

CLIENT ALERT

This Month in International Trade - June 2014

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THIS MONTH'S TOP TRADE DEVELOPMENTS

1) Iran and the Joint Plan of Agreement (JPOA)

The latest round of nuclear negotiations between the P5+1 (United States, Russia, China, the UK, France, and Germany) and Iran came to a close on June 20th with no evidence of an imminent final deal or notice of a potential extension of the JPOA's suspension of sanctions before the JPOA's expiration on July 20th.

A final round of talks began on July 2nd and is scheduled to run until the 15th; a marathon session signaling that both sides remain motivated to reach an accord over Iran's nuclear program and a roll-back of economic sanctions. There have been no formal statements from either side about extending the JPOA period to give negotiators more time.

Public reporting indicates that the key stumbling block to an agreement is how many centrifuges Iran will be allowed to maintain; the West seeks a number in the low thousands, while Tehran wants tens of thousands. Other issues are the design of the heavy-water reactor at Arak, the fate of the underground centrifuge site at Fordow, and the U.N.'s investigation into any possible military dimensions to Iran's nuclear program. Finally, there is disagreement on the length of any deal: the P5+1 group seeks 20 years, the Iranians only five.

For more information, contact: Cari Stinebower, Dj Wolff, Edward Goetz

2) The Russia-Ukraine Crisis: Latest Developments and Sanctions Update

During the past month, fighting has continued unabated in eastern Ukraine between government forces and pro-Russia separatists. After a failed attempt at a cease fire, President Petro Poroshenko ordered new offensive operations against the rebels on June 30th. EU leaders have maintained pressure on President Vladimir Putin of Russia to stop the flow of arms coming across the border and to use his influence in ending the violence. Threats of sectoral sanctions were made by the EU on June 27th, if Russia did not take sufficient action by the 30th. EU officials on July 1st felt Russia's progress had been "mixed" and that more time was needed to monitor developments.

In June, the United States, Canada, and Australia all issued additional designations in response to the ongoing crisis in the Ukraine.

United States

The U.S. added seven individuals to its sanctions list on June 20th for their roles in threatening the territorial integrity of Ukraine. Only one of the seven had not been previously sanctioned by the EU, Switzerland, and/or Canada. U.S. Treasury Under Secretary for Terrorism and Financial Intelligence David S. Cohen described the individuals as having "...contributed to attempts to illegally undermine the legitimate government in Kyiv, notably by falsely proclaiming leadership positions and fomenting violent unrest."

The new designee is Valery Vladimirovich KAUROV. He is the self-described "president of Novorossiya" and has called on Russian President Vladimir Putin to deploy troops to the territory described as Novorossiya. Kaurov has supported separatist activities in Ukraine's Donetsk and Lugansk territories.

Canada

On 21 June 2014, Canada released an update to its sanctions list. 11 new individuals were added, plus one new entity. All 12 have been previously sanctioned by the EU or United States.

Australia

After having announced financial sanctions and travel bans on March 19th and again on May 21st, the Australian Minister of Foreign Affairs finally published the list of names and companies targeted on June 19th. 50 individuals and 11 entities were listed for their involvement in the Russian threat to the sovereignty and territorial integrity of Ukraine. All have been previously sanctioned by one or more other countries.

For more information, contact: Alan Gourley, Cari Stinebower, Christopher Monahan, Dj Wolff

3) CBP Offers Incentives for Companies to Participate in New Trusted Trader Program Test

On June 16th, 2014, U.S. Customs and Border Protection (CBP) published a Federal Register notice seeking applicants to enroll in a test of the new Trusted Trader Program which will last eighteen months. The selection of initial test participants will begin no later than July 16th, 2014, and the test is limited to fewer than ten participants. Selected applicants will be notified individually of their participation date. Those applicants who are accepted will be offered a number of benefits in addition to all the benefits currently being offered under C-TPAT and ISA.

