

# 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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## G-8 GIVES PUSH TO DOHA ROUND TALKS ON AGRICULTURE

Leaders of the top industrialized nations agreed June 9 to make significant progress in the Doha Round, particularly on agriculture issues, by the end of July. "We direct our ministers and call on all WTO members to finalize the frameworks by July to put the WTO negotiations on track so that we can expeditiously complete the Doha Development Agenda," they said in a joint statement during the G-8 Summit in Sea Island, Georgia (see **WTTL**, June 7, page 4).

The announcement came as no surprise, since U.S. and European Union (EU) trade officials have been making the same pitch for the last few months. The statement, however, brings Japan into line with that commitment. It also reflects Tokyo's agreement to give up its insistence on talk on all four of the so-called Singapore Issues and its willingness to accept talks on only one, trade facilitation

The G-8, which comprises the leaders of the U.S., France, Germany, Italy, Great Britain, Japan, Italy and Russia, "is committed to expanding economic growth, development and opportunity by achieving ambitious results in the global trade negotiations," the leaders' statement said. "We are encouraged by the reinvigoration of the negotiations in recent weeks," they added. "Working in cooperation with other WTO members, we are determined to move expeditiously before the end of July to complete the frameworks on key issues that will put these far-reaching negotiations on track toward a rapid and successful conclusion," the statement declared.

"In agriculture, we are on the verge of an historic opportunity," the statement continued. "All three pillars of the agriculture negotiations must be treated with equal ambition," it noted, referring to talks on domestic supports, export subsidies and market access.

## BIS WILL EASE COMPUTER TECHNOLOGY CONTROLS FOR DEEMED EXPORTS

BIS intends to split up proposed rule changes on export controls for technology and software for the design and development of high-performance computers (HPC) and microprocessors to apply the changes first to "deemed export" licenses for foreign nationals working in the U.S., Bernie Kritzer, director of the BIS office of national security and technology transfer controls, told the Regulations and Procedures Technical Advisory Committee (RAPTAC) June 8.

"As far as doing something offshore or sending that technology and software for computers and microprocessors, we will not adjust those levels until such time as we reach an agreement in Wassenaar for the actual exports," he said. The proposals for HPCs and microprocessors were already moving on separate tracks because BIS had a clearer view of how to deal with computer

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technology (see **WTTL**, Oct. 27, page 3). Now it appears there will be four tracks: two for deemed exports and two for direct exports. The decision to divide the rules stems from Washington's desire to get multilateral agreement on technology controls.

When originally proposed in 2003, BIS was considering a broader rule, but then looked at its Wassenaar commitments, Kritzer noted. "We wanted to make sure that while we were negotiating in Wassenaar to raise controls on certain things that we didn't unilaterally take decisions that would put us not on the same level as Wassenaar," he explained.

Current talks in the Wassenaar Arrangement are aimed at raising the export control threshold for microprocessor technology above its current level of 530 million theoretical operations a second (MTOPS) and for HPC technology above 28,000 MTOPS. Even the U.S. admits these levels are out of date for the design of current and next generation computers. The BIS proposal for HPCs would have raised the threshold for Tier 3 countries to 75,000 MTOPS.

Wassenaar discussions on microprocessor changes, however, remain divided, with some members wanting to keep the control near its current level and other wanting to raise it to a five-figure level, Kritzer reported. "My guess is that the ultimately agreement in September will fall somewhere in the middle," he told RAPTAC.

The change in deemed export controls for HPC technology could be published early this summer, Kritzer predicted. "I am fairly optimistic that the high-performance computer rule, which will be the first rule, is at a fairly advanced stage of review," he said. The latest version of the BIS proposal on microprocessors was sent out for interagency review June 7. It could be published in late summer or fall. BIS will have a better idea of the direction of control on direct exports after the Wassenaar experts' group meeting in September. Actual changes to the rules, however, won't come until after the high-level Wassenaar Plenary meeting in December makes a final decision on the controls. After that, BIS plans to move quickly to implement whatever decision is made, Kritzer noted.

