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Rolls-Royce Pays $170 Million to Settle FCPA Charges

Rolls-Royce plc, the United Kingdom (UK)-based engine manufacturer, agreed to pay Justice nearly $170 million to settle charges the company and a U.S. subsidiary conspired to violate the Foreign Corrupt Practices Act (FCPA). The payment under a deferred prosecution agreement (DPA) was part of an $800 million global resolution to investigations by the department, UK and Brazilian authorities into a long-running scheme to bribe officials of state-owned oil and gas companies in exchange for contracts.

> From 2000 to 2013, Rolls-Royce, Rolls-Royce Energy Systems Inc. (RRESI), an indirect U.S. subsidiary in Mount Vernon, Ohio, and four employees paid "$35 million in commission payments to commercial advisors and others, knowing that the commission payments would be used to bribe foreign officials on behalf of Rolls-Royce and RRESI in Thailand, Brazil, Kazakhstan, Azerbaijan, Angola, Iraq and elsewhere, in exchange for foreign officials' assistance in providing confidential information and awarding contracts," according to the criminal information filed in Columbus, Ohio U.S. District Court in December and unsealed Jan. 17.

"Rolls-Royce did not disclose the criminal conduct, but did cooperate with the department's investigation, Justice said. "The behavior uncovered in the course of the investigations by the Serious Fraud Office and other authorities is completely unacceptable and we apologize unreservedly for it. This was unworthy of everything which Rolls-Royce stands for, and that our people, customers, investors and partners rightly expect from us," Rolls-Royce CEO Warren East said in a statement.

U.S. Challenges Canadian Wine Sales at WTO

In one of its last actions, the Obama administration requested consultations with Canada at the World Trade Organization (WTO) Jan. 18 over discriminatory practices related to British Columbia wine sales. Only British Columbia wine is allowed to be sold on regular

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grocery store shelves, to the exclusion of all imported wine. If the dispute is not settled in consultations, then the U.S. can request the WTO establish a dispute settlement panel.

In April 2015, British Columbia amended its regulations to provide two options for grocery stores to sell wine. The "wine on shelf" option permits grocery stores to sell wine anywhere in the store, but only British Columbia wine can be sold on shelves. Imported wine can only be sold under the "store within a store" option, but no British Columbia grocery store has taken advantage of that option, USTR said in its enforcement announcement. This is the 26th WTO enforcement action taken by the Obama administration.

> "American winemakers have found increasing success in export markets like Canada," said Acting Agriculture Secretary Michael Scuse, who took over after Tom Vilsack stepped down (see page 8). "However, we could be doing even better. …The United States simply seeks equal opportunities to market our wines, consistent with Canada's international obligations."

Industry groups applauded USTR's actions. "We urge the WTO and the governments involved to reach a fair and equitable solution so that B.C. grocery store consumers can choose from the vast array of the world's great wines," Wine Institute President and CEO Robert Koch said in a statement. "B.C. consumers are among the most knowledgeable and sophisticated purchasers of wine. Any expansion of retail distribution channels should ensure that consumers have convenient access to their preferred wines from around the world," Koch added.

Sens. Patty Murray (D-Wash.) and Ron Wyden (D-Ore.) echoed that sentiment. "The rapidly growing wine industry is a key part of Washington state's agricultural economy. Washington winemakers have the potential to continue this strong growth, but right now, they are at a disadvantage when it comes to reaching consumers right across the border in Canada, the largest foreign market for our wine," said Murray. "I strongly support USTR's challenge to British Columbia's regulation in order to allow fair competition for the high-quality wine being produced in the Northwest and across the country," she added.

"The blatantly discriminatory barriers American winegrowers face right next door in Canada keep them from competing fairly in one of their most important export markets," Wyden said. "I commend the Administration for keeping up the fight for tough trade enforcement, including for America's rural communities, even as it enters its final hours," he noted.

Another Medical Device Company Settles FCPA Charges

Texas-based medical device company Orthofix International agreed Jan. 18 to pay $6 million in disgorgement and penalties to settle Securities and Exchange Commission (SEC) charges that it violated the Foreign Corrupt Practices Act (FCPA) when its Brazilian subsidiary schemed to use high discounts and make improper payments to induce government doctors to use Orthofix products.

Competitor Biomet just settled its own repeat FCPA charges involving unlawful payments to Customs officials in Mexico and sales to a prohibited distributor in Brazil (see **WTTL**, Jan. 16, page 1).