Some of the additional benefits include: (a) a reduced Food and Drug Administration (FDA) targeting and examination risk score, (b) a penalty offset upon request, (c) a reduced number of Foreign Trade Zone (FTZ) on-site inspections, (d) exemption from on-site visits from drawback specialists, and (e) exemption from random Non-Intrusive Inspections.

To be eligible to participate in the test program, a company must be an active U.S. or Non-Resident Canadian importer with at least two years of importing history. The company must also have written policies and procedures pertaining to its import process and a valid continuous importation bond filed with CBP. Other requirements include: (1) implementing and maintaining

security measures and supply chain security practices meeting criteria under C-TPAT, and (2) maintaining books and records to establish compliance with laws and regulations enforced by CBP. Importers who meet the eligibility criteria and wish to participate in the test program must submit their applications to CBP via email at TrustedTrader@cbp.dhs.gov.

The program, once implemented fully, will unify CBP's current Customs-Trade Partnership Against Terrorism (C-TPAT) and Importer Self-Assessment (ISA) programs. The goal of the program would be to enhance collaboration and information sharing between various government agencies and, thereby, improving the efficiencies of the existing trade programs. This "single window" approach is consistent with the executive order signed by President Obama earlier this year, mandating U.S. government agencies to work together to streamline the import and export processes. The Trusted Trader Program test is not open to current ISA partners. However, if CBP decides to implement the Trusted Trader Program after the test period is over, CBP will transition all existing ISA partners into the program and discontinue the ISA program. ISA partners will be given the opportunity to "opt-out" of being transitioned into the Trusted Trader program.

For more information, contact: John Brew, Julia Rieper, Pierce Lee

4) BIS and DDTC Implement Third Set of ECR Changes on July 1st

On July 1st, 2014, the Department of State's Directorate of Defense Trade Controls (DDTC) and the Department of Commerce's Bureau of Industry and Security (BIS) concurrently implemented the third in a series of final rules amending the [International Traffic in Arms Regulations \(ITAR\)](#) and the [Export Administration Regulations \(EAR\)](#) (see 79 FR 276).

This set of rules revised U.S. Munitions List (USML) Categories IV (Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs, and Mines), V (Explosives and Energetic Materials, Propellants, Incendiary Agents, and Their Constituents), IX (Military Training Equipment), X (Personal Protective Equipment), and XVI (Nuclear Weapons Related Articles).

As is the case with each set of changes, this revision also created new 600 series Export Control Classification Numbers (ECCN) in the Commerce Control List (CCL) for items in the categories above determined to no longer warrant USML control.

In addition to changing the categories identified above, a previously undefined term, "equipment," has been added to §121.8. This section of the ITAR currently defines end-items, components, accessories, attachments, parts, firmware, software, and systems.

For more information, contact: Christopher Monahan, Brian Gatta, Edward Goetz

5) BNP Paribas Pleads Guilty to Violating U.S. Sanctions; Agrees to Record Fine

On June 30th, French bank BNP Paribas (BNP) agreed to pay \$8.9 billion in fines and plead guilty to two criminal charges for concealing billions of dollars in transactions on behalf of Sudan, Iran, and Cuba from 2002 to 2012 in violation of U.S. sanctions law.

U.S. regulators found the bank stripped information from wire transfers involving entities in Iran and Cuba to avoid raising any red flags. In the case of Sudan, BNP devised elaborate payment structures that disguised their Sudanese origin and were routed through other banks.

BNP's fine is the largest yet levied on a major bank in a sanctions violation case. In addition to monetary penalties, the deal will also block certain BNP units, mainly related to oil and gas finance, from clearing U.S. dollar transactions for one year beginning January 1st, 2015. Units affected are New York, the bank's headquarters in Paris, as well as offices in Geneva, Singapore, Milan and Rome. This is the first time a global bank has had dollar transaction privileges suspended in New York State.

