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CLIENT ALERT

This Month in International Trade — January 2017

Feb.09.2017

In this issue:

This news bulletin is provided by the International Trade Group of Crowell & Moring. If you have questions or need assistance on trade law matters, please contact John B. Brew or any member of the International Trade Group.

CROWELL & MORING'S FIRST 100 DAYS SERIES

PODCAST – President Trump's Early Trade Policy Moves – What it Means for Business

As part of Crowell & Moring's "First 100 Days" series, Paul Davies and Andrew Blasi of C&M International, Crowell & Moring's international policy and regulatory affairs consulting affiliate, discuss the trade policy moves made so far by the Trump Administration, and what it means for businesses who are involved in trade issues. Paul is a director at C&M International and a former Australian trade negotiator. Andrew is an associate director at C&M International and a former staff member of the US-ASEAN Business Council and the U.S. House of Representatives.

Covered in this 16 minute podcast:

- President Trump's early trade policy emphasis on limiting imports and eliminating the trade deficit.
- Implications of the U.S. withdrawal from TPP and the main takeaways for businesses.
- The president's upcoming meeting with Prime Minister Abe of Japan and where things stand.
- Thoughts on NAFTA and what businesses might expect.

Click below to listen via the embedded player or access from one of these links:
PodBean | SoundCloud | iTunes

For more information, contact: Paul Davies, Andrew Blasi

PODCAST – State of Play on U.S.-Cuba Relations

As part of Crowell & Moring's "First 100 Days" series, Cari Stinebower, Scott Douglas, and Mariana Pendás sit down to discuss the state of U.S.-Cuba relations at the start of the Trump administration, updating our Nov. 23 podcast on sanctions under the Trump Administration. Cari, a partner with the firm, previously worked as an attorney advisor for the Office of Foreign Assets Control. Scott is a senior policy director with our Government Affairs Group and previously served as finance director for Senator Mitch McConnell. Mariana is an international associate with the firm's International Trade Group; she is a dual-qualified lawyer in Spain and New York and admitted to practice under the Brussels' E List.

Discussed in this 20 minute podcast:

- History of Cuban sanctions.
- Recent legislation relating to Cuba.

- What is likely to happen under the new administration.
- What American businesses should consider before entering the Cuban market.
- Which members of Congress might have the most influence on relations with Cuba.

Click below to listen via the embedded player or access from one of these links:
PodBean | SoundCloud | iTunes

For more information, contact: Cari Stinebower, Scott Douglas, Mariana Pendás

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TOP TRADE DEVELOPMENTS

Business Coalitions Form on Border Adjustment Tax (BAT) while Senate Waits to Weigh In

In December we flagged the proposed Border Adjustment Tax (BAT), an element of the House Republican tax reform blueprint being championed by House Speaker Paul Ryan (R-WI) and Ways and Means Committee Chairman Kevin Brady (R-TX).

The Blueprint proposed a variety of corporate tax reforms, including a BAT under which exports of domestically produced goods are exempt from federal income tax and imports of foreign made goods are denied a cost basis for tax purposes (separately President Trump has threatened to levy a tariff on imports from specific countries such as a 20% border tax on Mexican imports).

Some lawmakers have expressed concerns about the proposed BAT. Senate Finance Committee Chairman Orrin Hatch (R-UT) said that he will not take a position before he knows how U.S. consumers would be affected and whether the measure would be consistent with U.S. trade obligations. He has stated, "No one should expect the Senate to simply take up and pass a House tax reform bill…a major concern on tax reform is producing a bill that can get through the Senate, and that is likely going to require a separate Senate tax reform process, which will almost surely end up looking different from what passes in the House." Senate Finance Committee member Charles Grassley (R-Iowa) said, "I don't think its [BAT] got much support in the Senate compared to what it's got in the House." President Trump has called BAT "too complicated" though the White House is reportedly working with House Republicans to consider a BAT provision as part of broader corporate tax reform.

The business community is split over the proposed BAT. The American Made Coalition has formed to support the overall House Republican tax blueprint, including a BAT. Members include Dow Chemical, General Electric, Boeing, Pfizer and Eli Lilly. The Americans for Affordable Products coalition has formed to oppose a BAT (though the coalition supports comprehensive tax reform). This coalition includes importers, including retail groups (the National Retail Federation, the American Apparel & Footwear Association, Footwear Distributors & Retailers of America) and large retailers (Gap, Target, Walmart, QVC, Rite Aid, Nike, Petco, Macy's, Best Buy, Ikea). The coalition plans to run a national campaign to engage consumers and educate lawmakers about a policy that it believes will "result in higher costs for their customers on everyday items including food, gas and clothing [and] is the wrong approach." The National Retail Federation estimates that a BAT could cost families as much as $1,700 per year.

Further details on the proposed BAT are not expected until spring at the earliest. House Speaker Paul Ryan has said that attention will turn to tax reform and infrastructure after health care. In the meantime, Members of Congress and staff from both the House and the Senate are asking companies for information on how the proposed BAT would affect their operations and profitability as they work on legislative language.

