

CLIENT ALERT

This Month in International Trade - December 2014

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TOP TRADE DEVELOPMENTS

Russia/Ukraine Update: Fresh Diplomatic Effort to End Crisis; Russian Economy Continues Slide; New Eurasian Economic Union Stands Up

Leaders from France and Germany will join Russian and Ukrainian Presidents Putin and Poroshenko in **Kazakhstan on January 15** in a new bid to find a diplomatic solution to the crisis in Ukraine. News of the summit comes as the first peace talks since September were suspended indefinitely after only one day of meetings on December 24. The only tangible result of the Christmas Eve talks was an agreement for a prisoner exchange, which was conducted on December 26. Approximately 225 separatists being held by Ukraine were released, while the rebels turned over 150 Ukrainian servicemen.

Amidst the ongoing crisis, the **Russian economy** continues to suffer under the weight of economic sanctions and falling prices for oil, its principal export. The rouble lost 40 percent of its value in 2014 and inflation in Russia is now estimated to be 11.4 percent. Russia's Finance Minister believes the economy will contract by 4 percent in 2015, while the Central Bank expects 4.5 percent.

It is unknown what effect the current economic downturn in Russia will have on the new Eurasian Economic Union (EEU), the "Single Economic Space (SES) of Belarus, Kazakhstan, Armenia, and Russia," which formally came into existence on January 1st. The EEU is intended to build upon an existing customs union by further integrating member state economies and reducing regulatory barriers to trade. President Putin's ambition is for the EEU to eventually become a key player in the world economy and to expand its influence by adding other countries from the post-Soviet region. The first such addition is Kyrgyzstan, set to formally join in May.

The EEU adds one more consideration for companies operating in the region. On top of navigating the complex economic sanctions regime against Russia, the EEU, like the European Union, is moving to adopt common standards and regulations, meaning companies will need to monitor these evolving policies, while maintaining compliance with sanctions directed at Moscow.

For more information, contact: Salomé Cisnal De Ugarte, Cari Stinebower, Dj Wolff, Lorenzo Di Masi, Edward Goetz

Obama Administration Clarifies Scope of Export Restrictions on Crude Oil: Lease Condensate Eligible for Export

During the week after Christmas, the U.S. clarified that **ultralight oil known as lease condensate is eligible for export** under the current Export Administration Regulations (EAR). The United States imposes "short supply" export controls on crude oil, effectively banning its export in all but a limited number of circumstances. The U.S. petroleum industry has been aggressively lobbying for a relaxation or removal of these restrictions to support the booming U.S. shale business as well as to help mitigate some of the effects of the collapsing global price in oil. The incoming, Republican-controlled Congress is expected to re-examine and possibly pass legislation lifting the ban on the export of U.S. crude oil.

In the interim, the Bureau of Industry and Security (BIS) posted new FAQs clarifying the scope of existing restrictions. Under the EAR, "lease condensate" is considered to be crude oil; however Part 754.2(a) of the EAR states lease condensate that has been processed through a **crude oil distillation tower is not crude oil but a petroleum product. Petroleum products are subject to few export restrictions.**

Several companies had already been exporting lease condensate oil based on Part 754.2(a) and previous BIS rulings; however, others have been waiting for additional clarification from BIS that the limited processing to which lease condensate is subjected was sufficient to meet the criteria of Part 754.2. Eric Hirschhorn, Under Secretary of Commerce for Industry and Security, said BIS published the FAQs to "...clarify how it implements these regulations [EAR], informed by a review of technological and policy issues, together with inter-agency consultations."

To assist producers unsure of whether their product has been processed sufficiently to qualify as lease condensate, BIS identified a list of factors – including whether the process materially transforms the crude oil, the change in API gravity, the

purpose of the product, etc – it would consider when determining if a product has been "processed through a crude oil distillation tower." In the same FAQ (#4), BIS noted that the factors listed are not intended to be categorical or exhaustive.

