

# CLIENT ALERT

## The Month in International Trade – October 2020

Nov.11.2020

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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](#).*

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### Top Trade Developments

#### **Crowell & Moring's Election 2020 Series**

Join us for Election 2020, Crowell & Moring's series that will look at the campaigns, the issues, and the implications for your business. Our bipartisan team of government affairs advisors and lawyers will take you behind the curtain to look at how a Biden election or Trump reelection could impact you over the next four years.

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.

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### **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.

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### **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*

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### **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*

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### **OFAC Targets Iran's Financial Sector and Designates Additional Iranian Banks**

On October 8, 2020, the Treasury Department's Office of Foreign Assets Control (OFAC) took a long-rumored final step in curtailing virtually all non-humanitarian financial flows with Iran, identifying the Iranian "financial sector" as a target for potential "secondary" sanctions designation, and simultaneously [designating eighteen Iranian financial institutions](#), many of which had been the only remaining conduits by which funds flowed to or from Iran. OFAC designated sixteen banks for operating in the Iranian financial sector under the authority of Executive Order (EO) 13902, one bank for being owned or controlled by a

bank designated under EO 13902, and one bank that serves Iran’s armed forces under the non-proliferation authorities of EO 13382 (EO 13382). Following a 45-day wind-down period, the sanctions become effective on November 22, 2020.

For more information on the latest in President Trump’s “maximum pressure” campaign against Iran, [please click here](#).

*For more information, please contact: Caroline Brown, Carlton Greene, Jeff Snyder, Dj Wolff, Nicole Succar, Erik Woodhouse, Chandler Leonard*

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### **Bureau of Industry and Security (BIS) Provides Exporters with Six-Month Extension of Licenses**

On October 17, BIS issued a [press release](#) announcing that exporters may request a six-month extension for any licenses due to expire on or before December 31, 2020.

The press release states, “BIS will streamline the extension of the validity process by creating a central electronic mailbox for submission of requests: [LicenseExtensionRequest@bis.doc.gov](mailto:LicenseExtensionRequest@bis.doc.gov).” The original license will be reviewed and, in most cases, the validity period extended via the electronic system. Depending on the number of requests received, BIS estimates the majority of extension requests will be processed and approved within two to three business days.

Acting Under Secretary for Industry and Security, Cordell Hull said, “The streamlined process will help ensure that exporters with licenses due to expire on or before the end of 2020, who may not have been able to ship orders due to resource constraints during the pandemic, have the opportunity to benefit fully from the authorizations granted on their licenses.”

*For more information, please contact: Jeff Snyder, Jana del-Cerro, Chandler Leonard, Edward Goetz*

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### **China Increases Focus on Protecting Against Intellectual Property Infringement**

On September 14, 2020, China’s highest court, the Supreme People’s Court of the People’s Republic of China, released the “Opinions on Increasing Enforcement Against Intellectual Property Infringement According to Law” (关于依法加大知识产权侵权行为惩治力度的意见) (“Opinions”).

The Opinions cover four main areas: (1) Evidence Preservation, (2) Injunctions, (3) Monetary Relief, and (4) Criminal Enforcement

- **Evidence Preservation**

- Articles 1-4 cover evidence preservation. Evidence preservation is a measure taken by Chinese courts to investigate, collect, and preserve evidence when it may be destroyed or difficult to collect in the future. Article 2 directs courts to promptly review and decide an application for an injunction and an application for evidence preservation when a party applies for both. Article 4 allows courts to make inferences in favor of an intellectual

property rights holder when the alleged infringer damages or transfers evidence subject to an evidence preservation order.

- **Injunctions**

- Articles 5-6 cover injunctions. Article 5 reaffirms the primacy of injunctions in Chinese intellectual property litigation and states courts should grant an injunction first when facts supporting infringement are clear and infringement has been established.

- **Increasing Monetary Relief**

- Articles 7-13 cover increasing monetary relief for intellectual property infringement. Notably, Article 10 permits punitive damages in the event of severe and intentional infringement to deter intentional infringement. In terms of statutory damages, Article 11 permits courts to award statutory damages up to a maximum limit in situations where the infringement has caused a right holder severe damages or an infringer has obtained a substantial amount of profits through infringement and evaluates factors in assessing damages including whether the infringement was intentional; whether defendant has repeatedly infringed; duration of infringement; whether infringement involves a large area; and whether infringement endangers personal safety, exploits natural resources, or damages public interests.

