to be Treasury under secretary for terrorism and financial crimes; Elizabeth Rosenberg to be Treasury assistant secretary for terrorist financing; and Arun Venkataraman to be Commerce assistant secretary and director general of U.S. and Foreign Commercial Service. Bianchi was then-Vice President Biden’s head of economic and domestic policy from 2011 to 2014. She joined Evercore ISI in 2019. Biden named Venkataraman, former Commerce and USTR official, to Commerce “agency review team” after election; Rosenberg, former Center for a New American Security (CNAS) fellow, was on Treasury landing team (see **WTTL**, Nov. 16, 2020, page 1). Most recently, Venkataraman was senior director, global government engagement, at Visa.

**SEAFOOD:** CBP May 28 issued withhold release order (WRO) for tuna, swordfish and other seafood harvested by vessels owned or operated by Dalian Ocean Fishing Co., “based on information that reasonably indicates the use of forced labor in the entity’s fishing operations,” agency said. Action is first against entire fleet of fishing vessels. CBP issued earlier WROs on individual vessels, including Lien Yi Hsing No. 12, Taiwanese-flagged and owned distant water fishing vessel, in December (see **WTTL**, Jan. 11, page 7).

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