

CLIENT ALERT

The Month in International Trade – April 2019

May.13.2019

In this issue:

- **Top Trade Developments**

- [Latest U.S. Trade Actions/Tariffs and Other Countries Retaliatory Measures](#)
- [China Section 301 Updates](#)
- [Latin America Update: Suspension of Helms-Burton Act; New Sanctions for Venezuela and Nicaragua](#)
- [OFAC Publishes New Sanctions Regulations to Address Foreign Interference in U.S. Elections](#)
- [Trump Administration Readies \\$11 Billion in Tariffs against EU and Schedules Section 301 Hearing in WTO Airbus Case](#)
- [EU Retaliatory Tariffs: Preliminary List Proposed in Continuing Dispute with U.S. over Boeing/Airbus Subsidies](#)
- [False Claims Act Suit Brought Against Importer for Evading Customs Duties](#)
- [Customs Rulings of the Week](#)

- **Crowell & Moring Speaks**

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

Latest U.S. Trade Actions/Tariffs and Other Countries Retaliatory Measures

Finding it hard to stay on top of the latest in tariff increases?

Please [click here anytime](#) for the latest actions, covered products rate increases, and effective dates.

For more information, contact: Dan Cannistra, Robert Holleyman, Bob LaFrankie, Spencer Toubia, Ru Xiao-Graham, Cherie Waltermann

China Section 301 Updates

China Section 301 List 4 Coming

In a [statement on May 10](#), U.S. Trade Representative (USTR) Robert Lighthizer said, "...The President also ordered us to begin the process of raising tariffs on essentially all remaining imports from China, which are valued at approximately \$300 billion."

USTR to Publish Exclusion Process for Section 301 List 3; Latest Tariffs Contain "On Water" Exception through June 1st

On May 9, 2019, the [United States Trade Representative \(USTR\)](#) published a notice in the [Federal Register](#) increasing tariffs on Chinese goods worth \$200 billion (also known as "List 3") from 10 percent to 25 percent effective on May 10, 2019.

The notice also announced that USTR will establish a formal exclusion request process for products covered by the [September 2018 action \[List 3\]](#) in order to be excluded from the additional duties. This will be published in a future Federal Register Notice.

Unlike past Section 301 notices of this type, this one contains an "on water" exception.

The annex to the notice reads the effective date includes goods (i) entered for consumption, or withdrawn from warehouses for consumption, on or after 12:01 a.m. eastern daylight time on May 10, and (ii) exported to the United States on or after May 10.

Thus, goods that were exported to the United States and were in transit before May 10 are not subject to this action. However, in a [soon to be published Federal Register Notice](#), USTR is modifying the exception. All Section 301 List 3 items must be in transit to the United States before May 10, **and** arrive in the United States by June 1, 2019 to avoid the increased tariff. Goods entering the U.S. after June 1 will be subject to the higher 25 percent rate even if they were shipped to the U.S. before May 10.

For more information, contact: John Brew, Clif Burns, Frances Hadfield, Spencer Toubia

Latin America Update: Suspension of Helms-Burton Act; New Sanctions for Venezuela and Nicaragua

Recently, the U.S. State Department and the Department of the Treasury's Office of Foreign Assets Control (OFAC) targeted the economic sector of, what the White House identified as the "[troika of tyranny](#)," also known as the regimes of Cuba, Nicaragua, and Venezuela.

In conjunction, the U.S. State Department lifted the suspension of Title III of the Helms-Burton Act, allowing Cuban-Americans to file lawsuits against persons and entities *trafficking* in property confiscated by the Cuban regime.

Cuba and the Helms-Burton Act

The Trump administration officially activated Title III of the Helms-Burton Act (22 U.S.C. §§ 6021-91), potentially opening the floodgates to litigation over property confiscated by the Fidel Castro regime on or after January 1, 1959. Now effective since May 2, Title III of Helms-Burton creates a private right of action for U.S. citizens to bring claims against anyone who is "trafficking" (*i.e.*, using) in property confiscated by Cuba.

