

CLIENT ALERT

This Month in International Trade - September 2012

Oct.10.2012

THIS MONTH'S TOP FIVE DEVELOPMENTS

1) U.S. Launches WTO Action Against China Over Automobile Subsidies

On September 17, the United States requested formal dispute settlement consultations against China under the World Trade Organization (WTO), accusing China of violating WTO rules by providing export-contingent subsidies to automotive industries. According to the request from the U.S. Trade Representative (USTR), at least twelve cities in China are recognized as "export bases," where subsidies are offered to auto and auto parts manufacturers in the form of grants for research and development, tax preferences, and interest rate subsidies. Such subsidies topped \$1 billion between 2009 and 2011.

The action filed on September 17 launches a 60 day consultation period during which U.S. and China are to seek a negotiated resolution to the issue. If at the end of the consultation period no solution is forthcoming, USTR may request that the WTO establish a dispute settlement panel to determine whether China is providing impermissible subsidies to auto and auto parts manufacturers.

If the panel decides that the subsidies are impermissible, China will be given a reasonable period to comply with the panel's determination; otherwise the U.S. may impose retaliatory duties on China to offset those impermissible duties. The overall process may take nearly three years, including the 60 day consultation period, up to 12 months for the WTO dispute settlement process, up to 18 months for the implementation period, followed by any countermeasures imposed by the prevailing party.

A trade remedies investigation by the U.S. Commerce Department could also be brought in parallel with the above WTO action launched by USTR. However, Commerce has "self-initiated" such antidumping or countervailing duty cases on only a few occasions over the last 40 years.

2) EU Investigation Into Chinese Solar Panels

On September 6, the European Commission (EC) announced the launch of an investigation into alleged antidumping (AD) of Chinese solar panel products into the European Union (EU) market. The Notice of Initiation of an Anti-dumping Proceeding Concerning Imports of Crystalline Silicon Photovoltaic Modules and Key Components (i.e. Cells and Wafers) Originating in the People's Republic of China was published in the Official Journal of the European Union. The investigation stems from an EU industry group complaint filed in July 2012. According the complaint, Chinese companies sold solar panel modules and products well below production costs, with dumping margins between 60 and 80 percent. On September 25, the same industry group representing EU solar panel manufacturers filed a complaint with the EC to investigate Chinese government subsidies. The trade group claims the subsidies, including property, power, cheap loans and loan forgiveness, resulted in massive overproduction of solar products.

The EC AD proceeding expands beyond the scope of a similar investigation in the United States. The US investigation, Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China (case number A-570-979) does not include wafers. In that case, The US Department of Commerce, International Trade Administration (ITA) issued an affirmative preliminary determination in May 2012 and imposed AD rates of 31 percent on certain named companies and 250 percent on all other Chinese-origin solar cells. The ITA had already issued a preliminary affirmative determination in March 2012 on countervailing (anti-subsidy) duties and imposed CVD rates between 2 and 5 percent, depending on the exporting company.

The EC investigation into Chinese solar products is significant due to the high value of those imports in the EU market. In 2011 alone, China exported over 20 billion euros worth of solar products to the EU member countries. The EC is required to complete its AD investigation within 15 months after initiation, with a final determination by December 2013; any possible anti-subsidy investigation includes a 13-month deadline.

3) Despite Heavy Criticism, Brazil Takes Protectionist Approach By Increasing Import Tariffs

Brazil is expected to increase tariffs on 200 products by the end of this year, as an exception to Mercosur Common External Tariff (CET). The tariffs, however, remain zero within Mercosur countries. The tariff increase for the first 100-product list took effect on October 1st, 2012, and would potentially have an impact on Brazilian imports, ranging from potatoes to tires to aluminum plates, as high as 4% for the upcoming year ([for the complete product list, click here](#)).

The products were suggested to the Brazilian Ministry of Development, Industry and International Trade (MDIC) by Brazilian companies, by means of confidential procedure whereby the applicants would have to input information such as suggested product market share and the level of harm of its imports on Brazilian industry and employment. The other Mercosur countries have had the chance to challenge the list, but none of them did so.

The second 100-product list will be made in connection with Mercosur Common Market Council (CMC) Decision No. 25/12, which is not yet in force. The MDIC will again open to Brazilian companies the opportunity to suggest what products should be featured on the list. After that, MDIC will publish the proposed list, Mercosur countries will have 15 days to challenge it, and then the list will become final. There is no official forecast on when this is expected to happen, but the Brazilian Chamber of International Trade (CAMEX) is expected to issue the Resolution, that will trigger the process, by the end of this month.

4) Customs Opens Two New CEEs – Will Your Import Business Be Affected?