For more information, contact: Cari Stinebower, Dj Wolff, Brian Gatta, Edward Goetz

THIS MONTH IN TRADE – OTHER NEWS

Agency Enforcement Actions

Bureau of Industry and Security (BIS)

- [Bass Pro Shops](#) agreed to pay a civil penalty of \$25,000 to dispose of charges that it had exported optical sighting devices for rifles to China, Canada, and Cyprus without a license.
- A [Texas woman](#) pleaded guilty in West Texas District Court to one count of smuggling goods from the United States. The charge stems from her sale of two Advanced Combat Optical Gunsights (ACOGs) destined for Germany in violation of the International Trafficking in Arms Regulations. The woman bought the equipment from soldiers assigned to Fort Hood, Texas.
- BIS added a total of 31 new individuals to the Entity List in June. [26 individuals](#) were designated on June 5th with another [5 individuals](#) on June 26th.
- BIS added 29 persons to the [Unverified List \(UVL\)](#). Persons are added to the list when BIS cannot verify their bona fides because an end-use check could not be completed satisfactorily for reasons outside the U.S. Government's control.

Office of Foreign Assets Control (OFAC)

- [Fokker Services B.V \(FSBV\)](#) of the Netherlands agreed to settle potential civil liability for 1,112 alleged violations of the Iranian Transactions and Sanctions Regulations and 41 alleged violations of the Sudanese Sanctions Regulations. FSBV will pay a \$10.5 million civil penalty and an additional \$10.5 million pursuant to a deferred prosecution agreement with the Department of Justice. FSBV indirectly exported or re-exported aircraft spare parts to Iranian and Sudanese customers that FSBV either procured or had repaired in the U.S. specifically to fill a customer's order, or that were U.S.-origin and subject to export license requirements under U.S. law.

- Network Hardware Resale LLC (NHR) agreed to pay \$64,758 to settle potential civil liability for apparent violations of the Sudanese Sanctions Regulations and the Iranian Transactions and Sanctions Regulations. Between approximately April 14th, 2008, and January 6th, 2011, NHR exported 16 shipments of networking equipment and related accessories from the United States to Sudan, and two shipments of networking equipment and related accessories from the United States destined for Iran.
- Red Bull North America, Inc. agreed to pay \$89,775 to settled potential civil liability for alleged violations of the Cuban Assets Control Regulations. Between June 8th and June 18th, 2009, seven representatives of RBNA traveled to Cuba in order to film a documentary, without authorization from OFAC. The production of the film, as well as the associated travel, was approved by RBNA management.

Directorate of Defense Trade Controls (DDTC)

- Department of State administratively debarred Mr. Carlos Dominguez (individually and in his capacity as principal of the following entities) Elint, S.A.; Spain Night Vision, S.A.; and SNV S.A., for failure to respond to a charging order. The violations charged are in connection with Mr. Dominguez's re-export and retransfer of night vision devices without authorization from the Department of State. 366 total violations are alleged.

For more information, contact: Michael Appel, Nancy Cruz, Edward Goetz

BIS and DDTC Publish ECR Changes for Military Electronics (effective December 2014) and Updates to Aircraft Wing Folding Systems (effective July 1st and August 15th)

On June 30th, 2014, the Department of State's Directorate of Defense Trade Controls (DDTC) and the Department of Commerce's Bureau of Industry and Security (BIS) concurrently published the latest Export Control Reform (ECR) changes in a final rule amending the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR). This is the fourth round of changes for these regulations and this change primarily impacts one category of the United States Munitions List (USML), Military Electronics (Category XI), and becomes **effective December 30th, 2014**. 15 of 21 categories have now been transitioned under ECR.

In addition to the changes to Category XI, this final rule removes paragraphs (h)(21) and (h)(22) from Category VIII of the USML and paragraph (f)(7) from Category XIX of the USML, because they will be superseded by paragraphs (c)(2), (c)(3), and (c)(11) in USML Category XI.

Category VIII has also been modified to ensure that certain wing folding systems for commercial aircraft, and their related software and technology, are not controlled as defense articles on the USML; however, the Department of Commerce, with the concurrence of the Departments of Defense and State, has stated in the final rule that the Anti-Terrorism (AT) controls of Export Control Classification Numbers (ECCN) 9D991 and 9E991 in the EAR do not provide adequate control for development software and technology for wing folding systems to be used on large commercial aircraft and greater control is necessary because the software and technology required to develop a robust civil system would confer insights that would be useful to the development of a military wing folding system.

