

# CLIENT ALERT

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## Customs, Imports, and Trade Remedies

### New Customs and Trade Bill Focused on Strong Enforcement and Facilitation Likely To Be Enacted

On December 9, following a bicameral conference committee to reconcile the House and Senate versions, Congress released the Trade Facilitation and Trade Enforcement Act of 2015 (ENFORCE Act), a major customs and international trade bill designed to modernize U.S. Customs and Border Protection's (CBP or Customs) procedures, promote trade facilitation, prioritize certain trade issues, and strengthen enforcement of U.S. international trade laws. Notably, the Act provides the Administration multiple new tools to achieve these goals, including:

- the establishment of formal duty evasion investigation and prevention programs;
- importer risk assessment and importer of record programs;
- new requirements that customs brokers identify importers;
- import-related intellectual property rights enforcement initiatives;
- changes in classification and duty rates for certain textile and apparel imports;
- an interagency Import Safety Working Group;
- trade facilitation provisions related to the *de minimis* value for duty-free entry, returned imports, residue of cargo, and duty drawback;
- increased cooperation and partnerships with the private sector; and
- an expanded State Trade Expansion Program.

The House passed the ENFORCE Act by a vote of 256-158 on December 13, and the Senate is expected to vote on it in early 2016 (without amendment).

For a detailed summary of the new measure, please see [Crowell's analysis of the bill's provisions](#).

*For more information, contact: John Brew, Frances Hadfield, Benjamin Blase Caryl*

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### Fed Circuit: Gov't Cannot Change Culpability Alleged in Original Customs Penalty Claim

On December 1, in *United States v. Nitek Electronics, Inc.*, the U.S. Court of Appeals for the Federal Circuit agreed with the U.S. Court of International Trade (CIT) that the Government is administratively barred from seeking a penalty claim in court at a culpability level that differs (even if lower) than the final penalty determined by U.S. Customs and Border Protection (CBP).

In 2004, CBP issued a letter to Nitek claiming its shipments of pipe fitting components used for gas meters was misclassified under the U.S. Harmonized Tariff Schedule (HTS) and claimed payment for lost duties. In 2011, CBP issued Nitek a final penalty claim, with a culpability level of gross negligence.

Thereafter, the Government brought suit at the CIT to recover the duties and a penalty based on negligence rather than gross negligence as determined by the agency in the final penalty notice. The CIT dismissed the penalty claim for failure to state a

claim for which relief may be granted. The Court specified that the penalty claim based on negligence was "an entirely new claim," and thus was not properly before the court because the Government failed to exhaust administrative remedies. The Government appealed the dismissal.

The Federal Circuit affirmed the CIT's decision agreeing that the Government failed to exhaust administrative remedies by pursuing a penalty claim based on negligence rather than gross negligence. It stated that the language of the statute and the legislative history support a reading that penalty claims based on fraud, gross negligence, or negligence are separate claims. Thus, the Department of Justice cannot independently enforce a penalty claim in court for a culpability level that was not pursued administratively by CBP.

This decision expands and is consistent with the decision of the court in *United States v. Ford Motor Co.*, in which the court denied the Government's motion to amend its complaint and allege a penalty claim at a higher culpability level than CBP's originally alleged. This decision confirms that the Government cannot pursue penalty claims differing from CBP's final administrative penalty determination.

*For more information, contact: Frances Hadfield, Ade Johnson*

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### **Court of Int'l Trade Instructs Commerce to Reconsider Oven Door Handle Duties**

On December 4, Chief Judge Timothy C. Stanceu of the U.S. Court of International Trade (CIT) determined the Department of Commerce (DOC) must reconsider whether antidumping (AD) and countervailing duties (CVD) on Chinese aluminum extrusions apply to a certain type of oven door handle made by Meridian Products LLC.

Although Judge Stanceu affirmed that the AD and CVD orders apply to two other contested types of appliance handles, he concluded DOC misinterpreted language within the orders and mistakenly determined that a certain type of handle used for oven door assemblies, referred to as a Type B handle, was an "extrusion" as defined in the duty orders. The Type B handle includes certain other parts for assembly—including screws and end caps for installation—that are not covered by the orders, according to the opinion.

In addition, the ruling stated DOC relied on flawed logic to conclude that Type B handles would not be exempt from the duties under an exclusion order for so-called finished merchandise, which applies to imports containing aluminum extrusions as parts that are fully assembled.

Crowell & Moring represents Meridian Products LLC in this matter. Crowell partner Daniel Cannistra said, "We are hopeful that Commerce will use the remand order as an opportunity to meaningfully refine its analytical framework in the aluminum matters."

