

Washington Tariff & Trade Letter®

A Weekly Report for Business Executives on U.S. Trade Policies, Negotiations, Legislation, Export Controls and Trade Laws

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Vol. 24, No. 27

July 5, 2004

FIRM PAYS CIVIL AND CRIMINAL FINES FOR VIOLATION OF ENTITY LIST

Berkely Nucleonics Corp. (BNC) of San Rafael, Calif., has agreed to pay \$355,000 in civil and criminal fines for knowingly exporting nuclear pulse generators to Indian customers who were on the Bureau of Industry and Security's (BIS) Entity List. In a plea agreement obtained by WTTL, the company pled guilty in the San Francisco U.S. District Court in early June to one count of violating export control regulations by exporting the equipment without an approved license. BNC agreed to pay a \$300,000 criminal fine and be placed on five-years probation.

In a separate settlement agreement with BIS, announced June 28, BNC agreed to pay a \$55,000 civil fine and have its export privileges denied for five years. The agency agreed to suspend the denial order for one year and waive it entirely, if the firm remains in compliance with export requirements.

Two companies executives, Richard Hamilton and Vincent Delfino, pled guilty to criminal charges in December and were fined \$1,000 each. They also were placed on probation for two years and ordered to perform 100 hours of community service. The indictment handed up against the firm and the executives in August 2001 charged them with exporting the pulse generators between 1998 and 2000 to the Bhaba Atomic Research Center and the Nuclear Power Corporation, which are divisions of the Indian Department of Atomic Energy. BNC admitted that its employees knew these end-users were on the Entity List and licenses were required.

WTO AGRICULTURE TALKS HAVE MANY POTENTIAL "DEAL BREAKERS"

WTO agriculture negotiations remain stuck on several issues that could become "deal breakers," the chairman of the talks, Ambassador Tim Groser of New Zealand, warned the WTO Trade Negotiations Committee (TNC) June 30. Among the areas that put the negotiations at risk are proposals to end export subsidies in the form of food aid, to reign in state trading enterprises (STE) and to reduce tariffs on sensitive products in some developed countries.

WTO Director General Supachai opened the TNC meeting also warning that more progress was needed in all areas of the Doha Round, if members hope to reach a framework agreement at the July 26-29 meeting of the General Council. Although there has been political-level support for the Round, "we still face the problem that it is not being translated into progress here in the negotiations," he said. He said he plans to circulate an overall draft text with an agriculture annex by mid-July. Groser gave a positive assessment of talks on reducing domestic supports where the U.S. and European Union (EU) are the primary providers of such aid and agree on the need to reduce these payments. On the subject of food aid, export credits and STE, Groser

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**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**

said an effort may be made to identify the subsidy components of these programs so talks can focus on eliminating the subsidy while leaving the other benefits of these programs untouched (see **WTTL**, June 28, page 2). Negotiators also have had difficulty agreeing on a framework in the market access talks. Some developed countries, such as Japan, Korea, Norway and Switzerland, who are part of the so-called G-10, continue to insist on protecting sensitive products.

The idea of a “blended approach” combining sharper cuts for higher-tariff products and straight-line cuts for lower-tariffs products has fallen into disfavor. An alternative, called a “tiered” or “banded” approach has gained more attention because it offers more options for countries to tailor their cuts.

But Groser, however, cautioned against creating too many bands which would make the framework too complicated and the reduce the benefits for exports. To avoid this he said he was advocating “constrained flexibility” in establishing the various tiers.

FOREIGN CORRUPT PRACTICES ACT CHARGES HIT HEALTHSOUTH EXECUTIVES

In one of the most highly publicized enforcement actions in recent years under the Foreign Corrupt Practices Act (FCPA), the U.S. Attorney in Birmingham, Ala., announced the indictment July 1 of two former officials of HealthSouth Corporation, a firm already under investigation for numerous other fraud charges. The indictments came two days after Commerce sent Congress its sixth and last annual report on an international convention to combat bribery and on actions the government took in the last year to enforce the FCPA.

The indictments of ex-HealthSouth executives Robert E. Thomson and James C. Reilly charged them with bribing the director of a Saudi Arabian foundation in an effort to get a contract to staff and manage a 450-bed hospital in the country. The Saudi had solicited a \$1 million payment as a “finder’s fee” and the two executives arranged to set up a consulting contract for him paying \$500,000 per year for five years. [**Editor’s Note:** A copy of indictment is available to **WTTL** subscribers without charge on request.]

