

Vol. 28, No. 35

September 8, 2008

Professor Convicted of Giving Defense Data to Chinese Student

The university research community has been shaken by the Sept. 3 conviction of former University of Tennessee Professor J. Reece Roth on charges that he released defense-related technical data to a Chinese graduate student without an approved license from the Directorate of Defense Trade Controls (DDTC). Roth's co-defendants in the case had pleaded guilty in separate deals with the government. His conviction by a federal jury in Knoxville, Tenn., came after a seven-day trial and two weeks after co-defendant Atmospheric Glow Technologies, Inc. (AGT) pled guilty to a 10-count indictment for its role in the release of the technology.

Roth was convicted on one count of conspiracy, 15 counts of violating the Arms Export Control Act (AECA) and one count of wire fraud. AGT, a privately-held plasma technology company in Knoxville, pleaded guilty to 10 counts related to the release of the technology to the Chinese student, who was working on a company-funded research project for the Navy at the University of Tennessee (UT) on plasma actuators for unmanned air vehicles (UAVs). Former AGI employee and UT researcher Daniel Max Sherman pled guilty to a one-count conspiracy charge in April (see **WTTL**, Sept. 1, page 4).

A government brief in the trial claimed a UT export compliance officer had warned Roth about giving the data to the student. Robin Witherspoon, a contract administrator and export control officer at UT, learned in May 2006 about Chinese and Iranian graduate students working for Roth on the project. "Witherspoon e-mailed Roth advising him that the Phase II contract was export controlled and providing him with the text so stating," the government's brief alleged.

BIS Launches Foreign Availability Review of Thermal Cameras

For the first time since 1994, the Bureau of Industry and Security (BIS) has agreed to undertake a formal foreign availability assessment under the provisions of the Export Administration Act (EAA). The agency Sept. 2 said it would assess the availability of uncooled night vision cameras in China based on a certified petition and report from its Sensors and Instrumentation Technical Advisory Committee (SITAC). Makers of thermal imaging cameras have been trying for eight years to get BIS to examine the growing availability of these products from several countries, including France and China.

While BIS has agreed to conduct the assessment, it reportedly has reneged on promises to revise the Regional Stability (RS) controls on thermal imaging products. For the last couple of

Copyright © 2008 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 print or by e-mail \$647 a year. Combo subscription of print and e-mail is \$747. Additional print copies mailed with full-price subscription are \$100 each.

years, BIS officials kept saying a change in the rules was coming close, including in an October 2007 Federal Register notice (see **WTTL**, Nov. 5, 2007, page 1). The Defense Department, however, has recently quashed that effort, sources report.

The SITAC report, submitted Aug. 14, provides detailed descriptions and specifications of thermal imaging devices that are available in China from Chinese manufacturers. “We spent a lot of time putting together the document and talking with BIS,” SITAC Chairman John Goodrich, who is the president of Fluke Thermography in Plymouth, Minn., told **WTTL**.

The report concluded that “thermal imaging cameras such as those controlled under the CCL have been shown to be readily available in China from Chinese manufacturers. The quantities of these cameras have been shown to be sufficient so as to be widely available for commercial uses and export. Cameras have been shown to be of comparable or better technical capability and quality to those controlled by the CCL.”

SITAC urged BIS “to pursue the process of foreign availability determination to its statutory conclusion.” The committee formally asked BIS to decontrol of uncooled thermal imaging cameras incorporating microbolometer focal plane arrays subject to Export Control Classification Number (ECCN) 6A003.b.4.b. BIS said it reviewed the SITAC petition and determined that it has sufficient evidence to show that foreign availability of these cameras exists.

After BIS completes its 90-day review, Commerce Secretary Carlos Gutierrez will have to rule whether foreign availability has been shown. Even if his decision is affirmative, the final determination is still subject to a presidential override for national security reasons. Sources expect the Defense Department to oppose any decision to decontrol these products and to take its case to the president if necessary.

The thermal imaging industry has been complaining for years about the negative impact export controls have had on their competitiveness, a contention supported by a 2006 BIS study of the industry. “We’re getting whacked internationally,” Goodrich told **WTTL**. “U.S. export control policy is stimulating our competition,” he said. It has particularly encouraged China to develop its infrared technology, while giving the French firm ULIS a marketing advantage, he noted.