*For more information, contact: Daniel Cannistra*

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## Commerce Announces Preliminary CVD Determinations on Cold-Rolled Steel

On December 22, the U.S. Department of Commerce (DOC) published its preliminary countervailing duty (CVD) determinations on imports of cold-rolled steel from Brazil, China, India, Korea, and Russia. DOC calculated the following CVD rates:

- Brazil: 7.42 percent of the imports' value;
- China: 227.29 percent;
- India: 4.45 percent;
- Korea: 0.18 to 0.61 percent (*de minimis*, *i.e.*, below 2 percent); and
- Russia: 0.01 (*de minimis*) to 6.33 percent.

As a result, DOC directed U.S. Customs and Border Protection to suspend liquidation of all such entries and require cash deposits for entries above the 2 percent *de minimis* CVD rate. DOC also aligned the final CVD determination with the current final antidumping (AD) determination, which is currently May 8, 2016, but could be extended to July 7, 2016.

*For more information, contact: Daniel Cannistra, Alexander Schaefer, and Benjamin Blase Caryl*

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## Whirlpool Files New Trade Case on Large Residential Washers from China

On December 16, Whirlpool Corporation filed an antidumping (AD) petition on low-priced imports of large residential washing machines from China.

AD and countervailing duty (CVD) orders on large residential washing machines from Korea were imposed in February 2013. In the new petition, however, Whirlpool claims that those orders' "effectiveness has been substantially nullified by the decision of Samsung and LG to relocate production ... to China."

Whirlpool alleges that U.S. imports of washers from Samsung and LG are dumped at levels between 68 and 109 percent of the imports' value.

*For more information, contact: Benjamin Blase Caryl*

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## Commerce Finds Final Duties of Over 500 Percent on Chinese Melamine

On December 28, the U.S. Department of Commerce (DOC) published its final antidumping (AD) and countervailing duty (CVD) determinations on imports of melamine from China with CVD rates of 353.6 percent of the imports' value and AD rates between 154 to 156.9 percent.

On December 2, the International Trade Commission (ITC) rendered an affirmative final injury vote on melamine imports from China, and a negative final vote on imports from Trinidad & Tobago. As a result, DOC will issue AD/CVD orders on melamine imports from China.

Melamine is used primarily in the manufacture of resins for adhesives, surface coatings, laminates, molding compounds, paper treatment, and textile treatment in the automotive, appliance, dinnerware, furniture, fabric, and wood paneling industries.

*For more information, contact: Benjamin Blase Caryl*

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## **Sanctions, Financial Crime, and Anti-Corruption**

### **Iran: Progress Made Toward 'Implementation Day'**

There were several material developments related to Iran and the implementation of the Joint Comprehensive Plan of Action (JCPOA, *i.e.*, the Iran nuclear agreement) during December and early January, including (a) "significant progress" towards the JCPOA's Implementation Day, (b) resolution of the International Atomic Energy Agency's (IAEA) decade-long review of the Possible Military Dimensions (PMD) of Iran's nuclear program, (c) new U.S. Congressional and Executive developments, and (d) increased tension between Iran and its Persian Gulf rival, Saudi Arabia.

#### **JCPOA Implementation Day Developments:**

On December 28, U.S. Secretary of State John Kerry reported significant progress on the path to implementation of the JCPOA, noting a ship departed from Iran to Russia carrying most of Iran's stockpile of low-enriched uranium, totaling more than 11,000 kilograms. The shipment included fuel closest to bomb-grade quality, which could have been used to produce a nuclear weapon with little further enrichment.

The sanctions relief contemplated under the JCPOA will not take effect until the IAEA verifies that Iran has taken several steps to unwind its nuclear program, a day known as 'Implementation Day.' The reduction of Iran's enriched uranium stockpile to less than 300 kilograms was one of the key steps Iran was required to take. Implementation Day is now expected to occur in the First Quarter of 2016.

#### **Possible Military Dimensions of Iran's Nuclear Program**

On December 15, the governing board of the IAEA passed a resolution closing its decade-long inquiry into the Possible Military Dimensions (PMD) of Iran's nuclear program. The IAEA's review of PMD was undertaken in parallel with the JCPOA, but was considered a key feature in the comprehensive deal. Although the IAEA found Iran engaged in activities aimed at developing a nuclear bomb in the past, Iran denied doing so throughout the investigative process. Due to Iran's only partial cooperation in the matter, the IAEA was unable ultimately to reconstruct Iran's past activities in full detail and the IAEA agreed to close the matter for the sake of implementing the JCPOA.

## U.S. Legislative and Executive Developments

Following the attacks in Paris and San Bernardino, a new measure was passed by Congress and signed into law by President Obama on December 18 that prevents visa-free travel to the U.S. for people who are dual nationals of—or who have visited—Iran, Iraq, Syria, or Sudan. Iranian leaders have strongly objected to Iran's inclusion in the new U.S. law. They have also characterized eventual implementation of the measure as a breach of the JCPOA. Iranian Foreign Minister Mohammad Javad Zarif specifically raised the issue with U.S. Secretary of State John Kerry, who replied that Washington remains committed to the JCPOA and that the new requirements could be waived in individual cases. Nevertheless, Iranian leaders insist the measure will adversely affect bilateral relations and effectively constitutes a new sanction against Iran.

