

CLIENT ALERT

The Month in International Trade – November 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](#).

[Crowell & Moring’s International Trade Group Named a 2020 Law360 Practice Group of the Year](#)

Crowell & Moring’s [International Trade Group](#) has been selected as a *Law360* 2020 Practice Group of the Year. The group was recognized for successes in the past year, including efforts to respond to the COVID-19 pandemic.

“We are honored to have been recognized by *Law360* for our work this year,” said [John Brew](#), co-chair of the firm’s International Trade Group. “We have deepened our partnerships with our clients during this tumultuous year and we value the trust they have placed in us as we help them address important issues.”

Law360 profiled the firm, noting how the group “successfully navigated uncharted territory” through matters including “disproving forced labor allegations against a Malawi tobacco company to helping a nonprofit combat tuberculosis in North Korea and providing real-time COVID-19 advice to clients across the globe.”

“With our focus on the global nature of our clients, we were able to meet the challenges of the year head on, responding to needs and questions as they arose,” said [Nicole Janigian Simonian](#), co-chair of Crowell & Moring’s International Trade Group. “Our recent expansions in Brussels, Shanghai, and Doha have also allowed our reach and global presence to grow.”

[Click here to read the Practice Group of the Year feature profile.](#)

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

U.S. Bans Imports from China Cotton Producer XPCC: How will CBP Enforce WRO?

On November 30, 2020, the U.S. Customs and Border Protection (CBP) placed all cotton and cotton products from Xinjiang Production and Construction Corporation (XPCC) and its subordinate and affiliated entities on the [Withhold Release Orders \(WRO\) list](#). XPCC is a Chinese state-owned enterprise (SOE) which produces around 17 percent of the Xinjiang’s cotton and employs approximately 12 percent of the region’s population, according to CBP commissioner Mark Morgan. CBP [issued the WRO](#) against XPCC based on “information that reasonably indicates the use of forced labor” in the region.

Withhold Release Orders 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.

[Experts estimate](#) that the U.S. imported \$11 billion of cotton textile and apparel products from China in 2019. Considering that Xinjiang produces around 85% of China’s cotton, this WRO designation will affect billions of dollars’ worth of imports into the U.S. as it places a significant roadblock on importing any cotton-based products. The company-specific action falls just short of a provincial cotton ban but DHS Deputy Secretary Ken Cuccinelli claims that XPCC is so embedded in the region’s economy that

targeting its products will have a similar effect as a region-wide ban. Cuccinelli explained that, “I wouldn’t say it’s a *de facto* ban, but as you see XPCC’s reach is quite extraordinary in the region.”

Even with this XPCC-specific action, the possibility of a region-wide ban remains on the table. Senate and House Democrats on the Senate Finance Committee and Way and Means Committee respectively have pressured CBP to issue a cotton ban on all of Xinjiang. Since the introduction of the Uyghur Forced Labor Prevention Act in April 2020, there have been an increasing number of U.S. government actions targeting economic and political actors in Xinjiang.

The effect of the supply chain for large clothing brands remains in question. Although companies may be able to prove they source from different factories in Xinjiang, it could be more difficult to prove supply chains are free of Xinjiang cotton. The trickle-down effect could spill over into fellow Asian textile and apparel producers if they contain cotton from China. At this time CBP has announced it expects companies to “self-police”, but could take steps to detain products if a company claims ignorance about the origin of cotton. In order to mitigate risks of CBP detention of cotton-based products from China, importers should ascertain the full-extent of their product’s origin and be prepared to complete a certificate of origin should CBP require it.

This WRO is different than, and separate from, the sanction on XPCC by the U.S. Treasury Department’s Office of Foreign Assets Control (OFAC) in July; OFAC allowed for (now expired) wind down periods to transition from any business with XPCC. According to the OFAC designations, the “XPCC is a paramilitary organization in the XUAR that is subordinate to the Chinese Communist Party (CCP). The XPCC enhances internal control over the region by advancing China’s vision of economic development in XUAR that emphasizes subordination to central planning and resource extraction. The XPCCs structure reflects a military organization, with 14 divisions made up of dozens of regiments.” Under the OFAC sanctions, all “property and interests in property” of XPCC and of any entities that are owned, directly or indirectly, 50 percent or more that are in the United States or in the possession or control of U.S. persons, are blocked; OFAC’s regulations generally prohibit all transactions by U.S. persons or within (or transiting) the United States that involve any property or interests in property of designated or otherwise blocked persons. The prohibitions include the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any blocked person or the receipt of any contribution or provision of funds, goods or services from any such person. This means that even apart from importing and other activity blocked by the WRO, any other interaction with XPCC is prohibited.

