

CLIENT ALERT

This Month in International Trade - February 2016

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PRESIDENT SIGNS TRADE FACILITATION AND ENFORCEMENT ACT OF 2015

On February 24, the President signed the [Trade Facilitation and Trade Enforcement Act of 2015](#), a major customs and international trade bill designed to modernize U.S. Customs and Border Protection's (CBP) procedures, promote trade facilitation, prioritize certain trade issues, and strengthen enforcement of U.S. international trade laws.

The implementation dates for the new law's numerous provisions, however, vary from immediately to two years from enactment. For example, modifications to the duty treatment of protective active footwear takes effect immediately, the elimination of the consumptive demand exception to the ban on imports of goods made with forced labor becomes effective March 11, and CBP is required to promulgate regulations for the new duty evasion investigations within six months of enactment.

For detailed information on the Trade Facilitation and Trade Enforcement Act of 2015, please see [Crowell's Client Alert](#).

For more information, contact: [John Brew](#); [Frances Hadfield](#); [Benjamin Blase Caryl](#)

SANCTIONS / FINANCIAL CRIME / ANTI-CORRUPTION / EXPORT CONTROL

Cuba: Re-Establishment of Air Services, a Presidential Visit, and More

On February 18, President Obama announced he would visit Cuba on March 21, marking the first visit by a current U.S. President to the island in decades. During his trip, the President will be meeting with Cuban President Raul Castro to discuss the thawing relationship between Cuba and the United States as well as ways to promote the establishment of U.S. business interests on the island.

Ahead of the president's visit, the two governments continued to meet in various capacities throughout February. The second U.S.-Cuba Regulatory Dialogue, hosted by the U.S. Departments of Commerce and Treasury, was held in Washington on February 17-18. The Cuban Minister of Foreign Trade and Investment (MINCEX), Rodrigo Malmierca Diaz, led the Cuban delegation, which also included the president of the Cuban Chamber of Commerce. The talks are designed as a mechanism to build commercial ties between the United States and Cuba in support of the recent regulatory relaxations.

While in Washington, the Cuban delegation also met with the U.S. Chamber of Commerce. Although Minister Diaz emphasized the need to end the embargo against Cuba, he also acknowledged the important role the U.S. Chamber of Commerce has had in promoting the reestablishment of relations between the two countries and building the willingness of the governments to improve economic ties.

On February 16, the U.S. Secretary for Transportation, the Assistant Secretary of State for Economic and Business Affairs, the Cuban Minister of Transportation, and the President of the Cuban Civil Aviation Institute (IACC), signed an arrangement that provides for the reestablishment of scheduled air services. The U.S. Department of Transportation (DOT) invited U.S. air carriers to apply for the necessary licenses to in order to participate in the return of regularly scheduled passenger and cargo flights. This agreement was necessary to give effect to the previous partial relaxations by the U.S. Departments of Treasury and Commerce of the pre-existing prohibitions on U.S. air carriers traveling to Cuba.

Furthermore, working-level representatives of the two governments met in Havana on February 22-23 to exchange information and discuss best practices related to the prevention of on-line fraud and cybercrime.

Additional intergovernmental meetings are expected in March in preparation for, and resulting from, President Obama's visit.

For more information, contact: Mariana Pendas, Dj Wolff

SEC Sets Precedent with Individual Deferred Prosecution Agreement (DPA) in FCPA Case

The Securities and Exchange Commission (SEC) set a precedent in February when it entered into its first-ever individual deferred prosecution agreement (DPA) in a Foreign Corrupt Practices Act (FCPA) case. Massachusetts-based technology company PTC Inc. (NASDAQ: PTC) and two of its Chinese subsidiaries (collectively, PTC China) together agreed to pay more than \$28 million to settle parallel civil and criminal actions for violations of the FCPA.

The SEC entered into the individual DPA with Yu Kai Yuan, a former employee of one of PTC's Chinese subsidiaries, due to his significant cooperation. Under the DPA, civil charges against Yuan will be deferred for three years. DPAs are designed to facilitate and reward cooperation in investigations by requiring the deferred party to cooperate fully and truthfully throughout the deferral period.

As for the entities themselves, PTC agreed to pay \$13.6 million to the SEC pursuant to a cease-and-desist order, while PTC China agreed to pay \$14.5 million to the Department of Justice (DOJ) pursuant to a non-prosecution agreement (NPA).

