

# Washington Tariff & Trade Letter®

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

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## **BIS ISSUES RULES ON “INSTALLED BASE” FOUND IN LIBYA**

U.S. firms operating in Libya may be able to avoid the prohibition against handling goods that were exported there illegally during the U.S. trade embargo under new regulations the Bureau of Industry and Security (BIS) published March 22. The revised rules will offer firms two ways to deal with so-called “installed base” items they may have to service, sell, store, buy or use in Libya depending on the level of controls applied to that equipment.

For items that are subject to the Export Administration Regulations (EAR) but not on the Commerce Control List; those eligible for a License Exception or only controlled for national security or antiterrorism reason; and those not on Wassenaar’s Sensitive or Very Sensitive Lists, firms will only need to file a report with BIS providing the agency with all known material facts about the equipment. For equipment not meeting these criteria, a license will be required.

The revisions to the EAR also address concerns exporters have raised since the Bush administration lifted restrictions on trade with Libya in April 2004. Among the changes is a shift to a policy of case-by-case review from a policy of denial for licenses for products in Export Control Classification Numbers (ECCNs) 5D002 (encrypted software), 1C992 (oil well perforators), 2A994 (portable electric generators) and aircraft and helicopters. BIS also dropped licensing requirements for vessels visiting Libya, making them eligible for License Exception TMP.

## **SOFTWOOD LUMBER TALKS PRODUCE NO LAST-MINUTE MIRACLE**

Commerce Under Secretary Grant Aldonas will leave his post March 31 without having been able to cap his tenure with an eleventh-hour deal to settle the long-running U.S.-Canada dispute over softwood lumber. While there was little hope of a settlement before Aldonas met with Canadian trade officials March 23-24 in Toronto, the results of the meeting suggest that the battle over U.S. dumping and countervailing duties on Canadian lumber will slog on for six or more months without resolution, sources close to the talks report.

The Toronto meeting was intended to discuss Ottawa’s proposal to impose an export tax on Canadian lumber as part of a broader deal to withdraw the U.S. trade restrictions and return the cash deposits importers have been paying for two years (see **WTTL**, March 14, page 1). The next step in the process is an expected meeting in Chicago April 4 which will be attended by government and industry representatives from both the U.S. and Canada. Negotiators did agree to set up some working groups to examine elements of the Canadian proposal and to discuss other options for settling the dispute. But one source cautioned that discussions are still very

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early. "There is an extremely long way to go before there is a negotiated settlement," the source said. "I don't think there is any sense of emergency in Canada," the source added. Any potential impetus for a deal is still months away, as both sides await additional rulings expected this summer from NAFTA and WTO panels and the Court of International Trade.

## **U.S., EU EDGE BACK TOWARD THE BRINK IN AIRCRAFT DISPUTE**

Even after the apparently heated telephone call between Deputy Secretary of State Robert Zoellick and European Union (EU) Trade Commissioner Peter Mandelson March 18 over the scope of negotiations on a new aircraft subsidy agreement, U.S. and EU trade staffs were on the phone the week of March 21 discussing how to get the talks back on track. U.S. sources say Washington is prepared to extend the April 11 deadline for the negotiations as long as the EU honors the commitment made at the start of the talks to provide no new launch aid to Airbus.

When Zoellick and Mandelson agreed in January to take three months to negotiate a new bilateral deal to end subsidies for large civil aircraft, they were guilty of wishful thinking (see **WTTL**, Jan. 24, page 4). If the talks are extended, as is now likely, they probably won't be completed until incoming U.S. Trade Representative (USTR) Rob Portman comes on board and settles in.

U.S. officials complain that the EU is trying to change the terms that were agreed upon in January as the goals for the negotiations. They say the EU now wants the agreement to address subsidies that Tokyo gives to Boeing subcontractors in Japan and also the phase-out of subsidies Boeing receives under the repealed Foreign Sales Corporation/Extraterritorial Income Tax (FSC/ETI) law. "The EU keeps wanting to stray farther and farther from the January 11 agreement," said USTR Spokesman Richard Mills.

A key issue for the U.S. is a new Airbus request for EU aid to launch a proposed A350 aircraft that would compete with Boeing's new 787. Washington believes the granting of such help would violate the subsidy standstill agreement that accompanied the January negotiating plan. If the EU agreed to fund this new aircraft, the U.S. would undoubtedly end the talks and refile its complaint against the EU's Airbus subsidies in the World Trade Organization (WTO).

