

CLIENT ALERT

The Month in International Trade – February 2019

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In this issue:

- [Crowell & Moring Expands International Trade and Global Employment Practices with Four Senior Lawyers; CMI Breaks New Ground in Shanghai](#)

- **Top Trade Developments**
 - [Latest U.S. Trade Actions/Tariffs and Other Countries Retaliatory Measures](#)
 - [Regulatory Forecast 2019: “Trade Winds: How Global Businesses are Navigating Trade, Tariffs, and the Uncharted Waters Ahead”](#)
 - [President Trump Removing India and Turkey from Generalized System of Preferences \(GSP\)](#)
 - [Brexit Extension to Withdraw from the EU Very Likely](#)
 - [Latin America Regional Recap: January and February](#)
 - [OFAC Enforcement Action: Do You Know What Your Subsidiaries Are Doing?](#)
 - [Customs Rulings of the Week](#)

- [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](#).

CROWELL & MORING EXPANDS INTERNATIONAL TRADE AND GLOBAL EMPLOYMENT PRACTICES WITH FOUR SENIOR LAWYERS; CMI BREAKS NEW GROUND IN SHANGHAI

Leading Team Assists Clients with Global Expansion in Asia

Los Angeles – March 11, 2019: Crowell & Moring LLP is broadening its ability to help multinational clients navigate global expansion and regulatory compliance in China and the Asia Pacific by adding four international trade and global employment lawyers: partners [Nicole J. Simonian](#) and [Evan Yee-Fan Chuck](#), senior counsel [Robert Clifton Burns](#), and counsel [Jackson Pai](#) to its Los Angeles and Washington offices. As part of this move, Crowell & Moring International (CMI), the firm’s global policy and

regulatory affairs consulting affiliate, is launching an office in Shanghai with seven trade, transactions, and tax professionals to support global businesses facing cross-border transactional, investigative, policy, and regulatory needs.

International Trade Group Additions

The team joins from Bryan Cave Leighton Paisner LLP and bolsters Crowell & Moring's ability to help companies structure, establish, and manage business operations in Asia, Europe, the Middle East, and Latin America. They have worked together for more than two decades, providing advice to foreign businesses that face complex regulatory issues such as complying with antitrust laws and securing approval from the Committee on Foreign Investment in the United States (CFIUS). Simonian, who served as co-chair of Bryan Cave's International Trade Group and head of its Asia practice, will co-chair Crowell & Moring's International Trade Group, together with [John B. Brew](#). Simonian will also serve as the firm's International Employment and Global Mobility lead. Chuck, who most recently led Bryan Cave's China Practice, will become head of the firm's Asia Practice. Simonian, Chuck, and Pai join the firm's Los Angeles office while Burns will reside in the Washington office. Their move comes on the heels of former Bryan Cave partner David Stepp's joining the firm in August.

"We are thrilled to welcome this diverse group of top flight lawyers at a time when international trade issues, particularly in China, are of paramount importance to our clients. Our new team has in-depth knowledge about how best to help clients move goods, services, and people across borders in today's challenging global trade climate," said [Philip T. Inglima](#), chair of Crowell & Moring LLP. "Their collective skill set will expand our capabilities and provide clients with the highest level of service to address their global corporate and supply chain needs."

Crowell & Moring International Opens in Shanghai

Crowell & Moring International, an affiliate of Crowell & Moring LLP, is launching an office in Shanghai to support global businesses facing cross-border business needs, as well as international trade, policy, and regulatory issues. In the coming weeks, Crowell & Moring International plans to welcome a 7-person team of highly skilled professionals based in Shanghai. They have worked with Simonian, Chuck, and Stepp since 2005. This new Shanghai presence expands Crowell & Moring International's ability to serve clients in the Chinese market and builds on CMI's more than 30 years of experience advising global businesses operating in the Asia-Pacific.

"Our Shanghai office, in conjunction with our Los Angeles and Washington D.C. based international trade teams, will provide a valuable platform to help clients access and navigate the growing market," said [Ambassador Robert Holleyman](#), president and CEO of Crowell & Moring International and former deputy U.S. Trade Representative responsible for Asia. He plans to work closely with Simonian and Chuck as they provide trade, corporate, policy, regulatory, and international employment and global mobility advice to multinational clients. "This group brings a wealth of talent to our law firm's International Trade Group and positions us for growth in Asia," Holleyman said.

