

Vol. 29, No. 11

March 16, 2009

Treasury Issues General License to Implement New Cuba Law

Treasury's Office of Foreign Assets Control (OFAC) moved quickly March 11 to issue a new General License easing restrictions on family travel to Cuba as required under provisions of the 2009 appropriations bill. It also issued guidelines on implementation of provisions in the law dealing with business travel and sales to Cuba. The spending legislation barred Treasury from enforcing travel and trade restrictions imposed by President Bush (see **WTTL**, March 2, page 5). The General License became effective immediately and allows travel to Cuba once every 12 months for persons visiting close relatives.

The guidance on business travel to Cuba for sales and marketing says regulations must still be issued before the new rules can apply. "Until promulgation of new regulations, these travel-related transactions must be authorized by specific license," the guidance advises.

On the Bush-era rules requiring "cash in advance" before delivery of goods sold to Cuba, the legislation said Treasury should apply the meaning used in the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA). "Because the Act does not amend the requirement in TSRA that agricultural exports to Cuba be either paid for by 'cash in advance' or financed using a third-country bank, TSRA's statutory provisions remain in place," the guidance states.

Analytical Methods Fined \$500,000 for ITAR Violations

The belief that voluntary self-disclosures (VSD) to State's Directorate of Defense Trade Controls (DDTC) always result in warning letters rather than civil penalties was proven wrong in DDTC's consent agreement with Analytical Methods, Inc. (AMI), of Redmond, Wash. Even though the firm filed VSDs for the export of its software and defense services to China, Israel, Singapore and Turkey, DDTC imposed a \$500,000 penalty in an agreement reached Feb. 18. Under the deal, AMI will pay a \$100,000 fine, receive credit for \$200,000 it has already spent on export compliance, and spend another \$200,000 on additional remedial actions.

"The Department considered the Respondent's Voluntary Disclosures as a significant mitigating factor when determining the charges to pursue in this matter," said DDTC's proposed Charging Letter, which listed 29 charges against the company. In addition to the fine, AMI agreed to appoint an internal senior compliance officer and hire an outside consultant to conduct an audit of its export compliance program. AMI develops Computation Fluid Dynamic (CFD) software used for three-dimension computer modeling. In the early 1990s, AMI and Israeli Aircraft



Industries jointly developed the MGAERO CFD program, which had been considered dual-use software. In 1999, it obtained development and marketing rights for a version of the program. “Although some of the Respondents CFD programs have been ITAR controlled, the majority of the Respondent's CFD software programs are dual-use,” DDTTC said. “However, these dual-use software programs can be used in providing an ITAR regulated de-fense service when consulting on military systems,” it asserted. In January 2004, AMI received a Commodity Jurisdiction ruling that the software is subject to ITAR. The firm’s VSDs covered exports to China between 1999 and 2002 and to the other countries from 2003 to 2005.

OMB Set to Issue “Buy American” Rules

The Office of Management and Budget (OMB) will issue an interim final rule in the coming days to implement the “Buy American” provisions in the economic recovery bill (H.R. 1) that became law Feb. 17 (see **WTTL**, March 2, page 2). It also will issue guidelines to federal agencies and state and local governments on how to apply the law’s requirements for using U.S.-made iron, steel and manufactured goods in public works funded by the legislation. “The Federal Acquisition Regulatory Council (comprised of GSA, DOD and NASA) will issue a procurement rule in the Federal Acquisition Regulation (FAR) shortly to implement the Recovery Act Buy American requirements for federal contracts,” an OMB spokesman told **WTTL**.

“The rule will be published as an interim final rule and will be effective immediately. The public will have an opportunity to comment and the comments will be considered before the rule is finalized,” he added. Separately the Office of Federal Financial Management “will issue guidance to agencies on Buy American requirements that affect contracts issued by states or localities under a federal grant, and this guidance may be published in the Federal Register as interim final guidance, which allows for public comments before the rule is finalized and eventually codified,” the spokesman said in an e-mail. “Additional guidance to agencies on Recovery Act requirements in general will be issued by OMB and may include more details on the implementation of Buy American requirements for contracts and grants,” he said.

