

CLIENT ALERT

This Month in International Trade - February 2015

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TOP TRADE DEVELOPMENTS

U.S. Accuses China of \$1B in Illegal Subsidies, Takes Case to WTO

On February 11, United States Trade Representative Michael Froman announced that the U.S. is requesting consultations with the Government of China at the World Trade Organization (WTO), the first step in initiating a dispute, concerning China's "Demonstration Bases-Common Service Platform" export subsidy program, alleging almost \$1 billion in illegal aid.

The U.S. has long complained about China's export subsidy measures, but the initiation of the proceedings represents the first concrete step the U.S. administration has taken. Although the U.S. has used WTO dispute mechanisms aggressively in the past with China, the timing of this challenge has caused some to believe it may be linked with the Administration's efforts to secure Trade Promotion Authority (TPA) for the Trans-Pacific Partnership (TPP) Agreement, currently under negotiation with 12 Pacific

Rim countries. Some have observed that the industries impacted by the alleged export subsidy program affect states with Senators "on the fence" regarding granting the President TPA.

The U.S. alleges that China provides prohibited export subsidies for services such as information technology, training, and product design at "Common Service Platforms" to manufacturers and producers across seven economic sectors and dozens of sub-sectors located throughout China known as "Demonstration Bases."

There are a total of 179 Demonstration Bases, each comprised of enterprises from one of seven sectors: (1) textiles, apparel and footwear; (2) advanced materials and metals (including specialty steel, titanium and aluminum products); (3) light industry; (4) specialty chemicals; (5) medical products; (6) hardware and building materials; and (7) agriculture.

If a mutually acceptable agreement is not reached, the U.S. would then request a dispute resolution panel be convened at the WTO to rule on the action.

Crowell's team of trade lawyers and trade policy experts will continue to closely monitor developments in this case and alert clients of potential impacts.

For more information, contact: John Brew, Patricia Wu, Dj Wolff, Edward Goetz

Cuba: State Publishes List of Goods for Import; Column 2 Duty Applies

The U.S. Department of State posted an initial list of goods (subject to updates) which may now be imported into the U.S. from Cuba, if they are produced by independent Cuban entrepreneurs. The list was anticipated in the Cuba-sanctions and embargo relaxations announced in January.

The State Department published a "negative list" of goods. Specifically, State authorized the import of all products from independent Cuban entrepreneurs except those products that fall into the categories (organized by HTS):

- Section I: Live Animals; Animal Products - All chapters
- Section II: Vegetable Products - All chapters
- Section III: Animal or Vegetable Fats and Oils and their Cleavage Products; Prepared Edible Fats; Animal or Vegetable Waxes - All chapters
- Section IV: Prepared Foodstuffs; Beverages, Spirits, and Vinegar; Tobacco and Manufactured Tobacco Substitutes – All chapters
- Section V: Mineral Products - All chapters
- Section VI: Products of the Chemical or Allied Industries - Chapters 28-32; 35-36, 38
- Section XI: Textile and Textile Articles - Chapters 51-52
- Section XV: Base Metals and Articles of Base Metal – Chapters 72-81

- Section XVI: Machinery and Mechanical Appliances; Electrical Equipment; Parts Thereof; Sound Recorders and Reproducers, Television Image and Sound Recorders and Reproducers, and Parts and Accessories of Such Articles - All chapters
- Section XVII: Vehicles, Aircraft, Vessels, and Associated Transportation Equipment - All chapters; and
- Section XIX: Arms and Ammunition; Parts and Accessories Thereof - All chapters

In other words, State authorized only the import of products identified in Chapters 33-34, 37, 39-50, 53-71, 82-83, 90-92, and 94-97.

State has advised that U.S. persons engaging in the import of goods from Cuba must obtain documentary evidence that demonstrates the entrepreneur's independent status, such as a copy of a license to be self-employed issued by the Cuban government or, in the case of an entity, evidence that demonstrates that the entrepreneur is a private entity that is not owned or controlled by the Cuban government.

Importers should note that column 2 duty rates apply to any such goods imported into the U.S. Column 2 rates are generally prohibitive, in the range of 100 per cent.

Please do not hesitate to contact one of Crowell's experienced Customs attorneys with any questions on importing from Cuba.

For more information, contact: John Brew, Alex Schaefer, Jini Koh, Aaron Marx, Edward Goetz

The Ukraine Crisis: New Sanctions, a Ceasefire, an Assassination, and Elections

February saw the EU and Canada expand the scope of their "blocking" sanctions by adding new individuals and entities to their blacklists. Canada also added the Russian company Rosneft to its energy sector sanctions list. The United States threatened, but did not announce any new sanctions over the course of the month.

