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United Technologies Settles SEC Bribery Charges

Connecticut-based United Technologies Corporation (UTC) agreed Sept. 12 to pay $13.9 million to settle charges of violating the Foreign Corrupt Practices Act (FCPA) with illicit payments in its elevator and aircraft engine businesses in seven countries. In total, the company will pay $9.9 million in disgorgement plus interest and a $4 million penalty.

> From 2012 through 2014, UTC, through its subsidiary Otis Elevator Company, "made unlawful payments to Azerbaijan officials to facilitate the sales of elevator equipment. Improper payments were also made in connection with a kickback scheme to sell elevators in China in 2012," the SEC order noted.

In addition, from 2009 to 2013, UTC, through International Aero Engines, "made unsupported payments to an agent, disregarding the high probability that at least some of the money would be used to make unlawful payments to a Chinese official to obtain confidential information to sell engines to a Chinese state-owned airline." "Finally, from 2009 through 2015, UTC through Pratt & Whitney and Otis Elevator Company improperly provided trips and gifts to various foreign officials in China, Kuwait, South Korea, Pakistan, Thailand, and Indonesia in connection with its business," the order said.

In a statement, UTC said it was "pleased" to resolve these matters. "Following our voluntary disclosure in 2013 and our own internal investigations, we took immediate steps to reinforce that UTC is committed to doing business the right way. This included disciplinary action including employee terminations, enhancement of our internal controls, policies and compliance resources, and more robust training programs," the company said.

White House Could Impose Sanctions for Election Interference

Pick your cliché: "all sizzle and no steak" or "all hat and no cattle," or even better for vegetarians: "all icing, no cake." Despite long-held criticism that the administration is not

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taking the Russian threat of election interference seriously, the president Sept. 12 signed a wordy executive order (EO) authorizing sanctions "in the event foreign election interference is determined to have occurred."

In a presidential message to Congress along with the EO, the White House directed the secretaries of State and Treasury to "develop additional recommended sanctions measures, appropriately calibrated to account for the severity of the interference and any collateral effects on United States and allied financial stability and economic and security interests, targeting companies in significant economic sectors in a country whose government is determined to have engaged in or sponsored election interference."

> As could be expected, lawmakers were quick to question the EO. "It is outrageous that it has taken 21 months for President Trump to begin to respond to the Kremlin's interference in our democracy. In addition, I do not believe this executive order precludes the urgent need for legislation that increases sanctions pressure on the Kremlin for its destabilization of democracies here and around the world, support of a war criminal and terrorism in Syria and its ongoing military aggression in Ukraine," Sen. Bob Menendez (D-N.J.) said in a statement.

Menendez also took the opportunity to mention the Countering America's Adversaries Through Sanctions Act (CAATSA) that both houses overwhelmingly passed in July 2017 and that has yet to be fully implemented (see **WTTL**, July 23, page 3). "The American people deserve a whole-of-government strategy to the threat that Russia continues to pose to our democracy and national security. It is unacceptable that the President has not directed the federal government towards that end, which includes full implementation of mandatory sanctions provisions" under CAATSA, he said.

At a House Foreign Affairs Committee hearing Sept. 13, Chairman Ed Royce (R-Calif.) was cautious. "In the months ahead, the committee will continue to work with the administration on this and other sanctions policy, including implementation of the executive order announced yesterday regarding election interference. And we'll be watching to see that another tranche of sanctions is imposed against Russia later this year for its use of a military-grade nerve agent on British soil in March. Putin will certainly be looking for any signs that the U.S. is wavering."

Committee Ranking Member Eliot Engel (D-N.Y.) told State and Treasury officials that were set to testify at the hearing that the EO was "too little, too late" and that existing Russian sanctions amount to "a band-aid on a bullet wound." Engel also said the EO "creates a complicated, overly broad process that will not do much to deter the ongoing attack on American democracy."

He also criticized the lack of coordination in developing the EO. "There was no discussion of this effort with Congress whatsoever. We learned about it from Reuters. And from what I hear, your agencies were caught equally by surprise. And obviously that's not the way it's supposed to work," he said.

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The EO itself hedged its bets more than many observers would have liked. "Although there has been no evidence of a foreign power altering the outcome or vote tabulation in any United States election, foreign powers have historically sought to exploit America's free and open political system. In recent years, the proliferation of digital devices and internet-based communications has created significant vulnerabilities and magnified the scope and intensity of the threat of foreign interference," it said.

Trade Groups Target Flyover Country

This is getting serious. With two months before the midterm elections, more than 80 of the largest U.S. retail, manufacturing, technology and services trade organizations Sept. 12 launched a new coalition, Americans for Free Trade (AFT), with a multimillion-dollar nationwide campaign against tariffs called "Tariffs Hurt the Heartland."

