

# CLIENT ALERT

## The Month in International Trade – August 2018

September 11, 2018

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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](#).*

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### LEADING INTERNATIONAL TRADE LAWYER DAVID STEPP JOINTS CROWELL & MORING IN LOS ANGELES

*New Partner Establishes Trade Group's California Presence; His Practice Focuses on Global Customs, Trade Compliance*

Crowell & Moring LLP is pleased to announce the addition of [David R. Stepp](#) as a partner in the firm's International Trade Group in Los Angeles. With more than 30 years of experience, Stepp provides strategic counsel on global customs and international trade compliance. At Crowell & Moring, he will advise multinational companies and importers as they move goods across borders and establish subsidiaries around the world. He joins the firm from Bryan Cave Leighton Paisner LLP.

Stepp's arrival expands the presence of the firm's recognized International Trade Group into California, further broadening the global practice's reach to serve clients across the Pacific Rim.

For more on David's arrival at Crowell, [please click here](#).

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## 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 Walterman*

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### CANADA AND U.S. FAIL TO REACH NEW NAFTA AGREEMENT; CONGRESS NOTIFIED OF U.S.-MEXICO TRADE DEAL

Canada and the U.S. failed to reach agreement on a new NAFTA following ministerial meetings from August 29-31 and September 5-7. The U.S. previously reached bilateral agreement with Mexico on a preliminary deal on August 27. Among the key outstanding issues are the U.S. objective of opening up Canada's dairy market and the Canadian objective of maintaining Chapter 19 of the original NAFTA's dispute settlement for antidumping and countervailing duty cases.

Despite the breakdown in U.S.-Canada talks, the Trump administration notified to Congress its intent to sign an agreement with Mexico on August 31, noting also the possible inclusion of Canada if agreement is eventually reached. The notification begins the 90-day timeline under Trade Promotion Authority (TPA) after which the administration can, according to USTR, legally sign an agreement with both Mexico and Canada. Although there are some legal questions as to whether adding Canada after the notification would fulfill TPA notification requirements, it is not likely to face significant challenge (most would like to see Canada included in the agreement).

60 days prior to signature, however, the Trump administration is still required under TPA to publish the text of the new NAFTA agreement, meaning a text must be agreed to and released by October 1 in order to achieve the administration's goal of a signed agreement before December 1, when Mexican President Enrique Pena Nieto's term ends. **This likely means that Canada and the U.S. would have to agree on terms by the start of October, if not before.**

If no agreement with Canada is reached, it remains possible that the Trump Administration would seek to terminate the existing NAFTA and replace it with the preliminary agreement reached with Mexico on August 27.

According to USTR fact sheets, the preliminary agreement with Mexico includes the following:

- Market access: Maintains zero tariffs on originating agricultural and industrial products.

- Autos/Auto parts: Requires 75 percent of auto content to be made in Mexico or the United States and 40-45 percent of automobile content be made by workers earning at least \$16/hour in order to qualify for duty-free treatment; it is unclear if existing facilities will be exempted from this requirement.
- Other industrial products: Strengthens rule of origin for other industrial products such as chemicals, steel-intensive products, glass, and optical fiber.
- Textiles: Limits rules that allow for non-originating inputs to qualify for duty-free treatment, including for sewing thread, pocketing fabric, narrow elastic bands, and coated fabric.
- Agriculture: Enhances rules for sanitary and phytosanitary standards and protects use of certain geographical indicators (GIs).
- Intellectual property: Protects biologics data for 10 years, extends minimum copyright terms to 75 years, and enhances patent and trademark protections.
- Digital trade: Minimizes localization requirements on data storage and processing, limits requirements for disclosure of proprietary source code and algorithms, and limits civil liability of Internet platforms for hosting non-IP content.

According to press reports, the agreement also includes the following:

- Sunset clause: Requires the U.S. and Mexico to renew the agreement 6 years after entry into force, for the agreement to extend beyond a 16 year-period.
- Investor-State Dispute Settlement (ISDS): Limits ISDS protections outside of the oil and gas, energy, telecommunications, and infrastructure sectors.
- Autos/Auto parts: While not made explicit, reports suggested that Mexico could receive an exception from supplemental import duties arising from the national security investigation into autos and auto parts. This suggests that the U.S. is still considering implementing new supplemental import duties on autos and auto parts pursuant to Section 232 of the Trade Expansion Act of 1962.

