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THE EXPORT CONTROL IMPROVEMENT ACT IS INTRODUCED IN THE U.S. HOUSE OF REPRESENTATIVES


The Securing Exports Through Coordination and Technology Act, if signed into law, will amend Title 13, Chapter 9 of the U.S. Code and create Technology Act, if signed into law, will amend Title 13, Chapter 9 of the U.S. Code and create

The Export Enforcement Act of 2009.

The Export Enforcement Act will also require that enforcement authorities with respect to the Export Administration Regulations ("EAR"). The Export Control Improvement Act contains two titles: the Securing Exports Through Coordination and Technology Act; and the Export Enforcement Act of 2009.

The Export Enforcement Act, if signed into law, will amend Title 13, Chapter 9 of the U.S. Code and create an Automated Export System ("AES"), whereby exporters enter export-related data into the AES and the AES automatically informs the exporter of any applicable export license requirements. If the information entered into the AES does not satisfy the requirements of the various export control laws and regulations, the AES will issue notices, compliance alerts, and other warnings to the exporter, accompanied by references to the applicable authorities. In addition, the AES will retain records of actions of all exporters that utilize the AES in an effort to simplify and streamline future filings. The Department of Commerce is charged with oversight of the AES, including ensuring that any changes to U.S. export laws, regulations, product classifications, and party lists are reflected in the AES.

The Export Enforcement Act, if signed into law, will require a comprehensive review of export control laws and regulations to assure that: (1) exports are approved quickly for trusted partners of the United States; (2) strategic export controls effectively identify and protect technologies critical to U.S. national security interests; and (3) coordination is improved among the responsible federal agencies to enhance efficiency, information sharing, and the consistent execution of export control laws. To carry out these objectives, Special Agents at the Department of Commerce's Bureau of Industry and Security ("BIS") would be provided with permanent law enforcement authorities that will allow them to perform undercover operations, make arrests, conduct searches and seizures, and carry firearms. Further, BIS would be able to search, detain, and seize goods or technology not only within the United States but also at locations outside the United States pursuant to arrangements with other countries.

The Export Enforcement Act will also require that the Department of Commerce report to Congress regarding all countries that are likely to ship, re-export, or divert items subject to the EAR to an entity owned or controlled by the Government of Iran. The bill calls for a strengthening of U.S. export control laws and licensing requirements with respect to such countries.

So far, Rep. Sherman's proposed bill has reached the House Committee on Foreign Affairs. Reed Smith will continue to track the progress of the Export Control Improvement Act and provide periodic updates. Companies interested in learning more about the proposed Export Control Improvement Act should contact Leigh T. Hansson or Jason P. Matechak in Reed Smith's Washington, D.C. office.

FCPA AND BEYOND: ‘MOON-CAKE’ GIFT RUNS AFOUL OF LOCAL HONG KONG ANTI-BRIBERY LAWS

In a decision made in March 2009, the Hong Kong courts highlighted the importance of adhering to local anti-bribery laws.

The defendant, a director of a local construction company called Brilliant Ray (the “Company”), was sentenced to two months’ imprisonment for offering 15 boxes of moon-cakes to police officers with whom he had business dealings. Moon-cakes are traditionally eaten during the Chinese Mid-Autumn Festival.

The Company had been appointed as the construction subcontractor for certain roadworks in Hong Kong. Prior to commencing the work, the Company had to submit notices and obtain approvals from the local Police Traffic Team. Between January and September 2007, the traffic team approved 54 projects to be carried out by the Company, with the defendant acting on behalf of the Company in its dealings with the police.

On 14 September 2007, only 11 days before the Mid-Autumn Festival, the defendant met a police constable at the local station and gave the constable 15 boxes of moon-cakes. A senior inspector later contacted the defendant and returned the moon-cakes.

The defendant pleaded guilty to offering an advantage to prescribed officers contrary to Section 8(1) of the Prevention of Bribery Ordinance.

The court rejected the defendant’s argument that he was ignorant of the law and that he was merely following a Chinese custom appropriate for that time of year.