Crowell will be closely monitoring administrative and legislative developments in this area as the new Congress convenes this month.

For more information, contact: Cari Stinebower, Jennifer Waters, Dj Wolff, Edward Goetz

DOJ to Importing Community: Trek Leather Decision NOT Open Season on Individual Corporate Officers

At the U.S. Court of International Trade's Judicial Conference last month, Department of Justice (DOJ) trial attorney Joshua Kurland said that the Court of Appeals for the Federal Circuit's September en banc decision in *U.S. v Trek Leather Inc.* was **consistent with DOJ's approach to identifying and seeking liability from purportedly negligent importers.**

In its decision, the Court of Appeals for the Federal Circuit agreed with DOJ that Trek's president, a corporate officer, could be held liable for penalties related to the submission of false commercial and import-related documentation to CBP.

Although many in the trade community considered the decision to broaden the scope of the "persons" culpable under 19 U.S.C. § 1592, Kurland explained that DOJ had always viewed those definitions in broad terms.

While the Trek decision presents unique issues for importers, an interesting and perhaps obvious fact was also shared by Kurland – in future penalty disputes, DOJ will pursue those persons, whether corporate or individual, that are in the best position to pay the penalties sought by CBP.

For more information, contact: John Brew, Jini Koh, Edward Goetz

Implementing U.S. – Cuba Relaxations: OFAC, BIS to Amend Regulations in 2015

Per an [FAQ](#) released by the Office of Foreign Assets Control (OFAC) on December 17, both OFAC and the Bureau of Industry and Security (BIS) will be amending the Cuban Assets Control Regulation (CACR) and the Export Administration Regulations (EAR), respectively, at a date to be determined in 2015, in order to incorporate changes driven by the new U.S. – Cuba Policy announced by the President last month.

OFAC emphasized that nothing has been implemented yet, so companies should be adhering to current regulations.

For in-depth analysis on the President's remarks, please see Crowell's [Client Alert](#).

For more information, contact: Cari Stinebower, Dj Wolff, Edward Goetz

Commerce Resolves Sugar Dispute with Mexico

On December 19, the U.S. signed agreements with Mexico to suspend the antidumping (AD) and countervailing duty (CVD) investigations of refined sugar. The interim terms agreed to in October were slightly modified in the final deal to reduce the amount of product that Mexico can ship to the U.S. and to raise the mandatory floor prices for both refined sugar and all other sugars.

Under the final agreement, the export of refined sugar from Mexico to the U.S. is capped at 53 percent of Mexico's total sugar exports, instead of the 60 percent specified in the interim deal. The Mexican government will allocate the amount of sugar each Mexican sugar producer/exporter can export to the United States and will establish export licensing for sugar. Sugar exports from Mexico cannot enter the United States without an export license.

To prevent dumping in the U.S., the floor price for refined sugar rose from 23.57 cents per pound to 26 cents, while all other sugars went from 20.75 cents per pound to 22.25 cents.

With the agreements complete, Commerce will instruct CBP to **terminate** the suspension of liquidation and **refund** any cash deposits collected as a result of the preliminary AD and CVD investigation determinations consistent with the relevant provisions of U.S. antidumping and countervailing duty law.

For more information, contact: Dan Cannistra, Alex Schaefer, Jini Koh, Edward Goetz

What about Congress? Reaching Nuclear Deal Between Major Powers and Iran May Be Easier Than Lifting U.S. Sanctions

The P5+1 (United States, UK, France, Germany, Russia, and China) and Iran are working under the second extension of the Joint Plan of Action (JPOA) for containing Iran's nuclear program and U.S. Secretary of State Kerry is optimistic both sides will reach political agreement on a final deal by the new **March 1, 2015 deadline**. Under the extended JPOA, the parties would then need to finalize technical details by **June 30, 2015**.

