crowell moring

CLIENT ALERT

This Month in International Trade — March 2017

Apr.06.2017

In this issue:

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

TOP TRADE DEVELOPMENTS

Trump's Trade Agenda Taking Shape

Last month, we provided a first look at the Trump administration's Trade Policy Agenda. One month later, we are starting to see more specific information about the priorities the administration intends to pursue, where it differs from its predecessor, and where there will most likely be continuity in approach.

Trade Ministers Agree in Chile to Continue Discussing a Potential TPP

At the same time, governments around the world are taking the measure of the administration's early trade moves, and positioning themselves to adapt. The first indication of how foreign governments were responding came at the meeting of Asian and Latin American Trade Ministers in Vina del Mar, Chile, on March 14-15. The meeting brought together members of Pacific-facing governments from three trade groups – the eleven remaining members of the Trans-Pacific Partnership (TPP); the Latin American governments participating in the Pacific Alliance; and several of the governments, including China, negotiating the Regional Comprehensive Economic Partnership (RCEP).

The principal development from Vina del Mar was the commitment by the TPP-11 governments (that is, absent the U.S.) to continue discussing the potential future of the agreement after the United States' withdrawal. Ministers from the TPP-11 will meet again in Hanoi, Vietnam, in May during the meeting of Asia-Pacific Economic Cooperation (APEC) Ministers Responsible for Trade, and possibly in Canada prior to that time as well. Opinions among those governments vary about the future of the agreement, and whether to implement it among themselves, renegotiate it, or abandon it. Japan, the largest economy left in TPP, has stated that it wished to consider all options, and will consider TPP in the context of the possibility of pursuing a bilateral agreement with the United States, and regional integration through RCEP. Other developing country members are only interested in TPP if the United States is party to the agreement.

In Latin America, governments are emphasizing their commitment to liberalizing trade among themselves, and opening up the Pacific Alliance trade agreement to new members, with criteria for membership to be developed.

USTR Nominee Robert Lighthizer Suggests Substantial Continuity with Past Policy during Confirmation Hearing

Back in Washington, the confirmation hearing for United States Trade Representative (USTR) nominee Robert Lighthizer on March 14 was a further opportunity to examine the "new approach" the Trump administration is promising to bring to US trade policy. Lighthizer's comments to the Senate Finance Committee indicated the administration's trade policy would have substantial continuity with past policy while emphasizing stricter enforcement and more focused negotiation on sectors that boost American production. Of interest:

- On digital trade, Lighthizer said the work in TPP was important and should be incorporated into future U.S. agreements, and emphasized Canada, Japan, and Mexico as early priorities.
- On NAFTA, Lighthizer said NAFTA needed to be re-negotiated to benefit U.S. manufacturing. Lighthizer reassured Senate members that he would be careful in re-negotiating NAFTA "not to do anything that adversely affects winners from NAFTA". At the same time, he did not specify whether the agreement would remain a three-country bloc, or be concluded as two separate but parallel agreements.
- On trade deficits, Lighthizer said deficits were "indications of conditions in a country or the particular set of rules," suggesting a trade deficit with the United States is a sign of trade barriers employed by the trading partner. To study this condition, President Trump signed Executive Order 13786 on March 31, 2017, directing the preparation of an Omnibus Report on Significant Trade Deficits.
- Trade Enforcement was a feature of Lighthizer's testimony. Much of the discussion regarding the Trump administration's new approach to trade enforcement took place in the context of China's overcapacity in the steel sector. Lighthizer suggested China was pursuing industrial policies in violation of global trade rules, stating that China's unfair policies were not just limited to steel but encompassed many other sectors, and that WTO rules were not effective in dealing with China.

Lighthizer's confirmation by the Senate remains on hold pending agreement in the upper house on a waiver for his past representation of foreign interests.

Administration Preparing to Notify Congress its Intent to Pursue Revising NAFTA

By March 30, it was starting to become clearer how the Trump administration would be sequencing its trade priorities, and approaching its first foray into trade negotiations – revising NAFTA.

