

CLIENT ALERT

This Month in International Trade - July 2013

August 9, 2013

THIS MONTH'S TOP FIVE DEVELOPMENTS

1) FDA Proposes New Food Safety Rules Requiring Importers to Verify Compliance of Foreign Suppliers and Establishing Third-Party Accreditation Standards

On July 26, 2013, the U.S. Food and Drug Administration (FDA), continuing the process of implementing the 2011 Food Safety Modernization Act (FSMA), published two new proposed rules: one on foreign supplier verification programs for food importers and one on accreditation of third-party food safety auditors. These proposed rules are the foreign counterparts to two proposals published earlier this year, which set standards for preventive controls and produce production at domestic food facilities. The FDA, which missed several statutory deadlines for promulgating new food safety regulations, is under increasing pressure from stakeholders and the courts to complete the FSMA rulemaking process. This latest move brings the agency significantly closer to achieving that goal.

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For more information, contact: John Fuson, John Brew, Michael Kuppersmith

2) How Companies Can Use the Transatlantic Trade and Investment Partnership (TTIP) Negotiations to Achieve their Business Objectives and Enhance the Bottom Line

In July 2013, the United States and European Union (EU) began negotiations on a Transatlantic Trade and Investment Partnership (TTIP). If completed, the TTIP would be the largest and most significant bilateral economic agreement of all time and would bring concrete commercial benefits to thousands of companies doing business across the Atlantic. Yet these benefits will not come automatically – to see the full gains of a TTIP, companies must actively participate – and shape the outcome of – the negotiation process.

Crowell & Moring and its affiliated international consulting firm, C&M International, are uniquely equipped to help companies use the TTIP negotiations to improve their bottom lines. Our attorneys and consultants have worked on transatlantic economic issues as senior officials in the U.S. government and other governments, are fluent in the language and process of trade and investment negotiations, and have strong relationships with negotiators on both sides. We understand from extensive first-hand experience how trade and investment policy is made – in Washington, Brussels, and around the world – and we can draw on this experience to give our clients a "seat at the table" in the TTIP negotiations.

In addition to providing real-time insights and intelligence into the progress of the talks, we will be helping our clients translate their commercial priorities into workable negotiating proposals and advocate those proposals directly with negotiators, for example to:

- Eliminate tariffs and obtain favorable rules of origin;
- Minimize the costs of complying with different regulatory systems, including in the agricultural, automotive, chemical, consumer product, medical device, and pharmaceutical sectors;
- Enhance market access for service providers in the financial, information and communications technology, energy, distribution, transportation, and other sectors;
- Protect their patents, trademarks, trade secrets, and other intellectual property;
- Ensure that they can move their data and people across borders as business dictates;
- Provide the strongest possible investment protections, directly enforceable by companies through international arbitration; and
- Compete on a level playing field for government contracts.

For more information, contact: Josh Kallmer, Christopher Wilson

3) BIS and DDTC Issue Second Set of Final Rules for the Administration's Export Control Reform Initiative

Continuing implementation of the President's Export Control Reform (ECR) Initiative, the Department of State's Directorate of Defense Trade Controls (DDTC) and the Department of Commerce's Bureau of Industry and Security (BIS) concurrently issued the second in a series of final rules amending the [International Traffic in Arms Regulations \(ITAR\)](#) and the [Export Administration Regulations \(EAR\)](#). This second set of rules revises USML Category VI (Surface Vessels of War and Special Naval Equipment), USML Category VII (Ground Vehicles), USML Category XIII (Materials and Miscellaneous Articles), and USML Category XX (Submersible Vessels and Related Articles). With this publication, 8 of the 19 USML categories have now been rebuilt under ECR. The second set of rules takes effect on January 6, 2014.

This revision also creates five new 600 series Export Control Classification Numbers (ECCN) in the CCL. The 600 series controls items being added to the CCL that were previously controlled on the USML. These five new ECCNs can be found in Category 8 (Marine), as they control surface vessels of war that are "specially designed" for military use, but are not enumerated in USML Category VI.

Included in the changes from DDTC are definitions for organizational, intermediate, and depot-level maintenance. By specifically defining these activities, the Administration continues its attempts to clarify key concepts to exporters.

Of special interest, on July 25th, DDTC and BIS published a second round of proposed rules for USML Category XI (Military Electronics). There is a 30-day public comment period for the proposed rules that closes on September 9, 2013. The [State](#) and [Commerce](#) rules are now available online.

For more information, contact: Alan Gourley, Lorraine Halloway, Jana del-Cerro, Chris Monahan, Edward Goetz

4) GSP Review Continues; Congressional Reauthorization Still Pending

The Office of the U.S. Trade Representative (USTR) announced that it was seeking public comment for its 2013 Generalized System of Preferences (GSP) review, even though Congress failed to act to reauthorize the program before its July 31 expiration. Despite the delay in its renewal, GSP is expected to be reauthorized once Congress can agree on funding details, and the agency is therefore moving ahead with its normal review and request for public comment.

