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CLIENT ALERT

The Month in International Trade — June 2017

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This news bulletin is provided by the International Trade Group of Crowell & Moring. If you have questions or need assistance on trade law matters, please contact Jeff Snyder or any member of the International Trade Group.

FREE WEBINAR: Risky Business – International Commerce Under Stress

Special One-Hour Look at Russia, Cuba, and Qatar

July 18, 2017 • Webinar

Starts: 2:00 PM (EDT)
Ends: 3:00 PM (EDT)

Click here to register for this webinar.

With recent announcements from President Trump re-imposing certain sanctions on Cuba and apparent bipartisan Congressional support for sharply expanded sanctions on Russia, the pace of change in the ever-shifting landscape of economic sanctions appears to have increased.

How can companies stay compliant with current requirements and on top of potential changes, while remaining competitive in an international market that is not following the U.S.'s lead?

Join Crowell & Moring's experienced team of lawyers and international trade advisors for a webinar discussion of best practices in staying ahead of, and compliant with, these ever changing rules.

Contact: Kim Peters (202.508.8991, kpeters@crowell.com)

CROWELL & MORING WELCOMES: Former Deputy USTR Robert Holleyman

Ambassador Robert W. Holleyman II, the former deputy U.S. trade representative, is joining C&M International – the international policy and regulatory affairs affiliate of Crowell & Moring LLP – as president and CEO.

Ambassador Holleyman also joins Crowell & Moring as a partner in the firm's International Trade Group. He has spent more than two decades in business and government, expanding market access around the globe for leading technology companies and companies from the manufacturing and services sectors that face unfair trade barriers.

At C&M International and Crowell & Moring, Holleyman will help companies navigate challenges and barriers in international trade, investment, services, digital trade and economy, and protection of intellectual property.

Please click here to read Crowell & Moring's press release.

TOP TRADE DEVELOPMENTS

BREXIT STATUS AND OUTLOOK

The Election

On 29 March 2017, the U.K. invoked Article 50 of the Treaty of the European Union, setting in motion the two-year period to negotiate a settlement for their political separation.

The two sides began settlement negotiations in June. The talks are time-limited: under Article 50, the U.K. will leave the EU automatically in March 2019, absent either unanimous consent from the 27 remaining Member States or ratification of an exit treaty.

U.K. Prime Minister Theresa May sought to strengthen her hand in the Brexit negotiations by calling a snap election, which took place on 8 June 2017. Defying early expectations, the election resulted in Mrs May's Conservative Party losing its slim majority in the House of Commons. The Democratic Unionist Party (DUP) of Northern Ireland agreed to provide the Conservatives with support for key legislation, providing the Conservatives a majority in Parliament. Mrs May remains Prime Minister.

The Government presented the Queen's Speech, its legislative program for the coming two parliamentary years, on 21 June 2017. That program includes the "Great Repeal Bill", the somewhat erroneously-named legislation which would convert all existing EU law into domestic U.K. law – thus allowing the U.K. to amend or discard EU rules as it sees fit after Brexit. The Conservative Party agreement with the DUP includes support for the Queen's Speech. It was approved as the primary legislative agenda by a narrow Commons vote on 29 June 2017.

Negotiations Begin

The governing arrangements for the U.K. having reached a point of clarity, at least in the short term, allowed formal separation negotiations to begin on 19 June 2017. The lead negotiators are David Davis, a Member of Parliament and Minister at the Department for Exiting the European Union, and Michel Barnier of the European Commission.

At the first plenary session a terms of reference was drawn up which envisions further sessions every four weeks until the week of 9 October 2017. At present, the scope of negotiations under the terms of reference has been narrowly defined to establish initial working groups for the detailed negotiations regarding citizens' rights and the U.K.'s financial settlement.

The principal focus of early negotiations has been on the status of EU citizens who have settled in Britain and Britons who have settled elsewhere within the EU under "freedom of movement" rules which allow EU citizens to live and work in other Member States. By those rules, all EU citizens are granted a right of permanent settlement after five years of residence in a host Member State.

The U.K. has published a policy paper proposing that those EU citizens already present in the U.K. for five years be treated equally with British citizens under local law, and for those citizens already settled in the U.K. by a certain cut-off date (likely 29 March 2017 or after) to be eligible to gain such rights after living in the U.K. for five years. The same would apply to British citizens settled elsewhere in the EU.

The EU position is for the reciprocal rights of EU and British citizens to have a wider scope, essentially on the basis of existing EU rules. Moreover, the EU wishes for the European Court of Justice to have continued jurisdiction over questions of immigration rights regrading U.K. and other EU citizens covered by this aspect of an eventual Brexit deal. It is highly unlikely that the U.K. will agree to such continued jurisdiction.