Separately, Congressional leaders also began talking about the possibility of new Iran-related sanctions in 2016. The Iran Sanctions Act, originally passed in 1996, is currently scheduled to expire in late 2016. Several Congressmen are seeking to renew the legislation early as a warning to Iran for its recent non-nuclear activity, while the Administration has called for the legislation to be renewed at the end of 2016.

In response to two ballistic missile tests conducted by Iran in late 2015 (in breach of two UN Security Council resolutions), the Obama Administration has reportedly been considering the announcement of new Iran sanctions designations. The new sanctions would allegedly add a number of people to the U.S. list of Specially Designated Nationals (SDN) for their role in developing Iran's ballistic missile program. Iran has responded aggressively, arguing that any new sanctions would be a violation of the spirit, if not the letter, of the JCPOA.

## Increased Tension between Iran and Saudi Arabia

On January 2, Saudi Arabia executed Shiite Cleric Sheikh Nimr al-Nimr on terrorism charges, causing relations between the two countries to collapse when hardline conservatives set the Saudi Arabian embassy in Tehran on fire. Saudi Arabia, Bahrain, and Sudan severed diplomatic relations; the United Arab Emirates, an important trading partner, downgraded relations with Iran. The events brought on by Sheikh al-Nimr's execution have further polarized Sunni-Shiite tensions in the Persian Gulf Region, bringing more uncertainty over the Syrian Peace Talks, as well as U.S. relations with both Saudi Arabia and Iran so close to Implementation Day.

*For more information, contact: Cari Stinebower, Carlton Greene, James Smith, Chris Monahan, Charles De Jager, Dj Wolff*

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## Financial Executives to Certify AML and Sanctions Systems in Place Under Proposed NY DFS Rule

On December 1, New York Governor Andrew M. Cuomo proposed new regulations aimed at strengthening the state's ability to fight terrorist financing, sanctions violations, and money laundering.

The proposed rule, published in the New York Register on December 16, sets out "the required attributes of a Transaction Monitoring and Filtering Program" and requires a "Certifying Senior Officer ... of Regulated Institutions ... to file Annual Certifications ... regarding compliance by their institutions" with these new standards.

Public comments will be accepted through February 17, 2016. Instructions for submitting comments may be found [here](#). The point of contact for "data, views, and arguments" on this proposal is [Gene.Brooks@dfs.ny.gov](mailto:Gene.Brooks@dfs.ny.gov).

The new rule stems from recent anti-money laundering (AML) and sanctions investigations by the New York State Department of Financial Services (NYDFS), which found "serious shortcomings in the transaction monitoring and filtering programs" at financial institutions, as well as "a lack of robust governance, oversight, and accountability at senior levels of these institutions."

The proposed rule requires that financial institutions maintain a "transaction monitoring program" to guard against AML-related risks and a "watch list filtering program" to screen against sanctions and other, similar lists, and sets out minimum requirements for each.

Additionally, the rule for the first time would require the chief compliance officer or functional equivalent of each financial institution to sign and submit an annual certification to NYDFS by April 15 of each year attesting to the institutions compliance with these requirements.

*For more information, contact: Cari Stinebower, Carlton Greene, J.J. Saulino*

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## **Russia Sanctions: U.S. Designates an Additional 121 Persons; EU Extends Its Sanctions Another Six Months**

Despite increased recent cooperation among the U.S., European Union, and Russia relating to the fight against the Islamic State, and corresponding calls by Russia for the relaxation of existing Western measures, both the United States and European Union took actions in December to extend and/or enforce existing Russian sanctions.

First, on December 22, the Office of Foreign Assets Control (OFAC) added a total of 121 new persons to its Specially Designated Nationals and Blocked Persons List (SDN) and its Sectoral Sanctions Identifications (SSI) list. These represented OFAC's first new designations under its Russia-related sanctions since July. According to [Treasury's press release](#), "[This] action is part of OFAC's continued effort to counter attempts to circumvent these sanctions, to further align U.S. measures with those of its international allies, and to provide additional information to assist the private sector with sanctions compliance."

The changes included 34 new additions to the SDN list including: 14 designations for sanctions evasion or for being owned 50 percent or more by a current SDN; six designations for separatist activity; two designations related to the former Ukrainian regime; and 12 designations for operating in Crimea. In parallel, the United States also added 87 persons to its SSI list. Each of these entities were allegedly 50 percent or more owned by current SSIs (VTB Bank, Sberbank, and Rostec) and therefore were already designated by operation of law; OFAC added them to the list to assist in private sector compliance efforts.

