

# 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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## EXPORTER GOING TO JAIL FOR EXPORT CONTROL VIOLATIONS

William Kovacs, the former owner of Elatec Technology Corp. of Boxford, Mass., was sentenced Oct. 4 to one year and one day in jail on a criminal charge of conspiracy to violate the Export Administration Regulations (EAR). Kovacs had pled guilty in 2004 to a one-count indictment charging him with the unlicensed export in 1999 of a hot press industrial furnace to China's Beijing Research Institute of Material and Technology (BIMT).

An Elatec employee, Stephen Midgley, reached a separate civil settlement agreement with the Bureau of Industry and Security in January 2005 for his role in the filing of a false Shipper's Export Declaration (SED) for the equipment (see **WTTL**, Feb. 21, 2005, page 4). BIS fined him \$5,000 but agreed to waive \$4,000 of the fine as long as he stayed in compliance with U.S. export controls. Elatec also pled guilty in the case but is in Chapter 7 bankruptcy proceedings.

According to the government, Elatec submitted an export license to BIS in 1998 for the export of a Pressvac furnace valued at \$324,000 to BIMT, with China Great Wall Industry Corp. listed as consignee. Based a Defense recommendation, BIS denied the application, telling Elatec "the proposed export could make a material contribution to the proliferation of missiles," a Justice statement noted. After receiving the denial in March 1999, Kovacs and China Trading Co. agreed to a plan to ship the furnace to China under a different name and supposedly to a different customer, which in fact was still BIMT. Kovacs also arranged to have the SED for the shipment identify the item as eligible for License Exception NLR (No License Required).

After BIS began its investigation of the export, "Kovacs caused Elatec employees to create false documentation and instructed an Elatec employee to testify falsely before a grand jury," Justice said. The government said Kovacs agreed to cooperate with the investigation as part of his plea agreement. It also noted that in handing out the jail sentence, D.C. U.S. District Court Judge Richard Leon took that cooperation into consideration but also said he was "focusing on the seriousness of the offense and the need to deter future offenders." [**Editor's Note:** Copy of the Kovacs indictment and plea agreement will be sent to subscribers on request.]

## DEEMED EXPORT ADVISORS FACE TOUGH BALANCING ACT

The first meeting of the Bureau of Industry and Security's (BIS) Deemed Export Advisory Committee (DEAC) Oct. 12 revealed a group of experts who are as puzzled about how to balance national security and academic freedom as the government officials who asked for their advice. Speaking to reporters, DEAC Co-Chairman Norman Augustine, retired CEO of Lockheed

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Martin, agreed that the committee would be going over “a well-plowed field” that has already been the subject of several reports and hundreds of comments from the academic and business communities. “I doubt we will come up with any totally new ideas,” he said. The committee’s other co-chairman, Robert Gates, who is president of Texas A& M and a former CIA director, agreed. “One of the contributions we can make at the end of this may not be some intellectually creative approach but may be perhaps some suggestions on bringing greater clarity to what people are supposed to be doing and also make suggestions on that balance,” Gates said. He also noted that thousands of companies and their researchers “need something people understand and that works and doesn’t end up hurting the United States.”

Gates, who appears likely to play the key role in leading the direction of the DEAC, said the committee hopes to hold at least three public meetings outside of Washington, including sessions at one major research university, one major high-tech company and one at a federal research lab. No decision has been made on which venues will be selected, he said. With Commerce funding, the committee will be hiring a consultant to handle the administrative work for its one-year assignment and to write its final report.

Augustine and Gates said they understand the important role foreign nationals play in U.S. science and technology. Augustine also said it was important to focus on what technologies were controlled. “There is a strategic issue that underlies everything that we do and that is: the world is catching up with us,” he said. “The mere fact that we deny something to one individual or country doesn’t mean they won’t have access to it,” he added.

Neither would rule out the possibility that the committee might recommend a change in the Reagan-era National Security Directive (NSD-189) which established the government’s policy of not controlling fundamental research conducted at academic institutions. Both said it was too early in their work to say what, if any change, is needed. Gates acknowledged that universities would like to see that policy reaffirmed. “I come from a university so I have an interest in protecting the role of universities in scientific research,” Gates said. “We’re clearly going to be very focused on how to protect the openness and freedom of scientific inquiry in the university setting. That is a very important issue,” he added.