Orthofix "also improperly recognized revenue in its Orthopedics Segment through extra-contractual agreements used at its Brazilian subsidiary. Moreover, throughout the relevant period, Orthofix had inadequate internal accounting controls over its distributor revenue recognition and had a culture of setting aggressive internal sales targets and imposing pressure to meet those sales targets," the SEC order noted.

> Four former Orthofix employees, including accounting and sales executives and the company's former corporate CFO, agreed to pay separate penalties ranging from $20,000 to $40,000. In July 2012, Orthofix agreed to pay more than $7.4 million in penalties to settle SEC and Justice charges that its Mexican subsidiary paid bribes, which employees called "chocolates," to Mexican officials to obtain contracts with government hospitals (see **WTTL**, July 16, 2012, page 4).

"We are very pleased to bring closure to these collective matters, which relate to activities that occurred largely between 2011 and 2013," said Orthofix President and CEO Brad Mason in a statement. "We have instituted broad remedial measures designed to detect and prevent the issues that led to the matters being resolved, and these resolutions allow us to continue moving forward with the Company's critical mission of serving patients, our physician customers, and shareholders," he added. After careful review, Justice "has decided to take no further action with respect to this matter," the company noted.

NAFTA Number One Priority for Trump's Commerce Nominee

Renegotiating the North American Free Trade Agreement (NAFTA) is priority number one for Trump's pick for Commerce Secretary, billionaire investor Wilbur Ross. At his confirmation hearing Jan. 18, Ross said, "As to Canada and Mexico, the president-elect has made no secret in his public remarks, nor have I, that NAFTA is logically the first thing for us to deal with." He said it would be premature to detail exactly what a new NAFTA deal would look like.

"We ought to solidify relationships the best way we can in our own territory before we go off into other jurisdictions," he added. Ross supports the use of duties as a tool for punishing trade cheats, but softened Trump's threats to impose tariffs on trading partners. "In terms of the 35% and some of the other statements, I think [Trump] has done a wonderful job pre-conditioning some of the other countries with whom we'll be negotiating that change is coming," he said.

But make no mistake, if NAFTA is number one, then taking down China's protectionist agenda and steel overcapacity is priority number two. He suggested that more enforcement is needed, as well as improvements on collecting duties. In defending himself against criticisms that he outsources jobs, Ross said that he and United Steelworkers

President Leo Gerard had saved 100,000 when Ross bought several struggling U.S. steelmakers.

Early on in the Senate Commerce Committee hearing, Chairman John Thune (R-S.D.) sought clarity as to just who is going to lead trade policy in the new administration. Trump had previously said that Ross would be a leading voice on trade, as would Peter Navarro, who was tapped to lead the newly formed National Trade Council.

"We're well aware of the legislative powers of the U.S. Trade Representative, and obviously neither the president nor I will try to do anything that is averse to the congressional mandate given to the U.S. Trade Representative," Ross said in response. However, it would be in the U.S.' best interest to bring together all the "intellectual resources and experiences we can," he added. Trade policy will therefore be a collaboration among Ross, Navarro and, presumably, USTR nominee Robert Lighthizer (see **WTTL**, Jan. 9, page 2).

In contrast to his boss, Ross was initially a supporter of the Trans-Pacific Partnership (TPP) but has since changed his mind after looking over the text of the multilateral agreement. (Two protesters chanted "Ross supports TPP! Ross exports jobs!" before they were swiftly escorted out of the hearing room.) He cited the auto industry, in particular a portion of the TPP that allows up to 60% of a car's components to come from non-TPP countries but still reap the benefits of the deal. TPP, as the deal stands now, has been reviled by both parties.

There appeared to be bipartisan support for Ross' take on trade enforcement. Commerce has the right to self-initiate antidumping and countervailing duty investigations on behalf of domestic industries, but that right has rarely been exercised. "I like the idea of occasionally using self-initiation by the Department of Commerce to bring these cases. We're not going to self-initiate every case… but I think by picking strategic cases… it will send a message to the other side that we're getting more serious about this. Second, it would definitely accelerate the process," said Ross.

The hearing briefly touched upon the long beleaguered Export-Import Bank (Ex-Im). Ross acknowledged the criticism of Ex-Im, but said that "some sort of financing tool" should be available for U.S. exporters. At press time, with the departure of Ex-Im board chair Fred Hochberg, there is only one acting member of the board.

