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## Most Functions to Be Move out of BIS Under Export Reforms

White House National Security Advisor James Jones June 30 partly confirmed and partly calmed exporting community concerns about the Bureau of Industry and Security's (BIS) future under the Obama administration's export reform plans. Jones announced that the plans now call for BIS' export licensing function to move out of Commerce to a new independent agency along with the export licensing responsibilities of State's Directorate of Defense Trade Controls (DDTC). The move of BIS licensing to an independent agency quashed rumors and fears that all licensing would be consolidated in DDTC (see **WTTL**, June 28, page 1).

Jones also confirmed that BIS and DDTC would have their criminal export enforcement assignments moved to an enhanced counter-proliferation section of Immigration and Customs Enforcement. All BIS field operations and staffs would be reassigned to ICE under the plan, according to another White House official.

These organizational changes will require legislation, Jones said. "Phase III will require legislation," Jones told the Senate Aerospace Caucus. "We need a partnership with Congress to get this done," he said. The administration is still aiming to send the legislation to Congress this year, but congressional sources say lawmakers probably would not take up the issue until 2011.

Jones said an interagency task force has begun the groundwork to merge the Commerce Control List (CCL) and the U.S. Munitions List (USML) into a tiered structure that would impose the strictest controls on top-tiered items and lesser or no controls on lower-tiered items. At the end of the process, the USML would be converted to a "positive list" of items that would be subject to control, Jones said. The group has developed two draft documents: one setting the criteria for the tiers into which items would fall and another called a "bright line process" for determining licensing jurisdiction and ending current disputes over commodity jurisdiction.

The group is testing the criteria by "opening up" Category VII in the USML to see how they would apply, a White House official explained. [**Editor's Note:** A complete examination of the changes Jones unveiled will appear in the July issue of our sister publication, *The Export Practitioner*. WTTL subscribers can receive a free copy on request.]

## Bad News for Dems in November, Good News for Korea FTA

President Obama's decision to push forward with the U.S.-Korea Free Trade Agreement (FTA) is probably based in part on the White House's recognition that there will be fewer Democrats



and more Republicans in Congress when the deal is likely to come up for a vote in 2011. As with past trade agreements, congressional approval will rely on a majority of GOPers voting for the deal, with only a minority of Democrats backing it. Obama is certain to bring along more Democratic votes than President George W. Bush did for trade agreements during his term, but the exact calculation of how many Obama will need will depend on the outcome of the fall mid-term elections. Obama also will benefit from strong support and lobbying for the accord from most of the business community outside of automakers and import-sensitive industries.

For now, the road to correcting the alleged problems with the Korean pact runs straight through the House and especially House Speaker Nancy Pelosi (D-Calif.) and Acting Ways and Means Committee Chairman Sander Levin (D-Mich.). With unions still vehemently opposed to the deal, U.S. Trade Representative (USTR) Ron Kirk will have trouble getting clear guidance from the Democratic leaders on what changes, if any, to the FTA would make it acceptable to them.

Obama in the past two years has often said he supports implementation of the Korean pact, but this time he means it his aides say. When asked by reporters why Obama's call for the deal after meeting with Korean President Lee Myung-Bak June 26 on the sidelines of the G-20 meeting in Toronto was different from a similar pledge he made in Seoul in November 2009, Deputy National Security Advisor Mike Froman said, "What is different at this point is that he is prepared to direct his team, his U.S. Trade Representative and his counterpart, to sit down and to begin to discuss those issues."

After meeting with Lee, Obama said he was committed to moving the agreement. "We are going to do it in a methodical fashion," Obama said. "I want to make sure that everything is lined up properly by the time that I visit Korea in November. And then in the few months that follow that, I intend to present it to Congress," he added.

Kirk moved quickly to comply with Obama's orders and called Korean Trade Minister Kim Jong-hoon right after the Obama-Lee meeting. The two trade officials agreed to resume talks in the next few weeks. On his last visit to Washington, Kim complained that the U.S. has made no effort in the three years since the FTA was signed to tell the Koreans what exactly needs to be fixed in the deal to make it worthy of bringing it to Congress for approval (see **WTTL**, May 24, page 2). Kim also warned that any U.S. demands for additional trade concessions would likely prompt Seoul to ask for changes that it wants in the deal.