This case is important because it involves giving a gift of relatively inconsequential value. It is customary in Hong Kong to give moon-cakes to clients, suppliers and third parties in the lead up to the Mid-Autumn Festival. Nevertheless, according to Section 19 of the Prevention of Bribery Ordinance, merely following a custom is not a defence to prosecution.

While the reaction to the severity of the punishment has been one of surprise, compliance experts have stressed the importance of paying attention to local anti-bribery laws and not just focusing on the U.S. Foreign Corrupt Practices Act. They suggest that companies have particular regard to the size and quality of the gift so as to ensure that both are commensurate with the recipient’s stature. Furthermore it has been recommended that companies implement procedures to ensure that employees are aware of anti-bribery laws both in the country of incorporation and in the territory where the gift is to be given.
Biodiesel: EU Anti-Dumping and Countervailing Duties
Is There a Conflict Between the Duties Imposed and EU Competition Policy?

The complaint and imposition of the duties

Following a complaint lodged by the European Biodiesel Board in April 2008, on 12 March 2009, the European Commission published regulations to the effect that, since 13 March 2009, all imports into the EU of biodiesel originating in the United States have been subject to both anti-subsidy and anti-dumping duties. Under Council regulation (EC) No 3283/1994, the European Commission has powers to impose protection against dumped imports. This policy is based on principles found in the General Agreement on Trade and Tariffs of the World Trade Organisation. The Commission investigates, on average, 30 new anti-dumping matters each year.

Whilst a subsidy duty was widely expected by the industry because the U.S. government has been providing a $1 per gallon subsidy on biodiesel, an

The FSA reports on financial services firms’ approach to UK financial sanctions

On 27 April 2009, the Financial Services Authority of the UK (“FSA”) published a report that reviewed financial services firms’ compliance with the FSA’s financial crime objectives relating to the UK Financial Sanctions Regime (“FSR”). The report found inadequacies in firms’ systems and controls to reduce the risk of a breach of UK financial sanctions in all-sized firms across all UK financial sectors.

Although the FSA’s report does not constitute formal guidance, it is clear that the FSA expects firms to use it in ensuring that their UK financial sanctions systems and controls are effective.

Compliance is not always straightforward, particularly for international companies, as different sanctions regimes may collide and impose conflicting obligations.

What is the UK Financial Sanctions Regime (“FSR”)?

The FSR aims to prohibit and suppress the financing of terrorism and terrorist acts. The FSR applies to all individuals and entities subject to UK jurisdiction, and can have extra-territorial effect.

In general, firms should not provide funds or financial services to a target on the HMT list (see below) unless a license is granted by HM Treasury. The maximum sanction for non-compliance is seven years’ imprisonment and/or an unlimited fine.

Banks and other financial institutions are particularly exposed since providing funding and financial services is their main business activity.

HM Treasury, through its Asset Freezing Unit (AFU), is responsible for putting into effect, administering, and enforcing compliance with the FSR. The AFU maintains and updates a list (known as the HMT list) of individuals and entities, both from the UK and other jurisdictions, that are “targets” under the FSR. The list includes about 1,400 individuals and 500 entities, including those linked to Al-Qaeda, the Taliban, North Korea, and Iran, and people linked more generally to terrorist financing.

The FSA’s role is to ensure that FSA-regulated firms have sufficient systems and controls in place to prevent them from accepting blacklisted clients.

The FSA’s Report

The FSA surveyed 228 financial services firms to review their compliance with the FSA’s financial crime requirements relating to financial sanctions.

Its conclusions include:

- Firms need to improve their awareness and understanding of the FSR to ensure adequate systems and controls are implemented.

- The FSA came across a number of misconceptions, e.g., the belief that sanctions applied only to foreign entities and individuals. In fact, the banned list contains 50 individuals and 12 entities based in the UK.

- When another FSA-authorised firm refers a client, firms should themselves screen those clients against the HMT list when taking them on as a client. The assumption and reliance on the referring firm having conducted the financial sanctions screening is a key weakness the FSA identified in major and medium-sized firms reviewed.

