



July 14, 2010

## **U.S. Company Faces Penalties for Alleged Nuclear Export Attempts to India, Israel**

***Time to seek pledges from our allies that they will not violate U.S. laws to outfit their nuclear weapons and missile programs and will cooperate in any prosecution of alleged violators***

**By David Albright, Paul Brannan, and Andrea Stricker**

In the spring of 2010, the U.S. Bureau of Industry and Security (BIS) charged the U.S.-based Telogy LLC and its Belgian affiliate with violating U.S. Export Administration Regulations (EAR) for attempting to export controlled goods to Israel, India, China, and South Africa. These charges followed a voluntary self-disclosure by the companies.

In the case of Israel and India, the goods could have been intended for nuclear weapons and missile programs. India's attempted acquisition of oscilloscopes shows that the country may continue to acquire items illicitly from abroad for its missile programs or unsafeguarded nuclear programs, including its nuclear weapons program. Recently, India has also sought vacuum pumps from European manufacturers that are believed to be for its unsafeguarded uranium enrichment program. The large scale oscilloscope purchases made by Israel bring into question its continued commitment to halting its illicit procurement of equipment for its nuclear program, which it made as a result of U.S. pressure during the 1990s.

The public typically focuses on the export control violations of U.S. adversaries or competitors, such as Iran, North Korea, or China. However, some U.S. allies also break U.S. or foreign trade control laws to outfit their missile or nuclear weapons programs. Although the BIS did not identify the suspected purchasers of these goods in Israel or India, this case highlights the need for the U.S. government to develop a more formal process to discourage allies from violating U.S. trade control laws.

To that end, the United States should obtain formal pledges from its allies, in particular India, Israel, and Pakistan, that they will not seek to violate U.S. laws, or for that matter supplier-country laws, in order to outfit their ballistic missile programs or unsafeguarded nuclear programs. These allies should also be expected to cooperate fully with U.S. authorities in any investigation or prosecution of alleged violations, including efforts to collect evidence, extradite violators, and obtain the return of goods sent under false pretenses to a nuclear weapons or missile program. In the absence of adequate cooperation, the United States should impose additional licensing requirements on the export of any dual-use goods to these countries. The United States can already impose sanctions on Indian, Israeli, and Pakistani entities and nationals that violate U.S. laws, but for egregious violations it should seek United Nations Security Council sanctions on responsible entities and individuals.

For a more comprehensive discussion of illicit nuclear trade and improved methods to detect or thwart it, see a new book by David Albright, [Peddling Peril](#), or a recent ISIS article, [“Detecting and Disrupting Illicit Nuclear Trade after A.Q. Khan,”](#) published in *The Washington Quarterly*.

## The Cases

Telogy, based in Union City, California, was charged with three violations of the U.S. Export Administration Regulations (EAR), pursuant to a voluntary self-disclosure made by the company.<sup>1</sup> BIS also charged Telogy’s Belgian affiliate, Telogy International NV, with twenty-three violations of the EAR, also the result of a voluntary self-disclosure.<sup>2</sup> Between 2003 and 2007, Telogy LLC and Telogy International NV (hereafter referred to as Telogy Intl) allegedly cooperated to attempt to export oscilloscopes to India and Israel. These oscilloscopes are controlled because of their potential application in nuclear weapons and missile delivery systems.<sup>3</sup> Telogy Intl is also charged with allegedly re-exporting twenty-two oscilloscopes to Israel.<sup>4</sup> Telogy LLC and Telogy Intl allegedly cooperated to export a spectrum analyzer, monitoring equipment controlled for national security reasons, to China. Telogy Intl is also charged with allegedly re-exporting a spectrum analyzer to South Africa.<sup>5</sup> The companies neither admit nor deny these allegations.<sup>6</sup>

According to BIS settlement agreements, Telogy LLC was given a suspended fine of \$76,000; Telogy Intl must pay \$75,000 and faces a suspended fine of \$362,000.<sup>7</sup> The suspended fines will be waived if the companies do not commit additional export violations for a period of one year.

## Telogy LLC

Between 2005 and 2007, Telogy LLC allegedly attempted to export two oscilloscopes to India, one oscilloscope to Israel, and a spectrum analyzer to China.<sup>8</sup> Oscilloscopes are equipment that exhibit graphs of electrical signals and track the timing of signals and are controlled for export because of their potential use in nuclear weapons and missile delivery systems. Spectrum analyzers are controlled exports for national security reasons due to their potential uses in surveillance and monitoring. They observe the frequency and amplitude of signals emitted from a source.

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<sup>1</sup> *Proposed Charging Letter from John Sonderman, Acting Director, Office of Export Enforcement, to Telogy LLC*, undated.

<sup>2</sup> *Proposed Charging Letter from John Sonderman, Acting Director, Office of Export Enforcement, to Telogy International NV*, undated.

<sup>3</sup> United States Department of Commerce, Bureau of Industry and Security, *Order Relating to Telogy LLC*, May 5, 2010; United States Department of Commerce, Bureau of Industry and Security, *Order Relating to Telogy International NV*, March 18, 2010.

<sup>4</sup> BIS documents from the case do not indicate whether the oscilloscopes were sent to Telogy Intl by Telogy LLC explicitly for this alleged sale, or whether they were U.S.-made equipment already possessed by the Belgian affiliate for distribution purposes.

<sup>5</sup> BIS documents from the case do not indicate whether the spectrum analyzer was sent to Telogy Intl by Telogy LLC explicitly for this alleged sale, or whether it was U.S.-made equipment already possessed by the Belgian affiliate for distribution purposes.