For more information, please contact: John Brew, Carlton Greene, Frances Hadfield, Jeff Snyder, Sam Boone

Asian Pacific Leaders Cite Digital Transformation as Key to Post-COVID Recovery

AI, Future of Work, Data Privacy, and Digitalization Top the Agenda

The Asia-Pacific Economic Cooperation (APEC) forum will deepen its engagement with the private sector as it recommits to its role as a policy incubator for digital transformation across the Asia-Pacific. That was the clear message from Heads of State and thought leaders spanning numerous Asia-Pacific economies at the annual APEC “Leaders Week” meetings, which were hosted virtually from November 19-20 by the Malaysian government.

Nearly every participant in the [APEC CEO Dialogues](#) touched on the role of digitalization, as well as innovative policymaking to sustain a robust digital economy, in supporting post-COVID-19 economic recovery in this dynamic region. These high-level

discussions – featuring prominent CEOs alongside national leaders – reflected APEC’s unique mandate for collaborative economic policymaking between industry, government, and other stakeholders.

In his opening remarks, Malaysian Prime Minister Muhyiddin Yassin spoke of an “APEC reimagined” that would advance its reputation as an incubator for ideas and collaboration among the public and private sectors. He underscored that digitalization not only allowed us to protect the health of our communities, but could also reinvigorate global economies.

Consequently, APEC Leaders issued a consensus statement of principles – labeled the “*APEC Putrajaya Vision 2040*” – to guide the organization towards achieving “an open, dynamic resilient and peaceful Asia-Pacific community by 2040, for the prosperity of all our people and future generations.” *Innovation and Digitalisation* was one of three core pillars of *Vision 2040*, with APEC Leaders committing to a market-driven, enabling environment to support an interconnected, increasingly digital global economy. To achieve this goal, the Leaders pledged that APEC’s work will continue to promote economic policies to “strengthen digital infrastructure, accelerate digital transformation, narrow the digital divide, as well as cooperate on facilitating the flow of data and strengthening consumer and business trust in digital transactions.”

APEC economies have been tasked by the Leaders to develop in the coming year a comprehensive plan for implementation of the *Putrajaya Vision 2040*.

Emerging technologies and future-of-work policies were also highlighted during the CEO Dialogues. A session on the APEC agenda for Artificial Intelligence (AI) discussed the need for supportive regulatory frameworks and to improve international collaboration between APEC economies on AI-related issues. The APEC Business Advisory Council (ABAC) has similarly pledged to elevate AI adoption in its yearly workplan, and launched the report, “*Artificial Intelligence in APEC – Overview of the State of AI in APEC Economies and the Enabling Initiatives that will Drive Further Adoption*” in conjunction with the APEC CEO Dialogues. The report highlights challenges as well as opportunities for collaboration across APEC and offers recommendations to support widespread AI adoption. Another consistent theme of the discussions was the need to upskill national workforces to prepare for the continued digitalization of industries. These efforts have been advanced through initiatives such as the [APEC Closing the Digital Skills Gap forum](#), which recently finalized a roadmap with industry-driven recommendations to scale upskilling and reskilling efforts across APEC economies.

To oversee much of the forum’s digital agenda and ensure implementation of its activities, APEC launched the newly-reconstituted [Digital Economy Steering Group](#), or DESG, in 2019. Early initiatives span a range of issues and industries, focusing on how digital solutions can help chart the path toward a global recovery from the pandemic. Projects range from telemedicine to implementing digital technologies for pandemic response, to efforts to digitalize government processes for permits and licensing, so that shovel-ready infrastructure projects can efficiently support a post-COVID-19 economic rebound. These efforts are complemented by cross-sectoral policy efforts, such as on privacy and data protection issues; data flows and digital trade provisions; an industry-driven cybersecurity standards program; and an increasing focus on public-private partnerships to promote digital skills for citizens in the APEC region.

