

# 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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Vol. 26, No. 38

September 25, 2006

## STATE SUSPENDS USML LICENSES FOR THAILAND

State's Directorate of Defense Trade Controls (DDTC) has stopped approving U.S. Munitions List (USML) licenses for Thailand in the wake of the military coup that toppled the Thai government Sept. 19. "We have informally put a hold on all new authorizations waiting for foreign policy guidance from the White House," Deputy Assistant Secretary of State Greg Suchan told the Defense Trade Advisory Group (DTAG) Sept. 21. Even if licensing resumes, State "may be taking a more prophylactic view toward arms transfers to Thailand," he said. Suchan emphasized that no final decision has been made on future Thailand licensing. The suspension may be shortlived depending on U.S. policies toward the new government.

Separately a State spokesperson said the U.S. was "extremely disappointed" by the coup and called for early new elections, but no additional policy guidance has been given. State's deputy spokesman Tom Casey told reporters Sept. 21 that the department is reviewing foreign assistance and military aid given to Thailand to determine if that funding can continue in light of a statutory prohibition on aid to countries that have been the target of a coup.

"We are undertaking a review of U.S. government programs to determine what constitutes -- or which direct assistance to the government of Thailand falls under these categories and whether there might be additional relevant programs as well," Casey said. The U.S. provides only \$14 million in foreign aid to Thailand. State approves about \$1 billion annually in defense exports.

## MINISTERS CALL FOR RESUMING DOHA TALKS THIS YEAR

Trade and finance ministers attending annual meetings called for the resumption of Doha Round talks by the end of the year, but it is still hard to separate the rhetoric from the real thing. Finance ministers at the annual meeting of the International Monetary Fund (IMF) in Singapore expressed their "deep disappointment" that the talks were suspended. Their Sept. 17 communique called for "leadership from the major trading nations to work urgently toward an early resumption of the negotiations, and an ambitious, successful outcome by the end of the year."

Trade and agriculture ministers attending the meeting of the Cairns Group in Australia issued a similar call in their Sept. 21 communique. "We are determined to do all that we can to facilitate convergence and an early return to the negotiating table," said the group, which comprises 18 agriculture exporting nations, including several, such as Brazil and South Africa, that belong to the so-called G-20. "To this end, WTO Members should assess prospects for resumption and take the necessary steps to resume negotiations no later than November," the Cairns group

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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

said. "We have instructed our officials in Geneva to embark immediately on the attached work program in the Cairns Group across each of the pillars, with a view to preparing the Group's contributions to resumed negotiations," it added.

U.S. Trade Representative (USTR) Susan Schwab, who attended the meeting in Cairns, Australia, told reporters afterward that "The exercise here in the last two days has been exactly the kind of dialog that it's going to take to get us back to the table for more formal negotiations." She repeated her recognition that the G-6, comprising the U.S., European Union, Brazil, India, Australia and Japan, had failed to produce the compromise for which many had hoped.

"What it's going to take is small groups, affinity groups like Cairns Group, bilaterals, small groups of countries that are open-minded about negotiating about this agreement to come together very quietly and to share what-ifs, to exchange what-ifs, the kind of stretching that we all know we need to do if this agreement is going to come together," she said. Schwab will hold talks in Washington the week of Sept. 25 with EU Trade Commissioner Peter Mandelson.

### **ONLY TWO COMMENTS ON BIS ANTIBOYCOTT PENALTY GUIDANCE**

The Bureau of Industry and Security (BIS) received only two comments on its proposed penalty guidance for the enforcement of its antiboycott regulations, but BIS officials say they intend to adopt some of the suggested changes those comments offered (see **WTTL**, July 3, page 3). General Electric urged BIS to develop a system to allow electronic filing of antiboycott reports. It also said the Office of Antiboycott Compliance (OAC) should update its guidance on how firms with worldwide operations and numerous divisions should submit reports, especially regarding the reporting number given to each company.

"Complying with OAC rules, and in particular investigating, compiling and filing a voluntary disclosure, is a significant cost for large global companies," GE said. The time and cost of a self disclosure, including audits of transaction going back five years, "involve significant legal and compliance professional resources that put the average cost per disclosure in the range of tens of thousands of dollars."