On February 12, the leaders of Ukraine, Russia, Germany, and France agreed to a new 12-point ceasefire (the Minsk Agreement) that updated the previous ceasefire signed in September 2014. By the end of the month, parties continued to claim the latest ceasefire has held, although tenuously at times with reports of rebel shelling.

The West continues to blame Russia for sending troops, weapons, and support into Ukraine in violation of the Minsk Agreement. On March 1, the UN issued a report blaming the recent escalation of the Ukraine crisis on Russia due to "credible reports [indicating] a continuing influx of heavy and sophisticated weaponry to armed groups in the Donetsk and Luhansk regions, as well as foreign fighters, including from the Russian Federation." The Organization for Security and Cooperation in Europe (OSCE) confirmed the UN's findings.

Throughout the region, the crisis continued to have substantial geopolitical effects. First, on Friday, February 27, a prominent Russian opposition leader and former Deputy Prime Minister, Boris Nemtsov, was assassinated in central Moscow, just steps from the Kremlin. Having published previous reports accusing the Russian leadership of diverting up to \$30 billion of the \$50

billion used for the Sochi Olympics, Mr. Nemetsov was preparing to publish a new report on Russian involvement in Ukraine. His death sparked the largest opposition demonstration in Russia in three years in Moscow.

On the heels of Nemetsov's death, Estonia, a former Soviet country and current member of NATO, held elections over the weekend. Despite a pro-Russian minority of almost 25 percent, the pro-NATO Prime Minister Taavi Roivas' center-right Reform Party retained power. There were fears that the Center party, which has a co-operation agreement with President Putin's United Russia movement, might pull ahead.

Crowell will continue to closely monitor legal developments and alert clients to any changes, especially if new sectoral sanctions are introduced.

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

TTIP: EU Proposes Joint U.S.-EU Regulatory Cooperation Body

The EU has proposed creating a Joint Regulatory Cooperation Body of senior EU and U.S. regulatory authorities to act as a forum, share ideas, set priorities, and ensure a coherent approach to rule-making during the Transatlantic Trade and Investment Partnership (TTIP) negotiations.

Response to the idea is mixed. Business groups in the EU believe the proposal will contribute to lowering trans-Atlantic trade costs, allowing new customers to be reached, and helping create jobs and growth; however, civil society groups in Europe worry trade and investment will be prioritized over the public interest and that this will lead to downward harmonization.

To contribute to a better understanding of the EU's objectives in this area, it made both the proposal and a fact sheet public on February 10, stressing it is not the intention of the EU to create a new agency with regulatory or legal powers.

In many cases EU and U.S. regulations are different for reasons unrelated to the level of protection they aim to provide, and that, where this is the case, regulatory cooperation can avoid unnecessary divergences or inconsistencies and make it easier to trade products

The next round of negotiations is tentatively planned for April in Washington, D.C. Discussions between negotiating teams will be organized before that date concerning sectorial regulation.

Feel free to contact Crowell with any questions you might have regarding this proposal or potential TTIP regulatory impacts on your industry.

For more information, contact: Jeff Snyder, Salomé Cisnal De Ugarte, Grégoire Ryelandt

More Scrutiny for Deferred Prosecution Agreements (DPA) after Fokker Decision

U.S. District Judge Richard J. Leon's rejection of a June 2014 Deferred Prosecution Agreement (DPA) between the United States and Dutch aerospace provider Fokker BV could mean harder-hitting DPAs for companies that engage in commerce with countries sanctioned by the United States.

The Fokker DPA involved allegations that Fokker conspired to export aircraft parts, technologies, and services to Iran, Sudan, and Burma in violation of the International Emergency Economic Powers Act (IEEPA). The Court rejected the DPA even though it included an 18-month probationary period and required Fokker to forfeit \$10.5 million, and even though the company had entered into separate agreements with Commerce's Bureau of Industry and Security (BIS) and Treasury's Office of Foreign Assets Control (OFAC) to pay another \$10.5 million in civil penalties.

Judge Leon called the above measures "grossly disproportionate" to Fokker's conduct. He took particular issue with the imposition of fines not greater than Fokker's illegally obtained revenue, with the fact that employees responsible for the transactions were allowed to remain with the company, and with the lack of an independent monitor. The decision was effectively a call for greater accountability of companies that violate U.S. sanctions laws. Fokker has filed a notice of appeal.

Crowell & Moring's International Trade and White Collar groups are available to aid companies in building effective compliance programs.