> "The campaign includes a geographically searchable map (TariffsHurt.com) that allows users to find stories of job losses, deferred investments, higher prices and other negative consequences for farmers and businesses in communities across the country impacted by tariffs," AFT announced in a press release. The group will also hold events in key congressional districts in the lead-up to the midterm elections.

AFT includes many of the usual suspects, including Software & Information Industry Association (SIIA), American Association of Exporters and Importers, American Petroleum Institute, Information Technology Industry Council, US-China Business Council and National Retail Federation (NRF).

SIIA has "provided specific information on how tariffs will harm the construction of data centers in the United States and make smart thermostats more expensive. We strongly support the Administration's goal of addressing unfair Chinese trade and investment practices but consider tariffs counterproductive," SIIA Senior VP for Public Policy Mark MacCarthy said in a separate statement.

The new campaign will also include paid TV, radio and online advertisements, as well as op-eds, blogs and statements and a digital media campaign. In March, partner group Farmers for Free Trade, the coalition backed by the nation's largest ag commodity groups, kicked off a cable news campaign, "Voice of the Farmer," which included 30-second ad spots (see **WTTL**, March 19, page 5).

The day after the campaign launch, AmCham China and AmCham Shanghai released the results of a joint survey of 430 member companies. "The practical impact of combined tariffs is reflected in loss of profit (50.8%), higher production costs (47.1%), and decreased demand for products (41.8%). Only 11.8% of respondents have reduced employees, though the second tranche of tariffs will most likely raise this percentage," the groups noted. However, despite the administration's efforts, only 6% say they are considering relocation back to the U.S., the report said.

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China Asks Permission to Retaliate in WTO Dispute

The current trade tit-for-tat over tariffs got a little more interesting Sept. 11 when China requested World Trade Organization (WTO) authorization to impose $7 billion in annual trade sanctions on U.S. goods as a result of the U.S.' failure to comply with the WTO's ruling in a dispute over methodologies used in antidumping proceedings.

> The dispute dates from a complaint China filed in December 2013. In October 2016, a dispute panel found that the Commerce acted inconsistently with Article 2.4.2 of the Anti-Dumping Agreement (ADA) in its use of the weighted average-to-transaction (WA-T) comparison methodology, particularly "zeroing." The WTO Appellate Body ruled in May 2017 on China's appeal (see **WTTL**, May 15, 2017, page 5). The U.S. was given until Aug. 22 to comply with the ruling.

The WTO Dispute Settlement Body (DSB) will convene a meeting Sept. 21 to rule on the request. "China requests authorization from the DSB to suspend concessions or other obligations with respect to the United States at a level equivalent to the nullification or impairment suffered as a result of the failure of the United States to comply with the recommendations and rulings of the DSB," the request noted.

EU, U.S. Trade Officials Agree to Keep Talking

After a "constructive" meeting Sept. 10, European Union (EU) Trade Commissioner Cecilia Malmström and U.S. Trade Representative (USTR) Robert Lighthizer agreed to continue talking about what sounds like a recast of a trade deal that the administration derailed in its early days. Relations between the two partners soured as U.S. tariffs have been met with WTO challenges.

While no formal trade negotiations were announced, the officials met "to initiate the Executive Working Group to improve trade relations," USTR announced. "Specifically, we hope for an early harvest in the area of technical barriers to trade. We look forward to each party pursuing their domestic processes for negotiating mandates," it added.

For its part, USTR will begin consultations with Congress pursuant to Trade Promotion Authority to facilitate negotiations on longer-term outcomes, the office said. EU and U.S. announced in July that the two would work toward zero tariffs and zero subsidies on non-automobile goods and refrain from further retaliatory tariffs while they negotiate (see **WTTL**, July 30, page 3).

USTR chief agricultural negotiator Gregory Doud addressed EU-U.S. agriculture trade among other issues at a Senate Agriculture Committee hearing Sept. 13. "There are many sensitivities surrounding agricultural trade, but including agriculture in any negotiations with the EU remains a priority for this Administration," Doud said in his opening statement. Currently, the U.S. runs an agricultural trade deficit of over $15 billion with the EU; "which is partly indicative of the scope of market access issues and non-tariff barriers for U.S. agriculture into the EU," he added.

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* * * Briefs * * *

TRANSFORMERS: In 5-0 "sunset" vote Sept. 12, ITC said revoking antidumping duty order on imports of large power transformers from Korea would renew injury to U.S. industry.

EXPORT ENFORCEMENT: Rawnd Khaleel Aldalawi of Seattle pleaded guilty Sept. 6 in Seattle U.S. District Court to conspiracy to violate Arms Export Control Act for scheme to smuggle dozens of firearms to Turkey and Iraq without licenses between October 2016 and November 2017. Federal jury indicted Aldalawi and Paul Stuart Brunt of Bellevue, Wash., in January (see **WTTL**, Feb. 5, page 6). After arrest, Brunt was released on bond, and Aldalawi remains in custody. Sentencing is set for Dec. 7. Brunt pleaded guilty in July; sentencing is set for Nov. 9.

