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A Weekly Report for Business Executives on U.S. Trade Policies, Negotiations, Legislation, Export Controls and Trade Laws

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SELF-DISCLOSURE REDUCES FCPA SANCTIONS FOR CALIF. FIRM

Micrus Corporation, a privately owned medical device firm in Sunnyvale, Calif., avoided criminal prosecution for violating the Foreign Corrupt Practices Act (FCPA) because it voluntarily self-disclosed the violations and agreed to take remedial actions to prevent future violations of the law. Under a settlement agreement, which the Justice Department announced March 2, Micrus will pay a \$450,000 fine, adopt an FCPA compliance program, and hire an independent compliance expert for three years to make sure it stays in compliance with the statute.

According to Justice, Micrus paid certain officials and agents in France, Turkey, Spain and Germany \$355,000 in stock options, honoraria and commissions to get public hospitals to buy its surgical devices. The company uncovered the payments through an internal investigation and reported the results to Justice.

The settlement agreement will remain in place for two years as long as Micrus stays in compliance with the FCPA. "Because of Micrus' cooperation commitment, the remedial actions taken by the company to date and the company's voluntary disclosure of the wrongdoings, the Department of Justice has agreed not to file criminal charges stemming from the investigation for that two-year period," a Justice statement explained (see separate FCPA story page 3).

DEMOCRATS CONCERNED ABOUT DOWNGRADING OF USTR POST

House Democrats wrote to President Bush March 3 to raise their concerns about the delay in naming a replacement for U.S. Trade Representative (USTR) Robert Zoellick and also about reports that the White House intends to downgrade the USTR's role in U.S. trade policy. The letter apparently responds to rumors suggesting that Zoellick, who became deputy secretary of State Feb. 22, wants to continue to oversee trade policy from his State post and was supporting the appointment of a low-profile replacement who would follow his directions.

Although only two weeks have passed since Zoellick left the USTR post, it could take a month or two for a replacement to clear the security checks and Senate confirmation process, if that person is not already in government. It has already been two months since President Bush on Jan. 7 announced his nomination of Zoellick to the State job. "We are further concerned about reports that your administration is considering downgrading, formally or informally, the position of U.S. Trade Representative," wrote 11 Democrats who serve on the House Ways and Means Committee. "We hope that you will confirm these reports are unfounded, that the administration will maintain a strong USTR with full Cabinet rank in name and practice capable of taking its traditional leadership role in international trade issues – as well as have the

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resources to exercise this authority fully,” they told the president. The power and influence of USTRs has fluctuated over time depending on their closeness to the president and top White House aides. The icon of USTRs was Robert Strauss, who served under President Carter and used his ties to Carter and congressional Democrats to shepherd the Tokyo Round to completion and approval by Congress. USTR Mickey Kantor had a similar relationship to President Clinton. USTRs who weren't in the inner circle of White House power, such as Bill Brock and Charlene Barshefsky, often found their roles diminished.

UAE CONTINUES TO BE LEADING REQUESTER OF BOYCOTT INFORMATION

The United Arab Emirates (UAE), which wants to enter a free trade agreement (FTA) with the U.S., remained by far the largest source of requests for information or actions to support the Arab League boycott of Israel in 2004, the Bureau of Industry and Security (BIS) reports. Although the number of reports to BIS from U.S. companies of requests for restrictive practices from the UAE declined 21% from 2003, its 482 requests in fiscal 2004 represented 38% of the 1,266 reports the agency received for all countries, according to BIS 2004 annual report.

Those 1,266 reports marked a 12% decline from the 1,437 filed in fiscal 2003. The number of firms submitting reports was nearly unchanged at 295 compared to 297 the year before. The reports to BIS cover requests for information seeking to assure that goods or services entering Arab countries were not of Israeli origin, did not contain Israeli components and were not transported on Israeli carriers.

After the UAE, Kuwait was the next largest requester of boycott-related information with 140 requests; followed by Lebanon (96), Syria (76), Qatar (65) and Saudi Arabia (60). With trade relations renewed, requests from Libya jumped to 22 from 16 in 2003. BIS in 2004 reached settlement agreements with four firms and imposed fines totaling \$65,000 for alleged boycott-related violations. This compares to seven settlements and civil fines totaling \$93,700 in 2003.

