

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

BETWEEN:-

THE QUEEN

- on the application of –

(1) EDMUND ZAGORSKI

(2) RALPH BAZE

Claimants

- and -

**THE SECRETARY OF STATE
FOR BUSINESS INNOVATION AND SKILLS**

Defendant

ARCHIMEDES PHARMA LIMITED

Interested Party

**STATEMENT TO BE MADE IN OPEN COURT ON 29 NOVEMBER 2010
ON BEHALF OF THE SECRETARY OF STATE**

Sodium thiopental is an anaesthetic which is widely used in medicine in the UK and Europe but is also used in several US States to anaesthetise prisoners prior to execution. In two US States it is used in higher doses to execute prisoners. For several months, there has been a shortage of sodium thiopental in the US. This has caused at least some US States to seek supplies of the medicine elsewhere. There is evidence that the State of Arizona obtained the sodium thiopental used in a recent execution from the United Kingdom.

On 28 October 2010, Leigh Day & Co, solicitors acting for Mr Edmund Zagorski, a prisoner on death row in Tennessee, wrote to the Secretary of State inviting him to place controls on the export of sodium thiopental. Whilst affirming the United Kingdom's opposition to the death penalty in all circumstances, the Secretary of State declined to impose exports controls on sodium thiopental. His primary concern was that he should not take action which might cause delays in the export of a medicine which might be needed by patients.

The Secretary of State reaffirmed his decision on 12 November on the basis that there remained a possibility of significant legitimate trade in this important medicine and that it was unlikely that an order would prevent any execution.

On 22 November, the Court indicated that it would dismiss the Claimants' arguments that the Secretary of State was obliged by the EU Charter of Fundamental Rights or the common law to make an export control order. The Court refused to grant interim relief requiring the Secretary of state to make such an order. The effect of the Court's indication and decision last week was that the question whether to make an export control order was for the Secretary of State, subject to public law review in the ordinary way. The Court adjourned the Claimants' public law challenge to be heard today.

In the meantime, all parties have sought to clarify the extent of any possible lawful trade in sodium thiopental. Having consulted US lawyers, they are all agreed that, under applicable federal law, it is not currently lawful to import sodium thiopental into the United States for medical purposes. That means that an order controlling the export of sodium thiopental should not have any adverse impact on patients in the US or on UK exporters.

In the light of that information, officials considered it appropriate to invite the Secretary of State to reconsider his decision. Yesterday afternoon, the Secretary of State decided that these new developments significantly strengthen the arguments in favour of an order. Such an order would serve to underline the United Kingdom's moral opposition to the death penalty in all circumstances, without impacting on legitimate trade.

The Secretary of State has therefore decided that he will now make an order under s. 6 of the Export Control Act 2002 controlling the export of sodium thiopental to the US. The order will be made as soon as practicable. Once it comes into force, any person exporting sodium thiopental to the US will require a licence issued by the Export Control Organisation. Breach of the order will be a criminal offence.

The Order will be laid before Parliament pursuant to the procedure in s.13 of the 2002 Act and will cease to have effect unless affirmed by a resolution of each House within

40 days. Orders made under s. 6 last for a maximum of 12 months. The operation and effect of the Order will be kept under review in the light of factual developments.

The Secretary of State has also instructed his officials to explore with the European Commission, the European Parliament and other Member States the possibility of implementing an export control on sodium thiopental on an EU-wide basis, as an EU-wide control would be much more effective than a control imposed only by the UK.

Arrangements are in place to inform the pharmaceutical industry of the effects of the order. Any person wishing to export sodium thiopental who requires advice on the operation or effect of the order should contact the Export Control Organisation by email or telephone.

MARTIN CHAMBERLAIN

29 November 2010