

Vol. 35, No. 37

September 21, 2015

Administration Expands Licensed Exports, Travel to Cuba

In rules to be published Sept. 21, the Obama administration continues opening Cuba to U.S. businesses and signals more changes may be coming. In parallel Federal Register notices, the Bureau of Industry and Security (BIS) and Treasury's Office of Foreign Assets Control (OFAC) amend their regulations to ease further sanctions on Havana.

Senior administration officials told reporters Sept. 18 that the changes had nothing to do with Pope Francis' visit to Cuba and the U.S. The actions just happened to be the end of a "fairly lengthy interagency review process," one said. When asked if more changes were coming, one official said, "we continue to get a lot of feedback from U.S. companies," and will take that feedback into account (see **WTTL**, Sept. 14, page 2).

OFAC changes include allowing some authorized travelers to Cuba to bring their close relatives, certain businesses to establish a physical presence in Cuba, and certain travelers to open and maintain bank accounts in Cuba. The rule also removes the \$2,000 quarterly limit on remittances. The changes authorize U.S. companies to provide carrier services by vessel without the need for specific OFAC licenses, and permit certain lodging services aboard such vessels in connection with such transportation.

In its rule, BIS creates a favorable licensing policy for "items to ensure the safety of civil aviation and safe operation of commercial passenger aircraft." In addition, it amends the deemed export and deemed reexport license requirements for releases of technology and source code to Cuban nationals. It also expands several license exceptions, including Support for the Cuban People (SCP), Aircraft, Vessels and Spacecraft (AVS) and Consumer Communications Devices (CCD).

EU Moves Toward Investment Court Without Waiting for TTIP

The European Commission, the executive branch of the European Union (EU), isn't waiting for negotiation of a Transatlantic Trade and Investment Partnership (TTIP) to establish a mechanism for handling investor-state dispute settlement (ISDS) issues. Instead it approved a proposal Sept. 16 to create an investment court system to address such disagreements. The plan, which still needs approval of the European Council and European Parliament, was first proposed by EU Trade Commissioner Cecilia Malmström

in May (see **WTTL**, May 11, page 2). The proposal drew a negative reaction from the U.S. Chamber of Commerce. “If the EU still regards the TTIP as a serious objective, today’s proposal is deeply flawed. Tough negotiations lie ahead, and the reforms the United States has undertaken in recent years in its own investment agreements represent a far superior starting point for these important deliberations,” said a statement by Chamber Vice President for European Affairs Marjorie Chorlins.

“Today, we’re delivering on our promise – to propose a new, modernized system of investment courts, subject to democratic principles and public scrutiny,” Malmström said in a statement. “We want to establish a new system built around the elements that make citizens trust domestic or international courts,” she said. “It’s very important to have an open and transparent exchange of views on this widely debated issue,” she added.

The proposal calls for creation of a public investment court system that would have a “first instance” tribunal and an appeal tribunal. Judges would be publicly appointed just as members of the International Court of Justice and the WTO Appellate Body. The criteria for investors to bring suits would be defined and limited to cases based on discrimination, expropriation without compensation or denial of justice. It would also assure that governments maintain the right to regulate. The Commission said it wants the system “enshrined and guaranteed in the provisions of the trade and investment agreements.”

The proposal came out of a lengthy public debate within the EU over ISDS provisions in trade agreements. Malmström has called ISDS “the most toxic acronym in Europe.” A commission call for public comments on the issue in 2014 drew some 150,000 comments, with about 67,000 opposing ISDS, but 50,000 reportedly were nearly identical suggesting an orchestrated effort against these provisions.

China Pleas for Acceptance of its Procurement Proposal

China wants the rest of the world to understand its problems and why it can’t make a better offer for accession to the World Trade Organization’s (WTO) Government Procurement Agreement (GPA). At a GPA committee meeting Sept. 16, Chinese officials reportedly claimed their last proposal in December 2014 was improved over previous proposals and as much as it can do under current economic conditions in the country.

Any additional concessions will have to wait until reforms of state-owned enterprises and military procurement have made more progress and regional governments are willing to make reforms, Chinese officials said, according to sources in Geneva. If GPA parties don’t accept the current offer, they may have to wait a long time for a better one, the Chinese reportedly said.