If the parties are able to reach agreement, the United States is then confronted with several challenges to resolving the potentially more difficult question: how does it go about lifting its most complicated sanctions regime?

First, the U.S. has imposed a myriad of sanctions on Iran, much of which is codified in law. Since the 1979 revolution, the White House has issued **16 executive orders** and Congress has passed **nine acts** imposing punitive sanctions on Iran. Some of this legislation has built in waiver authority which would enable the President to incrementally relax sanctions, but much of it does not. **The President will therefore need to negotiate with the new Republican-controlled Congress whose members (including some Democrats) have indicated they want a far more draconian deal than is being negotiated.**

Second, the U.S. sanctions regime targets a number of issues beyond nuclear proliferation including, but not limited, to support for terrorism and human rights violations. By some estimates, **80 percent** of U.S. sanctions target more than just nuclear proliferation. The JPOA negotiations are focused only on Iran's nuclear program and the United States has indicated it plans to relax **only** those nuclear-related sanctions in the event of a successful deal.

Finally, further complicating the U.S. negotiating position, the new Republican-controlled Congress has threatened to pass new Iran sanctions early in 2015. In reaction to the extended JPOA, Senators McCain (R-AZ), Graham (R-SC) and Ayotte (R-NH) issued a joint statement noting "We believe this latest extension of talks should be coupled with increased sanctions and a requirement that any final deal between Iran and the United States be sent to Congress for approval."

While the President has recently shown he is willing to take dramatic executive action to reduce sanctions in the case of Cuba, he will almost certainly require Congressional involvement and approval to implement any negotiated agreement with Iran. These domestic negotiations may yet prove the biggest hurdle to any lasting agreement.

For more information, contact: Cari Stinebower, Dj Wolff, Edward Goetz

400 Changes to EU's Dual-Use Control List Effective January 1

The EU implemented a revised dual-use list on January 1. The list controls the **export, transit, and brokering of dual-use items** - goods, software, and technology normally used for civilian purposes, but which might have military applications or contribute to the proliferation of weapons of mass destruction.

The updated list takes into consideration the latest commercial and technological developments, and also reflects growing security concerns regarding the use of surveillance technology and cyber tools that could be misused in violation of human rights or against the EU's security.

The new Regulation introduces some 400 changes to the list. These include:

- changes to technical parameters for nuclear reactor parts and components, such as frequency changers;
- new controls on certain chemicals, such as plant pathogens;
- new controls on special materials, electronics and computers, telecommunications and information security equipment, sensors and lasers, aerospace and propulsion, underwater survey equipment, carbon monoxide lasers, and hydro-acoustic sensors.

The new Regulation also removes from the list certain items and technologies which have become more widely available and represent a lower security risk, and therefore do not need to be subject to control any longer.

For more information, contact: Salomé Cignal De Ugarte, Cari Stinebower, Dj Wolff, Lorenzo Di Masi, Edward Goetz

African Growth and Opportunity Act: 2015 Beneficiary Changes

Each year, the President determines countries eligible for the African Growth and Opportunity Act (AGOA). **For 2015**, Guinea-Bissau's benefits were reinstated, while those of South Sudan and The Gambia were removed. Eligibility criteria for the AGOA is determined by whether or not a country met or made "continual progress" on "the establishment of a market-based economy,

rule of law, economic policies to reduce poverty, protection of human rights and worker rights, and efforts to combat corruption."

Those countries who meet the criteria are able to enjoy trade preferences under the U.S. Generalized System of Preferences tariff treatment and its third-country fabric provision. It also allows nearly **6,800 products to enter the U.S. duty-free.**

AGOA is up for renewal this year, expiring on September 30. Since 2000, it has **doubled trade** with eligible African nations, who are now asking for a long-term extension. The President has also begun a review to determine how AGOA can be improved to further increase trade with and within Africa.