The deemed export rule for HPCs "as it has finally come out is essentially tilted to the release of technology and software for high-performance computer design, development and production to cover foreign nationals working in the United States," Kritzer explained. The regulation will have a special feature that would make foreign nationals who are already subject to deemed export licenses eligible for the license exceptions that apply to these products. If a company wants to hire a new foreign national "that person would be subject to a one-time, 30-day government pre-vetting process before they would be eligible for license exceptions," he said.

## **NAFTA PANEL ORDERS ITA TO REVISE CVD DUTIES ON LUMBER**

Washington's leverage in the softwood lumber dispute with Canada continues to slip. The latest blow came June 7 when a NAFTA binational panel upheld the International Trade Administration's (ITA) use of log prices to determine the countervailing duty (CVD) rate on softwood lumber, but ordered the agency to recalculate the rates to use actual market data for several provinces, as well as reconsider its adjustment for profits. The ruling comes a week after ITA issued its preliminary administrative review decisions on the first year of the anti-dumping and CVD orders (see **WTTL**, May 24, page 2).

The administrative review would reduced the CVD rate to 9.24%, which is lower than the 13.23% rate ITA found in its first remand determination and the 18.79% rate it originally found. In the antidumping review, ITA reduced most individual producer rates to under 5%, with an all-other rate of 3.98%. This compares to the original all-other rate of 9.67%, with individual rates topping 15%.

After the NAFTA panel first raised questions about ITA's use of cross-border price comparisons in its original CVD determination and remanded the case back to the agency, ITA

reopened the record in the case and developed a new benchmark based on private log prices. "Since there appears to the panel to be substantial evidence on both sides of the issue, we will not disturb the department's finding here that private log prices are useable as benchmarks," the panel ruled. Nonetheless, it agreed with Canadian parties that there was substantial evidence to allow ITA to use actual log prices in different provinces to calculate those log prices without using import log price or ads in trade magazines. Thus, it remanded the case back to ITA, ordering it to recalculate CVD rates for exports from six provinces.

Rusty Woods, chairman of the Coalition for Fair Lumber Imports, issued a statement noting that the latest remand order won't change the cash deposit rates required to be paid on Canadian lumber. "The panel inexplicably agreed with most of the Canadian parties' claims and disregarded some U.S. claims," he said. "Congress is simply going to have to reform this system so that the United States is assured that, as intended and agreed, it applies U.S. law," he added.

### **BIS PREPARING TO CLARIFY NEW RULES ON LIBYA AND SYRIA**

BIS is working on revisions to recently issued rules on trade with Libya and Syria to address exporter concerns, BIS Assistant Secretary Peter Lichtenbaum says. While no date is set for when those changes might come or whether BIS proposals would be accepted by other agencies, the goal of the changes would be to deal with such issues as the "installed base" of controlled and unlicensed equipment that might be found in Libya, he told the Regulations and Procedures Technical Advisory Committee (RAPTAC) June 8 (see **WTTL**, June 7, page 2).

Lichtenbaum confirmed that BIS has revoked all existing licenses for exports to Syria and has begun reviewing new applications seeking to fit under the waivers that President Bush granted to the sanctions. The economic cost to exporters from the cutoff of trade with Syria could start to rise, as Syrian customers start to invoke performance bonds for the nondelivery of ordered goods.

### **GSA WEBSITE OFFERS SCREENING OF DENIED AND DEBARRED PARTIES**

Companies will be able to do one-stop shopping to find parties that are debarred from doing business with the U.S. government or subject to export control sanctions on an updated website the General Services Administration (GSA) has created. Complying with legislation requiring all government agencies to participate in the program, the agency has set up the Excluded Parties List System (EPLS) at [www.epls.gov](http://www.epls.gov) with a search system that allows visitors to determine if a party is subject to restrictions at GSA, Commerce, State or Treasury.

For now, the addition of sanctioned names from the different departments is delayed, but GSA staff are revising the system so it is updated automatically whenever lists are changed. Nor is the system foolproof. Searching for Osama Bin Laden, the system reports "no record found."

Originally designed to identify firms or individuals barred from government business primarily because of fraud or illegal activities, the website has been expanded to offer department-by-department lists, an explanation of the cause and treatment for any sanction, and its duration. The data in the system can be download for addition to internal screening systems.

