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Marketing Firm Pays \$19 Million to Settle FCPA Charges

International advertising firm WPP plc agreed Sept. 24 to pay the Securities and Exchange Commission (SEC) more than \$19 million to settle charges that it violated the Foreign Corrupt Practices Act (FCPA) related to a bribery scheme at a WPP majority-owned subsidiary in India. Other schemes involved subsidiaries in China, Brazil and Peru.

The Indian subsidiary “through intermediaries, paid as much as a million dollars in bribes to Indian officials to obtain and retain government business, resulting in over \$5 million in net profit from 2015-2017,” the SEC order noted. The company neither admitted nor denied the SEC’s findings and agreed to pay \$10.1 million in disgorgement, \$1.1 million in prejudgment interest, and an \$8 million penalty.

In addition, other schemes included: “a subsidiary in China making unjustified payments to a vendor in connection with a Chinese tax audit, resulting in significant tax savings to WPP’s subsidiary; a subsidiary in Brazil making improper payments to purported vendors in connection with government contracts in 2016-2018; and in 2013, a Peruvian subsidiary funneling funds through other WPP entities to disguise the source of funding for a political campaign in Peru,” the SEC added.

“The Commission’s findings relate to control issues as well as the acquisition and integration of companies in high-risk markets until 2018. As the Commission’s Order recognizes, WPP’s new leadership has put in place robust new compliance measures and controls, fundamentally changed its approach to acquisitions, cooperated fully with the Commission and terminated those involved in misconduct,” a company spokesperson wrote in an email to WTTL.

Huawei CFO Clicks Heels Three Times, Will Return to China

It’s all over but the shouting. After almost three years of negotiations and name-calling, Huawei CFO Meng Wanzhou and Justice Sept. 24 agreed to a four-year Deferred

Prosecution Agreement (DPA) that would allow Meng to return to China. In Brooklyn U.S. District Court the same day, Meng pleaded guilty to four charges of conspiracy to commit bank fraud, conspiracy to commit wire fraud, bank fraud and wire fraud.

In August, Canada joined the U.S. in condemning China for the arrest, trial and imprisonment of the two Michaels in what many experts see as a tit-for-tat for Meng's arrest (see **WTTL**, Aug. 16, page 4). Meng was first arrested in December 2018 and has been in Canada since. Under the DPA, she also agreed that "all of the facts in the Statement of Facts are true and accurate," the document noted. In exchange, the U.S. government agreed to withdraw its extradition request.

"While acting as [CFO] for Huawei, Meng made multiple material misrepresentations to a senior executive of a financial institution regarding Huawei's business operations in Iran in an effort to preserve Huawei's banking relationship with the financial institution. The truth about Huawei's business in Iran, which Meng concealed, would have been important to the financial institution's decision to continue its banking relationship with Huawei," Acting U.S. Attorney Nicole Boeckmann said in a statement.

In August 2013, Meng met in Hong Kong with an executive of a Financial Institution responsible for operations in the Asia Pacific region, the DPA noted. "In her presentation, Meng stated, among other things, that Huawei's relationship with Skycom was 'normal business cooperation' and 'normal and controllable business cooperation,' and she described Skycom as a 'partner,' a 'business partner of Huawei,' and a 'third party Huawei works with' in Iran," it added.

"Those statements were untrue because, as Meng knew, Skycom was not a business partner of, or a third party working with, Huawei; instead, Huawei controlled Skycom, and Skycom employees were really Huawei employees. It would have been material to Financial Institution 1 to know that Huawei controlled Skycom," it added.

Commerce Starts Section 232 Investigation on Neodymium Magnets

Commerce will investigate the national security impacts of imports of neodymium-iron-boron (NdFeB) permanent magnets (sometimes referred to as neodymium magnets, neo magnets, or rare earth magnets). The department requests comments on the Section 232 investigation in the Sept. 27 Federal Register. Comments are due Nov. 12.

