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Editor & Publisher: Samuel M. Gilston • P.O. Box 5325, Rockville, MD 20848-5325 • Phone: 301.570.4544 Fax: 301.570.4545

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Obama Gives DHS Lead Role in Export Enforcement Center

President Obama delivered the first concrete step in his promised export control reforms Nov. 9, issuing an executive order establishing an interagency Federal Export Enforcement Coordination Center. Originally tagged as the Fusion Center and one of four "singularities" that are supposed to come out of the reform plan, the new organization will be located inside the Department of Homeland Security (DHS). The center will have a director who is a full-time DHS employee and two deputy directors: one from Commerce and one from Justice.

> The order says the center "will coordinate on matters relating to export enforcement" among State, Treasury, Defense, Justice, Commerce, Energy, Homeland Security, the Office of the Director of National Intelligence, and "other executive branch departments, agencies, or offices as the President, from time to time, may designate." DHS "shall operate and provide funding and administrative support for the Center to the extent permitted by law and subject to the availability of appropriations," the order states (see **WTTL**, Sept. 20, page 4).

The center is to serve as "the primary forum within the Federal Government for executive departments and agencies to coordinate and enhance their export control enforcement efforts and identify and resolve conflicts that have not been otherwise resolved in criminal and administrative investigations and actions," the order explains. It emphasizes that it does nothing to change the authority, laws or regulations of each participating department. "Agencies shall continue to investigate criminal and administrative export violations consistent with their existing authorities, jointly or separately, with coordination through the Center to enhance enforcement efforts and minimize potential for conflict," it declares.

Exporter skepticism about the new center was highlighted in Mark Menefee's Enforcement Insights column in the November issue of our sister publication, ***The Export Practitioner***. Menefee claims the enforcement center is a solution in search of a problem. In addition, the great disparity in the size, budgets and personnel of enforcement agencies will make coordination difficult, Menefee argues, pointing to the FBI's12,000 investigators and State's staff of 200. "A Fusion Center does not come with its own magical bullet," Menefee writes.

Sting Finds Chinese Willing to Circumvent AD/CVD Orders

It's easy to find Chinese manufacturers and freight forwarders that are willing to circumvent U.S. antidumping (AD) and countervailing duty (CVD) orders by transshipping subject goods

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through third countries, claims a report prepared by the staff of Sen. Ron Wyden (D-Ore.), who chairs the Senate Finance Committee's subcommittee on international trade. Wyden's staff set up their own sting operation and over a period of weeks found Chinese suppliers offering to export Chinese goods covered by AD/CVD orders without paying required duties. In August 2010, Wyden's staff created a bogus company called AvisOne Traders, Inc. with a company profile on China's largest business-to-business e-commerce website, Alibaba.com. "The results are alarming and illustrative of how widespread the problem of duty evasion appears to be," Wyden's office said in a Nov. 9 press release. In under two weeks and for as little as 30 minutes a day, one staff person, acting as a "purchasing manager" for AvisOne Traders, Inc., contacted roughly 120 companies through Alibaba.com and received 47 responses.

> Of these 47, the staffer received written confirmations from 10 Chinese companies that were willing to evade duties on five different products subject to U.S. AD/CVD orders. These products include uncovered innerspring units, lined paper school supplies, steel nails, natural bristle paint brushes, and light-walled rectangular pipe and tube. The staff also found 12 shippers and freight forwarders in China and Hong Kong who offered to ship the goods to third countries to avoid the U.S. duties. These companies "publically advertise services to avoid paying AD/CV duties and other import restrictions like import quotas," the report stated.

"These firms advertise their services in both English and Chinese on websites like alibaba.com, China's largest e-commerce website that links buyers and sellers," it said. "Most evasion schemes involve illegal transshipment through a third country and falsified country of origin certificates for Chinese-origin product destined to the United States and other export markets."

