

CLIENT ALERT

The Month in International Trade – April 2020

May.07.2020

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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](#).

Top Trade Developments

Coronavirus Resource Center

Crowell & Moring has a multidisciplinary working group helping clients navigate the rapidly evolving business, legal and operational challenges associated with the COVID-19 pandemic. This group brings together lawyers with relevant senior government, industry, and private sector experience across a wide array of practices that intersect with the issues at play in this unprecedented legal landscape.

Our focus is helping clients to anticipate issues, to take proactive steps, to develop appropriate responses, and to execute sound legal, business and operational plans. Crowell & Moring attorneys are advising on more than 250 COVID-19 matters in areas, including:

- Antitrust
- Bankruptcy & Restructuring
- Business Interruption and Commercial Contracts
- Commercial Finance & Lending
- Corporate
- Education
- Employment (U.S. & International)
- Energy
- Environmental
- Government Affairs
- Government Contracts
- Health Care, including Digital Health
- Insurance
- International Dispute Resolution
- Litigation
- Privacy & Cybersecurity
- Products Liability
- State Attorneys General Investigations
- Supply Chains & Trade
- Tax
- White Collar & Regulatory Enforcement

Immediate and Just Around the Corner Issues

We are counseling clients as they navigate both immediate issues, as well as those that may impact them very shortly. We are focused on helping them to understand the questions they need to ask with a view toward both the immediate and longer term business impacts and potential consequences. Some of the resources we have developed include:

- Analyses of a majority of federal, state, and municipal emergency declarations and orders. To request information for a specific jurisdiction, please email COVID-19@crowell.com.
- Webinar Series: We are hosting a webinar series called COVID-19: Immediate and Just Around the Corner Issues. Brief programs that will provide up to the minute information on important topics.
- Commercial Contracts Checklist: designed to assist companies when reviewing commercial contracts for provisions that are likely relevant to minimizing business disruptions and losses related to the COVID-19 pandemic.
- Workplace Guidelines: summarized the priority issues employers should be considering in the face as of COVID-19.

Areas in which we anticipate clients are facing immediate concerns include:

- Government contract performance issues in the US and abroad.
- Force majeure provisions in commercial contracts.
- Supply chain disruption and other business continuity issues.
- Hospital operations and capacity, patient safety, and medical supplies.
- Insurance questions and coverage exclusions and limitations.
- Compliance with workplace safety issues and health care law.
- Privacy and data protection policies and regulations.
- Labor and employment issues, including employment mobility.
- Disruption of corporate internal and external investigations.
- Oversight of public health policy and health care system preparedness plans.
- Medicare, Medicaid, and commercial reimbursement.

For access to the resource center, [please click here](#).

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

[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 Walterman

Latest on Section 301 Product Exclusions

[Please click here anytime](#) for the latest actions regarding Section 301 Product Exclusions.

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

BIS Broadens U.S. Government Visibility into Exports to Chinese and Russian Military End Users and End Uses

On April 28, 2020, the Department of Commerce’s Bureau of Industry and Security (BIS) published two new final rules and a proposed rule amending the Export Administration Regulations (EAR) to: (1) impose export license requirements on an expanded scope of items when destined for “military end use” or to “military end users” in China, Russia, and Venezuela; (2) remove license exception Civil End Users (CIV) and impose a license requirement for national security-controlled items on the Commerce Control List (CCL) to countries of national security concern; and (3) propose a modification of license exception Additional Permissive Reexports (APR) to remove provisions which currently authorize reexports of certain national security-

controlled items. Collectively, the changes reflect increased U.S. concerns about civil and military integration in China, Russia, Venezuela, and elsewhere, and oblige companies dealing with U.S.-origin items to perform “increased diligence with respect to the evaluation of end users in China.”

For highlights of the changes in the three rules, [please click here](#).

For more information, contact: Jana de-Cerro, Alan W.H. Gourley, Jeff Snyder, and Brian McGrath

USMCA (New NAFTA) to Take Effect July 1, 2020

The Office of the United States Trade Representative has notified the United States Congress that the [United States-Mexico-Canada Agreement \(USMCA\)](#) will enter into force on July 1, 2020. Following the notification to Congress, the United States became the third country to certify to the Parties (Mexico and Canada) that it had completed its domestic procedures to implement the agreement, which is the final step needed for the USMCA to enter into force.

