

Vol. 29, No. 32

August 10, 2009

DHL Pays \$9.44 Million to Settle BIS, OFAC Charges

Express carrier DHL reached a joint settlement Aug. 6 with the Bureau of Industry and Security (BIS) and Treasury's Office of Foreign Assets Control (OFAC) to pay a \$9,444,744 civil fine to settle charges for shipments to Iran, Sudan and Syria. The settlement avoids possible fines of more than \$350 million for the alleged failure to maintain records of shipments and aiding and abetting shipments that allegedly violated U.S. trade sanctions on the three countries.

The BIS charges involved eight shipments from June 2004 to September 2004 of items subject to the Export Administration Regulations (EAR) from the U.S. to Syria, plus 90 exports from May 2004 to November 2004 for which DHL failed to retain air waybills and other required documents. OFAC accused the carrier of four unlicensed exports to Sudan and 64 unlicensed exports to Iran between 2002 and 2007 and failing to maintain records for 32,228 shipments to Iran.

In its Prepenalty Notice to DHL, OFAC said the alleged violations warranted fines totaling \$323,098,000. Nonetheless, the agency said it balanced aggravating and mitigating factors and proposed a fine of \$10,494,160. The mitigating factors were DHL's cooperation in the investigation, improvements made in its compliance program and its willingness to waive the statute of limitation. In its proposed Charging Letter, BIS didn't suggest a total fine, but said each of its charges were subject to a fine of \$250,000. As part of the negotiations that led to the reduced fine, DHL agreed to hire an unaffiliated third-party expert to conduct annual external audits for three years. Copies of the audits will go to BIS along with copies of air waybills and export documentation for any shipment that may suggest a potential violation.

In a statement, DHL noted that for "all the transactions cited by OFAC and BIS, DHL Express' role was to transport packages for its customers." It also pointed out that each year it handles millions of transactions worldwide and said the cited shipments involved delivery of correspondence, personal items or consumer goods. "The U.S. government has not alleged that DHL transported shipments of strategic sensitivity to these countries," the statement added.

What's Obama's Option C in Chinese Tire Safeguard Case?

When both Option A and Option B are unpalatable, past administrations often came up with Option C to resolve thorny trade disputes. President Obama's aides are likely searching for a third way now to satisfy the United Steelworkers Union's request for increased tariffs on Chinese tire imports under the pending Section 421 safeguard case, while not adopting measures that



some consider protectionist just one week before he meets with Chinese President Hu Jintao and other world leaders at the G-20 meeting in Pittsburgh on Sept. 24. Option C will have to allow Obama to offer some relief to the union from Chinese imports and claim he is taking a tougher tack on trade than President Bush, who rejected four Section 421 cases that reached his desk. At the same time, it can't cut off all low-cost Chinese tire exports to the U.S.

Even the International Trade Commission (ITC) staff report in the case projected small benefits for the U.S. tire industry and U.S. jobs from the commission's proposed relief of three years of increased tariffs, starting at 55% in the first year (see **WTTL**, July 6, page 2). Obama could offer a smaller, mostly symbolic, tariff or try to come up with trigger-price mechanism that would speed up tariff reductions, if prices or volumes meet pre-set points. With a rebounding economy, car and tire sales could increase even after the Cash-for-Clunkers program ends.

Ahead of a Aug. 7 hearing held by the U.S. Trade Representative's (USTR) office on what advice to give Obama, both the Steelworkers and Chinese exporters embarked on intensive public relations campaigns trying to sway public and administration opinion on the case. During dueling press conferences Aug. 5, representatives of Chinese tire exporting companies and officials of the Steelworkers Union quoted conflicting statistics on whether tire imports from China have been rising or falling this year. They also cited opposing economic projections on the number of jobs that will be gained or lost in tire manufacturing and distribution.

Mary Xu, deputy secretary general of the China Rubber Industry Association, who spoke for a group of nine Chinese industry representatives in Washington to lobby against 421 restrictions, told reporters that 100,000 Chinese jobs could be lost if tariffs were raised on tire imports. She also stressed that the ITC finding of injury to the U.S. industry did not say Chinese imports were being trade unfairly. Xu conceded that U.S. action under Section 421 was permitted under China's accession agreement to the World Trade Organization (WTO). "It is legal, but legal does not make it right," she said.