Other GPA members are still unhappy with China’s proposed coverage of certain provinces and state-owned enterprises in the offer. The U.S. and EU urged China to improve its proposal, with the U.S. calling on Beijing to make a new revised offer in 2016.

Separately, the committee invited Moldova to join the GPA based on a draft decision paper circulated to parties July 31. Moldova could formally accede to the GPA 30 days after it has deposited its instrument of acceptance with the WTO. Moldova Ambassador

Victor Moraru told the committee that his country is looking forward to joining the GPA as a way to lower costs, increase foreign investment and benefit its economy overall. He said his government would spare no effort to commence domestic acceptance procedures to ensure formal accession is concluded in a timely manner, one source reported.

Oil Legislation Set to Become Partisan Fight

The coming debate over legislation to lift restrictions on crude oil exports is likely to become partisan as the White House has criticized proposed legislation as a Republican plan. After House Majority Whip Kevin McCarthy's (R-Calif.) announcement Sept. 15 that he expects a bill to come to the House floor soon, White House Spokesman Josh Earnest said the administration "wouldn't support legislation like the one that's been put forward by Republicans."

House action on oil exports got another boost Sept. 17 when the Energy and Commerce Committee reported out a bill (H.R. 702) that will end the president's authority to impose a ban on exports. The committee reported out the measure on an almost party-line vote of 31-19, with only three Democrats crossing over to support the bill.

Earnest said the administration's policy on oil exports "is made over at the Commerce Department." For an update on that position "if one is necessary, you can consult with the Commerce Department," he said. "The one thing that I would note is that this policy announcement is being made by Leader McCarthy in front of an organization in Houston that is largely funded by four or five of the biggest oil companies in the United States. So it is pretty clear, once again, where Republicans in Congress and their political benefactors stand when it comes to their energy policy priorities," Earnest said at the daily White House press briefing.

After announcing plans for bringing oil legislation to the House floor, McCarthy posted a blog on his website questioning the lifting of restrictions on Iran's oil exports under the nuclear deal, while denying the ability of the U.S. to export oil. "If there was ever a time to lift the oil export ban, it's now. This outdated policy from the 1970s was created in a time when people thought Peak Oil was just on the horizon and scarcity left Americans waiting in lines to get gasoline. Now, America is the world's leading producer of gas and oil, which has lifted up our economy and helped us largely break free from our dependence on foreign oil," McCarthy blogged.

The two main provisions of H.R. 702 would repeal section 103 of the Energy Policy and Conservation Act of 1975, which gives the president authority to restrict the export of coal, petroleum products, natural gas, or petrochemical feedstocks and would bar any government official to impose or enforce any restriction on the export of crude oil. Before approving the bill, the committee passed by voice vote an amendment sponsored by Rep. Gene Green (D-Texas) to give the president authority under the International Emergency Economic Powers Act and other statutes to reimpose restrictions if there is a national emergency.

McCarthy's announcement drew a strong floor speech Sept. 16 by Sen. Ed Markey (D-Mass.), who has opposed any easing of oil export restrictions. "This is the beginning of a very important debate in our country and I'm looking forward to it," he said. "I think

the American people are going to rise up and realize that this is very dangerous for them on so many different levels that it will be rejected on the floor of the Senate before this entire process has ended,” Markey said.

As economic reports have suggested that lifting restrictions would have little impact on consumer gas prices, opponents of lifting those rules have raised other concerns (see **WTTL**, Sept. 7, page 2). Among those factors are the impact of increased oil production in the U.S. would have on the environment, injury to the U.S. shipping industry that carries oil between U.S. ports under Jones Act protections, and higher costs for U.S. refiners who benefit from the lower price for U.S.-produced oil.

U.S. to Delay Lifting of Iran Sanctions Pending Verification

President Obama will issue waivers of U.S. nuclear sanctions on Iran Oct. 15 but will delay their effective date until after the International Atomic Energy Agency (IAEA) verifies that Tehran has taken all necessary steps required under the Joint Comprehensive Plan of Action (JCPOA), administration officials announced Sept. 17. The announcement came after the Senate was blocked from voting on a motion of disapproval of the Iran nuclear deal and U.S. acceptance became official.

Oct. 15 is considered “adoption day” for the accord, but “implementation day” will come when the IAEA issues its verification report. “We expect the process to start on October 18th and then take months after that to implement all of these steps,” one senior administration official told reporters, speaking on background.

