

CLIENT ALERT

The Month in International Trade – March 2020

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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](#).

Top Trade Developments

Coronavirus Resource Center

Crowell & Moring has a multidisciplinary working group helping clients navigate the rapidly evolving business, legal and operational challenges associated with the COVID-19 pandemic. This group brings together lawyers with relevant senior

government, industry, and private sector experience across a wide array of practices that intersect with the issues at play in this unprecedented legal landscape.

Our focus is helping clients to anticipate issues, to take proactive steps, to develop appropriate responses, and to execute sound legal, business and operational plans. Crowell & Moring attorneys are advising on more than 250 COVID-19 matters in areas, including:

- Antitrust
- Bankruptcy & Restructuring
- Business Interruption and Commercial Contracts
- Commercial Finance & Lending
- Corporate
- Education
- Employment (U.S. & International)
- Energy
- Environmental
- Government Affairs
- Government Contracts
- Health Care, including Digital Health
- Insurance
- International Dispute Resolution
- Litigation
- Privacy & Cybersecurity
- Products Liability
- State Attorneys General Investigations
- Supply Chains & Trade
- Tax
- White Collar & Regulatory Enforcement

Immediate and Just Around the Corner Issues

We are counseling clients as they navigate both immediate issues, as well as those that may impact them very shortly. We are focused on helping them to understand the questions they need to ask with a view toward both the immediate and longer term business impacts and potential consequences. Some of the resources we have developed include:

- Analyses of a majority of federal, state, and municipal emergency declarations and orders. To request information for a specific jurisdiction, please email COVID-19@crowell.com.
- Webinar Series: We are hosting a webinar series called COVID-19: Immediate and Just Around the Corner Issues. Brief programs that will provide up to the minute information on important topics.
- Commercial Contracts Checklist: designed to assist companies when reviewing commercial contracts for provisions that are likely relevant to minimizing business disruptions and losses related to the COVID-19 pandemic.

Areas in which we anticipate clients are facing immediate concerns include:

- Government contract performance issues in the US and abroad.
- Force majeure provisions in commercial contracts.
- Supply chain disruption and other business continuity issues.
- Hospital operations and capacity, patient safety, and medical supplies.
- Insurance questions and coverage exclusions and limitations.
- Compliance with workplace safety issues and health care law.

- Privacy and data protection policies and regulations.
- Labor and employment issues, including employment mobility.
- Disruption of corporate internal and external investigations.
- Oversight of public health policy and health care system preparedness plans.
- Medicare, Medicaid, and commercial reimbursement.

For access to the resource center, [please click here](#).

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

Profiteering in the U.K. and the Pandemic: Navigating Fluctuating Markets and Erratic Supply Chains

Introduction

We are in extraordinary times.

Businesses are having to adapt, fire-fight and problem-solve like never before. Markets are fluctuating in ways that were totally unforeseeable six months ago and sometimes only days ago. Most companies are now operating in an entirely new world of demand behaviours, supply chain constraints and pricing practices.

This changed environment inevitably leads to new approaches, and we are seeing some for the greater good, but others less so. For example, a light is increasingly being shone on profiteering or “price gouging” – the practice of charging excessive prices for products and services during an emergency situation or extreme market conditions.

The Law

Price gouging and similar behaviours are primarily regulated in the U.K. by the Competition and Markets Authority (**CMA**), which enforces competition and consumer protection law. (For businesses operating in the U.S., see our update [here](#).)

In particular, section 18(2) of Chapter II of the Competition Act 1998 specifically prohibits the imposition of unfair prices or other unfair trading conditions by entities with significant market power (which can be as small as 40% of a particular market in a part of the U.K. – and what is a particular market can be a complex issue in itself). Case law provides tests for assessing whether particular pricing behaviours will be abusive, including as follows – which the CMA has decided to apply in its cases:

1. *Is the difference between costs actually incurred and the price actually charged excessive? And, if yes:*
2. *Has a price been imposed which is either unfair in itself or when compared to competing products?*

The Risks

The Competition Act gives the CMA extensive powers to investigate and take enforcement action against price gouging practices, including: making directions requiring an entity to modify or cease particular conduct; applying to the courts for enforcement orders; and imposing financial penalties.

In response to the current crisis and the sadly inevitable recent increases in price gouging practices, the CMA has launched a new COVID-19 taskforce dedicated to:

- Monitoring market developments and scrutinising harmful pricing practices.
- Proceeding with enforcement action where businesses have breached competition or consumer protection law.
- Advising Government on emergency legislation to extend existing powers, including potential direct action to regulate prices.

