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ENGINEER PLEADS GUILTY TO EXPORTING DEFENSE-CONTROLLED SOURCE CODE

A former employee of Quantum 3D, Inc., of San Jose, Calif., pled guilty in federal court Aug. 1 to exporting to China source code that is controlled under the International Traffic in Arms Regulations (ITAR). This reportedly is the first conviction under the Arms Export Control Act (AECA) based on the export of source code. Xiaodong Sheldon Meng also pled guilty to violating the Economic Espionage Act (EEA) for possessing trade secrets he allegedly stole from Quantum. The government said this is only the second conviction and only third prosecution under EEA since in was enacted in 1996

> "This conviction, the first in the nation for illegal exports of military-related source code, demonstrates the importance of safeguarding our nation's military secrets and should serve notice to others who would compromise our national security for profit," said Assistant Attorney General for National Security Kenneth L. Wainstein in a statement. "This case is the latest evidence of the department's enhanced investigative and prosecutorial efforts to keep America's critical technology from falling into the wrong hands," he added.

Meng, whose attorneys were court-appointed federal public defenders, pled guilty to only two of the 36 charges that were contained in his December 2006 indictment. The government had charged him with exporting source code for two products, but accepted his plea to only one of those charges. Meng agreed that he had violated the AECA by exporting source code for the viXen simulation system used to train fighter pilots. The government dropped its claim that he exported source code for the nVsensor, a simulation system for combat night vision training.

From 2000 to 2003, Meng had worked for Quantum, which had developed several simulation systems used for commercial and military training, including the Mantis system. When Meng left the company, he became an independent consultant in Asia and China, allegedly trying to sell Quantum products he had taken with him despite agreeing to return all company materials when he resigned. Among Asian firms and military services that he contacted, according to his indictment, were the Beijing Lantian Aviation Simulation Technology Company, which is a subsidiary of the China Aviation Industry Corporation. The indictment said he also approached the Navy Research Center of the PRC and the Shenzhen Land Management Bureau.

RANGEL REACHES FOR LOW FRUIT WITH PERU FTA

During a quick trip to Peru Aug. 6, House Ways and Means Committee Chairman Charles Rangel (D-N.Y.) claimed Congress would be ready to vote to approve the U.S.-Peru Free Trade

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Agreement (FTA) in September when lawmakers return from their summer vacation. But he didn't mention the fates of the Panama, Colombia or Korea FTAs, suggesting that congressional Democrats are ready to fulfill only one-quarter of the May 10 deal they made with the Bush administration and to approve the easiest of the four pacts (see **WTTL**, July 23, page 1) .

> "I was extremely pleased to hear President Garcia express such overwhelming support for the recent changes to the agreement and I look forward to making the US-Peru FTA a top priority for the committee and the Congress when we return in September," Rangel said in a statement when he returned. "During our meetings, it became clear that Americans and Peruvians share the same principle - that expanded trade must not be a race to the bottom where the basic rights of workers are ignored so that large multi-national corporations may profit," he said.

At the welcoming ceremony when Rangel and his fellow committee members arrived in Lima on Aug. 6, Peruvian President Alan Garcia said his country was committed to enacting the changes in labor and environmental laws that are required under the May 10 accord, but didn't say when that would happen. "It is my understanding that some of the observations and requests of the new [U.S. Congress] majority coincide clearly with the objectives of the government that I lead," he said. "Our delegates are committed to incorporate the changes to strengthen the agreement to benefit world trade and workers worldwide," he told the visiting North Americans.

On his return, Rangel found a letter waiting from U.S. Trade Representative (USTR) Susan Schwab and Treasury Secretary Henry Paulson. "We share your goal of passing the Peru free trade agreement legislation expeditiously," they wrote. "Therefore, we look forward to working with you to move the legislation out of Committee in September so that we can begin to make the vision of the May 10 bipartisan agreement a reality," they added.

SCHWAB GIVES STRONG ENDORSEMENT TO ITC'S HANDLING OF 337 CASES

In addition to upholding Broadcom's right to import protection in its dispute with Qualcomm over certain semiconductor patents, USTR Susan Schwab Aug. 6 boosted the role of the International Trade Commission (ITC) in deciding section 337 cases without having to worry too much about being seconded guessed by the White House. "In declining to disapprove these orders, I am continuing the practice of successive administrations of exercising section 337 review authority with restraint, reserving for extraordinary cases the power to disapprove the findings and orders of the USITC," she said in a statement (see **WTTL**, June 11, page 1).