In Europe, on December 21, the European Union (EU) extended by another six months, until July 31, 2016, its existing sectoral sanctions against Russia for its involvement in the military conflict in Eastern Ukraine without any alterations. The extension allows for further assessment of whether Russia fully implements its pledges under the terms of the Minsk Agreements, the cease-fire framework signed in February 2015 in Belarus.

The sanctions mainly prohibit EU financial transactions with major Russian state banks and restrict access to EU capital markets for some Russian entities. They also prevent the sale of arms and certain dual-use goods to Russia. In addition, the sanctions limit exports of energy-related equipment and technology to Russia and ban exports of certain energy-exploration equipment.

This decision was expected, given general agreement among the EU Member States on Russia's failure thus far to implement its Minsk Agreements pledges. However, Ukrainian officials were reportedly worried that the EU might adopt a more lenient approach to Russia following recent attempts to collaborate with Russia to address the crisis in Syria and to combat the Islamic State.

*For more information, contact: Cari Stinebower, Salomé Cisnal de Ugarte, Carlton Greene, Chris Monahan, Charles De Jager, Dj Wolff*

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### **UK's Serious Fraud Office (SFO) Secures First-Ever Deferred Prosecution Agreement (DPA)**

On 30 November, the UK's Serious Fraud Office (SFO) gained approval of its first-ever Deferred Prosecution Agreement (DPA) in the first resolution of a case under section 7 of the UK Bribery Act.

Please see Crowell's Client Alert for more information.

*For more information, contact: Thomas Hanusik, Adrian Jones, Alan W.H. Gourley, Cari Stinebower*

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### **FinCEN Responds to Industry Concerns About Cost of Proposed Customer Due Diligence Rule**

On December 24, the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) published notice in the Federal Register of the availability of a Regulatory Impact Assessment (RIA) and Initial Regulatory Flexibility Analysis (IRFA) relating to its proposed new Customer Due Diligence (CDD) rule for banks, brokers and dealers in securities, mutual funds, and futures commission merchants and introducing brokers in commodities.

Please see Crowell's Client Alert for more information.

*For more information, contact: Carlton Greene, Cari Stinebower, J.J. Saulino*

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## Trade Agreement and Investment Updates

### Key Industry Groups Declare Support for TPP; Timing for Congressional Vote Still Uncertain

Several major industry associations formally endorsed the Trans Pacific Partnership (TPP) in December and early January, though most did so with the caveat that they would continue to seek improvements to the agreement. The associations supporting TPP are the National Association of Manufacturers (NAM), the U.S. Council for International Business (USCIB), the National Foreign Trade Council (NFTC), the American Farm Bureau Federation (AFBF), the U.S. Chamber of Commerce, and the Business Round Table (BRT).

Still, it remains unclear whether formal industry support will have an impact on the timing of a Congressional vote on TPP. Concerns regarding TPP expressed by the U.S. pharmaceutical, tobacco, and financial services industries have already blunted enthusiasm for taking up the agreement among key Congressional Republicans. Senate Majority Leader Mitch McConnell (R-Kentucky) declared on December 10 in an interview with the *Washington Post* that TPP should not be voted on before the 2016 general election, citing "significant pushback" from "all over the place." He did not address the possibility of a Congressional vote on TPP during the lame-duck session of Congress after the new President is elected.

On the other hand, Speaker of the House Paul Ryan (R-Wisconsin) said on December 15 that a vote on TPP was "very possible" in 2016, but only if the House Ways and Means Committee approves the substance of the agreement.

At the same time, the Administration and other TPP negotiators are still conducting a legal scrub of the TPP agreement, which could eventually lead to a final TPP agreement with slight differences from the public version currently available.

*For more information, contact: Paul Davies, Dj Wolff, Evan Yu*

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### Cuba: Negotiations Begin on Claims Settlement; Agreement to Resume Commercial Flights

One year after President Obama's announcement of a new U.S.-Cuba policy, the two governments started negotiations on settling U.S. property claims. These claims are considered by many to represent the largest single barrier to a removal of the full U.S. embargo on Cuba. The claims have been certified by the Foreign Claims Settlement Commission, as a result of asset confiscation of U.S. persons and entities by the Cuban government after the 1959 revolution, but have not yet been paid.

The claims, which originated in the 1960s and early 1970s, amounted to \$1.9 billion at the time and are now considered to be valued at about \$8 billion including interest. The first meeting occurred on December 8, when the U.S. Department of State, led by Principal Deputy Legal Adviser Mary McLeod, met with Abelardo Moreno Fernandez, the Cuban Vice-Minister of Foreign Affairs. This negotiation is a major step towards normalization of U.S.-Cuba relations, but is also a necessary legal step towards the lifting of the trade embargo because the Helms-Burton Act of 1996 made resolution of these claims a precondition to ending the embargo.

