

Vol. 28, No. 21

May 26, 2008

BIS Averts Staff Furloughs to Deal with Budget Crunch

The Bureau of Industry and Security (BIS) will avoid having to furlough employees this summer after reaching an agreement with Commerce management May 22 on reprogramming funds to keep the agency operating despite budget shortfalls. BIS Under Secretary Mario Mancuso warned BISers at a May 20 "All Hands" meeting that furloughs were possible from July through September because BIS is operating under a budget based on its appropriations two years ago. The reprieve may not calm BIS staff concerns. "We're already doing more with less, so this is having a very negative impact on already bad morale," one BISer told WTTL on background.

BIS is caught in a budget squeeze because Congress never approved fiscal 2008 appropriations for Commerce. "The administration's BIS budget request for FY 2008 was \$78.8 million but Congress only appropriated \$72.9 million in the Consolidated Appropriations Act of 2008 which is approximately \$6 million less than what was requested and approved by the relevant appropriations committees," BIS Deputy Under Secretary Dan Hill explained in an e-mail to WTTL.

The temporary budget fix still leaves BIS with potential budget problems later this year and into 2009. Congressional sources say lawmakers may not be able to agree this year on a final 2008 appropriations bill or a 2009 bill for the fiscal year starting Oct. 1, 2008. That sets up the prospect that Commerce and BIS will remain funded under a so-called "continuing resolution" that would leave them at or near 2007 budget levels, far below their current needs. Mancuso reportedly was optimistic about solving BIS budget problems. He said furloughs would have been a last resort, but the agency was planning for them anyway.

"While the reduction was disappointing, we have worked diligently to ensure that BIS remains mission capable," Hill said. "In the meantime, we have taken a number of steps to minimize the impact of the budget reduction, including offering a voluntary early retirement for those who are eligible. Most importantly, no BIS employee has been asked to retire and there are no plans for staff reduction at this time," he asserted.

Mandatory AES Set for Final Implementation

Regulations requiring the mandatory use of the Automated Export System (AES) for filing export documentation for all exports could be published in the Federal Register the week of May 26. The rules were reportedly "imminent" in March but sat for over a month on the desk of Homeland Security Department Secretary Michael Chertoff, who finally signed them May 16

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Published weekly 50 times a year except last week in August and December. Subscription in print or by e-mail \$647 a year. Combo subscription of print and e-mail is \$747. Additional print copies mailed with full-price subscription are \$100 each.

(see WTTL, March 17, page2). The final regulations reportedly are close to the last proposed version and, for now, leave post-shipment reporting requirements under so-called Option 4 unchanged. Census Bureau officials, however, say they plan to revisit the requirements for Option 4 in a separate rulemaking process. “This is not the final word on Option 4,” one Census official told WTTL. “There are a number of things we need to take care, but we couldn’t take care of them in this rule,” he said.

Census will begin later this year to consider what to do with AES issues and problems that were not addressed in the final mandatory AES rule. “We have a list of things we would like to look at but we didn’t have the time to plan for them,” the official said. “If we’d have tried to address [in the final rule] all the issues we have identified in our review, it would have required another notice of proposed rulemaking and we didn’t want to do that,” he said.

In addition to Option 4, one of the issues Census still wants to address is how to collect information on ultimate end users through AES. Filings now only identify the principle U.S. party in interest, the freight forwarder and the foreign consignee. Census wants to be able to know to whom a consignee is retransferring an exported product or when an export is a drop shipment to an ultimate end user. The Bureau also wants deal with exports of household goods and shipments valued under \$2,500, which aren’t captured under the current system.

Will Courts Decide China Currency Manipulation Issue?

As Congress ponders whether to pass legislation forcing Treasury to declare that China is manipulating its currency and opening Beijing to potential sanctions, the legal treatment of China’s currency policies may end up at the Court of International Trade (CIT). Several of the first China cases in which the International Trade Administration (ITA) has agreed to conduct countervailing duty (CVD) investigations will be close to final determinations in the coming weeks and months, and they could become the subject of suits challenging the application of the CVD law to China and the treatment of currency manipulation as an illegal subsidy.

