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CLIENT ALERT

This Month in International Trade - June 2016

Jul.11.2016

In this issue:

- **Crowell & Moring Speaks**

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.

BREXIT - INTERNATIONAL TRADE IMPLICATIONS

What Companies Should Do Now

Although the immediate aftermath of the United Kingdom's decision to leave the EU rocked global financial markets, the implications of the Brexit on international trade – imports, exports, sanctions, antidumping, and other normal day-to-day issues for global business – will not be seen right away; instead, they will take shape over the next several months.

However, now is the time for companies to plan and develop strategies for the significant changes to global trade on the horizon. In particular, it would be wise to isolate U.K. operations in your supply chains, gather data as changes unfold, and identify alternative options to any transactions you might be conducting in the U.K.

For more detailed information, please see Crowell's Client Alert.

For more information, contact: Charles De Jager, Dj Wolff, Gordon McAllister, Jeff Snyder

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CUSTOMS / IMPORTS / TRADE REMEDIES

ITC Publishes Miscellaneous Tariff Bill (MTB) Submission Form

On June 15, the International Trade Commission (ITC) published a notice in the Federal Register seeking comments on its draft Miscellaneous Tariff Bill (MTB) submission form. This form provides the information companies must provide the ITC when petitioning for a reduction or elimination of tariffs in accordance with the American Manufacturing Competitiveness Act of 2016 (AMCA).

The instructions for commenting can be accessed at this link, while the comments form may be found here.

The ITC must initiate the MTB process no later than October 15, 2016. After initiation, companies will have 60 days to petition the ITC for tariff reduction or elimination. After this 60 day period, the process will not be open again until 2019.

To ensure consideration on the submission form, written comments must be submitted on or before August 16, 2016.

For more information, contact: John Brew, Frances Hadfield, Jini Koh, Aaron Marx, Benjamin Blase Caryl

Trade Remedy Measures Against EU on the Rise; EU Regulations Codified

On June 15, the European Commission adopted its 13th annual report on third-country trade remedy actions against the EU. The report concludes that the number of measures in force against the EU increased in 2015 and that cases are becoming more complex. The 37 new measures imposed against the EU in 2015 are comparable in number to 2014. However, the total number of measures in force increased from 140 at the end of 2014 to 151 at the end of 2015. While the majority of these are antidumping measures, some are safeguards.

Brazil, China, India, and the U.S. account for a large number of these cases against the EU. The industrial sectors most commonly targeted in this context are steel and chemicals, against which 19 and 7 new investigations, respectively, were initiated in 2015. The European Commission states that it monitors actively third-country trade remedy actions against the EU, intervening in many cases to defend EU industries' legitimate market access against unwarranted measures.

Separately, the EU also published on June 30 codified versions of its antidumping and antisubsidy regulations. In the interest of clarity, the regulations on protection against dumped imports (now Regulation 2016/1036) and subsidized imports (now Regulation 2016/1037) thus reflect seamlessly the changes made in 2012 and 2014 to the former and in 2014 to the latter. Principal among these are the changes introduced in 2014 to a number of basic regulations relating to the common commercial policy to ensure their consistency with the provisions introduced by the Lisbon Treaty.

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

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New EU AD Case Initiated on Certain Hot-Rolled Flat Products of Iron and Steel

The EU has initiated a new antidumping (AD) proceeding against imports of certain hot-rolled flat products of iron, non-alloy, or other alloy steel from Brazil, Iran, Russia, Serbia, and Ukraine.

The complaint was lodged by the European Steel Association (Eurofer) on behalf of EU producers representing more than 25 percent of the total EU production of the products concerned. The scope of the investigation covers 27 different Customs Nomenclature codes.

The complainant alleges that imports of the products have increased overall in absolute terms and in terms of market share. Finally, the dumping margins alleged by the complainant are significant for all the countries concerned.

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

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Latest Trade Cases Filed in the U.S.: Steel Flanges and Dioctyl Terephthalate

On June 30, Weldbend Corp. and Boltex Mfg. Co. filed antidumping (AD) and countervailing duty (CVD) petitions on low-priced imports of finished carbon steel flanges from India, Italy, and Spain. Petitioners allege that U.S. imports of steel flanges from these countries are being dumped at levels up to 103 percent below the price of the product.

