

Washington Tariff & Trade Letter[®]

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. 24, No. 28

July 12, 2004

FIVE BROTHERS CONVICTED FOR EXPORT AND SED VIOLATIONS

A federal jury in Dallas, Texas, July 7 convicted five brothers of conspiracy to export computers to Libya and Syria without approved licenses and making false statements on Shipper's Export Declarations (SED). The case against the family dates to a Bureau of Export Administration investigation which led in 2001 to a temporary export denial order being imposed on the brothers and a guilty plea by one of them in 2002 (see **WTTL**, July 1, 2002, page 4).

Convicted were brothers Bayan, Ghassan, Basman, and Hazim Elashi and Ihsan (also known as Sammy) Elashyi, as well as their company, Infocom Corp. of Richardson, Texas. Ihsan Elashyi pled guilty in 2002 to charges of unlicensed exports to Saudi Arabia and was still serving his sentence when the latest conviction came. The brothers face a separate trial on charges that they donated money to Hamas, which is a Specially Designated Terrorist Organization.

In addition to the TDO, the brothers, and others not part of this trial, were the subject of a 38-count indictment in 2002. In this trial, they faced 23 counts. Only one brother, Basman, was convicted on all 23 counts. The others, including Infocom, were convicted on six to 15 counts.

"All of the defendants with the exception of Ghassan Elashi, were found guilty of Libyan Export Violations and all of the defendants were found guilty of Syrian Export Violations," reported a statement by the U.S. Attorney in Dallas. "All of the brothers were convicted of false statements, and all of the defendants except Ihsan Elashy, were also convicted on money laundering charges," it added. The SED charges related to making statements that the goods were destined for Malta or Italy when they were really going to Syria or Libya, claiming no license was required, or misstating the true value of the shipments.

CENSUS TELLS SHIPPERS NOT TO GIVE SED DATA TO FOREIGN GOVERNMENTS

With more foreign governments seeking to obtain information included on Shipper's Export Declarations (SEDs) or Automated Export Systems (AES) filings, the Census Bureau July 5 sent a memo to all U.S. principal parties in interest, freight forwarders and common carriers, reminding them that it is against the law to provide such information to unauthorized parties, including foreign governments. The bureau issued a similar notice in February, rejecting a request from Costa Rica for SED data.

The new memo clarifies that notice to cover all foreign governments. The memo from Harvey Monk, director of Census's Foreign Trade Division, noted that information contained on SEDs

Copyright © 2004 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

is confidential. It is a violation of the Foreign Trade Statistics Regulation to provide such data to “anyone except the U.S. Principal Party in Interest or their agent and only when such a copy is needed to comply with United States official legal and regulatory export control requirements,” he wrote. “We are requesting that the information on the SED or Automated Export System record not be provided to foreign governments,” Monk stated.

“Providing this information to foreign governments would be contrary to the national interest as it would seriously impact further attempts to complete the mission of the Census Bureau,” his memo said. Foreign governments want SED data to check stated export values against import invoices to detect fraud. Costa Rica had enacted requirements for the submission of SEDs for imports but suspended the rules for U.S. goods when Census balked at providing the data.

Customs has also wanted to arrange for the swapping of export data with foreign governments to track potential illegal shipments and terrorist activities. Commerce Secretary Don Evans, apparently over the objections of Census, recently authorized Customs to provide some SED information to Mexico on a selected basis (see **WTTL**, April 12, page 1).

COURT UPHOLDS RESTRICTIONS ON BYRD AMENDMENT PAYMENTS

Companies that originally opposed an unfair trade complaint can't receive a share of the payments under the Byrd Amendment even when they acquire another company that supported the case, the Court of Appeals for the Federal Circuit (CAFC) ruled July 2. Supporting a Court of International Trade (CIT) decision that reached the same conclusion, the appellate court – by a 2-1 vote – tried to dispel the ambiguity in the statute, which led to a dispute over how Customs decided which companies were eligible to receive funds under the Continued Dumping and Subsidy Offset Act of 2000.

At issue in the suit was a claim by Candle Corporation of America (CCA) that it was entitled to Byrd money because it had acquired two firms, Lenox Candles and Colonial Candles of Cape Cod, which had supported the 1985 antidumping complaint against imports of petroleum wax candles from China. CCA had opposed the case at the time. The case involves big stakes. Customs had \$18.3 million to distribute in fiscal year 2001 to eligible candle makers and \$69.5 million in 2002.

