

# 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. 25, No. 17

April 25, 2005

## ELASHI BROTHERS CONVICTED AGAIN FOR VIOLATING EXPORT CONTROLS

Three brothers, who were convicted a year ago for violating the Export Administration Regulations, were convicted April 13 on additional charges of dealing with a person on the list of Specially Designated Terrorists and money laundering. Bayan, Ghassan and Basman Elashi and their company, Infocom, were convicted by a federal grand jury in Houston, Texas, on one count of conspiracy, 10 counts of dealing in the property of someone on the SDT list and nine counts of money laundering. Basman was convicted of one extra count of dealing with an SDT.

Last year, the three brothers and two other brothers were convicted of violating the EAR by exporting computers to Libya and Syria and making false statements on their Shipper's Export Declarations (SEDs). Bayan, Basman and brother Hazim have been in federal custody since December 2002 on immigration violation charges. Brother Ihsan is serving a four-year prison term after pleading guilty in 2002 to related charges (see **WTTL**, July 12, 2004, page 1).

The latest conviction involves the transfer of funds to Mousa Abu Marzook, an Infocom investor who is a leader in the Islamic Resistance Movement, which is also known as Hamas and an SDT organization. The case against the brothers was developed by a multi-agency enforcement team known as the North Texas Joint Terrorism Task Force

## ALLGEIER WARNS STATES AGAINST OPTING OUT OF WTO DEALS

States that refuse to conform with World Trade Organization (WTO) agreements on government procurement, services or investment could see their states become the target of retaliation by other WTO members, warned acting USTR Peter Allgeier. Speaking April 16 to the National Conference of State Legislatures, Allgeier tried to convince the lawmakers that bilateral and multilateral trade agreements can't force states to give up their sovereignty in these areas, but by voluntarily going along with the terms of these agreements they can benefit their exporters.

He cautioned, however, that states that impose restrictions on government procurement from foreign suppliers could put their own exporters at risk of losing foreign contracts. "I would urge you to consider carefully the implications such legislation may have on suppliers from your states in bidding on foreign government procurement," he said in his prepared text.

"Remember this simple rule: what goes around comes around," he said. Allgeier pointed particularly to legislation enacted in Maryland to withdraw from the government procurement

Copyright © 2005 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

agreement. "If the Maryland legislature cause a breach of U.S. commitments under our international agreements, our trading partners could retaliate," he said. "In all likelihood, our trading partners would respond by excluding Maryland businesses from their procurement contracts," Allgeier warned.

## OMAN FTA TALKS SPEEDING TOWARD JULY CONCLUSION

A year of advance work and discussions before the beginning of free trade agreement talks have helped propel U.S.-Oman trade negotiations toward one of the quickest deals ever reached. After a second formal round of talks in Washington during the week of April 18, negotiators expect to resolve the final issues in the accord without another meeting and to conclude a deal by July, according to Assistant USTR Catherine Novelli. The last remaining issues can be discussed through telephone calls and video-conferences, she told reporters April 22.

Compared to the controversies surrounding other recent FTAs, the deal with Oman doesn't involve sugar, and the country boasts of improvements it has made in its environment and labor laws. A law passed in 2003 has allowed for the election of 25 worker committees that have the right to bargain collectively on various labor issues, including wages. Novelli said Oman has renounced the use of secondary and tertiary boycotts of firms doing business with Israel and has actually had a long trade relationship with Israel.

## PORTMAN CLAIMS ADMINISTRATION HAS GOTTEN MESSAGE ON TRADE

Rep. Rob Portman (R-Ohio), President Bush's nominee to be the new U.S. Trade Representative (USTR) tried to assure the Senate Finance Committee April 21 that the White House has gotten the message that it needs to take a tougher stand against China's trade and monetary policies. The senators at Portman's confirmation hearing seemed skeptical about that and other promises he made to mollify congressional dissatisfaction with the administration's trade policies, but for now they are willing to give him the chance to make good on those pledges.