Under Helms-Burton, an entity “traffics” in confiscated property if that entity “knowingly and intentionally”:

- sells, transfers, distributes, ... manages, or otherwise disposes of confiscated property, or purchases, ... receives, possesses, ... uses, or otherwise acquires or holds an interest in confiscated property;
- engages in a commercial activity using or otherwise benefiting from confiscated property; or
- causes, directs, participates in, or profits from trafficking (as described in clause (i) or (ii) by another person, or otherwise engages in trafficking (as described in clause (i) or (ii) through another person

without the authorization of any United States national who holds a claim to the property.

The amounts that Plaintiffs will be able to sue for are not tied to the trafficker’s economic involvement or profit from the trafficking. Instead, the potential damages available will be the greatest amount resulting from calculations under three alternative formulas: (1) the amount certified by the Foreign Claims Settlement Commission (FCSC) plus interest if the Claimant applied for and achieved such a ruling back in the early 1970s, (2) an amount determined by a Judge or special master today; or (3) the fair market value of the property either now or when confiscated (plus interest from the date of confiscation). If those claims were certified by the FCSC, then the potential plaintiff may be entitled to treble those damages.

To learn more on Helms-Burton [click here](#).

Venezuela

On April 17, OFAC designated *Banco Central de Venezuela* (Central Bank of Venezuela) pursuant to Executive Order (E.O.) 13850 – “*Blocking Property of Additional Persons Contributing to the Situation in Venezuela*” –, as amended by E.O. 13857 – “*Taking Additional Steps To Address the National Emergency with Respect to Venezuela*,” and Iliana Josefa Ruzza Terán, pursuant to E.O. 13692 – “*Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela*”. Iliana Josefa Ruzza currently is the Director of the Central Bank of Venezuela and Vice President of Finance of *Petróleos de Venezuela, S.A.* (PdVSA)—previously designated on January 28. She was also recently appointed by Nicolás Maduro on the Board of Directors for the Venezuelan Department of Foreign Commerce (CORPOVEX).

The two new designations once again target the financial sector of the Maduro regime by cutting access to the US-financial sector. Earlier in March, OFAC also designated *Banco de Desarrollo Económico y Social de Venezuela* (BANDES). In its press release, the U.S. Treasury alleged that the Central Bank of Venezuela is being used as a tool for illicit gains and the perpetuation of power by the Maduro regime. The Bank is under the control of several previously designated individuals.

New GLs

OFAC issued General License 19 (GL19) – “*Authorizing Certain Activities Necessary to the Wind Down of Operations or Existing Contracts Involving Banco Central de Venezuela*” – and General License 20 (GL20) – “*Authorizing Official Activities of Certain International Organizations Involving Banco Central de Venezuela*”. GL19 authorizes transactions and activities that are necessary for the wind down of operations relating to the Central Bank of Venezuela until 12:01 AM on May 17, 2019. GL19 does not, however, authorize any debit account to the Central Bank of Venezuela on the books of a US financial institution. GL20 authorizes specific international organizations such as the Inter-American Development Bank, the Organization of American

States (OAS), the World Bank and CAF Development Bank of Latin America, amongst others, to conduct official business as long as it is not otherwise prohibited under E.O. 13850.

Amended GLs

The following GLs were amended to include the Central Bank of Venezuela:

- [General License 3D \(GL3D\)](#) - “Authorizing Transactions Related to, Provision of Financing for, and Other Dealings in Certain Bonds.”
- [General License 4A \(GL4A\)](#) - “Authorizing New Debt Transactions and Transactions involving Certain Banks Related to the Exportation or Reexportation of Agricultural Commodities, Medicine, Medical Devices or Replacement Parts and Components.”
- [General License 9C \(GL9C\)](#) - “Authorizing Transactions Related to Dealings in Certain Securities.”
- [General License 15 \(GL15\)](#) - “Authorizing Transactions Involving Certain Banks Prohibited by Executive Order 13850 for Certain Entities.”
- [General License 16 \(GL16\)](#) - “Authorizing Maintenance of U.S. Person Accounts and Noncommercial, Personal Remittances involving Certain Banks.”

The [FAQ](#) clarifies that humanitarian aid and remittances to Venezuela are still permitted. The FAQ also addresses the changes made to the General Licenses.

