

Vol. 32, No. 23

June 4, 2012

State Claims It Is Working Closely with Congress on Reforms

State Department officials dispute claims that friction between Assistant Secretary of State Andrew Shapiro and congressional committees and staffs has caused delays in the export reform initiative. While declining to comment on individual contentions about relations between Shapiro and Congress, one State official told WTTL that Shapiro “is working very close” with Congress and “he has had very constructive meetings in recent weeks as has Beth McCormick,” deputy assistant secretary of State for trade and regional security (see **WTTL**, May 21, page 1).

In addition to talks on the notification requirements of Section 38(f) of the Arms Export Control Act (AECA), State has reached an agreement to resolve another lingering concern about the long time lawmakers have taken to give their approval to commercial defense sales, which is a provision in Section 36(f) of the AECA. Secretary of State Hillary Clinton wrote to the House Foreign Affairs Committee in March 2011 complaining about delays that can stall a sale for up to 200 days.

In response to her letter, Committee Ranking Member Howard Berman (D-Calif.) proposed and State accepted a plan to allow congressional staffers to have access directly from their own computers to the department’s database to see and review potential arms sales while they are in interagency review even before licenses are filed. “Right now what we are doing is a concurrent review of congressional notifications,” the official told WTTL. “We give staffers the ability to see cases even before they are informally notified,” he said.

The official denied that problems with Congress are delaying reform. “The administration’s effort to reform export licensing is ongoing and continuing apace and is on track,” he said. “Any delays that have occurred so far have really been before going to Congress; they have been interagency delays as we go through the process of reviewing the list,” he said. “We have been working very closely with Congress as to how to notify these 38(f) transfers,” he stated.

WTO Considers New Transparency Rules for Safeguard Actions

The World Trade Organization’s (WTO) Committee on Safeguards has been asked to consider new rules that would require greater transparency and the application of “best practices” to committee reviews of complaints against countries that impose temporary relief measures against imports. At the committee’s last meeting in April, Ecuador, Cuba and Turkey offered a joint proposal for formally defining such procedures for safeguard actions. The U.S., European Union (EU), Australia, Canada, Japan, Mexico, Chile, Norway, Brazil and Colombia told the



committee they preferred the existing ad hoc approach to reviewing cases. While U.S. and EU safeguard actions get more publicity, the remedy, which can be applied to imports that injure a domestic industry without having to show dumping or subsidies, has become primarily used by developing countries against other developing countries. The transparency proposal came in response to requests from Colombia and India to the committee for review of safeguard actions.

According to WTO data, safeguard measures by developing countries represented 60 to 65% of reported actions from 1995 to 2011. The U.S. ranked sixth for the highest number of safeguard actions initiated (10), but seventh for the number implemented (6). The top eight countries imposing safeguards were India and Turkey with 13 each, Indonesia with 10, Chile, Jordan and the Philippines with seven each, the U.S. with six and the Czech Republic with five.

Colombia and India in 2011 invoked a provision never before used that allows a country to ask the committee to “find” whether “procedural requirements” have been violated by a safeguard measure. Colombia requested review of Ecuador’s safeguard measure against glass windshields; India’s dealt with Turkey’s action on cotton yarn. Although the committee didn’t make a finding on Colombia’s request, its chairman, Lillian Saili Bwalya of Zambia, sent a message to the WTO Goods Council suggesting how investigations should be conducted. That report could boost committee efforts to seek procedures for better defining best practices and boosting transparency, one official said; adding that the mechanism “is still in development.”

The official said it is very rare for the committee to agree to something on other than a consensus basis. To “find” that a certain member has violated procedural requirements, the committee must win the agreement of the country that is the subject of the complaint. The chairman’s report on India’s request is pending. India withdrew the matter from the committee’s April agenda and may be considering seeking dispute settlement, he said.

Ericsson Unit Fined \$1.75 Million for Trade with Cuba

The Bureau of Industry and Security (BIS) imposed a \$1.753 million civil penalty on Ericsson de Panama S.A., a subsidiary of Sweden’s Ericsson, a major provider of mobile phones, as part of a settlement to resolve charges that it provided repair services for phones in Cuba in violation of the U.S. trade embargo. The BIS Charging Letter and agreement, released May 25, alleged the firm had committed 262 violations of the Export Administration Regulations (EAR).

“While the conduct in this case was egregious, Ericsson de Panama avoided possible criminal prosecution and heavier fines by voluntarily disclosing the violations to BIS and cooperating with the investigation,” Assistant Secretary of Commerce for Export Enforcement David W. Mills said in a statement.