U.S. importers in certain target industries may soon find themselves notified that their post-entry activities will be handled by one of the new U.S. Customs and Border Protection (CBP) Center of Excellence and Expertise (CEE). CBP has chosen nine key industries to develop a more focused approach on import compliance. Entries and revenue collection will still take place at the port of clearance, however protests, origin and classification validation, post entry amendment/post summary correction reviews and prior disclosures will be handled at a centralized location where specialized CBP personnel will have industry-specific knowledge to further examine compliance in these areas.

Recently CBP added the center for automotive and aerospace in Detroit, MI and a center for the petroleum, natural gas and mineral industry in Houston, TX. These join the center for information technology and consumer electronics in Los Angeles, CA and the pharmaceutical center in New York, NY which became operational earlier in 2012. In 2013 there are plans to open

centers for agriculture and prepared products, base metals and machinery, consumer products and mass merchandising, industrial and manufacturing materials, and textiles, wearing apparel and footwear.

CBP has focused on these industries as areas that often require specialized industry knowledge to properly determine compliance with its regulations. CEEs should provide importers with a consistent CBP post-entry action approach across many ports of entry, and are intended to increase efficiency and reduce cargo delays since CBP personnel with industry specific knowledge will now be reviewing shipments. Importers selected to work with a CEE are advised to examine their classification process, import documentation and post entry review procedures as they will be looked at with a higher level of scrutiny than before in addition to the increased facilitation.

CBP has currently limited participation in the CEE program to its "trusted partner" companies such as participants in the Customs and Trade Partnership Against Terrorism (C-TPAT) and/or Importer Self Assessment (ISA) programs. However, all importers in these industries should be vigilant and review their import compliance programs in preparation of increased and detailed scrutiny by CBP.

5) How Companies Can Use International Investment Agreements

Companies that operate internationally face an increasingly complex business environment, in large part because of uncertainty created by governments. Whether because of their political cultures and commitment to the rule of law, their international economic and foreign policies, or their use of state-controlled companies, governments are affecting markets in more ways and to a greater extent than they have in the past. To deal with this uncertainty, global companies need to do more than overcome the traditional business challenges. They also need to address the regulatory, policy, and geopolitical risks that governments create for them.

To continue reading, please see our [prior client alert](#).

THIS MONTH IN TRADE – OTHER NEWS

U.S. Continues To Remove Sanctions Against Burma

A bill to allow U.S. representatives to international financial institutions (IFIs) to vote for loans to Burma (Myanmar) passed Congress and awaits President Obama's signature. The bill specifically allows, upon determination by the President, for the Secretary of the Treasury to instruct the US Executive Director of any IFI to vote in favor of that institution's provision of assistance to Burma. The bill includes certain consultation and notification requirements between the State Department, Treasury and the appropriate congressional committees listed in the bill. A determination that assistance to Burma is in the national interest of the United States would allow IFIs such as the World Bank and International Monetary Fund to provide technical assistance and project loans to further Burmese economic development and reform.

In related moves, Treasury eliminated additional sanctions against Burmese financial institutions and government officials. On September 19, Treasury removed Burmese President Thein Sein and Lower House of Parliament Speaker Thura Shwe Mann from the Specially Designated Nationals (SDN) list. The action frees up assets and property while allowing the individuals to enter into transactions with the United States or U.S. persons. Also, on September 26, Treasury's Financial Crimes Enforcement Network

(FinCEN) repealed certain USA PATRIOT Act Section 311 actions against two former Burmese banks, Myanmar Mayflower Bank and Asia Wealth Bank. The banks had been identified as financial institutions of primary money laundering concern in 2004; the Government of Burma revoked the banks' licenses in 2005 and neither institution currently exists. FinCEN retains Section 311 special measures on the Burmese banking section.

Export Control Reform May Move After Election

The Office of Management and Budget (OMB) is expected to institute an enhanced review process for significant new rules submitted by agencies until after the November election. The additional review, which is designed to prevent the possibility of so-called "midnight rulemaking" in the final months of an administration, will slow but not halt the publication of new rules.

Proposed rules have yet to be published for several United States Munitions List (USML) category revisions, including category XI (military electronics) and category XII (fire control, range finder, optical and guidance and control equipment). In addition, the Bureau of Industry and Security (BIS) and the Directorate of Defense Trade Controls (DDTC) are still working to finalize the regulation defining "specially designed" and the transition rule for moving items from the USML to the Commerce Control List (CCL) after receiving public comments on each. Industry is pushing for fast action after the election; however it is unclear whether implementation will move forward during a "lame duck" session, given the Congressional notification requirements for moving items off of the USML under Section 38(f) of the Arms Export Control Act.

