

Washington Tariff & Trade Letter[®]

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

Editor & Publisher: Samuel M. Gilston • P.O. Box 5325, Rockville, MD 20848-5325 • Phone: 301-570-4544 Fax 301-570-4545

Vol. 26, No. 43

October 30, 2006

PADILLA SEES LITTLE CHANGE LIKELY IN CHINA PROPOSAL

The final version of the proposed China catch-all regulation is not likely to be changed much from its original proposal but will include more details on how the new rules will be implemented, according to Bureau of Industry and Security (BIS) Assistant Secretary for Export Administration Chris Padilla. In an exclusive interview with WTTL, Padilla said he would not speculate on what the final rule would look like but emphasized that the proposal is based on a policy decision taken at the highest levels of the Bush administration.

“What I will say is the proposed rule derives from fundamental U.S. policy, and we have invited comments on how to implement this rule both in terms of the list of 47 and foreign availability and in terms of the definition of military end use and how to make the rule operate,” he said. “Based on where we’ve asked for input, you can understand that we put this forward for very good reasons that we’re convinced make sense,” he added.

“A lot of people ask me, where does this rule come from? Is this just bureaucracy on autopilot? And I want to address that because I was involved in this to some degree when I was at the State Department when this rule was considered at very senior levels interagency,” Padilla told WTTL. “I really want to emphasize that it does derive from broader U.S. foreign policy with China and particularly the military end use controls,” he said. “Essentially, it was driven by a concern about civilian technology undermining the arms embargo,” he explained.

Padilla stressed the potential value exporters will get from the Authorization Validated End User (VEU) proposed in the rules. “I understand some of you are skeptical. I understand that it is new and there are a lot of questions. But when you have a rare opportunity like this to streamline controls on a very controversial country like China, there are two ways to react. You can step back and dump all over it or you can dig in with us and try to figure out how to make it operate effectively,” he said. [Editor’s Note: An extended report on this interview with Padilla will appear in the November issue of our sister publication, *The Export Practitioner*. A copy of the issue will be sent to WTTL subscribers on request.]

DOHA ROUND TALKS AWAIT OUTCOME OF U.S. ELECTIONS

Like the characters in *Waiting for Godot*, trade diplomats in Geneva are awaiting the U.S. elections in the expectation that Washington will be able to make new offers after the political season to get the Doha Round restarted by the end of the year. A group of U.S. industry representatives visiting Geneva the week of Oct. 23 found ambassadors there expecting the U.S.

Copyright © 2006 Gilston-Kalin Communications, LLC. All rights reserved. Reproduction, copying, electronic retransmission or entry to database without written permission of the publisher is prohibited by law.

Published weekly 50 times a year except last week in August and December. Subscription in printed or electronic form is \$597 a year in U.S., Canada & Mexico; \$627 Overseas. Additional copies with full price subscription are \$75 each.
Circulation Manager: Elayne F. Gilston

to make a new offer on agriculture. "Many stressed that the United States will need to improve its offer on domestic support in agriculture," said Mary Irace, vice president of the National Foreign Trade Council, which sponsored the trip.

Irace said there is "quiet activity going on" among delegates to the WTO. In particular, a small group of countries, including Canada, Chile, Indonesia, New Zealand and Norway, have been trying to find a compromise that has eluded the G-6 made up of the U.S., European Union, Brazil, India, Australia and Japan. The talks will need "multiple sparks" to get restarted, Irace said.

WTO members are well aware of the expiration of President Bush's fast-track negotiating authority next year. They recognize that there has to be a breakthrough of some sort early next year to convince Congress to renew that authority, Irace noted. The U.S. executives on the trip tried to convince the ambassadors they met with that the business community still supports a successful conclusion of the round. They also emphasized that other countries will have to contribute to a breakthrough, including the European Union and advanced developing countries.

WASSENAAR SET TO REVISE EXPORT CONTROLS ON LASER PRODUCTS

At the next plenary meeting of the Wassenaar Arrangement in December, members are expected to approve the first comprehensive revision of export controls on laser products since the regime was created a dozen years ago. Most of the expected changes, which were recommended by an experts' group in September, will liberalize current controls on these items, according to industry representatives who worked with the Wassenaar group on the proposal.

The proposed new rules will shift the basis for laser controls to equipment performance rather than specific components. It will be based on "what comes out of the box, not what is in the box," said Breck Hitz, executive director of LEOMA, the laser industry's trade association. The new rules will "rollback" controls of fiber lasers, which didn't exist at the time Wassenaar was established. These controls will be based on "wall plug efficiency". But other changes will liberalize controls on non-linear optics and huge industrial lasers.

