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CLIENT ALERT

The Month in International Trade – October 2018

Nov.09.2018

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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

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

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2018 MIDTERM ELECTIONS UPDATE: IMPACT ON U.S. TRADE POLICY

The 116th Congress begins on January 3, 2019. Based on projections from yesterday's midterms, Democrats will control the House of Representatives by a narrow margin, while Republicans will expand their hold on the Senate. The changes to Congress are likely to shape trade policy through 2019, but much will depend on how House Democrats use their new majority, and whether trade is a priority issue or whether it will be overtaken by domestic issues.

Companies will have to carefully navigate the new political environment in order to advance their policy objectives. In addition to accounting for the hard-nosed approach to trade taken by the current administration, an effective policy engagement strategy will have to account for the new political dynamics created by newly empowered House Democrats and a potentially polarized Congress. Companies should be prepared to intervene on issues that are likely to come up in 2019, including: ratification of the U.S.-Mexico-Canada Trade Agreement (USMCA); trade negotiations with the EU, Japan, and the UK; and the ongoing U.S. tariff interventions on China and for sensitive sectors.

For more on this important topic, please see Crowell & Moring's Client Alert.

For more information, contact: Robert Holleyman, Melissa Morris, Joshua Boswell, Jing Jing Zhang, Evan Yu

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UNITED STATES REINSTATES FULL IRAN EMBARGO

On November 5, 2018, in accordance with President Trump's May 8, 2018 decision to withdraw from the Joint Comprehensive Plan of Action (JCPOA), the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC) issued an amendment to the Iranian Transactions and Sanctions Regulations (ITSR). The amendment followed on the expiration of the final 180-day wind-down period for transactions previously authorized by "General License H" and for the re-imposition of the remaining "secondary sanctions," which concluded November 4, 2018, at 11:59 PM.

This action, along with the August 6, 2018 issuance of a new Executive Order (E.O. 13846), reinstates a full U.S. embargo against Iran, and fully re-imposes all U.S. sanctions which had been suspended or waived since the implementation of the JCPOA in January 2016.

Below, we summarize OFAC's action, as well as related actions taken by the State Department to authorize certain waivers of these sanctions. OFAC:

1. Amended the ITSR to revise 31 C.F.R. § 560.211(c) to implement the authority granted in E.O. 13846 to block all interests in property in the United States, or under the control of a U.S. Person, of a person that has been designated for having either –
    a. Materially assisted or provided support to the Government of Iran in the purchase or acquisition of U.S. currency or precious metals on or after August 7, 2018.
    b. Materially assisted or provided support to the National Iranian Oil Company (NIOC), the Naftiran Intertrade Company (NICO), or the Central Bank of Iran (CBI) on or after November 5, 2018.
2. Removed the EO 13599 non-SDN List (denoting blocked persons that meet the definition of "Government of Iran" and "Iranian financial institution") and relisted more than 700 individuals and entities, including Bank Melli, National Iranian Tanker Company (NITC), and hundreds of others, on the Specially Designated Nationals and Blocked Persons List (SDN List).

3. Amended the existing general license provided in 31 C.F.R. § 560.543 related to the sale of real property in Iran to further authorize U.S. persons to engage in all transactions necessary and ordinarily incident to the sale of personal property in Iran and to transfer the proceeds to the United States, provided that the property was either acquired before the individual became a U.S. Person, or was inherited from persons in Iran.