MTB: President Sept. 13 signed Miscellaneous Tariff Bill (MTB) Act of 2017 (H.R. 4318) ten days after House passed Senate-amended version of bill by voice vote (see **WTTL**, Sept. 10, page 5). MTB allows domestic industry to petition ITC for tariff relief. Senate passed its version in July by voice vote. Last MTB passed by Congress expired in December 2012. "With his signature, President Trump has freed manufacturers and other businesses from a pointless $1 million a day tax," National Association of Manufacturers President Jay Timmons said in statement.

FCPA: Juan Carlos Castillo Rincon (Castillo), manager of Houston-based logistics and freight forwarding company, pleaded guilty Sept. 13 in Houston U.S. District Court to conspiracy to violate Foreign Corrupt Practices Act (FCPA) for paying bribes to former official of Venezuela's state-owned energy company, Petroleos de Venezuela S.A. (PDVSA), in exchange for favorable business treatment. Castillo was arrested in Miami in April and released on $100,000 bond. Sentencing is set for Feb. 21, 2019. At same time, July 2017 guilty plea of Jose Orlando Camacho of Miami, PDVSA official whom Castillo bribed, was unsealed. Camacho is also scheduled to be sentenced Feb. 21, 2019. Castillo is 17th defendant in larger investigation. Jose Manuel Gonzalez Testino (Gonzalez), dual U.S.-Venezuelan citizen, was arrested and charged July 31 in Miami U.S. District Court on related charges (see **WTTL**, Aug. 6, page 7).

NORTH KOREA: Treasury's Office of Foreign Assets Control (OFAC) Sept. 13 designated China-based IT firm Yanbian Silverstar Network Technology Co., Ltd. (aka China Silver Star), its North Korean CEO Jong Song Hwa, and its Russia-based sister company, Volasys Silver Star. Firms were designated under two authorities: for exportation of workers from North Korea to generate revenue for government of North Korea or Workers' Party of Korea (Executive Order 13722); and for operating in IT industry in North Korea (EO 13810), OFAC noted. China Silver Star is associated with UN- and U.S.-designated Munitions Industry Department (MID) of Workers' Party of Korea and Korea Kuryonggang Trading Corporation.

STEEL: Two years later, Commerce Sept. 10 launched new interactive Global Steel Trade Monitor, which provides "extensive and timely" steel trade data for top 20 global steel importing and exporting countries. Department began publishing country-specific reports of current steel trade flows in August 2016 (see **WTTL**, Aug. 8, 2016, page 5). Tool can produce more than 20,000 charts for five aggregate product groups: flat, long, pipe and tube, semi-finished and stainless products, Commerce said. Monitor available at https://beta.trade.gov/gstm.

CUBA: BIS in Federal Register Sept. 17 requests public comments on effectiveness of licensing procedures for export of agricultural commodities to Cuba. Comments due by Oct. 18. Comments will be included in biennial report to Congress under Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA).

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TRADE PEOPLE: T. James Min II joined LimNexus LLP to lead international trade & regulatory practice and open firm's new Washington office, firm announced Sept. 10. Min was chair of global trade law practice at Deutsche Post DHL. Prior to DHL, Min was trade lawyer with Commerce, Homeland Security and Treasury.

RUSSIA: In Frequently Asked Question (FAQ) posted Sept. 14, OFAC defined activities that are considered "maintenance" under Ukraine-/Russia-related General Licenses (GLs) 14, 15 and 16. Authorization "includes all transactions ordinarily incident to the continuity of operations," OFAC said. Approved transactions "include issuing or accepting purchase orders and making or receiving shipments consistent with the terms of the general license," it said. However, "stockpiling inventory …would not be authorized unless transaction history indicates that the scope and extent of maintaining inventory is consistent with past practice." Agency in June issued GL 16 extending authorization for U.S. persons to engage in "specified transactions related to winding down or maintaining business involving EN+ Group PLC, JSC EuroSibEnergo, or any entity in which EN+ Group PLC or JSC EuroSibEnergo owns, directly or indirectly, a 50 percent or greater interest," until Oct. 23 (see **WTTL**, June 11, page 8).

IRAN: OFAC Sept. 14 designated Thai firm My Aviation Company Limited for acting for or on behalf of Mahan Air, previously designated Iranian airline. My Aviation is Mahan Air General Sales Agent (GSA), and provides cargo services and passenger booking services to airline. OFAC in July designated Malaysia-based Mahan Travel and Tourism Sdn Bhd for similar services (see **WTTL**, July 16, page 8). Mahan Air was designated in October 2011 for providing support for Islamic Revolutionary Guard Corps-Qods Force (IRGC-QF).

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