An initial draft of its notification letter to Congress, under the signature of Acting USTR Stephen Vaughn, set out the priorities the administration would intend to pursue in revising NAFTA. Although media reporting of the letter emphasized the continuity between the Trump administration's priorities and the TPP Agreement which it abandoned, there are a number of important shifts in emphasis providing insight into how the administration intends to restructure NAFTA.

The most important area of difference is in trade remedies. The draft suggests the administration would seek to include a safeguard provision in the renegotiated NAFTA, though it does not describe how the new provision would differ from the current safeguards in Chapter 8 of NAFTA. With respect to antidumping and countervailing (AD/CVD) duties, the administration is seeking to preserve flexibility to address "diversionary dumping" which involves using low-priced imported inputs from outside the NAFTA zone in manufacturing while meeting NAFTA rules of origin. In addition, the administration has signaled it wishes to eliminate Chapter 19 of NAFTA, which requires antidumping and countervailing duties be confirmed by a binational panel, rather than just the judicial authorities of the importing country. All of these changes create scope to limit the effect of NAFTA's market-opening commitments, creating the potential for Canada and Mexico to withdraw some benefits under the agreement to match their evaluation of the revised balance of rights and obligations the Trump administration may seek. Such responses could take the form of tariff increases; imposition of tariff-rate quotas and quantitative restrictions; or in the rules areas, removal of provisions of interest to the U.S. from the coverage of the agreement.

Another prominent area of difference is in rules of origin, where the draft letter foreshadows an administration approach that would "seek rules of origin that ensure that the Agreement supports production and jobs in the United States." This is a signal that the U.S. intends to tighten rules of origin under NAFTA. One of the objectives of rules of origin in a regional agreement is to enable "cumulation" of the value of production inside the free trade area, but it does not distinguish between production taking place in the U.S., Canada, or Mexico. Tightening rules of origin will reduce the amount of non-NAFTA content in complex manufactured goods, but will not necessarily cause production to be located in the United States as compared to Canada or Mexico (although it would be possible to "weight" the rules of origin in such a way as to require a certain percentage of regional value content to originate in the United States, but this would be controversial and would smack of industrial policy, not a U.S. strength in the past).

Limiting the application of cumulation rules could result in a relocation of production to the United States, thus reducing the benefit of the overall agreement to Canada and Mexico. Clearly rules of origin will be one of the most contentious parts of the renegotiation.

For more information, contact: Paul Davies, Melissa Morris

President Signs New EO Establishing Enhanced Collection of AD/CVD Duties and Violations of Trade and Customs Law

According to a March 31 U.S. Customs and Border Protection (CBP) press release, the new Executive Order (EO) authorizes the Secretary of Homeland Security, through the Commissioner of CBP to:

- Develop implementation plans within 90 days to require importers who CBP has determined pose a risk to the revenue of the United States to provide security for antidumping and countervailing duty (AD/CVD) liability through bonds.
- Develop and implement a strategy and plan for enabling interdiction and disposal of inadmissible goods, including through methods other than seizure.

The EO enhances CBP's ability to share information with rights holders to determine if Intellectual Property (IP) Rights infringements or violations have occurred, and information regarding merchandise voluntarily abandoned that violates trade laws. The Attorney General also is to develop prosecution practices and allocate resources to treat significant trade law violations as a high priority.

For more information, contact: John Brew, Dan Cannistra, Alex Schaefer, Bob LaFrankie, Jini Koh, Benjamin Blase Caryl

---

ZTE Update: Judge Revises Plea Agreement to Ensure More Central Role for Court in Monitoring Ongoing Compliance

Continuing a trend toward greater judicial scrutiny of Department of Justice (DOJ) plea agreements first seen in the district court's action in the *Fokker* case, Ed Kinkeade, a U.S. District Judge for the Northern District of Texas, revised the guilty plea submitted to him by ZTE and the DOJ to reject the corporate monitor agreed to by both ZTE and the DOJ and instead add that the "monitor is a judicial adjunct pursuant to Federal Rule Procedure 53."