The "Divorce Bill"

The financial settlement, which has become colloquially known as the "divorce bill" that the U.K. may have to pay, is also contentious. On 4 March 2017, the European Union Committee of the U.K.'s House of Lords (the senior legislative chamber), published a report which questioned the enforceability of such a divorce bill in international law with reference to the Vienna Convention on the Law of Treaties.

Nevertheless, the EU's initial position paper declares that there should be a financial settlement "based on the principle that the United Kingdom must honour its share of the financing of all the obligations undertaken while it was a member of the Union." Regardless of the legal considerations, the political calculus of Brexit negotiations will doubtless hinge on further developments over what price the U.K. is willing to pay in this divorce bill debate. However, the U.K. has yet to publish an official position paper on a financial settlement.

Trade after Brexit

If no withdrawal treaty or agreement to extend negotiations can be confirmed before March 2019, the U.K.'s immediate relationship with its trading partners, including the EU, would revert to WTO rules until alternative trade treaty relationships can be established. However, one may note that this scenario also has its challenges. For example, although the U.K. is a WTO member in its own right, changes to its tariff schedule from the EU schedule of which it is currently part, could involve separate negotiations with the WTO.

For more information on the U.K. Government's aspirations for Brexit, see its white paper, last updated on 15 May 2017.

For movement on potential U.K. trade policy more widely, please see Crowell & Moring's recent alert, Update: Legal Considerations for U.K. and EU Investment and Trade Treaties after Brexit. Section 9 of the U.K. Government's white paper on Brexit also notes the government's hopes in this regard, stating, "Many countries including China, Brazil, and the Gulf States have already expressed their interest in enhancing their trading relationships with us. We have started discussions on future trade ties with countries like Australia, New Zealand and India. The new United States Administration, the world's biggest economy, has said that they are interested in an early trade agreement with the U.K."

However, given the U.K. cannot agree to trade treaties with non-EU countries until after its departure from the bloc, any further trade negotiations with third-party states are likely to remain preliminary for some time. Official negotiating documents and position papers of the parties are being made available on government websites as they are published. Please see the following two links: United Kingdom and European Union.

For more information, contact: Michelle Linderman, Gordon McAllister, Ed Norman, John Laird

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U.K. GOVERNMENT ANNOUNCES INTERNATIONAL SANCTIONS BILL

On 21 June 2017, the U.K. Government announced through the Queen's Speech an International Sanctions Bill intended, as part of other Brexit legislation, "to ensure that the United Kingdom makes a success of Brexit." The bill will provide the U.K. with the legal framework and powers needed to enable it to impose and implement sanctions in order to comply with its obligations under the United Nations Charter and to support wider foreign policy and national security goals after the U.K.'s exit from the EU.

Main Benefits of the Bill

The government's background briefing paper accompanying the Queen's Speech identifies that the main benefits of the bill would be:

- To ensure that, as a permanent member of the UN Security Council, the U.K. continues to play a central role in negotiating global sanctions to counter threats of terrorism, conflict and the proliferation of nuclear weapons, as well as bringing about changes in behavior.
- To return decision-making powers on non-UN sanctions to the U.K.
- To enable the U.K.'s continued compliance with international laws after the U.K.'s exit from the EU.

Key Elements of the Bill

The key elements of the bill are:

- To provide a domestic legislative framework to allow the government to:
    - Impose sanctions to ensure compliance with obligations under international law after the U.K.'s exit from the EU. These include asset freezes, travel bans, and trade and market restrictions.
    - Ensure individuals and organisations can challenge or request a review of the sanctions imposed on them.
    - Exempt or license certain types of activity, such as payments for food and medicine, which otherwise would be restricted by sanctions.
    - Amend regulations for anti-money laundering and counter-terrorist financing and to pass new ones after the U.K.'s exit from the EU.

Jurisdiction

In terms of jurisdiction the Briefing Paper states that the bill would apply to the whole of the U.K. and would also contain provisions to extend its reach to the U.K.'s Overseas Territories and Crown Dependencies as appropriate.

Background to the Bill – Government Consultation on Sanctions Post-Brexit

On 21 April 2017, the Foreign and Commonwealth office, HM Treasury and Department for International Trade, launched a 'Public Consultation on the United Kingdom's future legal framework for imposing and implementing sanctions' to seek views on the legal powers the Government will need upon the U.K.'s withdrawal from the.

The U.K. needs to be able to impose and implement sanctions in order to comply with international obligations and to support foreign policy and national security goals. However, like other members of the EU, many of the U.K.'s powers to implement sanctions flow from the European Communities Act 1972, requiring new legal powers post-Brexit to replace these.

