

CLIENT ALERT

The Month in International Trade – February 2018

Mar.13.2018

In this issue:

- **Top Trade Developments**
 - [Latest News on Section 232 Steel and Aluminum Investigations, Tariffs](#)
 - [NAFTA Negotiation Continues - Now Complicated by Steel and Aluminum Tariffs](#)
 - ["America First" Moves to Export Controls: New Bill Introduced in House](#)
 - [New TPP Trade Pact Signed by 11 Countries on March 8](#)
 - [FinCEN Names Latvian Bank Primary Money Laundering Concern – Proposes Section 311 Special Measure](#)
 - [DDTC and BIS Issue Notice Of Inquiry for USML Categories V, X, And XI](#)
 - [Podcast: Announcing Crowell & Moring's Regulatory Forecast 2018](#)

- **[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 NEWS ON SECTION 232 STEEL AND ALUMINUM INVESTIGATIONS, TARIFFS

To keep up with the latest developments on the Section 232 steel and aluminum investigations and tariffs, [please subscribe to Section 232 Investigations](#) from [Crowell & Moring's International Trade Law blog](#).

For more information, contact: [Dan Cannistra](#), [Robert Holleyman](#), [Bob LaFrankie](#), [Ru Xiao-Graham](#), [Cherie Walterman](#)

NAFTA NEGOTIATION CONTINUES - NOW COMPLICATED BY STEEL AND ALUMINUM TARIFFS

The 7th round of NAFTA negotiations took place in Mexico City from February 25-March 5 with relatively little fanfare as the talks were overshadowed by President Trump's comments that his administration would impose Section 232 tariffs on aluminum and steel imports. Following the close of the round, President Trump issued Presidential Proclamations announcing the tariffs on March 8.

Officials are nearing completion of chapters on telecommunications and technical barriers to trade and closed discussions on good regulatory practices, administration and publication, and sanitary and phytosanitary measures (SPS). The three parties also agreed to a specific chapter dedicated to energy, which the U.S. previously opposed.

On the more difficult issues, some discussions are taking place but the path to completion remains unclear.

- **Autos rule of origin:** Officials reportedly continued discussions over Canada’s proposal on the rule of origin for autos, which would incorporate intellectual property and technology in determining country of origin. However, the U.S. has still not given any sign it will move away from its initial proposal requiring a regional content requirement of 85 percent and a U.S.-originating content requirement of 50 percent.
- **State-to-state dispute settlement:** Mexico and Canada have proposed modifying the rules for selection of panelists in state-to-state dispute settlement. However, it remains unclear whether the U.S. will agree to a form of binding dispute settlement.
- **Investor-state dispute settlement (ISDS):** Canada and Mexico have initiated bilateral discussions on ISDS without the United States. The United States has not shown signs of seeking any ISDS commitments thus far beyond the “opt-in” system it initially proposed.
- **Procurement:** Similar to ISDS, Canada and Mexico are discussing bilateral options for liberalizing procurement access for their respective markets. The U.S. has thus far not engaged in these discussions.

There was no joint statement following the March round. U.S. Trade Representative (USTR) Robert Lighthizer noted progress made on relatively non-controversial chapters but warned that “time is running very short” for the negotiations.

NAFTA talks could be further complicated by President Trump’s action to impose Section 232 tariffs on imports of steel and aluminum, effective March 23. President Trump’s March 8 Presidential Proclamations on the tariffs initially exempts imports from Canada and Mexico, but appears to suggest that the exemptions are conditioned on ongoing discussions to address transshipment through both countries.

Meanwhile, statements by USTR Lighthizer and President Trump have suggested that the aluminum and steel tariffs could be used as a bargaining chip during NAFTA negotiations. Canada and Mexico have insisted that the discussions are on separate tracks.

The next NAFTA round is tentatively scheduled for the week of April 8 in Washington D.C.

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

"AMERICA FIRST" MOVES TO EXPORT CONTROLS: NEW BILL INTRODUCED IN HOUSE

On February 15, 2018, Representative Ed Royce, Chairman of the House Foreign Affairs Committee, introduced new legislation intended to “modernize U.S. export control regulations of dual-use items.”