On the same day, Eastman Chemical Company filed an AD petition on low-priced imports of dioctyl terephthalate—a plasticizer used in flexible polyvinyl chloride articles from flooring to toys and medical devices—from Korea. Petitioner alleges that U.S. imports of dioctyl terephthalate from Korea are being dumped at levels between 24 and 48 percent below the price of the item.

The U.S. International Trade Commission (ITC) will hold public preliminary conferences on both cases on July 21, in which interested parties (U.S. producers, importers, purchasers, and foreign producers/exporters) may testify and answer ITC staff questions about the respective industries and markets.

For more information, contact: Benjamin Blase Caryl

TRADE AGREEMENT / INVESTMENT UPDATES / EU - U.S. DATA PRIVACY

First Round of Tariff Reductions on 201 Tech Products Effective July 1 - What Companies Need to Know

In accordance with the expanded Information Technology Agreement (ITA) reached by 53 WTO members accounting for approximately 90 percent of world trade in information technology products, the phasing out of tariffs on 201 technology products began on July 1. With annual trade in these products valued at approximately $1.3 trillion, the gradual elimination of tariffs in this context should have a significant economic impact.

The EU, Malaysia, Taiwan, and Thailand have confirmed that the tariff cuts to which they committed became applicable on July 1. Similarly, as a result of a Presidential Proclamation issued on June 30, the tariff cuts also took effect on July 1 in the United States. However, a number of participants including China, Japan, and South Korea have failed to complete the domestic ratification processes necessary to implement the agreement on time.

Failure to meet the July 1 deadline delays the ITA's benefits but does not technically violate its terms, because members are urged to eliminate duties subject to the completion of domestic procedural requirements. With these processes under way, WTO sources reportedly do not expect significant delays from any member.

In the United States, the applied duties for some tariff lines will drop immediately to zero. This includes certain copying machines, office machines, digital storage media, radio broadcasting machines, monitors, certain mirrors, prisms, and lenses, stereoscopic microscopes, navigation instruments, surveying equipment, x-ray machines, and various measuring devices. These tariff lines are listed in Annex II.A of the Presidential Proclamation.

In other cases, there will be incremental reductions in the duty rates. The applied duty rates for certain U.S. tariff lines will drop to zero by July of 2019. This includes certain printing inks, photomask blanks, static converters, microphones and speakers,

television transmission apparatus, certain circuits and switches, certain mirrors, prisms, and lenses, various measuring devices, oscilloscopes and spectrum analyzers, and light-emitting diode backlights for monitors and laptops. These tariff lines are listed in Annex II.B of the Presidential Proclamation.

The lower rates will apply to goods entered for consumption on or after July 1, 2016. In most cases, the new duty rates will take effect automatically. However, a number of new, duty-free tariff lines were created in the Harmonized Tariff System (HTS) of the United States specifically to comply with the updated agreement. To receive these benefits, an importer must affirmatively reclassify their goods in these lines. These tariff lines are listed in Annex I of the Presidential Proclamation. This list includes such goods as:

- Solid printing inks in "engineered shapes."
- Optically clear adhesives used in the manufacture of flat-panel displays.
- Boxes and crates specially shaped or fitted for the conveyance or packing of semiconductor wafers.
- Multi-component integrated circuits (MCOs).
- Fans principally used to cool microprocessors.
- Machines and components of machines used in the manufacture of printed circuits.
- Power supplies for computers, copying machines, and monitors.
- Electromagnets used for Magnetic Resonance Imaging.
- Flight data recorders.
- Digital translators and E-readers.
- Portable interactive electronic education devices designed primarily for children.
- Telescopes other than those designed to attach to weapons.

What Companies Should Do Now

Companies which import or export the above products should review their current classifications. Certain goods may be eligible for duty-free treatment under the expanded agreement. Importers and exporters of such goods can benefit from existing tariff lines with newly reduced duty rates, or by reclassifying its products under a duty-free tariff line.

For more information, contact: John Brew, Charles De Jager, Aaron Marx

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German Data Protection Authority Fines Three Companies for U.S. Data Transfers

In a press release of June 6, 2016, the Data Protection Authority (DPA) of Hamburg announced that three fining decisions it issued against companies unlawfully relying on the invalidated "U.S.-EU Safe Harbor Framework" (Safe Harbor) have become final.

