CLIENT ALERT

This Month In International Trade - August 2011

August 31, 2011

Office of Antiboycott Compliance Continues Its Enforcement Push, but Will Its Mandate Change?

The Department of Commerce Office of Antiboycott Compliance ("OAC") announced a $22,000 penalty against Chemguard for 7 alleged violations of the U.S. antiboycott laws The violations included two counts of furnishing an agent-signed certificate in conjunction with transactions in the UAE and five counts of failing to report an antiboycott request. OAC's new announcement comes on the heels of three penalties it announced in July for a combined $50,900 against Applied Technology, Inc, Lynden Air Freight, and Smith International.

The U.S. House of Representatives may however shortly act on legislation that would change the OAC's mandate. When the House returns from recess, it will take up voting on the State Department authorization bill, to which Howard Berman (D-CA) was successfully able to attach a boycott-related amendment. In addition to codifying the U.S. antiboycott provisions which have been promulgated solely by Executive Order since 1994, the new legislation includes a number of dramatic changes to the existing law, including giving the Executive Branch discretion to remove existing exceptions (e.g., compliance with primary import or positive certification statutes) and extending application of the regulations beyond the current jurisdictional limit of transactions within "U.S. commerce." The amendment's future in the Senate is unclear.

Large OFAC Fines for Financial Institutions are the New Normal

On August 25, 2011 the U.S. Treasury Department, Office of Foreign Assets Control ("OFAC") announced JPMorgan Chase Bank ("JPMC") agreed to remit $88,300,000 to settle potential civil liability for apparent violations of multiple sanctions regulations and executive orders administered by OFAC. OFAC went beyond citing the substantive violations in the settlement notice to criticizing JPMC for its failures in the course of the investigation. For example in finding that the some of the violations were egregious under the guidelines, it noted that (1) the bank failed to take steps to prevent further violations of the Cuban embargo once they were reported to "management and supervisory personnel;" (2) the bank waited four months to make a disclosure after deciding to do so in transactions involving the Iran embargo and "failed to respond promptly and completely to an OFAC administrative subpoena;" and, (3) "failed to produce several responsive documents in JPMC's possession, and repeatedly stated that JPMC had no additional responsive documents. OFAC ultimately provided JPMC with a list of multiple responsive documents . . . based on communications with a third party . . . ."

The settlement is the latest in a recent trend of large dollar settlements agreed to by financial institutions. JPMC's settlement follows the $536 million global settlement by Credit Suisse in 2009 and the $298 million settlement by Barclays Bank in 2010. In addition to a large financial penalty for JPMC, the settlement is a further signal to financial institutions that OFAC officials are taking notice of their role in potentially sanctioned financial transactions. Given the recent tightening of sanctions against Iran, Libya, and Syria, and OFAC's apparent willingness to target large financial institutions, it is more important than ever that they remain compliant with US embargoes and sanctions.

BIS Seeks Comments on Export Control Reform

The Department of Commerce Bureau of Industry and Security (BIS) published a Notice of Inquiry seeking comments on the retrospective review of its regulations. BIS is conducting the review to clarify or streamline certain portions of regulations, including the Chemical Weapons Convention Regulations and National Defense Industrial Base Regulations. Comments are due by February 1, 2012.

CITA Removes Certain Cotton Yarns From CAFTA-DR Exemptions Limiting Duty Free Claims on Downstream Products

The Committee for the Implementation of Textile Agreements (CITA), an interagency group chaired by the Department of Commerce, made the determination to remove a certain cotton, compacted, plied, ring spun cotton yarns from Annex 3.25 pursuant to its authority under the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR). Annex 3.25 includes a list of fabrics, yarns and fibers "not available in commercial quantities in a timely manner" in CAFTA-DR territories. Importers of textile and apparel from CAFTA-DR territories should be aware that the determination to remove these cotton yarns from the Annex will affect country of origin treatment for articles containing the subject product. CITA's determination takes effect on February 20, 2012.

Targeting Syria: New US and EU Sanctions

New sanctions on Syria come in the wake of weeks of build up as the world watches Syrian President Assad's five month long violent crackdown on political protestors in Syria. The United States and the European Union have already announced expanded sanctions programs and are petitioning the United Nations for broader international action.

CBP Ends Paper Courtesy Liquidation Notices For Electronic Filers

On August 17, U.S. Customs and Border Protection (CBP) adopted a rule ending the mailing of "courtesy" liquidation notices to importers using the Automated Broker Interface (ABI) for electronic filing. ABI filers will receive electronic liquidation notices, while importers not using ABI will continue to receive the paper versions. The rule is intended to eliminate duplication and reduce CBP costs. Although CBP's actions only impact "courtesy" notices, liquidation is CBP's final assessment of an entry, triggering protest and appeal rights. Therefore, importers should ensure proper tracking of CBP's liquidation of entries.

CIT Judge Wallach Tapped For CAFC

President Obama nominated United States Court of International Trade (CIT) Judge Evan J. Wallach to the United States Court of Appeals for the Federal Circuit (CAFC). Appointed to the CIT by President Clinton in 1995, Judge Wallach has presided over more than 230 cases involving customs and international trade law.

Crowell and Moring Welcomes

The International Trade Group welcomes **Elena Klonitskaya** and **Jini Koh**.

Elena is an associate in our Brussels office who provides counseling to private companies and sovereign governments on international trade compliance and negotiations, the WTO, customs regulation, embargoes, sanctions and export controls, and Russian trade and customs law. Prior to joining Crowell & Moring, Elena was a member of Government & Global Trade practice area with the Brussels office of a US law firm, and a member of its Antitrust & Competition and EU Regulatory practice groups. Elena is admitted to practice in both Brussels and Moscow.

Jini is an associate in our Washington, D.C. office who advises U.S. and multinational companies with their business processes and transactions to ensure regulatory compliance with U.S. customs, trade remedy and international trade regulatory matters. Prior to joining Crowell & Moring, Jini was with the international trade/indirect tax practice of one of the big 4 accounting firms and clerked for Judge Nicholas Tsoucalas at the U.S. Court of International Trade. Jini is not admitted to practice in the District of Columbia; her practice is supervised by partners of the firm.

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

John B. Brew
Partner – Washington, D.C.
Phone: +1.202.624.2720
Email: jbrew@crowell.com

Alan W. H. Gourley
Partner – Washington, D.C.
Phone: +1.202.624.2561
Email: agourley@crowell.com

David (Dj) Wolff
Partner; Attorney at Law – Washington, D.C., London
Phone: +1.202.624.2548, +44.20.7413.1368
Email: djwolff@crowell.com