Fleeting time was also given to whether Ross supports lifting the Cuba trade embargo. Ross acknowledged that American companies like Starwood Hotels have already entered the Cuban market and that there is increasing interest from other American companies, "but I don't feel I'm expert enough in that right now to have a firm view," he said.

UK Prime Minister Outlines Brexit Trade Strategy

The United Kingdom's (UK) objectives for exiting the European Union (EU) do not include staying a member of the single market nor staying a full member of the Customs Union, membership in which prevents the UK from striking out on its own free trade deals, British Prime Minister Theresa May said Jan. 17 in a speech outlining her government's 12 highest priorities in the Brexit process.

Number eight in May's list of objectives is pursuing "a bold and ambitious free trade agreement with the European Union," she said. Such an agreement would allow for the "freest possible" trade in goods and services between Britain and EU members. "But I want to be clear. What I am proposing cannot mean membership of the single market," said May. Full membership would mean accepting the EU's four freedoms of goods, capital, services and people, and accepting the European Court of Justice.

> "It would to all intents and purposes mean not leaving the EU at all," May noted. A new agreement between the UK and EU is expected to take many elements of the current single market arrangement, but will not include the UK making contributions to the EU budget, May pledged.

Pursuing trade deals with countries outside the EU is a priority for May's government, she said, pointing to her creation of a Department for International Trade (see **WTTL**, July 18, page 9). "We want to get out into the wider world, to trade and do business all around the globe. Countries including China, Brazil, and the Gulf States have already expressed their interest in striking trade deals with us. We have started discussions on future trade ties with countries like Australia, New Zealand and India," she said.

May also addressed potential trade deals with the U.S. that had been put on the back burner after the Brexit vote. "President-Elect Trump has said Britain is not 'at the back of the queue' for a trade deal with the United States, the world's biggest economy, but front of the line," said May. While a deal is still legally impossible while still part of the EU, Trump surrogates and others, including Brexit proponent Nigel Farage, have predicted a quick turnaround.

A turn toward other countries does not mean abandoning Europe, said May. She wants tariff-free trade with the EU, but does not want the UK to be a part of the Common Commercial Policy nor bound by the Common External Tariff – the pieces of the Customs Union that prevent the UK from negotiating free trade agreements with other countries and establishing its own tariff schedules at the World Trade Organization (WTO). It is widely accepted that the UK is a member of the WTO in its own right.

Casino Firm Pays Another $7 Million to Settle FCPA Charges

Sheldon Adelson's casino chain Las Vegas Sands Corp. (LVSC) agreed Jan. 19 to pay Justice under a non-prosecution agreement (NPA) to settle charges the firm violated the Foreign Corrupt Practices Act (FCPA) by failing to properly document $60 million in payments to a consultant facilitating business expansion in China and Macao from 2006 through 2009.

The consultant represented to LVSC that he was a former Chinese government official, and advertised his political connections with Chinese government officials as a primary qualification to provide assistance, the NPA said. In April, LVSC paid $9 million to settle related Securities and Exchange Commission (SEC) charges (see **WTTL**, April 11, 2016, page 1).

> "Several of Sands' contracts with and payments to Consultant had no discernible legitimate business purpose, Sands senior executives were repeatedly warned about the Consultant's dubious business practices and the high risk of Sands' transactions with Consultant, and by at least early 2008, certain senior Sands executives knew that over $700,000 paid to Consultant by Sands subsidiaries had simply disappeared," the NPA noted.

In or around early 2007, Sands sought to acquire a professional basketball team in the Chinese Basketball Association (CBA) to increase interest in Sands' existing casino operations in Macao, according to the NPA. Sands promotional strategy in China also included pursuing a joint venture to develop a resort facility with a Chinese state-owned travel agency, it noted.

U.S., European Union Take Stock of TTIP

While the Transatlantic Trade and Investment Partnership (TTIP) is considered to be in a "deep freeze" as the new administration considers the future of multilateral trade deals, the two partners stopped to take stock of the agreement's progress. On Jan. 17, just three days before the presidential transition, the U.S. and European Union (EU) released their joint report on TTIP progress-to-date.

The joint document touted rosier aspects of the negotiations, such as offers to eliminate duties on 97% of tariff lines and reduction of "unnecessarily burdensome requirements and delays at our borders." The two sides also highlighted a shared commitment to strengthen worker and environmental protections and a focus on small- and medium-sized enterprises (see **WTTL**, Jan. 9, page 6).

