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Chitron Fined for Exports to China, Owner Sent to Jail

The illegal export of defense items and technical data to China has resulted in a multimillion-dollar fine for an electronics company and multi-year jail sentences for its owner and manager. Chitron Electronics, Inc. in Waltham, Mass., has been ordered to pay a $15.5 million criminal fine for exporting power amplifiers and digital-to-analog converters to China.

> Zhen Zhou Wu, a Chinese national and Chitron's owner, was sentenced to 97 months in prison Jan. 26, for conspiring to export U.S. Munitions List parts and sensitive technology to China, illegally exporting electronics to China on 14 occasions between 2004 and 2007, and conspiring to file, and filing, false shipping documents with Census from 2005 through 2007. Wu was also ordered to pay a fine of $15,000, a special assessment of $1,700 and forfeit $65,881.71.

Wu's ex-wife and Chitron's manager, Yufeng Wei, was sentenced Jan. 28 to 36 months in jail for the same charges. A Boston federal jury convicted Wu, Wei and Chitron in May 2010 (see **WTTL**, May 24, 2010, page 4). The exported equipment is used in electronic warfare, military radar, fire control, military guidance and control equipment, missile systems and satellite communications. Several Chinese military entities were among those to whom they exported the equipment. The exports went to China without a license from State's Directorate of Defense Trade Controls, which would have denied an application any way because of the U.S. embargo on arms sales to China.

Commerce Tightens Certification Rules for AD/CVD Filings

In response to growing complaints from members of the trade bar about incorrect or intentionally fraudulent filings in antidumping AD) and countervailing duty (CVD) cases, Commerce's International Trade Administration (ITA) is publishing new rules that will require formal certification from participating companies and lawyers that filed information is "accurate and complete to the best of my knowledge." The interim final rule that the agency will publish in the Federal Register during the week of Feb. 7 reflects extensive changes from a proposal first published in September 2004 and also responds to concerns about data coming from respondents in China (see **WTTL**, Aug. 23, page 1).

The interim rule contains two boilerplate statements that must be signed by a company or government representative when submitting information to the agency and by legal representatives when making submissions. The certification underscores the legal prohibition against

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making a false statement to the U.S. government and also notes that ITA will retain any submission, even those later withdrawn. Both certifications state:

> "I certify that the information contained in this submission is accurate and complete to the best of my knowledge. I am aware that the information contained in this submission may be subject to verification or corroboration (as appropriate) by the U.S. Department of Commerce. I am also aware that U.S. law (including but not limited to 18 U.S.C. 1001) impose criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. government. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the Department may preserve this submission, including a business proprietary submission, for purpose of determining the accuracy of this certificate. I certify that I am filing a copy of this signed certification with this submission to the U.S. Department of Commerce and that I will retain the original for a five-year period commencing with the filing of this document. The original will be available for inspection by U.S. Department of Commerce officials."

Commerce officials admit they have limited ability to act against companies and attorneys who file inaccurate or false information in cases. They say their strongest weapon is to use "adverse facts available" in determining dumping or subsidy margins. Where they believe a submission is fraudulent, they say they could refer the case to Commerce' Office of Inspector General for investigation or to the Justice Department. The retention of withdrawn filings will help such investigations. In addition, they say ITA doesn't have legal authority under the Trade Act to impose sanctions or penalties for such fraud and doesn't have the organization, resources or expertise to conduct criminal investigations.

ITA is also restrained because the sources of some of these false submissions are persons outside the U.S. and outside U.S. legal jurisdiction. Moreover, the persons directly responsible for making these false submissions may not be affiliated with a filing party by the time the U.S. is ready to take legal action against them.

Some members of the trade bar are increasingly frustrated with what they contend are fraudulent filings and the failure of participating lawyers to confirm the accuracy of data they get from foreign clients and consultants. "A few bad apples have tainted the whole barrel," says one trade lawyer. "It's killing our bar," he adds. Trade lawyers who have uncovered cases of alleged fraud say they also have limited ability to attack it even using other legal tools such as the federal False Claims Act or whistleblower laws or to refer the information to Customs and Border Protection for investigation of potential customs fraud. Because the information they find is often in submissions that are subject to Administrative Protective Orders, they feel they cannot release it to anyone not covered by the APO, they contend.

