

Client Alert

The Month in International Trade – August 2022

September 8, 2022

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Crowell & Moring Media 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](#).

Ukraine Crisis Resource Center

Crowell & Moring has a multidisciplinary working group helping clients navigate the rapidly evolving business, legal and operational issues associated with the crisis. Our group brings together lawyers and professionals with relevant senior government, industry, and private sector experience across a wide array of practices that intersect with the most critical issues in this unprecedented crisis. We are helping clients to mitigate risk, to implement practical approaches and sound business solutions, and anticipate and prepare for the opportunities and challenges that are on the horizon.

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Top Trade Developments

Latest Russia Sanctions/Export Highlights

- [September 1, 2022](#)
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For more information, contact: Jeff Snyder, Carlton Greene, Dj Wolff, Michelle Linderman, Caroline Brown, Nicole Succar, Anand Sithian, Brian McGrath, Laurel Saito, Rachel Schumacher

EU Steel Safeguards found to be WTO-inconsistent; European Commission to amend them

On August 24, the European Commission (“Commission”) made public its intent to implement the recommendation and ruling from the World Trade Organization (“WTO”), and bring the safeguard measure on certain steel products (“Steel Safeguards”) into conformity with the WTO Agreement on Safeguards and the GATT 1994.

The Commission also invited interested parties to submit comments by September 14, 2022.

The Commission’s notice follows the WTO’s ruling on DS595, whereby Turkey challenged the European Union’s Steel Safeguard measures before the WTO Dispute Settlement Body (“DSB”) in 2020. The WTO’s final panel report was circulated on 29 April 2022. On 31 May 2022, the WTO DSB adopted the Panel report with a recommendation for the EU to bring its measures into conformity.

The two inconsistencies that the WTO found concern:

- Article XIX:1(a) of GATT: the original safeguard measure had not sufficiently explained how the increase in imports took place as a result of the unforeseen developments that had been identified. Also, the measure had not identified the GATT obligations whose effect resulted in the increase in imports; and
- Article 4.1(b) of the WTO Agreement on Safeguards: the panel found that two central elements of the determination of a threat of serious injury were not ‘based on facts’: first, the finding that the domestic industry was ‘in a fragile and vulnerable position’, despite its improved performance and, second, the finding that a further increase in import volumes in the future would bring about serious injury to the domestic industry.

This is a positive development for EU importers and third-country exporters who have been contesting the Steel Safeguards since they were originally imposed in 2019. Interested parties may now use the WTO’s Panel Report to support that the Steel Safeguard measures are WTO-incompatible *ab initio*, and there are no retroactive remedies that could apply to render them WTO-compatible or to remedy the injury that the measures caused. We therefore foresee a great influx of comments and hearings by interested parties and sovereign Governments before to Commission to argue that the Steel Safeguards should be terminated.

In order to effectively comply with the WTO ruling, the Commission may need to revise its safeguard duty adoption criteria and procedures, and potentially be forced to terminate the existing Steel Safeguards forthwith.

For more information, contact: Vassilis Akritidis, Marcia Pulcherio

Treasury Sanctions Tornado Cash and Turns Up Heat on Mixers

On August 8, 2022, the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) sanctioned virtual currency mixing service Tornado Cash, which OFAC said has been used to launder billions of dollars in virtual currency, including \$455 million stolen by the Lazarus Group, a Democratic People’s Republic of Korea (“DPRK”) state-sponsored hacking group that OFAC sanctioned in 2019. Though OFAC’s action marks the second instance it has sanctioned a virtual currency mixer—OFAC sanctioned Blender.io in May 2022—this is the first time that OFAC has designated a non-entity software protocol. Tornado Cash is a “smart contract” that allows users to anonymize the origins, destinations, and counterparties for virtual currency transactions.

[Click here to continue reading the full version of this alert.](#)

For more information, contact: Carlton Greene, Caroline Brown, Anand Sithian, Nicole Succar

DHS Adds Entities and Sets Processes to Remove and Add Entities to the Uyghur Forced Labor Prevention Act Entity List

On August 4, 2022, the Department of Homeland Security (DHS) published notice adding entities to the Uyghur Forced Labor Prevention Act’s (UFLPA’s) Entity List. Per Section 2(d)(2)(B) of the UFLPA – which was signed by President Biden on December 23, 2021 – the Department of Homeland Security on behalf of the Forced Labor Enforcement Task Force (FLETF) is required to develop and maintain the UFLPA Entity List. The UFLPA Entity List serves as a consolidated register of the following four lists, as required by the Act:

1. A List of Entities in Xinjiang That Mine, Produce, or Manufacture Wholly or in Part any Goods, Wares, Articles, and Merchandise with Forced Labor;
2. A List of Entities Working with the Government of Xinjiang To Recruit, Transport, Transfer, Harbor or Receive Forced Labor of Uyghurs, Kazakhs, Kyrgyz, or Members of Other Persecuted Groups Out of Xinjiang
3. A List of Entities That Exported Products Described in Clause (iii) From the PRC Into the United States
4. A List of Facilities and Entities, Including the Xinjiang Production and Construction Corps, That Source Material from Xinjiang or From Persons Working with the Government of Xinjiang or the Xinjiang Production and Construction Corps for Purposes of the “Poverty Alleviation” Program or the “Pairing-Assistance” Program or any Other Government Labor Scheme That Uses Forced Labor