The consultation puts forward proposed powers to designate individuals and impose financial and trade restrictions including primary legislation (which requires an Act of Parliament) to create a framework containing powers to impose sanctions regimes, the details of which will be laid out in the secondary legislation made using those powers.

The legislation will also include provisions relating to the processes which will apply when sanctions are created, such as provisions for reviews, challenges, and enforcement. The secondary legislation will put in place measures for specific sanctions

regimes and because it can be made without an Act of Parliament it enables a rapid and flexible response to evolving international issues allowing for targets to be listed, thus preventing asset flight or other sanctions evasion.

The consultation sets out the government's expectation that the powers included in the new primary legislation will:

- Complement existing powers in the Immigration Act 1971 to deport or exclude a person from the U.K.
- Enable application of asset freezes to designated persons.
- Expedite the freezing of assets.
- Allow adoption of financial and trade restrictions, preventing U.K. persons and operators from engaging in specified trade or financial activities with a target country or regime, or to trade arms with a target country, part of a country, or a target regime.
- Complement existing powers in the transport sector to control use of ports, ships, aircraft, and other transport vehicles used in relation to sanctions targets.

Comment

Until negotiations on the U.K.'s exit from the EU are concluded, the U.K. remains a full member of the EU. During this period the U.K. Government will continue to implement and apply existing EU sanctions legislation.

It is, however, clear from the consultation and the bill that the government's current intention is to try to ensure that the U.K.'s new sanctions powers enable it to impose and implement sanctions legislation consistent with the EU sanctions regime while also potentially allowing it to respond more rapidly than the EU to emerging risks to national and international security.

The consultation also states that the U.K. will continue its robust approach to the enforcement of sanctions which was augmented in April of this year by the introduction of new monetary penalties. It remains to be seen precisely what form the new legislation will take and government is currently analyzing the feedback to the consultation which ended on 23 June 2017.

For more information, contact: Michelle Linderman, Carlton Greene, Cari Stinebower, Dj Wolff

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NATIONAL SECURITY INVESTIGATIONS OF STEEL AND ALUMINUM IMPORTS HEAT UP

In May and June, the U.S. Department of Commerce held hearings and accepted hundreds of public comments for its investigations under section 232 of the Trade Expansion Act of 1962 to determine whether U.S. imports of steel and aluminum threaten national security.

DOC missed its self-imposed deadline of June 30 to release its reports and recommendations to President Trump as to what, if any, action to take to "adjust imports". The delay was due to increased pressure from Capitol Hill and important members of the Trump administration (including Treasury Secretary Mnuchin, Defense Secretary Mattis, and National Economic Council Director Cohn) against any broad import restrictions due to concerns over supply chain disruptions and retaliation from major trading partners.

U.S. trading partners at the G-20 Summit in Germany last week reiterated their concerns over possible section 232 actions and promised swift retaliation against politically-sensitive U.S. exports (agricultural products and bourbon were specifically mentioned) and challenges at the World Trade Organization.

The G-20 Leaders declaration issued on July 8 called for the Global Forum on Steel Excess Capacity "to fulfill their commitments on enhancing information sharing by August 2017, and to rapidly develop concrete policy solutions to reduce steel excess capacity" with a "substantive report with concrete solutions by November" of this year. Arising out of last year's G-20 summit in Hangzhou, the Global Forum is facilitated by the OECD and includes major steel producing nations. Leaders like Angela Merkel seek to invigorate the forum as a means of pressuring China on its excess capacity while warding off unilateral measures like those contemplated by the U.S. However, it has been slow in starting as it was only formally established last December. It is also important to note any recommendations arising from the forum would be non-binding.

Friday, July 7, brought two new developments which could cause further delays in the release of the section 232 reports. First, Politico reported Defense Secretary Mattis directed the Defense Logistics Agency to undertake a 60-day review of steel use in U.S. defense applications. Second, the U.S. International Trade Commission released its comprehensive study "Aluminum: Competitive Conditions Affecting the U.S. Industry", conducted pursuant to Congressional request.

As of Monday, July 10, no section 232 reports or recommendations have been released. There have been many rumors regarding what measures DOC will recommend and President Trump will take under section 232, ranging from across-the-board import duties on all steel and aluminum from all sources, as well as tariff rate quotas, to exemptions for NAFTA and European sources, or certain types of steel and aluminum either not produced or available in sufficient supply domestically. The latter option could include an exemption/exclusion request and analysis period after the reports are issued, but no such process is required under the statute.