Software and technology related to wing folding systems will be controlled for one year under ECCNs OD521 and OE521, respectively. In the interim, the U.S. Government intends to submit a proposal to control these items on the Wassenaar Arrangement Dual-Use List.

While the wing folding systems change is **effective August 15th, 2014** in the USML, the change to the software and technology for those systems in the EAR is **effective July 1st, 2014**.

For more information, contact: Chris Monahan, Brian Gatta, Edward Goetz

Copservir and Other Colombian Companies Tied to the Cali Cartel Included in Massive Treasury SDN Delisting

In the largest single delisting in Treasury's sanctions history, 308 individuals and entities tied to Cali Cartel leaders Miguel and Gilberto Rodriguez Orejuela were removed from the Specially Designated Nationals and Blocked Persons (SDN) List on June 19th. The action came after the cartel collapsed economically.

In 2004, following the Colombian government's seizure and subsequent oversight of Orejuela companies, OFAC issued a licensing policy for U.S. companies dealing with 11 different companies, including Copservir, one of Colombia's largest drug store chains. Because of the close relationship between the Governments of the United States and Colombia, OFAC issued licenses to engage in transactions with these SDNs but established restrictions on the payment streams in order to ensure funds were not diverted.

Clients should contact Crowell with any questions about the potential impact of this unprecedented action on your company.

For more information, contact: Cari Stinebower, Edward Goetz

Ford's \$6M Jaguar Duties Suit Dismissed for Second Time by CIT

The U.S. Court of International Trade (CIT) again dismissed Ford Motor Co.'s \$6.2 million customs duties refund claims, finding that certain claims were time-barred and declining to exercise jurisdiction over other claims.

This action arose from Jaguar cars imported from the UK as far back as 2004 and 2005. After entry, Ford realized it had mistakenly overpaid duties and filed reconciliation entries with CBP seeking a refund. The refund claims remained pending (unliquidated) with CBP until 2009 when Ford filed its initial action in the CIT. Ford claimed that the court had jurisdiction under 19 U.S.C. § 1581(i). Typically, importer appeals of CBP's refusal to issue duty refunds are based on the Court's review of a denied protest, and CIT jurisdiction to hear such appeals is under 19 U.S.C. § 1581(a). After Ford filed its initial appeal CBP liquidated the subject entries and Ford filed administrative protests with CBP challenging CBP's refusal to issue duty refunds. The CIT originally ruled that the court lacked jurisdiction to hear certain claims because CBP had liquidated the entries since the complaint was filed and Ford could now appeal CBP's decision under 19 U.S.C. § 1581(a). Ford appealed the CIT decision to the U.S. Court of Appeals for the Federal Circuit (CAFC). The CAFC vacated and remanded the CIT decision, holding that the CIT improperly ruled

that jurisdiction under 19 U.S.C. § 1581(i) can be eliminated by CBP instituting remedies post-complaint (i.e., liquidating subject entries). The CAFC, however, stated that the CIT could review again the jurisdictional claims in light of the CAFC opinion.

On remand, the CIT (Judge Barnett) stated certain claims were time-barred under 19 U.S.C. § 1581(i), which requires that all actions be commenced within two-years from the date on which the claim accrues. Ford had claimed that its reconciliation entries seeking duty refunds were "deemed liquidated" by law one year after the entries were filed – requiring CBP to issue refunds. Judge Barnett reasoned that if Ford's claims were true, then the entries would have been "deemed liquidated" in 2006 and Ford did not file its complaint until 2009. The Court found that Ford did not file its complaint within a "reasonable period" after its expectation that the subject entries had been deemed liquidated under 19 U.S.C. § 1504(a), *i.e.*, when Ford should have had notice of the final agency decision being challenged. Since Ford did not file its complaint until six to eight months after the two year statute of limitations period for when the Court determined Ford should have had notice, Ford's claims are time-barred. With respect to the other claims, the court found that it lacked jurisdiction under 19 U.S.C. § 1581(i) because Ford had an adequate remedy to obtain relief under 19 U.S.C. § 1581(a). Ford already had separate pending CIT case seeking relief on the same entries under 19 U.S.C. § 1581(a).

