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UK Engineering Subsidiary Pays \$43 Million to Settle FCPA Charges

Amec Foster Wheeler Limited, a subsidiary of John Wood Group plc, a United Kingdom (UK)-based global engineering company, agreed June 25 to pay \$43 million to settle Justice and Securities and Exchange Commission (SEC) charges of violating the Foreign Corrupt Practices Act (FCPA). The settlement relates to a scheme to obtain an oil and gas engineering and design contract in Brazil.

“From 2012 through 2014, Foster Wheeler’s UK subsidiary, Foster Wheeler Energy Limited (FWEL) made improper payments to Brazilian officials in connection with efforts to win a contract with the Brazilian state-owned oil company, *Petróleo Brasileiro S.A. (Petrobras)*. The bribes were made through third party agents, including one agent who failed Foster Wheeler’s due diligence process for prospective sales agents, but was allowed to ‘unofficially’ continue working on the project,” the SEC order noted.

Under the settlement, the company agreed to pay Justice \$18,375,000 and entered into a three-year deferred prosecution agreement (DPA) and pay the SEC \$22.7 million in disgorgement and prejudgment interest. The SEC payment includes offsets for up to \$9.1 million of disgorgement paid to Brazilian authorities and up to \$3.5 million of disgorgement paid to the UK’s Serious Fraud Office (SFO).

“The resolutions relate to historical conduct which occurred before Amec plc acquired Foster Wheeler AG in November 2014 and prior to the combined firm’s acquisition by Wood in October 2017. Wood cooperated fully with all authorities in their investigations, which is reflected in the cooperation credit that Wood received from the authorities in their respective resolutions,” the Wood Group said in a statement.

Administration Takes Further Action Against Chinese Forced Labor

Calling in Homeland Security, Commerce and Labor, the Biden administration took coordinated action June 24 against Chinese imports produced with forced labor in the

Xinjiang region. Bureau of Industry and Security (BIS) added five Xinjiang-based companies to its Entity List, while Customs and Border Protection (CBP) issued a withhold release order (WRO) on silica-based products made by Hoshine Silicon Industry Co. and its subsidiaries, and Labor added polysilicon to its list of products produced by forced labor.

At the same time, the Senate Foreign Relations Committee approved the Uyghur Forced Labor Prevention Act (S. 65), which calls for sanctions on those responsible for forced labor in Xinjiang or engaged in importing goods produced with forced labor. Rep. Jim McGovern (D-Mass.) and six cosponsors reintroduced the parallel House bill (H.R. 1155) in February (see **WTTL**, Feb. 22, page 5).

Two weeks before the administration's action, two dozen House Democrats urged CBP to block imported products containing polysilicon made with forced labor in Xinjiang, China (see **WTTL**, June 14, page 6). Manufacturers use polysilicon predominantly in the production of solar panels. In a February 2021 briefing, CBP asserted that enforcement actions regarding polysilicon were forthcoming.

The five companies added to the BIS Entity List were: Hoshine Silicon Industry (Shanshan); Xinjiang Daqo New Energy; Xinjiang East Hope Nonferrous Metals; Xinjiang GCL New Energy Material Technology, and the Xinjiang Production and Construction Corps (XPCC). For the five entities, BIS imposed a license requirement for all items subject to the Export Administration Regulations (EAR) and a case-by-case license review policy for Export Control Classification Numbers (ECCNs) 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983 and 2E983.

AFL-CIO President Richard Trumka applauded the announcements. "These actions are an important first step toward eliminating forced labor in global supply chains and changing the behavior of corporations that benefit from egregious labor exploitation," he said. The order "reaffirms President Biden's commitment to building a greener economy with strong labor and environmental protections, and we look forward to continuing to work with the administration to achieve those goals," Trumka added.

The Solar Energy Industries Association (SEIA) also supported the move. "The fact is, we do not have transparency into supply chains in the Xinjiang region, and there is too much risk in operating there. For that reason, in October, we began calling on solar companies to leave the region and we provided them a traceability protocol to help ensure there is not forced labor in the supply chain," John Smirnow, SEIA general counsel and VP of market strategy, said in a statement.