Breaches of the law can be serious in other ways too – agreements can be held unenforceable, directors can be disqualified, and criminal sanctions can be imposed for particularly serious abuses; be in no doubt that this is a serious issue.

Potential Claims including Class Actions

Entities may also expose themselves to third party claims, for example, in damages and for other relief including injunctions (where brought by counterparties who can demonstrate that they have been harmed by anti-competitive behaviour). There may even be the possibility of fraud claims, if a party can demonstrate that it relied upon a fraudulent misrepresentation regarding pricing which caused a loss and that could create personal liability for directors or employees that make those representations.

Notably the CMA has confirmed that U.K. courts may take its recent guidance into account when deciding any corresponding cases – which might pave the way for a stricter approach being seen in the courts in the near future.

For competition claims, the main cause of action is typically breach of statutory duty, although economic torts may also be relevant (e.g. conspiracy to use unlawful means – although note that this involves a requirement for the defendant to have intended to cause injury to the claimant). These claims may be brought on a stand-alone or follow-on basis. The former is where a claimant alleges an infringement separate to any CMA investigation or decision, and the latter is where liability has already been established by the regulator.

Civil claims can be brought in the High Court or the Competition Appeal Tribunal (**CAT**) and if a number of individuals have suffered at the hands of one entity then class actions are potentially possible too (although only in the CAT). Under the Consumer Rights Act 2015, the CAT has the power to determine certain class action competition claims on either an opt-in (where each claimant actively signs up to be included) or opt-out (where individuals are automatically included unless they specifically request to be excluded) basis. Note that opt-out provisions only apply to U.K. entities, but non-U.K. entities may opt-in.

Issues and Risks in the Current Climate

A number of issues are pertinent for businesses: ranging from how to react to supplier price increases on products or services that are critical for ongoing operations; to how to introduce necessary increases to their own prices, in response to constraints up or downstream in their supply chains or the increased cost of doing business in this environment; to how to seek recourse if they have suffered at the hands of unlawful price gouging or other market abuse.

Many businesses are likely to be genuinely under pressure to adapt to new market constraints, and helpfully the CMA has recognised that certain competition law enforcement could impede necessary cooperation between businesses to deal with the current crisis. As part of their expanded remit they will also be advising Government on preserving market stability and not prohibiting legitimate commercial practices which may help bolster supply chains and public health needs.

Actions

So what practical steps can clients take to enable them to react nimbly to these changing circumstances?

- Businesses would be wise to keep abreast of developments, as the CMA's approach may be increasingly robust. For example, particular scrutiny is being placed on the pharmaceutical and food and drink industries already. The CMA has published an open letter to businesses operating in these markets, warning of increased monitoring of bad behaviours.
- Check your contractual framework. There may already be mechanisms in place to help with agreeing changes to pricing structures or performance obligations that protect all project parties.
- If the position is unclear, take advice before making reactive decisions on pricing. The CMA has made it clear that some price rises are inevitable due to unavoidable economic pressures, but it is asking businesses to inform it of suspected bad practice.
- We expect this issue to present new legal challenges so we will be monitoring developments in this area, including any significant action from the new CMA taskforce. However, as mentioned above, the prohibition contained in Chapter II of the Competition Act is triggered only where an entity has "significant market power". Businesses that are confident that they do not have significant market power should be able to charge what they think people will be prepared to pay. That said, it remains to be seen whether the new CMA taskforce will be interpreting the definition more loosely – particularly in the current climate.

For more information, contact: Nicola Phillips, Robert Weekes, Laurence Winston, Lydia Taylor

Multinational Companies May Benefit From Chinese Stimulus Programs to Help Mitigate the Economic Impact of COVID-19

The central government of the People's Republic of China (PRC) as well as provincial and city level governments across the country have announced numerous incentives and supporting measures to assist companies, including wholly foreign owned enterprises (commonly referred to as WFOEs) and Sino-foreign joint ventures, in resuming production and operations that were adversely impacted by the COVID-19 outbreak. In China, provincial and municipal governments often have discretion to implement specific rules pursuant to broad policy guidelines or requirements issued by the central government so long as the local rules do not provide benefits or incentives that are lower than that provided in the national guidelines. Accordingly, companies should confirm the local rules at provincial or municipal levels as specific implementing measures may vary.