This case highlights the importance of knowing the different timelines that exist for initiating different claims against CBP, as well as determining the proper method to obtain judicial relief from CBP's actions or inaction.

For more information, contact: John Brew, Jini Koh, Pierce Lee

OFAC Reissues Burmese Sanctions Regulations

The Office of Foreign Assets Control (OFAC) reissued the [Burmese Sanctions Regulations](#) (31 C.F.R. Part 537) (BSR) on June 30th, 2014, in order to implement the four Executive Orders (EO) pertaining to Burma published since the last revision of the BSR in 2005. Similar to OFAC's revision of the Syrian Sanctions Regulations in May, these revisions also incorporated the three existing Burmese General Licenses (GL) found on OFAC's Burma webpage.

The revisions incorporate the provisions of the following four EOs: [13448](#) (Blocking Property and Prohibiting Certain Transactions Related to Burma); [13464](#) (Blocking Property and Prohibiting Certain Transactions Related to Burma); [13619](#) (Blocking Property of Persons Threatening the Peace, Security, or Stability of Burma); and [13651](#) (Prohibiting Certain Imports of Burmese Jadeite and Rubies).

The three current GLs regarding Burma, which are now incorporated into the Regulations are GL 16 (Authorizing the Exportation or Re-exportation of Financial Services to Burma); GL 17 (Authorizing New Investment in Burma by U.S. Persons); and GL 19 (General License with Respect to Asia Green Development Bank, Ayeyarwady Bank, Myanmar Economic Bank, and Myanmar Investment and Commercial Bank).

Additionally, these revisions remove a number of previously included prohibitions including the prohibition on the importation of Burmese origin articles (except Jade and Rubies).

Clients should contact Crowell with any questions they might have on the updated Burmese Sanctions Regulations.

For more information, contact: Cari Stinebower, Dj Wolff, Edward Goetz

CIT Agrees with Commerce: Intent not a Factor in "Targeted Dumping"

Court of International Trade (CIT) Senior Judge Judith M. Barzilay affirmed the Commerce Department's anti-dumping duty review of a Turkish steel pipe shipper on June 25th. The defendant, Borusan AS, argued that Commerce failed to consider its explanation for why its sales patterns did not support a finding of targeted dumping. Judge Barzilay rejected Borusan's argument, finding that there is no provision in U.S. trade law or the accompanying statement of administrative action to support Borusan's position. Commerce not need consider intent or motivation during analyses of companies under scrutiny in these cases.

The case began when U.S. Steel Corp. requested Commerce conduct a review of Borusan's entries of standard pipe into the U.S. from May 1st, 2010 to April 30th, 2011. Commerce set a final dumping margin of 6.05 percent (later reduced to 3.55 percent), but Commerce continued to maintain that Borusan engaged in targeted dumping when their U.S. sales price for February 2010 was compared to other months in the review period, prompting the challenge from Borusan.

Commerce's use of targeted dumping examinations is contentious, prompting a dispute settlement panel at the World Trade Organization (WTO). The panel is reviewing the practice in the context of several anti-dumping cases related to Chinese products.

Clients should contact Crowell with any questions they might have concerning targeted dumping.

For more information, contact: Dan Cannistra, Lindsay Denault, Pierce Lee

CROWELL & MORING CONGRATULATES

We are pleased to congratulate Ms. Norlene Karim who has been named Manager for Crowell & Moring's Trade Services Professionals. Norlene will supervise the firm's trade professionals, who provide practice support to the International Trade group in the areas of import and export regulation. Norlene is a Licensed Customs Broker who holds an MBA from the University of Missouri, Kansas City, with concentrations in management information systems and entrepreneurship. Prior to joining Crowell & Moring, Norlene worked for a multi-national retailer and a global express carrier.

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