If the U.S. goes back to the WTO, it will target all subsidies the EU has given Airbus over the last 10 years. That could amount to \$20-30 billion in potential retaliation against the EU, if Washington were to prevail. "That's the club," one industry representative told **WTTL**. USTR and industry sources say they are confident the U.S. would win in the WTO.

Among the likely targets of such retaliation would be BAE Systems, the British defense firm which owns 20% of Airbus and is a major Pentagon supplier. Equally at risk, industry sources say, would be any hope Airbus has of selling the Defense Department its new A-400 transport as a replacement for the aging C-130 or any aircraft for use as tankers. "If Airbus is contemplating competing in our defense market, it can forget it," one industry source said.

## **JUDGE REFUSES TO LIFT CHINA SAFEGUARD INJUNCTION**

The government has lost two efforts to lift the Court of International Trade's (CIT) preliminary injunction which is blocking Commerce from proceeding with safeguard actions against Chinese textile and apparel imports based on the threat of market disruption. On March 17, the Court of Appeals for the Federal Circuit (CAFC) deferred consideration of the government's request to lift the CIT injunction. Then on March 18, CIT Judge Richard Goldberg, who issued the injunction in December, denied a government request to dismiss the suit which was filed by the U.S. Association of Importers of Textiles and Apparel (USA-ITA). Goldberg noted that the CIT has ruled in the past that final authorized decisions of the Committee on Implementation of Textile Agreements (CITA) to impose import restrictions are not subject to judicial review. In this case, however, the issue is CITA's regulations. "These procedural predicates to any

substantive decision by CITA to actually impose safeguards on Chinese textile imports are independently reviewable by this court,” he ruled (see **WTTL**, March 7, page 3). Goldberg also dismissed the claim that USA-ITA had not exhausted its administrative remedies because no final decision has been made on the safeguard petitions. “The court finds that this argument is wholly without merit,” he wrote. “The defendant cannot seriously argue that requiring full participation in CITA’s administrative proceeding, the very legitimacy of which is at issue in this case, is an appropriate application of the exhaustion doctrine,” he declared.

Goldberg’s ruling came just a few days before Commerce Secretary Carlos Gutierrez announced department plans for a new system for monitoring and reporting on textile and apparel imports. Starting in early April, the department on a biweekly basis will post aggregate import data by textile category on the website of the Office of Textiles and Apparel.

## **WTO FARM TALKS HAVE NOT BROKEN DOWN, GROSER CLAIMS**

Even though a formal meeting of the Doha Round negotiating committee on agriculture was suspended March 17, the talks have not broken down, Ambassador Tim Groser told the main Doha Trade Negotiations Committee (TNC) March 21 (see **WTTL**, March 21, page 2). Groser, New Zealand’s representative to the WTO and chairman of the agriculture committee, tried to assure the TNC that informal talks are continuing with much of the time consumed by members going over detailed spreadsheet data showing how non-ad valorem import tariffs might look if they were converted into ad valorem rates, a major technical roadblock in the talks.

Meanwhile, members of the so-called G-20 issued a communique March 19 after meeting in New Delhi, calling for further disciplines in Blue Box and Green Box domestic subsidies “to avoid mere box shifting.” Any change in Blue Box rules must make such aid less trade distorting than it is now, they said.

The communique also said the mandate for substantial reductions in trade-distorting domestic support requires the determination of base periods and levels in a politically credible manner. “It was noted that significant reductions will be required to address inflated baselines and to arrive at effective reductions that address the need for removing trade distortions in agriculture trade,” the paper said. In addition, the G-20 pressed for elimination of tariff escalations that impose higher tariffs on processed foods and lower tariffs on raw products.

## **FOREIGN STUDENT ROLLS DECLINE DESPITE BETTER VISA HANDLING**

As State fights to correct what it considers to be misperceptions about the difficulty foreign students are having getting visas, the number of foreign students has declined for two straight years. Foreign student enrollment in both undergraduate and graduate programs declined for the first time in 30 years during the 2003-2004 school year, dipping 2.4%. Surveys of schools for the current school year suggest that the decline has continued.