In place of the monitor proposed by ZTE and DOJ, the Judge selected former Texas state district court judge, James Stanton. Judge Kinkeade also revised the agreement to ensure the court has a more active role in several ways including: (a) removing DOJ's role in reviewing the monitor's workplan, which will now be written by the court, (b) indicating the monitor will report to the court, and (c) clarifying that the court, not DOJ, "shall decide any disputed issues between the Monitor, the Company, and the Department."

In light of the settlement of administrative and criminal enforcement actions against ZTE, the End-User Review Committee (ERC) at the Bureau of Industry and Security (BIS) removed both companies from the Entity List on March 29.

For more information, contact: Jeff Snyder, Carlton Greene, Cari Stinebower, Dj Wolff, Chris Monahan, Jana del-Cerro

---

Trump Administration Reaffirms U.S. Commitment to a "Sovereign and Whole Ukraine"

The U.S. Department of State issued a press release on the third anniversary of the occupation of Crimea stating, "The United States does not recognize Russia's "referendum" of March 16, 2014, nor its attempted annexation of Crimea and continued violation of international law. We once again reaffirm our commitment to Ukraine's sovereignty and territorial integrity."

The press release also reiterated, "Crimea is a part of Ukraine. The United States again condemns the Russian occupation of Crimea and calls for its immediate end. Our Crimea-related sanctions will remain in place until Russia returns control of the peninsula to Ukraine."

EU Extends Sanctions Related to Russian Annexation of Crimea

On March 3, the EU extended for one year its asset-freezing measures against certain persons responsible for the misappropriation of Ukrainian state funds or human rights violations in Ukraine. Subsequently on March 13, the EU extended for six months its sanctions against 150 individuals and 37 entities it finds responsible for "…actions which undermine or threaten the territorial integrity, sovereignty, and independence of Ukraine." These two sets of sanctions will thus continue to apply until March 6, 2018, and September 15, 2017, respectively.

In parallel, EU restrictive measures remain in place on economic relations with Crimea and Sevastopol until June 23, 2017, while the EU's sectoral sanctions against Russia remain in place until July 31, 2017.

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

---

New Trade Cases Filed

Biodiesel from Argentina and Indonesia

On March 23, the National Biodiesel Board Fair Trade Coalition, an *ad hoc* association composed of the National Biodiesel Board and 15 confidential members, filed antidumping (AD) and countervailing duty (CVD) petitions on imports of biodiesel from Argentina and Indonesia.

Biodiesel is an environmentally friendly fuel source because it is made from renewable resources and produces lower emissions. Petitioners have requested AD duties of 23.3 percent (Argentina) and 34 percent (Indonesia), as well as CVD duties to offset subsidies.

The U.S. International Trade Commission (ITC) will hold a public preliminary conference on April 13, in which interested parties (U.S. producers, importers, purchasers, and foreign producers/exporters) may testify and answer ITC staff questions about the biodiesel industry and market.

For more information, contact: Benjamin Blase Caryl

Carbon and Alloy Steel Wire Rod from 10 Countries

Gerdau Ameristeel US Inc., Nucor Corporation, Keystone Consolidated Industries, Inc., and Charter Steel filed antidumping (AD) and countervailing duty (CVD) petitions on imports of Carbon and Alloy Steel Wire Rod (CASWR) from the countries identified below.

- AD - Belarus, Italy, the Republic of Korea, the Russian Federation, the Republic of South Africa, Spain, Turkey, Ukraine, United Arab Emirates, and the United Kingdom.
- CVD petitions - Turkey and Italy.

The merchandise covered by these investigations are certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, less than 19.00 mm in actual solid cross-sectional diameter. Petitioners have requested AD duties as high as 821 percent, as well as CVD duties to offset subsidies provided by the Turkish and Italian governments.

