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## Agencies Send Firearms Rules Back to Congress

Just days after the Office of Management and Budget completed its review of interagency review of final rules transferring items from U.S. Munitions List (USML) categories I, II and III (firearms and ammo) to the Commerce Control List, export control agencies Nov. 13 gave Congress another 30-day notification under Section 38(f) of the Arms Export Control Act (AECA).

OMB completed its review of Bureau of Industry and Security (BIS) and State's Directorate of Defense Trade Controls (DDTC) rules Nov. 7 (see **WTTL**, Nov. 11, page 1). Specifically, BIS revised the final rules to address the publication of technology for 3D printing firearms, while State made no changes.

"To address concerns raised by some members of Congress and the public regarding certain access to 3D printing technology and software for firearms, the Department of Commerce has revised its draft final rule to make certain technology and software capable of producing firearms subject to the EAR when posted on the internet under specified circumstances," State said in its summary of changes that accompanied the notification.

BIS specified items that remain subject to its Export Administration Regulations, including "software' or 'technology' for the production of a firearm, or firearm frame or receiver, controlled under ECCN [Export Control Classification Number] 0A501, that is made available by posting on the internet in an electronic format, such as AMF or G-code, and is ready for insertion into a computer numerically controlled machine tool, additive manufacturing equipment, or any other equipment that makes use of the 'software' or "technology' to produce the firearm frame or receiver or complete firearm," the BIS rule noted.

## Judge Blocks Posting of 3D Gun Blueprints

While observers hoped the final rules on the transfer of USML firearms to Commerce jurisdiction would put to rest a lawsuit that the administration settled with Defense

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Distributed over online posting of 3D gun blueprints, a judge in Seattle U.S. District Court Nov. 12 granted Washington state's motion to halt the posting of such blueprints. The day before the 38f notification, Judge Robert Lasnik ruled that the Trump administration's "decision to allow the unlimited distribution on the internet of data files for untraceable, undetectable 3D-printed guns was arbitrary, capricious and unlawful," the Washington attorney general's office said in a statement.

Lasnik previously granted a preliminary injunction against the settlement in August 2018 (see **WTTL**, Sept. 3, 2018, page 5). However, the organization found a loophole that the judge allowed, posting the blueprints for sale the day after the ruling.

Defense Distributed immediately denounced the judge's latest ruling to vacate its State license. "The rest of his order blandly accepts the Plaintiff States' basic position and either skips past our arguments entirely or addresses them with conclusory denials. We have come to expect this kind of laziness and basic error from district judges," the group wrote.

## House Passes Ten-Year Ex-Im Extension Bill

In a close to party line vote, the House of Representatives Nov. 15 voted 235-184 to approve a bill (H.R. 4863) to reauthorize the Export-Import Bank (Ex-Im) for ten years, increase the agency's lending authority from \$135 billion to \$175 billion over seven years and rename the bank as the U.S. Export Finance Agency.

The House Financial Services Committee approved the bill in October in a 30-27 vote, while three other unrelated bills passed by either unanimous or voice votes (see **WTTL**, Nov. 4, page 1). The administration and Senate Majority Leader have already stated their opposition to the bill, and the agency's charter will expire Nov. 21 if it is not reauthorized.

The day before the vote, the White House issued a Statement of Administration Policy (SAP) opposing the bill. "This bill creates significant obstacles to achieving the mission of the Export-Import Bank and includes provisions that would create excessive costs and burdensome reporting structures, which could delay project approval and implementation. The Export-Import Bank must remain flexible so it can counter alternative sources of project financing from international competitors, such as China, that make use of a diverse array of credit agencies," the SAP said.

Rep. Mark Amodei (R-Nev.) echoed the White House sentiment in explaining his "no" vote. "Today's legislation has no chance in the Senate, and the Administration has come out in opposition," he said in a statement. "Also, by picking winners and losers with regard to its green energy mandate, this legislation potentially places American exporters at a competitive disadvantage against other nations' global export agencies, including those subscribing to the Paris Climate Accord, that may not be required to adhere to the same regulations," Amodei added.

In contrast, Democrats voted overwhelmingly for the bill. “The Export-Import Bank is a critical tool in keeping our exports competitive, benefitting businesses in Texas and across the United States. With the certainty of reauthorization, companies can make long-term business decisions, knowing that the tools of the Bank are available to them,” said Rep. Lizzie Fletcher (D-Texas).