## **LAMY SEES NO CHANGES IN POSITIONS IN DOHA TALKS**

Three months after suspension of World Trade Organization (WTO) Doha Round negotiations, WTO Director General Pascal Lamy told the WTO General Council Oct. 10 that he has found no change in negotiating positions among members. “We can only resume when substantive positions have changed on key problem issues, in particular in the key area of Agriculture which holds the key to unlocking the rest of the agenda. No visible indications of flexibilities until now,” he said. “Unless and until it happens, we will remain deadlocked,” Lamy added.

The window of opportunity to get the talks started again is limited, he indicated. “If we are to have a chance of finishing in 2007, the space to move is somewhere between November and springtime, which appears to be the latest time to get the breakthrough we need,” Lamy said. He cautioned, however, that “resuming makes no sense if nothing has changed since July.”

## **FINAL LUMBER DEAL CIRCUMVENTS OPPOSITION OF CANADIAN PRODUCERS**

Unable to get the needed support of Canadian lumber producers to terminate all litigation, the U.S. and Canada agreed to get around the opposition by modifying the Softwood Lumber Agreement (SLA), or Lumber IV, to drop most of its preconditions and implement the deal anyway. Commerce’s International Trade Administration late on Oct. 12 formally revoked the original antidumping and countervailing duty (CVD) orders on softwood lumber from Canada along with all administrative reviews. At the same time, Ottawa issued new rules imposing a 15% tax

on all lumber exports covered by the agreement starting Oct. 12. The revocations of the orders supposedly makes all remaining litigation moot. Washington and Ottawa have filed a joint motion with the Court of International Trade (CIT) stipulating to the dismissal of all claims by the Canadian government against the lumber orders in a consolidate CIT case now known as *Government of Canada v. United States et.al.* (Court No. 05-0033). Most – but not all– Canadian industry parties signed a revised Annex 2A to the SLA, agreeing to the termination of the case. An industry source told WTTL that the U.S. Coalition for Fair Lumber Imports intends to end its separate constitutional challenge of the NAFTA binational dispute settlement process in the next days or weeks.

The agreement to revise the SLA was announced after WTTL went to press on Oct. 6 (see **WTTL**, Oct. 9, page 1). Complaints about the agreement among many Canadian lumber firms reportedly has not subsided, but some lawyers representing these firms say there is little they can do to block it now. The Canadian government is going ahead with its plan for accepting assignment of the tariff refunds and paying cooperating Canadian producers their share of the money.

Because there is no authority under U.S. antidumping or CVD laws to enter into the SLA, ITA used its general settlement authority to end the CIT litigation. In its Federal Register notice announcing the revocations of the orders, the agency said it will instruct Customs to stop collecting duties on Canadian lumber as of Oct. 12 and to refund all tariff deposits collected since May 2002 with accrued interest. ITA used this same authority to settle litigation in the agreement earlier in 2006 to resolve the long-running dispute with Mexico over cement.

Meanwhile, USTR Susan Schwab identified the “meritorious initiatives” that will receive \$450 million of non-refunded lumber deposits. The United States Endowment for Forestry and Communities will get \$200 million and the American Forest Foundation, \$150 million for endowments. Habitat for Humanity International will receive \$100 million for a revolving loan fund to buy lumber for low-income housing.

## **GSP LEGISLATION MAY FAIL TO GET ENACTED IN LAME-DUCK SESSION**

A last-ditch effort will be made to renew the Generalized System of Preferences (GSP) law when Congress returns for a lame-duck session after the November elections, but opposition to its renewal in the Senate might block action before the system expires at the end of the year. If a bill to renew GSP for the long-term can't get passed, lawmakers may be asked to approve a short-term extension to allow the legislation to be considered when a new Congress convenes next January. In the past when GSP has expired, Congress has renewed it retroactively and authorized Customs to refund any tariff deposits made during the program's lapse.

House Ways and Means Committee Chairman Bill Thomas (R-Calif.), with the support of Ranking Member Charles Rangel (D-N.Y.), will push for House passage of his proposed extension and modification of the GSP program (H.R. 6142). In addition to extending GSP, the measure would grant new trade preferences for Haiti and extend third-country fabric rules under the Africa Growth and Opportunity Act (AGOA)(see **WTTL**, Sept. 25, page 3).

In the Senate, however, Finance Committee Chairman Charles Grassley (R-Iowa) still hasn't shown any interest in backing away from his opposition to any renewal of the program. Grassley sees denial of GSP as a way to gain leverage in Doha Round negotiations.