In the coming weeks and months, several related developments will be underway. To support the USMCA implementation, new regulations are being drafted under Part 182 of the Customs regulations (19 C.F.R. Part 182). Further, the Harmonized Tariff Schedule of the United States (HTSUS) will be amended to include General Note 11 to include information on the USMCA rules of origin.

Until the USMCA enters into force, the North American Free Trade Agreement (“NAFTA”) requirements—which are set forth in Part 181 of the Customs regulations and General Note 12 of the HTSUS—remain in effect.

Recommendations to Importers:

- Importers with established NAFTA programs should begin taking steps to assess the impact of new USMCA requirements on existing compliance procedures. Further, importers will face the challenge of not only transitioning existing NAFTA programs to meet USMCA requirements, but also maintaining existing NAFTA programs for entries of merchandise running back five years.
- Importers of goods from Mexico or Canada who currently do not benefit from preferential treatment under NAFTA should assess whether the USMCA represents new opportunities for duty savings.

For more information, contact: John Brew and David Stepp

President Declares Threat to Electric Power Grid a National Emergency

On May 1, 2020, the President signed a new [Executive Order \(EO\)](#) declaring a national emergency regarding certain threats to the U.S. bulk-power system and broadly prohibiting acquisition, importation, transfer, or installation of any “bulk-power system

electric equipment” where the transaction, by any person, involves property in which any foreign country or national thereof has an interest.

Depending on how it is implemented, the EO has the potential to significantly disrupt the supply chain for electrical equipment for U.S. bulk-power systems, which include items used in electric generation projects and transmission systems. In order to prohibit a transaction, the Secretary of the Department of Energy, in consultation with other agencies, must determine that the transaction involves bulk-power system electric equipment “designed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary” and find that the transaction poses undue risks of sabotage or subversion of the bulk-power system, catastrophic effects to the security or resiliency of U.S. critical infrastructure or the U.S. economy, or otherwise presents an unacceptable risk to U.S. national security.

To continue reading this article, [please click here](#).

For more information, contact: Alan W.H. Gourley, Larry Eisenstat, Caroline Brown, Robert Holleyman, Deborah Carpenter, and Byron Brown

OFAC Issues Fact Sheet Regarding Humanitarian Trade Involving Sanctioned Countries and Provides COVID-19 Guidance

In response to criticism that sanctions are hampering the global response to the COVID-19 pandemic, the U.S. Treasury Department’s Office of Foreign Assets Control (OFAC) has released new guidance to encourage those interested in humanitarian trade involving jurisdictions sanctioned by the United States to “avail themselves of longstanding exemptions, exceptions, and authorizations” pertaining to that trade.

On April 16, 2020, OFAC published an extensive [fact sheet](#) outlining relevant authorizations, exemptions, and guidance available to support the provision of humanitarian assistance under its Iran, Venezuela, North Korea, Syria, Cuba, and Ukraine/Russia-related sanctions programs, and how these might be applied to personal protective equipment (PPE) and other COVID-19 pandemic-related humanitarian assistance. OFAC provides specific examples by program of PPE and other medical and humanitarian assistance that qualifies under these provisions. Even when an exemption is not available, OFAC indicates that it will consider license requests on a case-by-case basis and that it will prioritize applications, compliance questions, and other requests related to humanitarian support. The fact sheet underscores the United States’ commitment “to ensuring that humanitarian assistance continues to reach at-risk populations through legitimate and transparent channels as countries across the globe fight [COVID-19].”

Separately, in an April 20, 2020 [announcement](#), OFAC encourages individuals and entities affected by COVID-19 to communicate to OFAC “as soon as practicable” any delays they may experience in meeting deadlines related to OFAC’s regulatory requirements, including blocking and reject reports, responses to administrative subpoenas, and reports required by general or specific licenses. OFAC also expresses a limited willingness to take the circumstances of the pandemic into account when considering enforcement.

To continue reading this article, [please click here](#).

