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District Judge Dismisses Huawei NDAA Complaint

Consider it one less legal fight against Chinese telecom firm Huawei. A judge in Sherman, Texas, U.S. District Court Feb. 18 dismissed on almost all grounds Huawei's complaint against the constitutionality of the 2019 National Defense Authorization Act (NDAA) regarding its exclusion of Huawei and ZTE products.

In a motion to dismiss filed in July, the U.S. defended the constitutionality of the 2019 NDAA (see **WTTL**, July 8, 2019, page 3). Huawei requested a summary judgment in a motion filed in May. Section 889 of the 2019 NDAA prohibits the Defense secretary from procuring or obtaining, as well as entering into, extending or renewing a contract with an entity that uses telecom equipment or services produced by the two companies.

"Contracting with the federal government is a privilege, not a constitutionally guaranteed right—at least not as far as this Court is aware. Despite Section 889's particularized nature and its impact on Huawei's current and future contractual relationships, it is rationally related to a legitimate congressional purpose and thus does not violate Huawei's due process rights," District Judge Amos Mazzant wrote.

"The statute does not directly impact any of Huawei's private contractual relationships; rather, it limits who the federal government may contract with and what the subject of those contracts may be. Any effect the statute may have on Huawei's contractual relationships is 'collateral or incidental' to the statute's primary restrictions," he added. "Contrary to Huawei's argument, the prohibition on Huawei products is not permanent. In the event that security threats posed by Huawei subside, the DNI [director of national intelligence] may waive the prohibition," Mazzant wrote.

BIS Restricts Exports to Russia, Yemen

In the Federal Register Feb. 24 Bureau of Industry and Security (BIS) will revise the Export Administration Regulations (EAR) Country Group designations for Russia and

Yemen “based on national security and foreign policy concerns, including proliferation-related concerns.” Specifically, this rule removes Russia from more favorable treatment under Country Groups A:2 and A:4 and adds it to Country Groups D:2 and D:4 and adds a presumption of denial when the items are controlled for proliferation of chemical and biological weapons, nuclear nonproliferation, or missile technology reasons. Separately, this rule removes Yemen from Country Group B and adds it to Country Group D:1.

“Russia has not been cooperative in allowing BIS to perform pre-license checks or post-shipment verifications related to U.S.-origin goods,” the agency said. In addition, the presumption of denial “further accentuates the seriousness with which the United States takes Russia’s use of a ‘novichok’ nerve agent in the attack against Sergei Skripal and his daughter Yulia Skripal in the United Kingdom” in March 2018.

“The ongoing conflict in Yemen has fostered international terrorism and instability in the Arabian Peninsula, including the proliferation of small arms, unmanned aerial systems, and missiles,” BIS noted. “There are concerns about the diversion to unauthorized and prohibited end uses and users of U.S.-origin items controlled for national security reasons,” it added.

U.S., Chinese Officials Agree on Engine Exports

After reports surfaced that the administration was going to block the export of jet engines to China from CFM, a joint venture of GE and Safran, on national security grounds, the president and Chinese officials ended up on the same side of the argument. A series of tweets revealed the split between the president, his administration and members of Congress.

“We want to sell product and goods to China and other countries. That’s what trade is all about. We don’t want to make it impossible to do business with us. That will only mean that orders will go to someplace else,” President Trump tweeted Feb. 18. This comes amid legal fights over potential security threats and prohibitions against Huawei and ZTE (see related story, page 1).

“As an example, I want China to buy our jet engines, the best in the World...I have seen some of the regulations being circulated, including those being contemplated by Congress, and they are ridiculous. I want to make it EASY to do business with the United States, not difficult. Everyone in my administration is being so instructed, with no excuses,” he added.

The same day, Chinese Foreign Ministry Spokesperson Geng Shuang told reporters in his daily press briefing: “U.S. moves for a long while hurt not only the interests of Chinese businesses but also that of American companies. What's worse, it will severely disrupt bilateral and even global exchange and cooperation in science, technology and trade. We urge the U.S. to view Chinese companies and China-U.S. commercial cooperation in an objective and just manner, and act as a constructive contributor rather than an irrational spoiler.”

More Alstom, Marubeni Execs Indicted in Bribery Scheme

A superseding indictment was unsealed Feb. 18 in New Haven, Conn., U.S. District Court against two former executives of the Indonesian subsidiary of the French power and transportation company Alstom S.A. and a former executive of Japanese trading company Marubeni Corporation for their alleged participation in a scheme to bribe Indonesian officials in exchange for assistance in securing contracts.

Reza Moenaf and Eko Sulianto, the former president and sales director of Alstom's subsidiary in Indonesia; and Junji Kusunoki, the former deputy general manager of Marubeni's Overseas Power Project Department, were charged in the February 2015 indictment with conspiracy to violate the Foreign Corrupt Practices Act (FCPA) and conspiracy to commit money laundering.

Lawrence Hoskins, a former Alstom Power senior VP in Asia, was convicted in November in the same court after a two-week trial on FCPA charges for his role in the multi-company scheme (see **WTTL**, Nov. 11, page 5). Sentencing is set for March 6. Alstom executive Frederic Pierucci was sentenced in September 2017 to 30 months in prison less time served for related charges.