BHATIA TRIES TO CALM KOREAN CONCERNS ABOUT FTA

With Korean farmers rioting outside of the hotel where U.S. and Korean negotiators were holding talks the week of Oct. 23 on a free trade agreement, Deputy U.S. Trade Representative (USTR) Karan Bhatia was in Seoul trying to calm Korean concerns about the proposed deal. In emphasizing the benefits of a Korean-U.S. (KORUS) FTA, Bhatia acknowledged what critics of FTAs also point out: the U.S. trade deficit with FTA partners usually goes up after a deal is made. "From Chile to Singapore to Mexico, the history of our FTAs is that bilateral trade surpluses of our trading partners go up," he said in the prepared text of his Oct. 24 speech.

Bhatia tried to debunk myths about a proposed KORUS, including the charge of Korean farmers that the deal would be devastating to Korean agriculture. "No one is saying that immediate free trade in agriculture is a requirement for finalizing this agreement," he said. "Transition periods have been used in past FTAs to address sensitive products and would likely be employed here," he said.

Meanwhile, in the KORUS talks, the U.S. presented new three new offers in agriculture, textiles and industrial goods, providing for a quicker schedule of tariff cutting for Korean exports. The proposal would move nearly \$1 billion in industrial goods, most importantly in the auto parts sector, to the list of items having a shorter time frame for tariff elimination. In textiles, some \$1.3 billion in Korean goods would have tariffs lifted sooner and 60% of Korean farm exports also become duty-free sooner. At the end of the week, Assistant USTR Wendy Cutler, who is heading the U.S. side of the talks, told reporters that the U.S. and Korea made progress

in some key areas, but the U.S. was still not satisfied with Seoul's offer on agriculture. "It does not meet our expectations," she was quoted as saying in a Reuters wire story.

BIS SHUFFLES STAFFS TO BULK UP TECHNOLOGY EVALUATION OFFICE

BIS has decided to bulk up the newly created office of technology evaluation (OTE) by shifting to it staff from the office of strategic industries and economic security (SIES) and also giving it responsibility for overseeing the agency's technical advisory committees. The technology office, which is headed by Kevin Kurland, will soon have a staff of 11 and will handle Section 232 investigations, which determine whether imports are hurting a domestic industry that is vital to national security, foreign availability assessments and short-supply reviews.

Remaining in SIES will be responsibility for BIS participation in the Committee on Foreign Investment in the U.S. (CFIUS), offset reviews and Defense Production Act implementation. The technology office will work with the BIS enforcement staff and a newly created intelligence liaison staff to assess the effectiveness of export controls, their impact on U.S. industries, emerging technologies, and foreign government licensing procedures.

OTE plans to undertake studies to evaluate U.S. industry's capabilities to supply "mission-critical" defense microchips, the global state-of-the-art for semiconductor manufacturing equipment and the U.S. satellite industrial base. It also will examine industry practice of applying for licenses for larger quantities than are actually shipped under the license.

L-3 PAYS \$1.5 MILLION PENALTY BUT GETS TITAN EXPORT BAN LIFTED

L-3 Communications has picked up the tab for a \$1.5 million civil penalty for its successor liability for alleged violations of the International Traffic in Arms Regulations (ITAR) committed by Titan Corporation, which it acquired in 2005. As part of a consent agreement with the Directorate of Defense Trade Controls (DDTC), however, L-3 was successful in getting State to lift its 19-month-old bar to the approval of U.S. Munitions List (USML) exports for Titan.

Based on a voluntary self-disclosure by L-3, DDTC charged the company with violating ITAR Part 130, a rarely cited violation of a requirement to notify DDTC about defense procurement commissions that exceed \$100,000. As part of its due diligence audit of Titan after its acquisition, L-3 uncovered three sales for which Titan had obtain licenses but had failed to report the commissions. These involved defense sales in France, Japan and Sri Lanka.

"This settlement agreement is the result of L-3's cooperation with the State Department," an L-3 spokeswoman said. "The Agreement relates to export-related activities by L-3's Titan subsidiary that occurred prior to its acquisition by L-3 in July of 2005, and that were voluntarily disclosed to the State Department following an internal audit. L-3 is pleased to have fully resolved this issue in a way that reaffirms our commitment to export compliance," she added.