100% Cargo Screening Will Be Difficult, GAO Says

It will be difficult for Customs and Border Protection (CBP) to meet the 2012 deadline Congress has set for conducting 100% screening of all containers coming into the U.S., says an Aug. 18 report from the Government Accountability Office (GAO) (Report No. GAO-08-538). In addition, implementing the requirement could undermine Customs efforts to get international cooperation on stricter cargo screening rules, it said. The so-called 9/11 Act requires scanning 100% of all U.S.-bound container cargo at foreign ports using nonintrusive inspection equipment, including X-ray or gamma ray imaging equipment, and radiation detection equipment.

“CBP may have difficulty implementing a 100 percent scanning requirement while also maintaining a risk-management security approach that it has developed with many international partners,” the GAO said. Customs has been working with foreign customs agencies through its Container Security Initiative (CSI) and the Secure Freight Initiative (SFI) and also with the World Customs Organization (WCO) on its SAFE Framework, which seeks to establish international standards for cargo security.

“According to senior CBP officials, requiring 100 percent scanning before having the results of the SFI pilot compromises the credibility of the agency with its international partners because those countries that agreed to partner with CBP on the SFI pilot did so with the understanding that the findings would drive further discussions regarding a logical path forward,” the GAO reported.. “Further, international partners have expressed to DHS and Congress that 100 percent

scanning runs counter to the SAFE Framework, which is based on risk-management principles,” it added. “WCO officials are concerned that 100 percent scanning could have an adverse impact on several of the organization’s core instruments, which include not only the SAFE Framework but also the Revised Kyoto Convention — an international customs agreement to which the European Commission, the United States, and 52 other nations, have acceded.”

DDTC Underestimates Impact of User Fees, Comments Warn

State’s Directorate of Defense Trade Controls (DDTC) may be underestimating the impact its proposed higher licensing fees will have on large and small defense exporters, early industry comments on the proposal indicate. Members of the Defense Trade Advisory Group (DTAG) and other groups offered an advanced view of industry reaction to the proposal in comments they sent to DDTC following the June 19 meeting of DTAG (see **WTTL**, Aug. 4, page 4).

Comments sent to DDTC voiced concern about the new fees and how they would be administered. The proposal is intended to allow the agency to self-finance up to 75% of its operating funds or \$22 million. DDTC currently collects \$9 million in fees. DDTC proposed the new fee structure after the DTAG meeting

The Aerospace Industries Association (AIA) warned DDTC about its “budgetary assumptions, given the probability that companies may soon pay 200 to 300 times more in registration fees on an annual basis.” It also pointed to the lack of a “mechanism to challenge the fee assessment.” Darla Hobson, an export compliance officer at HiRel Connectors, Inc., also said she sees DDTC’s future income projections as potentially unrealistic and unsustainable. “It doesn’t seem logical to charge by license when we do not control how many licenses we are required to submit,” she wrote. It is hard to know in advance how many licenses will be required because of the difficulty in working with DDTC, she pointed out. “There is no choice but to comply with whatever the particular licensing officer might request,” commented Hobson.

Hobson raised concerns about the impact of the fees on small exporters. “The flat fee may impact small component manufacturers to a greater degree than big defense companies,” Hobson contended. “HiRel is very concerned about this proposed rule, and the consequences to small manufacturers who already struggle with the financial impact of compliance,” she continued.

Ex-KBR Exec to Pay \$10.8 Million Restitution in FCPA Case

A former executive with Kellogg, Brown and Root (KBR), the oil and gas services company, will have to make \$10.8 million restitution to his former employer as part of a plea agreement he reached Sept. 3 with the Justice Department to settle criminal charges that he violated the Foreign Corrupt Practices Act (FCPA). Albert Jackson Stanley also reached a civil settlement with the Securities and Exchange Commission (SEC) on related charges for paying \$180 million in bribes between 1995 and 2004 to Nigerian government officials to assist in obtaining multiple contracts worth over \$6 billion to build liquefied natural gas production facilities (LNG Trains) in Bonny Island, Nigeria.