The U.S. International Trade Commission (ITC) will hold a public preliminary conference on April 18, in which interested parties (U.S. producers, importers, purchasers, and foreign producers/exporters) may testify and answer ITC staff questions about the CASWR industry and market.

For more information, contact: Bob LaFrankie, Benjamin Blase Caryl

Carton-Closing Staples from China

On March 31, North American Steel & Wire, Inc./ ISM Enterprises filed an antidumping (AD) duty petition on imports of carton-closing staples from China. Carton-closing staples secure or close the flaps of corrugated and solid paperboard cartons and boxes. Petitioner has requested AD duties as high as 148.8 percent.

The U.S. International Trade Commission (ITC) will hold a public preliminary conference on April 21, in which interested parties (U.S. producers, importers, purchasers, and foreign producers/exporters) may testify and answer ITC staff questions about the carton-closing staple industry and market.

For more information, contact: Benjamin Blase Caryl

EU Conflict Minerals Regulation Advances toward Final Adoption

The European Parliament has adopted by a large majority the proposed new EU Conflict Minerals Regulation. The Regulation is expected to be passed in May, upon formal adoption by the Council. It would then become applicable as of January 1, 2021, allowing companies time to adapt to its requirements. The Regulation will primarily affect importers of tin, tantalum, tungsten and gold, but also indirectly refiners and smelters of these minerals within and outside the EU.

The Regulation mandates supply chain due diligence, including a five-step framework for its conduct. These include (i) establishing company management systems, (ii) identifying and assessing risks in the supply chain, (iii) elaborating a strategy to respond to these risks, (iv) independent third-party audit of due diligence efforts, and (v) annual reporting on these efforts. Companies will be able to apply to the European Commission for recognition of their compliance schemes' conformity with these five requirements.

By the end of 2017, the Commission should be issuing guidelines on the identification of conflict-affected and high-risk areas from which the relevant minerals are sourced. A list of such areas will be compiled and regularly reviewed by external experts designated by the Commission. The Commission also intends to produce a global list of responsible refiners and smelters.

Besides aiming to reduce the financing of conflicts in developing nations, the Regulation seeks to address human rights abuses in the affected areas' mining industries. Therefore, the EU is planning for related development aid to promote sustainable economic growth and investment in education and healthcare in these regions. The EU is also working with third countries to ensure responsible sourcing and the elimination of alternative markets for conflict minerals.

For more information, contact: Charles De Jager

It's a Plane: Significant Modifications Do Not Result in Substantial Transformation

On March 10, 2017, U.S. Customs and Border Protection published a final determination under the Trade Agreements Act that the country of origin of a Brazilian-manufactured military cargo airplane would remain Brazil, even after the aircraft undergoes significant conversion into a civil fire-fighting aircraft within the United States.

According to CBP, the U.S.-origin changes to the aircraft—which include removing and adding various systems and components to install fire suppression capability—are not sufficient to change the aircraft's "fundamental identity" and thus, do not constitute "substantial transformation." The CBP emphasized that the aircraft would maintain its "most important" systems, the "basic structural integrity and the aerodynamics of the aircraft" would remain unchanged, and there was no evidence to demonstrate meaningful changes to the aircraft's power, speed and range, or to the electronics and instruments used to fly the plane.

For more information, contact: Alan W.H. Gourley, M. Yuan Zhou

---

CROWELL'S FIRST 100 DAYS OF THE TRUMP ADMINISTRATION SERIES

PODCAST – Foreign Investment and Reviews by CFIUS under the New Administration

Alan Gourley and Addie Cliffe, both partners in Crowell & Moring's International Trade and Government Contracts groups, sit down to provide a high-level overview of the Committee on Foreign Investment in the U.S. (CFIUS) and what it means for trade. **Covered in this 13 minute podcast**

- Overview of CFIUS;
- Current trends surrounding CFIUS;
- Practical tips for businesses regarding Mergers & Acquisitions (M&A) activity and foreign investment; and
- What can be gleaned from the annual CFIUS report to Congress.

