

CLIENT ALERT

This Month in International Trade - February 2013

Feb.28.2013

THIS MONTH'S TOP FIVE DEVELOPMENTS

1) EU and U.S. Launch Transatlantic Trade and Investment Partnership Negotiations

President Obama confirmed in his February 14 State of the Union address that the EU and the U.S. are set to launch negotiations for a comprehensive trade and investment partnership agreement within the coming months. The negotiations aim to remove tariff barriers, open markets for investment and services, and seek cooperation and convergence on regulatory measures and product standards. Furthermore, the agenda also foresees talks on a variety of rules-based issues, such as the protection of intellectual property rights and aspects of trade related to labor, the environment, and competition policy.

Concerning tariff barriers, the declared aim of the EU and U.S. is to remove all customs duties on transatlantic trade in industrial and agricultural products. There are open questions, however, regarding the degree to which "highly sensitive" products will be liberalized. In the area of investments, the aim is to achieve the highest levels of liberalization and investment protection.

Concerning regulatory measures and technical standards for products – which are widely regarded as the most significant barriers to transatlantic trade – negotiators will consider means of aligning regulations or fostering mutual recognition. The negotiation of provisions on sanitary and phytosanitary (health and hygiene) standards, for example for food products, and technical barriers to trade are likely to be particularly challenging in light of important differences in consumer attitudes and regulatory approaches. Sectors such as chemicals, automotives, pharmaceuticals and medical appliances are likely to be the subject of special attention given their economic importance.

It has been estimated that a transatlantic partnership agreement would lead to an annual increase in GDP of 0.5% or €86 billion (\$112 billion) for the EU, and 0.4% or €65 billion (\$85 billion) for the U.S. by 2027.

The months leading up to the official launch of negotiations, likely in mid-2013, will be a critical opportunity for companies to express their commercial priorities to negotiators in both Washington and Brussels. The Crowell & Moring team stands ready to assist in refining and articulating company views to the negotiating teams.

2) The White House Shines a Spotlight on Trade Secret Theft

In the wake of legislation strengthening U.S. federal trade secret statutes and a recent National Intelligence Estimate sounding the alarm on the economic costs of cyber-espionage, the White House on February 20 released a new "Administration Strategy to Mitigate the Theft of Trade Secrets." The report, produced by the U.S. Intellectual Property Enforcement Coordinator, Victoria Espinel, represents a new push to develop effective, coordinated public policy responses to the misappropriation of trade secrets.

Please [click here](#) to continue reading this previously published client alert.

3) AEO – C-TPAT Mutual Recognition: Reciprocal Implementation Effective as of 31 January 2013

On January 31, 2013, the EU started treating companies in the U.S.'s Customs-Trade Partnership Against Terrorism (C-TPAT) program in a manner comparable to the way that the EU treats companies that are Authorised Economic Operators (AEOs) under the EU's AEO program, under a May 2012 [Decision](#) on mutual recognition of the two programs.

In practical terms, exports to the EU made by U.S. companies registered under C-TPAT at the Tier II or Tier III level are now considered secure and receive a lower risk score. They are subject to fewer physical controls and quicker customs clearances. The EU does not, however, provide the import facilitations to U.S. companies with only C-TPAT Tier I level membership. This is similar to the U.S. recognition of the AEO status of EU companies registered either as AEO S (AEO certificate for safety and security), or AEO F ("full" AEO certificate for customs simplifications and security and safety), but not AEO C (AEO certificate for customs simplification).

The U.S. has been recognizing the AEO status of EU companies since July 2012. Only EU manufacturers, suppliers and exporting companies, not EU customs brokers, sea or air carriers, third party logistic providers or agents, are eligible to benefit from lower risk scores under the mutual recognition program. AEO-certified freight forwarders can, however, indirectly benefit from the mutual recognition program if the manufacturer/exporter of the goods that are exported is an AEO.

In order to avail themselves of the benefits under the mutual recognition decision, EU-eligible companies must register their EORI number with the U.S. Customs and Border Protection authority (CBP) using the following [link](#), so that they can obtain the Manufacturer's Identification Number (MID). Moreover, they must give consent to the U.S. customs authorities to exchange company-related information with third countries.

4) Export Control Reform Proposals Sent to Congress

This month, the State Department initiated a key step towards finalizing a reformed U.S. Munitions List (USML) that better describes what is controlled and more brightly draws the line between the USML and the Commerce Control List (CCL). Reportedly, State has begun 30 days of informal discussions with Congress as a prelude to the formal notification of the proposed changes to both Category VIII (Aircraft & Related Articles) and Category XIX (Gas Turbines) that will trigger the statutory 30-day review under Section 38(f) of the Arms Export Control Act (AECA). This action confirms that the Administration will now proceed piecemeal to obtain tacit Congressional approval of those USML categories where vetting of industry comments is complete while it works to complete modification of the remaining USML categories (and corresponding changes to the CCL). Also anticipated this Spring is publication of the final rule – known as "The Beast" – which will include the all important definition of "specially designed" as well transitional rules.