- Firms should ensure and regularly monitor that adequate IT systems are in place to flag targets to reduce their exposure to the FSR.

- Client screening should include directors, beneficial owners of corporate customers, and any third-party payees of clients.

The report provides examples of good and bad practice to assist firms in undertaking more effective risk assessments, and putting in place appropriate systems and controls.

Future enforcement action?

According to press reports, FSA-regulated firms do not face an immediate risk of enforcement action as a result of their sanctions-compliance failures, but the FSA is set to scrutinise firms’ systems and controls further in the coming months. Firms should be on their guard.
BioDiesel: EU Anti-Dumping and Countervailing Duties—continued from page 3

anti-dumping duty on top of this was not expected. The duties introduced are expressed to be “provisional” currently.

Provisional (interim) duties are not always imposed by the Commission; however, in this case, the Commission took the view that the harm being caused to the European biodiesel industry by U.S. imports was sufficiently material to warrant the introduction of new duties prior to the deadlines as set out under the underlying Regulations for enforcement of definitive anti-subsidy and anti-dumping duties in July and September 2009, respectively.

In a Commission meeting at the end of May, most Member States’ representatives agreed to back plans to impose definitive anti-subsidy and anti-dumping measures, which will see the duties extended for five years. The definitive duties are expected to be introduced by 12 July; the deadline for five-year anti-subsidy measures.

The European Biodiesel Board is in effect a trade association of European producers. The crux of their members’ complaint was that U.S. government and state subsidies were allowing U.S. producers and traders in biodiesel to import into the EU and to undersell producers in the EU. The figure below illustrates the difference between the average prices at which the EU producers were selling their biodiesel and the average prices at which the U.S. producers were exporting their biodiesel to the EU in 2007.

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<th>2007</th>
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<tr>
<td>Complainant’s average sales price (€/ton)</td>
<td>840–890</td>
</tr>
<tr>
<td>U.S. biodiesel average export price (€/ton)</td>
<td>500–550</td>
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This naturally led to the U.S. importers’ market share in the EU rising from 0.1 percent in 2004 to 17.2 percent during the Commission’s investigation period between 01 April 2007 and 31 March 2008.

Having advised all interested parties in the United States and the EU at the outset of the investigation, including the U.S. government and the U.S. National Biodiesel Board; the Commission used a sample of EU and U.S. producers that had responded to the Commission’s initial communications to work out the “injury” being caused to the EU industry, as well as to calculate the specific figures for the subsidy margins and dumping margins. To establish subsidy margins, the Commission considered all of the federal and state subsidies available, and which U.S. producers benefited. They then expressed the amount gained from each subsidy by each producer as a percentage of their total sales of biodiesel over the investigated period. To establish dumping margins, the weighted average normal value of the biodiesel for each of the sampled U.S. producers was compared with their weighted average export price.

The injury margins determined by the Commission for the sampled companies are based on: the volume of the dumped imports; the effect of the dumped imports on prices in the Community market; and the consequent impact on the Community industry. The Commission also determined, based on the injury sustained and reasonable projections for the EU industry, what they described as a “fair” profit margin for European producers of biodiesel, of 15 percent.

As stated, whilst the anti-subsidy duties were expected, the anti-dumping duties were not. However, the anti-dumping duties have been limited because of the Commission’s approach of not allowing the anti-subsidy duty and anti-dumping duty combined to exceed the injury margins established.

**Competition issues**

Outside the sampled companies, cooperating producers (that is to say, those that responded to the Commission’s requests for information), are paying, under the provisional scheme, combined duties on import into the EU of €342 per tonne of U.S. imported biodiesel, while non-cooperating producers and traders are paying duties of €419 per imported tonne. This brings biodiesel prices up to “competitive levels,” from the point of view of EU production costs versus the subsidies obtainable by U.S. exporters, which will arguably be at very significant cost to end-users and consumers of biodiesel.

