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Md. Transport Exec Found Guilty on Bribery Charges

A federal jury Nov. 22 convicted Mark Lambert, the former president of nuclear cargo delivery firm Transport Logistics International Inc. (TLI) of Fulton, Md., on charges of bribing an official at a subsidiary of Russia's State Atomic Energy Corporation to obtain and retain business. Lambert was found guilty in Greenbelt U.S. District Court of violating the Foreign Corrupt Practices Act (FCPA), conspiracy to violate the FCPA and wire fraud. Sentencing is set for March 9, 2020.

TLI agreed in March 2018 to pay a \$2 million criminal penalty under a three-year deferred prosecution agreement (DPA) to settle related charges (see **WTTL**, March 19, 2018, page 5). TLI co-president Daren Condrey pleaded guilty in June 2015 to conspiracy to violate the FCPA and wire fraud and awaits sentencing.

In order to conceal and further the scheme, Lambert and Condrey "used the terms 'remuneration' and 'commission' when documenting the corrupt and fraudulent payments on an internal spreadsheet and when communicating with unknowing [TLI] employees who unwittingly processed the corrupt and fraudulent payments to offshore accounts," the indictment said.

JSC Techsnabexport (TENEX) supplied uranium and uranium enrichment services to nuclear power companies throughout the world on behalf of the Russian government, according to the January 2018 Lambert indictment. In addition, TENEX was indirectly owned and controlled by, and performed functions of, the Russian government, it noted. In December 2015, TENEX official Vadim Mikerin was sentenced to 48 months in prison for conspiracy to commit money laundering involving FCPA violations after pleading guilty in August 2015.

President Signs Hong Kong Export Bills

Despite veto threats, the president Nov. 27 signed two bills intended to test China's democracy in Hong Kong, perhaps complicating ongoing trade talks between the U.S. and

China. Both bills passed with either overwhelming majorities or in unanimous voice votes (see **WTTL**, Nov. 25, page 1). One, the Hong Kong Human Rights and Democracy Act of 2019 (S.1838) would require the president to annually report to Congress on Hong Kong's enforcement of U.S. export controls, including whether items of U.S. origin have been used for mass surveillance in China and whether Hong Kong has been used to evade sanctions on North Korea or Iran. The second (S. 2710) would ban the U.S. export of crowd control munitions and equipment, including tear gas, rubber bullets and handcuffs, to the Hong Kong Police Force for one year.

In a press statement, President Trump said, "I signed these bills out of respect for President Xi, China, and the people of Hong Kong. They are being enacted in the hope that Leaders and Representatives of China and Hong Kong will be able to amicably settle their differences leading to long term peace and prosperity for all."

At the same time, he hedged on the bills' implementation. "Certain provisions of the Act would interfere with the exercise of the President's constitutional authority to state the foreign policy of the United States. My Administration will treat each of the provisions of the Act consistently with the President's constitutional authorities with respect to foreign relations," the president said in a separate statement.

Bill sponsor Sen. Jeff Merkley (D-Ore.) tweeted. "Glad to see the President follow Congress's bipartisan, unanimous lead by signing my bill into law to ban the export of crowd control munitions like rubber bullets and tear gas. Our country will not stand by as pro-democracy protestors are silenced using American products."

Not surprisingly, Chinese officials denounced the bills. "This is a severe interference in Hong Kong affairs, which are China's internal affairs. It is also in serious violation of international law and basic norms governing international relations. The Chinese government and the people firmly oppose such stark hegemonic acts," the Foreign Ministry spokesperson said in a statement.

"China will take strong counter-measures in response to the U.S. behavior that interferes in China's internal affairs and undermines China's interests. No one shall underestimate China's determination in safeguarding national sovereignty, security and development interests. Nor shall they misjudge China's resolve in implementing the 'one country, two systems' principle and in upholding prosperity and stability in Hong Kong," he added.

NAFTA Negotiators Push Forward with Talks

Maybe it really is close. Despite the Thanksgiving holiday, union opposition and the legislative calendar, Mexican, Canadian and U.S officials met the week of Nov. 25 to iron out details of the U.S.-Mexico-Canada trade agreement (USMCA).

House members left town Nov. 21 for the holiday without formal agreement on USMCA. Despite progress, House Speaker Nancy Pelosi was skeptical about the legislative

calendar for the rest of the year (see *WTTL*, Nov. 25, page 3). However, Pelosi appeared more optimistic a few days later. “We are within range of a substantially improved agreement for America’s workers. Now, we need to see our progress in writing from the Trade Representative for final review,” Pelosi said Nov. 25.

