

# 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 WILL APPLY THREE CRITERIA TO FOREIGN AVAILABILITY IN CHINA**

A task force that the Bureau of Industry and Security (BIS) is creating to review comments on the proposed China catch-all regulation will consider three factors in judging whether there is foreign availability for any of the 47 Export Control Classification Numbers (ECCNs) that will face new export controls under the proposal. "I've asked the group to look at comments from those three perspectives," Assistant Secretary for Export Administration Chris Padilla told the Washington International Trade Association Dec. 14. "We will then factor in what we are hearing from Europe and what I hear when I go to Asia next month, and we will then have a series of interagency meetings and there may be some changes as a result of that," he said.

The three factors are: (1) What is the commercial impact of that particular item; (2) What is the relative foreign availability of the item; and (3) What is the national security value of these items in terms of making a material contribution to a specific item that is controlled on the U.S. Munitions List or the International Munitions List, Padilla said (see **WTTL**, Dec. 4, page 2).

"I want to know for each item on the list the relative commercial impact based on what we received from companies so we can get a sense which are the really big ticket items and which ...don't have a big sales stream," Padilla explained. On foreign availability he said, "I want to have a ranking." Padilla said he is asking, "Do we have items where we've got credible information of availability in fact in China compared to the second tier of more general availability in other places or where we have no allegations?" The national security review will look at comments to determine whether "we may learn that some of [the 47 ECCNs] make a relatively greater contribution to specific military weapons systems than others," he said.

## **BUSH WILL HAVE TO SEEK NEW FAST-TRACK AUTHORITY, VERONEAU SAYS**

President Bush will need to seek new fast-track trade negotiating authority from Congress next year not just an extension of his current Trade Promotion Authority (TPA), says Deputy U.S. Trade Representative (USTR) John Veroneau. "It is clear that it is too late for a Doha agreement to be completed in time to be sent to Congress to be considered under the current TPA, so if there is going to be a DDA agreement to be considered by Congress, we'll need new TPA authority to do that," Veroneau told reporters in Geneva Dec. 12 (see **WTTL**, Nov. 13, page 1).

There has been speculation that Bush might ask Congress for a short-term extension of TPA if the Doha Round negotiations were to show significant progress in the spring and the conclusion of the round just needed a few more months to be completed. A similar step was taken in

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1993 when fast-track authority was about to lapse toward the end of the Uruguay Round. The current TPA law has built-in extension provisions, but “those processes don’t apply here, since this will not be technically a renewal of this current TPA authority,” Veroneau explained. “It would be a request for new TPA authority,” he continued. “It would simply be a decision by the President whether to make the request and when to make that request,” he said.

Veroneau’s comments responded to questions about the confusion in Geneva over the future of TPA and the impact its expiration would have on Doha talks. He said the president could also let the law lapse and come back with a new request for authority later. The president doesn’t need fast-track authority to conduct trade negotiations. The law only affects congressional procedures for voting on any legislation to implement a final agreement. It provides for Congress to vote up or down on the legislation without the opportunity to amend the measure.

Meanwhile, Senate Finance Committee Chairman Charles Grassley (R-Iowa) Dec. 4 said he will push for renewal of TPA in the next Congress. “I’m not optimistic that we’ll be successful in getting an extension,” he told members of the European Union Parliament. “Protectionist sentiments in Congress are growing,” he said, according to a copy of his comments. “On top of that, the new Democratic majorities in Congress could try to impose new conditions on Trade Promotion Authority that might be too extreme for me and others to accept,” he added.

## **COURT SAYS NAFTA CONSTITUTIONAL SUIT IS MOOT**

The D.C. U.S. Court of Appeals Dec. 12 refused to rule on the constitutionality of NAFTA’s binational dispute-settlement provisions, saying the Softwood Lumber Agreement (SLA) reached by the U.S. and Canada has made the case moot. The court said NAFTA had stripped U.S. courts of jurisdiction over binational panel rulings except in a narrow provision providing for declaratory or injunctive relief regarding a determination. “After the SLA, however, there is no determination left on which to hang our hat,” the court stated.

The Coalition for Fair Lumber Imports, some Canadian lumber firms and Ontario wanted the constitutional challenge to continue despite the SLA to resolved the constitutional question once and for all (see **WTTL**, Nov. 13, page 3). The coalition also wanted the binational panel process declared unconstitutional to deter Canada from terminating the SLA early. “We need not resolve this debate, however, as the SLA deprives us of statutory jurisdiction,” the court responded.

