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CLIENT ALERT

The Month in International Trade — April 2017

May.04.2017

In this issue:

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.

TOP TRADE DEVELOPMENTS

TRUMP ADMINISTRATION TRADE POLICY – ENGAGING PARTNERS ONE BY ONE

April was an initial "test case" for the Trump administration's new trade policy. In a series of high level interactions with leaders from China, Japan, South Korea, Canada and Mexico, leading administration figures started the process of engaging trading partners on their "review and revise" approach to trade agreements. In each case, the results yielded more defined processes for bilateral discussions, though the results of those discussions remain in the future.

The visit to Mar-a-Lago on April 6-7 by Chinese President Xi Jinping was highly anticipated given the strong signals President Trump sent in advance, that he would emphasize the need for change in terms of trade between the two countries. In the end, the meeting brokered a change in the structure of bilateral dialogue, replacing the Obama-era Strategic & Economic Dialogue with four separate tracks for bilateral engagement: a Diplomatic and Security Dialogue which would focus on common security challenges; a Comprehensive Economic Dialogue to focus on trade and investment; a Law Enforcement and Cybersecurity Dialogue; and a cultural/social dialogue.

Commerce Secretary Wilbur Ross, National Economic Council Chair Gary Cohn, and Chinese Vice Premier Wang Yang met at Mar-a-Lago during the Summit and agreed to develop a joint "100 Day Plan" aimed at identifying issues where the two sides could make progress quickly and identify issues for more intensive longer term work. U.S. Trade Representative Robert Lighthizer (once confirmed) will also participate in the dialogue in the future alongside Chinese National Development and Reform Commission (NDRC) chair He Lifeng.

The agreement to restructure processes in the US-China economic dialogue was seen as progress given the sharp rhetoric the administration had issued regarding Chinese trading practices. Such "confidence building" measures helped put into context the administration's decision on April 14 not to label China as a currency manipulator, contrary to the intent the President voiced during the campaign.

The early positive moves with China helped to draw focus on Vice President Pence's visit to Korea and Japan in mid-April. The Vice President in Seoul signaled the administration's desire to renegotiate the Korea-US Free Trade Agreement (KORUS FTA). The administration is linking the persistence of a bilateral deficit in goods trade ($32 billion per year) to deficiencies in the agreement. Details of how and when the review would take place remain to be discussed until a new administration is in place in Korea following elections to be held on May 9.

Later that week in Tokyo, the Vice President, accompanied by Commerce Secretary Ross inaugurated the US-Japan Economic Dialogue. The administration's decision to leave the Trans Pacific Partnership in January in effect provides an opportunity to achieve a bilateral free trade agreement with Japan. Given the $108 billion of trade between the two countries, it was incumbent upon the administration to find a way to recast the bilateral trade relationship and establish a path for future negotiations. The Economic Dialogue will have three "tracks": a macroeconomic coordination track in which structural issues including labor market reform and exchange rate issues will be discussed; a trade and investment track which is intended to address the future potential for a bilateral free trade agreement; and a sectoral track in which long-standing areas where bilateral trade is inhibited, including agriculture and automotive products, will be addressed.

Again, the administration is putting new structures in place to engage a major trading partner on the concerns it considers not properly addressed in existing agreements. The process outcomes from the Vice President's visit will shift towards engagement on substantive issues in the coming weeks.

Meanwhile, activity in Washington focused on the administration's evolving approach to the potential renegotiation of the North American Free Trade Agreement with Canada and Mexico. The administration's public presentation reinforced President Trump's campaign message that NAFTA required fundamental change. Its negotiations with the House and Senate on the terms of its formal notification of intent to renegotiate took a path more consistent with the requirements of the Trade Promotion Act of 2015. The administration's initial letter to Congress on April 3 emphasized not only its priorities of reducing trade deficits and promoting U.S. manufacturing, but also foreshadows the opportunity to update NAFTA rules in areas including the digital economy, intellectual property, and non-tariff measures, while also signaling intent to revise the NAFTA rules on trade remedies to remove the requirement for NAFTA binational panel approval to enforce trade remedies.