But the areas where the EU and U.S. differ remain substantial. "We still have significant work to do to resolve our differences in several important areas of the negotiations," they wrote. These differences include: "how to treat the most sensitive tariff lines on both sides; [and] how to expand and lock in market access in key services sectors."

In addition, differences also remain on "how best to achieve our shared objective of providing strong investor protection while preserving the right of governments to regulate, including with respect to dispute resolution mechanisms… how to structure commitments on data flows that will reinforce the essential electronic commerce and digital infrastructure of our economic relationship while respecting legitimate concerns about protecting privacy," reads the document. Since TTIP negotiations began in July 2013, there have been 15 rounds of negotiations. While TTIP has largely flown under the radar stateside, the trade deal faces opposition in Europe.

"While disappointed that more was not achieved during the three-plus years of TTIP negotiations, TABC encourages the Trump Administration to work with the EU as soon as possible through 'continued engagement' to successfully conclude 'an ambitious, balanced, comprehensive, and high-standard agreement' as called for by the Joint Report," Trans-Atlantic Business Council (TABC) Director-General/CEO Tim Bennett said in a statement.

"At the very least, TABC asks the Trump Administration to prioritize U.S.-EU trade relations, building on the substantial work that was accomplished during the TTIP negotiations and decades prior to pursue further regulatory cooperation where possible and conclude common agreements that will reduce unnecessary barriers in certain sectors such as autos, chemicals, and pharmaceuticals," Bennett added.

Agencies Should Monitor Economic Impact of Cuba Policy Shifts

While new U.S. regulations have begun to foster some travel and commerce with Cuba, those agencies involved in Cuba policy, including State, Commerce, Treasury and Agriculture, need to collect more information that would allow them to monitor changes in economic engagement with the country, according to a Government Accountability office (GAO) report published Jan. 17 (GAO-17-201).

> "U.S. agencies have not collected and documented key information on the Cuban economy, the effects of regulatory changes, and agency activities, in accordance with federal standards for internal control. Without collecting and documenting information, agencies risk being unable to monitor and assess changes over time in economic engagement with Cuba, including with the private sector," GAO said.

The U.S. government has made six sets of regulatory changes since December 2014 to ease restrictions on travel, remittances, financial services and trade with Cuba, the report noted. "However, relatively few commercial deals have been completed. In addition, U.S. trade with Cuba has decreased, driven by declining agricultural exports, which have been legal since 2000," it said.

U.S. exports of goods and services to Cuba declined from $299 million in 2014 to $180 million in 2015, the report showed. "This decline is a continuation of a longer -term downward trend from a high of $712 million in U.S. exports to Cuba in 2008. Over time, Cuba has increasingly shifted its agricultural purchases to the European Union and other countries such as Brazil, Argentina, and Canada," GAO noted.

* * * Briefs * * *

<u>GSP</u>: USTR in Federal Register Jan. 23 closed country practices review of worker rights in Fiji and Niger "without change to those countries' GSP trade benefits." Agency closed review "in view of progress made by the governments of Fiji and Niger, respectively, in addressing worker rights issues in those countries," notice said. USTR will hold hearing on GSP annual review Feb. 22.

STAPLE FIBER: In 6-0 "sunset" vote Jan. 18, ITC said revoking antidumping duty orders on polyester staple fiber from Korea and Taiwan would renew injury to U.S. industry.

GLYCINE: In 6-0 "sunset" vote Jan. 18, ITC said revoking antidumping duty order on glycine from China would renew injury to U.S. industry.

ENTITY LIST: BIS in Federal Register Jan. 25 will remove seven persons under ten entries in Germany, Hong Kong, India, Singapore, Switzerland and UAE from its Entity List. Rule removes Industrio GmbH, Martin Hess, Peter Duenker and Wilhelm Bill" Holler in Germany; Frank Genin in Hong Kong and UAE; Beaumont Trading AG in India, Switzerland and UAE; and Amanda Sng in Singapore. All were added to Entity List in March 2016 (see **WTTL**, March 21, page 8).

INDIA: BIS in Jan. 19 Federal Register established licensing policy of general approval for exports or reexports to or transfers within India of EAR items controlled only for National Security or Regional Stability reasons. In addition, BIS amended end-use and end-user provisions of Validated End User (VEU) authorization to state that "items obtained under authorization VEU in India may be used for either civil or military end uses other than those that are for use in nuclear, 'missile,' or chemical or biological weapons activities," notice said.

