

CLIENT ALERT

The Month in International Trade – December 2020

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In this issue:

- **Top Trade Developments**
 - [Crowell & Moring's Transition 2021 Series](#)
 - [Export Controls Classroom](#)
 - [Latest U.S. Trade Actions/Tariffs and Other Countries Retaliatory Measures](#)
 - [Latest on Section 301 Product Exclusions](#)
 - [BIS – Making Their Lists and Adding to Them Twice](#)
 - [Recent Changes to the Export Administration Regulations Impact Hong Kong, Ukraine, Mexico, and Cyprus](#)
 - [DDTC Issues Second Extension to Certain Temporary Suspensions, Modifications, and Exceptions to ITAR Due to COVID-19](#)
 - [China Issues Rules Governing National Security Rules of Foreign Investment](#)
 - [CBP Issues Withhold Release Order on Seafood Harvested with Forced Labor](#)
 - [OFAC Designates Entities Determined to be Involved in Exporting Workers from North Korea](#)
 - [EU Adopts Magnitsky-Like Sanctions Program](#)
 - [Large Civil Aircraft Dispute 2021 Update: Section 301 Tariffs on New EU Goods](#)
 - [Vietnam Section 301 Hearing Transcripts](#)
 - [Customs Rulings of the Week](#)

- [**Crowell & Moring Podcast: Global Trade Talks**](#)
- [**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

Crowell & Moring's Transition 2021 Series

What to Expect

Join us for Transition 2021, Crowell & Moring's series that will look at the new developments, critical analysis, and longterm business implications for your business. Our bipartisan team of government affairs advisors and lawyers will take you behind the curtain to look at how the transition of power could impact you and your business.

We will dig into key issues, including COVID-19, health care, digital transformation, infrastructure, tax, trade, energy, environment, national security, labor & employment, subjects of congressional investigations, and more.

[Please sign up](#) to receive alerts, webinar invitations, breaking news analyses, and forward-looking insights.

Export Controls Classroom

Welcome to Crowell & Moring's Export Controls Classroom! This Classroom is intended to provide insight into the significant challenges and potential compliance risks that export controls pose for global companies. The site contains various training resources and a schedule of upcoming presentations by Crowell & Moring practitioners. The Classroom will be updated regularly with new content.

[Please click here](#) for Upcoming Events/Webinars and On-Demand Resources.

We would love to hear your questions, comments, and suggestions regarding future training sessions. [Click here](#) to connect with our team.

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 – Making Their Lists and Adding to Them Twice

The Bureau of Industry and Security (BIS) remained busy during the closing days of the year.

On December 18 and 21 the Department of Commerce issued several press releases announcing the addition of 77 entities to the Entity List, and for the first time, a Military End User List. The December 18 press releases ([here](#) and [here](#)) announced the addition of 77 entities to the Entity List, including several high-profile Chinese companies. And while the new additions were not published in the [Federal Register](#) until December 22, the additions became effective on the date of the press release, December 18. Continuing a “rulemaking by press release,” exporters who rely on the Federal Register may have missed the additions.

The December 21 press release ([here](#)) publicized the creation of a new list, the Military End User List (“MEU List”), related to the MEU rule BIS issued earlier this year (see our prior alert [here](#)). The MEU List was published in the [Federal Register](#) and went into effect on December 23.

For more on additions to the Entity List and the new Military End User List, [please click here](#).

For more information, please contact: Jeff Snyder, Jana del-Cerro, Chandler Leonard

Recent Changes to the Export Administration Regulations Impact Hong Kong, Ukraine, Mexico, and Cyprus

On December 23, the Bureau of Industry and Security (BIS) amended the Export Administration Regulations (EAR) to remove the People’s Republic of China (PRC or China) Special Administrative Region of Hong Kong from the list of destinations in the EAR. The amendment implements Sections 2 and 3 of Executive Order 13936 of July 14, 2020, in response to new security measures imposed on Hong Kong by the government of China. BIS states that the “new measures [by China] fundamentally undermine Hong Kong’s autonomy increasing the risk sensitive U.S. technology and items will be diverted to unauthorized end uses and end users in China.”

