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Cardinal Health Pays $8 Million to Settle FCPA Charges

Ohio-based pharmaceutical company Cardinal Health agreed Feb. 28 to pay the Securities and Exchange Commission (SEC) more than $8 million to settle charges it violated the Foreign Corrupt Practices Act (FCPA) related to improper payments made by employees of its former Chinese subsidiary.

> In November 2010, Cardinal acquired the Chinese subsidiaries of an established pharmaceutical distribution company and rebranded them as "Cardinal China," the SEC order noted. "Cardinal China terminated most of the marketing accounts due in part to known FCPA-related compliance risks associated with channeling the marketing expenses of third parties through its own books and records," it added.

"Despite these risks, until 2016, Cardinal China maintained and operated marketing accounts for a European supplier of non-prescription, over-the-counter dermocosmetic products," the SEC noted. "In 2016, Cardinal China learned that the marketing employees and the dermocosmetic company had hidden the purpose of certain purported marketing pay-ments, which were redirected to healthcare professionals who provided marketing services to the dermocosmetic company, and to other employees of state-owned retail entities who had influence over purchasing decisions," it added.

Cardinal divested the Chinese pharmaceutical and medical device distribution business in 2019 and voluntarily disclosed possible violations to Justice and SEC, a company spokes-person wrote via email to WTTL. Justice declined to take any action against Cardinal Health, the company added. Under the settlement, Cardinal agreed to pay $5.4 million in disgorgement, $916,887 in prejudgment interest, and a $2.5 million civil penalty. The company neither admitted nor denied the SEC charges.

White House Won't Impose Tariffs on Titanium Sponge Imports

While acknowledging that titanium sponge imports threaten to impair U.S. national security, the White House Feb. 27 decided against imposing Section 232 tariffs on such

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imports, but instead will create a working group with Japanese officials to ensure access to adequate supply. Commerce launched the investigation in March 2019 as to whether the "quantity or circumstances" of titanium sponge imports threaten U.S. national security (see **WTTL**, March 11, 2019, page 1). In its November report to the White House, the department found that 94.4% of titanium sponge imports in 2018 were from Japan.

> Despite the high level of imports and low domestic production, the president agreed with "the Secretary's recommendation that actions to adjust imports under section 232 not be taken at this time," the White House noted. "Measures apart from the adjustment of imports are more likely to be effective to address the threatened impairment of the national security," it added.

Those other measures include: Defense and Commerce secretaries will "invite their counterpart agencies in Japan to participate in discussions with the working group in order to agree upon measures to ensure access to titanium sponge in the United States for use for national defense and critical industries in an emergency," the White House said. In addition, Defense will seek "new appropriations as necessary, to increase access to titanium sponge for use for national defense and critical industries and to support domestic production capacity for the production of titanium sponge to meet national defense requirements," it added.

"Imports of titanium sponge, which accounted for 68% of all titanium sponge consumed in the United States in 2018, threaten to impair the national security by placing the remaining U.S. titanium sponge producer's operation under severe financial stress," the memorandum noted. "Low-priced titanium sponge imports, as well as low-priced titanium scrap imports, depress the price of U.S. titanium sponge and discourage recapitalization and modernization of the remaining active producer's aging production facility," it added.

"Absent domestic titanium sponge production capacity, the United States will be completely dependent on imports of titanium sponge and scrap and will lack the surge capacity required to support defense and critical infrastructure needs in an extended national emergency," the White House concluded.

USTR Takes on WTO, Cites "Historic" Success

In its Trade Policy Agenda and Annual Report unveiled Feb. 28, the Trump administration maintained its "take no prisoners" stance, promising to "continue to rebalance America's relationship with its trading partners, aggressively enforce our trade laws, and take prompt action in response to unfair trade practices by other nations."

One of the administration's proudest achievements in the past year was bringing about "a fundamental rethinking" of the WTO, which "has strayed far from its original mission and purpose," the report noted. The U.S. Trade Representative's (USTR) office Feb. 11 released its official post-mortem on the WTO Appellate Body (AB), what it called "in-depth assessment of the Appellate Body's failure to comply with WTO rules and interpret WTO agreements as written" (see **WTTL**, Feb. 17, page 6).

To that end, the administration set a goal of "limiting the WTO to its original purpose of serving as a forum for nations to negotiate trade agreements, monitor compliance with agreements, and facilitate the resolution of international trade disputes." A USTR fact sheet outlined the administration's plans to explore a "broader reset" in Geneva. "The WTO currently locks in an outdated tariff framework that no longer reflects deliberate policy choices and economic realities. Members need to fundamentally rethink tariff commitments by the United States and its trading partners," USTR explained.

The administration's other goals for the next year include: robust enforcement of commitments under the U.S.-Mexico-Canada agreement (USMCA), the China phase one deal, and the World Trade Organization (WTO); new trade agreements with important partners, including the United Kingdom and the European Union, as well as Kenya; further negotiations with Japan for a comprehensive trade agreement; and a phase two agreement with China that continues to require structural reforms and other changes to China's regime (see related story, page 4).