As part of the negotiations, Cuba has presented demands of its own. The Cuban Ministry of Foreign affairs announced minutes after the meeting that Cuba had presented the United States with its own claims. The Cuban government estimates that the

losses suffered as a consequence of the U.S. trade embargo amount to \$121 billion. Both parties committed to further discussions, but the next steps for resolution of the competing claims have not yet been announced.

At the same time, the U.S. and Cuba agreed, on December 17, to restore scheduled commercial flights between the two countries. The agreement will not go into effect immediately but once implemented will allow airlines to sell tickets directly on their websites. Although it is still prohibited to travel to Cuba for tourism, this new bilateral agreement will facilitate permissible travel under one of the 12 general licenses. The legal prohibitions to direct commercial air travel between the countries had been removed as part of the relaxations, but until this agreement, the two countries had yet to reach a practical agreement regarding how such travel could be conducted.

*For more information, contact: Cari Stinebower, Chris Monahan, Dj Wolff, Mariana Pendas*

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### **WTO Nairobi Declaration Reflects Progress; Fails to Resolve Doha Agenda's Future**

At the close of the World Trade Organization's (WTO) Tenth Ministerial Conference in Nairobi, Kenya, WTO Director General Roberto Azevêdo hailed the Nairobi Ministerial Declaration as "historic" for delivering major, multilaterally-negotiated outcomes. In fact, although agreement was reached on a package to phase out agricultural export subsidies and restrict agricultural export credits, the Declaration reflects last-minute compromise and continued disagreement on the final disposition of the 2001 Doha Development Agenda (DDA).

The U.S., EU, Japan, and a few other developed countries have been strongly in favor of definitively closing the DDA negotiations; however, China, India, South Africa, and many other developing countries have strongly opposed such a move. As a result, the Declaration contains compromise language that fails to settle the issue, acknowledging that many WTO members reaffirm the DDA, but others believe new approaches are needed to achieve progress. This language, proposed by the U.S. and EU, is deemed to favor the interests of developed countries and seems likely to lead to continued disagreement regarding the basis for further negotiations.

Concerning agriculture, the Nairobi Package includes a Ministerial Decision on Export Competition with a commitment to eliminate subsidies for farm exports, regarding which developing countries especially have consistently demanded action. Developed WTO members have thus committed to remove most export subsidies immediately. Developing WTO members will do so by 2018, with some flexibility; while the poorest and food-importing countries are given even more time to cut such subsidies. In addition, least developed countries (LDCs) have gained duty-free and quota-free access to developed countries' markets for cotton.

The Nairobi Ministerial Conference also adopted a decision to facilitate the export of goods by LDCs to developed and developing countries under unilateral preferential trade arrangements by establishing multilaterally agreed guidelines for LDC exports to qualify for preferential market access. Furthermore, LDCs have gained an extended waiver period under which non-LDC WTO members may grant preferential treatment to LDC services and service suppliers.

Finally, negotiations on the expanded Information Technology Agreement (ITA) were concluded in Nairobi by 53 WTO members representing major exporters of IT products. The members reached an agreement on the implementation timetable to eliminate tariffs on 201 IT products with a value estimated by the WTO at over \$1.3 trillion per year.

*For more information, contact: Melissa Morris, Charles De Jager*

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### **Argentina and Venezuela: Signs of a More Favorable Climate for Investors, but Challenges Still Ahead**

Recent elections in South America have created optimism of a policy transition toward a more favorable climate for investment. On November 23, opposition candidate Mauricio Macri won the presidential elections in Argentina, putting an end to a 12-year political dynasty by the leftist Kirchner family. Two weeks later, on December 6, Venezuela's opposition coalition (MUD in Spanish) secured a two-thirds "supermajority" of seats in the unicameral legislature for the first time in 17 years. However, the immediate outcome of these elections is still uncertain.

In Argentina, new President Macri lifted currency controls immediately after taking office on December 10. He has stated that his agenda will be focused on reducing debt and inflation, relaxing regulations to attract foreign investment, and rebuilding Argentina's ties with business-friendly governments such as Chile and Colombia. However, there are still questions about Macri's ability to govern without the support of a majority in congress, which is still controlled by the left despite the presidential electoral defeat. The new government will also face substantial economic challenges, with declining growth and sustained inflation over the past years resulting from contentious policies and exchange controls imposed by the previous administration.

