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Calif. Firm Settles BIS Export Charges

Lesson 32: Don't lie to federal export agencies. VTA Telecom Corporation (VTA) in Milpitas, Calif., a subsidiary of a Vietnamese state-owned telecom company, agreed to pay the Bureau of Industry and Security (BIS) a \$1,869,372 civil penalty to settle six charges of violating export regulations, including false statements to BIS and other government officials, in connection with the export of power amplifiers/JFET transistors, actuators and a mass properties instrument and related equipment.

“Specifically, VTA would provide plausible false civil end-uses for the products, which were in reality intended for defense-related end-uses, to disguise and conceal from the U.S. government the true purpose of VTA’s exports,” the BIS order noted. Of the penalty, \$200,000 will be suspended for two years and then waived if VTA dissolves its business operations or commits no further violations.

The transistors were controlled under Export Control Classification Number (ECCN) 3A001.b.3.b for national security (NS), regional stability (RS) and anti-terrorism (AT) reasons and required an export license to Vietnam. Actuators were valued at \$235,000 and controlled under ECCN 9A610.x for NS, RS, Missile Technology (MT) and AT reasons. The mass properties instrument and related equipment was valued at \$624,373 and controlled under ECCN 9B604.c for NS, RS, AT and UN Embargo (UN) reasons.

“On the basis of VTA’s application to BIS containing false statements regarding the items’ end-use, BIS granted VTA a license to export 100 transistors and 2 development tools worth \$59,100 to Vietnam,” agency order said. Separately, “VTA provided a U.S. vendor with an end-user statement and other information containing false statements as to the end-use of the items, which the vendor transmitted to BIS,” it added.

Industry Places Blame for Supply Chain Crisis

Industry groups complaining about a supply chain crisis are looking for government assistance, while the administration is looking to the private sector to step up and

increase their production. Nonetheless, there is no shortage of reasons for the bottlenecks, delays, rising costs and empty shelves of consumer goods. Many of the problems are blamed on the shortage of semiconductors.

Commerce earlier in October established a Microelectronics Early Alert System to address semiconductor supply chain challenges (see **WTTL**, Oct. 11, page 8). “Commerce is calling on companies and manufacturers to voluntarily share information regarding any new or ongoing COVID-related shutdown or disruption to microelectronics and semiconductor manufacturing facilities and their related supply chains around the world,” the department announced.

President Biden Oct. 13 announced a much-hailed expansion of hours at the Los Angeles and Long Beach ports to be open 24/7, as well as night hours at FedEx and UPS. When those hours will take effect remains to be seen, given labor shortages. “If the private sector doesn’t step up, we’re going to call them out and ask them to act. Because our goal is not only to get through this immediate bottleneck, but to address the longstanding weaknesses in our transportation supply chain that this pandemic has exposed,” Biden said at the White House.

Domestic textile groups pointed their fingers at offshoring. “There is a reason we got into this mess and there is a reason we have a global supply chain crisis. Years of off-shoring production in a race to the bottom—exacerbated by predatory trade practices that have undermined so many manufacturing industries—has led to a tipping point,” National Council of Textile Organizations President and CEO Kim Glas said in a statement.

“We must hold China accountable for predatory trade practices that have offshored our industries and our jobs. We must onshore and nearshore more textile and apparel production chains out of Asia to the U.S. and also to Western Hemisphere trade partners,” Glas added.

The chemical industry is looking to Congress to pass the infrastructure bill. “For too many presidential administrations and sessions of Congress, we have been trying to get a comprehensive infrastructure package passed. We’ve known for years that the truck driver shortage was hitting critical mass,” National Association of Chemical Distributors (NACD) President and CEO Eric Byer said in a statement.

“But now we’ve got the perfect storm, and while President Biden didn’t create these issues, his administration must step in and help solve them. Without recourse, continued disruptions in ocean shipping could cripple the U.S. supply chain and lead to widespread product shortages and further restricting economic growth,” he added.

World Trade Organization (WTO) Director-General Ngozi Okonjo-Iweala addressed the background policy reasons during a speech in Washington Oct. 14. “During the early weeks of the pandemic when personal protective equipment and other medical countermeasures were suddenly in desperately short supply, many blamed the shortages on import dependence rather than the unforeseen spike in demand,” she explained.

“Several governments restricted exports of key goods in an attempt to shore up domestic availability,” Ngozi added. “At the time only the bravest of gamblers would have bet that global merchandise trade would be breaking new records by the first quarter of 2021, but that's exactly what has happened,” she said.