EU Takes Further Action Against Dumped Imports of Bicycles from China

The European Commission has recently taken further action against dumped bicycle imports from China, by initiating an investigation concerning the possible circumvention of anti-dumping duties on imports of bicycles from China by imports of bicycles consigned from Indonesia, Malaysia, Sri Lanka and Tunisia (see Commission Regulation (EU) No 875/2012 of 25 September 2012). The product concerned is the same as that covered by the anti-dumping measures currently in force on bicycles from China (Council Implementing Regulation (EU) No 990/2011), following an expiry review of the measures imposed by Council Implementing Regulation (EU) No 1524/2000 and amended by Council Regulation (EC) No 1095/2005, and as that covered by the ongoing interim review of the anti-dumping measures (which began in March 2012) and the ongoing anti-subsidy investigation (which began in April 2012). The Commission opened the anti-circumvention investigation after deciding it had sufficient prima facie evidence to show that the anti-dumping duties on imports of bicycles from China are being circumvented by means of transshipment via Indonesia, Malaysia, Sri Lanka and Tunisia and by means of assembly operations of certain bicycle parts from China via Indonesia, Sri Lanka and Tunisia. Absent an exemption, imports of the product under investigation are subject to registration in order to ensure that anti-dumping duties can be levied from the date on which registration began should the investigation result in findings of circumvention.

Updates and Technical Fixes for Textile and Apparel Products Under CAFTA-DR & NAFTA and Country of Origin Rules for HTSUS

On October 13, 2012, certain technical fixes to the U.S.-Dominican Republic Central America Free Trade Agreement's textile and apparel rules of origin (CAFTA-DR) will go into effect. The technical corrections and modifications include clarifying certain monofilament sewing thread is required to be produced in the United States or the CAFTA-DR region in order for goods to qualify for preferential tariff treatment, the treatment of certain nightwear, and several products on the "short supply" list. The

modifications will apply to goods of a CAFTA-DR country that are entered or withdrawn from a warehouse for consumption effective October 13th. The CAFTA-DR countries are: United States, Dominican Republic, El Salvador, Honduras, Costa Rica, Guatemala, and Nicaragua.

Separately on September 25, 2012, U.S. Customs and Border Protection (CBP) published technical corrections to part 102 of its regulations to reflect recent changes in the Harmonized Tariff Schedule of the United States (HTSUS). Specifically, the corrections were related to 19 C.F.R. § 102.20, which prescribe the tariff shift rules that are used to determine whether a good is considered a good of a North American Free Trade Agreement (NAFTA) country or a new or different article of commerce under the U.S.-Morocco Free Trade Agreement and the U.S.-Bahrain Free Trade Agreement. Changes to 19 C.F.R. § 102.21 related to the rules of origin for textile and apparel products, other than those that are products of Israel. These technical corrections were due to the 2012 HTSUS modifications which added or removed certain tariff provisions and transferred certain goods to different or newly created tariff provisions for tariff classification purposes. These changes are to correct product coverage and/or numbering of certain headings and subheadings and are not intended to have any other substantive effect. Importers, particularly textile and apparel importers, should review these technical fixes closely and confirm that they are in compliance or can take advantage of these updates.

New Guidance for the Practical Implementation of AEO/C-TPAT Mutual Recognition Decision

On 4 May 2012, the European Union (EU) and the United States (U.S.) agreed on mutual recognition of the Customs-Trade Partnership Against Terrorism (C-TPAT) program in the United States (U.S.) and the Authorized Economic Operator (AEO) programme of the European Union (EU), signing a Mutual Recognition Decision. As the U.S. customs targeting systems can only grant benefits based on the information that is linked to a Manufacturer's Identification Number (MID), it is necessary to associate the EU EORI (Economic Operators Registration and Identification) numbers with MID numbers.

For this purpose, U.S. Customs and Border Protection (CBP) has created a web application where EU AEOs must register their EORI number and associate this number with their MID number(s). After the match between the EORI number and the MID number(s) has been established, the AEO will automatically receive the favorable treatment granted by U.S. customs, provided that the AEOs U.S. business partner indicates that MID number when importing into the U.S.

Interim CBP Rules Implement Customs Provisions of Colombia FTA; USTR Says Panama FTA Will Soon Take Effect

On September 26, 2012, U.S. Customs and Border Protection (CBP) published interim rules implementing the preferential tariff treatment and other customs provisions of the U.S.- Colombia Free Trade Agreement. The U.S.-Colombia FTA took effect on May 15, 2012 with over 80 percent of U.S. consumer and industrial products exports to Colombia becoming duty-free immediately. Importers and interested parties may submit comments to the interim rules by November 26, 2012 via the Federal eRulemaking Portal: <http://www.regulations.gov> (docket number USCBP-2012-0017).

