

# 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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## GRASSLEY THREATENS TO END GSP TO ADD LEVERAGE TO DOHA TALKS

To put pressure on countries, such as India and Brazil, that have not made adequate offers in the WTO Doha Round negotiations, Senate Finance Committee Chairman Charles Grassley (R-Iowa) May 16 warned that he would oppose renewal of the Generalized System of Preferences (GSP) or seek changes in the law that would exclude those countries from the law's benefits. "I hope that with GSP termination looming, Brazil, India and other beneficiary countries will work harder to see that the Doha negotiations are concluded successfully," Grassley said at the start of the committee's confirmation hearing on Susan Schwab's nomination to be USTR.

Grassley blamed India and Brazil for holding up the Doha talks and said he was frustrated by their behavior. "As a result, I'll likely oppose the extension of the GSP program, which is due to expire at the end of the year," he said. "If GSP is extended, I'll work to see that the eligibility requirements are very tightened, so some countries can expect to be removed from the program," he added.

There are currently 139 GSP beneficiary countries. In 2004, the latest period reported by the USTR's office, the top ten GSP beneficiaries were India, Brazil, Thailand, Indonesia, Turkey, Philippines, South Africa, Venezuela, Argentina, and Russia, all of which, except Turkey and Russia, are members of the G-20 group in the Doha talks.

## BIS WILL ISSUE GUIDANCE AS COMMITTEE REVIEWS DEEMED EXPORTS

The Bureau of Industry and Security (BIS) still plans to issue guidance to industry and universities on deemed export rules even as it freezes any new regulations for a year and appoints a committee to study the subject. In a Federal Register notice to be published May 22, BIS will announce the creation of a Deemed Export Advisory Committee (DEAC) and will seek nominations for participants. The committee, to be made up of industry, academic and intelligence community experts, will be given one year to examine and make recommendations on how the transfer of technology to foreign nationals in the U.S. should be controlled.

The decision to put off new regulations came in response to the critical comments BIS received on its advance notice of proposed rulemaking, which asked for public reaction to proposals the Commerce Inspector General's Office (OIG) made to strengthen deemed export rules. The heated debate over the topic drew the attention of Commerce Secretary Carlos Gutierrez and other top department officials who forced BIS to slowdown its march toward the publication of a proposal to change the regulations (see **WTTL**, March 13, page 2). BIS Under Secretary David McCormick also "thought the discussion was getting too far down into a legal debate

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instead of the important issue of balancing economics, research and national security,” one BISer said. Even though BIS will hold off publishing a proposal to change the Export Administration Regulations (EAR), it will post advice on its website on its current interpretation of deemed export requirements. “There is still confusion on what our policies are now,” one BIS source told WTTL. BIS also will provide technical advisory committees with more guidance on these policies, and BIS officials will address the subject in speeches and outreach programs.

“Given the extended public discussion of the OIG recommendations and the coming review of the deemed export policy by the DEAC, a reiteration of the current BIS deemed export policy regarding country of birth, the existing definition of ‘use’ in the Export Administration Regulations (EAR), and the relationship of fundamental research to deemed exports is warranted,” the BIS Federal Register notice states. “BIS has decided not to make any changes at this time to current regulations and policy on these three issues,” it adds (BIS emphasis).

### **BAHRAIN SAYS IT HAS CLOSED ITS ISRAEL BOYCOTT OFFICE**

Just in time for the Finance Committee’s mock markup of the Oman-U.S. Free Trade Agreement, Bahrain informed Deputy U.S. Trade Representative (USTR) Susan Schwab that it has closed its Boycott of Israel Office and is not enforcing the primary boycott of the Jewish state. The letter to Schwab from Bahrainian ambassador Naser M.Y. Al Belooshi, responded to concerns raised by House and Senate lawmakers, as well as BIS Antiboycott Compliance officials, that Bahrain was not keeping its commitment to close the boycott office, a commitment made ahead of congressional approval of the Bahrain-U.S. FTA (see WTTL, Oct. 31, page 1).

The Bahrain government had faced objects to the closing of the boycott office from members of its own parliament. “In the hope of advancing peace and regional cooperation, the Kingdom of Bahrain recognized the need to dismantle the primary boycott of Israel and despite recent press accounts, the Boycott of Israel Office is closed,” Al Belooshi wrote.