Because of a lack of a comma, the statutory language left doubt as to whether the prohibition on paying Byrd funds to opponents that acquired supporters of a complaint applied only to companies “related” to opponents or also to opponents themselves. There was no legislative history to clarify the meaning of the language. Writing for the two-judge majority, Judge Timothy Dyk said, because of the lack of legislative history, “we must look beyond the statutory language to the statute’s purpose to determine the meaning.” Dyk said. “The purpose of the statute is quite clear – to bar opposers of antidumping investigations from securing payments either directly or through the acquisition of supporting parties,” he declared.

Judge Arthur Gajarsa dissented, saying the case should have been remanded to Customs to interpret the law and the court should not intervene. “In my judgment, there is no basis to decipher the congressional intent or purpose from any source,” he wrote.

ADMINISTRATION DEFENDS LABOR PROVISION IN MOROCCO FTA

Democrats on the House Ways and Means Committee were left sputtering over semantics July 7 as they attempted to raise objections to the labor provisions in the U.S.-Morocco Free Trade Agreement (FTA). Reps. Charlie Rangel (D-N.Y.) and Sandy Levin (D-Mich.) complained that the deal doesn't require Morocco to enforce the core labor standards of the International Labor Organization (ILO). But Deputy U.S. Trade Representative Peter Allegeier countered by pointing out that Rabat has reformed its labor laws to be consistent with ILO standards, and the

accord requires it to enforce those laws. Despite the tough questioning on labor rules, most of committee members appeared satisfied with provisions in the FTA strengthening Morocco's enforcement of intellectual property rights and opening the country to more U.S. farm exports. Allegeier also assured Rep. Earl Pomeroy (D-N.D.) that there would be no increase in Morocco's share of the U.S. sugar quota until it became a net exporter of sugar.

Chairman Bill Thomas (R-Calif.) said he hopes to bring implementing legislation to the House floor "prior to the Democratic Convention" at the end of July. House and Senate staffers are working with administration lawyers on the bill and hope to have a draft ready for a non-markup markup by Ways and Means and the Senate Finance Committee the week of July 12, congressional sources report.

HOUSE VOTES TO BLOCK BIS FROM LIMITING EXPORTS TO CUBA

The House July 7 voted 221 to 194 to amend the 2005 Commerce appropriations bill (H.R. 4754) to prevent the Bureau of Industry and Security (BIS) from enforcing new regulations limiting exports of gifts to Cuba. The rules, published June 22, are intended to limit exports of personal gifts and packages sent from the U.S. to Cuba (see **WTTL**, June 28, page 1).

Sponsored by Rep. Jeff Flake (R-Ariz.), the amendment said no appropriated funds "may be used to implement, administer, or enforce the amendments made to sections 740.12 of title 15, Code of Federal Regulations" or Section 740.14 which relates to license exemptions for baggage taken by individuals for travel to Cuba.

Congressional action comes as the Office of Foreign Assets Controls (OFAC) continues to crackdown on trade and financial dealings with Cuba. In latest release of information on civil settlements, it imposed a \$74,294 civil fine on the Church Pension Fund for payments to Cuban nationals and a \$92,093 fine on International Music Network for contracting on behalf of Cubans. OFAC fined CNN \$7,500 for attempting to send U.S. currency to Cuba.

CHINA AGREES TO STOP REBATES ON SEMICONDUCTOR VAT

Why is China being so nice? Beijing didn't even wait for the convening of a World Trade Organization (WTO) dispute-settlement panel before bowing to U.S. complaints and agreeing to end its policy of giving domestic semiconductor manufacturers a rebate on the value added taxes (VAT) paid on chips. The agreement on the VAT rebates, announced July 8, came just two months after Chinese Vice Premier Wu Yi was in Washington on a charm offensive offering to settle several other U.S.-Chinese trade disputes (see **WTTL**, April 26, page 3).

The next tests of Chinese accommodation will be its enforcement of intellectual property rights (IPR) and the valuation of their currency, the renminbi. Treasury officials have been holding talks with Beijing on the exchange-rate issue, and industry sources expect China to re-peg the currency to make it less undervalued than its current 8.2- to-\$1 rate but not to let it float freely.

