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Cuba Policies Await Publication of Rules

The Bureau of Industry and Security (BIS) already has draft regulations “well formulated” to implement President Obama’s April 13 order easing trade and travel rules for Cuba, Acting BIS Assistant Secretary for Export Administration Matthew Borman reports. The new rules would implement BIS’ portions of the president’s directive, including authorizing the donation of certain consumer telecommunication devices to Cuba without a license and adding certain humanitarian items to the list of items eligible for export through licensing exceptions. BIS will also amend rules on gift parcels and eliminate weight limits on baggage carried to Cuba.

Other elements of Obama’s sweeping order will await issuance of regulatory changes and general licenses by Treasury’s Office of Foreign Assets Controls (OFAC). “President Obama will direct the Secretaries of State, Treasury, and Commerce to support the Cuban people’s desire for freedom and self-determination by lifting all restrictions on family visits and remittances as well as taking steps that will facilitate greater contact between separated family members in the United States and Cuba and increase the flow of information and humanitarian resources directly to the Cuban people,” a White House statement said.

Obama has ordered the departments to: lift all restrictions on the travel of family members to Cuba; remove restrictions on remittances to family members; authorize telecommunications network providers to establish fiber-optic cable and satellite telecommunications facilities linking the United States and Cuba; license U.S. telecommunications service providers to enter into roaming service agreements with Cuba’s telecommunications service providers; license U.S. satellite radio and satellite television service providers to engage in transactions necessary to provide services to customers in Cuba; license persons subject to U.S. jurisdiction to activate and pay U.S. and third-country service providers for telecommunications, satellite radio and satellite television services provided to individuals in Cuba. Obama’s directive didn’t change requirements for advance payment for farm sales to Cuba.

Exporters Coming Back to Ex-Im Bank for Financing

Exporters who reduced their use of Export-Import Bank financing when credit was cheap and easy are coming back to the Bank, Ex-Im officials reported at the Bank’s annual meeting April 16. There has been an especially sharp rise in financing of deals for transportation and airplane sales, as well as for project and structured financing, they said. To provide additional aid for exporters, the Bank is considering several new initiatives that would (1) let commercial



banks create blended deals with Ex-Im to offer lower interest rates, (2) offer Ex-Im guarantees for private placements of loans in capital markets, and (3) provide lenders the option of transferring loans to Ex-Im when they have difficulty funding themselves or there is another market collapse, Ex-Im Vice President and Chief Operating Officer John McAdams said.

In addition, the Bank is “looking for pockets of distress where we see credit-worthiness but liquidity is gone,” said one official speaking on background. This may include specific countries or industries, including agriculture, infrastructure and clean energy. Ex-Im is also talking to Treasury about obtaining additional funds to meet those needs, if more money is required beyond what it has available in its own, self-sustaining account. “As we keep finding opportunities like that, there may be a demand for more resources,” he said.

One area of increased financing is for aircraft. Compared to fiscal 2008, when Ex-Im supported about \$5.5 billion in aircraft exports, some officials expect financing this year to exceed \$9 billion, noted Ex-Im Vice President Jeff Abramson. For project and structured financing, “we are already seeing demand in the first six months of this year in excess of what we saw throughout the entire fiscal year of last year,” he said. “This is, to some degree, a reflection of the lack of liquidity and capacity in the market and the desire on the parts of governments and businesses to continue to develop infrastructure projects,” he said. The pipeline for project and structured financing is the largest it has been in 10 years, with 17 applications pending.

While the Bank is striving to provide more export financing, it has also increased the scrutiny it is giving to applications in the wake of several high-profile fraud cases that have cost it over \$100 million (see **WTTL**, March 9, page 1). The Bank is expecting loan applicants and lenders to conduct stricter due diligence of transactions, including customer screening using various denied party lists maintained by agencies such as the Office of Foreign Assets Control. Ex-Im has brought in outside contractors to train its staff on fraud and also adopted new program called CRTI, which stands for character, reputation and transaction integrity.

Countries Stem Swelling Protectionist Tide

Countries are largely resisting domestic protectionist pressures in the face of the global economic outlook, officials said after a meeting of the World Trade Organization’s (WTO) Trade Policy Review Body April 14. The body heard Director-General Pascal Lamy’s second report on trade developments emerging from the financial and economic crisis. The ongoing monitoring exercise aims to spur transparency and public scrutiny of government policies. “There is no indication of an imminent descent into high-intensity protectionism, involving widespread resort to trade restriction and retaliation,” Lamy said in his prepared remarks.