### **JURISDICTION SHIFT FOR AMORPHOUS SILICON AWAITING AGREEMENT**

State has suspended its commodity jurisdiction (CJ) ruling on amorphous silicon focal plane arrays (FPA) pending an agreement with BIS on how to split licensing jurisdiction for cameras and systems containing these thermal imaging devices (see **WTTL**, May 3, page 3). While the CJ would move FPAs using the material to the U.S. Munitions List (USML) from the Commerce

Control List (CCL), end-products containing these FPAs supposedly would come under new BIS licensing requirements. The agencies are also waiting to see what multilateral controls the Wassenaar Arrangement may decide to impose on these products.

BIS remains concerned new requirements, if they are too broad, could overwhelm its licensing staff. It expects to increase the number of license applications it handles this year for thermal imaging products to about 3,500 compared to around 2,700 last year. Imposing new rules for amorphous silicon products could add 500-1000 applications a year to that load, notes Bernie Kritzer, director of BIS' office of national security and technology transfer controls.

## MANDATORY AES PUT OFF TO EARLY 2005

Census Bureau plans for issuing regulations requiring all exporters to use of the Automated Export System (AES) for filing Shipper's Export Declaration (SED) information by the end of 2004 have slipped. As a result, mandatory AES probably won't be imposed until sometime in the first quarter of 2005, Census trade division chief Harvey Monk told industry representatives June 8. Census expected to propose the implementing regulation in June and issue a final rule in the fall. Now the proposal isn't likely to be published until September, Monk reported.

Even without a mandatory requirement, 92% of export documents are now going through AES, he noted. The error rate for these filings is less than one percent and the number of late filings is 4.3%, he noted.

Monk also said the AES Commodity Redesign went into effect June 7 and "things are going very well." The changes affect how corrections are made and impose stricter editing rules. Under the new system, 99% of warning messages will become fatal error messages.

As part of the planned regulation for implementing mandatory AES, Census will propose a complete rewrite of the Foreign Trade Statistics Regulation. The agency has still not decided how it will divide up the delegation of its enforcement powers between BIS and Customs, Monk noted. Nor has a decision been made on which agency's penalties will apply.

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

EXPORT ENFORCEMENT: BIS June 8 announced settlement agreement with Stoelting Co. of Wood Dale, Ill., under which firm has agreed to pay \$44,000 civil fine to settle BIS complaints that it exported polygraph equipment to China in 1998 and 1999 without approved licenses. Firm also accepted five-year denial of export privileges, which BIS suspended provided Stoelting remains in compliance with export control rules. Stoelting's president, LaVern Miller, agreed to pay \$44,000 civil fine for his role in exports, which were diverted through Italy and Taiwan. Separately, Stoelting and Miller have pled guilty in Chicago, Ill., U.S. District Court to criminal charges for violating International Emergency Economic Powers Act. They will be sentenced in September.

BIS PEOPLE: Mark Menefee, director of BIS office of export enforcement for last 11 years, retired May 14 after 22 years at Commerce, mostly at BIS. He will be doing some consulting and other trade-related work in post-government career. He can be reached at 301-656-4677 or [markmenefee@verizon.net](mailto:markmenefee@verizon.net).

EXPORT ENFORCEMENT: General Monitors of Lake Forest, Calif., paid \$40,000 civil fine as part of agreement with BIS to resolve charges it exported gas and fire detection equipment to Bharat Heavy Electricals Limited of Hyderabad, India, without approved licenses. At time of shipment, 1998-2001, Bharat was on BIS Entity List. BIS charging letter cited six unlicensed exports and filing of 12 false SEDs which claimed no license was required. Firm voluntarily self-disclosed some of alleged violations.

CARBOXYMETHYLCELLULOSE: Aqualon filed antidumping complaints at ITA and ITC June 9 against imports of purified carboxymethylcellulose from Finland, Mexico, Netherlands and Sweden.

FSC/ETI: Due to President Reagan's funeral, House Ways and Means Committee postponed markup of new FSC/ETI bill (H.R. 4520) to June 14 (see **WTTL**, June 7, page 4).