

# Washington Tariff & Trade Letter<sup>®</sup>

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. 24, No. 38

September 27, 2004

## EXPORT SANCTIONS ON LIBYA LIFTED BUT TERRORISM CONTROLS REMAIN

President Bush's Sept. 20 decision to terminate or waive the last trade and finance sanctions on Libya did not end the country's designation as a state sponsor of terrorism. Thus, antiterrorism (AT) export controls will remain in place. In addition, acts committed before 12:01 A.M. Sept. 21, when the president's executive order went into effect, are still subject to legal action.

"Termination of the national emergency will not affect any action taken or proceeding, pending, not finally concluded, or determined as of the effective date of this E.O.; any action or proceeding based on any act committed prior to such date; or any rights or duties that matured or penalties that were incurred prior to such date," Treasury's Office of Foreign Assets Control (OFAC) said in a statement (*punctuation added*).

In a series of memoranda to Cabinet secretaries and trade agencies, Bush adopted "as a general policy, the strategy of providing a level playing field for U.S. business in Libya," a White House statement said. The memos terminated the emergency declared in 1986 under the International Emergency Economic Powers Act (IEEPA) and revoked related Executive Orders. The orders end the need for OFAC licensing for trade with Libya, permit direct air service and regular charter flights, and unblock assets belonging to Libyan and non-Libyan entities that were frozen when the national emergency was imposed. As a result, the families of the victims of Pan Am 103 are expected to receive over \$1 billion in additional compensation from Libya.

"Today's step does not constitute full normalization," said State spokesman Adam Ereli. "I would remind you that Libya is still on the...list of State Sponsors of Terrorism and is subject to sanctions pursuant to that," he added. Separately, trade lawyers say their clients are getting an increasing number of requests for Israel-related boycott information from Libyan customers.

## CRYOGENIC PUMP EXPORTS TO IRAN DRAW OVER \$6.5 MILLION IN FINES

The government hit Ebara International Corp. and its former CEO with \$6,530,000 in criminal and civil fines as part of a Sept. 23 plea agreement in which the company admitted it created an elaborate scheme to export cryogenic submersible pumps and associated technology to Iran. The equipment, which is used for the transportation of liquified natural gas (LNG), was shipped through France where a French construction company had arranged to buy it for use in Iran's 8<sup>th</sup> Olefins Project. Ebara International pled guilty to a seven-count information charging it with conspiracy, unauthorized exports under the International Emergency Economic Powers Act and money laundering. It agreed to pay a \$6.3 million criminal fine. Its former CEO, Everett Hylton, pled guilty separately to a one-count information and agreed to pay a \$10,000 criminal

Copyright © 2004 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

fine and to be on probation for three years. In a separate settlement agreement with the Bureau of Industry and Security (BIS), Ebara International agreed to pay a \$121,000 civil fine and to have its export privileges denied for three years. The denial order was suspended.

Hylton also reached a deal with BIS to pay a \$99,000 civil fine and to accept a three-year suspended denial order. The BIS investigation of the case started in August 2003 after the agency receive a call from a reporter with the *Washington Times* who asked if it had information about the export of the pumps to Iran.

At the plea session in the D.C. U.S. District Court, Justice lawyers dispelled suggestions that the pumps had nuclear uses, saying the government found no evidence that they were used in any nuclear programs in Iran. In a statement, Ebara explained that the pumps are used to lower the temperature of LNG. "It is impossible for these pumps to be used for any other purpose due to the fact that only liquified natural gas will allow the pumps to function," it said.

Ebara International, based in Sparks, Nevada, is a subsidiary of Ebara Corporation of Japan, which has 53 subsidiaries in 17 countries and some \$5 billion in annual sales. The parent firm acquired what is now its Cryodynamics division in 1989. Although Ebara Corporation was not part of the plea agreement, Justice said it was involved in one part of the scheme. Ebara International had provided the technology for the pumps to the parent, allowing it "to bid on and obtain a contract with a foreign company also working on the development of the Iranian gas fields," Justice said in a statement. [Editor's Note: A copy of the Justice and Ebara press releases, tplea agreements and factual proffers will be sent to WTTL subscribers on request.]