Integrated Policy Team

Simonian advises companies on their market entry and global business strategies throughout Asia, Latin America, the Middle East, and Europe. She advises Fortune 500 companies on their international trade and employment strategies as they develop and maintain international workforces and structure global mobility and expatriate processes to address the growing need to

move goods and people across borders. Her experience in corporate, trade, and international employment law provides a holistic approach for her clients who operate in a complex, global regulatory environment.

“We are excited to enhance Crowell & Moring’s reputation as a premier international law firm,” Simonian said. “Our team’s experience, combined with Crowell & Moring’s Chambers-ranked International Trade Practice and its influential consulting firm, provide a powerful platform to deliver innovative legal, political, and business solutions for clients worldwide.”

Chuck has more than 25 years of international trade and cross-border transactional experience. He advises Fortune 500 companies in structuring market entry, global supply chain, and e-commerce strategies across the Asia-Pacific region. He has in-depth experience in China with cross-border acquisitions/dispositions, government regulatory compliance, and investigations. He also represents large, multinational Chinese companies with complex U.S. transactional, tax, and regulatory issues. He advises U.S.-based companies with complex supply chains in ongoing Section 301 trade disputes between the U.S. and China. He served as both chair of Bryan Cave’s International Trade Group and as managing partner of its Shanghai office for seven years.

“I look forward to joining forces with Crowell & Moring to add deep, China cross-border trade and transactional experience to the firm’s top tier law and consulting practices in the United States and Europe for the benefit of the firm’s multinational clients,” Chuck said.

“Given the current trade wars and uncertainties of the global trade environment, clients need business solutions and sophisticated guidance to help them minimize tariffs, resolve supply chain disruptions, and secure market access,” Brew said. “Nicole, Evan, and the team have the experience and insight to provide counsel on emerging trade issues worldwide.”

“In the digital age, the competition for talent is intense and workforces are becoming increasingly mobile,” said [Kris D. Meade](#), chair of Crowell & Moring’s Labor & Employment Group, “Our new additions have the right mix of experience in global mobility and trade so they can help our clients stay ahead of the competition.”

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

Regulatory Forecast 2019: “Trade Winds: How Global Businesses are Navigating Trade, Tariffs, and the Uncharted Waters Ahead”

Crowell & Moring has issued its fifth annual report on regulatory trends for in-house counsel. “[Regulatory Forecast 2019: What Corporate Counsel Need to Know for the Coming Year](#)” explores a diverse range of regulatory developments coming out of Washington and other leading regulatory centers of power, and it takes a deep dive into international trade—examining the challenges and opportunities that will arise in the year ahead as global businesses compete in the digital revolution and operate their businesses across borders.

The [cover story](#) examines how changing international trade policies are causing businesses to rethink strategies for everything from supply chains to data transfers, while uncovering new opportunities along the way. The article forecasts changes on the horizon that include how new tariffs and trade barriers may drive up costs and cause companies to rearrange their supply chains; how some countries are restricting the flow of data across borders; and the impact of the growing number of stronger enforcement of financial crimes regulations, among others. The article also identifies hot spots for 2019 in an international trade infographic. An [additional international trade article](#) examines the increased oversight on foreign investment in the U.S., and its impact on innovation.

Be sure to read the [full report](#) and follow the conversation on social media with #RegulatoryForecast.

President Trump Removing India and Turkey from Generalized System of Preferences (GSP)

President Trump indicated in a [press release from the USTR](#) that he intends to remove India and Turkey from the list of Generalized System of Preferences (GSP) eligible countries. GSP provides reduced tariff rates for certain products from certain developing and least developed countries.

In the case of India, the removal is a response to India’s alleged failure to provide market access assurances, whereas in the case of Turkey the removal is predicated on a finding that Turkey is at a sufficiently high level of economic development that continued treatment as a developing country is unwarranted.

U.S. law requires the president to give 60 days notice to Congress and the recipient-country before removing GSP eligibility. Therefore, tariffs will increase for certain GSP-eligible products from those two countries as soon as May 3, 2019.