The Commerce reported four new FCPA enforcement actions since last year’s report plus a court ruling reinstating the indictment of American Rice, Inc. Two cases were indictments and two were settlements agreements with the Securities and Exchange Commission. In one SEC settlement, Schering-Plough, the U.S. drug manufacturer, agreed in June to pay \$500,000 civil penalty for effort to get contract in Poland. Report also notes latest Justice advisory opinion (04-01) on FCPA, which said a U.S. sponsor of legal seminar in China could pay expenses for travel, meals and accommodations for Chinese officials who had to travel to Beijing to meeting.

BIS REVISES REGULATIONS TO WELCOME NEW NATO MEMBERS

BIS has kept its promise to revise the Export Administration Regulations (EAR) to give new NATO members almost the same treatment as other members. In the June 28 Federal Register, it issued final rules lifting some restriction on exports to Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia and Slovenia, which joined NATO in March (see **WTTL**, April 5, page 1).

The new rules remove the X in the Commerce Country Chart for these countries for Regional Stability (RS) 2 and for Crime Control (CC). The chart still includes Xs for these countries in the columns for RS:1, Missile Technology (MT), Chemical and Biological (CB) 1 and National Security (NS) 1 and 2.

BIS is working on broader changes to its Country Groups and Country Charts to reflect post-Cold War changes, including the membership of several East European countries in the European Union. In the meantime, the hodge-podge of controls on these countries is likely remain a cause of friction and confusion with U.S. allies and exporters. Separately, during the

U.S.-EU Summit in Shannon, Ireland, June 26, President Bush and European leaders agreed to work to get all the new EU members to join the various multilateral export control regimes, including the Wassenaar Arrangement. They also pledged to strengthen those regimes and the controls on items that might contribute to the development of weapons of mass destruction.

“We will continue to promote, with others, the importance of effective export controls, backed up by criminal sanctions for illicit export and trafficking of sensitive materials for WMD programmes and work for a more efficient sharing of relevant information, in order to prevent illicit transfers,” they said.

“We welcome recent developments which have seen all remaining EU Member States gain full membership of the Nuclear Suppliers Group and the Australia Group. We are working together to ensure that application for membership by the new EU Member States to the Wassenaar Arrangement and the Missile Technology Control Regime are actively considered in accordance with the respective procedures of those two Groups,” they stated.

ICE CRACKDOWN ON EXPORTS TO CHINA NETS ARRESTS, INDICTMENTS

The old law enforcement arm of Customs, which is now the U.S. Bureau of Immigration and Customs Enforcement (ICE) in the Department of Homeland Security, has stepped up its investigation and prosecution of cases involving illegal exports of dual-use and military items to China. In two recent cases, ICE investigations led to the arrest of seven individuals in New Jersey July 1 and indictments of two men in California for exporting night vision products.

The seven arrested in New Jersey were executives with two firms, Universal Technologies of Cherry Hill, N.J. and Manten Electronics of Mount Laurel, N.J. Criminal complaints charged them with conspiracy to export controlled items, including digital-to-analog converters and digital signal processors, to Chinese-government research institutes without approved licenses [**Editor's Note:** WTTL subscribers can receive free copies of the complaints on request.]

In another ICE case, indictments were handed up June 3 in the San Francisco U.S. District Court, charging Night Vision Technologies of San Jose, Calif., and two company executives of exporting night vision cameras to the North China Research Institute for Electro-Optics between 1999 and 2003. The two executives, Philip Cheng and Martin Shih, also carried some night vision cameras with them on trips to China, and Shih went there to provide training on the equipment. Both were arrested and each posted \$340,000 bail.

HIATUS IN STEEL TALKS MAY MARK DEATH KNEEL FOR PACT

Skeptics and cynics might say they were not surprised by the suspension June 29 of multilateral talks aimed at an agreement to restrain subsidies and unfair trade practices in the global steel market. Several sources recalled the failure of similar efforts in the early 1990s to reach a Multilateral Steel Agreement. It is unclear whether the decision to pause formal talks on steel until early in 2005 really represents a breather or a polite way of saying the talks are dead.