Trade groups were quick to applaud the bill. “We now urge the U.S. Senate keep the momentum going by swiftly voting in favor of the Ex-Im Bank’s reauthorization. By doing so, they will help keep our industry vibrant and the support our industry’s 1.3 million men and women,” Association of Equipment Manufacturers (AEM) President Dennis Slater said in a statement.

The New Democrat Coalition (NDC) the day before the vote announced its support for the bill, which also “creates new programs to help connect foreign buyers with U.S. exporters and strengthens the Agency’s support for small businesses,” the group said. “Additionally, the bill also addresses concerns about unfair trade competition and our national security by prohibiting the Bank from financing sales to certain bad-actor entities as determined under existing U.S. statute, and promotes a climate-forward global economy through support of renewable energy and technology exports,” NDC added.

## **WTO Panel Rejects India’s Claims on U.S. Compliance**

A World Trade Organization (WTO) dispute panel Nov. 14 largely rejected India’s claims against U.S. efforts to comply with a previous panel ruling on countervailing measures on imported hot-rolled carbon steel flat products from India.

The DSB agreed to India’s request to establish a panel in April 2018 (see **WTTL**, April 30, 2018, page 6). At the time, the U.S. maintained that there was no basis for India’s position and said it was willing to engage in proceedings to prove that it is compliant.

Specifically, the panel rejected India’s claims that the U.S.’ compliance measures were inconsistent with the “public body” and “benefit” provisions of the WTO Subsidies and Countervailing Measures (SCM) Agreement. On India’s claims regarding specificity, the panel found that the U.S. reinvestigation erred with respect to one subsidy program -- that is “mining leases for iron ore” program -- while rejecting India’s other claims that the U.S.’ reinvestigation had incorrectly found the subsidy programs at issue to be “specific.”

With one exception, the panel also rejected India’s claims regarding injury findings concerning price effects and the state of the domestic industry in the U.S.’ reinvestigation. However, the panel did find that the International Trade Commission (ITC) acted inconsistently with WTO provisions “by failing to consider the impact of dumped imports from China, Kazakhstan, Romania, Chinese Taipei, and Ukraine on the injury suffered by the domestic industry and to separate and distinguish it from the effects of subsidized imports and of other known factors,” the WTO said.

## Administration Has Bigger Fish to Fry: AI

While the findings should not come as a surprise, the U.S. is being outcompeted by China in five areas of artificial intelligence (AI): research and development, commercial competition, military-civilian fusion, military modernization and global recruiting of AI talent, according to an interim report by the National Security Commission on Artificial Intelligence (NSCAI) published Nov. 5.

NSCAI argues that if there is not a reversal in these trends, “the resulting disadvantage to the U.S. could endanger national security and global security.” The administration is preparing proposed rules on emerging technology controls, which could include AI, but the timeline for those rules keeps shifting (see **WTTL**, Sept. 23, page 1).

The principal findings include the dire fact that “China is projected to pass the United States in absolute R&D spending within 10 years.” In addition, “Chinese tech firms have reached enormous scale and are poised to become leaders in applied AI, excelling in numerous commercial AI applications, including education, healthcare and e-commerce,” the report says.

Additionally, for the Chinese, there is no “distinction between civilian and military relevant AI R&D,” the report noted. Perhaps most troubling, the report found that the Chinese and Russians have established R&D institutes to advance their military application of AI, similarly to DARPA.

When President Xi launched “Made in China 2025,” allocating more than \$300 billion on 10 strategic industries, including AI, semiconductors, and robotics, many in the West, including American officials begun to raise the alarm of China’s rise. It led to some policymakers calling for decoupling from the Chinese economy, while others cautioned firmness but cooperation. The NSCAI report seems to support the latter.

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

**EXPORT ENFORCEMENT:** Iranian national Behzad Pourghannad was sentenced Nov. 13 in White Plains, N.Y., U.S. District Court to 20 months in prison for exporting carbon fiber to Iran between 2008 and 2013 without OFAC licenses. He pleaded guilty in August (see **WTTL**, Sept. 2, page 8). Pourghannad was extradited and appeared in court in July after being arrested in Germany two months earlier. Co-defendants Ali Reza Shokri and Farzin Faridmanesh are still at large. Three-count indictment was first filed in July 2013 and unsealed day before first appearance in court. Carbon fiber is controlled under ECCN 1C010 or 1C210 (after 2010) and can be used in gas centrifuges to enrich uranium, Justice sentencing memo noted.