The main issue that needs to be addressed is the treatment of auto trade under the pact. Both Chrysler and Ford object to the agreement because of their concerns that it doesn't do enough to assure the opening of the Korean market and the removal of nontariff barriers that are more of an impediment to U.S. exports than the 8% tariff on car imports. More important for Ford is the phase out of the 25% U.S. tariff on trucks, Ford's most successful and profitable line.

The congressional debate over the pact has already started. A bipartisan group of House members have formed a Congressional U.S. – South Korea Free Trade Agreement Working Group to build further support for efforts to resolve outstanding issues and prepare the agreement for congressional consideration. At the same time, Rep. Mike Michaud (D-Maine) was one of several lawmakers who renewed their criticism of the deal. "This is another flawed NAFTA-style trade agreement negotiated by the Bush Administration for the benefit of big corporations and at the expense of the American worker," Michaud said.

## **Ex-Im Expands Foreign Content Coverage for Small Exporters**

In an effort to make it easier for small exporters to get export financing help, the Export-Import Bank June 28 revised its requirements for short-term credit insurance and working capital loan guarantees to allow more foreign content in the goods being supported by the bank. Under the new rules, nearly 50% of an export financed by the bank could be foreign content. In addition, it has expanded the definition of domestic content for small firms to include indirect costs

such as general administrative expenses, research and development and marketing. Some members of the Ex-Im Advisory Committee questioned the bank's foreign content requirements in a report last year (see **WTTL**, Sept. 14, 2009, page 3). Any change in domestic content rules or what is counted toward U.S. content has been opposed by unions. Ex-Im officials say the change for small firms was the result of an initiative of bank Chairman Fred Hochberg.

The change only applies to firms that qualify as a small business under guidelines issued by the Small Business Administration. Generally, that means companies with fewer than 500 employees, but in some sectors, small is bigger. For example, for petroleum refiners, 1,500 employees qualifies as small; for steel mills 1000; for paper mills and ball bearing firms, 750; and for wholesalers 1000.

For now, the new policy applies only to these short-term programs and the bank is not planning to extend it to medium or long-term programs. "At this time, I can tell you it is not directly on the table," said Wendy Wright of the Ex-Im policy staff. "This was a pretty challenging initiative to get through as it was," she told a conference call. "Right now I think medium and long-term are pretty set," she added.

## **Airbus Panel Report Just Another Step in Continuing Dispute**

Public release of the World Trade Organization (WTO) panel report June 30 on the U.S. complaint against European subsidies for Airbus is just a mile marker in a dispute that will continue for several more years. In addition to its expected appeal of the ruling to the WTO Appellate Body, the European Union (EU) also claims a parallel dispute-settlement review of its charges against U.S. aid for Boeing will find similar WTO-inconsistent subsidies. EU sources contend the "misinformation" about the Airbus report has put the EU at a public relations "disadvantage" because of the timing of the public release of the two reports.

If the WTO ends up issuing "plague-on-both-your houses" rulings, negotiation of a new bilateral deal on large civil aircraft will likely be needed. Both USTR Ron Kirk and EU Trade Commissioner Karel De Gucht have said they would sit down to work on the problems raised by the panel reports. They already broached the subject during a meeting in May (see **WTTL**, May 17, page 3). Serious talks, however, aren't expected until both panel reports are issued and the Appellate Body review of both is completed.

Meanwhile, the U.S. hailed the decision as a sweeping victory. Boeing and American aerospace workers and suppliers "have finally been awarded the long overdue victory," said USTR General Counsel Tim Reif during a press briefing. The report confirms Europe has never provided launch aid on commercial terms and consistent with the WTO, he said. "The panel found that the launch aid for each and every model of Airbus aircraft ... constituted a subsidy," Reif said.

"Every instance in which the European governments have provided launch aid to Airbus, every single aircraft program, the A300, the A310, the A320 family, A330/A340, the A330 series 200, the A340 series 500 to 600, and the A380, all the programs as to which launch aid terms and conditions were available when we litigated this case, every single one was found to be either a subsidy that caused adverse effects or a prohibited subsidy in the case of the A380," Reif said. That's why Kirk has said European aid for the A350 would be "very disappointing," he added.