U.S., Switzerland Finalize Iran Trade Channel

U.S. and Swiss governments Feb. 27 finalized the terms of the Swiss Humanitarian Trade Arrangement (SHTA), which will "facilitate the flow of humanitarian goods to the Iranian people while safeguarding against the Iranian regime's diversion of humanitarian trade for malign purposes," Treasury said in announcing the channel.

> In a January press conference, Treasury Secretary Steven Mnuchin warned European allies against using the INSTEX barter mechanism, which could be subject to secondary sanctions, in favor of the approved Swiss framework for humanitarian transactions (see **WTTL**, Jan. 13, page 6).

"The SHTA presents a voluntary option for facilitating payment for exports of agricultural commodities, food, medicine, and medical devices to Iran in a manner that ensures the upmost transparency. Under the SHTA, participating financial institutions commit to conducting enhanced due diligence to ensure that humanitarian goods reach the people of Iran and are not misused by the Iranian regime," Treasury said.

At the same time, Treasury issued General License (GL) 8 authorizing certain humanitarian-related transactions involving the Central Bank of Iran (CBI) along with several Frequently Asked Question (FAQs). "Non-U.S. persons do not risk exposure under U.S. secondary sanctions for engaging in humanitarian-related transactions or activities involving the CBI that would be authorized under GL 8 if engaged in by a U.S. person, provided such transactions and activities do not involve any person designated in connection with Iran's support for international terrorism or WMD proliferation, other than the CBI," the department explained.

Administration Hails "Phase One" Progress with China

Two weeks after the entry into force of a "Phase One" trade deal with China, the U.S. Trade Representative (USTR) Robert Lighthizer and Agriculture Secretary Sonny Perdue Feb. 25 applauded the "numerous actions" China has taken to begin implementing its agriculture-related commitments. However, at a House hearing the next day, lawmakers and private sector representatives questiomed the level of commitment the "phase one deal" represented.

> On the day China's tariff cuts on $75 billion worth of U.S. imports took effect, USTR announced the deal with Beijing would get its very own Bilateral Evaluation and Dispute Resolution Office (see **WTTL**, Feb. 17, page 1). President Trump and Chinese Vice Premier Liu He signed the deal in a White House ceremony in January.

These actions include: signing a protocol that allows the importation of U.S. fresh chipping potatoes; lifting the ban on imports of U.S. poultry and poultry products; lifting restrictions on imports of U.S. pet food containing ruminant material; updating lists of facilities approved for exporting animal protein, pet food, dairy, infant formula, and tallow for industry use to China; updating the lists of products that can be exported to China as feed additives; and updating an approved list of U.S. seafood species that can be exported to China.

In addition, China has begun announcing tariff exclusions for imports of U.S. agricultural products subject to its retaliatory tariffs, and it announced a reduction in retaliatory tariff rates on certain U.S. agricultural goods, the officials noted.

"This agreement is the culmination of hard-fought negotiations and that there are some important commitments that have been secured in this agreement," House Ways and Means Committee Chair Richard Neal (D-Mass.) said in his opening statement Feb. 26. "However, the 'Phase One' agreement leaves on the table more significant, structural commitments for a future 'Phase Two' or even 'Phase Three' agreement. And there are other important structural issues that are not even part of the Trump Administration's trade negotiations with China," Neal added.

Thea Lee, president of Economic Policy Institute (EPI), testified that the administration had built up leverage with its tariffs, which "represented a welcome shift in approach from previous administrations' inaction and timidity. Ultimately, however, the phase one deal squandered that leverage and failed to address the key structural issues at the root of the U.S.–China economic relationship."

Moving forward, Lee argued the administration should use that leverage more strategically to achieve other objectives: 1) leveling the playing field with respect to currency, subsidies, unfair pricing, workers' rights, environmental policies, and consumer safety; 2) engaging in medium- and long-term strategic planning to ensure that the U.S. has a fair shot of succeeding in the critical rising industries; and 3) coordinating with allies to develop and enforce fair international rules.

Industry Reacts to Coronavirus Impact on Supply Chain

While the eventual, long-term impact of the coronavirus on the global supply chain will not be known for some time, trade groups and individual firms are already sounding the alarm, aside from the sell-off evident in the stock market around the globe.

> "Given the uncertainty in the market as a result of the coronavirus, many textile and apparel sourcing executives are seeking alternatives outside of Asia. We stand ready to assist brands and retailers looking to shift sourcing during this uncertain time," National Council of Textile Organizations (NCTO) President and CEO Kim Glas said in a statement Feb. 25.

"The Western Hemisphere production platform established under our free trade agreements and trade preference programs provides a sound alternative as companies look to diversify their sourcing. The region has immediate capacity to meet worldwide demands with duty-free access through well-established supply chains," Glas added.

A week before, Apple announced it would not meet its March revenue guidance, citing two main reasons attributed to the coronavirus: constrained iPhone supply and lower demand for Apple products within China. "While our iPhone manufacturing partner sites are located outside the Hubei province — and while all of these facilities have reopened — they are ramping up more slowly than we had anticipated," the company said Feb. 17.

