

Vol. 30, No. 21

May 24, 2010

Fusion Center to Coordinate Export Enforcement

All agencies involved in enforcement of export controls will be assigning representatives to a soon-to-be created Fusion Center that will coordinate federal export enforcement, including investigations and license reviews. The center's creation is one of the early steps being taken to implement one of the "four singles" in the Obama administration's export control reform plan, establishment of a single export enforcement agency (see **WTTL**, May 3, page 1).

In another step toward implementing the plan, administration officials are drafting legislation to amend enforcement penalties, including language to provide for a mandatory minimum penalty in criminal cases and a maximum penalty in civil and criminal cases. The Fusion Center "is being set up as we speak," Bureau of Industry and Security (BIS) Chief of Staff Kevin Kurland told an American Conference Institute program on export controls May 18.

"Our goal is to have it set up by this summer," he said. "There was a lot of ground work already plowed in this area before Secretary Gates' announcement" of export reform plans, Kurland noted. In addition to staff from BIS, the center will have representatives from Immigration and Customs Enforcement, the Federal Bureau of Investigation, military branch criminal investigation services and Justice, he explained.

"We're going to detail agents full time to a co-location so that they can work together and make sure that you don't have three government agencies knocking on a company's door in the same week following up on a lead," Kurland told the conference. "They also will be working to make sure that as we move forward on investigations that we're not tripping over each other, which, unfortunately, has been the case in the past," he said. "The enforcement folks will also have an active role in reviewing licenses," Kurland added. Right now only BIS enforcement staff review licenses before they are issued. "We want to make sure this Fusion Center actually at the front end has the opportunity to screen all transactions before they are approved for export," he stated. The center will also coordinate pre-shipment and post-shipment verifications, voluntary disclosures and re-export and transshipment enforcement, he noted.

U.S. Monitoring Chinese Aviation Subsidies

U.S. trade officials have growing concerns that China's subsidies for its newly emerging civil aviation industry might be violating World Trade Organization (WTO) rules, and they are monitoring the support Beijing is giving its industry to determine whether a trade complaint



may be warranted. The Chinese aviation industry is among the sectors that China has targeted in its indigenous innovation program, which will be the subject of talks during the May 24-25 meeting of the U.S.-China Strategic and Economic Dialogue (SAED) in Beijing (see story page 3). China is focusing its attention on building and marketing two civil aircraft outside of China, the ARJ21 regional jet and the larger C919 narrow body passenger plane.

“The growth of the Chinese aerospace sector also presents inevitable challenges for U.S. companies and U.S. policy makers,” Mary Saunders, Commerce’s deputy assistant secretary for manufacturing, told a U.S.-China Economic and Security Review Commission hearing May 20. “These include concerns regarding the relationship between civil and military production; the direction of Chinese industrial policy in the aerospace sector; and the extent to which government funding in this sector could unfairly subsidize Chinese producers in violation of China’s WTO obligations,” she said in her prepared testimony.

In 2008, China established the Commercial Aircraft Corporation of China Ltd. (COMAC) to focus on the commercial aircraft market. It has also listed large passenger aircrafts as one of 16 key science & technology major special projects established by the “*National Medium and Long-Term Science and Technology Development Plan*,” which identifies areas that will benefit from indigenous innovation treatment, she noted.

“The Department of Commerce is clearly concerned with ensuring that government support for Chinese aerospace producers does not unfairly disadvantage U.S. companies and is fully consistent with China’s WTO obligations,” Sanders testified. The structure of Chinese government financing and the relationship to State Owned Enterprises make it difficult to make a clear determination regarding the nature of government support, she said. Commerce’s Subsidy Enforcement Office and Beijing office are actively studying the nature and terms of government funding in China’s aerospace and civil aircraft industry, she also stated. In addition, the U.S. is seeking information through the WTO’s China Transitional Review Mechanism and Trade Policy Review and may also request information under the WTO Subsidies Agreement, she told the committee.