"Numerous critical national security systems rely on NdFeB permanent magnets, including fighter aircraft and missile guidance systems. In addition, NdFeB permanent magnets are essential components of critical infrastructure, including electric vehicles and wind turbines. The magnets are also used in computer hard drives, audio equipment, and MRI devices," the Federal Register notice says.

The White House first announced the possible investigation in June as part of the results of the administration's 100-day review of supply chain vulnerabilities. It also asked the U.S. Trade Representative (USTR) to lead a new trade strike force (see **WTTL**, June 14, page 2). "This would demonstrate the type of targeted but tough action we expect the trade strike force to deliver," Press Secretary Jen Psaki said at the time.

The department is particularly interested in comments on: quantity of or other circumstances; domestic production and productive capacity needed to meet projected national defense requirements; existing and anticipated availability of human resources, products, raw materials, production equipment, and facilities to produce NdFeB permanent magnets; growth requirements to meet national defense requirements and/or requirements for supplies and services necessary to assure such growth including investment, exploration and development.

In addition, it wants information on: the impact of foreign competition on the economic welfare of the domestic industry; the displacement of any domestic production causing substantial unemployment, decrease in the revenues of government, loss of investment or specialized skills and productive capacity, or other serious effects; relevant factors that are causing or will cause a weakening of our national economy; and any other relevant factors, including the use and importance in 16 critical infrastructure sectors.

BIS Nominees Commit to Nothing but Cooperation with Congress

In their hour in the spotlight during a Senate Banking Committee hearing Sept. 21, Bureau of Industry and Security (BIS) nominees Alan Estevez and Thea Kendler answered questions on numerous hot-button issues: China and Section 232 national security investigations, emerging technologies, Xinjiang and firearms transferred from State jurisdiction.

Kendler, who is nominated to be BIS assistant secretary, has been the lead BIS prosecutor in the case of Huawei CFO Meng Wanzhou, who just agreed to a deal with Justice to return to China (see related story, page 1). "I am particularly proud of charging global telecommunications company Huawei with operating as a criminal enterprise, stealing trade secrets, and defrauding global financial institutions," she said in her opening statement.

Estevez, the nominee to be BIS under secretary, outlined the top four priorities for the agency, which should be familiar to loyal readers: China, emerging and foundational technologies, supply chain resilience, especially in semiconductors, and rebuilding the relationship with allies. On Huawei specifically, he agreed the company poses a national security risk. "I see no reason why it would come off the Entity List unless things change," Estevez said.

Both officials acknowledged that multilateral export controls are the best tool, but not the only one in their toolbox. On Xinjiang, Kendler said, the agency will use all tools to

scrutinize license applications and “wouldn’t hesitate to impose unilateral controls.” Estevez agreed, saying that the agency is prepared to use unilateral controls, but you “have to balance risks in doing that,” he added.

On Section 232, like almost all other subjects, Estevez would not commit to any specific policy, but said the national security investigations “need to be looked at.” The policy “shouldn’t be used willy-nilly,” he added. Just three days after the hearing, Commerce formally announced the start of yet another Section 232 investigation on neodymium magnets (see related story, page 2).

Committee Ranking Member Pat Toomey (R-Pa.) set the tone on Section 232 in his opening statement. “Does anyone truly think a Volvo station wagon is a national security threat, as the last administration claimed?” he asked. “You should urge the president to reverse the last administration’s mistakes by removing the current Section 232 tariffs harming our relationships with our allies, and stopping the abuse of Section 232,” Toomey told the nominees.

NDAAs Amendments Target Firearms Exports, Pipeline Sanctions

The House version of the 2022 National Defense Authorization Act (NDAA) will include a wide range of amendments that could affect export controls and sanctions policy. Whether they survive a Senate vote and potential conference committee remains to be seen.

