

# 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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## BUSH ADMINISTRATION EASES EXPORT CONTROLS ON LIBYA

President Bush April 23 issued his much anticipated Presidential Declaration lifting most trade and investment restrictions on Libya, but maintaining terrorism controls on goods and technology subject to the Export Administration Regulations (EAR). Simultaneous with the White House announcement, Treasury's Office of Foreign Assets Control (OFAC) issued a General License implementing the president's decision. The administration also said it would drop its objections to Libya beginning accession talks in the World Trade Organization (WTO).

Bush formally lifted sanctions imposed by the Iran and Libya Sanctions Act (ILSA), citing Libya's compliance with United Nations' resolutions. The UN previously lifted its sanctions after Tripoli cooperated in the prosecution of Libyans involved in the Pan Am 103 bombing and agreed to pay compensation to the families of victims. More important for the U.S. was Libya's agreement in December to give up weapons of mass destruction (see **WTTL**, April 12, page 4).

OFAC's General License said: "The exportation of goods, software or technology (including technical data or other information) to Libya from the United States is authorized, provided that the exportation is licensed or otherwise authorized by the Department of Commerce." Libya remains a State Sponsor of Terrorism for application of export controls, the White House said. "Exports to Libya of defense articles and services on the U.S. Munitions List remain prohibited," it said. Direct air service is still prohibited and blocked Libyan assets remain frozen.

With the lifting of ILSA sanctions, most commercial activities, financial transactions and investments in Libya will be allowed to resume, the statement explained. "U.S. companies will be able to buy or invest in Libyan oil and products. U.S. commercial banks and other financial service providers will be able to participate in and support these transactions," it added.

## WTO DOHA ROUND AGRICULTURE TALKS REMAIN DEADLOCKED

If WTO negotiators can reach a deal on the future of agriculture talks in the Doha Round by the end of July, the result may look worse than a camel designed by a committee trying to design a horse. While participants claim the latest round of discussions in Geneva the week of April 19 showed serious efforts to develop a "framework" for moving the talks toward actual specific liberalization proposals, wide differences remain in each of the three pillars of farm trade being addressed: domestic support, market access and export subsidies. The lack of progress on farm talks has dimmed hope that any real movement will be made in the Doha Round this year. After the talks, which involved some 70 countries, Chief U.S. Agriculture

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Negotiator Allen Johnson told reporters the meetings had “narrowed the list” of differences. But other sources in Geneva said there was no convergence on the key subject of market access and the discussions still left doubt that an agreement for going forward could be reached by the July 26 meeting of the WTO General Council. If there is no deal by the WTO’s August break, “we won’t get done this year,” Johnson conceded.

The main focus of the latest talks, both formal and informal, was on market access. Negotiators are attempting to use the draft ministerial declaration from the Cancun Ministerial to develop a framework that mixes a formula reduction of tariffs and trade barriers, similar to the formula applied in the Uruguay Round, with targeted reductions aimed at extremely high duties.

These discussions have raised proposals for “blends,” “bands” and “tiers” that could produce a complex set of commitments that members have had a hard time comprehending. Resistance to opening markets has come from both ends of the economic spectrum. Rich nations such as Japan, Switzerland and Korea want to protect their farmers, while least-developed countries want special and differential treatment that would exempt them from almost all liberalization.

There was some discussion of export subsidies, with renewed calls for the setting of a specific deadline for their elimination. “Without an end date, the process will not be successful,” Johnson said. The emphasis on market access and export subsidies left little time for talks on domestic supports, the key third leg of the negotiations, one source reported.

## **BIS ENFORCEMENT CHIEF DEFENDS TREATMENT OF SELF-DISCLOSURES**

The chief enforcement officer in the Bureau of Industry and Security (BIS) April 21 defended the agency’s treatment of voluntary self-disclosures of export violations, trying to counteract the perception that firms are getting hit with high civil fines despite their cooperation. Assistant Secretary for Export Enforcement Julie Myers told a conference in Washington that recent settlements involving self-disclosed violations rewarded cooperating companies with significant reductions from the potential penalties they might have faced absent self-disclosure.