A significant point, from a competition point of view, is that while it is understandable that non-cooperating companies should receive the highest duties, why are such markedly different duties being imposed by the Commission on the sampled companies and the cooperating companies (as an example, ADM pays a duty of €260 per tonne on imported U.S.-origin biodiesel, while cooperating companies who were not sampled pay duties of €342 under the provisional duties)? This is especially important if we consider the duties in light of the fact that the cooperating companies’ duty rates have been established by calculating the weighted average of the sampled companies’ duties, and that it is clear from the individual duties imposed that companies such as Peter Cremer have pulled the weighted average up considerably.

Sampling makes investigation of producers manageable, but, in this case at least, it is harsh on the cooperating producers who are not able to compete on a level playing field because of the variation in duties imposed. Many producers as a consequence may be considering applying for individual duties; however, at this stage, the options are limited. Perhaps a more realistic approach would be to side with Peter Cremer to attempt to reduce their duties and thereby the weighted average duties.

As noted by Advocate General Van Gerven in his opinion in the leading case of Nolle; “The primary aim of competition policy under the Treaty is to safeguard competition on the Community market in the ultimate interest of the consumer, whilst the system of the anti-dumping scheme is intended to protect European industry (that is, the competitors) against competition (regarded as unfair) from imported products sold below their normal value. The imposition of an anti-dumping duty may therefore result, with the aim of protecting European industry, in a price increase and a diminution of global competition within the common market.”

(continued)
Advocate General Jacobs, in his opinion in Extramat, which discussed the potential for conflict between competition policy and anti-dumping policy, was also of the opinion that where applicable, a consideration of competition law should be made in anti-dumping investigations. In this regard, it was thought that if an anti-dumping measure would have the effect of contravening EC competition law, then it should not be implemented.

Although it is accepted that the Regulations do refer to Competition issues, this is normally only in the context of restoring effective competition within the Community and eliminating the injury caused to the EC industry, i.e., normal competition conditions in the absence of dumped imports. However, where sampling took place, this does not address the fact that the duties effectively remove competition between cooperating producers that were not chosen for the Commission’s investigation and those producers that were.

Under the proposals for definitive duties, it has been reported that there will be some adjustments to the current provisional duties imposed. For example: Archer Daniels Midland (ADM) looks to face an increased duty of €359 per metric ton of U.S. biodiesel imported into the EU, up from the interim duty of €261; Cargill would have to pay €213.80 instead of €275; and, while the companies that cooperated with the Commission’s investigation will pay €335, all other companies would pay €409, which is a reduction from the interim duty of €419.

We believe that the consequence of introducing these definitive duties will be that it may never be viable for the producers of and traders in U.S. biodiesel to export biodiesel into the EU again. This is reinforced by the fact that discussions have been held between the EU various biodiesel-producing South American and African countries, leading us to suspect that biodiesel from these countries may well fill the gap created by the loss of U.S.-produced biodiesel, whilst the European producers rebuild their production levels.

The short-term result of these measures will undoubtedly be a marked increase in the costs of biodiesel to end-users and consumers. This was a factor brought up and considered by the Commission during the investigation, with one association representing the interests of Shippers in one Member State claiming that the imposition of measures would have an adverse effect on the activity of its members. It alleged that diesel is responsible for 20 to 25 percent of the costs of the transport sector, and that given the low profitability of the sector (0–5 percent), the price of diesel is determinant for the survival of thousands of companies.

A final point to note is that U.S. commentators on the duties imposed see the steps taken by the Commission as the latest in a series of protectionist ploys, with the U.S. National Biodiesel Board stating that there are “significant procedural and factual shortcomings in the EC’s provisional ruling.” Furthermore, in light of the current global economic and financial crisis, and international recognition of the need to avoid protectionism, it is argued that the Council, in its deliberations as to whether to make these provisional duties definitive, will need to fully consider each of these issues and, in particular, EU competition policy considerations.
The Defense Security Service (“DSS”) has partnered with the Department of Energy (“DOE”) to use the DOE electronic Foreign Ownership, Control or Influence (“e-FOCI”) system to facilitate and enhance DSS facility clearance processes. The new e-FOCI system began operating June 1, 2009, and all companies seeking a new facility clearance (or facility clearance upgrade) or reporting a material change to the DSS are now required to use the DOE e-FOCI system to submit all relevant documents to the DSS.