One contentious amendment, sponsored by Rep. Norma Torres (D-Calif.), would reinstate congressional notification before export licenses valued at \$1 million or more could be issued for semi-automatic weapons that had previously been on the U.S. Munitions List (USML). The amendment passed the House in 215-213 vote Sept. 23.

The National Shooting Sports Foundation (NSSF) considered defeating this amendment as a key vote. The amendment “would reverse over a decade’s worth of work, which started under the Obama-Biden Administration and was completed under President Trump to strengthen national security and the competitiveness of key U.S. manufacturing and technology sectors,” the group said in an alert to members.

Another amendment, sponsored by Rep. Michael McCaul (R-Texas), authorizes new mandatory sanctions on the Nord Stream 2 pipeline, excluding the national security waiver. “I am pleased for the third year in a row Congress has taken a strong bipartisan stand against the Nord Stream 2 pipeline. The new targeted sanctions in this amendment exclude the national security waiver President Biden misused earlier this year,” McCaul said in a statement.

In addition, McCaul had submitted other amendments that did not pass the House: one would require Commerce to report to Congress on a quarterly basis all the export control licenses that have been approved or denied to Chinese companies on the Entity List. It also requires BIS to designate all identified CCP military companies on the Entity List.

Another would require the Operating Committee for Export Policy to make decisions on export licenses by majority vote, with each agency (State, Energy, Defense and Commerce) getting one vote, rather than Commerce deciding by itself. A third would require BIS to strengthen the entity listing for China's Semiconductor Manufacturing International Corporation (SMIC) by updating the technical parameters of the SMIC licensing policy.

BIS Requests Comments on Semiconductor Supply Chain

It's all anyone is talking about: the semiconductor shortage and the long wait for washing machines, cars and other consumer goods. Industry will have a chance to defend itself as BIS Sept. 24 requested comments on how to secure and strengthen America's semiconductor product supply chain. Comments are due Nov. 8.

"With the goal of accelerating information flow across the various segments of the supply chain, identifying data gaps and bottlenecks in the supply chain, and potential inconsistent demand signals, the department is seeking responses from interested parties (including domestic and foreign semiconductor design firms, semiconductor manufacturers, materials and equipment suppliers, as well as semiconductor intermediate and end-users)," BIS said in the Federal Register notice.

The day before the notice, Commerce Secretary Gina Raimondo hosted a White House meeting with the semiconductor industry. Four months after the last summit, she said "the situation seems to be getting worse. We are hearing regularly from companies that cannot get the supply they need. We also know the delta variant has closed down key factories," Raimondo said in her opening remarks. "What's still not clear is what specifically is happening. For example, I don't know who is overordering or who is not supplying at the levels expected," she added.

"The administration reaffirmed that industry needs to be in the lead in resolving the supply chain bottlenecks that are occurring due to the global chip shortage. Industry reiterated its commitment to transparency initiatives, which will help keep Americans at work and allow factories to produce goods on schedule," a White House readout noted.

Industry groups welcomed the call to arms. "The White House has taken a series of decisive steps aimed at strengthening U.S. chip production and innovation, including initiating a study of America's chip supply chains, convening a series of dialogues with industry leaders, and – along with leaders in Congress from both parties – strongly advocating for \$52 billion in federal investments to boost domestic semiconductor manufacturing, research, and design," Semiconductor Industry Association (SIA) President and CEO John Neuffer said in a statement.

Biden, Johnson Dance Around Trade Progress

When United Kingdom (UK) Prime Minister Boris Johnson met with President Biden at the White House Sept. 21, he had Angus [beef], not AUKUS on his mind. In fact, Johnson

has made it no secret that he considers a U.S. trade deal the crown jewel, and therefore was willing to play whatever role to achieve that goal. So, when he met with VP Kamala Harris earlier that day in Washington, Johnson telegraphed his intentions. “On trade, we’re seeing a great deal of progress. The ban on beef — your curious ban on British beef has been removed, which is a wonderful thing, as well as the tariffs on Scotch whiskey. And there’s a great deal of progress we want to make in that, and that I hope that we can make,” the British PM announced.