Finance Chairman Charles Grassley (R-Iowa) announced plans to seek committee approval April 26 to report Portman's nomination favorably to the Senate and to get a vote on his confirmation the same day. Members and congressional staffers are working to reach a compromise with Sen. Evan Bayh (D-Ind.) to get him to lift his "hold" on Portman's confirmation (see **WTTL**, April 18, page 3).

Although Portman didn't show the same intellectual firepower that his predecessor, Robert Zoellick, often displayed at congressional hearings and in speeches, he did convey greater affinity to the concerns raised by Finance members on a wide array of trade issues. His political skills were quickly apparent as he dodged criticism and complaints about everything from China and DR-CAFTA to softwood lumber and steel. Confirmation hearings are never a time to disagree with the senators who must approve a nomination, but Portman seemed to go out of his way to empathize with the concerns of Finance members.

On at least nine occasions he told senators he shared their concerns and frustrations. "I agree wholeheartedly," he responded to a Grassley statement on the need for progress on agriculture in the Doha Round. "I share your frustration," he told Sen. Ron Wyden (D-Ore.), who asked about the softwood lumber dispute with Canada. "You're right," he said to Sen. Gordon Smith (R-Ore.), who said the U.S. needs strong IPR provisions in any WTO accession agreement with Russia. "I think it's a concern," Portman replied to a question on the trade deficit from Sen. Jim Bunning (R-Ky.).

From the start of the hearing, Portman went on the offensive to portray himself as a USTR who will take a tougher stand on trade agreement enforcement. He focused especially on his plans for a "top-to-bottom" review of the administration's current approach toward Chinese trade

practices, particularly Beijing's enforcement of intellectual property rights (IPR). Portman promised to focus on stopping Chinese IPR piracy, industrial policies that exclude U.S. products from their market and expanding market access, as well as using the textile safeguard mechanism to protect U.S. markets from disruption. "This more aggressive approach will require a new focus at USTR," he said. "If confirmed, I will order an immediate top-to-bottom review of all our trade issues with China. And I will shift resources and people as appropriate to address this pressing issue," he added.

Other issues Portman addressed:

Trade Agreement Enforcement: Portman promised to take a more aggressive approach to the enforcement of trade agreements. "If confirmed, I would pursue an aggressive agenda with a focus on opening new markets, enforcing our trade agreements and enforcing our trade laws," he testified. "I will consider with a fresh perspective the entire range of enforcement tools available," he said.

Softwood Lumber: "I think there is an opportunity here...to try to reach some kind of a breakthrough because it seems to me there is frustration on all sides," Portman said. "It has been litigated to death. It is time to come up with a settlement," he added. Portman noted, however, that our "stand has to continue to be that the United States needs to see an elimination of those subsidies in Canada." He reported receiving a congratulatory call from Canadian Trade Minister Jim Petersen but the two have not yet had substantive talks. "I believe he is a man I can work with," Portman said.

Doha Round: Portman indicated that there might be a shift of USTR attention back to the World Trade Organization's Doha Round and away from bilateral free trade agreements. While asserting the continuing importance of bilateral FTAs, he said, "Doha is the big agreement; that's the one we have to build toward." But he added, "I think it needs a jump start." Portman said "it's time for us to add more energy" to the talks. If confirmed in time, he said he plans to attend the Organization for Economic Cooperation and Development (OECD) annual meeting in Paris May 3-4, after which there will be a mini-ministerial of OECD and non-OECD trade ministers to discuss progress in the round.

## **U.S., EU DIVIDED OVER COTTON AGREEMENT IN DOHA TALKS**

USTR-nominee Rob Portman has encountered his first dispute with the European Union (EU) even before taking office. During his confirmation hearing April 21 before the Senate Finance Committee, Portman said he opposes an EU decision to support an "early harvest" in the Doha Round to give cotton-producing countries of West Africa immediate benefits once a final accord is reached. Portman's statement suggested some misunderstanding over the EU plan.