GSP provides for preferential tariff treatment to eligible goods from certain specified developing countries. It is a specific derogation from the most-favored-nation principle that is generally required for WTO members requiring all countries to receive similar tariff treatment aimed at promoting development through trade and economic growth. The U.S. has used GSP as a trade-preference program for nearly 37 years.

The bills under consideration in the House and Senate would renew GSP through September 2015. Senator Tom Coburn (R-Okla.) had placed a hold on the Senate bill citing concerns about whether there were sufficient revenue offsets in the bill. Because Congress failed to act by the July 31 expiration of the prior GSP authorization, GSP is currently suspended until Congress acts to renew it. However, once GSP is renewed, importers who could have benefited from its provisions can apply retroactively for refunds.

USTR undertakes a regular review of both the eligible products and the eligible countries for GSP. It is requesting that petitions to modify the list of GSP-eligible items or to review the GSP status of a beneficiary developing country be submitted by October 4, 2013.

For more information, contact: J.J. Saulino

5) CBP Final Rule on Energy Conservation and Labeling Standards - Are Your Consumer Products and Industrial Equipment Compliant?

On July 5, U.S. Customs and Border Protection (CBP) and the Department of the Treasury published a notice in the Federal Register, adopting as a final rule proposed amendments to part 12 of title 19 of CBP regulations (19 CFR part 12) regarding Energy Policy and Conservation Act of 1975 (EPCA) standards for imports of consumer products and industrial equipment. The amendments require CBP to refuse admission into the customs territory of the United States those imports found to be noncompliant with EPCA standards, based on a Department of Energy (DOE) or Federal Trade Commission's (FTC's) written determination of noncompliance (DN).

Under the final rule, CBP may conditionally release under bond any noncompliant products or equipment, with written or electronic notice from the DOE or FTC, to allow the subject imports to be brought into compliance through reconditioning, re-labeling, or other necessary action. In response to comments (following a March 2012 Federal Register notice), CBP made the following notable clarifications:

- Information on EPCA requirements and training is available from DOE;
- The 30-day conditional release period may be extended if CBP receives a written or electronic recommendation from DOE or FTC stating the reason for and anticipated length of the extension;

- CBP may make a finding on its own that a covered product or equipment is noncompliant without having received prior written noncompliance notice from DOE or FTC and that, in those situations, CBP would confer with DOE and FTC regarding the disposition of the product or equipment; and
- "Covered imports" does not include products or equipment intended for export or transshipment, but only products entered for consumption in the United States.

The rule change is effective as of August 5.

For more information, contact: John Brew, Jini Koh, Michael Larmoyeux

THIS MONTH IN TRADE – OTHER NEWS

Agency Enforcement Actions

Bureau of Industry and Security (BIS)

- [Florida Man Sentenced to 18 Months in Prison For Illegal Export of Night Vision Goggles.](#)
- [Two Men Denied Export Privileges for 15 Years for Making Misleading Statements](#) in the Course of an Investigation.
- BIS disclosed in its [FY2012 Annual Report](#) that over the previous 12 months they had undertaken 42 cases involving alleged antiboycott violations and issued 10 penalties totaling \$142,600, representing a 20% increase from the 8 cases and a 10% increase from the \$129,000 in penalties in FY2011.

Customs and Border Protection (CBP)

- [San Diego Man Sentenced to 37 Months for Evading Customs Duties.](#)
- [Missouri Company Forfeits Lamps Worth \\$1.8 Million Bearing Counterfeit Safety Labels.](#)
- CAFC Reverses CIT Decision in *Trek Leather, Inc.* Case; Corporate Officers and Shareholders Not Directly Liable for CBP Penalties.

Office of Foreign Assets Control (OFAC)

- [Intesa Sanpaolo Settles for \\$2,900,000 for Multiple Sanctions Violations.](#) Intesa Sanpaolo S.p.A., a bank headquartered in Italy, allegedly processed payments for Irasco S.r.L., a party owned or controlled by Iran, and processed wire transactions to or through the United States that involved Cuba or Iran. Intesa Sanpaolo did not voluntarily disclose these violations, but OFAC found that the violations were not egregious. Intesa Sanpaolo settled with OFAC for \$2,949,030.
- [Texas Drilling Company Settles for \\$84,000 for Violations of Iran Sanctions.](#) Stanley Drilling Equipment & Supply, Inc., a Texas-based drilling company, allegedly exported goods intended for the supply, transshipment, or reexportation to an oil rig in Iran. Stanley Drilling did not have actual knowledge that the oil rig was to be located in Iranian waters at the time of the subject transactions, but the transactions were deemed particularly harmful to U.S. sanctions program objectives. Stanley Drilling agreed to settle with OFAC for \$84,240.

- [AMEX TRS Settles for \\$5,200,000 for Violations of Cuba Sanctions](#). American Express Travel Related Services Company, Inc. allegedly issued almost 15,000 tickets for travel to Cuba. AMEX TRS voluntarily disclosed the matter to OFAC in 2005 but then continued to commit violations through 2011. OFAC found that AMEX TRS demonstrated reckless disregard for U.S. sanctions against Cuba, and it ultimately agreed to pay \$5,226,120 to settle the matter.