The Hamburg DPA concluded that after the invalidation of the former "U.S.-EU Safe Harbor Framework" by the European Court of Justice in October 2015, the companies had failed to otherwise adequately ensure the protection of employee and customer data transferred from Europe to the U.S.

For more information, please see Crowell's Client Alert.

For more information, contact: Jeffrey Poston, Emmanuel Plasschaert, Jeane A. Thomas, Evan D. Wolff, Robin B. Campbell, Frederik Van Remoortel, Christopher Hoff, Lisa Weinert

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SANCTIONS / FINANCIAL CRIME / ANTI-CORRUPTION / EXPORT CONTROL

Commerce/State/FinCEN/OFAC/SEC Increase Potential Penalties for Export, Admin Violations

U.S. Government departments and agencies are in the process of implementing the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), which increases civil monetary penalties (CMP) for violations under their jurisdiction. The amount of each increase is a function of the inflation, as measured by the Consumer Price Index that has occurred since October of the year in which the last adjustment to the civil penalties was made.

Each agency may begin applying the adjusted penalty amounts to resolutions and settlements occurring after the "effective date" specified in the final rules, but it remains to be seen to what extent agencies will apply them retroactively to conduct voluntarily disclosed before the new penalties were announced.

For specific agency details, please click here.

For more information, contact: Alan W.H. Gourley, Cari Stinebower, Carlton Greene, Adelicia R. Cliffe, Chris Monahan, Dj Wolff

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BIS Revises Guidance on Charging and Penalty Determinations for Enforcement Actions

On June 22, the Bureau of Industry and Security (BIS) published a final rule implementing revised Guidance on Charging and Penalty Determinations in Settlement of Administrative Enforcement Cases (the Guidelines) in Supplement 1 to Part 766 of the Export Administration Regulations (EAR).

Although it adopted the structure used by the Treasury Department's Office of Foreign Assets Control (OFAC) penalty guidelines, BIS emphasized in response to industry comments of the draft rule that its approach to voluntary disclosures and penalty assessments remains consistent in many key aspects with the philosophy employed by the Directorate of Defense Trade Controls (DDTC).

Highlights of the revised guidance include:

Alignment with DDTC Enforcement Practices - As discussed above, there was concern from industry that BIS was aligning with OFAC rather than DDTC practices. BIS noted that, similar to DDTC, only a small percentage of voluntary self-disclosures (VSDs) result in a civil monetary penalty. BIS does not expect an increase in the number of cases resulting in civil penalties arising from VSDs as a result of the revised Guidelines. BIS also highlighted that, like DDTC, it will allow companies to offset civil penalties by allocating funds to compliance activities.

Mitigation for VSDs - The final rule retains the 50 percent mitigation of base penalty amounts for cases arising from a VSD. Commenters had suggested that only affording 50 percent mitigation could discourage companies from submitting a VSD. However, BIS emphasized the importance of VSDs and stated that the 50 percent mitigation in the rule simply formalizes longstanding BIS practice.

Base Penalty Policy - In response to comments that the proposed rule's base penalty formula was too rigid and/or unduly restricted BIS's discretion, the revised Guidelines provide that the base penalty for an egregious case resulting from a VSD to "up to" one-half of the statutory maximum.

Aggravating Factors - BIS responded to concerns that the revised Guidelines require at least some civil penalty in any case in which aggravating factors were present by stating that it anticipates issuing warning letters in many cases, including those with some degree of aggravating factors, and does not expect an increase in administrative enforcement actions as a result of the revised Guidelines. Further, BIS noted that concurrence by the Assistant Secretary of Commerce for Export Enforcement is required in order for BIS to determine that a case is "egregious" and accordingly calls for a "strong enforcement response."

Mitigating Factors - To encourage not only self-reporting, but also tips and leads from industry, the revised Guidelines now include whether the Respondent has provided information to BIS leading to enforcement actions against other parties as a mitigating factor.

Other Relevant Factors - BIS revised Factor A.4 *Pattern of Conduct* to explicitly note that, in situations where a single inadvertent error, such as misclassification, resulted in multiple recurring violations, BIS will generally treat the matter as one violation for purposes of determining egregiousness.