In parallel, OFAC also issued a number of frequently asked questions (FAQs), which generally provide guidance regarding how OFAC will interpret its Iran-related authorities going forward. This includes, in addition to other things, the following notes:

- **General Summary**:The provision of goods or services, or extension of debt or credit, to an Iranian counterparty after November 4, 2018, even pursuant to contracts that were lawful and in effect prior to the U.S. withdrawal from the JCPOA (May 8, 2018) may result in the imposition of sanctions unless otherwise authorized by OFAC. (FAQ 630)
- **Non-U.S. Persons Receiving Payment for pre-Nov. 5 Activity**: However, non-U.S., non-Iranian persons may receive payment for goods or services fully provided or delivered prior to the expiration of the relevant wind-down period and pursuant to contracts in effect prior to the U.S. withdrawal from the JCPOA (May 8, 2018) after November 5, 2018. (FAQs 631, 634)
- **U.S. Persons Receiving Payment for pre-Nov. 5 Activity**:In contrast, U.S. persons, and non-U.S. entities owned or controlled by U.S. persons, will require prior authorization from OFAC to receive payment on or after November 5, 2018 for goods or services fully provided or delivered prior to the expiration of the relevant wind-down period and pursuant to contracts in effect prior to the U.S. withdrawal from the JCPOA on May 8, 2018. (FAQ 635)
- **U.S. Persons and New SDNs**: U.S. persons, and non-U.S. entities owned or controlled by U.S. persons, require prior authorization from OFAC to receive any payment involving any of the re-listed SDNs from the former EO 13599 List. (FAQ 636)
- **Insurance**: OFAC clarified that non-U.S. insurers, reinsurers, and brokers could face U.S. "secondary" sanctions for processing claims after November 5, 2018, even if those claims relate to "incidents" that occurred prior to November 5, 2018 and during a period in which the underlying activity and insurance policy were not prohibited.

In addition to OFAC's actions, the State Department issued guidance on two sets of waivers that it has issued for sanctions under its authority. Specifically:

- **Significant Reduction Exemption for Crude Oil Importers**: The State Department noted that it was granting a "significant reduction exemption" to China, India, Italy, Greece, Japan, South Korea, Taiwan, and Turkey. As a result, these countries and importers in these countries will not face "secondary" sanctions risk for importation of Iranian crude oil. The State Department specifically noted that it continues to negotiate with these countries to "get all the nations to zero [oil imports]."
- **Civil Nuclear Energy Waivers**: Second, the State Department stated that it will not impose "secondary" sanctions related to ongoing nonproliferation projects at Arak, Bushehr, and Fordow as an "interim measure that preserves oversight of Iran's civil nuclear program." These waivers do not, however, extend to any "new civil nuclear projects." The State Department specifically noted that these waivers are conditional upon "the cooperation of the various stakeholders" and can be rescinded at any time.

These amendments represent the final step in re-imposing the full suite of U.S. primary and secondary sanctions after President Trump's May 8, 2018 decision to fully withdraw from the JCPOA, returning the U.S. sanctions program to its pre-JCPOA state.

U.S. persons and non-U.S. persons that are owned or controlled by U.S. persons are now prohibited from conducting virtually all Iran-related activity without a license.

Non-U.S. persons face renewed "secondary" sanctions risks for conducting certain types of transactions with sanctioned persons (*e.g.*, Iranian persons on the SDN list) and Iranian industries (*e.g.*, petroleum, petrochemicals, energy, shipping, shipbuilding, precious metals, etc.).

Despite widespread global opposition to these developments—including the passage of updated "Blocking" legislation in the European Union—we expect the Administration to aggressively enforce these new authorities to increase the perceived pressure on Iran, both through expanded enforcement of "primary" sanctions (*e.g.*, aggressive investigation and imposition of penalties with respect to perceived violations) and through increased numbers of "secondary" sanctions designations.

For more information, contact: Dj Wolff, Jana del-Cerro, Ade Johnson

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TREASURY CFIUS PILOT PROGRAM OVERLAPS WITH MADE IN CHINA 2025 SECTORS

On October 10, Treasury announced interim regulations to implement certain provisions of the Foreign Investment Review Modernization Act (FIRRMA), which President Trump signed into law on August 13, 2018. As part of that announcement, Treasury will initiate a pilot program imposing mandatory declarations on transactions involving certain sensitive sectors.

That pilot program is due to go into effect on November 10, 2018 and will cover 27 "pilot program industries." One of the questions for analysis that has emerged is to what extent those sectors intersect with Made in China 2025 priority industries.

