

# 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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## **BIS INTERNET CONNECTION SHUT DOWN DUE CHINESE HACKERS**

An informal, nonstatistical survey of exporters and trade lawyers has found that the interruption of Internet service at the Bureau of Industry and Security (BIS) has not had a significant impact on the export licensing process. BIS licensing officers have been restricted in using the Internet since mid-July when the agency discovered that hackers operating through a Chinese internet service provider have been trying to get access to the bureau's computer system. The break-in to the BIS systems was first reported in the Washington Post on Oct. 6.

Commerce spokesman Richard Mills confirmed that the department's information technology system detected the hacking and took immediate steps to prevent any further access. "We have no evidence that any BIS data has been lost or compromised," he said.

Without Internet access, licensing officers have had to fall back on Twentieth Century technology to communicate with applicants, using the phone and faxes to obtain information on cases. Limited access to the Internet has been gained through stand-alone computers that aren't hooked into the Commerce system. There are also anecdotal stories that some reviewers are communicating with applicants through their computers at home. In addition to limiting e-mail messages, the lack of Internet service has restricted the ability of BISers to do web searches when seeking information on applicants, their products and their overseas customers.

"We've not seen an unusual slowdown" in licensing, one trade lawyer with an extensive export licensing practice told WTTL. "We're sending more by fax that we used to send by e-mail," he said. E-mails that have Adobe PDF files attached appear to have a better chance of getting to licensing officers through the still-operating BIS system than documents in Word, he reported. The export manager for one major exporter told WTTL that he has "not seen any impact" from the Internet problem. "It's just changed the way we communicate with BIS," he said.

Commerce sources say BIS is still accepting licenses electronically because that system is not affected by the hacking. They also claim there has been no impact on the licensing process or review times. In response to questions about whether BIS had a firewall on its Internet connection, one source would only say Commerce "has robust security procedures in place."

## **SOFTWOOD LUMBER DEAL FACES MORE DELAYS, POSSIBLE COLLAPSE**

The U.S.-Canada Softwood Lumber Agreement (SLA) not only faces further delays beyond Nov.1, but sources close to Canadian producers warn that the entire deal might collapse

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because of the inability of the Canadian government to meet its side of the agreement. The U.S. and Canada agreed on Sept. 29 to extend the implementation of the deal to Nov. 1 from Oct. 1 in response to a request from Canadian firms “to allow them more time to complete the complex but necessary paperwork required on both sides of the border,” Canadian Trade Minister David Emerson said. But sources say the problem isn’t just paperwork.

Even though the Canadian parliament voted to support the SLA, it has not yet enacted a government sponsored bill (C. 24) to implement the border tax and fees that are needed to implement the agreement. A committee hearing on the bill is expected the week of Oct. 16. Opposition has arisen to the specifics of the measure because it imposes the border tax but doesn’t include the mechanism for refunding antidumping and countervailing duty deposits to lumber companies.

Ottawa is also facing resistance from Canadian firms that are refusing to terminate lumber-related litigation – a key prerequisite for the SLA. At least one Canadian lumber firm reportedly has balked at dropping its Chapter 11 investment suit against the U.S. and 40 companies have objected to demands to end their suit in the Court of International Trade (CIT) over Washington’s use of Section 129 of U.S. trade law to keep the import duties in place. The U.S. reportedly has demanded that all parties agree to terminate the cases “with prejudice”, which would bar the previous victories in the suits from being used as precedent if the SLA ends and litigation resumes (see **WTTL**, Sept. 25, page 3).

Because of the recent sharp drop in lumber prices due to the U.S. housing slump, the trigger-price mechanism of the SLA will require a 15% export tax on Canadian lumber as soon as the deal goes into effect. In addition, the Canadian implementing legislation would impose a 19% tax on lumber producers to pay for the refund mechanism Ottawa plans to establish. Some Canadian producers see this combined 34% tax on lumber as a significant cut in their share of U.S. tariffs that they were supposed to receive under the SLA, sources say.