The political signals surrounding the renegotiation were amplified by several other developments during April. These included President Trump's strong response to the loss of Canadian markets for U.S. dairy exports due to the reintroduction of milk classification in Canada; the imposition of countervailing duties on softwood lumber from Canada; the looming expiry of a suspension agreement preventing antidumping duties on sugar imports from Mexico; and the award on April 27 of World Trade Organization authorization for Mexico to retaliate against $163 million of U.S. imports in the WTO case against U.S. tuna labeling rules.

The trilateral back and forth on long standing trade irritants reached a crescendo when a report circulated on April 26 that the White House was considering terminating NAFTA by Executive Order. Subsequent conversations among President Trump, Prime Minister Trudeau, and President Peña Nieto confirmed the three governments would renegotiate the agreement. It is clear that the negotiating table, once the three sides engage, will be loaded with a full set of North American trade issues, many of which have been unresolved since the 1980s.

The net result of the Trump administration's busy April of bilateral engagement is that it has established new structures for dialogue with China and Japan that appear to suit its approach better; has put Korea on notice that the KORUS FTA will be reviewed; and set NAFTA on a path for renegotiation.

With the Senate expected to confirm USTR-designate Robert Lighthizer early in May, the table is set for the Trump administration to move on multiple fronts on trade policy in the coming months.

For more information, contact: Paul Davies

COMMERCE PROBES IMPACT OF STEEL, ALUMINUM IMPORTS ON NATIONAL SECURITY

STEEL

A Federal Register Notice published on April 26 provided additional information to industry on the Department of Commerce's investigation of steel imports and U.S. national security.

- For more detail on the April 21 Presidential Memorandum directing the investigation, please see Crowell's Client Alert.

We learned a three-hour public hearing will be held on May 24 at DOC and that interested parties must request to speak by May 17. The requests need to include a written summary of the planned presentation. Written comments will also be accepted until May 31.

DOC provided a list of criteria it is interested in learning about, as they relate to national security:

- Quantity of steel or other circumstances related to the importation of steel.
- Domestic production and productive capacity needed for steel to meet projected national defense requirements.
- Existing and anticipated availability of human resources, products, raw materials, production equipment, and facilities to produce steel.
- Growth requirements of the steel industry to meet national defense requirements and/or requirements to assure such growth.
- The impact of foreign competition on the economic welfare of the steel industry.
- The displacement of any domestic steel causing substantial unemployment, decrease in the revenues of government, loss of investment or specialized skills and productive capacity, or other serious effects.
- Relevant factors that are causing or will cause a weakening of the U.S. national economy.

Five general categories of steel are being looked at: flat products, long products, pipe and tube products, semi-finished products, and stainless products. The notice also refers to "specialty steel alloys that require unusual production skills and are used for armor, vehicles, ships, aircraft, and infrastructure."

Because the scope remains overly broad, the Section 201 Steel Safeguard of 2001-2002 may serve as a general guide. The following categories of products were targeted in that proceeding:

- Certain carbon flat-rolled steel, including carbon and alloy steel slabs.
- Plate (including cut-to-length plate and clad plate).
- Hot-rolled steel (including plate in coils).
- Cold-rolled steel (other than grain-oriented electrical steel.
- Corrosion-resistant and other coated steel.
- Carbon and alloy hot-rolled bar and light shapes.
- Carbon and alloy cold-finished bar.
- Carbon and alloy rebar.
- Carbon and alloy welded tubular products (other than oil country tubular goods).
- Carbon and alloy flanges, fittings, and tool joints.
- Stainless steel bar and light shapes.
- Stainless steel rod.
- Carbon and alloy tin mill products.
- Stainless steel wire.

The measures imposed were subject to significant product exclusions. Pursuing a similar product-exclusion strategy in the new Section 232 proceeding will likely be important for affected companies.

The timeline for the steel proceeding is shown below.

Request to Appear at Public Hearing	May 17
Public Hearing	May 24
Submission of Post-Hearing Comments or other Written Comments	May 31
Completion of DOC investigation	January 15, 2018*
Presidential Determination	April 16, 2018*
President Informs Congress	May 16, 2018*

* At the latest

ALUMINUM

On April 27, President Trump directed an investigation into the impact of aluminum imports on U.S. national security.