For more information, contact: Patricia Wu, Jeffrey Snyder, John Brew, Charles Hwang, Charles De Jager

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Indications Point to NAFTA Renegotiation

Escalating tensions between the U.S. and Mexico threatened to put the North American Free Trade Agreement (NAFTA) at risk for the first time since its birth in 1994. On January 26, Mexican President Enrique Peña Nieto announced his decision to cancel Mexico's participation in the 'three amigos' meeting in Washington, D.C. The purpose of the planned meeting between the U.S., Mexico, and Canada was to discuss their current trade relationship, including the possibility of renegotiating NAFTA.

Following cancellation of the presidential summit, however, President Trump and President Peña Nieto spoke by phone on January 27 in an effort to put the bruised bilateral relationship back on track. The two leaders agreed not to talk publicly about "the wall" between Mexico and the U.S., or how it would be ultimately financed. Mexico's Secretariat of Economy soon published a notice that it was proceeding with a 90-day consultation period with Mexican companies, to determine priorities from Mexico's point of view for renegotiating NAFTA. Mexico is also pursuing a parallel renegotiation of its free trade agreement with the European Union.

Although the Trump administration has not as yet issued any notice calling for consultations or public comments from interested parties about NAFTA, President Trump remarked to members of the House Ways and Means and Senate Finance Committees in a meeting at the White House on February 2 that he hoped to accelerate discussions with Mexico and Canada on reworking NAFTA. All indications are that President Trump seems focused on renegotiating NAFTA – and perhaps even rebranding it – but not withdrawing from the agreement.

The prospect of renegotiating NAFTA raises a number of possible issues, including efforts by the Trump administration to develop certain "model approaches" to trade issues in NAFTA that could then be applied in subsequent negotiations with other partners. Examples of issues likely to be prominent in the Trump administration's thinking are rules of origin for the auto sector and possibly textiles and apparel, disciplines over the production of steel and aluminum to prevent over capacity in the market, and rules governing trade in the North American energy sector. Details await the confirmations of Secretary of Commerce-designate Wilbur Ross and USTR-designate Robert Lighthizer. House Ways and Means Ranking Member Richard Neal (D-MA) has already mentioned including provisions on currency manipulation, and incorporating articles on labor and the environment in the NAFTA text.

American business will need to provide views to shape such proposals and minimize disruptions to North American supply chains.

For more information, contact: Melissa Morris, Patricia Wu, John Brew, Daniel Cannistra, Eduardo Mathison

Trump Sanctions Iran over Ballistic Missile Test

On February 3, in response to Iran's latest ballistic missile test, which occurred on January 29, the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) sanctioned multiple entities and individuals involved in procuring technology and/or materials to support Iran's ballistic missile program as well as supporting the Islamic Revolutionary Guard Corps-Quds Force (IRGC-QF).

Specifically, OFAC designated 13 individuals and 12 entities under several non-nuclear authorities including sanctions targeting global terrorism (designated with the tag [SDGT]) and the proliferation of weapons of mass destruction (designated with the tag [NPWMD]). According to OFAC, the designations were intended to disrupt four separate networks: (1) the Abdollah Asgharzadeh Network, including entities in both Iran and China; (2) the Gulf-based Rostamian Network, including entities in Iran and the United Arab Emirates; (3) an Iran-based network working with Navid Composite and Mabrooka Trading (both previously identified as Specially Designated Nationals (SDNs)); and (4) a Lebanese-based network supporting the IRGC-QF.

While these sanctions represent the first additions to the SDN list under President Trump and come on the heels of a sharp increase in confrontational rhetoric from both the U.S. and Iran, they do not represent a substantial change in U.S. policy and were likely being prepared for months; indeed, President Obama followed a similar pattern after taking office, designating Iran-based individuals and entities under the [SDGT] and [NPWMD] programs within six weeks after first taking office in 2009.

Because the designations were all issued under non-nuclear authorities, they also do not represent a violation of the U.S.'s commitments under the Joint Comprehensive Plan of Action (JCPOA). At most, the designations demonstrate an increased willingness by the new Administration to exercise its enforcement authorities after criticizing the Obama Administration for under-utilizing them.

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

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U.K. Government Secures First Favorable Parliamentary Vote on Brexit

On February 1, 2017, the U.K. House of Commons voted preliminarily by a large majority (498 votes to 114) in favor of the Withdrawal from the European Union (Article 50) Bill 2016-2017 (the "Withdrawal Bill" – available here). Once the Withdrawal Bill receives royal assent, it will provide a formal mandate to the U.K. Government to notify the European Council of its intention to withdraw from the European Union. This notification will, itself, start the clock on the two-year window for negotiating the U.K.'s departure, pursuant to Article 50 of the Treaty on the Functioning of the European Union.

