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YORK PAYS \$22 MILLION IN PENALTIES TO SETTLE FCPA CHARGES

The government's accelerating crackdown on violations of the Foreign Corrupt Practices Act (FCPA) continued with an Oct. 1 settlement under which York International, the maker of heating and air conditioning equipment, agreed to pay more than \$22 million in penalties and to be enjoined from future violations of the law. The settlements with the Securities and Exchange Commission (SEC) and Justice resolved complaints about illegal payments to officials in the United Arab Emirates, India, China, Nigeria and countries in Europe and the Middle East. It also covered allegations of illicit payments tied to the Food-for-Oil Program in Iraq. York voluntarily disclosed its actions and also agreed to new remedial steps, the SEC reported.

Under the settlements, which led the SEC to withdraw a complaint it had filed against the firm in the D.C. U.S. District Court, York neither admitted nor denied the SEC allegations, but it agreed to the injunction and to disgorge \$8,949,132 in profits, plus \$1,083,748 in pre-judgment interest; to pay a civil fine of \$2,000,000; and pay a \$10 million fine as part of a deferred prosecution agreement with Justice. It also was ordered hire an independent compliance monitor.

According to the government's complaint, York, which was acquired in 2005 by Johnson Controls, Inc., after the alleged violations, paid approximately \$522,500 to an intermediary knowing most of the money was intended to bribe a UAE official to secure contracts to provide equipment for a government-owned luxury hotel called the Conference Palace. Total illicit payments were \$550,000, the SEC charged. The government also claimed York's Dubai subsidiary approved some \$647,110 in kickbacks for sales under the Food-for-Oil Program. York was also charged with making over \$7.5 million in illicit payments through various subsidiaries to win sales in the Middle East, India, China, Nigeria and Europe.

ALLGEIER SEES POSITIVE SIGNS IN DOHA ROUND AGRICULTURE TALKS

It's hard to find anyone optimistic about the Doha Round, but Deputy U.S. Trade Representative (USTR) Peter Allgeier says he sees positive signs in the agriculture talks. "There have been three very good weeks of work on agriculture, less rhetoric, and more countries are catching up with the core of countries that have been working deeply on agriculture," Allgeier said in Washington Oct. 2. "We still have to see if that translates into people making modifications in their positions," he added. Allgeier also reiterated USTR denials of rumors that the U.S. has made a new offer to cut domestic farm subsidies lower than its previous offers. "We have said we will negotiate within the ranges in the chairman's paper, if other countries are negotiating within the other market access ranges in ag and NAMA [non-agriculture market access]," he

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said. "The question before the house right now, the real question, is whether a bunch of those countries, advanced developing countries, who want agriculture so badly are willing to make the same commitment with respect to NAMA," Allgeier added. "They will never see the agriculture package, if they don't," he declared (see story page 4).

Allgeier confirmed expectations that the chairman of the services negotiations will likely draft a negotiating text similar to those drafted by the chairs of the agriculture and NAMA talks (see **WTTL**, Oct. 1, page 3). The services paper, however, isn't likely to emerge until after modalities are agreed upon in agriculture and NAMA, he advised.

Once the agriculture and NAMA hurdles are surmounted, it will take at least two more months before new services offers will be made, putting negotiations into the spring of 2008. Work on services will "be very dragged out because it is very specific and bilateral," Allgeier explained. "So, if we are talking about a country like Brazil, we're going to be talking about what are the foreign equity caps and is there insurance branching," he said. Allgeier admitted the U.S. still has work to do to improve its services offer. There is still a need "to push some of the recalcitrant interests in our own government about binding things that have been open, in some cases, for decades," he said. He noted that some U.S. regulatory agencies that oversee U.S. service sectors "want to preserve a degree of regulatory flexibility, and we have to find a balance."

COSTA RICA GETS NOT-SO SUBTLE WARNING ABOUT VOTE ON CAFTA

As Costa Ricans prepared to go to the polls Oct. 7 to vote in a referendum on whether to join the U.S.-Central American Free Trade Agreement (CAFTA), U.S. trade officials and members of Congress were suggesting the country could lose its benefits under the Caribbean Basin Initiative (CBI) if it votes no on the trade pact. Ahead of the vote, reports and polls indicated that Costa Ricans were likely to reject the accord, presenting a potential dilemma for Washington on whether to make good on the threat of eliminating its CBI trade preferences.

