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## Daimler Admits to Widespread Foreign Bribery

As part of a deferred prosecution agreement it reached with the Justice Department March 22, Germany's Daimler AG admitted that it paid hundreds of illegal bribes to foreign officials to win contracts in some 20 countries in violation of the Foreign Corrupt Practices Act (FCPA). The agreement requires the firm to pay a fine of \$93.6 million, which is about 20% below the bottom of the applicable Sentencing Guidelines fine range of \$116 million, Justice noted. A separate, but still not released, settlement with the Securities and Exchange Commission (SEC) will add another \$91.4 million to the penalty, according to press reports. Justice agreed to reduce the fine because of Daimler's cooperation, its adoption of a beefed up internal FCPA compliance program and the hiring of a corporate compliance manager.

“Between 1998 and January 2008, Daimler made hundreds of improper payments worth tens of millions of dollars to foreign officials in at least 22 countries – including China, Croatia, Egypt, Greece, Hungary, Indonesia, Iraq, Ivory Coast, Latvia, Nigeria, Russia, Serbia and Montenegro, Thailand, Turkey, Turkmenistan, Uzbekistan, Vietnam, and others -- to assist in securing contracts with government customers for the purchase of Daimler vehicles valued at hundreds of millions of dollars,” the statement of facts in the agreement stated.

“In at least one instance, a U.S. shell company was incorporated for the specific purpose of entering into a sham consulting agreement with Daimler in order to conceal improper payments routed through the shell company to foreign government officials,” the company admitted.

## No Doha Round Deal in 2010, Stocktaking Talks Confirm

A week of stocktaking by World Trade Organization (WTO) members March 22-26 cemented the view among trade officials that the Doha Round won't be concluded in 2010. At the end of the week, WTO Director General Pascal Lamy said he would be more active in trying to help link “horizontal” agreements that might close the gaps in the various negotiating sectors. Trade sources, however, say Lamy still won't try to repeat what Arthur Dunkel, the director general of the General Agreement on Tariffs & Trade (GATT) during the Uruguay Round, did when he tried to force negotiators toward a deal by drafting an accord reflecting compromises on all sides. The catalogue of gaps is clear, Lamy told a March 26 meeting of the Trade Negotiations Committee (TNC). The actual size of the gaps is more blurred, he said; noting that the gaps over a wide range of issues make a collective narrowing very challenging. “Everyone agrees that no miracle solution is available to us at this point in time,” he said. Other diplomats in



Geneva had a blunter assessment. “The possibility of finishing this year...doesn’t look remotely possible,” one high-ranking diplomat told WTTL after a series of bilateral and multilateral meetings aimed at assessing progress in the key negotiating groups. “If you project forward what is happening, we’re not going to finish in the next several years,” he added; saying “the idea of finishing at some point requires a change. The change has not yet come.”

The chairmen of negotiating groups on agriculture and non-agriculture market access (NAMA) started the week with downbeat reports on the status of talks in their areas. Two basic issues are outstanding in the NAMA talks, said Swiss Ambassador Luzius Wasescha, who chairs these negotiations. Some countries think the draft NAMA package is “unbalanced because of what they perceive as an inadequate level of market access envisaged in some key markets and a lack of clarity about the use of flexibilities,” Wasescha said.

“Some countries,” was an obvious reference to the U.S. “There has been an attempt by those members to pursue bilateral and or sectoral negotiations with certain emerging trading partners with a view to increasing the level of ambition,” he noted. Emerging countries say their contributions in the draft NAMA package “are already demanding,” Wasescha said. The scope for additional market access is “limited unless an additional price is paid by the demandeurs either in NAMA or other negotiating areas,” he said.

New Zealand Ambassador David Walker, who chairs the farm talks, gave a detailed report on each of the issues within his group. He said an extensive amount of technical work has been done since September 2009, but no agreements are close. On the subject of sensitive products, Japan and Canada have said they need more flexibilities than provided in draft texts; in cotton “no new contributions have been forthcoming,” and a special safeguard mechanism “is one of the more politically challenged issues under discussion,” Walker said.