The large majority in favor in the House of Commons suggests that the bill will almost certainly become law, although the process for its full adoption still requires additional procedural steps. In particular, the Withdrawal Bill will now undergo in-depth discussions within a committee of the House of Commons. Following the committee stage, the Withdrawal Bill will be voted upon by the entire House of Commons, and then transmitted for a vote to the House of Lords.

U.K. Prime Minister Theresa May has stated she intends to give formal notice under Article 50 in March 2017. Given the lengthy parliamentary procedure, combined with the continuing political debates on the precise scope of the government's mandate, one could be forgiven for questioning whether this timetable might prove unduly optimistic.

For more information, contact: Dj Wolff, Charles De Jager, Lorenzo Di Masi, Gordon McAllister

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President Trump Orders Withdrawal from TPP, Signals Interest in Bilateral Trade Agreement with Japan

On January 23, President Trump fulfilled his election campaign promise to withdraw the U.S. as a signatory to the Trans-Pacific Partnership (TPP) agreement. One of his first actions as President was signing a Presidential Memorandum directing the U.S. Trade Representative (USTR) to formally notify TPP countries of the U.S. withdrawal from the agreement. This action ensures for the time being the agreement will not enter into force.

The Memorandum directed USTR to begin pursuing, "wherever possible," bilateral trade agreements for the benefit of American industry and American workers. While the Administration has not specified its negotiating priorities, it has signaled it will pursue the re-negotiation of the North American Free Trade Agreement (NAFTA), a review of the existing agreements in place with TPP countries, as well as new agreements with the TPP countries with which the U.S. does not have a trade deal.

Beyond Asia, President Trump expressed a desire to work with U.K. Prime Minister Theresa May on examining a bilateral FTA during her visit to Washington on January 27.

The most important potential target for the Administration's trade agenda in Asia is Japan. President Trump is scheduled to meet with Japanese Prime Minister Shinzo Abe in Washington on February 10, which could set the stage for moves to kick off a bilateral negotiation.

A bilateral deal with Japan would face significant challenges, even in light of the market-opening Japan agreed to in TPP. The Trump Administration would be seeking more far reaching commitments on currency, automotive market access and likely better protections against import surges in commodities such as steel. Pressing Japan on these issues could create a lengthy negotiation, particularly given the domestic opposition Prime Minister Abe faced in securing TPP's passage through the Diet before the Trump Administration withdrew from the deal.

Thus far the remaining TPP countries do not have concrete plans to move forward on a trade agreement without the U.S. Negotiations for the Regional Comprehensive Economic Partnership (RCEP), an agreement involving 16 Asia-Pacific countries (including many TPP countries, as well as India and China) are ongoing, though the scope of the agreement and the timeframe for conclusion is still uncertain. TPP Ministers, along with China, Korea and Colombia, will be meeting in Chile on March 18 to discuss the potential future path for trade liberalization among Asian and Latin American economies.

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

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ITAR and EAR: Changes and Proposed Changes in January

The Directorate of Defense Trade Controls (DDTC) and the Bureau of Industry and Security (BIS) posted notices in the Federal Register this month announcing changes and proposed changes to the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR).

Fire Control, Laser, Imaging and Guidance Equipment (ITAR Category XII)

On October 12, 2016, both DDTC and BIS published final rules for Fire Control, Laser, Imaging and Guidance Equipment (ITAR Category XII), but are now seeking industry comment on the impact of further increasing certain controls implemented by that final rule. Comments for both the ITAR and EAR proposals are due no later than March 14, 2017. In its notice, DDTC is requesting comment on (1) alternatives to controls on certain items when "specially designed for a military end user," (2) the scope of the control in paragraph (b)(1), and (3) certain technical parameters that the Department is evaluating to replace "specially designed" controls.

Spacecraft and Related Systems (ITAR Category XV)

Both the ITAR and EAR final rule published on January 10 address issues raised in, and public comments on, the interim final rule that was published on May 13, 2014, as well as additional clarifications and corrections. According to DDTC, the amendments describe more precisely the articles warranting control in this category.

The changes made in this final rule are grouped into four types of changes:

- Changes to address the movement of additional spacecraft and related items from the U.S. Munitions List (USML) to the Commerce Control List (CCL) as a result of changes in aperture size for spacecraft that warrant ITAR control.
- The movement of the James Webb Space Telescope (JWST) from the USML to the CCL.
- Other corrections and clarifications to the spacecraft interim final rule.
- The addition of .y items to Export Control Classification Number 9A515.

Other EAR Changes

Implementation of the India-U.S. Joint Statement of June 7

- This rule amends the EAR by establishing a licensing policy of general approval for exports or re-exports to or transfers within India of items subject to the EAR and controlled only for National Security or Regional Stability reasons.
- In addition, BIS amended the end use and end user provisions of the Validated End User (VEU) authorization to state that items obtained under authorization VEU in India may be used for either civil or military end uses other than those that are for use in nuclear, "missile," or chemical or biological weapons activities.

