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## Ross Expands on Huawei Export License Policy

More than 1000 industry attendees, foreign officials and journalists all had the same question: “Can you clarify the administration’s position on exports to Chinese telecom company Huawei?” Commerce Secretary Wilbur Ross opened the Bureau of Industry and Security (BIS) annual conference July 9 in Washington with an attempted answer.

“Commerce will issue licenses where there is no threat to U.S. national security. Within those confines we will try to make sure that we don’t just transfer revenue from the U.S. to foreign firms. Huawei itself remains on the Entity List, and the announcement does not change the scope of items requiring licenses from the Commerce Department, nor the presumption of denial,” Ross said.

BIS added Huawei and 68 affiliates to its Entity List in May; five days later, the agency issued a narrow and temporary General License. In June, President Trump said U.S. companies would be able to sell to Huawei, but two weeks later, neither BIS nor the White House has released anything official or more specific (see **WTTL**, July 8, page 1).

Reviews were mixed as to whether Ross’ comments provided any further clarity, or even a change to existing policy. In a later conference session, BIS Deputy Assistant Secretary Matt Borman said the agency is looking at the current crop of pending applications, citing consumer devices, networks and mass-market products as being highlighted in licenses.

That same day, Chinese Vice Premier Liu He held a telephone conversation with U.S. Trade Representative (USTR) Robert Lighthizer and Treasury Secretary Steven Mnuchin. “The two sides exchanged views on the consensus reached by the heads of the two countries during their meeting in Osaka,” the Chinese Ministry of Commerce reported.

## France Approves Digital Services Tax Against U.S. Opposition

In a sign that even potential U.S. tariffs cannot deter a country’s resolve, France July 11 adopted a 3% digital services tax (DST) on certain “giant” companies. The USTR’s office

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the day before opened a Section 301 investigation, claiming that France is unfairly targeting the tax at U.S.-based technology companies. In response to the U.S. announcement, French Finance Minister Bruno Le Maire tweeted: “The United States has decided to open proceedings against the national tax on digital services. Among allies, we must resolve our differences in a way other than threat. France is a sovereign state. It decides sovereignly on its tax provisions.”

In a speech to the French Senate, Le Maire explained the French decision. “We are confronted today with the emergence of economic giants, which are monopolistic. They want [to not only] control the maximum amount of data but go even further than that by escaping [taxes]. They are putting in place instruments of exchange that could, tomorrow, take the form of a sovereign currency.”

Le Maire also called for an international and amicable way to resolve the issue. “Let’s accelerate work at the international level, find a common solution, find a solution at the OECD level and go through agreements rather than only by threats. It seems to me better policies to deal with this issue [of] fundamental taxation of digital giants,” he said.

In a note of bipartisanship, lawmakers and industry groups applauded the U.S. announcement. Senate Finance Committee Chairman Chuck Grassley (R-Iowa) and Ranking Member Ron Wyden (D-Ore.) urged USTR in a joint statement to “continue working with the Treasury Department on a unified strategy that prevents other countries from taking unilateral, discriminatory action that would result in new trade barriers and significant double taxation.”

Separately, Treasury responded to a letter sent by Grassley and Wyden, confirming that it is reviewing a range of potential responses, including application of a section of U.S. tax code. “Treasury is actively engaged in a coordinated effort across the Administration, and we are evaluating a range of potential U.S. responses to the adoption of a French DST. Options under review include consideration of the Internal Revenue Code authorities,” the department wrote.

“France’s new digital services tax disproportionately affects innovative American companies while carving out French competitors. The design of this new tax suggests it was tailored specifically to impose a financial burden on successful U.S. companies,” National Foreign Trade Council (NFTC) VP Jake Colvin said in a statement. Members of Congress and industry groups reacted similarly to the United Kingdom’s (UK) November 2018 proposal of a 2% digital services tax on large, profitable digital firms starting in April 2020 (see **WTTL**, Nov. 5, 2018, page 5).

## House Takes Shot at USML Firearms Transfers

In a 225-205 vote July 11, the House approved an amendment to the 2020 National Defense Authorization Act (NDAA) that would prohibit the long-awaited transfer of items from U.S. Munitions List (USML) categories I, II and III, including firearms, close assault

weapons and combat shotguns, guns and armament, and ammunition and ordnance, to Bureau of Industry and Security (BIS) jurisdiction.

The firearms industry is losing patience with the delay, and members say they will oppose the nomination of acting BIS under secretary Nazak Nikakhtar if she comes up for a vote before the final rules are published (see **WTTL**, July 8, page 1). Rep. Norma Torres' (D-Calif.) amendment reflects the language of H.R. 1134, which Torres introduced in February at the same time as Sen. Robert Menendez (D-N.J.) put a "hold" on the transfers after receiving a formal 38(f) notification.

Administration officials were mum on the status of the transfers. At the BIS annual conference July 9, Rob Hart, acting regulatory & multilateral affairs division chief in State's Office of Defense Trade Controls Policy (DTCP), noted there is no final rule, but that it could be a matter of interpretation of the Arms Export Control Act (AECA) what it means to put a hold on a 38(F) notification. That is "really where it stands right now."

