

CLIENT ALERT

This Month in International Trade - March 2016

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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](#).

SANCTIONS / FINANCIAL CRIME / ANTI-CORRUPTION / EXPORT CONTROL

Obama Visits Cuba and Further Relaxes Ties while the EU Bolsters Its Own Economic Position in Cuba

March witnessed a further expansion of economic links with Cuba from both the U.S. and European Union. On March 20, President Obama became the first U.S. president to visit Cuba since 1928. Facing newfound competition from Cuba's neighbor to the north, the European Union took steps to further its own engagement with Cuba, concluding negotiations on a bilateral Political Dialogue and Cooperation Agreement (PDCA) just before President Obama's historic visit to the island.

From the U.S. perspective, the visit represented not just a political milestone. The U.S. also took further steps to relax its remaining embargo prior to the president's visit. The Bureau of Industry and Security (BIS) amended the Export Administration Regulations (EAR) to revise a license exception to allow for the export of items necessary for maintaining a physical and business presence in Cuba and adopted a case-by-case review of specific licenses for exports to Cuba that would facilitate development of the Cuban export industry in the private sector. The Office of Foreign Assets Control (OFAC) relaxed the Cuban Assets Control Regulations (CACR) for travel and travel-related transactions, expanded the authorization for a "physical presence" for entities in Cuba, and is now allowing certain funds transfers initiated by non-U.S. financial institutions through the U.S. financial system in which Cuba or a Cuban national has an interest (*i.e.*, "U-Turn" transactions).

The president was accompanied on his visit by a broad array of U.S. business executives including the general counsel for Starwood Hotels, the CEOs of Xerox and PayPal, and the president and founder of Airbnb, among others, underscoring the widespread interest in this slowly opening market. Indeed, days prior to the visit, Starwood Hotels announced it had received authorization to renovate and operate three historic hotels in Havana, representing the first foray by the U.S. hotel industry into Cuba.

Not wanting to lose its position as Cuba's largest foreign investor, the EU also took efforts to expand its relationship in March. The PDCA will now define EU external relations with Cuba, superseding the 1996 EU Common Position in force until now. The negotiations towards a PDCA started in April 2014 and were concluded on March 11, after seven negotiating rounds. Ratification of the PDCA by the EU and Cuba in accordance with their respective internal processes is expected by the end of 2016.

The agreement, which marks a change in the EU's Cuba policy over the last twenty years, includes three main chapters on the following: (1) political dialogue, (2) cooperation and sector policy dialogue, and (3) trade and trade cooperation. The PDCA does not establish a free trade area between the parties, nor does it cover investment protection. The PDCA mainly aims to create a

transparent environment for economic operators, to increase production and trading capacities, and to promote dialogue and cooperation to foster sustainable development, democracy and human rights.

The EU has a heavy presence in Cuba in sectors such as tourism, construction, light industry, and agriculture. The EU also accounts for a third of foreign visitors to Cuba and remains Cuba's principal export market and second trading partner after Venezuela. Cuba's main export goods are mineral fuels and mineral oils, sugars, beverages and tobacco. Cuba exported €540 million worth of goods to the EU in 2015, while the EU exported €1.6 billion worth of goods to Cuba in 2014.

This historically privileged role is now subject to competition in a way it has not been for 50 years as the U.S. slowly opens its market to the island nation 90 miles off its border.

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

Chinese Telecom ZTE Added to Entity List, then Granted Temporary Reprieve

On March 8, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) undertook a long-rumored step and added four entities to its Entity List: Beijing 8-Star International Co. (in China), Zhongxin Telecommunications Equipment Corporation (ZTE) (in China), ZTE Kangxun Telecommunications Ltd. (in China), and ZTE Parsian (in Iran).

Specifically, BIS alleged the four entities had "planned and organized a scheme to establish, control and use a series of 'detached' [or shell] companies to illicitly re-export controlled items to Iran in violation of" the Export Administration Regulations (EAR). Pursuant to the designation, BIS required a license for the export, re-export, or transfer to any of the four entities of any goods, software, or technology "subject to the EAR." BIS implemented a policy of denial with respect to these licenses.

