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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

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ARMOR PAYS \$1,102,200 FINE FOR UNLICENSED CRIME CONTROL EXPORTS

The Bureau of Industry and Security (BIS) Aug. 17 said Armor Holdings, Inc., of Jacksonville, Fla., has agreed to pay a \$1,102,200 civil fine to settle 167 charged violations of exporting various crime control equipment to foreign consignees from 2001 to 2004 without approved licenses. The charges also include failing to file Shipper's Export Declarations (SEDs) or filing false information, as well as failing to comply with recordkeeping requirements. The exports went to 41 countries, including Egypt, Mexico and France.

The shipments included handcuffs, riot helmets, fingerprinting equipment, and face shields, BIS said. "Rigorous compliance with all aspects of our export control system is critical," said BIS Assistant Secretary Export Enforcement Darryl W. Jackson in a statement. "Compliance is vitally important for crime-controlled items, which can be misused if they fall into the wrong hands," he added.

CHI MAK CASE STILL ALIVE AS JUDGE WEIGHS RETRIAL MOTION

Chi Mak, who was convicted in May on charges of attempting to export controlled naval propulsion technology to China, has become the "poster boy" for government officials warning about the threat of Chinese espionage. But the case isn't over yet. Santa Ana U.S. District Court Judge Cormac Carney has agreed to hear Mak's motion for a retrial or acquittal and ordered the government to give his defense lawyer's access to a computer simulation that was behind evidence offered in this trial. At the same time, Carney has delayed Mak's sentencing, which was scheduled for Sept. 10.

After Mak was convicted, four member of his family who were co-defendants in the case, pled guilty to either conspiracy or aiding and abetting in the alleged export scheme (see **WTTL**, June 11, page 2). The request for a new trial also claims the government distorted the fact-finding process by intimidating a key witness. The government has denied this claim.

A hearing on Mak's motion for retrial was postponed from Aug. 1 to Oct. 15 because his lawyer, Ronald Kaye, was scheduled to have surgery on his vocal cords Aug. 13. Earlier, Carney allowed Kaye to question one of the government's witnesses, Dr. Yuri Kheronsky, and ordered the government to provide Kaye with the computer simulation used as the basis of testimony by another government witness. "The court finds it appropriate to grant Mr. Mak's request for access to the computer simulation presented by Mr. Schreppler to the jury during his rebuttal testimony," Carney wrote. "Although the simulation was not formally admitted as an exhibit, it

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was presented to the jury during the government's rebuttal case. The government has articulated no rational basis for denying Mr. Mak access to the actual simulation presented to the jury," the judge declared. That didn't end the issue. "On July 16, 2007, government counsel provided notice to defense counsel that the simulation and the hard copy of the code are classified, and consequently, that the defense expert would have to review the material in the secure room at the Roybal Federal Building," noted a stipulation filed with the court. As a result, Mak's lawyers had to find an expert with a security clearance who could review the information under these conditions.

Mak's lawyers said they wanted access to Kheronsky, a vice president at Power Paragon, the company where Mak worked, because the government did "intentionally distort the fact-finding process" by allegedly threatening Kheronsky with criminal prosecution. Kheronsky had declined to testify at Mak's trial, invoking his Fifth Amendment right against self-incrimination. "Had Dr. Kheronsky testified, the jury would have known that engineers at Power Paragon uniformly did not seek approval of the export coordinator prior to presenting technical papers at academic conferences," Mak's retrial motion stated.

U.S. TO ASK WTO PANEL TO HEAR COMPLAINT ON CHINA'S IPR PRACTICES

The U.S. will ask the World Trade Organization (WTO) to establish a dispute-settlement panel to judge its complaints against China's alleged failure to provide intellectual property rights (IPR) protection to U.S. films and movies. The U.S. began consultations with China on these issues in April but talks failed to resolve the complaints. The request for the panel will be presented to the WTO Dispute Settlement Body at its next meeting on Aug. 31. China has the right to block the first request for a panel, so the panel creation process probably won't start until September or October.

"The United States and China have tried, through formal consultations over the last three months, to resolve differences arising from U.S. concerns about inadequate protection of intellectual property rights in China," said U.S. Trade Representative (USTR) spokesman Sean Spicer.