Portman told Sen. Blanche Lincoln (D-Ark.) that he had been surprised to learn that the EU had changed its policy of supporting "a single undertaking" in the round and was proposing to deal with the cotton issue before all the negotiations were completed. "I think we need to stick with the single undertaking approach," he said. "It's balanced and provides a broad vision of reform," he said.

EU Trade Commissioner Peter Mandelson revealed the new EU policy April 19 in Mali. "I am today announcing a significant policy change," he said. "In the face of the hardship experience by African cotton producing countries, the EU now stands ready to make an exception for these vulnerable countries in this particular sector," he continued. "I will argue for a plan that ensures the cotton sector can benefit immediately from the signature of the Single Undertaking that will conclude the Doha Round rather than wait for years of slow implementation," he said.

These benefits should be in all three pillars of the farm talks: elimination of export subsidies, reduction of tariffs and quotas, and reduction of trade distorting domestic support. Mendelson said he wants the cotton provisions of any Doha deal to go into effect for these African countries on "day one" of the entry into force of the accord, but not before the final accord is reached. In effect, he's not proposing an early harvest as Portman interpreted it but rather a "first fruits" policy. Washington, which has lost a WTO dispute against its subsidies for upland cotton, has fought hard to bring cotton into the scope of the general agriculture negotiations in the Doha Round and to make any changes in the U.S. cotton program part of a larger

farm deal. The EU produces little cotton, so it would feel no pain from an early cotton accord, but it would win friends in Africa on other issues in the round. Mandelson said his change of heart came in part from his visit to Mali. "There is no substitute for witnessing for yourself the avoidable errors of policy that rich countries have made," he said.

## PORTMAN OPENS DOOR FOR DR-CAFTA DEAL ON SUGAR

During his April 21 confirmation hearing, USTR-nominee Rob Portman appeared to suggest a way to lessen sugar industry opposition to the Dominican Republic-Central American Free Trade Agreement (DR-CAFTA) by giving them a way to set the conditions for when a compensation mechanism in the accord would be triggered. Portman opened the door for congressional involvement in defining the terms of the compensation option, which would allow the U.S. to offer compensation to Central American and Dominican sugar exporters if Washington were to cut sugar imports because of their damage to the U.S. sugar program.

Trade officials have said the criteria were left vague deliberately to give the U.S. maximum flexibility when applying the provision. Appearing before the Senate Finance Committee, Portman said: "We have the opportunity to work on that compensation program because it is not fleshed out in the agreement," he said.

"One thing I would love to do is sit down with you and other representatives of sugar beet growers and sugar cane growers and figure out what makes sense in this compensation program and make sure it is a real insurance policy that works for all partners." Portman also assured the committee that the handling of sugar in DR-CAFTA would not be a precedent for other trade deals, saying sensitive products should be addressed on a case-by-case basis.

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

EXPORT ENFORCEMENT: Metric Equipment Sales of Hayward, Calif., which previously agreed to pay \$150,000 civil fine to settle BIS charges, also has pled guilty to one felony charge and agreed to pay \$50,000 criminal fine for unlicensed export of oscilloscope to Israel (see **WTTL**, April 4, page 4). In plea agreement entered in U.S. district court in Oakland, Calif., March 21, firm agreed to pay fine, be placed on three years probation and do 250 hours of community service. "They knew they needed a license, but didn't want to wait" one BIS source told **WTTL**. Case "should send message that you can't ship before you get a license just because you think a license will take too long," source added.

WIRE ROD: NAFTA binational panel April 18 issued ruling sustaining ITC remand determination which provided better justification of decisions it made in CVD and dumping case against steel wire rod from Canada.

PET: On 5-1 vote, ITC April 18 reach final determination that subsidized imports of polyethylene terephthalate (PET) from India and dumped imports of PET from India, Indonesia and Thailand are not injuring or threatening to injure U.S. industry.

