CLIENT ALERT

This Month in International Trade - August 2012

Sep.07.2012

THIS MONTH'S TOP FIVE DEVELOPMENTS

1) Iran Sanctions SEC Disclosure Obligations - Are You (and Everyone You Know) In Compliance?

Section 219 of Iran Threat Reduction and Syria Humans Rights Act of 2012 (ITRA) establishes a new disclosure obligation for all issuers required to file annual or quarterly reports with the Securities and Exchange Commission (SEC) pursuant to the Securities and Exchange Act of 1934. Issuers, beginning on February 9, 2013, are required to report on almost any activity in which they or their affiliate engages if the activity involves Iran. The reportable activities include even some permissible activities. Moreover, the SEC is required to publish on its website the information provided in the disclosure. These reports also trigger an automatic investigation into possible sanctions violations by the President. Covered reportable activities include the following:

Section 5(a) and (b) of the Iran Sanctions Act: :

- Investing $20 million or more annually (or making a combination of investments of at least $5 million each, which amounts to at least $20 million in total in a 12-month period) in Iran's ability to develop petroleum resources.
- Providing goods, services, information, technology or support valued at $1 million or more (or that, during a 12-month period, has an aggregate fair market value of $5 million) that facilitates the maintenance or expansion of Iran's domestic production of refined petroleum products.
- Providing goods, services, information, technology or support valued at $1 million or more (or that, during a 12-month period, has an aggregate fair market value of $5 million) that contributes to Iran's ability to import refined petroleum products, including the provision of financing, shipping, insurance, or reinsurance.
- Facilitating Iran's efforts to obtain or develop chemical, biological, conventional or nuclear weapons or to support terrorism.

Section 104(c)(2) of the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010

- Facilitating the efforts of the Government of Iran (and IRGC) to acquire or develop WMD or delivery systems or provide support for a Foreign Terrorist Organization (FTO)
- Facilitating the activities of a person subject to the UN Security Council's Iran sanctions resolutions. Engaging in money laundering to support Iran's weapons of mass destruction program or its support for terrorism, or in support of a person subject to UN sanctions.
- Facilitating efforts by the Central Bank of Iran or any other Iranian financial institution in support of Iran's weapons of mass destruction program or terrorist activities, or in support of a UN-sanctioned person.

- Facilitating a significant transactions or transactions or provides significant financial services for the Iranian Revolutionary Guard Corp or a financial institution whose property and interests in property are blocked as a result of that entity's connection with Iran's proliferation of weapons of mass destruction or support for terrorism.

Amended Section r of Section 13 of the SEC Act of 1934

- Conducting any transaction or dealing with any person blocked under certain US Executive Orders concerning support for terrorism (EO 13224) or weapons of mass destruction proliferation (EO 13382).
- Conducting any unauthorized transaction or dealing with any person identified by the Treasury Department as being the Government of Iran; owned or controlled by the Government of Iran; or acting on behalf of the Government of Iran (directly or indirectly).

Section 105(a) of CISADA

- Transferring or facilitating the transfer of goods or technologies likely to be used by the Government of Iran to commit serious human rights abuses against the people of Iran including firearms, rubber bullets, police batons, pepper or chemical sprays, stun grenades, electroshock weapons, tear gas, water cannons or surveillance technology or sensitive technology.
- Providing services with respect to the goods/technologies described above after those goods/technologies are transferred to Iran.

For more information on Iran Sanctions, please click here to read our prior client alert.

2) CBP To Begin Voluntary CEE Test Program

On August 28, Customs and Border Protection (CBP) announced the beginning of a test program designed to further develop the new Centers for Excellence and Expertise (CEE). The announcement, published in the Federal Register, provides for the waiver of certain regulations effectively transferring port director authority to the CEE directors for various import matters. Under the test program, the ports will forward entry documents to the CEEs and the CEEs will handle many post entry functions including entry cancellations, rejected ACS entry summaries, Requests for Information (CF-28), Notice of Action (CF-29), Requests for Internal Advice, extensions and suspensions of liquidation, protests and prior disclosures.

