

Vol. 29, No. 19

May 11, 2009

## Obama's Budget Would Fund New BIS Computer System

President Obama's budget plans for fiscal 2010, released May 7, would include an extra \$10 million for the Bureau of Industry and Security (BIS) to upgrade its obsolete computer system and allow agency staffers to reconnect with the Internet for the first time in three years. Overall, the proposal would add \$16.7 million to the agency's budget, a 20% increase over its estimated appropriations for the current fiscal year. In real terms, however, the increase will be \$11.8 million when various budgetary gimmicks are taken into account.

BIS had been caught in a budget squeeze for two years due to misplanning in 2007, but it received a jump in funding in its 2009 appropriations. This year it was given an appropriations of \$83.7 million. For fiscal 2010, which starts Oct. 1, 2009, the White House said it will ask for \$100.3 million. BIS gets funds from other sources as well, which could bring the total 2010 budget to \$102.3 million and the agency's staffing to 363 full-time equivalents.

"In response to growing cyber espionage, BIS proposes to implement a Compartmentalized Application Infrastructure (CAI), which secures mission-critical export control system applications and data by separating high, moderate, and low security systems from one another," said a Commerce explanation of the BIS budget. "To modernize critical systems and software, BIS proposes to invest additional resources in the ongoing ECASS-Redesign project, which is migrating existing functionality from a high risk, obsolete system (Legacy ECASS) to a current, stable, supportable technology system," it said. BIS staff was disconnected from direct access to the Internet after hackers broke into the system in 2006 (see **WTTL**, Nov. 24, page 3).

Export Enforcement (EE) would get an extra \$1.8 million and three more staffers for its mission. EE has "a significant inventory of cases in the critically important areas of weapons of mass destruction (WMD), terrorism, and unauthorized military end-use," Commerce said. "These cases are a priority, and some of them directly impact the ability of the U.S. military to successfully execute its missions in Iraq and Afghanistan. EE also has an expanding operation targeting illicit procurement of U.S.-origin items used in improvised explosive devices (IEDs) being employed against U.S. troops in the Middle East," the department explained.

## Cuban Trade Embargo Must Wait for Health Care Legislation

Legislation to lift the U.S. trade embargo on Cuba won't move in Congress until after lawmakers complete action on President Obama's health care legislation, House Ways and Means



Committee Chairman Charles Rangel (D-N.Y.) declared May 5. Although there appears to be growing congressional support for lifting trade and travel restrictions on Cuba, Rangel indicated no rush to move Cuban trade legislation. Separate proposals for lifting the restrictions on the travel of U.S. citizens to Cuba may move more quickly, as they come under the jurisdiction of the House Foreign Affairs Committee. With the pace of health legislation uncertain, consideration of Cuban bills could be put off until the fall or into 2010.

Numerous bills are pending to mandate a change in the 50-year-old trade embargo on Cuba as well as other restrictions enacted in the intervening years. Rangel has introduced two bills, one on lifting the travel ban (H.R. 1528) and one on lifting the embargo (H.R. 1530).

But the most comprehensive legislation (H.R. 188) was introduced by Rep. Jose Serrano (D-N.Y.). It would repeal Cuba provisions in several laws, including the Trading with the Enemy Act, the Export Administration Act, the Helms-Burton Act and the Trade Sanctions Reform and Export Enhancement Act of 2000. Reps. William Delahunt (D-Mass.) and Jeff Flake (R-Ariz.) have introduced a bill (H.R. 874) to open travel to Cuba for all U.S. citizens without restrictions. They say they hope their bill could move through the Foreign Affairs Committee easily without having to wait for broader legislation to deal with Cuba.

Broad congressional action on Cuba could also be complicated by the multiple committees with jurisdiction over various elements of current restrictions and some technical issues that won't be resolved by merely repealing current laws. In particular, Rep. Kevin Brady (R-Texas) has cautioned about the need to address outstanding claims by Cuban-Americans to confiscated property and intellectual property rights in Cuba (see **WTTL**, April 20, page 1).

## **U.S., EU Deal on Beef Averts New Trade Retaliation**

When it comes to the long-running battle with the European Union (EU) over the ban on imports of hormone-treated beef, the U.S. appears to have adopted the policy that a cow in hand is worth two someplace else. In a provisional deal announced May 6, the U.S. agreed to drop the threat of new sanctions against the EU in return for getting a larger quota for U.S. exports of hormone-free beef to Europe. EU sources said they were pleased that the U.S. has come to recognize the cultural objections in Europe to certain products, including hormone-treated beef, and hope the same change in attitude would be reflected in the dispute over genetically modified organisms (GMOs).