Steelworkers' President Leo Gerard said he feels confident Obama will agree to impose tariffs on tire imports based on statements the president made during the presidential campaign and afterward about Section 421. Gerard told reporters that the case involved "illegally imported Chinese tires." He also suggested a link between Chinese tires and counterfeit and unsafe goods that have been coming from China. Kenneth Button of Economic Services, Inc., rebutted a report circulated by Chinese tire exporters claiming import relief would cost the U.S. 25,000 jobs. He questioned the report's "economic meaningfulness" and criticized it for not providing its economic model and not explaining how its figures were derived.

CCI Fined \$18.2 Million for FCPA Violations

It's the fourth shoe to drop but may not be the last. Control Components, Inc., (CCI), of Rancho Santa Margarita, Calif., pleaded guilty July 31 to violating the Foreign Corrupt Practices Act (FCPA) and the Travel Act and agreed to pay an \$18.2 million fine. Two former employees of the firm have already pleaded guilty to related charges and six other ex-employees were indicted on FCPA charges in April (see **WTTL**, April 13, page 4).

In its plea agreement with Justice, CCI, a subsidiary of United Kingdom's IMI, pleaded guilty to a three-count criminal information. In addition to the fine, it agreed to create, implement and maintain a comprehensive antibribery compliance program; retain an independent compliance monitor who for a three-year period will review the design and implementation of CCI's antibribery compliance program and make periodic reports to CCI and Justice.

The firm also will serve three years on organizational probation and continue to cooperate with Justice's continuing investigation. CCI designs and manufactures service control valves for use in the nuclear, oil and gas sectors and power generation. According to charges filed in the

Santa Ana, Calif., U.S. District Court, CCI paid bribes to numerous officers and employees of state-owned and privately-owned customers around the world, including in China, Korea, Malaysia and the United Arab Emirates to obtain or retain business. It paid approximately \$4.9 million in bribes in violation of the FCPA and approximately \$1.95 million in bribes in violation of the Travel Act, the government charged. Bribes were paid to officials at state-owned entities, including Jiangsu Nuclear Power Corp. (China), Guohua Electric Power (China), China Petroleum Materials and Equipment Corp., PetroChina, Dongfang Electric Corporation (China), China National Offshore Oil Corporation, Korea Hydro and Nuclear Power, Petronas (Malaysia) and National Petroleum Construction Company (United Arab Emirates).

Industry Pushes for Pact on Environmental Goods, Services

U.S. exporters of environmental goods and services want WTO talks to start now on an Environmental Goods and Services Agreement (EGSA) without waiting for the completion of the Doha Round. To push the idea of a separate and earlier EGSA deal, the National Foreign Trade Council (NFTC) has established a trade and climate working group, which will be chaired by Jeremy Preiss of United Technologies Corp. Preiss told reporters Aug. 3 that an EGSA will be “beneficial politically” because it would give the Obama administration the chance to support a trade deal that also fosters environmental protection and addresses climate change. “It is a no-regrets initiative,” he said.

An EGSA could be modeled on the WTO Information Technology Agreement (ITA) reached in the 1990s to cut tariffs on high-tech goods. Not all members of the WTO would have to agree on the deal for it to take effect. An agreement could go into effect once a “critical mass” of exporters and importers of these products signed on. Supporters of an EGSA, however, recognize that there is resistance to spinning off a major industrial sector from the Doha talks and putting it on a separate track.

Justice FCPA Advisory Allows Donation of Equipment

The Justice Department Aug. 3 advised an unnamed medical device manufacturer that the department would not consider it a violation of the Foreign Corrupt Practices Act (FCPA) for the company to donate 100 pieces of its equipment to government-run health facilities in a foreign country to allow for trial use of the equipment. “This is because, based on Requestor’s representations, the proposed provision of 100 medical devices and related items and services fall outside the scope of the FCPA in that the donated products will be provided to the foreign government, as opposed to individual government officials, for ultimate use by patient recipients selected in accordance with specific guidelines,” the Justice advisory opinion stated.

According to the advisory opinion, the medical device company had explained to Justice that its representatives had met in March 2009 with a senior official of the foreign government who described the government’s plan to buy the medical devices and resell them at subsidized prices to patients as part of a nationwide health program. The official said all medical device firms would be allowed to participate in tender offers to the government, but only one device would be endorsed by the government. The devices and related services cost \$19,000 each for a total of \$1.9 million for all 100 units.