Along with the U.S., the United Nations (UN) and European Union (EU) will follow a similar schedule to lift their nuclear sanctions on Iran. On implementation day, “the UN will terminate all the past resolutions, so it will terminate 1737, 1803, 1747, 1929,” another official explained, referring to UN Security Council resolutions. The EU “will adopt a regulation that will also effectuate their sanctions relief, but again, taking effect only on implementation day once we’ve received the IAEA’s report. So it’s kind of putting these – both these documents into a suspended state until such time as the IAEA makes its report and activates the sanctions relief,” the official said.

The U.S. waivers will be done so “they are effectively suspended and can be snapped back in the future,” one official said. “Those waivers would be periodically renewed, and again, leaving the legislation in place such that we could effectively snap it back in the event of Iranian noncompliance,” an official explained.

The waivers “will lay out every single piece of legislation or statutory provision that we need to waive in order to provide the sanctions relief. So this will include the legislative sanctions with respect to Iranian oil sales, with respect to Iran’s transportation sector, with respect to banking – essentially that whole group of nuclear-related economic sanctions that are described in the deal. And so, essentially, most of the sanctions that deal with Iran’s major sectors of its economy will be – the actual text of how we would waive them will be laid out in this waiver,” one official said. While the JCPOA will allow U.S. financial institutions to provide U.S. bank notes to Iran and other entities to conduct trade, no financial transactions will be permitted to go through U.S. banks

because of sanctions that are not being lifted. “There are going to be a lot of sanctions, specifically in the United States, that will remain in place,” one official emphasized.

“Among those is the prohibition on being able to use the U.S. financial system. And for most major – most large dollar transactions around the world, they would need to be able to do – go through the U.S. financial system, go through New York. That will not be allowed as part of this. Those sanctions are not being lifted as part of this deal. And it will not be allowed to do what you – as you correctly called U-turn transactions, transactions that would be ultimately going through New York or through the U.S. financial system,” he added.

One official also tried to debunk claims that Iran would have immediate access to more than \$100 billion in frozen assets. “I think there’s a common misperception that on implementation day a big suitcase full of cash shows up in Tehran and all of a sudden they have all this money, which I think is really – does a disservice to what actually is going to happen,” he said.

“On implementation day, essentially, the rules, the sanctions that prevent Iran from doing a lot of this sort of business will be lifted, will be suspended, and so they’ll be able to start doing that type of business. But it’s going to take them some time, it’s going to take their economy some time, to dig out of the hole that it’s been in as a result of these sanctions,” he contended.

“If a country wants to start buying Iranian oil, they’ll be able to buy that oil right away. Will Iran be able to provide that much more oil – probably not. They’ll have to build up their production capacity and work towards the point where they can actually increase the amount of oil they sell over time,” he suggested.

“So in each case there will be things that will be immediately possible to do, but it will take time for Iran to really enjoy the full benefits of that. Iran is a big market. We expect that companies will be looking to do business there once these sanctions are lifted, and they’ll be able to enjoy the sanctions relief that they anticipate. But with any sort of economic recovery it’s going to take a significant amount of time,” he added.

At the same time, Secretary of State John Kerry named Ambassador Stephen D. Mull to serve as lead coordinator for Iran nuclear implementation. Mull most recently served as ambassador to Poland and from 2010 to 2012 as executive secretary of the department. He was also involved in the early P5+1 talks with Iran and with the IAEA.

Ex-Im Charter Still Unresolved As Year-End Looms

As the end of the federal fiscal year Sept. 30 nears, the Export-Import Bank’s (Ex-Im) fate is tied to talks on a short-term budget extension, which could allow the bank to keep managing existing financing but still not able to offer new aid. Reports of job losses due to the lack of Ex-Im backing don’t appear to have much impact on bank opponents.

President Obama responded Sept. 16 to General Electric’s (GE) announcement that it was moving 500 jobs overseas due to the lack of Ex-Im funding. “I was concerned about [GE’s] announcement that jobs that were here in the United States are now going to be

overseas because we don't get this done," he told the Business Roundtable. "But that's true for the supply chain; it's also true for some smaller companies that use Ex-Im directly. It's not just that they're part of the GE or Boeing supply chain, it's that they're selling tea to a country and this is the only mechanism they have to be able to make those sales," Obama said.