Developing countries remained united, at least publicly, in opposition to changing a draft proposal from December 2008. The so-called G-20 group's solidarity was manifested in a strong push back against Washington’s efforts to gain greater concessions from advance developing countries. Bilateral talks the U.S. held with Brazil, China and India during the week apparently did not go well. China reportedly took a “very hard stance” against the U.S. during a meeting Lamy hosted March 24, one source reported. The Chinese say there is no real indication the U.S. is ready to negotiate, so they won’t waste time trying until it’s clear the U.S. wants to conclude the round, the source noted.

It is unclear how much, if any, progress has been made in these bilaterals. “The U.S. said let’s discuss [these issues] in the bilaterals and all will be fine,” another senior diplomat told WTTL. “Nothing happens in the bilaterals among other things because the U.S. doesn’t really come with clear ideas,” he argued. “The bilaterals are not working,” he stated. “We are in a situation now in which practically nothing is happening. People say we are having technical discussions and making good headway. This is an absolute side show. It’s completely peripheral. Even in purely technical issues, which are a little bit more important, there is no movement because people are holding back to see what happens elsewhere. So, we are in a bit of a quagmire here. We are stuck, this is clear,” he said.

## **Ruling on Airbus Subsidies Will Test WTO Authority**

An apparent U.S. victory in its WTO complaint against European Union (EU) subsidies for Airbus may prove more challenging for the WTO as an institution and other countries helping their fledgling aviation industries than for the U.S. or Europe. The Airbus case and a counter complaint the EU filed against U.S. aid for Boeing will test whether the WTO can enforce its rules against major trading nations when the targets of the complaints represent large, showcase industries that involve billions of dollars in investment, thousands of jobs and a potential national security element. Thus, a negotiated settlement still appears likely, although it may be several more years before all the appeals, which the EU is expected to file, and other legal

maneuvers run their course. The cases also will pose problems, if they result in retaliation, since neither Airbus or Boeing will want to be seen hurting their own customers, which in many cases are already struggling airlines. Moreover, Airbus claims it is the largest customer for the U.S. aviation industry, buying some \$10 billion a year in U.S. products and supporting thousands of jobs in the U.S. In addition, the Airbus and Boeing cases may have a greater impact on other countries that are aiding their aviation industries.

Canada, Brazil and China are watching the cases carefully. Canada reportedly intends to help Canadian-based Bombardier build larger commuter planes that will compete with Boeing's smaller planes. How the WTO eventually defines what are or are not acceptable subsidies could become grist for future complaints. "Because of the U.S. government's undiminished resolve to end illegal subsidies, this decision should level the competitive playing field once and for all with Airbus, as well as set an important precedent for other nations with aspirations to enter the commercial airplane business," said a Boeing statement.

U.S. lawmakers and aerospace interests claimed the still confidential WTO panel report issued to parties March 22 found in favor of the U.S. on most key issues. Airbus, a subsidiary of European Aeronautics Defense and Space Company (EADS), tried to temper the U.S. celebration with claims that the panel decision in the case went in its favor too. "Past loans were found by the panel to contain a certain element of subsidy, a finding we will study," an Airbus statement said. "Research grants have been condemned as structurally noncompliant, with important implications for the coming report on U.S. subsidies to Boeing," it added.

One U.S. lawyer, however, said the panel found all the subsidies, launch aid, R&D and infrastructure support Airbus received were inconsistent subsidies. Rep. Norm Dicks (D-Wash.), who was briefed on the panel report, issued a press release saying EADS used "unsecured loans, success-dependent and back-loaded repayment arrangements as well as below-market interest rates" to assist in the launch of the entire fleet of large Airbus airliners. Sen. Patty Murray (D-Wash.) issued a statement that said the illegal subsidies were given to the Airbus A330, which was in competition for the Defense Department's next aerial refueling plane.

According to one U.S. lawyer, the issue people cared about was launch aid, R&D support and infrastructure support. The Boeing statement said, "Government subsidies have been used to support the creation of every Airbus product, including the A330/A340, which received more than \$5 billion in development aid, and the A380, which received \$4 billion in subsidies." It said Airbus and its sponsor governments "continue to re-affirm their commitment to using subsidized launch aid to fund the next Airbus airplane, the A350."