Although DOJ is placing a greater emphasis requiring companies to disclose evidence of individual wrongdoing as described in its September 2015 memorandum titled, "Individual Accountability for Corporate Wrongdoing," informally known as the "Yates memo," no individuals were charged criminally in the case.

The related case involving PTC China is also noteworthy as it provides rare insight and some clarity with respect to DOJ's decision-making process. DOJ commented in the PTC China NPA that "PTC China did not receive voluntary disclosure credit or full cooperation credit because, at the time of initial disclosure, it failed to disclose relevant facts..."

Even so, the NPA gave PTC China “partial cooperation credit of 15% off the bottom of the Sentencing Guidelines fine range for their cooperation with the Office's investigation, including collecting, analyzing, and organizing voluminous evidence and information for the Office...”

This focus on “complete transparency” in order to gain full mitigating credit emphasizes the need to tailor internal reviews from the onset with this in mind.

For more information on the “Yates memo,” please see [Crowell’s Special Focus Article on Employee Liability](#).

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

North Korea: New U.S. and UN Sanctions

On February 18, President Obama signed into law the [North Korea Sanctions and Policy Enhancement Act of 2016](#), expanding and strengthening U.S. sanctions against North Korea in response to that country's recent nuclear and ballistic missile tests. These measures not only broaden the scope of U.S. sanctions to categorically prohibit dealings by U.S. persons with the Government of North Korea, they also provide for additional sanctions for persons who knowingly undertake certain types of North Korea-related activity.

For detailed information, please see [Crowell’s Client Alert](#).

On March 2, [United Nations Security Council Resolution \(UNSCR\) 2270](#) was adopted imposing new sanctions on North Korea. Among other things, the new Resolution contains:

- **Mandatory Inspection Regimes:** All cargo going into or out of North Korea is now required to be inspected (previously it was subject to an enhanced due diligence regime).
- **Additional Export Controls:** The UN broadened the scope of its export prohibitions to a number of items including:
 1. Items determined to contribute to North Korea’s armed forces;
 2. Items that contribute to North Korea’s nuclear or ballistic missile programs;
 3. Coal, iron, and iron ore;
 4. Gold, titanium ore, vanadium ore, and rare earth minerals; and
 5. Aviation and rocket fuel.
 - UN Member States are permitted to impose broader restrictions, as the United States has done.
- **Additional Designations:** The UN added a number of new individuals and entities that it determined have been involved in supporting North Korea’s nuclear program or that are owned or controlled by previously designated persons to its list of sanctioned persons. Countries are further required to expel North Korean diplomats accused of illegal activity, but there remains an exception for the North Korean Mission to the United Nations in New York.
- **Financial Measures:** Member States are to:
 1. Prohibit public and private financial support for trade with North Korea (including the granting of export credits, guarantees or insurance to their nationals or entities involved in such trade);

2. Prohibit the opening and operation of new branches, subsidiaries, and representative offices of North Korean banks;
3. Take the necessary measures to close such existing branches, subsidiaries and representative offices, and also to terminate such joint ventures, ownership interests and correspondent banking relationships with North Korean banks within ninety days from the adoption of the resolution if the State concerned has credible information that provides reasonable grounds to believe that such financial services could contribute to North Korea's nuclear or ballistic missile programs.

On the same day, in actions which complement and implement the new resolution, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) designated two entities and ten individuals with ties to the Government of North Korea and its nuclear and weapons proliferation efforts.

Additionally, the State Department designated three entities and two individuals for activities related to weapons of mass destruction (WMD) proliferation for North Korea, and also updated the alias of an entity that was previously designated for similar activities.

For more information, contact: Carlton Greene; Cari Stinebower; Dj Wolff; Adeoye Johnson

UK: Increasing Sanctions Penalties To Prepare for a New Sanctions Enforcement Agency

In line with the UK government's intention to increase the penalties for non-compliance with financial sanctions, legislation has been introduced in Parliament that proposes to increase prison sentences and civil fines for such violations. If adopted, the legislation would substantially strengthen the UK Treasury's enforcement powers in this field.

Specifically, the Policing and Crime Bill would increase the available imprisonment terms from six to twelve months on summary conviction, and from two to seven years on conviction on indictment. Similarly, the legislation would increase the permitted maximum monetary penalties to the greater of £1 million or 50 percent of the estimated value of the funds or resources involved.

These sanctions come in anticipation of the initiation of the UK's Office of Financial Sanctions Implementation (OFSI) in April 2016. The UK has publicly indicated that it intends to model the OFSI off its U.S. counterpart, the Office of Foreign Assets Control (OFAC). OFSI would be responsible for broader outreach and education of the UK community on sanctions compliance, but would also be provided with broader enforcement authorities. It remains to be seen where the OFSI will place its emphasis and whether these new authorities would result in a substantial increase in UK enforcement cases, following in OFAC's shoes.