**MORE EXPORT ENFORCEMENT:** Cotran Corporation of Portsmouth, R.I., agreed Nov. 7 to pay \$136,000 civil penalty to settle 11 BIS charges of engaging in prohibited conduct and failure to comply with recordkeeping requirements. From May 2011 through July 2015, Cotran exported electric cattle prods to Venezuela, Mexico, South Africa and Czech Republic without required BIS licenses. Items were classified under ECCN 0A985 and controlled on crime control grounds, valued at \$81,010. Of penalty, \$86,000 will be suspended for four years and then waived if Cotran commits no further violations.

**STILL MORE EXPORT ENFORCEMENT:** Three Saudi nationals were indicted Nov. 6 in Riverside, Calif., U.S. District Court on charges of exporting more than \$100,000 in weapons parts, including rifle barrels, rifle triggers and other items, to Saudi Arabia without required State licenses. Hatim Humeed Alsufyani and Mosab Alzahrani, both formerly of San Bernardino, and Abdulwahab Mohammed A. Alabdulwahab, formerly of Los Angeles, are believed to be in Saudi Arabia.

**ENTITY LIST:** BIS in Federal Register Nov. 13 added 22 entities to Entity List in Bahrain, France, Iran, Jordan, Lebanon, Oman, Pakistan, Saudi Arabia, Senegal, Syria, Turkey, UAE and UK. Agency added five entities in Pakistan and one in Oman, Saudi Arabia and UAE that “have been involved in supporting unsafeguarded nuclear activities.” Eight others in UAE and Turkey “knowingly divert U.S. origin items to Iran without authorization and are therefore unreliable recipients of U.S.-origin goods and technology,” BIS said. At same time, rule modified one entry in Pakistan. In addition, BIS removed Technology Links Pvt. Ltd. in Pakistan; All Industrial Manufacturing (AIM) Pte Ltd in Singapore; and Eurotech DMCC in UAE “based upon their requests for removal.”

**STEEL ROD:** In 5-0 final vote Nov. 15, ITC found U.S. industry is materially injured by dumped imports of carbon and alloy steel threaded rod from Thailand. Commission also made negative finding on critical circumstances for these imports.

**ACETONE:** In 5-0 final vote Nov. 14, ITC found U.S. industry is materially injured by dumped imports of acetone from Singapore and Spain.

**POULTRY:** China will lift “unwarranted” ban on U.S. poultry products, USTR Lighthizer and Agriculture Secretary Sonny Perdue announced Nov. 14. China banned all U.S. poultry in January 2015 due to avian influenza outbreak, even though U.S. has been free of this disease since August 2017, joint statement noted. U.S. exported over \$500 million worth of poultry products to China in 2013.

**CHEMICALS:** CAFC affirmed CIT dismissal of complaint appealing Customs denial of protest concerning duty-free treatment for organic chemicals from India under Generalized System of Preferences (GSP). “The CIT dismissed Industrial Chemicals’ Complaint for lack of jurisdiction, explaining that, to the extent Industrial Chemicals contested Customs’ denial of retroactive GSP treatment, its Protest was invalid, because the denial was “not a protestable decision under 19 U.S.C. § 1514(a),” and “[t]o the extent that [Industrial Chemicals] contest[ed] the liquidation of its entries, its [P]rotest was untimely,” Circuit Judge Evan Wallach wrote for three-judge panel in *Industrial Chemicals, Inc. v. U.S.*

**FCPA:** Yanliang Li, aka Jerry Li, former head and managing director of China subsidiary of Herbalife, publicly traded international multi-level marketing company, and Hongwei Yang, aka Mary Yang, former external affairs head of Chinese subsidiary, were charged Nov. 14 in Manhattan U.S. District Court on charges of violating Foreign Corrupt Practices Act (FCPA) from 2006 to 2016. Li and Yang remain at large. SEC added FCPA charges next day. “Li orchestrated a bribery scheme in China, bribing local, provincial, and national government officials to obtain direct selling licenses and curtail government investigations of China Subsidiary’s business practices,” agency noted in complaint.