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Hitachi Pays $19 Million to Settle FCPA Charges

Japanese conglomerate Hitachi Ltd. agreed Sept. 28 to pay $19 million to settle Securities and Exchange Commission (SEC) charges of violating the Foreign Corrupt Practices Act by bribing South Africa's ruling party, the African National Congress (ANC), to win contracts to build two multi-billion dollar power plants. "Hitachi's lax internal control environment enabled its subsidiary to pay millions of dollars to a politically-connected front company for the ANC to win contracts with the South African government," said Andrew J. Ceresney, director of the SEC's Enforcement Division, in a statement.

> In 2005, Hitachi created Hitachi Power Africa (Pty) Ltd. (HPA) in South Africa to establish a local presence in the country to pursue lucrative public and private contracts, including government contracts to build two new major power stations, the SEC complaint noted. Hitachi sold 25% of the stock in HPA to Chancellor House Holdings (Pty) Ltd., a local South African company that was a front for the ANC, the complaint claimed.

The case has stirred up political trouble in South Africa, where the opposition Democratic Alliance (DA) is reportedly asking for an official investigation into Chancellor House. "Our view is that this is corrupt activity and must be prosecuted accordingly. Therefore, we've asked the South African police to investigate and hopefully in the long run ask the World Bank to investigate and the public protector will engage the matter as well," DA Leader Mmusi Maimane was quoted in The Mail & Guardian newspaper in South Africa. The ANC website has a statement declaring "the ANC categorically states that the organisation was not involved, implicated nor approached to answer on anything relating to the charges brought against Hitachi."

The SEC said Hitachi entered into an undisclosed arrangement to pay Chancellor "success fees" if the contract awards were "substantially as a result" of Chancellor's efforts. It recorded the fees as "consulting fees" in its books and records, SEC said.

WTO to Address Slowdown in Dispute-Settlement Process

World Trade Organization (WTO) Director-General Roberto Azevedo is working on proposals to speed up the dispute-settlement process, which has become slower and slower in recent years as the number of disputes given to dispute-settlement panels has increased along with their complexity. Azevedo will present his plans to the next meeting of the Dispute-Settlement Body (DSB) Oct. 28, DSB Chairman Harald Neple, Norway's ambassador to the WTO, told the group at its Sept. 28 meeting.

> The slowdown in the dispute-settlement process could undermine confidence in the WTO's ability to be a forum to redress unfair trade practices and hold countries to trade agreements. Some disputes have languished for years as panel rulings are appealed to the Appellate Body, countries seek additional arbitration when losing parties fail to comply with decisions and further proceedings are needed to determine potential levels of retaliation.

Concerns about the slowing process have increased for over a year but came to a head at the DSB's August meeting when Korea put it on the agenda for formal discussion. Korea complained that a panel established in March 2015 to review its complaint against a U.S. antidumping order on oil country tubular goods (OCTG) won't be able to begin its work until the end of 2016 at the earliest. The delay "is so excessive and so far removed from the deadlines set forth by the drafters that it is impossible to reconcile with the principle of prompt settlement of disputes that is at the core of the DSU [Dispute-Settlement Understanding]," a Korean official told the DSB in a prepared statement.

The Koreans claim the antidumping order is costing Korean companies $10 million a month and a 15-month delay in starting the panel will add up to $150 million. By the time the panel actually issues a report and other procedures are completed, the cost could double, Seoul's representative argued. Korea urged the WTO secretariat to provide more information to members on what is causing the delays in panel work and what is needed to fix the problem.

While U.S. officials agreed that the dispute-settlement process is facing problems, they objected to Seoul raising the issue as part of the bilateral dispute over OCTG. "We do not agree with Korea's statement about harm to its companies since we consider that U.S. duties have been imposed consistently with WTO rules," a U.S. representative told the DSB, according to prepared talking points.

"That said, for some time the dispute settlement system has been facing significant delays, first at the appellate stage, and now at the panel stage. This raises some significant concerns, particularly in light of the fact that the WTO dispute settlement system for many years operated with admirable efficiency. We share the view that Members need a better understanding of the causes behind delays so that we can develop and consider appropriate solutions," the American representative said.