With some pundits suggesting trade will be a political issue in this year's presidential election, U.S. Trade Representative (USTR) Robert Zoellick used the announcement of the VAT deal to boast about the Bush administration's success in getting trade concessions from China and winning other trade disputes. The March 18 U.S. request for WTO consultations complained that Beijing was providing its domestic Chinese chip manufacturers a rebate of up to 14% on the 17% VAT, putting chip imports at a disadvantage.

Under the settlement, China immediately will stop certifying new semiconductor manufacturers as eligible for the rebate and will end the rebate for all Chinese-produced chips by April 1, 2005. It also will no longer offer special VAT rebates to semiconductors designed in China. George Scalise, president of the Semiconductor Industry Association, said the Chinese chip

market is about \$25 billion and growing at a rate of 25% annually. U.S. firms have the largest share of foreign chip imports, selling about \$2 billion to China in 2003. Scalise said the industry still faces problems with China's lack of enforcement of intellectual property rights. He noted that export controls have been a problem "to some degree" because of restrictions on exports of semiconductor manufacturing equipment to China.

"However, at this stage, we think that is getting worked through, and as time moves along and the next level of equipment is allowed to go in, I think that problem is a relatively small problem, and not something that creates a great discontinuity," he said. U.S. export control agencies have maintained a de facto policy of only allowing exports to China of chip equipment that is one generation behind the state-of-the-art equipment now used in the U.S.

SHRIMP RULING SHOWS ITA TAKING MORE ACCOMMODATING VIEW ON NMEs

Like its decision on wooden bedroom furniture three weeks earlier, the International Trade Administration's (ITA) preliminary antidumping ruling July 6 of frozen and canned shrimp from Vietnam and China shows the agency has become more willing than in the past to look at actual market conditions in nonmarket economies (NMEs). While ITA didn't use market input prices in the shrimp case as it did in the furniture case, it did examine differences in production costs for integrated producers, who had lower costs than firms that bought and resold shrimp.

"We found that the integrators in this particular situation had a cost of production that was very low relative to other producers," explained Assistant Secretary of Commerce for Import Administration James Jochum. As a result, one integrator, Zhanjiang Guolian Aquatic, was given a de minimis dumping rate of 0.04% and Shantou Red Garden Foodstuff was assigned a 7.67% rate.

Allied Pacific Group was assigned a 90.05% rate and Yelin Enterprises 98.34%, but the separate rate for firms that filed voluntary questionnaires was 49.09%. The preliminary rates on Vietnamese shrimp ranged from 12.11% to 19.60%, with a separate rate of 16.01%. ITA made a critical circumstances decision for Chinese shrimp produced by Yelin and Allied Pacific, as well as China-wide imports. It found insufficient evidence for such a ruling on imports from Vietnam. The narrow scope of the case, covering only frozen and canned shrimp and prawns, may shift production to battered and breaded shrimp which was excluded from the scope.

* * * BRIEFS * * *

AUSTRALIA FTA: House Ways and Means Committee July 8 voted unanimously to reported out favorably legislation (H.R. 4759) to implement U.S.-Australia FTA. Measure could be on House floor for vote by end of week of July 12. House approval is expected.

SORBITOL: ITC split 3-3 July 8 in "sunset review" determination on whether revoking antidumping order sorbitol from France would lead to renewed injury to U.S. industry. Under Trade Act, tie goes in favor of domestic petitioners.

WIRE ROD: Voting 6-0 in "sunset review case," ITC July 8 found that revoking antidumping orders on stainless steel wire rod from Japan and Taiwan would likely lead to renewed injury to U.S. industry. By 4-2 votes, commission reached similar finding for imports from Italy, Korea, Spain and Sweden.

TRADE PEOPLE: PhRMA, drug industry trade association, July 6 named Geralyn Ritter to be vice president international. She will succeed Shannon Herzfeld, who will remain at association until end of year. Ritter was formerly USTR associate general counsel and with law firm of Covington & Burling.

OMAN: U.S. and Oman signed Trade and Investment Framework Agreement (TIFA) July 7.

GATEWAY: Having been target of Hewlett-Packard Section 337 unfair trade complaint at ITC in May, Gateway counterattacked July 2, filing complaint against H-P at ITC (see **WTTL**, May 10, page 4).