“The danger today is of an incremental build-up of restrictions that could slowly strangle trade and undercut the effectiveness of policies to boost world demand and restore sustained growth globally,” Lamy said. Other speakers at the meeting mostly shared his assessment. The results of U.S. monitoring are similar to Lamy’s report, Deputy U.S. Trade Representative Peter Allgeier told the meeting. “Major protectionist measures have been avoided,” Allgeier said. He noted that U.S. trading partners have considered and rejected numerous restrictive measures.

At the meeting, WTO members criticized recent trade remedy measures some countries have taken, including antidumping, sanitary and phytosanitary and non-tariff barriers, one trade official told **WTTL**. The biggest concern centers on auto industry bailouts in Europe, the U.S. and Brazil, said one ambassador. Countries are concerned that the support given to carmakers “could impact on the competitiveness or the free market,” the ambassador said. A deteriorating U.S. auto industry also could reduce competition, he said. Criticism also focused on unfairness of developed countries’ stimulus packages compared to developing countries’, the trade official said. “Buy American” provisions in the U.S. stimulus package “are unhelpful and send all the wrong signals,” said Brazilian Ambassador Roberto Azevedo in prepared remarks. The “decline

of international prices of agricultural products is already occurring for many products, particularly cotton and dairy products,” Azevedo said. “Unchecked cotton subsidies, maintained against successive Appellate Body rulings, call into question the credibility of the system,” he said. “We still have time to address this question in the Round, but it is running out fast,” Azevedo told the meeting.

Trade Bar Expects Surge of China Cases

Members of the trade bar are predicting a sharp increase in antidumping (AD) and countervailing duty (CVD) complaints against Chinese imports in 2009, but the likelihood of success in those cases is still uncertain. The rise in petitions would come after a near drought in filings. In the eight months before the steel industry filed its complaints April 8 against oil country tubular goods from China, only seven new antidumping and CVD cases were filed at the International Trade Administration (ITA) and the International Trade Commission (ITC). Trade lawyers say the decline was due to the strong economy and high profits enjoyed by many industries despite the growth in imports, reducing the chances for an injury finding at the ITC.

With the economy falling off the cliff at the end of 2008, that may have changed. Industries are waiting to see first and second quarter results before deciding to file new complaints, Kenneth Pierce of Hughes Hubbard and Reed told an American Bar Association (ABA) program April 15. Even though imports have fallen in the first quarter, their market share in some sectors has increased, he said.

New cases against Chinese imports will still face the challenge of proving injury at the ITC, another attorney told WTTL. While imports need only be “a cause” of injury, he noted that court rulings require a real showing of causation. Given the depth of the recession, the contribution of imports to an industry’s financial condition may not be easy to prove, he suggested.

The U.S. is not the only country seeing an increase in cases against Chinese imports. Complaints against Chinese goods are also rising in Canada, Brazil and the European Union (EU), noted other speakers at the ABA international section’s spring meeting. In Brazil in 2008, all 23 petitions filed with the government targeted Chinese imports, reported Claudia Marques, who is with the Brazilian law firm of Veirano Advogados.

While the U.S. and Canada apply CVD rules against Chinese imports, Brazil and the EU don’t. Whether treatment of China as a non-market economy (NME) and application of the CVD laws is unfair may have to await a ruling from a WTO dispute-settlement panel. A similar problem may face cases against Russia and other countries in transition, suggested Valerie Slater of Akin Gump and Strauss. “We are struggling to operate in a paradigm that doesn’t exist anymore,” she said. “We are stretching things to the limit of what we can do,” she added.

Obama Slows Talk about Amending NAFTA

In his first formal meeting with Mexican President Calderon since his inauguration, President Obama April 17 continued to downplay his campaign promises to renegotiate NAFTA. At a joint press conference, Obama said it makes sense for labor and environmental provisions to be enforceable under NAFTA rather than just under side agreements. “But I recognize that we are in a very difficult time right now economically on both sides of the border and that those kinds of negotiations are going to need to proceed in a very careful and deliberate way, because we don’t want to discourage trade; we want to encourage trade right now,” Obama said.