While several substantive issues blocked progress in the talks, which are being held under the auspices of the Organization for Economic Cooperation and Development (OECD), the main problem was the political uncertainty stemming from coming elections in the U.S. and the shuffling of leadership in the European Union (EU). Added to that was the recent surge in demand and higher prices for steel, which has slackened enthusiasm for imposing discipline on steel trade.

Sources involved in the talks say a Disciplines Study Group (DSG) had made good progress in preparing a draft agreement on reducing subsidies in the sector even though the proposal didn't satisfy everyone. There is already speculation that the steel talks could shift to and become

part of the rules negotiations in the World Trade Organization (WTO) Doha Round. One source said the DSG's work could become the "incubator" for an agreement in the round. The fact that the Doha Round is discussing a possible agreement on fisheries is seen as a sign that it might be ready to overcome its normal reluctance to address product specific issues in trade pacts. It might take "the gravitational pull of a larger body" to get an agreement on steel, the source suggested. Moving the steel talks to the WTO would solve two of the main problems with the OECD negotiations. A WTO deal would provide legal authority for imposing disciplines on subsidies and a dispute-settlement mechanism – two things the OECD can't offer.

Even before the formal meeting of the High-Level Group (HLG) of trade officials at the OECD in Paris, advance talks indicated that participants wanted to suspend formal negotiations. The key issues blocking progress involved the definition and treatment of subsidies that would be permitted or "green-lighted" under a deal.

Agreement could not be reached on allowing subsidies for research and development and environmental remediation; what special and differential treatment would be given developing countries; or which countries would get that treatment. Finally, the U.S. industry balked at demands from other participants that green-lighted subsidies be exempt from CVD action.

* * * BRIEFS * * *

EXPORT ENFORCEMENT: Under settlement agreement with BIS announced June 28, Kennametal of Latrobe, Pa., agreed to pay \$262,500 civil fine for exporting nickel powder to Chile, India, Israel, Mexico, Peru and Taiwan without approved licenses from 1998 to 2000. Firm voluntarily disclosed unlicensed exports. While case involved 45 unlicensed shipments, BIS added 27 additional charges for filing false SEDs which said no license was required for exports. It also added three recordkeeping charges.

MORE EXPORT ENFORCEMENT: BIS imposed \$14,000 civil fine on Atotech USA, of Rock Hill, S.C., as part of settlement of charges that firm exported Econo-Chrome 140-S to Hong Kong without approved license, knew it was violating EAR and filed false SED.

PAKISTAN: President Bush June 16 designated Pakistan to be Major Non-NATO Ally, making it eligible for additional exports under Arms Export Control Act.

SOCKS: Hosiery Association and three other textile industry trade groups joined together June 28 to file petition with Commerce seeking safeguard relief in form of quotas to restrict imports of socks from China. Case was filed under the special safeguard rules that were part of legislation supporting China's accession to WTO. Groups claim sock imports from China grew from less than 1 million dozen pair in 2001 to 22 million dozen in 2003. This still represents only 5% of U.S. market, but industry warns imports will grow and prices drop further after Dec. 31, 2004 end of quotas under Multifiber Arrangement.

DRAWBACKS: In Federal Register June 28, Customs conceded test of Paperless Drawback Protocol has failed and it is discontinuing program. "Based on its evaluation, CBP has determined that processing of paperless drawback claims cannot be successfully accomplished under current automated systems," it said.

CHLORINATED ISOCYANURATES: By 6-0 vote June 28, ITC made preliminary determination that allegedly dumped imports of chemical from China and Spain may be injuring U.S. industry.

GSP: USTR's office June 30 said it rejected petitions to revoke GSP benefits for Guatemala for alleged workers' rights violations and for Dominican Republic for allegedly not protecting intellectual property rights. It said will extend for 90 days review of petition to strip Brazil's eligibility because of inadequate IPR protection. "There have been developments in Brazil that could lead to positive results," statement said. President Bush also issued proclamation on GSP product graduations and extensions. Separately, in July 1 Federal Register, USTR asked for public comment on proposal to grant GSP benefits to Iraq.

UNFAIR TRADE: In response for more public comments, ITA's Unfair Trade Practices Task Force has received submissions regarding dehydrated onions, forest products, scrap steel, movies and TV programs, steel, batteries, glass tableware and potatoes.

MUNITIONS LIST: State in July 2 Federal Register revised rules in Category XIV to clarify controls on equipment used to disperse various chemicals and biological products. It also amended ITAR to reflect membership of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia and Slovenia in NATO.