5) Potential Tariff Modifications In Brazil

A resolution from the Brazilian Foreign Trade Chamber (CAMEX) launched a public consultation related to the requests made by Brazilian companies for (i) temporary tariff modifications regarding the List of Exceptions to the Mercosur Common External Tariff (known as LETEC) and (ii) inclusion of items in the new list of temporary tariff increases to the Mercosur Common External

Tariff. The Brazilian government ties these moves to trade imbalances arising from international economic developments.

If approved, the requests, which were presented by Brazilian companies in March 2012 and January 2013, may result in a substantial increase or reduction in import duties for inputs and final products. [Click here](#) for the complete list of 318 products object of the public consultation.

Interested parties may file their arguments for or against any of the requests, accompanied by technical literature and catalogs, within 30 days beginning on February 8, 2013.

THIS MONTH IN TRADE – OTHER NEWS

Agency Enforcement Actions

Bureau of Industry and Security (BIS)

- Individual [Denied Export Privileges](#) for 10 Years for Exporting Night Vision Goggles Without a License.

Customs and Border Protection (CBP)

- CBP and CPSC Seize Multiple Shipments of Toys Containing Illegal Levels of Lead.

Office of Foreign Assets Control (OFAC)

- Offshore Marine Laboratories of Gardena, CA, allegedly exported to the UAE spare parts and supplies destined for end use in oil drilling platforms in Iranian waters, in violation of Iranian Transactions Regulations and Executive Order. The matter was not disclosed, and OFAC's investigation resulted in the company [settling for a payment](#) of \$97,695.

State Department

- Man Sentenced to 24 Months in Prison for Conspiracy to Export Night Vision Goggles to Belarus

"Project Honeygate" – Criminal Charges for Antidumping Duty Fraud

On February 20, the U.S. Immigration and Customs Enforcement (ICE) announced that five individuals and two domestic companies were [charged with federal crimes](#) in connection with the importation of honey from China. The ICE Homeland Security Investigations (HSI) department found Honey Solutions and Groeb Farms, two of the largest suppliers of honey in the U.S., along with five individuals, evaded \$180 million in anti-dumping duties by mislabeling and transshipping the honey imports to obscure the origin of the goods. The companies entered into deferred prosecution agreements, including \$3 million in fines and the implementation of new corporate compliance programs. The individuals, including customs brokers and a former company director, face possible prison sentences.

These criminal charges are the latest action in "Project Honeygate," an inter-agency trade enforcement action led by ICE HSI. The investigation continues but this is noted as a rare criminal enforcement of trade matters. The investigation is part of ongoing

efforts by federal authorities to eliminate antidumping duty circumvention. In 2001, the Commerce Department imposed anti-dumping duties on Chinese-origin honey after determining that the honey was being sold in the United States at less than fair market value. In 2008, executives at German food conglomerate Alfred L. Wolff GmbH and its affiliates were involved in evading \$80 million in antidumping duties on honey from China, resulting in seizure and forfeiture of the goods.

FDA Expands Authority to Detain Food Imports

On February 5, 2013, the FDA published its new rule expanding its ability to detain, inspect and reject food imports. Under the new rule, the FDA need only a 'reason to believe' that the food products have been adulterated or misbranded to order an administrative detention for up to 30 days. During this period, the FDA is to determine whether any enforcement action, such as seizure or obtaining a federal injunction to prohibit distribution, is warranted. This rule is being implemented as an update required by the FDA Food Safety Modernization Act, passed in 2011. Prior to the 2011 legislation, the FDA was required to possess evidence that the food was contaminated or mislabeled and that the contamination or mislabeling posed grave health hazards or risk of death before being able to detain food imports.

CROWELL AND MORING SPEAKS

Cari N. Stinebower moderated a panel, "The Legal and Economic Impacts of Financial Sanctions on Targeted Activities and Affected Institutions," at the Georgetown University Law Center, in Washington, D.C. on February 13, 2013.

Jonathan S. ("Josh") Kallmer will speak on "How Companies Can Use International Investment Agreements to Address Regulatory and Policy Concerns in India" at the New York City Bar's CLE program entitled "Doing Business in India" in New York City, March 1, 2013.

Laurent Ruessmann and **Alex Schaefer** will join panelists at the Advertising & Produce Risk Management Conference, "Staying Afloat When Your Brand Is Under Pressure: How to Avoid, Mitigate and Manage Product Crises," hosted by Crowell & Moring on Tuesday, March 19 at our Washington, DC office. We also invite you to be our dinner guest the night before the Conference, on March 18, at The Hamilton, 600 14th Street, NW, Washington, D.C.

John B. Brew and **John Fuson** will be speaking at Grocery Manufacturer's Association Science Forum on April 3. Their panel will include a discussion of Understanding the Food Safety Modernization Act's Impact on your International Supply Chain.

The International Compliance Professionals Association (ICPA) is hosting its 10th Annual Conference from March 17-20 at the Hilton Hawaiian Village in Honolulu, Hawaii. Crowell & Moring will host a reception on March 18, from 5:30 to 7:30 pm, at the Hilton Hawaiian Village, Tapa Tower, Honolulu Lanai, and extends an invitation to all Conference attendees.

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