DOHA ROUND INCHES FORWARD ON TECHNICAL TALKS

Trade ministers attending a World Trade Organization (WTO) mini-ministerial in Mombasa, Kenya, March 3-4 tried to pretend they were economists, debating technical formulas for cutting industrial tariffs and weighing complex agriculture duties. In a key agreement for the farm talks, ministers agreed that any formula developed for translating complex duty rates, such as cents-per-tonne, into ad valorem tariffs based on tariff percentages per value would only be used for comparison sake so members could judge each other's offers and would not commit members to converting their duties to an ad valorem system at the end of the round. This was a major demand from the EU, which has many complex duty schemes on farm imports.

Some ministers also seemed to support an American proposal for cutting tariffs in the non-agriculture market access (NAMA) talks. The U.S. has proposed a “Swiss formula with two coefficients.” This approach would aim to cut peak tariffs more than lower tariffs along with a broad across-the-board cut in rates. Several countries have offered variations on Washington's proposal.

WTO RULING AGAINST U.S. ON COTTON ADDS PRESSURE FOR DEAL

A WTO Appellate Body ruling March 3 against U.S. subsidies for producers of upland cotton could be the catalyst for more trade complaints by developing countries against U.S. and European Union (EU) farm programs. Some trade experts see the targeting of agriculture subsidies in developed countries as a potential tactic developing countries could use to win greater leverage in Doha Round negotiations. Acting USTR Peter Allgeier made it clear March 4 that the U.S. intends to deal with the cotton ruling in the context of the round and not before. “Our view is that if you are really looking for a permanent solution to problems such as that,

the best way is to do it in a negotiation,” he told reporters. “The best way is to complete this round in a time frame we are talking about by the end of 2006,” he added. Allgeier said nothing in the new ruling has changed the U.S. position. “Our position on domestic support has been clear from the beginning that there needs to be harmonizing cuts in domestic support,” he said. The main U.S. goal is to get the EU to cut its domestic subsidies.

Although Brazil brought and won the case against the U.S. on cotton, West African countries that produce cotton have been the main demanders of compensation for the damage they claim to be suffering from the U.S. subsidies. The U.S. has been trying to keep the cotton issue in the Doha agriculture talks, but a compromise has eluded negotiators so far.

SEC USES TITAN CASE TO WARN INDUSTRY OF FCPA REQUIREMENTS

The Securities and Exchange Commission (SEC) included a message to other international firms in its enforcement action against Titan Corp., which agreed to pay a \$13 million criminal fine as part of a plea agreement March 1 to settle government charges that it violated the Foreign Corrupt Practices Act (FCPA). In its report on the investigation into Titan’s bribery of officials in Benin, the SEC advised firms that statements made regarding compliance with FCPA requirements as part of due diligence reviews during mergers or acquisitions are subject to SEC rules if they are disclosed in proxy statements filed with the Commission.

“The inclusion of FCPA representations in a disclosure document filed with the Commission, whether by incorporation by reference or other inclusion, constitutes a disclosure to investors,” the SEC noted. When new information is uncovered after such a filing the issuer is obligated to disclose it. “The issuer cannot avoid this disclosure obligation simply because the information published was contained in an agreement or other document not prepared as a disclosure document.”

Titan’s fine settled a three-count information charging it with the bribery of officials in Benin, including Benin’s president, as part of the firm’s development of its telecommunications business in the country. [**Editor’s Note:** Copy of SEC charges, investigation report, all press releases and plea agreement with Titan will be sent free to WTTL subscribers on request.]

IMPORTERS ARGUE FOR CONTINUED BAR TO TEXTILE SAFEGUARDS

The U.S. government has not been prevented from negotiating with the Chinese on their apparel exports because of a court injunction blocking Commerce from acting on safeguard petitions based on the threat of market disruption, importers argued in a court brief opposing a Justice appeal to have the injunction lifted (see **WTTL**, Feb. 21, page 2). The U.S. Association of Importers of Textiles and Apparel (USA-ITA) also objected to Justice’s contention that the actions of the Committee for Implementation of Textile Agreements (CITA) are exempt from court review because they come under the president’s power to conduct foreign relations.

“The injunction does not bar discussions with Chinese government officials or with foreign or domestic interested parties,” USA-ITA argued in a brief filed with the Court of Appeals for the Federal Circuit. It is “disingenuous” for the government to make that argument, it said, pointing to talks Commerce Under Secretary Grant Aldonas had with the Chinese on textile issues during his visit to Beijing in January after the Court of International Trade (CIT) issued its injunction.