During a meeting Obama held with Senate Minority Leader Harry Reid (D-Nev.) and House Minority Leader Nancy Pelosi (D-Calif.) Sept. 17, the three agreed they would support a clean, short-term continuing resolution to keep the government open.

In addition, they "spoke about the importance of securing passage of a long-term transportation bill that creates jobs and addresses our nation's critical infrastructure challenges, and renewing the Ex-Im Bank charter that Republicans have allowed to lapse, costing hundreds of jobs," a White House statement noted.

GE announced Sept. 15 that it had reached an agreement with the French export credit agency (COFACE) to provide a line of credit for global power projects. "To access the required export credit for its customers of its aeroderivatives turbines, GE will move its final assembly from the U.S. to Hungary and China," GE said.

"As related projects are bid and won in these two product lines, GE will move approximately 500 jobs from Texas, South Carolina, Maine and New York to France, Hungary and China," the company said. In 2014, GE employed some 305,000 people worldwide, with about 136,000 in the U.S. and the rest abroad, so the announcement seems to be mostly a public relations gambit to put pressure on Congress to renew Ex-Im's charter.

"We do not make today's announcements lightly, and in fact, have done everything in our power to avoid making these moves at all, but Congress left us no choice when it failed to reauthorize the Ex-Im Bank this summer. We know this will have an impact not only on our employees but on the hundreds of U.S. suppliers we work with that cannot move their facilities, but we cannot walk away from our customers," said GE Vice-Chairman John Rice in a statement.

Anti-Tax Groups Give Support to Miscellaneous Tariff Bills

Miscellaneous tariff bills (MTB), which have languished in Congress for several years mainly due to conservative House members who consider their tariff-cutting provisions to be prohibited "earmarks," got unexpected support Sept. 11 from other conservatives who see tariffs as a form of taxes that they oppose. The groups, led by the National Taxpayers Union (NTU), launched a campaign and wrote to members of Congress, urging them to support new procedures for drafting MTBs in the pending Customs enforcement legislation (H.R. 644), which was left over after enactment of fast-track and trade preference measures (see **WTTL**, June 29, page 1).

"MTBs allow Congress to reduce tariffs, which are nothing more than taxes on American consumers and businesses. While we would prefer broader, more comprehensive approaches to tariff reductions, MTBs have long served as a bipartisan approach to lessening the burden of government and increasing economic growth," the groups wrote. "Congress must ensure that MTBs do not give undue consideration to special interests in

Washington. To that end, the House and Senate should reform the process so that individual companies request tariff relief from the International Trade Commission, rather than appealing directly to Members of Congress. This would greatly benefit taxpayers by increasing transparency and accountability. Additionally, Congress should ensure that the ITC does not use MTBs to reward or deny tariff relief based on political considerations,” they wrote. Congress hasn’t passed an MTB package since 2010.

The pending provisions in the Customs bill were sponsored by Sen. Rob Portman (R-Ohio) and would shift the process to the ITC for vetting proposed tariff cuts or suspensions so individual lawmakers would not have to introduce them and give the appearance of providing special favors to companies that would benefit from the changes.

“As our coalition letter indicates, free market organizations know the great importance of lower tariffs for all Americans. While MTBs aren’t a perfect way of advancing the critical goal of freer trade, they are an effective and achievable means of doing so,” said NTU Executive Vice President Brandon Arnold in a statement.

In addition to NTU, the letter was signed by Council for Citizens Against Government Waste, Center for Individual Freedom, Competitive Enterprise Institute, R Street Institute, and Small Business and Entrepreneurship Council.

*** * * Briefs * * ***

FCPA: Knut Hammarskjold, former co-CEO of oil and gas company PetroTiger, was sentenced Sept. 10 in Camden, N.J., U.S. District Court to time served and two years’ probation for violating FCPA by bribing Colombian government officials to secure oil services contract worth roughly \$45 million. He pleaded guilty in February 2014. At same time, PetroTiger’s former general counsel, Gregory Weisman, was given two years’ probation for bribery and fraud charges connected to same scheme. Hammarskjold’s co-CEO Joseph Sigelman was given three years’ probation after pleading guilty in June for his role (see **WTTL**, June 22, page 8). Case was brought to Justice’s attention through voluntary disclosure by PetroTiger, which cooperated with department’s investigation, Justice said.