TPP Talks Headed into Overtime in Atlanta

At press time Friday night, trade ministers from the 12 countries negotiating a Trans-Pacific Partnership (TPP) in Atlanta had already extended their talks beyond the original Sept. 30-Oct. 1 schedule and were headed into weekend meetings in an effort to seal a deal. Forecasts about the chances of an agreement were changing hourly, with final disagree-ments still focused on same issues that have stymied talks for months: dairy, sugar, auto rules of origin and drug patent protection. Before he entered meetings, U.S. Trade Representative (USTR) Michael Froman had no shortage of advice from nearly everyone on what he needed to do in a final agreement. In many cases, the advice took diametrically opposing positions on the same subject. If an agreement is reached over the weekend, it appears certain that many parts of it will upset some group in the U.S. or in the other 11 TPP countries.

> In a letter to Froman and Treasury Secretary Jacob Lew, the chairmen and ranking members of the Senate Finance Committee and the House Ways and Means Committee tried to put some backbone into the U.S. negotiators, urging them "to ensure that any agreement reached meets the priorities of Congress" and also saying they expect the administration officials intensify consultations and coordination with Congress immediately.

"We urge you to take the time necessary to get the best deal possible for the United States, working closely with us and with stakeholders to resolve the many outstanding issues in these critically important negotiations," wrote Finance Chairman Orrin Hatch (R-Utah) and Ranking Member Ron Wyden (D-Ore.) and Ways and Means Chairman Paul Ryan (R-Wis.) and Ranking Member Sander Levin (D-Mich.). "If you are unable to obtain an agreement that is consistent with the standards we have set out, we would support continuing negotiations so that TPP meets the benchmark that Congress can support," they told the Cabinet officials.

In a separate statement, Wyden said it is "important that the U.S. obtain a balanced dairy package that provides significant new access to Canada's dairy market, ensure fair limitations and exceptions to copyright provisions, and that the agreement protects the ability of countries to promote public health, including as it relates to regulating tobacco use."

Levin also wrote an op-ed piece for the Politico newspaper, restating the long list of issues that have be addressed in TPP. Among his prime concerns, however, is the rule of origin for autos. "The intensity of the controversy around the Rules of Origin reflects the economic importance of the automotive industry to the United States and the other countries involved in the negotiations," he wrote.

Japan, for instance, wants a loose rule, allowing its manufacturers to source cheaper inputs from Thailand or China, instead of from TPP countries. I support a strong rule, which ensures that the benefits of the agreement accrue to the countries that are part of the agreement," he declared. Levin noted that in the two decades since NAFTA was implemented "a major integration of the U.S. and Mexican auto industries has occurred, and Mexico has become the seventh largest producer of vehicles worldwide." In 2015, Mexico will send the U.S. more vehicles than Canada or even Japan, he wrote.

Levin said Mexico's comparative advantage in autos is significantly constructed on Mexican workers being paid one-fifth as much as their American counterparts, or less. "They do so in a system where the laws are in violation of international worker rights standards and where the system is thoroughly stacked against workers," he complained.

Froman's mailbox was also filled with letters from other lawmakers urging protection for the U.S. dairy industry, some wanting to protect U.S. sugar growers but some wanting to open the sugar market to more imports, some objecting to carveouts in investor-state dispute settlement provisions to allow regulation of tobacco, and others urging long-term protection of biologic drug patents while others called for quicker availability of generic versions in poor countries.

Groups Oppose Reif for USTR Transparency Officer

Just weeks after the USTR's office took a grudging step toward transparency by naming a chief transparency officer, a group of organizations aren't satisfied with the person who was selected, USTR General Counsel Tim Reif (see **WTTL**, Sept. 28, page 7). In a Sept. 30 letter to USTR Michael Froman, the groups claimed there is "an inherent structural conflict of interest" between the role of general counsel and the transparency post created by Congress.

