

CLIENT ALERT

The Month in International Trade – October 2019

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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

USTR Announces List 4 Exclusion Process for Section 301 Tariffs

The U.S. Trade Representative (USTR) will soon publish a [federal register notice](#) outlining the process for submitting Section 301 exclusion requests for List 4. The USTR noted that if an exclusion is granted, it will be effective from the day the first tranche of List 4 tariffs (i.e. “Annex A”) came to effect (i.e. from September 1, 2019). Instead of being effective for one year after exclusions are granted, as was the case for Lists 1-2, any exclusion will be effective for one year, starting from the September 1, 2019 effective date for Annex A of the August 20, 2019 notice.

The key dates moving forward are:

- **October 31, 2019** at noon EDT: The web portal for submitting exclusion requests - <https://exclusions.USTR.gov> - will open.
- **January 31, 2020 at 11:59 PM EDT**: Last day for submitting exclusion requests.

The federal register notice introduced new questions and data points that were not included in the exclusion request forms for list 3 and concern:

1. The requestor’s import and revenue data for first half of 2019 instead of the first quarter of 2019.
2. Whether the product is subject to an antidumping or countervailing duty order issued by the U.S. Department of Commerce.

For more information, contact: Frances Hadfield, Spencer Toubia, Edward Goetz

USTR Considering Certain Section 301 List 1 Exclusion Extensions in November

The Office of the United States Trade Representative (USTR) is [considering possible extension requests for Section 301 List 1 exclusions granted in December 2018](#) and invites public comments on whether to extend exclusions granted in its [December 2018 notice](#). These will be evaluated on a case-by-case basis.

USTR is focusing its analysis on whether the particular product remains available only from China. In addressing this factor, commenters should address specifically:

- Whether the particular product and/or a comparable product is available from sources in the United States and/or in third countries.
- Any changes in the global supply chain since July 2018 with respect to the particular product, or any other relevant industry developments.
- The efforts, if any, the importers or U.S. purchasers have undertaken since July 2018 to source the product from the United States or third countries.

Additionally, USTR will consider whether the imposition of additional duties on the products covered by the exclusion will result in severe economic harm to the commenter or other U.S. interests.

USTR is encouraging commenters to complete two forms, which USTR will post on its website before the docket opens on November 1st. The public docket can be found on <http://www.regulations.gov>. The docket number is USTR-2019-0019. One form will be posted on the public docket while one form will contain business confidential information which will not be posted on the public docket.

The USTR is asking for commenters to provide several other data points that it did not request from parties in in the original exclusion requests.

The docket closes on November 30.

For more information, contact: Spencer Toubia, Edward Goetz

FinCEN Identifies Iran as Money Laundering Threat While OFAC Announces New Mechanism to Facilitate Humanitarian Assistance There

On Friday, October 25, 2019 the Financial Crimes Enforcement Network (FinCEN) issued a [final rule](#) pursuant to Section 311 of the USA PATRIOT Act finding Iran to be a jurisdiction of primary money laundering concern and imposing special measures prohibiting U.S. financial institutions from maintaining correspondent accounts for or on behalf of Iran. Separately on Friday, the U.S. Departments of the Treasury and State [announced](#) the rollout of a new mechanism to facilitate humanitarian trade with Iran.

Finding and Special Measures Against Iran

FinCEN based its finding on the role of Iran’s central bank in facilitating terrorist financing, the dominance of Iran’s Revolutionary Guard Corps (IRGC) in Iran’s economy, Iran’s support to terrorist groups, and the regime’s efforts to develop weapons of mass destruction (WMD). FinCEN’s actions build on comprehensive U.S. sanctions against Iran, which already prohibit U.S. persons, including U.S. financial institutions, from nearly all transactions with Iran and Iranian financial institutions. The primary effect of the new rule is to require U.S. banks to conduct special diligence efforts to ensure that their correspondent relationships are not used indirectly to facilitate transactions by Iran.

This is the second time that FinCEN has found Iran to be a jurisdiction of primary money laundering concern. FinCEN made such a finding in 2011 and proposed a rule that would have imposed the same special measures, but never finalized it. FinCEN’s new finding and final rule were issued without re-opening the process for public comment, relying on the Administrative Procedure Act’s “foreign affairs” exception. This appears to be the first time that FinCEN ever has done this, and suggests that the agency may in the future seek to issue special measures against other targets without public comment. That would be a substantial departure from the agency’s recent approach to Section 311. In addition to a long history of submitting proposed Section 311 designations for public comment, even when they were based in part on risks of terrorism financing or the proliferation of WMD, FinCEN in recent years had begun to make the non-classified, non-privileged parts of its administrative record to support such actions available for public review, partly as the result of due process litigation brought by designated foreign financial institutions.

