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Mass. Manufacturer Settles FCPA Charges

Alere Inc., manufacturer of rapid diagnostic tests based in Waltham, Mass., agreed Sept. 28 to pay the Securities and Exchange Commission (SEC) \$13 million in civil penalty, disgorgement and prejudgment interest to settle multiple financial charges, including improper payments to foreign officials.

Between 2011 and 2013, Alere's subsidiaries in Colombia and India "indirectly made improper offers and payments to foreign government officials for the purpose of making sales of its products. Profits from the sales associated with the improper offers and payments totaled approximately \$3.3 million," the SEC order noted.

In Colombia, subsidiary Biosystems made improper payments of approximately \$275,000 to government health officials in order to obtain business. "Biosystems disguised these improper payments as payments for purported consulting services... In fact, none of the recipients of these improper payments performed legitimate consulting services for Biosystems sufficient to justify the amount of payments received," it said.

Local government officials informed the India distributor that if they were paid a 4% commission, they would increase the orders from 200,000 to 1,000,000 testing kits, the SEC noted. Alere India's VP approved the commission, and the distributor "proceeded to incorporate the increased commission amount into the prices for the test kits," it added.

"We have cooperated with the SEC and we are pleased to fully resolve this matter," Alere said in a statement. The settlement includes penalty of \$9.2 million, disgorgement of \$3,328,689, and prejudgment interest of \$495,196, the company noted.

Commerce Slams Bombardier with Preliminary Determination

In a move that angered Canada and the United Kingdom (UK), Commerce Sept. 26 announced a preliminary subsidy rate of 219.63% in the countervailing duty (CVD)

investigation of 100- to 150-seat large civil aircraft from Canada, using information from Bombardier, as well as the governments of Canada, Quebec and the UK.

“We are clearly very disappointed with this initial determination. Boeing’s position in this case is unjustified and not what would be expected of a long-term partner to the UK,” James Brokenshire, UK Secretary of State for Northern Ireland, said in a statement following the announcement of the preliminary tariff levied against Bombardier’s C-Series jets. Bombardier has a factory in Northern Ireland employing 4,200 workers.

As expected, Canada also disagreed with the determination (see **WTTL**, Sept. 25, page 9). “While this is only a preliminary stage in the investigation, and no duties can be imposed until the final investigations are completed, Canada strongly disagrees with the antidumping and countervailing duty investigations into imports of Canadian large civil aircraft. This is clearly aimed at eliminating Bombardier’s C Series aircraft from the U.S. market,” Canadian Foreign Affairs Minister Chrystia Freeland said in a statement.

“Components of the Bombardier C Series are supplied by American companies, directly supporting almost 23,000 well-paying jobs in many U.S. states, including Connecticut, Florida, New Jersey, Washington, New York, Ohio, Kansas, Pennsylvania and Colorado. Boeing’s petition is threatening these U.S. jobs,” she added.

The administration defended the move. “The U.S. values its relationships with Canada, but even our closest allies must play by the rules,” Commerce Secretary Wilbur Ross said in a statement. “The subsidization of goods by foreign governments is something that the Trump Administration takes very seriously, and we will continue to evaluate and verify the accuracy of this preliminary determination,” he added.

To add insult to injury, Bombardier now must also fend off a challenge from Brazil. At its meeting Sept. 29, World Trade Organization’s (WTO) Dispute Settlement Body (DSB) agreed to establish a panel to rule on Brazil’s complaint that Canadian support programs that favor Bombardier violate WTO rules. The U.S. reserved third-party rights to participate as the panel moves forward.

NAFTA Partners Conclude Talks on Small Business

NAFTA partners made significant progress in the area of small and medium-sized enterprises (SMEs), “effectively concluding negotiations on that chapter pending specific outcomes in related discussions,” U.S. Trade Representative (USTR) Robert Lighthizer, Canadian Foreign Affairs Minister Chrystia Freeland and Mexican Economy Secretary Ildefonso Guajardo said in a joint statement Sept. 27 after the third round of NAFTA negotiations concluded in Ottawa, Canada. But major challenges remain.