Just over two weeks after the listing BIS partially reversed course, issuing a temporary general license with respect to ZTE and ZTE Kangxun. The temporary general license was issued by the End-User Review Committee (ERC) – comprised of representatives of the Departments of Commerce, State, Defense, Energy, and sometimes Treasury – as a result of a request submitted by both entities and due to the "binding commitments made by these entities to the U.S. Government...." Pursuant to the general license, persons can export, re-export, or transfer all items subject to the EAR to these two entities subject to the same licensing requirements that existed *prior* to the Entity List designation on March 8.

The temporary general license is only in effect until June 30, 2016, at which time the ERC will consider renewing the license based on whether or not the two entities are "...cooperating with the U.S. Government in resolving the matter."

For more information, contact: Chris Monahan, Dj Wolff

EU Renews Targeted Russian Blocking Sanctions; Disagreement Remains on Extension of Sectoral Sanctions

The European Union renewed its targeted Russian “blocking” sanctions on 146 individuals and 37 entities on March 10 with limited controversy. The sanctions renewed in early March only dealt with asset freezes and travel bans on individual Russian and pro-Russian separatists, as well as companies seen as supporting the destabilization in eastern Ukraine.

In contrast, a meeting of EU foreign ministers on March 14 was reportedly marked by some disagreement over whether or not the EU’s sectoral sanctions on Russia’s financial, defense, and energy sectors, which expire on July 31, should be extended for another year.

The disagreement has spilled over into the public arena, with EU Member States publicly advocating in favor or against the renewal of the sectoral sanctions. Hungary and Greece favor their elimination, and Italy advocates for greater engagement with Russia. However, the United Kingdom and other Member States still strongly favor the extension of sanctions, given a lack of any progress towards implementation of the Minsk Accords.

Extending the sanctions requires a unanimous vote from the EU Member States so there will be a substantial amount of behind-the-scenes diplomacy between now and the expected meeting of the EU foreign ministers in Brussels in late June.

The current expectation is that the sectoral sanctions will ultimately be renewed, particularly given recent reports of increased Russian military intervention in eastern Ukraine, but there remains the possibility that one or more Member States could veto their extension, jeopardizing what has been a coordinated global response to Russia’s intervention in Ukraine.

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

Public International Organizations Fair Game for FCPA Prosecutions

On March 2, the U.S. District Court for the Eastern District of Pennsylvania denied Defendant Dmitrij Harder’s motion to dismiss several charges alleging violation of the Foreign Corrupt Practices Act (FCPA). Judge Paul S. Diamond ruled that the FCPA applies to corrupt efforts to influence the conduct of “any officer or employee of . . . a public international organization,” thus further clarifying the scope of the law.

Prosecutors alleged that from 2007-2009, Defendant Harder, a Russian national, naturalized German citizen, and U.S. permanent resident: (1) conspired to pay and paid approximately \$3.5 million in bribes to influence the actions of an official at the European Bank for Reconstruction and Development (EBRD) with respect to the approval of financing for a Russian oil and gas concern; (2) conspired to conceal and facilitate the bribes; and (3) conspired to and committed international money laundering by wiring these payments to Europe from the U.S. The government asserts that these actions were performed via Harder’s U.S. company.

As part of his Motion to Dismiss, Harder challenged the FCPA’s coverage of public international organizations. The institution in question, the London-headquartered EBRD, was designated as a “public international organization” by President George H.W. Bush in June 1991 by Executive Order.

The court rejected the argument that the government impermissibly substituted in the indictment the term “public international organization” for “foreign government or instrumentality thereof,” because the FCPA “proscribes unlawful conduct in connection with a public international organization—itsself an association of foreign governments.” The court reasoned that Harder’s interpretation of the statute would lead to an absurd result—namely, that the government would have no ability to prosecute an employee of an international organization who unlawfully used his position with respect to his employer.

Though the court disposed of several other claims made by Harder challenging the adequacy of the government’s indictment, the ruling that public international organizations fall within the scope of the FCPA presents new and significant precedent for future prosecutions.