Voluntary self-disclosure is one of only two mitigating factors to which BIS will give “great weight” when considering enforcement actions under its new Penalty Guidance, Myers noted. “We understand companies make mistakes, however, if our agents are the ones that discover those mistakes, you’ll be treated differently than if you came in the front door,” she said.

“It’s come to my attention as I’ve been out meeting with industry that there are some occasions where folks feel that they come in with voluntary, self-disclosure but they have not been rewarded appropriately,” Myers stated. “But the numbers do not support that. The numbers show how voluntary, self-disclosure provides a substantial financial benefit to companies that come to us with accurate information,” she added.

Myers noted several examples. In the Emcore case, the company paid a \$400,000 civil fine for 71 alleged violations that could have brought fines of \$2.5 million, she pointed out. “They paid 60% less because of voluntary self-disclosure,” she said. The math actually shows an 84% reduction. Another case was Molecular Probes, which was charged with 97 alleged violations. “Once again, because this company voluntarily self-disclosed and cooperated with the investigation, they were able to cut their penalty from over \$1 million to \$266,000,” she said.

A third example was New Focus, which could have faced \$524,000 in fines for illegal exports, including alleged deemed export violations, but reached a settlement to pay \$200,000. She also cited a Honeywell settlement in which the firm paid a \$36,000 fine for alleged violations that could have cost it \$240,000. Some of the benefit of self-disclosure is offset when BIS adds three other charges to the one violation that is reported, raising the initial potential level of fines. Myers, however, denied that BIS was using this tactic to boost fines. “We didn’t create

three violations, they just didn't put them in their letter," she argued. Myers said that when she began to hear complaints from industry about self-disclosure settlements, she asked her staff to compile figures on the reductions given to firms. "We are keeping an eye on this to make sure that those individuals who come in do get benefits," she stated. Myers said she did not have numbers comparing these benefits to those given in non-voluntary cases. "I know in several cases where there was not voluntary self-disclosure, where we started off, our settlement offer and where we were sticking to was much, much higher and that is by design to reward those companies that are coming in voluntarily," Myers asserted.

## **U.S., CHINA STRIVE TO CALM ROUGH TRADE WATERS**

With political pressure pushing the Bush administration to take a tougher stand against Chinese trade, monetary and human rights practices, Washington and Beijing used the April 21 meeting of the Joint Commission on Commerce and Trade (JCCT) to defuse some of the bilateral tension with a series of deals that attempted to show that China is getting the message. While several of the announced agreements seem to be significant, critics and friends of the administration agreed the test of their value will be in their implementation.

The JCCT is co-chaired on the Chinese side by Vice Premier Wu Yi and on the American side by Commerce Secretary Don Evans and U.S. Trade Representative (USTR) Robert Zoellick. It was given more prominence in the last six months as China and the U.S. sought to show greater attention to bilateral disputes. As a result, the latest meeting was primed by months of advance staff-level work.

The biggest "deliverable" was China's agreement to suspend indefinitely its controversial proposal to establish a unique encryption standard for wireless computers and mobile phones or so-called WAPI standard. Beijing said it will now participate in the international standards-setting process for wireless communications. China also promised to remain "technology neutral" with respect to the adoption of Third Generation (3G) telecommunications standards for mobile phones. "Telecommunications providers in China will be allowed to make their own choices as to which standard to adopt, depending on their individual needs," a USTR fact sheet explained. "Chinese regulators will not be involved in negotiating royalty payment terms with relevant intellectual property rights holders," it noted.

The U.S. and China agreed to form a working group to examine whether China should be treated as a market economy in antidumping cases. During an April 21 press conference, however, Evans stressed that the six criteria for market status spelled out in U.S. trade law would remain the benchmark against which China would be measured. A separate working group will work on reconciling the wide differences in each country's trade statistics.

Wu announced plans to provide greater protection for intellectual property rights (IPR) in China. This will include increased penalties for IPR violations, a crackdown on violators and improved protection of IPR on the Internet. China will sign the World Intellectual Property Rights (WIPO) Internet treaties. It also promised to pressure local governments to use only original, licensed software. China also said it would speed up to July 1, 2004, implementation of a new law to provide greater trading rights for foreign firms in China.