Replacing NAFTA with a bilateral U.S.-Mexico deal would raise [the significant legal and political concerns noted in our August 29 post on Crowell's International Trade Law blog.](#)

*For more information, contact: Robert Holleyman, Dan Cannistra, Melissa Morris, Evan Yu*

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## **EU Blocking Statute in Support of Iran Nuclear Deal Enters into Force**

On August 7, 2018, [EU's newly updated Blocking Statute](#) entered into force. The Blocking Statute generally forbids EU citizens and established entities, residents, and persons physically in the EU from complying with a variety of U.S. measures imposing secondary sanctions on Iran, including the Iran Sanctions Act of 1996, the Iran Freedom and Counter-Proliferation Act of 2012, the National Defense Authorization Act for Fiscal Year 2012, and the Iran Threat Reduction and Syria Human Rights Act of 2012.

The Blocking Statute also makes foreign court judgments based on these sanctions ineffective in the EU and allows EU operators to recover damages arising from U.S. extraterritorial sanctions from the persons or entities causing those damages.

*For more information, contact: Michelle Linderman, Ade Johnson*

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## **President Trump Issues New Executive Order Reimposing, Expanding, and Consolidating Iran Sanctions**

On Monday, August 6, 2018, President Trump issued a new Executive Order (New Iran EO) that reimposes Iran sanctions previously revoked as part of the Joint Comprehensive Plan of Action (JCPOA), consolidates the relevant authorities into one single document, and broadens the scope of previous sanctions restrictions. This action coincides with the expiration of the 90-day wind down period for a number of transactions previously authorized as part of the Agreement. OFAC also updated and issued additional Frequently Asked Questions with respect to this New Iran EO.

### **Reimposition of Sanctions Authorities and Revocation of Previous EO's**

In accordance with [President Trump's May 8, 2018 decision to withdraw from the JCPOA](#), the New Iran EO reimposes the relevant provisions of EOs 13574, 13590, 13622, and 13645 previously revoked by EO 13716. Accordingly, as of 12:01 a.m. eastern daylight time (EDT) Tuesday, August 7, 2018 sanctions targeting the following areas were reinstated:

- The purchase or acquisition of U.S. dollar banknotes by the Government of Iran.
- Iran's trade in gold or precious metals.
- The direct or indirect sale, supply, or transfer to or from Iran of graphite, raw, or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes.
- Significant transactions related to the purchase or sale of Iranian rials or the maintenance of significant funds or accounts outside the territory of Iran denominated in the Iranian rial.
- Purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt.
- Iran's automotive sector.

Further, as of August 7, 2018, the wind down period terminated for transactions related to the export/re-export of Iran commercial passenger aircraft pursuant to General License I, and transactions regarding U.S. imports of, and dealings in, Iranian-origin foodstuffs and carpets, and related letters of credit and brokering services. The next wind down deadline is November 4, 2018, and relates to transactions pursuant to General License H, and sanctions targeting the following areas: Iran's port operators and shipping/ship-building sectors; petroleum-related transactions; financial transactions and specialized messaging services with the Central Bank of Iran; underwriting and insurance services; and Iran's energy sector.

The New Iran EO also revokes EOs 13716 and 13628 and supersedes these authorities by incorporating the blocking sanctions previously provided in sections 2 and 3, and subsection 3(c) respectively.

### **Expansion of Sanctions in Effect Prior to JCPOA**

The New Iran EO further broadens the scope of sanctions in effect prior the implementation of the JCPOA, January 16, 2016. OFAC details this expansion in [Frequently Asked Question # 601](#), and we have summarized those changes below:

- **New Designation Authority:** The New Iran EO provides new authority to designate as Specially Designated Nationals (SDNs) any person that on or after November 5, 2018, provided material support, or goods and services in support of, persons designated for engaging in the following transactions: (1) providing support, or goods and services in support of the purchase or acquisition of U.S. bank notes or precious metals by the GOI; (2) providing support, or goods and services in support of the National Iranian Oil Company (NIOC), the Naftiran Intertrade Company (NICO), or the Central Bank of Iran (CBI); or (3) being part of the Iranian energy sector, shipping, or shipbuilding sectors, being a port operator in Iran, or providing significant support of persons designated under section 1244(c)(1)(A) of the Iran Freedom and Counter-Proliferation Act of 2012 (IFCA) or other SDNs.
- **New Restrictions on Financial Institutions:** The New Iran EO provides the authority to prohibit or significantly restrict correspondent and payable-through accounts of foreign financial institutions determined to have knowingly conducted or facilitated significant transactions on or after November 5, 2018, with persons designated pursuant to the new authorities described above.
- **Expanded Menu of Sanctions for Petroleum Transactions:** The New EO expands the menu of sanctions available to be imposed on persons that on or after November 5, 2018, knowingly engaged in significant transactions related to Iranian petroleum products and petrochemicals, including: (1) Visa restrictions on controlling officers and shareholders; (2) certain secondary sanctions on principal executive officers of a SDN; and (3) prohibitions on investing in or purchasing debt and equity instruments from a sanctioned person.
- **Expanding Restrictions on Foreign Subsidiaries of U.S. Companies:** The New EO also expands sanctions restrictions on foreign subsidiaries of U.S. owned or controlled companies by prohibiting transactions with persons blocked for any of the following activity: (1) providing material support for, or goods and services in support of, persons designated pursuant to Iran sanctions; and (2) being part of the Iranian energy sector, shipping, or shipbuilding sectors, being a port operator in Iran, or providing significant support of persons designated under section 1244(c)(1)(A) of the Iran Freedom and Counter-Proliferation Act of 2012 (IFCA) or other SDNs. Note that this expanded restriction does not eliminate the authorization to wind down transactions pursuant to General License H by November 4, 2018.

## Implications

The expansion of pre-JCPOA sanctions may come as some surprise to the business community but largely fall within the Trump Administration's new policy towards Iran. In his May 8th [National Security Memorandum](#), President Trump hinted that the process of restoring sanctions could entail revising relevant sanctions regulations. These revisions make clear that after the November 4th wind-down date, any person, including U.S. persons, that attempts to directly or indirectly provide support in any way to persons designated under pre-JCPOA sanctions restrictions will also risk designation.

These renewed and expanded U.S. sanctions against Iran create an increasingly complex landscape for companies operating globally, as it is impossible to comply with both sets of restrictions. However, a few large European companies [have already suspended plans to invest in Iran](#).

*For more information, contact: Jeff Snyder, Ade Johnson*

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## **HOUSE EASILY PASSES MISCELLANEOUS TARIFF BILL (MTB) ACT OF 2018 ON VOICE VOTE – WHITE HOUSE INDICATES PRESIDENT WILL SIGN**

On September 4, 2018, the House agreed to Senate amendments made to the Miscellaneous Tariff Bill (MTB) Act of 2018 last month, moving the legislation to the president for signature. The White House reportedly indicated President Trump will sign the bill. The last MTB passed by Congress expired on December 31, 2012.

Once signed into law, the bill would cut or eliminate tariffs on articles such as chemicals, footwear, toasters, and roughly 1,660 other items made outside the United States. Roughly half of those items are produced in China and there is an overlap between MTB and the Section 301 tariffs in effect, and those being considered.

Section 1664 states the effective date is on or after the 30th day after the date of the enactment of the Act. It provides for duty suspensions and reductions through December 31, 2020.

The next MTB petition cycle will be in the Fall of 2019.

The purpose of MTB is to reduce or eliminate what many businesses claim are unfair, out-of-date and/or anticompetitive taxes.

*For more information, contact: John Brew, Frances Hadfield, Aaron Marx, Spencer Toubia, Edward Goetz*

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## **U.S. NATIONAL SECURITY REVIEW OF FOREIGN INVESTMENT: REVISIONS TO CFIUS LEGISLATION SIGNED INTO LAW**

On August 13, 2018, the president signed the National Defense Authorization Act for Fiscal Year 2019 which includes the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) updating national security reviews performed by the Committee on Foreign Investment in the United States (CFIUS).

Some FIRRMA provisions are effective immediately, but the effective date of others requires formal rulemaking to be completed within the next 18 months. Included in the provisions effective immediately is a lengthening of the review process (including the ability to provide limited 15-day extensions) and express authority to suspend transactions pending review or to enter into interim mitigation while the review proceeds.

The FIRRMA provision authorizing a filing fee of up to \$300,000 is effective immediately, and could perhaps be implemented sooner than the other regulations mandated by the Act. Awaiting rulemaking and industry input are such reform provisions as providing for voluntary (and in some cases mandatory) short form declarations.

Implementation of the provisions arguably expanding the Committee's jurisdiction, or at least codifying CFIUS's broad interpretation of its existing authority, such as review certain real estate transactions and non-controlling investments involving "critical technologies," "critical infrastructure" or "sensitive personal data of U.S. citizens" will also be addressed in rulemaking. The CFIUS Chair has 180 days to submit an implementation plan to Congress.