On May 8, U.S. Trade Representative Ron Kirk formally delayed new sanctions that were to go into effect on May 9 (see **WTTL**, April 27, page 4). "Today's delay will prevent the additional duties from taking effect until August 15, 2009. Once the provisional agreement with the EU is signed, USTR intends to take further steps to prevent the application of any additional duties for the duration of the agreement," USTR's office said. The new sanctions would have implemented the so-called "carousel" provisions in the Trade Act.

"Following a very good discussion today, we have reached an understanding that provides a pragmatic way forward in the long-running beef dispute," Kirk and EU Trade Commissioner Catherine Ashton said in a joint statement. "An agreement is in our mutual interest, and we will now discuss this with our respective stakeholders and constituencies in an effort to finalize it as soon as possible," they said.

Under the agreement, the EU will provide additional duty-free access to the EU market for 20,000 tons of U.S. hormone-free beef in the first three years and 45,000 tons beginning in the fourth year. "Under the agreement, the United States will maintain existing sanctions and will not impose new sanctions on EU products during the initial three-year period, and will eliminate all sanctions during the fourth year," a USTR statement explained. "The two sides will refrain from further litigation at the World Trade Organization regarding the EU's ban on beef

treated with certain growth-promoting hormones for at least 18 months. Before the end of the four-year period, the two sides will seek to conclude a longer-term agreement," it added. The EU ban on hormone treated beef has been in place since the early 1980s. The U.S. and Canada challenged the EU's ban at the WTO in 1996. A series of WTO rulings led to the U.S. imposing retaliatory sanctions on EU imports in 1999.

## **BIS Advisors Told to Speed Up Advice on Aircraft Equipment**

The Bureau of Industry and Security's (BIS) Transportation Technical Advisory Committee (TransTac) was told May 6 that it needs to speed up the development of a recommendation on the regulation of exports of Full Authority Digital Engine Controls (FADEC) because the Wassenaar Arrangement will begin reviewing proposals in June for changing multilateral rules for these products. A TransTac working group has drafted a White Paper to address the issue, but members doubted they could have a final recommendation ready by mid-June when a Wassenaar inter-sessional meeting will be held. The White Paper was the subject of discussions between industry representatives and officials from Commerce, State and Defense May 7.

Without advice from industry on the definition and interpretation of FADEC, the U.S. might be forced to block Wassenaar discussion of the issue. Even without the advice, the Pentagon may oppose changes in the Wassenaar rules, sources report. Two years ago, the United Kingdom got Wassenaar to defer work on a new FADEC definition. Several Wassenaar members have companies involved in jet engine production, including the UK, Canada, Japan, Ukraine, Russia and Sweden, so rules for FADEC exports can affect international competition.

Because of the way the FADEC provisions in Export Control Classification Number (ECCN) 9E003 are written, it is difficult to determine what is or is not covered by the controls, industry representatives complain. The White Paper attempts to describe industry understanding what constitutes FADEC technology, which products are clearly covered by the rules and which are not. It advises that companies whose products might fall in the gray area between those interpretations file a commodity classification with BIS. In addition to issuing the White Paper after consensus is reached on its provisions, the TransTac is being urged to file a request for a formal advisory opinion from BIS to have its views confirmed by the agency.

## **WTO Reports Rise in Antidumping Complaints Worldwide**

While the U.S. saw a record low number of antidumping complaints filed in the second half of 2008, the rest of the world experienced a 17% increase in new trade complaints, the World Trade Organization (WTO) reported May 7. From July to December 2008, 15 WTO members reported initiating 120 new investigations, compared with 103 reported by 14 members during the same period in 2007. The U.S. initiated only three new antidumping cases in that time. For all of 2008, 208 new antidumping investigations filed worldwide compared to 163 in 2007.

Some U.S. trade law firms that have seen new antidumping business drying up in Washington have become active representing U.S. firms being charged with dumping in other countries. In the second half of 2008, six of the antidumping cases filed in foreign countries targeted American products. Two cases against U.S. exports were filed in the first half of the year.