After Mexico announced it had completed all of its labor commitments, U.S. Trade Representative (USTR) Robert Lighthizer met with Canadian Deputy Prime Minister Chrystia Freeland and Mexican Undersecretary of Foreign Relations Jesus Seade in Washington Nov. 27 “to discuss recent developments in the push to enact the USMCA,” the USTR’s office tweeted.

Following that meeting, Seade stressed that Mexico does not agree with establishing any mechanism outside of the dispute settlement system. NAFTA “has a dispute settlement system, the World Trade Organization has one, Mexico’s agreement with the European Union has one, all these agreements have a dispute resolution system, within which there are experts who assess the problems and gather evidence. We will see how to do things correctly as part of the normal conduct of how to resolve things,” he noted.

Seade then met with Prime Minister Justin Trudeau and Freeland in Ottawa Nov. 29. They “reaffirmed the strength of the Canada-Mexico partnership and both countries’ commitment to implementing the deal. They agreed on the importance of continued strong relations for the benefit of people, jobs, and businesses in both countries,” according to the Canadian government website.

At a press conference Nov. 25, Mexican President López Obrador said that “Mexico has made good on all the commitments agreed to for its ratification and will send a message to the U.S. Congress this week ‘in good faith, with no intention of interfering, asking that passage of the trade agreement not be postponed or delayed,’” the Mexican Foreign Ministry said. He also said that the USMCA is “a good treaty for all three nations and it should be approved as soon as possible,” the ministry added.

Samsung Heavy Industries Pays \$75 Million for Brazilian Bribes

South Korea-based engineering company Samsung Heavy Industries (SHI) agreed Nov. 22 to pay a \$75 million fine under a three-year deferred prosecution agreement (DPA) to settle charges of violating the Foreign Corrupt Practices Act (FCPA) with a scheme to pay millions of dollars in bribes to Brazilian officials.

From 2007 until 2013, SHI “knowingly and willfully conspired and agreed with others to corruptly provide payments to, and for the benefit of, foreign officials to secure an improper advantage and to influence those foreign officials in order to obtain and retain business with Petrobras, to wit: the sale of an offshore oil drillship to Chartering Company which would then be chartered to Petrobras,” the Brazilian state-owned oil company, the DPA said.

“Prior to executing the agreement with Intermediary Company 1 and Intermediary Company 2, and prior to making the \$20 million in payments pursuant to the agreement, SHI Senior Manager 1 and others became aware that Brazilian Agent 1 would use a portion of the money received from Samsung Heavy Industries to pay bribes to Petrobras officials in association with the chartering of the Option Drillship,” it added.

Under the DPA, SHI will not be required to have a compliance monitor and will instead provide Justice with annual compliance program reports. Half of the fine will be paid within 10 business days to the U.S. government, and the other half will be paid within the next 12 months either to the Brazilian government if a separate resolution is reached with Brazilian authorities or to the U.S. government if no such payment is made to Brazil during that time.

“We deeply regret the company’s involvement in these events, which is contrary to our values and ethical standards,” CEO Joon Ou Nam said in a statement. “Many of the events described in our agreement happened more than a decade ago, and the individuals involved are no longer with the company. Over the past years, we have taken extensive steps, at our own initiative, to strengthen our anti-corruption compliance program to meet the highest standards of compliance and ethics,” Nam added.

Wyden Rejects Treasury’s Response on Halkbank Charges

As the House pursues impeachment involving the president’s role in Ukrainian investigations, lawmakers are looking at other enforcement efforts and the administration’s role in effecting their outcome. In one case, Sen. Ron Wyden (D-Ore.) Nov. 25 was less than satisfied with Treasury’s response to his investigation into the lapses in financial oversight that might have led to violations of U.S. sanctions by Turkish state-owned bank Türkiye Halk Bankasi A.S., aka Halkbank.

Halkbank was indicted Oct. 15 in Manhattan U.S. District Court on charges related to the bank’s participation in a multibillion-dollar scheme to evade U.S. sanctions on Iran by conducting international financial transactions on behalf of the Iranian government and other blocked entities (see **WTTL**, Oct. 21, page 1).