FOCI determinations are rendered by the U.S. government to ensure that entities under foreign ownership, control, or influence are not given access to classified information or special nuclear material, particularly when such access may result in the compromise of U.S. national security interests. FOCI determinations must be rendered for all prospective federal contractors whose projects may require security clearances for access to classified matter, special nuclear material or unescorted access to security areas.

All prospective government contracts that may require security clearances must submit the following documents in the e-FOCI system:

- Certificate Pertaining to Foreign Interests form (Form SF 328)
- Explanations for affirmative answers on the SF 328
- FOCI Summary Data Sheet
- List of Key Management Personnel (formerly known as the Owners, Officers, Directors, and Executive Personnel (“OODEP”) List)
- Representative of Foreign Interests Statements (if applicable)

Other required documents vary depending on the company’s business structure (e.g., sole proprietorship, partnership, corporation, etc.) and may include articles of incorporation, by-laws, annual reports, board meeting minutes, and SEC filings.

While the DOE may conduct a preliminary review of the FOCI submissions from firms in the competitive range in the procurement process, a final FOCI determination is only rendered for the successful bidder. Contractors must re-submit their e-FOCI package once every five years, along with significant changes in ownership, control, or influence as they occur. Contractors that have previously obtained a FOCI determination can access the e-FOCI system to submit their five-year updates and report any significant changes.

Besides offering a streamlined and automated process for submission of FOCI data and supporting documentation, e-FOCI will enable the DSS to process facility clearances more efficiently and effectively. Companies with questions about the e-FOCI system, or transitioning from the traditional FOCI submission process to the e-FOCI process, should contact the authors of this article.

IN PRINT AND AT THE PODIUM

Leigh Hansson spoke on the topic of “M&A Due Diligence” on May 2, 2009 at the Society of International Affairs’ (SIA) Conference in New Orleans.

Jason Matechak co-chaired the American Bar Association Section of International Law Leadership Retreat that was held in conjunction with the ABA Annual meeting in July.

Jason Matechak was quoted in a September 12, 2009 Law360 article on world trade issues at the G-20 summit in Pittsburgh.

Jason Matechak presented separate sessions on anticorruption in public procurement to government leaders for developing countries on September 18, 2009 at the International Law Institute and on September 23, 2009 at the Institute for Public-Private Partnerships.

Jason Poblete will address the Worldwide Partners International 2009 North American Region Meeting in Baltimore, Maryland, on October 6, 2009. He will talk about U.S. economic sanctions, export controls, and current issues before the U.S. Congress.

Leigh Hansson will be speaking at the annual TRACE Forum on October 14, 2009 on the topic of “OFAC Enforcement Issues Related to Third Parties.”

Department of Commerce Actions

On May 20, 2009, Gulf International Bank of New York, the U.S. branch of Gulf International Bank of Bahrain, agreed to pay a civil penalty of $49,850 to settle allegations that it violated the antiboycott provisions of the Export Administration Regulations (“EAR”). The U.S. Department of Commerce’s Bureau of Industry and Security (“BIS”) alleged that, on eight occasions between 2002 and 2004, the bank, in connection with transactions involving the sale of goods from the United States to Syria, furnished prohibited information about another person’s business relationship with a company known or believed to be restricted from having any business relationship with Syria or in another boycotting country. BIS also alleged that the bank, on 17 occasions during the same timeframe, failed to report to BIS its receipt of a request to engage in a restricted trade practice or boycott and failed to maintain certain records required by the EAR.