On December 28, BIS amended the EAR to revise the Country Group designations for Ukraine, Mexico and Cyprus.

In this rule, BIS moved Ukraine from Country Group D to Country Group B and added Mexico and Cyprus to Country Group A:6. In both cases, these countries now have access to additional license exceptions available in the EAR.

The EAR designates countries into Country Groups A, B, D, and E which reflect each country’s export control policy, multilateral regime membership, system, and practice. The Country Groups generally serve as a basis for the availability of exceptions from license requirements of the EAR. Country Groups may also be used when describing license review policy and end-user and end-use based controls.

For more information, please contact: Jeff Snyder, Jana del-Cerro, Chandler Leonard, Edward Goetz

DDTC Issues Second Extension to Certain Temporary Suspensions, Modifications, and Exceptions to ITAR Due to COVID-19

The State Department's Directorate of Defense Trade Controls (DDTC) issued a [Federal Register Notice on December 11, 2020](#), announcing a "second extension to certain temporary suspensions, modifications, and exceptions to certain provisions of the International Traffic in Arms Regulations (ITAR) to provide for continued telework operations during the current SARS-COV2 public health emergency... This action is taken in order to ensure continuity of operations among members of the regulated community."

This second extension will expire on June 30, 2021, unless otherwise extended by DDTC.

This ITAR allowance provides authorization, as described below, for remote work to continue under technical assistance agreements, manufacturing agreements, or exemptions.

- A temporary suspension, modification, and exception to the requirement that a regular employee, for purposes of ITAR § 120.39(a)(2), work at the company's facilities, to allow the individual to work at a remote work location, so long as the individual is not located in Russia or a country listed in ITAR § 126.1.
- A temporary suspension, modification, and exception to authorize regular employees of licensed entities who are working remotely in a country not currently authorized by a technical assistance agreement, manufacturing license agreement, or exemption to send, receive, or access any technical data authorized for export, reexport, or retransfer to their employer via a technical assistance agreement, manufacturing license agreement, or exemption so long as the regular employee is not located in Russia or a country listed in ITAR § 126.1.

DDTC also noted in the same Federal Register Notice that the second extension will provide it more time to consider permanent revisions to the ITAR sections relating to remote work.

For more information, please contact: Chandler Leonard, Edward Goetz

China Issues Rules Governing National Security Rules of Foreign Investment

On December 19, 2020, China's National Development and Reform Commission (NDRC) and Ministry of Commerce (MOFCOM) released anticipated "Measures for the Security Review of Foreign Investments" (the Measures). These Measures, which implement China's Foreign Investment Law that went into effect on January 1, 2020, and established the country's new foreign investment regulatory framework, are effective on January 18, 2021.

For more information, [please click here](#).

For more information, please contact: Olivier Antoine, Caroline Brown, Evan Chuck, Aurora Zhang, Zhongdong Zhang

CBP Issues Withhold Release Order on Seafood Harvested with Forced Labor

On December 31, 2020, U.S. Customs and Border Protection (CBP) issued a [Withhold Release Order \(WRO\)](#) for seafood harvested on a Taiwanese fishing vessel named the Lien Yi Hsing No. 12. The order follows a separate decision in August of last year against the Da Wang, another Taiwanese fishing vessel suspected of similar violations. The December 31 WRO was the 13th and final for Fiscal Year 2020.

The Agency's Press Release included 3 out of the 11 possible forced labor indicators:

- Deception
- Withholding of wages
- Debt bondage

Additional forced labor indicators include: Abuse of vulnerability, restriction of movement, isolation, physical and sexual violence, intimidation and threats, retention of identity documents, abusive working and living conditions, and excessive overtime.

WROs are issued by the U.S. government when information reasonably but not conclusively indicates goods were made in whole or in part using Forced Labor. Merchandise detained under a WRO order must be exported immediately or a substantial submission made that provides specific information showing that the goods were not made with forced labor. To obtain a release of any shipment that has been subjected to a WRO, a certificate of origin along with this detailed statement regarding the merchandise's production and supply chain origin must be submitted to CBP. CBP makes a determination on a case-by-case basis.