“Because the foreign government is not familiar with the performance of Requestor’s devices, the Senior Official advised Requestor that in order for Requestor’s devices to be endorsed by the government, they would need to be evaluated by the government,” Justice explained. “The Senior Official asked Requestor to provide sample devices to government health centers for evaluation of the technology, measured outcomes, and feedback from the top physicians at each center following the use of the devices in patients. The foreign government and Requestor jointly determined that the optimal sample size for such a study was 100 units distributed

among ten experienced health centers in the country,” it noted. The facilities that will receive the devices will be selected by a group of health professionals from government lists of participating health centers. Close family members, including immediate relatives, nieces, nephews, cousins, aunts, and uncles, of the government agency’s officers or employees, working group members or employees of the health centers will be ineligible to be part of the program unless the employees hold low-ranking positions, clearly meet criteria for participation and are more suitable candidates than other candidates.

* * * **Briefs** * * *

PULUNGAN: Justice July 29 asked Seventh Circuit to rehear its June 15 decision to throw out conviction of Doli Syarief Pulungan on export control violations (see **WTTL**, June 29, page 2).

D-TRADE 2: As of Aug. 7, 11:00am EST, DTrade 1 was no longer available. “All Industry must utilize the DTrade 2 to submit new license applications. Please note, legacy DTrade 1 licenses and submission tracking will not be available via DTrade 2,” DDTC notice said.

BODY ARMOR: DDTC in Aug. 6 Federal Register amended ITAR to create license exemption for “temporary export of body armor for exclusive personal use to destinations not subject to restrictions under the ITAR Sec. 126.1 and to Afghanistan and Iraq under specified conditions.”

EXPORT ENFORCEMENT: New Haven, Conn., U.S. District Judge Janet Bond Arterton July 31 sentenced Yi Chieh Yen, also known as Venessa Chu, to one day in prison and three years probation, including three months home confinement, for smuggling pair of USML night-vision goggles to Taiwan. Chu, who had pleaded guilty to charge, was also fined \$3,000. Justice had asked judge to sentence her to 10 to 16 months in jail or, at minimum, five months in prison and five months in home confinement. Chu is Taiwanese living in U.S. with husband and son. In brief, her lawyer said, “This is a case about an immigrant woman who leads an exemplary life and who has made a tragic error of judgment.” He said her guilty plea “triggers lifetime collateral consequences – not least the possibility of deportation or denial of citizenship.”

MAURITIUS: U.S. and Mauritius Aug. 5 announced plans to launch talks on bilateral investment treaty (BIT). Because Obama administration is conducting review of model BIT, talks “before conclusion of the review will proceed at the technical level,” USTR statement said.

AES: Census in Aug. 5 Federal Register amended Foreign Trade Regulations to eliminate requirement to report Social Security Number (SSN) as identification number when registering to file and filing electronic export information in AES or AESDirect. SSN is used as identification number principally by filers who are individuals. “Upon implementation of this Interim Final Rule, if the USPPI or the U.S. authorized agent who resides or has an office located in the United States does not have an EIN, the USPPI, or U.S. authorized agent must obtain an EIN through the Internal Revenue Service’s Web site,” Census explained.

CUSTOMS FACILITATION: Finance Committee Chairman Max Baucus (D-Mont.) and Ranking Member Charles Grassley (R-Iowa) introduced Customs Facilitation and Trade Enforcement Reauthorization Act of 2009 (S. 1631) to reassert CBP’s trade role. Bill would statutorily reauthorize CBP and ICE, which operate now under discretionary authority. It also would create new high-level positions, including principal deputy commissioner and assistant commissioner of trade, devoted exclusively to customs facilitation and enforcement of U.S. trade laws. Measure would direct CBP to provide additional trade benefits to C-TPAT participants.

EXPORT ADMINISTRATION ACT: Rep. Brad Sherman (D-Calif.) July 31 reintroduced his Export Control Improvements Act (H.R. 3515) to provide full law enforcement powers to BIS. Measure would also require Commerce to revise AES to provide error message to filers if item being exported requires license and no license has been granted. Bill would give Commerce authority to identify “Destinations of Possible Diversion Concern” and impose special licensing requirements for exports to those countries. In nonbinding statement of policy, legislation says “strategic export controls are in need of a comprehensive review.”