Airbus, on the other hand, said, "Possible future funding for the A350 is not affected in any way by today's report. U.S. attempts to include the A350 were specifically rejected." Airbus said it expects the WTO to issue the report on Boeing subsidies in June. "Boeing's recent WTO enthusiasm is unlikely to survive WTO confirmation that the B787 is the most highly subsidized aircraft program in the history of aviation," it said. A U.S. lawyer, however, claimed the Airbus and Boeing cases are different. The cases are "completely separate," he argued, with separate panels and two entirely separate sets of issues that are being challenged.

## **Divisions Sharpen over Anti-Counterfeiting Pact**

The lead EU negotiator in talks on an Anti-Counterfeiting Trade Agreement (ACTA) tried March 22 to allay concerns and dispel what he called "unfounded" rumors about the planned pact at a briefing of supporters and opponents of tougher border enforcement measures to protect intellectual property rights (IPR). The meeting underscored the continuing divisions among European stakeholders in the talks, including the differing views of intellectual property holders, Internet providers, transportation and shipping companies and consumers. U.S. stakeholders have expressed the same differences. ACTA is an enforcement treaty, not a substantive treaty, so it won't change the EU checks and balances of rights or obligations and

exceptions, said lead EU negotiator Luc Devigne. "It's exclusively about enforcement of existing laws," he claimed. Criminal sanctions will only deal with infringement on commercial sales, Devigne said. The EU already has procedures for rights holders to register their products with customs, but this doesn't exist in all countries, Devigne said. "It's what we're trying to achieve -- that these instruments or these laws which we see as efficient to the rights holders, are also available to our rights holders in other countries," he said.

Software representatives at the meeting raised concern about including patents in the negotiations. Devigne note that European patent law isn't harmonized, although there are common enforcement rules through the EU's IPR enforcement directive. "We will base ourselves on these rules," he stated. "If the United States has different rules, there will be a discussion, obviously, a negotiation, and arbitration or changes, but we are defending our Acquis" communautaire, he said, referring to the body of EU laws. Some countries' legislation will have to change, Devigne conceded. He didn't specify which countries.

Consumer speakers warned that strong enforcement measures could cause life-saving medicines to be held up at borders. Executives from firms and associations representing trademark holders said they want higher standards and stronger cooperation in combating transnational counterfeiting, stronger border enforcement measures, especially in relation to goods in transit, and more effective criminal penalties. Telecommunications companies, on the other hand, are "very concerned," at least based on leaked documents, about disproportionate and "very wide ranging" measures including disconnecting Internet users, said Michael Bartholomew, director of the European Telecommunications Network Operators' Association. Devigne assured him that "No party has even proposed it." He referred to rumors of a three strikes rule or some other graduated response to online copyright infringements. None will be imposed and Internet service providers won't in some way be induced to self-regulate in that direction, Devigne said.

## **Obama Faces Tough Choices on China Currency Issue**

President Obama will soon face the difficult decision of whether to hold to his strategic approach to managing trade and security relations with China or take the politically popular path of stepping up trade complaints against Beijing. The first sign of his choice could come April 15 when the Treasury is due to issue its semi-annual report on foreign currency markets and will need to decide whether or not to declare China a currency manipulator. A House Ways and Means Committee hearing March 24 made it clear that there could be both positive and negative results from tagging China a manipulator.

Acting Ways and Means Chairman Sander Levin (D-Mich.) told reporters after the hearing that he wants to talk with Treasury officials before the department makes its decision and before the interagency process reaches a conclusion. "I think clearly there is a problem. I think the next question is, "What are the most effective answers?" he said. "If the status quo is unsustainable, which it is; is ineffective, which it is; which needs to be replaced, which it must; what's the best way to do it," Levin said.

Witnesses at the hearing gave divided advice on which of the paths to take. Fred Bergsten, head of the Paterson Institute for International Economics, said Treasury should name China a currency manipulator as part of a three step action plan that would also include asking the International Monetary Fund (IMF) to launch consultations with Beijing and the filing of a complaint at the WTO. Harvard historian Niall Ferguson warned that starting a currency war with China could repeat the mistakes that deepened the Great Depression. He also said Obama would look like the "wimp of the Western world," if he refused to declare China a manipulator. Clyde Prestowitz, president of the Economic Strategy Institute, noted that the problem with China is far bigger than its undervalued currency, pointing to its investment subsidies. He called for creation of "war chest," an idea used in the 1980s to fight unfair tied-aid financing, to counter Chinese investment incentives.