Meanwhile, the U.S. Coalition for Fair Lumber Imports has complained about the delayed implementation of the deal and a jump in imports from Canada. “Reports are unanimous that Canadian lumber producers have been shipping extraordinary volumes into a weak market in the United States in anticipation of implementation,” the Coalition said in a statement. Political pressure to get the deal implemented has come from Sen. Max Baucus (D-Mont.). He wrote to U.S. Trade Representative (USTR) Susan Schwab Oct. 4, urging her to take immediate action to get the SLA implemented to prevent the injury the U.S. industry is starting to suffer. Baucus also called on her to get Customs and Border Protection to issue promised regulations to monitor lumber imports from Canada.

## **INDUSTRY SEEKS END TO “INSTALLED BASE” RULES FOR LIBYA**

While U.S. exporters have applauded the Bureau of Industry and Security’s (BIS) for lifting antiterrorism control on Libya, they want the agency to end the rules that require them to report when they find controlled items in Libya that were exported during the U.S. embargo of the country. When BIS amended its Libya regulation Aug. 31, it emphasized that the “installed based” rules still apply (see **WTTL**, Sept. 4, page 2). Exporters say compliance with the installed base rule will get even more difficult as time goes by and the stock of U.S. goods in Libya increases with the end of the trade embargo and it becomes more difficult to determine what was shipped before or after restrictions were lifted.

The installed base rule was intended to clarify how BIS would enforce General Prohibition Ten of the Export Administration Regulations (EAR), which bar an exporter from maintaining, servicing or replacing parts for any item that was illegally exported. Since the resumption of trade relations with Libya, exporters have been finding items that were exported to the country during the 20-year U.S. embargo. The installed base rule allows activities related to these items as long as exporters report their discoveries to BIS. “Our experience with the installed base provisions have shown that due diligence required in order to benefit from the reporting

requirement has proven to be a significant burden for our members because the U.S. embargo on Libya spanned 20 years,” wrote the National Foreign Trade Council and the Coalition for Employment Through Exports in joint comments submitted to BIS on the revised Libyan rules.

These due diligence investigations are difficult because many of the items found in Libya are standard commercial products and companies can’t always determine their U.S. content. Moreover, many of the records are older than the five-year period for records’ retention. “With incomplete information on the circumstances of the original transaction, it is virtually impossible to determine with any degree of certainty how an installed base incident occurred,” they wrote.

The two associations urged BIS to adopt the same approach it used in 1990 when East Germany was reunited with West Germany and old Cold War controls were dropped. Back then, Commerce allowed exporters to repair or upgrade equipment found in East Germany as long as the item was otherwise eligible for what was then called General License GDR. A similar waiver for Libya would allow U.S. exporters to do the same in Libya “regardless of the circumstances of the original transaction, provided that the original equipment and the goods proposed for export or reexport are EAR99 items or Commerce Control List (CCL) items that are authorized for export or reexport under a license exception to Libya,” the associations suggested.

## **BIS SETTLES FOUR ANTIBOYCOTT VIOLATION CASES**

Ah, fall, when the leaves turn to gold and the BIS Office of Antiboycott Compliance (OAC) issues its annual batch of administrative settlements. In a burst of activity, OAC released four settlement agreements the week of Oct. 2, all of which included charges of failing to report requests from Middle Eastern customers for boycott-related information.

Two cases stemmed from voluntary disclosures. Sumitomo Corporation of America revealed to BIS that it had provided information on the origin of one shipment to a customer in Oman and had failed to report the request. In its settlement with BIS, it agreed to pay a \$3,000 civil fine.

Ayman, LLC of Bethesda, Md., also filed a self disclosure on its provision of eight pieces of information to a customer in Syria. BIS charged it with eight violations for providing that information and one charge for failing to report the request. Ayman was fined \$17,000. J.E. Hogan Forwarders, Inc., of Woodlawn, N.Y., agreed to pay a civil fine of \$4,400 for allegedly failing to file four reports on requests for boycott information. D&S Exports, Inc., of Norwalk, Conn., reach a settlement with BIS on six charges of failing to report boycott requests and agreed to pay a \$7,800 civil fine.

## **EXPORTS OF CATTLE PRODS DRAW CRIMINAL AND CIVIL FINES**

Springer Magrath Company of McCook, Neb., has agreed to pay civil and criminal fines in settlements with the government for the export of electric cattle prods to several countries without approved export licenses. Exports of these products are restricted under the crime-control provisions of the Export Administration Regulations (EAR).