For more information, contact: Jeff Snyder, Ashley Bailey, Cari Stinebower, Dj Wolff, Edward Goetz

Call for Comments on WCO's Tariff Schedule Changes

The International Trade Commission (ITC) is seeking comments by April 20, 2015 on:

- (1) The World Customs Organization's (WCO) Recommendation of June 27, 2014 that Contracting Parties to the International Convention on the Harmonized Commodity Description and Coding System (Convention) modify their tariff schedules to conform with amendments to the Harmonized System expected to enter into force on January 1, 2017; and
- (2) whether one of the two HTS subheadings that apply to taro (also known as dasheen) should be deleted, and whether the HTS nomenclature for corned beef should be provided for under a superior subheading for cured meat of bovine animals.

The ITC has posted a webpage containing the changes under consideration, as well as instructions for filing comments electronically.

Please do not hesitate to contact one of Crowell's experienced Customs attorneys with any questions or help in writing comments.

For more information, contact: John Brew, Alex Schaefer, Jini Koh, Aaron Marx, Edward Goetz

Antidumping Petition Filed against Australian Firm for Steel Additive

Felman Production of West Virginia filed an antidumping (AD) claim with the Department of Commerce and the International Trade Commission (ITC) last month on Australian imports of silicomanganese, an essential deoxidizer and alloy additive used in the manufacture of steel. Felman is claiming material injury to the entire U.S. silicomanganese industry. The alleged dumping margin is 61.1 percent.

Tasmanian Electro Metallurgical Company (TEMCO), Australia's only exporter of the product, is said to be dumping its silicomanganese into the US market at a rate of 61.1 percent. With U.S. contract prices linked to published index prices, Australia has reportedly been the "low price leader" in recent years. Felman claims it shut down production from June 2013 to July 2014 because of imports from TEMCO.

The Commerce Department will now determine whether to launch an AD investigation. Currently, there are antidumping orders in effect against several other silicomanganese-producing countries – including India, Kazakhstan, Venezuela, China, and Ukraine.

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

New Rules to Combat Wildlife or Plants Trafficking

Companies whose business involves importing wildlife or plants and wildlife or plants incorporated products should know the Obama Administration recently [released](#) its Implementation Plan for the 2014 National Strategy for Combating Wildlife Trafficking (*Strategy*).

The *Strategy* calls for a coordinated effort across the government to address three strategic priorities: strengthen domestic and global enforcement, reduce demand for illegally traded wildlife, and expand international cooperation and commitment.

The Implementation Plan identifies specific actions to be taken for each priority. The action items range from administrative actions that could be taken quickly to calls for Congressional action, to diplomatic efforts, to public-private partnerships. Accordingly, some elements of the Implementation Plan could be completed before others are begun. Those with the highest likelihood of prompt completion include those that the Administration can do unilaterally, and most of those would strengthen domestic enforcement.

For example, to achieve the goal of a "near-total" U.S. ban on elephant ivory and rhinoceros horn trade, the Implementation Plan proposes several actions that could be taken via administrative rulemaking or, in some cases, a guidance document, including:

- eliminating broad administrative exceptions to the 1989 African Elephant Conservation Act moratorium to prohibit commercial importation of antique ivory and clarifying the definition of "antique" ivory under the Endangered Species Act;
- revising the Endangered Species Act Section 4(d) rule that allows African elephant ivory to be traded in ways that would otherwise be prohibited by the Act;
- re-affirming, clarifying, and improving public understanding of the "use-after-import" provisions of the U.S. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulations; and
- limiting the number of elephant sport-hunted trophies an individual may import.

Similarly, the Implementation Plan calls for committing and coordinating resources within several agencies, including the U.S. Fish and Wildlife Service, U.S. Department of Agriculture, and the Department of Justice to increase the Administration's ability to develop cases against wildlife traffickers and bring successful enforcement actions. The Implementation Plan also supports "increasing and further institutionalizing" existing tools to target the assets of wildlife traffickers, including administrative, civil, and criminal fines and penalties, community service payments, forfeiture and restitution. To achieve these ends, the full array of federal laws that are aimed at safeguarding wildlife, including the Endangered Species Act, Lacey Act, and CITES could be deployed.

It is recommended that companies carefully monitor applicable agency action to stay abreast of any regulatory changes and should also consider pro-active engagements with agencies to minimize adverse impacts to lawful business that could result from these anticipated regulatory or administrative changes.