On Aug. 6, 2009, BIS and the Department of Treasury’s Office of Foreign Assets Controls ("OFAC") entered into a joint settlement agreement with DPWN Holdings (USA) Inc. (formerly known as DHL Holdings (USA) Inc.) and DHL Express (USA) Inc. (collectively “DHL”) regarding allegations that DHL unlawfully aided and abetted the illegal exportation of goods to Iran, Syria, and Sudan, and failed to comply with the recordkeeping requirements of the EAR. BIS charged that on eight occasions between June 2004 and September 2004, DHL transported items subject to the EAR from the United States to Syria, and failed to retain air waybills for approximately 90 exports from May 2004 to September 2004, as required by Part 762 of the EAR. OFAC charged that DHL violated various OFAC regulations between 2002 and 2006 with respect to thousands of shipments to Iran and Syria. DHL agreed to pay a civil penalty of $9.44 million and hire an expert on U.S. export control laws and sanctions regulations to conduct compliance audits through 2011.

On Aug. 13, 2009, FMC Technologies, Inc. agreed to pay a $610,000 civil penalty to settle allegations that it exported certain items typically utilized in the oil and gas industries in violation of the EAR. The allegations involved 78 unlicensed exports of butterfly and check valves classified under Export Control Classification Number (“ECCN”) 2B350, and controlled for chemical and biological weapons reasons to a variety of countries. BIS reported that FMC voluntarily disclosed the violations and actively cooperated in the investigation.

On Sept. 15, 2009, five foreign subsidiaries of Thermon Manufacturing Company of San Marcos, Texas, agreed to pay $176,000 in civil penalties to settle allegations that between October 2006 and June 2006, they participated in unlicensed exports and re-exports of EAR99 heat-tracing equipment manufactured in the United States to Iran, Syria, Libya, and listed entities in India, in violation of the EAR. Thermon Manufacturing claimed that its subsidiaries did not inform the U.S.-based headquarters that they were conducting such transactions even though Thermon Manufacturing had informed the subsidiaries that such actions were prohibited. When Thermon Manufacturing ultimately learned of the transactions, it voluntarily disclosed the violations to BIS.

On Sept. 15, 2009, Foxsemicon Integrated Technologies, Inc. (“FITI”) of Taiwan paid a $250,000 civil penalty to settle allegations that, between August 2005 and May 2006, it committed 31 violations of the EAR related to the unlicensed export of pressure transducers from the United States to the People’s Republic of China. FITI’s U.S.-based wholly owned subsidiary, Foxsemicon LLC of San Jose, Calif., agreed to a $160,000 civil penalty that it aided and abetted FITI’s violations. BIS alleged that at the time the unauthorized exports were made, FITI knew that licenses were required for the items, yet it made no attempt to apply for licenses to authorize the shipments.

Department of Treasury Actions

In April 2009, EFEX Trade, LLC (“EFEX”) of West Palm Beach, Fla., remitted $2,000 to OFAC to settle allegations that the company violated the Cuban Assets Control Regulations in February 2006. The alleged violation related to unlicensed remittance forwarding-services that Cuba or a Cuban national had an interest, and which EFEX did not voluntarily disclose to OFAC.

In April 2009, Varel Holdings, Inc. of Dallas, Texas (“Varel”), remitted $110,000 to OFAC to settle allegations that it violated the Cuban Assets Control Regulations. OFAC alleged that, between June 2005 and June 2006, a foreign subsidiary of Varel made 11 unlicensed exports of goods in which Cuba or Cuban nationals had an interest. Varel voluntarily disclosed the unlicensed exports to OFAC.

In July 2009, MGE UPS Systems, Inc. of Costa Mesa, Calif. (“MGE UPS”), now known as American Power Conversion Corporation, remitted $10,341 to OFAC for violating the Cuban Assets Control Regulations in September 2005. MGE UPS sold electrical regulators ultimately destined for Cuba without having voluntarily disclosed the sales to OFAC.

In July 2009, First Incentive Travel, Inc., of Kissimmee, Fla. (“FIT”), remitted $8,250 to settle allegations that it violated the Cuban Assets Control Regulations in October 2006. OFAC alleged that FIT provided travel-related services in which Cuba or Cuban nationals had an interest, without an OFAC license and without voluntarily disclosing the transactions to OFAC.

