

CLIENT ALERT

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

Leading International Trade Team Joins Crowell & Moring in Brussels

Brussels—September 23, 2020: Vassilis Akritidis, a leading international trade lawyer, is joining Crowell & Moring in Brussels, expanding the firm’s capability to provide global clients with strategic European trade advice. Akritidis and his team bring a broad trade practice, including experience in World Trade Organization law and proceedings, customs, and unfair trade litigation.

Akritidis joins as a partner from DWF, where he led the International Trade and WTO practice and served as managing partner of that firm’s Brussels office. Prior to that role, he led the EU international trade practice at two other large law firms. In addition, Lorenzo Di Masi, a former Crowell & Moring senior associate, returns to the firm with Akritidis. The pair has worked closely together for the past two years on EU investigations, customs, and regulatory matters.

Akritidis brings nearly three decades of experience in Brussels, advising clients mainly on trade defense investigations, customs matters, trade barriers/market access issues, trade sanctions/export controls, and EU anti-fraud investigations led by OLAF, the European Anti-Fraud Office. He is consistently recognized by *Chambers & Partners* and *Legal 500* in these fields. Akritidis also advises clients on European public procurement and bid protests, EU Competition law, EU internal market issues, and he is an experienced litigator before the European Union Courts in Luxembourg. He counsels global companies on their dealings with EU institutions, European and Asian governments and represents them before international trade authorities and investigatory agencies.

“Vassilis has the established reputation and proven experience to help our clients solve their most pressing international trade issues,” said [Philip T. Inglima](#), chair of Crowell & Moring. “He is joining the firm at a time when we are strategically growing our international footprint and expanding our ability to advise global clients in critical areas in this dynamic business environment. Having Vassilis and his team in the EU will be of great benefit to clients.”

Akritidis has advised corporations, professional associations, and governments located in EU Member States, as well as throughout the world in India, China, Brazil, Thailand, Taiwan, Croatia, Russia, Ukraine, Korea, Turkey, UAE, and the United States. He has handled 10 investigations before the Eurasian Economic Commission in Moscow, representing Asian respondents. His clients span a variety of sectors including steel, chemicals, technology, transportation, defense and aerospace, and agriculture and food.

“Vassilis and his team are an exciting addition to our Brussels office,” said [Kristof Roox](#), co-managing partner of the Brussels office. “Crowell & Moring has an exceptional international trade team and this new group expands our ability to serve clients throughout Europe, Russia, and Asia. This very experienced team is also able to tackle issues such as the impact of Brexit and trade wars between China and the U.S., putting us in a very strong position to advise our growing global client base.”

“Given the upcoming elections in the U.S. and Brexit in Europe, there is an increased need for trade counsel,” said [Nicole Janigian Simonian](#), co-chair of Crowell & Moring’s [International Trade Group](#). “The addition of Vassilis and Lorenzo bolsters our trade capabilities in Europe, creating a strong transatlantic international trade team that will be able to help our clients in Asia as well.”

“I was drawn to Crowell & Moring because of its top-level trade practice, people, and the valuable synergies with the firm’s deep regulatory and litigation experience,” Akritidis said. “I look forward to collaborating with my new colleagues to help clients as

they pursue strategies to protect and grow their business and international footprint.” Akritidis received a law degree from the Aristotle University of Thessaloniki and a master’s degree from the Institute of European Studies.

New Crowell & Moring Podcast Series: 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.

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.

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

HTMX et al. v. United States – An (Ongoing?) Opportunity for Importers to Recover Section 301 Tariffs Paid on Section 301 List 3 (and 4A) Products

The Court of International Trade (CIT) saw nearly 3,000 complaints filed over a period of four days from Friday, September 18, 2020 to Monday, September 22, 2020 challenging the United States Trade Representative's (USTR) authority to levy Section 301 Tariffs on products found on List 3 (and frequently, also those also found on List 4A) ("List 3 Tariffs"). These complaints dovetail from the lead case which first raised this issue, filed on September 10, 2020, *HMTX Industries LLC et al. v. United States*.