Ildefonso and Freeland both complained that the U.S. has yet to submit formal proposals in several key areas, including rules of origin (see **WTTL**, Sept. 25, page 1). Lighthizer said the U.S. will hopefully have a draft text on that chapter ready for the next round, which

will take place in Washington Oct. 11-15. In addition to SMEs, negotiators made progress on the competition chapter with talks expected to conclude on that chapter prior to the next round. Showdowns are expected over Canadian dairy rules, Mexican labor, and the U.S. wish to eliminate Chapter 19 dispute-settlement provisions.

Biologics could be another area of contention. Sen. Orrin Hatch (R-Utah), who fought hard for 15 years' data protections for biologics in the Trans-Pacific Partnership (TPP), said negotiators need to establish at least 12 years in the NAFTA deal. "I think taking it below 12 is flirting with disaster," Hatch told reporters on the sidelines of an event sponsored by the American Creative Technology and Innovative Organizations Network (ACTION for Trade).

"These are tough negotiations and we're just going to have to see," said Hatch, who said he's confident that Lighthizer will "bring about improved IP [intellectual property] regimes" in North America.

It's looking less likely that the deal will be wrapped by the end of the year. Asked by reporters if she thinks the U.S. really wants a deal, Freeland demurred. "I do not have the super power that allows me to look into the heart of a counter party and divine their true intention," she said after the joint appearance.

Freeland also took a jab at the current U.S. administration, in light of Commerce's ruling on Bombardier (see related story, page 1). "We all know that this is an administration that is openly protectionist. It's an administration that speaks quite openly of the America-first policy. That is the reality Canada has to deal with," she said.

Separately, the USTR's office in the Federal Register Sept. 26 requested comments on an environmental review of the NAFTA renegotiation. Comments on topics that should be included in the scope of the environmental review, including "potential positive or negative environmental effects that might result from the trade agreement and potential implications for U.S. environmental laws and regulations," are due Nov. 27.

State's Second in Command Defends Department Reorganization

Testifying before the House Foreign Affairs Committee Sept. 26, Deputy Secretary of State John Sullivan defended the department's reorganization efforts that seek to cut \$5 to \$10 billion in State spending as "employee-led." Sullivan also acknowledged the slow-going in filling positions at State.

Rep. Lee Zeldin (R-N.Y.) questioned Sullivan as to when undersecretary and assistant secretary vacancies will be filled. Well below 50% of the positions are filled, said Sullivan, who admitted "it's far fewer than it should be and we are not pleased with that situation." He acknowledged that many of the nominees have only recently been submitted to the Senate.

“We have 30 nominees that are pending now before the Senate Foreign Relations committee. We have in the pipeline, so to speak, individuals who are undergoing vetting for many more positions. My hope is, subject to the Senate calendar, that we will get the vast majority of these positions filled by the end of November or the beginning of December. We’re behind the curve and we should be ahead of the curve and we’re doing all we can to catch up,” said Sullivan.

In his opening statement, Sullivan said that the reorganization was “employee-led” to reduce red tape that the thousands of employees surveyed said they encountered. But Democrats remained skeptical. In a heated exchange, Rep. Gerry Connolly (D-Va.) expressed the anxieties felt by some longtime State employees.

“If you’re going to have a bottom-up reorganization for State Department and USAID and they already know there is going to be a third cut [per the proposed budget] leading to the attrition or layoff of somewhere probably north of 2,000 employees, I’d say that puts a little damper on my enthusiasm ... because I’m worried about my own job security and I wonder how sincere the effort is if in advance I’m already told what the parameters are,” said Connolly.

Sullivan said he’s doing his best to quell uncertainty by meeting with employees and initiating regular email outreach. However, the deputy had few specifics to share with the committee, including no mention of State’s role in export controls, which only added to the skepticism.