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

TRADE AGREEMENT AND INVESTMENT UPDATES

President Obama Says He Will Submit TPP in 2016

President Obama said that he will submit legislation to implement the Trans Pacific Partnership (TPP) to Congress this year in remarks made before a meeting of the National Governors Association on February 22. In the same speech, he downplayed objections to portions of the TPP expressed by key Republican leaders, including Speaker of the House Paul Ryan (R-Wisconsin) and Senate Majority Leader Mitch McConnell (R-Kentucky), referring to the objections as merely “concerns along the margins” of the agreement.

Speaker Ryan, speaking in a Fox News interview on February 14, said that there are currently not enough votes to pass TPP due to “flaws” in the agreement. He said that he did not know whether that would change, citing criticisms of TPP commitments on cross-border data flows, dairy, and the exclusivity period for biologic drugs. Senate Majority Leader McConnell has previously said that Congress should not vote on TPP before the November elections. Among Democrats who object to TPP overall, the ranking member of the Committee on Ways and Means, Representative Sander Levin (D-Michigan), formally announced his opposition to the agreement on February 18. He has expressed optimism that Democratic presidential candidate Hillary Clinton, whom he has endorsed, would obtain a better deal.

Senior Administration officials have confirmed that the Administration is in consultations with Congress and the Congressional trade committees on addressing Congressional concerns as well as the timing for a vote. House Ways and Means Chairman Kevin Brady (R-Texas) has indicated that the timing of a TPP vote will depend on whether and when those concerns can be resolved.

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

U.S. and EU Conclude Twelfth Round of TTIP Negotiations

Officials of the United States and European Union concluded the twelfth round of negotiations on the Transatlantic Trade and Investment Partnership (TTIP) on February 26. As both sides maintain that they seek to conclude negotiations in 2016, this round was necessary to build on intensified engagement in recent months and to accelerate the pace of negotiations going forward. It is understood that particular progress was achieved under the two pillars of regulatory cooperation and rules during these negotiations.

With respect to regulatory cooperation, discussions advanced on the horizontal aspects of good regulatory practices and cooperation on rule-making, as well as standards development practices ensuring transparency and input from stakeholders. Revised proposals in this respect – expected to be developed before the next round in the United States later in spring - will be made public. In terms of sectors, discussions to identify common objectives focused on automotive, pharmaceuticals, and medical devices. The overarching aim remains to eliminate burdens on trade while maintaining existing levels of regulatory protection.

With respect to rules, negotiators highlighted proposals and discussions in the areas of customs and trade facilitation, sanitary and phytosanitary (pests and pathogens) measures, rules of origin, and competition. However, the EU also emphasized investment protection, as this round was the first time the parties were able to consider the full implications of the investment protection proposal presented by the EU in December, including a new Investment Court System. The EU has expressed hope areas of convergence will be identified in this context.

In the market access areas, the parties are working to have meaningful offers on the table. On tariffs, both sides have made offers and agree on liberalizing 97 percent of tariff lines, with the U.S. emphasizing the goal of eliminating transatlantic tariffs under TTIP. However, on services, it is understood that a fairly significant gap may still remain between the parties' respective offers. The U.S. is also reported to consider the EU offer on e-commerce insufficient. The U.S. maintains high ambitions in this area, and will call for strong discipline on freedom of data flows and restrictions on localization of data infrastructure.

As a result, work will continue in the weeks ahead, beginning with an initial exchange of offers on government procurement the week of February 29. In addition, two more rounds of negotiations are foreseen before the summer. The aim by then is to have achieved substantial progress under all three pillars of the agreement – market access, regulatory cooperation, and rules – removing brackets from offers and agreeing on actual wording. As reported by U.S. officials, the parties are now well into the nitty-gritty of these negotiations.

For more information, contact: Paul Davies, Charles De Jager

Canada Accepts New EU Approach on Investment Protection and Dispute Settlement

In the context of the legal review of the new EU-Canada Comprehensive Economic and Trade Agreement (CETA), the European Union and Canada have agreed to revise the final CETA text to include the new EU approach on investment protection and dispute settlement.

European Commission officials emphasize these changes to the final CETA text are intended as a clear signal to the EU's other trading partners of the EU's goal to incorporate this new approach on investment in all negotiations.