Before Johnson took the stage, Harris said, “We must work and continue to work together to uphold and protect democratic principles and values around the globe. And we look forward to that continuing relationship and our relationship in the transatlantic as partners, longstanding and well into the future.”

Later, in a White House press conference with Biden, Johnson called on a British journalist who asked Biden if his reluctance to grant the UK a trade deal was tied up with the Northern Ireland protocols. “They’re two separate issues. On the deal with the UK, that’s continuing to be discussed. But on the protocols, I feel very strongly about those,” Biden said.

Solar Industry Groups Pull No Punches on Tariffs

While the Section 201 safeguard tariffs on solar products get all the attention, lawyers and industry groups are still fighting over antidumping (AD) and countervailing duty (CVD) orders on imports of crystalline silicon photovoltaic cells (CSPV) and/or modules from China. One group claims that producers in Malaysia, Thailand, and Vietnam are unlawfully circumventing duties on Chinese imports.

Separately, China appealed a World Trade Organization (WTO) dispute panel ruling that upheld the safeguard tariffs on CSPV cells (see related story, page 8). The Solar Energy Industries Association (SEIA) has urged the administration to end the tariffs.

A group named American Solar Manufacturers Against Chinese Circumvention (A-SMACC) filed anti-circumvention petitions in August requesting that Commerce investigate the unfairly traded imports. Under the auspices of the SEIA, more than 200 U.S. solar companies Sept. 22 urged Commerce Secretary Gina Raimondo to ignore the petitions, citing the anonymous nature of the group and the devastating impact on U.S. solar production.

“These anonymous companies are also trying to avoid the requirement to establish harm from imports during a full U.S. International Trade Commission (USITC) investigation and public hearing before the USITC Commissioners, and conveniently exclude domestic panel manufacturers’ own solar cell and panel imports from Malaysia and Vietnam,” the companies wrote. The three targeted countries account for 80% of all panel imports to the U.S., the SEIA noted.

In response, A-SMACC wrote: the solar companies “cannot refute the fundamental premise of the circumvention request: that certain Chinese companies have made the bare minimum investment outside of China in order to avoid AD/CVD duties, while the vast majority of the solar supply chain, investments, and expenditures remain in China.”

A Week Later, AUKUS Deal Still Causes Friction

More than a week on, what has not subsided is the European Union’s (EU) and France’s anger and frustration, not only at the way AUKUS developed and played out; coming so soon after the U.S.’s Afghanistan withdrawal, where they argued the Biden administration blindsided them, now as it did then.

AUKUS – a military partnership among Australia, the United Kingdom (UK) and the U.S. – gives Australia a submarine upgrade and the alliance firepower to face down China in the Pacific, but costs France more than \$35 billion (see **WTTL**, Sept. 20, page 4). The fallout almost led France to sink the first meeting of the U.S.-EU Trade and Technology Council, which is scheduled for Sept. 29 in Pittsburgh.

Speaking specifically on the fallout of AUKUS, European Commission President Ursula von der Leyen was frank, although mindful to note she would not allow China to exploit this disagreement. “We’re friends and allies. And friends and allies, partners, talk to each other. And they talk to each other mainly on an issue of common interest. So, this did clearly not happen,” she said from New York, where she is attending the United Nations General Assembly (UNGA).

French Foreign Minister Jean Yves Le Drian expressed this point less diplomatically days earlier. “There has been lying duplicity, a major breach of trust, and contempt. This will not do. Things are not going well between us. They are not going well at all. It means there's a crisis.”

AUKUS launched while key U.S. allies are arriving for the UNGA before proceeding to the White House for major foreign policy discussions, consultations and collaboration. French President Emmanuel Macron was not one of them. From Paris he held a 30-minute phone call initiated by President Biden Sept. 22, intended to be continued when the two leaders meet in Europe in October, a French-U.S. joint statement said.