Panel to Look at Role of Trade and Climate Change

Climate change and environment issues – and their potential treatment under U.S. trade laws – will be major items on the legislative agenda for the House Ways and Means trade subcommittee, its chairman, Rep. Sander Levin (D-Mich.), told the panel’s organizational meeting March 10. “Climate change is going to be a major issue before this Congress,” said Levin, as he outlined actions he will push in the next two years. Climate change and trade will be the topic of the subcommittee’s first hearing March 24. There have been some discussions about using trade laws to penalize foreign exporters whose goods are made in factories that don’t control carbon emissions (see **WTTL**, Jan. 19, page 2).

Other agenda items include: U.S. trade preference programs, a miscellaneous tariff bill, the USTR’s industry trade advisory committees, Customs reauthorization, trade enforcement legislation, and oversight of all trade agencies. Levin also expressed interest in addressing trade relations with Russia and Kazakhstan, renewal of sanctions against Burma, and trade negotiating authority.

Other hearings will examine President Obama’s trade policy agenda issued March 2 and the annual National Trade Estimate (NTE) of foreign trade barriers, which is due by March 31 (see **WTTL**, March 9, page 1). Levin said he is concerned that the NTE “is released and not much is made of it.” He said he was encouraged by the administration’s apparent commitment to make the report’s estimates “more than just writing on a page.” At the meeting, Rep. Chris Van Hollen (D-Md.) asked Levin to act on the Afghanistan-Pakistan Security and Prosperity Enhancement Act (H.R. 1318), which Van Hollen co-sponsored. The bill would allow “non-

trade sensitive exports,” primarily textiles, from those countries to enter the U.S. duty-free. Levin reacted with a wait-and-see approach. The proposal, he said, is “a good example of how you can’t expand trade without looking at its impact. Few trade issues are uncomplicated.”

Kirk Will Take Time to Review Trade Policies, Deals

U.S. Trade Representative-nominee (USTR) Ronald Kirk plans to spend more time in his early days in office reviewing U.S. trade policies and pending trade deals than launching new trade talks. At his shortened, 45-minute confirmation hearing before the Senate Finance Committee March 9, Kirk deftly appeased both Democrats and Republicans with his answers (see **WTTL**, March 9, page 3). Two of his statements may set the tone for his first months in office. “I do not come to this job with ‘deal fever’,” he said in his opening remarks. “The first order of business for the administration on trade is to ensure strong enforcement of the rules,” he added. The committee approved his nomination March 12 on a voice vote, and full Senate confirmation is expected the week of March 16.

Although Kirk avoided having to give detailed answers at the hearing, he wasn’t let off the hook entirely. Written questions from committee members and his written answers filled 129 pages. Many of his responses were characterized by noncommittal statements such as: “I will be monitoring these issues carefully...” “I appreciate the concerns you have raised...” “I am committed to working with...Congress...the committee....other agencies... stakeholders...” “We will use all the tools available to us....”

While promising to focus on trade enforcement, Kirk in his written answers cautioned against using World Trade Organization (WTO) complaints to judge enforcement. “The number of new cases filed is not a valid measure of an administration’s efforts to enforce U.S. rights under trade agreements,” he wrote. Other mechanisms also will be used, including bilateral consultations, technical talks, Special 301 and monitoring, he said. Kirk told the hearing he plans to review pending free trade agreements (FTAs) with Colombia, Panama and Korea “to make sure they meet the standards the president has laid out.” While suggesting Panama would likely be the first to be sent to Congress for approval, he said: “I cannot commit to a certain timetable.”

Developing Countries Object to WCO’s Direction

The World Customs Organization (WCO) could face a revolt by its developing-country members over complaints that the 174-country trade group gives countries insufficient time to consider pending recommendations and lacks transparency. A growing number of developing countries are starting to call for the organization’s work to be more “member-driven” rather than “secretariat-driven,” according to one official involved in WCO work. One concern “is the totally unbalanced” participation in the WCO Policy Commission of countries belonging to the OECD. Half the commission’s 24 members are from OECD countries, giving them undue influence on policies given symbolic approval at WCO Council meetings, the official claimed.