- **Increasing Criminal Enforcement**

- Articles 15-16 cover increasing criminal enforcement of intellectual property rights and states courts should impose severe penalties for counterfeiting disaster relief items and epidemic prevention supplies. Notably, the Opinions removed a foreigner-targeted clause from the draft opinions, which would have imposed severe penalties for infringement of trade secrets by overseas institutions, organizations, and personnel.

As China becomes a viable venue for intellectual property enforcement, it is important to monitor the recent developments in Chinese intellectual property legal system.

*For more information, please contact: Julia Milewski, Yao Mou*

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## **OFAC and FinCEN Releases Advisories on Risks of Ransomware Payments**

On October 1, 2020, the Office of Foreign Assets Control (OFAC) and the Financial Crimes Enforcement Network (FinCEN) each released advisories (the [OFAC Advisory](#) and the [FinCEN Advisory](#)) addressing financial crime-related risks associated with ransomware and ransomware payments. The OFAC Advisory focuses on the risk that ransomware attacks or payments may involve sanctioned persons or jurisdictions, the risk that paying ransoms, or otherwise dealing with ransomware attackers may result in liability under OFAC sanctions authorities, and the possibility for victims of such attacks to earn credit against potential sanctions penalties by voluntarily disclosing such attacks to law enforcement. The FinCEN Advisory draws attention to the potential for financial institutions to be used in the processing of ransomware payments, the risk that intermediaries that facilitate such payments may be deemed money transmitters, red flags of potential ransomware-related activity, and the need to report technical details related to such attacks in suspicious activity reporting.

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

*For more information, please contact: Caroline Brown, Carlton Greene, Paul Rosen, Dj Wolff, Evan Wolff, and Erik Woodhouse*

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## **USTR Launches Section 301 Investigation Targeting Imports from Vietnam**

On Friday, October 2, 2020, the United States Trade Representative (USTR) announced that, at the direction of the President, a two-part investigation is being initiated into Vietnam under Section 301 of the Trade Act of 1974. USTR, in conjunction with the Department of the Treasury, will review policies related to the import and use of timber that may have been illegally harvested or traded. The two agencies will also review any practices that may have contributed to the undervaluation of Vietnam's currency, the Dong (VND), resulting in harm to U.S. commerce.

In the announcement, United States Trade Representative Robert E. Lighthizer said, "President Trump is firmly committed to combatting unfair trade practices that harm America's workers, businesses, farmers, and ranchers. Using illegal timber in wood products exported to the U.S. market harms the environment and is unfair to U.S. workers and businesses who follow the rules by using legally harvested timber. In addition, unfair currency practices can harm U.S. workers and businesses that compete with Vietnamese products that may be artificially lower-priced because of currency undervaluation. We will carefully review the results of the investigation and determine what, if any, actions it may be appropriate to take."

The announcement follows a 2019 decision by the Treasury Department to include Vietnam on a [watch list](#) for its currency practices and [changes in federal regulations](#) in February of this year that allows currency undervaluation to be considered as part of subsidy investigations conducted by the Department of Commerce. The change to federal regulations was prompted in part by a Treasury Department [report](#) in January outlining the scale and persistence of foreign exchange intervention among most major U.S. trading partners and in the context of a widening trade deficit with Vietnam and weakening VND against the dollar.

In August, for the first time, the Department of Commerce accepted evidence, under the new regulations, from a [valuation assessment](#) conducted by the Treasury Department in an ongoing [countervailing duty \(CVD\) investigation](#) of an alleged subsidy pertaining to currency undervaluation on passenger vehicle and light truck tires from Vietnam.

Friday's announcement was met with mixed reactions but universal concern over the possible effects on domestic industry. USTR is expected to release two separate Federal Register notices next week that will provide details of the investigation and information on how members of the public can provide their views through written submissions.