In Venezuela, starting on January 5, 2016, the MUD legislative majority will have the required numbers in Congress to call for a referendum to remove President Maduro from power, impeach Supreme Court justices, pass new laws or rescind existing laws, and even initiate the process to amend or reform the Constitution. However, President Maduro's government continues to have control over the executive, the judiciary, the Electoral Council, the military, the Central Bank, and Stated-owned companies like PDVSA. Furthermore, there are precedents where the government has lost elections but has later been able to take them away from the opposition through quasi-legal mechanisms. This time is not the exception, as the outgoing legislature appointed Supreme Court Justices before the newly elected legislators took office, suspended the appointment of three MUD deputies, and announced the creation of a parallel "National Communal Parliament," as an attempt to usurp the legislature's powers. Moreover, President Maduro is expected to further his economic policies on currency exchange and price controls, which likely will worsen the economic situation in the country. By 2015, the parallel market exchange rate rose from 180 to nearly 900 bolívares per U.S. dollar, and the inflation rate reportedly closed over 200 percent.

While the recent elections leave some room for optimism for foreign investors, both Argentina and Venezuela arguably will continue to confront severe economic, political and legal challenges in 2016. The strict policies adopted by the two governments over the past years will not be overcome easily, so investors should be prepared for another unstable year. In the long-term, however, both elections may create an opening for a political shift which will potentially lead to an increasingly positive environment for international trade and foreign investment.

*For more information, contact: Ian Laird, Eduardo Mathison, J.J. Saulino*

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## Negotiations for EU-Vietnam Free Trade Agreement Formally Concluded

After agreement was reached in principle in early August 2015, following two-and-a-half years of intense negotiations, European Commission President Jean-Claude Juncker and Vietnamese Prime Minister Nguyen Tan Dung announced the formal conclusion of negotiations on the Free Trade Agreement (FTA) between the EU and Vietnam on December 2. The preliminary text is expected to be released in early 2016, but the FTA is reportedly ambitious in providing for the first time symmetrical liberalization between the EU and a developing country, albeit with a transition period for Vietnam to adapt.

The FTA eliminates tariffs and most of Vietnam's export duties, creates market access opportunities in services (financial, telecommunications, transport, postal, courier) and investment (removal or easing of limitations on manufacturing of food products and beverages, as well as in non-food sectors), applies disciplines largely in line with the WTO Government Procurement Agreement, and improves the protection of Geographical Indications in Vietnam.

The FTA also includes what the Commission considers a robust and comprehensive chapter on trade and sustainable development, including commitments to International Labor Organization standards, the conservation and sustainable management of natural resources (wildlife, forests, fisheries), and fair and ethical trading schemes. In addition, Vietnam is reported to have agreed to implement the EU's new approach to investment protection, including a permanent tribunal and a clearly defined appeals process.

Legal review of the FTA will begin in early 2016, followed by translation. The Commission is expected to publish the FTA's preliminary text in 2016 and to submit a proposal for approval of the FTA to the European Parliament and the Council in 2017. On this timetable, the FTA would enter into force in early 2018.

This is the second FTA between the EU and a member country of the Association of South East Asia Nations (ASEAN), following conclusion of the EU-Singapore FTA in 2014. There is little doubt that the completion of the Trans Pacific Partnership (TPP) also played a role in closing the deal. Its conclusion is in keeping with the EU's stated aim of concluding an ambitious and comprehensive region-to-region FTA with ASEAN as a whole.

*For more information, contact: Charles De Jager, Dj Wolff*

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## AGENCY ENFORCEMENT ACTIONS

### Bureau of Industry and Security (BIS)

- On December 10, BIS entered into a Settlement Agreement with GLS Solutions, Inc. of Aventura, Florida, for acting with knowledge of a violation of the Export Administration Regulations (EAR) when it sold or transferred a FLIR High Performance Infrared Camera from the U.S. to Venezuela. The company agreed to a civil penalty of \$50,000 with \$32,500 suspended for one year, so long as GLS Solutions does not commit another violation.

- On December 10, [BIS entered into a Settlement Agreement](#) with Gregorio L. Salazar of Aventura, Florida, for making a false or misleading statement in a disclosure to BIS regarding GLS Solutions, Inc's unlicensed export of a FLIR High Performance Infrared Camera from the U.S. to Venezuela. Mr. Salazar agreed to a \$50,000 civil penalty.
- On December 28, [BIS amended the Export Administration Regulations \(EAR\)](#) by adding sixteen (16) persons to the Unverified List (UVL). These persons will be listed on the Entity List under the destinations of the Crimea region of Ukraine, Cyprus, Luxembourg, Panama, Russia, Switzerland, and the United Kingdom.
  - These sixteen persons were previously designated by the Department of the Treasury's Office of Foreign Assets Control under its Ukraine-/Russia-Related Sanctions Program.