Plaintiffs have generally taken the position that, while initial retaliatory tariff action reflected in the implementation of Section 301 Tariffs on products found on List 1 and List 2 may have been lawful, the USTR's subsequent round of actions (*i.e.*, List 3 and List 4A) failed to comply with requirements under the Administrative Procedures Act. These lawsuits, if successful, may ultimately eliminate List 3 (and where applicable, List 4A) tariffs and result in refunds. It remains to be seen whether refunds would be applicable to all importers, or only those who filed complaints. Further action could be warranted in the latter case for those parties which elected not to file lawsuits but subsequently wish to pursue action to receive refunds on duties paid. Importers may also still challenge exclusion denials, extension denials, and the shortening of granted List 3 exclusions.

There remain conflicting opinions as to when the deadline to file a complaint contesting List 3 Tariffs expires (or expired). The statute of limitations to file a complaint at the CIT expires after two years - the outstanding question is when this deadline first began tolling. Some argue that the deadline expired on Friday, September 18, 2020, starting the timer from the USTR press release which first announced the finalized list of covered tariff numbers included in List 3. Others point to Monday, September 21, 2020, which is two years from the date on which the finalized list of covered tariff numbers was first published in the Federal Register. Still others take the position that the deadline is September 24, 2020 (the date the tariffs actually took effect), or, possibly a later date corresponding to when an importer was first assessed a duty on an imported List 3 product. There is

therefore still time as of the publication of this blog, arguably, for importers to “throw their hat in the ring” with respect to contesting List 3 Tariffs. We can additionally expect another round of lawsuits contesting List 4, but the expiry of the statute of limitations for those products remains around a year in the future at the earliest.

Regardless of the outcome at the CIT, importers can expect there will be at least one appeal to the Court of Appeals, and possibly another appeal to the Supreme Court. Importers should therefore not expect any resolution on this question in the near future.

For more information, contact: John Brew, Mert Arkan

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. On October 8, USTR released two separate Federal Register notices that 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 Clayton Kaier

Election 2020: U.S. – China Tensions Will Remain Regardless of Who Wins the White House

U.S.-China trade relations and economic policy are highly politicized within the United States, and are key issues in the campaigns of both President Donald Trump and the Democratic nominee, former Vice President Joe Biden. A theme has emerged in the campaign messaging battles, with neither candidate ceding any ground on their “tough on China” bona fides. But as divergent as Trump and Biden are on many policy issues, when it comes to China and trade, there is some overlap between Trump’s executive actions and Biden’s campaign agenda.

Aggressive U.S. policymaking to call-out and sanction interests within China has strong bipartisan support among Washington officials. The expansion of national security laws in Hong Kong, the treatment of the Uyghurs in Xinjiang, China’s trade practices and industrial policies, the COVID-19 pandemic, and South China Sea have all converged to put China into the spotlight of the U.S. elections, even more so than in 2016. It can be expected that a challenging U.S.-China relationship will continue regardless of who wins the White House in November. For global businesses, these growing geopolitical and regulatory challenges do not present a static ‘new normal’ to adjust to, but rather an increasingly dynamic environment, requiring more nimble and proactive strategic planning, sourcing, policy, and compliance efforts.

For ‘Key Trends to Watch’ and ‘2021 Scenarios’, [please click here](#).

For more information, please contact: Joshua Boswell, Clark Jennings, Shelley Su

China Opens Up: Certain Foreign Nationals Can Come Back – with Conditions

On September 23, 2020, the Ministry of Foreign Affairs of the People’s Republic of China (MFA) announced its decision to allow foreign nationals holding certain valid Chinese residence permits to enter China with no need to apply for new visas **starting midnight, September 28, 2020**. This marks a loosening of MFA’s policy to temporarily bar foreign nationals holding valid visas or residence permits from re-entering the country announced on March 26, 2020 (“March 26 Announcement”).

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

For more information, please contact: Evan Chuck, Zhongdong Zhang, Yi Huang Aurora Zhang

New Executive Order Supports Domestic Sources of Critical Minerals

Pointing to perceived risks posed by the lack of domestic sources of certain critical minerals needed for military applications, infrastructure, and the modern economy, President Donald J. Trump issued an [Executive Order on September 30, 2020](#), that declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. § 1701 et seq.) and the National Emergencies Act (50 U.S.C. § 1601 et seq.) to address the country’s reliance on foreign sources for these minerals.

