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Justice Defends 3D Gun Blueprints Settlement

In their suit against the Trump administration's settlement with Defense Distributed over posting of 3-D gun blueprints online, eight states' attorneys general and the District of Columbia are firing blanks, Justice argued in a brief filed Aug. 16. The "plaintiffs misunderstand the fundamental limit on the State Department's authority," the department said.

"This case concerns the Department of State's delegated authority to control the export of defense articles and services, or technical data related thereto, that raise military or intelligence concerns," it added. "Domestic activities that do not involve providing access to foreign persons, by contrast, are left to other federal agencies—and the states—to regulate," Justice said.

A Seattle U.S. District Court judge in July granted a temporary restraining order against the settlement with just hours to spare (see **WTTL**, Aug. 6, page 2). Another hearing will be held Aug. 21 to turn the temporary order into a preliminary injunction.

Washington State Attorney General Bob Ferguson, the lead plaintiff in the suit, was quick to respond. "President Trump says he objects to making 3D-printed guns widely available to anyone, regardless of whether they're a felon or a terrorist. Then why is his administration still moving forward to pursue that very policy? Somebody should ask the president who's really in charge," he said in a statement.

Administration Unveils Iran Action Group

As the administration reimposes sanctions after withdrawing from the Iran deal, State Aug. 16 launched the Iran Action Group, which will be "responsible for directing, reviewing and coordinating all aspects" of State's Iran-related activity and will report directly to the secretary, Secretary of State Michael Pompeo said in a press briefing.

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Brian Hook, senior policy advisor to Pompeo, will lead the group as special representative for Iran. President Trump withdrew from the Joint Comprehensive Plan of Action (JCPOA) in May and has reimposed or will soon reimpose sanctions on the Iranian regime (see **WTTL**, Aug. 13, page 1).

“Our hope is that one day soon we can reach a new agreement with Iran. But we must see major changes in the regime’s behavior both inside and outside of its borders. The Iranian people and the world are demanding that Iran finally act like a normal nation,” Pompeo said.

Staff details were lacking. “The Iran Action Group will launch with a core staff of several permanent personnel, and additional experts will be detailed from the department. The secretary is committed to ensuring that the team has all necessary resources to do its job and to drive implementation of the new strategy. We want to be very closely synchronized with our allies and partners around the world. This team is committed to a strong, global effort to change the Iranian regime’s behavior,” Hook said during the briefing.

But other countries, specifically China, have stated they will not reduce imports of Iranian oil. Hook said the administration’s goal is to reduce “every country’s import of Iranian oil to zero by November 4,” and it is prepared to “impose secondary sanctions ... on other governments that continue this sort of trade with Iran.”

President Signs NDAA with Caveats

In a case of “I’m agreeing to this, but I don’t like it,” President Trump Aug. 13 signed the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (H.R. 5515), which include several popular pieces of standalone legislation, but also specific provisions “that raise constitutional concerns.”

The Senate Aug. 1 approved the conference report to accompany the bill in an 87-10 vote (see **WTTL**, Aug. 6, page 7). The House overwhelmingly passed the report a week prior. The bill includes language to strengthen the regulatory jurisdiction of the Committee on Foreign Investment in the U.S. (CFIUS) and formalize export control authority.

“I applaud the Congress for passing this bill to provide the DOD with the resources it needs to support our Armed Forces and keep America safe. I note, however, that the bill includes several provisions that raise constitutional concerns,” Trump said in a statement after the signing.

He then goes on to mention a number of provisions of the bill, including section 1761, which involves export enforcement, and 17 others, that “purport to mandate or regulate the submission to the Congress or the publication of information protected by executive privilege. My administration will treat these provisions consistent with the President’s constitutional authority to withhold information, the disclosure of which could impair national security, foreign relations, law enforcement, or the performance of the President’s constitutional duties,” the White House statement noted.