Support Document Requirements with Respect to Hong Kong

- This rule requires persons intending to export or re-export to Hong Kong any item subject to the EAR and controlled on the Commerce Control List (CCL) for national security (NS), missile technology (MT), nuclear nonproliferation (NP column

1), or chemical and biological weapons (CB) reasons to obtain, prior to such export or re-export, a copy of a Hong Kong import license or a written statement from the Hong Kong government that such a license is not required.
- This rule also requires persons intending to re-export from Hong Kong any item subject to the EAR and controlled for NS, MT, NP column 1, or CB reasons to obtain a Hong Kong export license or a statement from the Hong Kong government that such a license is not required.

For more information, contact: Chris Monahan, J.J. Saulino, Edward Goetz

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2-For-1: The Price of New Regulations Under the Trump Administration

On January 30, 2017, President Trump issued an Executive Order informing agencies that "for every one new regulation issued, at least two prior regulations" must "be identified for elimination."

Details of this are discussed more fully in our blog post. According to the Order, guidance on implementation will be forthcoming from the Director of the Office of Management and Budget.

For more information, contact: Robert Burton, Lorraine Campos, Peter Eyre, Elizabeth Buehler

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Opportunities for Remission and Repayment of EU Customs and Antidumping Duties

Recent Trends Following Entry into Force of Union Customs Code (UCC)

Under EU customs law, economic operators can obtain reimbursement or remission of customs duties, broadly speaking, in three different situations:

- Where the customs authorities committed an error which could not be detected by the importer acting in good faith.
- Where the customs duties were not legally owed, or to use the Union Customs Code's approach, where customs duties have been paid in excess.
- Where it would be unjust that the importer bears the burden of customs duties. In such cases, based on equity, the importer must be in a so-called "special situation."

The above conditions, albeit with a different wording, were already present in the previously applicable Community Customs Code. They have been widened by the administrative practice of the European Commission deciding such cases, as well as by the case law of the Court of Justice of the European Union (CJEU). The latter took the view that importers could use such provisions to obtain before the national customs authorities of the EU member states reimbursement of antidumping duties that were not legally due by arguing before customs and the judicial authorities that the underlying antidumping regulation at issue was defective.

Reimbursements have also been granted as a consequence of a review of the tariff classification of the product, as well as in cases where incorrect certificates of preferential origin were issued by third countries' authorities or accepted by the EU customs authorities. The provisions on reimbursement add to the ones related to appeals and litigation with customs, thereby establishing a so-called "double avenue approach": on the one hand companies can use all available appellate procedures against customs while, on the other hand, and at the same time, they can file a request for repayment and remission of duties.

The Union Customs Code has streamlined the above procedures by establishing a three-year deadline from importation (or from the further initiation of audit action by customs) to file reimbursement or remission requests.

The ruling of the CJEU on 18 January 2017 in Case C-365/15, Wortmann KG Internationale Schuhproduktionen, is of particular importance in this context. The ruling provides that where customs duties, including antidumping duties, are collected by the customs authorities of the EU member states in breach of EU law, there is an obligation on such authorities not only to reimburse such duties, but also to reimburse them with interest running from the date of payment of duties to customs by the parties involved.

Although a strict literal interpretation of both the former provisions in force and of those of the UCC would call for an outcome opposite to the above-mentioned judgment concerning interest, the CJEU's reasoning based on general principles of EU law allowed for importers fully to recover interest.

The above demonstrates that EU customs law must be read and interpreted in light of general EU law. It also evidences that there are great opportunities for companies under the UCC provisions on repayment and remission of duties. Unfortunately, companies do not yet rely upon these provisions as they should.

For more information, contact: Jeff Snyder, John Brew, Charles De Jager

Prepared as part of our occasional collaboration with Laura Beretta and Davide Rovetta, Grayston & Co., Brussels.

CBP Proposes Further Restrictions on Use of Foreign Flagged Vessels in Offshore Drilling Repairs and Operations Under the Jones Act

U.S. Customs and Border Protection (CBP) is proposing the modification and revocation of ruling letters relating to the use of foreign flagged vessels in offshore drilling under the Jones Act (46 U.S.C. 55102). The Jones Act prohibits transportation of certain "merchandise and equipment" between coastwise points by foreign flagged vessels (*i.e.*, any vessel without coastwise endorsement, or one that is not built in and wholly owned by citizens of the U.S. for purposes of engaging in the coastwise trade). The term "coastwise" distinguishes vessels engaging in domestic trade from those engaged in foreign trade.

In the past, CBP interpreted the definition of *vessel equipment* to include "portable articles necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of the persons on board." According to Treasury Decision (T.D.) 49815(4), if the article was used "in furtherance of the fundamental operation" of the vessel, then the article was considered vessel equipment. CBP has applied its interpretation broadly, and considered materials such as cement, chemicals, and offshore drilling repair materials as "vessel equipment." For example, in Headquarters ruling letter (HQ) 101925

issued in 1976, CBP found that a foreign flagged vessel could be used to transport repair (and other) materials to locations within the U.S. because transport of this type of "equipment" was not in violation of the coastwise laws, as it did not constitute an engagement in coastwise trade.