Chinese officials denounced the actions. "China has clarified the facts and the truth many times. The U.S. side should respect the facts, and immediately stop spreading false information and using that as excuses to unjustifiably suppress Chinese companies. China will watch closely the measures to be taken by the U.S. side and make necessary responses to resolutely safeguard its own interests," Foreign Ministry Spokesperson Zhao Lijian told reporters the day before the formal announcements.

Allies Impose Sanctions on Belarus over Repression

The White House and its allies kept its promise by imposing sanctions June 21 on Belarus over “the Lukashenka regime’s escalating violence and repression,” including forcefully commandeering commercial flight between two European Union (EU) nations. For its part, Treasury’s Office of Foreign Assets Control (OFAC) designated 16 individuals and five entities, including the president’s press secretary, the former presidential chief of staff, the Belarusian KGB and its chairman, and the country’s deputy minister of internal affairs.

In May, the White House announced its intent to impose sanctions in coordination with the EU, citing “ongoing abuses of human rights and corruption, the falsification of the 2020 election, and the events of May 23,” the White House said in a statement at the time (see **WTTL**, June 7, page 4).

At the same time as the sanctions, OFAC issued General License 3 authorizing “transactions and activities with [Belarusian KGB] that are necessary and ordinarily incident to requesting, receiving, utilizing, paying for, or dealing in certain licenses and authorizations for the importation, distribution, or use of certain information technology products in Belarus,” OFAC said in a Frequently Asked Question (FAQ).

Canada, EU, the United Kingdom (UK) and the U.S. also announced “coordinated sanctions action” in a joint statement at the same time. “We are committed to support the long-suppressed democratic aspirations of the people of Belarus and we stand together to impose costs on the regime for its blatant disregard of international commitments,” the partners said. “We are disappointed the regime has opted to walk away from its human rights obligations, adherence to democratic principles, and engagement with the international community,” they added.

Commerce Formally Pulls Bans on TikTok, WeChat

Commerce June 23 rescinded the identification of prohibited transactions with respect to TikTok and WeChat mobile applications. Two weeks earlier, the Biden administration revoked its predecessor’s potential bans on the two Chinese firms, which are the subject of multiple legal challenges, replacing the orders with “a criteria-based decision framework and rigorous, evidence-based analysis” to identify national security risks (see **WTTL**, June 14, page 1).

Biden’s latest Executive Order (EO) also directed Commerce to “make recommendations to protect against harm from the sale, transfer of, or access to sensitive personal data, including personally identifiable information and genetic information – to include large data repositories – to persons owned or controlled by, or subject to the jurisdiction or direction of, foreign adversaries,” a White House fact sheet noted.

The previous administration announced the implementation of its ban in September 2020. While the prohibitions on WeChat went into effect almost immediately, the ban on TikTok services, other than new app downloads, was delayed until after the election in November, giving the company time to complete a deal with a U.S. firm.

Chinese Foreign Ministry Spokesperson Zhao Lijian called the move “a positive step toward the right direction” during his daily press briefing. “China has all along urged the U.S. to earnestly respect the principles of the market economy and international economic and trade rules, immediately stop over-stretching the concept of national security, stop abusing state power to unjustifiably suppress Chinese technology companies, and treat Chinese companies in a fair, just and non-discriminatory manner,” he added.

EU, U.S. Join Forces on Privacy, Big Tech

In the not-quite six months since President Biden has come to office, the EU and the U.S. are beginning to work closely on several issues related to technology. The new urgency is perhaps driven by the recent ransomware attacks; the ubiquity in their capitals of foreign social media, such as TikTok and WeChat; the transgressions of U.S. big tech, such as Amazon, Apple, Facebook and Google, both in the U.S. and the EU; as well as concerns over data privacy and 5G security.

The first of these was at the just-concluded G7 and NATO meetings where members laid out the ground rules in joint communiques. Foreign attacks of domestic networks, especially cybersecurity of critical infrastructure was off limits. This was made clear to both Russia and China by the U.S. and Europe.