In its notice DHS also provides the process for listed entities to submit requests for removal from the UFLPA Entity List. The party seeking removal must submit supporting documentation evidencing that the entity no longer produces goods in whole or in part from forced labor. Following the submission of documents and dissemination of the removal request among the FLETF member agencies, there may be additional questions for the entity by the FLETF member agencies before or during the review period, and before the voting process. If the FLETF denies a removal request, entities may submit a new removal request with new supporting documentation and information. In addition, DHS explained that any FLETF member agency may submit recommendations to add entities to the UFLPA Entity List. Both addition and removal processes rely on Section 2(d)(2)(B) of the UFLPA to determine whether entities will be added or removed from the list. Upon receipt and review of a removal request, or a request to add an entity, the FLETF member agencies will decide via a majority vote.

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For more information, contact: John Brew, Martin Yerovi, Emily Devereaux

Aluminum from Xinjiang Could be at Risk of Being Tainted with Forced Labor, Per April 2022 Report

In a report from April 2022, Washington, DC based-firm Horizon Advisory investigated the Xinjiang aluminum sector and reported how – alongside the textile, apparel, agriculture, and solar energy sectors in the region – this sector is at high-risk of forced labor exposure. The report found that the eight major aluminum companies

operating in Xinjiang – one of which, Xinjiang East Hope Nonferrous Metals, is already on the Forced Labor Enforcement Task Force’s (FLETF) UFLPA Entity List – are exposed to indicators associated with forced labor. In addition, the report emphasizes how forced labor at such an upstream node can have implications across a multitude of other sectors’ supply chains, including the automotive, aerospace, rail, information technology, electronics, and polysilicon industries.

The report states that 17% of China’s aluminum production, which already makes up 60% of the world’s primary aluminum production, comes from Xinjiang. This is a result from the Xinjiang Production and Construction Corp’s (XPCC’s) identification of the heavy industry as a sector of high importance. As noted in the report, the XPCC in its 14th Five Year Plan called “for ‘the extension of the industry chain for ferrous metals such as aluminum.’ ” In looking at the top eight aluminum producers in the region, the report identified how each of the eight companies had exposure to at least one forced labor indicator. These eight companies include:

1. Xinjiang Sixth Division Aluminum Co., Ltd.
2. Xinjiang East Hope Nonferrous Metals Co., Ltd. (currently on the UFLPA Entity List)
3. The Eighth Division of the XPCC Tianshan Aluminum Co., Ltd.
4. Xinjiang Qiya Aluminum & Power Co., Ltd.
5. Xinjiang Jiarun Resources Holdings Co., Ltd.
6. Xinjiang Shenhua Coal and Electricity Co., Ltd.
7. Xinjiang Tianlong Mining Co., Ltd.
8. Xinjiang Zhonghe Co., Ltd.

Of these eight entities, the first seven were identified as being associated with government-led transfer of labor programs. Three of the eight – Xinjiang Sixth Division Aluminum Co., Ltd, The Eighth Division of the XPCC Tianshan Aluminum Co., Ltd., and Xinjiang Zhonghe Co., Ltd. – were also identified as subordinates of the XPCC. Lastly, the report found that two of the eight – Xinjiang Jiarun Resources Holdings Co., Ltd. and Xinjiang Tianlong Mining Co., Ltd. – participate as “ethnic policy” leaders, while four of the eight – Xinjiang East Hope Nonferrous Metals Co., Ltd., The Eighth Division of the XPCC Tianshan Aluminum Co., Ltd., Xinjiang Qiya Aluminum & Power Co., Ltd., and Xinjiang Zhonghe Co., Ltd. – coordinate labor transfer subprograms.

In addition to these specific companies, the report notes that the entire aluminum industry in Xinjiang is under systemic risk of exposure to forced labor. A major indicator of risk identified in the report is the XPCC’s heavy emphasis on the aluminum industry over the past decade as well as the two largest Xinjiang aluminum companies’ affiliation to the XPCC. The second major indicator is the fact that many of the major aluminum companies in Xinjiang operate in industry parks that have been associated with forced labor risks. As an example, the report states that three of the eight identified companies are based in the Zhundong Economic and Technological Development Zone. The Zhundong Zone has been recognized by the Xinjiang government as a contributor to Beijing’s “ethnic policies” in the region.

The report concludes that while the findings are not intended to be conclusive, the indicators used “mirror those that have been monitored and applied in assessments of other Xinjiang-based supply chains found to be benefiting from forced labor (e.g., textiles, agriculture).” In addition, due to the fact that aluminum is one of the

most commonly used metals around the world, and due to China's aluminum sector's deep integration in many industries' supply chains, global industries "from aircraft fuselages to utensils" are at risk to exposure.

Horizon Advisory's report can be found [here](#).