From 2004 to 2007, Ericsson de Panama allegedly routed items from Cuba through Panama, repackaged them to conceal their Cuban markings, forwarded the items to the U.S. for repair and replacement and then returned them to Cuba, BIS charged. The items, worth approximately \$169,000, were classified under Export Control Classification Numbers (ECCNs) 5A002, 4A994, 5A991, 5B991 or designated EAR99. The BIS complaint cited 138 charges of evasion, 123 charges of causing, aiding or abetting an act prohibited by the regulations, and one charge of unlicensed reexport of telecommunications equipment to Cuba.

“Specifically, Ericsson de Panama received items from its customer in Cuba, Empresa de Telecomunicaciones de Cuba, S.A., that needed repair. When Ericsson de Panama received the items from Cuba, it repackaged them to remove Cuba markings from the packaging and falsified paperwork associated with the items to make it appear to the Ericsson, Inc. repair center in the United States that the equipment belonged to a non-Cuban entity. Ericsson de Panama then shipped the equipment to Ericsson, Inc. in the United States for repair or replacement,” the settlement stated. “Because of the false paperwork and other steps taken by Ericsson de Panama, Ericsson, Inc. was unaware that the items it was repairing or providing replacement parts

for had originated in Cuba and were destined for Cuba. Ericsson, Inc. repaired or replaced the items and transshipped them through Ericsson de Panama in Panama to Cuba,” it continued. In its settlement with BIS, Ericsson neither admitted nor denied the agency’s allegations. An Ericsson spokesman in Sweden, however, acknowledged the settlement with BIS. “It is correct that Ericsson Panama has entered into a settlement agreement with the Bureau of Industry and Security, US Department of Commerce (BIS) following a voluntary self-disclosure of violations of the Export Administration Regulations (EAR) between 2004 and 2007,” he said in an e-mail to WTTL. “In an internal assessment, it was discovered that telecom equipment from Cuba had been re-routed to the U.S. via Panama for repairs....The personnel involved in these actions created a special repair flow for Cuba repairs that effectively made it appear as if the shipments were intended for Panama, rather than Cuba,” he added.

U.S. Hits Syrian Bank As Senate Seeks Tougher Sanctions

To prevent circumvention of previous international sanctions on Syrian banks, Treasury May 30 added the Syria International Islamic Bank (SIIB) to its Specially Designated Nationals (SDN) list. The department said it imposed the sanction because the bank had acted on behalf of or provided services to the Commercial Bank of Syria and its subsidiary, the Syrian Lebanese Commercial Bank, both of which are subject to U.S. and international sanctions.

According to Treasury, from 2011 to 2012, SIIB “surreptitiously facilitated financing worth almost \$150 million on behalf of the Commercial Bank of Syria.” The new sanctions came as domestic U.S. and international pressure is mounting for Washington and other governments to take tougher action against Damascus in the wake of the massacre of civilians in the town of Haoula.

Treasury’s action also follows Senate passage May 21 of an amended version of legislation (H.R. 1905) to increase sanctions on Iran. An amendment to the measure co-sponsored by Senate Banking Committee Chairman Tim Johnson (D-S.D.) and Ranking Member Richard Shelby (R-Ala.) added new sanctions aimed at Syria. The amendment would require the president to identify persons in Syria who are responsible for human rights abuses or censorship and impose on them sanctions available under the International Emergency Economic Powers Act. It would grant the president the power to waive the imposition of these sanctions if he determines a waiver would be in the national security interest of the U.S.

Services Talks Make Progress Toward Formal Launch

Talks in Geneva May 29-30 showed progress toward the launch of formal negotiations on a plurilateral agreement on services, with the European Union (EU) reportedly agreeing to talks based on the understanding that any final agreement would remain under the aegis of the WTO and not be outside of existing trade rules, including the General Agreement on Trade in Services (GATS). EU Trade Commissioner Karel De Gucht had voiced concerns previously that services talks might undermine the WTO (see **WTTL**, March 19, page 1). The EU wants the agreement to “draw heavily” on the GATS structure and provisions so it can be an “effective, genuine stepping stone” towards multilateralism, Tomas Baert, an EU spokesman in Geneva, told WTTL. The agreement shouldn’t be an obstacle for others to join later, he said.

Getting rid of the GATS structure for the agreement would exclude forever the possibility of a WTO agreement on services, said Pascal Kerneis, managing director of the European Services Forum. The door should be left open for China, India, Brazil and Asian countries with real growth to someday join, he said. There seems to be a greater understanding of the various positions following the meetings, Kerneis noted. The EU also wants any deal to apply to the sub-federal level in the U.S., Australia, and other countries, including for public procurement of services, a trade executive said. Persuading the U.S. to agree will be “difficult,” although it may happen at the bilateral level, he said. Another source noted continuing discussions on how to present schedules and specific commitments in an agreement. While talks are still at an

“early” stage, there is an expectation that any agreement would have to stay close to GATS rules on market access and national treatment, he said.