The time is right for private sector engagement in APEC, particularly from data-driven companies that will shape the future of Asia’s digital economy. The digital agenda in APEC has intensified in recent years, and the high-level commitments from Heads of State underscore the political buy-in and sense of urgency for this work. In her closing remarks of the CEO Dialogues, Prime Minister Jacinda Ardern pledged that incoming APEC host New Zealand would push the forum to continue its work to “foster prosperity and well-being that is sustainable, inclusive and digitally enabled” during its 2021 host year.

C&M International works at the forefront of many APEC working groups, including those related to the digital economy, data privacy, and emerging technologies. We work to foster unique collaboration and initiatives between industry, government, and other stakeholders to promote smart policymaking and to advance an innovation-friendly regulatory environment across the Asia-Pacific.

For more information, please contact: Robert Holleyman, Clark Jennings

Vietnam Section 301 Hearings Set for Late December

Last week, the U.S. Trade Representative (USTR) published two Federal Register notices announcing hearings for the recently initiated Section 301 investigations into Vietnam’s currency valuation practices ([85 FR 75397](#)) and import of illegal timber ([85 FR 75398](#)). The hearings follow the announcement of the investigations in October of this year and are open to public comment and participation. More information on the initiation of the investigations targeting imports from Vietnam is available in our October 7 post [here](#).

USTR is seeking public comment and will hold public hearings. The schedule for each hearing is listed below.

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
December 29	Public Hearing on Vietnam’s Currency Practices
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)

USTR is requesting comments with respect to any aspect of the proposed including:

For the Currency Investigation

- Whether Vietnam’s currency is undervalued, and the level of the undervaluation.

- Vietnam’s acts, policies, or practices that contribute to undervaluation of its currency.
- The extent to which Vietnam’s acts, policies, or practices contribute to the undervaluation.
- Whether Vietnam’s acts, policies and practices are unreasonable or discriminatory.
- The nature and level of burden or restriction on U.S. commerce caused by the undervaluation of Vietnam’s currency.
- The determinations required under section 304 of the Trade Act, including what action, if any, should be taken.

The notice describes the process for submitting comments. The docket number for this action on regulations.gov is USTR 2020-0037.

For the Timber Investigation

- The extent to which illegal timber is imported into Vietnam.
- The extent to which Vietnamese producers, including producers of wooden furniture, use illegal timber.
- The extent to which products of Vietnam made from illegal timber, including wooden furniture, are imported into the United States.
- Vietnam’s acts, policies, or practices relating to the import and use of illegal timber.
- The nature and level of the burden or restriction on U.S. commerce caused by Vietnam’s import and use of illegal timber.
- The determinations required under section 304 of the Trade Act, including what action, if any, should be taken in the investigation.

The notice describes the process for submitting comments. The docket number for this action on regulations.gov is USTR 2020-0036.

For more information, please contact: Frances Hadfield, Clayton Kaier, Edward Goetz

White House Issues Executive Order Prohibiting Investments that Finance Communist Chinese Military Companies

On November 12, 2020, the President signed an [executive order](#) (the EO) that prohibits any “transaction in publicly traded securities or any securities that are derivative of, or are designed to provide investment exposure to such securities” with companies designated as Communist Chinese military companies. The prohibitions, which go into effect on January 11, 2021, apply to U.S. persons, including foreign branches of U.S. companies.

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

For more information, please contact: Caroline Brown, Evan Chuck, Jana del-Cerro, Robert Holleyman, Dj Wolff

EU Places Retaliatory Tariffs on \$4 Billion in U.S. Goods

On November 9, 2020, the European Union announced the imposition of retaliatory tariffs on U.S. goods worth approximately \$4 billion stemming from the WTO case alleging the U.S. government has provided illegal subsidies to aircraft maker Boeing. High profile products targeted by the tariffs include fish, cheese, cotton, tractors, spirits, and jets. Of the products affected, Boeing jets will be hit with a 15 percent tariff while select industrial and agricultural goods will face 25 percent tariffs. The tariffs took effect starting November 10, 2020.

These tariffs are the latest development in the long-lasting feud between the U.S. and EU over government subsidies to aircraft manufacturers. In a parallel case involving Airbus, the United States applied WTO-approved tariffs on EU goods worth up to \$7.5 billion in October 2019. The U.S. levied tariffs targeting similar industries, including aircraft, wine, cheese, and olives.