The current CEEs operate in four locations covering the following industries: Electronics (Los Angeles); Pharmaceuticals, Health & Chemicals (New York); Automotive & Aerospace (Detroit); and Petroleum, Natural Gas and Minerals (Houston). The CEEs are "virtual" in that they include industry expert specialists in other locations. The Centers provide a centralized, single contact for importers in an industry, utilizing account management principles.

CBP will conduct the CEE test program beginning on October 12, 2012 and plans to continue the test through 2015; interested companies may apply on a rolling basis throughout the duration of the test. Priority will be given to those "trusted partners" already enrolled in the Importer Self-Assessment (ISA) program or certified under Customs-Trade Partnership Against Terrorism (C-TPAT). CBP will assign participants to a CEE based on the company's highest percentage of imports within a particular industry

(by tariff classification) despite a company's multi-industry footprint. This allows CBP to pair each company with an account manager to provide a single point of contact for any import issues.

Importers considering whether or not to participate in the voluntary test should weigh the possible benefits and risks associated with the program. For instance, test participants should see fewer inspections, fewer requests for information and notices of action, fewer cargo delays, etc., resulting in lower costs for the company as CBP shifts enforcement resources on non-participants. However, CEE specialists utilizing industry expertise may apply greater scrutiny to participant transactions, leading to possible penalties and sanctions for "misconduct under the test."

Importers may file comments concerning the test program by sending an email with the subject line “Comment on CEE test” to CEE@dhs.cbp.gov.

3) China Continues to Challenge U.S. Countervailing Duties

After failing to reach a mutually agreeable solution during the mandatory 60 day consultation period, China has formally requested the initiation of a dispute with the United States over the allegedly improper application of countervailing duties to $7.3 billion of Chinese imports. The dispute involves 22 separate U.S. countervailing duty cases and principally arises out of China's disagreement that various state-owned enterprises should be considered as "public bodies."

The case is related to the WTO Appellate Body's 2011 ruling that the United States had improperly applied countervailing duties and non-market economy antidumping duties to certain Chinese imports which in certain cases resulted in the "double counting" of Chinese subsidies. The double counting concern has been the subject of the ongoing "GPX" litigation in the United States.

4) Argentina Trade Disputes Heat Up

August witnessed an escalation of the ongoing trade disputes between Argentina and its trading partners involving elements of its import licensing regime. On August 21, Argentina announced it intended to seek consultations with the United States as a first step in formally initiating a WTO dispute on alleged U.S. barriers to Argentinean beef and citrus exports. The announcement came several hours after the U.S. and Japan separately requested consultations with Argentina over Argentina's import licensing policies.

The U.S. and Japan's requests were only two of the four initiated against Argentina with respect to its licensing regime; the European Union requested consultations with Argentina in May 2012 while Mexico requested consultations on August 24. Argentina has also retaliated against the European Union's request for consultations byinitiating their own dispute with Spain over that country's restrictions on Argentina's biofuel exports.

5) US-India BIT Negotiations

While the United States and India continue BIT negotiations at a healthy pace, there are at least four categories of issues that present significant impediments to the conclusion of a high-standard agreement.

- **Market access**: While India will likely agree that the agreement ought to cover the "pre-establishment" phase of investment, it will almost certainly seek to maintain broad exceptions to this coverage, across a range of sectors of commercial interest to U.S. companies (such as retail, financial services, defense, and energy). The United States will want to greatly limit the number and scope of these exceptions.

- **Performance requirements**: Consistent with its National Manufacturing Policy, National Telecom Policy, and other similar measures, India will want to maintain, at both the federal and state and local levels, the right to impose local content requirements, technology transfer requirements, and other "performance requirements" on investors in its territory. The United States strives to substantially prohibit such measures, and so it will be a major challenge to find an acceptable middle ground.

- **Labor and environment**: India generally opposes including affirmative obligations with respect to labor and environmental protection in its investment agreements. The United States demands such provisions and, indeed, just enhanced these demands as a result of changes introduced in the 2012 model BIT. Whether or not a final agreement includes such provisions will likely be decided at a senior political level.