## **U.S.-CHINA DEAL ON END-USER VISITS ISN'T LIBERALIZATION, BIS CONTENTS**

BIS officials are concerned that an agreement reached between the U.S. and China April 21 to improve the conducting of end-user checks of exports to China has been misreported as a liberalization of controls. During the visit to Washington of Chinese Vice Premier Wu Yi, Chinese officials and BIS Under Secretary Kenneth Juster exchanged letter explaining new procedures for conducting pre- and post-shipment verification (PSV) visits in China. "This is an agreement about process, about agreed procedures for getting these things done," BIS Deputy Under Secretary Mark Foulon told WTTL. "We would hope that by doing that it would

facilitate U.S. exports of goods, including high-technology goods to China,” he added. Madame Wu and other Chinese officials tried to make the agreement sound like it would lead to liberalization of controls. Wu told a dinner audience in Washington April 22 that China and the U.S. had agreed to take active action for “relaxation of export controls on China.”

Foulon denied that interpretation of the agreement. To the extent that lack of end-use checks has delayed license approvals or caused Chinese entities to be placed on the Unverified List, the new agreement may help, he conceded. “Our hope would be that through these strengthened procedures that we wouldn’t be in a position where there are companies that we can’t do checks on,” he said. “If we can do checks on these companies they will come off the list,” he added.

While Commerce refused to release the details of the new agreement, it issued a statement saying the deal establishes “procedures for conducting end-use visits, while also providing a mechanism for consultations on other end-use issues that may arise.” The agreement covers not only computer exports to China but all dual-use exports. “This is a landmark agreement,” Commerce Secretary Donald Evans declared.

“Resolution of this longstanding issue will allow for increased U.S. exports to China of high-technology items subject to appropriate safeguards,” the Commerce statement said. “This new end-use understanding provides an important example of the United States and China working together to solve practical problems to the benefit of both their peoples, as well as the increasing consensus on the objectives of the underlying strategic purposes of the controls,” it added.

Although a similar deal was struck with Beijing in 1998, current BIS officials have complained that the old agreement wasn’t working. Under that arrangement, Chinese officials had to accompany U.S. representatives who conducted the inspections. Beijing often puts off these visits, claiming it lacks the staff and resources to participate in the inspections. By early 2001, the backlog of end-user check requests had reached about 700, BIS officials reported. In 2002, bilateral talks began on the revising process (see **WTTL**, Oct. 14, 2002, page 3)

During her speech, Wu said “unreasonable control on American export to China” contributed to the U.S. trade deficit with China. “As far as the U.S. removes those unreasonable export control measures, there will be no problem for China to import more hi-tech products from the U.S. every year with a value of several billion or billions of dollars,” she declared.

“Since we cannot buy from the U.S., we have to turn to other countries,” Wu added. She noted the difficulty China faces importing nuclear power plant items from the U.S. Wu said Vice President Chaney had raised this issue during his visit to Beijing in mid-April. Recalling the cut-off of commercial satellite sales to China, Wu said Chinese buyers need a guarantee from the U.S. government and Congress that such sales wouldn’t be cancelled in the future.

\* \* \* BRIEFS \* \* \*

**EXPORT ENFORCEMENT:** Roper Scientific of Trenton, N.J., agreed to pay \$422,000 civil penalty as part of deal with BIS to settle 121 charges related to unlicensed export of coupled device imaging cameras to Italy, Japan and South Korea. Firm had voluntarily self-disclosed violations.

**ANTIBOYCOTT:** Invitrogen Ltd., of Scotland, whose U.S. parent paid recent fine for export violations of another subsidiary, Molecular Probes, paid \$2,000 civil penalty for telling customer in Syria that its goods were not of Israeli origin (see **WTTL**, April 12, page 4).

**SHORT-SUPPLY:** BIS launched investigation into short-supply of copper scrap and copper-alloy scrap. It published notice in April 22 Federal Register asking for comments (see **WTTL**, April 19, page 4).

**KOREA:** USTR Robert Zoellick April 23 announced deal with South Korea, which has agreed not to impose its Wireless Internet Platform for Interoperability (WIPI) as mandatory standard for downloading content from Internet to cell phones. Agreement will allow U.S. telecommunications providers, who already have seven million subscribers in Korea, to remain in market.