"That dialogue has not generated solutions to the issues we have raised, so we are asking the WTO to form a panel to settle this dispute," he added. Washington's complaint is aimed at the high threshold Beijing sets for prosecution of copyright and trademark counterfeiters; China's practice of reselling fake music and video CDs that have been seized by the government; and the inability of foreign copyright holders to complain about copyright infringement while Chinese censors are reviewing their products for access to the Chinese market.

The U.S. and China are continuing to consult on a separate American complaint about restrictions on access to the Chinese market for copyrighted material, including online music (see **WTTL**, July 30, page 1). The market access dispute involves movies, music, home entertainment videos, and publications. The U.S. "has just completed supplemental consultations with China and is considering next steps," the USTR's office said.

NAFTA MINISTERS PRESS FOR EXPANDED SECTORAL TRADE

At their Aug. 14 NAFTA Commission meeting in Vancouver, British Columbia, trade ministers from the U.S., Canada and Mexico agreed to instruct their staffs to develop a plan for facilitating trade among the three countries in swine, steel, consumer electronics, and chemicals. With full implementation of NAFTA's tariff-cutting agenda nearly completed after 14 years, a communique issued by the ministers said, "we must look for new and creative ways of further promoting trade and new business opportunities." They also authorized a third set of changes to liberalize the rules of origin for some \$100 billion in goods by 2008. Changes in the rules in 2005 and 2006 eased trade for about \$35 billion in trade. "We recognize the concept of

cumulation of origin as an important mechanism for creating new business opportunities by strengthening the competitiveness of North American products globally,” the communique stated. “The Commission intends to instruct the Working Group on Rules of Origin to study further appropriate opportunities for cumulation,” it added.

The ministers reviewed a report from a Chapter 19 Operation Working Group, which proposed changes in the rules of procedures for bilateral NAFTA dispute-settlement panels. The three countries will now review the group’s recommendations, “with a view to having the Commission adopt an agreed package of amendments to the Rules of Procedure by November 15, 2007,” the ministers said.

BIS TO STUDY NATIONAL SECURITY RISKS FROM CHANGES IN CHIP INDUSTRY

Two years after the Defense Science Board (DSB) warned that U.S. national security might be at risk from the offshore movement of the U.S. semiconductor industry and foreign acquisition of American chip makers, BIS has launched its own study of trends in the industry. The agency Aug. 13 said it would conduct an industrial base assessment of the integrated circuit industry to support the Pentagon’s procurement system and to understand the capabilities of domestic suppliers. The BIS assessment will support a DOD effort to establish a *Trusted Integrated Circuit Policy*, scheduled for release later this year.

BIS said it will establish a working group of defense, intelligence and academic experts to help its study and will consult with industry. It also plans to conduct a survey U.S. companies to establish a baseline for current capabilities and the outlook for the industry’s future. On-site visits also will be conducted. Its final report is due by the end of 2007.

The DSB report raised concerns about the offshore movement of chip production, especially to the Far East and China, and the potential loss of leading edge technology to China. The report was part of a Defense review, started by then-Deputy Secretary Paul Wolfowitz in 2003, of the availability of microprocessors that are essential for defense weapons systems. [Editor’s Note: Copy of the DSB report will be sent to WTTL subscribers on request. We’ll also send copy of August 2005 issue of sister publication, *The Export Practitioner*, with article on report.]

U.S. EXPORTS GREW AT TWICE PACE OF IMPORTS IN FIRST HALF 2007

Exports of U.S. goods and services in the first six months of 2007 grew more than twice as fast as imports. As a result, the total U.S. trade deficit in goods and services shrank by \$29.5 billion compared to the first half of 2006. The goods deficit was almost \$15 billion less. “June trade data, released this morning, show that the U.S. trade deficit has fallen by 7.7% so far this year, compared to the same period of 2006,” said USTR Susan Schwab. “American exports are up by 11%, more than twice as fast as the 4.4% increase in U.S. imports. Highlighting the importance of exports, other recently released data on the economy showed that export expansion has accounted for 40% of U.S. economic growth over the last year,” she added.

Contributing to the drop in the trade deficit were declining bilateral deficits with almost every major trading region except China. The trade deficit with China grew by \$15.6 billion. This was offset, however, by a decline in the deficit with Central and South America by \$11.5 billion, with the European Union (EU) by \$9.8 billion, with Japan by \$3 billion, and with Canada and Mexico by \$1 billion.