In August 2009, Australia and New Zealand Bank Group, Ltd. of Melbourne, Australia (“ANZ”), remitted $5.75 million to settle allegations that it violated the Sudanese Sanctions Regulations and the Cuban Assets Control Regulations from 2004 to 2006 by actively manipulating SWIFT messages to conceal references to Sudan or Cuba, and names of entities subject to U.S. sanctions. The settlement (continued)
Enforcement Highlights—continued from page 7

covered 16 transactions in the aggregate amount of approximately $28 million alleged to have violated the Sudanese Sanctions Regulations, and 15 transactions in the aggregate amount of $78 million alleged to have violated the Cuban Assets Control Regulations. OFAC reduced the total potential penalty based on ANZ’s substantial cooperation, its prompt and thorough remedial response, and the fact that ANZ had not been subject to an OFAC enforcement action in the five years preceding the transactions at issue. As part of its remedial response, ANZ re-engineered its operating model to enhance its ability to identify and resolve operational gaps and weaknesses, and established more effective controls with respect to potential OFAC violations.

In August 2009, Thermon Manufacturing Company of San Marcos, Texas, violated the Sudanese Sanctions Regulations on several occasions between January 2004 and November 2005. OFAC alleged that Thermon engaged in and facilitated the export and/or re-export of heat-tracing equipment, directly or indirectly, to Sudan in three separate transactions. Thermon voluntarily disclosed this matter to OFAC, and reported to OFAC corrective measures and improvements to its OFAC compliance procedures it had taken in response to its discovery of the alleged violations.

Department of Justice Actions

On June 11, 2009, Traian Bujduveanu was sentenced in federal district court in Florida to 35 months imprisonment and three years of supervised release for his role in a conspiracy to illegally export military and dual-use aircraft parts to Iran, in violation of the International Emergency Economic Powers Act and the Arms Export Control Act. Bujduveanu’s co-defendant, Hassan Keshari, and his corporation, Kesh Air International, were sentenced in May 2009. As part of his plea, Bujduveanu admitted that he used his Plantation, Fla., corporation, Orion Corporation, to sell aircraft parts to Keshari for purchasers in Iran, by way of freight forwarders in Dubai, United Arab Emirates. All of the parts supplied by Bujduveanu were manufactured in the United States, designed exclusively for military use, and are designated as “defense articles” by the U.S. Department of State in the U.S. Munitions List.


On July 10, 2009, Frederic A. Bourke Jr. was found guilty by a federal jury in New York of conspiracy to violate the FCPA and the Travel Act, and making false statements to the FBI. Evidence presented at trial convinced the jury that Bourke was a knowing participant in a scheme to bribe government officials in Azerbaijan with several hundred million dollars in cash, shares of stock, and other gifts to ensure that Bourke would win an auction to supply the State Oil Company of the Azerbaijan Republic (“SOCAR”). The evidence also showed that from 1997 to 1998, Bourke and several business partners conspired to pay millions of dollars worth of bribes to Azeri government officials to ensure that their investment consortium would gain, in secret partnership with Azeri officials, a controlling interest in SOCAR and its substantial oil reserves. Bourke faces a maximum penalty of five years in prison and a fine of $250,000, or twice the gross gain or loss resulting from the alleged violations.

On July 30, 2009, Helmerich & Payne Inc. (H&P) entered into an agreement with the Department of Justice (“DOJ”) to settle allegations that it made improper payments to government officials in Argentina and Venezuela in violation of the FCPA. The illegal payments were made to facilitate the import and export of goods in violation of local regulations and evade higher duties and taxes on the same goods. The settlement agreement requires H&P to pay a $1 million penalty, implement rigorous internal controls, and cooperate fully with the DOJ.