> The ITC has increasingly become the venue of choice in patent and trademark suits against imports under section 337. The handling of section 337 cases has become the commission's primary assignment in the last few years as the number of new antidumping and countervailing duty cases has declined to historic low levels. The patent bar has favored the ITC for patent disputes because rulings are issued more quickly there than in federal district courts and ITC exclusion orders and cease-and-desist orders can broadly cover all imports.

"This administration remains committed to advancing innovation and economic progress," Schwab said. "Consistent with that policy, ensuring adequate and effective protection of intellectual property rights, including enforcement of such rights at the U.S. border through orders issued under section 337, is an important national interest," she added. Schwab said the review of the ITC order included the USTR's office, as well as the departments of Homeland Security, Commerce, State, Treasury, Transportation, Defense and Justice. One of the key issues under consideration was whether national security, law enforcement and other domestic first responders would suffer if federal and local agencies could not buy imported telecommunications equipment that would be excluded by the ITC order.

"While we recognize legitimate concerns that certain market participants and others have expressed regarding the potential effects of these orders, we believe that steps are being taken

to address those concerns," Schwab said. "We have consulted closely with the Department of Homeland Security (DHS) and other public safety agencies. After extensive review, DHS has advised that it does not believe there are public safety risks sufficient to justify disapproval of the USITC's limited exclusion order," she said.

> Qualcomm isn't ready to accept the cease-and-desist order the ITC imposed on imports of new foreign-made cellphones that use Qualcomm chips that the commission found infringe on patents held by Broadcom. Qualcomm said it would seek another stay of the ITC order at the Court of Appeals for the Federal Circuit. The appellate court July 20 rejected a stay request by the company because it said the issue wasn't ripe for judicial review until after the White House had completed its review and decided whether or not to block the order.

U.S. TAKING SOFTWOOD LUMBER DISPUTE WITH CANADA TO ARBITRATION

It seemed almost unnatural for the U.S. and Canada to go almost 10 months without a dispute over softwood lumber, so it felt like old times Aug. 7 when Washington said it would seek arbitration to resolve U.S. complaints about Ottawa's implementation of the U.S.-Canada Softwood Lumber Agreement (SLA) (see **WTTL**, April 2, page 4). The U.S. had sought consultations with Canada in March on U.S. industry complaints that Canada was not slowing down the flow of lumber to the U.S. – as required by the bilateral accord – to match the slowdown in the U.S. construction industry.

> "It is truly regrettable that, just ten months after the agreement entered into force, the United States has no choice but to initiate arbitration proceedings to compel Canada to live up to its SLA obligations relating to export volume caps, proper application of the import surge mechanism, and anti-circumvention," Schwab said in a statement. "Our efforts to resolve these matters through consultations have not been successful. Therefore, we are initiating arbitration proceedings as provided under the SLA," she declared.

"This announcement stems from differing interpretations of the Softwood Lumber Agreement by Canada and the U.S.," said Canada's Minister of International Trade David Emerson. "Despite extensive talks with industry, we were not able to resolve these issues during the consultation phase," he noted. "We will work closely with the United States to resolve these matters. Canada remains committed to this agreement and its continued effective operation, and will abide by the outcome of the dispute settlement process," Emerson stated.

Under the SLA, the U.S.-requested arbitration will be conducted by the London Court of International Arbitration. There will be a two-month process to select arbitrators. The SLA calls for the arbitral tribunal to issue its award within six months of its appointment. A key part of the bilateral dispute is Canada's alleged failure to implement export restricting measures when the price of softwood lumber fell below $355 per million board feet(MBF). "The current prevailing monthly price of lumber is $309 per MBF," the USTR's office says.