These meetings also included negotiations to replace the U.S.-EU Privacy Shield and the launch of a U.S.-EU Trade and Technology Council (TTC) tasked with writing “the rules of the road for the economy of the 21st century,” according to a White house fact sheet (see **WTTL**, June 21, page 5). On Privacy Shield, Commerce Secretary Gina Raimondo sat down with EU Justice Commissioner Didier Reynders and planned next steps.

During the visit, both Raimondo and U.S. Trade Representative (USTR) Katherine Tai also met Executive VP Margrethe Vestager, Europe’s top privacy cop. “Raimondo welcomed the Vice President’s invitation for further engagement on tech policy developments in the EU, including the Digital Markets Act, and committed to regular and sustained dialogue on these and other topics related to the digital economy,” across both continents, Commerce said.

After the U.S. officials returned, the House Judiciary Committee, in a bipartisan vote, June 24, passed six bills out of committee which, if successful, would put significant restrictions on big tech companies. Among the legislations were: the Merger Filing Fee Modernization Act of 2021 (H.R. 3843); the State Antitrust Enforcement Venue Act of 2021 (H.R. 3460); the Platform Competition and Opportunity Act of 2021 (H.R. 3826); and

the Augmenting Compatibility and Competition by Enabling Service Switching (ACCESS) Act of 2021 (H.R. 3849). “Importantly, we are not alone in taking steps to reign in abuses by dominant online platforms. The United Kingdom, Australia, and the [EU] are each considering significant updates to their competition laws governing the digital economy motivated by the same concerns that give rise to the legislation we will consider today,” Committee Chairman Jerrold Nadler (D-N.Y.) said. Similar legislation has already made its way through the U.S. Senate led by Sen. Amy Klobuchar (D-Minn.) and others.

The Information Technology and Innovation Foundation (ITIF) urged caution on the legislation. “If enacted, these new antitrust bills, informed by a ‘big is bad’ ideology, will harm U.S. innovation and competitiveness and undermine an antitrust regulatory framework that has enabled the United States to become a global leader in technology,” Aurelien Portuese, ITIF director of antitrust and innovation policy, said in a statement.

Two days before that committee markup, the EU opened a new investigation into whether Google has violated EU competition rules by “favoring its own online display advertising technology services ‘ad tech’ over competitors.”

“We are concerned that Google has made it harder for rival online advertising services to compete in the so-called ad tech stack. A level playing field is of the essence for everyone in the supply chain. Fair competition is important - both for advertisers to reach consumers on publishers' sites and for publishers to sell their space to advertisers, to generate revenues and funding for content. We will also be looking at Google’s policies on user tracking to make sure they are in line with fair competition,” Vestager said.

As part of its in-depth investigation, the Commission will examine three practices: the restrictions Google placed on third parties to access user, which is available to Google’s own advertising intermediation services, including the Doubleclick ID; Google’s announced plans to prohibit the placement of third-party ‘cookies’ on Chrome; and the company’s plans to stop making the advertising identifier available to third parties on Android devices when a user opts out of personalized advertising.

Transatlantic Partnership Will Extend to Cyber Crime Fight

As ransomware attacks become commonplace on both sides of the Atlantic, affecting major industry infrastructure, U.S. and EU officials reaffirmed their commitment to renew their partnership on fighting cybercrime after a meeting in Lisbon June 22. The meeting came just weeks after the G7 partners set benchmarks for all nations to operate in cyberspace (see **WTTL**, May 10, page 5).

Officials, including Homeland Security Secretary Alejandro Mayorkas, “agreed on the importance of together combating ransomware including through law enforcement action, raising public awareness on how to protect networks as well as the risk of paying the criminals responsible, and to encourage those states that turn a blind eye to this crime to

arrest and extradite or effectively prosecute criminals on their territory,” the U.S. and the EU said in a joint statement. On bilateral and multilateral instruments to facilitate the fight against cybercrime, both restated their commitment to negotiate an EU-U.S. agreement facilitating access to e-evidence for the purpose of cooperation in criminal matters as soon as possible.

The two partners “acknowledged the need to cooperate and shape a digital future based on our shared democratic values,” they said. The U.S. and the EU “acknowledged the potential benefits and risks of using artificial intelligence technologies for law enforcement and the judiciary,” the joint statement added.