On July 31, 2009, Ousama Naaman of the United Arab Emirates was indicted in the U.S. District Court for the District of Columbia for his alleged participation in an eight-year conspiracy to defraud the United Nations Oil for Food Program, and bribe Iraqi officials in connection with the sale of a chemical additive used in the refining of leaded fuel, in violation of the FCPA. Naaman was arrested July 30, 2009 in Frankfurt, Germany, and the U.S. government is currently seeking his extradition from Germany to the United States. According to the indictment, from 2001 to 2003, acting on behalf of a publicly traded U.S. company, Naaman offered and paid 10 percent kickbacks to the Iraqi government in exchange for five contracts under the Oil for Food Program.

On July 31, 2009, Control Components Inc. (“CCI”), a California-based company, pleaded guilty to violating the FCPA and the Travel Act in a decade-long scheme to secure contracts in approximately 36 countries by paying bribes to officials and employees of various state-owned companies. CCI designs and manufactures service control valves for use in the nuclear, oil and gas, and power generation industries. According to the plea agreement, from 2003 to 2007, CCI paid approximately $4.9 million in bribes, in violation of the FCPA, to officials from various foreign state-owned companies, and approximately $1.95 million in bribes, in violation of the Travel Act, to officers and employees of foreign privately owned companies. As part of the plea agreement, CCI agreed to pay an $18.2 million criminal fine, create a comprehensive anti-bribery compliance program, and retain an independent compliance monitor to report periodically to the Department of Justice.

On Sept. 2, 2009, Jacques Monsieur, a Belgian national and resident of France suspected of international arms-dealing for decades, was arrested on charges relating to a conspiracy to illegally export F-5 fighter jet engines and parts from the United States to Iran, in violation of the International Emergency Economic Powers Act and the Arms Export Control Act. According to the indictment, Monsieur and his co-conspirator, Dara Fatoushi, have been actively working with the Iranian government to procure military items for the Iranian Revolutionary Guard. The U.S. government took action after Monsieur met with an undercover U.S. agent in Paris and London, requesting information about obtaining forged U.S. shipping and export authorization documents that would falsely indicate the items would be sold in Colombia.
On Sept. 3, 2009, Leo Winston Smith, the former director of sales and marketing for Pacific Consolidated Industries LP (“PCI”), pleaded guilty to charges related to the bribery of a UK Ministry of Defense official in order to obtain lucrative equipment contracts with the UK Royal Air Force, in violation of the FCPA. According to the plea agreement, Smith and the President of PCI, Martin Eric Self, created a sham marketing agreement between PCI and a relative of a UK Ministry of Defense official to facilitate the payment of more than $70,000 in bribes. Self pleaded guilty in November 2008 and was sentenced to two years probation. Smith’s sentencing is scheduled for December 2009 and he faces a maximum of eight years in prison.

**Securities and Exchange Commission Actions**

In May 2009, the Securities and Exchange Commission (“SEC”) announced the filing of a settled FCPA enforcement action against Thomas Wurzel, the former President of ACL Technologies, Inc. (“ACL”), a former indirect wholly owned subsidiary of United Industrial Corporation (“UIC”). The SEC alleged that Wurzel authorized payments to an Egyptian agent with knowledge that the agent would offer, provide, or promise at least a portion of such payments to Egyptian Air Force officials for the purpose of awarding business to ACL and UIC. The SEC determined that the payments to the Egyptian agent resulted in ACL being awarded a contract with gross revenues of $5.3 million. Wurzel agreed to pay a $35,000 civil penalty.

On July 31, 2009, the SEC filed a civil enforcement action against Nature Sunshine Products Inc. (“NSP”), a Utah corporation that manufactures nutritional and personal care products; its CEO Douglas Faggioli; and its former CFO Craig D. Huff for violating the FCPA (along with several anti-fraud, reporting, and recordkeeping provisions of federal security laws) with respect to the sale of products in Brazil. According to the SEC complaint, NSP made undocumented cash payments to Brazilian customs brokers in an effort to circumvent medicinal registration requirements in Brazil. Notably, the SEC charged Faggioli and Huff with violating the FCPA’s books and records and internal controls provisions based on their position as “control persons,” even though the SEC did not allege that the executives had personal knowledge of the payments. NSP has agreed to pay a civil penalty of $600,000, and Faggioli and Huff were each fined $25,000.
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