The action to remove India followed a series of bilateral consultations between the US and India that failed to resolve issues affecting market access by U.S. exporters to India on a range of products. The GSP petition to remove India was originally filed by U.S. medical device and dairy producers in April 2018, leading to attempted bilateral negotiations to address the market barriers identified by the petitioners as well as other barriers noted by U.S. negotiators.

For more information, contact: [Melissa Morris](#), [Spencer Toubia](#)

Brexit Extension to Withdraw from the EU Very Likely

The U.K. could receive an extension to the withdrawal period by three months or up to 2021 under Article 50 of the Treaty on European Union. The House of the Commons will have a “meaningful vote” on Theresa May’s revised Brexit deal no later than March 12th, a yes-or-no vote to approve the PM’s plan.

If it fails, then the UK will allow a vote on whether to have a no-deal Brexit and leave the EU. If no-deal Brexit is rejected then the MPs will vote to extend the Article 50 period, potentially prolonging the UK’s commitment to the EU past March 29th. The vote of extension will occur no later than Thursday, March 14th.

For more information, contact: Michelle Linderman, Elena Klonitskaya, Cherie Walterman

Latin America Regional Recap: January and February

Crowell & Moring’s Latin America Practice publishes a Regional Recap each month to highlight some of the most relevant news and trends from the region impacting international trade and investment.

To learn more about each of the below topics, [please click here](#).

- **Major trend: Battling Systematic Corruption**
- **Venezuela: A Storm of Political Uncertainty**
- **Brazil: Changing Old Ways**
- **PROSUR: Colombia Paving a New Path**
- **Mexico: A “Free Zone”**
- **Nicaragua: Dialogue 2.0?**
- **Cuba: A Potential Tsunami of Litigation**

For more information, contact: Cari Stinebower, David Baron, Eduardo Mathison, Alexandra Solórzano, Rebecca Toro Condori

OFAC Enforcement Action: Do You Know What Your Subsidiaries Are Doing?

On February 14, 2019, [the Office of Foreign Assets Control \(OFAC\)](#) announced it had assessed a civil monetary penalty of over \$5.5 million dollars against AppliChem GmbH (AppliChem) of Darmstadt, Germany (a company that manufactures chemicals and reagents for the pharmaceutical and chemical industries) for 304 violations of the [Cuban Assets Control Regulations, 31 C.F.R. part 515 \(CACR\)](#). Specifically, OFAC determined that between May 2012 and February 2016, after it had been purchased by a U.S. company and come within the jurisdiction of the U.S. sanctions on Cuba, AppliChem sold chemical reagents to Cuba. 19 C.F.R. § 515.201.

A. The U.S. Company’s Merger and Acquisition Due Diligence Team Successfully Identified the Cuban Sanctions Issue.

On January 1, 2012, Illinois Tool Works, Inc. (ITW), a company based in Glenview, Illinois, acquired AppliChem. In December 2011, during its merger and acquisition due diligence, ITW discovered references to countries subject to U.S. economic and trade sanctions on AppliChem’s website. That same month, ITW told AppliChem it would be required to cease all Cuban transactions after it was acquired. ITW then incorporated AppliChem into its Reagents Division, and allowed AppliChem’s former owners to stay on as manager-employees. On January 12, 2012, the General Manager of ITW’s Reagents Division sent AppliChem’s former owners a memorandum explaining ITW’s guidelines for complying with U.S. sanctions, including the CACR.

B. Willful Evasion by the Non-U.S. Entity and Persons Working for It.

However, despite these warnings, AppliChem continued to complete and collect on existing orders with Cuba under pre-acquisition contracts. Upon discovering AppliChem’s continued Cuban business, ITW’s European legal department sent a third warning to AppliChem’s former owners on April 5, 2012 to immediately cease all sales to Cuba.

In late January 2016, an anonymous report was made through ITW’s ethics helpline. The call alleged that AppliChem had continued making sales to Cuba through an intermediary company in Berlin, Germany. ITW began a full investigation, which revealed that AppliChem’s former owners had continued AppliChem’s Cuba business by creating a scheme that concealed this business from ITW after having been specifically told by ITW to cease Cuban sales.