The Chinese Ministry of Commerce (MOFCOM) responded specifically to the CFIUS expansion with caution. “China will comprehensively evaluate the bill and closely follow the impacts on Chinese enterprises during its implementation,” the ministry said in a statement. “The two governments should conform to the wishes of enterprises and provide them with a favorable environment and stable expectations. The U.S. should treat Chinese investors objectively and impartially and avoid making the national security review an obstacle to investment cooperation between the Chinese and the U.S. enterprises,” it added.

Agency officials also applauded the bill’s signing. “FIRRMA delivers much-needed reforms that will ensure CFIUS has the tools necessary to identify, examine, and address national security concerns arising from foreign investment,” Treasury Secretary Steven Mnuchin. “America is a vibrant place to invest, and better protecting critical U.S. technology and infrastructure will ensure it stays that way,” he added.

On First Anniversary, Mexico, U.S. Approach NAFTA Resolution

Nearly a year to the date NAFTA renegotiations began, Mexican Economy Minister Ildefonso Guajardo returned to Washington for further talks. Guajardo arrived one day ahead of the Aug. 16 anniversary and stated Aug. 17 that he hopes to have a resolution to outstanding bilateral issues in the coming days.

“Hopefully we will be able to close up no later than the middle of the week,” said Guajardo. He and his negotiating team, as well as members of the incoming Mexican administration, were in Washington the previous week, too, negotiating thorny issues like autos (see **WTTL**, Aug. 13, page 3).

The five-year sunset clause, that Canada strongly objects to, was not discussed, said Guajardo. A sectoral meeting on financial issues will take place Aug. 20 followed by Mexican and U.S. ministers meeting Aug. 21. Outstanding issues, like Chapter 19, will need to be negotiated trilaterally.

At a Cabinet meeting Aug. 16, President Trump played coy. “We’re doing very well. I’m in no rush. We want to make the right deal. NAFTA has been a disaster for our country. Mexico and Canada were — if you think about making, or if you think about deficits — we had a deficit of \$135 billion a year on NAFTA. ... So we’re going either going to do a good NAFTA — a fair NAFTA for us — or we’re not doing NAFTA at all,” he said.

In the same meeting, U.S. Trade Representative (USTR) Robert Lighthizer addressed the progression from bilateral to trilateral talks. “I’m hopeful with Mexico. And then I hope once we get [a deal] with Mexico, that Canada will come along,” he said. “We’ve had, as I’ve told you, some 15 or 20 other smallish agreements that have been helpful for agriculture and other areas. I call them ‘hitting singles.’ Every time you’re at bat, it’s not a home run. We’re hitting single after single, and literally every few weeks we have one and there are several,” Lighthizer added.

As the three days of bilateral meetings wrapped up for the weekend, more than 30 petitioners under the NAFTA labor chapter, including AFL-CIO, recommended the new NAFTA “contain strong protections for working people and enforcement mechanisms that do justice to those protections.” A NAFTA labor chapter should meet basic standards of the International Labor Organization’s core conventions, ensure a complaint process and dispute resolution mechanism accessible to workers, and avoid barriers to complaints and dispute resolutions, the petitioners wrote to Lighthizer.

“Time and time again, we have seen our complaints fall prey to ineffectively enforced labor provisions. Unless the labor chapter includes a broad set of protections and a meaningful process for enforcing those protections, efforts to incorporate a labor chapter will have been in vain,” they added.

WTO Disputes with EU, Indonesia Move Forward

Two World Trade Organization (WTO) disputes involving the U.S. moved forward at a special WTO Dispute Settlement Body (DSB) special meeting Aug. 15 -- one involving the European Union (EU) and the other, Indonesia -- despite U.S. protests or inaction.

In the fight over illegal subsidies provided for Airbus, the U.S. blocked the EU’s first request for establishment of a panel to determine whether the EU is in compliance with a WTO ruling (see **WTTL**, Aug. 13, page 5). The EU informed the DSB in May that it was in full compliance, but the U.S. disagreed. Consultations in June failed to resolve the issue, prompting the EU to ask for a panel, which they further claimed should be granted on first request per a January 2012 procedural agreement with the U.S.