For more information, contact: Caroline Brown, Carlton Greene, Jeff Snyder, Dj Wolff, Clif Burns, Nicole Succar, Erik Woodhouse, and Nimrah Najeeb

President Trump Issues an Executive Order to Temporarily Extend Deadlines for Certain Duty Payments

On Sunday April 19th, President Trump issued an Executive Order using the National Emergency Authority to temporarily extend deadlines for certain estimated payments of import tariffs. Simultaneously with the Presidential Proclamation, U.S. Customs and Border Protection (CBP) issued instructions and guidelines in a CSMS bulletin titled ["90 Day Postponement of Payment for the Deposit of Certain Estimated Duties, Taxes, and Fees."](#) For entries that meet certain requirements, CBP will postpone owed payments for 90 calendar days following the deadline for payment for any entries made in March 2020 or April 2020, but will not return deposits of estimated duties, taxes, and fees that have already been paid.

The extension of certain tariff payment deadlines is designed to provide relief to importers "experiencing a significant financial hardship due to the coronavirus disease (COVID-19)." According to the CSMC bulletin, CBP has established that eligible importers do not need to file documentation with CBP to take advantage of the deferrals, but must maintain documentation in its books and recordkeeping that can prove the importer meets the requirement for relief. CBP defines its standard for "significant financial hardship" as follows:

1. [the company has] experienced a full or partial suspension of government operations due to COVID-19 related government orders; and
2. Its "gross receipts are less than 60 percent of the gross receipts for the comparable period in 2019.

The temporary postponement only applies to formal entries of merchandise entered, or withdrawn from a warehouse, for consumption in March, 2020 or April, 2020. However, there are certain exceptions. The deferral does not apply to duties through various trade actions listed below:

- Section 301 Duties
- Countervailing Duties ("CVD" Duties)
- Antidumping Duties ("AD" Duties)
- Section 232 Duties
- Section 201 Safeguards Actions

Furthermore, the temporary postponement does not apply to deadlines for the payments of other debts to CBP, including but not limited to "deadlines for the payment of bills for duties, taxes, fees, and interest determined to be due upon liquidation or reliquidation, deadlines for the payment of fees authorized pursuant to 19 U.S.C. 58c (except for merchandise processing fees and dutiable mail fees), or deadlines for the payment of any penalty or liquidated damages due to CBP." Finally, the timeframe for entry summary filing has not changed.

It remains to be seen if the Trump administration will direct CBP to apply temporary duty postponements for entries in May or beyond if the financial hardships from COVID-19 continue. Companies that import goods have continued to push the

administration for temporary relief to address cash flow issues while domestic industry associations have opposed such measures.

For more information, contact: Frances Hadfield, Spencer Toubia, and Sam Boone

CBP Issues Message with Information on New COVID-19 Relief Imports Web Portal

Cargo Systems Messaging Service (CSMS) #4236474 states that due to the high volume of inquiries received in the COVID-19 Relief Imports email inbox, CBP is migrating to the COVID-19 Relief Imports Web Portal. The web portal has been established to replace the email address for all cargo inquiries related to the importation of medical supplies to fight the spread of the COVID-19 virus. It provides an interactive experience for the user to review pertinent information and allows for the submission of a direct inquiry to the COVID-19 Cargo Resolution Team (CCRT).

While monitoring the inbox, the CCRT has been responding to many similar questions regarding the importation of various PPE and critical medical supplies. To alleviate some of the common questions, the web portal will have basic guidance uploaded to a FAQ section and valuable information in other areas of the site. CBP will continue to update the portal and upload important information on a daily basis.

The web portal can be found at <https://imports.cbp.gov/>.

For more information, contact: Edward Goetz

DDTC Announces Temporary Reduction in Certain ITAR Registration Fees

On May, 6, 2020, the Directorate of Defense Trade Controls (DDTC) published a notice in the Federal Register announcing a temporary reduction in certain International Traffic in Arms Regulations (ITAR) registration fees due to the COVID-19 pandemic.

- DDTC will temporarily reduce registration fees to \$500 for DDTC registrants in Tier I and Tier II if the registration's original expiration date is between May 31, 2020 and April 30, 2021.
 - Companies in Tier 1 are those that are first time registrants or who did not submit any license applications or request for authorization during the twelve month period ending 90 days prior to the expiration of its current registration.
 - Companies in Tier 2 are those who have submitted and received a favorable authorization on ten or fewer license applications or request for authorization during a twelve month period ending 90 days prior to the expiration of its current registration.
- DDTC is reducing registration fees to \$500 for new applicants who submit their registration application between May 1, 2020 and April 30, 2021. All new registrants are in Tier I in the first year.
- The fee structure for Tier III entities remains unchanged at this time.