The revised CETA text now includes the main elements of the new EU approach, as outlined in the EU's investment proposal in the TTIP negotiations, and as contained in the recently concluded EU-Vietnam free trade agreement. Specifically, the agreement includes stronger language affirming governments' "right to regulate", a new approach to arbitrator selection in which arbitrators will be appointed in advance by Canada and the EU rather than by the parties to the dispute, and an appeal system in which the appellate body is empowered to review arbitral decisions for legal errors. The EU and Canada likewise have both committed to engage in efforts with their other trading partners to set up a permanent multilateral investment court with a standing appellate mechanism.

Despite the agreement reached between Canada and the EU, the TTIP negotiations will significantly test this new approach, as it remains to be seen to what extent the United States will accept the EU's investment protection and dispute settlement proposal.

For more information, contact: Charles De Jager, J.J. Saulino

Venezuelan Government Announces More Changes to Currency Exchange System

On February 17, Venezuela President Nicolás Maduro announced a series of measures in another effort to “resolve” the country’s economic recession. This time the measures include a devaluation of the official exchange rate from 6.3 to 10 bolívars per U.S. dollar, and a rise of the greatly subsidized fuel prices for first time in two decades.

With the Government's new announcement, the exchange control system in Venezuela will transition from a previous three-tiered structure into a dual exchange rate mechanism, as follows: (i) CENCOEX at 10 bolívars per U.S. dollar (a fixed rate exclusively for the food and health sectors); and (ii) "Marginal Currencies System" (Sistema Marginal de Divisas or SIMADI), starting at an average price of 200 bolívars per U.S. dollar. It remains unclear whether SIMADI will operate as a free floating exchange rate, unlike how it has been working to date. Meanwhile, the parallel market rate reached 1,000 bolívars per U.S. dollar, *i.e.*, 100 times more than CENCOEX’s rate.

For further explanation of SIMADI and Venezuela’s exchange system, please see [Crowell's February 2015 Client Alert](#).

Maduro’s announcement came after the government-controlled Supreme Tribunal of Justice overturned the National Assembly’s refusal to approve the [economic emergency decree](#) proposed by the President in January. The court held that President Maduro did not need legislature authorization and granted him broad powers to intervene in the economy bypassing the National Assembly. According to recent studies, Venezuela’s Supreme Court has not ruled against the Government in over 45,000 decisions since 2004. At the international level, however, numerous international tribunals have ruled against the Government with respect to claims against Venezuela under bilateral investment treaties (BITs).

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

CUSTOMS / IMPORTS / TRADE REMEDIES

EU AD/CVD Duties on Chinese Solar Panel Components Extended to Malaysia and Taiwan

Following an anti-circumvention investigation initiated on May 29, 2015, the European Commission has extended to Malaysia and Taiwan the antidumping (AD) and countervailing duties (CVD) currently applicable to imports of solar panel components from China. The Commission determined that solar modules and cells of Chinese origin were being transhipped via Malaysia and Taiwan to avoid paying duties under the EU trade defense measures in force.

However, EU users will be able to continue sourcing solar modules and cells without duties from five Malaysian and approximately twenty Taiwanese companies the Commission determined are producers not engaged in circumvention activities. The Commission also specifically commended the Taiwanese authorities for their cooperation during the investigation, highlighting their resolve to combat customs fraud and circumvention.

The EU antidumping and countervailing measures on imports of solar cells and panels from China were imposed on December 5, 2013 for a period of two years. Reviews to determine whether they should remain in force were initiated on December 5, 2015. The Commission expects these reviews will be completed late in 2016.

For more information, contact: Charles De Jager, Benjamin Blase Caryl

New Trade Case Filed on Stainless Steel Sheet and Strip from China

On February 12, AK Steel, Allegheny Ludlum, North American Stainless, and Outokumpu Stainless USA filed antidumping (AD) and countervailing duty (CVD) petitions on low-priced imports of stainless steel sheet and strip from China.

There are already AD and CVD orders on stainless steel sheet and strip from Japan, Korea, and Taiwan. Petitioners allege that U.S. imports of stainless steel sheet and strip from China are dumped at levels between 54 and 83 percent of their actual value.

The U.S. International Trade Commission (ITC) held a public preliminary conference in early March, at which interested parties (U.S. producers, importers, purchasers, and foreign producers/exporters) testified and answered ITC staff questions about the stainless steel sheet and strip industry and market.