*For more information, contact: Alan W.H. Gourley, Addie Cliffe, Paul Rosen, Jana del-Cerro*

## **CBP RELEASES NEW DOCUMENT REGARDING FORCED LABOR RISK AND THE GLOBAL SUPPLY CHAIN**

On August 17, 2018, U.S. Customs and Border Protection (CBP) published a document entitled, “[Responsible Business Practices on Forced Labor Risk in the Global Supply Chain](#)”, which provides details regarding the best practices for importers of goods into the U.S. The agency indicated that the guidelines were published in order to further CBP’s strategic goal to stop the importation of goods produced with forced labor. The Office of Trade also recommends the adoption of the Department of Labor (DOL) Comply Chain principles in order to create a social compliance system. To this end, the DOL has made an APP available for download called [Sweat & Toil](#), which identifies problematic countries, commodities, and types of exploitation.

Finally, CBP’s Responsible Business Practices document recommends that a company review the [Organisation for Economic Co-operation and Development \(OECD\) Guidelines for Multinational Enterprises](#) because they provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognized standards. These guidelines are the only multilateral and comprehensive code of responsible business conduct that governments have agreed to promote.

*For more information, contact: Frances Hadfield, Edward Goetz*

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## **CROWELL & MORING SPEAKS**

[Jeff Snyder](#) has been invited to speak at the [World Customs Organization’s 13th annual Picard Conference](#) in Malatya, Turkey, October 9-11, 2018. Jeff will speak on ‘Global Trends in Customs Matters’ showcasing the articles and issues addressed in the [Global Trade & Customs Journal](#) (Jeff serves as the General Editor) over the past year. Jeff will also moderate a panel at the invitation of the WCO Research Unit.

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## **CROWELL & MORING EVENTS**

### **The Potential Effects of Brexit on U.K. Sanctions Law and How Compliance Officers Can Prepare for the Switch**

Crowell & Moring Partner [Michelle Linderman](#) is co-presenting a webinar, in association with [SanctionsAlert.com](#) on September 13, 2018 on “[The Potential Effects of Brexit on U.K. Sanctions Law and How Compliance Officers Can Prepare for the Switch.](#)” Michelle’s co-presenter is Susan Lake, the regional compliance head of Swiss Re’s Reinsurance Business Unit.

You can register at the link below.

[Register Online \(\\$195\)](#)

**Date:** September 13, 2018

**Time:** 10:00 – 11:15 AM EDT (3:00 – 4:15 PM in Amsterdam)

The U.K. currently derives its power to implement sanctions from European law, regardless of whether they originated at the U.N., E.U., or OSCE. Since June 2016's 'Brexit' decision, when the U.K. voted to leave the E.U., it has been unclear how the U.K. will implement sanctions policy after the divorce.

The new Sanctions and Anti-Money Laundering Bill, which received Royal Assent earlier this year, provides the U.K. powers to impose, update, and lift sanctions and AML regimes after the U.K. leaves the E.U. in March 2019. But will the U.K. sanctions landscape stay the same, or is it likely to change drastically?

**In this SanctionsAlert.com webinar, you will learn:**

- What powers will be derived from the new U.K. Sanctions and Anti-Money Laundering Bill and how this will change (or not change) the sanctions landscape.
- What the potential effect of Brexit on U.K. Sanctions Law will be as well as how Compliance Officers can prepare for the switch.

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## **Doing Business with Asia: Developments in Trade, IP, Investment and Dispute Settlement**

**September 20, 2018 | Los Angeles, CA**

**Starts:** 12:30 PM (PDT)

**Ends:** 7:00 PM (PDT)

**Site:** Crowell & Moring

**Address:** 515 South Flower Street, Los Angeles, CA 90071 ([view map](#))

This event will showcase the Inter-Pacific Bar Association (IPBA) to lawyers in the U.S., with a focus on the hot issues for 2018, including international trade under the "new rules" of the Trump Administration.

The sessions are designed to address the important matters facing international business in Asia, with speakers from key IPBA jurisdictions, led by IPBA Committee members, including the Corporate Counsel Committee. IPBA Leadership, including those involved in future annual conferences, has been invited and will discuss plans for upcoming events in Singapore, China, and Japan, among others.

Partner [Jeffrey L. Snyder](#) will be presenting during this event.

[For more information and to register, click here.](#)

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



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