In Sullivan’s corner was Rep. Ann Wagner (R-Mo.), who served as the U.S. ambassador to Luxembourg under President George W. Bush. “I am well aware that State Department is a bloated bureaucracy and reassessing everything from hiring to diplomatic programming to cutting unnecessary departments is critical to advancing U.S. diplomacy into the 21st century. I believe that we can balance State Department’s checkbook while promoting American leadership,” she said.

Cabinet Secretaries Press China on Trade

Lowering tariffs and non-tariff barriers, reducing protectionism and protecting intellectual property rights are among the trade issues the current administration seeks to target in discussions with China, Commerce Secretary Wilbur Ross said Sept. 27 in Hong Kong. Secretary of State Rex Tillerson made his way to China a day later following dialogue with Chinese officials in Washington.

“We do need major change, and I hope and I believe that we’ve made that clear to the Chinese government, because the relationship is too lopsided at present,” Ross told reporters. Ross, accompanied by U.S. Ambassador to China Terry Branstad, met with senior Chinese officials to hammer out details of an upcoming trade mission to China in November that will coincide with President Trump’s visit to the region.

In a readout of the meeting, Commerce said that Chinese officials committed to further market access and agreed that trade frictions can be resolved through negotiation. However, Chinese officials raised concerns about U.S. export controls and the ongoing Section 301 investigation into China's intellectual property rights (IPR) policies (see *WTTL*, Aug. 21, page 1).

In turn, Ross "relayed the ongoing concerns of the U.S. business community at forced technology transfers, data localization, and other [IPR] issues," Commerce noted. Despite Ross' criticism that "China is one of the most protectionist" countries, he said he is optimistic about the future of trade between the two super powers.

Tillerson and Chinese Vice Premier Liu Yandong co-chaired the first U.S.-China Social and Cultural Dialogue Sept. 28 in Washington. That same day, Tillerson traveled to Beijing to meet with his Chinese counterpart Foreign Minister Wang Yi, State Councilor Yang Jiechi and President Xi Jinping. According to State, the multi-day meetings covered North Korea's nuclear threats and trade and investment. The trip was scheduled to conclude Oct. 1.

"This is building on Secretary of Commerce Ross's visit earlier this week – we're working with China to rebalance our trade and our lopsided relationship in that realm and ensure that China provides fair treatment to U.S. companies in ways that create U.S. jobs. Secretary Tillerson's visit to China reaffirms the administration's commitment to further broaden and enhance U.S. economic and security interests in the Asia Pacific region," State Spokesperson Heather Nauert said during the daily press briefing Sept. 28.

Don't Implement New Cybersecurity Law, U.S. Tells China

The U.S. urged China not to implement a new cybersecurity law out of fears it will damage global trade in services, according to a document published Sept. 26 by the World Trade Organization (WTO). Meanwhile, members aired old grievances at the WTO's Dispute Settlement Body (DSB) meeting Sept. 29.

The U.S. says a new cybersecurity law that China implemented in June would impose local data storage requirements and security assessments that would result in severely restricted cross-border data transfers. "China's measures would disrupt, deter, and in many cases, prohibit cross-border transfers of information that are routine in the ordinary course of business," the U.S. wrote in a communication submitted to the WTO's Council for Trade in Services. "We request that China refrain from issuing or implementing final measures until such concerns are addressed."

At the DSB meeting Sept. 29, Antigua and Barbuda railed against the U.S. for failing to offer "fair and equitable terms" to settle a dispute regarding cross-border supply of gambling (see *WTTL*, July 24, page 3). The U.S. said in November 2016 it was reviewing a settlement offer, but the island nation's Ambassador Ronald Sanders said they have yet to receive a response. Given the devastation of Hurricane Irma, Antigua and Barbuda is in

need of the restitution, said Sanders. The U.S. expressed sympathy regarding the hurricane destruction and said it was committed to resolving the matter. Yet again, the U.S. said it could not agree to launch a selection process to fill vacancies on the WTO's Appellate Body until its concerns about former judges continuing to hear cases is addressed (see **WTTL**, Sept. 4, page 6).