- **Investor-State arbitration**: While India has traditionally agreed to investor-State arbitration provisions, recent losses and challenges have caused its domestic political establishment to question the benefit to India of such a mechanism. Two things will have to happen in order for the two sides to agree on an acceptable package of provisions. First, India will have to make a threshold decision to include such provisions in principle. Second, the United States will have to agree to significant procedural safeguards in these provisions, potentially beyond those already contained in the U.S. model approach.

THIS MONTH IN TRADE – OTHER NEWS

SEC Disclosure on Conflict Minerals

On August 22, the Securities and Exchange Commission (SEC) adopted a long-delayed rule requiring importers to disclose the use of certain conflict minerals originating from the Democratic Republic of the Congo (DRC) or an adjoining country. The rule was one of the last remaining elements of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and is intended as part of the effort to reduce conflict in the DRC region financed by the exploitation and trade in the minerals, including gold, tantalum, tin and tungsten ("conflict minerals"). These minerals are basic component minerals in products across a wide array of industries, ranging from electronics to auto parts.

Broadly speaking, the final rule requires all companies - U.S. an foreign - who are required to file reports with the Securities and Exchange Commission (SEC) to determine if conflict minerals are "necessary to functionality or production of a product manufactured" or contracted to be manufactured by that company. If so, the company is required to analyze the country of origin of the conflict minerals, to publicly disclose the result of this research. If the conflict minerals originate in the DRC or a neighboring country the company is required to submit a Conflict Minerals Report to the SEC detailing the due diligence steps it has undertaken to determine whether its conflict minerals were sourced from entities that helped fund the conflict in the DRC. The report must be audited by a third-party. The Final Rule does incorporate a number of proposals, including exempting

recycled material and extending the implementation period for small entities, designed to reduce the estimated 2 million hours and $1.2 billion in annual compliance costs.

New ITA System Allows Online Access To Trade Proceeding Documents

In August 2012, the International Trade Administration (ITA)implemented the second phase of development for its ACCESS (Antidumping and Countervailing Duty Centralized Electronic Service System) electronic document filing system. IA ACCESS is the repository for all documents filed in an AD/CVD proceeding conducted by the U.S. Department of Commerce, Import Administration (IA).

Registered electronic filers use IA ACCESS to submit documents to the record of an AD/CVD proceeding. The new features in phase 2 of IA ACCESS allow any registered users, whether filers or guest users, online access to search and view all public versions of documents submitted to the proceeding record since IA ACCESS was initially launched in August 2011. The final release stage for IA ACCESS development, scheduled for 2013, will allow certain authorized parties access to proprietary documents in the system. Interested parties may register for an account with IA ACCESS online or contact ia_access@trade.gov for more information.

A Full House for CBP East Coast Trade Symposium

U.S. Customs and Border Protection ("CBP") will hold the 2012 East Coast Trade Symposium, "Expanding 21st Century Global Partnerships," at the Renaissance DC Downtown Hotel in Washington, D.C. on October 29-30. The conference will feature panel discussions covering a variety of topics such as global supply chain security, Beyond the Border initiatives, Centers for Excellence and Expertise, the role of the broker, ACE and trusted trader programs. Registration for the onsite event is already full; however, registration remains open for CBP's live webcast of the symposium.

CROWELL AND MORING SPEAKS

Jonathan (Josh) S. Kallmer will speak on "The Nuts and Bolts of Treaties: Negotiation, Ratification and Interpretation" at the International Chamber of Commerce's Seventh Annual New York Conference: Arbitration with States and State Entities under the ICC Rules in New York City, September 10, 2012.

John B. Brew will be speaking on "Getting Customs Valuation Right" and moderating a panel on "Key Government Agencies" at the American Conference Institute (ACI)'s U.S. Customs Compliance "Boot Camp" at the Washington Plaza Hotel, November 27-28, 2012, in Washington, D.C. Please note: Crowell clients attending ACI events receive a discount; please contact your Crowell representative for details.

Cari N. Stinebower will speak on "Doing Business in Burma/Myanmar: What You Can and CANNOT Do Under New, Eased Sanctions Restrictions," at ACI's OFAC Boot Camp, in New York City, December 5-6, 2012.

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

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