For more information, contact: J.J. Saulino, Ade Johnson

TRADE AGREEMENT AND INVESTMENT UPDATES

Significant Work Remains after Twelfth Round of TTIP Negotiations

Following a twelfth round of TTIP negotiations in Brussels in March, EU and U.S. trade officials stated substantial progress had been made in the areas of market access, regulatory cooperation, and trade rules; however, significant work still remained if negotiations are to be concluded in 2016 on what officials maintain must be an ambitious, high-standard agreement that satisfies both EU and U.S. interests. Given the time pressure, intense efforts will continue between the next two negotiating rounds in April and July.

In the context of regulatory cooperation, the EU and U.S. have tabled new textual proposals aimed at creating a system within TTIP that facilitates current and future regulatory cooperation. The overarching goal is to maintain or increase the existing high standards protecting human health and safety, as well as the environment. The latest round also addressed sanitary and phytosanitary (pests and pathogens) measures, standards, and conformity assessments. The industrial sectors considered in this context were automotive, chemicals, cosmetics, engineering, information and communication technology, medical devices, pesticides, pharmaceuticals, and textiles.

With respect to trade rules, the negotiators addressed the substantive areas of competition, customs and trade facilitation, and state to state dispute settlement. On the contentious issue of investment protection, there are now textual proposals from both sides, including the EU proposal for a new Investment Court System. According to officials, the parties are reportedly delving into each other's proposals and starting to identify areas of convergence.

The small percentage of tariffs that remain subject to discussion cover goods of high political sensitivity, including agricultural products such as dairy and poultry. The EU reportedly might seek to exempt some of these goods from tariff elimination, but US officials have maintained that work must proceed towards the eventual elimination of all transatlantic tariffs under TTIP.

Intercessional discussions also focused on government procurement, for which both sides have now tabled texts. Despite limits on what the U.S. may be willing or able to offer in this context, EU officials are eager to push for greater access to the U.S.

procurement market. For now, disagreement remains between the parties as to both the degree of openness of each other's procurement markets and the value of opportunities open to each other's government contractors.

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

U.S. and China Move Closer to Signing Bilateral Investment Treaty

On March 23, Chinese officials announced that China and the U.S. are close to signing a bilateral investment treaty (BIT). The conclusion of the BIT would be the result of 24 rounds of negotiations over eight years.

The BIT would include an Investor-State Dispute Settlement (ISDS) provision where the parties reportedly agreed to submit investment disputes to third party arbitration at the World Bank's International Center for Settlement of Investment Disputes (ICSID). The ISDS provision has been a significant point of contention between the U.S. and China in their BIT discussions.

The conclusion of the U.S.-China BIT would follow the Canada-China Foreign Investment Promotion and Protection Agreement (FIPA), in force since 2014. The Canada-China FIPA includes an ISDS mechanism as well.

The U.S.-China BIT will require ratification by both states after its signature. Once in effect, it would provide U.S. investors with direct avenues to seek protection of their investments in China, while making the U.S. market more attractive for Chinese investors.

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

Congressional Work on TPP Continues Amid Vocal Trade Debate

Administration officials and Congressional leaders continued working towards resolving substantive issues in the Trans-Pacific Partnership (TPP) this month. U.S. Trade Representative Michael Froman has met with Congressional leaders in both the Senate and the House to address Member objections on a range of topics, including intellectual property protections for biologics, cross-border data flows for financial services, investor-state dispute settlement for tobacco products, and other agricultural issues.

Froman said on March 18 that the "outstanding issues" in TPP could be addressed through a "number of mechanisms" without reopening negotiations. He could be referring to new side-letter agreements or through implementation and enforcement of the TPP agreement, though no specific proposals have been made public.

The technical work on addressing substantive TPP concerns comes amid a hostile political atmosphere for TPP and trade in general, generated by the 2016 Presidential primary process. Candidates from both parties on the campaign trail have become increasingly forceful in their criticism of trade in general and the agreement more specifically. This opposition has been led by Republican candidate Donald Trump and Democratic candidate Sen. Bernie Sanders (D-Vermont), but Democratic candidate Hillary Clinton and Republican candidate Sen. Ted Cruz (R-Texas) have also expressed concerns, though to a lesser extent.

Trade experts now believe a Congressional vote on the agreement before the November elections will be all but impossible, and are increasingly unsure whether a vote, let alone TPP passage, will occur during the lame-duck session following the elections.

