

CLIENT ALERT

DOJ Prosecution of Chinese State-Owned Enterprise for Trade Secrets Theft Offers Lessons for U.S. Businesses

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For the first time, the U.S. Department of Justice has indicted a Chinese state-owned enterprise for violating the Economic Espionage Act, in connection with efforts to acquire manufacturing technology for titanium dioxide, a white pigment commonly used in paint, plastics and paper. The indictment specifically alleges that "the People's Republic of China (PRC) publicly identified the development of chloride-route titanium dioxide (TiO₂) production technology as a scientific and economic policy."

The recently issued indictment charges the state-owned enterprise, Pangang Group Company, Ltd., and three of its affiliates, along with five individuals. The individual defendants include two former employees of chemical giant DuPont, which owns the targeted technology. One of the former DuPont employees pled guilty on March 1, 2012, and the other pled not guilty on March 8, 2012. Another key witness in the case committed suicide shortly before the Pangang indictment, according to press reports.

The case began when DuPont received an anonymous tip in 2010 that a naturalized U.S. citizen named Walter Liew was selling DuPont's titanium dioxide trade secrets to a Chinese company. That led DuPont to file a civil suit in April 2011 and to notify U.S. law enforcement authorities, which in turn led to execution of a search warrant at Liew's home in July 2011. Among other documents seized by the FBI was evidence of meetings between Liew and at least one high-ranking PRC official.

The titanium dioxide case highlights several issues for consideration by companies dealing with the heightened risk of trade secrets theft in a global economy:

- China remains a primary threat. As its economy grows, China is eager to develop domestic technologies rather than rely on foreign producers. Many specific technologies and industries have been overtly targeted, including titanium dioxide, and, if the allegations in the Pangang case are true, it is but one example of efforts to acquire such technologies by illegitimate means.
- The U.S. government is willing to move aggressively against foreign companies and governments to prosecute economic espionage. While such cases have been rare in the past, steps taken by the Obama administration, including the creation of an Intellectual Property Enforcement Coordinator within the White House and a related DOJ Task Force, signal a heightened focus on enforcement. It is notable that the Pangang indictment was issued in the midst of a visit to the U.S. by the PRC Vice President -- and soon-to-be President -- Xi Jinping.
- Companies like DuPont are becoming increasingly aggressive in alerting law enforcement authorities to possible criminal cases. This mode of enforcement can be particularly important when dealing with foreign defendants, who can too often evade U.S. civil litigation and remedies. The titanium dioxide case is one of several DuPont cases to result in criminal prosecutions in recent years, including one involving theft of Kevlar® technology by a Korean company that resulted in the conviction of a former DuPont employee and a July 2011 civil jury award to DuPont of \$920 million in

damages. (Crowell & Moring represents DuPont in the Kevlar® case.)

- Company counsel should be aware of, and track, pending proposals in Congress to add a private right of action to the Economic Espionage Act, which would provide a powerful new tool to combat both foreign and domestic trade secrets theft.

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

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