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. 25, No.4 January 24, 2005

IMPORTER INDICTED FOR DUCKING DUMPING DUTIES ON DRAMS

A federal grand jury in Boston has indicted the part owner of an electronics company for a scheme to avoid paying the full antidumping duty on dynamic random access memory (DRAM) chips from Korea. The Jan. 13 indictment of Bernard Smith charged him with importing some $6.7 million in DRAMs from 1999 to 2000 but having his Hong Kong supplier falsely state their value at under $1.3 million. The lower manifest value caused Customs to underassess the duty on the shipments by more than $385,000, the indictment charged.

> Smith is the president and part owner of Stealth Components, Inc., which is now in Stratham, New Hampshire, but at the time of the alleged imports was in Newburyport, Mass. According to the indictment, Smith arranged with an "unindicted co-conspirator" in Hong Kong, identified only as Mr. A, and his company, which was called the XYZ Company in the indictment, to "present false and fraudulent invoices to Customs that undervalued the purchase price and falsely described Korean DRAMs that Stealth imported."

Although the manifest values were understated, Mr. A faxed Smith separate invoices showing the true value of the DRAMs and Smith paid the invoiced price, the indictment charged. An unnamed person working for Stealth also was cited as an "unindicted co-conspirator." While the indictment identified over 20 individual allegedly false entries, it charged Smith with only six counts of entering goods with false statements and one count of conspiracy.

Commerce imposed the dumping order in 1993 on DRAMs made by Hyundai and L.G. Semicon/Goldstar. "Stealth imported Korean DRAM produced by these manufacturers during the relevant time period and thus, these imports were subject to antidumping duties," the indictment said. Stealth filed import statements that acknowledged the goods were subject to the order.

EU AGREES TO LIFT FSC/ETI SANCTIONS RETROACTIVE TO JAN. 1, 2005

A European Union (EU) trade committee agreed Jan. 21 with an EU Commission recommendation to lift sanctions on U.S. exports retroactively to Jan. 1, 2005, in recognition of Washington's enactment of legislation to revoke the Foreign Sales Corporation/Extraterritorial Income Tax (FSC/ETI) law last year. The sanctions, however, could be reimposed in 2006, if the WTO agrees with the EU's complaint that certain parts of the so-called JOBS Act are still inconsistent with WTO requirements and consultations between the U.S. and EU fail to resolve these issues. The EU's 133 Committee recommended that the EU General Affairs Council adopt the Commission recommendation to revoke the sanctions with some modifications of the

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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

draft regulation proposed in December. The Council is expected to endorse that recommendation at its Jan. 31 meeting, and the final rules will become effective on Feb. 1.

> Throughout the legislative debate over the JOBS Act, the EU objected to provisions that would grandfather certain export tax benefits and provide a transition period for the complete elimination of FSC/ETI subsidies. When the final measure retained this language, the EU asked the WTO to establish a compliance panel to review the new law to judge whether the U.S. has resolved all the flaws with the old law. The WTO is expected to approve creation of the panel at a Jan. 25 meeting of the Dispute-Settlement Body.

As part of a joint declaration between the Council and the Commission, the EU has stepped back from the threat of automatically reimposing sanctions, which could be a 14% tariff on certain U.S. products, if the WTO rules in favor of Europe. Instead, the new rules call for EU-U.S. consultations during the 60 days following final approval of the panel's findings. The WTO panel process could take four to eight months. Only if those consultations fail would the EU consider renewing the sanctions with the exact level of tariff subject to possible revision.

COURT UPHOLDS CIT RULING DENYING 806.30 TREATMENT TO SCRAP

U.S.-origin scrap steel shipped abroad and re-imported can't qualify for the special tariff treatment of the old 806.30 of the Tariff Schedule of the U.S., the Court of Appeals for the Federal Circuit (CAFC) ruled Jan. 18. The decision of the three-judge panel upheld a Court of International Trade (CIT) ruling which reached the same opinion. The processing of the scrap to prepare it for export is not considered manufacturing, both court's agreed.