"In our view, it is simply not feasible that without launch aid and the other subsidies, relying entirely on non-subsidized financing, Airbus could have undertaken the pace of aircraft development that would have enabled it to launch the range of large commercial aircraft that it has successfully launched to date, which has resulted in its present position in the market for large civil aircraft," Reif said, quoting the panel report, which he said requires the prohibited subsidies to be withdrawn in 90 days. The aid to Airbus was given by individual EU member states and not the EU. An EU source disputed suggestions that Airbus would have to pay back the money within a certain number of days. That doesn't reflect the WTO dispute process, an

EU source said. “The WTO panel has rejected the allegation that support for Airbus caused ‘material injury’ to the U.S. aircraft industry,” a European Commission press release said. “It has found that EU support did not damage Boeing’s pricing or profitability and did not lead to a loss of jobs at the company,” it said. “The panel’s findings on the economic effects of Airbus’ funding on the U.S. aircraft industry are limited,” the EC claimed.

## Industry Groups Oppose China Currency Legislation

The traditional divide in the business community between import-sensitive industries and importing or multinational corporations has arisen again in the debate over legislation aimed at treating China’s undervaluation of its currency as an unfair trade practice. Opponents of a bill (S. 3134) sponsored by Sen. Charles Schumer (D-N.Y.) and others wrote to members of the Senate June 30 to say the measure is unnecessary and probably would violate WTO rules. The bill would change the antidumping and countervailing duty laws to allow Commerce to adjust duty margins to account for a foreign country’s undervalued exchange rates.

“Estimations of the ‘correct’ currency value would be inherently subjective, unilateral and potentially politicized since there is no agreed upon method to determine what a country’s exchange rate should be in the absence of a market-based determination,” wrote 28 trade groups representing a range of industries from medical devices and meat to financial services and sporting goods. The current methodology for dealing with nonmarket economies such as China “already adjusts for currency undervaluation, as margins are calculated using market-based values from a third country and does not use Chinese costs or prices,” they wrote.

Meanwhile, at a town hall meeting in Racine, Wis., June 30, President Obama responded to a question about China’s exchange rate. “Things have to be fair,” he said. “So, for example, if China has a currency that’s undervalued, that makes our exports more expensive, it makes their imports cheaper. So we’ve been putting pressure on them to say, you know what, let’s make sure that we’re not favoring one side or the other in this trade deal,” he said.

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

FCPA: Massive corruption that surrounded development of Nigeria’s liquified natural gas facility on Bonny Island caught another participant that bribed Nigerian officials to get piece of \$6 billion project. France’s Technip S.A. agreed June 28 to pay \$240 million penalty in deferred prosecution agreement with Justice to settle FCPA charges. Separately, it agreed to pay \$90 million fine in deal with SEC.

WIRE DECKING: In rare rejection of trade petition, ITC made final determination by 4-2 vote July 1 that dumped and subsidized wire decking imports from China are not injuring U.S. industry.

CCL: BIS published results in June 28 Federal Register of third phase of its review of CCL. Changes include clarifications to existing controls, elimination of redundant or outdated controls and establishment of “more focused and rationalized controls,” BIS said. Publication also made CCL-related changes in EAR dealing with definitions and license exceptions. In separate June 30 Federal Register notice, BIS proposed adding new ECCN 6A981 to CCL to control passive infrasound sensors for Regional Stability (RS) and Anti-Terrorism (AT) reasons. “In addition, BIS proposes to control technology and software for the development, production, or use of these items for RS and AT reasons under revised ECCNs 6D991 and 6E991, respectively,” agency explained.

ENTITY LIST: BIS in June 28 Federal Register updated Entity List to add 24 new names of parties in Belarus, China, Hong Kong, Iran, Malaysia, New Zealand, Norway, South Africa and United Kingdom and to remove one person located in Hong Kong.

GSP: President Obama made annual revisions to GSP benefits June 30, withdrawing duty-free treatment for some products, including certain passenger tires from Thailand, wood flooring from Brazil and gold rope necklaces from India. He continued coverage for fresh cut carnations from Colombia and silver jewelry from Thailand. Obama also waived graduation for 110 products from 19 beneficiary countries, because imports exceeded the statutory ceilings by only a small amount, USTR’s office explained.