Now CBP is proposing to revoke prior CBP rulings, and hold that while certain types of offshore repair and installation work do not constitute an engagement in coastwise trade, the transportation of repair materials from U.S. points of lading to points of unlading within U.S. waters and offshore platforms and pipelines on the Outer Continental Shelf (coastwise points pursuant to Outer Continental Shelf Lands (OCSLA)) would be a violation of Jones Act. Below is a summary of the proposed ruling:

- CBP would revoke the prior HQ ruling that transport of pipe for repair of offshore sites was not considered engagement in coastwise trade. CBP proposes ruling that although the repair of the pipes is not an engagement in coastwise trade, the transportation of the repair materials by a vessel from a U.S. point to a coastwise point would be a violation of the Jones Act.
- CBP would revoke the prior HQ ruling that the installation of anodes on a subsea pipeline did not constitute an engagement in coastwise trade because the activity was in the nature of the repair. CBP proposes ruling that although the installation of anodes is not an engagement in coastwise trade, the transportation of this merchandise between U.S. points embraced by coastwise laws by a non-coastwise qualified vessel is prohibited.
- CBP would revoke the prior HQ ruling that a foreign flagged vessel may engage in laying and repairing of pipe in territorial waters and installing pipeline connectors to offshore drilling platforms and subsea wellheads. CBP proposes ruling that use of a foreign flagged vessel to transport merchandise for these activities (even if it is transported as "incidental to an operation") is a violation of the Jones Act.
- CBP would revoke the prior HQ ruling that if the sole use of a vessel is underwater repairs to offshore or subsea structures, then it is not considered a use in coastwise trade. CBP proposes ruling that transportation of repair materials, regardless of their value or use on any part of a drilling platform, is transportation between U.S. coastwise points and such use of a foreign flagged vessel would violate the Jones Act.
- CBP would revoke the prior HQ ruling that if the sole use of a vessel is in the installation or servicing of a wellhead assembly at a location within U.S. waters, then it is not considered a use in the coastwise trade. CBP proposes ruling that the transportation of well-head equipment, valves and valve guards from a U.S. point to a wellhead assembly that is a coastwise point pursuant to the OCSLA using a foreign flagged vessel would violate the Jones Act.

CBP intends to revoke or modify all prior rulings that are inconsistent with the new proposed rule. Interested parties may file comments to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings on or before February 17, 2017.

For more information, contact: Jeff Snyder, John Brew, Mariana Pendás

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The United States Substantially Relaxes Existing Embargo on Sudan

On January 13, 2017, the U.S. suspended most of the comprehensive embargo that it has maintained on Sudan since the Clinton Administration. As described further below, new authorizations have been issued to permit U.S. persons to engage in most

commercial activity with Sudan, including the exportation of most goods or services to Sudan and persons in Sudan, and to unblock property previously frozen under these sanctions.

However, sanctions relating to the Darfur region of Sudan remain, and these, along with other sanctions programs relating to terrorism and weapons of mass destruction, may continue to affect transactions with Sudan.

For more information, please see Crowell's previous client alert, "The United States Substantially Relaxes Embargo on Sudan."

For more information, contact: Alan W.H. Gourley, Carlton Greene, Cari Stinebower, James Flood, Dj Wolff, Jana del-Cerro

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OFAC Asserts Jurisdiction on the Sole Basis of a Bankruptcy Proceeding

On Friday, February 3, 2017, the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC) issued a Finding of Violation (FOV) against B Whale Corporation, a Member of the TMT Group of Shipping Companies, (BWC) for alleged violations of the Iranian Transactions and Sanctions Regulations (ITSR). The surprise in the announcement was the unique basis on which OFAC asserted jurisdiction over BWC, a non-U.S. entity conducting business outside the United States.

In the FOV, OFAC alleged that between August 30 and September 2, 2013, BWC's vessel, the M/V *B Whale*, received more than 2 million barrels of crude oil from a vessel owned by the National Iranian Tanker Company (NITC) that was designated on OFAC's List of Specially Designated Nationals (SDNs). OFAC found that BWC had (a) demonstrated reckless disregard for U.S. sanctions, (b) knew or should have known that the transaction involved a vessel on the SDN list, and (c) took steps to conceal the transaction, including by leaving ship logs blank and turning off vessel transponders.

The sole apparent basis for OFAC's jurisdiction over the transaction was BWC's involvement in U.S. bankruptcy proceedings. BWC is a Liberian incorporated entity based in Taiwan with no identified business operations in the United States. However, it and 22 affiliates (collectively the TMT Group)—at least one of which, TMT USA Shipmanagement LLC, was a U.S.-incorporated entity— had filed for Chapter 11 protection in the U.S. Bankruptcy Court for the Southern District of Texas on June 20, 2013. OFAC found that BWC was therefore a "U.S. person" because it was "present in the United States for the bankruptcy proceedings when the transaction occurred." Further, because BWC's vessel was under the jurisdiction of the Bankruptcy Court, OFAC found that the transfer of oil to that vessel represented an "importation from Iran to the United States."