At the bilateral meeting, trade took a backseat to more pressing concerns about drug violence and immigration. No agreement was indicated on how to settle the dispute over the congressionally mandated termination of the pilot program to allow Mexican trucks into the U.S. On the plane with Obama going to Mexico, White House Spokesman Robert Gibbs said Transportation Secretary Ray LaHood was talking to lawmakers about a possible solution but no

announcement was expected from the two presidents. "That's something that we're working on with members of Congress to ensure that we can get a continuation of a demonstration program that meets their needs as well as our international obligations," he told reporters.

Administration Backs Away from Carbon Border Tariff

U.S. Trade Representative (USTR) Ronald Kirk is trying to head off a new partisan trade battle in Congress, this time over proposals to impose import tariffs of products made in countries that don't curb carbon emissions (see **WTTL**, March 30, page 1). In letters April 14 to the ranking Republican members of several House committees, Kirk backed away from statements by Energy Secretary Steven Chu suggesting the administration supports "cap-and-trade" legislation that would include a border measure. "The administration, however, does not support any specific measures, including border measures, at this time," Kirk wrote.

"The administration believes that the best approach to address concerns with carbon leakage is to negotiate a new international climate change agreement in the United Nations that ensures that all major emitters take long-term, significant action to reduce their greenhouse gas emissions," he wrote. The administration will seek to ensure that "the design and implementation of domestic energy and climate policy are compatible with our international trade obligations and minimize incentives for our trading partners to pursue counter measures that could negatively impact U.S. exports," Kirk stated.

* * * BRIEFS * * *

USTR: President Obama April 14 said he will nominate Miriam E. Sapiro to be Deputy USTR. She is now president of Summit Strategies International, which advises on international Internet and telecommunications issues. She was special assistant to President Clinton for Southeast European Stabilization & Reconstruction and earlier was on National Security Council staff and at State.

COMMERCE: President Obama April 14 said he intends to nominate Francisco "Frank" Sanchez to be Commerce under secretary for international trade. He was special assistant to president and then assistant secretary of transportation in Clinton administration. He has been trade consultant in Tampa, Fla., and served as policy advisor on Latin America to Obama For America Campaign. Sanchez's name surfaced early as likely candidate for post (see **WTTL**, Jan. 26, page 4).

DOHA ROUND: WTO April 22 is set to name New Zealand's new ambassador to WTO David Walker to chair Doha Round agriculture negotiations committee. He fills post vacated when previous New Zealand Ambassador Crawford Falconer returned home. Walker is third New Zealander heading WTO farm talks.

CHINA: Treasury April 15 again declined to name China as currency manipulator. It said decision was based on: (1) steps China has taken to enhance exchange rate flexibility, (2) renminbi's 16.6% appreciations from June 2008 to February 2009, (3) official statistics suggesting pace of China's foreign exchange reserve accumulation slowed in fourth quarter of 2008, and (4) Beijing's enactment of large fiscal stimulus package. "Even so, Treasury remains of the view that the renminbi is undervalued," it stated.

EXPORT ENFORCEMENT: Falmouth Scientific, Inc., of Cataumet, Mass., and William Dalton have reached settlements with BIS to resolve charges that they made false or misleading statements in letter to agency regarding commodity classification for navigation system going to China. Falmouth agreed to pay \$50,000 civil fine, with \$25,000 suspended; Dalton will pay \$10,000 of \$25,000 fine, with balance suspended and then waived if he stays in compliance with EAR for one year.

MORE EXPORT ENFORCEMENT: Shu Quan-Sheng, 68, was sentenced to 51 months in prison April 9 in Norfolk, Va., U.S. District Court. He had forfeited nearly \$387,000, a house, two Mercedes Benz cars and several bank accounts as related punishment following his Nov. 17 guilty plea to three violations of Arms Export Control Act (AECA) and Foreign Corrupt Practices Act (see **WTTL**, Dec. 1, page 4).

SOFTWOOD LUMBER: Canadian industry expects U.S. to seek arbitration against British Columbia's reduction of stumpage fees on softwood lumber. Mounting lumber dispute comes as AbitibiBowater, Canada's fourth largest lumber producer, filed for bankruptcy protection April 16 (see **WTTL**, April 13, page 1).