> The new position was established "to alter and improve what many in Congress consider an unacceptable lack of transparency by this administration with respect to trade policy in general and the TPP," the letter said. It was signed by 22 organizations and individuals including Common Cause, Electronic Frontier Foundation, Bill of Rights Defense Committee, Public Citizen and the Society of Professional Journalists (SPJ). [Disclaimer: the editor is an SPJ member.]

"It is unclear to us how the same USTR staff person whose remits include, defending to Congress the agency's unwillingness to make draft texts available to the public and, to date, certain congressional staff, and defending USTR denials of Freedom of Information Act requests for trade pact texts and information, can also serve as the internal USTR advocate for new transparency improvements, which was Congress' intent in the legislation establishing this position," the letter added.

The groups also urged Froman's office to "immediately change its practice of conducting its trade negotiations under the cloak of secrecy." They said the "U.S. government should at least make public its own textual negotiating positions in other ongoing negotiations, such as the TTIP [Transatlantic Trade and Investment Partnership], where the European Union has made its textual negotiating positions public."

Separately, a federal judge Sept. 25 upheld the USTR's policy of keeping draft TPP chapters confidential. "It is both logical and plausible that unilateral disclosure of Draft Chapters, in explicit violation of the very first term of the TPP confidentiality agreement, would harm foreign relations, especially prior to consummation of the final agreement," ruled Manhattan U.S. District Court Judge Edgardo Ramos in *Intellectual Property (IP) Watch v. USTR*.

Continued Russian Sanctions Face Challenges

European support for sanctions against Russia may be weakening just as the U.S. relationship with Moscow has soured even further over its air strikes in Syria the week of Sept. 28. Future sanctions on Russia could depend on Europe's pain threshold, which is being tested by the sharp drop in its trade with Russia, according to a Center for Strategic and International Studies (CSIS) report issued Oct. 1.

Ukraine and Syria were the subject of talks that Secretary of State John Kerry held with Russian Foreign Minister Lavrov Sept. 30. Separately, French President Hollande and German Chancellor Merkel were to meet with Russian President Putin in Paris Oct. 2. At the same time, the U.S., France, Germany, Qatar, Saudi Arabia, Turkey and the United Kingdom issued a joint statement Oct. 2 expressing "deep concern with regard to the

Russian military build-up in Syria and especially the attacks by the Russian Air Force on Hama, Homs and Idlib which led to civilian casualties and did not target Da'esh." The seven nations called on Moscow "to immediately cease its attacks on the Syrian opposition and civilians and to focus its efforts on fighting ISIL."

> Kerry also met with Lavrov Sept. 28 and the next day told an interview that "Ukraine was the first topic." He said "there's a path that we discussed that we will follow up on in order to try to resolve some of the outstanding issues in order to fully implement" the 2015 February Minsk II agreement.

The CSIS report cites the challenges facing sanctions on Russia, including their negative impact on European economies and Putin's popularity in his own country. Sanctions could shrink Europe-Russia trade by about €80 billion in 2015 and cost Europe about €30 billion in lost exports to Russia, it said. "Those amounts are significantly higher than what Iran sanctions cost the European economy in the past decade, and markedly greater than the cost to the U.S. economy of Russia sanctions. This could complicate the support for sanctions over time in Europe," the report noted.

In addition, sanctions are believed to have cut Russia's real gross domestic product (GDP) by more than 1% between the summer of 2014 and the summer of 2015, according to the CSIS report. This cost is "hard to disentangle from the fall in oil prices and the poor management of the Russian economy in recent years," the report acknowledged. "Russians acknowledge the impact of sanctions but still support Russia's actions in Ukraine as President Putin's popularity has increased in the past year," CSIS noted. The International Monetary Fund (IMF) estimates Russian GDP has declined 3.6% in 2015 and will decline further in 2016.

Moving forward the U.S. and Europe should "increase support to the Ukrainian government's reform efforts, whose success will be key to convince Europeans that sustaining sanctions is worth it. The role of sanctions will be radically transformed if Ukraine collapses, even becoming possibly pointless," it said.