In its agreement with BIS, the company agreed to pay a \$451,000 civil fine and to be denied export licensing privileges for three year. The BIS Charging Letter claimed that on 18 occasions the firm exported cattle prods and components subject to Export Control Classification Number (ECCN) 0A985 without licenses to customers in Ireland, South Africa and Mexico. BIS also charged it with making a false statement to BIS investigators.

In a plea agreement with the U.S. Attorney in Omaha, Neb., Springer Magrath pleaded guilty Sept. 7 to one count of exporting cattle prods to South Africa without a license. It was

sentenced to pay a criminal fine of \$50,000 and placed on probation for three years. The company was also ordered to pay a \$400 special assessment.

## STATE REVISES ITAR TO EASE EXPORTS TO HAITI

After implementing a new export licensing policy for Haiti informally, State's Directorate of Defense Trade Controls (DDTC) officially amended the International Traffic in Arms Regulations (ITAR) in the October 4, Federal Register to lift partially the arms embargo on Haiti (see **WTTL**, Sept. 25, page 4). The revised rules will permit certain exports to the government of Haiti and authorized United Nations missions.

Effective on publication, the new policy allows exports of personal protective clothing, including flak jackets and helmets, for use by personnel from the United Nations and other international organizations, representatives of the media, and development workers and associated personnel. Licenses will be reviewed on a case-by-case basis, DDTC said. For all other trade, DDTC said "it is the policy of the United States to deny licenses, other approvals, exports or imports of defense articles and defense services, destined for or originating in Haiti."

### \* \* \* BRIEFS \* \* \*

**CONFIRMATIONS:** Before Senate recessed for elections Sept. 30 it confirmed Chris Padilla to be new BIS Assistant Secretary for Export Administration, John Veroneau to be Deputy USTR, and Bijan Rafiekian to be member of Ex-Im Board.

**CHINA:** House Ways and Means Committee Chairman Bill Thomas (R-Calif.) asked ITC Oct. 2 to conduct study of U.S.-China trade and investment relations.

**CIT:** Court of International Trade will hold 14<sup>th</sup> Judicial Conference in New York Nov. 6, 2006. Details available on court's website at [www.cit.uscourts.gov](http://www.cit.uscourts.gov).

**COLOMBIA:** National Farm Bureau Federation board voted Oct. 4 to endorse U.S.-Colombia FTA (US/CFTA). Separately, reports from USTR industry advisory committees provided mixed opinions on pact, which President Bush said he intends to sign by end of November after sending notice to Congress in August (see **WTTL**, Sept. 4, page 4). US/CFTA received strong endorsement from Advisory Committee on Trade Policy and Negotiations (ACTPN) and most sectoral committees. As expected, textile and apparel advisory committee had mixed views, as did trade and environment advisors and intergovernmental committee representing state and local governments. Main concerns mentioned involved state-investor dispute settlement, government procurement, services trade and impact of intellectual property rights on availability of medicines. Labor advisory committee, which was authorized in May, complained that its membership wasn't appointed in time to review agreement.

**EXPORT ENFORCEMENT:** UTi United States of Beverly, Mass., U.S. subsidiary of global freight forwarder and logistics firm UTi, has reached two agreements with BIS to settle charges related to missing or false entry of the Employer Identification Numbers on SEDs. It agreed to pay \$76,500 civil fine.

**MORE EXPORT ENFORCEMENT:** Cerac, Inc., of Milwaukee, Wis., agreed to pay \$297,000 civil fine to settle BIS charges that it exported various inorganic chemicals to customers in Israel, India, Taiwan, Thailand and China without approved licenses. Company had received warning letters from BIS in 1992 and 1996 for previous violations, BIS noted in its Charging Letter. Cerac, "had several years of experience in the export licensing process," BIS stated.

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Produced by our sister publication, *The Export Practitioner* and partner Spark Media, Inc., *Mastering Deemed Exports* is a training video specially designed to help exporters train all employees on the risks of failing to comply with BIS Deemed Export regulations and what they have to do to ensure compliance with these complex requirements.

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