For more information, contact: Benjamin Blase Caryl

Congress Requests Investigation of Competitiveness of U.S. Aluminum Industry

On February 24, House Ways and Means Committee Chairman Kevin Brady (R-Texas) formally requested the U.S. International Trade Commission (ITC) investigate the factors affecting the global competitiveness of the U.S. aluminum industry—producers of unwrought (*e.g.*, primary and secondary) and wrought (*e.g.*, semi-finished) aluminum products.

The request letter anticipates that the ITC will need to collect primary data from market participants through questionnaires. The ITC will also likely hold hearings on the following:

- Production, capacity, employment, wages, inventories, supply chains, domestic demand and exports of U.S. and major foreign aluminum industries;
- Trends and developments in the global aluminum market;
- Trade flows through third countries for further processing and subsequent exports;
- Comparison of competitive strengths and weaknesses of aluminum production and exports of major countries, including producer revenue, production costs, technology, innovation, exchange rates, prices, and government policies that affect aluminum production and exporting;
- Factors driving unwrought aluminum capacity increases; and

- Qualitative and quantitative assessment of the impact of government policies and programs of major foreign aluminum producing and exporting countries on their aluminum production, exports, consumption, domestic prices, the U.S. aluminum industry, and aluminum markets worldwide.

The ITC's report will be due to Congress in June 2017.

For more information, contact: Alex Schaefer and Benjamin Blase Caryl

Commerce Announces Preliminary AD Determinations on Cold-Rolled Steel

On March 1, the U.S. Department of Commerce (DOC) announced its preliminary antidumping duty (AD) determinations on imports of cold-rolled steel from Brazil, China, India, Korea, Japan, Russia, and the United Kingdom. DOC calculated the following AD rates:

- Brazil: 38.93 percent of the imports' value;
- China: 265.79 percent;
- India: 6.78 percent;
- Japan: 71.35 percent;
- Korea: 2.17 to 6.85 percent;
- Russia: 12.62 to 16.89 percent; and
- United Kingdom: 5.79 to 31.39 percent.

As a result, DOC will direct U.S. Customs and Border Protection to suspend liquidation of all such entries and require cash deposits for entries at the above rates. The final AD determinations for China and Japan are scheduled for May 16, 2016, while the final AD determinations for the other subject countries are scheduled for July 13, 2016.

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

Federal Circuit Denies Ford Motor Co. Declaratory Relief for Duties Paid on Jaguar Cars

On February 3, 2016, in *Ford Motor Company v. United States*, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) affirmed the U.S. Court of International Trade's (CIT) dismissal of Ford's claims for injunctive relief for duty payments on imported Jaguar-brand cars. This case involves two types of court actions that Ford filed to seek duty refunds on the same entries. Ford filed the first action seeking declaratory relief under 28 U.S.C. § 1581(i) or CIT's residual jurisdiction, which is the subject of the Federal Circuit decision discussed here. Ford also filed actions under 28 U.S.C. § 1581(a) contesting U.S. Customs and Border Protection's (CBP) denial of protests. Ultimately, the Federal Circuit found that the pending § 1581(a) actions would be a better venue for Ford to assert these claims and dismissed Ford's claims under § 1581(i).

In 2004 and 2005, Ford imported from the UK into the U.S. Jaguar-brand cars and deposited estimated duty payments with CBP. After concluding that it overpaid duties because the original value of the cars was too high, Ford filed nine reconciliation entries with CBP in 2005 and 2006 seeking a refund of \$6.2 million. Such an action requires CBP, within one year unless CBP extends the period, to liquidate an entry or calculate the accurate duty owed. If an importer disagrees with CBP's liquidation decision, then the importer has 180 days to file a protest. Importers cannot file protests to a CBP decision on an entry unless and until the entry is "liquidated."

On April 15, 2009, after several years where CBP took no action on Ford's 2005 and 2006 entries, Ford filed suit in the CIT asserting in six claims that CBP failed to properly extend the liquidation period. Because CBP had failed to liquidate any of Ford's entries at the time, Ford sought declaratory judgment under the residual jurisdiction of § 1581(i), arguing that its entries were deemed liquidated as entered at the lower duty as a matter of law (*i.e.* that Ford's lower duty calculation should be deemed accurate by default).

While the CIT § 1581(i) action was pending (titled *Ford I*), CBP liquidated five of the nine entries and denied Ford a refund. The government then filed a motion to dismiss Ford's claims in *Ford I* for lack of jurisdiction under § 1581(i). The CIT granted the government's motion as to the five liquidated entries, finding that Ford could simply file a § 1581(a) action contesting CBP's denial of Ford's protest to obtain duty refunds. As for the remaining four unliquidated entries, the CIT declined to issue declaratory relief under its discretionary authority, finding that Ford would have ample opportunity to challenge those entries in a future § 1581(a) action. Ford appealed the *Ford I* decision to the Federal Circuit.