Comments from the Customs and International Trade Bar Association (CITBA) said BIS should adopt policies followed by Customs and Border Protection (CBP) for voluntary self disclosures. Just as Customs, BIS should allow oral disclosures of violations followed by a written notice in 10 days. CITBA also said BIS has to offer greater incentives for voluntary disclosures. In particular it questioned the proposed guidance's offer to give "great weight" to voluntary disclosures while offsetting that by saying other factors may be given great weight. Such a policy "inevitably introduces uncertainty" into the calculus of submitting a disclosure, it said. CITBA said it understands BIS' desire to keep its options open, but said the agency should adopt the Customs approach in which "definite advantages *always* flow from disclosing violations."

### **COMMENTS CALL FOR PRESERVING GSP PROGRAM**

Some members of Congress want to eliminate or sharply cut back the list of countries eligible for the benefits of the Generalized System of Preferences (GSP), but that view isn't shared by the business community or organized labor. A broad majority of some 800 comments submitted to the USTR's office on potential changes to the GSP program opposed any changes to the current program and particularly defended its renewal for such countries as Argentinian, Brazil, India, Indonesia and Thailand. The potential curtailing of the GSP program drew more comments than anyone can remember (see **WTTL**, Aug. 14, page 4).

Meanwhile, House Ways and Means Committee Chairman Bill Thomas (R-Calif.) Sept. 21 introduced a bill (H.R. 6142) to renew GSP legislation for two years with new restrictions eliminating the opportunity to waive competitive need limits for products that account for

more than \$1.5 billion in exports to U.S. and for countries with per capita GDP of more than \$3,400. The bill also would extend extend third-country fabric rules under Africa Growth and Opportunity Act (AGOA) and would provide Haiti with same benefits as AGOA.

The most ironic bedfellows supporting continuation of the GSP program as it is were the AFL-CIO and the U.S. Chamber of Commerce. The labor group opposed proposed changes in the program, saying the existing criteria for graduating products and countries “are sufficient and should continue in force.” If any changes are made, they should strengthen the worker rights provisions, it said.

In a switch from its usual free trade stand, the American Farm Bureau Federation said its own studies have found that the major beneficiaries of the program “are quite capable of furthering their development” without GSP. Many of the imported farm products that get GSP tariff-free treatment could be supplied by U.S. growers, it argued. Supporting the AFBF position, Senate Agriculture Committee Chairman Saxby Chambliss (R-Ga.) wrote to USTR Susan Schwab Sept. 19 urging her to amend the GSP rules to exclude countries such as Brazil and India.

### **NO EASING OF ITAR RULES FOR LIBYA SOON, STATE OFFICIAL SAYS**

Although Commerce has issued new regulations removing anti-terrorism controls on Libya, State is not likely to lift its terrorism controls on Tripoli any time soon, according to State officials. Libya was taken off the list of state sponsors of terrorism but remains on the list of prohibited destination in ITAR Section 126.1, “because concerns regarding Libya are not connected solely to its role as a state sponsor of terrorism,” said State Deputy Assistant Secretary Gregory Suchan. “The potential for exceptions always exists,” he told the DTAG Sept. 21. “Libya is not yet ready to be removed from the proscribed nations’ list,” he added. Suchan declined to explain what other reasons are delaying further liberalization of trade with Tripoli. The day when Libya will come off the 126.1 list “may not be too far off” but there is no “near-term prospect” for a change, he told DTAG (see **WTTL**, Sept. 4, page 4).

### **SCHWAB SIDE LETTER AGREED TO AMEND SOFTWOOD LUMBER DEAL**

Before the Canadian House of Commons approved the U.S.-Canada Softwood Lumber Agreement (SLA) by a 172-116 vote Sept 19, USTR Susan Schwab sent Canadian Trade Minister David Emerson a side letter agreeing to several changes in the original accord. Schwab said she was agreeing to the changes “to assuage the concerns expressed by Canadian stakeholders.” She also asked Ottawa to clarify certain concerns raised by the U.S. lumber industry. Canada moved quickly after the vote to issue regulations to implement the SLA.

As expected, Schwab agreed to change the SLA to require six-months’ advance notice before either side can terminate the agreement and to bar termination sooner than 18 months after it enters into force. In addition, the U.S. agreed to a “standstill” provision that says no new trade case against Canadian lumber would be initiated for one year following the expiration of the deal. She agreed to have other issues discussed by a binational Softwood Lumber Committee or other bilateral working groups or an industry council (see **WTTL**, Sept. 4, page 1).