Service Firms Play Main Role in Small Company Exports

The Obama administration's push to get more small and medium-size enterprises (SMEs), particularly small manufacturers, to export may be aimed at the wrong audience and the wrong goal. An International Trade Commission (ITC) report released Nov. 9 (ITC report 332-510) found that about half of SME exports are indirect in the form of goods and services provided inside the U.S. to larger firms, especially multinational enterprises (MNEs) that export. Just as most SMEs in the U.S. are in the service sector, the largest share of SME exports are tied to services. The leading service exports involve portfolio management; architectural, engineering, and related services; computer systems design and related services; software publishing services; and management, scientific, and technical consulting services.

> The report estimated that 4 million jobs are supported by value-added SME exports, including about 1.9 million by direct exports and 2.1 million by indirect exports. "The overall number of jobs supported by value-added exports (of both SMEs and large firms) is estimated to be 9.2 million," the report noted. Small firms appear to create more jobs proportional to their exports than large firms because they are less productive than large firms and require more workers per unit of output than larger firms. But SMEs that export are more productive and economically successful than those that don't, the ITC claims.

ITA to Keep 15-Day Rule for Customs Liquidation Instructions

The International Trade Administration (ITA) said Nov. 9 that it will continue its policy of issuing liquidation instructions to Customs and Border Protection (CBP) 15 days after it publishes final administrative review determinations for antidumping and countervailing duty cases in the Federal Register. "Commerce has determined that 15 days is reasonable and appropriately takes into consideration the concerns of CBP and the interested parties," ITA said. The policy gives CBP adequate time to liquidate entries before the six-month deadline for liquidating entries at their entered rate. ITA also claimed the policy gives parties adequate time to file a summons and complaint at the Court of International Trade (CIT). "Commerce's

normal practice is to release the final results of review to interested parties the day after the notice is signed by the Assistant Secretary. This day can be a week, sometimes more, before the final results are published in the Federal Register," it explained. "In other words, while parties have 15 days after the publication of the final results before Commerce will issue liquidation instructions, they have usually had at least 22 days to read and review the final results before Commerce has issued liquidation instructions," it stated.

> "In addition, the preliminary results of administrative review are released and published well in advance of the release and publication of the final results, and the parties are provided the opportunity to comment on the preliminary results during that period of time," ITA pointed out. "The parties are thus aware of the issues which they may be interested in litigating well before the final results are released, much less published in the Federal Register," it added.

Lack of U.S. Leverage Derails Korean Trade Talks

President Obama put U.S. trade negotiators in a tough spot last June when he said he wanted a deal to fix the U.S.-Korea Free Trade Agreement (FTA) by the time he met with Korean President Lee Myung-Bak before the G-20 summit in Seoul Nov. 11. That placed the Americans in the position of wanting an agreement more than the Koreans, and the Koreans knew it. As a result, Korean negotiators, who were also in a difficult political position with key Korean constituencies, could take a hard line in the final intense talks the week of Nov. 8. It left U.S. Trade Representative (USTR) Ron Kirk the option of accepting too little or putting off a final accord until after the spotlight is turned off the negotiations. He opted for the latter.

> At the end, just as at the beginning, the main division in the talks was over auto and beef exports to Korea. The U.S. could not get the Koreans to agree to accepting U.S. safety and environmental standards for low-volume exports to Korea or to let in beef from cows older than 30 months.

The failure of the talks may be due in part to the late start they got. USTR officials wasted almost four months trying to build support for a new deal in Congress. Kirk and Korean Trade Minister Kim Jong-hoon didn't have their first face-to-face talks until Oct. 26-27. The "shellacking" Democrats got in the November elections didn't help. Having been fooled once into signing an FTA three years ago and then finding out President Bush couldn't get it approved by Congress, the Koreans probably wanted assurance that any new pact they reached would get congressional approval. With the loss of Democratic control of the House and some 80 new Republicans coming in, many of whom are entering with tea party support and unknown views on trade, Kirk couldn't give that assurance.

The expectation that free-trade Republicans would automatically buy into any deal the U.S. brought back from Seoul was disabused when incoming House Ways and Means Committee Chairman Dave Camp (R-Mich.) issued separate joint statements with Senate Finance Committee Chairman Max Baucus (D-Mont.) and outgoing Ways and Means Chairman Sander Levin (D-Mich.), taking a tough stand on the auto and beef issues. Baucus and Camp said they welcomed the talks on autos and beef. "We urge the President to stand firm in seeking such an outcome with regard to these important sectors," they declared.