Mechanism for Humanitarian Assistance to Iran

The new mechanism is intended to facilitate exports of agricultural commodities, food, medicine, and medical devices to Iran for humanitarian purposes while preventing such aid from being diverted by the Iranian regime. It is intended in particular to restrict the role of Iran's central bank in such trade, based on that entity's previous facilitation of terrorism financing. The mechanism will require the submission of extensive information about the details of proposed transactions and the identity, affiliations, and beneficial owners of Iranian purchasers. In exchange for providing this information, Treasury would provide written confirmation that an approved financial channel cleared with Treasury will not be subject to U.S. sanctions. U.S. persons, including U.S. financial institutions, taking part in humanitarian trade with Iran are free to also make use of this mechanism, but must continue to abide by existing requirements that apply to them under the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) for humanitarian exports to Iran, as implemented through OFAC regulations. How this new mechanism will actually look and work in practice will become clearer over the coming weeks and months.

Practical Considerations

- U.S. financial institutions that offer correspondent accounts to foreign financial institutions should ensure that they have implemented reasonable, written procedures to prevent the use of their correspondent relationships to provide indirect access to Iran. This may include in particular reviewing their questionnaires for holders of such accounts to capture information on whether account holders maintain accounts for Iranian customers. Based on the responses received you may wish to consider reviewing your current controls around, and risk rating of, that correspondent relationship.
- U.S. persons engaging in humanitarian trade with Iran—exporters, insurers, shipping companies and financial institutions alike—may wish to review OFAC's [list](#) and consider whether collecting the same types of information, or participating in the new mechanism, might help them to manage risk. In addition, if U.S. persons are aware that an Iranian buyer in a transaction covered by license will provide its bank, a foreign financial institution, information for submission to Treasury under the new mechanism, then they may wish to also be privy to the same information for their own risk considerations.

For more information, contact: Carlton Greene, Jeff Snyder, Nicole Succar, Allegra Flamm

WTO Grants China Clearance for \$3.5 Billion in Retaliation to U.S. Anti-Dumping Duties

On November 1, 2019, the World Trade Organization (WTO) granted China clearance to levy \$3.5 billion of duties on U.S. goods in response to a WTO case where China challenged a wide-range of U.S. anti-dumping duties. The U.S. initially placed anti-dumping duties on China in an effort to fight cheap Chinese goods from flooding the U.S. market. However, the Chinese alleged that the U.S. anti-dumping calculation method of "zeroing", which has been determined illegal at the WTO, has been artificially inflating dumping margins for Chinese exporters.

China brought the case to the WTO six years ago in response to the U.S. placing anti-dumping duties on more than 40 Chinese goods, including Chinese furniture, solar panels and steel products. In 2017, the WTO ruled that the United States did not

comply with the organization's rules and guidelines in the way it implemented anti-dumping duties. Beijing hoped to score more than \$7 billion worth of retaliatory duties but the WTO decided to award only half of China's original ask.

This decision comes at a time of high-tension between the world's largest economies and hits at several longstanding disputes. China is also chasing another \$2.4 billion worth of retaliatory tariffs in relation to U.S. countervailing duties. Countervailing duties, commonly referred to as anti-subsidy duties, are import duties designed to neutralize the effects of government subsidies. The United States has long defended the use countervailing duties at the WTO in response to Chinese-subsidized goods.

For more information, contact: Robert Holleyman, Walter (Sam) Boone

Trump WH Announces Changes/Reviews for Generalized System of Preferences (GSP) Program

The Trump Administration announced that it will suspend \$1.3 billion in trade preferences for certain products from Thailand under the Generalized System of Preferences (GSP) program citing Thailand's "failure to adequately provide internationally-recognized worker rights."

GSP provides reduced tariff rates for certain products from certain developing and least developed countries. Per the office of the U.S. Trade Representative's (USTR) [announcement](#), the suspension is slated to take effect in April, 2020. Because the USTR gave notice to Congress, it has the legal ability to remove benefits within 60 days (U.S. law requires the President to give 60 days' notice to Congress and the recipient-country before removing GSP eligibility).

The list of products that will be removed from eligibility will affect about a third of Thailand's GSP-eligible products and include products such as certain fresh and frozen seafood, lumber, and textile products.

The Administration also noted that it is "restoring some GSP benefits for Ukraine following its passage of legislation aimed at addressing shortcomings in its intellectual property (IP) regime" and announced that it is opening new GSP eligibility reviews for two countries: South Africa and Azerbaijan.

For more information, contact: Spencer Toubia, Melissa Morris

Customs Rulings of the Week

- October 21: [Garmin Sport Pro Dog Training Collar Device](#)
- November 4: [Mart Carts](#)

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

Crowell & Moring Speaks

Jeff Snyder will be speaking at C5's European Forum on U.S. Export Controls on November 19, 2019, in Brussels, Belgium. He will be discussing "Protecting your Company for the Future – Staying Ahead of High Stakes Global Developments."

Jana del-Cerro and Jeff Snyder presented on US Export Controls and Sanctions – Compliance and Enforcement Trends to the In House Counsel Forum in Seoul, South Korea, on Wednesday, November 6th, in collaboration with Lee & Ko, a leading law firm in South Korea.

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

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