No Action and Warning Letters - BIS adopted one commenter's suggestion to emphasize the introduction of "no action" determinations in which BIS has concluded that there is insufficient evidence or no evidence of a violation arising from a VSD. BIS also noted that while no action and warning letters constitute final disposition of the disclosure, neither is a "final agency action" and BIS will reserve the right to reopen an investigation or inquiry if it later learns of additional information regarding the same or similar transactions.

Transaction Value - BIS declined to state a specific method for valuing all exports or deemed exports of technology, noting the difficulty in many instances for identifying a market value, and will continue to use "the economic benefit derived by the Respondent" in such cases. BIS also reaffirmed that it would base penalties issued to freight forwarders on the value of the shipment rather than the freight forwarding fees, and issued several clarifications on how it will determine transaction values.

Settlements - BIS did not revise the Guidelines with respect to settlements, despite industry concerns that the Guidelines could put "inappropriate pressure to settle even if the respondent has a legitimate defense, or feels that the proposed penalty is excessive," asserting that such practices incentivize early settlement and efficiently use limited government resources.

For more information, contact: Alan W.H. Gourley, Chris Monahan, Lindsay Denault, Jana del-Cerro

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U.S. Starts Flights to Cuba and Engages on Marine Environmental Issues

The U.S. Department of Transportation issued an order on June 10 authorizing six U.S. airlines to provide scheduled passenger flights between the U.S. and Cuba. The airlines are American, Southwest, JetBlue, Silver Airways, Frontier, and Sun Country. Flights are scheduled to begin as early as this fall.

This order was issued in accordance with the Memorandum of Understanding on international transportation signed in February by the U.S. and Cuba. The net effect of this change is to make it easier for authorized U.S. travelers to move between the United States and Cuba. Previously, even travelers authorized by the recent U.S. general licenses to travel to Cuba were typically required to fly to a third country (*e.g.*, Canada) before connecting to Cuba. Now, direct routes will be available from the United States.

In addition to U.S. authorization (*i.e.*, qualifying for one of the general licenses), U.S. person travelers must also have a Cuban visa to enter Cuba. There have been media reports stating one of the newly authorized airlines will be working with a third party company to provide visas to passengers. U.S. persons traveling to Cuba to meet with government officials or doing business in Cuba also require a Cuban business visa, which is more difficult to obtain than a Cuban tourist visa.

On maritime affairs, a U.S. Delegation led by David Bolton, the Deputy Assistant Secretary of State for Oceans and Fisheries, traveled to Cuba on June 28 for the first meeting under the U.S.-Cuba Joint Statement on Cooperation on Environmental Protection – a framework agreement signed between the two countries to facilitate and guide U.S.-Cuba cooperation on marine environmental issues. Discussions included options for collaboration on issues such as Illegal, Unregulated and Unreported (IUU) fishing, marine species of special concern, marine debris, coral reefs, and coastal resilience.

Meanwhile, other countries are continuing to bolster relations with Cuba, taking advantage of the change in U.S. policy toward the island nation. In June, Cuba ratified an extended economic and scientific exchange with Serbia, which will increase Serbia's participation in the development of the Special Zone of Mariel. Last week, the Portuguese foreign minister met with his Cuban counterpart to forge closer relations.

Cuban officials recently visited China to discuss how to strengthen ties and cooperation between the two countries. Saudi Arabia and Cuba have also had talks, reviewing the current state of their bilateral cooperation, specifically in the health sector.

For more information, contact: Cari Stinebower, Mariana Pendas, Dj Wolff

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All Elements of EU's Russia Sanctions Regime Extended

Following action by the EU Council in June and early July, the application of all elements of the EU sanctions regime against Russia has now been extended for six months.

On July 1, the Council extended until January 31, 2017, the sanctions targeting the financial, energy, and defense sectors, as well as dual-use goods. More specifically, these sanctions are intended to achieve the following:

- Limit access to EU primary and secondary capital markets for five major Russian-majority, state-owned financial institutions and their majority-owned subsidiaries established outside of the EU, as well as three major Russian energy and three defense companies.
- Impose an export and import ban on trade in arms.
- Establish an export ban for dual-use goods for military use or military end-users in Russia.
- Curtail Russian access to certain sensitive technologies and services that can be used for oil production and exploration.