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

U.S. and Argentina Sign Bilateral Trade and Investment Framework Agreement

During President Obama's visit to Buenos Aires, the U.S. and Argentina signed a Trade and Investment Framework Agreement (TIFA) to advance bilateral trade and investment. The TIFA creates a forum for engagement between the two countries on aspects such as market access, intellectual property rights protection, and "cooperation on shared objectives in the World Trade Organization and other multilateral fora."

This engagement between the U.S. and Argentina takes place only four months after opposition candidate Mauricio Macri won the presidential election in Argentina. Immediately after taking office, President Macri lifted currency controls, implemented a series of economic reforms to attract foreign investment, and began an active agenda aimed to rebuild Argentina's ties with business-friendly governments such as the U.S., Chile, and Colombia.

The U.S. and the South American trade bloc MERCOSUR (of which Argentina is a member) have also engaged in informal discussions regarding a possible trade cooperation agreement and potentially a free trade agreement. The latter, however, seems unlikely in the short term.

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

Venezuelan Government Adopts New Foreign Exchange Platforms

On March 9, the Government of Venezuela announced the creation of two new foreign exchange platforms: (i) DIPRO (Protected Exchange Rate) at 10 bolívars per U.S. dollar, exclusively for the food and health sectors; and (ii) DICOM (Complementary Exchange Rate) for all other sectors, based on the demand and supply of U.S. dollars assigned by the Government. DICOM opened at an average price of 200 bolívars per U.S. dollar, and by the end of March had reached 250 bolívars per U.S. dollar.

DIPRO and DICOM represent the seventh attempt (and the fourth since 2013) by the Venezuelan Government to "ease" its strict system of exchange controls. Since 2003, companies have been subjected to several government exchange platforms of similar structure although with different acronyms, such as CADIVI (2003), SITME (2010), CENCOEX (2013), SICAD (2013), SICAD II (2014), SIMADI (2015), and now DIPRO and DICOM (2016). None of these platforms have effectively allowed companies to repatriate their earnings. On the contrary, all of them have virtually blocked repatriation of monies and have caused a substantial devaluation of the bolívar. For instance, between the creation of SIMADI in 2015 and the launch of DIPRO and DICOM, the parallel market exchange rate jumped from 190 to 1,170 bolívars per U.S. dollar.

Although DICOM is intended to operate as a free floating rate exchange system, it is expected that the new system will face difficulties given the dependence of the currency trading market on the Government (previous platforms such as SITME, SICAD II and SIMADI were also introduced as free-floating rates). The lack of an effective mechanism continues to leave Venezuela subject to potential claims under bilateral investment treaties (BITs), which provide a variety of options for companies seeking to recover their earnings and obtain compensation for losses suffered.

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

CUSTOMS / IMPORTS / TRADE REMEDIES

North American and European Steel Producers Considering All Options to Address Global Steel Glut

With nearly 150 U.S. antidumping (AD) and countervailing (CVD) orders on steel imports in place and after filing dozens of new AD/CVD petitions on additional steel imports last year, U.S. steel mills continue to explore all other options to address massive global steel overcapacity and alleged unfairly cheap and subsidized steel imports.

U.S. steel producers, the United Steelworkers (USW) union, and Members of Congress are pressuring the U.S. Department of Commerce (DOC) to aggressively enforce AD/CVD laws in the current steel investigations in light of the “Leveling the Playing Field Act” passed in the summer of 2015 in exchange for support of trade promotion authority legislation.

Leading up to public hearings on April 12 before the U.S. Trade Representative (USTR) and DOC on global steel overcapacity, the U.S. steel industry submitted over 100 comments and at least sixteen Members of Congress have submitted comments or requests to testify at the hearing. In their comments, U.S. and Canadian steel producers called for binding commitments for China, India, Korea, and Turkey to cut hundreds of millions of tons of steel capacity and eliminate government subsidies that fuel overproduction. U.S. producers are also reportedly considering formally requesting President Obama to impose global safeguard measures on imports from fairly and unfairly traded steel imports.