Prior to that appeal, CBP liquidated the remaining four entries, again denying Ford a refund, then denied Ford's protest of these determinations. Ford later commenced a separate § 1581(a) action challenging that protest denial, which is currently pending. On the appeal of CIT's *Ford I* decision, the Federal Circuit reversed CIT's dismissal of the claims relating to the first five entries. The Court held that CBP's action of liquidating the entries after the *Ford I* action commenced could not remove subject matter jurisdiction under § 1581(i). The Court further vacated CIT's discretionary denial of declaratory relief on the remaining four entries.

On remand of *Ford I*, the CIT granted the government's motion to dismiss for claims directed to the 2005 entries. The CIT found the action was time-barred by the two year limitations period provided by 28 U.S.C. § 2636(i), governing civil actions brought in the CIT under §1581(i). As for the claims regarding Ford's 2006 entries, the CIT again declined to exercise its discretionary jurisdiction under § 1581(i) stating such claims would be better adjudicated in Ford's pending § 1581(a) action. Ford then appealed this second CIT decision to the Federal Circuit.

On this second appeal, the Federal Circuit found that the two year statute of limitations was not jurisdictional because there was no clear evidence of that effect in the wording of the statute itself, in Congress' structure of the statute, or in cases interpreting the statute. Accordingly, the Federal Circuit held that the CIT had jurisdiction to adjudicate Ford's claims under §1581(i) even though they were filed after the two year statutory period had ended.

However, as to claims related to the 2006 entries, the Federal Circuit found that the CIT did not abuse its discretion in denying injunctive relief. The Court agreed with the CIT that the currently pending § 1581(a) action would better provide resolution of Ford's claims. Unlike review under § 1581(i), in a § 1581(a) review the CIT would review Ford's claims *de novo* (from the beginning) based on a complete record. Thus, the CIT could address both the issue of whether Ford's entries were deemed liquidated by default and what the correct rate of duty would be for Ford's imports.

Accordingly, because the alternative remedy would be more effective, and Ford had already commenced the separate § 1581(a) action, the Federal Circuit found that the CIT did not abuse its discretion in denying declaratory relief for claims related to the 2006 entries. The Federal Circuit also refused to remand the case to the CIT to adjudicate claims on the 2005 entries originally found to be time-barred. Using a court’s discretion to affirm an agency decision on a different ground than used by the agency, the Federal Circuit found that CIT’s adequate reasons for failing to exercise discretion to review the claims related to the 2006 entries equally apply to the remaining claims. Therefore remand was unnecessary because the CIT decision not to provide declaratory relief under § 1581(i) on claims for the 2006 entries would also apply to the remaining claims.

In a dissenting opinion, Federal Circuit Judge Newman refused to join with the remaining judges to make Ford wait for the pending § 1581(a) action to receive its refund. Rather, Judge Newman argued that Ford should be ordered the refund now. She emphasized how irregular the process has been to adjudicate such an uncomplicated claim, a process where, as she notes, CBP has failed to provide support for its actions. She lamented that, “[t]he judicial role is to bring the matter to a close, not to start again.”

For more information, contact: Frances Hadfield, Ade Johnson

AGENCY ENFORCEMENT ACTIONS

Bureau of Industry and Security (BIS)

- On February 3, BIS issued an order denying export privileges for 10 years to Qiang Hu, who was convicted on July 24, 2014 of violating the International Emergency Economic Powers Act (IEEPA). Hu knowingly and willfully conspired, combined, confederated and agreed with other persons to cause the export of U.S.-origin pressure transducers to China in violation of the Export Administration Regulations (EAR).
- On February 11, BIS issued an order denying export privileges for 8 years to Viacheslav Zhukov, who was convicted on December 5, 2014 of violating the International Emergency Economic Powers Act (IEEPA). Zhukov knowingly and willfully conspired, combined, confederated and agreed to unlawfully export controlled firearm accessories from the United States to co-conspirators in Russia without obtaining an export license from the Department of Commerce.
- On February 23, BIS amended the Export Administration Regulations (EAR) by adding eight (8) persons to the Entity List under the destination of the United Arab Emirates (U.A.E.).
 - This final rule also removed nine (9) persons from the Entity List, as the result of a request for removal submitted by these persons, a review of information provided in the removal request in accordance with the procedure for requesting removal or modification of an Entity List entity and further review conducted by the End-User Review Committee (ERC).
 - Finally, this rule revised six (6) existing entries on the Entity List. One entry under Iran was modified to correct the entry by updating the Federal Register citation. Five entries on the Entity List under the destinations of Armenia, Greece, India, Pakistan and the United Kingdom (U.K.) were modified to reflect a removal from the Entity List.