*For more information, please contact: John Brew, Evan Chuck, Robert LaFrankie*

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## **Customs Rulings of the Week**

- October 9: [Classification of Electrostatic Backpack Sprayer](#)
- October 16: [Classification of White Claw Hard Seltzer](#)
- October 23: [Classification of PowerXL Grill Air Fryer Combo](#)

- November 4: [Classification of Parrot Toy](#)

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

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## Upcoming Crowell & Moring Webinars

### Caught Between a Rock and a Hard Place: The Impact of Dueling Tech Regulations and Escalating Tensions on Cross-Border Transactions

**Date:** Thursday, November 19, 2020

**Time:** 11:00 AM Eastern Standard Time

**Duration:** 1 hour

Please join us for Part Two of a series of discussions focused on the increasing impact of national security concerns on the information and communication technology supply chain and critical infrastructure, and how those issues are affecting the United States' relationships with China and other key trading partners. This installment will address these developments from non-U.S. perspectives and provide concrete advice to help companies understand what they need to reduce their risk in this new environment.

Recent actions by the U.S. government have arguably escalated tensions between China and the United States as the "tech cold war" intensifies. Targeted trade controls that increasingly restrict the transfer of technology and regulatory bodies, the strengthening of regulatory bodies that protect critical infrastructure from foreign investment and supply chain compromises, and efforts aimed at reshoring global supply chains have left companies scrambling to update their compliance programs and reassess their business strategies. China has responded in kind, issuing its own export controls, a draft law targeted at protecting personal information, and investing heavily in developing its own technologies in order to decrease reliance on the United States. Stuck in between are U.S. allies grappling with competing incentives offered by the two jurisdictions while also trying to attract companies seeking to "nearshore" their operations closer to the U.S. market.

The discussion will feature **Ambassador Robert Holleyman** from the firm's Washington, DC office, **Evan Chuck** from the firm's Los Angeles office, and **Vassilis Akritidis**, who recently joined the firm's Brussels office. The webinar will be moderated by **Caroline Brown**, who recently joined Crowell & Moring after spending 10 years as a national security attorney at the U.S. Department of Justice's National Security Division and the Treasury Department.

**Speakers:** [Robert Holleyman](#), [Evan Chuck](#), and [Caroline Brown](#)

**Contact:** Crowell & Moring Events ([events@crowellevents.com](mailto:events@crowellevents.com))

**[Register for Event](#)**

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## Crowell & Moring Webinars On Demand

### Protecting Sensitive Data and the Race for 5G: CFIUS, Team Telecom, the Clean Network Program, and the TikTok and WeChat Executive Orders

Crowell & Moring is pleased to present a series of webinars on the increasing impact of national security concerns on transactions involving telecommunications supply chain and critical infrastructure international trade and how those issues are affecting the United States' relationships with China and other key trading partners. These webinars will address these developments from both the U.S. and foreign perspectives and provide concrete advice to help companies understand what they need to reduce their risk in this new environment.

The first webinar in the series will be shortly before the U.S. Presidential election and will address the recent Executive Orders seeking to ban the mobile applications TikTok and WeChat that have garnered headlines over the past few weeks and sent companies scrambling to assess their potential exposure. While court orders temporarily enjoined the prohibitions from taking effect, these Executive Orders are just the latest example of the U.S. government's more aggressive approach to oversight of the telecommunications industry and businesses that use personally identifiable information (PII) because of concerns over the exploitation of sensitive information and vulnerabilities in the supply chain.

The discussion will address the implications of recent actions by the U.S. government, including strengthening the Committee on Foreign Investment in the United States (CFIUS) and the interagency national security group "Team Telecom," as well as the Clean Network initiative and prohibitions affecting government contractors under Section 889 of the NDAA, that are likely to have a significant impact on many telecom providers, equipment manufacturers, and companies developing artificial intelligence and IoT projects.

The webinar will feature **Caroline Brown**, who recently joined Crowell & Moring as a partner in the International Trade and White Collar groups after spending 10 years as a national security attorney at the U.S. Department of Justice's National Security Division and the Treasury Department, **Kate Growley**, a partner in Crowell & Moring's Privacy & Cybersecurity and Government Contracts groups, and **Adelicia Cliffe**, a partner in Crowell & Moring's International Trade and Government Contracts groups.