Obama was unable to close the deal himself in his one-on-one meeting with Lee and tried to put a good face on the failed negotiations. "We have asked our teams to work tirelessly in the coming days and weeks to get this completed, and we are confident that we will do so," he told a press conference after their meeting. "The talks will continue," Lee promised. He said Kirk and Kim have engaged in extensive discussions, "but President Obama and I agreed that we need to give them a bit more time so that they can iron out the technical issues between themselves." Lee also showed why the Koreans are taking a tough stand in the talks. The U.S. trade deficit with Korea is "continuously going down because in that, there's a lot of figures that is hidden, namely the royalty that the Korean companies have to pay the United States that

they pay every year," Lee said. "So one thing that I wish to point out to the American consumers is that there is really no trade imbalance when you -- when the U.S. talks about its trade relationship with the Republic of Korea," he asserted.

EU Threatens Retaliation on Government Procurement

The European Union (EU) will consider retaliation against countries that don't open their government procurement programs to European firms in the same way the EU opens its markets to foreign suppliers, warned EU Trade Commissioner Karel de Gucht Nov. 9. DeGucht's threat came as he unveiled a "renewed trade strategy" that is aimed at opening more markets for EU exports and taking a tougher stand on enforcing trade rules. "Retaliating" in a moderate and sector specific way is "what I have in mind," de Gucht told a press conference in Brussels. He said the EU Commission is considering an "instrument" that would not "close down the whole procurement market in Europe at once, but rather "will be linked to what happens in third countries," he said. "It should be flexible, but it should also give us leverage, for example, in negotiations with third countries," he said. There is a "broad understanding" in the commission of what the instrument should look like, de Gucht claimed.

> As an example of the lack of reciprocity in procurement, he noted an EU subsidized highway project in Poland where the lowest bid came from China. The public doesn't think the bid should be accepted, if the EU doesn't have access to those kinds of public works projects in China, he said. That's the type of concern that's driving introduction of the instrument, he noted.

The renewed trade strategy has six priorities, de Gucht said, referring first to completing in the next few years ambitious trade agreements, including the Doha Round. Closing deals with India, Canada, Ukraine and Mercosur will be a particular focus in 2011, he said. Trade and investment links with the U.S., China, Japan and Russia will be "deepened," he added. The needs of EU investors outside Europe have to be addressed, de Gucht said. "We will look at negotiating comprehensive investment provisions with key trading partners," he continued, citing India, Canada, Singapore, China and Russia.

De Gucht promised a greater focus on enforcement using all appropriate means to ensure that European interests are treated fairly under trade rules. Enforcement is stressed because rules-based international trade is important to Europe, he said. The aim is to enforce existing rules using the public procurement "instrument" being discussed. European markets are open. so it's "entitled to ask" trade partners to open their markets "progressively," de Gucht declared.

Obama Pledges to Drop Indian Centers from Entity List

The last Indian defense, space and atomic research institutes still on the Bureau of Industry and Security's (BIS) Entity List will be removed shortly, President Obama promised Nov. 8 during his state visit to India. A BIS source could not say when that change would be published in the Federal Register. The White House also said BIS would change its licensing policy toward India to "realign" India in its dual-use export control regulations to reflect India's status as a strategic partner, "effectively treating India similarly to other close allies and partners."

> The White House noted that less than one percent of U.S. exports to India are subject to licensing, but "the perception of onerous U.S. export controls remains a barrier to high technology trade." It didn't mention that unlicensed exports to Indian agencies on the Entity List have brought civil fines to many U.S. exporters

"This realignment will remove India from categories within the dual-use regulations that connote India as a 'country of concern'," a White House fact sheet said. "In return, India will harmonize its national control list with the multilateral regimes and incorporate reexport controls on certain U.S.-origin items to address the potential transshipment of these items," it said.