Some of the programs that may be available to multinational companies operating in the PRC, including the following:

1. Central Government Incentives to Support Resumption of Production

a. Preferential Tax Measures. The PRC's State Tax Administration (SAT) announced on February 6 a series of preferential tax measures to encourage resumption of industrial production including employment. One of the measures allows companies in certain industries severely affected by the epidemic to offset 2020 losses for a longer than standard period of time (8 years, instead of 5). Qualifying industries include transportation, catering, accommodation, and tourism. The portion of the revenue generated from business activities in the qualifying industries must account for more than 50% (excluding non-taxable income and investment income) of total revenue in 2020. Separately, the PRC Ministry of Finance (MoF) and SAT Announcement [2020] No. 8 provides that companies engaging in production of key personal protective equipment (PPE) (e.g., facial masks, protective clothes) may deduct the costs of purchased equipment in a lump sum from applicable PRC corporate income tax (CIT). In addition, donations from companies to public welfare organizations, governmental agencies, or directly to hospitals responsible for epidemic control are entitled to a full deduction from taxable income, under MoF and SAT Announcement [2020] No. 9.

b. Import Exemption. Under MoF Announcement [2020] No. 6, the importation of donated supplies used for prevention and control of the epidemic, such as reagent, disinfection equipment, and protective supplies, is exempt from import duties, import VAT, and consumption tax. For donated supplies from the United States, no retaliatory tariffs would be imposed on such donated supplies. This policy is applicable to imports between January 1, 2020 and March 31, 2020. Import tariffs during that period can be refunded if they were not used to offset the importer's output VAT. Importers may claim refunds before September 30, 2020.

c. Payroll Exemptions. The Ministry of Human Resources and Social Security (MHRSS), MoF and SAT jointly issued a notice (Social Security Ministry Announcement [2020] No. 11) on February 20, 2020 to allow provincial and municipal governments to exempt small and medium enterprises from making company contributions to social insurance programs for up to five months, and large enterprises from fifty-percent (50%) of the company contributions, for up to three months. Provincial and municipal governments have implemented this announcement as highlighted below.

2. Provincial and Local/Municipal Incentives

Many other incentive and support measures have been announced at the provincial and municipal levels, including:

a. Hubei Provincial Measures. The provincial government of Hubei, which suffered most of the adverse economic impact of COVID-19 in China, issued the Hubei Provincial New Corona Virus Infection Prevention and Control Headquarters Notice on

March 11, 2020. It provides that Wuhan-based companies essential to epidemic prevention and control (e.g., including the manufacture of PPE), public utilities operations (e.g., water supply), daily necessities (e.g., sales of food, fruits, meat and eggs), and agricultural production (e.g., seeds and fertilizer), are permitted to resume production. Companies that are significant to national and global supply chains can also resume production if approved by the authorities. In areas considered medium or low risk, there a broader range of companies is allowed to resume production. However, businesses on the “negative list”, such as cinemas, bookstores, bars, gyms and restaurants, cannot resume work before the epidemic ends. Most notably, all companies in Hubei, including wholly foreign-owned enterprises and joint ventures, are also temporarily exempt from payment of pension, unemployment, and work injury insurance contributions according to an announcement issued by the Hubei Provincial government on March 27, 2020.

b. Shanghai Municipal Measures. In Shanghai, a number of measures have been implemented to reduce the financial burden on employers. For example, employers that have not laid-off employees, or attempted to minimize the number of employees laid-off, may receive a refund on their payment of unemployment insurance premiums of fifty percent (50%). Pursuant to the central government joint notice referenced above, the local Shanghai Branch of the MHRSS has implemented an exemption for (a) small and medium sized enterprises in Shanghai to make company contributions to the three social insurance programs between February to June this year, and (b) for large enterprises, a fifty-percent (50%) reduction in company contributions to the three social insurance programs between February and April.

c. Measures in Beijing and Guangdong Province. The Beijing Municipal Government has similarly introduced measures to reimburse small and medium sized companies for their payments of unemployment insurance premiums if the companies’ reduction in force is below certain thresholds, and to provide companies a reduction (large enterprises) and exemption (small and medium enterprises) in the amount of company contributions to social insurance programs. Guangzhou and Guangdong Province have also allowed companies to delay contributions to social insurance programs without penalty.