Earlier in the day at a separate conference session, Hart's boss, Policy Chief Sarah Heidema simply said, "I don't know," in response to a question about the timing of the final rule.

Gun control groups applauded the House amendment. The transfer "might be good for the bottom line of the corporate gun lobby, but it harms the national security of our country. This amendment makes sure the right experts are watching over these shipments so our enemies don't get American-made guns they can use to carry out violence abroad," Robin Lloyd, managing director at the gun safety organization Giffords, said in a statement.

## **New Rules Will Keep BIS Staff in Overdrive, Officials Say**

If anyone was concerned, the Bureau of Industry and Security (BIS) will certainly be busy in the foreseeable future. In addition to the ever-increasing Section 232 investigations and product exclusions and the usual work of processing and approving export licenses, the agency has been tapped to implement the president's recent executive order (EO) on telecom and information security and will be tapped in a growing number of Committee on Foreign Investment in the U.S. (CFIUS) reviews, officials told attendees at the BIS annual conference July 9.

"The Department will issue by mid-October interim regulations for making determinations under the Executive Order to ensure the viability of our IT and telecom providers. We will protect the security of the U.S. data infrastructure," Commerce Secretary Wilbur Ross told the conference, without going into details of what that rule will include.

"The interim final rule will request input from the public, stakeholders in the private sector, government agencies, and academia. Most importantly, we must quickly identify the most significant vulnerabilities in our telecommunications supply chain and act swiftly to mitigate them," he added. Ross also discussed BIS participation in the ongoing

CFIUS pilot program in 27 sectors that Treasury began in November 2018 (see **WTTL**, Oct. 15, 2018, page 1). “We are working closely with other agencies to implement Pilot Program reviews of non-controlling interests in critical technology companies, and will fully implement the law by February,” he said.

“CFIUS investigations will rise as we address previously undisclosed investments in U.S. technology companies that may pose national security risks. Further, we look at the entire spectrum of foreign investments for trends indicating when an important nascent technology sector has been targeted. We will address vulnerabilities using our CFIUS authority or export control laws,” Ross noted.

BIS officials told a later conference session that the agency reviews about 200 CFIUS transactions per year, and that number could double or even triple when provisions of the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) go into full effect in February 2020. FIRRMA and the ensuing pilot program expanded the types of transactions that trigger interagency review.

## **DDTC Will Issue Two ITAR Clean-Up Rules**

This time, they really mean it. State’s Directorate of Defense Trade Controls (DDTC) is working on two new rules to clean up or “defrag” the International Trade in Arms Regulations (ITAR) and make it more in sync with Commerce’s export regulations, Rob Hart, acting regulatory & multilateral affairs division chief in DDTC’s Office of Defense Trade Controls Policy, told the BIS annual conference July 9.

The first rule will consolidate in one place definitions that are sprinkled all over the ITAR, the other will create a step-by-step description of license requirements and exemptions that are also in disparate sections of the regulations. The definitions rule is “close,” Hart said, and would likely be issued as an interim final rule with a delayed implementation date, to allow for public comments.

“We’re not upending the content, not sneaking in new definitions,” Hart said during a later conference roundtable session. Nevertheless, industry attendees expressed concern that moving language around and rearranging section numbers would create a “significant administrative burden” to update proprietary systems, even if nothing substantive changed.

DDTC has been talking about these rules since export control reform wound down. A similar ITAR review was “currently pending in interagency discussion,” then-DDTC Chief Brian Nilsson told BIS conference attendees in October 2017. “What we’re actually looking at is the restructuring of the ITAR, to basically put it more like a military operations manual, to put like things together, to put all our authorities in one place, put all of our authorizations in one place, put any exemptions... in one place, to put all our definitions in one place,” he said.

## BIS Officials Tackle Rules on Emerging, Foundational Technologies

At the Bureau of Industry and Security (BIS) annual conference July 10, Assistant Secretary Richard Ashooh and acting Under Secretary Nazak Nikakhtar addressed the proposed rules on emerging technologies that could “emerge” from the more than 200 industry comments the agency received (pun intended).

In what some observers thought was a throwaway line, Ashooh said proposed rules will be issued in “weeks, but not months.” Harkening back to export control reform’s promise of ongoing list review, Ashooh explained that the “controls will be iterative,” and the “process will have no end.”

“We want to move forward with all urgency,” Nikakhtar added. During that same panel, other BIS officials described specific emerging technologies that the agency is considering, including additive manufacturing, quantum computing and robotics.

Industry is also waiting for an advanced notice of proposed rulemaking (ANPRM) on foundational technologies, which BIS is hoping to issue “very soon,” Nikakhtar noted. One conference attendee asked in advance if the comment period would be extended. The ANPRM on emerging technologies, which was extended once, was issued right before Christmas and ended during a government shutdown (see **WTTL**, Jan. 14, page 1).