These sanctions have been in force since July 2014 in response to Russia's actions destabilizing the situation in Ukraine. Since March 2015, these sanctions have been linked to the implementation of the Minsk agreements, designed to alleviate the conflict in Eastern Ukraine. Given a lack of progress implementing the agreements, the Council decided to extend once again the applicable sanctions.

This follows the decision of the Council on June 17 to extend until June 23, 2017, the sanctions imposed in response to Russia's illegal annexation of Crimea and Sevastopol. These sanctions include prohibitions on:

- Imports of products originating in Crimea or Sevastopol into the EU.
- Investment in Crimea or Sevastopol.
- Tourism services in Crimea or Sevastopol.
- Exports of certain goods, technologies, and related services to Crimean companies or for use in Crimea in the transport, telecommunications and energy sectors and related to the prospection, exploration and production of oil, gas, and mineral resources.

On March 10, the Council already extended until September 15, 2016, the third element of the EU sanctions regime against Russia, restrictive measures against listed individuals and companies in Russia and Ukraine subject to travel bans and asset freezes for undermining or threatening the territorial integrity, sovereignty, and independence of Ukraine.

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

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Modifications to Swiss Anticorruption Law Effective on July 1

On July 1, two amendments to the Swiss Penal Code designed to combat corruption in the private sector entered into force.

As reported previously, the Swiss Parliament adopted the new amendments last year. The amendments penalize offering or requesting any undue advantage in exchange for an act carried out in connection with a person's business function. The offense is punishable with imprisonment of up to three years, or a monetary fine.

The law applies only to cases (1) where the bribes are offered or requested with the intent to violate a specific fiduciary obligation, or to preserve another party's interest, and (2) when an obligation involves a contractual relationship. For example,

an advantage offered to a wealthy individual to win his or her business is not considered bribery according to the new provisions. However, the same advantage offered to an employee of the wealthy individual to win the business of the wealthy individual is punishable by the new provisions.

Further, minor or insignificant cases will not be automatically reviewed by the Swiss prosecutors. Instead, private citizens can initiate a formal complaint regarding these cases which can then trigger the Swiss prosecutors' review. Although the law does not contain any criteria identifying what constitutes a "minor or insignificant" offense, according to parliamentary discussions, the prosecutor is unlikely to prosecute cases involving less than a few thousand Swiss francs, that do not affect a third party's health or safety, or that represents a first offense.

Companies affected by the new amendments may have to review their internal compliance programs and regulations to adjust, where appropriate, with these new standards and, more specifically, their reporting mechanisms.

For more information, contact: Cari Stinebower, Carlton Greene, Dj Wolff; Mariana Pendas

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Venezuela Currency Continues Depreciation under Failed Exchange Platforms

The burdens of the exchange controls continue to be a serious issue in Venezuela. The most recent launch by the Venezuelan Government of two new exchange platforms, DIPRO and DICOM, has only resulted in a greater depreciation of the bolívar, leaving many companies with revenues stranded in the country.

On March 9, 2016, the Government of Venezuela announced the creation of DIPRO and DICOM, as another attempt to "ease" its complex and shifting system of exchange controls. The new platforms have only caused further devaluation of the local currency. DIPRO (replacing CENCOEX), was established at 10 bolívares per U.S. dollar, while DICOM (replacing SIMADI), began trading at a rate of 200 bolívares per U.S. dollar and has rapidly moved to over 600 bolívares per U.S. dollar by the end of June.

Eight foreign exchange platforms have been introduced since the Government of Venezuela suspended free convertibility of the bolívar in 2003. These platforms appear to have failed to provide an effective mechanism for currency exchange. According to a recent survey, only 10 percent of companies have been able to exchange bolívares into hard currency at the DICOM rate, while only 2 percent has been granted access to hard currency at the DIPRO rate.

The result of the failed exchange controls on foreign companies in Venezuela has been to strand billions of U.S. dollars in bolívares awaiting repatriation. As a result, many companies have curtailed their operations, while others have been forced to write off large balances in order to remeasure their investments in the country.

Please click here to view a brief description on how Bilateral Investment Treaties (BITs) may be used to aid in the recovery of monies owed by Venezuela.