### Department of Justice (DOJ)

- On December 10, DOJ announced that [three Chinese Nationals were arrested](#) in a scheme to steal and illegally export military-grade semiconductors. The complaint alleges, among other things, one of the three asking an undercover law enforcement agent to obtain 22 Xilinx semiconductors. To facilitate the theft, the individual would provide the agent with fake components. After being advised the items could be stolen from a nearby U.S. Navy base, the individual provided the undercover agent with eight fake components. The three were arrested on December 6 attempting to take delivery of the Xilinx semiconductors from the agent.
- On December 18, [a Chinese national pleaded guilty](#) in U.S. District Court to two counts of conspiring to commit export violations and smuggle goods from the U.S. to Iran and four counts of illegally exporting U.S. manufactured pressure transducers to Iran. Sentencing is scheduled for January 27, 2016.

### Financial Crimes Enforcement Network (FinCEN)

- On December 17, FinCEN announced its first settlement with and [assessment against a "card club" gaming establishment](#). Oaks Club Room d/b/a Oaks Card Club of Emeryville, California, is required to pay \$650,000 for willful violations of the Bank Secrecy Act (BSA). FinCEN has the authority to investigate casinos and card clubs for compliance with the BSA.
- On December 30, [FinCEN announced](#) its first action against a dealer in precious metals, precious stones, or jewels, when it assessed a \$200,000 civil money penalty against B.A.K. Precious Metals, Inc. of Los Angeles and its owner and designated compliance officer who admitted to willfully violating BSA federal anti-money laundering (AML) requirements.

*For more information, contact: Edward Goetz*

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## OTHER AGENCY ACTIONS

### Executive Office of the President

- On December 29, Proclamation 9384 of December 23, 2015 was published in the Federal Register, lowering tariffs of certain environmental goods as of January 1, 2016. This is in line with the Asia-Pacific Economic Cooperation (APEC) economies, who have affirmed to do the same by the end of 2015.
  - The Harmonized Tariff Schedule (HTS) will be modified, as follows:
    - Subheading 4418.72.95 (Builders' joinery and carpentry of wood, including cellular wood panels and assembled flooring panels; shingles and shakes: other):
      - Duty goes from 8% to 5%.
    - Subheading 8404.20.00 (Condensers for steam or other vapor power units):
      - Duty rate goes from 5.6% to 5%.
    - Subheading 8406.90.20/30/40/45 (all HTS' relating to rotors):
      - Duty rate goes from 6.7% to 5%.

### **Bureau of Industry and Security (BIS)**

- BIS issued a proposed rule on December 28 in the Federal Register that would revise BIS guidance regarding administrative enforcement cases based on violations of the Export Administration Regulations (EAR).
  - The rule would rewrite Supplement No. 1 to part 766 of the EAR, setting forth the factors BIS considers when setting penalties in settlements of administrative enforcement cases and when deciding whether to pursue administrative charges or settle allegations of EAR violations.
  - This proposed rule would not apply to alleged violations of part 760—Restrictive Trade Practices and Boycotts, which would continue to be subject to Supplement No. 2 to part 766.
  - BIS is proposing these changes to make administrative penalties more predictable to the public and aligned with those promulgated by the Department of the Treasury, Office of Foreign Assets Control (OFAC).
  - Comments must be received no later than February 26, 2016.

### **Directorate, Defense Trade Controls (DDTC)**

- On December 21, DDTC published an Industry Notice, "Rule Waiver for Exporters to Deposit Permanent Export Licenses with U.S. Customers and Border Protection (CBP)."
  - In anticipation of the implementation of CBP's Automated Commercial Environment (ACE), DDTC is electronically sending CBP registration and licensing data on a daily basis.
  - Since CBP port officials will have access to the DDTC registration and licensing data through ACE, there is no longer a need for exporters to deposit permanent export licenses with CBP prior to filing in ACE.
  - Effective immediately, the Deputy Assistant Secretary for Defense Trade Controls is exercising the authority under 22 CFR 126.3 to waive the requirement under 22 CFR 123.22(a)(1) for exporters to deposit permanent export licenses with CBP prior to filing in the Automated Export System (AES) or ACE.
  - This exemption will remain in effect until DDTC amends the language of 22 CFR 123.22(a)(1) to remove the requirement.

### **Office of Foreign Assets Control (OFAC)**

- On December 7, OFAC issued a six-month general license to authorize certain trade-related transactions otherwise prohibited by the Burmese Sanctions Regulations (BSR).
  - This general license allows individuals, companies, and financial institutions to conduct most transactions otherwise prohibited by the BSR that are ordinarily incident to the export of goods, technology, or non-financial services to or from Burma—including participating in trade finance transactions and paying port fees as well as shipping and handling charges associated with sending goods to or from Burma.
- On December 21, OFAC updated its Frequently Asked Questions (#57-61) with regard to the provision of Cuba-related insurance.
- On December 31, OFAC published regulations to implement Executive Order 13694 of April 1, 2015 (Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities). The agency intends to supplement this part 578 with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance and additional general licenses and statements of licensing policy.

