

Vol. 39, No. 48

December 9, 2019

Ericsson Pays \$1.1 Billion to Settle FCPA Charges

Swedish telecom firm Ericsson agreed Dec. 6 to pay a total of \$1.1 billion to settle charges of conspiring to violate the Foreign Corrupt Practices Act (FCPA) related to bribing government officials in Djibouti, China, Vietnam, Indonesia and Kuwait. Under a deferred prosecution agreement (DPA) with Justice, Ericsson will pay a criminal penalty of \$520.6 million, which includes a \$9.5 million criminal fine on behalf of Ericsson Egypt.

Separately, Ericsson agreed to pay the Securities and Exchange Commission (SEC) \$539.9 million in disgorgement of profits and prejudgment interest. “From 2011 through early 2017, Ericsson subsidiaries paid approximately \$62 million in bribes to government officials through third parties in Djibouti, Saudi Arabia, and China to obtain or retain business,” the SEC complaint said.

“Ericsson’s practice involved either entering into agreements with third party consultants who had connections with or access to public officials, and/or paying for travel and entertainment expenses for foreign officials and sometimes their families in order to influence their decision-making,” it added. “In Vietnam and Indonesia, Ericsson subsidiaries used consultants to create slush funds of approximately \$56 million and the ultimate recipients of these funds were unknown. The consultants in Vietnam and Indonesia served strictly as intermediaries to transfer money to third parties,” the SEC said.

The settlement “shows that we have not always met our standards in doing business the right way,” President and CEO Börje Ekholm said in a statement. “Reaching a resolution with the U.S. authorities allows us to close this legacy chapter. We can now move forward and build a stronger company,” he added.

USTR Could Impose Tariffs on French Cheese, Handbags

As promised, the U.S Trade Representative’s (USTR) office Dec. 2 announced its finding that France’s 3% digital services tax (DST) is “unreasonable or discriminatory and

burdens or restricts U.S. commerce.” Under the rules, USTR could impose up to 100% duties on certain French products, or fees or restrictions on French services. The office opened a Section 301 investigation in July, claiming that France is unfairly targeting tax at U.S.-based technology companies. During the G-7 meeting in August, the U.S. and France celebrated an agreement on the DST, but specifics were sparse (see **WTTL**, Sept. 2, page 5).

USTR will hold a hearing on its findings Jan. 7. The Federal Register notice includes an annex listing including 63 potential tariff subheadings of French products with an approximate trade value of \$2.4 billion. The list includes yogurt, cheese, handbags, make-up and porcelain china.

Specifically, USTR found that: (1) the French DST is intended to, and by its structure and operation does, discriminate against U.S. digital companies; (2) the retroactive application is unusual and inconsistent with prevailing tax principles and renders the tax particularly burdensome for covered U.S. companies; and (3) its application to revenue rather than income imposes significant burdens on covered U.S. companies.

In addition, the agency found that: (4) its application to revenues unconnected to a physical presence in France is particularly burdensome for covered U.S. companies; and (5) its application to a small group of digital companies contravenes international tax principles counseling against targeting the digital economy for special, unfavorable tax treatment.

Lawmakers and industry groups immediately welcomed the finding. “The French digital services tax is unreasonable, protectionist and discriminatory,” Senate Finance Committee Chairman Chuck Grassley (R-Iowa) and Ranking Member Ron Wyden (D-Ore.) said in a joint statement. “Taking premature action that will adversely and disproportionately affect another [Organization for Economic Cooperation and Development] OECD member state is contrary to the organization’s goals and shouldn’t stand,” they added.

“Digital Services Taxes are unilateral actions that violate the spirit of multilateral agreements and bilateral treaties regarding which countries can tax multinational corporations. France’s Digital Services Tax is narrowly and inappropriately targeted to raise revenue only from the largest companies in a small set of industries, many of them American,” Information Technology and Innovation Foundation (ITIF) Senior Fellow Joe Kennedy said in a statement.

“The OECD’s work on international taxation, in which France participates, should be the basis for changes in international tax policy, not unilateral international tax changes proposed by France,” Software & Information Industry Association (SIIA) Senior VP for Global Public Policy Carl Schonander noted.

Judge Boots Huawei Attorney for Conflict of Interest

In more than 10 months of discussions, persuasion and disagreements, Justice lawyers landed a devastating blow to the legal team assembled to fight the U.S. cases against Chinese telecom giant Huawei. Brooklyn U.S. District Court Judge Ann Donnelly Dec. 3 disqualified attorney James Cole from representing Huawei in legal proceedings before the court.

Donnelly approved the Justice motion that Cole's representation would pose "real and irresolvable conflicts of interest," from when he served as deputy attorney general in the Obama administration between 2010-15. A redacted version of the court's proceedings will be made public in January 2020. Cole served as Huawei's lead attorney from the firm of Sidley Austin LLP.