KBR Communications Director Heather Browne told the **WTTL** that “KBR does not in any way condone or tolerate illegal or unethical behavior. The company stands firm in its unwavering commitment to conduct business with the utmost integrity.” When pressed on KBR’s relationship and liabilities that have resulted from Stanley’s time with KBR, Browne responded “We remain focused on KBR’s path forward.”

The Nigerian construction contracts and FCPA violations were committed by Stanley while he was an executive with KBR, which at the time was a wholly-owned subsidiary of Halliburton Company, which apparently will get the \$10.8 million restitution. KBR was formed when Halliburton’s Brown and Root was merged with M.W. Kellogg Company after Halliburton

acquired Kellogg's parent, Dresser Industries, Inc. KBR separated from Halliburton and became a publicly traded company on its own in 2006. Stanley agreed to make all his assets available to pay the required restitution.

In 2004, Halliburton said Stanley had been fired after the SEC began its investigation of the FCPA charges and the company had launched its own investigation of the charges. "The terminations occurred because of violations of Halliburton's code of business conduct that allegedly involved the receipt of improper personal benefits in connection with TSKJ's construction of the natural gas liquefaction facility in Nigeria," Halliburton told the SEC in a 2004 filing (see **WTTL**, July 26, 2004, page 4).

The SEC complaint against Stanley said that "in numerous Dresser, Halliburton and KBR company records, Stanley and others falsely characterized the payments to the U.K. Agent and the Japanese Agent as legitimate 'consulting' or 'services' fees when, in fact, Stanley knew they were bribes." It also said, "Stanley and others also prepared for approval internal company bid documents for the LNG Trains that mischaracterized the bribe payments as legitimate expenses. By falsifying documents and authorizing the sham agent contracts, Defendant also knowingly circumvented certain internal accounting controls of a U.S. issuer."

*** * * Briefs * * ***

PUERTO RICO: Census issued FTR Letter No. 1 Sept. 4 to clarify filing time requirements for filing Electronic Export Information (EEI) in AES for exports to Puerto Rico. "In reviewing this issue with CBP, we have determined that the Trade Act deadlines do not apply to shipments within the U.S. Customs Territory, which includes Puerto Rico," said letter issued by William Bostic, chief of Census Foreign Trade Division. "Therefore, Puerto Rico is exempt from the filing times in the FTR," he wrote. Exemption does not apply to U.S. Virgin Islands, which is not part of U.S. Customs Territory, Bostic noted.

KOSOVO: BIS in Sept. 2 Federal Register amended EAR to recognize Kosovo as sovereign country and place it in Country Group B for export controls and Tier 3 for computer exports.

FCPA: Former Managing Director of ITXC Corporation Roger Michael Young was sentenced Sept. 2 to pay \$7,000 fine and serve five-years probation, three months home detention and three months in community confinement center for FCPA violations related to bribes paid to obtain telecommunications contracts in Africa. He pled guilty to charges in July 2007 (see **WTTL**, July 30, 2007, page 4). Co-defendant Steven Ott was sentence in July to pay \$10,000 fine and serve five years on probation and six months in community confinement center.

SOFTWOOD LUMBER: At request of U.S., CIT Judge Donald Pogue Sept. 2 issued revised order barring distribution of Byrd Amendment funds from antidumping duties collected on imports of red hard wheat from Canada to add order stating government of Canada's complaint on softwood lumber was dismissed for lack of standing (see **WTTL**, June 16, page 4).

BELARUS: OFAC Sept. 1 issued General License No. 1 permitting U.S. firms to conduct transactions for 180 days with Lakokraska OAO and/or Polotsk Steklovolokno OAO, two entities that were designated as blocked parties on May 15, 2008.

CONSTRUCTION EQUIPMENT: BIS in Sept. 5 Federal Register amended ECCN 0A018.a. in EAR to make it clear that "crew protection kits" are subject to controls. "To facilitate public understanding that crew protection kits are considered construction equipment built to military specifications, the Departments of Commerce, State, and Defense agreed to include specific reference to these kits in the descriptive text of ECCN 0A018.a," BIS explained. Controls now apply to: "Construction equipment built to military specifications, including equipment specially designed for airborne transport; and specially designed parts and accessories for such construction equipment, including crew protection kits used as protective cabs."