DOHA ROUND: EU submitted new offer in Doha Round services negotiations April 20, but offer continues to exclude commitments on education, health and audio-visual service.

CHINA: House and Senate Democrats April 20 took another stab at getting USTR to launch Section 301 investigation into China's undervaluation of its currency. Despite previous rejections, they submitted petition asking USTR to initiated case and take dispute to WTO (see **WTTL**, Nov. 15, page 4).

FTAA: Acting USTR Peter Allgeier told GAO that he disagrees with its just released report on FTAA talks and its assessment that co-chairmanship of talks by U.S. and Brazil hasn't accomplished its intended purpose. "In our view, the GAO report is an inaccurate and poorly framed portrayal of progress and problems in the negotiations over the past twenty months," Allgeier told GAO. "The report characterizes the negotiating dynamics as mainly involving the United States and Brazil, blames their co-chairmanship for the talks' slowdown, and asserts erroneously that we (and others) deliberately shifted away from the FTAA and thus added to its problems," he noted. Report fails to mention "developments that have positive long-term implications for the FTAA and hemispheric integration," he asserted. But real problem of FTAA may be in Brazil, where Associated Press report quotes President DeSilva telling labor group that "for two years, FTAA has not been discussed in Brazil because we took it off the agenda."

NEWS FLASH: BIS in March 28 Federal Register Seeks Comments on Proposed Changes to Deemed Export Regulations and their Application to University-Industry Cooperative Research!

***The Export Practitioner*** **and**  
***Washington Tariff & Trade Letter***

Present An Audio-Conference Briefing On

**University-Industry Research  
and  
U.S. Export Controls  
How to Cope with New Challenges**

This timely audio-conference will go to the heart of challenges you face when you conduct research involving foreign nationals or controlled technology and equipment. The panel will address the criteria for the "fundamental research" exemption and how universities can balance academic freedom and competitiveness with U.S. export control requirements. The program will help you design a compliance program for university-industry research collaborations. You will also hear the latest explanation of a BIS proposal to amend its "deemed export" rules to change the designation of "home county" under the EAR and redefine what "use" of technology means, and you'll learn the impact these revisions could have on your research plans if they are adopted.

**FEATURED SPEAKERS:**

**Todd E. Willis**

Senior Export Policy Analyst  
BIS Office of National Security and  
Technology Transfer Controls

**Richard J. Pettler**

Partner  
Fragomen, Del Rey, Bernsen and Loewy

**Terence Murphy**

Managing Director and General Counsel  
MK Technology

**Rachel Claus**

Senior University Counsel  
Stanford University

**TUESDAY, MAY 10, 2005**

2:00 to 3:30 P.M. (Eastern)

1:00 to 2:30 P.M. (Central)

12:00 Noon to 1:30 P.M. (Mountain)

11:00 A.M. to 12:30 P.M. (Pacific)

**REGISTER NOW:**

**Call: 202-463-1250, Ext. 2**

**FAX: 301-570-4545**

## WHO SHOULD SIGN UP?

- Export Compliance Managers
- Corporate and Academic Legal Staff
- Senior Management
- VPs International
- International Trade Lawyers
- University Research Directors
- Heads and Deans of Science and Engineering Departments
- Research and Development Directors
- Human Resources Managers
- Immigration and Naturalization Specialists

## THE CONVENIENCE OF AUDIO-CONFERENCES

- Listen from Your Own Office
- Let Staff Join On Speaker Phone
- No Limit on Number of Listeners
- Add to Your Training Program
- Live Program Permits Questions
- Hear From Compliance Experts
- Avoid Costly Travel to Conference
- No Time Lost out of Your Office
- Receive All Slides and Power Points