For more information, contact: Sarah Bordelon, Ryan Lance, Jini Koh

Importers Cheer as West Coast Port Dispute Ends, but Economic Impact Continues

Although operators and union workers at U.S. West Coast ports have agreed to a new five-year contract last month, the impact of the nine-month labor dispute will continue to cast a long shadow over the economy due to the backlog of ships to be unloaded. While the contract still must be ratified by union members, importers look forward to the resumption of normal operations.

It is estimated it will take ports, at a minimum, two months to catch up on the current backlog at one of the nation's busiest ports, Los Angeles and Long Beach. This means the impact to the economy will continue to affect the U.S. trade deficit and business in general for the next few months.

Retailers and other industry were hit hard by the labor unrest at the 29 ports on the West Coast, which started last June.

For more information, contact: Jini Koh, Edward Goetz

New EU National Export Control Measures Published

Through a note [issued](#) on February 13, the European Commission published a new list of measures that EU Member States have adopted to implement [Regulation 428/2009](#), the main EU legislative text on trade in dual-use items. Most notably, these include processes to:

- extend the application of brokering controls to non-listed dual-use items that might be used for Weapons of Mass Destruction (WMD) purposes and to dual-use items for military end use or for use in violation of an arms embargo;
- impose in individual cases an authorization requirement for the specific transit of listed dual-use items if the items are, or may be, intended for WMD purposes;
- require additional controls on non-listed dual-use items for reasons of public security or human rights consideration; and
- compel businesses to have customs formalities necessary for the export of dual-use items completed only at customs offices empowered to do so.

Further, an overview of National General Export Authorizations (NGEAs) adopted by EU Member States was published. NGEAs offer a simplified procedure for the export of certain controlled goods or to certain destinations and are currently in force in Germany, Greece, France, Croatia, Italy, The Netherlands, Austria and the United Kingdom.

Crowell & Moring's International Trade group in the EU is available to answer any questions you may have regarding these changes.

For more information, contact: Salomé Cisnal De Ugarte, Lorenzo di Masi, Edward Goetz

CBP Testing Combined Filing of ACE Cargo Release and ISF Data

Starting on February 10, CBP began a modified Automated Commercial Environment (ACE) Cargo Release Test, which allows filers who meet certain eligibility, data, timeliness, and other requirements to file ACE Cargo Release and Importer Security Filing (ISF) data in a combined submission.

To file a combined submission the filer must meet the definition of an ISF importer as stated in [19 CFR § 149.1](#) and be either a: (1) Self-filing importer who has the ability to file ACE Entry Summaries certified for cargo release or a broker who has the ability to file ACE Entry Summaries certified for cargo release; or a (2) self-filing importer or broker who has stated his or her intent to file entry summaries in ACE in its request to participate in the test.

Any party not already taking part in the ACE Cargo Release Test who would like to participate must contact CBP and provide their filer code, as well as a list of ports where they would like to submit the combined ACE Cargo Release and ISF data.

However, importers should consider the following before applying to the program:

- As ISF data is only needed for ocean freight, the combined data submission *only* applies to cargo transported by vessel;
- Participants will not be allowed to utilize the ISF flexible filing provision outlined in [19 CFR § 149.2](#);

- Similar to the ISF data submission process, ISF data points *must* be submitted no later than 24 hours before the cargo is loaded onto a vessel directed to the United States; and
- the combined filing does *not* relieve the ISF importer from any of its other obligations.

The test will continue until approximately November 1st, 2015. If you have any questions regarding this new process, contact Crowell's experienced Customs attorneys.

For more *information*, contact: *John Brew, Jini Koh, Aaron Marx, Nicholas DeLong*

AGENCY ENFORCEMENT ACTIONS

Bureau of Industry and Security (BIS)

- **Export privileges** for Maple Pacific Corp. have been denied for a period of 10 years. The company was convicted of violating the International Emergency Economic Powers Act in December 2012. Specifically, Maple Pacific willfully exported and transshipped goods from the United States to Iran without first obtaining from the United States Department of Commerce and the Office of Foreign Assets Control, a license or written authorization.
 - Export privileges for Andrew Hsu (Hsu) were also denied for a period of 10 years because Hsu is the sole owner of Maple Pacific and had performed all aspects of Maple Pacific's operations. Previously approved export licenses have been revoked.
- BIS added eleven (11) persons to, and removed one person from, the Entity List (EL).
- Export privileges for Ernesto Salgado-Guzman have been denied for a period of 10 years. On May 5, 2014, he was convicted of violating the Arms Export Control Act (AECA). Specifically, Salgado-Guzman exported and caused to be exported and attempted to export and attempted to cause to be exported from the United States to Mexico caliber rifles, defense articles which were on the United States Munitions List, without having first obtained from the Department of State a license for such export or written authorization for such export.