Grassley's opposition is supported by Senate Agriculture Committee Chairman Saxby Chambliss (R-Ga.). In a Sept. 19 letter to USTR Susan Schwab, Chambliss said the USTR's current examination of the GSP program should revise the criteria for eligibility to exclude Brazil and India. “I believe the program should not reward governments who threaten litigation against the United States, work against our negotiations in the WTO towards a more open liberalized trade environment, and disregard the intellectual property rights of U.S. companies,” he wrote.

**BUSINESS COMMUNITY SEES SENATE SUPPORT FOR TRADE SLIPPING**

A biennial report card on how members of Congress have voted on key trade legislation of importance to the business community shows support for trade dropping among several leading Democratic members of the Senate. Senators who supported trade bills in the past voted against these measures in the last year perhaps because of their presidential aspirations, according to the National Foreign Trade Council (NFTC), which issues the scorecard at the end of each session of Congress. Former pro-trade Democrats who voted against trade bills in the 109<sup>th</sup> Congress included Sens. Evan Bayh (Ind.), Chris Dodd (Conn.) and Dick Durban (Ill.). “Trade looks to be caught up in politics,” said Jake Colvin, director of NFTC’s USA-Engage.

Colvin also noted that “tension in the House” between Democrats and Republican leaders, particularly Ways and Means Committee Chairman Bill Thomas (R-Calif.), contributed to the low Democratic support for trade bills in the House. The NFTC report card gives all lawmakers grades on their trade votes from A+ to F. Only two senators, Chuck Hagel (R-Neb.) and Richard Lugar (R-Ind.) got A+ grades. In the House, only one Republican, Rep. Jeff Flake (R-Ariz.), and one Democrat, Rep. Vic Snyder (D-Ark.), got that grade.

NFTC is watching the upcoming election to see how Democrats who voted for the DR-CAFTA free pact, the so-called CAFTA-15, do. Labor unions had vowed to oppose their reelection, but so far these lawmakers seem to be winning reelection, and labor opposition has cooled as the chances for a Democratic takeover of the House have increased.

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

D-TRADE: “On October 12, the ELLIE system will no longer be available for submission of DSP-5s, DSP-61s, and DSP-73s,” DDTC said on its website. DSP-119 feature will continue to be available for amending licenses, it said (see **WTTL**, Sept. 25, page 4).

CAROUSEL LAW: CIT Judge Judith Barzilay Oct. 10 dismissed (Slip Op. 06-149) suit seeking to force USTR to rotate targets of retaliatory tariffs against EU exports as part of retaliation for EU’s ban on imports of U.S. hormone-treated beef. After remand from Court of Appeals for Federal Circuit, USTR got letters from U.S. cattle industry saying rotation wasn’t needed (see **WTTL**, July 10, page 4).

PERU: President Bush and Peruvian President Alan Garcia discussed legislation to implement U.S.-Peru FTA during Garcia’s visit to White House Oct. 10. “I assured the president that I will work with Congress as soon as possible to get this agreement passed,” Bush told reporters. But legislation faces uphill battle when Congress returns for lame-duck session after election, business community sources say.

OFAC: Koch Foods of Chattanooga, Tenn., has agreed to pay \$43,947.50 civil fine to settle OFAC charges that it shipped frozen poultry to Iraq in 2002 without approved license.

AIRBUS: U.S. has asked WTO to suspend its second complaint against new subsidies Airbus is allegedly receiving from EU until dispute-settlement panel hearing its first complaint issues its report. Panel has said report won’t come until 2007. “This will allow the second panel to benefit from the findings in the first case, which has almost the same subject matter,” said USTR spokesperson Gretchen Hamel.

TRADE FIGURES: Goods exports in August surged 15% to record \$88 billion compared to August 2005. Goods imports jumped 16.3% to record \$163.5 billion. Services exports rose 8.4% to \$34.4 billion, as services imports increased 10% to \$28.8 billion.

GOVERNMENT PROCUREMENT: U.S. and EU have submitted joint proposal to WTO Government Procurement Committee on ways to amend current WTO Government Procurement Agreement.

CHINA: In Beijing Oct. 13, Chinese Premier Wen Jiabao and South Korean President Roh Moo-hyun said China and Korea agreed to start talks on free trade agreement “as soon as possible,” Chinese announced.

MAGNESIUM: NAFTA Binational Panel Oct. 6 rejected second remand determination from ITC in “sunset” review of antidumping and CVD orders on magnesium from Canada. Panel said it attempted to review ITC evidence supporting determination. “In short, there is no such evidence,” panel declared.