BIS OFFERS ADVICE ON ENCRYPTION EXPORTS TO CHINA

In Aug. 2 advisory opinion, the Bureau of Industry and Security (BIS) attempted to clarify its review and licensing requirements for exports of encryption "technical assistance" and "technology" to China. The opinion signed by C. Randall Platt, director of the BIS information technology controls division, focuses on the distinctions in the treatment of technology assistance classified in Export Control Classification Numbers (ECCNs) 5E992 and 5E002 under EI encryption controls. Platt's advice responded to an inquiry from an unidentified firm that asked whether BIS agreed with its interpretation of the encryption regulations in four proposed scenarios that it described. BIS concurred with most of the firm's views with some expanded interpretation. "If any exporter complies with the requirements set forth in section 742.15(b)

for the export of the 5E992 technology, the authorization set forth in section 742.15(b) will satisfy the requirement in section 744.9 that any 'technical assistance' for encryption commodities or software be authorized by BIS," Platt wrote. One of the scenarios involved technical assistance classified under ECCN 5E992 to a company in China for the manufacture of a Chinese-made item covered by 5A002. Platt agreed that an ECCN 5A002-level foreign product would not be subject to the Export Administration Regulations (EAR) unless the foreign product contained more than a *de minimis* amount of U.S-origin controlled content.

> In a second scenario, Platt said "the export of ECCN 5E002 technical data or ECCN 5E002 technical assistance would require a license for export to China under section 742.15(a), and that license would satisfy the requirement under section 744.9 that any export of encryption technical assistance receive authorization from BIS." A third involved the transfer of a foreign direct product in China. Such as sale or transfer to third parties "would be the equivalent to an export, and prior review/license exception authorization or a license would be required for such transactions to the same extent it would be required for an export of the item from the United States to the end user," Platt wrote.

* * * BRIEFS * * *

EAR: BIS in Aug. 6 Federal Register published what it calls "technical corrections" to EAR. Among changes are clarifications on grace period for filing of support documents on AES and SED filings, Entity List entry on Indian entities, and addition of License Exception for sighting devices in ECCN 0A987.

BEEF: Sen. Max Baucus (D-Mont.) Aug. 7 asked ITC to conduct section 332 fact-finding investigation of effects of foreign animal health, sanitary and food safety measures on U.S. on beef exports.

EXPORT ENFORCEMENT: P.R.A. World Wide Trading Co., Inc. has agreed to pay $250,000 civil fine in agreement with BIS on 42 charges, claiming it conspired and did file false SED statements. Specifically, BIS claimed freight forwarder filed false values on 41 shipments, stating values at just 20% of true value. BIS agreed to suspend $90,000 of fine and waive balance if PRA remains in compliance with regulations.

MORE EXPORT ENFORCEMENT: BIS added "knowledge" charges in Charging Letter to Zaharoni Industries of Hawthorne, Calif., based on outreach visit OEE agents made to company. In settlement agreement with BIS, firm agreed to pay $66,000 civil fine to resolve six complaints related to export of integrated circuits to Iran through UAE without approved license.

MORE EXPORT ENFORCEMENT: Viking Corp. of Hastings, Minn., has agreed to pay $22,000 civil fine and its Luxembourg subsidiary, Viking SA, has agreed to pay $44,000 civil fine in agreements with BIS to settle charges that they exported and attempted to export fire extinguishing equipment to Iran through UAE without OFAC approval. BIS claimed Viking SA acted with knowledge because parent had informed it of licensing requirement before export. Both firms also agreed to perform internal export compliance audits and provide copy of results to BIS Chicago office.

ANTIBOYCOTT: QSA Global, Inc., of Burlington, Mass., paid $1,600 civil fine in agreement with BIS after it made voluntary self-disclosure that on one occasion it provide boycott information to customer Oman. In separate case, BIS issued warning letter to Andrew Corporation of Orland Park, Ill., after it made self-disclosure that it had failed to report request from client to particpate in boycott of Israel.

COMMODITY JURISDICTION: In update on CJ process posted on its website, DDTC said median time for completing CJ determinations has been 106 days in first six months of 2007.

DEEMED LIQUIDATION: In split 2-1 ruling July 27, in *Koyo v. U.S.*, Court of Appeals for Federal Circuit affirmed ITC decision that Customs improperly refused firm's protest. "Based on the record before us, it is undisputed that Koyo timely protested nine of 10 entries that were deemed liquidated by operation of law pursuant to Section 1505(d)," two judges agreed. "Customs should have applied the final review results to determine the rate of duty owed by Koyo," they said.

BEDROOM FURNITURE: ITA Aug. 9 issued final first administrative review results on wooden bedroom furniture from China, raising most rates significantly from final antidumping order. Starcorp group saw its rate go to 216.01% from 15.78% based on use of adverse facts available because it didn't cooperate in review. For participating separate-rate companies, rate jumped to 35.38% from 6.65%. PRC-wide rate increased to 216.01% from 198.08%