## ABOUT OUR SPEAKERS

### Todd E. Willis

Mr. Willis is the Senior Export Policy Advisor in the Bureau of Industry and Security's Office of National Security and Technology Transfer Controls. This office is the focal point within BIS for issues related to the transfer of technology to foreign nationals in the United States, as well as National Security and Short Supply controls. Joining BIS in 2003, Mr. Willis was recently named the Department of Commerce liaison to the academic and research community for export control issues. Before coming to BIS, he was the Economic Development and Public Policy Director for the Oakland Metropolitan Chamber of Commerce in Oakland, California. Mr. Willis was also an adjunct professor for California State University, Hayward School of Business and Economics and founded Global Trade Alliance Corporation, a trade consulting firm. This followed over ten years in the finance and technology fields. Prior to this, Mr. Willis spent six years in the U.S. Army as an Armor and Intelligence Officer. He graduated cum laude with an MBA from California State University, Hayward, and has a BA in Political Economics from the University of Pacific.

### Richard J. Pettler

Mr. Pettler is a partner in the San Francisco law firm of Fragomen, Del Rey, Bernsen and Loewy LLP, where he manages the firm's Export Controls Practice Group. A member of the California Bar since 1977, he is recognized as one of the nation's premier experts on the issue of deemed exports and the deployment of foreign nationals. His practice includes the representation of a varied clientele, including Fortune 500 companies and universities, in major export investigations, settlement and enforcement actions, export control due diligence for mergers and acquisitions, compliance audits, corporate compliance programs, commodity jurisdiction disputes, and export licensing. Additionally, Mr. Pettler has advised the U.S. government on deemed export policy and has testified before the House Committee on Government Reform on deemed export issues and visa processing. He is a graduate of the University of California, Berkeley (B.A., 1970) and the University of West Los Angeles Law School (J.D., 1977).

### Rachel Claus

Following 20 years in private practice in the area of federal contract disputes, Rachel Claus joined Stanford University's Office of General Counsel in 1992 as the University Counsel for the Stanford Linear Accelerator. On becoming Senior University Counsel in 1998, she was given responsibility for export control issues related to Stanford's public domain fundamental research, working closely with Stanford's Office of the Vice Provost & Dean of Research and Graduate Policy. Ms. Claus has spoken extensively on the subject of export controls and university research before such groups as the National Academy of Sciences, the Office of Science and Technology Policy, the U.S. State Department, the National Association of College and University Research Administrators, and the Center of International Security and Cooperation. A 1975 graduate of the University of San Francisco School of Law, she is admitted to practice before the U.S. Court of Appeals for the Federal Circuit, the U.S. Claims Court, the U.S. District Court of the Northern District of California, and the California Supreme Court.

### Terence Murphy

Mr. Murphy is Managing Director and General Counsel of MK Technology, and a Senior Associate of the Center for Strategic and International Studies. From 1986 to 2003, when he joined MKT, he was founding partner of the law firm Murphy Ellis Weber in Washington. A member of the BIS Regulations and Procedures Technical Advisory Committee, he led the advisory process on new BIS Penalty Guidance. He participated in the 2003 Sino-U.S. Export Controls Seminar in Shanghai. Mr. Murphy advises leading research universities and has been consulted by BIS on "deemed exports" issues. He also has worked with CSIS on a National Academy of Sciences white paper on that subject. He chairs the Annual "Globalization of Strategic Trade Controls" conferences in London and Asia, called "the definitive export controls conference." A former member of the ABA Administrative Law Council, he received his J.D. from the University of Michigan and his A.B. from Harvard. He has litigated successfully in the U.S. Supreme Court and is a member of the Bar of the District of Columbia, the Supreme Court, and other Federal courts.