- Companies in Tier 3 are those who have submitted and received a favorable authorization on ten or more license applications or request for authorization during a twelve month period ending 90 days prior to the expiration of its current registration.
- DDTC anticipates this temporary reduction in fees for Tier I and Tier II and new registrants will save regulated industry over \$20 million over the course of the coming year.

As a reminder, now that the new Defense Export Control and Compliance System (DECCS) is on line, DDTC collects payment after it processes a registration.

For more information, contact: Alan W.H. Gourley, Jana del-Cerro; and Edward Goetz

Team Telecom Recommends that the FCC Revoke China Telecom’s Authorizations to Provide International Telecommunications Services to and from the United States

On April 9, a group of Executive Branch agencies, including those that comprise the working group known as “Team Telecom”, recommended to the Federal Communications Commission (FCC) that it revoke China Telecom (Americas) Corp.’s (China Telecom’s) authorizations to provide international telecommunications services to and from the United States. The agencies that made the recommendation, including the Departments of Justice (DOJ), Homeland Security, Defense, State, Commerce, and the U.S. Trade Representative, stated that “substantial and unacceptable national security and law enforcement risks associated with China Telecom’s operations...render the FCC authorizations inconsistent with the public interest.” China Telecom is the U.S. subsidiary of a People’s Republic of China (PRC) state-owned telecommunications company. Its parent, China Telecom Corp. Ltd., manages 70 percent of the internet in China.

To continue reading this article, [please click here](#).

For more information, contact: Caroline Brown

Relief from EU Value Added Tax and Import Duties for Certain Goods used for Combating COVID-19

Last month, the EU granted Value Added Tax (VAT) and import tariff relief for essential goods if those goods are for free distribution and they are imported by state organizations or public bodies or authorized organizations.

Relief has been granted for the period 30 January through 31 July 2020. Duties and VAT can be claimed back for this period via the refund procedure (an application to be filed with the national customs authority). The period of duty and VAT relief can be extended beyond July 31 2020.

The EU adopted an indicative, non-exhaustive list of essential goods which covers medical supplies needed in the health sector to treat COVID-19 (ranging from monitors, tubes, to gloves and hand washing soap). EU Member States are allowed to extend the list. For example, the non-exhaustive list adopted by Belgium includes the following:

- Laparoscopic scissors, Laryngoscopes, Aspiration Probes and Suction Pumps, RNA extractors;
- Soaps, disinfectants and sterilizing agents (e.g. hydroalcoholic gel);
- CEC ECMO (consumables for extracorporeal oxygenation), Respirators, Lung ventilators for intensive therapy, Oronasal masks, and Suction systems;
- Laboratory equipment (e.g. Sterile test tubes);
- Thermometers;
- Protective corrective eyewear and contact lenses, Safety glasses;
- Mouth and nose protectors, textile and surgical masks, FFP2 and FFP3 masks;
- Face shields, Protective clothing and masks, Gloves;
- Examination kits / instruments and apparatus used in the diagnostic tests of COVID 19, as well as sampling kits;
- Other medical supplies or equipment (e.g. tomographs, electrocardiographs, portable ultrasound systems, centralized monitoring for intensive therapy, fixed and portable multi-parameter monitors, nursing carts, mobile chairs and beds, equipment for setting up field hospitals);
- Medical consumables (e.g. cotton swabs, compresses, bandages, surgical drapes, endotracheal tubes, intubation kits, vascular access kit, syringes with or without needles, catheters);
- Infusion pumps for medicines, Peristaltic pumps for enteral nutrition;
- Humidifiers;
- Shoes and shoe covers;
- Dispensers for wall mounting for disinfectants; and
- Medicinal products (Hydrogen peroxide, Paracetamol, Hydrochloroquine, Lopinavir/Ritonavir, Remdesivir, and Tocilizumab).

For more information, contact: Elena Klonitskaya

Impact of COVID-19 on EU Anti-Dumping and Anti-Subsidy Investigations

The EU Commission issued a [Notice](#) recently on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations.

The Notice addresses the impact of COVID-19 on the below two aspects of such investigations.