"There has been speculation that the United States would simply renegotiate the terms of the current agreement or negotiate a new bilateral trade agreement with Costa Rica if our current agreement is rejected. That is not the case," USTR Susan Schwab asserted in an Oct. 4 statement. "It is difficult to imagine any U.S. administration renegotiating the current agreement or negotiating a new trade agreement with Costa Rica, if this agreement is rejected," she added.

Schwab also raised doubts about the future of Costa Rica's CBI status. She noted that the unilateral trade preferences, which benefit Costa Rica's textiles and tuna industries, are scheduled to expire next year. "There has also been considerable discussion about whether Costa Rica would continue to enjoy preferential access to the U.S. market under our trade preference programs if the agreement is rejected," she stated. "The fact is, the United States has never faced a situation where one of our trading partners rejects a reciprocal trade agreement with the United States, but continues to seek unilateral trade preferences," she said.

House Republican Whip Roy Blunt (R-Mo.) also weighed in on the issue, criticizing some lawmakers, such as Rep. Bernie Sanders (I-Vt.), who have urged Costa Rica to vote against CAFTA. "Unfortunately, some of my colleagues in Congress have suggested that temporary trade preferences for Costa Rican products will be continued indefinitely – a clear effort to dissuade the nation from adopting a formal trade agreement," Blunt said in a statement. "Interestingly, it's a promise that's being made by members who in some cases haven't even supported these preferences in the past," he observed.

House Ways and Means Committee Chairman Charles Rangel (D-N.Y.) and trade subcommittee chairman Sander Levin (D-Mich.) also got into the debate Oct. 5, issuing a joint statement asserting that "preference programs should not be conditioned on a country entering into a free trade agreement with the United States." They said current preference programs don't include

that condition. "Furthermore, there is no provision in the current preference program statute that would permit the president to withdraw benefits if a beneficiary country failed to implement an FTA," they said in their statement.

BIS EXTENDS VEU PROGRAM TO INDIA

Qualified Indian firms will have the same opportunity to get license-free exports from the U.S. as Chinese companies under new rules the Bureau of Industry and Security (BIS) published in the Oct. 2 Federal Register extending the Verified End User (VEU) program to India. "This final rule designates India in section 748.15 of the EAR [Export Administration Regulations] as an eligible destination for exports, reexports and transfers under Authorization VEU," BIS said in its notice. BIS officials have been talking about adding India to the VEU program for a year. The Indian rule had to wait until the publication in June of the final China rule, which details the procedures and conditions for obtaining VEU status.

The new rule authorizes "export, reexport and transfer of certain controlled U.S. technology without a license to end-users engaged in civilian end-uses in India who have demonstrated their ability to use sensitive items responsibly," BIS said. "As India continues to demonstrate its commitment to harmonize its export controls with those of the major multilateral control regimes, BIS anticipates that more end-users and items will be approved for Authorization VEU," it added.

Restrictions and conditions that apply to Chinese VEUs will also apply to Indian candidates. BIS Under Secretary Mario Mancuso told reporters that India has become a "strategic partner" of the U.S. Mancuso also praised recent steps India has taken to adopt an export control law and to restrict exports that might help the development of weapons of mass destruction.

CHINESE SEEK SEAT ON WTO APPELLATE BODY

In a sure sign of its coming of age in the international trade community, China is trying get a seat on the WTO Appellate Body for a Chinese lawyer. Beijing has proposed two candidates for one of the two vacancies on the Body, Zhang Yuejiao and Zhang Yuqing. While AB members are supposed to be impartial and not represent the points of view of their home countries, having a Chinese lawyer on the Body is bound to be seen as a positive for China as it faces a growing number of complaints by other WTO members about its adherence to WTO rules.

The U.S. also has two candidates for the AB vacancies. Washington is promoting Jennifer Hillman, a former member of the U.S. International Trade Commission and USTR general counsel in the Clinton administration, and Jane Bradley, a former career USTR negotiator who served in the USTR's office in various positions and in other government posts from 1981 to 2002. Bradley was a key negotiator during the Uruguay Round, and her last position with the USTR's office was as assistant USTR for monitoring and enforcement.

The candidates are supposed to be impartial, so a Madison Avenue-style campaign wouldn't look good, a high-ranking Latin American trade diplomat told WTTL. The contest between the U.S. and China to fill the AB positions is "a big country thing," he said. With two candidates each, the message being sent is: pick one, the diplomat added. "The U.S. and China are saying, 'Hey, we think this is important and so much so we have two good candidates'," he said. Pakistan, the Philippines, Japan, Korea, and Benin each has a candidate.