Until the reports are issued, companies should continue to monitor developments, advocate for desired outcomes, prepare for possible exclusion processes, and review their supply chains and contracts to be ready to deal with any broad section 232 action(s).

In addition to likely challenges by foreign governments at the WTO, companies and trade associations will likely challenge any adverse section 232 measures in U.S. court. Both WTO and U.S. challenges would raise novel questions regarding import restrictions taken in the name of "national security."

Below are the remaining deadlines based for the two section 232 investigations, though action is expected well before these dates.

Steel 232 Investigation

Event	Allotted Time	No Later than Date
DOC Report Submitted to President	270 days from Initiation	January 15, 2018
Presidential Decision Whether to Act	90 days from DOC Report	April 15, 2018

Presidential Action	15 days from Determination	April 30, 2018
President Must Inform Congress	30 days from Determination	May 15, 2018

Aluminum 232 Investigation

Event	**Allotted Time**	**No Later than Date**
DOC Report Submitted to President	270 days from Initiation	January 21, 2018
Presidential Decision Whether to Act	90 days from DOC Report	April 21, 2018
Presidential Action	15 days from Determination	May 6, 2018
President Must Inform Congress	30 days from Determination	June 5, 2018

For more information, contact: Jeff Snyder; Robert Holleyman; Dan Cannistra; Bob LaFrankie; Benjamin Blase Caryl

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USTR TESTIMONY TO CONGRESS OFFERS INSIGHT INTO WHITE HOUSE TRADE POLICY

The first full month with the White House's trade team in place saw a ramp up of activity initiated in the early days of the administration. To a great extent, the administration is still in the driver's seat; its decision to renegotiate NAFTA, its self-initiated actions on the national security reviews of steel and aluminum imports, and the review of trade deficits are all areas where the president is pursuing a shift in direction of policy.

What is becoming apparent is the administration is facing the challenge of balancing its priorities with the legacy of continuing negotiations and expiring agreements it inherited, as well as the policy responses of trading partners to its moves. How it balances these sometimes competing prerogatives will become clearer in the coming months.

NAFTA and China

In wide ranging testimony before the House Ways and Means and Senate Finance Committees on June 21-22, U.S. Trade Representative Robert Lighthizer characterized the administration's trade policies as discrete actions; however, when taken together, the measures demonstrate a results-driven use of trade policy.

Regarding NAFTA renegotiation, Lighthizer faced questions about strategy and specific priorities for the negotiations. His key messages were:

- There is "no artificial deadline" for NAFTA renegotiation; the priority is getting a high-standard agreement.
- NAFTA is recognized as deficient on intellectual property, but the three countries' systems are not incompatible, and "our hope is that we end up with a model agreement in this area." Securing extensions of newer IP protections, including pharmaceuticals, to NAFTA will be a priority in the coming negotiations.
- Currency manipulation is not considered a problem with Canada or Mexico, but the renegotiation is an opportunity to put together a "model" agreement with an eye to future negotiations with other countries.
- NAFTA labor provisions should be strengthened, and any new principles should build on the NAFTA labor annex and not take a step back by narrowing the scope of existing principles.
- Lighthizer would do "all I can" to address remaining agricultural barriers to American exports to Mexico and improving dairy access to Canada.
- On the future of investor-state dispute settlement, he said "I can't say we will get rid of ISDS, but we will see what we can do to perhaps rebalance where we are in this situation."

Unsurprisingly, the committees were very interested in White House strategy on China. Of note, Lighthizer addressed:

- WTO Market Economy Status: Lighthizer considers China's seeking market economy status at the WTO the "most serious litigation matter we have at the WTO right now… China is certainly not a market economy under our laws." Lighthizer is not sure what will happen with the WTO ruling, but if the WTO rules that China can attain market economy status, this would be "cataclysmic".
- Outcomes from the 100 day plan: USTR is working on remaining issues surrounding science-based approval of American agriculture biotech products in China. Lighthizer is confident these issues can be resolved. For example, U.S. beef access to China "has been restored."
- Technology: USTR will continue to focus on the issue of opening China to U.S. cloud services. He said, "China has had an unfair advantage in several different sectors of the economy."
- Mercantilism: Lighthizer used aggressive language regarding China, saying, "I do believe our trade model is better than China's. We have to take on China when they do something that is inconsistent with how we think the economy should develop and work…We have to prevail against China for the good of the world."
- Autos: Lighthizer called the issue of Ford moving its factory activity to China "very troubling". He said there is no administration position as of yet, but that if this happened for reasons that are "noneconomic", he thinks the administration should take action.