Possible Doha Concessions Emerge from Meetings

The U.S. and advanced developing countries are continuing to spar publicly over who has to make more concessions in the Doha Round negotiations, but following meetings of trade ministers on the sidelines of the World Economic Forum in Davos, Switzerland, and a session of the World Trade Organization's (WTO) Trade Negotiations Committee (TNC), an effort to bridge the differences appears to be emerging. While no strict deadlines have been agreed upon, trade negotiators say they recognize new offers have to be on the table by late April and nearly final deals reached by July, so trade ministers can put their stamp of approval on a final agreement at the already planned biennial ministerial conference in December 2011.

The central divide remains U.S. demands for greater market access for industrial goods in advanced developing countries such as China, India, Brazil and South Africa, and developing county resistance and emphasis on the "development" aspect of the Doha Development Agenda. Until now, both sides have been reluctant to admit there will be a price to pay for any further concessions. A statement circulated in Davos by a group of advanced developing counties said their existing position in the round would require offering "a level of contribution [in the existing modalities] without precedent by any member in any of the previous negotiating rounds." It

said their trade ministers "agreed that the contributions are not being reciprocated by developed countries, some of whom still seek further exceptions and flexibilities to continue with their existing trade barriers and trade policies, adversely affecting the developing countries' interests," the statement said. They said an outline of an agreement reached in July 2008 should be "improved to strengthen" the development dimension of the round.

> The U.S. is "ready, willing, and able to engage in a process of give and take on all fronts," Deputy U.S. Trade Representative (USTR) Michael Punke claimed in a prepared statement to negotiators at the Feb. 2 meeting of the TNC. All countries need a package they can support and call their own, he said. "Give and take, though, can only take place at the negotiating table, not as a price of admission for sitting at the table," Punke said.

The mood has changed, said Philippine Ambassador to the WTO Manuel Teehankee. It is good to hear U.S. officials clearly say they are committed to concluding the round and are ready to contribute more, Teehankee said. Another diplomat applauded Punke's statement to the TNC. The question now is what will be added to the pot, the diplomat said. The U.S. agreed with the advanced developing country notion that everyone must come to the table with something to offer, he added. The most important signal is "everyone is serious now," the diplomat said.

Brazilian Ambassador Roberto Azevedo told the TNC "a marginally improved framework" is possible "as long as "the balance that has been achieved so far" is kept. However, the push for such selective ambition sought since December 2008 "can backfire," and put the round at risk, he told the TNC. Brazil wouldn't accept any result that shifts the balance away from agriculture or development, Azevedo said.

WTO Ruling on Boeing Subsidies Puts Pressure on Aid

A still-confidential, but widely reported WTO dispute-settlement panel ruling Jan. 31 that Boeing has received illegal U.S. government subsides for aircraft development will put pressure on all countries supporting their aviation industries to drop their subsidies. The Boeing decision, along with a separate ruling in 2010 against European aid to Airbus and earlier cases against subsidies by Canada and Brazil, will make it difficult for any country to subsidize its aircraft industry unchallenged. Countries such as Russia and China could face similar complaints in the future, trade diplomats contend.

> The overall effect of the WTO rulings in the numerous aircraft cases is downward pressure on trade distorting subsidies, one trade diplomat to the WTO told WTTL. The results of the Boeing/Airbus and Canada/Brazil disputes will force support to be less trade distorting and conform with WTO rules, he said. Other aircraft producing nations will look carefully at the panel findings, and competitors could find "ammunition" to use in future complaints against aircraft coming from other developing nations, he said.

"We welcome the WTO panel's confirmation of its initial findings regarding the support provided to Boeing by the U.S. government," said EU trade spokesman John Clancy. "This solid report sheds further light on the negative consequences for the EU industry of these U.S. subsidies and provides a timely element of balance in this long-running dispute," he said.

