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South Korean Telecom Settles FCPA Charges

Seoul-based telecom firm KT Corp. agreed Feb. 17 to pay the Securities and Exchange Commission (SEC) $6.3 million to resolve charges of violating the Foreign Corrupt Practices Act (FCPA) by making improper payments for the benefit of government officials in Korea and Vietnam. Under the settlement, KT agreed to pay $3.5 million in civil penalties and $2.8 million in disgorgement.

> "KT lacked sufficient internal accounting controls over expenses, including executive bonuses and purchases of gift cards, which enabled managers and executives to generate slush funds. In addition, the misconduct involved former high-level managers and executives and occurred under circumstances whereby KT had no relevant anti-corruption policies or procedures with respect to donations, employment candidates, vendors, subcontractors, or third-party agents. In certain instances, this allowed KT employees to provide benefits improperly to government officials and to seek business from government customers," the SEC order noted.

In Korea from 2009 through 2017, "high-level executives of KT maintained slush funds, comprised of both off-the-books accounts and physical stashes of cash, in order to provide items of value to government officials, among others. These included gifts, entertainment and, ultimately, illegal political contributions to members of the Korean National Assembly serving on committees relevant to KT's business," the agency said.

"Between 2014 and 2018, KT employees internally discussed providing money to third parties connected to government officials in Vietnam in order to obtain contracts for two projects," the SEC added. The first project was to construct a solar cell power system, and the second to provide hardware, software and training for five vocational colleges.

USTR Adds WeChat to Annual Shame List of Notorious Markets

The U.S. Trade Representative's (USTR) office Feb. 17 issued its Out-of-Cycle Review of Notorious Markets a few months early, highlighting 42 online markets and 35 physical

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markets that "reportedly engage in or facilitate substantial trademark counterfeiting or copyright piracy." Most notably, the USTR list included Chinese social media platform WeChat for the first time.

Of particular concern on WeChat is "the e-commerce ecosystem that seamlessly functions within the overall WeChat platform and facilitates the distribution and sale of counterfeit products. For example, sellers of counterfeit goods are allegedly directing potential buyers to their counterfeit product offerings by advertising on WeChat through livestreams… and other communication portals that are available to all users such as scanning of QR codes at physical stores," the report noted.

> "The global trade in counterfeit and pirated goods undermines critical U.S. innovation and creativity and harms American workers," USTR Katherine Tai said. "This illicit trade also increases the vulnerability of workers involved in the manufacturing of counterfeit goods to exploitative labor practices, and the counterfeit goods can pose significant risks to the health and safety of consumers and workers around the world," she added.

The 42 identified online sites are hosted around the world, including in Argentina, Bulgaria, China, Czech Republic, Egypt, Finland, France, India, Indonesia, Iraq, Israel, Jordan, the Netherlands, Panama, Russia, Singapore, Switzerland and Vietnam. While nine of the 35 identified physical markets are in China, others exist in Argentina, Brazil, Cambodia, Canada, India, Indonesia, Kyrgyz Republic, Malaysia, Mexico, Paraguay, Peru, Philippines, Russia, Turkey, Ukraine, United Arab Emirates and Vietnam.

Toronto's Pacific Mall was previously listed, but "increased efforts by Pacific Mall management as well as from law enforcement authorities against sellers of counterfeit goods led to its removal" in 2018, the report said. "Right holders report that the level of counterfeit goods offered for sale has increased since then, with Pacific Mall management not taking the necessary measures against sellers, and law enforcement not prioritizing actions against counterfeit trade," it added.

The American Apparel & Footwear Association (AAFA) praised the report but highlighted the increase in online shopping and accompanying counterfeit risks. "While USTR listed many key notorious markets recommended by AAFA, the report missed the opportunity to hold certain major platforms accountable where the sale, and promotion, of counterfeits continues to proliferate and target unknowing American consumers," AAFA President and CEO Steve Lamar said in a statement.

Administration Officials Outline Potential Russian Sanctions

While the world awaits a potential Russian invasion of Ukraine, Biden administration officials Feb. 18 clarified the package of sanctions and export control measures that the U.S. and its allies are prepared to impose on the Kremlin. At press time, President Biden expressed unequivocal conviction that Russia would invade Ukraine.

"Financial sanctions have been designed to impose overwhelming and immediate costs to the largest financial institutions and state-owned enterprises in Russia," Daleep Singh, deputy director of the National Economic Council, told a White House briefing. "We are also prepared to impose powerful export controls as part of our package," he added.