A Further Round of Engagements – Europe, India, Korea, Japan

The "built-in" agenda of negotiations and agreements the administration inherited attracted more attention in June. Summit diplomacy with India and South Korea and further engagement with Japan and the EU are beginning to clarify next steps with major trading partners.

- Europe: In early June, Commerce Secretary Ross hinted the administration could still proceed with TTIP negotiations with Europe, while at the same time pursue smaller, sectoral agreements where deals could be struck outside the omnibus agreement framework. In his House testimony, USTR Lighthizer said the White House appreciated the current political reality in Europe. The recently concluded election in France and coming election in Germany suggest the Trump administration will not be able to move quickly on any far-reaching agreement with the EU. President Trump's participation in the G20 Summit in Hamburg in July is seen as another opportunity to clarify the Administration's intent regarding TTIP.
- India: Prime Minister Modi's first meeting with President Trump yielded an agreement to conduct a "comprehensive review of trade relations with the goal of expediting regulatory processes; ensuring that technology and innovation are appropriately fostered, valued, and protected; and increasing market access in areas such as agriculture, information technology, and manufactured goods and services." One key objective for Modi's visit was to maintain a positive tenor of relations with the United States, and the agreement on a trade review neutralized the potential impact of India's inclusion among the countries highlighted in the trade deficit review report.
- South Korea: President Trump's stated dissatisfaction with the terms of the U.S.-Korea Free Trade Agreement (KORUS) loomed over the visit by newly-elected President Moon Jae-in. The official outcome of the two leaders' engagement on trade was a neutral reference in the Joint Statement issued at the end of their meeting to "work together, as part of the process of the Commercial Dialogue, to promote investment, support entrepreneurs, and facilitate cooperation between the United States and the [Republic of Korea] to boost economic growth and job creation in both countries." The statement made no reference to KORUS or any commitment to change its terms, but did reference working together on addressing steel overcapacity and "non-tariff barriers to trade".
- Japan: The Minister for Economy, Trade and Industry (METI), Hideki Seko, made a low profile visit to Washington to continue the economic dialogue established during Vice President Pence's visit to Tokyo in April. Following USTR Lighthizer's meeting with Seko on the margins of the Asia Pacific Economic Cooperation (APEC) Trade Ministers' meeting in May, it is increasingly clear the economic dialogue is shifting more towards a way to deal with ongoing issues and promote joint action where feasible, rather than moving in the short term towards negotiation of a bilateral free trade agreement. For its part, Japan is playing down the prospect of negotiations, while at the same time working with the remaining ten other members of TPP to revise and complete that agreement.

232 Investigations, Deficit Reports a Signal of Things to Come

By the end of June both the Department of Commerce report on significant trade deficits and the Section 232 reports on steel and aluminum had been submitted to the White House. Of the two, the 232 reports are seen as having a more immediate potential impact because its findings (not yet public) could recommend specific remedies on steel and aluminum imports and (per USTR Lighthizer's testimony) could cause affected trading partners to threaten retaliation.

Over the longer term, the trade deficit report could have broader impact depending on its specific recommendations. If it attributes deficits, or some component of structural deficits, to trade restrictive policies, the administration may use the finding as a pretext to launch negotiations or unilateral actions with trading partners to address imbalances.

For more information, contact: Paul Davies, Garam Noh

WHAT INDUSTRY WANTS FROM NAFTA RENEGOTIATION

Reps from Key Economic Sectors Provide Input to White House

The Office of the U.S. Trade Representative (USTR) held hearings to seek public comment on NAFTA renegotiation from June 27-29. The hearings, chaired by Assistant U.S. Trade Representative for the Western Hemisphere John Melle, generated widespread interest. Witnesses comprising most industry sectors testified, including agriculture, manufacturing, services, technology, energy, automotive, and apparel industries, along with labor and civil society groups.

Although a diversity of views were represented at the hearings, most industry groups agreed that NAFTA should remain a trilateral agreement and be modernized to better suit the current trade and economic environment. Many industry representatives also highlighted the need to preserve existing trade benefits under the current NAFTA. Sections of the Trans Pacific Partnership and the U.S.-Korea Free Trade Agreement were mentioned as provisions that could be used as baselines for updating elements of a new NAFTA agreement.

Two Democratic Members of Congress testified: Representative Bill Pascrell (D-New Jersey), the Ranking Member of the Ways and Means Subcommittee on Trade, and Representative Sandy Levin (D-Michigan). Rep. Pascrell called out the Trump administration for its failure to outline the objectives for the negotiations in specific enough detail. Both Democrats also pushed the president to seek stronger, more enforceable labor standards in a new NAFTA, based on the so-called May 10th Agreement, the 2007 agreement on trade objectives the George W. Bush Administration reached with Democrats.