*For more information, contact: Edward Goetz*

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## **CROWELL & MORING WELCOMES**

**Carlton Greene** is a partner in Crowell & Moring's Washington, D.C. office and a member of the firm's International Trade and White Collar and Regulatory Enforcement groups, where he provides strategic advice to clients on U.S. economic sanctions, Bank Secrecy Act and anti-money laundering (AML) laws and regulations, export controls and anti-corruption/anti-bribery laws and regulations. Carlton is the former Chief Counsel at FinCEN (the Department of the Treasury's Financial Crimes Enforcement Network), the U.S. AML regulator responsible for administering the Bank Secrecy Act.

Before joining FinCEN, he previously served as the Assistant Director for Transnational Threats with the U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC), where he directed targeting and investigations for more than 15 U.S. economic sanction programs, including those related to Iran and North Korea, and was counsel to OFAC on terrorism and other sanctions issues

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**Wing Cheung** is a senior international trade specialist and licensed customs broker based in Crowell & Moring's New York office. As a trade compliance professional, Wing will support clients with import regulatory matters pending primarily before U.S. Customs & Border Protection (CBP).

Wing's experience covers all areas of import regulatory compliance including classification of merchandise under the Harmonized Tariff Schedule (HTS) of the United States, customs valuation, country of origin and marking, trade preference programs and free trade agreements, CBP inquiries (i.e., CF-28s and CF-29s), conducting internal compliance audits, and assisting in developing internal compliance programs. She also has unique experience in addressing other governmental agency issues that arise at the border, notably, importation of fish and wildlife products.

Prior to joining Crowell & Moring, Wing was the trade compliance supervisor at one of the top 5 Japanese trading companies (sogo shosha). She has particular import knowledge in apparel, textile and footwear, chemical, machinery, food and consumer products.

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We look forward to the opportunity of supporting you in the near future, and should you wish to contact Carlton and Wing directly, please see below for their contact details.

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**CROWELL & MORING CONGRATULATES**

Crowell & Moring's international trade group has been recognized by [Law360](#) as an international trade practice group of the year.

Crowell & Moring is pleased to announce the following promotions:

[Alex Schaefer](#) has been elected to the firm's partnership. [Jini Koh](#) and [Dj Wolff](#) have been named Of Counsel. [Edward Goetz](#) has been promoted to Manager, International Trade Services. [Nicholas DeLong](#) and [Ru Xiao-Graham](#) have been named Senior International Trade Analysts.

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**CROWELL & MORING SPEAKS**

[Cari Stinebower](#), [Frances Hadfield](#), and [Jini Koh](#) discussed "Recent Trade Developments affecting eCommerce and Software Companies" at Pitney Bowes in Stamford, CT on December 7. Trade topics discussed were Anti-money Laundering and the Foreign Corrupt Practices Act, Export Controls, Customs and Free Trade Agreements, and Economic Sanctions.

On December 9, Benjamin Blase Caryl moderated a panel on the Trade in Services Agreement (TiSA) negotiations, featuring the lead U.S. negotiator on TiSA and two other experts. TiSA is an international agreement currently being negotiated by countries representing 75 percent of global trade in services to liberalize trade in services, including finance, investment, insurance, legal

services, and other emerging issues such as restrictions on cross-border data flows that can disrupt financial and e-commerce services.

On January 7, J.J. Saulino will be speaking at a working conference hosted by the Hudson Institute entitled "Iran After the Deal: Open for Business or Business as Usual?"

On January 9, Carlton Greene will be speaking at the American Bar Association's 2016 Banking Law Committee Meeting in Washington, D.C. on a panel titled "AML/Sanctions Regulation and Enforcement Update."

On January 21, John Brew, will be a panelist at the 10th Advanced Forum on Import Compliance and Enforcement in Washington D.C. His panel's topic is "Statistical Sampling in Prior Disclosures: Understanding the Methods and Benefits while Avoiding Common Errors."

On February 12, Cheryl Falvey, Frances Hadfield, and Chahira Solh will be speaking at the 2016 Fashion Law Conference at the Parsons School of Design in New York. Cheryl and Frances will be speaking on "The Regulatory Framework of Labeling and Disclosure," while Chahira will be discussing "Mergers/Acquisitions and Antitrust Considerations."

On March 3, Jeff Snyder will be speaking at a program sponsored by the Women's Bar Association of D.C. on "Getting Published as a Practitioner." Jeff, who serves as the General Editor of the Global Trade & Customs Journal, a Kluwer Law International publication, will discuss publication opportunities for practitioners.

Jeff will also be speaking on issues related to dispute resolution under the Trans Pacific Partnership (TPP) at the 26th Annual Meeting and Conference of the Inter-Pacific Bar Association in Kuala Lumpur on April 15.

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

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