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

For more information, contact: Alan Gourley, Addie Cliffe

Taking Stock of the Trump Trade Agenda – Implications for Business

The Trump administration has come to office promising substantial changes to U.S. trade policy. Its trade policy agenda, released on March 1, 2017, emphasized U.S. sovereignty in determining trade policy, promised to use trade remedy laws assertively to counter unfair trading practices, pledged to aggressively put pressure on countries to eliminate barriers to U.S. exports, and committed to reviewing the U.S. approach to trade agreements.

- What are the implications for business of this new policy approach?
- What forces drive how the administration and Congress come together on a new strategy for trade?
- How much scope does the administration have under existing U.S. law to act unilaterally to address trade imbalances or unfair trade practices?
- How are U.S. trading partners responding, and what implications do their moves have for global business?

Click here to listen to this insightful 60 minute webinar held on March 15. This event was hosted by members of C&M International and Crowell's International Trade Group and is available on demand.

For more information, contact: Andrew Blasi, Paul Davies, Melissa Morris, Benjamin Caryl

---

AGENCY ENFORCEMENT ACTIONS

Bureau of Industry and Security

- On March 14, BIS entered into a Settlement Agreement with Access USA Shipping, LLC of Sarasota, Florida to settle 150 alleged violations of the Export Administration Regulations (EAR). The company illegally shipped rifle scopes, night vision lenses, weapons parts, and EAR99 items. The 150 alleged violations included 129 counts of evasion, 17 counts of exporting or attempting to export crime control items without the required license, and 4 counts of exporting or attempting to export to a sanctioned entity on the BIS Entity List without the required license. Access USA was assessed a civil penalty of $27 million, of which $17 million dollars of the penalty was suspended for a two-year probationary period.

State Department

- On March 30, the U.S. Government determined that 30 foreign persons engaged in activities warranting the imposition of measures pursuant to Section 3 of the Iran, North Korea, and Syria Nonproliferation Act (INKSA). The Russian company Rosoboronexport was also listed, but identified in a separate Federal Register notice on March 29.
    - Effectively, the measures prohibit the U.S. government from contracting with or assisting these companies and individuals. In addition, the measures terminate all sales of any defense articles, defense services, or design and construction services under the Arms Export Control Act. Finally, the measures prevent any issuing of, and suspend any current, licenses for the export of items controlled under the Export Administration Act of 1979 or the Export Administration Regulations.

For more information, contact: Edward Goetz

OTHER AGENCY ACTIONS

Bureau of Industry and Security

- On March 7, BIS published a notice in the Federal Register to recruit private-sector members to serve on its seven Technical Advisory Committees (TAC). The TACs advise the Department of Commerce on the technical parameters for export controls applicable to dual-use commodities and technology and on the administration of those controls. Each is composed of representatives from industry, academic leaders, and members of the U.S. Government representing diverse points of view on the concerns of the exporting community.
    - To respond to this recruitment notice, please send a copy of your resume to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov*.
    - *This Notice of Recruitment will be open for one year.*
- The first quarterly notice from the Trump administration listing countries which require or may require participation in, or cooperation with, an international boycott was published in the Federal Register on March 30. The countries listed remain unchanged from the Obama administration's last listing from December 2, 2016.

- The countries listed are Iraq, Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, United Arab Emirates, and Yemen.

For more information, contact: Edward Goetz

CROWELL & MORING AUTHORS

A New Era of Enforcing Protectionist Trade Measures

Jini Koh, *New York Law Journal*

Even prior to the 2016 Presidential election, Congress had already determined that certain enforcement measures were necessary to protect U.S. companies. Signed into force in February 2016, the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) was the first comprehensive authorization of U.S. Customs & Border Protection (CBP) since the Department of Homeland Security was created back in 2003.