If the testimony at the hearing is any indication, interest in NAFTA renegotiation is high, and many stakeholders will seek to have their interests served by an updated agreement. The policy debate regarding the scope of negotiations will come to a head when the Trump administration prepares the set of negotiating objectives it will put forward to Congress, expected around mid-July.

Industry “Wants”

Below is a review of major positions taken during the hearings:

- Agriculture: Agricultural groups in general sought to preserve existing duty-free benefits under the current NAFTA, but varied in their specific issue requests. Meat groups were divided over whether to reinstitute country-of-origin labelling requirements in NAFTA. Dairy groups sought changes to Canada’s dairy supply management program. Produce growers expressed concerns that Mexican produce is currently being dumped in the U.S. market, and requested resolution through the NAFTA renegotiation process.
- Manufacturing: Manufacturers from several sectors (for example, chemicals and food) requested the Administration to pursue improved commitments to regulatory coherence and cooperation across the three NAFTA countries.
- Steel: U.S. steel producers continued their push for measures to address the level of foreign imports through the NAFTA renegotiations. They sought a stricter rule of origin for autos and auto parts, including requirements to use North American steel. They also said that enforceable currency provisions should be included in any NAFTA agreement.

- Textiles: Apparel and textile groups were divided over whether the existing rules of origin under the current NAFTA should be changed. In particular, there was significant discussion of whether tariff preference levels, which allow some goods not meeting rule of origin requirements to qualify for benefits for a limited time, should be eliminated.
- Internet and Communications Technologies (ICT): ICT groups pushed for commitments to ensure the free flow of data across borders, prohibit data localization, and ensure stronger intellectual property protections. In fact, the inclusion of digital trade protections in NAFTA was pushed for by many industry sectors, including those outside of ICT.
- Autos: The autos and auto parts manufacturing industry sought to preserve existing duty free treatment, as well as existing rule of origin requirements. They also requested that NAFTA include updated customs procedures (including duty drawbacks).
- Labor: Labor groups, including the AFL-CIO, sought the elimination of investor-state dispute settlement, stronger rule of origin requirements for autos, stronger labor and environmental provisions, and measures to address currency manipulation.

For more information, contact: Melissa Morris, Evan Yu

NAFTA DISPUTE SETTLEMENT NOT ON WHITE HOUSE RADAR, FOR NOW

On May 18, the United States Trade Representative (USTR) gave official 90-day notice to Congress of the Trump administration's intent to renegotiate NAFTA. The USTR also published a request for interested parties to submit public comments on matters relevant to "NAFTA Modernization" for the development of U.S. negotiating positions.

Although the official notice to Congress did not mention investor-state dispute settlement (ISDS), the USTR is expected to publish more detailed negotiating objectives in mid-July (at least 30 days before August 16, 2017, when the 90-day consultation period ends).

Furthermore, the USTR invitation for public comments included "investment issues" as part of the relevant matters to be addressed. Earlier this year, before any formal step was taken in the NAFTA renegotiation process, information was leaked to the press that the administration's intention to renegotiate NAFTA included proposed changes to the dispute resolution provisions of the Investment Chapter. Therefore, it remains uncertain whether the renegotiation of NAFTA will have impact on ISDS.

The legal consequences of revising or repealing NAFTA would be significant for investors. In particular, if the United States withdraws from NAFTA, U.S. investors would no longer be able to pursue international arbitration against Mexico and Canada for expropriation of their investments, or for protection against arbitrary and discriminatory measures impacting the value of such investments.

For more details on the potential implications of NAFTA's termination on ISDS, please see Crowell & Moring's client alerts: "NAFTA on the Brink" and "NAFTA Termination - What Investors Need to Know".

For more information, contact: Ian Laird, John Brew, Dan Cannistra, Eduardo Mathison

SENATE'S RUSSIA/IRAN SANCTIONS BILL FACES OPPOSITION IN BOTH HOUSE AND TRUMP ADMINISTRATION

With a pause on Capitol Hill because of the July 4th recess, many are taking stock of the prospects for the Senate passed legislation intended to dramatically expand sanctions on Russia. Specifically, a bipartisan group of Senators reached a compromise to combine several pending Russia-related measures and attach them as an amendment to S.722 - The Countering Iran's Destabilizing Activities Act of 2017. For complete details on the extensive new Russia restrictions contained in the bill, please see Crowell & Moring's June 19 Client Alert.