The Brooklyn case on Iran sanctions violations and other charges is just one of two federal criminal charges pending against Huawei. The Bureau of Industry and Security (BIS) cited the January indictment when it added Huawei and its affiliates to the Entity List in May. BIS extended a narrow and temporary General License (GL) authorizing some transactions with Huawei through February (see **WTTL**, Nov. 25, page 5).

The second case against Huawei is in Seattle U.S. District Court state for trade secret theft, fraud and obstruction of justice. The grand jury alleged in that case that Huawei exploited a business relationship with T-Mobile to steal that company's intellectual property.

EU Appeals Latest WTO Ruling on Airbus Subsidies

The European Union (EU) Dec. 6 appealed a second World Trade Organization (WTO) panel report that rejected its claims that the EU and four of its member states -- France, Germany, Spain and the United Kingdom (UK) -- have complied with an earlier ruling that the EU maintained illegal subsidies for aircraft manufacturer Airbus.

Formally blessed by WTO members, the U.S. in October imposed import duties on EU products to counteract the Airbus subsidies after WTO members agreed to authorize the U.S. countermeasures at a Dispute Settlement Body (DSB) meeting (see **WTTL**, Oct. 21, page 2). The WTO is considering a similar case against subsidies on Boeing.

In light of today's report and the lack of progress in resolving the dispute, the U.S. is "initiating a process to assess increasing the tariff rates and subjecting additional EU products to the tariffs," the USTR's office noted Dec. 2. Previously targeted products included: new airplanes and other civil aircraft, single-malt (or straight) Irish and Scotch Whiskies and sweaters; coffee, tools and books; cheese and olive oil; liqueurs and cordials; olives and wine; pork and cherries.

USTR Robert Lighthizer welcomed the WTO panel's latest ruling. "Despite losing in five previous WTO reports, Europe remains more focused on generating meritless litigation

than it is in addressing the massive subsidies to Airbus that continue to harm the U.S. aerospace industry and its workers,” he said in a statement. “The EU’s frivolous case proves that strong action is needed to convince the EU that its interests lie in eliminating these market-distorting subsidies now and in the future, so that our industries can compete on a level playing field.”

Administration, Industry Welcome Japanese Approval of Trade Deals

When the administration faces self-initiated disputes with almost every other trading partner, it should take comfort in small victories. While it’s not everything but the kitchen sink, the administration applauded the Japanese Diet’s approval Dec. 4 of two mini-trade deals on agriculture and digital trade.

The House Ways and Means trade subcommittee held a hearing in November on U.S.-Japan trade agreements, the day after the deals passed the lower House of the Japanese parliament, but USTR officials declined the subcommittee’s invitation to appear (see **WTTL**, Nov. 25, page 7).

In response to the latest vote, USTR Robert Lighthizer said he expected the president to sign the U.S. implementing proclamation “next week.” He added, “U.S. farmers and ranchers will have significantly improved access to Japan’s market, and America’s leadership in the growing digital economy will continue to flourish to the benefit of all our workers.”

“The agreement between the [U.S.] and [Japan] is a better deal for the entire U.S. economy, but is a particularly big win for our farmers and ranchers. Japan is a significant market for U.S. agriculture exports, making today a good day for American agriculture,” Agriculture Secretary Sonny Perdue tweeted.

The software industry, including BSA | The Software Alliance, echoed the previous sentiments. “Around the world, innovative and open economies recognize the need for cross-border access to cutting-edge software solutions. Forward-looking trade deals that ensure data can freely flow across borders are vital to the continued success of the global digital economy. BSA applauds Japan for taking this step forward and urges other countries to implement similarly smart, modern trade agreements,” BSA policy director Joseph Whitlock said in a statement.

Huawei Fights to Overturn FCC Equipment Ban

In just the latest U.S. court challenge, Chinese telecom behemoth Huawei is fighting the Trump administration’s efforts to stop its growth and dominance in the U.S. Huawei Dec. 5 filed a petition with the Fifth Circuit Court in New Orleans seeking to overturn a Federal Communication Commission (FCC) order banning U.S. rural carriers from the Universal Service Fund (USF) to purchase Huawei equipment, and wherever that equipment is found to rip out and replace it.

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 (see **WTTL**, Dec. 2, page 6). The FCC argued that “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” and therefore the FCC’s public funds is off-limits on national security grounds.

All of this is occurring while Trump is aggressively courting Beijing for a trade deal and pushing allies not to buy Huawei’s equipment because it has a built-in back door for spying. At press time there has been no response by the FCC or any arm of the Trump administration. The Chinese firm took similar legal action against Congressional efforts to include a provision in the 2019 National Defense Authorization Act (NDAA) regarding its exclusion of Huawei and ZTE products (see **WTTL**, July 8, page 3).