The U.S.-Panama Free Trade Agreement is soon to take effect, announced the U.S. Trade Representative's office. Congress passed the implementing legislation in October, 2011 but Panama's National Assembly only passed the last piece of legislation needed to bring its laws into conformity with the FTA obligations on September 27, 2012. Once Panamanian President Ricardo Martinelli signs the legislation, the changes to Panamanian law to be published in the official gazette before officially becoming

law. Then the two countries will set a timeline to exchange certain letters confirming that the legal requirements have been met before the FTA can take effect.

Two New Antiboycott Violations Announced

The U.S. Department of Commerce's Office of Antiboycott Compliance (OAC) announced two more settlements involving the alleged violations of the U.S. antiboycott regulations by two Fortune 500 U.S. companies.

- Dover Energy Inc. ("Dover")'s Norriseal Division, based in Houston, Texas and a division of Dover Corporation, paid \$22,000 to settle 10 alleged violations of the antiboycott regulations. OAC alleged that between 2007 and 2008, Dover had furnished prohibited boycott-related information on four occasions and failed to report receipt of boycott-related requests on six occasions, all related to transactions in Pakistan.
- W W Grainger Inc., an industrial supply company based in Illinois, paid \$12,000 to settle allegations that it had committed 12 violations of the antiboycott regulations between 2008 and 2009. All 12 violations involved Grainger's failure to report receipt of a request to participate in an unsanctioned foreign boycott when engaged in transactions in Kuwait.

New Bill To Raise De Minimis Import Value

On September 26, 2012, the "Low Value Shipment Regulatory Modernization Act of 2012" bill, S. 3597, was introduced by Senators John Thune (R. – S.D.) and Ron Wyden (D. – Or.) proposing to raise the "de minimis" value at which customs duties are imposed on imported goods from \$200 to \$800. Shipments under the "de minimis" value are free from tariffs, taxes or formal customs procedures. Following introduction, the bill was referred to the Senate Finance Committee. Interested parties should contact the committee to express their opinion or concerns regarding the bill.

Crowell Hosts CBP Symposium Happy Hour

Crowell & Moring's International Trade Practice will host a happy hour at Brasserie Beck on Monday, October 29, following the first day of the 2012 CBP East Coast Trade Symposium. We look forward to catching up with old colleagues and making new friends. Please contact Elliot Dritch at edrtich@crowell.com for details and to R.S.V.P for the event.

CROWELL AND MORING SPEAKS

Jonathan (Josh) S. Kallmer spoke on "The Economic Impact of Current Investment Trends in Airports, Inland Waterways, and Marine Ports Infrastructure" at an event sponsored by the American Society of Civil Engineers in Washington, D.C., September 13, 2012.

Jini Koh will speak on "Understanding US Product Safety Apparel Requirements and Risk-Based Targeting at the Border" with the Product Risk Management Group on a webinar hosted by the Canadian Apparel Federation on October 17. [Click here to register](#), the code is CMCOMP.

John B. Brew will be speaking on "Getting Customs Valuation Right" and moderating a panel on "Key Government Agencies" at the American Conference Institute (ACI)'s U.S. Customs Compliance "Boot Camp" at the Washington Plaza Hotel, November 27-28, 2012, in Washington, D.C. Please note: Crowell clients attending ACI events receive a discount; please contact your Crowell representative for details.

Cari N. Stinebower will speak on "Doing Business in Burma/Myanmar: What You Can and CANNOT Do Under New, Eased Sanctions Restrictions," at ACI's OFAC Boot Camp, in New York City, December 5-6, 2012.

* * *

Crowell and Moring welcomes **Cheryl A. Falvey**, former general counsel of the U.S. Consumer Product Safety Commission (CPSC). Cheryl joins the firm as a partner in the Torts Group and Product Risk Management practice in the Washington office as of October 1, 2012.

Crowell and Moring also welcomes three new Visiting International Scholars: **Maysa A. Tavares Verzola** from TozzineFreire Advogados in Brazil; **J. Cristobal Leighton** from Grupo Vial Abogados in Chile; and **Shu-Chin (Denise) Jen** from LCS & Partners in Taiwan. Crowell's Visiting International Scholars Program (VISP) invites lawyers from abroad to join the firm as consultants for eight months. The program enhances the firm's ability to build relationships with the Scholars' foreign law firms.

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

John B. Brew

Partner – Washington, D.C.
Phone: +1 202.624.2720
Email: jbrew@crowell.com

George D. Ruttinger

Partner – Washington, D.C.
Phone: +1 202.624.2670
Email: gruttinger@crowell.com

Daniel Cannistra

Partner – Washington, D.C.
Phone: +1 202.624.2902
Email: dcannistra@crowell.com

David (Dj) Wolff

Partner; Attorney at Law – Washington, D.C., London
Phone: +1 202.624.2548, +44.20.7413.1368
Email: djwolff@crowell.com