But an immediate fallout from AUKUS, which may have serious consequences for the alliance, is the decision by the Europeans to deploy their autonomous defense force, despite having one foot firmly planted in NATO. The U.S. “also recognizes the importance of a stronger and more capable European defense, that contributes positively to trans-atlantic and global security and is complementary to NATO,” according to the joint statement.

This was a view von der Leyen made more forcibly Sept. 20. “We will step up to build our European defense union. Many of our member states are members of NATO, and NATO is

the strongest military alliance in the world. But it is important to have a strong European pillar in NATO and to have, for the European Union, the capabilities to act independently in theaters where, for example, NATO is not, but the European Union is called upon,” she said.

But as allies arrive in the U.S., domestic politics both in the U.S. and France appears to be overtaking foreign policy concerns. In the U.S. Congress, a GOP-Democratic tug-of-war skews Biden’s focus on the U.S. debt ceiling and his omnibus \$3.5 trillion “Build Back Better.” In France, Macron faces a fierce electorate and a close general elections battle in months. This led some foreign policy analysts to speculate, domestic issues may sideline foreign policy. Only time will tell.

* * * **Briefs** * * *

NOMINATIONS: President Biden Sept. 20 sent Senate nominations of Reta Jo Lewis to be first Black woman Ex-Im Bank president and Marisa Lago to be Commerce under secretary for international trade (see **WTTL**, Sept. 20, page 1). Lewis is currently senior fellow and director of congressional affairs at German Marshall Fund of United States (GMF). Lago serves as director of NYC Department of City Planning and chair of City Planning Commission.

SOLAR PANELS: China Sept. 20 appealed WTO dispute panel ruling that upheld U.S. Section 201 safeguard tariffs on crystalline silicon photovoltaic cells (CSPV), rejecting Chinese claims that duties violated WTO commitments (see **WTTL**, Sept. 6, page 1). “Given the ongoing lack of agreement among WTO members regarding the filling of Appellate Body vacancies, there is no Appellate Body Division available at the current time to deal with the appeal,” WTO noted.

USTR: Senate Sept. 23 confirmed Sarah Bianchi to be deputy USTR (Asia, Africa, investment, services, textiles and industrial competitiveness) in 85-11 vote. Day before, Senate confirmed Jayme White to be deputy USTR (Western Hemisphere, Europe, Middle East, labor, and environment) in 80-18 vote. Following White’s confirmation, Sen. Ron Wyden (D-Ore.) announced that Sally Laing will now serve as chief international trade counsel for Senate Finance Committee. Laing previously served as senior international trade counsel for Finance Committee and assistant general counsel at USTR.

COMOROS: At sixth meeting of working party on WTO accession Sept. 21, Comoros “reaffirmed its commitment and willingness to swiftly complete the accession process in 2022,” WTO said. “While it is clear that it is not possible to complete accession for MC12, I think we are entering the final phase of the process. My goal is to find a way to complete this accession in 2022,” new working party chair, Ambassador Omar Zniber of Morocco, said in statement. Working party held fifth meeting in September 2020 (see **WTTL**, Sept. 21, 2020, page 9). Comoros applied for accession in February 2007, and working party was established in October 2007.

USMCA: USTR Katherine Tai and Labor Secretary Marty Walsh Sept. 22 announced “successful conclusion of the first course of remediation” under USMCA’s Rapid Response Labor Mechanism (RRM). “We will continue to collaborate closely with Mexico to strengthen the legitimization vote process and ensure workers in Mexico can access their rights to freedom of association and collective bargaining,” Tai said in statement. Day before, Tai requested Treasury Secretary Janet Yellen to resume liquidation of entries of goods from General Motors (GM) facility in Silao, Mexico. Workers at Silao facility voted to reject their existing collective bargaining agreement in August (see **WTTL**, Aug. 23, page 2).