<sup>6</sup> *Order Relating to Telogy LLC*, May 5, 2010; *Order Relating to Telogy International NV*, March 18, 2010.

<sup>7</sup> United States Department of Commerce, Bureau of Industry and Security, *Settlement Agreement in the Matter of Telogy LLC*, Signed by the parties on April 29, 2010 and April 7, 2010, respectively; United States Department of Commerce, Bureau of Industry and Security, *Settlement Agreement in the Matter of Telogy International NV*, Signed by the parties on March 15, 2010 and March 9, 2010, respectively.

<sup>8</sup> *Proposed Charging Letter to Telogy LLC*, undated.

In May 2005, Telogy LLC received an order for two oscilloscopes destined for India from its Belgian affiliate, Telogy Intl, and according to BIS, took actions “with intent to evade” the EAR. According to BIS, Telogy LLC was aware that an export license was required for shipping oscilloscopes to India, and therefore arranged to ship them first to Telogy Intl “with the understanding that the items would then be sent to India.”<sup>9</sup> BIS documents do not indicate whether the items were actually sent to India.

In June 2005, Telogy LLC received an order from Telogy Intl for a spectrum analyzer, destined for China. According to BIS, Telogy LLC was aware that an export license was required for shipping a spectrum analyzer to China, and therefore arranged with Telogy Intl to ship the item to a California-based import/export company chosen by Telogy Intl “with the understanding that the item would then be sent to [China].”<sup>10</sup> BIS documents do not indicate whether the item was actually sent to China.

In June or July 2007, Telogy LLC received an order from Telogy for one oscilloscope, destined for Israel. According to BIS, Telogy LLC was aware that an export license was required for shipping an oscilloscope to Israel, and therefore arranged with Telogy Intl to ship the item to a company located in Canada chosen by Telogy Intl “with the understanding that the item would then be sent to Israel.”<sup>11</sup> BIS documents do not indicate whether the item was actually sent to Israel.

Telogy LLC filed a voluntary self-disclosure of its actions with BIS’s Office of Export Enforcement. It was assessed a suspended civil penalty of \$76,000, which can be waived if the company commits no further export violations for one year.<sup>12</sup> It neither admits nor denies the allegations contained in the BIS charging letter.<sup>13</sup>

## **Telogy Intl**

Between 2003 and 2007, Telogy Intl of Belgium allegedly re-exported twenty-two oscilloscopes to Israel, and one spectrum analyzer to South Africa. According to BIS, on twenty-two occasions, Telogy Intl re-exported oscilloscopes from Belgium to Israel without a license.<sup>14</sup> In May 2007, Telogy Intl allegedly re-exported a spectrum analyzer from Belgium to South Africa without a license.<sup>15</sup> BIS documents from the case do not indicate whether the oscilloscopes and spectrum analyzer were sent to Telogy Intl by Telogy LLC explicitly for these alleged sales, or whether they were U.S.-made equipment already possessed by the Belgian affiliate for distribution purposes.

Telogy Intl filed a voluntary self-disclosure of its actions with BIS’s Office of Export Enforcement. It was assessed a penalty of \$437,000, of which it was ordered to pay \$75,000 within thirty days. The remainder of the penalty, \$362,000, was suspended for one year and can be waived if the company commits no further export violations during the period.<sup>16</sup> The company neither admits nor denies the allegations contained in the BIS charging letter.<sup>17</sup>

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<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> *Settlement Agreement in the Matter of Telogy LLC*, April 29, 2010 and April 7, 2010.

<sup>13</sup> Ibid.

<sup>14</sup> *Proposed Charging Letter to Telogy International NV*, undated.

<sup>15</sup> Ibid.

<sup>16</sup> *Settlement Agreement in the Matter of Telogy International NV*, March 15, 2010 and March 9, 2010.

<sup>17</sup> Ibid.

## Lessons and Observations

These alleged instances show that countries which are U.S. allies knowingly violate U.S. export laws and regulations to procure goods for their nuclear, missile, or military programs. They use methods that differ little from those pursued by U.S. adversaries, such as Iran or North Korea. The United States should take several actions to discourage U.S. allies from violating U.S. trade control laws:

- It should determine if the alleged Indian procurement attempt was for its unsafeguarded nuclear program and in violation of the letter or spirit of U.S.-India peaceful nuclear cooperation agreements. To that end, the United States should secure an Indian commitment that it will not procure goods from abroad for its nuclear, missile, or military programs in violation of U.S. or other suppliers' trade control laws.
- The United States should also follow up on Israel's acquisition of oscilloscopes to determine whether Israel has contravened its stated commitment from the 1990s not to engage in illicit trade for its unsafeguarded nuclear program and seek affirmation of its pledge not to do so.
- The United States should insist that allies cooperate fully with U.S. authorities in any investigation or prosecution of alleged violations, including in efforts to collect evidence, extradite violators, and obtain the return of goods sent under false pretenses to a nuclear weapons or missile program. This cooperation should extend equally to the activities of state-controlled entities ordering the equipment and domestic trading companies contracted to seek the items abroad. The United States should impose additional licensing requirements on the export of any dual-use goods to countries that refuse to cooperate.
- The United States should state as a matter of policy that if any country knowingly seeks goods abroad for its nuclear weapons program in violation of U.S. or other supplier countries' laws, it may be subject to unilateral and multilateral sanctions. It should seek to make egregious violations of internationally accepted export controls, such as Nuclear Supplier Group guidelines, a sufficient rationale for imposing U.N. Security Council sanctions on a country, in particular state-controlled entities, companies, and persons that are responsible for illicit purchases.