## U.S. SEEKS WTO CONSULTATIONS WITH EU ON CUSTOMS PROCEDURES

Out of nowhere, the U.S. Sept. 21 said it has asked the European Union (EU) for WTO consultations to raise complaints about the lack of uniformity in the customs rules and procedures among the 25 members of the EU. Although the EU is considered a customs union under WTO rules, its members continue to have separate laws and regulations, the U.S. complained.

"Lack of uniformity, coupled with lack of procedures for prompt EU-wide review, can hinder U.S. exports, particularly for small to mid-size businesses," the U.S. Trade Representative's (USTR) office said. The disparity in rules became a bigger problem with the EU's enlargement to 25 members, it pointed out.

The EU says the U.S. has never raised this issue in the EU-U.S. Joint Customs Council. "We regret the U.S. move to bring this issue to the WTO rather than using the bilateral Joint Customs Council," said EU spokeswoman Arancha Gonzalez.

## AGRICULTURE TALKS ARE AHEAD OF OTHER DOHA TOPICS, GROSER SAYS

Other negotiating groups in the World Trade Organization (WTO) Doha Round need to catch-up with the progress that was made in the agriculture negotiations in July, contends Tim Groser, the New Zealand Ambassador to the WTO and chairman of the agriculture negotiating committee. "Agriculture is now well ahead of the other dossiers in this negotiation," he said in Washington Sept. 21. "It's time for catch-up on the other issues," he added.

The Framework Agreement the WTO General Council adopted Aug. 1 outlines the direction of future farm talks; presenting a roadmap for eliminating export subsidies, significantly reducing domestic supports and providing market access (see WTTL, Aug. 2, page 1). Similar progress needs to be made in other areas, such as non-agriculture market access (NAMA), which deals with tariffs on manufactured goods, and services, Groser said. The agriculture deal reflected "mature and high level" negotiations which the other Doha talks have not yet seen, he said. He also noted that "this is just the half way stage" in the negotiations. Some may think the framework means that export subsidies have been eliminated, but "it has done nothing of the

sort,” he cautioned. “We have produced the possibility of eliminating export subsidies when, and if, we complete these negotiations,” he said. The farm agreement, nonetheless, is very important, he stressed. “Agriculture is the central element of the Doha Development Agenda,” he said. “We may get better results in the other areas by having prove to the many, many doubters and dissenters that the talks would not go to founder over agriculture,” Groser said.

Before July, developing countries were conservative in making offers in the non-agriculture areas, because they were uncertain about what they would get in the farm talks. Now that they’ve seen the framework, they should have confidence they will get something in return for concessions in other areas, he argued.

Despite the progress in July, Groser warned that much hard work lies ahead to work out the details of a final accord and to overcome resistance to opening markets to imports from other countries. “The drama queens will demand a final emotional appearance on center stage, I’m sure of that,” he declared. “It may be their last international performance,” he added.

### **ITA PROPOSES CERTIFICATION OF INFORMATION IN AD/CVD FILINGS**

Brushing aside the division within the trade law bar over the issue, the International Trade Administration (ITA) Sept. 22 published a proposal to amend its antidumping and countervailing duty (CVD) regulations to tighten rules that require persons that submit information in trade cases to certify that the information submitted is factual. The proposal in the Federal Register includes a statement that company executives or trade attorneys would have to complete and sign attesting to the accuracy and completeness of their submissions.

When ITA sought advance comments on the concept in January, several law firms argued the changes weren’t needed because current rules are clear about the need for probity in the submissions and lawyers are already subject to rules of professional conduct (see **WTTL**, April 5, page 3). ITA said it disagreed with this argument because “current certification requirements do not address important issues, notwithstanding the existing rules of professional conduct.”

The proposal would require company executives to certify that, based on their “informed judgment,” the information they are submitting is accurate and complete. Company representatives, including lawyers, would have to sign a certification indicating they made “an inquiry reasonable under the circumstances” to determine that the information they submit is accurate and complete. Any omissions discovered later would have to be reported to ITA. If such certifications prove to be false, those signing them could be prosecuted for making false statements to the government. Lawyers could be debarred from appearing before Commerce.