Observations and Recommendations

China, having faced unprecedented public health and economic damage, is now turning to recovery in many dimensions. Multinational companies should evaluate their operations in China to see if they are eligible to benefit from these incentives and supporting measures. If you believe your company may be eligible for any of these incentive and support measures, we recommend:

- Seeking information on qualifying requirements; explore prima facie eligibility; move quickly – some of the programs have a short eligibility or claim period.
- Considering all forms – national, provincial, and municipal – that may apply.
- Understanding the risks, documentation requirements, audits, and the overall enforcement environment based on the specific measure itself under consideration.

We note that with many of the measures described above, the text often does not specify which “authorities” have jurisdiction, which raises uncertainty with respect to implementation and enforcement.

Crowell & Moring is monitoring stimulus programs being considered in major markets around the world and will provide periodic updates on our [Coronavirus Resource Center](#).

For more information, contact: Evan Chuck; Nicole Simonian; David Stepp; Jackson Pai

Iran Petroleum and Petrochemical Designations

The U.S. Departments of State and the Treasury recently sanctioned several individuals and companies for their involvement in transactions in Iranian petrochemical products or petroleum, signaling the U.S. government's continued intent to cut off funding for Iran's malign activities, including those of the Islamic Revolutionary Guard Corps-Qods Force's (IRGC-QF). This action was taken pursuant to Executive Order 13846, *Reimposing Certain Sanctions with Respect to Iran* (Aug. 6, 2018).

On March 18, 2020, the State Department imposed menu-based sanctions on seven entities for "knowingly engaging in a significant transaction for the purchase, acquisition, sale, transport, or marketing of petrochemical products from Iran." That same day Treasury's Office of Foreign Assets Control (OFAC) also imposed a mix of menu-based sanctions and blocking sanctions on these same entities. The sanctioned entities include one South African company, SPI International Proprietary Limited (SPI), three Hong Kong-based companies; and three Chinese companies. State and Treasury also sanctioned two other companies that "own or control SPI" and had knowledge of its activities, as well as three individuals who serve as executives for the sanctioned companies. While less restrictive than blocking sanctions, menu-based sanctions significantly limit a person's U.S. market access. Blocking sanctions freeze all property and interests of property subject to U.S. jurisdiction of blocked persons, as well as the property interests of companies in which blocked persons own 50% or more, individually or in the aggregate with other blocked persons.

The complete list of persons sanctioned by both State and OFAC are:

- South African persons
 - SPI International Proprietary Limited
 - Hossein Tavakkoli, Director of SPI International Proprietary Limited
 - Main Street 1095 Proprietary Limited
 - Reza Ebadzadeh Semnani, Director of Main Street 1095 Proprietary Limited
- Hong Kong-based persons
 - McFly Plastic HK Limited, Saturn Oasis Co., Limited
 - Sea Charming Shipping Company, Limited
- Chinese persons
 - Dalian Golden Sun Import & Export Co., Ltd.
 - Tianyi International (Dalian) Co., Ltd.
 - Aoxing Ship Management (Shanghai) Ltd.
- Iranian persons
 - Armed Forces Social Security Investment Company (an Iranian Public Pension)
 - Mohammad Hassan Toulai, Managing Director of Armed Forces Social Security Investment Company

In addition, on March 19, OFAC sanctioned five companies based in the United Arab Emirates (UAE) for their material support to the National Iranian Oil Company's (NIOC) sale of Iranian petroleum and petrochemical products. Treasury states that these five companies "collectively purchased hundreds of thousands of metric tons of petroleum products from [NIOC]." According to

Treasury, at least three of these companies falsified documents in order to conceal the Iranian origin of these shipments, a fact that appeared significant to OFAC's decision to sanction them.

The persons sanctioned by OFAC are:

- Alam AlThrwa General Trading LLC
- Alphabet International DMCC
- AlWaneo L.L.C. Co.
- Petro Grand FZE
- Swissol Trade DMCC

Takeaways

- These actions show an increasing willingness by State and Treasury to impose secondary sanctions on companies outside of Iran that aid Iran's sales of petroleum and petrochemicals, including Chinese companies and companies based in the jurisdiction of U.S. allies.
- They also represent a continuation of the U.S. government's focus on the maritime sector. Over the last 18 months, the U.S. government has steadily increased pressure on all maritime actors, with a series of designations, advisories, enforcement actions, and public statements all targeting the sector. In 2020, this represents the second coordinated use of sanctions authorities by OFAC and State on ship management and vessel companies, building on the January 2020 designation of two COSCO affiliates relating to Iran.
- These designations highlight the potential risks even for those companies with no exposure to Iran. As the United States continues to designate vessels, owners, and managers, it is having an increasing effect on non-Iran related trade, particularly in Asia. Companies that are transacting with these counterparties (*e.g.*, as ship manager for a vessel trading in Southeast Asia) must now evaluate whether a continued relationship is permissible.
- Companies dealing in the maritime sector may wish to consider (a) "know your customer"-style analyses of counterparties, including vessels, vessel owners, and managers as well as (b) whether clauses in maritime contracts are robust enough to enable immediate suspension or termination of business in the event it becomes required by sanctions.