*** * * Briefs * * ***

PET RESIN: DAK Americas, LLC, Indorama Ventures USA, Inc., M&G Polymers USA, LLC, and Nan Ya Plastics Corporation, America filed antidumping duty petition Sept. 26 with ITA and ITC against imports of certain polyethylene terephthalate (PET) resin from Brazil, Indonesia, Korea, Pakistan and Taiwan. ITC found in March 2016 U.S. industry is materially injured by dumped PET resin imports from Canada, China, India and Oman and subsidized imports from China and India (see **WTTL**, April 4, 2016, page 11).

PTFE RESIN: Chemours Company FC LLC Sept. 28 filed antidumping and countervailing duty petitions with ITA and ITC against imports of polytetrafluoroethylene (PTFE) resin from China and India.

BRASS SHEET AND STRIP: In 4-0 "sunset" votes Sept. 28, ITC said revoking antidumping duty orders on imports of brass sheet and strip from France, Germany, Italy and Japan would renew injury to U.S. industry.

EXPORT ENFORCEMENT: Millitech of Northampton Mass., agreed Sept. 25 to pay BIS \$230,000 civil penalty to settle 18 charges of exporting active multiplier chains to China and Russia without required licenses between October 2011 and July 2014. Active multiplier chains were classified under ECCN 3A001, controlled on national security and anti-terrorism grounds, and valued at approximately \$364,947. Of penalty, \$50,000 will be suspended for two years then waived if Millitech commits no further violations. Company became part of Smiths Interconnect in 2005.

FCPA: Alstom Power executive Frederic Pierucci was sentenced Sept. 25 in New Haven, Conn., U.S. District Court to 30 months in prison less time served on charges of bribing Indonesian officials to secure power contracts. He pleaded guilty in July 2013 to FCPA violations. Former executive William Pomponi died in May 2016 while awaiting sentencing on related charges (see **WTTL**, July 18, 2016, page 9). Lawrence Hoskins, former Alstom senior VP in Asia, is awaiting trial, and David Rothschild, former regional sales VP at Connecticut subsidiary, pleaded guilty in November 2012 and awaits sentencing. Japanese trading company Marubeni agreed to pay \$88 million criminal fine in March 2014. GE completed acquisition of Alstom's power and grid businesses in November 2015.

MORE FCPA: Amadeus Richers, former director of Cinergy Telecommunications, was sentenced Sept. 25 in Miami U.S. District Court to time served followed by three years' supervised release for conspiracy. He pleaded guilty in July, six years after federal indictment on charges of FCPA violations, wire fraud and money laundering (see **WTTL**, July 24, page 10). Richers was arrested in February after being extradited from Panama. Richers, Cinergy, its president, plus president of Florida-based Telecom Consulting Services Corp. and two former Haitian government officials were charged in July 2011. Indictment alleged Cinergy and its related company, Uniplex Telecommunications, paid more than \$1.4 million to shell companies to bribe Haiti Teleco officials. Charges against Cinergy itself were dismissed in February 2012.

NORTH KOREA: Treasury's Office of Foreign Assets Control (OFAC) Sept. 26 designated eight North Korean banks and 26 individuals linked to North Korean financial networks under recent Executive Order 13810 and previous orders (see **WTTL**, Sept. 25, page 2). Individuals are North Korean nationals operating in China, Russia, Libya and UAE who act as representatives of North Korean banks, OFAC said. Agency also identified two banks as part of North Korean government. "These individuals were part of North Korea's ongoing attempts to evade sanctions in order to help the regime raise and move funds. We are calling them out and working tirelessly to put an end to this practice," Sigal Mandelker, Treasury under secretary for terrorism and financial intelligence, told Senate Banking Committee Sept. 28.