Companies considering use of U.S. bankruptcy courts should therefore pay attention. OFAC has now indicated that it will assert jurisdiction over non-U.S. entities and activity that is conducted outside the United States, if that activity is conducted by an entity that has placed itself within the jurisdiction of a U.S. bankruptcy court. Therefore, if a company is considering use of U.S. bankruptcy courts, it must now ensure that it, as well as any of its affiliates falling under the court's jurisdiction, understand, and comply with, OFAC sanctions during the pendency of the bankruptcy proceedings.

For more information, contact: Monique Almy, Cari Stinebower, Dj Wolff

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AGENCY ENFORCEMENT ACTIONS

Bureau of Industry and Security (BIS)

- On January 10, BIS entered into a Settlement Agreement with Berty Tyloo of Morges, Switzerland to settle one alleged violation of the Export Administration Regulations (EAR). Tyloo allegedly made false or misleading statements to BIS in relation to an investigation of unlicensed exports and re-exports to Syria of EAR-controlled items manufactured by Agilent Technologies, Inc. Tyloo was the area sales manager or distribution channel manager for the Middle East and Africa of European subsidiaries or affiliates of Agilent, including the sale of Agilent products to Syria through Technoline SAL, a Lebanese distributor or reseller. In a June 2013 interview, he said he had "no idea" how Agilent products ended up in Syria, when in fact he was aware of the situation. Tyloo has been stripped of export privileges for a period of three years.
- On January 19, BIS entered into a Settlement Agreement with Milwaukee Electric Tool Corporation of Brookfield, Wisconsin to settle 25 alleged violations of the Export Administration Regulations (EAR). The company exported thermal imaging cameras from the U.S. to various countries, to include Hong Kong, Colombia, Ecuador, El Salvador, and Mexico. Milwaukee Electric was assessed a civil penalty of $301,000.

Office of Foreign Assets Control (OFAC)

- On January 12, OFAC announced Aban Offshore Limited of Chennai, India, agreed to pay $17,500 to settle potential civil liability for an apparent violation of the Iranian Transactions and Sanctions Regulations (ITSR). The apparent violation occurred when Aban's Singapore subsidiary ordered oil rig supplies from the U.S. with the intended purpose of re-exporting the supplies to the United Arab Emirates (UAE), then to Iran.
- On January 12, OFAC also announced an individual acting in his personal capacity, as well as the Alliance for Responsible Cuba Policy Foundation, on whose behalf the individual also acted, agreed to a settlement whereby the Alliance will pay $10,000 to settle potential civil liability for alleged violations of the Cuban Assets Control Regulations. The individual engaged in unauthorized travel-related transactions during business travel to Cuba and provided unauthorized travel services related to those trips for 20 persons. The individual represented himself as an officer of the Alliance.
- On January 13, OFAC announced Toronto-Dominion Bank (TD Bank), headquartered in Toronto, Canada, agreed to remit $516,105 to settle its potential liability for 167 apparent violations of the Cuban Assets Control Regulations (CACR) and the ITSR.
    - The bank conducted transactions generally involving import-export letters of credit without screening for potential OFAC-sanctioned countries or entities prior to processing related transactions through the U.S. financial system. It maintained several accounts for, and processed transactions to or through the U.S. on behalf of a Canadian company owned by a Cuban company.
    - It also maintained several accounts for a company which was listed as a sales agent for an OFAC designated entity located in Iran. The bank processed a number of transactions for the customer through the U.S. financial system.
    - Last, TD Bank maintained accounts on behalf of 62 customers who were Cuban nationals living in Canada who had not demonstrated permanent residency in Canada. It processed a number of transactions on their behalf through the U.S. financial system.

- Separately, OFAC issued a Finding of Violation (FOV) to TD Bank, the parent company of wholly owned subsidiaries Internaxx Bank SA and TD Waterhouse Investment Services (Europe) Limited for 3,491 violations of the CACR and ITSR. The two subsidiaries processed securities-related transactions through the U.S. on behalf of persons in Iran and Cuba. An FOV was issued because the violations did not indicate a pattern of misconduct, rather insufficient compliance policies and procedures.
- On February 3, OFAC issued an FOV to B Whale Corporation (BWC), a company based in Taipei, Taiwan and a member of the TMT Group of shipping companies (TMT), for a violation of the ITSR. BWC violated the ITSR when its vessel, the M/V *B Whale*, conducted a ship-to-ship transfer with, and received 2,086,486 barrels of condensate crude oil from, the vessel M/T *Nainital*, a vessel owned by the National Iranian Tanker Company and identified on OFAC's List of Specially Designated Nationals and Blocked Persons (the SDN List) at the time the transaction occurred.
    - The transactions occurred after BWC entered into bankruptcy proceedings in the U.S. Bankruptcy Court for the Southern District of Texas on June 20, 2013. OFAC determined that BWC was a U.S. person within the scope of the ITSR because it was present in the U.S. for the bankruptcy proceedings when the transaction occurred.
    - Additionally, the vessel M/V *B Whale* was subject to U.S. sanctions regulations because it was property under the jurisdiction of a U.S. bankruptcy court, and therefore the oil transferred to the vessel was an importation from Iran to the U.S. as defined in the ITSR.