In spite of its title, the [Export Control Reform Act of 2018 \(H.R. 5040\)](#) does little to further the original goals of the Export Control Reform initiative and appears more squarely focused on using the Export Administration Regulations to prevent U.S. adversaries -- principally the PRC -- from gaining access to U.S. "emerging critical technologies," whether dual-use or solely commercial. The bill is the newest in a series that have been introduced without success since the Export Administration Act lapsed in 2001. Its fate appears tied to the ongoing CFIUS reform efforts, which this bill seeks to complement by enhancing regulatory controls on technology transfers of concern.

Much of the legislation would codify the current practices of the Department of Commerce and other U.S. export control regulatory agencies, and so do not appear to present significant changes. Notably, however, the bill diverges sharply with respect to its proposed definition of "U.S. Persons," which excludes entities organized under U.S. law unless U.S. individuals "own, directly or indirectly, more than 50 percent of the outstanding capital stock or other beneficial interest in such legal entity." The definition appears unworkable; publicly traded companies would have difficulty certifying that they meet a 50 percent U.S. ownership requirement, and, absent a comprehensive licensing mechanism or a broad exemption scheme, foreign-owned U.S. companies would be effectively unable to manufacture and export CCL-controlled items.

Other sections of the legislation appear focused on expanding congressional oversight of the Departments of State and Commerce's ability to license or otherwise authorize activities with the U.S. embargoed countries or nationals thereof. The provisions reflect a congressional desire to curtail the Executive branch from unilaterally relaxing such export controls, seemingly in reaction to the previous administration's approach toward Cuba.

For more information, contact: Alan Gourley, Addie Cliffe, Jana del-Cerro

NEW TPP TRADE PACT SIGNED BY 11 COUNTRIES ON MARCH 8

This week, in Santiago, Chile, the eleven nations that remained after the United States withdrew from the Trans-Pacific Partnership signed a successor agreement, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). A statement issued on March 9 by former Secretary of State Rex Tillerson addressed U.S. plans to evaluate the "new TPP."

It read, "Among the core principles of the Trump Administration's economic policy are protecting American jobs, ensuring fairness and reciprocity in trade relationships, and advancing America's international economic competitiveness. The Administration is studying how the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) will affect American workers and America's interests in the Indo-Pacific region. The United States values its trade relationships with each of the signatories to the CPTPP and looks forward to engaging them on ways to strengthen and expand trade on the basis of fairness and reciprocity."

The CPTPP will enter into force 60 days after six of the 11 countries ratify the deal.

For a deeper look at the changes to the trade and investment environment in the Asia-Pacific, and some key dynamics to watch as the CPTPP countries move toward ratification and implementation, please see [Crowell & Moring's Client Alert](#).

For more information, contact: Robert Holleyman, Clark Jennings, Joshua Boswell

FINCEN NAMES LATVIAN BANK PRIMARY MONEY LAUNDERING CONCERN – PROPOSES SECTION 311 SPECIAL MEASURE

On February 13, the U.S. Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN) issued a finding pursuant to Section 311 of the USA PATRIOT Act identifying ABLV Bank of Latvia as a “primary money laundering concern.” FinCEN also issued a [notice of proposed rulemaking \(NPRM\)](#) under that section which, if adopted, would prohibit financial institutions from opening or maintaining a correspondent account in the United States for, or on behalf of, ABLV.

In practice, financial institutions (both U.S. and non-U.S. headquartered) often do not wait for such a rule to be finalized but instead move immediately to close out banking relationships with the designated foreign financial institution as soon as the finding and NPRM are announced.

For more, [please see Crowell & Moring’s International Trade Law blog](#).

For more information, contact: Carlton Greene, Cari Stinebower

DDTC AND BIS ISSUE NOTICE OF INQUIRY FOR USML CATEGORIES V, X, AND XI

On February 12, the State Department’s [Directorate of Defense Trade Controls \(DDTC\)](#) published a Federal Register Notice seeking comments to inform its review of controls implemented in recent revisions to the following United States Munitions List (USML) Categories:

- V – Explosives and Energetic Materials, Propellants, Incendiary Agents, and Their Constituents
- X – Personal Protective Equipment
- XI – Military Electronics

Commerce’s [Bureau of Industry and Security \(BIS\)](#) also published a notice on February 12. The agency is seeking public comments to perform a complementary review of items on the Commerce Control List (CCL) concurrent with DDTC’s review to ensure that the descriptions of these items on the CCL are clear, items for normal commercial use are not inadvertently controlled as military items on the USML, technological developments are accounted for on the control lists, and controls properly implement the national security and foreign policy objectives of the United States.

