

Vol. 30, No. 11

March 15, 2010

## Obama's Export Control Reforms May Be Slow to Come

The Bureau of Industry and Security (BIS) apparently wasn't prepared for President Obama's March 11 announcement that he was ordering the agency to implement an online system that would speed up the technical reviews of encryption products from 30 days to 30 minutes. Questions about how soon the agency will set up the new system received the answer, "We are actively working to publish a regulation and hope to get it done soon," from one administration official. The requirement for getting an encryption decision from BIS has been a major irritant for exporters. In fiscal year 2008, BIS conducted 3,396 technical reviews.

In a speech to the Export-Import Bank Annual Conference, Obama said Defense Secretary Robert Gates would be announcing "within the next couple of weeks" the results of the review of export controls that the president ordered last August (see **WTTL**, Feb. 1, page 1). Ahead of Gates' announcement, Obama said he was prepared to announce plans for streamlining encryption reviews and harmonizing policies on the treatment of foreign nationals under export controls.

"Right now, [exporters] endure a technical review that can take between 30 and 60 days, and that puts that company at a distinct disadvantage to foreign competitors who don't face those same delays," Obama said. "So a new one-time online process will shorten that review time from 30 days to 30 minutes, and that makes it quicker and easier for our businesses to compete while meeting our national security requirements," he announced.

Obama also promised to eliminate unnecessary obstacles to hiring dual-nationals and third-country-nationals. "Currently, our exporters and foreign consumers of these goods have to comply with two different, conflicting set of standards. They're running on two tracks, when they could be running just on one. So we're moving towards harmonizing those standards and making it easier for American and foreign companies to comply with our requirements without diminishing our security. And I look forward to consulting with Congress on these reforms, as well as broader export control reform efforts," the president stated.

## Locke Says Brazil Open to Talks to Settle Cotton Dispute

After his return from Brazil, Commerce Secretary Gary Locke told WTTL March 11 that his talks with the Brazilians on their announced retaliation against U.S. cotton subsidies indicated that they were receptive to negotiations on settling the dispute. Locke and U.S. Trade Representative (USTR) Ron Kirk spoke with WTTL following their presentations to the Export-



Import Bank's annual meeting. "We indicated to them that Ambassador Kirk and his team will be sending a group of negotiators in the next few days, and we do want to resolve this and we want to avoid a trade war. That was well received and we talked about the necessity of avoiding a trade war where it becomes tit for tat, tit for tat," Locke told WTTL. A solution to the dispute will "depend on both sides," he said. "There is a serious commitment to resolve this as quickly as possible," he added. Kirk confirmed that he was "going to send another team down to talk with them next week." He declined to say whether the negotiators would carry a U.S. proposal for settling Brazil's complaint that the U.S. has not come into compliance with a World Trade Organization (WTO) ruling that U.S. subsidies for cotton violate WTO rules.

"I don't know if we're that far," Kirk told WTTL. The WTO gave Brazil authority to retaliate against the U.S., and Brazil on March 8 released a list of 102 U.S. products that will face retaliatory duties ranging from 12% to 100% over their current tariffs. The harshest tariffs will hit various cotton products (100%), motor vehicles (50%), personal care products (36%) and buses and trucks (32%).

"We've had lots of conversations" with them, Kirk said; noting Secretary of State Clinton's recent visit to Brazil. "We've been working with them to see if there might be some way to solve this," he said. "The meter is ticking," he added. "We have 30 days before this first wave goes in. We don't want to prejudge the process," he said. Kirk also declined to say whether legislation will be needed to settle the dispute. "You're way ahead of me," he said.

Resistance from Congress to legislative changes to current cotton subsidies came from Senate Agriculture Committee Chairman Blanche Lincoln (D-Ark.) and Ranking Member Saxby Chambliss (R-Ga.). In a joint statement, they said the U.S. was willing to negotiate but is waiting for Brazil to start the process. "We cannot negotiate with a partner that is unwilling to voice what it wants," they said; noting that the White House assured them that Locke was not going to Brazil to conduct negotiations. "We believe that doing so would only encourage a process where we end up negotiating with ourselves. Changes to both the cotton and GSM programs can only be done by Congress with the support of the House and Senate Agriculture Committees," they declared.