The Executive Order notes that the United States is dependent on China as the source for many kinds of minerals used in a range of industrial and military applications, and that China has taken various actions, including flooding international markets, to make it uneconomical for the United States and other countries to develop domestic sources of these minerals.

For more on this new Executive Order, [please click here](#).

For more information, please contact: R. Timothy McCrum, Byron R. Brown, Elizabeth B. Dawson

CFIUS Mandatory Declarations – Bye, Bye NAICS Codes; Hello "Regulatory Authorizations"

Today, less than 4 months after publication of a proposed rule, the Committee on Foreign Investment in the U.S. has published a [final rule](#), effective October 15, 2020, that eliminates the connection to certain industries, as defined by specified North American Industry Classification System (NAICS) codes, for determining whether a foreign investment in a so-called “U.S. TID business” that produces, designs, tests, manufactures, fabricates or develops “critical technologies” is subject to *mandatory* review by CFIUS.

To implement this change, the new rule broadly identifies certain foreign persons whose covered investments or covered control transactions will now be subject to mandatory CFIUS review where a “regulatory authorization” would be required if the U.S. TID business’ critical technology were to be exported, reexported, transferred (in-country) or retransferred to that foreign person, a determination that is generally made without regard to whether any exemptions or exceptions under the applicable export control regulations would be available. There are a few EAR exceptions (*e.g.*, certain items qualifying for the TSU, ENC and STA exceptions) that may relieve the burden somewhat for foreign investment in certain U.S. TID businesses.

The new test may be easier to apply because assessing whether the U.S. business is producing, designing, testing, manufacturing, fabricating or developing “critical technology” was (and is) already a first step in making the mandatory declaration determination, while some found the NAICS approach difficult to apply. Nonetheless, because “critical technology” covers most export controlled items and technology, eliminating the prior requirement of a connection to certain specified industries will likely increase the number of foreign investment transactions that will be subject to mandatory CFIUS review.

For more information, please contact: Alan W.H. Gourley, Jana del-Cerro, Addie Cliffe, Caroline Brown

A Giant Leap for FinTech in the EU

European FinTech has taken a giant leap, indeed. The European Commission has proposed a draft legal framework that opens the door to a modern regulated financial services industry.

Towards a European Digital Finance Strategy

By now, everyone has heard of Bitcoin and the promising blockchain technology behind it. While Bitcoin was conceived for a non-regulated financial world, it was clear from the beginning that regulators and legislators would do whatever was in their power to control, and thus influence, this new digital financial services offering in order to protect both consumers and investors. That power has been limited, however, mainly because the current financial legislation was drafted with the traditional financial system in mind.

In the last couple of years, new technologies have drastically changed the financial services industry in a way that is similar to how over-the-top (*i.e.*, non-carrier) services have changed the way we communicate. An e-Privacy framework is being built to regulate the aforementioned innovative communication services, and a similar EU-wide framework is being built for digital financial services.

The intention behind the new legislation is not to stifle innovation by regulation, but to create a level playing field where financial innovation can thrive. When the European Commission launched its [FinTech Action Plan](#) in March 2018, it stated that a new EU-wide regulatory and supervisory framework “should allow firms operating in the EU Single Market to benefit from financial innovation and provide their customers with the most suitable and accessible products.”

The next step was public consultation on a proposed regulatory framework and the [Digital Finance Outreach 2020](#), and a series of events was organized in collaboration with the EU Member States to discuss FinTech and digital innovation in the financial sector, and to prepare the new EU digital finance strategy.

Now, another big step has been taken: the adoption on September 24 of a digital finance package, which includes the promised digital finance strategy, a renewed strategy for modern and safe retail payments, as well as two legislative packages on (i) crypto-assets and (ii) digital resilience.

For ‘Legislative Proposals’ and ‘Next Steps’, [please click here](#).

For more information, contact: Maarten Stassen

FinCEN Issues ANPRM Seeking Comment on Requirement for an "Effective and Reasonably Designed" AML Program

On September 16, 2020, the Financial Crimes Enforcement Network (FinCEN) issued an advanced notice of rulemaking (ANPRM) requesting comments on proposed regulatory changes under the Bank Secrecy Act (BSA) that aim to enhance the effectiveness of anti-money laundering (AML) programs. The proposals reflect the recommendations of a working group within the Bank Secrecy Act Advisory Group (BSAAG), whose membership includes representatives from financial institutions, federal and state regulatory and law enforcement agencies, and trade groups and is chaired by the director of FinCEN, that was convened to develop recommendations to strengthen the national AML regime. Comments are due by November 16, 2020.