> TSUS 806.30, which has been replaced by Harmonized Tariff Schedule (HTS) 9802.00.60, is intended to allow U.S. manufacturers to export metal components for reworking or further manufacturing outside the U.S. with the tariff on the re-imported final product based only on the value added outside the U.S. The tariff heading is also called production sharing.

In the case before the CAFC (04-1019), Washington International Insurance Co. appealed a CIT ruling which upheld Customs denial of 806.30 treatment to stainless steel imported by Newmet Corp. and Newmet Steel from 1984 to 1986, while 806.30 still applied. The stainless steel sheets were manufactured in foreign steel mills from stainless steel scrap that was exported from the U.S. The scrap was not solely of domestic origin.

WIIC had claimed the scrap entered the scrap yards as obsolete or industrial scrap and was processed into commercial scrap, contending this was a manufacturing process that qualified it for 806.30 treatment. "While the scrap used to make Newmet's stainless steel sheets were extensively manipulated, these manipulations merely cleaned, isolated or packaged the scrap," wrote Chief Judge Haldane Robert Mayer. "Not every advancement or preparation of an article in anticipation of subsequent manufacture constitutes a 'process of manufacture'," Mayer wrote. "If it did, the restriction in subheading 806.30 would be superfluous," he added.

"EMINENT PERSONS" REPORT URGES CHANGES TO WTO

The World Trade Organization (WTO) should consider reforming how it negotiates trade agreements, settles disputes and administers its day-to-day responsibilities, if it is to overcome the shortcomings of its first 10 years of history, a group of "eminent persons" recommended in a report released Jan. 19. Formed at the request of WTO Director General Supachai Panitchpakdi, the consultative board examined the last decade of WTO history as well as current world trade conditions, the globalization of business, the need for eliminating poverty in developing countries and the criticism of the WTO system. Recognizing the difficulty negotiators have had in recent years in moving trade talks forward, the board, which was chaired by former WTO

Director General Peter Sutherland, recommended consideration of alternatives to the use of consensus for all WTO decisions. Only pluralateral agreement may be needed for procedural issues, it suggested. The board also called for WTO summits every five years of world leaders.

> If the WTO considers taking a new pluralateral approach to some decisions, the model could be the General Agreement on Trade in Services (GATS), which would allow members to "schedule"commitments to agreements they support. In addition, countries that want to block an agreement should be required to justify their opposition to a deal, the board advised.

The WTO General Council should adopt rules that would require "a member considering blocking a measure which otherwise has very broad consensus support shall only block such consensus if its declares in writing, with reasons included, that the matter is one of vital national interest to it," the board recommended.

Without citing the U.S. push for more bilateral free trade agreements, the board criticized the spread of preferential trade agreements and the "speghetti bowl" of discriminatory preferences. "Governments need to show restraint or risk more damage to the multilateral trading system," it stated. A successful Doha Round would be a long-term remedy to this problem. "A commitment by developed members of the WTO to establish a date by which all their tariffs will move to zero should be considered seriously," it offered.

The report also called for more transparency in WTO dispute-settlement procedures, including opening to the public sessions of dispute-settlement panels and the WTO Appellate Body. It supported improved relations with civil society, but it said the WTO secretariate "is under no obligation to engage seriously with groups whose express objective is to undermine or destroy the WTO." Finally, it urged members to increase the resources for the WTO secretariate, giving the director general more powers, increasing the budget and appointing a chief executive officer who would be a deputy director general to improve management.

COMPANY AND ITS PRESIDENT FINED FOR ATTEMPTED EXPORTS

Export enforcement action can hit not only a company but also its officers, if they are directly responsible for alleged violations of U.S. export controls. A demonstration of that legal principle is seen in two settlement agreements the Bureau of Industry and Security (BIS) reached with Valtex International of Palo Alto, Calif., and its president, Vladimir Alexanyan. As part of its settlement, Valtex agreed to pay a $77,000 civil fine, while Alexanyan reach a separate deal to pay a $88,000 civil penalty.