Trade Officials Have High Hopes for WTO Reform, Ministerial

Arriving in Geneva was a big step, a city U.S. Trade Representative (USTR) Katherine Tai's predecessor never visited. In a speech to the Graduate Institute Oct. 14, Tai emphasized the administration's support for the WTO and its role in a post-recovery economy.

“The Biden-Harris administration believes that trade – and the WTO – can be a force for good that encourages a race to the top and addresses global challenges as they arise,” Tai said. “Throughout the pandemic, the WTO rules have kept global trade flowing and fostered transparency on measures taken by countries to respond to the crisis. But many time-sensitive issues still require our attention. We can use the upcoming ministerial to deliver results on achievable outcomes,” she added.

“It is also essential to bring vitality back to the WTO's negotiating function. We have not concluded a fully multilateral trade agreement since 2013,” Tai said. “Dispute settlement was never intended to supplant negotiations. The reform of these two core WTO functions is intimately linked,” she added.

At the same time, WTO Director-General Ngozi Okonjo-Iweala gave a speech at the Peterson Institute in Washington, where she addressed an intellectual property (IP) waiver for vaccines, trade's role in environmental protection, and of course high hopes for the upcoming 12th WTO Ministerial Conference (MC12).

“Following this week's productive meeting of G20 trade ministers in Sorrento and their resolve to make progress on these issues of response to the pandemic, I believe that members can find a pragmatic compromise on the IP waiver which ensures equitable access to developing countries whilst preserving incentives for research and innovation,” Ngozi said.

“Trade can help make it cheaper to decarbonize our economies and get more value for each dollar of green investment. Lowering trade barriers to environmental goods and services would reduce the cost of decarbonization,” she said. As far as the WTO's ability to monitor compliance, Ngozi noted, “that's what we are talking about, more transparency so that the rules of the game it can be made clear who is obeying and who is not obeying them. When you shine light a light on things it really helps.”

“Success at MC12 would reinvigorate the WTO and give members new momentum to tackle other concerns on their agendas, from agricultural and industrial subsidies to strengthening the WTO's notification and transparency function,” she added. “For a successful MC12 we need a set of outcomes: an outcome driven to completing negotiation

and agreement in one or two key areas, e.g. response to the pandemic or trade and health, fisheries subsidies, domestic regulation of services, along with some basic agreements in agriculture,” Ngozi noted. “Added to this would be agreement on a process for reforming and revitalizing the dispute settlement function post MC12.”

Two days before Tai’s speech in Geneva, House Democrats urged the USTR to push for strong worker protections at MC12. “We support the Biden administration’s focus on a worker-centered trade policy,” 18 lawmakers wrote in a letter to Tai. “For far too long, labor issues have not been central to the work of the WTO despite clear indications of its prominence in the foundational legal text of the organization as well as Congress’ intent for the WTO to address labor and worker rights,” they added.

“In the wake of historic economic distress and disruptions over the last year that have touched nearly every country around the world, the United States and WTO Member States must directly engage and elevate labor and employment standards within the organization,” they added.

Prior to Ngozi’s speech, Peterson Institute experts also issued their take on reforming the WTO. “To restore credibility to the rules-based trading system, the WTO needs to come up with firm plans to address” three shared challenges: (1) ensuring that the trading system speeds the production and flow of essential goods to fight the pandemic; (2) addressing how trade measures can support carbon abatement commitments through new provisions covering green subsidies, energy regulations, and carbon taxes and border measures; and (3) advancing a plan to fix the dispute settlement process. “To be credible, the global trading rules must be enforceable.”

G20 Trade Ministers Look Past Covid Recovery

A year ago, the G20 trade ministers focused on recovery from the global pandemic, not knowing what was to come. At their meeting in Italy Oct. 12, the ministers looked past the recovery despite its lingering effects, applauded the removal of trade-restrictive measures, and looked forward to the MC12 in November and potential WTO reforms.

“While recognizing the importance of further strengthening global supply chains, making them more resilient, secure and sustainable and increasing production to meet demand, diversifying sources, we acknowledge the positive results that the multilateral trading system has achieved since the onset of the pandemic. We welcome that the WTO members rolled back more than half of COVID-19 trade restrictive measures and encourage them to continue to do so,” the joint ministerial statement noted.

