

# Washington Tariff & Trade Letter<sup>®</sup>

A Weekly Report for Business Executives on U.S. Trade Policies, Negotiations, Legislation, Export Controls and Trade Laws

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## DOHA DEAL SEEN NEAR BUT NO ANNOUNCEMENT WILL BE MADE

Well informed sources in Geneva say they believe a Doha Round agreement on agriculture and non-agriculture market access (NAMA) is near among the major negotiators, the U.S., European Union (EU), Brazil, with those three trying to bring along India. The major concern now is how not to announce a deal. While details of an accord haven't been worked out, sources say trade ministers want to avoid announcing a four-way deal that other World Trade Organization (WTO) members might feel is being dictated to them and would reject for that reason.

A preliminary deal is done, although "it has not been officially done," one former WTO negotiator said. "I think the big issue now is how they communicate the deal," he said. "If they communicate they've made a deal, they're dead, because all the other 140 countries that have not been in this process will scream and yell," he said. As a result of this concern, the four main players are trying to devise a plan to bring the talks back to the WTO negotiating process in Geneva.

Their goal would be to get the chairmen of the agriculture and NAMA negotiating committees to incorporate their proposals into a chairmen's paper for discussion within their committees. U.S. Trade Representative (USTR) Susan Schwab met with the agriculture committee chairman, New Zealand Ambassador Crawford Falconer, while she was in Geneva March 5 (see **WTTL**, March 5, page 1). President Bush was expected to discuss the potential deal with Brazilian President Lula during a visit to Brazil March 8-9. Schwab, who was traveling with the president, was scheduled to meet with Brazilian Foreign Minister Celso Amorim during the visit.

The details of any proposed deal are being closely held by the chief negotiators to prevent them from being leaked before they can brief and get support from key constituencies, including members of Congress in the U.S. and EU member states.

Meanwhile, pressure has increased on India to improve its offers in the talks. The U.S. filed a complaint at the WTO March 6 seeking consultations with India on its high tariffs and import fees on wine and distilled spirits. The U.S. claims the tariffs and fees violate India's obligations under GATT Articles II and III and also impose charges that domestic Indian wine and spirits don't face. The EU in November had filed its own complaint against the Indian fees.

## GATES SIGNALS DIFFERENT VIEWS ON CHINESE MILITARY THREAT

Defense Secretary Robert Gates appears to have a less strident view of China's military build-up than his predecessor and may be signaling some division in the administration about the

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policy behind the Bureau of Industry and Security's (BIS) China catch-all proposal. Speaking with reporters March 7, Gates responded to a question about reports that Beijing plans to increase its defense budget by 18% and whether he saw a threat to the U.S. from China's growing military capability. "I do not see China at this point as a strategic adversary of the United States," Gates responded. "It's a partner in some respects. It's a competitor in other respects. And so we are simply watching to see what they're doing," he added. "I think that it's very important for us to engage the Chinese on all facets of our relationship as a way of building mutual confidence," he continued.

Gates, who for a short time co-chaired the BIS Deemed Export Advisory Committee, said China's increased military spending "doesn't say much at all about China's intentions." He acknowledged that the Chinese are building their capabilities. "We've talked about that here before in terms of the anti-satellite test and some of their submarine operations, and so on. They clearly are making a significant investment in their military forces and in both strategic and tactical modernization," he stated.

"I think that greater transparency would help from the standpoint of the Chinese in terms of both what they're doing and what their strategies are, their intent in modernizing their forces; a greater openness about the purposes," Gates noted. He also said he doesn't think the announced budget increase represents the entire Chinese military budget.

It's unlikely that Gates' statement means BIS won't go through with its China catch-all regulation. A source who has worked with the secretary in the past said Gates is very aware of the catch-all proposal. While the Pentagon chief's views might support some tempering of the proposal before it gets into final form, the source said Gates won't back the call of some in the exporting community to shelve the proposal.