The Senate bill passed with a margin of 98-2 and appeared on track for quick approval in the House. However, it was sent back to the Senate last week after the House Parliamentarian objected because the bill ran afoul of the Origination Clause of the Constitution which requires the House to act before the Senate on any bill which raises revenue. With a few technical changes on the eve of the recess, Senate Foreign Relations Committee Chairman Bob Corker (R-TN) submitted a resolution correcting the bill, sending it back to the House for consideration.

The House will take up the bill on the 11th when it returns. Prospects for the bill in the House are cloudy, given not only the otherwise full agenda (including health care and tax reform), but also what appears to be growing opposition among House members to boxing President Trump into a very difficult position on Russia. Other objections are surfacing; including pushback from Representative Pete Sessions (R-TX) who is uncomfortable with the new energy restrictions, believing it could hurt energy companies. Many are awaiting details on this objection, before assessing its weight and validity.

The Trump administration fears the measure will complicate its ability to conduct diplomacy because the bill limits the president's power to act on sanctions without congressional authorization. If it does pass the House, the administration has not ruled out a veto. If forced to have to consider a veto, Trump would be hard pressed to rely, no matter how much historical precedent there may be, on the valid concerns about constraints being placed on the office of the presidency, because a veto could be perceived as being "soft" on Russia.

For more information, contact: Jeffrey Snyder, Cari Stinebower, Carlton Greene, Dj Wolff

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ENFORCEMENT ACTIONS FROM BIS, OFAC, and DOJ

Bureau of Industry and Security (BIS)

- On June 8, BIS entered into a Settlement Agreement with Axis Communications, Inc. of Massachusetts to settle charges of 15 alleged violations of the Export Administration Regulations (EAR). The company was assessed a $700,000 civil penalty and directed to conduct an external audit of its export compliance program by an unaffiliated third-party consultant.
    - Between 2011 and 2013, the company exported thermal imaging cameras to Mexico without a license on 13 occasions. The cameras were valued at nearly $400,000. BIS also alleged Axis failed to comply with recordkeeping requirements in connection with the shipments.

- On June 9, BIS entered into a Settlement Agreement with Cryomech, Inc. of New York for one alleged violation of the EAR. The company was assessed a $28,000 civil penalty and directed to conduct an external audit of its export compliance program by an unaffiliated third-party consultant.
    - In 2012, Cryomech made an unlicensed export of an LNP-20 Liquid Nitrogen Plant to a party in Russia on the Entity List.
- On June 27, BIS entered into a Settlement Agreement with Hassan Zafari of Brentwood, California, to settle one alleged violation of the EAR. Mr. Zafari was assessed a $52,500 civil penalty (with all but $7,500 suspended, pending a two-year probationary period) and is subject to a two-year denial order; he may not participate in the export of any item from the U.S. during this time.
    - He caused, aided, or abetted the export from the U.S. to Iran of a used industrial laser system without the required license. According to the Charging Letter, among other things, Zafari admitted to BIS special agents during an interview that he knew that U.S. law prohibited exports to Iran, directly or indirectly, but he "[n]onetheless . . . took several actions that facilitated the transaction, including identifying and hiring a freight forwarding company to ship the laser system from the United States to a general trading company in Dubai, UAE, and instructing the forwarder to list the UAE general trading company as the consignee while aware. . . that the item actually was intended for supply, transshipment, or re-export to Iran."

Office of Foreign Assets Control (OFAC)

- On June 8, OFAC announced American Honda Finance Corporation (AHFC) agreed to remit $87,255 to settle its potential civil liability for 13 alleged violations of the Cuban Assets Control Regulations (CACR).
    - Between 2011 and 2014, Honda Canada Finance, Inc. a majority-owned subsidiary of AHFC located in Canada, approved and financed 13 lease agreements between an unaffiliated Honda dealership in Ottawa, Canada and the Embassy of Cuba in connection with the Cuban Embassy's leasing of vehicles.
- On June 26, OFAC announced American International Group agreed to remit $148,698 to settle its potential civil liability for 555 alleged violations of sanctions regulations covering Iran, Sudan, Cuba, and the Weapons of Mass Destruction program.
    - From 2007 to 2012, AIG engaged in transactions totaling approximately $396,530 in premiums and claims for the insurance of maritime shipments of various goods and materials destined for, or that transited through, Iran, Sudan, or Cuba, and/or that involved a blocked person.
    - Although AIG had in many cases included OFAC's recommended exclusion clauses (see OFAC FAQs 102 and 103), some failed to include them, and other policies "were too narrow in their scope and application" for the clauses to be effective.

Department of Justice

On June 16, the Department of Justice publicly disclosed another declination under its Foreign Corrupt Practices Act pilot program. This is the sixth public declination by the Department since launching the program in April 2016. It also represents the first public declination since the Department announced the temporary extension of the pilot program on March 10, 2017, and the first under the Trump administration.