Provisions within the TFTEA update longstanding CBP programs such as duty drawback making the process of obtaining refunds of customs duties paid for imported products that are later exported easier; formalize modernization efforts such as CBP's Automated Commercial Environment (ACE), or e-filing entry process; and introduce certain enforcement measures further outlined below. Combined with the protectionist statements from the new Administration, companies that import and export products should, at a minimum, expect increased scrutiny of their shipments and more sophisticated companies should anticipate a new landscape where trade measures are used to gain competitive advantages.

Of note in the TFTEA are three enforcement measures of which companies should be particularly aware. The first is Title Four of the TFTEA, commonly referred to as the Enforce and Protect Act (EAPA), which established a new administrative procedure for investigating allegations of evasion of antidumping and countervailing (AD/CVD) duty orders. As background, dumping occurs when a foreign company prices its products at below fair market value and countervailing occurs when a foreign government provides assistance and subsidies to a foreign company enabling them to sell products below fair market value. A U.S. manufacturer can file a petition with the International Trade Commission claiming that it is injured in the marketplace because these foreign imports are priced below fair market value, whether through dumping or by receiving countervailable subsidies. The International Trade Commission determines if the domestic industry suffered injury as a result of lower priced imports, as opposed to increasing costs or other market forces. If injury is decided in the affirmative, the Department of Commerce then determines by how much the domestic industry was injured. The ensuing AD/CVD tariff is assessed on imports from the offending countries/producers to 'level' the playing field between the unfairly priced imported and competitively produced domestic products. AD/CVD orders are product and country specific, e.g., carbon and alloy steel cut-to-length plate from Brazil or honey from China, and the AD/CVD rates tariff can range from 0 percent to over 200 percent, which are assessed as an ad valorem tax (i.e., on the value) at importation. As AD/CVD rates in the double or triple digits are lock out rates from the U.S. market, certain foreign companies will attempt to evade these AD/CVD duties. One common evasion method is transshipping products through a third country and labelling them as being from the non-subject country. Another method is to classify, or categorize, subject-merchandise as another product that is not-subject—since import declarations are electronically filed

through ACE and physical inspections at the border have a low-risk of occurrence since the focus is on security risk versus commercial risk, the likelihood of getting caught is lower than not getting caught.

The EAPA directs the Department of Homeland Security to establish a National Targeting and Analysis Group dedicated to preventing and countering evasion, including proactive targeting of imports. The EAPA also directs CBP to investigate allegations of evasion filed by an "interested party," which is not limited to a domestic manufacturer but could be another importer, a trade union, or another federal agency, among others. The target of the investigation is not limited to the foreign producer or others in the supply chain, but is actually focused on the U.S. importer. The U.S. importer is the entity legally liable for an imported shipment under the U.S. customs laws and could be related or unrelated to the foreign producer. Once an interested party files an allegation, CBP has 15 days to determine whether or not to initiate a formal investigation. These formal evasion investigations are new processes and CBP just published interim rules for the investigative process in fall of 2016. Uniquely, perhaps to the trade laws, is that the EAPA and the interim rules permit CBP to make an adverse inference if any questioned party (e.g., importer, foreign producer, exporter, foreign governments, etc.) does not cooperate to the best of its ability. Given the limited implementation period to date, CBP is still determining key parameters such as what type of information is sufficient to support an evasion allegation and initiate an investigation to how to conduct its investigations. Since EAPA went into force, CBP has only released two investigation outcomes—one determining non-initiation of an investigation and one determining to initiate an investigation. Interestingly in its determination not to initiate an investigation, CBP stated that the interested party "may resubmit the allegation" indicating that a decision not to initiate an investigation is not an acquittal, per se, but rather that insufficient evidence was submitted this time to move forward, almost inviting the company making the allegation to do so again once additional information is available. Companies that import or have upstream components that are subject to AD/CVD orders should monitor EAPA developments as the interim rules become final and CBP concludes additional investigations. While EAPA investigations are intended to protect domestic manufacturers by seeking to fully enforce an AD or CVD order, they could also easily be used as both a sword or shield against competitors, whether domestic or fellow importers.