### **U.S. EFFORTS FAIL TO INCREASE NUMBER OF EXPORTERS**

Since 1997, government programs to increase the number of U.S. firms involved in exporting have failed to attract many new exporters. After rising to 213,664 in 1997 from 112,854 in 1992, the number of exporters remained nearly flat through 2004 when there were 231,736, an 8.5% increase over eight years, according to the 2006 National Export Strategy (NES) Report issued by the interagency Trade Promotion Coordinating Committee (TPCC). The 2004 figure was down 6% from 2000 when the number of U.S. exporters peaked at 246,452. During this

period, the share of exports accounted for by small and medium size enterprises (SMEs) has stayed around 30%. Only 4% of U.S. companies do any exporting. Among SMEs, 60% export to only one foreign market, the report notes. "While there are a number of explanations for these trends, a major factor for most companies continues to be the large and dynamic domestic U.S. market," the report states. Other factors include a perception of risk and concerns about financing and shipping, it said. To overcome the factors that discourage exporting, the TPCC has launched a government-industry partnership program to get firms that are involved in exporting to help ease the way toward exporting for SMEs that are not (see **WTTL**, July 24, page 4). Firms already involved in the program include FedEx, eBay, PNC Bank and Dow Jones.

## STATE WEIGHING COUNTRY OF ORIGIN RULE OF FOREIGN NATIONALS

State's DDTC is considering a change in the International Traffic in Arms Regulations (ITAR) to require license applicants to provide information on the country of birth or origin of foreign nationals to be covered by Technical Assistance Agreements (TAAs). A similar BIS proposal to require such information in "deemed export" regulations drew widespread opposition from the business and academic communities, and BIS finally decided to withdraw the proposal. A State official said DDTC is just "thinking" about the proposal, but argued that such information is critical to agency decisions. Initial thinking would require the country of birth information only for foreign nationals who came originally from countries listed in ITAR Section 126.1.

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

DEEMED EXPORTS: BIS has announced that first meeting of Deemed Export Advisory Committee will be Oct. 12 at Commerce Department in D.C. (see **WTTL**, Sept. 18, page 3).

HAITI: State officials say they will now look favorably on case-by-case basis at defense exports to security units that are under control of government of Haiti or United Nations. They will also look favorably at exports to other UN or international missions in Haiti. DDTC also may approve protective clothing, such as flak jackets, for staff of UN, international organizations, media and development agencies.

ZEROING: Both U.S. and Japan will appeal Sept. 20 WTO panel report that partially upheld use of "zeroing" methodology in antidumping administrative reviews. Decision appears to run counter to Appellate Body opinion in Canadian softwood lumber case (see **WTTL**, Aug. 21, page 2). Separately, EU Sept. 22 asked U.S. for dispute-settlement consultations to resolve still conflicting WTO rulings on zeroing.

OMAN: Senate approved U.S.-Oman FTA Sept. 19 by 62-32 vote (see **WTTL**, Sept. 11, page 1).

LEMON JUICE: Sunkist Growers filed antidumping complaints at ITC and ITA Sept. 21 against lemon juice from Argentina and Mexico. Case is only third antidumping petition filed in 2006.

D-TRADE: State's DDTC will go paperless Oct. 12, declared DDTC Managing Director Robert "Turk" Maggi. He told DTAG Sept. 21 that he is optimistic that agency will be ready to go paperless for TAAs and amendments around Christmas or New Year's. Automation of CJ requests also coming, he said. Maggi said electronic submissions through D-Trade should speed up licensing process because system will reject faulty submissions which now take up licensing officers' time.

FOREIGN TRADE ZONES: Commerce amended FTZ rules in Sept. 22 Federal Register to shorten FTZ application processing time to six to eight months from 12 months and to grant temporary or interim manufacturing authority for products and components that are similar to products previously approved rather than requiring them to be identical.

FERROVANADIUM: In "sunset" review Sept. 18, ITC voted 6-0 that lifting antidumping order on ferrovanadium and nitrided vanadium from Russia would likely lead to renewed injury to U.S. industry.

FCPA: Jim Bob Brown, ex-employee of Willbros Group, oil and gas pipeline construction firm, has reached settlement with SEC in Houston, U.S. District Court to be enjoined from future violations of FCPA and to pay civil fine to be imposed by court later. Brown neither admitted nor denied SEC charges that he bribed officials in Nigeria and Ecuador to win approval of projects (**Editor's Note**: Copy of SEC complaint will be mailed to subscribers on request).