From the company’s headquarters in Shenzhen, China, Huawei mounted an all-out press assault with its legal officer, outside legal counsel and vice president of corporate communications all available and ready to answer questions. Glen Nager, outside counsel for Huawei, and a partner at Jones Day said that the FCC’s order exceeds its statutory authority.

“Nothing in the Universal Service provisions of the Communications Act authorizes the Commission to make national security judgments or to restrict use of USF funds based on such judgments. Indeed, the Commission has no national security expertise or authority. And Congress could not constitutionally give the Commission such authority, because it is an independent agency not subject to the direction of the President,” Nager said.

“The Commission’s initial designation of Huawei lacks legal or factual support and is based on unsound, unreliable, and inadmissible accusations and innuendo; what he calls “shameful prejudice of the worst kind,” Nager also argued. “The rule of law to which the United States adheres does not permit this kind of arbitrary and unfair action by a government agency. Under the rule of law in the United States, the ends do not suffice to justify such unlawful means. We are confident that the Fifth Circuit will vacate the Commission’s Order,” Huawei’s outside counsel argued.

Karl Song, VP of Huawei’s Corporate Communications Department, defended Huawei’s networks in rural communities. “For years, remote parts of the U.S. had poor connectivity. If you called for an ambulance on your cell phone, you got no signal. Today, things are much better – partly because of Huawei. We’ve built networks in places where other vendors would not go. Other vendors saw those communities and wrote them off as ‘low-value customers,’” the Huawei official said.

In perhaps his strongest retort, Song argued, “Our competitors make a lot of their equipment in China, some of them even have joint ventures with Chinese state-owned companies. Their equipment is used widely in America. One FCC Commissioner said roughly 40% of all U.S. networks contain equipment that was made in China. Targeting Huawei will not change that situation at all.”

Twitter Threat Against Brazil, Argentina Elicits Quick Response

Once again, the president made policy decisions via Twitter, this time threatening to restore Section 232 tariffs on Brazilian and Argentine steel and aluminum. This despite public and legislative outcry over his ongoing tariff disputes with the EU and China.

“Brazil and Argentina have been presiding over a massive devaluation of their currencies. which is not good for our farmers. Therefore, effective immediately, I will restore the Tariffs on all Steel & Aluminum that is shipped into the U.S. from those countries,” Trump tweeted before dawn Dec. 2. In May, he threatened to impose tariffs on all Mexican products via Twitter (see **WTTL**, June 10, page 1).

“The Federal Reserve should likewise act so that countries, of which there are many, no longer take advantage of our strong dollar by further devaluing their currencies. This makes it very hard for our manufactures & farmers to fairly export their goods,” he added. At press time, neither Treasury, Commerce nor the USTR’s office had issued formal notices. Argentina, Brazil and South Korea had reached quota deals with the administration that exempt them from tariffs.

The Brazilian government responded immediately, saying it was “in contact with its counterparts in Washington about the issue. The Brazilian government will work to defend Brazilian trade interests and to safeguard trade flows with the USA, with a view to expanding trade and strengthening bilateral relations for the benefit of both countries,” according to a joint statement from the Brazilian Foreign Affairs, Economy and Agriculture ministries.

U.S. lawmakers, including Sen. Pat Toomey (R-Pa.), who has sponsored legislation to restrict the president’s authority to impose tariffs, also denounced the move. “Even if this action were legitimate, the statutory window for imposing these tariffs has closed. These actions further underscore that Congress should take up my legislation that would reassert congressional authority regarding imposition of national security tariffs,” Toomey said in a statement.

The president “is justifying these tariffs by citing Section 232 of the Trade Expansion Act. This provision is exclusively meant for national security threats. Yet, the President has acknowledged that the real purpose of this action is to combat currency manipulation - which does not pose a national security threat,” Toomey added.

Solar Tariffs Lead to U.S. Job Loss, Reduced Investment

On the eve of a hearing on the administration’s Section 201 safeguard tariffs on solar cells and modules, the Solar Energy Industries Association (SEIA) quantified the tariffs’ effect on the U.S. economy. The import tariffs, which have been the subject of multiple WTO dispute panels, have led to the loss of more than 62,000 U.S. jobs and \$19 billion in new private sector investment, the SEIA reported Dec. 3. “In addition to its economic impact,

tariffs on solar have caused 10.5 gigawatts (GW) of solar installations to be cancelled, enough to power 1.8 million homes and reduce 26 million metric tons of carbon emissions,” the industry group noted. The Section 201 solar tariffs began at 30% in 2018, and ramped down to 25% in 2019, 20% in 2020 and 15% in 2021, it added.