For more information, contact: John Brew, Edward Goetz

Upcoming Changes for Importers: Revised Labeling Requirements for Heating and Cooling Equipment & New Use Rule for Ethylene Glycol Ethers

Revised Labeling Requirements for Heating and Cooling Equipment (Effective April 6, 2015)

- The Federal Trade Commission is updating its label requirements for heating and cooling equipment and is removing information from furnace labels about regional conservation standards.

New Use Rule for Ethylene Glycol Ethers (Effective February 17, 2015)

- This rule will require persons who intend to manufacture (**including import**) or process any of the seven ethylene glycol ethers for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing such manufacture or processing. The required notifications would provide EPA with the opportunity to evaluate the intended use and, if necessary based on the information available at that time, an opportunity to protect against potential unreasonable risks, if any, from that activity before it occurs.

For more information, contact: John Brew, Jini Koh, Edward Goetz

Confidentiality of Export License Applications to Commerce Remains Intact

Congress and the Administration acted to preserve the confidentiality of export license application information submitted to the Department of Commerce for items subject to the Export Administration Regulations (EAR). Among other things, the Naval Vessel Transfer Act of 2013, Public Law 113-276, signed into law on December 18, 2014, renews Section 12(c) of the Export Administration Act of 1979 (EAA), which **exempts export license information from disclosure under the Freedom of Information Act (FOIA)** absent a determination by the Secretary of Commerce to release the information.

The move is expected to forestall a decision from the California Court of Appeals for the Ninth Circuit regarding a 2013 district court ruling that the Department of Commerce could not rely on Section 12(c) to withhold license application information from disclosure under FOIA because Congress had failed to renew the EAA, including Section 12(c), and Executive Order 13222 issued under the International Emergency Economic Powers Act to maintain the EAR in effect did not constitute a statute within the scope of the relevant FOIA Exemption. The new law makes clear that Section 12(c) has been in effect since the EAA lapsed in 2001 and will remain in effect for the next four years, and that the **statutory language is covered by the FOIA exemption**.

Although the new law did not amend the AECA to allow for these same FOIA protections, courts have long found certain information included in **export license applications to the Department of State protected under Exemption 3 of the FOIA**.

Additionally, consistent with the Administration's Export Control Reform initiative, the new law amends the Arms Export Control Act (AECA) to codify the President's delegation of authority to the Department of State under Executive Order 13222 to issue licenses for the export of items subject to the EAR, provided that the items are to be used "in or with" defense articles controlled on the United States Munitions List. The revised language specifies that items "subject to the EAR" exported under a Department of State license remain under the jurisdiction of the Department of Commerce with respect to any subsequent transactions, for example, any re-exports or retransfers of the items.

For more information, contact: Chris Monahan, Jana del-Cerro, Edward Goetz

AGENCY ENFORCEMENT ACTIONS

U.S. Customs and Border Protection (CBP)

- In December, CBP released an Anti-Dumping (AD) and Countervailing Duty (CVD) Enforcement Update, which included:
 - Selected Fiscal Year 2014 Highlights;
 - New Cases Targeting AD Duty Evasion in the U.S. Court of International Trade (CIT); and
 - Three Cases of Importers Contesting CBP's Requests for Single Transaction Bonds as Additional Security for AD/CVD Concerns in the CIT.

Department of Justice (DOJ) and Securities and Exchange Commission (SEC)

- Alstom S.A. (Alstom), a French power and transportation company, pleaded guilty and agreed to **pay a record \$772.3 million fine** to resolve charges that it violated the FCPA by falsifying its books and records and failing to implement adequate internal controls.
 - Alstom admitted its criminal conduct in a widespread scheme involving tens of millions of dollars in bribes in countries around the world, including Indonesia, Saudi Arabia, Egypt and the Bahamas.
 - In addition, Alstom Network Schweiz AG, formerly Alstom Prom, Alstom's Swiss subsidiary, **pleaded guilty** to conspiracy to violate the anti-bribery provisions of the FCPA.
 - Alstom Power Inc. (Alstom Power) and Alstom Grid Inc. (Alstom Grid), **two U.S. subsidiaries**, both entered into **deferred prosecution agreements**, admitting that they conspired to violate the anti-bribery provisions of the FCPA.