This investigation is being held under the same authority as the previously announced probe on steel, section 232 of the Trade Expansion Act of 1962 (19 U.S.C. § 1862). As with steel, DOC is charged with determining whether aluminum is being imported into the U.S. in such quantities or under such circum-stances as to threaten to impair national security. DOC has 270 days to conduct its investigation and prepare a report on its findings for submission to the president.

The next step will be a Federal Register Notice providing information about the upcoming public hearing.

For more on section 232 investigations, please see Crowell's Client Alert from the steel case.

For more information, contact: Dan Cannistra, Alan W.H. Gourley, Alex Schaefer, Jeff Snyder, John Brew, Bob LaFrankie, Charles De Jager, Jini Koh, Benjamin Blase Caryl

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NEW U.K. ECONOMIC SANCTIONS AUTHORITIES TAKE EFFECT

On April 1, the United Kingdom's Office of Financial Sanctions Implementation (OFSI) acquired new civil enforcement powers, including the ability to impose civil monetary penalties. These authorities come from implementation of portions of the Policing and Crime Act 2017 (the Act).

OFSI has issued finalized guidance of its compliance and enforcement approach, including how it will assess whether to apply a monetary penalty (the Guidance).

The office is now authorized to impose civil monetary penalties if it is "satisfied, on the balance or probabilities, that—

> "(a) The person has breached a prohibition, or failed to comply with an obligation that is imposed by or under financial sanctions legislation, and
>
> (b) The person knew, or had reasonable cause to suspect, that the person was in breach of the prohibition or (as the case may be) had failed to comply with the obligation."

In contrast to the strict liability sanctions regime in the U.S., the U.K. explicitly focuses its enforcement authority on persons with knowledge or reason to suspect a potential violation. In a case where the breach or failure relates to particular funds or economic resources, the Act authorizes the imposition of penalties of up to £1,000,000 or 50 percent of the estimated value of the funds or economic resources, whichever is greater.

Scope of Jurisdiction and Individual Liability

OFSI's guidance, a draft of which we summarized in January, includes:

- Scope of Jurisdiction: Its authority covers all transactions with a "U.K. nexus," even those outside the U.K. This includes, but is not limited to:
  - "Transactions using clearing services in the U.K."
  - Transactions involving "financial products or insurance bought on U.K. markets but held or used overseas."
  - Transactions "taking place overseas but directed from within the U.K." OFSI notes that it will "not artificially bring something within U.K. authority that does not clearly and naturally come under it," but it can and will refer potential violations to other authorities.
- Individual Liability: The Guidance highlights OFSI has jurisdiction to impose penalties on entities, but can also pursue a penalty against an officer of that entity if the activity:
  - "Occurred with the "consent or connivance of the officer;" or
  - Was "attributable to any neglect on the part of the officer."

Other Key Points

- Actions OFSI Can Take: OFSI identifies four actions it can take in response to a sanctions breach: (1) issuing correspondence requiring details of how a party will improve its compliance practice; (2) referring a regulated professional to its relevant professional body; (3) imposing civil monetary penalties; or (4) referring the case to law enforcement agencies for criminal investigation and prosecution.
- Enforcement Focus: OFSI intends to be "proportionate" in its response and that it will assess a number of mitigating and aggravating circumstances when assessing a case. Generally speaking, "the more aggravating factors [OFSI] see[s], the more likely [it is] to impose a monetary penalty."