In response, the U.S. said the EU has not provided basic information to back up its claims, and the latest panel request is an attempt to further drag out the 14-year-long dispute. The procedural measure the EU alluded to explicitly refers to a U.S. request, not an EU request, and therefore would not accept the establishment of a panel. The EU can make another request at the next DSB meeting, scheduled for Aug. 27.

Automatic arbitration was triggered in the WTO dispute between the U.S. and Indonesia over the importation of horticultural products, animals and animal products. The U.S. said Indonesia failed to comply with a previous WTO ruling and asked in early August for permission to suspend concessions as a result.

Indonesia claimed it made the appropriate changes prior to the July 22 deadline and thus objected to the U.S. request for authorization to suspend concessions, which would be approximately \$350 million in 2017 (see **WTTL**, June 25, page 5). Per Article 22.6 of the Dispute Settlement Understanding, the matter must be referred to arbitration.

The day after the special DSB meeting, China Aug. 16 requested consultations with the U.S. in two disputes over safeguard duties imposed on solar-cell imports and state-level

incentives for using domestically sourced renewable energy products and technologies. The U.S. imposed safeguard measures on solar cells in January per a Section 201 investigation, which China claims violates U.S. obligations under the GATT and Safeguards Agreement. Korea made similar claims in May (see **WTTL**, May 21, page 10). Two days earlier, China argued that renewable energy incentive programs in Michigan, California and Washington state violate aspects of three other WTO agreements.

* * * **Briefs** * * *

EXPORT ENFORCEMENT: Mohawk Global Logistics of North Syracuse, N.Y., agreed Aug. 10 to pay \$155,000 civil penalty to settle BIS charges of aiding export of LNP-20 Liquid Nitrogen Plant to All-Russian Scientific Research Institute of Experimental Physics (VNIIEF), blocked Russian entity, without required BIS license in 2012. Item was designated EAR99 and worth \$33,587. In addition, in February 2014 and August 2015, Mohawk aided export of Real-Time Back Reflection Laue Camera Detectors and Accessories, designated EAR99 and worth \$177,156 to University of Electronic Science and Technology of China (UESTC) in Chengdu, China without BIS license. UESTC also was on Entity List. Of penalty, \$20,000 will be suspended for six months then waived if Mohawk commits no further violations. Cryomech, Inc. of Syracuse agreed in June 2017 to pay \$28,000 civil penalty to settle related charge (see **WTTL**, June 19, 2017, page 10).

MORE EXPORT ENFORCEMENT: Rasheed Al Jijakli, CEO of Orange County, Calif., check cashing business, pleaded guilty Aug. 13 in Santa Ana U.S. District Court to charges of illegally exporting day-and night-vision rifle scopes, laser boresighters, flashlights, radios, bulletproof vest and other tactical equipment to Syria without licenses. He was arrested in August 2017 and released on \$250,000 bond (see **WTTL**, Aug. 7, 2017, page 7). Indictment was unsealed same day. Sentencing is set for Dec. 3.

NOTORIOUS MARKETS: In Aug. 16 Federal Register USTR requested comments on online and physical markets based outside U.S. to be included in 2018 Notorious Markets List. List identifies “online and physical marketplaces that reportedly engage in and facilitate substantial copyright piracy and trademark counterfeiting,” USTR noted. Comments are due Oct. 1.

COMPRESSION SOCKS: CAFC Aug. 16 affirmed CIT ruling that three types of graduated compression hosiery were not specially designed for use or benefit of physically handicapped persons, so are not classified as duty free. “We conclude that the Court of International Trade reached the correct result, but that it should have focused more narrowly on the ‘persons’ for whose use and benefit the subject merchandise is specially designed. We also find that it construed the term ‘specially designed’ too broadly,” Circuit Judge Kathleen O’Malley wrote for three-judge panel in *Sigvaris, Inc. v. U.S.*

ATMs: CAFC Aug. 15 reversed ITC ruling that Diebold violated Section 337 by importing components of automated teller machines (ATMs) that infringe ’235 patent. “Because the ’235 patent fails to disclose any structure corresponding to the function of ‘holding the at least one authentic cheque to return the at least one authentic cheque to the user responsive to receiving user instructions cancelling depositing of the at least one authentic cheque,’ we conclude that claims 1–3, 6, 8, and 9 are invalid for indefiniteness,” Circuit Judge Kathleen O’Malley wrote for three-judge panel in *Diebold Nixdorf, Inc. v. ITC*.