Across the Atlantic, the EU maintains 37 trade defense measures against steel imports, sixteen of which are against China, and is conducting nine additional investigations. More new EU cases against Chinese steel imports are expected this year. The EU is addressing the problem of overcapacity partly through dialogue in the context of the Steel Contact Groups it has established with China, India, Japan, Russia, Turkey, and the U.S. The EU-China Steel Contact Group met for the ninth time on March 10 in Beijing to discuss capacity reduction targets and efforts, subsidization policies, and the behavior and financing of state-owned enterprises. According to the EU, significant work remains to be done in all these areas.

On March 16, the European Commission also issued a Communication entitled “Steel: Preserving Sustainable Jobs and Growth in Europe.” The Communication identifies the major challenges of global overcapacity, a dramatic increase in exports, and an unprecedented wave of unfair trading practices. In response, the Commission proposes to accelerate the adoption of AD measures, as well as to make additional proposals to improve the current trade defense system’s efficiency. The Communication also addresses efforts to modernize the EU steel industry and render it more competitive through investments in technology.

While each country is considering unilateral options to address global steel overcapacity, multilateral coordination is also being explored. On April 18, the annual meeting of the Organization for Economic Cooperation and Development's (OECD) steel committee, of which China, the EU, Canada, the United States and Mexico are all members, will discuss options for addressing global steel overcapacity. Though previous attempts in the late 1990s and early 2000s failed, the U.S., Canadian, Mexican, and European steel industries are reportedly considering a multilateral steel accord to address global overcapacity.

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

Chinese Nationals Must Electronically Update Visas by November

U.S. Customs and Border Protection (CBP) announced on March 15 that Chinese nationals holding 10-year tourist or business visas must update certain biographic information via the Electronic Visa Update System (EVUS) at least every two years starting this November. Future travelers will be required to enroll in EVUS prior to entering the United States.

In 2014, China and the United States agreed to increase the scrutiny of visas issued to each other's citizens.

According to CBP Commissioner R. Gil Kerlikowske, "The Electronic Visa Update System [EVUS] will enable CBP to enhance the security of the [10-year visa] program while facilitating legitimate travel."

For more information, contact: Aaron Marx, Nicholas DeLong

Aluminum Industry Presses for Action on Exports from China

As seen in the steel sector, the U.S. aluminum industry is being challenged by the rise in China's aluminum exports. China's capacity and production on aluminum has substantially increased from 10 percent of global supply to 50 percent. As a result, U.S. annual production has decreased considerably from an annual output of 3.7 million tons in 2000 to 565,000 metric tons today.

By the end of 2016, only four aluminum smelters are expected to be in operation in the U.S., down from 23 in 2000.

The U.S. aluminum industry has lobbied the Obama administration to investigate China's trade practices and whether China is dumping aluminum on the U.S. market or providing government subsidies to its producers.

In February, House Ways and Means Committee Chairman Kevin Brady (R-Texas) [formally requested the U.S. International Trade Commission](#) investigate the factors affecting the global competitiveness of the U.S. aluminum industry.

The report is due to Congress in June 2017.

For more information, contact: Alex Schaefer, Benjamin Blase Caryl, Wing Cheung

Import-Related Protection of IP Rights Strengthened in New Trade Law

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

Under Title III of the TFTE, “Import-Related Protection of Intellectual Property Rights,” the Tariff Act of 1930 has been amended such that when CBP suspects merchandise is being imported in violation of an intellectual property right, CBP has the authority to provide samples of potentially infringing goods to owners of these rights for assistance in determining whether a violation has taken place.

To continue reading this alert, [please click here](#).

For more information, contact: Alex Schaefer, Aaron Marx

Is that Tag in your Pants in the Right Place?

On March 2, [the Federal Circuit \(CAFC\) unanimously held](#) that Customs should use the definition of “trademark” in the Lanham Act (which is not limited to registered marks) when determining whether a country of origin designation is assessed under 19 C.F.R. § 134.46 or 19 C.F.R. § 134.47. This means that the term “trademark” unambiguously includes unregistered trademarks that are not subject to a pending application.