#### [Listen to Webinar](#)

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### International Trade Diligence Considerations and Best Practices in M&A Transactions

With the near daily change in U.S. trade-related regulations, including new export control restrictions, the rise and fall of sanctions programs, escalating tariffs affecting supply chains, among many others, international trade diligence, risk assessment, and mitigation has become a central feature in successfully closing deals today. Given that virtually all companies have some amount of international exposure—whether through direct operations, employee base, supply chain and sourcing, customers, or financing—international trade related risks are present in virtually all deals, raising the possibility of penalties, fines, business interruptions, bottom line profit impact, and reputational concerns for the successor-in-interest.

This risk has been present for years, but in 2020, not only has the pace of regulatory change increased, but U.S. regulators are specifically focusing on the company's M&A related activities, from the adequacy of their initial diligence straight through to their follow-through on the necessary post-closing integration steps. During this 60 minute webinar, a cross-section of Crowell & Moring's International Trade group will share our key takeaways and best practices on conducting due diligence throughout the transaction, as well as post-closing integration and follow-up considerations.

**[Listen to Webinar](#)**

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**Crowell & Moring Speaks**

Clark Jennings, Shelley Su, and Robert Holleyman were featured in an October 16 Inside U.S. Trade (subscription required) article titled, "Attorneys: Trade Policy to Remain Prominent No Matter Who Wins on Nov. 3."

Carlton Greene was featured in an October 19 *Capital Forum* article titled "[New Fortress Energy: Contract With Nicaraguan Company With Strong Ties To Sanctioned Entity And Unknown Ownership Raises Red Flags, Potentially Exposing New Fortress To Legal Risk, Experts Say.](#)"

Caroline Brown was featured in an October 30 *Variety* article titled "[What's At Stake for Hollywood in The Presidential Election?](#)"

**WITA Post-Election Analysis**

Date: Thursday, November 12, 2020

Time: 10:00 AM Eastern Standard Time

Duration: 1 hour

Please join WITA on November 12th as we look at what the U.S. Presidential election might mean for American trade policy in the years to come, with a bipartisan panel of experts who served in senior roles in Congress and the Administration.

WITA Webinar Featuring:

- Nasim Fussell, Partner, Holland & Knight; and former Chief International Trade Counsel, Senate Finance Committee
- Ambassador Robert Holleyman, Partner, Crowell & Moring LLP and President & CEO, C&M International; and former Deputy USTR
- Brian Pomper, Partner, Akin Gump Strauss Hauer & Feld, LLP; and former Chief International Trade Counsel, Senate Finance Committee
- Stephen P. Vaughn, Partner, King & Spalding; and former USTR General Counsel, and Acting USTR
- Moderator, Stephanie Lester, Senior Director, Government Affairs, Gap Inc. Announcement is attached in case it is helpful

Register via Eventbrite here: <https://lnkd.in/eKRGZEv>

**AmCham Singapore Webinar – Living with COVID-19: Accelerating Recovery with ICT**

**Date:** November 12, 2020 | 11:00 am – 12:00 pm Singapore Time



**Location:** Webinar

**Lawyers Primarily Involved:** Clark Jennings

**Description of Opportunity:** CMI's [Clark Jennings](#) moderated a session that explores the best practices of organizations who have used ICT to minimize disruption to services; to increase access for underserved sectors; to explore newer ways of working and interacting socially; and to develop strategies to mitigate the effects of the pandemic and to support the recovery and growth for a post-pandemic future.

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

**Jeffrey L. Snyder**

Partner – Washington, D.C.

Phone: +1 202.624.2790

Email: [jsnyder@crowell.com](mailto:jsnyder@crowell.com)

**Frances P. Hadfield**

Counsel – New York

Phone: +1 212.803.4040

Email: [fhadfield@crowell.com](mailto:fhadfield@crowell.com)

**Edward Goetz**

Manager, International Trade Services – Washington, D.C.

Phone: +1 202.508.8968

Email: [egoetz@crowell.com](mailto:egoetz@crowell.com)