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Extradition From Japan for Antitrust Offenses Unlikely, but Risks Should Still Be Weighed

The auto parts cartel investigations, indictments, plea agreements and private litigation have spanned more than a decade, and have involved more than a hundred parts manufacturers, many of them Japanese.

These auto parts are sold globally to almost all of the largest original equipment manufacturers (OEMs) like Toyota, Ford, Nissan and General Motors. More than 100 companies have been indicted, along with scores of individuals. In the US, some of these individuals have pleaded guilty and subjected themselves to the jurisdiction of US courts. Others have gambled that the US Department of Justice (DOJ) will not be able to extradite them from Japan, and have refused to present themselves to US authorities for a plea agreement or trial. Given the fact that the DOJ has not yet succeeded in extraditing any Japanese individuals for antitrust violations, this is probably not an unreasonable gamble.

Extradition from Japan for antitrust offenses has never occurred, and for other white collar offenses, such extradition is highly unusual. A recent exception is the April 2019 extradition by Japan of two of its own citizens, Junzo and Paul Suzuki (father and son) to the US in connection with a fraudulent Ponzi scheme. The extradition followed their arrest in January 2019 by Japanese authorities at the request of the US. The indictment alleged that the two fraudulently solicited and induced investments from thousands of Japanese residents through MRI International, a Las Vegas-based investment company, where both men were former executives.

Less than a year after the Japanese extradition of Junzo and Paul Suzuki, a former senior vice president of cargo sales and marketing for Martinair, Maria Ullings, a Dutch national, was extradited to the US from Italy in January 2020. Ms. Ullings was indicted almost 10 years ago, in 2010, in the US District Court for the Northern District of Georgia in Atlanta. She was recently apprehended by Italian authorities while visiting Sicily. In response to the extradition of Ms. Ullings, Assistant Attorney General Makan Delrahim stated, "This extradition . . . demonstrates that those who violate U.S. antitrust laws and seek to evade justice will find no place to hide. . . . With the assistance of our law enforcement colleagues at home and around the world, the Division will aggressively pursue every avenue available in bringing price fixers to justice." The Assistant Attorney General did not exclude Japan from his warning.

Given these two events, the extradition of Junzo and Paul Suzuki and the arrest and extradition of Ms. Ullings, it may be that there is a convergence of at least two factors necessary for the extradition of a Japanese national for an antitrust or competition-related crime: (i) a willingness on the part of the Japanese authorities to extradite its nationals for white collar offenses; and (ii) increased assertiveness on the part of the DOJ Antitrust Division to push governments to extradite defendants for antitrust violations. Given this apparent convergence, it could well be the case that one of the Japanese executives indicted in one of the auto parts cases, who has not voluntarily come to the US to plead guilty, could be the first Japanese individual to be extradited for an antitrust violation in the US.

Extradition in Japan is governed by the Japanese Act of Extradition and its Extradition Treaty with the US. In order for a US request for extradition from Japan to succeed, it must meet certain requirements. Such requirements include that there be dual criminality, where the offense is illegal in both the US and Japan, and that the offense be punishable by the laws of both countries by death, life imprisonment or "deprivation of liberty" for a period of more than one year.

Extradition must also occur through diplomatic channels. In this regard, the DOJ must first submit its request to the Minister of Foreign Affairs of Japan, who then passes the request to the Ministry of Justice in Japan. After some intervening steps, the request is submitted to the Tokyo High Court, which has broad discretion to grant or deny any extradition request.

Given all of these hurdles, it is certainly understandable why so many indicted Japanese nationals in the auto parts cartel cases have decided to ignore their DOJ price-fixing indictments and remain in Japan. They probably believe, quite reasonably, that there is little likelihood of being extradited to the US. That said, it is curious that a significant number of Japanese executives in these auto parts cartel cases have voluntarily come to the US to plead guilty and serve jail time. It may be that there is an increasing concern, given the recent Japanese extradition to the US for white collar offenses other than antitrust, and the assertiveness of the DOJ in seeking extradition. Also, given the international nature of most businesses (certainly in the auto parts industry), it would be very difficult for Japanese auto parts executives to conduct business without leaving Japan. With the advent of INTERPOL and the assertiveness of the DOJ, an indicted individual would forever wonder if his or her business trip would lead to an arrest, an appearance before a US court and eventual federal prison. Appearing in the US, pleading guilty and serving time eliminates the risk of international travel.

Given these facts, it is important that lawyers working with Japanese clients understand that the current state of the law and facts with regard to antitrust extradition is a mixed bag. No Japanese national has yet been extradited to the US for an antitrust violation, yet many Japanese nationals have assessed the risk and decided to submit to US jurisdiction. It is important that any practitioner carefully review the risks and consequences of extradition from Japan for an antitrust violation.

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