* * * **Briefs** * * *

ITA: Talks May 31-June 1 in Geneva on expanding Information Technology Agreement (ITA) focused primarily on trying to come up with consolidated list of new items to add to accord. Industry sources say they expect easy agreement on about 80% of those items in new ITA, with disagreement over other 20% and real dispute over about 10% (see **WTTL**, May 21, page 2).

VEU: In Federal Register May 31, BIS removed two entries for National Semiconductor Hong Kong Limited -- Shanghai Representative Office and Shenzhen Representative Office -- as eligible destinations for Semiconductor Manufacturing International Corporation (see **WTTL**, Nov. 14, page 4).

STEEL CYLINDERS: ITC made 6-0 final determination May 30 that U.S. industry is being injured due to subsidized and dumped imports of high-pressure steel cylinders from China.

EXPORT PROMOTION: By voice vote May 30, House approved bill (H.R. 4101), Export Promotion Reform Act, to give Commerce secretary authority to review trade promotion budgets of agencies in Trade Promotion Coordinating Committee and require department every five years to “conduct a global assessment of overseas markets to determine those with the greatest potential for increasing United States exports, and to deploy the Commercial Service personnel and other resources” based on that assessment.

EX-IM BANK: President Obama May 30 signed Export-Import Bank Reauthorization Act of 2012 (H.R. 2072) (see **WTTL**, May 28, page 1).

EXPORT ENFORCEMENT: Chinese law enforcement officials in Shanghai cooperated with ICE in investigation, indictment and arrest of Joseph Debose of North Carolina, staff sergeant in Special Forces National Guard unit, and two Chinese nationals, Zhifu Lin and Lilan Li. Three defendants were charged with illegal export of handguns to China. “In connection with this investigation, on or about August 30, 2011, a representative of United Parcel Service (UPS) contacted law enforcement to inform them that a parcel... shipped from Queens, New York had been intercepted by Chinese law enforcement officials in Shanghai, China and found to contain several firearms, including a Beretta 9mm semiautomatic handgun concealed in a speaker housing,” ICE agent said in affidavit filed in case.

FCPA: Another former executive of Control Components Inc. (CCI) pleaded guilty May 29 to single charge of making corrupt payment to foreign government official in China. Paul Cosgrove of Laguna Niguel, Calif., former head of CCI worldwide sales, entered plea in Santa Ana, Calif., U.S. District Court. Although his plea claimed he didn’t know bribes were being paid, he admitted he “failed to make additional inquiries” into certain “commissions” (see **WTTL**, April 23, page 4).

SHRIMP: CIT Chief Judge Donald C. Pogue May 30 upheld ITA remand determination to apply average zero or *de minimis* rate to cooperative, non-individually investigated respondents in review of antidumping order on warm water shrimp from Vietnam (slip op. 12-68). In rejecting complaint filed by Ad Hoc Shrimp Trade Action Committee, Pogue agreed with government that ITA had separate questionnaire response data to support decision.

ZEROING: Month after he remanded to ITA 14th administrative review of antidumping order on corrosion-resistant carbon steel flat products from Korea, CIT Judge Timothy Stanceu remanded 15th review to agency to reconsider several issues, including why it continues to apply zeroing to old administrative reviews but not to new investigations (slip op. 12-67) (see **WTTL**, April 30, page 4).

TUNA: In May 31 letter to President Obama, House Natural Resources Committee Ranking Member Ed Markey (D-Mass.) and 42 other Democrats urged administration to “make clear that the U.S. will not water down or eliminate the very successful dolphin-safe labeling regime” that was subject of WTO Appellate Body ruling May 16 (see **WTTL**, May 21, page 5).

MAGNESIUM: CIT Senior Judge Richard Goldberg May 29 upheld ITC “sunset” review determination that ending antidumping order on pure magnesium from Russia would not cause renewed injury to U.S. industry (slip op. 12-64). Goldberg agreed with ITC decision not to cumulate imports from Russia with imports from China. Argument against ITC ruling by plaintiff, U.S. Magnesium, “is meritless because the Commission received responses to questionnaires from both Chinese and Russian producers that demonstrated precisely what the Commission concluded, i.e., that there was a large and growing Chinese magnesium industry and a smaller, contracting Russian magnesium industry,” he wrote.