## **PADILLA WARNS UAE ON NEED FOR EXPORT CONTROL LAWS**

The failure of the United Arab Emirates (UAE) to impose export controls on goods and technology flowing through its ports could lead the Bureau of Industry and Security (BIS) to take steps to warn exporters of trading with the country, warns BIS Assistant Secretary Chris Padilla. “What we are seeing is an increasing number of items, including some controlled items, being diverted through the ports of Dubai and Abu Dabi, Dubai particularly, to Iran and Syria,” Padilla told the Washington International Trade Association Dec. 14.

“The time for action on the part of the UAE is running short,” he declared. “We are increasingly alarmed by the kinds of diversion that we are seeing and our message to the government of the UAE is that they really must take action and do so in the near term,” Padilla said. “If there continues to be this problem, we may have to consider steps beyond just doing technical assistance,” he added; saying, “I won’t speculate on what we would do.”

The U.S. has been in talks with the UAE authorities for several years but has made no headway in getting the Middle East nation to adopt export controls. BIS sources say the UAE has resisted U.S and European Union pressure because it wants to maintain its position as a global

free port. In addition, the federal structure of the UAE leaves much of the authority over trade to each of the individual emirates that make up the country, and the U.S. has been unable to get all the emirates to agree on a common export control policy.

### **WASSENAAR AGREED TO REVISE CONTROL LIST**

The annual plenary meeting of the Wassenaar Arrangement Dec. 5-6, as expected, revised the entire section on laser controls in the international dual-use control list to adopt the recommendations of its experts' working group (see **WTTL**, Oct. 30, page 2). The changes in Category 6 for sensors and lasers create new definitions and control parameters, including new measures for output wavelengths, wall-plug efficiency, and single and multiple transverse mode output.

Wassenaar also amended provisions on composite materials in Category 1; eliminated controls on certain contact lense production equipment in Category 2; added controls on certain lithography templates, revised controls on analogue-to-digital devices and dropped the CTP measurements in Category 3; modified radio equipment controls in Category 5; added a new entry on inertial measurement equipment in Category 7; added an entry on software for cooling gas turbines in Category 9, which was also renamed Aerospace and Propulsion. The group also agreed on a statement of understanding on controls for source code.

### **CHINA MAKES PROGRESS IN TRADE COMPLIANCE, BUT U.S. THREATENS ACTION**

Can't anyone write a report about China without using the words "nevertheless," "although" or "despite"? The latest report, released Dec. 11, from the USTR's office on China's compliance with its World Trade Organization (WTO) obligations says China has taken significant steps to comply with WTO rules in the five years since it joined the trade body. "Nevertheless," the 109-page report goes on to say, there are shortcomings in Beijing's protection of intellectual property rights, export subsidies, market access, discriminatory regulations, and local content requirements. If China doesn't do more to correct these measures, the U.S. "will not hesitate to employ the full range of enforcement tools available," the report declared.

The report came out just before a delegation of U.S. Cabinet officials, including Treasury Secretary Henry Paulson and USTR Susan Schwab, left for China for the first meeting of the Strategic Economic Dialogue Dec. 14-15. The U.S. officials spent most of the meeting hectoring the Chinese about the undervaluation of the Chinese currency and their failure to open their markets as promised. Chinese Vice Premier Wu Yi responded by recalling 5000 years of Chinese history and complaining that the U.S. doesn't appreciate the economic challenges China faces.

"We will each take measures to address global imbalances, notably through greater national savings in the United States and through increased domestic consumption and exchange rate flexibility in China, and maintaining open investment in both countries," Paulson told the closing session of the talks. "We have come to a number of consensus, although we remained different on some issues," Wu Yi told reporters after the meeting.

### **BIS FLOATS NEW "TRUSTED CUSTOMER" CONCEPT TO EASE EXPORTS**

BIS has started to use the term "trusted customer" as a substitute for the Verified End User (VEU) procedure it offered in the proposed China catch-all regulations. The VEU proposal has drawn broad criticism in industry comments on the China proposal for the extra burdens and liabilities it might impose on firms that seek to get the VEU designation (see **WTTL**, Dec. 4, page 2). BIS Assistant Secretary Chris Padilla referred to the trusted customer idea repeatedly in a presentation Dec. 14 to the Washington International Trade Association. Padilla said he discussed the idea with his European counterparts during a multi-country visit to Europe in

early December. Defending the VEU/trusted customer concept, Padilla told WITA that “it is likely that the trusted customer program will liberalize more U.S. exports than the military end-use controls will prohibit.” The idea is part of a broader BIS plan for giving exporters more information on who are the good or bad guys.