### **ITA REJECTS CHINA’S REQUEST FOR MARKET ECONOMY STATUS**

The International Trade Administration (ITA) May 15 rejected China’s latest request to be considered a market-oriented economy, citing primarily Beijing’s control of the banking sector as the reason for maintaining its status as a nonmarket economy (NME). The Chinese Ministry of Commerce had asked ITA to declare China a market economy as part of its antidumping investigation of lined paper products from China. In addition to state intervention in allocating financing, ITA found problems with land ownership, property rights and the rule of law.

China has made economic reforms but there are areas where “fundamental reforms continue to lag,” an ITA staff memo declared. “Given the investment-driven nature of China’s economy and the significant share of investment that is bank-financed, the decentralized government’s continued role in the allocation of financial resources indicates that it exerts significant leverage over the allocation of resources in the economy as a whole,” the memo stated.

### **NEW RESTRICTIONS ON VENEZUELA WILL ROLL OUT SLOWLY**

The Directorate of Defense Trade Controls’ (DDTC) informal policy of rejecting U.S. Munitions List (USML) licenses for Venezuela will become official State Department policy, but only after Oct. 1, 2006. The delayed implementation will leave DDTC licensing policy where it has been for the last nine months. As first reported in WTTL, State last fall began denying or returning without action (RWA) export applications for Venezuela out of concern for the country’s anti-U.S. policies (see WTTL, Oct. 31, page 1). State on May 15 announced that it

was declaring Venezuela to be a country that was “not cooperating fully” with the U.S. antiterrorism efforts. The formal notice of that determination was published in the May 18 Federal Register. The declaration doesn’t put Venezuela on the list of state supporters of terrorism, which would be a much more severe sanction.

The new policy won’t apply until the start of the next fiscal year, on Oct. 1. After that “new U.S. sales and licenses for the commercial export of defense articles and defense services to Venezuela will be prohibited,” DDTC said in a notice posted on its website. “In addition, as a matter of policy, as of October 1, the retransfer to Venezuela of U.S.-origin defense articles and technology will not be permitted.” it added. Before Oct. 1, DDTC will continue its case-by-case review of licenses for Venezuela and its general policy of denial or RWA.

A State source said existing licenses won’t be revoked and companies would still be able to export under existing licenses after Oct. 1. “Amendments to existing foreign military sales cases will not be allowed for Venezuela,” State said in a separate statement. “As we have stated in the past, due to our concerns regarding Venezuela’s multi-billion dollar arms acquisition program, we have closely scrutinized all arms transfers to Venezuela,” it added. “The not fully cooperating designation will end all commercial arms sales and retransfers to Venezuela,” State said. State spokesman Sean McCormack called the department’s action “a practical decision.” “It’s a hard-eyed assessment of whether or not a country is cooperating with the United States in fighting terrorism. And in this case, the answer came back no,” he said.

### **SCHWAB PROMISES TO KEEP SEEKING AMBITIOUS DOHA AGREEMENT**

At her Senate Finance Committee confirmation hearing May 16 to be USTR, a relaxed and self-confident Deputy USTR Susan Schwab said she still intends to push for an ambitious Doha Round agreement. “It is premature to talk about Plan B,” she told the committee. “I have not given up on Plan A,” she declared. Schwab displayed extensive knowledge of all the trade issues her office is now confronting and promised to take a forceful stand in resolving several trade disputes as well as getting the WTO talks moving. “I like to get things done. I’m a problem solver,” she said. Schwab, a former trade aide to then-Sen. John Danforth (R-Mo.), also promised to continue the bipartisan approach to trade that USTR Rob Portman pursued.

“I believe that markets work,” Schwab said. She rejected arguments raised by Sen. Kent Conrad (D-N.D.), who tried to link the growing trade deficit to a failure of U.S. trade policies. “There is something else going on in the economy,” Schwab said. “Very little of the trade deficit has to do with trade policy,” she asserted. Schwab also said she would use the “bully pulpit” of the USTR’s office to explain to the public how trade benefits the economy.

### **FINANCE APPROVES OMAN FTA AS JORDAN ACTS ON LABOR COMPLAINTS**

The Senate Finance Committee May 18 approved draft legislation to implement the U.S.-Oman Free Trade Agreement after adopting an amendment that would bar imports of goods made by forced or coerced labor. While the White House isn’t likely to include the amendment in the final FTA bill it sends to Congress for fast-track approval, the amendment reflected bipartisan reaction to a report that dramatized sweatshop conditions in apparel factories in Jordan. The amendment was approved by a bipartisan 18-0 vote, and the final draft cleared on a 19-0 vote.