- Factors OFSI Considers: OFSI will look at a number of factors in considering enforcement, including: (1) whether there is a direct provision of funds or economic resources to a designated person; (2) whether there is circumvention of sanctions; (3) the value of the breach; (4) the harm or risk of harm to the sanction regime's objectives; (5) the knowledge and sophistication of the actor involved; (6) the behavior of the persons involved; (7) whether a license was sought; (8) whether a transaction was disclosed; (9) whether there were repeated, persistent, or extended breaches; (10) the public interest; and (11) other case-specific factors.
- Voluntary Self-Disclosure: Voluntary self-disclosures are encouraged and treated as a mitigating factor. In contrast to the U.S. where only the first disclosure is considered voluntary, OFSI notes "the mere fact that another party has disclosed first will not necessarily lead to the conclusion that later disclosure has any lesser value." OFSI encourages early disclosures and notes that it is willing – as is common before the Office of Foreign Assets Control (OFAC) in the U.S. – to consider an initial and further disclosure as facts are supplemented.
- Penalty Calculation: OFSI published a matrix to show how it calculates penalties. This penalty matrix is very similar to that published by OFAC. OFSI assesses the 'seriousness' of a penalty, while OFAC assesses 'egregiousness', and both consider whether a voluntary disclosure was made. For serious violations in which a disclosure was made, the penalty would be reduced by at least 50 percent. For "most serious" violations, the base penalty will be reduced "up to 30%".
- Publication: In a departure from typical European practice and as required by the Act, OFSI notes it will "normally publish details of all monetary penalties it imposes [.]" This summary will include: (a) identifying the person subject to penalty; (b) the summary facts of the case; (c) the value of the violation; (d) the value of the penalty; (e) the "compliance lessons OFSI wishes to highlight"; and (f) any other relevant information. OFSI does note that there may be circumstances in which it will not publish a summary including where "a reasonable person would consider it disproportionate."

Companies need to be aware of the new penalties and that the standard of proof required to impose them is lower than that required for criminal prosecution. Although breach of sanctions has always risked adverse media coverage, the publication by OFSI of all monetary penalties it imposes means this risk has increased.

These factors, together with the size of the fines and the added risk of referral to regulators who may impose additional fines, means that sanctions compliance issues will remain at the top of the compliance agenda for all businesses.

For more information, contact: Carlton Greene, Cari Stinebower, Dj Wolff, Charles De Jager, Gordon McAllister, Edward Norman

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EU PROPOSAL ON CYBER-SURVEILLANCE TOOLS COULD LEAD TO EXPANDED CONTROLS

An EU proposal intended to address important technological developments could significantly affect the controls on cyber-surveillance tools.

The proposal to introduce a "human security" dimension to export controls is designed to prevent the abuse of certain cyber-surveillance technologies by regimes with poor human rights records. However, the current scope of the proposal is particularly broad. It includes intrusion software, monitoring centers, lawful-intercept and data-retention systems, as well as digital forensics.

Although there is agreement on the need to improve human rights in the digital context, the proposal has divided stakeholders and is of particular concern to the cyber industry. It argues overly broad controls based on human rights considerations would place it at a competitive disadvantage in relation to non-EU rivals.

Instead, industry believes more targeted export controls would provide a better balance between concerns for national security and human rights. They argue many of the technologies affected by the proposal should be seen as part of the solution to human rights abuses.

In parallel, member states of the Wassenaar Agreement are considering multilateral export controls on intrusion software. Certain stakeholders have expressed disappointment at the relative lack of transparency in this area and believe the time is right for industry to increase its advocacy efforts. Once again, the problem is achieving the right balance between national security and privacy/human rights.

Finding this balance would allow for a narrowing and clarifying of relevant definitions and control descriptions in both Wassenaar and the EU.

For more information, contact: Jeff Snyder, Chris Monahan, Charles De Jager, Jana del-Cerro

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U.K. to Implement Fourth EU Anti-Money Laundering Directive in June

Her Majesty's Treasury (HM Treasury) will soon publish its final policy decisions in advance of the June 26, 2017 implementation of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (2017 MLRs).

The 2017 MLRs are intended to transpose the EU's fourth directive on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (4MLD). The Fund Transfer Regulation (FTR) which accompanied will also be effective on June 26.

Comments received from HM Treasury's initial request for public consultation on transposing the 4MLD in UK Regulation have already been incorporated into the regulations. Treasury officials provided a summary of the consultation as well as a summary of the interventions and opinions for stakeholders.

Coming Soon: New U.K. Office for AML Supervision of Professional Bodies

In parallel, the U.K. announced it would create a new Office for Professional Body Anti-Money Laundering Supervision (OPBAS).

Currently, there are more than 22 professional bodies that supervise accounting and legal service providers. OPBAS will coordinate and align the risk-based approaches taken by each of the 22 bodies.

In particular, OPBAS aims to publish standard AML guidance for each business sector, reducing the number of guidance documents and easing the regulatory burden on firms.