Rather than ceasing sales to Cuba as directed by ITW, between February 2012 and April 2012, AppliChem designed and implemented what it called the “Caribbean Procedures” (whereby Cuba was referred to by the code word “Caribbean”), which made sure that no documents mentioning Cuba would be prepared or retained by AppliChem in connection with its continued business with the country. Pursuant to the Caribbean Procedures, AppliChem engaged an external logistics company and an independent hazardous materials consultant to prepare the necessary shipping documents and hazardous materials declarations, which previously had been handled internally.

Once AppliChem implemented the Caribbean Procedures, AppliChem senior management conducted both written and in-person training sessions for AppliChem’s staff, particularly those working in the logistics department, to ensure that Cuba-related sales would be concealed from ITW. The reasons for the implementation of the Caribbean Procedures were “well known to AppliChem staff during this time” and were described by AppliChem staff as an “open secret” at AppliChem. Consequently, between May 2012 and February 2016, AppliChem fulfilled Cuban orders on 304 invoices. The transaction value of the shipments made during this time was €2,833,701 (approximately \$3,433,495).

C. OFAC Investigation and Results

OFAC determined that ITW voluntarily self-disclosed the violations on behalf of AppliChem, and that the violations constituted an egregious case. The statutory maximum civil monetary penalty applicable in this matter was over \$20 million dollars. The base civil monetary penalty was over \$10 million dollars.

OFAC determined the following to be **aggravating factors**:

1. The willful conduct of AppliChem’s management.
2. The use of written procedures to engage in a pattern of conduct in violation of the CACR.

3. AppliChem's sales to Cuba of approximately \$3,433,495 in 304 transactions over the course of five years caused significant harm to the sanctions program objective of maintaining a comprehensive embargo on Cuba.
4. The size and sophistication of AppliChem, with an average annual revenue of around \$23 million between 2012 and 2015, and the fact that it is a subsidiary of ITW, a large international company.

OFAC determined the following to be **mitigating factors**:

Once ITW discovered ApliChem's perfidy, it cooperated by filing a thorough voluntary self-disclosure with OFAC, providing prompt responses to requests for information, performing a thorough internal investigation, and signing a tolling agreement on behalf of AppliChem.

This case demonstrates the importance of auditing and verifying foreign subsidiaries. In contrast to previous enforcement actions in which a buyer failed to identify a sanctions exposure, ITW identified the sales and took steps to ensure they ceased. The issue arose because of its new subsidiary's ability to circumvent those instructions and hide ongoing sales, underscoring the importance of verifying that internal procedures are being followed. Further, U.S. companies with international operations should consider:

- i. Implementing risk-based controls, such as regular audits, to ensure subsidiaries are complying with their obligations under OFAC's sanctions regulations.
- ii. Performing follow-up due diligence on acquisitions of foreign persons known to engage in historical transactions with sanctioned persons and jurisdictions.
- iii. Appropriately responding to derogatory information regarding the sanctions compliance efforts of foreign persons subject to the jurisdiction of the United States.

For more information, contact: Dj Wolff, Frances Hadfield

Customs Rulings of the Week

- March 7: [Electric Bicycle with Golf Bag Compartment](#)
- February 28: [Selenium Shot and Powder...and a Partial Duty Exemption under 9802, HTSUS](#)
- February 21: [The Tariff Classification of a Pet Treat Dispenser with a Camera!](#)
- February 14: [Country of Origin, Government Procurement, and Certain Ethernet Switches, Routers, and Network Cards](#)

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

CROWELL & MORING SPEAKS

[David Stepp](#) and [Frances Hadfield](#) spoke at the Federal Bar Association's 2019 Fashion Law Conference on February 8, 2019 in New York City. Both David and Frances discussed "Trade Wars with China: Analysis of Outcome".

Dan Cannistra will be speaking at the American Fuel & Petrochemical Manufacturers (AFPM) annual meeting in Washington, D.C. on March 19, 2019. He will be on a panel entitled "Trade Agenda 2019."

Chris Monahan will be speaking at the International Compliance Professionals Association's 2019 Annual Conference on March 25, 2019 in Orlando, FL. His topic is "Anatomy of an Internal Investigation."

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

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