### **BIS EASES CONTROLS TO INDIAN SPACE PROGRAM AND ENTITIES**

After collecting hundreds of thousands of dollars in fines from firms who exported all types of goods to Indian entities without approved licenses, the Bureau of Industry and Security (BIS) Sept. 22 issued new rules removing the Indian Space Research Organization (ISRO) from the Entities List and easing restrictions on other Indian entities.

The Federal Register amendment to the Export Administration Regulations (EAR) implements a U.S. commitment to India as part of a Next Steps in Strategic Partnership (NSSP) deal that aims to enhance cooperation between the two countries on missile and nuclear proliferation. In addition to taking the ISRO headquarters off the Entity List, the new rules ease restrictions on six ISRO subsidiaries.

Under the new policy, no license will be required for exports to these entities of items that are EAR99 or for a handful of items whose last three digits of their Export Control Classification Numbers (ECCN) end in 999. For all other controlled items on the Commerce Control List,

BIS will apply a policy of case-by-case review. A third change will establish a presumption-of-approval policy for licenses for EAR99 items and items not subject to Nuclear Proliferation (NP) controls to be exported to the “balance-of-plant” portion of four nuclear plants in India that are under International Atomic Energy Agency (IAEA) safeguards. These exports can go to the power generation part of the plant but not the nuclear reactor part.

Export licenses would still be needed for all items subject to the EAR and will get case-by-case review, BIS said. The wording of the regulation may need to be corrected because it doesn’t say what the preamble to the new rule says.

A BIS statement said the change in licensing policy should lead to a 75-85% reduction in license applications for ISRO entities and a 20-25% reduction in overall applications for India. BIS also revised the EAR to state that requirements related to the Entity List were being directed to the “public” and not just to exporters. “The word ‘exporter’ should not be read to limit the scope of the notice,” it said.

### **CHINA’S LACK OF IPR ENFORCEMENT BECOMING TOP PRIORITY**

With China getting generally good grades for the pace at which it is implementing its WTO commitments, the U.S. business community and government have turned the focus of their complaints to Beijing’s inadequate enforcement of intellectual property rights (IPR). Chinese Vice Premier Wu Yi had promised progress on this subject during her April visit to Washington, but a survey of U.S. firms contends the threshold for legal action is too high and hasn’t proved to be a deterrent to piracy of American goods, trademarks, audio-visual products and software. In addition, enforcement hasn’t reached to the local and provincial level.

For many firms, the IPR issue has become more important than charges that Beijing is keeping the Chinese currency artificially low. Under Secretary of Commerce Grant Aldonas addressed the IPR issue during his trip to China earlier in September, and the USTR’s office plans to conduct an out-of-cycle Special 301 review of China’s IPR commitments in early 2005.

In its third annual review of China’s compliance with its WTO accession agreement, the U.S. Chamber of Commerce Sept. 22 said its members have found positive changes in China’s trade and investment regimes. While Beijing has not been completely transparent in the drafting and issuing of new rules, it has often listened to comments from U.S. firms on draft rules and changed them to meet objections. Noting progress in many areas, especially on technology standards, the report also raised continuing concerns about IPR, lack of transparency and lack of market access in key services areas. Members are particularly waiting to see how Beijing implements news rules on trading rights and distribution, which are due by Dec. 11, 2004.

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

AFGHANISTAN: U.S. and Afghanistan signed Trade and Investment Framework Agreement Sept. 21.

MEXICAN TRUCKS: House Sept. 22 approved amendment to transportation appropriations bill (H.R. 5025) barring use of funds to implement regulations to allow Mexican trucks to operate in U.S.

CHINA: State in Sept. 20 Federal Register debarred China’s Xinshidai (also known as China Xinshidai Company, XSD, China New Era Group or China New Era Group) for alleged proliferation activities. In same Federal Register, it extended waiver of proliferation sanctions against Chinese government.

CUBA: House Sept. 22 rejected direct attack on Cuban trade sanctions during debate on pending transportation appropriations bill (H.R. 5025), defeating Rep. Charles Rangel’s (D-N.Y.) amendment to cut funding for enforcement of LIBERTAD act. But it was willing to nibble around edges, approving amendments to require Bush administration to ease restrictions on agriculture and medicine sales, Cuban-American travel and academic visits to Cuba. Bill still has to go through Senate and could face presidential veto if passed as amended (see **WTTL**, Sept. 20, page 4).