For more information, contact: Nicole Succar, Carlton Greene, Caroline Brown, Dj Wolff

Custom' Additional Guidance for Entry Summary Payments Impacted by COVID-19: CSMS #42161666

On 3/20/2020, U.S. Customs and Border Protection (CBP) issued Cargo Systems Messaging Service (CSMS) message [42097586](#) regarding requesting a case by case need for additional days for payment of estimated duties, taxes and fees.

However, since then CBP has issued CSMS #42161666 which states that CBP is **no longer accepting requests for additional days for payment**. It also provides guidance to Brokers (including brokers that made requests on behalf of importers), Importers and

Sureties on processing the universe of entries affected by the previous message. CBP will retain the right to allow additional days for narrow circumstances, including a physical inability to file entry or payments, due to technology outages or port closures.

Timeframe For Payment:

Single payments, daily and periodic monthly statement payments of estimated duties, taxes and fees that should have been tendered from 3/20/2020 through 3/26/2020, must be initiated by 3/27/2020.

If an importer did not pay CBP for estimated duties, taxes and fees due 3/20/2020 through 3/26/2020, payment should be initiated via FedWire or ACH credit by 3/27/2020.

Payment Instructions:

If paying via FedWire, please follow the attached instructions. For payment of Periodic Monthly Statement, include the Periodic Monthly Statement numbers in the Originator to Beneficiary Information Line 2. If paying a daily statement please enter the daily statement number. If paying multiple statements, please send the list of those statements to debitvoucherteam2@cbp.dhs.gov. Alternatively, parties who are current ACH Credit participants may pay via ACH Credit following normal business practices.

Please Note: Although the temporary option was provided to extend payment due dates, if the money was withdrawn from the account, these funds are legally owed to CBP and a refund will not be issued. Trade users need to work with their financial institutions to ensure that future ACH debit and ACH credit payments to CBP are processed appropriately.

Additional Information:

CBP is continuing to work with federal and private sector partners to identify appropriate mechanisms to manage the operational impacts of COVID-19. The trade community should monitor CSMS for additional changes related to COVID-19.

Policy questions should be directed to the Office of Trade, Trade Policy and Programs at OTentrysummary@cbp.dhs.gov.

For more information, contact: Frances Hadfield, John Brew, Wing Cheung

USTR Seeks Comments on Removal of Tariffs on Certain Chinese Imports that Assist the U.S. Coronavirus Response

The Office of the U.S. Trade Representative (USTR) is seeking comments to remove Section 301 tariffs on certain Chinese imported products that could help support the United States COVID-19 response. The USTR recently granted approximately 200 exclusions that covered personal protective equipment products, including medical masks, examination gloves, antiseptic wipes, and other medical-care related items as a response to the COVID-19 outbreak.

The March 20, 2020, [notice](#) is seeking comments on whether a product is “needed to respond to the COVID-19 outbreak.” The Comment window will be open until at least June 25, 2020, and may be extended as appropriate.

Each comment specifically must identify the particular product of concern and explain precisely how the product relates to the response to the COVID-19 outbreak. This notice does not replace the current ongoing exclusion process. However, to facilitate timely consideration, interested parties should submit comments as soon as possible.

For more information, contact: John Brew, Spencer Toubia, John Arszulowicz

President Issues Executive Order Formalizing “Team Telecom” and Executive Branch Review of Foreign Involvement in Telecommunications Transactions

On April 4, 2020, President Trump issued an [Executive Order](#) formalizing the working group colloquially known as “Team Telecom” and its review of certain licensing applications referred to it by the Federal Communications Commission (FCC) for national security and law enforcement concerns. The order comes amidst increasing concern of foreign influence over the U.S. telecommunications network, access, and supply chain. Team Telecom, which has for many years reviewed certain licensing applications referred to the Executive Branch by the FCC for national security and law enforcement concerns as part of the FCC’s public interest review, has received heightened attention in the wake of the FCC’s denial of China Mobile’s licensing application and the recent successful merger of Sprint and T-Mobile.