For more information, please contact: Jeff Snyder, Frances Hadfield, Clayton Kaier

OFAC Designates Entities Determined to be Involved in Exporting Workers from North Korea

On November 19, 2020, the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) designated two entities operating in Russia determined to be involved in the exportation of forced labor from North Korea, under the authority of Executive Order (E.O.) 13722 of March 15, 2016, "Blocking Property of the Government of North Korea and the Workers' Party of Korea, and Prohibiting Certain Transactions With Respect to North Korea." The two sanctioned entities are: Mokran LLC, a Russian construction company, and Korea Cholsan General Trading Corporation, a North Korean company operating in Russia.

For more on these designations, [please click here](#).

For more information, please contact: Jeff Snyder, Caroline Brown, Chandler Leonard

EU Adopts Magnitsky-Like Sanctions Program

On December 7, 2020, The Council of the European Union adopted a [global human rights sanctions regime](#), similar to the Magnitsky Sanctions program used by the Department of the Treasury's Office of Foreign Assets Control (OFAC). The EU's framework will permit it to target individuals, entities, and bodies, whether state or non-state actors, and those who provide technical, financial, or material support to those who are "responsible for, involved in or associated with serious human rights violations and abuses worldwide, no matter where they occurred." This includes the imposition of targeted sanctions for acts such as genocide, crimes against humanity and other serious human rights violations or abuses (e.g., torture, slavery, arbitrary executions, arbitrary detentions, etc.), and other widespread, systemic and serious human rights violations (e.g. human trafficking, sexual and gender-based violations, violations or abuses of freedom of assembly, association, speech, religion).

The program will permit member states or the High Representative of the EU for Foreign Affairs and Security Policy to propose any sanctions under the program, which will then be acted upon by the Council of the EU. The Council may then impose restrictive measures such as travel bans, freezing of funds, and forbidding persons and entities in the EU from making funds available, directly or indirectly, to those designated. This program greatly expands the scope of the EU's sanctions program which was historically more targeted and geographically-based. The new program provides the EU with the authority to impose sanctions on individuals and entities, regardless of their location, that are accused of human rights abuses. The program entered into force on December 8, 2020, but sanctions have yet to be imposed under the new program.

The program comes only months behind the first sanctions imposed under a [similar program in the United Kingdom](#) and after continued additions to both the UK and OFAC's Magnitsky program. In particular, on December 9, in commemoration of International Anti-Corruption Day, OFAC designated additional individuals in Liberia, the Kyrgyz Republic, and China for being current or former government officials responsible for corruption. On December 10, International Human Rights Day, both OFAC and the UK designated additional entities and individuals worldwide for their roles in serious human rights abuses. It remains to be seen whether the new EU program will soon join the U.S. and the UK in proactively making use of its new sanctions regime.

For more information, please contact: Michelle Linderman, Dj Wolff, Brian McGrath

Large Civil Aircraft Dispute 2021 Update: Section 301 Tariffs on New EU Goods

In response to recent action by the European Union in the Large Civil Aircraft (Boeing-Airbus) Dispute in the World Trade Organization (WTO), the United States Trade Representative (USTR) has announced the inclusion of additional products to the list of EU goods subject to Section 301 tariffs.

Section 301 tariffs will apply to specified additional products of France and Germany, including certain aircraft manufacturing parts, and certain non-sparkling wines, and cognac and other grape brandies. The USTR's action targets products of France and Germany, as the agency contends these countries have provided the greatest level of WTO-inconsistent large civil aircraft subsidies. In a [press release](#) issued late on December 30, 2020, the USTR explained that its decision to expand the pool of EU products currently subject to additional tariffs responds to recent retaliatory action taken by the European Union in November 2020, which imposed additional tariffs on certain large civil aircraft of the United States and other U.S. goods.

Pending confirmation in a forthcoming formal Federal Register Notice, the USTR’s revisions will apply to products entered for consumption, or withdrawn from consumption, on or after 12:01 am (Eastern Standard Time) on January 12, 2021.