For more information, contact: Richard Massony, Dj Wolff

New EU Regulation on Customs Enforcement of Intellectual Property Rights

On June 12, 2013 the European Parliament and the Council adopted [Regulation \(EU\) 608/2013](#) concerning customs enforcement of intellectual property rights, repealing Council Regulation (EC) 1383/2003 from January 1, 2013.

The new Regulation extends the protection of intellectual property rights to certain intellectual property rights and certain infringements that were excluded from the scope of Council Regulation (EC) 1383/2003, namely trade names in so far as they are protected as exclusive property rights under national law, topographies of semiconductor products and utility models and devices which are primarily designed, produced or adapted for the purpose of enabling or facilitating the circumvention of technological measures.

It also provides that where the customs authorities have a reasonable basis to suspect, that goods under their supervision infringe intellectual property rights, they can suspend the release of or detain the goods in order to enable a person or entity entitled to submit an application to initiate proceedings for determining whether an intellectual property right has been infringed.

For more information, contact: Emmanuel Gybels

CITA Commercial Availability Determination - CAFTA-DR Agreement

On July 2, 2013, the Committee for the Implementation of Textile Agreements (CITA) published a [notice](#) in the [Federal Register](#) regarding its determination that certain warp stretch woven nylon/rayon/spandex fabric is not available in commercial quantities in a timely manner under the [Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement](#) (CAFTA-DR Agreement). The product will be added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities.

The CAFTA-DR Agreement allows textile and apparel goods that meet the rule of origin to enter the United States duty-free. When the CITA determines a textile material is not available in commercial quantities in a timely manner, the material may be sourced from outside the countries for use in qualifying textile and apparel products.

For more information, contact: John Brew, Michael Larmoyeux

EU Reintroduces Tariff Preferences for Myanmar/Burma

As of July 19, 2013, the EU has [reintroduced duty-free and quota-free access](#) to the European market for all products originating in Myanmar/Burma, except arms and ammunitions, under the EU's Generalized System of Preferences - 'Everything But Arms'

scheme. The EU's trade preferences had been withdrawn in 1997 as a result of the country's serious and systematic violations of international conventions on forced labor.

As the International Labor Organisation Conference officially recognized progress in the labor rights situation in Myanmar/Burma's on June 13, 2012, the trade preferences for Myanmar/Burma will be applied retrospectively as of that date. To claim back the import duties paid since June 13, 2013, a retroactive submission of a certificate of origin is required upon import into the EU.

For more information, contact: Emmanuel Gybels

President Obama Nominates Drug Czar Kerlikowske to Lead CBP

The President nominated R. Gil Kerlikowske, Director of National Drug Control in the Office of National Drug Control Policy at the White House, as the next commissioner of the U.S. Customs and Border Protection (CBP). If approved by the Senate, the Obama Administration's current drug czar would take over for acting CBP commissioner Thomas Winkowski who has served in that role since David Aguilar's retirement in March 2013.

Prior to his current role in the White House, Kerlikowske served as Seattle's police chief and as a deputy director at the U.S. Department of Justice. His law enforcement career also includes service as Buffalo's police commissioner and with the St. Petersburg, FL police department. In addition, Kerlikowske is a veteran of the U.S. Army and holds a B.A. and M.A from the University of South Florida.

For more information, contact: John Brew, Michael Larmoyeux

CROWELL & MORING SPEAKS

Cari Stinebower joins Eric Edwards and Alan Howard at a Breakfast Briefing covering "CFT/AML Issues and Related Litigation Facing Global Financial Institutions" on September 17, 2013, 8 am to 10 am, at Crowell & Moring's New York office.

John Brew will join a panel on "The Centers of Excellence Debate – How Can Importers Benefit from These Centers?" at the American Conference Institute's 2nd U.S. Customs Compliance Boot Camp, November 19-20, at the Washington Plaza Hotel in Washington, D.C.

CROWELL & MORING WELCOMES

We are pleased to welcome **Edward Goetz** and **Pierce Lee** to the International Trade group.

Edward joins the firm as an international trade analyst after 20 years of service in the U.S. Air Force. He spent the first half of his career in operational Space assignments, to include on-orbit satellite operations, before being selected for duty as the Deputy Commander of the National Reconnaissance Office's (NRO) Launch Communications Operations Squadron. After his NRO assignment, Edward served as a Program Manager in the Military Satellite Communications Program Office at the Air Force's Space and Missile Systems Center. In 2009, he was assigned to the Defense Technology Security Administration (DTSA), where

he ensured ITAR compliance during international technology transfers involving commercial space hardware and defense services in the U.S., Russia, Ukraine, and Kazakhstan. He also authored Department of Defense technology security positions on more than 1,100 ITAR license applications for the Department of State's Directorate of Defense Trade Controls.

Pierce joins the firm as an international trade analyst, after completion of the Georgetown University Law Center LL.M. program on International Business and Economic Law, to focus on trade remedies and customs matters. During his LL.M. program, he authored articles on anti-dumping, rules of origin and South Korea free trade agreements. He also received the LL.M. program's WTO Studies Certificate. Pierce earned his law degree from the University of British Columbia and previously worked as a transactional lawyer in Canada. He is also licensed to practice law in New York.

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