# **APPLICATION OF DEEMED-EXPORT RULES TO UNIVERSITIES AND RESEARCH LABS COULD JEOPARDIZE YOUR R&D PLANS.**

## **HOW CAN YOU COMPLY AND STILL SUCCEED IN THIS DIFFICULT ENVIRONMENT?**

**Sign Up Today for this Timely Briefing!**

**As a Participant, You Will:**

- ✓✓ Learn how an Inspector General's report has triggered a major reconsideration of Bureau of Industry and Security "deemed export" policies and how other companies and universities are preparing for these challenges.
- ✓✓ Get a detailed briefing on the BIS March 28 Federal Register request for comments on a proposal to change the rules for determining the nationality or "home country" of foreign nationals, to redefine "use" of controlled equipment and technology, and to clarify the "fundamental research" exemption.
- ✓✓ Hear about the "Best Practices" that leading universities are adopting to assure compliance with U.S. export controls and still remain competitive in attracting industry and government research grants and contracts.
- ✓✓ Better understand current BIS policies and interpretations of its "deemed export" rules and how the agency is applying them today to universities and academic research.
- ✓✓ Be alerted to the key issues you need to consider when you design and implement projects that might involve foreign nationals, controlled equipment and technology or publicly available information.
- ✓✓ Receive guidance on training and oversight programs that can help you spread the export-compliance message to researchers, human resources professionals and contract drafters in your school or company.
- ✓✓ Obtain insights into the political and national security concerns that are driving Washington's emerging concerns about the potential leakage of controlled U.S. technology within the university setting.
- ✓✓ Draw on the knowledge and experience of experts who deal daily with questions and challenges of university-industry research and export controls.

**REGISTER TODAY FOR THIS IMPORTANT AUDIO-CONFERENCE!**

Audio-Conference Briefing On  
University-Industry Research  
and  
U.S. Export Controls  
How to Cope with New Challenges

**Tuesday, May 10, 2005**

**3 EASY WAYS TO REGISTER  
BY MAIL, FAX OR PHONE**

**SUBSCRIBERS SAVE 15%  
ON PRICE OF AUDIO-CONFERENCE**

**(Non-Subscribers, call today to subscribe  
at special discount rate)**

Please Complete and Return this Information to Register:

Yes, Please register me for the May 10, 2005, 90-Minute Audio-Conference Briefing on "**University-Industry Research and U.S. Export Controls - How to Cope with New Challenges**" for \$169.

I'm a subscriber to **The Export Practitioner** or **Washington Tariff & Trade Letter**, please sign me up at 15% discount price of \$143.

I can't participate but want to receive CD recording of program for \$149.

Payment Enclosed   
Charge My Credit Card:  
VISA  MasterCard  American Express

Card Number \_\_\_\_\_

Expiration Date \_\_\_\_\_

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Company \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone Number \_\_\_\_\_

Fax Number \_\_\_\_\_

E-Mail Address \_\_\_\_\_

Please send me information about future audio-conferences and seminars on U.S. export controls

## About the Sponsors

### *The Export Practitioner*

This monthly magazine is the only publication devoted exclusively to the export licensing requirements and law enforcement policies of Commerce, State and Treasury. It provides exclusive in-depth news and analysis aimed at helping exporters speed their products to customers abroad while avoiding costly legal troubles. With special guest features and columns written by experts in the field, **The Export Practitioner** gives export managers, international trade lawyers, and trade consultants information they can apply directly to coping with U.S. export controls and trade sanctions. For more information, visit [www.exportprac.com](http://www.exportprac.com).

### *Washington Tariff & Trade Letter*

Since 1981, this award-winning weekly newsletter has helped business executives, legal experts and consultants stay ahead of U.S. trade policies, export and import regulations, and enforcement of antidumping and countervailing duty laws. In four, concise pages, it provides exclusive advance reports on U.S. export controls, trade legislation, international negotiations and disputes, as well as efforts to open foreign markets for American exports and investment. For more information, visit [www.WTTOnline.com](http://www.WTTOnline.com).

**Mail To:**  
**Gilston-Kalin Communications, LLC,**  
**P.O. Box 5325,**  
**Rockville MD 20848-5325**

**FAX Registration To: 301-570-4545**

**Call: 202-463-1250, Extension 2**