Department of Justice (DOJ)

- Three importers accused of evading customs duties on imports of Chinese aluminum extrusions have agreed to pay more than \$3 million to settle a False Claims Act suit. C.R. Laurence Co. Inc., Southeastern Aluminum Products Inc. and Waterfall Group LLC, were accused of making false declarations to U.S. Customs and Border Protection to avoid paying anti-dumping and countervailing duties on aluminum extrusions manufactured by Tai Shan Golden Gain Aluminum Products Ltd. The three companies paid \$2.3 million, \$650,000 and \$100,000, respectively.

Securities and Exchange Commission (SEC)

- The SEC charged Goodyear Tire & Rubber Company with violating the Foreign Corrupt Practices Act (FCPA) when its subsidiaries paid bribes to land tire sales in Kenya and Angola. Goodyear agreed to pay more than \$16 million to settle

the SEC's charges. According to the SEC's order instituting a settled administrative proceeding, Goodyear failed to prevent or detect more than \$3.2 million in bribes during a four-year period due to inadequate FCPA compliance controls at its subsidiaries in sub-Saharan Africa. The settlement reflected the company's self-reporting, prompt remedial actions, and significant cooperation with the SEC's investigation.

Financial Crimes Enforcement Network (FinCEN)

- FinCEN and the Office of the Comptroller of the Currency (OCC) together issued a \$1.5 million civil money penalty to the First National Community Bank of Dunmore, Pennsylvania (FNCB) for willfully violating the Bank Secrecy Act (BSA). The Bank admitted that it failed to file suspicious activity reports on transactions involving illicit proceeds from a judicial corruption scheme – spanning over five years – for which two former Pennsylvania judges were ultimately convicted.

For more information, contact: Edward Goetz

OTHER AGENCY ACTIONS

Office of Foreign Assets Control (OFAC) and the Bureau of Industry and Security (BIS)

OFAC and BIS jointly issued revisions to the Sudanese Sanctions Regulations (SSR) and the Export Administration Regulations (EAR) to increase the scope of the General License for Personal Communications in Sudan. Please find details in Crowell's Client Alert [here](#).

Department of State

- Two Chinese entities and successors had nonproliferation sanctions waived due to the national security interests of the United States. They are:
 1. Nanjing Chemical Industries Group (NCI); and
 2. Jiangsu Yongli Chemical Engineering and Technology Import/Export Company.
- The Secretary of State determined on February 19, 2015, pursuant to Section 1245(d)(4)(D) of the National Defense Authorization Act for Fiscal Year 2012 (NDAA), (Pub. L. 112-81), as amended, that as of February 19, 2015, each of the following countries: Belgium, the Czech Republic, France, Germany, Greece, Italy, the Netherlands, Poland, Spain, Sri Lanka, and the United Kingdom have significantly reduced their crude oil purchases from Iran, or have maintained their crude oil purchases from Iran at zero, over the preceding 180-day period.

For more information, contact: Edward Goetz

CROWELL & MORING SPEAKS

J.J. Saulino spoke on "Burdens and Standards of Proof for Corruption" at the [Ninth Annual Investment Treaty Arbitration Conference](#) sponsored by Juris in Washington, D.C. on February 26, 2015.

SAVE THE DATE! This year's [International Compliance Professionals \(ICPA\) Association Annual Conference](#) will be held in Fort Worth, TX from March 15 – 19, 2015. Crowell & Moring will be hosting an event on Monday, March 16, which is open to Crowell & Moring clients and friends. Please contact John Brew at jbrew@crowell.com - (202) 624-2760 if you would like to attend.

Cari Stinebower and Chris Monahan will be presenting at the [annual Spring Meeting of the American Bar Association \(ABA\) Business Law Section](#) in San Francisco on April 16. The topic will be an update and overview of Export Controls and Economic Sanctions for corporate attorneys.

CROWELL & MORING WELCOMES

We are pleased to welcome **Aaron Marx** to the International Trade Group.

Aaron joins the firm as an associate. He came to us from U.S. Customs and Border Protection's Office of International Trade, Rulings and Regulations, where he spent three years as an Attorney Advisor in the Tariff Classification and Marking Branch, and a year and a half in the Intellectual Property Branch. Before becoming an attorney, Aaron worked as an engineer in the automotive industry for nine years, for companies such as the Gates Rubber Co., SaarGummi America, and Hyundai America. He has a J.D. from Brooklyn Law School, which he received in 2010, and a B.S.E. in chemical engineering from the University of Michigan, which he received in 1998.

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

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