SHELVING: In 6-0 final vote Sept. 15, ITC found U.S. industry is materially injured by imports of dumped and subsidized boltless steel shelving units prepackaged for sale from China.

IRONING TABLES: In 6-0 “sunset” vote Sept. 18, ITC said revoking antidumping duty order on ironing tables and certain parts thereof from China would renew injury to U.S. industry.

STEEL WIRE STRAND: In 6-0 “sunset” vote Sept. 18, ITC said revoking antidumping and countervailing duty orders on prestressed concrete steel wire strand from China also would renew injury to U.S. industry.

SUGAR: Commerce issued final antidumping and countervailing duty decisions Sept. 17 on sugar from Mexico, with dumping margins from 40.48% to 42.14% and CVD rates from 5.78% to 43.93%. ITC held injury hearing Sept. 16. Case is subject to suspension agreement signed in December, but sugar interests are challenging in Court of International Trade ITC’s finding in March that agreement remedies injury to domestic industry (see **WTTL**, Dec. 22, page 14).

THERMAL PAPER: CIT Senior Judge Nicholas Tsoucalas Sept. 17 upheld Commerce’s 4th administrative review of antidumping order on lightweight thermal paper from Germany,

agreeing with department's ruling on "ordinary course of trade" and adverse facts available. "Very low prices or profits may be indicative of sales outside the ordinary course of trade; however, the mere fact of such low prices or profits does not necessarily mean that such sales are outside the ordinary course of trade, as Commerce must evaluate all the circumstances particular to the sales in question," judge wrote (slip op. 15-104). He also found respondent Koehler had cooperated with Commerce.

AUSTRALIA GROUP: In Federal Register Sept. 18, BIS corrected rule implementing 2014 Australia Group recommendations (see **WTTL**, June 22, page 1). Note to ECCN 1C351.a.4 (which controls avian influenza viruses identified as having high pathogenicity) incorrectly referenced ECCN 1C352.a.4, instead of ECCN 1C351.a.4, BIS said.

TPP: At Business Roundtable Sept. 16, President Obama addressed talks on Trans-Pacific Partnership (TPP): "I am confident that we can get it done, and I believe we can get it done this year." He acknowledged politics of Congress in getting it ultimately approved, even with Trade Promotion Authority. "We should not assume, though, that because the authority was done, that we automatically are going to be able to get TPP done," Obama said. "And I'll be honest with you, the reason is that the politics around trade are tough," he added.

CHINA: Ahead of Chinese President Xi Jinping's state visit to Washington Sept. 25, 94 CEOs wrote to President Obama and Xi Sept. 15, stressing need for concluding bilateral investment treaty (BIT). "As we look at the range of issues on the bilateral agenda, a high-standard BIT – with clear provisions providing equal treatment to each country's investors and a short list of exceptions – is one of the key items that could make an immediate and tangible impact for both of our economies," they wrote. U.S. and Chinese officials keep claiming that they are making progress toward BIT but without specific deadline (see **WTTL**, June 29, page 6).

DOHA ROUND: "The significant difficulties that we detected in the first semester are still in evidence. Returning to Geneva after consulting with capitals over the summer, it seems to me that we have not yet found solutions which can bridge the gaps in the most problematic areas," WTO Director-General Roberto Azevêdo told WTO heads of delegation meeting Sept. 17. "While continuing those efforts, I think it is time for us to start working more intensely on the more promising issues which may be potential deliverables for the Nairobi Ministerial Conference," he said. Among potential "deliverables" for Nairobi are help for least-developed countries, development, export competition in agriculture and increased transparency in negotiations, said Azevêdo, who will be in Washington Sept. 23-24 for meetings with members of Congress and administration officials (see **WTTL**, Aug. 3, page 4).

Is a Site or Corporate License for You?

- When many individuals in your organization need to read *Washington Tariff & Trade Letter*, there's an easy way to make sure they get the news they need as quickly and conveniently as possible.
- That's through a site or corporate license giving an unlimited number of your colleagues access to each weekly issue of *WTTL*.
- With a low-cost site or corporate license, you can avoid potential copyright violations and get the vital information in *WTTL* to everyone who should be reading it.

For More Information and Pricing Details, Call: 301-570-4544