FCC Chairman Ajit Pai [welcomed the order](#), stating that “[a]s we demonstrated last year in rejecting the China Mobile application, this FCC will not hesitate to act to protect our networks from foreign threats. At the same time, we welcome beneficial investment in our networks and believe that this Executive Order will allow us to process such applications more quickly.”

The “Executive Order on Establishing the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector” establishes a committee comprised of three members, including the Secretary of Defense, the Secretary of Homeland Security, and the Attorney General of the Department of Justice, who will also chair the committee, “to assist the FCC in its public interest review of national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector.” Advisors to the committee include the Secretary of State, the Secretary of the Treasury, the Secretary of Commerce, the Director of the Office of Management and Budget, the United States Trade Representative, the Director of National Intelligence (DNI), the Administrator of General Services, the Assistant to the President for National Security Affairs, the Assistant to the President for Economic Policy, the Director of the Office of Science and Technology Policy, the Chair of the Council of Economic Advisers, and any other Assistant to the President, as the President determines appropriate.

The committee’s main responsibilities will be to (1) review applications and licenses for risks to national security and law enforcement interests, and (2) to respond to those risks by recommending that the FCC dismiss an application, deny an application, condition the grant of an application upon compliance with mitigation measures, modify a license with a condition of compliance with mitigation measures, or revoke a license.

While committee members and the DNI are to set forth specific procedural norms in a Memorandum of Understanding (MOU) within 90 days of the date of the order, the order outlines an overarching interagency structure for the review of licensing

applications, including timelines. Notably, the order also allows the committee to review existing licenses, which could potentially broaden Team Telecom's previous scope of review.

The order also calls for additional rigor to the committee's review process, including the issuance of a national security risk assessment by the DNI for every application under review, and directs committee members to produce a written risk-based analysis to the FCC upon the conclusion of the committee's review and subsequent recommendation to the FCC.

Key takeaways from the order are as follows:

Timeline

Under the order, the committee has 120 days from the date that the chair determines that the applicant's responses to any questions and information requests from the committee are complete to determine:

- That granting an application for a license or the transfer of a license raises no current risk to national security or law enforcement interests;
- That any identified risk to national security or law enforcement interests raised by an application may be addressed through standard mitigation measures recommended by the committee; or
- That a secondary assessment of an application is warranted because risk to national security or law enforcement interests cannot be mitigated by standard mitigation measures.

The committee must complete any secondary assessments within 90 days after the committee's determination that one is warranted.

Committee Review of Existing Licenses

Of significant note is a provision in the order under Section 6 that allows the committee to review existing licenses to identify any additional or new risks to national security or law enforcement interests. Such action will be initiated by a majority vote of the committee members and subsequent notice to the advisors. Upon review of existing licenses, the committee may recommend that the FCC modify the license to include a condition of compliance with mitigation measures, take no action with respect to the license, or revoke the license due to the risk to national security or law enforcement interests.

Collection of Information from the Applicants

As part of the review process, the committee will issue a set of questions and requests for information to the applicants, which will be delineated in the committee's MOU and will likely build upon Team Telecom's existing triage questions. The committee may request additional information from the parties at any time throughout the process. Failure to supply the information may result in an extension of the review process or in a recommendation that the FCC dismiss the application without prejudice.

The order also tasks the DNI, who will designate a liaison from the Intelligence Community to support the committee, with producing a national security threat assessment for each application within 30 days from the date on which the chair determines that an applicant's responses to requests for information or questions are complete or 30 days from the date on which the chair requests such an analysis.

Committee Recommendations to the FCC and Interagency Coordination

Upon conclusion of its initial review or secondary assessment, the committee will:

- Advise the FCC that the committee has no recommendation for the FCC and no objection to the FCC granting the license or transfer of the license;
- Recommend that the FCC deny the application due to the risk to the national security or law enforcement interests of the United States; or
- Recommend that the FCC only grant the license or transfer of the license contingent on the applicant's compliance with mitigation measures.

The procedures aim for consensus by the committee, with the inclusion of the advisors as necessary. The committee must notify the President of any recommendation that the FCC deny a licensing application, condition the grant of the license on non-standard mitigation, modify of a license to condition it upon compliance with non-standard mitigation measures, or revoke a license.