The second enforcement measure in the TFTEA is additional authority for CBP to protect intellectual property (IP) rights from infringing imports, whether they are counterfeit, pirated or other violative goods. Perhaps a surprise to companies will be that CBP can now provide samples of potentially infringing products to the IP owner to help determine if the product is indeed infringing. This allows IP owners unique insight into what infringers are doing and in real-time, perhaps even prior to the IP owner being aware of the latest infringing technique or commodity. Companies can also submit allegations of infringing shipments which CBP will use in its targeting and enforcement efforts. Depending on the nature and specifics of the IP registered with CBP, in practice it seems that the violative company does not necessarily need to be importing counterfeit goods but could also be importing legitimate goods through unauthorized channels.

The third enforcement measure in the TFTEA outlined here is increased focus directed to the prohibition of importing products that are produced, whole or in part, by forced labor (including convict labor, child labor, and indentured servitude). The original prohibition has been in the customs laws since the 1930s and is similar to other instances where Congress has used trade measures to enforce social objectives such as the conflict minerals provisions in the Dodd-Frank Act and plant and wood product reporting requirements in the Lacey Act. The TFTEA removed an exception permitting imported goods made with forced labor if there were not sufficient products made without forced labor to satisfy the "consumptive demand" of the United States. To enhance enforcement, CBP publishes the Withhold Release orders (i.e., instruction to the ports of entry to refuse importation of the listed items) of goods suspected of being produced with forced labor. The Withhold Release orders list the product and the

manufacturer. There were four Withhold Release orders issued in 2016, all against Chinese companies involving different products, which ended a lull stretching back to 2000.

While the TFTEA outlined specific and increased enforcement provisions to protect domestic companies, the new Administration places a different lens on how these enforcement actions may be executed. The new Administration may focus its enforcement efforts on certain countries (*e.g.*, China and Mexico) and on certain commodities (e.g., steel) in these newly established mechanisms as well as pursue new enforcement measures. More importantly, given how young these new enforcement provisions are, the new Administration will heavily influence the standards by which evasion or infringement are met, which will have a long-term impact on the trade community. Companies should not only be aware of these new enforcement measures but also consider how best to prepare for or even to utilize these measures to increase its own competitive edge.

Reprinted with permission from the April 3, 2017 edition of the New York Law Journal© 2017. ALM Media Properties, LLC. All rights reserved. Further duplication without permission is prohibited. ALMReprints.com – 877-257-3382 - reprints@alm.com.

CROWELL & MORING SPEAKS

On April 21, Kelly Currie will be speaking at the 19th Annual New York Conference on the Foreign Corrupt Practices Act (FCPA) in New York. He will be sharing his insights as a former Chief Assistant U.S. Attorney for the Eastern District of New York (EDNY) on a panel entitled, "Looking Ahead: EDNY and SDNY Prosecutors Alumni Panel."

On May 2, Frances Hadfield will be a speaker at the Practicing Law Institute's (PLI) Fashion and Retail Law 2017 Trends and Developments seminar at PLI's New York Center. She will be part of a panel on International Trade Developments, discussing topics such as responsibilities for importing fashion and retail products, current issues for exporters, country of origin rules and marking, and how the evolving trade policy environment is likely to affect the industry.

On May 9, Jana del-Cerro will be speaking at AAEI's Export Controls and Compliance Seminar in Washington, DC on a panel focused on technology controls in an increasingly digital world. Topics include cloud computing, encryption, deemed access, and processes to automate export control compliance.