JBlu Inc. is a California clothing company that imported approximately 500,000 pairs of blue jeans from China. The jeans were variously labeled but included C’est Toi Jeans USA, C’est Toi Jeans Los Angeles and CT Jeans USA. The company had not officially registered its trademarks but instead relied on usage to claim common-law trademarks. Pursuant to 19 U.S.C. § 134.46, when a geographic location is indicated on an imported article or its container, and that indication may mislead the ultimate purchaser as to the actual country of origin, then the article must also be marked with its correct country of origin in close proximity. In comparison, §134.47 provides a more lenient rule when the geographical indication is part of a trademark or trade name. According to § 134.46, products that have a geographic name on them must sew the label showing where the garment was manufactured “in close proximity” to the American location printed on the brand label. However, under § 134.47, trademarks only have to have the origin label sewn in a “conspicuous” location rather than in “close proximity.”

After importation, U.S. Customs and Border Protection (CBP), applying the stricter § 134.46 standard to unregistered marks, stopped several of JBLU’s shipments for alleged labeling problems. CBP noted that JBlu’s jeans—whose brand names included the words USA and Los Angeles—did not have the “Made in China” label right next to its brand label on the back waistband. Instead, the “Made in USA” label was sewn inside the front section of the waist band near the zipper.

The CIT had previously determined that without a registration or a pending application, the use of the geographic indicator triggered a more strict requirement for a close-by country of origin marking. The Federal Circuit, however, determined that the

relevant question was whether the label on the imported blue jeans, which included the terms "USA" and "Los Angeles," were "trademarks" within the meaning of the regulation. The Federal Circuit determined that the dictionary definition of "trademark" does not depend on whether the mark has been registered or an application for registration is pending.

Consequently, without some similar limitation in the regulation, the word "trademark" has to be given its broader meaning. The Lanham Act, which is the U.S. federal trademark law, does not require that the marks be registered to be trademarks. According to the Court of Appeals, the word "trademark," in this context, "unambiguously includes trademarks without a pending application."

The Court of International Trade decision was reversed and the case was remanded.

For more information, contact: Frances Hadfield, Anne Li

New Antidumping (AD) and Countervailing Duty (CVD) Petitions Continue to Flood in Through March

Automotive Refrigerant, Phosphor Copper, Ferrovandium, and Water Treatment Chemicals

On March 3, the American HFC Coalition and its individual members (Amtrol, Inc., Arkema, Inc., The Chemours Company FC LLC, Hudson Technologies, Mexichem Flour Inc., Worthington Industries, Inc.) filed AD petitions on imports of a refrigerant known as 1, 1, 1, 2 – Tetraflourothane (R-134a) from China.

- The product's largest end-use is automotive air conditioning.
- Petitioners allege that U.S. imports of R-134a from China are dumped at levels between 158.5 and 226.8 percent of their actual value.
- The ITC will vote on whether or not to continue the investigation on April 15.

On March 9, Metallurgical Products Company filed an AD petition on imports of phosphor copper from South Korea.

- Phosphor copper is used primarily to manufacture copper tubing and phosphor copper brazing rods, as well as products produced by copper and brass melting.
- Petitioners allege that U.S. imports of phosphor copper from South Korea are dumped at levels between 13.76 to 60.73 percent of their actual value.
- The ITC will vote on whether or not to continue the investigation on April 22.

On March 28, the Vanadium Producers and Reclaimers Association and its members (AMG Vanadium, LLC, Bear Metallurgical Company, Gulf Chemical & Metallurgical Corp., and Evraz Stratcor, Inc.) filed AD and CVD petitions on imports of ferrovandium from South Korea.

- Ferrovandium is used in the production of several types of construction and engineering alloy steels, rail steels, high-speed and heat-resisting tool and die steels, and high-strength low-alloy steels, often called microalloy steels.

- Petitioners allege that U.S. imports of ferrovanadium from South Korea are dumped at levels between 49.68 and 92.87 percent of their actual value.
- The ITC will hold a public conference on April 18 and vote on whether or not to continue the investigation on May 11.

On March 31, Compass Chemical International LLC filed AD and CVD petitions on imports of a chemical known as HEDP from China.