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

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AGENCY ENFORCEMENT ACTIONS

Bureau of Industry and Security (BIS)

- On June 2, BIS entered into a Settlement Agreement with Fokker Services B.V. of the Netherlands to settle 253 alleged charges in connection with acting with knowledge of violations of the Export Administration Regulations (EAR) regarding exports or re-exports to Iran and Iranian military end-users, acting contrary to the terms of a denial order, and exporting or re-exporting items to Sudan. The company agreed to a civil penalty of $10,500,000.
- On June 3, BIS entered into a Settlement Agreement with Weiss Envirotronics, Inc. of Grand Rapids, MI to settle 20 alleged charges in connection with engaging in prohibited conducted by exporting without the required license. Weiss, on 20 occasions, exported environmental test chambers controlled for missile technology reasons to the People's Republic of China directly or, on four of these occasions, via Hong Kong or Japan without an export license. The company agreed to a civil penalty of $575,000 and two audits of its export compliance program.
- On June 17, BIS entered into a Settlement Agreement with Fulfill Your Packages Inc., d/b/a HTCT LLC, of Portland, Oregon (FYP) to settle one alleged charge of evasion in connection with the intended export of a thermal imaging camera to the People's Republic of China. The company agreed to a civil penalty of $250,000.
- On June 17, BIS also entered into a Settlement Agreement with Worthington Products, Inc. and Paul Meeks to settle one alleged charge of conspiracy to export items from the United States to the Government of Iran without the required license. The item to be exported was a waterway barrier debris system. The company and Meeks agreed to a civil penalty of $250,000. Both Worthington and Meeks also agreed to complete export controls compliance training annually for five years. Finally, the company consented to a five-year probationary order on the export of goods from the United States.
- On June 21, BIS published in the Federal Register a final rule amending the Export Administration Regulations (EAR) by adding 28 persons under 31 entries to the Entity List.
    - The EAR imposes additional license requirements on, and limits the availability of most license exceptions for, exports, re-exports, and transfers (in-country) to those listed.
    - The twenty-eight persons will be listed on the Entity List under the destinations of Afghanistan, Austria, China, Hong Kong, Iran, Israel, Panama, Taiwan, and the United Arab Emirates (U.A.E.).
    - This final rule also removes three entities from the Entity List under the destinations of Finland, Pakistan and Turkey as the result of requests for removal received by BIS pursuant to the section of the EAR used for requesting removal or modification of an Entity List entity and the End-User Review Committee's (ERC) review of the information provided in the removal requests.
- On June 21, BIS also published in the Federal Register a final rule amending the EAR revising the Unverified List (UVL) by adding 36 persons and adding an additional address for one person currently on the UVL.
    - These persons were added to the UVL on the basis that BIS could not verify their *bona fides* because an end-use check could not be completed satisfactorily for reasons outside the U.S. Government's control.
- On June 23, BIS published in the Federal Register a final rule amending the EAR to revise the existing Validated End-User (VEU) list for the People's Republic of China by updating the list of eligible items and destinations (facilities) for VEU Advanced Micro Devices, Inc. (AMD).
    - Specifically, BIS amends Supplement No. 7 to part 748 of the EAR to remove an existing "eligible destination" (facility); add a building to an existing address at one of AMD's already approved facilities to which eligible items

may be exported, re-exported or transferred (in-country); and reflect the recent removal of an existing "eligible item" from the Commerce Control List (CCL).

Department of Justice (DOJ) and the Securities and Exchange Commission (SEC)

- On June 21, DOJ and the SEC announced both agencies had resolved violations of the Foreign Corrupt Practices Act (FCPA) by BK Medical ApS, headquartered in Denmark and a subsidiary to Massachusetts technology company Analogic Corporation. BK Medical entered into a non-prosecution agreement (NPA) with the department and agreed to pay a $3.4 million penalty for improper payments made in Russia and elsewhere in violation of the FCPA. Analogic reached a settlement with the SEC under which it agreed to pay $7.67 million in disgorgement and $3.81 million prejudgment interest.

Directorate of Defense Trade Controls (DDTC)

- On June 20, DDTC entered into a Consent Agreement with Microwave Engineering Corporation of Massachusetts and agreed to pay a $100,000 civil penalty for one alleged violation of the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR). Then-president Dr. Rudolf Cheung and another engineer allegedly provided a non-U.S. person, an employee of the company, with ITAR-controlled technical data on multiple occasions without first obtaining a license or other authorization.