"These iPhone supply shortages will temporarily affect revenues worldwide," it added. "All of our stores in China and many of our partner stores have been closed. Additionally, stores that are open have been operating at reduced hours and with very low customer traffic," the company said.

* * * Briefs * * *

<u>HUAWEI</u>: Federal Communications Commission (FCC) Feb. 26 began collecting information from telecommunications carriers receiving Universal Service Funds (USF) on use of Huawei and ZTE equipment and services in their networks. "We are moving forward quickly to identify where equipment and services from these suppliers are embedded in our communications networks and, where they do have a foothold, to be in a position to help remove them," said FCC Chairman Ajit Pai in statement. Commission voted in November to block U.S. rural wireless carriers from accessing USF if they use Chinese services and equipment and require carriers to remove and replace equipment using ZTE and Huawei (see **WTTL**, Dec. 2, page 6).

<u>SANCTIONS</u>: Société Internationale de Télécommunications Aéronautiques SCRL (SITA), Swiss transportation service provider, agreed Feb. 26 to pay OFAC $7.8 million civil penalty to settle 9,256 apparent violations of global terrorism sanctions between April 2013 and February 2018. Specifically, SITA "provided commercial services and software that were subject to U.S. jurisdiction and benefitted certain SITA member airlines after OFAC designated those airlines as specially designated global terrorists," agency said. OFAC identified blocked entities Mahan Air, Syrian Arab Airlines and Caspian Air as SITA member-owners. "This settlement takes into account SITA's proactiveness in communicating with and approaching OFAC, our cooperation and the remedial actions we have already taken," company spokesperson wrote in email to WTTL.

Citing deceptive acts by Iranian airlines and recent enforcement actions, OFAC warned U.S. civil aviation industry in July to be especially careful in considering business with Iran or select third countries (see **WTTL**, July 29, page 3).

MORE SANCTIONS: Italian national Gabriele Villone, owner of GVA International Oil and Gas Services (GVA), pleaded guilty Feb. 25 in Savannah, Ga. U.S. District Court to conspiracy in scheme to procure Vectra 40G power turbine from U.S. manufacturer and ship Vectra to blocked Russian company that intended to use turbine on Arctic deepwater drilling platform. Superseding indictment was unsealed in December against two Russian nationals, two Italian nationals, U.S. citizen, and various companies in conspiracy to evade U.S. sanctions (see **WTTL**, Dec. 19, page 8).

ENGINES: In 5-0 preliminary vote Feb. 28, ITC found U.S. industry may be injured by allegedly dumped and subsidized imports of vertical shaft engines from China.

STEEL: In 3-2 negative final vote Feb. 25, ITC found U.S. industry is not materially injured by dumped imports of fabricated structural steel from Canada, China and Mexico and subsidized imports from China and Mexico. Commissioners Rhonda Schmidtlein and Amy Karpel voted yes.

FCPA: Judge in New Haven, Conn., U.S. District Court Feb. 26 granted Lawrence Hoskins, former Alstom Power Inc. (API) senior VP in Asia, motion for new trial on seven FCPA charges for his alleged participation in scheme to bribe Indonesian officials in exchange for assistance in securing contracts. He was convicted in November after two-week trial. Judge did not dismiss money laundering charges. Sentencing is set for March 6. Super-seding indictment was unsealed Feb. 18 in New Haven court against two former executives of Indonesian Alstom subsidiary and former Marubeni executive for their alleged participation in scheme (see **WTTL**, Feb. 24, page 3).

EXPORT ENFORCEMENT: Indictment against Cho Yan Nathan Man was unsealed Feb. 18 in D.C. U.S. District Court on charges of exporting defense articles to Hong Kong without State licenses and money laundering. Man was arrested in Switzerland in June 2019 and extradited to U.S. just before indictment was unsealed. USML items included pair of Excelis enhanced night vision goggles, Glare Mout Plus, L-3 target pointer illuminator aiming light, and Surefire four-prong muzzle adapter.

KENYA: U.S. wheat from Idaho, Oregon and Washington can now be shipped to Kenya after country's national plant protection organization officially signed Export Certification Protocol, USDA announced Feb. 25. Kenyan wheat market is valued at nearly $500 million annually, department said. Two weeks prior, administration announced intention to initiate trade agreement negotiations with Nairobi under Trade Promotion Authority (see **WTTL**, Feb. 10, page 9).

SECTION 232: As expected, CAFC Feb. 28 affirmed CIT decision on constitutionality of Section 232 steel and aluminum tariffs. CAFC Judge Richard Taranto cited Supreme Court Algonquin decision that declares Section 232 not to violate nondelegation doctrine. "Agreeing with the Court of International Trade that Algonquin controls, we affirm without deciding what ruling on the constitutional challenge would be proper in the absence of Algonquin," he wrote for three-judge panel in nonprecedential opinion. Supreme Court in June denied American Institute for International Steel (AIIS) and two members' petition for writ of certiorari before CAFC judgment (see **WTTL**, July 1, page 9).

TRADE PEOPLE: National Association of Manufacturers (NAM) VP Linda Dempsey left organization for private sector, NAM President and CEO Jay Timmons announced Feb. 21. Dempsey had been in post since September 2012.