“Although the president’s foreign affairs power is generally shielded from probing judicial inquiry, compliance with regulations upon which the use of foreign affairs powers is predicated is not beyond the scrutiny of the courts,” wrote USA-ITA’s attorneys at Sidley Austin Brown & Wood. The brief also supported the CIT’s findings on the harm that importers and retailers would suffer without an injunction and the likelihood of their success in the litigation.

SURVEY CLAIMS MAJORITY OPPOSE CAFTA-DR TRADE PACT

U.S. trade officials and the business community may have made a mistake by not doing a more forceful job in touting the benefits of NAFTA to the public. A new survey which claims a slight majority of Americans oppose the proposed U.S.-Central America-Dominican Republic Free Trade Agreement (CAFTA-DR) also found that those with a negative view of CAFTA-DR also believe NAFTA has hurt the U.S. The survey found 51% of those questioned oppose CAFTA-DR and 51% said NAFTA was bad for the U.S.

The survey, sponsored by AmericansforFairTrade.org, was conducted by Ayres, McHenry & Associates and Ipsos-Public Affairs and sampled 800 households in February. There was an oversample of Hispanic respondents, who made up 300 of those contacted. The survey had a margin of error of +/- 3.5%.

The survey found a large number of people with little awareness of the CAFTA-DR. Overall, 83% of respondents said they have not heard or seen anything about CAFTA-DR, while lack of awareness among Hispanics was 79%. For those who know about the deal, the negative and positive messages have been evenly divided. This suggests that proponents and opponents of the deal will be fighting a public opinion war over people who know little about the proposed pact but half of whom have a negative inclination because of their views on NAFTA.

* * * BRIEFS * * *

VALTEX: Having reached civil settlement with BIS in January, Valtex International pled guilty Feb. 2 in Minneapolis U.S. District Court and agreed to pay \$250,000 criminal fine as part of a two-part government enforcement action (see **WTTL**, Jan. 24, page 3). Its president, Vladimir Alexanyan, also pled guilty and will be placed on five-years probation. [**Editor's Note:** Plea agreement available on request.]

DENIAL ORDERS: Chemical Industries Consolidated of Leidschendam, Netherlands, agreed to accept five-year denial of export privileges and its representative, Kiarash Arastafar, agreed to 15-year denial as part of settlement agreements with BIS for their alleged attempt to export gas processor parts to Iran without approved licenses. Orders were published in March 3 Federal Register.

CANDLES: At request of National Candle Association, ITA Feb. 28 launched two anti-circumvention investigations to determine whether to extend scope of current antidumping order on petroleum wax candles from China to candles made with palm or vegetable-based waxes.

EU: Agriculture ministers agreed Feb. 28 to delay until March 1, 2006, rule which would require debarking of wood used in pallets shipped to EU. Council allowed other requirements on packaging materials to go into effect. Despite delay, EU appears committed to going ahead with debarking requirement. Postponement will give "our trading partners enough time to adjust to the stricter measures," EU official said.

EXPORT ENFORCEMENT: Yarde Metals of Hauppauge, N.Y., has agreed to pay \$10,000 civil fine to settle BIS charge that it exported one aluminum plate to Vakram Sarahbai Space Center, Indian organization on BIS Entity List, in 2003 without approved export license.

URANIUM: Court of Appeals for Federal Circuit March 3 in *Eurodif S.A. v. U.S.* upheld CIT ruling in 2003 (Slip Op. 03-121) that enrichment of low-enriched uranium (LEU) is provision of service and not sale of good and therefore not subject to countervailing duty action.

IRAN: DC Grand Jury Feb. 25 issued five-count indictment of Ali Asghar Manzarpour of Brighton, England, charging him with exporting experimental aircraft, Berkut 360, to Iran from U.S. via United Kingdom without OFAC license. He has been arrested in Poland and is awaiting extradition to U.S.

MORE IRAN: In second case, federal grand jury in Chicago March 1 issued indictment of Juan Sevilla, sales director of United Calibration Corp. in Huntington Beach, Calif., for alleged export of controlled steel tensile testing equipment to Iran without approved export license.

ORANGE JUICE: While split on definition of like product, ITC March 3 made preliminary finding that allegedly dumped imports of orange juice from Brazil may be injuring U.S. industry.

RICE: EU has agreed to revise rice tariff scheme to avoid U.S. sanctions (see **WTTL**, Sept. 20, page 4).