“We reiterate the importance that any emergency trade measures designed to tackle COVID-19, if deemed necessary, are targeted, proportionate, transparent, temporary, reflect our interest in protecting the most vulnerable, do not create unnecessary barriers to trade or disruptions to global supply chains, and are consistent with WTO rules,” the

ministers added. Ministers also encouraged WTO reforms and hopes for MC12 (see related story, page 3). “While reaffirming the foundational principles of the WTO, we envision reforms to improve all its functions,” they said.

“A well-functioning dispute settlement system of the WTO should contribute to providing security and predictability to the multilateral trading system. We will work together at the WTO and with the wider WTO membership to advance the proper functioning of the WTO negotiating function and dispute settlement system, which require addressing longstanding issues,” the ministers added.

* * * **Briefs** * * *

EXPORT ENFORCEMENT: Arash Yousefi Jam, Iranian national living in Canada, was sentenced Oct. 14 in Detroit U.S. District Court to time served and deported for his role in conspiracy to export nine electrical discharge boards, CPU board, two servo motors, and two railroad crankshafts to Iran via UAE between January 2015 and February 2017 without required licenses. He pleaded guilty in July (see **WTTL**, July 26, page 5). Indictment against Jam and brother Amin Yousefi Jam, Iranian national also living in Canada, and Abdollah Momeni Roustani, Iranian national believed to be living in Iran, was unsealed in January. Arash Jam was arrested by U.S. authorities in December 2020. “Arash provided substantial assistance by convincing his brother and co-defendant, Amin, to waive his extradition from Canada—which the government acknowledges is a lengthy process—and voluntarily come to the United States to resolve his case,” Justice argued in sentencing memo.

FCPA: Jose Carlos Grubisich, former CEO of Brazilian petrochemical company Braskem S.A., was sentenced Oct. 12 in Brooklyn U.S. District Court to 20 months in prison and \$1 million fine for conspiracy to violate Foreign Corrupt Practices Act (FCPA). He pleaded guilty in April (see **WTTL**, April 19, page 7). Grubisich “knowingly and willfully participated in a conspiracy to divert hundreds of millions of dollars from Braskem into a secret illegal slush fund and to pay bribes to government officials, political parties, and others in Brazil to obtain and retain business,” Justice sentencing memo noted. Braskem and parent company Odebrecht agreed in December 2016 to pay combined penalty of \$3.5 billion to settle related charges.

WORKERS: USTR Katherine Tai Oct. 14 requested ITC conduct two-part Section 332 investigation on “potential distributional effects of goods and services trade and trade policy on U.S. workers by skill, wage and salary level, gender, race/ethnicity, age, and income level, especially as they affect underrepresented and underserved communities.” Part one would produce “public report that catalogues information on the distributional effects,” Tai wrote. In part two, ITC “would expand its research and analysis capabilities so that future probable economic effects advice includes estimates of the potential distributional effects.”

TIRES: CIT Oct. 12 remanded Commerce’s final determination in administrative review of countervailing duty (CVD) order on certain passenger vehicle and light truck tires from China. Plaintiffs argued that Commerce’s determination that, based on application of adverse facts available (AFA), Cooper Tire and Shandong Longyue Rubber Co., Ltd. used and benefited from China’s Export Buyer’s Credit Program (EBCP), is not supported by substantial evidence. “The court concludes that Commerce: (1) identified the gap in the record created by the failure of China] to provide requested information in regard to key aspects of the functioning of the EBCP; (2)

explained reasonably the reason that the missing information pertaining to loan disbursement [and partner/correspondent banks was critical to verifying claims of non-use, but failed to explain the reason that the missing information pertaining to the loan threshold was critical to verification; and (3) failed to articulate an explanation as to the reason that Commerce could not verify information on the record from Cooper Tire,” Judge Timothy Reif wrote in *Cooper (Kunshan) Tire Co. v. U.S.* (Slip Op. 21-141).

REVOLVING DOOR: Heidi Grant, director of U.S. Defense Security Cooperation Agency (DSCA), will lead Boeing’s defense, space and government services sales teams, firm announced Oct. 14. She will join company Nov. 8 as vice president of business development, day after leaving federal service. “Excited about this new opportunity to continue to add value using my expertise in national and global security,” Grant posted on LinkedIn. Art Shulman, previously acting DDTC compliance chief, joined Boeing as director of global trade controls in December 2017 (see **WTTL**, Dec. 18, 2017, page 7). His predecessor and boss at DDTC Sue Gainor joined Boeing as vice president of global trade controls that August. Both left Boeing in 2020.

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