> Both were denied export licensing privileges for five years for any exports going to China. In addition, both Valtex and Alexanyan are scheduled to plead guilty to criminal charges in the case in the Minneapolis U.S. District Court. Valtex also agreed to implement an export management systems within 12 months based on the BIS Export Management Systems Guidelines.

According to the charging letters that BIS issued to Alexanyan and Valtex, Alexanyan had attempted to export Germanium-coated polymide film to China without an approved license. The letter also described a complex scheme aimed at disguising the export, which the government apparently blocked before it could be completed.

Alexanyan bought the film from a U.S. company and had completed a Shipper's Export Declaration (SED) for its shipment to China on Oct. 28, 2002. On the SED he claimed the material qualified for General License G-DEST. This was a false statement, the government charged. The film was covered by Export Control Classification Number (ECCN) 1A003. The SED said the shipment was intended for the China Great Wall Industry Corp. "This statement was false because the actual ultimate consignee in the transaction was the Chinese Academy of Space and Technology in the People's Republic of China," BIS claimed. It also charged the Alexanyan

with making a false statement to a BIS special agent who was investigating the attempted export. "Specifically, in a sworn statement to OEE investigators, Alexanyan stated the attempted export of the film to the People's Republic of China without the required U.S. Department of Commerce license was a mistake due to a miscommunication between himself and another employee of Valtex International Corporation," the charging letter explained.

> "This statement was false because Alexanyan knew or had reason to know that a license was required," BIS charged. In all Valtex was charged with seven EAR violations, four of which were tied to statements on SEDs. Alexanyan was hit with the same charges plus an extra one for the allegedly false statement.

* * * BRIEFS * * *

EXPORT ENFORCEMENT: Medi-Link International has agreed to pay $17,500 civil fine to resolve BIS charges that it failed to retain records of seven shipments of medical devices to Iran from1999 to 2000. BIS dropped other charges of exporting items without licenses with knowledge that exports violated EAR and Iran Transactions Regulations.

STATE: DDTC posted advice on its website Jan. 18 on filing of defense export information for transfer of technical data and services on Census Automated Export System (AES) and plans for using of Form DS-4071 for direct reporting of export information to DDTC.

ITC: James Lyons, who has been acting general counsel, given full title to position Jan. 18

SPECIAL 301: Taiwan has made enough progress in its enforcement of intellectual property rights to be moved to Special 301 Watch List from Priority Watch List, USTR's office announced Jan. 18. In other out-of-cycle review result reported at same time, USTR said Poland will remain on Watch List.

AIRBUS: Ahead of U.S.-EU talks scheduled to start week of Jan. 24 on new bilateral agreement on subsidies for large civil aircraft, EU Trade Commissioner Peter Mandelson issued conciliatory note (see **WTTL,** Jan. 17, page 3). "The global market is big enough for both Boeing and Airbus," he said at ceremonies unveiling new A380 Airbus passenger jet Jan. 18. "Our task is to create the basis for fair competition between them. I intend to honour the text of my agreement with Bob Zoellick and I have instructed officials to begin talks without delay. I want to see early progress," he said.

OFAC: GE Ultrasound & Primary Care Diagnostics, which paid $32,000 fine to settle BIS charges related to exports to Iran by company it acquired in Europe, Lunar Europe, also agreed to pay $51,700 fine to settle OFAC's charges for same alleged violations. Settlement was among several OFAC announced Jan. 7 (see **WTTL**, Oct. 25, page 4). Other firms reaching deals with OFAC related to Iran trade were: Seabury & Smith ($46,341), Wells Fargo Bank ($42,833), SK Global America ($22,000) and PNC Bank ($8,200).

ITAR FEES: Groups representing universities that conduct research have written to DDTC to protest increase in annual ITAR registration fee. Increase announced in Dec. 8 Federal Register would increase fee to $1,750 from $600. This is 300% increase when considered with shortened period of registration. "The number of universities affected by these changes in policy is likely to increase as universities increasingly are engaged in research and education activities related to defense and security technologies," wrote Association of American Universities and Council on Government Research in Jan. 7 letter to State.

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