The U.S. and the EU “also reaffirmed their dedication to develop and use such technologies in a trustworthy manner in conformity with human rights obligations. They further exchanged views on current and upcoming European Union efforts on tackling illegal content online, including the need to improve the cooperation between the authorities and online platforms to detect ongoing criminal activity,” they declared.

*** * * Briefs * * ***

TIRES: In 4-1 final vote June 23, ITC determined U.S. industry is materially injured by dumped imports of passenger vehicle and light truck tires from Korea, Taiwan and Thailand and subsidized imports from Vietnam. Commissioner David Johanson voted no. Commission further found that dumped imports from Vietnam are negligible.

CHASSIS: In 5-0 final vote June 21, ITC determined U.S. industry is materially injured by dumped imports of chassis and subassemblies from China.

MELAMINE: In 5-0 “sunset” vote June 21, ITC said revoking antidumping and countervailing duty orders on imports of melamine from China would renew injury to U.S. industry.

EXPORT ENFORCEMENT: Security product manufacturer Skyline USA, Inc. of Sanford, Fla., agreed June 23 to pay BIS \$140,000 civil penalty for exporting stun guns, police batons, handcuffs and pepper spray to Colombia, Guatemala, Mexico, Nigeria, Pakistan, Panama, Trinidad and Tobago or Uruguay without required BIS licenses between April 2014 and August 2016. Items were classified under ECCNs 0A978 (police batons), 0A982 (handcuffs), 0A985 (stun guns) or 1A984 (pepper spray) and controlled for crime-control reasons. “The company lacked procedures to determine the classification under the Regulations of the products it sold and the licensing requirements for exports to its foreign customers,” BIS order noted. Of penalty, \$130,000 shall be suspended for two years and then waived, provided Skyline commits no further violations.

MORE EXPORT ENFORCEMENT: Turkish national Arif Ugur was charged June 22 in Boston U.S. District Court with exporting USML technical data to employees of Turkish manufacturer between July 2015 and November 2017 without required license. “In order to enable the Turkish Manufacturer to make some of the parts, UGUR provided the foreign manufacturer with technical specifications and drawings of the parts, which UGUR obtained from the Defense Logistics Agency (DLA). Several of these drawings and specifications were designated as defense articles,” court document noted. Parts included bracket assembly mounting seats, groove pulleys and locking device valve.

EVEN MORE EXPORT ENFORCEMENT: Indictment was unsealed June 21 in Los Angeles U.S. District Court against five individuals on charges of exporting ITAR-controlled thermal riflescopes, weapons sights, monoculars and night-vision goggles to Russia without State licenses. Elena Shifrin, of Mundelein, Ill., and Vladimir Pridacha, of Volo, Ill., were arrested June 17. Also indicted were Russian citizen Boris Polosin; Israeli citizen Vladimir Gohman; and Igor Panchernikov, Israeli national who resided in Corona, Calif. “Gohman would instruct ... Panchernikov and Shifrin to export defense articles to Russia and to falsely describe the contents of the exports as non-export-controlled items with a value of less than \$2,500. Gohman would further instruct... Shifrin to use false sender names and false sender addresses when exporting such items to Russia,” indictment noted.

DELISTING: State June 24 terminated sanctions on Chinese firm Aoxing Ship Management (Shanghai) Ltd and Hong Kong-based Sea Charming Shipping Company Limited, removing them from OFAC’s Specially Designated Nationals (SDN) list. Firms were designated in March 2020 for “knowingly engaging in a significant transaction for the purchase, acquisition, sale, transport, or marketing of petrochemical products from Iran” (see **WTTL**, March 23, 2020, page 1).

FCPA: Former Goldman Sachs banker Asante Berko agreed June 23 to disgorge \$275,000 in final judgment with Securities and Exchange Commission (SEC). Berko was charged in April 2020 in Brooklyn U.S. District Court with violating Foreign Corrupt Practices Act (FCPA) (see **WTTL**, April 20, 2020, page 5). From 2015 through 2016, Berko allegedly schemed to bribe various Ghanaian government officials so Turkish energy company would win contract to build and operate electrical power plant in Ghana and in turn sell power to Ghanaian government, SEC complaint noted.

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