No Efforts Being Made to Resolve Korean FTA Issues

While Obama administration officials, including President Obama and U.S. Trade Representative (USTR) Ron Kirk, repeatedly claim they want to resolve concerns about the U.S.-Korea Free Trade Agreement (KORUS-FTA) and get congressional approval of the deal, they are not talking to the Koreans about how to fix the accord. Colombian officials also say they have not had talks with U.S. officials on how to resolve concerns about the U.S.-Colombia trade pact. Kirk told the U.S. Chamber of Commerce May 18 that his office is “working to address issues with these agreements and find ways to move them forward.” So far, that work has remained invisible in Washington.

Korean Trade Minister Kim Jong-hoon told the Washington International Trade Association (WITA) May 19 that no one in the Obama administration has talked to him officially about what needs to be changed in the KORUS-FTA to allow the White House to take the deal to Congress for approval. Kim was in Washington May 18-19 for meetings with Kirk and other administration officials.

“I didn’t hear anything officially about concerns to be addressed before considering a serious ratification of the agreement,” Kim said. “I didn’t hear anything specific or in detail yet, because it seems to me that the USTR is still [having] consultation with your Congress. So, I have to wait until the consultation is over,” he added. “So I am waiting for that,” he said. Kim acknowledged that he has heard complaints raised about the auto provisions in the accord, beef and nontariff barriers. He argued that all these issues have been adequately addressed in the agreement. “No U.S. official has ever identified what is the problem with nontariff barriers. I am very curious to know,” Kim said. He said Korea would have to know the specifics of these

concerns before considering any changes to the FTA. “Before considering what kind of measures can be taken, I have to know what is the content of the concerns, what is the nature of the concerns,” he stated. Nonetheless, he declared: “Renegotiation is not something we can do. Once the deal is done, it’s done.”

Kim also tried to dispel the impression that the Korean auto market is closed to foreign autos, noting that European and Japanese car makers have adapted to Korean tastes. He also noted that the Ford Taurus now ranks as the second highest selling car in Korea.

After reaching 7% of the Korean market in 2007, foreign car sales declined in 2008 and 2009 along with the financial crisis. They are now forecast to reach 8% of the market in 2010. In addition, cars produced by a joint venture between GM and Daewoo hold about 10% of the market and autos from a Renault-Samsung joint venture have over 12%. Together imports and foreign investments account for 30% of the market, he pointed out. “With that percentage in mind, I don’t know how anyone could say the Korean auto market is closed,” Kim said.

U.S.-China Talks Will Produce Signals But Not Actions

China’s “indigenous innovation” program to foster development of favored domestic industries will be one of the priority topics on the agenda for the second meeting of the U.S.-China Strategic and Economic Dialogue (SAED) in Beijing May 24-25, but as in previous bilateral meetings, no clear breakthrough is likely to be announced. Trade issues at the meeting, along with discussion of China’s revaluation of the renminbi, are likely to be buried in an overstuffed schedule that will involve more than 15 U.S. Cabinet secretaries and top agency officials plus some 200 officials from both countries. Strategic issues such as Iran, climate change and North Korea’s sinking of a South Korean naval vessel will probably dominate the talks.

Business community representatives have pressed U.S. officials to get Beijing to back off from proposals to implement its indigenous innovation policy and also to ease government procurement restrictions on foreign suppliers. Although industry groups initially had a positive reaction to proposed changes in the indigenous innovation policy, they now say the details in the proposal continue to present problems for foreign firms (see **WTTL**, May 3, page 3).

While exchange rates will be discussed, U.S. officials are playing down any expectation that the SAED will produce an announcement from the Chinese on their currency. “We’ve remained confident that while we don’t know when China is going to move, we remain confident that they’re going to determine that it’s in their interest to move to a more market-determined exchange rate.” said Treasury’s Senior Coordinator for China Affairs David Loevinger, echoing a statement made often by Treasury Secretary Geithner. The discussion is likely to be complicated by the recent financial crisis in Europe, the decline in the value of the euro and continued Chinese questions about how the U.S. intends to reduce its budget deficit.