Office of Foreign Assets Control (OFAC)

- On June 23, HyperBranch Medical Technology, Inc. of Durham, North Carolina agreed to pay $107,691.30 to settle potential civil liability for apparent violations of the Iranian Transactions and Sanctions Regulations. HyperBranch exported nearly 2,500 units of two different products (Adherus Spinal Sealant and Adherus Dural Sealant) to its United Arab Emirates distributor with knowledge or reason to know that the goods were ultimately destined for Iran.

Securities and Exchange Commission (SEC)

- On June 7, the SEC announced two unrelated non-prosecution agreements (NPA) connected to bribes paid to Chinese officials by foreign subsidiaries. Massachusetts-based internet services provider Akamai Technologies agreed to pay $652,452 in disgorgement and $19,433 in interest, while Rhode Island-based Nortek, Inc., a residential and commercial building products manufacturer, agreed to pay $291,000 in disgorgement plus $30,655 in interest.

For more information, contact: Edward Goetz

OTHER AGENCY ACTIONS

Bureau of Industry and Security (BIS)

- On June 28, BIS published a final rule extending the temporary general license for ZTE Corporation and ZTE Kangxun to August 30, 2016. This temporary general license restores the licensing requirements and policies under the Export Administration Regulations (EAR) for exports, re-exports, and transfers (in-country) despite both companies being named to the Entity List.

Directorate of Defense Trade Controls (DDTC)

- On June 8, DDTC published on its website updated guidance regarding the DSP-83 form.
  - The Notice replaced the guidance provided by DDTC on the DSP-83 form on May 6.
  - Since the DSP-83 to date has not been substantially amended, the department will continue to accept expired forms.
  - However, DDTC "strongly urges" all individuals and entities that are not using the current form provided by the department to implement the new form no later than October 1, 2016 in order to avoid any confusion during future revisions.
- On June 20, DDTC published three notices in the Federal Register related to its transition to a new case management IT solution it plans to implement later this year. DDTC will be accepting comments from the public on these changes until August 19, 2016.
  - Application for the Permanent Export, Temporary Export, or Temporary Import of Defense Munitions, Defense Services, and Related Technical Data
  - Disclosure of Violations of the Arms Export Control Act
  - Statement of Material Change, Merger, Acquisition, or Divestment of a Registered Party

International Trade Commission (ITC)

- On June 27, the ITC published a notice in the Federal Register seeking comments on its draft questionnaire for Investigation No. 332-557, Aluminum: Competitive Conditions affecting U.S. Industry.
  - The draft questionnaire may be found here.
  - Written comments must be submitted on or before August 24, 2016.

Office of Foreign Assets Control (OFAC)

- OFAC updated the Frequently Asked Questions Relating to the Lifting of Certain U.S. Sanctions Under the Joint Comprehensive Plan of Action, adding two FAQs related to Financial and Banking Measures (C.15 and C.16) and nine FAQs related to Foreign Entities Owned or Controlled by U.S. Persons (K.14 – K.22).

For more information, contact: Edward Goetz

CROWELL & MORING SPEAKS

Join us for an "Update on U.S. Customs and Border Protection's (CBP) Forced Labor Detentions"

This **webinar is being co-hosted with the United States Fashion Industry Association** and will be held on Wednesday, July 20, 2016 from 2:00 – 3:00 PM ET.

The Trade Facilitation & Trade Enforcement Act of 2015 eliminated the "consumptive demand" clause and CBP has already taken quick action to detain imports suspected to be produced by forced labor, including textile products.

Frances Hadfield, counsel in Crowell & Moring's International Trade Group in New York City, will discuss the new law and how it will impact brands and retailers.

She will be joined by **David Wolff, counsel in the firm's Washington office and consultant with C&M International, the firm's trade policy affiliate**, who will discuss DPRK sanctions and recent reports that North Koreans are working for Chinese manufacturers just over the China-DPRK border.

Please click here for more information about this webinar.

Chris Monahan will be leading the post-conference AML OFAC workshop at the upcoming 12th National Forum on Insurance Regulation at the Carlton Hotel on Madison Avenue in NYC on July 25-26. The workshop, entitled "Developing the Most Efficient AML and OFAC Compliance Procedures to Improve Your Company's Competitiveness", is scheduled for Tuesday, July 26, from 1:45 pm-3:45 pm.

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

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