TRADE PEOPLE: President Trump Sept. 28 announced intent to nominate Dennis M. Devaney of Michigan and Randolph J. Stayin of Virginia to be ITC commissioners. Devaney is currently practice team leader and counsel with Varnum law firm. Stayin is consultant with "40 plus years" experience in law practice focused on international trade policy and trade regulation, White House noted... White House also announced intent to nominate Nazakhtar Nikakhtar to be Commerce assistant secretary for industry and analysis. Nikakhtar is currently partner at Cassidy Levy Kent (USA) LLP. Before entering private practice, she served at ITA as special assistant to senior enforcement coordinator of China/non-market economy office.

MORE TRADE PEOPLE: AFL-CIO Deputy Chief of Staff Thea Lee will be next president of Economic Policy Institute (EPI), replacing Lawrence Mishel, group announced Sept. 26. She will join group Nov. 1, Mishel will step down Jan. 1, 2018. Lee previously served as international trade economist at EPI from 1991 to 1997. "Thea Lee and I have worked together for a policy agenda to protect working people throughout the years, including opposing trade deals that undercut U.S. jobs and wages," Mishel said in statement.

SOLAR: In prehearing brief filed Sept. 28, attorneys for SolarWorld Americas argued for both temporary tariff and quota on crystalline silicon photovoltaic (CSPV) cells and modules. "Both remedies are permitted under the statute, and both remedies are necessary to address the serious injury resulting from imports, and will allow the domestic industry to positively adjust to import competition." Brief argued "remedy must be implemented for four years to allow domestic producers to make long-term capital improvements." ITC will hold remedy hearing in global safeguard petition Oct. 3 (see **WTTL**, Sept. 25, page 9).

JAPAN: Japan's Prime Minister Shinzo Abe dissolved Japan's government Sept. 28 to pave way for snap elections Oct. 22. Abe hopes election will give him new mandate.

RUSSIA: Senate Sept. 28 unanimously confirmed by voice vote Jon Huntsman, Jr. to be U.S. ambassador to Russia. He previously served as ambassador to China from 2009-2011 and Singapore 1992-1993. For past four years he served as Atlantic Council chairman. Gen. James L. Jones, Jr. will serve as interim chair while Council searches for Huntsman's replacement.

EX-IM BANK: U.S. Chamber of Commerce "strongly opposes" nomination of former Rep. Scott Garrett to serve as Export-Import Bank (Ex-Im) chairman, Suzanne Clark, Chamber senior executive VP, wrote in letter to Sens. Mike Crapo (R-Idaho) and Sherrod Brown (D-Ohio) Sept. 25. "During his tenure in Congress, Mr. Garrett was among the most vocal opponents of the Bank and a key contributor to the efforts to force a lapse in Ex-Im's charter. [Since his nomination], Garrett has failed to in any way publicly describe any change of heart towards Ex-Im to explain why he now wants to lead the organization that he spent so much of his career trying to shutter, nor has he committed to returning Ex-Im to a fully functional state," wrote Clark. Chamber strongly

supports nominations of Kimberly Reed, Claudia Slacik, Judith Delzoppo Pryor and Spencer Bachus (see **WTTL**, Sept. 25, page 7).

FIREARMS: Office of Management and Budget (OMB) received parallel DDTC and BIS proposed rules to transfer commercial firearms and related ammunition from U.S. Munitions List (USML) Categories I, II and III to Commerce Control List for regulatory review Sept. 26 (see **WTTL**, Sept. 11, page 1).

CUBA: State Sept. 29 ordered home non-emergency personnel and family from U.S. Embassy in Havana over mysterious “attacks” that affected health of diplomatic staff. Department also issued travel warning advising U.S. citizens to avoid travel to island. Sen. Patrick Leahy (D-Vt.), who supports lifting embargo, responded to order. “The health and safety of our diplomats and their families is the overriding concern here,” he said in statement. “Whoever is doing this obviously is trying to disrupt the normalization process between the United States and Cuba. Someone or some government is trying to reverse that process,” Leahy added. President reversed parts of U.S. Cuba policy in June (see **WTTL**, June 19, page 1).

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