The two sides have exchanged proposals for a solution but disagreements over ensuring future compliance and aid repayment have derailed efforts up until this point. The U.S. offered a truce on October 14, 2020 if Airbus agreed to repay state loans at a level of interest assuming a [50% product failure rate](#), however the EU declined and decided to move forward with tariffs. EU Trade Commissioner Valdis Dombrovskis spoke to EU trade ministers following the news of the new tariffs and said, “we have made clear all along that we want to settle this long-running issue. Regrettably, due to lack of progress with the U.S., we had no other choice but to impose these countermeasures.” The USTR has not issued comments on the new tariffs but it is possible U.S. Trade Representative Robert Lighthizer could opt to impose additional measures.

The EU has called on the U.S. to mutually drop the existing tariffs and expressed hope that a new administration under President-elect Biden will renew efforts to find a solution. Biden has spoken of rebuilding relationships with allies and resolving the Boeing-Airbus dispute would ease trade tensions with trading partners in Europe. However, it remains to be seen if there is any end in sight for the aircraft trade dispute where WTO litigation has been dragging on since 2005.

For more information, please contact: Frances Hadfield, Brian McGrath, Sam Boone

Customs Rulings of the Week

- November 4: [Classification of Parrot Toy](#)
- November 13: [Classification of Prepared Pork and Beef Meals](#)
- November 20: [Classification of Bugatti Baby II Electric Vehicle](#)

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

Upcoming Crowell & Moring Webinars

Export Control Risk Assessments

How effective is your company's export control compliance program? Are your company's day to day operations in line with your policies and procedures? How do you benchmark to industry compliance standards? In the words of DDTC, "[c]ontinuous export control self-assessment... is a best practice that complements and ensures a successful ITAR compliance program."

During this 90 minute webinar, Crowell & Moring's export control attorneys will be joined by the experienced export control professionals with Defense Trade Solutions to discuss key principles of export control self-assessments; including developing audit goals and scope, methodologies and processes for conducting audits, and strategies for carrying findings and recommendations forward. We'll wrap up with a seasonal example of export control risks presented by Clif Burns.

Speakers: [Clif Burns](#), Audrey Sutton (Senior Consultant, Defense Trade Solutions), Steve Casazza (Vice President, Defense Trade Solutions), [Jana del-Cerro](#), and [Chandler Leonard](#)

Date: Thursday, December 17

Time: 12:00 PM EDT

Duration: 90 minutes

Please contact [Denise Giardina](#)

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.

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

[Caroline Brown](#) and [Evan Chuck](#) authored "Dueling tech regulations and escalating tensions on cross-border transactions" for the December 2020-January 2021 issue of WorldECR.

Caroline Brown was featured in a November 23 *CQ Roll Call* article (subscription required) titled "Restrictions on Chinese Investment Will Include Subsidiaries, Experts Say."

On November 19, Crowell presented a webinar titled "Caught Between a Rock and a Hard Place: The Impact of Dueling Tech Regulations and Escalating Tensions on Cross-Border Transactions," *Crowell & Moring Webinar* with presenters: Vassilis Akritidis, Evan Chuck, Robert Holleyman, and Caroline Brown.

Robert Holleyman was featured in a November 12 article in the *Toronto Star* titled "Thanks to USMCA, Working-Class Americans Will Be Integral to Future U.S. Trade Policy."

Caroline Brown was featured in a November 10 *Foreign Investment Watch* article titled "FCC approves iHeartMedia request to take additional foreign investment."

Edward Goetz and Jeff Snyder authored "What's Next for US Space Export Controls?" for the November 2020 issue of *WorldECR*.

Crowell & Moring Welcomes

Gillian Katsumi is an International Trade Case Coordinator in Crowell & Moring's International Trade Group and a resident in the firm's Washington, D.C. office. In May, she graduated from the University of North Carolina with a BA in Economics and a BA in Global Studies. Her concentration was in Global Economics, Trade, and Development in Latin America. At Crowell, she will provide practice support on a wide range of trade remedy matters including antidumping (AD) and countervailing duty (CVD) investigations, administrative reviews, sunset reviews, and changed circumstance reviews before the Department of Commerce and International Trade Commission.

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

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