As part of the settlement, L-3 will pay a \$1 million civil penalty and to spend \$500,000 over three years in remedial compliance measures. The company also agreed to hire an outside individual or firm to serve as a consultant to examine and provide recommendations to improve the company's Part 130 policies and procedures. L-3 also will hire an outside firm to audit its Part 130 policies and implementation of the consent agreement. State had declared Titan ineligible for USML licenses after the company was convicted in March 2005 of violating the Foreign Corrupt Practices Act. In that case, Titan paid \$28.4 million in criminal fine and disgorgement for bribing officials in the African country of Benin. It also agreed to implement an SEC-drafted FCPA compliance program (see **WTTL**, March 7, 2005, page 3). In the new agreement with DDTC, State said debarment "is not appropriate at this time in view of its [L-3] acknowledgment of the seriousness of the violations...its efforts to date to strengthen its

compliance program as it applies to Titan and its agreement to take additional significant remedial actions.” It said “for the same reason, the department has further determined to terminate its policy of denying applications for licenses” for Titan.

DROP IN MARKET SHARE FOR NIGHT VISION EXPORTS SURPRISES BIS OFFICIALS

The U.S. thermal imaging industry is doing worse in international competition than a BIS study of the industrial initially calculated. After being instructed by agency officials to recalculate the U.S. share of global exports for imaging and sensor products, BIS staffers found the share dropped to 4% in 2005 from 10% in 2001. The final report, which was just released, includes an old chart claiming the share had risen to 10.8% from 10.5% (see **WTTL**, Sept. 4, page 1).

With export controls on uncooled infrared imaging cameras identified as the main obstacle to exporting, BIS is seeking interagency approval to ease Regional Stability (RS) controls on exports to NATO members and Japan. The proposal reportedly has drawn objections from the Army Night Vision Laboratory.

The decline in uncooled camera exports has gotten the attention of BIS officials. “This is a significant and disturbing anomaly,” BIS Assistant Secretary Chris Padilla told **WTTL**. “Clearly, there is something going on in this industry that we need to take a look at, there is some external factor that is causing this. Industry has argued that it’s export controls. This study informs our policy discussion that we are going to have with the other agencies,” Padilla said. “My sense of the concerns of other agencies is with onward sales, reexports, particularly to the Middle East. That is something we need to look at,” he explained.

* * * BRIEFS * * *

DEEMED EXPORTS: Preview of *Mastering Deemed Exports* training video, produced by our sister publication, *The Export Practitioner*, can now be seen on its website: www.deemedexports.com.

HUMVEE EXPORTS: Ex-DoD employee was sentenced to 18 months in jail Oct. 24 for sale of surplus militarized Humvees to customer in Saudi Arabia without approved license from DDTC. Ronald Wiseman, who worked for Defense Reutilization and Marketing Service (DRMS), pled guilty in May to charge of conspiracy in the D.C. U.S. District Court. He also pled guilty to charge of conspiracy to steal government equipment in Beaumont, Texas, U.S. District Court and faces additional sentencing in that court. Co-conspirator, Gayden Woodson, has also pled guilty to related charges and is awaiting sentencing.

THAILAND: DDTC Oct. 26 said “there is no arms embargo on Thailand.” It said U.S. “continues to review all proposed arms transfers and sales to Thailand on a case-by-case basis. Exports that support the foreign policy and national security goals of the United States will be approved. Already approved export authorizations and exports under ITAR exemptions continue to be allowed” (see **WTTL**, Sept. 25, page 1).

CUBA: In Oct. 23 Federal Register, BIS requested comments on effectiveness of licensing procedures for agriculture exports to Cuba to help it prepare biennial report to Congress on operation of TSRA statute.

DEFENSE SURPLUS: Defense Logistics Agency proposed new rules in Oct. 25 Federal Register to establish new Qualified Trading Partner designation for parties that will be eligible to buy and export surplus defense items subject to ITAR and EAR controls. Applicants for QTP would have to demonstrate compliance with export controls, including having export control management system in place, and be subject to assessment of their export control compliance.

BONDING: CBP in Oct. 24 Federal Register proposed new rules to designate certain imports that are subject to antidumping or CVD orders as Special Category Merchandise that would require continuous bonding. New rules stem from concerns about default and insufficient bonds.

NME: ITA in Oct. 19 Federal Register established new rule creating “rebuttable presumption that market economy input prices are the best available information for valuing an entire input when the total volume of the input purchased from all market economy sources during the period of investigation or review exceeds 33 percent of the total volume of the input purchased from all sources during the period.”