HONG KONG: BIS in Jan. 19 Federal Register required exporters and reexporters of EAR-controlled items to or from Hong Kong to "obtain, prior to such export or reexport, a copy of a Hong Kong import license or a written statement from the Hong Kong government that such a license is not required," notice said. Rule will become effective April 19. "BIS is taking this action to provide greater assurance that U.S. origin items that are subject to the multilateral control regimes noted above will be properly authorized by the United States to their final destination, even when those items first pass through Hong Kong," agency said.

ITC: President Obama Jan. 13 designated Rhonda Schnare Schmidtlein as ITC chair for term expiring June 16, 2018. Schmidtlein first nominated to ITC Jan. 6, 2014, and sworn in April 28, 2014, for term expiring Dec. 16, 2021. Prior to appointment she served as consultant to World Bank. … Jason Kearns, senior Democratic trade counsel for House Ways and Means Committee, tapped by Obama Jan. 17 to serve as ITC commissioner for term expiring Dec. 16, 2024. Kearns will replace Dean Pinkert, whose term expired. Kearns "understands the importance for our nation's trade deals to be crafted in a way that spreads the benefits of trade to all Americans, and has been a vocal proponent of ensuring our trade agreements are properly and rigorously enforced," Ways and Means Ranking Member Richard Neal (D-Mass.) said in statement.

USDA: Obama Agriculture Secretary Tom Vilsack stepped down Jan. 13, week early, and will be next CEO of U.S. Dairy Export Council. … Former Georgia Gov. Sonny Perdue tapped Jan. 18 as Trump Agriculture nominee. Perdue served as governor from 2003-2011. He reportedly is supportive of free trade, but agrees with Trump on TPP.

TRANSITION: Trump administration keeping on more than 50 Obama appointees to ensure continuity, transition team said Jan. 19. Adam Szubin will serve as acting Treasury secretary and Tom Shannon will serve as acting secretary of State until Trump nominees are confirmed. Szubin served for two years as acting undersecretary for terrorism and financial intelligence and was responsible for unwinding Iran sanctions following implementation of Joint Comprehensive Plan of Action.

MONGOLIA: Outgoing USTR Michael Froman and Mongolia's Ambassador to U.S. Bulgaa Altangerel Jan. 19 signed documents certifying that each country had taken steps to bring Agreement on Transparency in Matters Related to International Trade and Investment between two countries into enforcement in 60 days. Transparency agreement was signed in September 2013 (see **WTTL**, Sept. 30, 2013, page 9). U.S. exports of goods to Mongolia peaked at $665 million in 2012, but have declined due to downturn in Mongolia's economy, USTR noted.

MAIL FRAUD: Pakistani national Babar Butt, owner of Houston electronics export business, pleaded guilty Jan. 17 in Houston U.S. District Court to six counts of mail fraud. Butt admitted to defrauding FedEx by opening various shipping accounts, shipping packages to Dubai then not paying invoices. He is in custody awaiting sentencing, which is set for April 4.

TRADE PEOPLE: Former Assistant Attorney General for National Security John P. Carlin joined Morrison and Foerster law firm to chair its global risk and crisis management practice in N.Y. office, firm announced Jan. 10. Carlin left Justice in October, replaced by Mary B. McCord (see **WTTL**, Oct. 24, page 6).

BAUXITE: CAFC Jan. 9 affirmed CIT on proper classification of bauxite proppants imported by Schlumberger Technology Corporation in 2010 to be used in hydraulic fracturing. Customs & Border Protection classified merchandise under Subheading 6909.19.50 (ceramic wares) of U.S. Harmonized Tariff Schedule (HTSUS), which is charged duty rate of 4% ad valorem. On appeal, CIT in July 2015 rejected Customs' classification and entered summary judgment that merchandise should enter under HTSUS 2606.00.00 (aluminum ores and concentrates), which are duty free.

IRAN: Reps. Peter J. Roskam (R-Ill.), Brad Sherman (D-Calif.) and Lee Zeldin (R-N.Y.) Jan. 13 introduced Terror-Free Skies Act (H.R.566), which would require president to report on use by Iran of commercial aircraft for illicit military activities. If president determines that Iran Air or any other Iranian commercial airliner has used commercial aircraft for illicit military purposes, then airline must be added to OFAC Specially Designated Nationals list within 90 days, bill says. Roskam has long opposed Boeing aircraft deals with Iran air (see **WTTL**, July 11, page 3).