Securities and Exchange Commission and Department of Justice

- On January 12, the SEC announced Biomet, an Indiana-based medical device manufacturer, agreed to pay nearly $30 million to resolve parallel SEC and DOJ investigations into the company's alleged repeated Foreign Corrupt Practices Act (FCPA) violations. Both the SEC and DOJ settled FCPA cases with the company in 2012; however, the agencies contend Biomet continued to interact and improperly record transactions with a known prohibited distributor in Brazil, and used a third-party customs broker to pay bribes to Mexican customs officials to facilitate the importation and smuggling of unregistered and mislabeled dental products.
    - Biomet, which has since been acquired by Zimmer Holdings and renamed Zimmer Biomet, agreed to pay more than $5.82 million in disgorgement plus $702,705 in interest and a $6.5 million penalty for a total of more than $13 million. Zimmer Biomet also agreed to retain an independent compliance monitor for a three-year period to review its FCPA policies. As part of the deferred prosecution agreement (DPA) with the DOJ, Zimmer Biomet agreed to pay a fine of more than $17.46 million.
- On January 13, the SEC announced Chilean-based chemical and mining company Sociedad Quimica y Minera de Chile S.A. (SQM) agreed to pay more than $30 million to resolve parallel civil and criminal cases, finding that it violated the FCPA.
    - According to the SEC's order, SQM made nearly $15 million in improper payments to Chilean political figures and others connected to them. Most of the payments were made based on fake documentation submitted to SQM by individuals and entities posing as legitimate vendors. The payments occurred for at least a seven-year period.
    - SQM agreed to pay a $15 million penalty to settle the SEC's charges and a $15.5 million penalty as part of a DPA announced on the same day by DOJ. SQM agreed to retain an independent compliance monitor for two years and self-report to the SEC and DOJ for one year after the monitor's work is complete.

For more information, contact: Edward Goetz

OTHER AGENCY ACTIONS

Office of Foreign Assets Control (OFAC)

- On January 6, OFAC updated its Frequently Asked Questions regarding Cuba, adding five new FAQs (86-90). All are in the Trade/Business section and are related to shipping.
- On January 12, OFAC issued guidance on the provision of certain services relating to the requirements of U.S. sanctions laws. The Compliance Services Guidance does not reflect a change in OFAC's policy with respect to the provision of these types of legal and compliance services. Instead, it is designed to respond to numerous inquiries received by OFAC, many from non-U.S. companies at outreach events, relating to whether U.S. persons, including U.S. attorneys and compliance personnel, may provide certain legal and compliance services described in that guidance.
- On February 2, OFAC published Cyber-related General License (GL) 1, "Authorizing Certain Transactions with the Federal Security Service," pursuant to Executive Order 13694 of April 1, 2015, "Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities."
    - GL 1 authorizes certain transactions with the Federal Security Service (a.k.a. FSB) that are necessary and ordinarily incident to requesting certain licenses and authorizations for the importation, distribution, or use of certain information technology products in the Russian Federation, as well as transactions necessary and ordinarily incident to comply with rules and regulations administered by, and certain actions or investigations involving, the FSB.

State Department

- On January 11, the Department of State issued a Final Rule in the Federal Register adjusting civil monetary penalties for regulatory provisions maintained and enforced by the department. The new amounts only apply to those penalties assessed on or after the effective date of this rule, which is the date it was published.

U.S. Customs and Border Protection

- On January 17, CBP published a notice in the Federal Register announcing plans to make the Automated Commercial Environment (ACE) the sole electronic data interchange (EDI) system authorized by the Commissioner of U.S. Customs and Border Protection (CBP) for processing electronic drawback and duty deferral entry and entry summary filings has been delayed until further notice.
- On the same day, the agency also published proposed amendments to CBP regulations pertaining to the enforcement of intellectual property rights. Specifically, CBP is proposing amendments to implement a section of the Trade Facilitation and Trade Enforcement Act of 2015 which requires CBP to prescribe regulatory procedures for the donation of technologies, training, or other support services for the purpose of assisting CBP in intellectual property enforcement.
    - Comments are due on or before March 3, 2017.

For more information, contact: Edward Goetz

CROWELL & MORING INVITES YOU TO A RECEPTION AT ICPA MIAMI

Crowell & Moring's International Trade Group invites you to be our guests at a reception during the International Compliance Professionals Association's (ICPA) annual conference, being held from March 12-15, 2017 at the Hyatt Regency hotel in Miami, Florida.

The cocktail reception will on March 14 starting at 6 pm at the Lilt Lounge at Area 31.