"Export controls … go to the logical inputs Russia needs to deliver on Putin's strategic ambitions in aerospace, defense and high-tech," Singh said. "He has spoken many times about his desire for an aerospace, cyber, IT sector, without these critical inputs, there is no path to those ambitions," Singh added.

Singh rejected the idea that Russia could get these high-tech inputs from China. "We define the productive frontier. There is no ability for Russia to replace or compensate for the denial of these inputs from anywhere else, including China," he said. "We have an asymmetric advantage when it comes to foundational technologies, AI, semiconductors, quantum, robotics, hypersonic flight," Singh added.

In the case of an invasion, officials previously announced they also could employ the foreign-direct product (FDP) rule that the previous administration used to sanction China's Huawei (see **WTTL**, Jan. 31, page 1). At the same time, Congress said it was ready to impose a wide range of other sanctions.

DDTC Revises Guidance for Preparing Agreements

"Kill your darlings," many famous writers have been quoted as saying. State's Directorate of Defense Trade Controls (DDTC) took that advice to heart when it published its revised guidance on preparing agreements Feb. 14, leaving almost 100 pages of previous guidance on the cutting room floor.

While the agency reduced the page count by more than 50%, "the majority of the text remains unchanged but has been relocated and combined with like topics in order to provide more coherent guidance. Some verbiage has been modified for grammatical reasons. Additionally, duplicative information previously requested in the transmittal letter has been deleted. Some formatting changes are also provided based on industry best practices," DDTC said.

> The agency called out a few "noteworthy changes" including: under certain circumstances, cover letters are no longer required with executed copies of Technical Assistance Agreements (TAAs) and Warehouse and Distribution Agreements (WDAs); expedited execution is expanded to include the removal of sublicensees; the U.S. sublicensing statement is no longer required; and optional language when utilizing §126.18 is now provided.

In addition, DDTC clarified that the description of end-use includes the identification of platforms; added clarification on identifying and documenting foreign end users and the "deployment clause"; updated documentation of space launch territories on the DSP-5 vehicle; and clarified that the 124.4(b) letter must provide an estimate of the quantity of the articles authorized to be produced. "Additionally, MLAs involving the licensed manufacture of defense article abroad should identify the estimated quantity as part of the scope of the agreement," the agency said.

As part of the revision process, DDTC removed certain topics and posted those pages separately on its website, including: Part 130 Statements; Foreign Party GC (Option 3) for DN/TCN Authorizations; Utilization of Law Firms and Consultants; Authorizations Submitted in Support of U.S. Operations; Certification Letter (§ 126.13) Guidance; and Guidance on Export Control Reform.

USMCA Dispute Panel Sides with Canada on Solar Tariffs

Two weeks after the Biden administration extended the Section 201 safeguard tariffs on imported solar panels and cells, a dispute panel sided with Canada, ruling that the measures violate U.S. obligations under the U.S.-Mexico-Canada Agreement (USMCA).

> After hearing from everyone and their mothers, President Biden Feb. 4 extended the safeguard tariffs, as well as the exclusion of bifacial panels, for four years, with annual reductions for four years after that (see **WTTL**, Feb. 7, page 3). With the extension, the president instructed the USTR's office to enter into negotiations with Canada and Mexico to suspend the tariffs.

Specifically, the panel concluded that the U.S. has applied a safeguard measure to imports of solar products originating in Canada "that is not in conformity" with the U.S.' obligation "to exclude Canada from such safeguard measure," it noted. Accordingly, it recommended that the U.S. "bring its safeguard measure and consequently its tariff schedule into conformity with its USMCA obligations," the panel added.

The USMCA's relevant provisions prohibit "additional tariffs (or other safeguard actions) unless the two conditions of accounting for a substantial share and contribute importantly to serious injury have been met," the panel noted. The U.S. "had failed to demonstrate that either of the two conditions had been met," it added.

Canadian Trade Minister Mary Ng welcomed the ruling. "Canada will work toward the complete removal of these unjustified tariffs," she said in a statement. "Canada's long-standing and close collaboration with the United States on cross-border trade and supply chains is critical to supporting our shared economic recovery, fighting climate change, and ensuring our long-term growth and competitiveness," Ng added.

* * * Briefs * * *

<u>PTFE RESIN</u>: In 5-0 final vote Feb. 16, ITC found U.S. industry is materially injured by dumped and subsidized imports of granular polytetrafluoroethylene (PTFE) resin from India and Russia. Commission also made negative finding on critical circumstances on imports from India.