For more information, contact: Carlton Greene, Cari Stinebower, Charles De Jager; Gordon McAllister, Edward Norman, Mariana Pendas

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April a Tough Month for U.S. at the WTO

The U.S. was on the losing side in two cases at the World Trade Organization in April.

In the first, a WTO-appointed arbitrator saidthe U.S. must correct its antidumping and countervailing duty (AD and CVD) calculations on washing machines imported from South Korea by the end of 2017. If not, the U.S. could face retaliatory action from Seoul.

The dispute began in 2012 when Whirlpool Corp. petitioned for AD and CVD duties on Korean washing machines, primarily targeting Samsung. It alleged Samsung's pricing tactics and receipt of an unfair government subsidy caused injury to the U.S. domestic industry.

Whirlpool was successful with its petition. The Department of Commerce imposed significant AD and CVD duties. The U.S. International Trade Commission concurred, finding the imported washing machines were a threat to U.S. manufacturers.

South Korea then pursued dispute settlement proceedings at the WTO. Although it succeeded on a number of its claims at the panel stage, both sides appealed portions of the decision.

In September 2016, the Appellate Body (AB) upheld some of Seoul's key claims. The DOC then asked to be granted 21 months to implement the AB's findings and recalibrate AD and CVD rates. The arbitrator disagreed and determined 15 months from September 2016 was enough time for the U.S. to comply.

In the second case, three other arbitrators ruled Mexico can impose $163 million in retaliatory trade restrictions against the U.S. because U.S. dolphin-safe labeling rules for tuna products, modified in 2013, were found discriminatory by the WTO on four occasions.

The core finding is tuna caught in the eastern Pacific Ocean, a mainstay of the Mexican fishing industry, faces more stringent U.S. labeling requirements than fish captured in other waters.

In 2016, the U.S. revised its labeling requirements again in an attempt to bring them into WTO compliance. These modified rules are under consideration by a U.S.-requested compliance panel. Should the panel find the updated U.S. labeling requirements adequate, Mexico would no longer be allowed to retaliate. Until such time, Mexico can maintain its retaliation in the amount established by the arbitrator.

For more information, contact: Charles De Jager

NEW TRADE CASES FILED

Certain Tool Chests and Cabinets from China and Vietnam

On April 10, Waterloo Industries, Inc. filed antidumping (AD) petitions on imports of certain tool chests and tool cabinets from China and Vietnam, as well as a countervailing duty (CVD) petition on the same product from China.

The product covered by these petitions is certain metal tool chests and tool cabinets, typically made of steel, with two or more drawers per unit. The subject merchandise includes tool top chests, intermediate chests, cabinets, side cabinets, mobile work benches, work stations, and metal storage units with two or more drawers.

The Petitioner has requested AD duties of 167.5 percent for China and 58.2 percent for Vietnam– as well as CVD duties on Chinese exports of the product to offset subsidies.

For more information, contact: Benjamin Blase Caryl

Cold-Drawn Mechanical Tubing from China, Germany, India, Italy, Korea, and Switzerland

On April 19, ArcelorMittal Tubular Products, Michigan Seamless Tube, LLC, PTC Alliance Corp., Zekelman Industries, and Webco Industries, Inc. filed AD and CVD petitions on imports of certain cold-drawn mechanical tubing from China, Germany, India, Italy, Korea and Switzerland.

The scope of this investigation covers cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) of circular cross-section, in actual diameters less than 13 inches (less than 331 mm), and regardless of wall thickness, surface finish, end finish or industry specification. The subject cold-drawn mechanical tubing is a tubular product with a circular cross-sectional shape that has been cold-drawn or otherwise cold-finished after the initial tube formation in a manner that involves a change in the diameter or wall thickness of the tubing, or both. The subject cold-drawn mechanical tubing may be produced from either welded (*e.g.*, electric resistance welded, continuous welded, etc.) or seamless (*e.g.*, pierced, pilgered or extruded, etc.) carbon or alloy steel tubular products. It may also be heat treated after cold working (annealed, normalized, quenched and tempered, stress relieved, or finish annealed). Typical cold-drawing methods for subject merchandise include, but are not limited to, drawing over mandrel, rod drawing, and sink drawing.

Petitioners have requested the AD duties as shown below, as well CVD duties to offset subsidies on imports from China and India.