“European governments expressed considerable interest in the trusted customer concept,” he reported. “They asked whether foreign subsidiaries of European multinationals might be eligible, and wondered whether the concept would have applicability beyond China. My answer was yes on both counts,” he said. “I explained that Chinese subsidiaries of European firms could be good trusted customer candidates – just as Chinese subsidiaries of U.S. firms could be – provided that they have established records of using controlled technology responsibly,” he added. So far, BIS officials have said the VEU would only be applied to China and India.

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

ICE: Senate failed to act on President Bush’s nomination of Julie Myers to head ICE before it adjourn Sine Die Dec. 9. She has been serving in post under a recess appointment and Bush administration has determined she can stay in job under that appointment until end of first session of 110<sup>th</sup> Congress in December 2007.

INDIA: Legislation (H.R.5682) approved by Congress Dec. 8 to allow U.S. exports of nuclear equipment and technology to India will be implemented mostly by NRC and Energy Department, but BIS official says agency will likely change licensing policy for CCL items controlled for nuclear reasons to India to presumption of approval from presumption of denial.

VENEZUELA: Although BIS hasn’t suspended approval of export licenses for Venezuela as DDTC has, DAS Matt Borman Dec. 12 said current situation in country is being taken into account and crime control items are not likely to be approved because of concerns about political oppression.

OFAC: Compliance staff in 2007 plans to undertake regulatory audits of freight forwarders, exporters and importers to check on compliance with U.S. trade sanctions, agency officials report.

DOHA ROUND: Effort already being made to dampen speculation that some new breakthrough in talks might come when trade ministers meet during annual World Economic Forum in Davos, Switzerland, Jan. 24-28. WTO Director General Pascal is downplaying meeting, one trade ambassador in Geneva told WTTL. But another ambassador said he expects Davos to lead to start of substantive discussions. Diplomats in Geneva say they don’t expect Lamy to propose comprehensive draft Doha agreement as did Arthur Dunkel, late director general of GATT, after collapse of Uruguay Round.

TRADE FIGURES: U.S. goods exports in October surged 16.4% from October 2005 to \$88.5 billion, Commerce reported Dec. 12. Services exports of \$35.2 billion were up 7.8% from year ago. In comparison, goods imports rose only 3.4% to \$153.5 billion due to drop in oil prices. Services imports grew 8.6% to \$29 billion. U.S. goods exports to China in first 10 months of 2006 were up 34%, while imports from China rose only 17.6%. Goods exports to all of Asia through October were up 14.6%, while imports increased 12.3%.

STEEL: In “sunset” reviews, ITC Dec. 14 voted 6-0 that lifting CVD and antidumping orders on cut-to-length plate from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom would not lead to renewed injury to U.S. industry. By 4-2, it found injury unlikely to recur if orders ended on corrosion-resistant carbon steel from Australia, Canada, France, and Japan. All commissioners agreed that lifting orders on corrosion-resistant steel from Germany and Korea would likely renew injury (see **WTTL**, Oct. 23, page 3).

GOVERNMENT PROCUREMENT: WTO negotiators Dec. 8 reached provisional agreement on changes to 1994 Government Procurement Agreement to take into account new procurement practices, shorter time periods for bidding procedures, challenges to procurement decisions, and special and differential treatment for developing countries. They also agreed to develop arbitration procedures for resolving disputes. Tentative agreement will be presented to Doha Round negotiators for incorporation in any final trade package.

DEEMED EXPORTS: BIS’ Deemed Export Advisory Committee is looking for industry, academic and research witnesses for its Jan. 22 hearing in Santa Clara, Calif., BIS said in Dec. 11 Federal Register.

WAYS AND MEANS COMMITTEE: Democrats joining House panel in 2007 are: Reps. Earl Blumenauer (Ore.), Ron Kind (Wis.), Bill Pascrell (N.J.), Shelley Berkley (Nev.), Joe Crowley (N.Y.) Kendrick Meek (Fla.), Chris Van Hollen (Md.), Allyson Schwartz (Pa.), and Artur Davis (Ala.).

TRADE LEGISLATION: After **WTTL** went to press Dec. 8, House approved trade bill (H.R. 6404) on 212-184 vote, with 92 Democrats voting aye (see **WTTL**, Dec. 11, page 1). Senate cleared trade and tax measures together 79-9.

**EDITOR’S NOTE**: In keeping with our regular schedule, there will be no issue of *Washington Tariff & Trade Letter* on Dec. 25, 2006. Our next issue will be Jan. 1, 2007. Until then, we wish all our subscribers a HAPPY HOLIDAY and a HEALTHY AND PROSPEROUS NEW YEAR.