The ongoing large civil aircraft spat between the United States and the European Union simmered for more than a decade at the WTO and, in recent years, resulted in a tit-for-tat tariff war between the two trade partners. As importers close the book on 2020, the retaliatory tariffs show no clear signs of slowing. As no exclusion process has yet been implemented by the USTR in connection with this dispute, importers of impacted products should explore options for duty-savings.

For more information, please contact: John Brew, Maria Vanikiotis

Vietnam Section 301 Hearing Transcripts

On December 28 and 29, the U.S. Trade Representative (USTR) conducted public hearings on Vietnam’s timber imports and currency practices. Participant lists and hearing transcripts are available below. Post-hearing rebuttal comments are due January 6 and 7.

More information on the initiation of the investigations and hearings is available in our October and November posts.

Hearing Schedules:

Date	Event
December 10	Due date for filing requests to appear and a summary of expected testimony at both public hearings
December 28	Public Hearing on Vietnam’s Timber Imports <ul style="list-style-type: none"> • Participant List • Hearing Transcript
December 29	Public Hearing on Vietnam’s Currency Practices <ul style="list-style-type: none"> • Participant List • Hearing Transcript
January 6	Due date for submission of timber post-hearing rebuttal comments (post-hearing rebuttal comments are to be limited to rebutting or supplementing testimony at the hearing)
January 7	Due date for submission of currency post-hearing rebuttal comments (post-hearing rebuttal comments are to be limited to rebutting or supplementing testimony at the hearing)

For more information, please contact: John Brew, Maria Vanikiotis

Customs Rulings of the Week

- December 10: [Classification of Vegan Gelato](#)
- December 21: [Classification of Classic Italian Pasta Kit](#)
- January 4: [Classification of Portable Wood-Fueled Outdoor Brazier and Grill](#)

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

Crowell & Moring Podcast: Global Trade Talks

The "Global Trade Talks" Podcast is hosted by Ambassador [Robert Holleyman](#) and [Nicole Simonian](#) of Crowell & Moring's International Trade Group. This podcast shares brief perspectives on key global issues on international trade, current events, business, law and public policy as they impact our lives.

To listen to an episode, please click one of the links below. You can also access via [Apple Podcasts](#) and [Spotify](#), or bookmark this page at crowell.com/GlobalTradeTalks.

Dec.14.2020	Global Trade Talks: A Reporter's Perspective with Bloomberg's Shawn Donnan
Nov.19.2020	Global Trade Talks: Trade and Cyberspace with Bruce McConnell of the EastWest Institute
Oct.06.2020	Global Trade Talks: Trade is Not a Four-Letter Word
Sep.14.2020	Global Trade Talks: China's Digital Silk Road

Crowell & Moring Speaks

[Jeff Snyder](#) will be speaking on Borderlex' ["Roundtable: The Start of a New Era for Sustainable Development at the WTO?"](#) on January 12.

[Robert Holleyman](#) will be speaking at the Washington International Trade Association's [2021 Washington International Trade Conference](#) on February 8 on Trade & Environmental Sustainability.

[Robert Holleyman](#) authored an article on January 9 titled, ["Data Governance and Trade – The Asia-Pacific Leads the Way"](#) for the National Bureau of Asian Research.

Caroline Brown was featured in a January 5 article in *Legaltech News* titled “Legal Tech’s Predictions for Tech Regulation in 2021.”

On December 17, Crowell presented a webinar titled “Export Control Risk Assessments” with presenters: Clif Burns, Audrey Sutton (Senior Consultant, Defense Trade Solutions), Steve Casazza (Vice President, Defense Trade Solutions), Jana del-Cerro, and Chandler Leonard.

Robert Holleyman was featured in a December 17 article in *InsideEPA* titled “Biden May Push To Use Trade, Finance Rules to Advance Climate Goals.”

Frances Hadfield was featured in a December 15 *Law360* article (subscription required) titled “Dems Ask Trump to Get Tough on Palm Oil Slave Labor.”

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

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