To help the agency review these technologies, BIS is creating (or rather, reinventing) an Emerging Technology Technical Advisory Committee. “Members of this Committee will be announced soon, and they will get to work immediately to help modernize our controls on important technologies,” Commerce Secretary Wilbur Ross told the conference attendees.

### \* \* \* Briefs \* \* \*

**SODIUM NITRITE:** In 5-0 “sunset” vote July 10, ITC said revoking antidumping duty orders on imports of sodium nitrite from China and Germany and countervailing duty order on imports of product from China would renew injury to U.S. industry.

**WIND TOWERS:** Wind Tower Trade Coalition filed countervailing and antidumping petitions July 9 with ITA and ITC against utility scale wind towers from Canada, Indonesia, South Korea and Vietnam. Court of Appeals for the Federal Circuit (CAFC) in 2016 ruled three different ways on appeal of previous antidumping order on wind towers from Vietnam (see **WTTL**, Aug. 15, 2016, page 5).

**PET SHEET:** Advanced Extrusion, Ex-Tech Plastics and Multi-Plastics Extrusions filed antidumping petitions July 9 with ITA and ITC against polyethylene terephthalate (PET) sheet from Korea, Mexico and Oman.

**ANTIBOYCOTT:** Mitsubishi International Polymer Trade Corporation (MIP) and Mitsubishi International Corporation agreed June 13 to settle BIS charges of violating antiboycott regulations. MIP agreed to pay \$15,000 civil penalty to settle 11 charges of furnishing information about business relationships with boycotted countries or blacklisted persons and failing to report

receipt of request to engage in restrictive trade practice or foreign boycott from April 2014 through March 2015 during transactions with Oman and UAE. Mitsubishi International agreed to pay \$5,000 to settle three charges of same behavior from June 2013 through January 2014 during transactions with Oman and Bahrain.

**EXPORT ENFORCEMENT:** Fla. resident Cristian German Barrera was arrested July 11 and charged in Miami U.S. District Court with conspiracy to violate Arms Export Control Act (AECA) and attempts to illegally export thousands of AR-15 assault rifle parts to Argentine weapons trafficking organization without State licenses. Fla. residents John James Peterson and Brunella Zuppone were arrested June 26 on related charges (see **WTTL**, July 8, page 6).

**MORE EXPORT ENFORCEMENT:** Two Iranian nationals who live in Northern California and Iranian company agreed July 8 to pay settle \$300,000 to settle BIS charge of conspiracy to export U.S.-origin micro-drill press from U.S. to Iran via United Arab Emirates (UAE) without required U.S. government authorization in 2013. Sadr Emad-Vaez and Pouran Aazad pleaded guilty in May in San Francisco U.S. District Court to relate charges. Both participated in operation of Ghare Sabz Company, aka GHS Technology, large manufacturing corporation in Tehran (see **WTTL**, May 20, page 7). Press was designated EAR99 and worth \$15,199.

**VENEZUELA:** OFAC July 11 designated Venezuela's General Directorate of Military Counter-intelligence (DGCIM) for operating in country's defense and security sector. Navy Captain Rafael Acosta Arévalo died eight days after DGCIM detained him on claims he was involved in plot to assassinate Maduro. "Treasury is committed to ending the former Maduro regime's inhumane treatment of political opponents, innocent civilians, and members of the military in an effort to suppress dissent," Treasury Secretary Steven Mnuchin said in statement.

**KORUS:** U.S. Trade Representative (USTR July 9 held formal consultations with South Korea under competition chapter of U.S.-Korea Free Trade Agreement (KORUS). USTR formally requested consultations in March (see **WTTL**, March 18, page 1). U.S. called on Korea "to improve procedures in competition hearings held by the Korea Fair Trade Commission (KFTC)," USTR said. "Currently pending amendments to Korea's 'Monopoly Regulations and Fair Trade Act' fail to address U.S. concerns that KFTC hearings continue to deny U.S. firms due process rights under the KORUS agreement that are necessary to secure a fair competition hearing in Korea," agency added.

**STEEL:** Russia July 9 requested WTO dispute consultations with U.S. concerning "continued application of U.S. antidumping duties" on imports of hot-rolled flat-rolled carbon-quality steel products. Russia claims measures are inconsistent with WTO Anti-Dumping Agreement. In 6-0 "sunset" vote in September 2016, ITC said revoking antidumping duty orders products from Russia would renew injury to U.S. industry (see **WTTL**, Sept. 19, 2016, page 11).

**BELARUS:** At 12th meeting of working party on Belarus' accession July 11, First Deputy Prime Minister Alexander Turchin reaffirmed country's "strong intention to complete the accession negotiations" by WTO Ministerial Conference in 2020 in Kazakhstan. "Upon the request of a number of WTO members, Belarus has indicated its readiness to agree on more than 70% of the commitments contain[ed] in the draft Report. I believe that such a step would be considered as confirmation of the seriousness of our intention to become a WTO member," Turchin added. Meeting was fifth since resumption of working party work in January 2017.