CHEMICAL EQUIPMENT: In Federal Register Aug. 13 BIS requested comments on effectiveness of its controls on certain spraying and fogging systems under Export Control Classification

Number (ECCN) 2B352.i and “parts” and “components” therefor. Specifically, agency hopes to ensure that descriptions on Commerce Control List (CCL) “are clear, do not inadvertently control items in normal commercial use, accurately reflect chemical/ biological (CB) related technological capabilities and developments, and are consistent with the principal objective of the Australia Group (AG),” notice said. BIS also requested public comments on potential alternatives to current controls, including removing certain criteria or lowering flow rate threshold.

GLOBAL MAGNITSKY: OFAC Aug. 17 designated four Burmese military and Border Guard Police (BGP) commanders and two Burmese military units -- 33rd Light Infantry Division (LID) and 99th LID -- under Global Magnitsky Act for their involvement in ethnic cleansing and other widespread human rights abuses. “Treasury is sanctioning units and leaders overseeing this horrific behavior as part of a broader U.S. government strategy to hold accountable those responsible for such wide scale human suffering,” said Sigal Mandelker, Treasury under secretary for terrorism and financial intelligence.

FLANGES: Commerce Aug. 13 announced affirmative final determinations in antidumping duty (AD) and countervailing duty (CVD) investigations of imports of stainless steel flanges from India. Final dumping rates Bebitz/Viraj Single Entity and Echjay Single Entity 145.25% each, all others 19.16%. Final subsidy rates for Bebitz Flanges Works Pvt. Ltd. 256.15% and all others 4.92%. Petitioner is Coalition of American Flange Producers. ITC scheduled to make final determinations Sept. 24.

TURKEY: Turkey Aug. 15 doubled tariffs on imports of U.S. autos, alcohol and tobacco in retaliation for U.S. doubling steel and aluminum tariffs week before (see **WTTL**, Aug. 13, page 1). Tensions have mounted between two countries regarding detention of American pastor Andrew Brunson. “Turkey has taken advantage of the United States for many years. They are now holding our wonderful Christian Pastor, who I must now ask to represent our Country as a great patriot hostage. We will pay nothing for the release of an innocent man, but we are cutting back on Turkey!” Trump tweeted Aug. 16. White House Spokesperson Sarah Sanders clarified that Brunson’s release will not result in lifting of steel and aluminum tariffs, as those are “specific to national security.” Sanctions specifically related to Brunson’s detainment could be lifted upon his release, Sanders said at press briefing Aug. 15.

NORTH KOREA: OFAC Aug. 15 designated shipping industry facilitators of North Korea UN Security Council violations. Agency sanctioned China-based Dalian Sun Moon Star International Logistics Trading Co., Ltd. and its Singapore affiliate, SINSMS Pte., for illicit shipments of alcohol, tobacco and cigarette products. Russia-based Profinet Pte Ltd. and its director general, Russian national Vasili Aleksandrovich Kolchanov, also were designated for providing port services to North Korea-flagged vessels. OFAC designated Russian bank earlier in August for its interactions with North Korea (see **WTTL**, Aug. 6, page 7).

SECTION 301: USTR will hold public hearings Aug. 20-27 regarding proposed tariffs on approximately \$200 billion worth of Chinese products per outcome of Section 301 investigation, agency announced Aug. 17. Tariffs on \$34 billion in Chinese goods are in effect, and additional \$16 billion are scheduled to take effect Aug. 23 (see **WTTL**, Aug. 13, page 2).

EDITOR'S NOTE: In keeping with our 50-week publishing schedule, there will be no issue of Washington Tariff & Trade Letter on Aug. 27. Our next issue will be Sept. 3.