Other Recent Designations

On May 10, OFAC [designated](#) two companies operating in the oil sector of the Venezuelan economy. OFAC also blocked two vessels owned by these companies, which reportedly have been used to deliver crude oil from Venezuela to Cuba in exchange for military support.

On April 26, OFAC [designated](#) Nicolás Maduro’s Minister of Foreign Affairs, as well as a judge allegedly involved in the prosecution of several representatives of Venezuela’s legislature and the chief of staff of Interim President Juan Guaidó.

To learn more on previous Venezuela-related designations [click here](#).

Nicaragua

OFAC designated Banco Corporativo SA (Bancorp) and Laureano Ortegalla Murillo pursuant to [E.O. 13851](#) - “*Blocking Property of Certain Persons Contributing to the Situation in Nicaragua*”. The E.O. establishes criteria for blocking property and interests of property that are or hereafter come within the possession or control of any U.S. person (including U.S. persons such as foreign branches located outside the United States) of persons determined by OFAC to be responsible for or complicit in—among other things—serious human rights abuse or corruption in Nicaragua, as well as actions or policies that undermine democratic processes or institutions or that threaten the peace, security, or stability of Nicaragua.

The recently designated entities are a critical hit to Nicaragua’s economic sector for the following reasons:

- Bancorp has been the major banking entity that has served as a money laundering haven through the use of multiple escrow accounts for many corrupt officials, including the Ortega-Murillo Family.
- Before this designation, U.S. Persons were already prohibited to transact with Bancorp because it was a subsidiary of ALBANISA, and was therefore subject to the same asset freezing measures as PdVSA, its ultimate parent. However, on March 8th, the Government of Nicaragua approved a law to purchase Bancorp in order to avoid the sanctions associated with PdVSA. This designation renders that step irrelevant.
- Laureano Ortega is the son of President Daniel Ortega—currently being accused for crimes against humanity—and Vice President Rosario Murillo (SDN).
- Laureano is the head of ProNicaragua—a state-owned entity dedicated to the promotion of foreign investments in Nicaragua.
- Laureano, through ProNicaragua, is alleged to have “engaged in corrupt business deals in which foreign investors paid for preferential access to the Nicaraguan economy”.
- Laureano has also been a key figure in the Grand Canal Project of Nicaragua—a project that has been deemed as unconstitutional and has been used for illicit purposes such as acquiring property without due process.

These designations are the second set of designations pursuant to E.O. 13851. The sanctions issued were sparked by the Nicaraguan Government crackdown on the peaceful protests that began on April 19 and the political unrest that followed. Nicaragua has been a country that has been plagued with systematic corruption over several years – the symptoms are starting to show.

To learn more on previous Nicaragua-related designations [click here](#).

For more information, contact: David Baron, Dj Wolff, Mariana Pendas

OFAC Publishes New Sanctions Regulations to Address Foreign Interference in U.S. Elections

On April 29, 2019, the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) published new regulations in the Federal Register to address foreign interference in U.S. elections. These regulations, located at 31 CFR Part 579, implement Executive Order (E.O.) 13848 – “Imposing Certain Sanctions in the Event of Foreign Interference in a United States Election”, published September 14, 2018. To date, no individuals have been designated pursuant to this E.O. The regulations, however, provide guidance for practitioners if and when designations do occur.

E.O. 13848

E.O. 13848 – “Imposing Certain Sanctions in the Event of Foreign Interference in a United States Election” was issued on September 12, 2018 and declared a national emergency to deal with this threat. It requires that within 45 days after the conclusion of a U.S. election, the Director of National Intelligence shall conduct an assessment and prepare a report of any information indicating that a foreign government or individual acting on behalf of a foreign government, acted with the intent or purpose of interfering in the election. A second report, to be delivered 45 days later, shall detail the extent to which foreign interference materially affected the election. Persons identified in the report for having interfered in the election may then face

sanctions. Additional sanctions may also be imposed on other entities whose governments have been found to have authorized, directed, sponsored or supported election interference. In particular, the Secretary of State and the Secretary of the Treasury will recommend at least one entity from the following sectors: financial services, defense, energy, technology, and transportation.