Charles De Jager, Jana del-Cerro, and Grégoire Ryelandt will be speaking at the International Compliance Professionals Association's (ICPA) Annual European Conference, to be held June 11-13 in Dublin, Ireland. Charles will be providing an update on the Transatlantic Trade and Investment Partnership (T-TIP), Jana will be speaking on Encryption, and Grégoire will be discussing Registration, Evaluation, Authorization, and Restriction of Chemicals (REACH), an EU regulation which addresses the production and use of chemical substances, and their potential impacts on both human health and the environment.

CROWELL & MORING EVENTS

OOPS 2017 - Strategizing for Government Contractors' Game Plan under the New Administration

May 4-5 at the Renaissance Washington DC Downtown Hotel

The start of a new administration in Washington, D.C. is historically a time of uncertainty and anticipated change for contractors, and President Trump has launched 2017 with particularly bold statements about reforming the federal government, improving efficiencies, reducing regulatory burdens, and dismantling entire agencies and programs, while promising to inject significant investment into infrastructure and defense. At this early stage, the question remains – how will these dramatic changes and policy initiatives affect government contractors?

To help government contractors develop their game plans, our team will provide insider insight and practical advice across a broad range of subject areas, including an in-depth discussion of the Trump administration's policies and goals with respect to federal procurement, anticipated trends in enforcement (through suspension and debarment, investigations, and the False Claims Act), updates in the fast-moving world of cyber security, guidance on protecting intellectual property and data rights, what to expect with government-contracts related labor and employment law, litigation impacts on recovery/claims and bid protests, and how President Trump's trade and national security agenda may affect international issues in government contracting

There will be a panel on May 5 titled "Turbulent Seas – Competing Policies Roil International Procurement" which will address the following topics:

- Port blockades? Will public (and private) procurement remain open to foreign goods and services under America First?
- Exporting success? Can exporters expect retaliation or opportunities in light of increased defense spending and public procurement abroad?

Click to view the agenda.

Click to register for OOPS 2017.

EU Competition Law: Current Events in a Global Context

May 19 from 8:45 am to 5:30 pm at the Hilton Brussels Grand Place

After last year's success, in conjunction with Crowell & Moring, King's College London Centre of European Law is organizing a second conference to explore current EU Competition law issues in a global context.

The purpose of the event is to bring together leading judges, regulators, in-house counsel, academics, and private practice lawyers to discuss current issues in EU law from an international perspective, with a particular focus on the EU-U.S. axis.

To that end, we have put together four panels that each unite contributors from multiple jurisdictions to give short presentations leading to interactive discussions and Q&A involving the panel members and the audience.

Topics include:

- Merger Control Developments - Innovation Theories and EU Procedures
- Innovation and Unilateral Conduct
- ECN Policy - Consistency and the Brexit Impact
- Cartel Litigation - International Year in Review

Tickets £ 125.00.

Contact: Christine Copping, King's College, London (+ 44 207 848 2387, christine.copping@kcl.ac.uk)

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

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

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

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

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

Alexander H. Schaefer
Partner – Washington, D.C.
Phone: +1 202.624.2773
Email: aschaefer@crowell.com

Robert L. LaFrankie
Senior Counsel – Washington, D.C.
Phone: +1 202.624.2868
Email: rlafrankie@crowell.com

Jeffrey L. Snyder
Partner – Washington, D.C., Brussels
Phone: +1 202.624.2790, +32.2.214.2834
Email: jsnyder@crowell.com

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

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

Maria Alejandra (Jana) del-Cerro
Partner – Washington, D.C.
Phone: +1 202.624.2843
Email: mdel-cerro@crowell.com

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

M. Yuan Zhou
Counsel – Washington, D.C.
Phone: +1 202.624.2666
Email: yzhou@crowell.com

Adelicia R. Cliffe
Partner – Washington, D.C.
Phone: +1 202.624.2816
Email: acliffe@crowell.com

Andrew Blasi
C&M International Director – Washington, D.C.
Phone: +1 202.624.2837
Email: ablasi@crowell.com