This is part of DDTC and BIS’ periodic post-Export Control Review (ECR) of the USML/CCL.

Comments for both notices are due on April 13.

For more information, contact: Jeff Snyder, Edward Goetz

PODCAST: ANNOUNCING CROWELL & MORING'S REGULATORY FORECAST 2018

On February 28, Crowell & Moring published its fourth annual [Regulatory Forecast](#), exploring how technology is driving the future of business across industries – and how Washington, as well as state and global regulators, is forging the appropriate balance between fostering innovation and protecting consumers.

The publication's editors, Richard Lehfeldt and Dan Wolff, both partners in the firm's Administrative Law and Regulatory Practice, sat down to discuss the forecast. In this 8 minute podcast, Richard and Dan discuss what you will find in our Regulatory Forecast 2018, including both topics and authors new to the forecast this year.

Click below to listen:

[SoundCloud](#)

For more information, contact: Richard Lehfeldt, Daniel W. Wolff

CROWELL & MORING SPEAKS

On February 9, Erik Woodhouse and [Frances Hadfield](#) spoke at the Federal Bar Association's 5th Annual Fashion Law Conference at the Theresa Lang Center at The New School in New York. Erik will be a panelist for "Financial Crimes and Fashion." This panel will examine the risks of economic sanctions and money laundering liability in the fashion industry as well as whistleblower litigation pursuant to the False Claims Act. Frances will be speaking on a panel entitled, "Trump's NAFTA Renegotiation: Potential Changes and Impacts to Brands, Apparel, and Textiles." This panel will survey the impact of the Trump administration's renegotiation of NAFTA on the fashion industry, and how counsel should advise clients in navigating this potential new landscape.

On February 26, [Robert Holleyman](#) was a panelist at the Sedona Conference on International Patent Litigation in Reston, VA. His panel was entitled, "What is The Future for Domestic Enforcement of IP Activities Occurring Abroad?"

On March 12-13, Chris Monahan and [Jennifer Giblin](#) will be speaking at the [International Compliance Professionals \(ICPA\) 2018 Conference](#) in San Diego, CA. Chris' talk will be "2017 Export Year in Review," while Jennifer will be discussing "Understanding IATA Hazardous Materials."

[Robert Holleyman](#) will be speaking at the [Biennial IBA Latin American Regional Forum Conference in Mexico City](#) on March 15. He will be a panelist discussing "Free trade or protectionism: are we going local? The renegotiation of Brexit, NAFTA, and others – what are the challenges and opportunities."

[Jeff Snyder](#) will moderate panels and speak on "BEPS & Tax and Customs Efficient Supply Chain Management," including the Customs law impact of international supply chain optimization in the light of the OECD BEPS initiative, on March 15, 2018, at the [Inter-Pacific Bar Association Annual Conference in Manila](#).

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

Robert Holleyman

Partner and C&M International President & CEO – Washington, D.C.
Phone: +1 202.624.2505
Email: rholleyman@crowell.com

Evan Yu

C&M International Senior Consultant – Washington, D.C.
Phone: +1 202.508.8846
Email: eyu@crowell.com

Carlton Greene

Partner – Washington, D.C.
Phone: +1 202.624.2818
Email: cgreene@crowell.com

Clark Jennings

C&M International Managing Director, Asia – Singapore
Phone: +65.9111.0610
Email: cjennings@crowell.com

Joshua Boswell

C&M International Director – Washington, D.C.
Phone: +1 202.508.8752
Email: jboswell@crowell.com

Adelicia R. Cliffe

Partner – Washington, D.C.
Phone: +1 202.624.2816
Email: acliffe@crowell.com

Alan W. H. Gourley

Partner – Washington, D.C.

Phone: +1 202.624.2561

Email: agourley@crowell.com