A selection committee began its review of candidates Sept. 26 - 27 and is scheduled to continue its work on Oct. 11 and 15. It will meet with delegations Oct. 16-18 to discuss the candidates. The Dispute-Settlement Body (DSB) is expected to make its final choices on Nov. 19. On the committee are Director General Pascal Lamy; Malaysian Ambassador Muhamad Noor, who is also chairman of the WTO General Council; Danish Ambassador. Karsten Vagn Nielsen, who

chairs the Council on Goods; Barbadian Ambassador C. Trevor Clarke, who chairs the Council on Services; Nigerian Ambassador Yonov Frederick Agah, who chairs the Council on Trade-Related Intellectual Property; and Australian Ambassador Bruce Gosper, who chairs the DSB.

U.S. REPORTS FOUR YEARS OF AGRICULTURE SUBSIDIES

Complaints that U.S. Doha Round agriculture offers contained too much “water” or “headroom” – allowing Washington to maintain domestic subsidies at previous levels – were undercut Oct. 4 when the U.S. finally notified the WTO on the exact figures it has spent on farm subsidies from 2002 to 2005. The report, which is supposed to be submitted annually, has been long overdue, leaving U.S. trading partners to produce estimates of their own on what Washington has been spending. U.S. officials argued that the numbers show that U.S. agriculture offers in the talks would have cut actual U.S. spending in recent years.

U.S. Farm Subsidies Notified to WTO (in \$billions)				
	2002	2003	2004	2005
Amber Box	\$9.6	\$6.9	\$11.6	\$12.9
Amber Box Limit (WTO Ceiling)	19.1	19.1	19.1	19.1
Green Box (No limit)	58.3	64.1	67.4	71.8
OTDS	16.3	10.2	18.1	18.9

The proposal of WTO Agriculture Negotiating Committee Chairman Crawford Falconer for the U.S. to reduce Overall Trade Distorting Support (OTDS), which includes all trade-distorting aid including de minimis payments, by either 66% or 73% – ranges the U.S. has said it is willing to negotiate from – would also cut total U.S. farm subsidies. “[I]n five of the past eight years our OTDS

levels would have exceeded the upper range that is mentioned in the Falconer text; that is the \$16.4 billion. And that's one reason we believe that even the upper end of the range provides an effective cut in domestic support,” U.S. Agriculture Envoy Joe Glauber said. “It also means that the proposed cuts in trade-distorting support that we made in our October 2005 proposal, that is where we proposed to cut domestic support by 60% down to \$7.6 billion, that I'd note that in seven of the past eight years our U.S. AMS [Amber Box] levels would have exceeded [that] \$7.6 billion cap,” Glauber said.

As might be expected, the U.S. submission still didn't satisfy some developing countries. “They're just cutting water,” one Latin American diplomat continued to argue. “They have to come well below that if they have to make effective cuts” as called for in the Hong Kong Ministerial Declaration, he told WTTL. “This gives credence to G-20 demands for \$12 billion [OTDS cap] of trade distorting support for the U.S.,” he said.

* * * BRIEFS * * *

IEEPA: House on voice vote Oct. 2 approved bill (S. 1612) to raise maximum civil fines available for violations of EAR and U.S. trade sanctions to \$250,000 per charge (see **WTTL**, Oct. 1, page 1).

PERU: Senate Finance Committee Oct. 4 approved Peru FTA by voice vote.

PET STRIPS: DuPont Teijin Films, Mitsubishi Polyester Film, Inc., SKC, Inc. and Toray Plastics (America), Inc. filed antidumping petitions Sept. 28 at ITC and ITA against imports of polyethylene terephthalate film, sheet, and strip from Brazil, China, Thailand and United Arab Emirates.

GAMBLING: Federal Reserve Board and Treasury in Oct. 4 Federal Register jointly proposed regulations to implement Unlawful Internet Gambling Enforcement Act of 2006 (see **WTTL**, July 30, page 3)

EXPORT ENFORCEMENT: Volvo Aero Services, Inc., of Boca Raton, Fla. agreed to pay \$204,600 civil fine to settle BIS charges of unlicensed exports of aviation parts to several different countries.

COMPULSORY LICENSE: WTO received from Canada Oct. 4 first notification from any government that it has authorized company to make generic version of patented medicine for export under special WTO provisions agreed to in 2003. Canadian firm will make and export combination AIDS therapy to Rwanda, which is unable to manufacture medicine itself.