New Regulations

The newly published regulations implement OFAC’s standard initial set of bare-bones regulations for any new sanctions program. The net effect of their publication is to ensure that some of the basic sets of general licenses that apply in most OFAC programs are also applicable to this new program. The regulations as currently published are in abbreviated form and OFAC intends to supplement them with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance, general licenses, and statements of licensing policy.

Practical Considerations

As they currently stand, these new regulations do not change the state of play related to OFAC’s efforts to punish those responsible for interfering in U.S. elections. The regulations merely put in place what E.O. 13848 had already established, and implement a bare bones standard set of general licenses. Practitioners should be aware that updated regulations and general licenses will be forthcoming, although a date for their publication has yet to be established.

For more information, contact: Dj Wolff, Brian McGrath

Trump Administration Readies \$11 Billion in Tariffs against EU and Schedules Section 301 Hearing in WTO Airbus Case

On April 8, 2019, the Trump administration released a list (see Annex) of \$11 billion of European goods threatened with tariffs because of the WTO decision finding that “harmful subsidies” support the aircraft manufacturer Airbus. This case had been in litigation at the WTO for 14 years. It began in 2004 when the United States first challenged European government support for Airbus. The EU then challenged U.S. federal and state support for Boeing. The WTO ruled that the EU and the four governments involved in Airbus failed to comply with an earlier ruling that they should withdraw contested subsidies. The US then asked for authorization to retaliate in the amount of \$11 billion dollars. These proposed tariffs against the EU would be imposed in addition to those already in place for European products.

United States Trade Representative Robert Lighthizer said the U.S. issued the proposed \$11 billion list in order to “respond immediately when the WTO issues its finding on the value of U.S. countermeasures. The USTR press release may be found [here](#).

The annex of goods is part of a Federal Register Notice entitled, “Initiation of Investigation; Notice of Hearing and Request for Public Comments: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute”, which includes, among other things, aircraft and aircraft parts, as well as traditional European specialty products including certain cheeses and wines.

In addition to the tariff list, it includes the following schedule:

| Event | Due Date/Date |
|--------------|----------------------|
|--------------|----------------------|

| | |
|---|--------------|
| Submission of requests to appear at the public hearing and summary of testimony | May 6, 2019 |
| Section 301 Committee Public Hearing | May 15, 2019 |
| Submission of written comments, including post-hearing rebuttal comments | May 28, 2019 |

A WTO arbitrator has not yet ruled on this case, therefore the amount of retaliation remains undetermined until later this summer at the earliest. The EU said proposing to place tariffs on \$11 billion dollars' worth of goods is excessive.

For more information, contact: Frances Hadfield, Spencer Toubia, Edward Goetz

EU Retaliatory Tariffs: Preliminary List Proposed in Continuing Dispute with U.S. over Boeing/Airbus Subsidies

Views and Input Sought from Stakeholders by May 31, 2019

The European Union (EU) has published its preliminary list of U.S. goods that will be targeted for retaliatory tariffs over subsidies to Boeing. The preliminary list is focused on farm products. Some of the products include: Fish, cheese, agricultural goods such as fruits and vegetables, chocolate, wine, spirit alcohols, lobster, handbags/wallets, tractors, motorcycles/motorcycle parts, helicopters, planes, video game consoles, exercise machines, tobacco, etc.

The World Trade Organization (WTO) will ultimately decide the level of damages the EU can seek, with a verdict likely by the end of this year or in early 2020. The closing date for consultations is May 31, 2019, with private stakeholders potentially affected by the planned EU commercial policy measures due to the trade dispute with the United States.

The EU proposed retaliatory tariffs follows the U.S. threat to seek \$11 billion in damages through duties on European goods ranging from helicopters to cheeses to counter state aid to Airbus.

The EU is also seeking input regarding the views and information regarding the EU economic interests in the products originating in the United States, which could be subject to EU commercial policy measures. See [List of Products](#). This information must be submitted by 12:00 AM on May 31, 2019.