## Obama Recycles Export Plans of Previous Administrations

President Obama's executive order March 11 and his speech outlining his new National Export Initiative (NEI) borrowed heavily from export promotion campaigns launched by previous administrations. The promised program, however, will still leave the U.S. far behind its major competitors in the level of support given to exports, especially in the financial aid they provide through export credit agencies (ECAs) that compete with the U.S. Export-Import Bank.

Obama's executive order formally created a Cabinet group to plan and oversee the NEI. The order states: "The NEI shall be an Administration initiative to improve conditions that directly affect the private sector's ability to export. The NEI will help meet my Administration's goal of doubling exports over the next 5 years by working to remove trade barriers abroad, by helping firms -- especially small businesses -- overcome the hurdles to entering new export markets, by assisting with financing, and in general by pursuing a Government-wide approach to export advocacy abroad, among other steps."

It is hard to see how Obama's goal differs from this statement: "*America's future depends on our ability to compete successfully in the international marketplace...The strategy is founded on the conviction that exports play a vital and ever-increasing role in creating new jobs...the administration will develop coordinated action plans to assist U.S. firms...Business people can now call one telephone number and reach a Commerce Department-based information clearing-house...we will create a series of user-friendly one-stop shops located in major export centers... Finally, the export control licensing system will be streamlined and U.S. barriers to the export of some of our most attractive products for tomorrow's markets...will be dramatically*

*reduced,*” said then-Commerce Secretary Ronald Brown Sept. 30, 1993, announcing launch of legislatively mandated Trade Promotion Coordinating Committee.

## More FCPA Indictments Expected from Arms Sales Sting

The Justice Department is expected soon to roll out more indictments of individuals and firms in the arms and law-enforcement supply industry in the wake of a sting operation that snagged 22 executives for alleged violations of the Foreign Corrupt Practices Act (FCPA) (see **WTTL**, Feb. 1, page 3). The expansion of the case is being aided by a plea agreement and cooperation from one of the 22 indicted defendants plus a treasure trove of evidence the Federal Bureau of Investigation (FBI) collected from search warrants executed in connection with the sting.

At press time March 12, Daniel Alvarez, one of the 22 defendants, was scheduled to plead guilty to a superseding criminal information. Alvarez “will plead guilty and cooperate in the ongoing investigation,” his lawyer, Michael Volkov of the Dickinson Wright law firm, told **WTTL**.

The new criminal information adds a new charge for the attempted bribery of a defense ministry official in Georgia. It also portrays a broad conspiracy among the 22 defendants to bribe an African official, who was actually a federal undercover agent, to make sales to his country and to split a commission on the sale. “The government will seek to introduce evidence in each trial of statements and acts perpetrated by other conspirators,” Justice said in separate brief filed with the court. Justice said “its position is that this is one overarching conspiracy.” It also told the court that it has recordings of 5,000 telephone calls, 242,000 pages of documents and other electronic evidence it collected with its search warrants.

## Ex-Im Bank Requiring Certification of Iran-Free Trade

Exporters who are getting financial assistance from the Export-Import Bank are reportedly scrambling to get certifications from their foreign customers that no goods supported by the bank’s aid will go to Iran. Ex-Im has started to issue questionnaires to finance applicants seeking confirmation that none of the exported goods will go to projects in Iran that are prohibited under restrictions attached to Ex-Im’s fiscal year 2010 appropriations.

The questionnaire is being sent to applicants regardless of the products they export. The 2010 appropriations bill bars Ex-Im from authorizing any new guarantee, insurance or extension of credit for any project controlled by an energy producer or refiner that continues to provide Iran with petroleum; materially contributes to its capability to refined petroleum; or allows Iran to maintain or expand its refined petroleum resources (see **WTTL**, Dec. 21, page 4).