“The Treasury Department does not deny that President Trump tasked Secretary Mnuchin with intervening in the criminal investigation of Halkbank, and the department’s response to my letter raises more questions than it answers,” Wyden said. “These meetings took place while Treasury was supposed to be playing a key role in investigating Halkbank for massive Iranian sanctions violations,” he added.

“Congress needs to know to what extent Donald Trump and his cronies were carrying water for a state-owned Turkish bank and whether they ran the same Ukraine playbook by roping U.S. government officials into their personal scheme,” Wyden said.

A Nov. 20 letter from Treasury Deputy Assistant Secretary Frederick Vaughan to Wyden was ambiguous. “Mnuchin has met with senior officials from the government of Turkey on

multiple occasions to discuss a range of foreign policy and national security issues,” Vaughan wrote. “At some of those meetings, Turkish government officials expressed concern about the impact on Halkbank of U.S. economic sanctions on Iran,” he added.

“As was publicly reported, when Prime Minister Erdogan raised concerns directly with President Trump in April 2019, the President referred the issue to the Executive Branch departments responsible by law for the investigation and enforcement of economic sanctions – the Treasury and DOJ,” Vaughan wrote.

“Treasury is proud of its role as an integral part of the Administration’s maximum pressure campaign against the Iranian regime and administers a robust sanctions program against the Government of Iran and those who act on its behalf. On this and other fronts, federal law entrusts Treasury and DOJ with authority over enforcement of U.S. sanctions,” the department wrote.

Commerce Proposes Process to Protect Supply Chain

Without naming any specific companies or countries, Commerce Nov. 26 proposed rules to implement the president’s May Executive Order (EO) 13873, which is intended to secure the Information and Communications Technology and Services (ICTS) Supply Chain. While the rule sounds straightforward, the effect on industry could be formidable.

“The department is proposing regulations that would implement the terms of the Executive order by establishing a process by which the secretary will determine whether a particular transaction should be prohibited,” the Federal Register notice said. Other agencies, including the Federal Communications Commission (FCC) have already taken steps to protect infrastructure from companies seen as presenting risks to national security, including Huawei and ZTE (see related story, page 6).

Commerce posed specific questions to industry, such as: Are there instances where the Secretary should consider categorical exclusions? Are there classes of persons whose use of ICTS can never violate the Executive order? How best could the Secretary be made aware of changes in factual circumstances, including technology developments, that could render mitigation measures obsolete, no longer effective, or newly applicable? Comments are due Dec. 27.

Observers quickly noted this rule could have wide-ranging impacts on industry. In a series of tweets, Martin Chorzempa, a research fellow at the Peterson Institute, said he “cannot overstate how big a deal this is: proposed rules for ICT supply chain exec order dropped today from [Commerce] would give gov’t unprecedented, sweeping authority over the tech sector. This goes miles beyond Huawei.”

“Industry better step up to suggest guard rails on this, because the disruption to tech supply chains could be devastating. Our best companies could be bogged down in red tape, unable to obtain key inputs,” he added.

Ross has chosen to adopt a fact-specific approach to determine which transactions must be prohibited, or which can be mitigated, according to the requirements in the Executive Order. “The Secretary will use assessments developed by the Secretary of Homeland Security and the Director of National Intelligence pursuant to the Executive Order, among other things, to inform his evaluation of ICTS transactions,” Commerce said.

“While Executive Order 13873 empowers the Secretary immediately to prohibit or mitigate ICTS transactions that pose the risks identified in the Executive Order, the proposed rule sets forth procedures the Secretary will follow, except in instances where the risk of public harm or national security interests require a deviation from such procedures,” the statement continued.

“Although maintaining an open investment climate in information and communications technology, and in the United States economy more generally, is important for the overall growth and prosperity of the United States, such openness must be balanced by the need to protect our country against critical national security threats,” the EO noted.

Justice Joins FCC to Stop Huawei, ZTE

A growing list of Trump administration officials, including the Federal Communications Commission (FCC) Chair Ajit Pai and Attorney General Bill Barr, called for U.S. telecom companies to cease using equipment and services from Chinese IT giants ZTE and Huawei.

The FCC, in a 5-0 vote Nov. 22, all but killed 5G customers using equipment from nations deemed national security risks, such as China. The FCC rule would have a twofold effect: block U.S. rural wireless carriers from accessing a \$8.5 billion U.S. federal fund (USF) if they use Chinese services and equipment and second, require carriers to remove and replace equipment using ZTE and Huawei.