- HEDP is an agent that treats commercial water, acts as a scale inhibiting agent that prevents scale formulation in commercial heating/cooling systems such as boilers, air conditions and cooling towers, and can prevent the breakdown of oxidizing agents such as peroxide bleach.
- Petitioners allege that U.S. imports of HEDP from South Korea are dumped at levels between 100 and 155 percent of their actual value.
- The ITC will hold a public conference on April 21 and vote on whether or not to continue the investigation on May 13.

For more information, contact: Benjamin Blase Caryl

AGENCY ENFORCEMENT ACTIONS

Bureau of Industry and Security (BIS)

- On March 21, BIS amended the Export Administration Regulations (EAR) by adding 44 persons under 49 entries to the Entity List under the destinations of China, Germany, Hong Kong, India, Iran, Malaysia, the Netherlands, Singapore, Switzerland, and the United Arab Emirates (U.A.E.).
 - This final rule also removes five entities from the Entity List under the destinations of Ukraine and the U.A.E., as the result of requests for removal received by BIS, a review of information provided in the removal requests in accordance with the procedure for requesting removal or modification of an Entity List entity and further review conducted by the End-User Review Committee (ERC).
 - Finally, this final rule modifies two existing entries in the Entity List, both under the destination of China. These entries are being modified to reflect additional aliases and addresses for these persons.
- On March 14, BIS entered into a Settlement Agreement with Chemical Partners Europe S.A. (CPE) of Brussels, Belgium to settle six alleged charges of intent to evade the Export Administration Regulations (EAR) in connection with the export of coatings, pigments and paints from the U.S. to Iran via Belgium, including some suitable for use in nuclear facilities or in marine applications. The company agreed to a civil penalty of \$350,000.

Department of Justice (DOJ)

- In addition to Olympus Corporation of the Americas (OCA) paying \$623.2 million for making illegal payments to doctors and hospitals in the United States and Latin America, its subsidiary Olympus Latin America (OLA) will separately pay \$22.8 million to resolve criminal charges relating to the Foreign Corrupt Practices Act (FCPA) in Latin America. From 2006

until August 2011, OLA implemented a plan to increase medical equipment sales in Central and South America by providing payments to health care practitioners at government-owned health care facilities.

Office of Foreign Assets Control (OFAC)

- On March 16, [OFAC issued a Finding of Violation](#) to MasterCard International for violations of the Reporting, Procedures and Penalties Regulations (RPPR). MasterCard failed to report accounts in which two sanctioned entities had an interest.

Securities and Exchange Commission (SEC)

- On March 1, [the SEC announced](#) Qualcomm Incorporated agreed to pay \$7.5 million to settle charges that it violated the Foreign Corrupt Practices Act (FCPA) by hiring relatives of Chinese government officials who were deciding whether to select the company's mobile technology products amid increasing competition in the market. In addition, the company provided gifts, travel, and entertainment to try to influence officials at government-owned telecom companies in China.
- On March 3, [the SEC announced](#) global health science company Nordion, Inc. and a former employee, Mikhail Gourevitch, both agreed to settle FCPA violations related to Gourevitch scheming to bribe Russian government officials and obtain drug approvals for Nordion while also enriching himself. Gourevitch was terminated by the company and agreed to pay \$178,950 in disgorgement, prejudgment interest, and penalties, while Nordion agreed to pay a \$375,000 penalty for lacking proper internal FCPA controls.
- On March 23, [the SEC announced](#) Swiss-based Novartis AG agreed to pay \$25 million to settle charges that it violated the FCPA when its China-based subsidiaries engaged in pay-to-prescribe schemes to increase sales. Employees of two China-based Novartis subsidiaries gave money, gifts, and other things of value to health care professionals, which led to several million dollars in sales of pharmaceutical products to China's state health institutions.

For more information, contact: Edward Goetz

OTHER AGENCY ACTIONS

Census Bureau

- The Census Bureau is [proposing to amend the Foreign Trade Regulations](#) to reflect new export reporting requirements related to the implementation of the International Trade Data System (ITDS), in accordance with [Executive Order 13659](#) "Streamlining the Export/Import Process for American Businesses."
 - The proposed changes also include the addition of two new data elements in the Automated Export System (AES); the original Internal Transaction Number (ITN) field and the used electronics indicator.
 - Lastly, the Census Bureau proposes to make changes to provide clarity on existing reporting requirements.
 - Written comments must be submitted on or before May 9, 2016.