Mitigation and Monitoring

The committee may recommend to the FCC that it condition the grant or transfer of a license on compliance with mitigation measures, which are to be based on a written risk-based analysis. Committee members shall develop methods to monitor any such mitigation and will report back to the committee any non-compliance, and may recommend actions to the FCC as a result of any non-compliance.

Implications for Industry

While the order includes many of the processes that have long been a part of Team Telecom's review of certain applications to the FCC, establishing a formalized process may be welcomed by industry that has clamored for increased transparency and efficiency in the review process. The order could also, however, effectively expand the scope of review by allowing the committee to review existing licenses. Whether this directive is limited to what has heretofore been continuing review of compliance with mitigation agreements that the FCC has conditioned the grant of the license upon, or whether it broadens Team Telecom's prior mandate, remains to be seen in implementation. To that end, industry may find it useful to keep an eye on the promulgation of the MOU in 90 days, which may also provide additional information on what materials the committee expects applicants to submit as part of the review process and what standardized mitigation measures might look like.

For more information, contact: Caroline Brown, Addie Cliffe, Alan W.H. Gourley

Anti-Money Laundering Program Contingency Planning during COVID-19: Recent Guidance from FinCEN and FFIEC

In response to the COVID-19 pandemic, the Financial Crimes Enforcement Network (FinCEN) on March 16, 2020, [issued guidance](#) asking regulated financial institutions to contact FinCEN and their functional regulator as soon as practicable if they have concerns that the pandemic may delay filings required by the Bank Secrecy Act (BSA). The guidance implicitly recognizes the

impacts that COVID-19 has had on AML compliance teams and work processes, and the steps many financial institutions are taking to attempt automation or remote operation of parts of their programs.

At the same time, FinCEN identified certain trends of potential suspicious activity, and advised financial institutions to be alert for the kind of malicious or fraudulent transactions that it suggested are common with natural disasters. In particular, FinCEN noted the following trends:

- Imposter scams – bad actors attempt to solicit donations, steal personal information, or distribute malware by impersonating government agencies, international organizations, or healthcare organizations.
- Investor scams – The U.S. Securities and Exchange Commission (SEC) urged investors to be wary of COVID-19 related investment scams, such as promotions, that falsely claim that the products or services of publicly traded companies can prevent, detect, or cure coronavirus.
- Product scams – The U.S. Federal Trade Commission (FTC) and U.S. Food and Drug Administration (FDA) have issued public statements and warning letters to companies selling unapproved or misbranded products that make false health claims pertaining to COVID-19.
- Insider Trading – FinCEN has received reports regarding suspected COVID-19-related insider trading.

The agency also pointed to its previous [2017 advisory](#) for descriptions of other types of disaster-related fraud. FinCEN has asked financial institutions, when reporting suspicious activity relating to COVID-19, to enter “COVID-19” in Field 2 of the suspicious activity report (SAR) template.

Similarly, the Federal Financial Institutions Examination Council (FFIEC), which includes the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Consumer Financial Protection Bureau, and the State Liaison Committee, [issued rare guidance](#) in an “Interagency Statement on Pandemic Planning” in an effort to underscore the importance of business continuity and the delivery of critical financial services during the pandemic. Among other guidance, the FFIEC explained that financial institutions should have business continuity plans tailored to the specific challenges of pandemics. Unlike natural disasters, technical disasters, malicious acts, or terrorist events, the FFIEC reasons, the impact of a pandemic is much more difficult to determine because of the anticipated difference in scale and duration. In particular, unlike the limited duration of traditional disasters, pandemics generally occur in multiple waves, each lasting two to three months. Some of the most significant impacts from pandemics, the guidance suggests, may be staffing shortages and the need to operate remotely. The FFIEC accordingly asks financial institutions to consider measures such as cross-training employees to allow operation with smaller staffs when needed, ensure that systems are in place for remote work and online customer service, and to evaluate the risk that third-party vendors may be unable to continue adequate service. The FFIEC also expects financial institutions to consider the extent to which applicable legal obligations allow flexibility to address the challenges that customers face, and to plan for temporarily altered public-facing policies.