Just days after BIS extended a narrow and temporary General License (GL) authorizing some transactions with Huawei through February, the agency began approving export licenses to the Chinese firm after months of delay and handwringing (see **WTTL**, Nov. 25, page 5). In response to the new licenses, a bipartisan group of 15 senators, including Sens. Chuck Schumer (D-N.Y.) and Tom Cotton (R-Ark.) urged the president to suspend the licenses and notify Congress of any future approvals.

In its Nov. 22 statement, the FCC designated Huawei and ZTE as covered by the new rule. The notice also seeks comment on how to pay for removal and replacement of Huawei and ZTE equipment in their networks. “Both Huawei and ZTE have close ties to the Chinese government and military apparatus and are subject to Chinese laws requiring them to assist with espionage, a threat recognized by other federal agencies and the governments of other nations. The public funds in the FCC’s USF, which subsidizes U.S. broadband deployment and service through four separate programs, must not endanger national

security through the purchase of equipment from companies posing a national security risk,” the FCC warned. In a Nov. 13 letter, Barr joined the FCC decision. In his first public comments on the ZTE and Huawei cases, Barr said Huawei faces two separate criminal cases. One in the Eastern District of New York relating to alleged violations on Iran, bank fraud, and obstruction of justice, among several other criminal charges. In a separate Justice case, in the Western District of Washington, Huawei is being prosecuted for trade secret theft, fraud, and obstruction of justice.

“The grand jury has alleged in that case that Huawei exploited a business relationship with T-Mobile to steal that company’s intellectual property, even sending employees from China to do so when Huawei employees in America proved unwilling or unable to do as Huawei executives in China directed,” Barr argued.

“As to ZTE, it pleaded guilty in 2017 to violating our embargo on Iran by sending approximately \$32 million dollars’ worth of U.S. goods to that country and, when the conduct was exposed, making false statements and obstructing justice in an effort to defeat the Department’s investigation,” he added.

While neither case discusses activities that would directly affect the security of the U.S. telecommunications networks, they are unavoidable in evaluating the trustworthiness of Huawei and ZTE to build networks using federal funds, Barr concluded.

But most rural customers struggle to get wireless connection much less 5G. Because the infrastructure is sparse, the cost is prohibitive and big-name providers are rare, ZTE and Huawei flourished. They provide 25% of the equipment to rural carriers in the gap left by the absence of major U.S. carriers. It has prompted the Rural Wireless Association, which represents the interest of rural carriers to say that it is optimistic about the FCC’s ruling on national security grounds but hopes the FCC will allow continued network service with eventual full replacement funding.

Meanwhile, China responded firmly to the FCC decision. “Prohibiting American carriers from purchasing Huawei and ZTE equipment won't help U.S. network security. On the contrary, it will undermine network services in rural and underdeveloped areas. Relevant U.S. departments are fully aware of that. It begs this question: whose interests are behind those policies that are meant to ‘protect American interests’? And what are those politicians truly after when they formulate those policies to oppress foreign companies at the expense of the interests of American businesses and citizens?” Foreign Ministry Spokesperson Geng Shuang said in his Nov. 25 press briefing.

“Once again we urge the U.S. to stop the pan-security trajectory, stop smears and allegations against China, stop wanton oppression against Chinese companies, and instead provide a fair, just and non-discriminatory environment for their operation in the U.S. A word of advice to some people in the U.S.: if you lock all the doors to seek ‘security,’ you will only find yourself locked out of the world,” Geng said.

* * * **Briefs** * * *

DIGITAL TAX: USTR will announce proposed action against France's 3% digital services tax (DST) under Section 301 investigation Dec. 2, agency announced Nov. 27. Office opened investigation in July, claiming that France is unfairly targeting tax at U.S.-based technology companies. During G-7 meeting in August, U.S. and France celebrated agreement on DST, but specifics were sparse (see **WTTL**, Sept. 2, page 5).

VENEZUELA: OFAC Nov. 26 designated Cuban company Corporacion Panamericana S.A. "for being owned or controlled by, or having acted for or on behalf of," Cuban state-run oil import and export company Cubametales. OFAC designated Cubametales in July for continued importation of oil from Venezuela (see **WTTL**, July 8, page 6). "Cuba has played a direct role in preventing the return of democracy to Venezuela," said Treasury Deputy Secretary Justin Muzinich in statement.

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