Maryland Manufacturer Settles BIS Export Charges

Export compliance officials took a second nibble at the same apple Sept. 25 when Production Products, Inc. (PPI) of Charlotte Hall, Md. agreed to settle Bureau of Industry and Security (BIS) charges of exporting three duct fabrication machines to a designated Chinese entity. PPI exported the machines, which were designated as EAR99 and valued at $500,000 total, to China National Precision Machinery Import and Export Corp. (CPMIEC) without authorization in May 2010.

> BIS imposed a $50,000 civil penalty on PPI but will suspend the full amount for two years and then waive it, if PPI commits no further violations. PPI didn't get off completely free.

PPI had to agree to a BIS requirement to audit its export controls compliance program and submit a report on the results of the audit to BIS. In addition, its management team must complete an export compliance training course or program within a year of the settlement and submit a certificate of attendance to the agency. The government's first bite of the apple came in August when PPI agreed to pay Treasury's Office of Foreign

Assets Control (OFAC) $78,750 to settle related charges (see **WTTL**, Aug. 10, page 7). Treasury added CPMIEC to its list of Specially Designated Nationals (SDN) in June 2006. PPI did not check the SDN List (or any other screening list) in connection with the preparation of the export of the items to CPMIEC, BIS said.

"We respectfully decline to discuss this matter but do appreciate your interest," a company spokesperson said in an email response to a request for comment from WTTL.

Court Denies "Equitable" Prejudgment Interest on Bond

While the government is entitled to statutory prejudgment interest on unpaid antidumping duties covered by a surety bond, it is not entitled to equitable interest, Court of International Trade Senior Judge Richard Goldberg ruled Sept. 30. Goldberg's decision came on a remand from the Court of Appeals for the Federal Circuit (CAFC), which had overturned his earlier ruling that denied a Customs and Border Protection (CBP) request for statutory interest but remanded to him the question of equitable interest and how much statutory interest was due Customs (see **WTTL**, June 22, page 6).

Goldberg analyzed the factors under Section 580 of the Trade Act that determine whether equitable interest is warranted. "Weighing these equitable factors and remaining cognizant of the compensatory purpose of prejudgment interest, the court holds that an award is inappropriate in this case," he ruled in *U.S. v. American Home Assurance Co.* (slip op. 15-112). He ordered an interest payment of $299,441.10 based on a 6% interest rate.

The rationale for equitable prejudgment interest is to compensate for the time-value of money. "Were the government to receive equitable prejudgment interest, the rate would be the Federal short-term funds rate described in 26 U.S.C. Section 6621," he explained. That rate varied from 0.18% and 5.16%, with an average rate of 1.77%, he noted. "To award equitable prejudgment interest in these circumstances would overcompensate the Government. The court therefore declines to award equitable prejudgment interest to the Government in addition to Section 580 interest," Goldberg wrote.

In its June 17 decision, the CAFC examined 216 years of Customs law to determine that the government is entitled to interest on continuous bonds backing antidumping duties and not just regular tariffs. "We hold, as a matter of law, that 19 U.S.C. Section 580 provides for interest on bonds securing both traditional customs duties and antidumping duties," wrote CAFC Judge Alvin Schall for the three-judge panel. AHAC bonded imports of freshwater crawfish tail meat from China. "Section 580 is a short, free-standing statute within the Administrative Provisions section of Chapter 3 in Title 19. It does not cross-reference other statutory provisions," Schall wrote. "Thus, by the statute's plain terms, it covers, among other things, bonds securing the payment of antidumping duties when the government sues for payment under those bonds," he wrote.

* * * Briefs * * *

<u>FCPA</u>: Andres Truppel, former chief financial officer (CFO) of <u>Siemens Argentina</u> pleaded guilty Sept. 30 in Manhattan U.S. District Court to conspiracy to violate FCPA for his role in bribery scheme to retain $1 billion government contract to produce national identity cards for

Argentine citizens. He previously agreed to pay SEC $80,000 civil penalty for role in scheme. Uriel Sharef, former officer and board member of Siemens AG, agreed to pay $275,000 civil penalty to SEC in April 2013 (see **WTTL**, April 22, 2013, page 9).