- The DOJ charged five individuals, including four corporate executives of Alstom and its subsidiaries, for alleged corrupt conduct involving Alstom. **Three have pleaded guilty, the fourth is awaiting trial.**
- A **high-ranking member of the Indonesian Parliament** was also convicted in Indonesia of accepting bribes from Alstom, and is **currently serving a three-year term of imprisonment.**
- Dallas Airmotive Inc., a provider of aircraft engine maintenance, repair and overhaul services, admitted to violations of the FCPA and agreed to **pay a \$14 million criminal penalty** to resolve charges that it bribed Latin American government officials in order to secure lucrative government contracts.
 - The company also entered into a **deferred prosecution agreement** with the Department of Justice, with one count of conspiring to violate the FCPA and one count of violating the FCPA's anti-bribery provisions.
- The SEC charged Avon Inc. with violating the FCPA by failing to put controls in place to detect and prevent payments and gifts to Chinese government officials from a subsidiary. Avon agreed to **pay \$135 million** to settle the SEC charges and a parallel criminal case brought by the Department of Justice.
- The SEC charged Bruker Corporation, a global manufacturer of scientific instruments, with violating the FCPA by providing non-business related travel and improper payments to various Chinese government officials in an effort to win business. The company agreed to **pay \$2.4 million** to settle the charges.

Bureau of Industry and Security (BIS)

- An Indicted Chinese National was extradited from the United Kingdom to the U.S. to face charges for **conspiring to export pressure transducers to Iran** which can be used in the production process of weapons-grade uranium.
- The Chief Executive Officer for Hetran, Inc. was sentenced to 12 months' probation for **attempting to illegally ship a lathe machine to Iran** in violation of U.S. export regulations. Hetran was also fined \$337,500 in cash and an additional \$500,000, which was suspended.

For more information, contact: Edward Goetz

OTHER AGENCY ACTIONS

U.S. Customs and Border Protection (CBP)

- Signed three Customs Agreements with Singapore:
 - A U.S. – Singapore Customs Mutual Assistance Agreement (CMAA);
 - A Mutual Recognition Arrangement (MRA) between U.S. Customs and Border Protection's Customs-Trade Partnership Against Terrorism (C-TPAT) and Singapore's Customs' Secure Trade (STC) Partnership; and
 - A joint statement regarding U.S. Customs and Border Protection's Global Entry Program.

Office of Foreign Assets Control (OFAC)

- Posted 3 new FAQs providing clarification of U.S. sectoral sanctions related to Ukraine.

- Issued two General Licenses (GL) related to [Executive Order 13685 of December 19, 2014](#) "Blocking Property of Certain Persons and Prohibiting Certain Transactions with Respect to the **Crimea Region of Ukraine**."
 - [GL 4](#) - "Authorizing the Exportation and Re-exportation of Agricultural Commodities, Medicine, Medical Supplies, and Replacement Parts;"and
 - [GL 5](#) - "Authorizing Certain Activities Prohibited by Executive Order 13685 of December 19, 2014 Necessary to Wind Down Operations Involving the Crimea Region of Ukraine."

Bureau of Industry and Security (BIS)

- Posted a series of FAQs on its new "Boilerplate License Language," which is designed to eliminate redundancy by not including conditions specifying requirements and prohibitions already in the EAR on licenses.

U.S. Trade Representative (USTR)

- The USTR is **seeking comments** to identify **Intellectual Property Rights (IPR)** issues within **foreign countries** that deny adequate and effective protection of intellectual property rights. Countries identified with such issues are placed on the USTR's Priority Watch List or Watch List, which then are the focus of increased bilateral attention concerning the problem areas.
 - Interested parties are strongly encouraged to submit comments via www.regulations.gov, under docket number **USTR-2014-0025**.
 - Comments will be accepted until **February 6, 2015**.
 - Particularly interested parties can also participate in a public hearing, which is tentatively scheduled for **February 24, 2015**.