The charges involved officials from Perusahaan Listrik Negara (PLN), the Indonesian state-owned and controlled electricity company. Between 2002 and 2009, Alstom, its subsidiaries, and Marubeni "partnered to bid on and carry out various power projects in Indonesia through PLN, including the Tarahan Project and the Muara Tawar Projects," the indictment said.

The Consortium retained several consultants to assist them in obtaining the contracts for the projects. "The consultants' primary purpose was not to provide legitimate consulting services to the Consortium but was instead to pay bribes to Indonesian officials who had the ability to influence the award of the contracts," it added.

Marubeni agreed to pay an \$88 million criminal fine for its role in March 2014. Alstom S.A. was formally sentenced in November 2015 in New Haven court for violating the FCPA and paid a \$772 million fine. GE completed acquisition of Alstom's power and grid businesses in November 2015 just before company was formally sentenced.

* * * Briefs * * *

WOOD MOULDINGS: In 4-0 preliminary vote Feb. 21, ITC found U.S. industry may be injured by allegedly dumped imports of wood mouldings and millwork products from Brazil and China and subsidized imports from China. Commissioner Randolph Stayin did not participate.

FCPA: Alfonso Eliezer Gravina Munoz (Gravina) of Katy, Texas, former procurement officer of Venezuela's state-owned energy company, Petroleos de Venezuela S.A. (PDVSA), was sentenced Feb. 19 in Houston U.S. District Court to 70 months in prison. He pleaded guilty in December 2018 to conspiracy to obstruct official proceeding (see **WTTL**, Dec. 17, 2018, page 6). Gravina was 7th individual to be sentenced in Houston court in larger investigation into bribery at PDVSA.

Most recently, Juan Jose Hernandez Comerma of Weston, Fla., was sentenced in January to 48 months in prison and \$127,000 fine for his role in scheme to bribe PDVSA purchasing officials (see **WTTL**, Jan. 13, page 8).

ACTING NO MORE: Two years later, DDTC Chief Mike Miller has been named to post in permanent capacity, agency announced Feb. 14. Miller was named acting deputy assistant secretary in December 2017, temporarily replacing Brian Nilsson, who retired the day before (see **WTTL**, Jan. 1, 2018, page 1) Prior to DDTC post, Miller was director for regional security and arms transfers (RSAT) in Political-Military Affairs Bureau.

VENEZUELA: Treasury's Office of Foreign Assets Control (OFAC) Feb. 18 designated Rosneft Trading S.A., Swiss-incorporated, Russian-controlled oil brokerage firm, and board chair and president Didier Casimiro, for operating in Venezuelan oil sector. "Casimiro has held meetings with Petroleos de Venezuela (PdVSA) officials that have involved assessing projects and opportunities to strengthen strategic relationships for Rosneft Trading S.A. with PdVSA," OFAC said. At same time, OFAC issued General License (GL) 36 authorizing certain activities necessary to wind-down of Rosneft transactions until May 20.

OCTG: CAFC Feb. 14 affirmed-in-part, reversed-in-part, and remanded CIT decision on Commerce's final determination in antidumping duty investigation covering certain oil country tubular goods (OCTG) from Vietnam. CIT remanded case twice to Commerce and sustained Commerce's second redetermination on remand. "Substantial evidence supports Commerce's determination that Bhushan's financial statements are the best available information on the record to calculate SeAH's surrogate financial ratios," Circuit Judge Evan Wallach wrote for three-judge panel in *SeAH Steel VINA Corporation v. U.S.* "Commerce's by-weight allocation methodology for [brokerage and handling] B&H costs is, as applied here, unsupported by substantial evidence," he added.

DEFENSE SERVICES: DDTC Feb. 19 posted two new FAQs, adding to previous guidance on registration and authorization requirements for U.S. persons providing defense services abroad (see **WTTL**, Jan. 13, page 4). On "safe harbor" period: "U.S. persons who believe they may have been furnishing defense services without authorization, and request authorization for current or future defense services, may disclose their activities in conjunction with their request for authorization. Such disclosures will be treated as an initial notification," FAQ said. "In such cases, the applicant may proceed with the described activities on a provisional basis unless otherwise notified by DDTC," agency added.

REPORTING: OFAC Feb. 20 published two new FAQs clarifying previous changes to Reporting, Procedures and Penalties Regulations (RPPR). "OFAC expects all U.S. persons and persons otherwise subject to U.S. jurisdiction, including parties that are not U.S. financial institutions, to comply fully with all requirements of this rule, including the expanded requirement ... to provide reports to OFAC regarding rejected transactions within 10 business days of the rejected transaction," new FAQ said. "OFAC would expect at a minimum that all rejected transaction reports include required information that is applicable in all reject scenarios (e.g., information regarding the submitter of the report, the date the transaction was rejected, the legal authority or authorities under which the transaction was rejected, and any relevant documentation received in connection with the transaction)," it added. Agency revised RPPR in June 2019 (see **WTTL**, June 24, 2019, page 7).