Directorate of Defense Trade Controls (DDTC)

- DDTC held a Webinar for Industry on its IT modernization of the DTrade application on March 25, 2016. It can be accessed for viewing by [clicking here](#).
- On March 28, DDTC posted an Industry Notice announcing the release of Revision 4.3 of the "Guidelines for Preparing Agreements."
 - DDTC also posted a "Response to Industry Comments on the Agreement Guidelines" explaining the disposition of comments received during the January 2016 review period.

Executive Office of the President

- On March 16, the President issued [Executive Order \(E.O\) 13722, "Blocking Property of the Government of North Korea and the Workers' Party of Korea, and Prohibiting Certain Transactions with Respect to North Korea](#).

Office of Foreign Assets Control (OFAC)

- Following the issuance of E.O. 13722, the Secretary of the Treasury, in consultation with the Secretary of State, [determined pursuant to subsection 2\(a\)\(i\) of the E.O. that persons operating in the transportation, mining, energy, and financial services industries in the North Korean economy may be subject to targeted sanctions](#).
 - OFAC also issued nine general licenses on its web page for certain activities involving North Korea and published frequently asked questions pertaining to both E.O. 13722 and the general licenses. Both of these can be found on [OFAC's website](#).
- On March 24, OFAC issued [General License I: Authorizing Certain Transactions Related to the Negotiation of, and Entry into, Contingent Contracts for Activities Eligible for Authorization Under the Statement of Licensing Policy for Activities Related to the Export or Re-export to Iran of Commercial Passenger Aircraft and Related Parts and Services](#).
 - The [Frequently Asked Questions Relating to the Lifting of Certain U.S. Sanctions Under the Joint Comprehensive Plan of Action](#) was also updated, adding four FAQs (J.9 – J.12) related to the new General License.
- On March 29, OFAC announced the [Highly Enriched Uranium \(HEU\) Agreement Assets Control Regulations](#) were removed from the Code of Federal Regulations. OFAC took this action because the national emergency on which the regulation was based automatically terminated.

U.S. Customs and Border Protection (CBP)

- The U.S. circulated a primer on "Procedures for Investigating Allegations of Evasion" at the World Trade Organization on March 15.
 - It described "Further Action to Combat Evasion" of anti-dumping duties provided in the [Trade Facilitation and Trade Enforcement Act of 2015](#), which was signed into law on February 24 by President Obama.
 - The text of the primer may be [found here](#).

For more information, contact: Edward Goetz

CROWELL & MORING CONTRIBUTES

"International Practitioner's Desk Series" *U.S. Customs: A Practitioner's Guide to Principles, Process, and Procedures, Second Edition*. Edited by [John Brew](#), Co-Authors [Alex Schaefer](#) and [Jini Koh](#), Contributor [Frances Hadfield](#), Assistance from [Pierce Lee](#), [Edward Goetz](#), [Nicholas DeLong](#), and [Sharon Johnson-Harrell](#).

CROWELL & MORING SPEAKS

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

[John Brew](#) and [Cari Stinebower](#) spoke at the [International Compliance Professionals Association's \(ICPA\) 2016 Annual Conference](#). The conference was held on March 13-16 in Las Vegas. Cari provided an "Update on Global Sanctions" and John discussed the "Use of Statistical Sampling in Trade Compliance" on March 16.

Jeff will be speaking on issues related to dispute resolution under the Trans Pacific Partnership (TPP) at the [26th Annual Meeting and Conference of the Inter-Pacific Bar Association](#) in Kuala Lumpur on April 15.

Jim Smith, C&M International president, will be speaking at the National Association for Surface Finishing's (NASF) Washington Forum on April 20 at the Ritz-Carlton Pentagon City in Arlington, VA. Jim will be speaking on "Trade: A Look at Pending Trade Agreements with Asia and Europe."

[Addie Cliffe](#) and [Dj Wolff](#) will be presenting on the International Panel at [Crowell & Moring's Ounce of Prevention Seminar \(OOPS\)](#) scheduled for May 25-26, 2016 at the Renaissance Washington, DC.

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

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