ITC: William Powers Sept. 29 was named chief economist and director of ITC office of economics. He was been acting director since April, replacing Keith Hall, who became director of Congressional Budget Office (CBO). Most recently, Powers was chief of research division in economics office from February 2014 to March 2015.

PIPE: Bristol Metals, LLC, Felker Brothers Corp., Outokumpu Stainless Pipe Inc. and Marcegaglia USA filed countervailing and antidumping duty petitions Sept. 30 at ITA and ITC against welded stainless pressure pipe from India.

GSP: President Obama issued order Sept. 30 graduating Seychelles, Uruguay and Venezuela from GSP eligibility effective Jan. 1, 2017, because they are now considered higher income nations. At same time, USTR revised GSP program, which was renewed along with Trade Adjustment Assistance in June, by making eligible for GSP five upland cotton fiber products imported from least developed countries; reinstating three products from Ukraine and one from Indonesia; granting competitive need limitation (CNL) waivers for 100 products from 13 countries; and revoking CNL waivers for three products from Indonesia and Turkey.

ANTIBOYCOTT: Vinmar Overseas, Ltd. (VOL) and Vinmar International, Ltd. (VIL) in Houston agreed to pay BIS $41,400 and $19,800 civil penalties, respectively, Sept. 25 to settle charges of violating antiboycott regulations. Companies allegedly furnished information about business relationships with boycotted countries or blacklisted persons and failed to report receipt of requests to engage in restrictive trade practice in transport certificates from Lebanon, UAE, Qatar, Libya, Oman, Yemen and Syria from 2008 to 2012. Companies neither admitted nor denied charges. In email response to request for comment from WTTL, Vinmar Executive VP and Chief Legal Officer Mark Antonvich said, "No."

ARMS TRADE TREATY: Provision in pending 2016 National Defense Authorization Act (H.R. 1735) would continue to bar any funds from being used to implement two-year-old UN Arms Trade Treaty. House passed conference report on bill Oct. 1 on 270-156 vote, with only 10 Democrats supporting it. Senate Majority Leader Mitch McConnell (R-Ky.) filed cloture motion Oct. 1 to get vote on NDAA week of Oct. 6, but Senate Democrats could block action. White House has threatened to veto legislation because of lengthy list of objections.

COATED PAPER: WTO Dispute-Settlement Body (DSB) agreed Sept. 28 to established dispute-settlement panel to review Indonesia's complaints against U.S. antidumping and countervailing orders on coated paper from Indonesia (see **WTTL**, March 16, page 8).

TRADE FIGURES: Census began Sept. 28 to release advance report of monthly trade figures to to allow "policymakers and private data users to make data-driven decisions sooner due to this high-level 'snapshot' of trade in goods," bureau explained. Figures will come out about week ahead of regular trade data report that is released 35 days after end of each month and includes country-specific figures as well as services trade. Numbers released for August 2015 show exports dropped 7.2% from year ago to $127.6 billion on census basis seasonally adjusted. Imports declined 2.7% to $190.3 billion from August 2014.

EXPORT-IMPORT BANK: Rep. Stephen Fincher (R-Tenn.) relaunched effort Sept. 30 for discharge petition to force House vote on his bill (S. 3611) to renew charter of Export-Import Bank (see **WTTL**, Sept. 21, page 5). Push comes in hopes of vote before Ex-Im opponent Majority Leader Kevin McCarthy (R-Calif.) is expected to be elected to succeed Speaker John Boehner (R-Ohio). In colloquy Oct. 1 on House floor, Democratic Whip Steny Hoyer (D-Md.) asked McCarthy if he expects vote on bank. "In honor of the late Yogi Berra, it's like déjà vu all over again. There's no action scheduled in the House on Ex-Im, and I yield back," McCarthy replied.