Office of Foreign Assets Control (OFAC)

- On February 4, OFAC published its determination of a Finding of Violation against Johnson & Johnson (Middle East) Inc. (JJME), a U.S. subsidiary of Johnson & Johnson. JJME facilitated the export of goods to Sudan by coordinating and supervising five shipments from Johnson & Johnson (Egypt) S.A.E. to Khartoum, Sudan. This finding is in lieu of a civil monetary penalty.
- On February 8, Barclay's Bank Plc agreed to remit \$2,485,890 to settle potential civil liability for 159 apparent violations of the Zimbabwe Sanctions Regulations. Over a five-year period Barclays processed 159 transactions totaling approximately \$3.4 million to or through financial institutions located in the United States for or on behalf of corporate customers of Barclays Bank of Zimbabwe Limited that were owned 50 percent or more, directly or indirectly, by a person identified on OFAC's List of Specially Designated Nationals and Blocked Persons (the SDN List).
 - In its web notice, OFAC stated the enforcement response is appropriate, even when an individual or entity is not included on the SDN List, in response to apparent violations in which:
 - The apparent violator is an institution that maintains direct customer relationships for entities that are beneficially owned, directly or indirectly, 50 percent or more by one or more SDNs, and is processing or routing transactions to or through the United States on behalf of such customers;
 - The institution's own records clearly demonstrate or otherwise clarify the SDN ownership of the customer, but the institution failed to act on the information ; and/or
 - Information concerning the SDN ownership of the customer is publicly available and allows intermediary banks to identify and block such transactions.
- On February 22, CGG Services S.A., previously CGG Veritas (CGG France), agreed to pay \$614,250 on behalf of itself and two affiliates to settle potential civil liability for alleged violations of the Cuban Assets Control Regime (CACR). CGG France and its affiliates provided services, spare parts, and equipment for oil and gas exploration and seismic surveys.
- On February 25, Halliburton Atlantic Limited (HAL) agreed to pay \$304,706 on behalf of itself and its affiliate, Halliburton Overseas Limited (HOL), to settle potential civil liability for alleged violations of the Cuban Assets Control Regulations (CACR). Halliburton exported goods and services in support of oil and gas exploration drilling activities within the Cabinda Onshore South Block oil concession in Angola. Cuba Petroleo, a state-owned consortium, holds a five percent interest in the concession.

Securities and Exchange Commission (SEC)

- On February 18, the SEC announced a global settlement along with the U.S. Department of Justice and Dutch regulators that requires telecommunications provider VimpelCom Ltd. pay \$167.5 million to the SEC, \$230.1 million to the U.S. Department of Justice, and \$397.5 million to Dutch regulators to resolve its violations of the Foreign Corrupt Practices Act (FCPA) to win business in Uzbekistan.

Financial Crimes Enforcement Network (FinCEN)

- On February 25, FinCEN announced a \$4 million civil money penalty (CMP) against Gibraltar Private Bank and Trust Company of Coral Gables, Florida, for willfully violating federal anti-money laundering (AML) laws. The bank had been under scrutiny since 2010 by the Office of the Comptroller of the Currency (OCC). In 2014, the OCC placed Gibraltar under a Consent Order and on the same day as the FinCEN announcement issued a \$2.5 million CMP against the bank. Some notable details included:

- Gibraltar failed to file in a timely manner at least 120 suspicious activity reports (SAR) involving \$558 million in transactions between 2009 – 2013;
- The bank’s transaction monitoring system contained incomplete and inaccurate account opening information and customer risk profiles; and it
- Failed to address an automated monitoring system that generated an unmanageable number of alerts delaying Gibraltar’s review.