In addition to adopting the amendment sponsored by Sen. Kent Conrad (D-N.D.), the committee approved a change that Chairman Charles Grassley (R-Iowa) proposed for the Statement of Administrative Actions (SAA). That change would commit the USTR’s office to monitoring the implementation of labor laws in Oman and to reporting its findings in the annual National Trade Estimates Report. Concerns about labor conditions in Oman were heightened by a recent report from the National Labor Committee (NLC) which identified factories in Jordan

where foreign workers, mostly from Bangladesh, were forced to work long hours, had their passports seized so they couldn't leave Jordan, and had their wages denied. Assistant USTR Shaun Donnelly told Finance that the situation "is appalling to all of us." Donnelly said Amman took the report seriously and has already taken steps to investigate the charges, establishing inspection teams to visit the factories and promising to pay back wages to workers, including those that have already returned to their home countries. He also said NLC went back to Jordan the week of May 15 at the invitation of the Jordanian government to revisit 22 factories cited in its report. Jordan also invited the International Labor Organization (ILO) to send inspectors to the country to examine labor conditions in the apparel plants.

The Jordan Garments, Accessories and Textile Exporters Association issued a statement saying the report had focused on only a few factories and not the other 91 plants where apparel is produced in facilities operating in Qualified Industrial Zones (QIZ). It also placed part of the blame for the labor conditions at the factories on U.S. retailers and consumers. "The continuous demand from buyers to improve and upgrade production while simultaneously pressuring for constant reductions in pricing, creates a precariousness that cannot be ignored," it said.

Jordanian exports of textile and apparel products to the U.S. have surged in the last five years, rising from \$178 million in 2001 to more than \$1 billion in 2005. At a conference last November, an informal survey of apparel importers and retailers rated the Jordanian FTA as the most successful FTA the U.S. has entered.

#### **LIFTING OF TERRORISM EXPORT CONTROLS ON LIBYA STILL UNDER REVIEW**

President Bush's May 15 decision to reopen full diplomatic relations with Libya and to take Tripoli off the list of terrorist supporting nations is likely benefit U.S. aircraft exporters first. There are seven export licenses pending at BIS for aircraft sales to Libya and one license for parts and components. The cases have been delayed because State lawyers are trying to determine whether the department needs to notify Congress about the exports under the expired provisions of Section 6(j) of the Export Administration Act (see **WTTL**, Feb. 13, page 3).

There may be a long wait, however, until the EAR is amended to remove Libya from being subject to antiterrorism (AT) controls. "Changes to the EAR in light of the recent announcement regarding Libya are under interagency consideration," said BIS spokesman Scott Kamins.

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

**EXPORT ENFORCEMENT:** Ingersoll-Rand has agreed to pay \$680,000 civil fine to settle BIS charges that it exported diaphragm pumps to India, Israel, China and Taiwan without approved licenses on 28 occasions and made false statements on SEDs.

**VIETNAM:** USTR negotiators ignored protests from U.S. textile industry in reaching bilateral agreement with Hanoi May 13 on Vietnam's accession to WTO. Agreement includes no special textile safeguard like China's accession deal and allows quotas on apparel to drop after Vietnam joins WTO.

**CFIUS:** Treasury Assistant Secretary Clay Lowery testified May 17 that Bush administration opposes most of changes House and Senate members have proposed for Exon-Florio Amendment.

**SOFTWOOD LUMBER:** Although U.S. and Canada have drafted legal text to implement their preliminary agreement to settle softwood lumber dispute, Ontario lumber producers, who don't like deal, may force delay in final settlement (see **WTTL**, May 1, page 2). Two Ontario groups representing lumber and forestry interests sued in CIT and D.C. U.S. Court of Appeals to force U.S. and Canada to go ahead with Extraordinary Challenge Committee that U.S. requested to review ITA's final countervailing duty ruling. Groups complain their rights have been violated by suspension of ECC. They asked CIT to issue writ of mandamus to force USTR to name ECC panelists. In appellate court, they challenged constitutionality of agreement that would deny them due process established by NAFTA.