For details on the new declination, please see Crowell & Moring's Client Alert.

For more information, contact: Jeff Snyder, Edward Goetz

NEW AD/CVD CASES: OLIVES, LOW MELT POLYESTER FIBER, TAPERED ROLLER BEARINGS

Ripe Olives from Spain

On June 21, the Coalition for Fair Trade in Ripe Olives (Musco Family Olive Company and Bell-Carter Foods) filed antidumping (AD) and countervailing duty (CVD) petitions on imports of ripe olives from Spain.

Petitioners have requested AD duties ranging from 84 percent to 232 percent – as well as CVD duties to offset subsidies.

The products covered by this Petition are certain processed olives, usually referred to as "ripe olives". The subject merchandise includes all colors of olives; all shapes and sizes of olives, whether pitted or not pitted, and whether whole, sliced, chopped, minced, wedged, broken, or otherwise reduced in size; all types of packaging, whether for consumer (retail) or institutional (food service) sale, and whether canned or packaged in glass, metal, plastic, multi-layered airtight containers (including pouches), or otherwise; and all manners of preparation and preservation, whether low acid or acidified, stuffed or not stuffed, with or without flavoring and/or saline solution, and including in ambient, refrigerated, or frozen conditions.

Low Melt Polyester Staple Fiber (low melt PSF) from Korea and Taiwan

On June 21, Nan Ya Plastics Corporation, America, filed AD petitions on imports of Low Melt Polyester Staple Fiber (low melt PSF) from Korea and Taiwan.

Petitioner has requested AD duties of:

- Korea – 32.95 percent to 45.84 percent.
- Taiwan – 30.24 percent to 62.52 percent.

The merchandise subject to this proceeding is synthetic staple fibers, not carded or combed, specifically bi-component polyester fibers having a polyester fiber component that melts at a lower temperature than the other polyester fiber component, used for bonding fibers together (low melt PSF). The scope includes bi-component polyester staple fibers of any denier or cut length. The subject merchandise may be coated, usually with a finish or dye, or not coated.

Certain Tapered Roller Bearings from Korea

On June 28, The Timken Company filed an AD petition on imports of certain tapered roller bearings from Korea.

Petitioner has requested AD duties as high as 143 percent.

The scope of this investigation covers certain tapered roller bearings with a nominal outside cup diameter of eight inches and under, regardless of type of steel, whether of inch or metric size, and whether made of through-hardened steel or case hardened (case-carburized) steel.

Certain tapered roller bearings include: finished cup and cone assemblies entering as a set, finished cone assemblies entering separately, and finished parts (cups, cones, and tapered rollers). Certain tapered roller bearings are sold individually as sets (cup and cone assembly), as a cone assembly, as a finished cup, or packaged as a kit with one or several tapered roller bearings, a seal, and grease.

For more information, contact: Benjamin Blase Caryl

PODCAST: Anti-Money Laundering and the New Beneficial Ownership Rule – C&M's Trump: The First Year Series

What does the new beneficial ownership rule mean for lenders and other businesses? As part of our "Trump: The First Year" series, International Trade Group partners Carlton Greene and Cari Stinebower sit down with Commercial Finance & Lending Senior Counsel Scott Lessne to discuss the new rule.

Click below to listen via the embedded player or access from one of these links:
PodBean | SoundCloud | iTunes

CROWELL & MORING SPEAKS

On June 12, Alan W.H. Gourley spoke at the Inter-Pacific Bar Association's regional seminar on "Investment Controls in Europe, the U.S., and Asia – A Comparative View." The event was held at the Düsseldorf office of the Gleiss Lutz law firm.

Charles De Jager, Jana del-Cerro, and Grégoire Ryelandt spoke at the International Compliance Professionals Association's (ICPA) Annual European Conference, held June 11-13 in Dublin, Ireland. Charles provided an update on the Transatlantic Trade and Investment Partnership (T-TIP), Jana spoke on Encryption, and Grégoire discussed Registration, Evaluation, Authorization, and Restriction of Chemicals (REACH), an EU regulation which addresses the production and use of chemical substances, and their potential impacts on both human health and the environment.

Cari Stinebower and Michelle Linderman spoke at the Trade Security Journal's "Smart Practice in Trade Security" event on June 26 in London. They presented on "Best Practices in Internal Investigation – a Cross-Border Perspective."

Chris Monahan will be speaking at the ICPA's Annual Fall Conference and One Day Valuation Seminar in Grapevine, Texas, scheduled for October 23-25. His topic is "Understanding Commodity Jurisdictions (State vs. BIS)."

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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