Other countries often complain about U.S. antidumping practices, but in the last six months of 2008, India initiated the most new antidumping investigations (42). It was followed by Brazil (16), China (11), Turkey (10), Argentina and the European Communities (9 each), Indonesia (6), Ukraine (4), Pakistan and the United States (3), Australia and Colombia (2 each), and Canada, Korea and Mexico (1 each). Products from China were the most frequent target of complaints, with 34 cases hitting Chinese goods, the WTO reported. The EU and its member states were the subject of 14 new investigations. Exports from Chinese Taipei, Thailand, and

the United States were each the subject of six complaints. Also target were goods from Indonesia, Korea and Malaysia (5 each), India and Saudi Arabia (4 each) and Iran and Turkey (3 each). These were followed by Australia; Belarus; Hong Kong, China; Japan; Russia; South Africa and Ukraine (2 each), and Argentina, Armenia, Brazil, Chile, Ecuador, Israel, Kazakhstan, Kuwait, Peru, Philippines and Sri Lanka (one each). The products hit most often were base metals (43 initiations), chemicals (22), textiles (19) and plastics and rubber (14).

**\* \* \* Briefs \* \* \***

CORRECTION: With-Without nemesis struck May 4 issue of WTTL in article on “Kirk Opposes ‘Fear and Raw Politics’ in China Disputes.” Third sentence in fourth paragraph should have read: Kirk said there have been a number of cases where the U.S. has brought complaints against China at the WTO without retribution (see WTTL, May 4, page 1).[This error was corrected in electronic version.]

USTR: USTR Ron Kirk won’t have to go far to learn what Democrats in Congress want fixed in FTAs with Panama and Colombia. Senate May 6 confirmed former Finance Committee international trade counsel Demitrios Marantis to be deputy USTR. Former House Ways and Means Democratic trade counsel Tim Reif is already in place as USTR general counsel. The two men know more about Democratic views on trade than anyone in Washington.

H1N1 FLU: USTR Ron Kirk, Canadian Trade Minister Stockwell Day, and Mexican Economy Secretary Gerardo Ruiz Mateos May 7 issued joint statement urging foreign governments not to ban imports of pork and beef out of fear of H1N1 flu. “We are also concerned that some trading partners are imposing restrictions on trade in swine, pork and other meat products from North America that are without scientific justification and inconsistent with their international obligations. These unjustified restrictions will likely result in serious trade disruptions without cause and result in significant economic damage,” they said.

T-37 JET TRAINERS: BIS in May 6 Federal Register amended EAR to transfer licensing authority for T-37 trainers now subject to ECCN 9A018 on CCL to USML. These aircraft have been on CCL since 1993, but as rules were written, they could have fallen within jurisdiction of both BIS and State’s DDTC. “By removing T-37 jet trainer aircraft from the CCL, this rule clarifies that export licenses should not be obtained from BIS, avoids potentially overlapping coverage and reduces the possibility of confusion on the part of the public. Export and reexport license applications for the T 37 jet trainer aircraft and parts should be directed to DDTC,” BIS said.

IMPORT ENFORCEMENT: ICE agents May 6 arrested Boa Zhong Zhang, 58, a Chinese national, in Los Angeles, while Chung Po Liu, 68, a U.S. citizen from Bellevue, Wash., turned himself in Seattle, on charges that they circumvented U.S. antidumping duties on imports of honey from China. Government alleges they misrepresented country of origin as Philippines and avoided paying \$3.3 million in antidumping duties on more than \$1.4 million worth of honey.

CUBA: OFAC May 5 posted Addendum to Circular 2006, revising rules for implementing Cuban Assets Control Regulations for service providers and remittance forwarders. But change was dated January 14, 2009, before President Obama took office and ordered change in Cuban travel rules. OFAC Sanctions Coordinator Charles Bishop refused to answer questions on delay in publication, which apparently became effective only on May 5, or how rules will be changed again to implement president’s directive.

EXPORT ENFORCEMENT: Juwhan Yun, naturalized U.S. citizen, was indicted April 29 in Miami U.S. District Court on six counts of exporting defense items to South Korea without approved license from DDTC and brokering. He pleaded not guilty at April 30 arraignment. He was charged with attempt to export and exporting RD-180 Rocket Propulsion System and technology to Korea. Justice Department release said Yun had been previously convicted of conspiracy to export Sarin gas and had been sentenced to 39 months in prison. As result, he was debarred by State from engaging in defense exporting or brokering.

TRADE PEOPLE: Veteran trade attorney and former Assistant Secretary of Commerce for Import Administration Gary Horlick has left Wilmer Hale to start his own law firm. He can be reached at 202-429-4790 or gary.horlick@ghorlick.com.

PANAMA: House Ways and Means Chairman Charles Rangel (D-N.Y.) May 5 said his committee could move Panama FTA by end of June if President Obama sent up deal for approval. “We would have no problem with that, but we would have to take also account of all the votes we have, Democrat and Republican, before we embarrass ourselves and the government of Panama,” he said.