For more information, contact: Edward Goetz

CROWELL & MORING SPEAKS

SAVE THE DATE: The International Trade Group will be hosting its "This Year in Trade – 2015" Webinar on February 4, 2015 at 11:00 am ET.

- Should you expect anything different in 2015? Our Crowell & Moring team will discuss predictions for the coming year. Topics will include likely trends and issues in Export Controls (US/EU perspectives), Economic Sanctions, Anti-money Laundering, Import Litigation, Anticorruption/FCPA, Defense (Buy America, ITAR, CFIUS), and TTIP/TTP. Presenters include some of the most experienced attorneys in the field and we hope you can join us for this free webinar. Everyone who receives this newsletter will also receive an invitation via email next week. If you have immediate questions, please contact [Jennifer Rivers](#).

Cari N. Stinebower will be speaking at the American Conference Institute's [5th Annual Forum on Anti-Money Laundering \(AML\) and Office of Foreign Assets Control \(OFAC\) Compliance for the Insurance Industry](#) on January 20 in New York. Her session will

focus on "Ensuring Compliance and Avoiding Sanctions in an Uncertain and Shifting Landscape: Critical Insights and Best Practices for Insurance and Reinsurance Companies Regarding Russia, Iran, and Other Known and Potential Hotspots."

John Brew will be a panelist at the Sports and Fitness Industry Association's (SFIA) Litigation and Risk Summit Management Summit on February 2 in Las Vegas, NV. His panel will be examining "Border Crossing Issues for Products."

Jonathan (Josh) Kallmer will be speaking at the International Sweetener Colloquium in Orlando, Florida on February 10. His topic is "Perspectives on the Trans-Pacific Partnership (TPP) & Transatlantic Trade and Investment Partnership (T-TIP) Agreements."

SAVE THE DATE: Crowell & Moring will be hosting its First Annual In-House Affirmative Recovery Conference on March 19 and 20 at the Ritz Carlton Laguna Niguel in Dana Point, CA.

- **Over the past several years**, Crowell & Moring has distributed over **\$1 billion to our clients** through in-house affirmative recovery programs.
- Long at the leading edge of recovery and opt-out litigation, Crowell & Moring has been **proactively identifying and successfully pursuing** recovery opportunities for corporations for more than two decades.
- The **program** will cover a variety of legal recovery opportunities for companies (e.g., antitrust, tax and intellectual property). Additionally, Dan Cannistra and John Brew will speak on Global Trade Recovery opportunities.

Contact Dan Sasse or Deb Arbabi with any questions.

The seminar is free and will include dinner for participants and their guest on Thursday, March 19 and breakfast and a light lunch for participants on Friday, March 20. A room-block offering standard rooms at the rate of \$289 per night, plus fees and taxes, will be available for participants on a first-come, first-served basis until February 18, 2014.

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

John B. Brew

Partner – Washington, D.C.
Phone: +1 202.624.2720
Email: jbrew@crowell.com

Edward Goetz

Manager, International Trade Services – Washington, D.C.
Phone: +1 202.508.8968
Email: egoetz@crowell.com

Alexander H. Schaefer

Partner – Washington, D.C.
Phone: +1 202.624.2773
Email: aschaefer@crowell.com

Daniel Cannistra

Partner – Washington, D.C.
Phone: +1 202.624.2902
Email: dcannistra@crowell.com

Jennifer N. Waters

Partner – Washington, D.C.
Phone: +1 202.624.2715
Email: jwaters@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

Maria Alejandra (Jana) del-Cerro

Partner – Washington, D.C.
Phone: +1 202.624.2843
Email: mdel-cerro@crowell.com