Although Commerce has decided to apply the CVD law to China, legislation to confirm that the law applies to China is still needed, the Senate Finance Committee was told May 21 by John Magnus, president of Tradewins and counsel with Miller & Chevalier. “Court approval for DoC’s new approach has not yet been secured, and in any event, legislative clarification cannot be harmful,” he said at hearing on a bill (S.1919) to strengthen trade agreement enforcement.

ITA so far has ducked the currency issue by refusing to address it, claiming petitioners have not adequately shown that China’s currency manipulation was a subsidy. The first case in which this has been an issue, circular welded carbon quality steel pipe from China, is due to get final determinations in the next few weeks from ITA and ITC. If the petitioners in this case prevail in the final, they are unlikely to take the case to the CIT, one source reported. Whether petitioners in other pending cases will feel the same way is uncertain.

Meanwhile, a World Trade Organization (WTO) staff review released May 21 of China’s compliance with its trade obligations pointed to its currency policies and concluded that the renminbi (RMB) is “not freely trade internationally.” The report said China’s “constraint” of the RMB is due to its concern that China’s banking sector and capital markets are not sufficiently developed to withstand internal or external shocks to the system.

“A more flexible exchange rate regime could enable China to operate a more independent monetary policy, which would be better suited to achieving a low and stable rate of inflation in both product and asset markets and allow market forces to assume a greater role in determining interest rates,” the report stated. It also said a more flexible exchange rate “would complement structural reforms, especially those concerning the capital market, and obviate the need for price controls and other non-market measures to contain inflation.”

Lawmakers Want to See ITAR Changes for Defense Treaties

The Senate this year is likely to ratify the U.S. defense cooperation treaties with the United Kingdom and Australia, but not before State officials answer a long list of questions members of the Senate Foreign Relations Committee posed at a May 21 hearing. Committee members indicated general support for the treaties but raised concerns about how they would be enforced, how State would know whether sanctioned parties were exporting without a license, and what is the legal status of the implementing arrangements State negotiated with the two allies (see **WTTL**, May 19, page 1). They also said they want to see the Federal Register notice amending the International Traffic in Arms Regulations (ITAR) before the treaties are ratified.

Committee Chairman Joe Biden (D-Del.) was particularly concerned about how State would know if a U.S. party that had been convicted of violating the Arms Export Control Act (AECA) or had been debarred from export licensing was exporting under the treaties if no license were required. Acting Under Secretary of State John Rood told Biden defense exporters would have to register to be an “approved” member of the U.S. Community under the agreement.

After the hearing, Rood told **WTTL** that State will issue regulations spelling out how U.S. firms could register to be a member of the “United States Community” and eligible to make license-free exports to either the UK or Australia under the treaties. “There will be a process and we’ll make that public, of course, we have to, for companies to ask to be part of the approved community,” he said. “It will be similar to the way we review companies for inclusion today to be a defense exporter,” he added. Although the treaties include detailed criteria to determine which British or Australian companies can be members of the approved community to export license-free to the U.S. and the process for getting designated, no criteria is included for U.S. parties and no procedures for getting designated.

During the hearing, Rood gave evasive answers to many committee questions. Among the questions were: What authority would U.S. law enforcement agencies have to investigate violations of the treaties in the UK and Australia? Has the UK ever used its Official Secrets Act to enforce export controls? Do UK obligations under the treaty conflict with European Union export controls? Will Congress still get notifications of defense sales to the UK and Australia?

Revised Doha Farm Text Buys Hope for Ministerial Deal

The objectives for a final Doha Round agreement on agriculture and non-agriculture market access (NAMA) grew fuzzier in the perpetual game of “whack-a-mole” in the talks after the chairmen of the farm and tariff talks released revised draft texts May 19 (see story, page 4). But the new papers buoyed hopes that a mini-ministerial meeting could be held around the fourth week of June in an effort to reach a “horizontal” agreement between the two negotiating areas. “I don’t think anybody knows what happens after that,” said Agriculture Negotiating Committee Chairman Crawford Falconer. The revised agriculture text points the way for “anybody who’s got the eyes to see...the summit,” he said.

Reaction in Geneva to the texts “has been positive,” a developing country ambassador to the WTO told **WTTL**. Officials “are a bit more optimistic” about the negotiations, said a Latin American diplomat. Negotiators can see the basis for an agreement in the current texts, he added.