## **EX-MONSANTO EXECUTIVE FINED FOR FCPA VIOLATIONS**

Charles Martin, Monsanto's former government affairs director for Asia, has agreed to pay a \$30,000 civil fine to settle Securities and Exchange Commission (SEC) charges that he authorized the payment of a bribe to an Indonesian official and concealed the payment in a bogus invoice from the firm's consultant in Indonesia. According to the SEC, Martin, who was based in Washington, D.C., had approved a \$50,000 bribe of a senior official in the Indonesian Ministry of Environment in an unsuccessful effort to get the ministry to reverse a decree that required additional testing of genetically modified organisms (GMOs) that Monsanto wanted to market in Indonesia. In reaching the settlement with the SEC, Martin, who left Monsanto in 2002, neither admitted nor denied the charges.

Monsanto had reached a separate settlement with the SEC and Justice for its role in the bribe in January 2005. The company agreed to pay a \$1 million civil penalty in its deal with Justice and a \$500,000 fine in its agreement with the SEC. The government had claimed that Monsanto from 1997 to 2002 had actually been involved in the payment of about \$700,000 in bribes to 140 Indonesian officials.

## **NEW COMMERCE PROGRAM SEEKS TO ATTRACT MORE FOREIGN INVESTMENT**

Concern in the international business community that the U.S. is no longer an inviting place for foreign investment has prompted Commerce to launch a program to take an active role in attracting new foreign investment in the U.S. and to help foreign investors overcome the regulatory barriers to the U.S. market. Called Invest in America, the program, announced March 7, will be run by a small team in the International Trade Administration (ITA) and will rely mostly on U.S./Foreign Commercial Service (U.S./FCS) staffers in the U.S. and abroad to add the investment message to their export promotion assignment. International investor concerns about the investment climate in the U.S. have increased in the wake of the Dubai Ports World

brouhaha last year. ITA Under Secretary Franklin Lavin said Commerce will serve as a ombudsman in Washington to help foreign investors deal with the regulatory hurdles they face. He made clear, however, that the department would not get involved in specific cases before regulatory agencies implementing statutory requirements.

Speaking to the Peterson Institute, Lavin emphasized that Commerce would not get involved in helping foreign investors choose among various states that are seeking their investments. Most states have very aggressive programs that seek foreign investments and often try to outbid each other with tax benefits and incentives for new investors. The ITA head also said the program would not deal with any investments that have national security elements that might require review by the interagency Committee on Foreign Investment in the U.S. (CFIUS).

## **MANDATORY AES RULES STILL NOWHERE IN SIGHT**

Two years after they were ready for publications, the Census Bureau's final regulations for imposing mandatory use of the electronic Automated Export System (AES) for the filing of all export documentation are still tied up in a battle between Census and Customs over the sharing of AES data with foreign governments. "I don't think we are any closer today than we were a year ago," Census Ombudsman Jerome Greenwell told the BIS Regulations and Procedures Technical Advisory Committee (RAPTAC) March 6.

The final version of a new Foreign Trade Regulation was close to publication in the spring of 2005. At the last moment, Customs and Border Protection (CBP) raised objections to the continued use of Option 4 for post-shipment filing of export data. CBP also said it wanted to have authority to share AES data with other governments as part of its pledge to participate in a World Customs Organization (WCO) information sharing initiative.

Lack of a mandatory AES rule is not delaying full implementation of the electronic system. Data on about 98 % of all exports requiring export documentation are submitted through AES, Greenwell reported. The delayed publication actually is benefitting exporters because the final rule also will institute the \$10,000 per violation fine that Congress authorized when it enacted the statute requiring mandatory AES. As long as the rule remains unpublished, the old \$1,000 per violation fine remains in force.

Despite the high volume of AES use, Census still gets from 40,000 to 45,000 paper Shipper's Export Declarations (SEDs) a month. Census is beginning an outreach program to contact and visit the 15 largest users of SEDs in an effort to get them to shift to AES, Greenwell said. The largest number of SEDs is filed at the Saint Teresa, N.M., crossing on the U.S.-Mexico border. The main remaining users of paper SEDs are exporters of automobiles and pharmaceuticals. Fifty percent of paper SEDs have errors on them, Greenwell said. He also urged exporters to check and make sure their freight forwarders aren't filing paper SEDs for them and also to make sure the exporter and forwarder are not submitting duplicate export documents.