For more information, contact: John Brew, Frances Hadfield, Cherie Walterman

False Claims Act Suit Brought Against Importer for Evading Customs Duties

The U.S. Department of Justice recently intervened in *United States ex rel Vale v. Selective Marketplace Ltd.*, a False Claims Act (FCA) suit brought against a clothing importer for allegedly evading customs duties. *United States ex rel Vale v. Selective Marketplace*, 2:17-cv-00380, Dkt. 28 (D. Me. March 27, 2019). This lawsuit is just the latest example in a growing number of FCA actions brought against importers for allegedly concealing obligations to pay duties to U.S. Customs and Border Protection. The

rise in qui tam suits (a type of whistleblower lawsuit) based on avoidance of duties combined with the administration's protectionist policies means that importers could face increased FCA risks for years to come.

In an [Expert Analysis](#) article published in Law360, C&M attorneys analyze recent enforcement trends and discuss practical steps that importers can take to mitigate risks.

For more information, contact: Alex Schaefer, Jason Crawford, Allegra Flamm

Customs Rulings of the Week

- April 12 [Classification of the "Mac in a Sac"](#)
- April 19: [Classification of "Snoopy Sno-Cone Machine"](#)
- April 26: [Classification of Coffee Makers](#)
- May 3: [Classification of Imitation Meat Products from the U.K.](#)

For more information, contact: Frances Hadfield, Rebecca Toro Condori

CROWELL & MORING SPEAKS

[Ambassador Robert Holleyman](#) moderated a panel on the "The Future of U.S.-Japan Trade" for the Washington International Trade Association in Washington, D.C. on April 3. He was also on a panel entitled "The APEC Cross Border Privacy Rules" at the International Privacy Security Forum, also in Washington, D.C., on April 4.

[Ambassador Robert Holleyman](#) was on a panel entitled "Protecting Innovation" at the US-China Innovation Forum – Setting the Agenda, hosted by the Center for Strategic and International Studies (CSIS) in Washington, DC on April 10, 2019.

On April 23, [Jeff Snyder](#) presented on "US Export Controls: Issues for Companies in South Korea," in Seoul with the law firm Lee & Ko, to South Korean officials.

On April 26, Jeff moderated a panel on, "Current Issues in Russia – Asia Trade," at the 29th Annual Inter-Pacific Bar Association (IPBA) meeting and conference in Singapore. Later that day, Jeff co-moderated a panel on intertwined tax and trade issues entitled, "Doing Business in and with China: Is the View worth the Climb?"

[Addie Cliffe](#) moderated a panel entitled "International Considerations: New Approaches to Evolving National Security Concerns" at [Crowell's Ounce of Prevention Seminar OOPS\) 2019](#) in Washington, D.C. on May 7. Speaking on the panel were [Alan Gourley](#) and [Jana del-Cerro](#).

Pierce Lee will be speaking at the Southeast United States Korean Chamber of Commerce’s Korean Seminar for Multinationals on May 10 at Auburn University. He will be discussing “Trade Issues Related to Auto Industry: Section 232, Section 301, and USMCA Rules of Origin.”

Ambassador Robert Holleyman will be speaking at the APEC Life Sciences Forum on “Attracting Capital – Role of Trade, Investment, and Innovation Policies on May 15-16 in Viña del Mar, Chile, and Santiago, Chile, respectively.

Elena Klonitskaya will be speaking on “Managing Trade Risks” at the International Compliance Professionals Association’s (ICPA) 2019 EU/UK Conference in London on May 17.

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

Jeffrey L. Snyder

Partner – Washington, D.C.
Phone: +1 202.624.2790
Email: jsnyder@crowell.com

Frances P. Hadfield

Counsel – New York
Phone: +1 212.803.4040
Email: fhadfield@crowell.com

Edward Goetz

Manager, International Trade Services – Washington, D.C.
Phone: +1 202.508.8968
Email: egoetz@crowell.com

John B. Brew

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

Robert Clifton Burns

Senior Counsel – Washington, D.C.
Phone: +1 202.688.3448
Email: cburns@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

Brian McGrath

Associate – New York
Phone: +1 212.895.4222
Email: bmcgrath@crowell.com

Alexander H. Schaefer

Partner – Washington, D.C.

Phone: +1 202.624.2773

Email: aschaefer@crowell.com