Please contact Elizabeth Aghili to RSVP.

CROWELL & MORING SPEAKS

On January 18, Crowell & Moring held its annual "This Year in Trade" webinar. Presenters included members of our international trade team and Crowell & Moring International based in Washington, D.C. and Brussels. Topics included:

- Sanctions in a Trump Administration: Iran, Cuba, Russia, and beyond.
- Anti-Money Laundering (AML) – "de-risking" and the new normal.
- Export Control Reform (ECR) here to stay? Rollbacks? What's next?
- Supply chain risk management: Corporate Social Responsibility (CSR), blockchain, conflict minerals: new actors, and public disclosure – 2017 Issue.
- New tax on imports? Impact of possible border adjustment tax on your business; increased enforcement; Automated Control Environment (ACE) update.
- A new sheriff in town? Expedited case decisions, retaliatory tariffs, and China, China, China.

Click to access the on-demand version of the webinar.

On January 19, Dj Wolff spoke at the 7th Annual Forum on AML and OFAC Compliance for the Insurance Industry in New York City. He was part of a panel entitled, "Suspicious Activity Reporting, 'Know Your Customer' Protocols, and Information Sharing: Detecting and Reporting on Potential Laundering or Fraudulent Activities and Overcoming the Challenges of Identification, Including Cases Involving Elder Exploitation."

On February 1, Chris Monahan was part of a panel entitled, "How to Maintain Compliance in Cloud Computing" at C5's Forum on ITAR and EAR: U.S. Trade Controls Compliance in Europe in London.

On February 6, Cari Stinebower spoke on a panel entitled, "Shoring up our Defenses against Emerging Threats of Economic Warfare" at the Center on Sanctions and Illicit Finance's forum on "Securing American Interests: A New Era of Economic Power."

On February 6-7, John Brew and Aaron Marx spoke at "The Sports and Fitness Lawyers Team Presents: Zone Defense" program in Las Vegas. Both were on a panel entitled, "Sports Developments in Trade Law: Impact of Potential New Border Taxes on

Imports; Plus, How to Combat Infringing Imports and Comply with New Forced Labor Laws." John discussed Border Tax Adjustments, while Aaron spoke on Intellectual Property Rights.

On February 10, Preetha Chakrabarti is speaking at the Federal Bar Association's 2017 Fashion Law Conference at the Parsons School of Design in New York. Preetha will be speaking on a panel entitled: "Corporate Responsibility: Child Labor and Sustainability. This panel will provide an overview of international treaties and U.S. laws affecting child and or forced labor and environmental sustainability issues. Frances Hadfield will moderate this panel and is a principal organizer of this annual conference.

On March 13, Chris Monahan will be speaking on a panel entitled "Export Voluntary Disclosures" at the International Compliance Professionals Association's (ICPA) annual conference in Miami.

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

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

Frances P. Hadfield
Counsel – New York
Phone: +1 212.803.4040
Email: fhadfield@crowell.com

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

W. Scott Douglas
Senior Policy Director – Washington, D.C.
Phone: +1 202.508.8944
Email: sdouglas@crowell.com

Patricia L. Wu
C&M International Vice President and Managing Director – Washington, D.C.
Phone: +1 202.624.2963
Email: pwu@crowell.com

Jeffrey L. Snyder
Partner – Washington, D.C.
Phone: +1 202.624.2790
Email: jsnyder@crowell.com

Charles C. Hwang
Partner – Washington, D.C.

Phone: +1 202.624.2626
Email: chwang@crowell.com

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

Eduardo Mathison
International Associate – Washington, D.C.
Phone: +1 202.654.6717
Email: emathison@crowell.com

Carlton Greene
Partner – Washington, D.C.
Phone: +1 202.624.2818
Email: cgreene@crowell.com

David (Dj) Wolff
Partner; Attorney at Law – Washington, D.C., London
Phone: +1 202.624.2548, +44.20.7413.1368
Email: djwolff@crowell.com

Lorenzo Di Masi
Associate – Brussels
Phone: +32.2.214.2835
Email: ldimasi@crowell.com

Gordon McAllister
Counsel – London
Phone: +44.20.7413.1311
Email: gmcallister@crowell.com

Robert A. Burton
Partner – Washington, D.C.
Phone: +1 202.624.2982
Email: rburton@crowell.com

Lorraine M. Campos
Partner – Washington, D.C.
Phone: +1 202.624.2786
Email: lcampos@crowell.com

Peter Eyre
Partner – Washington, D.C.
Phone: +1 202.624.2807
Email: peyre@crowell.com

Alan W. H. Gourley
Partner – Washington, D.C.
Phone: +1 202.624.2561
Email: agourley@crowell.com

James G. Flood
Partner – Washington, D.C.
Phone: +1 202.624.2716
Email: jflood@crowell.com

Monique D. Almy
Partner – Washington, D.C.
Phone: +1 202.624.2935
Email: malmy@crowell.com