While export growth to China (+18.8%) continued to outpace import growth (+16%), the difference was far narrower than it was in 2006. Exports to the EU (+17%) far outstripped the growth of imports (+5%). Exports to South and Central America jumped 18.3%, while imports from the region actually declined by 5.8%. Trade with Mexico and Canada was nearly flat with exports up 3% and imports up 2%. The strong U.S. export performance was led by increases in

farm exports, especially corn and soybeans, gold, organic chemicals, plastics, steelmaking materials, industrial machines, civil aircraft, medical devices and pharmaceuticals. Going against the tide, several categories saw exports decline in the first half, including semiconductors, computer accessories, metal machine tools, raw cotton and audio-visual tapes.

Even though the U.S. has formally complained about Canada's alleged failure to implement the U.S.-Canada Softwood Lumber Agreement, imports on lumber in the first half of the year were down 28% to \$3.5 billion. Also seeing declines were imports of crude oil, shingles and wallboard, plastics, audio-visual tapes, liquified petroleum gas, and steel.

U.S. services exports in the first six months of the year grew at a faster pace than they did in the first six months of 2006 (11.9% v. 8.3%), helping to produce a services trade surplus of \$51.4 billion. Services export growth in 2007 has been led by a 14.6% jump in private service exports, which includes foreign payments for U.S. financial services and the fees paid to Wall Street firms. Also seeing strong expansion (+ 12%) was the payment of royalties and license fees by foreign users to U.S. owners. Foreign travel in the U.S. also picked up (+9.7%).

* * * BRIEFS * * *

EXPORT ENFORCEMENT: EHI Group USA, Inc., of Cupertino, Calif., and its president, Qing Chang Jiang, reached separate agreements with BIS to settle charges related to export of microwave amplifiers to China without approved licenses. BIS imposed \$17,000 civil fines on both EHI and Jiang, but will allow them to pay \$500 by Nov. 1, \$500 by Feb. 1, \$5,000 by May 1 and balance by Aug. 1. In addition, both EHI and Jiang will be denied export licensing privileges for five years.

LAMINATED SACKS: Allegedly dumped and subsidized imports of laminated woven sacks from China may be injuring U.S. industry, ITC determined in preliminary ruling Aug. 10

RECTANGULAR STEEL: ITC Aug. 10 made preliminary determination that U.S. industry may be suffering injury or threatened with injury from allegedly dumped and subsidized imports of light-walled rectangular pipe and tube from China and allegedly dumped imports from Korea, Mexico and Turkey.

FDA-REGULATED EXPORTS: In Aug. 14 Federal Register, FDA announced publication of final guidance on implementation of 1996 FDA Export Reform and Enhancement Act, which modified rules for exporting drugs, biologicals, foods, medical devices, food and color additives and dietary supplements. [**Editor's Note:** Copy of guidance will be sent free to WTTL subscribers on request.]

QUALCOMM: Having lost Section 337 challenge to Broadcom over semiconductor patents, Qualcomm was target of new 337 complain filed Aug. 16 at ITC by Nokia. Subject of new complaint are wireless communication chips and chipsets, and products containing same (see WTTL, Aug. 13, page 2)

CUBA TRAVEL: OFAC's latest enforcement report shows continued crackdown on travel to Cuba. Agency said it has reached agreement with Travelocity.com, which paid \$182,750 civil fine to settle charges of arranging air and hotel travel services on 1,458 occasions to Cuba. It also imposed \$16,625 fine on American Express Travel Related Services Co. for arranging group travel packages to Cuba in 2002 and 2003. Amex voluntarily disclosed actions to OFAC.

EDITOR'S NOTE: In keeping with our regular publication schedule, there will be no issue of *Washington Tariff & Trade Letter* on Aug. 27, 2006. Our next issue will be Sept. 3.

Washington Tariff & Trade Letter and *The Export Practitioner* Sponsor Audio-Conference Briefing on:

How to Comply with New BIS China Rule

Featuring

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Senior Advisor, MK Technology LLC
Former Director, BIS Office of Export Enforcement

Carol A. Kalinoski
Carol A. Kalinoski & Associates
Former Chairman, BIS Operating Committee

Donald Alford Weadon Jr.
Weadon & Associates

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