For more on the proposed amendments, [please click here](#).

For more information, please contact: Caroline Brown, Carlton Greene, Nicole Succar, Erik Woodhouse

FinCEN Issues Final Rule Establishing Anti-Money Laundering Requirements for State-Regulated Banks

On September 15, 2020, the Financial Crimes Enforcement Network (FinCEN) issued a final rule establishing anti-money laundering (AML) program requirements for “banks lacking a federal functional regulator,” a category that includes private banks, non-federally insured credit unions, and certain trust companies. Until now, such institutions had been covered by an exemption from the AML program requirements in the Bank Secrecy Act (BSA), though they were subject to a number of other BSA requirements, including to file currency transaction reports (CTRs) and suspicious activity reports (SARs). The new rule subjects these institutions to the same customer due diligence obligations, including the obligation to identify the beneficial owners of legal entity customers, that FinCEN imposed on federally-regulated banks in its 2016 “Customer Due Diligence” or CDD Rule. It also requires all non-federally regulated banks to implement customer identification programs (CIPs), which before were required only of certain non-federally-regulated banks.

For more on the new requirements, [please click here](#).

For more information, please contact: Carlton Greene, Caroline Brown, Michelle Gitlitz, Nicole Succar, Erik Woodhouse

Customs Rulings of the Week

- September 11: [Classification of “Rodico” Cleaning Putty](#)
- September 18: [Classification of Magnetic Sweeper](#)
- September 30: [Classification of the HoHoHoH2o Automatic Christmas Tree Watering Device](#)

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

Upcoming Crowell & Moring Webinars

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

Date: Thursday, October 29, 2020

Time: 12:00 PM Eastern Daylight Time

Duration: 1 hour

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.

Speakers: [Jana del-Cerro](#), [Dj Wolff](#), [Nimrah Najeeb](#), [Chandler Leonard](#), and [Maria Vanikiotis](#)

Contact: Crowell & Moring Events (events@crowellevents.com)

Crowell & Moring Speaks

[Nicole Janigian Simonian](#) was selected as one of [Latin America’s Top 100 Female Lawyers by Latinvex 2020](#).

[Addie Cliffe](#) and [Jana del-Cerro](#) authored a September 1 article titled, “[How to Prepare for CFIUS-Related Questions from Potential Investors](#)” for *Foreign Investment Watch*.

[Dj Wolff](#) was a speaker at the ‘Korea Global Forum for Peace 2020’ on September 8 in Seoul, Korea. He participated virtually and spoke on ‘UN Sanctions and the Humanitarian Crisis in the DPRK.’

[John Brew](#) discussed “[Navigating 301 Duties](#)” on September 15 at the 2020 International Compliance Professionals Association (ICPA) Fall conference.

[Addie Cliffe](#), [Jana del-Cerro](#), [Stephanie Crawford](#), and [Chandler Leonard](#) were panelists for a Crowell webinar on [Export Controls for Government Contractors](#) on September 15.

[John Brew](#) spoke on “[Valuing your Imports for U.S. Customs Entry](#)” on September 16, which was part of a larger webinar on a variety of U.S. Customs topics hosted by Lorman’s.

[Caroline Brown](#), [Carlton Greene](#), and [Erik Woodhouse](#) authored a September 17 article titled “[Managing An AML Program During COVID-19](#)” for the *ABA Banking Journal: Risk & Compliance*.

[David Stepp](#) was part of an international panel of experts on a webinar hosted by the Global Legal Customs Association held September 17 on “[The Future of International Trade](#).”

[Caroline Brown](#) was featured in a September 17 *Business Insider* article titled “[President Trump's Move To Force ByteDance to Sell TikTok Is Part Of A Growing Global Trend Of Countries Scrutinizing Who Owns Their Citizens' Data](#).”

John Brew spoke at Crowell & Moring’s “Recovery During COVID: Moving the Needle in 2020” webinar on September 30. He discussed Section 301 litigation and other global duty recovery opportunities.

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

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