“Solar was the first industry to be hit with this administration’s tariff policy, and now we’re feeling the impacts that we warned against two years ago,” said SEIA President and CEO Abigail Ross Hopper in a statement. “This stark data should be the predicate for removing harmful tariffs and allowing solar to fairly compete and continue creating jobs for Americans,” it added. Hopper testified before the International Trade Commission (ITC) hearing two days later.

On the same day as the ITC hearing, Court of International Trade (CIT) Judge Gary Katzmann approved the group’s motion for a preliminary injunction (PI) to allow the exclusion for bifacial modules to remain in place (Slip Op. 19-153). “The Government must follow its own laws and procedures when it acts, and the court finds it likely that it did not do so in withdrawing the Exclusion without adequate process. The court thus determines that a PI is warranted,” he wrote.

“The soundness of the safeguard duties and whether they should apply to bifacial solar panels are not the subject of this suit. Rather, at stake here is whether USTR undertook reasoned decision making to implement the Withdrawal... including provision for meaningful participation by interested parties,” Katzmann added.

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TRADE FIGURES: Merchandise exports in October dropped 3.7% from year ago to \$136.1 billion, Commerce reported Dec. 5. Services exports gained 3.2% to \$71.1 billion from October 2018. Goods imports dropped 6.6% from October 2018 to \$204.1 billion, as services imports jumped 4.1% to \$50.2 billion.

EXPORT ENFORCEMENT: Lebanese firm Ghaddar Machinery Co., SAL agreed Nov. 27 to pay \$368,000 civil penalty to settle 20 BIS charges of engaging in prohibited conduct by reexporting generator sets to Syria without required BIS licenses from January 2014 through September 2016. Items were classified under EAR99 and valued at \$736,236. Generator sets were assembled in Lebanon incorporating U.S.-origin engines and contained more than 10% of controlled U.S.-origin content. Company purchased engines from U.S.-owned supplier in UK.

MORE EXPORT ENFORCEMENT: Former U.S. Navy contractor Canadian firm OceanWorks International was sentenced Dec. 2 in DC. U.S. District Court to \$84,000 fine for scheme to falsify facts in March 2018 Commerce disclosure. At same time, company president Glen Omer Viau of British Columbia was sentenced to time served and \$25,000 fine. Scheme, which started in 2016, involved misrepresenting and concealing true nature and extent of transfer of U.S. Navy technical data to China. Specifically, scheme involved proposal by OceanWorks and unindicted Chinese company to People’s Liberation Army (PLA) Navy for design and construction of remotely operated submarine rescue vehicles. OceanWorks and Viau pleaded guilty in September.

STEEL FITTINGS: In 4-0 preliminary vote Dec. 6, ITC found U.S. industry may be injured by allegedly dumped imports of forged steel fittings from India and Korea and subsidized imports from India. Commissioner Randolph Stayin did not participate.

VENEZUELA: OFAC Dec. 3 identified six vessels as blocked property of state-owned oil company Petroleos de Venezuela, S.A. (PdVSA) that recently delivered Venezuelan petroleum products to Cuba. In addition, OFAC identified vessel Esperanza as blocked property of Caroil Transport Marine Ltd., which was designated in September for operating in Venezuelan oil sector (see **WTTL**, Sept. 30, page 6). Money received from shipments was to be transferred into Russian bank account, OFAC said.

TRADE PEOPLE: Former BIS Deputy Assistant Secretary for Export Enforcement Wendy Wysong will launch Steptoe & Johnson Hong Kong office, joining firm as partner. Wysong previously was partner at Clifford Chance law firm in Washington since 2007. She will also maintain Washington office for Steptoe.

SANCTIONS: Superseding indictment was unsealed Dec. 2 in Savannah, Ga. U.S. District Court against two Russian nationals, two Italian nationals, U.S. citizen, and various companies in conspiracy to evade U.S. sanctions. Defendants allegedly conspired to procure Vectra 40G power turbine from U.S.-based manufacturer and ship Vectra to Russian company that intended to use turbine on Arctic deepwater drilling platform. Parties also allegedly submitted false documentation that stated Vectra would be used by U.S. company in Atlanta area. Intended Russian recipient company was added to BIS Entity List in September 2014, indictment noted.

MORE SANCTIONS: Virgil Griffith, U.S. citizen living in Singapore, was charged Nov. 29 in Manhattan U.S. District Court on charges of traveling to North Korea in April 2019 to deliver presentation and technical advice on using cryptocurrency and blockchain technology to evade U.S. sanctions. State had denied Griffith permission to travel, and he knew that doing so violated U.S. sanctions, Justice noted. Griffith was arrested at Los Angeles International Airport Nov. 28.

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