The WTO report on Boeing found at least $5 billion in immediately quantifiable subsidies and more than $2 billion in planned subsidies, Airbus said in a press release. The effect of the "pervasive subsides" is larger than their face value, "thoroughly distorting competition" in the aviation industry, it added. Although the U.S. will certainly appeal the ruling once it is issued and the WTO adopts it formally, Airbus is already claiming that it is entitled to a major level of retaliation in compensation for lost business due to the help given Boeing. "Airbus estimates at least $45 billion as a realistic figure based on identified lost sales to Airbus as a result from the subsidies. Taking the cases together, the WTO will be seen to now have

specifically green-lighted the continued use of loans in Europe and commanded Boeing to end its illegal R&D cash support from NASA, DoD and the U.S. taxpayers," Airbus said. Both the European Union and U.S. are appealing various parts of the WTO ruling last year against Airbus (see **WTTL**, Aug. 23, page 4).

> "We can confirm that we have received a confidential version of the final report from the WTO panel hearing the European Union's (EU) challenge to alleged U.S. subsidies to Boeing," USTR spokeswoman Nefeterius McPherson said. "Under WTO rules, the report remains confidential until it is translated and released to all WTO Members. Despite that, the EU has publicly commented on the report. At this time we will simply say that the United States is confident that the WTO will confirm the U.S. view that European subsidies to Airbus dwarf any subsidies that the United States provided to Boeing," McPherson said.

Because of the size and complexity of the report, a final version may not be translated and released for two or three months, she said. "In this dispute, the EU challenged a number of research programs operated by NASA, the Department of Defense, and the U.S. Commerce Department," she explained. "They also challenged measures maintained by the States of Washington, Kansas, and Illinois. This dispute has proven to be one of the most complex and lengthy disputes under the WTO," McPherson said.

Court Gives Intervenors Bigger Role in Section 337 Arguments

Intervenors with a stake in Court of Appeals for the Federal Circuit (CAFC) rulings on Section 337 decisions from the International Trade Commission (ITC) may be able to play a bigger role in oral arguments before the court following a Jan. 28 order restructuring oral arguments in an unfair trade practice case involving variable speed wind turbines. In response to a motion from the intervenor in the case, Mitsubishi Heavy Industries, Ltd., the court has reallocated the time for presentations, giving lawyers for the appellant, General Electric, 20 minutes to speak; lawyers for Mitsubishi, 15 minutes; and the ITC just five minutes.

> CAFC judges reportedly recognized that parties in a Section 337 patent-infringement case may have different views than the ITC in the appeal's process and should be given more time to express their own position. While the court has not established a formal policy on time allotments in oral arguments, orders such as this one tend to become standard practice, one source said. Oral arguments in the wind turbine case are scheduled for Feb. 10.

At issue is an ITC ruling in January 2010 reversing the initial determination (ID) of ITC Administrative Law Judge Carl Charneski in a GE complaint (337-TA-641) against three related Mitsubishi subsidiaries, claiming infringement of three GE patents for wind turbine parts. In August 2009, Chernaski found infringement of two claims but not of others. After reviewing the ID, the ITC reversed Cherneski and made a final determination of no violation. "In our view, there is no infringement of the '039 and '221 patents, and GE failed to establish the existence of a domestic industry with respect to the '985 patent," the ITC's written opinion stated. GE appealed to the CAFC, and the court granted Mitsubishi intervenor status.

* * * Brief * * *

CHINA: Treasury report on foreign currency Feb. 4 again didn't name China as manipulator. "Based on the resumption of exchange rate flexibility last June and the acceleration of the pace of real bilateral appreciation over the past few months, and in view of the commitment during President Hu's state visit that China will intensify its efforts to expand domestic demand and further enhance exchange rate flexibility, Treasury has concluded that the standards identified in Section 3004 of the Act during the period covered in this report have not been met with respect to China. Treasury's view, however, is that progress thus far is insufficient and that more rapid progress is needed," department said.