- On site verifications: the Commission suspended all non-essential travel to affected areas and postponed face-to-face meetings. Therefore, the normal visits to examine the records of importers, exporters, traders, agents, producers, trade associations and organizations to verify the information, cannot take place. The Commission will consider the information to be properly submitted if sufficiently accurate and complete. If not sufficiently accurate or complete, the Commission will base their findings on verified or proven facts on the record. Since this means the Commission may need to do additional cross-checks, it is essential that parties cooperate fully with the Commission in providing information. Exporting producers responding to questionnaires are requested to ensure all responses can be verified remotely and linked to the corresponding records.

- Time limits: due to the various national safety measures which have been implemented, such as lockdowns and social distancing, parties may be confronted with difficulties to respond to questionnaires or other requests for information within the applicable time limits. Since the COVID-19 outbreak is considered *force majeure*, an extension of 7 days can be granted to provide responses to questionnaires and letters identifying deficiencies. Parties must indicate how the COVID-19 measures affect their ability to respond to Commission's questions. If companies are subject to additional safety measures such as quarantines or mandatory factory closures, an extension of more than 7 working days may be granted. Parties must again explain how these measures affect their ability to provide the information, and also how the extra extension would allow them to prepare a meaningful response to either the questionnaire or other request for information. The Commission will decide on such extraordinary extensions on a case-by-case basis, and can reject the request or shorten the extension if it jeopardizes the timely conclusion of the investigation. Since the adoption of the notice, verification visits in various on-going investigations have been cancelled or postponed and time limits of investigations extended within statutory limits.

The measures described above will apply until the affected areas are once again considered safe to travel to, or until the measures restricting the parties have been lifted. If visits can once again be carried out during the investigation, these will happen only if they are still opportune in light of the time limits of the investigation. If the measures are lifted after an investigation has been finished in which definitive measures were imposed, the Commission can review these measures.

Since the adoption of the notice, verification visits in various on-going investigations have been cancelled or postponed and time limits of investigations extended within statutory limits.

For more information, contact: Elena Klonitskaya

Customs Rulings of the Week

- April 7: [Classification of Tablet for Children](#)
- April 13: [Classification of Snack Foods from Singapore](#)
- April 23: [Classification of Facial Steamer](#)
- April 28: [Classification of Disposable Nonwoven Face Masks](#)

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

Crowell & Moring Welcomes

Chandler Leonard is an associate in Crowell & Moring's International Trade Group and resident in the firm's Washington, D.C. office. Her practice focuses on export controls and economic sanctions issues, including voluntary disclosures and enforcement matters before the Departments of Commerce, State, and Treasury. Chandler is a former compliance case officer with the Directorate of Defense Trade Controls (DDTC) at the U.S. Department of State, where she also participated in complex

regulatory and policy matters. She is most recently a former sanctions compliance officer with the Office of Foreign Assets Control (OFAC) at the U.S. Treasury Department. Chandler also brings in house experience where she navigated and advised on export control issues, including internal investigations and audits, at a large defense contractor.

Crowell & Moring Webinars

For the latest on Crowell & Moring COVID-19 webinars, [please click here](#).

Crowell & Moring Speaks

[Caroline Brown](#) was quoted in a recent [Inside U.S. Trade](#) article (subscription required) on how the Office of the United States Trade Representative (USTR) is among the U.S. agencies recommending the FCC revoke China Telecom’s authorization to provide international telecommunications services to and from the United States.

[Maria Vanikiotis](#) was quoted in an April 16 [International Trade Today](#) article titled “[USTR COVID-19 Docket Seen as New Chance for Section 301 Exclusions](#).”

[Evan Chuck](#) was featured on an April 20 [PandemicBuzz](#) podcast, where he provided his insights and perspective for businesses dealing with the COVID-19 pandemic.

[Alex Schaefer](#) and [Ru Xiao-Graham](#) were quoted in an April 29 [Law360](#) article titled “[Commerce Says India, Turkey Quartz Too Cheap](#).”

[Caroline Brown](#) was quoted in an April 30 [Law360](#) article titled “[Exec. Order Solidifies Team Telecom, But Gray Areas Remain](#).”

[Andrew Blasi](#) was featured on Fox 5 News on the Hill on May 3, where he discussed the [Coronavirus’ Economic Impact](#).

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

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