For more information, contact: Jeff Snyder, Martin Yerovi

USTR releases remand results on US-China Section 301 Tariffs

On Monday, August 1st, the Office of the U.S. Trade Representative (USTR) [filed remand results](#) with the U.S. Court of International Trade (CIT), releasing updated explanations for retaliatory tariffs on roughly \$300 billion worth of Chinese goods imposed in the midst of the U.S. – China Trade War. USTR filed the remand as ordered by the CIT, which found that the USTR had not satisfied its obligations under the Administrative Procedure Act (APA). The APA governs the process by which federal agencies develop and issue regulations.

Under the Trump Administration, the USTR levied two rounds of Section 301 tariffs on a combined \$50 billion worth of Chinese goods in the response to the country's forced intellectual property transfer and discriminatory trade policies. Section 301 authorizes USTR to take action to encourage foreign countries to abandon or mitigate unfair trade practices affecting U.S. commerce. After Beijing retaliated with its own tariffs on U.S. goods, the Trump Administration directed the USTR to expand its Section 301 tariffs to cover roughly \$300 billion of imports, a development that was controversial from the start. The decision to impose a third and fourth round of Section 301 tariffs on China elicited more than 9,000 public comments on the proposed expansions. Despite these comments, the USTR imposed the tariffs and thousands of importer plaintiffs have filed suit in the CIT challenging these actions.

The 90-page document addresses product-specific comments across eight categories, including new explanations on why the USTR included some products (parts) and excluded others (certain rare earths/critical minerals, seafood products, antiquities and art, consumer electronics, health and safety products, and chemicals and chemical inputs). The USTR did not explain inconsistencies in its decision-making process, but relied heavily on its desire to maintain the level of coverage directed by of former President Trump. The USTR stated in Monday's remand that "most comments urging for additional inputs to be removed failed to demonstrate how imposing the additional duties on the input would not be practicable or effective to eliminate China's acts, policies, and practices or failed to show how imposing the additional duties would cause disproportionate economic harm to U.S. interests."

Prior to filing its remand results Monday, the USTR [submitted a motion to correct the administrative record in the case](#), asking to add several Federal Register notices and press releases it said influenced decision-making around List 3 and List 4. USTR Associate General Counsel Megan Grimball stated on Monday that "upon drafting the remand results as ordered by the court, USTR determined that additional documents were directly or indirectly considered in the process of issuing List 3 and List 4." None of these documents were provided or cited in USTR's original notices implementing the tariffs.

Crowell & Moring, LLP continue to monitor this development and the potential impact to businesses and consumers moving forward.

For more information, contact: John Brew, Martin Yerovi, Dmitry Bergoltsev

Customs Rulings of The Week

- [Classification of Torrefied Wood Pellets](#)
- [Country of Origin of Mallets](#)
- [Classification of a Tot Swimmer Flotation Device](#)

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Crowell & Moring Speaks

11th Advanced Forum on Import Compliance and Enforcement, November 8-9, 2022 at the Kimpton Hotel Monaco DC, Washington, DC

- This 2-day, in-depth strategic conference is the only comprehensive, practical event of its kind that covers U.S. and international regulatory changes impacting imports and customs compliance strategy. Connect with an established community of global import compliance, customs, and supply chain experts and absorb key takeaways from sessions covering highly complicated, evolving US import controls.
- If Crowell colleagues and contacts quote **Registration Code S10-823-823I23.S**, they can benefit from a 10% discount off of the *early* main conference fee.
- [Please click here to Register Now.](#)

John Brew will be leading a session at the 2022 Fall International Compliance Professionals Association (ICPA) conference in Grapevine, TX, October 16-18, on Understanding Court of International Trade (CIT) Cases: Has CBP ever issued a decision that makes no sense and will cause your company significant harm? This session explains when and how you should appeal adverse CBP decisions to the US Court of International Trade (CIT). John will also explore what the CIT considers when determining to uphold or overturn government actions, and what impact CIT opinions might have on other government actions.

August 26, 2022 – Quartz speaks with partner Carlton Greene, former assistant director for transnational threats at the Office of Foreign Assets Control, regarding the U.S. sanctioning blockchain-based software in connection with the investigation of Lazarus Group, which is accused of laundering millions in stolen cryptocurrency. According to Greene, this sanction might be a signal from the Treasury department that decentralized software

and entities won't be excused from its sanctions efforts ([“The US Is Making Clear That Crypto Decentralization Is No Defense From Sanctions”](#)).

August 26, 2022 – *E&E News** quotes [Ambassador Robert Holleyman](#), former deputy U.S. trade representative, regarding whether the U.S. can curb reliance on Chinese-based imports for solar panels. Holleyman, who was responsible for trade negotiations with China in the Obama administration, says the new climate law will be a game changer for U.S. solar manufacturing ([“What the Climate Law Means for US Solar Manufacturing”](#)).

*subscription required

August 1, 2022 – CNBC quotes partner [Alexander Schaefer](#) regarding the Biden administration's deadline to defend former President Trump's China tariffs. According to Schaefer, the government lacks the manpower to process the volume of comments, and refunding importers could cost \$80 billion ([“Biden Administration Faces Midnight Court Deadline to Defend \\$350 Billion of Trump's China Tariffs”](#)).

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