## **INDUSTRY GROUPS URGE PROCEDURAL CHANGES IN EXPORT LICENSING**

Trade association executives representing U.S. exporters are seeking a personal meeting with President Bush to urge him to support changes industry is recommending for the export licensing procedures at State and Commerce. The executives are part of a group of eight trade associations that has banded together to form the Coalition for Security and Competitiveness. The coalition, announced March 6, has proposed a series of procedural changes in the implementation of both the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR). Although eight groups have joined the coalition, the main advocates for the changes are the Aerospace Industry Association (AIA) and the National Association of Manufacturers (NAM), which reportedly organized the effort at the urging of

Boeing and Lockheed Martin. The coalition's primary concern is the growing arbitrariness of State's Directorate of Defense Trade Controls (DDTC) in the implementation of the ITAR and the slowness of the licensing process. Recommended changes in BIS procedures were a last-minute addition to bring in more industry support.

The coalition has focused its recommendations on the licensing process at the two agencies and carefully steered away from proposals that would require a legislative fix. It is not seeking a change in export control statutes because members recognize that the export community "has few friends in Congress," one industry source said. It also has eschewed interest in changing national security policies.

Reflecting the aerospace industry's concerns about ITAR procedures, the coalition is recommending that FAA-certified equipment should remain on the Commerce Control List (CCL) while commodity jurisdiction requests are still pending. The coalition also suggested that the president appoint a senior director in the National Security Council to have responsibility for defense trade, export policy and technology cooperation. Other recommendations call for the hiring of more license reviewers in DDTC, creation of a presidential advisory body on defense trade, and for measures to expedite license and agreement reviews.

The coalition had fewer recommendations for improving BIS licensing procedures. It renewed a long-standing proposal to create a license exception that would allow transfers within companies without individual licenses. It also recommended a variation of BIS' proposed Verified End User concept to certify foreign end users outside of China and India who would get expedited license reviews or not require a license. It also called for streamlining the current encryption regulations and updating the CCL to reflect market availability. Another recommendation urged that BIS be given a greater role in the commodity jurisdiction process.

The group sent a copy of its recommendations to President Bush along with a letter March 6. "The coalition is committed to working closely and cooperatively with the administration and with Congress to provide a more efficient, predictable and transparent export control system that supports national security and competitiveness," they wrote.

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CRIME CONTROL: BIS in March 6 Federal Register amended Crime Control provisions in EAR to allow use of License Exception Gov for exports of these items to U.S. troops in Iran and Afghanistan. Change also extends controls to software and technology for crime control items and clarifies distinction between controls for crime control purposes v. torture. BIS approved 3,084 Crime Control licenses in FY 2006.

LATIN AMERICA: President Bush doesn't intend to offer Brazilian President Lula cut in ethanol tariff during his visit to Brazil March 8-9, National Security Advisor Stephen Hadley told reporters before president left for March 8-14 visit to Latin America. "No, the tariff is not under negotiation and we have no intention to propose altering the tariff," Hadley said in response to question. "That's obviously a congressional matter," he added. Nor will Bush propose FTA talks with Uruguay during his stop in Montevideo. In separate meeting with reporters, Bush himself quashed that idea. "There are countervailing pressures in my own government," president admitted. "People shouldn't take for granted that the United States wants to have trade agreements. As a matter of fact, there's a strong protectionist sentiment in America. I strongly resist those temptations," Bush said. "Therefore, I will make my case about why I hope we can continue what has been a constructive relationship with Uruguay without pressing the case beyond that which is politically possible," he added.

SNAP-R: BIS adoption of its electronic filing system for supporting documentation for export licenses is going "very well," says Eileen Albanese, director of BIS Office of Exporter Services. Agency staffers caution that supporting documentation of encryption licenses and reviews still has to be submitted manually and separately to National Security Agency (NSA), which is not yet linked to BIS computer system.

FTA: Ways and Means trade subcommittee chairman Sander Levin (D-Mich.) rejected Bush administration contention that including enforceable ILO standards in bilateral FTAs would open U.S. labor laws to challenge. "Under the FTA only the other government, not American unions or any other private party in either country could bring a claim under the FTA dispute settlement system; any conduct would have to be a persistent action having a direct effect on trade," he said in speech March 5.