Click here to continue reading the full version of this alert.

For more information, contact: Robert Holleyman, Alan Gourley, Addie Cliffe, Evan Yu, Jing Jing Zhang

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BIS CONTEMPLATES EXPORT RESTRICTIONS ON “ELECTRONIC WASTE” TO COMBAT SUPPLY CHAIN CONCERNS

On October 23, 2018, the Department of Commerce Bureau of Industry and Security (BIS) published a notice seeking comments on imposing export control restrictions on electronic waste in response to concerns that unregulated recycling of electronic waste is a source of counterfeit goods.

BIS has proposed to define electronic waste, prohibit electronic waste export, establish electronic waste exemptions, and require an export license to ship exempted electronic waste abroad.

The Bureau is seeking public comment until December 24, 2018 on all aspects of the proposal including the definition, methods of tracking exported electronic waste, costs, and the likely effectiveness of the regulations.

For more information, contact: Alan W.H. Gourley, Stephanie Crawford

BANKING REGULATORS ISSUE EXEMPTION FROM CIP REQUIREMENTS FOR PREMIUM FINANCE LOANS

On September 28, 2018, the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, and Office of the Comptroller of the Currency (collectively the Federal Banking Agencies or FBAs), with the concurrence of the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN), issued an interagency order (the Order) exempting premium finance lenders from the requirements of the customer identification program (CIP) rules imposed by the Bank Secrecy Act (BSA).

The exemption applies to banks and their subsidiaries subject to the FBAs' jurisdiction who offer loans to commercial customers (*i.e.,* corporations, partnerships, sole proprietorships, and trusts) to facilitate purchases of property and casualty insurance policies (herein referred to as premium finance loans or premium finance lending). The FBAs based their exemption on FinCEN's conclusion that certain structural aspects of such loans make them a low risk for money laundering or terrorist financing, and also on their conclusion that such lending did not present a safety or soundness issue.

For more analysis on this interagency order, please see Crowell & Moring's client alert.

For more information, contact: Carlton Greene, Danielle Giffuni

CROWELL & MORING SPEAKS

John Brew spoke at the Arizona Manufacturer's Summit in Phoenix on October 5, 2018. John was on a panel entitled "Trade, Tariffs, and Foreign Trade Zones." Topics included the new U.S.-Mexico-Canada Agreement (USMCA), the China Section 301 investigation, and the Section 232 national security cases on the import of certain steel and aluminum products, as well as other countries retaliatory tariffs.

Jeff Snyder spoke at the World Customs Organization's 13th annual Picard Conference in Malatya, Turkey, October 9-11, 2018. Jeff discussed 'Global Trends in Customs Matters', showcasing the articles and issues addressed in the Global Trade & CustomsJournal (Jeff serves as the General Editor) over the past year. Jeff also moderated a panel at the invitation of the WCO Research Unit.

Michelle Linderman spoke at an event at the Piraeus Marine Club in Greece on October 18, 2018 - Trading in and to High Risk and Complex Environments. Her presentation was entitled "US Iran Sanctions – All clear or are you confused about the EU Blocking Regulation?"

Michelle also spoke at the Reinsurance Wordings Experts' Forum in Zurich, Switzerland on October 23, 2018, providing an "Update on US Iran Sanctions and the EU Blocking Statute", as well as at VMWorld Europe in Barcelona on November 6, 2018 on "Running Oracle on VMware? Heard About Mars vs. Oracle?"

Dj Wolff spoke at Georgetown Law's 2018 Hotel and Lodging Legal Summit on October 26, 2018. He was part of a panel entitled "OFAC Compliance: Considerations for the Hotel Industry".

Dj also spoke at the 2018 International Conference on Humanitarian and Development Assistance to the DPRK, "Sanctions on North Korea and the Humanitarian Exemptions Process", on October 31, 2018 in Seoul, South Korea.

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

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