Practical Considerations

All of this guidance is relevant for AML program contingency planning. Regulated financial institutions should continue to (1) assess their risk, including from decreased capacity to implement their AML program, as well as pandemic-related types of suspicious activity, (2) establish or revisit policies and procedures as needed in accordance with the FFIEC guidance, scaling these

to potential changes in the impacts of the epidemic, and (3) plan for the potential impacts of the illness on staffing and the needs of their customers. With respect to staffing, institutions should consider, in line with FinCEN’s guidance, whether the pandemic may impact their ability to detect and report suspicious activity, and file other BSA-required reports, in a timely manner, and reach out proactively to regulators if there are reasons to think this might be an issue. With respect to their customers, financial institutions may wish to consider where they have flexibility to alter or relax existing aspects of their AML programs consistent with the requirements of the law to allow for the many difficulties and needs that customers are likely to experience during this time, such as allowing for alternative forms of customer identification other than drivers licenses given the closure of many Departments of Motor Vehicles. Financial institutions should assess such adjustments on a risk basis and should document their determinations on any adjustments they make to their AML program implementation.

Simultaneously, however, FinCEN’s guidance makes clear that the agency expects financial institutions to remain vigilant against efforts by fraudsters and other bad actors to take advantage of the pandemic. Institutions should consider the typologies identified by the agency, in addition to their own experiences and other available information. Fraud in particular historically increases during disaster-related events, and the COVID-19 pandemic likely will not be an exception.

As the number of fraudulent transactions will likely rise in the coming weeks, financial institutions could face the possibility of a backlog of suspicious activity reports. Ensuring that efficient protocols are in place now – such as comprehensive procedures for SAR preparation, review, and approval in order to submit within the prescribed time period, and the maintenance of comprehensive SAR reporting supporting documentation – for this and other aspects of a company’s AML program, might reduce scrutiny from regulators later.

For more information, contact: Carlton Greene, Scott Lessne, Erik Woodhouse

Customs Rulings of the Week

- March 16: [Classification of a Scent Machine](#)
- March 16: [Classification of GoGo SqueeZ YogurtZ](#)
- March 26: [Classification of Pet Comfort Pillows](#)
- March 30: [Classification of Smart Cat Litter Box](#)

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

Crowell & Moring Webinars

On Thursday, April 2, Crowell’s [Dj Wolff](#), [Michelle Linderman](#), and [Nicole Succar](#) hosted a webinar titled “COVID-19: “Virtual” Sanctions Compliance: Managing Your Team and Getting Your Regulatory Updates While Remote”.

Tips were provided on how to effectively manage your sanctions compliance program virtually. Dj, Michelle, and Nicole also provided recent sanctions developments you might have missed while you were busy following important health news.

The webinar is available on demand. [Please click here to watch the full presentation.](#)

Upcoming Webinar

The COVID-19 Pandemic and Imports: How Companies Can Effectively Move Goods In a Changing Environment

April 15, 2020

Starts: 11:00 AM

Ends: 12:00 PM

During these difficult times global businesses must streamline and protect their supply chain operations, manage new sourcing, navigate border issues, keep abreast of rapidly changing regulations, and deal with contract disputes. Importers and other businesses in the supply chain who take key steps now may mitigate potential losses while ensuring compliant and efficient supply chains. Topics to be discussed include:

- How have recent U.S. Customs and Border Protection (CBP) staffing and operational changes impacted importers?
- Update on CBP's COVID-19 response and enforcement trends.
- Impact of foreign, federal, state and local orders on the supply chain and addressing remote working challenges.
- Force Majeure provisions – handling common contract disputes between importers, suppliers, carriers, and other parties.
- Importing Personal Protective Equipment and other goods essential for the COVID-19 response.
- How can importers reduce tariffs and obtain duty refunds – Section 301 tariff exclusions, Foreign Trade Zones and duty drawback.

Join Crowell & Moring attorneys for a discussion of best practices for global businesses to manage supply chains and cross border transactions during the COVID Pandemic.

Speakers – [John Brew](#), [Frances Hadfield](#), [Aaron Marx](#), [Maria Vanikiotis](#), and [Brian McGrath](#)



Crowell & Moring Speaks

[Dj Wolff](#), [Caroline Brown](#), and [Michelle Linderman](#) were quoted in a recent [Export Compliance Daily](#) article (subscription required), on how “expectations for sanctions compliance are increasing amid the COVID-19 pandemic...”

[Nicole Succar](#), [Dj Wolff](#), and [Caroline Brown](#) were quoted in an April 3 Thomson Reuters article titled “[Expect less efficient sanctions-alert management during COVID-19, keep regulators apprised](#)”.

Nicole Succar was quoted in a recent Export Compliance Daily article (subscription required), on how documentation can help avoid sanctions compliance scrutiny after COVID-19 pandemic ends.

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

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