Whether or not due to Ex-Im restrictions, more companies are announcing a cutoff of trade with Iran. Following similar announcements from Caterpillar, Royal Shell, GE, Huntsman and Siemens, Ingersoll-Rand March 8 said it was ordering foreign subsidiaries to stop accepting orders from Iran. In a letter to United Against Nuclear Iran, Ingersoll-Rand CEO Michael Lamach said his company has complied with U.S. trade sanctions rules. “Ingersoll-Rand now joins with those companies, and effective immediately, will have its foreign subsidiaries stop accepting orders for all products, components and parts where the subsidiary knows such products, components or parts are destined for Iran,” he wrote.

## EU Parliament Urges Release of Anti-Counterfeiting Texts

The European Parliament flexed new muscles March 10, voting overwhelmingly to urge European Union (EU) negotiators to disclose the draft text of an Anti-Counterfeiting Trade

Agreement (ACTA) now being negotiated in the WTO. The December 2009 entry into force of the Lisbon Treaty gave the parliament new powers on access to information in negotiations and final approval for European trade deals. On a vote of 633 to 13, the parliamentarians approved a resolution calling for the talks to continue, but saying any deal should be limited to existing European enforcement measures (see **WTTL**, April 27, 2009, page 2). The parliament voted to press for public and parliamentary access to the negotiating text in the ACTA talks. If the texts are not released, the parliament said it “reserves its right to take suitable action, including bringing a case before the Court of Justice,” an EU press release noted.

The alleged secrecy of the ACTA talks is debated among the different groups who have a stake in the accord. Some industry executives and consumer activists who oppose the direction of the negotiations, in particular tighter border measures against counterfeit products, have complained about the limited release of information on the proposed treaty, while supporters of the pact claim there has been plenty on information and consultation on the proposals.

Parliament's transparency concerns reflect the internal EU debate over what Europeans call “competencies,” which are the different responsibilities and powers of each branch of the EU. That has little to do with the content of the ACTA negotiations, but it also foreshadows a potential problem in other free trade negotiations, one European source said. The Lisbon Treaty says the parliament has the right to be informed about ongoing negotiations, but it doesn't define exactly the extent of the information, the source explained.

EU Trade Commissioner Karel De Gucht said the European Commission has more than fully complied with provisions as they existed before the Lisbon Treaty, but he has asked other ACTA partners to release the documents. De Gucht told the parliament that the EU wouldn't unilaterally release them. He said the confidentiality of the international negotiations was not unusual. Nonetheless, some of the ACTA working texts have been leaked in Europe recently.

## **WTO Report Still Sees No Signs of Protectionism Surge**

The latest pulse-taking of new protectionist measures around the globe reconfirms previous reports that showed no substantial increase in trade barriers, despite the Great Recession of 2009. Nonetheless, the joint report released March 8 by the WTO and other international organizations cautions that sustained unemployment in developed countries will keep pressure on governments to take more restrictive measures.

“The trade and investment policy response to the global recession has so far been relatively muted,” the report said. “There has been no indication of a significant intensification of trade or investment restriction since the last report to the G20 in September 2009. However, past experience shows that prolonged periods of job losses and unemployment are one of the main catalysts for more restrictive policymaking,” it warned. The report cited an International Labor Organization report that said 27 million people around the world had lost their jobs in 2009, taking global unemployment to over 200 million people.

The report covered the six months since the last one was circulated (see **WTTL**, Sept. 21, page 1). New import-restricting measures by G20 members cover only around 0.7% their imports or around 0.4% of total world imports, the report said. The trade picture isn't that bad, one trade diplomat said in reaction to the report. Buy-national provisions haven't been too big, he noted. “It's much more complicated with the bailouts,” he said; saying General Motors is essentially a nationalized state-trading enterprise now. He also cautioned that negotiation to open financial markets will be more difficult with more “nationalized banks.” Another diplomat said some countries have taken measures that appear to be WTO compliant. Financial services interests are worried about the proliferation of new regulation proposals, said Pascal Kerneis, managing director of the European Services Forum. Concerns have also been raised about stricter application of sanitary and phytosanitary measures and technical barriers to trade.