Graduate student applications from China and India have declined especially sharply, dropping 13% and 9% respectively for 2005 from 2004, according to Doug Baker, Commerce deputy assistant secretary for Services. Overall, the number of foreign student graduate school applications decreased 5%, he noted. This follows a 28% decline the year before. He pointed out that foreign-student education in the U.S. accounted for some \$13 billion in services exports in 2003.

Although State has been doing a better job in speeding and easing the process foreign students must follow to get visas to enter the U.S., there appears to be a continuing decline in interest in studying in the U.S., he said, citing a recent report from graduate schools. Representatives of the academic community agree that visa clearance procedures have improved significantly from 2002 and 2003 when State first began imposing additional interview and checks on all

foreign visa applicants in reaction to 9/11. George Washington University President Stephen Trachtenberg said he has many fewer complaints about visas compared to 18 months ago. But visa perceptions aren't the only cause of the decline in foreign student enrollment. Reduced interest in attending school in the U.S. is also attributed to increased competition from universities in other countries, especially Canada, Australia, New Zealand, Japan and the United Kingdom. In addition, improvements in universities in China, India and other countries are helping to retain students who formerly wanted to go abroad to get a high-quality education.

\* \* \* BRIEFS \* \* \*

EXPORT ENFORCEMENT: In case with civil and criminal elements dating back to 2002 TDO against Yaudat Mustafa Talyi, aka Joseph Talyi, BIS has reached settlement with Uni-Arab Engineering of UAE and two of its employees to resolve charges related dealing with Talyi during TDO, participating in exports to Libya without approval and making false statement to BIS assistant secretary for export enforcement. Uni-Arab agreed to pay \$95,000 civil fine and had five-year denial of export privileges suspended. Nureddin Shariff Schweil agreed to pay \$20,000 civil fine and had three-year denial of export privileges suspended. Jamie Radi Mustafa will pay \$55,000 civil fine and have five-year denial order suspended.

YOU-FINALLY-GOT-IT-RIGHT-DEPARTMENT: After three previous CIT rulings and one CAFC ruling against two earlier remand determinations, ITC in third remand determination changed its mind and found U.S. industry not injured or threatened with injury from imports of tin- and chromium-coated steel sheet from Japan. CIT Chief Judge Jane Restani issued ruling March 23 sustaining new ITC decision in *Nippon Steel v. U.S.* (Slip Op. 05-38).

MAGNESIUM: ITC made final determination March 23 that dumped imports of magnesium from China and Russia are injuring U.S. industry. Commissioners Miller and Hillman found granular magnesium to be separate product and imports from Russia to be negligible, but joined colleagues in rest of ruling.

TREASURY: President Bush March 23 said he intends to nominate former Bush-Cheney campaign policy advisor Timothy Adams to be under secretary of Treasury for international affairs. He served in White House during administration of President George H.W. Bush.

CHINA: State in March 22 Federal Register extended for another six months waiver of import sanctions that had been imposed on Chinese government in 2003 for missile proliferation activities.

D-TRADE: DDTC on March 28 will post on its website availability of DSP-5 form software for testing.

INDIA: U.S. drug industry praised India's enactment of new law March 23 to extend patent protection to drug products in compliance with WTO TRIPS Agreement. But industry trade group, PhRMA raised concerns about changes to bill before enactment that could bring measure into conflict with WTO obligations.

CUSTOMS: Cosmetic firm Estee Lauder has been selected as first importer to make transition from Focused Enforcement to Importer Self-Assessment, CBP announced March 24.

COTTON: Nearly eight months after WTO agreed to deal with African nations' complaints about developed-country subsidies for domestic cotton and barriers to imports, Doha Round agriculture subcommittee March 22 finally agreed on work program for negotiations. Goal of talks will be to eliminate distortions in cotton trade and to find development assistance for African producers. Any cotton deal will eventually become part of agriculture agreement in round.

**Mark Your Calendars: TWO UPCOMING WTTL AUDIO-CONFERENCE BRIEFINGS**

- **New BIS Encryption Regulations.** April 19, 2005 at 2:00 PM Eastern. Featuring: Norman LaCroix, BIS; Ben Flowe, Corcoran, Berliner and Rowe; and Edward Bond, IBM.
- **University-Industry Research and U.S. Export Controls.** May 10, 2005 at 2:00 PM Eastern. Featuring: Todd Willis, BIS ; Richard Pettler and Steven Brotherton, Fragomen, DelRey Bernsen & Loewy; Terence Murphy, MK Technology; and Rachel Claus, Stanford University.

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