For more information, contact: Edward Goetz

OTHER AGENCY ACTIONS

Bureau of Industry and Security (BIS) and Directorate, Defense Trade Controls (DDTC)

- On February 9, BIS and DDTC published in the Federal Register clarifications and revisions to the [Commerce Control List \(CCL\)](#) and the [United States Munitions List \(USML\)](#) for Aircraft and Gas Turbine Engines.
 - Comments for these Proposed Rules are due March 25, 2016.
- On February 19, BIS and DDTC published proposed rules in the Federal Register to revise the [Commerce Control List \(CCL\)](#) and the [United States Munitions List \(USML\)](#) for fire control, laser, imaging, and guidance and control equipment.
 - Comments for these Proposed Rules are due April 4, 2016.

Financial Crimes Enforcement Network (FinCEN)

- On February 19, FinCEN announced it was “withdrawing three findings and related proposed rulemakings under Section 311 of the USA PATRIOT Act, after having determined that the subjects of the rulemakings no longer pose a money laundering threat to the U.S. financial system.” The three financial institutions are Liberty Reserve S.A., JSC CredexBank, and Banca Privada d’Andorra.

U.S. Customs and Border Protection (CBP)

- On February 8, CBP released an updated timeline for Entries (Cargo Release), Entry Summaries, and Partnering Government Agencies (PGA) in the Automated Commercial Environment (ACE).
 - While the legacy Automated Commercial System (ACS) was not to be turned off on February 28 for entries that are part of the initial ACE implementation, CBP advised they will give priority to ACE entries and will also be performing maintenance on ACS during peak hours which could cause delays.
 - Beginning March 31, 2016, however, certain functions of ACS will be turned off and ACE will be required for certain types of entries, and under those types, a limited subset of PGA data. The revised dates for the remaining entry types and PGA’s [may be found here](#).

For more information, contact: Edward Goetz

CROWELL & MORING INVITES YOU TO A RECEPTION AT ICPA LAS VEGAS

Please join Crowell & Moring for a Reception at the International Compliance Professionals Association's (ICPA) 2016 Annual Conference in Las Vegas on Monday, March 14 from 6 – 8 pm. [Please click here](#) for more information and to RSVP.

CROWELL & MORING PUBLISHES

- **Daniel Cannistra** and **Benjamin Blase Caryl**: "[Opportunities and Challenges in International Trade](#)," *Corporate Counsel* (February 2, 2016)
 - **Jini Koh**: "The Rising Use of Reference Pricing for Imported Goods," *Law360* (February 8, 2016)
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CROWELL & MORING SPEAKS

JOIN US FOR "This Year in Trade – What's Ahead in 2016?"

This free webinar will be held on Wednesday, March 16, 2016 from 12:00 – 1:30 PM ET.

International trade rules are changing rapidly. From Iran to Cuba, and from TPP to TTIP, 2016 promises even more. We will highlight the events and trends that will drive trade regulation in 2016, and identify opportunities to stay on top of, or even get ahead of change that affects your company's bottom line. Should you expect anything different in 2016?

Our Crowell & Moring team will discuss predictions for the coming year.

Topics will include likely trends and issues in the U.S. and EU on:

- Economic Sanctions
- Anti-money Laundering
- Export Controls
- Customs
- Trade Remedies
- EU Trade Issues
- Data Privacy

Presenters include members of our international trade team based in Washington, D.C. and Brussels and we hope you can join us for this webinar.

Please [click here](#) to register.

On February 12, **Cheryl Falvey**, **Frances Hadfield**, and **Chahira Solh** spoke at the 2016 Fashion Law Conference at the Parsons School of Design in New York. Cheryl and Frances discussed “The Regulatory Framework of Labeling and Disclosure,” while Chahira spoke on “Mergers/Acquisitions and Antitrust Considerations.”

Jini Koh spoke at the 2016 Georgetown Law International Trade Update on February 26. She was a panelist for “Behind the Scenes: Moot Customs Hearing.”

On March 3, **Jeff Snyder** spoke at a program sponsored by the Women’s Bar Association of DC on “Getting Published as a Practitioner.” Jeff, who serves as the General Editor of the Global Trade & Customs Journal, a Kluwer Law International publication, discussed publication opportunities for practitioners.

John Brew and **Cari Stinebower** will be speaking at the International Compliance Professionals Association’s (ICPA) 2016 Annual Conference. The conference is being held from March 13-16 in Las Vegas. On March 14, Cari will be providing an “Update on Global Sanctions” and John will be discussing the “Use of Statistical Sampling in Trade Compliance” on March 16.

On March 17, CMI Director **Paul Davies** will be presenting at the American Chamber of Commerce to the European Union’s Transatlantic Conference on opportunities for U.S. firms in Europe under the Trans Pacific Partnership (TPP) agreement.

Jeff Snyder will 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.

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

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