Country	Alleged AD Rate
China	88.82% - 188.88%
Germany	70.53% - 104.82%
India	25.48%

Korea	14.14% - 32.16%
Italy	37.23% - 69.13%
Switzerland	40.53% - 115.21%

The U.S. International Trade Commission will hold a public preliminary conference on May 10, in which interested parties (U.S. producers, importers, purchasers, and foreign producers/exporters) may testify and answer USITC staff questions about the Cold-Drawn Mechanical Tubing industry and market.

For more information, contact: Benjamin Blase Caryl

PODCAST: THE TRUMP ADMINISTRATION'S NEW IMPORT DUTIES ON SOFTWOOD LUMBER – C&M'S FIRST 100 DAYS SERIES

In the last few days the news has been chock-a-block with headlines about the administration slapping new import duties on softwood lumber from Canada. As part of our First 100 Days series, International Trade Group partner Alex Schaefer sits down to discuss the duties. Alex represents clients contending with U.S. import regulations, including customs and trade remedies laws.

Discussed in this 6 minute podcast

- The background of this lumber dispute.
- The reasons for the new import duties.
- What the future may hold on the lumber front.

Click below to listen via one of these links:
PodBean | SoundCloud | iTunes

For more information, contact: Alex Schaefer

BUY AMERICA – RHETORIC: YES – SUBSTANCE: NOT YET

On April 18, 2017, the president signed an Executive Order taking a modest step towards implementing his Buy American and Hire American campaign promise.

With respect to Buy American, the EO directs all agencies to review all domestic preferences applicable to federal procurements or grants (collectively Buy American Laws) and propose policies to ensure maximum use of U.S. manufactured products and components. The Secretary of Commerce is to consolidate the agency findings and recommendations into a report that also

assesses the impact that various WTO and Free Trade Agreements have had on buying U.S. made goods, with annual reports to follow.

Effective more immediately, any public interest waivers should be made by the head of the agency involved, maximize utilization of domestic products and material, and consider whether any foreign cost advantage is the result of unfair trade practices.

Signaling the potential for increased enforcement efforts, the EO requires every agency to "scrupulously monitor, enforce, and comply with Buy American Law."

With respect to Hire American, the EO directs DHS, DOL, and other relevant agencies to propose reforms to ensure that H-1B visas are awarded to the most skilled or highest paid petition beneficiaries and that the immigration system is administered to protect the interests of U.S. workers, including through the prevention of fraud and abuse.

For more information, contact: Alan W.H. Gourley, Angela Styles, Kris Meade

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AGENCY ENFORCEMENT ACTIONS

U.S. District Court for the Eastern District of New York

- U.S. District Judge Raymond Dearie ordered Odebrecht SA, an engineering conglomerate, to pay $2.6 billion to the governments of Brazil, the U.S., and Switzerland for violations of the Foreign Corrupt Practices Act. The company and its affiliate Braskem SA both pled guilty in December 2016 to conspiracy to violate the FCPA. Per the Department of Justice, the company employed “an elaborate, secret financial structure” to pay hundreds of millions of dollars in bribes over 15 years.
    - The fine was initially $6 billion. This was negotiated down by $2 billion after the company demonstrated it could not pay the full fine. It also received a 25 percent reduction because of its cooperation with the investigation.

For more information, contact: Edward Goetz

OTHER AGENCY ACTIONS

Directorate of Defense Trade Controls

- DDTC recently posted an update to its Frequently Asked Questions (FAQ) on Commodity Jurisdictions (CJ). The 34 FAQs describe how to prepare and submit the new DS-4076 form using the Defense Export Control and Compliance System (DECCS).
    - Please click here for the DDTC CJ page, which includes other useful information on CJs.

For more information, contact: Edward Goetz

CROWELL & MORING WINS

C&M SUCCESSFULLY OPPOSES CBP MOTION FOR SUMMARY JUDGMENT

CIT AGREES LOCKING HAND TOOLS ARE NOT CLASSIFIED AS WRENCHES

The Court of International Trade ruled locking pliers imported between 2012 and 2013 by Irwin Industrial Tools are not classifiable as wrenches. Ruling against CBP, the CIT opined that locking pliers lack the physical characteristics of a wrench. The government had argued that locking pliers should be classified as wrenches because they are designed for wrenching.