In the introduction to his new text, Falconer said there “are now relatively few” square brackets left in the document where disagreements remain. “Of these, some have been pretty stable over the past several months,” he noted. “I have in my own mind a pretty clear idea on where members will finally come out on them,” he said. Some remaining disputes won’t be settled until ministers meet, he indicated. “It is clear that, for a handful of them at least, that moment will not be in advance of having ministers in the room,” he observed. “There are not so many of them left that it would be impossible to manage them in that format,” he added. Falconer

reported that there is not much left to be done on food aid and export credits. “We should try to finish that off,” he suggested. “I remain (perhaps alone) stubbornly of the view that Green Box can be brought to a conclusion,” he noted. On special products and special product safeguards, “we still remain quite divergent,” Falconer reported. The Group of 33, which represents many least developed countries, still feels the treatment of special products, which developing countries can partially protect from liberalization, and the special safeguard mechanism has not been improved much in the text, said one ambassador involved in the group.

New Doha NAMA Text Issued Despite Lack of Talks

The revised Doha Round text on non-agriculture market access (NAMA) spells out a negotiating framework, but sheds little light on what a final deal will look like, officials in Geneva said after NAMA Chairman Don Stephenson issued his latest revised draft text May 19. So far, very little in the NAMA process could be characterized as negotiation, Stephenson said. There has not been “much engagement,” he added. Coefficients for cuts in industrial tariffs likely will be resolved last, said Stephenson who is the Canadian Ambassador to the WTO.

“NAMA seems to be a text in search of a negotiation,” said Catherine Bennett, senior vice president at the National Foreign Trade Council in a statement. Serious senior-level NAMA negotiations are “a prerequisite for moving to the horizontal negotiating process,” she added.

While much in the text is in square brackets, indicating a lack of agreement, it does include a range of figures that represents the “sliding scale that doesn’t slide” for balancing tariff-cutting coefficients with flexibilities that would allow developing countries to shelter some tariff lines from full liberalization. According to the text, if a developing country chose a coefficient (x) between 19 and 20 – meaning deeper cuts in tariffs – it would be able to provide “less than formula cuts for up to [12-14] percent of non-agricultural national tariff lines provided that the cuts are no less than half the formula cuts and that these tariff lines do not exceed [12-19] percent of the total value of a Member's non-agricultural imports,” the paper suggests. Or it could leave up to [6-7] percent of NAMA lines unbound as long as those lines do not exceed [6-9] percent of the total value of a member's non-agricultural imports.

If a country chose a coefficient (y) of 21-23, it could shelter up to [10] percent of its tariff lines provided the cuts are no less than half the formula cuts and the lines don’t exceed [10] percent of the total value of NAMA imports or “as an exception” it could keep tariff lines unbound or not applying formula cuts for up to [5] percent of industrial lines provided they do not exceed [5] percent of the total value of its NAMA imports. If it opted for a coefficient (z) between 23 and 26, it would be “without recourse to flexibilities,” the paper states.

* * * Briefs * * *

EXPORT ENFORCEMENT: New federal indictments handed up May 20 charge J. Reece Roth, professor emeritus at University of Tennessee, and Atmospheric Glow Technologies Inc. (AGT) with violating ITAR because they shared controlled technology with Chinese grad student. Earlier indictment named AGT researcher Daniel Max Sherman (see **WTTL**, April 21, page 4).

DEEMED EXPORTS: BIS in May 19 Federal Register asked for public comments on recommendations in final report of Deemed Export Advisory Committee (see **WTTL**, March 17, page 5).

MACHINE TOOLS: BIS has launched study on health of U.S. 5-axis machine tool industry.

NORTH KOREA: While naming North Korea along with Cuba, Eritrea, Iran, Syria and Venezuela as countries are not cooperating fully with U.S. antiterrorism efforts, State in May 20 Federal Register reported that North Korea’s status is under review. “The outcome of this review may warrant a re-assessment of whether North Korea should be included among the Countries certified as not cooperating fully with United States antiterrorism efforts,” it said.

BANANAS: WTO Panel May 19 said EU still hasn’t complied with past rulings on bananas.