Concerns Voiced about Release of Bio-Defense Information

Members of the BIS Materials Technical Advisory Committee (MTAC) expressed concerns May 13 about State Department plans to provide information on bio-defense facilities in the U.S. to the United Nations for public release on a UN website. State is providing the information as part of the U.S. contribution to Confidence Building Measures under the Biological and Toxin Weapons Convention (BWC). The U.S. has provided this information to the UN for 25 years on a confidential basis but now has agreed to submit a redacted version for public release. MTAC members said they were concerned about the accuracy of the information that would be made public and whether it was complete. They also questioned the value of making the information public and what legal authority State had to release the information. “There is no

demonstrated value to what is being proposed,” complained Gillian Woollett, chief scientist with the law firm of Engel & Novitt in D.C. She said there is sympathy in industry for the confidence building measures, but questioned the assumption that the information should be released “without anyone feeling the need to articulate the value.”

Woollett said industry, particularly vaccine manufacturers, “doesn’t want to be portrayed as being uncooperative or unhelpful,” which it has been in the past when it fought against proposals to include inspection rights in the BWC. Other MTAC members also had concerns about how the information that is being submitted has been collected and reviewed by the entities being listed.

Although the State Department compiles and submits the information to the UN, the information it files comes from various other agencies that are involved in bio-defense work, including the departments of Health and Human Services, Homeland Security and Defense. MTAC members said they were concerned that release of the information would discourage some facilities from becoming involved in bio-defense work because they will fear how the public release of that information would affect them.

Robert Mikulak, director of State’s office of chemical and biological weapons threat reduction, explained the decision to provide the information to the UN for release and tried to assure the committee that the information being submitted has been checked for accuracy. He said about a dozen other BWC countries have already begun providing public information in the last couple of years, including the United Kingdom, Germany and Australia. “This year we have scrubbed the submission with particular care to remove any gratuitous references to government contracts companies might have,” he said. The information being submitted lists eight human vaccine manufacturing companies, three research facilities that operate maximum containment laboratories and the Battelle Biomedical Research Center. Only mailing addresses are provided and lists of products sold on the market, he said.

* * * Briefs * * *

CORRECTION: “Watch List” that BIS Emerging Technology and Research Advisory Committee will be developing for agency will not be restricted to deemed export controls but will be used to consider need for all technology controls (see **WTTL**, May 3, page 2).

LIBYA: U.S. and Libya May 20 signed Trade and Investment Framework Agreement (TIFA) that provides forum to address bilateral trade and investment issues. In 2009, Libya was 69th largest goods trade partner for U.S. with \$2.6 billion in two-way trade. Top U.S. exports to Libya include vehicles, machinery, agricultural products, medical instruments, and iron and steel products. Oil was Libya’s principal export to U.S.

JAPAN POST: Deputy USTR Michael Punke and EU Charge d’Affaires John Clarke met in Geneva May 21 with Japan’s WTO Ambassador Shinichi Kitajima to complain that Tokyo’s favorable treatment of Japan Post discriminates against foreign firms that compete with Japan Post in providing insurance, banking and express delivery services. “We met jointly with Japan to underscore the deep level of concern that we both share regarding Japan’s preferential treatment of Japan Post in light of Japan’s national treatment commitments under the WTO,” Punke said in statement after meeting. At one point, Tokyo was considering privatization of Japan Post but has backed away from that idea.

EXPORT ENFORCEMENT: After making voluntary self-disclosure, GM Healthcare Bioscience BioProcess Corp. of Piscataway, N.J., reached agreement with BIS to pay \$126,000 civil fine to settle complaints that it had exported or reexported bioreactor kits to India, Mexico, China, Singapore and Taiwan without approved licenses. GE was successor in liability to Wave Biotech, which it acquired in April 2007. Exports occurred between August 2004 and March 2007.

MORE EXPORT ENFORCEMENT: Federal jury in Boston found two Chinese nationals, Zhen Zhou Wu, also known as Alex Wu, and Yufeng Wei, also known as Annie Wei, along with their company, Chitron Electronics, Inc., guilty May 17 of exporting dual-use and defense items to China without licenses (see **WTTL**, Dec. 15, 2008, page 4).