A second “major cause of concern” is a lack of adequate time to review commission recommendations before Council meetings, the official said. Documents submitted for final decisions are sometimes presented “for the first time ever” to commission meetings just two or three days before they are presented to the council, he said. The short notice makes it impossible to consult with capitals for “a duly considered decision,” he said.

A third concern involves technical work aimed at creating international standards for customs enforcement of intellectual property rights (IPR) at borders. Dubbed SECURE, the working group on the issue broke up during its fourth meeting in October 2008 over differences between developing and developed countries about its mandate and its relationship to the WTO agreement on Trade-Related Intellectual Property Rights (TRIPS). “The goal of the WCO secretariat

and of the countries ... pushing the SECURE project as a whole was to prepare non-binding standards,” the official said. The division was between developing countries that opposed the drafting of norms that go beyond TRIPS and developed countries, “basically the U.S., Japan and the EU, who wanted the group to develop norms of a TRIPS-plus nature,” he reported.

Bill Would Encourage Divestiture of Firms Operating in Iran

State and local divestiture of investments in firms doing business in Iran – already sanctioned by the courts – would get further encouragement under legislation (H.R. 1327) moving through Congress and likely to pass at least the House this year. A House hearing on the measure March 12 heard mixed views on the bill, but it was clear that lawmakers back the legislation and intend to move it. Rep. Gregory Meeks (D-N.Y.), chairman of the Financial Services international monetary and trade subcommittee, said the bill, the Iran Sanctions Enabling Act of 2009, would represent part of a carrot-and-sticks approach to Iran.

Florida State Senator Ted Deutch told the hearing that his state’s divestiture program for Iran and Sudan has already divested investments worth more than \$1.1 billion. “I am confident that dozens more will move forward once H.R. 1327 is passed, because your legislation will make it impossible for the naysayers to continue to argue against it,” he testified.

Deutch submitted a copy of the quarterly report issued by Florida’s State Board of Administration, which identifies “scrutinized companies” that have been found to be investing in Iran or Sudan and no longer allowed to be in the state’s investment portfolio, as well as others that it is still investigating. Among 31 “scrutinized” firms on its Iran list are China’s PetroChina, France’s Total, Italy’s ENI, Malaysia’s Petronas, Spain’s Repsol YPF, and Russia’s Gazprom.

Panama Faces New Hurdles before FTA Gets Approved

Panama may be the first of three pending free trade agreements (FTA) the Obama administration will send to Congress, but first it will need to meet new demands for changes in its labor and tax-haven laws. The main obstacle to consideration of the Panama FTA had been the election of Pedro Miguel Gonzalez-Pinzon, who is the target of a U.S. arrest warrant for allegedly killing an American soldier, as president of the Panamanian Assembly. With Gonzalez no longer in the post, Democrats in Congress have identified other issues that they say must be corrected before they will consider the trade pact (see **WTTL**, Oct. 22, 2007, page 3).

Ways and Means trade subcommittee chairman Sander Levin (D-Mich.) in a March 11 speech said Panama needs to address labor laws that exclude firms with 40 or fewer workers from rules protecting the right to unionize and also exclude firms less than two-years old from collective bargaining requirements. Later he told reporters that rules on subcontractors and temporary workers also needed to be addressed. “Those issues have to be resolved,” Levin said. The tax haven issue also “has to be resolved,” he stated.

* * * * Briefs * * *

TRADE FIGURES: U.S. goods exports in January plunged 21% from January 2008 to \$82.2 billion. Goods imports for month were down 26% from year ago to \$129.2 billion. Services exports slipped only 4.6% from last January to \$42.7 billion, while services imports were off just 4.4% from January 2008 to \$31.7 billion. January deficit in goods and services of \$36 billion was lowest since October 2002.

BEEF: USTR’s office March 12 said it was delaying imposition of new trade sanctions on European Union goods because of progress it was making in talks with EU on resolving dispute over the European ban on imports of hormone-treated beef.

USTR: President Obama March 12 said he will nominate Demetrios Marantis to be deputy USTR. He is currently chief international trade counsel with Senate Finance Committee.