Although the CIT denied Crowell's request for trial on the merits, the court did rely in part on physical examination of the samples submitted by counsel to the court. C&M argued that "locking pliers" should be classifiable as pliers of subheading 8203.20.60, dutiable at 12 cents per dozen plus 5.5 percent. Alternatively, it argued for classification in subheading 8205.70.0060 as vises, dutiable at 5 percent.

The CIT adopted definitions of each type of hand tool similar to those proposed by counsel. "The term 'wrench,'" the court explained, "refers to a hand tool composed of a head with jaws or sockets having surfaces adapted to snugly or exactly fit and engage the head of a fastener (such as a bolt-head or nut) and a frame with a singular handle with which to leverage hand pressure to turn the fastener without damaging the fastener's head."

The court held that physical inspection of the tools indicated they may be classifiable as pliers or vises, but lacked the qualities of a wrench. They do not have "a head with jaws having surfaces adapted to snugly or exactly fit and engage the head of a fastener (such as a bolt-head or nut)," nor do they have "a singular handle with which to exert pressure to turn a fastener without damaging the fastener's head."

The CIT defined pliers as a "versatile hand tool with two handles and two jaws that are flat or serrated and are on a pivot, which must be squeezed together to enable the tool to grasp an object." In a prior decision, the Court of Appeals for the Federal Circuit opined the CIT erred in failing to consider whether the tariff provision for 'wood screws' suggested either a provision controlled by use or one where use was of paramount importance. But the court indicated that there was no indication in this tariff provision that "wrenches" are "controlled by use."

Counsel is filing a Motion for Summary Judgment now that the court has defined the Headings at issue.

For more information, contact: Dan Cannistra, Frances Hadfield

CROWELL & MORING SPEAKS

On April 21, Kelly Currie spoke at the 19th Annual New York Conference on the Foreign Corrupt Practices Act in New York. He shared his insights as a former Chief Assistant U.S. Attorney for the Eastern District of New York (EDNY) on a panel entitled, "Looking Ahead: EDNY and SDNY Prosecutors Alumni Panel."

On May 2, Frances Hadfield spoke at the Practicing Law Institute's (PLI) Fashion and Retail Law 2017 Trends and Developments seminar at PLI's New York Center. She was part of a panel on International Trade Developments, discussing topics such as responsibilities for importing fashion and retail products, current issues for exporters, country of origin rules and marking, and how the evolving trade policy environment is likely to affect the industry.

On May 9, Jana del-Cerro will be speaking at the American Association of Exporter and Importers' (AAEI) Export Controls and Compliance Seminar in Washington, DC on a panel focused on technology controls in an increasingly digital world. Topics include cloud computing, encryption, deemed access, and processes to automate export control compliance.

Charles De Jager, Jana del-Cerro, and Grégoire Ryelandt will be speaking at the International Compliance Professionals Association's (ICPA) Annual European Conference, to be held June 11-13 in Dublin, Ireland. Charles will be providing an update on the Transatlantic Trade and Investment Partnership, Jana will be speaking on Encryption, and Grégoire will be discussing 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.

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)."

CROWELL & MORING EVENTS

EU COMPETITION LAW: CURRENT EVENTS IN A GLOBAL CONTEXT

May 19 from 8:45 am to 5:30 pm at the Hilton Brussels Grand Place

After last year's success, in conjunction with Crowell & Moring, King's College London Centre of European Law is organizing a second conference to explore current EU Competition law issues in a global context.

The purpose of the event is to bring together leading judges, regulators, in-house counsel, academics, and private practice lawyers to discuss current issues in EU law from an international perspective, with a particular focus on the EU-U.S. axis.

To that end, we have put together four panels that each unite contributors from multiple jurisdictions to give short presentations leading to interactive discussions and Q&A involving the panel members and the audience.

Topics include:

- Merger Control Developments - Innovation Theories and EU Procedures
- Innovation and Unilateral Conduct
- ECN Policy - Consistency and the Brexit Impact
- Cartel Litigation - International Year in Review

Tickets £ 125.00.

Contact: Christine Copping, King's College, London (+ 44 207 848 2387, christine.copping@kcl.ac.uk)

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